

Congressional hearings determined that the use of mechanical power hammers is very dangerous to the persons using them and to persons in the vicinity of the persons using them. As a result, Congress enacted a statute prohibiting the use of mechanical power hammers on all construction projects in the United States.

Subsequently, a study conducted by a private research firm concluded that nails driven by mechanical power hammers have longer-lasting joining power than hand-driven nails. After learning about this study, a city council enacted an amendment to its building safety code requiring the use of mechanical power hammers in the construction of all buildings intended for human habitation.

Is this amendment to the city's building safety code constitutional?

- A. No, because it conflicts with the provisions of the federal statute.
- B. No, because it was enacted subsequent to the federal statute.
- C. Yes, because the federal statute does not expressly indicate that it supersedes inconsistent state or local laws.
- D. Yes, because the long-term safety of human habitations justifies some additional risk to the people engaged in their construction.

Explanation:

It is common for the federal government to regulate the same subject matter as states and/or municipalities because these governments share many of the **same powers**. But under the **supremacy clause**, federal law is the supreme law of the land. Therefore, a **federal law** can **preempt** (ie, supersede) conflicting state or municipal laws and render them void. One example is **implied conflict preemption**, which occurs when there is:

- **direct conflict** – a state/municipal law conflicts with a federal law to such a degree that it is **impossible** (or nearly impossible) for a person or entity **to comply with both laws** *or*
- **indirect conflict** – a state/municipal law **frustrates the accomplishment** of the **federal law's purpose**.

Here, the federal statute *prohibits* the use of mechanized hammers on all construction projects. But the city council amendment *requires* the use of such hammers on all construction projects for human habitation. These laws directly conflict since it is impossible for a company constructing human habitations in the city to comply with both laws. Therefore, the federal statute impliedly preempts the city council amendment and renders it unconstitutional.

(Choice B) In determining preemption, the timing of the laws is irrelevant. Therefore, it makes no difference whether the city council enacted the amendment before or after the federal statute.

(Choice C) Although the federal statute does not *expressly* state that it supersedes inconsistent state or local laws, it *impliedly* preempts them.

(Choice D) Federal laws always preempt inconsistent state and local laws—regardless of their justification.

Educational objective:

Implied conflict preemption exists when (1) it is impossible to comply with a federal law and a conflicting state/municipal law (ie, direct conflict) *or* (2) a state/municipal law frustrates the accomplishment of a federal law's purpose (ie, indirect conflict).

References

- English v. Gen. Elec. Co., 496 U.S. 72, 79 (1990) (stating that federal law preempts state law when "it is impossible for a private party to comply with both state and federal requirements").
- 16A Am. Jur. 2d Constitutional Law § 235 (2019) (explaining when federal and state laws conflict).

Doctrine of preemption

