

A state law makes it a crime for an individual to intentionally provide false information on state tax forms when applying for employment.

A federal statute prohibits employers from hiring individuals who provide false Social Security numbers when applying for employment. The statute's purpose is to prevent individuals from assuming a false identity to obtain employment. A provision of the federal statute states that the statute expressly preempts state laws imposing civil or criminal punishments on employers who hire individuals who provide fraudulent Social Security numbers.

A man was charged in state court with violating the state law by intentionally providing a false Social Security number on his state tax withholding form when he applied for employment in the state. The man argued that the prosecution should not proceed because the federal statute preempts the state law.

Assume that no other federal statute applies.

How should the state court proceed with the case?

- A. Determine whether the man intentionally provided false information on his state tax form and, if so, find him guilty of violating the state law.
- B. Refuse to adjudicate the merits of the case and dismiss it, because the federal statute expressly preempts the state law.
- C. Refuse to adjudicate the merits of the case and dismiss it, because the federal statute impliedly preempts the state law.
- D. Refuse to adjudicate the merits of the case and dismiss it, because the federal statute expressly and impliedly preempts the state law.

### Explanation:

The **supremacy clause** renders a **state law void** and without effect when a federal law expressly or impliedly preempts it. **Express preemption** occurs when a **federal law**:

- was enacted pursuant to a **power *exclusively* reserved to the federal government** by the U.S. Constitution (eg, power to declare war) *or*
- **explicitly prohibits state regulation.**

The federal government shares power with state governments to regulate hiring practices within the respective state. And though the federal statute here expressly preempts state laws that punish *employers*, it does not mention *applicants*. As a result, the federal statute does not expressly preempt the state law **(Choices B & D)**.

The federal statute also does not impliedly preempt the state law. **Implied preemption** occurs through:

- **field preemption** – when Congress intended to completely occupy a particular field by **legislating so thoroughly** that it has left **no room for supplementary state regulations**
- **direct conflict preemption** – when it is impossible or **nearly impossible to comply with both** federal and state law *or*
- **indirect conflict preemption** – when the **state law frustrates the purpose** of the federal law.

Here, there is no field preemption since the federal statute punishes employers but leaves room for states to punish applicants. There is no direct conflict preemption because individuals can comply with both statutes. And there is no indirect conflict preemption since the state law *further*s the federal statute's purpose of preventing individuals from assuming a false identity to obtain employment **(Choices C & D)**.

Therefore, the state court should adjudicate the merits to determine whether the man intentionally provided false information on his state tax form and, if so, find him guilty.

### Educational objective:

Express preemption occurs when a federal law is enacted under an exclusive federal power or explicitly bars state regulation. Implied preemption occurs when there is no room for state regulation (field), it is nearly impossible to comply with both laws (direct conflict), or the state law frustrates the federal law's purpose (indirect conflict).

### References

- *Kansas v. Garcia*, 140 S. Ct. 791, 804–07 (2020) (holding that a federal law regulating employment hiring practices does not expressly or impliedly preempt a state law criminalizing fraud when applying for employment).
- 16A Am. Jur. 2d Constitutional Law § 234 (2020) (explaining the tests used to determine preemption).

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