Defying the Greater Government: Local and State Governments' Innovative Approach to Policymaking

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Synopsis

Since the economic collapse of 2008, American citizens have grown increasingly skeptical of their government's ability to pass socially and economically beneficial legislation. As citizens criticize large-scale government entities, such as the federal government or state legislatures, lower-level politicians have attempted to keep the masses at bay by passing legislation that will appease the voters in their districts. However, much of this newfound legislation is at odds with the policymaking efforts of their superior levels of government. In particular, over the last three years lower-level governments have attempted to limit, or usurp, the power of their superior governmental entities by attempting to pass legislation that either modifies the enactments of their federal and state-level counterparts, or, is expressly contrary to it. The *Rutgers Center on Law in Metropolitan Equity*, more commonly known as *CLiME*, has investigated the phenomenon of innovative exercises of government authority. In particular, *CLiME* has developed hypothesis as to why municipalities, cities and states seem to be legislating on issues typically reserved to higher governmental authority.

Introduction

> Should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union . . . would present obstructions which the federal government would hardly be willing to encounter.[1]

Since the Union's construction, citizens have feared greater government's incompetence and the implementation of widely unsupported policies. The above text illustrates James Madison's theory that subordinate governmental entities should nullify, or refuse to enact and police, policies that bring about a widespread detriment to citizens of a particular state.[2] Historically, the concept of nullification was attached only to states' refusal to implement federally-mandated policies. However, in recent years subordinate government nullification has been expanded to such an extent that the original theory may soon burst at the seams. Contemporary lower-level governments have not only refused to enforce federal

statutes; but also have gone as far as enacting statutes in blatant defiance of federal law and even enacting statutes punishing those who attempt to enforce federal law within certain states' jurisdictions.[3]

In addition to nullification's conceptual expansion, the practice's implementation, which was once exclusively reserved for states, is now being utilized by all levels of subordinate governments -- often including the rejection of state policies by cities and boroughs. Over the last three years the United States has seen boroughs defy cities; cities defy states; states defy the federal government; and cities defy states which are themselves defying the federal government. This widespread governmental defiance first begs the question: "Why have lower-level governments lost faith in the policy-making abilities of their superior tiers of government?" Second, these innovative practices beg the question: "Are lower tiers of government employing a Jeffersonian application of the Tenth Amendment; or are these policies a blatantly dubious attempt to usurp the powers of greater government?"

Trends in City and State Power and their Influences

As the American economy remains stagnant, citizens in struggling districts have grown frustrated with state and federal legislatures. As a result, an influx of lower-level government entities have opted to defy state and federal mandates. In order to remain in the good graces of voters, politicians in struggling districts have rejected what is often referred to as big brother-type government oversight -- often doing so by passing legislation expressly contrary to that enacted by their superiors.[4] Local politicians have been particularly successful at defying superior oversight due to both a lack of presidential and congressional policing; and the United States Supreme Court's side-stepping difficult issues such as gay marriage regulation and marijuana reform.[5]

In the event that these lawmakers come under fire, they often pin the federal legislative and executive branches against one another. This scenario can be illustrated by imaging President Obama and the conservative Congress as divorced parents; and the lower-tiered government entities as their disgruntled children. When conservative lawmakers enact policy defying a more liberal statute enacted by a superior governmental entity, these officials run to Congress to seek protection from the President.

Alternatively, when inferior governments defy conservative policy, they solicit the President to shield them from congressional upheaval.[6]

This authority-defying lawmaking has become particularly common in eight areas: the legalization of gay marriage, marijuana reform, gun carry regulations, housing and homelessness, labor and wages, environmental zoning, increased product safety and tort reform, and pretextual zoning. Cities that have enacted pro-cannabis and same sex marriage legislation appear to have done so as a means of protecting newly-accepted individual liberties from laws influenced by conservative, Eurocentric, cultures of generations past.[7] Laws pertaining to increased product safety and tort reform as well as stricter gun carry laws have been enacted by local governments influenced by their jurisdictions' greater public concern that these hazardous commonplace items are not thoroughly enforced at a federal level.[8] Alternatively, jurisdictions where these items are socially accepted, or where these items' production greatly benefits the local economy, have imposed less rigorous restrictions than those set by the federal government because citizens in these jurisdictions fear that the items' national unacceptance will bring negative social or economic consequences to their localities.[9]

Similarly, lower tiers of government in thriving cities have attempted to further economic growth and development by enacting laws which raise minimum wage and increase workers' rights; and alternatively, have enacted housing and anti-homeless legislation that attempt to drive poor citizens into neighboring communities, which in turn, creates the illusion that these cities' governments are more financially inept than their superiors. Lastly, environmental and pretextual zoning and permit schemes enable lower levels of government to discriminate against individuals -- such as the poor, illegal immigrants, and sex offenders -- they perceive as unsavory or bad for business. By forcing these individuals out of town, or by restricting them to miniscule areas within municipalities, inferior governments are able to attract wealthier and younger consumers and potential homeowners.[10]

The four aforementioned tactics, or trends in city and state power, are influenced by three over-arching themes. First, and most obvious, is lower-level government entities' loss of confidence in their superiors.[11] Second is inferior governments' attempt to secure financial stability and long-term success by

enacting policies that benefit the smaller governmental entities but not the larger bodies in which they are part of.[12] The final theme is a progressive shift in the morals of greater society, which in turn, has made Americans less likely to accept vices and potentially dangerous conduct such as gambling, smoking cigarettes, and living near sex offenders; all the while, making contemporary citizens more willing to expand their views of individual liberties to include non-traditional behaviors such as gay marriage and casual marijuana usage.[13]

Innovative Policymaking Methods and their Legality

Many innovative lawmakers shifted their crusade against authority into high gear by pushing nullification to its limits; and select legislative bodies have even dropped the petal to the floor by enacting policies that directly conflict with state or federal laws. However, the legality of these innovative measures, in particular whether or not these policies are preempted, is often a topic of debate. Preemption, which derives its power from the Supremacy Clause, occurs when either a federal law displaces a state law; or alternatively, when a state law displaces a municipal ordinance.[14]

In *McCullach v. Maryland*, the Supreme Court held that states have "no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress…"[15] The decisions post-McCullach have recognized two forms of preemption -- express and implied.[16] Express preemption occurs when Congress enacts legislation containing terms that directly illustrate the federal legislation's intended trumping of state law.[17] Alternatively, implied preemption can occur in one of two fashions. The first, conflict preemption, occurs when state and federal law contradict in a manner that makes following both a literal impossibility; and in the scenario that state law interferes with, or poses an obstacle to, full execution of the federal enactment's objectives.[18] The second form of implied preemption, field preemption, may occur in the absence of a conflict of law altogether.[19] Typically, courts will infer a state's attempt to preempt a federal regulatory scheme when states enact laws impeding federal regulations so pervasive that Congress intended the federal statutes to "occupy the field" without state enhancements.[20]

Preemption, at the federal level, is greatly disfavored.[21] Courts generally apply a presumption against preemption when the text of a federal preemption clause is susceptible to multiple interpretations.[22] This anti-preemption presumption is particularly revered in arenas traditionally regulated or governed by states.[23] This deference to states is rooted in Congress' historical viewing of states as the sovereign entities comprising the federal union.[24] Cities and municipalities, unlike states, are not sovereign national sub-bodies. In the scenario that a state law conflicts with a municipal ordinance, cities and municipalities are not afforded the presumption against preemption enjoyed by states.[25] Therefore, a conflicting ordinance will always be trumped by state law -- even when the ordinance pertains to an area, such as zoning, where municipalities have been afforded clear authority to act.[26]

Consequently, whenever a municipal or city ordinance either expressly or implicitly conflicts with state law, the ordinance is preempted by state law.[27] When state law conflicts with federal law, either expressly or implicitly, the federal law will prevail so long as the federal preemption statute cannot be construed to have multiple interpretations. When a federal preemption statute is found to have multiple potential interpretations the state law will prevail, due to the presumption against preemption, so long as the full parameters of the state statute fit within one of the preemption statute's interpretations.[28] Unlike the aforementioned well-established preemption scenarios, recent marijuana legislation has highlighted a murky area of preemption doctrine by challenging the conventional bounds of "implicit confliction."

The 2005 Supreme Court's decision in *Gonzales v. Raich* makes clear that federal prohibition against marijuana, particularly the *Controlled Substance Act's* inclusion of marijuana as a schedule 1 drug, is a valid authority of Congress' commerce power.[29] The decision in *Gonzales,* silenced critics whom argued that state marijuana regulation was immune from federal preemption. However, the breath of the *Gonzales* holding is rather limited -- as the Court failed to address whether state decriminalization and authorization of marijuana possession poses an implicit conflict with the federal statute. As noted by legal scholars Robert Mikos and Ilya Shapiro, the federal statute clearly applies to actions which it specifies such as federal marijuana prosecution and sentencing.[30] However, state-level decriminalization and authorization of possession appear not to conflict, either expressly or implicitly, with the *Controlled*

Substance Act.[31] This lack of conflict coupled with the fact that state officers are bound to enforce state, and not federal, statutes within their sovereign subdivisions leads to the conclusion that state marijuana decriminalization and authorization of possession fall outside of the *Supremacy Clause's* reach, and in turn, are not preempted by federal enactment.[32]

If state marijuana regulation's confliction, or lack thereof, with federal law throws a monkey wrench into the gears of preemption dogma, then cities attempting to enforce federal law within states that have decriminalized marijuana's possession and production, through the usage of zoning ordinances, poses an Hiroshima explosion-sized preemption enigma. In these scenarios, the question becomes: "May counties, cities and municipalities enforce zoning ordinances that restrict where and how marijuana is possessed, used and grown if the ordinances frustrate the general intent of the state enactment, in a manner consistent with federal law, which neither expressly or implicitly conflicts with state law?" Essentially, these localities have attempted to use non-conflicting zoning ordinances as a means of partially enforcing federal regulation in what appears to be some form of "reverse nullification."[33]

Here, political subdivisions have attempted to 'game' the ambiguity written into state statutes in the same manner in which the states 'gamed' the *Controlled Substance Act's* ambiguities.[34] However, the crucial difference between states and these inferior political subdivisions is that states enjoy the sovereignty afforded by the Tenth Amendment; whereas, the subdivisions do not.[35] States have successfully enacted pro-cannabis regulations because the presumption against preemption cuts in favor of their regulations' constitutionality. Political subdivisions, do not enjoy the presumption against preemption; therefore, it is more likely that these entities' attempts to frustrate the general intent of state law through the enactment of non-conflicting zoning ordinances that attack the ambiguity of states' statutes is an attempt at creating a form of constitutionally afoul contemporary nullification.[36]

Even in the absence of an express conflict, a colorful argument can be made that these ordinances have created an obstacle, or implicit conflict, that may only be constitutionally justified where the presumption against preemption cuts in favor of an enactment's attempt to modify statutory language that can be found to have multiple interpretations. In the absence of such presumption, these ordinances

cannot play upon statutory ambiguities to frustrate the objectives of state statutes in a roundabout manner. Thus, this frustration of state law would appear analogous to nullification in the classic sense -- where a state attempts to void a federal enactment -- which the Supreme Court has dubbed an "illegal defiance of constitutional authority."[37]

A. Marijuana Reform

Federal law prohibits the sale, cultivation, possession and transportation of cannabis. However, the federal government has announced on numerous occasions that states may pass laws decriminalizing marijuana for either recreational or medical usage so long as the individual states have reasonable regulatory systems for policing cannabis distribution and consumption.[38] These general announcements have provided little guidance as to what constitutes a reasonable regulatory system; and additionally, have opened a Pandora's Box of issues pertaining to cities and municipalities' abilities to police marijuana within states that have passed laws decriminalizing marijuana for both recreational and medical purposes. For the last decade, states such as California have openly defied federal marijuana laws.[39] However, the federal government's punting to states on the decriminalizing of marijuana has resulted in an influx of conservative neighborhoods and counties attempting to pass "marijuana limiting ordinances" that appear to facially defy California law.[40]

California state law fails to restrict the locations where fully-licensed marijuana dispensaries may be located.[41] In *County of Tulare v. Nunes*, a California appellate court upheld the constitutionality of a county zoning ordinance restricting marijuana dispensaries, or cooperatives, to commercial and manufacturing zones.[42] Particularly, the *Nunes* Court held that zoning restrictions, such as the one enacted by the County of Tulare, are a valid exercise of the county's power to enact local legislation because the ordinance neither conflicted with California's general law, nor attempted to frustrate the law's purpose in a manner that would trigger conflict preemption.[43] The Court went as far as forcefully rejecting contentions that the state legislature's intent was to "occupy the field."[44] Furthermore, the Court stated in dicta that a zoning ordinance which limits the number of "mature" marijuana plants a "cooperative" may

possess at any given time would not trigger conflict preemption -- despite legislative intent and a California Supreme Court decision suggesting the contrary.[45]

B. Same-sex Marriage

Like marijuana, the federal government has punted the issue of same-sex marriage to state legislatures. Presently 37 states and the District of Columbia recognize gay marriage.[46] Furthermore, the United States Supreme Court, in *Windsor v. United States*, struck down a provision in Section 3 of the Defense of Marriage Act which limited federally-recognized marriages to unions between a man and woman.[47] Cities and counties located within the thirteen states still prohibiting same-sex marriage have been forced to idly abide by their state regimes. However, judicial activism within certain counties of these states has pushed state restrictions to point of no return.

Until October 6, 2014 Missouri refused to acknowledge same-sex marriage certificates from other states. Even after being forced to recognize these certificates, Missouri adamantly refused to issue same-sex marriage licenses to its own residents.[48] However, on November 5, 2014 a St. Louis County appellate court refused to uphold the county's same-sex marriage licensing prohibition.[49] There, Judge Rex Burlison, in light of *Windsor*, held that St. Louis County must offer same-sex couples the same marriage opportunities that are afforded to heterosexual couples.[50] Yet, the remainder of Missouri has viewed the ruling as a conundrum -- as all but a single county of the state's 114 -- have refused to follow the road paved by Judge Burlison.[51]

C. Gun Carry Regulation

In the wake of the Sandy Hook Elementary School shooting, amongst others, states have begun enacting a wide array of firearm regulation -- some stricter than federal mandates; and others loosening the loop of federal mandates to the point of untying the statutes altogether. In particular, *Kansas Senate Bill 102* has attempted to undercut federal law altogether. S.B. 102 is attempting to create both gun restrictions less stringent than those imposed by the federal government, and also has attempted to make federal gun enforcement, performed by any legally-authorized federal agent, acting within the state of

Kansas a crime. In late January the federal government filed suit against the state of Kansas in district court alleging that *S.B. 102* is unconstitutional due to the bill being expressly preempted by federal law.[52]

Frankly, the federal government should prevail with ease, as a matter of law. The Kansas Senate, by passing S.B. 102, has attempted to perform a textbook example of nullification.[53] Here, the state's defense will be limited to a policy argument based on the theory that the Constitution, being a creature of the states, was intended to distribute only limited authority to the central government.[54] To the Kansas Senate's chagrin, this mode of argument has never been authorized, or accepted, by the Supreme Court.[55]

Contrary to the act of Kansas politicians, representatives in states such as Utah have fought for far stricter carry laws. In Utah specifically, municipalities have begun to pass gun-free zoning ordinances which impose far tighter carry regulation than mandated by either the Utah state or federal governments. Many of these gun-free zones have prohibited citizens from carrying legally-owned firearms, in a manner authorized by state law, in locations such as public parks, nature trails and cemeteries.[56] At first glance, it appears that these ordinances are expressly preempted by state law; and are implicitly preempted by state law given the Utah legislature's intention to "occupy the field." However, Utah localities may avoid the complete destruction of these ordinances by amending their language to restrict the discharge or brandishing of a firearm within the already-designated zones.[57] Utah cities have clear authority to prevent the brandishing or discharging of weapons -- activities falling outside of the state's exclusively-reserved authority to regulate firearm possession limitations.[58]

D. Labor and Wages

Since the economic collapse of 2008, cities with costs of living well exceeding the national average and counties located within states that have suffered from extensive amounts of outsourcing have attempted to enact locality-specific policies that will bolster employment prospects and decrease the amount of unemployed citizens living well below the national poverty line. There have been two commonplace forms of innovative policymaking -- laws increasing inner-city minimum wage beyond that of the state and right to work ordinances. Right to work ordinances are city and county legislatures' attempt at debunking state statutes that require all employees working at unionized jobsites to pay regular

union dues and membership fees.[59] In particular, three right-wing counties located within Kentucky, a state that does not authorize right work labor regulations, have attempted to enact right to work ordinances.[60]

Though well-intended, these ordinances are undoubtedly implicitly preempted by state law.[61] Section 14(b) of the *National Labor Relations Act's Taft-Hartley Amendments* grants states the exclusive authority to enact right to work legislation.[62] Furthermore, the United States Supreme Court has held on numerous occasions that congress intended both the *NLRA* and its *1947 Taft-Hartley Act Amendments* to "occupy the field" of regulations governing labor law.[63] Therefore, these Kentucky counties' attempts to enact right to work ordinances are implicitly preempted by the state's refusal to enact right to work laws.[64]

Alternatively, cities with minimum wages exceeding that of their respective states do not appear to run afoul constitutionally. These increased city wages do not facially, or expressly, conflict with state laws, in turn, preventing these statutes' express preemption.[65] Furthermore, the minimum wage increases appear not to frustrate the purpose of state minimum wage laws, in turn, preventing implied preemption.[66] The purpose of minimum wage laws is to serve as the floor for livable wage standards -- a floor which prevents employers from paying their workers salaries so disproportionate to the value of their labor as to bring about undue economic hardships. Therefore, at least theoretically, localities that enact ordinances requiring employers to pay higher minimum wages do not frustrate the purpose of their respective state statutes because they do not "dip beneath the floor" defining the parameters of a "livable wage."

However, the Seattle suburb of Sea Tac, Washington has thrown a monkey wrench into the preemption debacle avoided in the remainder of cities with minimum wages exceeding that of their respective states. Both Sea Tac and Seattle have enacted a $15 minimum wage -- nearly $6 higher than Washington State's minimum wage.[67] However, Sea Tac, unlike Seattle, has omitted union shops from the $15 an hour requirement.[68] Sea Tac's exemption begs the questions: "Does enacting a different minimum wage for union and non-union workers violate the *NLRA* in such a manner as to create an implicit conflict between the Sea Tac ordinance and Washington law?" If such a conflict is found to exist,

it is likely that Sea Tac's ordinance will be preempted by Washington law due to the ordinance's attempt to impede state authority -- authority granted by a federal statute occupying the field of labor law.

E. Housing and Homelessness

Cities and counties that are more "economically stable" than their parent states have begun enacting housing and anti-homelessness legislation which attempt to drive poor citizens into neighboring communities. It appears that many of these localities have done so solely to better the image of their communities -- an image that makes the localities appear more financially inept than their parent states.[69] Furthermore, a handful of municipalities have attempted to keep the poor from becoming homeless by enacting affordable housing ordinances which require landlords to accept housing vouchers as a source of income, if the potential renters meet all other categories defined by state housing law. In particular, Austin, Texas, one of the nation's few upcoming large urban markets, has passed one such housing voucher ordinance that prohibits lessees from denying or discriminating against those with housing vouchers unless the potential renters have a criminal record or very low credit score.[70]

A local renters association is in the process of filing suit against the city in hopes of preventing the "forced acceptance of undesirable tenants."[71] However, it is likely that the renters' association's suit will fail. Both zoning ordinances and affordable housing are areas where municipalities traditionally have been afforded great authority to act; therefore, it is unlikely that the ordinance unconstitutionally oversteps its bounds. Moreover, Austin's ordinance appears not to conflict with any Texas housing law. Lastly, constitutional arguments appealing to the 13th Amendment's prohibition against forced labor and the Taking's Clause seem highly unpersuasive due to the fact that lessees are not forced to perform labor with renters using housing vouchers; and the fact that these lessees' properties are not subject to eminent domain or another practice fitting within the narrow definition of "taking."[72]

On the other hand, anti-homeless prohibitions appear to be blatantly unconstitutional. Throughout the nation, local legislatures have enacted a slew of these ordinances, ranging from prohibiting homeless individuals from entering public libraries to Las Vegas' ordinance criminalizing sitting, sleeping, lying down, or loitering on public sidewalks.[73] The entire array of anti-homelessness ordinances appears

facially unconstitutional as they restrict the fundamental right ensuring freedom of movement.[74] However, a more plausible restriction that would effectively criminalize poverty in a roundabout manner is anti-begging city ordinances. In particular, the city of New Brunswick, New Jersey had enacted an ordinance banning panhandling.[75] John Fleming, a homeless resident holding a sign stating: "BROKE/ PLEASE HELP/ THANK YOU/ GOD BLESS YOU" had been issued a citation by local police on four occasions.[76] After the fourth citation, Fleming, with help from the ACLU, filed suit in a New Jersey state-level trial court challenging the city's ability to enact an anti-begging ordinance. There, Fleming obtained injunctive relief -- enabling him to continue to beg for the time being.[77]

Fleming's case is particularly interesting because dozens of cities nationwide have enacted similar anti-begging ordinances. The anti-panhandling ordinances are clearly not preempted by state laws; however, they raise intriguing constitutional questions. A persuasive argument can be made on behalf of both parties. Here, the homeless would contend that prohibiting panhandling is a violation of free speech; and as a result, the law must receive strict scrutiny analysis; which would ultimately lead to a finding that the ordinances are unconstitutional.[78] Alternatively, cities may claim that panhandling should receive diminished constitutional protection because it falls within the realm of "commercial speech."[79] If the panhandlers' statements are found to be commercial advertising, cities could justify their anti-begging ordinances by showing that these enactments forward a substantial government interest in a manner that is not unnecessarily restrictive or overbroad.[80]

F. Environmental Zoning

Municipalities and cities throughout the nation have enacted "green space zoning ordinances" which encourage the development of "smart growth." Smart growth is the term dubbed to environmental development that encourages open space, usage of mass transportation, and preservation of natural resources within inner cities.[81] In its most basic form, smart growth, encourages the decentralization of urban neighborhoods in a manner that decreases housing sprawl.[82] Therefore, smart growth is almost always achieved by redeveloping older or urban neighborhoods in a manner that decreases their number

of homes.[83] To achieve smart growth, cities and municipalities typically pass zoning ordinances aimed at creating walkable urban centers, which these cities hope, will increase mixed-use housing development.[84]

However, smart growth, by reducing the number of homes in an area, typically drives-up the value of homes in that neighborhood.[85] For those with the financial means of owning a home in an urban neighborhood, this process is highly beneficial. However, those with meager resources are often driven out of such neighborhoods because they cannot afford the rent influxes created by smart growth's decrease in readily available housing. For nearly a decade, smart growth has come under fire for both displacing minorities in a segregated manner and substantially limiting the amount of readily-available affordable housing.[86] These green zones have been further criticized for artificially deflating the supply of affordable housing -- particularly in cities where there are thousands of vacant or unused properties.[87]

As more and more cities begin to pass green zoning ordinances, the ability of poor, often black and Hispanic, citizens to live in urban neighborhoods shrinks exponentially.[88] As a result, the legality of these ordinances must be called into question. Furthermore, these ordinances are virtually never preempted by state law; and if challenged, are typically given rational basis review.[89] However, it is conceivable that smart growth challenges could receive heightened scrutiny in scenarios where ample statistical data suggests the green zones will bring about severe racial inequality and displacement.[90]

In recent years smart growth challengers have deployed four unique modes of attacking these otherwise constitutionally-permissible smart growth plans and green zoning ordinances. First, challengers attempt to debunk the green ordinance's relationship to the development scheme's overall mission by: showing the plan fails to detail its requisite rational basis justification; and by showing the plan is disproportionately influenced by either builders or city decision makers lacking authority to do so.[91] Second, challengers attempt to show that ambiguities in the drafting procress have led to unanticipated detrimental side effects such as a green zoning ordinance's inability to be incorporated into previously approved development code.[92] Third, challengers may test the ordinance's flexibility in hopes of showing that the city has enacted a policy that will fail to bring about the smart growth plan's ultimate mission in the event of that an economic decrease occurs.[93] Lastly, challengers point to nonconformities between the

green zoning ordinances and the overall mission of the smart growth plan to illustrate the plan's inability to align with state or federal regulations.[94]

Cutting-edge city ordinances aimed at preserving natural resources and usable green space are not limited to smart growth, and instead, are even more prevalent in the area of fracking. In states where fracking is allowed, cities and municipalities have enacted anti-fracking zoning ordinances; however, the legality of these ordinances has become complicated in recent months. In early 2015, the Ohio Supreme Court issued its decision in *State ex rel. Morrison v. Beck Energy Corp*.[95] There, the high court rejected the theory that "local anti-fracking zoning regulations can be used to trump a state's oil and gas law favoring exploration and production."[96] The Ohio Supreme Court determined that the Ohio Constitution exclusively vested the power of regulating the "methods of mining, weighing and marketing coal oil, gas and all minerals" to the state legislature.[97] The Ohio Constitution's *Home Rule Amendment*, the Court continued, "does not allow a municipality to discriminate against, unfairly impede, or obstruct oil and gas activities and production operations" enacted by the state legislature.[98]

The decision in *Beck* is of particular relevance because it is the first time a state supreme court has refused to acknowledge the idea that local zoning ordinances may displace state fracking regulations. The high courts of New York and Pennsylvania have held contrarily to Ohio's, in turn, creating what appears to be an intriguing issue for a circuit court in the not-so-distant future.[99]

G. Increased Product Safety and Tort Reform

Since the 1842 case of *Winterbottom v. Wright*, the American public has pushed for increased product safety, honest marketing tactics and transparent labeling systems.[100] This all-out crusade for safety peaked in the 1950s when scientists began first confirming the negative side effects of tobacco.[101] However, this public sentiment has held strong in contemporary society -- as lobby groups push for increased safety measures in the areas handgun firing mechanisms and the inclusion of GMOs in foods, to name a few. In particular lower-level legislatures have been particularly forceful in denying what they believe to be irresponsible federal standards in the areas of automotive manufacturing and pharmaceutical labeling.

Florida and a few accompanying states have begun to enact statutes that require pharmaceutical companies to label their products with large labels that clearly state each of the drug's negative side effects. Many of these transparency policies are far stricter than those imposed by FDA labeling regulations. In *Wyeth v. Levine*, the plaintiff injected herself in the arm with a legally-obtained prescription drug, produced by Wyeth, meant to decrease allergies and motion sickness.[102] Levine administered the drug in a slightly incorrect way. This improper administration caused an infection which ultimately forced Levine to have her arm amputated.[103] She filed suit in the state of Vermont alleging that the drug's labeling failed to describe all injuries that could have resulted from its improper administration.[104] This lack of labeling was in blatant violation of Vermont state regulations.[105] Wyeth contended that the label had been approved by the FDA; and therefore, the Vermont statue requiring greater labeling transparency created a conflict with the federal guidelines in a manner that frustrated the FDA's intent.[106] Thus, claimed Wyeth, Levine's suit must be dismissed because the Vermont regulation is preempted by federal law.[107]

The United States Supreme Court held that federal law does not preempt state law in a personal injury action against a drug manufacturer for failing to include an appropriate warning label where the drug in question had met all FDA labeling requirements.[108] The Court continued that requiring drug manufacturers to abide by state labeling regulations does not frustrate Congress' intention of entrusting the FDA with drug labeling.[109] Therefore, the Court reached the conclusion that pharmaceutical manufacturers bear the ultimate responsibility for the contents of their products' labels.[110]

A year after the decision in *Wyeth*, the United States Supreme Court further extended states' ability to enact product safety statutes more stringent than those of their federal counterpart with its decision in *Williamson v. Mazda Motor of America Inc*.[111] In *Williamson*, the plaintiffs' Mazda minivan was involved in a head-on collision.[112] Two of plaintiffs' children were seated in the minivan's second row; and were wearing traditional over the shoulder seatbelts. Both of these children survived the collision.[113] However, Plaintiffs' third child was seated in the minivan's rear row; and was wearing the waistband-styled seatbelt that came standard on all of Mazda's minivans. This child did not survive.[114]

Williamson filed suit in California state court alleging strict product liability, amongst other claims, all of which related to the exclusion of over the shoulder seatbelts in the minivan's third row.[115] The California Court dismissed plaintiffs' complaint and stated that the National Highway Traffic Safety Administration's regulations authorize third-row waistband-styled seat belts in minivans; therefore, Williamson's suit was preempted by federal regulation.[116] Plaintiffs unsuccessfully appealed the matter on numerous occasions; and it eventually reached the United States Supreme Court, who unanimously reversed the lower court rulings.[117] The Supreme Court held that the NHTSA regulation allowing manufactures to place lap-band seatbelts in the third row of minivans did not impliedly preempt a common law products liability claim based on the reasonableness of the lap-band seatbelts' placement.[118]

The decisions in *Wyeth* and *Mazda* are encouraging to states attempting to impose safety regulations stricter than those of federal agencies. The decisions are further encouraging to states that are attempting to hold large corporations responsible for safety standards by enabling plaintiffs to file common law suits. Thus, states that impose increased product safety measures and tort reform should be encouraged that their measures may not be found to be preempted in light of *Wyeth and Mazda*.

H. Assorted Pretextual Zoning

There has been a recent influx of municipalities enacting zoning ordinances aimed at reducing the amount of "morally unfavorable" citizens and activities within their jurisdictions. These zoning ordinances vary greatly in design and target; yet share a single commonality -- the unacceptance of non-conservative morals. For example, cities across the nation have enacted anti-loitering zones within inner cities; and have begun issuing nuisance summons to overcrowded apartment dwellers.[119] These ordinances appear both facially constitutional and free of any preemption issues. However, critics argue that these ordinances illicitly target illegal, mostly Hispanic, immigrants.[120] For example, anti-loitering ordinances clearly undercut a day worker's ability to solicit contractors.

Over the last three decades, there have been two common tactics used to strike down these unconstitutional ordinances. The first, and by far most successful, requires the challenger to show that the ordinance is vaguely drafted; or alternatively, is constructed in an overly broad manner.[121] The second

mode requires a challenger to show that these anti-loitering zones hinder the fundamental right ensuring freedom of movement.[122] This tactic has been particularly successful when applied to the area of juvenile curfews.[123] For example, in *Gaffney v. City of Allentown*, plaintiffs challenged a juvenile curfew ordinance on due process and equal protection grounds.[124] They argued that the statute hindered minors' fundamental right to move freely; and that in the absence of factors justifying differential treatment of minors, which would allow the court to employ a less rigorous standard of review, strict scrutiny analysis must be applied.[125]

Similar to the crusade against illegal immigrants and juveniles, municipalities have begun enacting very strict zoning ordinances limiting where sex offenders may live. Some of these zoning ordinances limit sex offenders to living within an area comprising less than 1% of the overall area of the municipality. Others resemble industrial zoning ordinances; and essentially, require the sex offender to live near or on busy intersections and interstate roads well away from municipal suburbia. One of such ordinances was challenged in *Ryals v. City of Englewood*.[126] The pertinent facts of Ryals are few: Ryals had been convicted as a sex offender in 2001. He completed his sentence and the state-mandated rehabilitation period.[127] Englewood enacted an ordinance making it a crime for a registered sex offender to live within 2,000 feet of any school, park, or playground; or 1,000 feet of any licensed day care center.[128] The Englewood ordinance was stricter than Colorado's state regulations.[129] In 2012, Ryals purchased a home in Englewood within one of the prohibited zones.[130] When he attempted to register his residence with the police, he was charged with a misdemeanor for violating the residency restriction.[131]

A Colorado district court held that there was a great need for state-wide sex offender registration and zoning uniformity; and as a result, held that the operational effects of city ordinance prohibiting registered sex offenders from living within its boundaries impermissibly conflicted with application and effectuation of state interest.[132] The court continued that the ordinance's undermining state policy and interests actively forbade the state's regulatory scheme in such a manner as to conflict with the state's system of registration; and thus, was preempted.[133] However, the district court, by ruling that the ordinance was preempted, side-stepped all issues pertaining to the ordinance's constitutionality.

Just as municipalities have used zoning ordinances to discriminate against distasteful individuals, localities have used similar ordinances to discriminate against activities they have perceived as distasteful. In *Law v. City of Sioux Falls*, the city enacted a zoning ordinance prohibiting the location of new on-sale alcoholic beverage businesses seeking to place video lottery machines in their establishments within 500-feet of school zones or municipal buildings.[134] Law, who was granted a liquor license, opened a bar within one of the prohibited zones; and as a result, the city refused to give Law a license for video gambling machines.[135] Law challenged the city's anti-gambling ordinance in state court, arguing that the city exceeded its authority by enacting the ordinance because the State of South Dakota had fully occupied the field of video lottery regulation.[136] Thus, Law contended, that the city's ordinance must be preempted by state law.[137]

The trial court ruled that the city ordinance was preempted by South Dakota's legislative video lottery scheme; and that the state's regulation of video lottery did not violate the constitutional provision prohibiting the delegation of municipal powers to any special commission, private corporation or association.[138] On appeal, the Supreme Court of South Dakota affirmed the lower court's ruling; and added that the ordinance, on its face, fails to coincide with or compliment the state's regulatory scheme; and thus was impliedly preempted.[139]

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[1] The Federalist Nos. 46 (James Madison) (Madison's Ode to State Nullification).
[2] *See* Sanford Levinson, *The Twenty-First Century Rediscovery of Nullification and Secession in American Political Rhetoric: Frivolousness Incarnate or Serious Arguments to Be Wrestled With?*, 67 Ark. L. Rev. 17 at 21 (2014).
[3] *Id.* at 28.
[4] Lyle Denniston, *Constitution Check: Can states exempt themselves from federal gun laws?*, (Aug. 5, 2014) http://blog.constitutioncenter.org/2014/08/constitution-check-can-states-exempt-themselves-from-federal-gun-laws/ (referencing Kansas Governor Sam Brownback's refusal to follow what he characterizes as Orwellian-styled laws, despite then-acting Attorney General Eric Holder's letter declaring S.B. 102 unconstitutional).
[5] Lawrence Hurley, *Supreme Court dodges gay marriage, allowing weddings in five more states*, (Mon Oct 6, 2014 7:19pm) http://www.reuters.com/article/2014/10/06/us-usa-court-gaymarriage-idUSKCN0HV19020141006 (referencing the Supreme Court and federal legislature's unwillingness to tackle difficult bi-partisan issues).
[6] Charlie Savage, *Shift on Executive Power Lets Obama Bypass Rivals*, (Apr. 22, 2014) http://www.nytimes.com/2012/04/23/us/politics/shift-on-executive-powers-let-obama-bypass-congress.html?pagewanted=all&_r=0 (referencing congress and the president's attempt at enacting unilateral political actions that originated in lower levels of government such as municipalities).
[7] Regina Nelson, *THEORIST-AT-LARGE: ONE WOMAN'S AMBIGUOUS JOURNEY INTO MEDICAL CANNABIS* (2015).
[8] Paul Ruschmann, *TORT REFORM 8* (2006).

[9] David Frum, *Fear drives opposition to gun control*, (July 30, 2012 12:47 pm) http://www.cnn.com/2012/07/23/opinion/frum-guns/.
[10] *See* Adam Liptak, *Begging Law Tests Ruling on Buffer Zones*, (Dec. 8, 2014) http://www.nytimes.com/2014/12/09/us/supreme-court-worcester-massachusetts-begging-law-souter.html.
[11] Missouri Control Council, *Better Together: Public Safety-Municipal Courts Report*, (Oct. 2014) http://www.bettertogetherstl.com/wp-content/uploads/2014/10/BT-Municipal-Courts-Report-Full-Report1.pdf.
[12] *See* Thom Tills, Jobs and the Economy, (2015) http://www.tillis.senate.gov/issues/jobs-and-economy (illustrating municipalities and cities belief that defying state and federal governments will bring about positive economic reform within those smaller governmental entities).
[13] Amy L. Wax, *Conservative's Dilemma: Traditional Institutions, Social Change, and Same-Sex Marriage*, 42 San Diego L. Rev. 1059 (2005).
[14] U.S. Const. art. VI cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). *See also McCulloch v. Maryland*, 17 U.S. 316 (1819) at 401-02.
[15] *Id.* at 435-36.
[16] *See id. generally*.
[17] *E.g.*, *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977); *Island Park LLC v. CSX Transp.*, 559 F.3d 96, 101 (2d Cir. 2009) (express preemption arises when a federal statute expressly directs that state law be ousted); *Chamber of Commerce v. Whitting*, 507 U.S. 658, 664 (2011) ("When a federal law contains an express preemption clause, [the court must] 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent.").
[18] *E.g.*, *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) ("When Congress intends federal law to occupy the field, state law in that area is preempted"); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947).
[19] *See Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963).
[20] *See McCulloch* at 436; cf. , *AT&T Mobility LLC v. Concepcion*, 563 U.S. 321, 131 S.Ct. 1740 (2011); *Barnett Bank v. Nelson*, 517 U.S. 25 (1996); *Hines v. Davidowitz*, 312 U.S. 52 (1941).
[21] *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).
[22] *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005).
[23] *Retail Clerks v. Schermerhorn*, 375 U. S. 96, 103 (1963).
[24] *See Medtronic, Inc.* v. *Lohr*, at 485-86.
[25] *See generally*, Brauch, Jeffrey A., *Municipal Activism v. Federal Law: Why ERISA Preempts San Francisco-Style Domestic Partner Ordinances*, 28 Seton Hall L. Rev. 925 (1997-1998); *See also People v. Nguyen*, 222 Cal.App.4th 1168, 1187.
[26] *Colorado Manufactured Housing Ass'n v. Board of County Com'rs of County of Pueblo, Colo.*, 946 F.Supp. 1539 (1996).
[27] *See Puerto Rico Telephone Co., Inc. v. Municipality Of Guayanilla*, 450 F.3d 9 (2006).
[28] *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114, 68 L.Ed.2d 576 (1981); *see also New York SMSA Ltd. Partnership v. Town of Clarkstown*, 612 F.3d 97, 104 (2010).
[29] *Gonzales v. Raich*, 545 U.S. 1, 15-16, 125 S.Ct. 2195, 2204-05 (2005).
[30] Scott C. Idleman, *Does Federal Law Actually Preempt Relaxed State Marijuana Laws?*, http://law.marquette.edu/facultyblog/2013/04/09/does-federal-law-actually-preempt-relaxed-state-marijuana-laws/.
[31] *See id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *See* Jake Sullivan, *The Tenth Amendment and Local Government*, 12 Yale L.J. 1935 (2003).
[36] *Ableman v. Booth*, 62 U.S. 506 (1859); *United States v. Peters*, 9 U.S. 115 (1809).
[37] *See id.*
[38] U.S. Department of Justice Office of the Attorney General, *MEMORANDUM FOR ALL UNITED STATES ATTORNEYS*, Aug. 29, 2013 http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.
[39] Medical marijuana has been legal in the state of California since Proposition 215 was passed in 1996.
[40] A complete list of California ordinances restricting marijuana's usage is available at: http://www.canorml.org/medical-marijuana/local-growing-limits-in-california.

[41] *County of Tulare v. Nunes*, 215 Cal.App.4th 1188, 1193 (2013).
[42] *See id.* at 1206.
[43] *Id.* at 1199-1200.
[44] *Id.* at 1200.
[45] *See People v. Kelly*, 47 cal.4th 1008 (2010).
[46] The states allowing same-sex marriage are: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
[47] *United States v. Windsor*, 133 S.Ct. 2675, 2683 (2013).
[48] "Press Release: Attorney General Koster's statement on his decision not to appeal in *Barrier v. Vasterling*". Missouri Times. (Retrieved Oct. 6, 2014).
[49] *State v. Florida*, Order and Judgment filed Nov. 5, 2014 available at: http://blogs.riverfronttimes.com/dailyrft/2014/11/same-sex_marriage_is_legal_in_missouri.php.
[50] Jim Salter, *St. Louis Challenge to Gay Marriage Ban in Court*, Washington Times Associated Press (Nov. 5, 2014).
[51] Mark Morris, *Jackson County judge rules in favor of married same-sex couples*, (Oct. 3, 2014 at 3:39pm) http://www.kansascity.com/news/government-politics/article2499162.html.
[52] Steve Straehley, Kansas Gov. Brownback Sued for Signing Law Criminalizing the Enforcement of Federal Gun Laws, (July 14, 2014) http://www.allgov.com/news/controversies/kansas-gov-brownback-sued-for-signing-law-criminalizing-the-enforcement-of-federal-gun-laws-140714?news=853674.
[53] Kansas S.B. 102 appears to be a textbook form of nullification consistent with Thomas Jefferson's Kentucky Resolutions of 1798; *see also Cooper v. Aaron*, 358 U.S. 1 (1958).
[54] Lyle Denniston, *Constitution Check: Can states exempt themselves from federal gun laws?*, (Aug. 5, 2014.)
[55] *See Cooper v. Aaron*, 358 U.S. 1 (1958); *Bush v. Orleans Parish School Board*, 364 U.S. 500 (1960); *Ableman v. Booth*, 62 U.S. 506 (1859); and *United States v. Peters*, 9 U.S. 115 (1809).
[56] Dan Harrie, *Utah cities pushed to purge gun rules by national group*, (Aug. 21, 2014) http://www.sltrib.com/sltrib/politics/58309720-90/gun-state-utah-laws.html.csp.
[57] *See id.*
[58] *See Mack and Printz v. United States*, 521 U.S. 898 (1997).
[59] Joey Brown, *Third Kentucky county considers right-to-work ordinance*, (Dec. 24, 2014 at 7:35 pm) http://www.wave3.com/story/27655680/third-kentucky-county-considers-right-to-work-ordinance.
[60] *See id.*
[61] *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959); *Machinists v. Wisconsin Emp. Rel. Commission*, 427 U.S. 132, 140-48 (1976) (referencing Congress' intent for the NLRA to occupy the field of labor law).
[62] *See id.*
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] *See* Brendan Fischer, *Fat on Restaurant Cash, Democratic Lawmakers Float Minimum Wage Preemption in IL*, (Nov. 18, 2014) See more at: http://www.prwatch.org/news/2014/11/12677/il-lawmakers-float-minimum-wage-preemption-bill#sthash.3ebYY34J.dpuf.
[67] Dana Milbank, *Raising the minimum wage without raising havoc*, (Sept. 5, 2014) http://www.washingtonpost.com/opinions/dana-milbank-no-calamity-yet-as-seatac-wash-adjusts-to-15-minimum-wage/2014/09/05/d12ba922-3503-11e4-9e92-0899b306bbea_story.html.
[68] *Id.*
[69] Eleanor Goldberg, *'Homeless Bill Of Rights' Wants People On Streets To Be Able To Freely Stand, Sit In Public*, (Oct. 7, 2014 8:59 am) http://www.huffingtonpost.com/2014/10/07/homeless-bill-of-rights-california_n_5941546.html.
[70] Andra Lin, *LAWMAKER, LAWSUIT CHALLENGE NEW AUSTIN APARTMENT REGULATION*, (Jan. 1, 2015 5:52 pm) http://www.taahp.org/section-8-voucher-holders-protected-from-discrimination/.
[71] *See id.*
[72] *See United States v. Dickinson*, 331 U.S. 745 (1947).

[73] Kelli Kennedy, *Feeding the homeless: Act of charity or a crime?*, (Nov. 5, 2014 10:47 pm) http://www.lasvegassun.com/news/2014/nov/05/feeding-homeless-act-charity-or-crime/.
[74] *See id. generally.*
[75] Seth Augenstein, *Homeless man can beg on New Brunswick sidewalks for now, court says*, (Dec. 24, 2014 7:37 am)http://www.nj.com/middlesex/index.ssf/2014/12/homeless_man_can_beg_on_new_brunswick_sidewalk_after_aclu_challenge_gets_court_injunction.html.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] KENT SCHEIDEGGER, *RESTORING PUBLIC ORDER: A GUIDE TO REGULATING PANHANDLING*, 6 (1992).
[80] *Id.*
[81] *See* https://www.planning.org/growingsmart/guidebook/print/.
[82] *See id.*
[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] Richard Layman, *Is Smart Growth Racist?*, (Mar. 17, 2011) http://urbanplacesandspaces.blogspot.com/2011/03/is-smart-growth-racist.html.
[87] *Id.*
[88] *Id.*
[89] *Id.*
[90] Stephen Sizemore, *Smart Growth Codes: Legal Issues*, (Fall 2004) https://www.planning.org/chapters/editors/thecommissioner/2004/fall02.htm.
[91] *See id.*
[92] *Id.*
[93] *Id.*
[94] *Id.*
[95] *State ex rel. Morrison v. Beck Energy Corp.*, 135 Ohio St.3d 1469 (2013).
[96] *Id.* at ¶ 56, *citing Rispo Realty & Development Co. v. City of Parma*, 55 Ohio St.3d 101 (1990).
[97] *Id.*
[98] *State ex rel. Morrison v. Beck Energy Corp.*, at ¶ 37 *citing Akron v. Scalera*, 135 Ohio St. 65, 66, 19 N.E.2d 279 (1939).
[99] Carl J. Pernicone and Kathleen D. Wilkinson, *Ohio High Court: State Oil and Gas Law Trumps Anti-fracking Zoning Rules Enacted by a Municipality*, (Feb. 26, 2015) http://www.wilsonelser.com/news_and_insights/client_alerts/2190-ohio_high_court_state_oil_and_gas_law_trumps.
[100] *Winterbottom v Wright*, 10 M&W 109 (1842).
[101] RICHARD DOLL, *UNCOVERING THE EFFECTS OF SMOKING: HISTORICAL PERSPECTIVE*, 88 (June 1998).
[102] *Wyeth v. Levine*, 555 U.S. 555, 556, 129 S.Ct. 1187, 1190 (2009).
[103] *Id.* at 575-76.
[104] *Id.* at 571.
[105] *Id.* at 572.
[106] *Id.* at 580.
[107] *Id.* at 623.
[108] *Id.* at 582.
[109] *Id.* at 602
[110] *Id.* at 604.
[111] *Williamson v. Mazda Motor of America, Inc.*, 562 U.S. 323,131 S.Ct. 1131 (2011).
[112] *Id.* at 1134.
[113] *Id.*
[114] *Id.*
[115] *Id.* at 1135.
[116] *Id.* at 1135.
[117] *Id.* at 1131.

[118] *Id.* at 1136.
[119] *See ACLU of MD Asks Court to Throw Out Annapolis 'Anti-Loitering' Law*, (June 6, 2000) https://www.aclu.org/free-speech/aclu-md-asks-court-throw-out-annapolis-anti-loitering-law.
[120] NYCLU, *Proliferation Of Local Anti-Immigrant Ordinances In The United States*, http://www.nyclu.org/content/proliferation-of-local-anti-immigrant-ordinances-united-states (referencing the assortment of American zoning ordinances critics hold to be racist given their detrimental impact on day workers).
[121] GPO Authenticated U.S. Government Information, STATE CONSTITUTIONAL AND STATUTORY PROVISIONS AND MUNICIPAL ORDINANCES HELD UNCONSTITUTIONAL OR HELD TO BE PREEMPTED BY FEDERAL LAW (1789–2002), available at: http://www.gpo.gov/fdsys/pkg/GPO-CONAN-2002/pdf/GPO-CONAN-2002-11.pdf.
[122] NATIONAL COALITION FOR THE HOMELESS, *A DREAM DENIED: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES, SECTION III CHALLENGES TO VAGRANCY, LOITERING, AND CURFEW LAWS*, http://www.nationalhomeless.org/publications/crimreport/casesummaries_3.html.
[123] *Id.*
[124] *Gaffney v. City of Allentown*, (1997 U.S. Dist. LEXIS 14565 (D. Pa. 1997)).
[125] *See id.*
[126] *Ryals v. City of Englewood*, Not Reported in F.Supp.2d, WL 2566288. (2014).
[127] *Id.* at 1.
[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *See id.* at 1-2.
[133] *Id.* at 2.
[134] *Law v. City of Sioux Falls*, 804 N.W.2d 428, 431 (2011).
[135] *Id.* at 432-33.
[136] *Id.* at 431.
[137] *See id.*
[138] *Id.* at 434.
[139] *See id.* at 435.