

No. 81636-1

MADSEN, C.J. (concurring)—When this case was decided by the Franklin County Superior Court in 2006 and when the Court of Appeals reversed that decision in 2008, the Pasco city ordinance at issue was not preempted by state law, for the reasons set forth in the majority opinion. The legislature did not, through the Manufactured/Mobile Home Landlord Tenant Act, chapter 59.20 RCW, decide for every community all of the details respecting alternative home sites. The statutory amendments to RCW 35.21.684, RCW 35A.21.312, and RCW 36.01.225, enacted by the legislature in 2009, *see* Laws of 2009, ch. 79, which prohibit cities and counties from barring recreational vehicles from mobile home parks, do not alter the conclusion that at the time this case was tried, there was no preemption. Indeed, the amendments strongly support this conclusion because they would have been unnecessary if state law had already prohibited ordinances such as Pasco’s. *See People’s Org. for Wash. Energy Res. v. Utils. & Transp. Comm’n*, 101 Wn.2d 425, 431, 679 P.2d 922 (1984) (amendment of an unambiguous statute indicates a purpose to change the law); *cf. WR Enters., Inc. v. Dep’t*

*of Labor & Indus.*, 147 Wn.2d 213, 222, 53 P.3d 504 (2002) (when a material change is made in the wording of a statute, a change in legislative purpose is presumed).

The 2009 amendments have changed the law. If the tenants in petitioner Paul Lawson's mobile home park remained in the park through this litigation, they cannot now be forced to leave. Likewise, if tenants now seek to return and live in the park in recreational vehicles, they cannot be prevented from doing so under a local ordinance like former Pasco Municipal Code (PMC) 25.40.060 (2005). As the city of Pasco conceded in its supplemental briefing, the new state law preempted the former city ordinance because the 2009 amendments prohibit what the ordinance mandated—the banning of recreational vehicles from mobile home parks. City of Pasco's Suppl. Br. at 20 n.7 (observing that if the then-pending legislation was enacted, it would preempt the ordinance). I note that the city of Pasco has amended PMC 25.40.060 and deleted the ban on recreational vehicles in mobile home parks that the ordinance formerly contained. This amendment was one of several changes to the city's code tending to bring city ordinances into compliance with the new state law. Pasco City Ordinance 3951 (2009); *see, e.g.*, PMC 25.40.020 (which now provides that uses that shall be permitted in residential park districts include placement of a recreational vehicle occupied as a primary residence); PMC 19.24.080 (addressing installation standards for a recreational vehicle used as a primary residence).

With these observations, I concur in the majority opinion.

AUTHOR:

Chief Justice Barbara A. Madsen

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WE CONCUR:

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