No. 81636-1

SANDERS, J. (dissenting)—Article XI, section 11 of the Washington Constitution prohibits cities from enacting ordinances that contravene state statutes. Former Pasco Municipal Code (PMC) 25.40.060 (2005) barred recreational vehicles (RVs) from mobile home parks.[1] Paul Lawson claims the Manufactured/Mobile Home Landlord-Tenant Act (MHLTA), chapter 59.20 RCW, and other state statutes allow, if not require, mobile home parks to site RVs used as primary residences. Because the MHLTA preempts the former Pasco ordinance before us, I dissent.

We have held a city "ordinance must yield to a statute on the same subject either if the statute preempts the field, leaving no room for concurrent jurisdiction, or if a conflict exists such that the two cannot be harmonized." *Brown v. City of Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991) (citation omitted). The majority stretches statutory boundaries beyond their intended scope and, in doing so, allows a city ordinance to unconstitutionally operate in a scheme exclusive to the State. The ordinance in question irreconcilably conflicted with state statute, and the State has preempted the field of mobile home park regulation.

A. Irreconcilable conflict

Article XI, section 11 of our constitution provides: "Any county, city, town or

[1] On December 21, 2009 Pasco's City Council adopted an ordinance to delete its prohibition and, instead, allow RVs occupied as primary residences in mobile home parks. *See* Pasco City Ordinance 3951 (2009); PMC 25.40.020; PMC 19.24.080.

township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." An ordinance violates this limited grant of power "if it directly and irreconcilably conflicts with the statute," *Brown*, 116 Wn.2d at 561 (citing *Kennedy v. City of Seattle*, 94 Wn.2d 376, 383-84, 617 P.2d 713 (1980)), or "if a conflict exists such that the two cannot be harmonized," *id*. (citing *Spokane v. J-R Distribs., Inc.*, 90 Wn.2d 722, 730, 585 P.2d 784 (1978)).

Pasco's former ordinance flatly banned RVs from mobile home parks. It provided that "[n]o recreational vehicle sites for occupancy purposes shall be permitted within any residential park." Former PMC 25.40.060. The state legislature, however, has spoken specifically on this matter by expressly authorizing RVs in mobile home parks and, recently, forbidding discrimination against RVs therein.

The MHLTA, chapter 59.20 RCW, authorizes placement of RVs in mobile home parks. The MHLTA plainly establishes state jurisdiction over mobile home lots: "This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot . . . ." RCW 59.20.040. The statute says nothing about sharing jurisdiction with local entities. The legislature has defined a "'[m]obile home lot'" as "a portion of a mobile home park . . . designated as the location of one mobile home, manufactured home, or park model . . . ." RCW 59.20.030(9). "'Mobile home park[s]'" include "any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income . . . ." RCW

59.20.030(10). The statute defines "'[p]ark model'" as "a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence." RCW 59.20.030(14). Accordingly, the plain language of the MHLTA unequivocally incorporates park models (i.e., RVs) into mobile home parks, over which the legislature has asserted state authority.

While the MHLTA incorporates RVs into mobile home parks, recent statutory amendments prevent cities from discriminatorily barring or removing RVs from those parks. Laws of 2009, ch. 79[2] amends RCW 35.21.684, RCW 35A.21.312, and RCW 36.01.225. Each amendment offers a minor textual variation of the same command—that a city or county may not bar or remove RVs from mobile home parks. RCW 35.21.684(3) applies to cities: "[A] city or town may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities."[3, 4]

In a single conclusory footnote the majority sidesteps these recent amendments by asserting they are not before the court. Majority at 1. I disagree. The amendments squarely address the removal of RVs from mobile home parks, which is the very essence of this case.

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[2] The legislature passed Engrossed House Bill 1227 in early March and April 2009 (the House voted 88-7 and the Senate unanimously approved 44-0), Governor Gregoire signed it April 13, 2009, and it became effective July 26, 2009 as Laws of 2009, ch. 79 (entitled "Recreational Vehicles – Primary Residences").

[3] The definition of "manufactured/mobile home community" in chapter 35 RCW is identical to the definition in the MHLTA. *See* RCW 35.21.684(5).

[4] RCW 35A.21.312(3) applies to code cities: "[A] code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities."

Lawson put the amendments before the court June 26, 2009, when he filed a statement of additional authority calling our attention to Laws of 2009, chapter 79. Pasco recognized this direct and irreconcilable conflict when it changed its ordinances late last year. *See* Pasco City Ordinance 3951 ("[T]he City Council has determined that to address changes in State law it is necessary to amend PMC Title 25 and Title 19 . . . ."). The majority's evasion promotes absurd results and hinders judicial economy. Its implicit requirement that Lawson would have to bring a separate lawsuit to put the recent amendments before the court—particularly when they are so clearly before us now—cannot be sustained.

Pasco endeavored to remove RVs used as primary residences from mobile home parks. The legislature expressly amended RCW 35.21.684, RCW 35A.21.312, and RCW 36.01.225 to remedy the former Pasco ordinance at bar. On January 26, 2009 petitioner Paul Lawson testified before the House Local Government and Housing Committee to encourage passage of then-Engrossed House Bill 1227 to nullify Pasco's ordinance.[5] The bill's sponsor, Representative Larry Springer, encapsulated its purpose with this testimony:

> [I thought] about what a lot of families might be facing, whether it's foreclosure, loss of a job, [or] the rising level of homelessness, [and] I didn't see any reason why we should continue to embrace *restrictions* on people's ability to find a safe and warm place in a community . . . .

Hr'g on HB 1227 Before the H. Local Government and Housing Comm., 61st Leg., Reg. Sess. (Jan. 26, 2009) (emphasis added), *audio recording by* TVW, Washington State's Public Affairs Network, *available at* http://www.tvw.org. Representative Springer's

[5] The House Bill Report for Engrossed House Bill 1227 notes Pasco's ordinance specifically.

testimony shows an unmistakable intent to halt and reverse local restrictions that ban RVs from mobile home parks. The amendments to RCW 35.21.684(3) and its brethren speak directly to—and irreconcilably conflict with—Pasco's former ordinance. The amendments squarely preclude Pasco and other local jurisdictions from banning or removing RVs from mobile home parks.

Former PMC 25.40.060 violated Washington Constitution article XI, section 11 by irreconcilably conflicting with the state's general laws.

B. Field preemption

Lawson asserts the legislature intended to occupy the field of RV placement in mobile home parks. "Preemption occurs when the Legislature states its intention either expressly or by necessary implication to preempt the field." *Brown*, 116 Wn.2d at 560. "If the Legislature is silent as to its intent to occupy a given field, the court may look to the purposes of the statute and to the facts and circumstances upon which the statute was intended to operate." *Id*. If the legislature "'affirmatively expresses its intent, either to occupy the field or to accord concurrent jurisdiction, there is no room for doubt.'" *Id*. (quoting *Lenci v. City of Seattle*, 63 Wn.2d 664, 670, 388 P.2d 926 (1964)).

In *Brown* we held the legislature expressly granted concurrent jurisdiction via the state fireworks law. The law referenced "'state-wide minimum standards'" and "'[a]ny local rules adopted by local authorities that are more restrictive than state law . . . .'" *Id*. (emphasis omitted) (quoting RCW 70.77.250(4)). We held, "[t]he phrase 'state-wide minimum standards' clearly contemplates the possibility of additional restrictions[,] . . . .

[and] the reference to more restrictive local rules contemplates their existence." *Id*.

Here the majority pulls express concurrent jurisdiction out of a magician's hat. Unlike the fireworks law in *Brown*, the MHLTA does not contemplate more restrictive rules or state-wide minimum standards, nor does it explicitly discuss "'local rules adopted by local authorities.'" *Brown*, 116 Wn.2d at 560 (emphasis omitted) (quoting RCW 70.77.250(4)).

Instead the majority selects passing references in statutes addressing landlord-tenant relationships to conjure up explicit concurrent jurisdiction. At most, the references to city ordinances in RCW 59.20.080 and RCW 59.20.130 regulate the landlord-tenant relationship between RV tenants and park managers *after* the tenancy has been formed. RCW 59.20.080[6] contemplates termination of leases for mobile home park residents. RCW 59.20.130[7] lists landlord duties under the MHLTA.[8] It may be that the legislature intended tenants of recreational vehicles to adhere to local landlord-tenant regulations and ordinances, but nowhere do the state laws confer express concurrent jurisdiction over initial

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[6] A landlord shall not terminate or fail to renew a tenancy of a tenant or the occupancy of an occupant, of whatever duration except for one or more of the following reasons:

. . . .

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes, manufactured homes, or park models or mobile home, manufactured homes, or park model living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency.

RCW 59.20.080(1).

RV placement in mobile home parks.

The majority erroneously proclaims these passing references in the MHLTA to be an explicit grant of concurrent jurisdiction. This claim facilitates the majority's dodge of important legislative history. In reality the legislature is silent as to its intent to occupy the field of RV placement in mobile home parks. However, under well-established precedent, when the legislature is silent, courts look to the purposes, facts, and circumstances behind the law. *See Brown*, 116 Wn.2d at 560. Those factors suggest the legislature intended to preempt the field of RV placement in mobile home parks by necessary implication.

The legislature recently affirmed its intention to preserve affordable housing in mobile home parks:

> Manufactured/mobile home communities provide a significant source of home ownership opportunities for Washington residents. However, the increasing closure and conversion of manufactured/mobile home communities to other uses, combined with increasing mobile home lot rents, low vacancy rates in existing manufactured/mobile home communities, and the extremely high cost of moving homes when manufactured/mobile home communities close, increasingly make manufactured/mobile home community living insecure for manufactured/mobile home tenants.

Laws of 2008, ch. 116, § 1(1)(a). The legislature further recognized that "[m]any tenants who reside in manufactured/mobile home communities are low-income households and senior citizens and are, therefore, those residents most in need of reasonable security . . . ."

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[7] It shall be the duty of the landlord to:

> (1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park.

RCW 59.20.130.

[8] The duty clearly includes not to discriminate against RV tenants under Laws of 2009, chapter 79.

Id. § 1(1)(b). Other legislative findings provide:

> [I]t is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement . . . .

RCW 59.22.010(2). Pasco's attempt to dislocate these individuals flies in the face of express legislative intent.

The majority distorts this same legislative intent to claim Pasco's ordinance preserves mobile home communities for low-income households. Majority at 7. The legislature clearly attempted to make housing reasonably secure and stable for low-income households. Evicting RVs from mobile home parks will have the opposite effect by saddling residents with the expense, stress, and inconvenience of being forced to relocate to "more appropriate venues such as RV parks." *Id*. at 7-8. In the likely event RV parks are unaffordable or unavailable to some uprooted individuals, the remaining alternatives—e.g., transiency, homelessness, and squatting—achieve the opposite of the legislature's intent, not to mention common sense.

Additionally the majority points out different "safety and maintenance concerns" between mobile/manufactured homes and RVs to suggest these differences support segregating the structures into separate communities. Majority at 8. The majority's argument is as unconvincing as it is inapposite. While the different structures must comply with different construction and sanitary standards, the bottom line remains that both manufactured/mobile homes and RVs used as primary residences provide suitable homes for

those in need.[9] The legislature has authorized all of these structures in mobile home parks. The majority's analysis improperly emphasizes uniformity of community over the legislature's express intent to facilitate homes for low income individuals. The legislature's inclusion of both RVs and mobile/manufactured homes in the same mobile home parks unequivocally demonstrates its will that all should receive equal footing therein, notwithstanding structural differences.

Moreover the broad spectrum of statutes addressing mobile homes speaks to the legislature's occupation of the field by necessary implication. Lawson points to a range of state activity in the field including, to pick a few examples, an office of manufactured housing, RCW 59.22.050; mandatory mobile home park registration with the State, RCW 59.30.050; and a state-maintained database of mobile home parks, RCW 59.30.060. The State has exercised vast authority over construction standards for mobile homes, RVs, and park trailers. *See* RCW 43.22.410. The State controls the nature of mobile home tenancies. *See* ch. 59.20 RCW. As articulated above, the State has banned discrimination against RV tenants in mobile home parks. The amendments to RCW 35.21.684, 35A.21.312, and 36.01.225 add significant cornerstones to the legislature's foundation preempting the field. With every additional regulation regarding mobile home parks, the State takes a greater role at the expense of the cities. The size, shape, and scope of the State's involvement in mobile homes demonstrate preemption of the field through necessary implication. This is a

[9] The majority inaccurately claims the "unique needs" of RVs are not met by mobile home parks. Majority at 8. In fact state statutes require RVs used as primary residences to meet applicable fire and safety codes, plus have an internal shower and toilet or, in the alternative, be sited in a mobile home park that provides those services. *See, e.g.,* RCW 35.21.684(4)(a)-(c).

mandate of our constitution, but it is one our majority today ignores.

I dissent.

AUTHOR:
Justice Richard B. Sanders

WE CONCUR:

Justice Gerry L. Alexander

Justice James M. Johnson