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978-0-521-88805-9 - Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question
Edited by William W. Buzbee
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PREEMPTION CHOICE

This book examines the theory, law, and reality of preemption choice. The Constitution's federalist structures protect states' sovereignty but also create a powerful federal government that can preempt and thereby displace the authority of state and local governments and courts to respond to a social challenge. Despite this preemptive power, Congress and agencies have seldom preempted state power. Instead, they typically have embraced concurrent, overlapping power. Recent legislative, agency, and court actions, however, reveal a newly aggressive use of federal preemption, sometimes even preempting more protective state law.

Preemption choice fundamentally involves issues of institutional choice and regulatory design: should federal actors displace or work in conjunction with other legal institutions? This book moves logically through each preemption choice step, ranging from underlying theory to constitutional history, to preemption doctrine, to assessment of when preemptive regimes make sense and when state regulation and common law should retain latitude for dynamism and innovation.

William W. Buzbee is a Professor of Law at Emory University School of Law and Director of the Emory Environmental and Natural Resources Law Program. He is a co-author of *Environmental Protection: Law and Policy*, fifth edition (2007). He has published widely on issues of regulatory federalism, environmental law, and administrative law, and three of his articles have appeared in collections of the ten best articles published in their year regarding environmental or land-use law. He has also testified before congressional committees regarding issues of federalism and environmental regulation. Prior to becoming an academic, he practiced public-interest and private-sector law in New York City.

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Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question

Edited by

WILLIAM W. BUZBEE
Emory University School of Law

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CAMBRIDGE UNIVERSIGTY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press
32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org
Information on this title: www.cambridge.org/9780521888059

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First published 2009

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Preemption choice : the theory, law, and reality of federalism's core question / edited by William W. Buzbee.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-521-88805-9 (hardback)
1. Exclusive and concurrent legislative powers – United States. I. Buzbee, William W., 1960– II. Title. III. Series.

KF4600.P73 2008
342.73′041–dc22 2008042112

ISBN 978-0-521-88805-9 hardback

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Contributors

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and scientific judgment, to the influence of the rapid rise in patenting during the 1990s on biotechnology innovation. Prior to entering academia, he was an associate with Covington and Burling in Washington, D.C., where he litigated patent disputes and provided counsel on environmental regulatory matters, and a Senior Attorney with the Natural Resources Defense Council in its Nuclear and Public Health programs. Following his graduation from Stanford Law School, Professor Adelman clerked for the Honorable Samuel Conti of the U.S. District Court for the Northern District of California. He has been a member of the U.S. Department of Energy's Environmental Management Advisory Board and has served on two National Academy of Sciences committees.

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Kirsten H. Engel joined the James E. Rogers College of Law at the University of Arizona in 2005 with a broad background in environmental law and policy that spans academia and public-sector practice. Engel is widely published on various topics in her field, including environmental federalism and the potential for cooperative regional efforts to counteract the federal government's stance on global climate change, solid waste landfill regulation, and the deregulation of the electricity industry. Engel previously served as senior counsel for the Public Protection Bureau and acting chief of the Environmental Protection Division of the Massachusetts Office of the Attorney General. She also has worked as a staff attorney for the Sierra Club Legal Defense Fund as well as for the U.S. Environmental Protection Agency. She has held the positions of Associate Professor of Law at Tulane Law School and Visiting Associate Professor at Harvard and Vanderbilt Law Schools. She recently served as a member of Governor Janet Napolitano's Climate Change Advisory Group and sits on the board of directors of the Tulane Environmental Law Clinic.

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Examination of the FDA's Efforts to Preempt Failure-to-Warn Claims," co-authored with David A. Kessler, M.D., who is dean and vice chancellor of the University of California San Francisco Medical School and formerly served as the Commissioner of the Food and Drug Administration; and a 2005 article in the *Pepperdine Law Review* entitled "Preemption and Regulatory Failure." Professor Vladeck also testifies frequently before Congress and testified on preemption in September 2007 before the Senate Judiciary Committee. Professor Vladeck is a founding Member Scholar of the Center for Progressive Reform and formerly served as a Public Member of the Administrative Conference of the United States.

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This book is the product of the shared efforts of numerous individuals and organizations. The idea for this book arose out of a number of papers first presented in discussion form at a November 2006 conference at Duke Law School, "Federalism in the Overlapping Territory." That conference was sponsored by the Duke Law School Program in Public Law, the Center for Progressive Reform, and the American Constitution Society. Key organizers and facilitators for that gathering were Professors Christopher Schroeder, Robert Glicksman, Robert Verchick, and Trevor Morrison. A February 2007 Thrower Symposium conference at Emory Law School, "The New Federalism: Plural Governance in a Decentered World," also involved several participants in this book who have further developed ideas presented at Emory. That gathering was sponsored by the family of Randolph Thrower, the *Emory Law Journal*, and the Emory Center for Federalism and Intersystemic Governance, with substantial faculty input by Professors Robert Ahdieh, Robert Schapiro, and William Buzbee. The book also involves chapters by scholars offering completely new work that was not shared at either conference.

I also thank my administrative assistant, Brenda Huffman, and Terry Gordon of the Emory Law School Library for their prompt and skillful assistance. Research assistants Annie Mackay, Daniel Adams, Chandani Patel, and Michael Eber provided assistance with this book and several related projects. I especially thank the remarkable scholars and staff associated with the Center for Progressive Reform (CPR), a regulatory think tank comprising experts in the fields of law, economics, philosophy, and science. Discussions of this book and strategies to strengthen it at several CPR meetings proved invaluable. The engaged, wise, and supportive people associated with Cambridge University Press, especially John Berger, copy editor Christine Dunn, and indexer Robert Swanson, immeasurably improved the book. Lastly, I personally thank my wife, Lisa E. Chang, and daughters, Tian and Seana Buzbee, for their support.

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