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LOCALPROGRESS IMPACT LAB

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Housing Law and Preemption in Florida

This memo analyzes the landscape of state preemption of local housing law in Florida.[1] The memo provides general background on local government authority and state preemption and reviews narrow areas of housing law—in rent regulation, landlord-tenant law, short-term rentals, and limited aspects of inclusionary zoning—that Florida expressly preempts.[2] The memo then turns to implied preemption, concluding that, while Florida has broadly preempted the field of landlord-tenant law, there are potential opportunities for local action despite the legislature's passage of House Bill 1417, Senate Bill 102, and Senate Bill 170 in 2023.

Background: State Preemption of Local Law in Florida

Municipalities in Florida have constitutional home rule, meaning they have extensive powers to legislate in the absence of delegated authority from the state. The Florida Constitution states that municipalities "may exercise any power for municipal purposes except as otherwise provided by state law."[3] Municipal authority is also codified in the Municipal Home Rule Powers Act, which recognizes broad municipal and county power to initiate policy.[4] Similarly, charter counties "shall have all powers of local self-government not inconsistent with general law."[5]

Notwithstanding broad authority to initiate policy, state law may preempt municipal as well as county law. Florida recognizes express preemption, implied field preemption, and conflict preemption.[6] Express preemption requires a clear statement by the legislature, and cannot be inferred.[7] Florida courts recognize implied preemption when "the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature."[8] A court must examine "the provisions of the whole law, and [] its object and policy" in making this determination, considering the nature of the power the legislature exercises, the object of the statute, and the type of obligations imposed.[9]

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[1] The information provided in this document does not, and is not intended to, constitute legal advice. Individuals and organizations should contact an attorney licensed to practice in their state to obtain advice with respect to a particular legal matter.

[2] During the 2023 legislative session when a series of bills were passed in an effort to curb local authority over urgent housing policy, this memo references the impact of these laws on housing in Florida.

[3] Fla. Const. art. VIII, § 2(b).

[4] Fla. Stat. § 166.021 and Fla. Stat. § 125.01

[5] Fla. Const. art. VIII, § 1(g).

[6] *D'Agastino v. City of Miami*, 220 So.3d 410, 420–21 (Fla. 2017) ("[A] local government enactment may be inconsistent with state law where the Legislature has preempted a particular subject area.")

[7] *Id*. at 421.

[8] *Tallahassee Mem'l Reg'l Med. Ctr. v. Tallahassee Med. Ctr.*, 681 So.2d 826, 831 (Fla. 1996).

[9] *D'Agastino*, 220 So.3d at 421.

Florida courts evaluating implied field preemption tend to draw narrow lines of the "field" at issue. In a recent case, for example, the Florida Supreme Court found implied preemption only of the very specific field of "compelled interrogation of police officers in investigation that could lead to their discipline," rather than finding preemption of the field of police officer investigations, itself a narrow category.[10] Another case found that a state law regulating forfeiture of contraband did not preempt a local ordinance that also regulated forfeiture of contraband, because the state law only applied to felonies.[11]

Florida courts also recognize conflict preemption, a doctrine that asks whether a local ordinance and state law "cannot coexist."[12] Generally, "the fact that an ordinance imposes additional requirements on a person or business is not evidence of conflict."[13] Where Florida courts have found conflicts, local ordinances have established requirements that cannot be followed without violating state law, rather than the local ordinance simply providing additional requirements.[14] For example, the Florida Supreme Court found that a local ordinance requiring election results to be confirmed after an audit, with no time period specified, conflicted with state law requiring election results to be certified within a specific period; if the locally mandated audit did not happen within the state-defined time period for certification, it might not be possible to comply with both requirements.[15] Florida caselaw also addresses conflicts in penalties. A locality may not criminalize conduct the state punishes with civil penalties,[16] and local penalties may not exceed state penalties for the same or similar conduct.[17] In sum, localities may impose additional requirements without presenting a conflict, but may not penalize similar conduct to a greater extent than state law.

Express Preemption of Local Housing Regulation

Some policy areas in housing law are expressly preempted in Florida. Local governments cannot regulate in these areas. This section reviews and analyzes the scope of this preemption.

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[10] *Id.* at 426.
[11] *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1245–46 (Fla. 2006).
[12] *Phantom of Clearwater v. Pinellas County*, 894 So.2d 1011, 1020 (Fla. Ct. App. 2005); *see also City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1247 (Fla. 2006) (finding no conflict because the state and local requirements "can coexist").
[13] *Phantom of Clearwater*, 894 So. 2d at 1020; *see also Sarasota Alliance for Fair Elections v. Browning*, 28 So.3d 880, 888–89 (Fla. 2010).
[14] *Browning*, 28 So.3d. at 889–91.
[15] *Id*. at 890.
[16] *Thomas v. State*, 614 So.2d 468, 470 (Fla. 1993).
[17] *See Phantom of Clearwater*, 894 So. 2d at 1020–21 (finding no conflict where local ordinance imposed a penalty *less* severe than state law penalty, but conflict where it allowed additional punishment).

Rent Regulation

Florida law prohibits local measures that "would have the effect of imposing control on rents" from being "adopt[ed] or maintain[ed]."[18] Prior to the 2023 legislative session, state law allowed municipalities to impose rent regulation in the event of a housing emergency "so grave as to constitute a serious menace to the general public." [19] This exception was eliminated by the Florida legislature during the 2023 session by SB 102 which removed the provision in the law that had allowed local governments to impose rent control under certain emergency circumstances.[20] As such, all forms of rent regulation are prohibited by law. This prohibition applies not only to ordinances that directly regulate rents, but could extend to any ordinance that would, in its effect, result in a regulation of rents.

Short-Term Rentals

Florida law expressly preempts localities from passing new regulations prohibiting short-term rentals, and from regulating "the duration or frequency of rental of vacation rentals."[21] The statute, however, allows local governments to "adopt ordinances specific to these rentals so that they can address some of the noise, parking, trash and life-safety issues" they may face, including by requiring registration.[22]

State law grandfathers in local ordinances prohibiting, or regulating the duration or frequency of, vacation rentals put in place prior to 2011.[23] Importantly, zoning codes that are "materially identical" to their pre-2011 counterparts come under the grandfathered exception.[24] Localities might, therefore, be able to rely on zoning to restrict short-term rentals. For example, a Florida Court of Appeal held that because Miami's current zoning code was substantially the

[18] Fla. Stat. §§ 166.043, 125.0103.
[19] Fla. Stat. §§ 166.043(3), 125.0103(3).
[20] Fla. Stat. §§ 125.01055
[21] Fla. Stat. §§ 509.032(7)(b).
[22] *See, e.g.*, Ft. Lauderdale Code of Ordinances art. X, https://library.municode.com/fl/fort_lauderdale/codes/code_of_ordinances?nodeId=COOR_CH15BUTAREMIBURE_ARTXVARE; *see also* Florida League of Cities, *2020 Legislative Issue Background: Short Term Rentals*.. It may also be worth noting that a bill was introduced in 2020 that would have completely preempted short-term rental regulation to the state, but it died in committee. A.G. Gancarski, *"Last Legs": House Vacation Rental Preemption Fizzles*, FLORIDAPOLITICS.COM (Mar. 6, 2020), https://floridapolitics.com/archives/322048-house-vacation-rentals. News reports stated that Governor DeSantis was skeptical about the prospect of the state regulating short-term rentals. *Id.*; *see also* Ryan Dailey & Tom Flanigan, *Short-Term Vacation Rental Preemption Bill Hits Snag in Senate*, WFSU (Mar. 2, 2020), https://news.wfsu.org/state-news/2020-03-02/short-term-vacation-rental-preemption-bill-hits-snag-in-senate.
[23] Fla. Stat. § 509.032(7)(b).
[24] *City of Miami v. Airbnb*, 260 So.3d 478, 482–83 (Fla. Ct. App. 2018); *see also* Fla. Op. Atty. Gen. 2019-07, 2019 WL 4033984, at *2 (provisions "that are essentially and materially unchanged from the prior ordinances" would still retain their grandfathered status).

same as its 2009 version, state law did not preempt.[25] This suggests that state law allows zoning ordinances substantially similar to pre-2011 versions that would limit short-term rentals. However, new zoning interpretations that expand prior prohibitions would likely not escape preemption.[26]

Recent Florida Attorney General opinions give some additional guidance on what cities can and cannot do if they have grandfathered ordinances. A locality may pass new ordinances allowing short-term rentals where they had previously been prohibited.[27] They cannot, however, apply duration or frequency restrictions to new areas, even if they have grandfathered restrictions in different areas.[28] Nor can local governments "take back" regulations allowing short-terms rentals, as this would amount to a new prohibition.[29]

In addition, localities may enact regulations that neither prohibit short-term rentals nor regulate their "duration or frequency." Localities have thus, for example, required registration of short-term rentals.[30] Registrants must meet a number of requirements, including providing a contact who will ensure compliance with noise and trash rules.[31] Localities impose code violations and fines for noncompliance with registration requirements.[32] As long as regulations do not prohibit short-term rentals in a certain area or address duration or frequency, a locality may likely regulate short-term rentals.

Residential Tenancies and Landlord-Tenant Law

Florida law expressly preempts local-government regulation in the areas of "residential tenancies, the landlord-tenant relationship, and all other matters covered under [Part II (residential tenancies) of Chapter 83 (Landlord and Tenant)]" of Florida Statutes.[33]

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[25] *City of Miami*, 260 So.3d at 482–83. The court recognized that this would be a "fact-intensive, case-by-case inquiry." Incidental short-term rental use, however, that would not alter a property's status as "predominantly" permanent, could not be banned. *Id*.

[26] *Id*. ("[T]o the extent the City's . . . Zoning Interpretation goes beyond the restrictions in [the zoning code], the Interpretation is preempted . . .").

[27] Fla. Op. Atty. Gen. 2020-05, 2020 WL 4013790, at *2.

[28] Fla. Op. Atty. Gen. 2019-07, 2019 WL 4033984.

[29] Fla. Op. Atty. Gen. 2020-05, 2020 WL 4013790, at *1.

[30] *See, e.g.*, Ft. Lauderdale Code of Ordinances art. X, https://library.municode.com/fl/fort_lauderdale/codes/code_of_ordinances?nodeId=COOR_CH15BUTAREMIBURE_ARTXVARE

[31] Anne Geggis, *Cities Find New Ways to Regulate Vacation Home Rentals*, South Florida Sun Sentinel (Feb. 9, 2018), https://www.sun-sentinel.com/local/broward/fl-reg-vacation-rules-20180208-story.html; Ft. Lauderdale Code of Ordinances Sec. 15-275.

[32] *See, e.g.*, Holmes Beach Code of Ordinances, Sec. 4-11, https://library.municode.com/fl/holmes_beach/codes/code_of_ordinances?nodeId=PTIICOOR_CH4REVAREUN_S4-11VIPE.

[33] Fla. Stat. § 83.425

In addition to this broad preemption of the field of landlord-tenant law for residential tenancies, Florida law also notes that the following non-exhaustive policies are specifically preempted: "the screening process used by a landlord in approving tenancies; security deposits; rental agreement applications and fees associated with such applications; terms and conditions of rental agreements; the rights and responsibilities of the landlord and tenant; disclosures concerning the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant; fees charged by the landlord; or notice requirements."[34]

As such, the following regulations that local governments in Florida and across the country have enacted are now preempted:

- **Just-Cause Eviction.** Just-cause eviction standards limit the grounds on which tenants can be evicted.[35] Because the process and substance of eviction is covered under Part II (residential tenancies) of Chapter 83 (Landlord and Tenant),[36] just-cause eviction policies are now preempted pursuant to Florida Statutes § 84.425.

- **Additional Notice Periods.** Florida law expressly preempts local ordinances that seek to regulate notice requirements under a landlord-tenant relationship.[37] As such, local governments may not impose notice requirements for eviction, lease terminations, etc. that exceed the time period set forth by the state law.[38]

- **Prohibition on Retaliation Against Tenants.** An ordinance that prohibits additional landlord retaliatory conduct is considered field preemption under Florida law. Florida law enumerates examples of conduct for which landlords may not retaliate, including complaining to a government agency about a code violation, complaining to the landlord, joining a tenant organization, and exercising rights under fair housing laws.[39] The statute also specifies actions the landlord cannot take in retaliation, such as: increasing rent, decreasing services, or threatening eviction. These prohibitions do not apply to eviction for "good cause," including, but not limited to, nonpayment of rent or violation of the

[34] Fla. Stat. § 83.425
[35] Local Housing Solutions, *"Just Cause" Eviction Policies*, https://www.localhousingsolutions.org/act/housing-policy-library/just-cause-eviction-policies-overview/just-cause-eviction-policies/ (last visited Oct. 23, 2020).
[36] *See, e.g.,* Fla. Stat. §§ 83.21, 83.22.
[37] Fla. Stat. § 83.425
[38] Fla. Stat. § 83.03
[39] *Id*. § 1(a)–(f).

rental agreement.[40] This detailed scheme, taken together with the coverage of retaliation against tenants under Part II (residential tenancies) of Chapter 83 (Landlord and Tenant),[41] indicates that anti-retaliation policies that are more protective than the ones listed above are likely to be field preempted.

- **Prohibition on Eviction by Force and Actions for Possession.** Local ordinances prohibiting eviction and limiting the terms under which a landlord can recover possession are now preempted by state law. The section that articulates the right of action for possession declares that "the landlord may recover possession of the dwelling unit *as provided in this section*,"[42] and is similarly covered under [Part II (residential tenancies) of Chapter 83 (Landlord and Tenant)].[43]

Policies Authorized Under Florida Law

Inclusionary Zoning

Florida state law specifically authorizes inclusionary zoning.[44] However, it also imposes certain restrictions on localities seeking to adopt these zoning policies, requiring them to offset costs of complying with inclusionary zoning requirements.[45] The development of affordable housing is also restricted by law to areas zoned for "commercial," "mixed-use," or "industrial use."[46]

Florida law provides guidance as to zoning and development approval procedures. The provisions require localities to follow a set of procedures for approving affordable housing developments, and they preempt local zoning regulations that do not allow the land uses, density, and building height permitted under Florida law.[47] Under the law, localities:

- may not restrict the unit density of a proposed affordable housing development below the highest allowed density on any land in the same local zoning jurisdiction;

[40] Fla. Stat. § 83.64(3).
[41] *See, e.g.,* Fla. Stat. §§ 83.21, 83.22.
[42] Fla. Stat.§ 83.59 (emphasis added).
[43] Fla. Stat.§ 83.59
[44] Fla. Stat. § 125.0103
[45] Fla. Stat. § 166.04151
[46] Fla. Stat. § 166.04151
[47] Fla. Stat. § 166.04151

- may not restrict the building height of a proposed affordable housing development below the highest allowed height for a commercial or residential development located in its jurisdiction within one mile of the proposed development or three stories, whichever is higher;
- may not require a proposed affordable housing development to obtain a rezoning, comprehensive plan amendment, special exception, variance, or other public hearing approval for the land uses, density, and building height allowed in qualifying projects;
- must instead administratively approve qualifying projects if they satisfy all other land development regulations for multifamily developments in areas zoned for such use and otherwise are consistent with the local comprehensive plan;
- may still enforce all other land development regulations, including but not limited to setbacks and parking requirements, building intensity (FAR or FLR), lot coverage, open space, etc.; and
- must "consider" reducing parking requirements if the proposed affordable housing development is located within one-half mile of a major transit stop accessible to the site.

Localities may "adopt and maintain" any measure "adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary zoning."[48] Florida law further specifies that localities may "require a developer to provide a specified number or percentage of affordable housing units," contribute to a housing fund,[49] or require the payment of a linkage fee.[50] However, if a locality imposes such requirements, it "must provide incentives to fully offset all costs to the developer" of complying with the ordinance.[51] Such incentives may include allowing the developer more density or floor space than otherwise permitted under zoning laws, and reducing or waiving impact or water and sewer fees.[52] The statute specifies that other incentives can be used, perhaps providing an opportunity for creative local ordinances.

The provisions allowing inclusionary zoning if costs are offset do not apply to areas of critical state concern, as designated by statute.[53] These areas have been designated by the State as containing crucial environmental and cultural resources that must be preserved, and the offset requirement previously described does not apply. Municipalities in these areas are specifically authorized to pursue affordable housing development that would otherwise be precluded by state

[48] Fla. Stat. §§ 166.04151(1) (municipalities); 125.01055(1) (counties).
[49] Fla. Stat. §§ 166.04151(2); 125.01055(2).
[50] Fla. Stat. §§ 166.04151(3); 125.01055(3).
[51] Fla. Stat. §§ 166.04151(4); 125.01055(4).
[52] *Id*.
[53] Fla. Stat. §§ 166.04151(5); 125.01055(5).

or local laws and regulations. Currently, the only municipalities that would fall under this exception are those in the Florida Keys, which were designated in 1975. In such areas, applicable agencies and governments are directed to consider availability of affordable housing.[54]

Conflict Analysis of Additional Local Policies

Protection Against Source of Income Discrimination

Despite broad preemption of landlord-tenant law, local source of income ("SOI") discrimination protections may be permissible. As discussed above, Florida law expressly preempts all aspects in the areas of "residential tenancies, the landlord-tenant relationship, and all other matters covered under [Part II (residential tenancies) of Chapter 83 (Landlord and Tenant)].[55] This Part, however, does not encompass protections against housing discrimination. [56]

The Florida Fair Housing Act protects against discrimination in housing on the basis of "race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status" in Part II of Title XLIV (Civil Rights), Chapter 760 (Discrimination in the treatment of persons; minority representation).[57] In the many states that prohibit SOI discrimination, such prohibitions are amendments to existing civil rights law.[58] Generally, when two statutes address the same issue area (such as the Florida Fair Housing Act and [Part II (residential tenancies) of Chapter 83 (Landlord and Tenant)]" of Florida Statutes[59]) Florida courts have held that the statute that more specifically addresses the area controls over the more general statute.[60] In the case of § 83.425, because the statute does not specifically address civil rights protections, but rather generally refers to the "screening processes" used by a landlord as being preempted, it is possible that a court would find that the Florida Fair Housing Act, which specifically addresses discrimination protections in housing, controls, although it does not specifically address source of income policies. Furthermore, given that the Florida Fair Housing Act does not expressly preempt local regulation and several Florida localities have enacted ordinances protecting against SOI

[54] Fla. Stat. § 380.0552(7)(l).
[55] Fla. Stat. § 83.425
[56] Although § 83.425 does include provide that "the screening process used by a landlord in approving tenancies" in its non-exhaustive list of preempted policies, it is likely that substantive discrimination protections are excluded.
[57] Fla. Stat. § 760.20
[58] *Poverty and Race Rsch. Action Council*, (Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program) Appendix B, p. 8 (2023), https://www.prrac.org/pdf/AppendixB.pdf
[59] Fla. Stat. § 83.425
[60] "When reconciling statutes that may appear to conflict, the rules of statutory construction provide that a specific statute will control over a general statute... [the] more specific statute is considered an exception to the general statute where statutes contain conflicting provisions." *DMB Investment Trust v. Islamorada, Village of Islands*, 225 So.3d 312, 317-18. (Fl. 3rd Dist. Ct. App, 2017).

discrimination, courts are likely to find that local SOI discrimination protections are not preempted by Florida Statutes § 83.425.

The United States Supreme Court has held that "disparate impact" claims are cognizable under the Fair Housing Act. One could argue that preempting local source of income protections leads to disparate impact because the legislation serves the purpose of preventing discriminatory housing practices.[61] Although the Fifth Circuit has rejected that claim with respect to landlords that refuse to accept vouchers, the Eleventh circuit has made no such determination and it is plausible that a court could find the legislation serves the purpose of preventing housing discrimination.[62]

Rental Registries

Rental registries typically provide a database of rental properties that includes detailed information about the property owner and the rental property in a given jurisdiction. These registries allow prospective and current tenants to have transparency as to previous violations of law. It is likely that rental registries that require disclosure of housing, building, and health code violations would not be preempted, but it is likely that required disclosures concerning "the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant" would be preempted.[63]

It is likely that landlord registries remain an area in which localities may regulate because Chapter 83 of Florida Statutes do not mention or address landlord registries, nor does HB 1417 enumerate landlord registries as a preempted matter. Registries for the most part are used by municipalities to keep a record of the number of rental units in their area, provide up to date contact information for property owners and managers in cases of emergencies and to enforce local building and health codes. Fla. Stat. § 83.51(1)(a) states, "The landlord at all times during the tenancy shall comply with the requirements of applicable building, housing, and health codes." As a tool of code enforcement and public health, the use of landlord registries as a means of enforcing local building and health codes may plausibly be further supported by state law, depending on future litigation.

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[61] *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 192 L. Ed. 2d 514 (2015)

[62] *Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890 (5th Cir. 2019)

[63] Fla. Stat. § 83.425.

With that said, Section 83.425 provides that "disclosures concerning the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord and tenant"[64] are preempted. As such, any rental registry that requires property owners to disclose such information is likely to be preempted.

Right to Counsel

Similarly, right to counsel, which refers to a qualifying tenant's ability to have an attorney assigned to their housing case, is not expressly preempted by Section 83.425. In most instances where right to counsel has been enacted, it has acted as a fiscal tool that localities can use to provide funding for counsel to help keep tenants in their homes when they face eviction proceedings. Given that right to counsel typically involves municipalities spending funds, rather than a policymaking structure that changes the terms of a landlord-tenant relationship, it is likely not preempted by under [Part II (residential tenancies) of Chapter 83 (Landlord and Tenant)].

Preemption Enforcement Mechanism

Florida law provides a preemption enforcement mechanism that allows individuals and businesses to challenge local ordinances in two distinct areas: 1) any law that is expressly preempted by state law, or 2) any law that is found to be "arbitrary or unreasonable".[65]while also allowing courts to award reasonable attorney fees to the prevailing plaintiff. Notably, Florida law shifts fees and costs to the prevailing party in such cases with a cap of $50,000, however, this fee shifting mechanism only applies to ordinances adopted after October 1, 2023.[66] where the law applies narrowly to express preemption, implied preemption where the legislature does not clearly enumerate a topic to be preempted, is likely not covered under this enforcement mechanism, but remains vulnerable to a reasonable challenge.

The law requires municipalities to suspend enforcement of an ordinance if such a challenge is brought unless the law is suspended or repealed. Unfortunately, there is little guidance as to what types of laws a court may deem to be "arbitrary and unreasonable" for purposes of the law, and this lack of clearly-defined legal contours exacerbates this chilling effect.

In other contexts, Florida courts have applied the arbitrary and unreasonable provision standard articulated in *City of Miami v. Kayfetz,* in which the court held that the test in determining whether or not a city ordinance is arbitrary or unreasonable is whether the ordinance "has a rational relation to the public health, morals, safety or general welfare and is reasonably

[64] Fla. Stat. § 83.425
[65] Fla. Stat. § 57.112
[66] Fla. Stat. § 57.112

designed to correct a condition adversely affecting the public good."[67] Further, courts will only disturb a legislative finding that an ordinance is rationally related to remedying a condition that adversely affects the public when that finding is made "without basis" or is "clearly erroneous." While the definition of arbitrary and unreasonable has not been defined for the purposes of this statute, Florida courts have routinely recognized the power of municipalities to regulate activities impacting public health, safety, and welfare under modern home rule. *Classy Cycles, Inc. v. Panama City Beach,* 301 So. 3d 1046 (Fla. Dist. Ct. App. 2019) *Citing (City of Jacksonville v. Sohn,* 616 So. 2d 1173, 1174 (Fla. 1st DCA 1993). The standard for what courts define as arbitrary and unreasonable is a high.

Conclusion

While Florida law expressly preempts local regulation broadly of the "residential tenancies, the landlord-tenant relationship, and all other matters covered under [Part II (residential tenancies) of Chapter 83 (Landlord and Tenant)],"[68] it appears that there is room for localities to impose additional regulation in other areas of the law. This memo reviewed state preemption statutes and enforcement mechanisms governing short-term rentals, inclusionary zoning, and landlord-tenant law. It concludes that despite broad preemption, localities may still take various actions. To the extent that express preemption does apply, this memo highlights the possibility that some tools remain at the disposal of municipalities including policy around source of income discrimination protections, inclusionary zoning, landlord registries, and right to counsel.

[67] *City of Miami v. Kayfetz*, 158 Fla. 758 (Fla. 1947)
[68] Fla. Stat. § 83.425

Appendix: Table Summarizing Preemption of Certain Topics

Clearly Preempted

Preemption Unclear

Local Authority

Local Policy	Express Preemption?	Field Preemption?	Conflict Preemption?	Local Authority
Rent regulation/rent control	Yes. Localities may not impose controls on rent.			
Short-term rentals	Yes. Localities may not pass new regulations prohibiting short-term rentals, or regulate "the duration or frequency of rental of vacation rentals."[69]			Localities may still "adopt ordinances specific to these rentals so that they can address some of the noise, parking, trash and life-safety issues" they may face, including by requiring registration.
Inclusionary zoning	Yes. Localities may not provide for inclusionary zoning unless they fully offset costs to developers.			Localities may adopt inclusionary zoning measures, but must provide for offsets. There could be space to be creative in

[69] Fla. Stat. §§ 509.032(7)(b).

				providing for cost offsets.
Just-cause eviction	Yes. Localities may not limit the grounds on which tenants can be evicted because the process and substance of eviction is covered under Part II (residential tenancies) of Chapter 83 (Landlord and Tenant).			
Prohibition on retaliation		Yes. Florida law enumerates examples of conduct for which landlords may not retaliate, including complaining to a government agency about a code violation, complaining to the landlord, joining a tenant organization, and exercising rights under fair housing laws.[70] The statute also specifies actions		

[70] *Id*. § 1(a)–(f).

		the landlord cannot take in retaliation, such as: increasing rent, decreasing services, or threatening eviction.		
Tenant right to organize			Unclear, but unlikely. State law prohibits retaliatory evictions for tenant organizing, so a challenge could argue that additional prohibition is a conflict.	Localities can argue that as long as the locality does not impose harsher penalties than the state, it should be able to add additional regulation.
Prohibition on eviction by force	Yes. Localities may not prohibit eviction and limit the terms under which a landlord can recover possession because the section that articulates the right of action for possession declares that "the landlord may recover possession of the dwelling unit *as provided in this section*," and is similarly			

	covered under [Part II (residential tenancies) of Chapter 83 (Landlord and Tenant).			
Source of Income			Unclear. Part II (residential tenancies) of Chapter 83 (Landlord and Tenant) does not encompass protection against housing discrimination and in the many states that prohibit SOI discrimination, prohibitions are amendments to existing civil rights law, indicating this may be an area where local control remains.	
Rental Registries	Yes. Section 83.425 provides that "disclosures concerning the premises, the dwelling unit, the rental agreement, or the rights and responsibilities of the landlord			Localities likely may use landlord registries as a tool to enforce existing state law and provide tenants with information about prospective rental units.

	and tenant" are preempted. As such, any rental registry that requires property owners to disclose such information is likely to be preempted.			
Right to Counsel				Localities likely can enact right to counsel because the issue is not covered by 83.425 and the laws involve municipalities spending funds on counsel rather than policymaking.