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The Supremacy Clause and the Doctrine of Preemption

What happens when state law conflicts with federal law? The answer relies on the doctrine known as federal preemption.

The Supremacy Clause is a clause within [Article VI](#) of the U.S. Constitution which dictates that federal law is the "supreme law of the land". This means that judges in every state must follow the Constitution, laws, and treaties of the federal government in matters which are directly or indirectly within the government's control. Under the doctrine of preemption, which is based on the Supremacy Clause, federal law preempts state law, even when the laws conflict. Thus, a federal court may require a state to stop certain behavior it believes interferes with, or is in conflict with, federal law.

Example 1:

State A has enacted a law that says "no citizen may sell blue soda pop anywhere in the state".⁹⁵¹⁶²²⁵ The federal government, however, has established the "Anti-Blue Sales Discrimination Act", prohibiting actions that discriminate against the color of goods sold. A local food and beverage vendor who sells blue soda pop in vending machines is charged with violating the state law. She may challenge the state law on the basis that it is preempted by federal law, and therefore violates the Supremacy Clause of the U.S. Constitution.

Example 2:

The United States passes a law promising to preserve and to protect Indian tribes. State B wants to tax Indian tribes located within its state. Under the Supremacy Clause of the U.S., State B may not tax a federally recognized Indian tribe since doing so would violate the tribe's political interest in which the U.S. has promised to protect.

Moreover, the federal government has broad powers under the Supremacy Clause to create, regulate, and enforce the laws of the United States. The concept of federalism, or that of federal power, has a long-standing history dating back to the late 1700's, during the time in which the nation's founding fathers signed the U.S. Constitution. Among those powers, the federal government has certain *express* (or "enumerated") powers which are specifically spelled out in the U.S. Constitution, including the right to regulate commerce, declare war, levy taxes, establish immigration and bankruptcy laws, and so on.

Not only does the federal government have *express* powers under the U.S. Constitution, it also has *implied* powers, or powers not specifically mentioned in the Constitution. This was the decision in the landmark Supreme Court case of [McCulloch v. Maryland](#). For example, the Constitution does not expressly mention the right to privacy, or the right of people to adopt, or seek an abortion, however, these rights can be *inferred* by the Constitution itself, or from the later amended [Bill of Rights](#).

Whether express or implied, federal law will almost always prevail when it interferes or conflicts with state law, except in circumstances where the federal law is deemed unconstitutional, or where the Supremacy Clause does not apply.

To that end, people living within the U.S. should be aware of the broad powers of the federal government, especially on issues affecting their daily lives, such as [bankruptcy](#) issues, [discrimination](#) claims, [immigration](#) challenges, [federal taxation](#), and many others. A [constitutional law attorney](#) can help with the construction and interpretation of a federal law as applied to a particular state law.

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