Strategies for Protecting Home Rule Powers of Municipalities:

Examples from Florida

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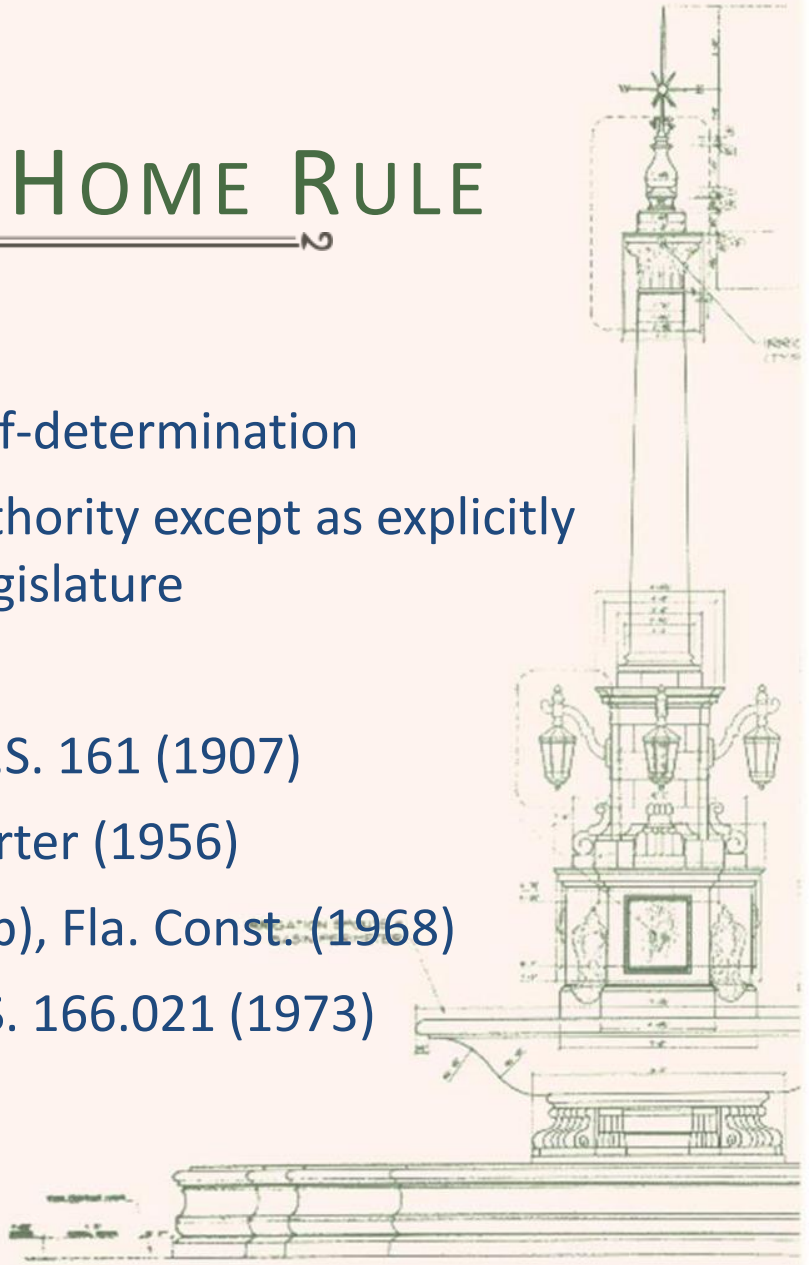


Recent Litigation

- FLORIDA RETAIL FEDERATION, INC and SUPER PROGRESO INC. v. CITY OF CORAL GABLES FLORIDA (3rd DCA, Case No. 3D17-562)
  - Raising improper delegation of legislative powers, violation of Miami-Dade Home Rule Amendment, among other issues
- CITY OF MIAMI BEACH v. FLORIDA RETAIL FEDERATION (3rd DCA, Case No. 3D17-0705)
  - Coral Gables Amicus in Support of Miami Beach, arguing that Legislature did not intend to preempt Miami Beach's ordinance and any ambiguity as to preemption should be resolved in favor of municipal home rule.
- CITY OF MIAMI v. AIRBNB, INC (3rd DCA, Case No. 3D17-1213)
  - Coral Gables Amicus in support of Miami, arguing that Miami's Ordinance predates preemption period, that there is no express preemption, and raising primary jurisdiction, exhaustion of administrative remedies, and sovereign immunity.

The Evolution of Home Rule

- Cooley Doctrine versus Dillon's Rule
  - Cooley: inherent right to local self-determination
  - Dillon's Rule: no independent authority except as explicitly or implicitly granted by a state legislature
- Home Rule versus Dillon's Rule
  - Hunter v. City of Pittsburg, 207 U.S. 161 (1907)
- Miami-Dade County Home Rule Charter (1956)
- Florida Constitution, Art. VIII, Sec. 2(b), Fla. Const. (1968)
- Municipal Home Rule Powers Act, F.S. 166.021 (1973)



Recent attempts to challenge Home Rule in Florida

- House Bill 17
- House Bill 1021 (Ch. 2017-149, Laws of Florida)
  - Painting permits
  - Corporate franchise logos
- Airbnb and Ride Sharing
- Cellular towers in the rights of way
- Polystyrene and Plastic Bag Regulations

Strategies for Fighting Preemption

- Constitutional Arguments – Vertical and Horizontal Structural Arguments
- Separation of Power/ Nondelegation Doctrine
  - Polystyrene and plastic bag regulations in Coral Gables
  - Nondelegation doctrine promotes a balance between local and state authority, ensures guidelines for regulations which in turn provide guidance to municipalities as to areas where they can legislate
    - City of Arlington, Texas v. FCC, 133 S. Ct. 1863 (2013)
    - Dept. of Prof'l Regulation, Fla. State Bd. Of Med. V. Marrero, 536 So. 2d 1094 (Fla. 1st DCA 1988)

Strategies for fighting preemption

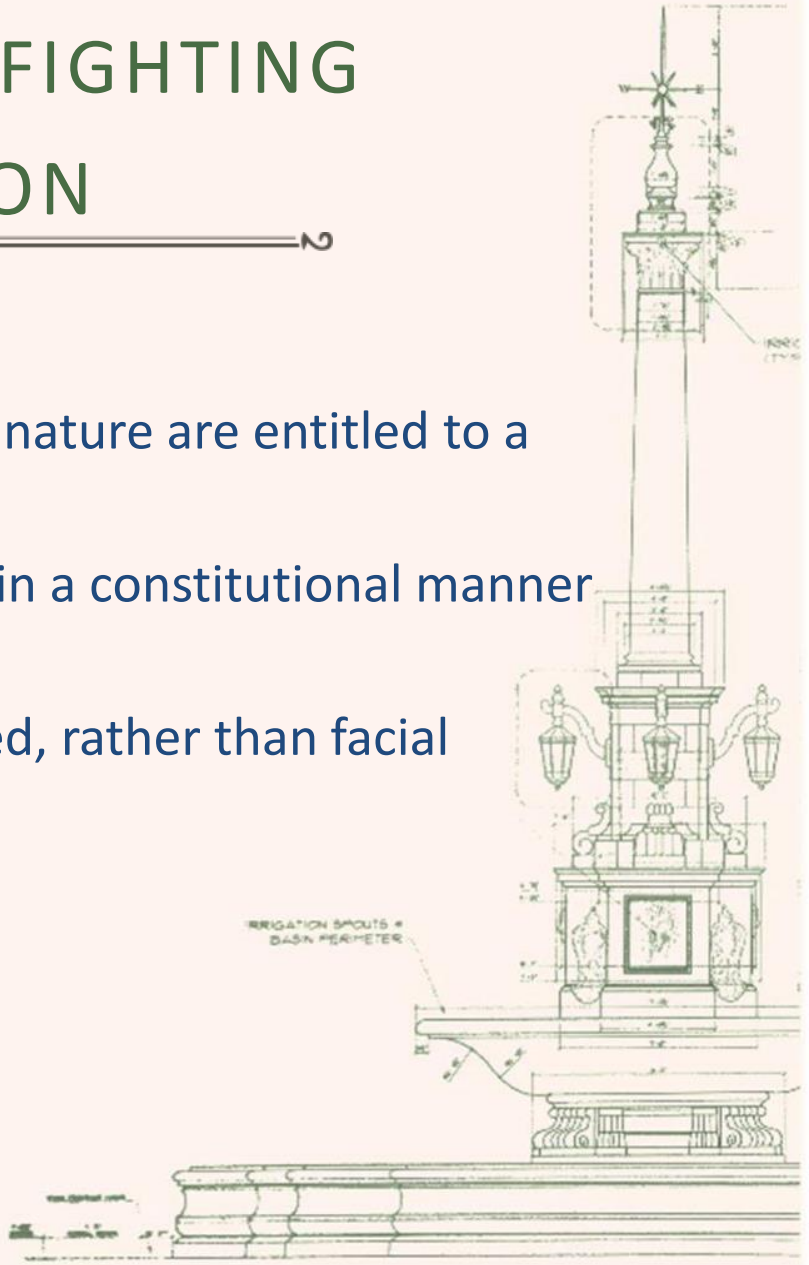


- Primary Jurisdiction/ Sovereign Immunity/ Administrative Exhaustion
  - Local legislation should not be deemed facially invalid

    (or facially preempted) unless the legislation is unlawful or preempted in all applications
    - Look to the exceptions in any preemption, apply the ordinance through the typical administrative process
      - Issues with Airbnb in Miami-Dade County
- Core Home Rule Grant of Authority
  - comparison to 10th Amendment/commerce clause analysis

Strategies for fighting preemption

- Canons of Construction
  - Ordinances that are legislative in nature are entitled to a presumption of validity
  - Ordinances should be construed in a constitutional manner to preserve that validity
    - Allow ordinances to be applied, rather than facial challenges

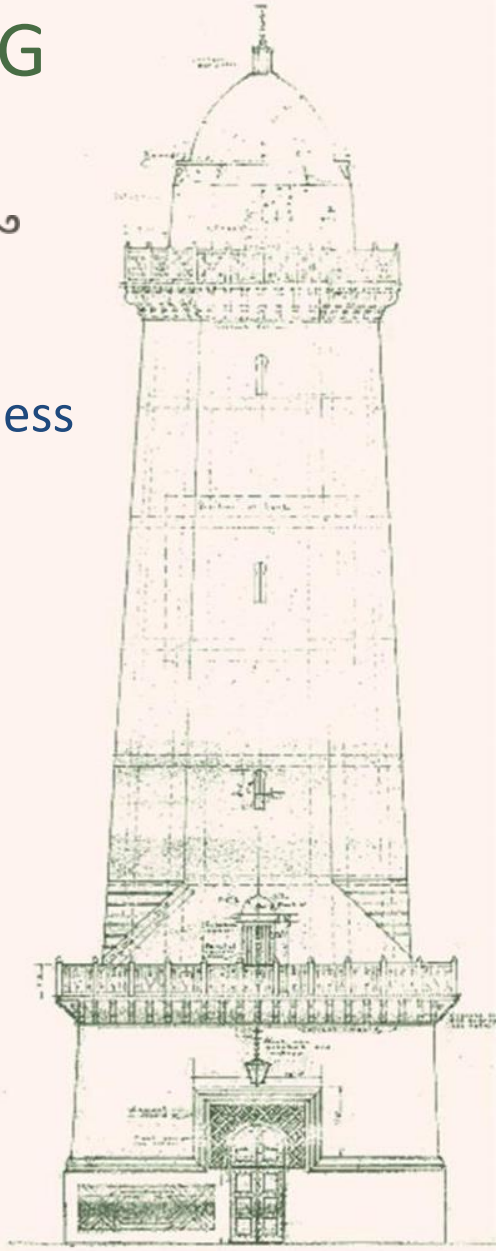


Strategies for Fighting Preemption

- Arbitrary Classification Doctrine
  - Article II, Section 11(b) of the Florida Constitution
  - " [i]n the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law"
    - City of Coral Gables Polystyrene regulations

Strategies for fighting preemption

- Equal Dignity Rule
  - Attempts to restore Dillon's Rule for local business regulations
  - House Bill 17



Strategies for Fighting Preemption

- Miami-Dade County Home Rule Amendment and Charter
  - For municipalities in the County it is important to raise the protections of the Home Rule Amendment and Charter.
  - Article VIII, Section 6 of the Florida Constitution preserves to Miami-Dade County and municipalities in the County authority over local affairs
  - Section 6.02 of the County Home Rule Charter recognizes that "[e]ach municipality may provide for higher standards of zoning, services, and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens"

