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PERSPECTIVE

## Local drone law preempted in first-of-its-kind ruling

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A federal judge recently held that portions of the city of Newton, Massachusetts's ordinance attempting to regulate unmanned aircraft — i.e., drone — operations within the city were invalid. The case, *Singer v. City of Newton*, 1:17-CV-10071-WGY (D. Mass., Sept. 21, 2017), marks the first time a federal court has struck down a local ordinance attempting to regulate drones.

The court held the following four city ordinance provisions to be unenforceable: (1) a requirement that all owners register their drone with the city; (2) a ban on all drone operations under 400 feet that are over private property unless done with express permission of the property owner; (3) a ban on all drone operations over public property, regardless of altitude, unless done with the express permission of the city; and (4) a requirement that no drone be operated beyond the visual line of sight of its operator. All four of these provisions of the Newton ordinance were found to be preempted by federal regulations promulgated by the Federal Aviation Administration.

### Federal Preemption

Under the supremacy clause of the U.S. Constitution, federal law prevails over conflicting state or local laws when there is an express or implied congressional intent to preempt state and local law. *Singer* challenged Newton's ordinance under an implied congressional intent theory, arguing for both field preemption and conflict preemption.

Under field preemption, implied congressional intent to wholly occupy a field will lead to state and local laws in that same field being preempted. Thus, when field pre-



A man monitors an airborne autonomous drone in Cape Cod, Massachusetts., Aug. 25, 2016. New York Times News Service

emption is found, it is no longer possible for state and local laws to coexist with federal laws in the specific field. Significantly, the court in *Singer* declined to determine whether field preemption exists in this area of the law, thus leaving open the possibility of some state, local, and federal drone laws coexisting. In contrast to field preemption, conflict preemption is a much narrower doctrine. The court determined that conflict preemption exists only when it is impossible to comply with federal regulations and the specific state or local law, or when the state or local law at issue interferes with congressional objectives. All four Newton ordinances were invalidated on this basis.

### Reasoning

In holding that the four sections of Newton's ordinance were each conflict preempted, the court identified the congressional objectives each section inhibited. One relevant congressional objective is to make the FAA the exclusive regulatory authority for registration of drones.

The Newton ordinance required the registration of drones with the city of Newton, which impeded Congress' objective, thus, the court found that section to be preempted.

A separate congressional objective the court identified is for the FAA to develop a comprehensive plan to safely accelerate the integration of drones into the national airspace system. The two sections of the Newton ordinance requiring prior permission to fly above both public and private property within the city effectively eliminated any drone activity without prior permission, thus those sections were held to interfere with the federal objective and were invalidated.

Lastly, the court found that the Newton ordinance's provision barring drone usage beyond the visual line of sight of the operator conflicted with a less restrictive FAA rule allowing such usage if a waiver is obtained or if a separate visual observer can see the drone throughout its flight and assist the operator.

### Implications

This ruling marks the long antic-

ipated beginning of federal courts addressing overlapping state, local and federal drone laws. While the *Singer* ruling is significant for invalidating sections of a local ordinance and thus laying a framework federal courts may follow to invalidate state and local drone laws elsewhere, it is important not to overstate the case's current significance.

The court in *Singer* declined to hold that law relating to airspace was expressly preempted or field preempted, but rather decided it was conflict preempted. Consequently, the case does not provide support for the assertion that all state and local drone laws related to airspace will be preempted by FAA regulations. Further, the court did not opine on the lower limits of the National Airspace and whether it goes to the ground, an issue likely to come up in future litigation.

The unchallenged portions of the Newton ordinance still stand, and the closing lines in the opinion recognize Newton is free to redraft the invalidated portions to avoid direct conflict with FAA regulations. Thus it remains possible, even in the District of Massachusetts, for federal law to coexist with state and local laws in this field. In order to successfully avoid invalidation in the courts, however, state and local lawmakers must draft legislation which is possible to comply with in conjunction with federal regulations, and which does not interfere with any federal objectives.

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