



Stephen Masciocchi

Partner
303.295.8451
Denver
smasciocchi@hollandhart.com



Jessica Smith

Partner
303.295.8374
Denver
jjsmith@hollandhart.com

Tenth Circuit Affirms District Court Decision To Abstain Under 'Pullman' From Exercising Jurisdiction

The Tenth Circuit affirmed a discretionary decision, concluding that the district court properly abstained and stayed the federal proceedings pending resolution of important state-law issues.

Insight — May 20, 2020

Law.com

In *Caldara v. City of Boulder*, No. 18-1421, 2020 WL 1814596 (10th Cir. April 10, 2020), plaintiffs challenged the constitutionality of a local ordinance regulating the sale and possession of firearms. The federal district court abstained from exercising its jurisdiction. The Tenth Circuit affirmed this discretionary decision under *Railroad Commission of Texas v. Pullman*, 312 U.S. 496 (1941), concluding that the district court properly abstained and stayed the federal proceedings pending resolution of important state-law issues.

Boulder's Firearms Ordinance

In May 2018, the Boulder City Council passed Ordinance 8245, which prohibits the sale or possession of assault weapons and large-capacity ammunition magazines within the city. The Ordinance also raised the legal age for possession of any firearm from 18 to 21.

Plaintiffs, citizens of Boulder and entities with various interests in the sale or possession of firearms within Boulder, sued the city in federal district court, alleging that the Ordinance violates the U.S. Constitution, the Colorado Constitution, and Colorado state statutes.

After plaintiffs sued in *Caldara*, different individuals and entities sued in Colorado state court challenging the constitutionality of the same Ordinance. *Chambers v. City of Boulder*, 2018-CV-30581 (Colo. D. Ct., Boulder Cty. June 14, 2018). The plaintiffs in *Chambers* challenged the Ordinance under Colorado state law, leaving out any claims under the U.S. Constitution.

After *Chambers* was filed, the defendants in *Caldara* moved to stay the case under the *Pullman* abstention doctrine, arguing that the federal court should wait to see how the Colorado state court resolved the state-law issues. Agreeing with defendants, the district court stayed the case pending resolution of *Chambers*. Plaintiffs appealed to the Tenth Circuit,

contending that the district court had abused its discretion.

'Pullman' Abstention

Under *Pullman*, federal courts can in “exceptional circumstances” abstain from exercising their jurisdiction and stay federal court proceedings pending resolution of state-law issues in state court. *Kan. Judicial Review v. Stout*, 519 F.3d 1107, 1119 (10th Cir. 2008). “[T]he *Pullman* concern [is] that a federal court will be forced to interpret state law without the benefit of state-court consideration and ... [will] render[] the federal-court decision advisory and the litigation underlying it meaningless.” *Moore v. Sims*, 442 U.S. 415, 428 (1979).

In order for a district court to rely on the *Pullman* abstention doctrine, three requirements must be met: “(1) an uncertain issue of state law underlies the federal constitutional claim; (2) the state issues are amenable to interpretation and such an interpretation obviates the need for or substantially narrows the scope of the constitutional claim; and (3) an incorrect decision of state law by the district court would hinder important state law policies.” *Caldara*, 2020 WL 1814596, at *3 (citing *Lehman v. City of Louisville*, 967 F.2d 1474, 1478 (10th Cir. 1992)).

Only if these three requirements are met can a district court exercise its discretion to decline jurisdiction entirely or postpone the exercise of its jurisdiction in deference to state court's resolution of the underlying state law issues. *Hartman v. Forssenius*, 380 U.S. 528, 534 (1965).

Application of 'Pullman'

In *Caldara*, the Tenth Circuit decided that all three *Pullman* requirements had been satisfied and that the district court had acted within its discretion in deciding to stay the case pending resolution of *Chambers*.

First, there was uncertainty over an important issue of state law that was foundational to the *Caldara* plaintiffs' constitutional challenge to the Ordinance, namely, whether Boulder had exceeded its authority under the Colorado constitution to enact the Ordinance in the first place.

Boulder is a home-rule municipality under the Colorado constitution, which allows it to pass ordinances in “local and municipal matters” that supersede “any law of the state in conflict therewith.” Colo. Const. art. XX, §6. But a home-rule municipality's ordinance is preempted if the ordinance deals with matters of statewide concern and is in conflict with state law on the subject. *City & Cty. Of Denver v State*, 788 P.2d 764, 767 (Colo. 1990). And where the issue is of mixed local and state concern, an ordinance may coexist with a state law only as long as there is no conflict; if there is a conflict, the state law wins. *Id.*

Plaintiffs in both *Caldara* and *Chambers* contend that the Ordinance is preempted by Colo. Rev. Stat. §§29-11.7-102 & 103, which provide that a “local government may not enact an ordinance, regulation, or other law that prohibits the sale, purchase, or possession of a firearm that a person

may lawfully sell, purchase, or possess under state or federal law.”

To decide whether the Ordinance is preempted, a court would need to determine (1) whether the regulation of firearms is a matter of local, state, or mixed concern and (2) if it is a matter of state or mixed concern, whether there is a conflict between the Ordinance and Colorado state law. Further complicating matters, the Tenth Circuit explained that there is considerable uncertainty under Colorado state law regarding whether the state considers the regulation of firearms as a matter of state or local concern. In a prior case, the Colorado Supreme Court had split evenly over whether Denver firearms ordinances were preempted by state law. *Caldara*, 2020 WL 1814596, at *3 (citing *State v. City & Cty. of Denver*, 139 P.3d 635, 636 (Colo. 2006) (3-3 decision, J. Eid not participating)).

Given these doubts related to Colorado state law, the Tenth Circuit concluded that the first *Pullman* factor had been satisfied.

Second, the state-law preemption issue could be determinative of the federal constitutional questions. If Boulder exceeded its home-rule authority such that the Ordinance is preempted by state law, then the Ordinance would be invalid on that basis, and no court need analyze whether it also violates the U.S. Constitution. Thus, the second factor had also been satisfied.

Third, the risk of the federal court disrupting important state-law policies is considerable, because the preemption question implicates the balance of power between home-rule municipalities and the state of Colorado. In this regard, the Tenth Circuit was guided by the fact that the U.S. Supreme Court has already found the third *Pullman* factor satisfied where the issue “involves a question as to whether a city has trespassed on the domain of a State.” *City of Chicago v. Fieldcrest Dairies*, 316 U.S. 168, 172 (1942). The third *Pullman* factor had been satisfied.

Finally, once all three factors had been satisfied, the Tenth Circuit analyzed whether the district court had abused its discretion in deciding to abstain from exercising its jurisdiction. To answer this question, the court balanced the desire to defer to states on important issues of state concern against the inherent delays associated with abstention. Because a state court was already on its way toward deciding the state-law issues, the Tenth Circuit concluded that the concern as to delay was sufficiently mitigated. The court therefore held “that the district court properly abstained as ‘appropriate regard for the rightful independence of state governments[.]’” *Caldara*, 2020 WL 1814596, at *6.

Stephen Masciocchi and Jessica Smith are attorneys at Holland & Hart specializing in complex commercial litigation. Steve assists clients with federal and state appeals and class actions in high-stakes trial and appellate litigation. Jessica has substantial appellate experience and leads the firm's religious institutions and First Amendment practice.

Reprinted with permission from the May 20, 2020 online edition of Law.com © 2020 ALM Media Properties, LLC. All rights reserved. Further duplication without permission is prohibited, contact 877-257-3382 or

reprints@alm.com.

Subscribe to get our Insights delivered to your inbox.

This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.