

How Existing Law Can Influence Public Policy

An incident at Southeast High School in Los Angeles illustrates how law can affect public policy. To cut down on graffiti, the school closed bathrooms that staff could not monitor. When students discovered that closing the bathrooms violated the state education code, the bathrooms were quickly reopened. The school policy of closing bathrooms violated state law.

Law comes from a variety of sources. The highest law in the land is the U.S. Constitution. No law or policy may violate the U.S. Constitution. For example, in the 1990s, the city of Chicago passed a gang ordinance making it against the law for “criminal street gang members” to loiter in public places. The law was challenged in court, and the U.S. Supreme Court struck it down as unconstitutional in the *Morales* case. The court ruled that the ordinance violated the 14th Amendment’s due process clause.



State constitutions are similar to the U.S. Constitution. A state constitution provides the fundamental law of a state. Within that state, no policy or law may violate the state constitution. For example, a library district in the state of Washington put Internet filters on its computers to protect library patrons from viewing content “harmful to children.” The filters blocked many sites including certain pages of presidential candidates, the site of the Seattle Women’s Jazz Orchestra, and a Second Amendment Foundation site. The filtering policy was challenged as violating the free speech provisions of the Washington Constitution.

Like a constitution, a city charter gives the fundamental law of a city. No city policy or law may violate the charter. For example, in New York City, a former member of the city Arts Commission sued the Parks Department because it had a policy of decorating flag poles without getting approval from the Arts Commission, as the city charter required. Many violations of a city charter involve procedural matters such as this one.

A common source of law is legislation. Congress, state legislatures, and local governments all pass laws. Not every law, however, is created equal. The U.S. Constitution’s supremacy clause (in Article VI) declares federal law to be the “supreme Law of the Land” over anything in a state’s constitution, laws, or policies. An example is the 1824 U.S. Supreme Court ruling in the landmark case of *Gibbons v. Ogden*. Gibbons had a federal license to operate steamboats between New York and New Jersey. Ogden held a monopoly, granted by the state of New York, to operate his steamboats in these waters. Ogden sued Gibbons to shut down his steamboat business. On appeal, the U.S. Supreme Court ruled in favor of Gibbons, saying that only Congress had the power to regulate interstate commerce. The federal license conflicted with the state monopoly, and the federal license therefore pre-empted, or superseded, the state monopoly.

Federal laws can pre-empt state laws or policies in several ways. The first way, illustrated by *Gibbons*, is when the laws conflict. Another way is for Congress to expressly state that a federal law pre-empts state law in a particular area.

The final way is that Congress' intent to pre-empt state law may be inferred. This happens when Congress legislates so much in an area that it leaves no room for state legislation. For example, in the 1956 case of *Pennsylvania v. Nelson*, the U.S. Supreme Court struck down a state law against advocating the overthrow of the U.S. government, known as sedition. The court listed many federal laws against sedition and concluded that "Congress has intended to occupy the field of sedition."

State laws can similarly pre-empt local ordinances and policies. Local governments—counties, cities, special districts—are created by states. They are subservient to state (and federal) law.

Another source of law is regulations. Regulations are made by federal, state, and local agencies. For example, the federal Environmental Protection Agency writes regulations to implement environmental laws passed by Congress. State and local government policies must comply with EPA regulations. As another example, the Colorado Department of Education makes regulations and policies for the state's K-12 education. Any policy of a Colorado public school must follow the board's regulations.

A final source of law is court decisions. Courts interpret laws, and in interpreting them, they create a new body of law. For example, if another city were to enact an ordinance similar to the one the Supreme Court struck down in the *Morales* case, it would not likely survive a court challenge.

For Discussion

1. What different sources of laws are mentioned in this article? Assume that each of these sources created a law on the same subject, rank the sources in order of precedence.
2. How can existing law can affect public policy? Give examples.