

## Fair Housing Act

### Breaking Down Statutory Text

This chart details which preemption sections of various omnibus and sectoral statutes deal with federal preemption.

Codified Section	Type of Preemption	Are the circuit courts in general agreement on what this means?
<a href="#">42 U.S.C. §3615</a>	Anti-Preemption Provision	Yes – most litigation is centered on determining if the State law requires or permits a discriminatory housing practice.
<a href="#">42 U.S.C. § 3615</a>	Express Preemption	Yes – most litigation is centered on determining if the State law requires or permits a discriminatory housing practice

### Methodology

The statutory text overwhelmingly contains express preemption and various savings clauses. Express preemption is directly related to statutory text, and it is the only form of preemption with this quality. The remaining types of preemption – field, impossibility, and obstacle – are forms of *implied* preemption. As the name suggests, these preemption categories are implicit in every statute and consequently do not rely on statutory text. (However, sometimes a statute will explicitly address an implied preemption principle, such as 42 U.S.C. § 2000h-4.) Instead, implied preemption principles appear exclusively in case law. Case law that relies on a theory of implied preemption are appropriately notated.

Since courts have not addressed every issue, there may be areas that are marked as “Not litigated.”

Legend:

Express Preemption

Field Preemption

Impossibility Preemption

Obstacle Preemption

Floor Preemption

*Anti-Preemption Provision*

Compliance Savings Clause

**Remedies Savings Clause**

Sunset Provision

Ceiling Preemption

### Statutory Text

§ 3615. Effect on State laws

*“Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law of a State,*

a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.”

## Summary

Litigation with the FHA’s preemption provision has centered around factual questions, such as determining if a given regulation qualifies as a discriminatory housing practice.

## Case Law

*Astralis Condo. Ass'n v. Sec'y, United States Dep't of Hous. & Urban Dev.*, 620 F.3d 62 (1st Cir. 2010)

Facts: A husband and wife, both with mobility issues, moved into Astralis Condo. The couple petitioned Astralis for exclusive use of two handicapped parking spaces, which were frequently unavailable. Astralis argues that a local law, P.R. Laws Ann. tit. 31, § 1291i(b)(4), requires unanimous consent of all condo owners to transfer common elements after construction.

Rule: The court found “to the extent that state statutes or local ordinances would undercut the FHAA's anti-discrimination provision, the former cannot be enforced” (69).

Holding: **To the extent the Puerto Rican law prevented the anti-discrimination provisions of the FHAA, the local law is preempted.**

*Summers v. City of Fitchburg*, 940 F.3d 133 (1st Cir. 2019)

Facts: In lodging houses with six or more unrelated residents, the City of Fitchburg requires owners to install sprinklers. Summers was the owner of four sober houses operated for recovering addicts, which housed more than six unrelated residents. Plaintiff petitioned for a reasonable accommodation under the FHAA to not install the sprinklers because compliance with the statute would be costly.

Rule: The city must allow accommodations that are both reasonable and necessary.

Holding: Summers’ requested accommodation is not reasonable because it thwarts the purpose - safety - of the regulation. **Therefore, the local law is not preempted.**

*Larkin v. Michigan Dep't of Social Servs.*, 89 F.3d 285 (6th Cir. 1996)

Facts: A state law, Michigan Adult Foster Care Licensing Act, governs the issuance of licenses to operate an adult foster care facility. The law prohibited the presence of two such facilities within a 1,500-foot radius of one another, and further required notice to the municipality.

Holding: **The court found the state law was preempted by the FHAA under its express preemption provision, 42 U.S.C. §3615.**

*Walker v. City of Lakewood*, 272 F.3d 1114 (9th Cir. 2001)

Facts: Plaintiff, the Fair Housing Foundation of Long Beach ("FHF"), engaged in fair housing advocacy, while being under contract with the local government (Defendant). Despite three years of service and renewals, Defendant did not renew plaintiff’s contract after the advocacy issue. Plaintiff sued the local government for retaliation under the FHAA.

Holding: Defendant argued that contract law barred the suit; however, the court held that the FHAA's express preemption clause, 42 U.S.C. §3615, prevented that argument.

*Putnam Family P'ship v. City of Yucaipa*, 673 F.3d 920 (9th Cir. 2012)

Facts: The City of Yucaipa passed a zoning ordinance that prohibited any mobile home park operating as senior housing from converting to all-age housing. Plaintiff, a mobile home park owner, argued the ordinance was preempted by the FHAA. However, defendant argued the ordinance fell within the FHAA's senior exemption, 42 U.S.C. §3607(b)(1).

Holding: *The court found the ordinance fell within the FHAA's exemption, and thus it was not explicitly or implicitly preempted.*

*Bangerter v. Orem City Corp.*, 46 F.3d 1491 (10th Cir. 1995)

Facts: Bangerter, a resident of a group home for the mentally ill, sued the city for violating the FHAA, alleging disparate treatment, after the city imposed two conditions - 24/7 supervision of residents and establishing a community advisory committee - solely on the group home. The key issue of the case was determining if imposition of conditions was considered a discriminatory housing practice.

Issue: Since the FHAA expressly preempts any law that is a discriminatory housing practice, the question of preemption is essentially the same as the key issue of the case.

Holding: *If Orem had engaged in discriminatory housing practices, then the city's regulation would be preempted.* However, the Court held that Bangerter "has not stated a valid claim" that Orem's behavior constituted a refusal to make reasonable accommodations. The case was remanded to proceed beyond the pleadings.