

its predictions of how states will respond to new standards in the future.

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*I. The Federal Insecticide, Fungicide, and Rodenticide Act*

*Wisconsin Public Intervenor v. Mortier*, 111 S. Ct. 2476 (1991)

A declaratory judgment action was brought in the Circuit Court of Washburn County, Wisconsin, by a property owner. The plaintiff alleged that a local ordinance, which required a permit for the aerial spraying of pesticides, was pre-empted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 (1988). The circuit court found the ordinance to be invalid and the Supreme Court of Wisconsin affirmed. The United States Supreme Court granted certiorari and, holding that this local ordinance was not pre-empted by federal law, reversed and remanded the case.

FIFRA is a congressional statute originally enacted as a pesticide licensing and labeling law. It was amended, however, in 1972 to regulate pesticide use, and to grant more enforcement power to the Environmental Protection Agency (EPA). Petitioner, the town of Casey, passed an ordinance pursuant to its own police power, requiring a permit for the use of certain pesticides on private lands, and refused to grant a permit to respondent Mortier. Respondent argued that the town's action was explicitly pre-empted by Congress: because allowance was only made for "[a] State" to regulate pesticide use, no mention was made of any local regulation in this area. Additionally, respondent argued that this local regulation was also prohibited implicitly, because Congress intended FIFRA to be a "comprehensive regulatory statute," requiring no other regulation, except where explicitly provided for.

The Court dismissed the pre-emption argument on both grounds, stating that pre-emption will only be found if "that was the clear and manifest purpose of Congress." The Court found that this local ordinance was not explicitly prohibited just because FIFRA only provided for "state" regulation of pesticide use. Instead, the use of this term was found not to be self-limiting, as "political subdivisions are merely subordinate components of the very entity the statute empowers." Hence, whether or not a particular state allows an individual town to participate

in the regulation of pesticides is wholly within the discretion of that individual state.

The Court concluded that Congress intended for there to be concurrent regulation of pesticides by federal, state and local governments. Because Congress left much of this field unregulated in the statute, it intended for states or municipalities to regulate fields not explicitly covered by the statute, such as the aerial spraying of pesticides on private lands. When such an ordinance does not conflict with any provision of FIFRA, and falls outside of the areas of pesticide use that Congress chose to regulate, it is entirely consistent with the statute, and it is therefore not pre-empted.

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