

Local Ban on Airbnb and Other Short-Term Rentals Did Not Violate Dormant Commerce Clause

An ordinance that banned short-term residential rentals and related activities did not violate the Dormant Commerce Clause, which prohibits discrimination against interstate commerce by state and local governments. *Rosenblatt v. City of Santa Monica*, 940 F.3d 439 (9th Cir. 2019). In *Rosenblatt*, the Ninth Circuit unanimously affirmed the dismissal of a putative class action that challenged the City of Santa Monica's "anti-Airbnb" ordinance as a violation of the Dormant Commerce Clause. The Santa Monica ordinance prohibited the rental of a dwelling unit for "exclusive transient use" for 30 days or less. An exception applied if at least one of the dwelling unit's primary residents lived on-site for the full duration of the rental. The ordinance also made it illegal to "undertake, maintain, authorize, aid, facilitate or advertise any vacation rental activity." The plaintiff, a Santa Monica resident who rented out her home on Airbnb, argued that the ordinance violated the Dormant Commerce Clause because, among other reasons, 95% of Santa Monica vacation rentals involved an out-of-state party. The involvement of out-of-state renters and owners, the court held, did not result in a violation of the Dormant Commerce Clause. The ordinance, the court observed, "penalizes only conduct in Santa Monica," regulates activity that "necessarily concerns property within Santa Monica," and "applies evenhandedly" to both in-state and out-of-state people and activities. The same restrictions would apply to all short-term rentals regardless of whether the owner or renter lived in Santa Monica, elsewhere in California, or out-of-state. Additionally, most of the related activities banned or regulated by the ordinance—*e.g.*, online bookings, payments, and communications—were not "entirely out-of-state." Rather, they were "part of a contractual relationship that Santa Monica properly regulates under its police power." While the ordinance arguably applied to out-of-state advertisements, the court presumed that the City intended to comply with the Constitution and thus interpreted the ordinance as applicable only within the City. Furthermore, to the extent that the ordinance *did* affect interstate commerce, its effects were permissibly "incidental," not "clearly excessive," and related to the City's "legitimate local public interest." Finally, the court dismissed the plaintiff's allegation that the City adopted the rental ban to increase the occupancy of luxury hotels, which were subject to a 14% tax that might increase the City's tax revenue from out-of-state visitors. Even if stimulating tax revenue were the City's true motive, however, the plaintiff failed to show that the ordinance affected local and out-of-state interests differently. In sum, although the ordinance had incidental effects on interstate commerce, it did not directly or indirectly regulate the interstate component of the vacation rental business or otherwise discriminate against or unduly burden interstate commerce, and hence did not violate the Dormant Commerce Clause.

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