



## Legal Fact Sheet on Municipal Regulation of Payday Lending

- Illinois courts have broadly upheld the power of a “home rule” municipality to promulgate ordinances and regulations or perform any other function “pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare . . . .”<sup>1</sup>
- The Illinois General Assembly’s desire to have the State retain exclusive power over a particular subject must be clearly indicated in an express statement. In the case of regulation of payday lending, there are no Illinois statutes that expressly deem that the State has exclusive power over regulation of payday lending. For instance, the “Interest Act”—enacted in 1879 and which controls interest rate setting throughout the state<sup>2</sup>—is superseded by ordinances enacted by a home rule unit under the Illinois Constitution after 1970<sup>3</sup> (and nor do the Act’s later amendments in any way limit the power of home rule units) and this Act does not explicitly reserve power to the State.<sup>4</sup> Additionally, the “Payday Loan Reform Act” does not reference home rule units and therefore does not expressly confine the subject of payday loans to exclusive state control.<sup>5</sup>
- While the State preempts municipal regulation of branch banks<sup>6</sup> payday lenders are not banks because Illinois classifies payday lenders as consumer credit companies,<sup>7</sup> which are non-banking institutions. In addition, payday lenders are not branch banks because branch banks operate as an extension of a chartered bank, whereas payday lenders do not operate on behalf of a bank.<sup>8</sup>
- Judicial review entails an analysis of whether the home rule unit exceeded its authority under the Illinois Constitution by regulating a matter that impacts or controls activity beyond its jurisdiction, or, in other words, whether the home rule unit’s actions relates to problems that are local in nature rather than State or national.<sup>9</sup> Instead of relying on a specific formula to decide whether an issue is one appropriately left to statewide control, courts look to the units of government that have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it.<sup>10</sup> Regulation of payday lending is not limited to state or national regulation. Nationally, the primary regulation on payday lending is on loans made to members of the Military.<sup>11</sup> And in the states, regulation varies widely. Most importantly, payday loan stores target poor and minority neighborhoods, and are located predominantly in areas with depressed economies, making the issue particularly local in nature.<sup>12</sup> The Illinois Supreme Court has emphasized the importance of local control over problems unique to the area.<sup>13</sup> Moreover, since payday loan stores are able to

accommodate widely divergent state laws, there should be no reason why they cannot also tailor their business to suit more local needs.

- Lastly, even if statewide regulation is found, the Illinois Supreme Court has upheld the right of home rule units to create more restrictive solutions to problems regulated by less-stringent state rules.<sup>14</sup> The Illinois Constitution itself explicitly permits home rule units to exercise power concurrently with the state where there is no indication the matter is confined to statewide control.<sup>15</sup>
- In sum, we conclude that the Illinois Constitution permits home rule units to regulate payday lenders since the Illinois General Assembly has not made an explicit statement relegating the specific issue to exclusive statewide control. And home rule units may regulate payday lenders because the Illinois Supreme Court has ratified the constitutional right of home rule units to exercise power concurrently with the state and because the issue can be interpreted as not so heavily regulated as to preclude local action.

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<sup>1</sup> ILL. CONST. art. VII, §6(a) (1970). See also Triple A Serv. v. Rice, 545 N.E.2d 706, 711 (Ill. 1989); Kanellos v. Cook Co., 290 N.E.2d 240, 243-44 (Ill. 1972).

<sup>2</sup> 815 ILL. COMP. STAT. 205/1.

<sup>3</sup> Evanston v. Create, Inc., 85 Ill. 2d 101 (Ill. 1981), at 199 (listing cases).

<sup>4</sup> See Evanston, 421 N.E.2d at 199.

<sup>5</sup> 815 ILL. COMP. STAT. 122/1

<sup>6</sup> People ex rel. Lignoul v. City of Chicago, 67 Ill. 2d 480 (1977).

<sup>7</sup> Ill. Dept. of Fin. Reg., Div. of Fin. Inst., (accessed on Nov. 12, 2010 at <http://www.idfpr.com/dfi/default2.asp> and [http://www.idfpr.com/dfi/CCD/ccd\\_main.asp](http://www.idfpr.com/dfi/CCD/ccd_main.asp)). See also 38 IL ADC 210.150.

<sup>8</sup> See 12 U.S.C.A. § 36(j); First National Bank in Plant City, Florida v. Dickinson, 90 S.Ct. 337 (1969) at 344.

<sup>9</sup> American Health Care Providers v. Co. of Cook, 638 N.E.2d 772, 778 (Ill. App. 1994).

<sup>10</sup> Kalodimos v. Village of Morton Grove, 470 N.E.2d 266, 274 (Ill. 1984).

<sup>11</sup> 42 U.S.C. § 987 (2006).

<sup>12</sup> See “Credit Segregation: Concentrations of Predatory Lending in Communities of Color,” National People’s Action, February 2011 (finding that in five major Midwestern metropolitan areas, payday lenders are three times as concentrated in communities of color “as compared to other neighborhoods. Neighborhoods with a high population of African-Americans or Latinos have on average two payday lending locations within one mile, six payday lenders within two miles, and 12 payday lenders with 3 miles. Predominately white areas, in comparison, had an average of two payday lenders within two miles, and about four payday lenders within three miles), available at:

[http://showdowninamerica.org/files/images/Credit\\_Segregation\\_NPA\\_Report\\_v3.pdf](http://showdowninamerica.org/files/images/Credit_Segregation_NPA_Report_v3.pdf); Howard Jacob Karger, Scamming the Poor: The Modern Fringe Economy, 2004 Soc. Pol’y J. 39-54. See also: Li, Parrish, et al., “Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California”, Center for Responsible Lending (March 2009); “Wealth-stripping Payday Loans Trouble Communities of Color,” Center for Responsible Lending (October 2008); “Race Matters: The Concentration of Payday Lenders in African American Neighborhoods in North Carolina,” The Center for Responsible Lending (March 22, 2005); Steven M. Graves. “Landscapes of Predation, Landscapes of Neglect: A Location Analysis of Payday Lenders and Banks” Volume 55, Issue 3, (303–317) Aug. 2003.

<sup>13</sup> Kaladimos, 470 N.E.2d at 274 (“[h]ome rule . . . is predicated on the assumption that problems in which local governments have a legitimate and substantial interest should be open to local solution and reasonable experimentation to meet local needs . . .”).

<sup>14</sup> Kaladimos, 470 N.E.2d at 275.

<sup>15</sup> ILL. CONST. art. VII, § 6(i) (1970).