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Preemption and the Limits of Claim Revival for Sexual Assault

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Since the advent of #MeToo, survivors of sexual abuse nationwide have advocated for expanded opportunities to bring civil actions against individual and institutional actors they deem responsible for sexual assaults perpetrated long ago. Some state and local legislatures have responded by enacting laws that afford circumscribed windows in which to assert these otherwise time-barred claims.

Judge Lewis A. Kaplan's recent decision in *Parker v. Alexander*, 2025 WL 268436 (S.D.N.Y. Jan. 22, 2025), brings into sharp focus the problems that can arise from overlapping and uncoordinated efforts to enact such claim-revival windows.

In *Parker,* Judge Kaplan concluded that New York State's Adult Survivors Act (ASA) and Child Victims Act (CVA), statutes that created limited windows reviving time-barred civil claims for survivors of sexual assault, preempt the claim-revival provision of New York City's Victims of Gender-Motivated Violence Protection Law (the "GMV Amendment"), to the extent that the GMV Amendment seeks to revive civil claims arising from violations of the sexual offense provisions of the New York Penal Law.

MeToo Hashtag

Kaplan's thoughtful preemption analysis is significant, and will be of particular interest to institutional defendants in lawsuits arising out of alleged conduct of former employees decades ago.

The Facts of '*Parker*'

In *Parker*, in relevant part, the plaintiff alleged that two brothers had raped her in approximately 2012. She filed suit on June 18, 2024 pursuant

to the GMV Amendment, which was enacted by the New York City Council in January 2022 and created a window that opened on March 1, 2023 in which to bring a claim against a party "who commits, directs, enables, participates in, or conspires in the commission of a crime of violence motivated by gender[,]" regardless of whether the limitations period had expired. The GMV Amendment's revival window closes two years after it opened, on March 1, 2025. *See* N.Y.C. Admin. Code §§ 10-1104, 10-1105(a).

The defendant brothers sought dismissal on the grounds that the GMV Amendment was preempted by the ASA, which had created a shorter, one-year window for revival of otherwise time-barred civil claims arising out of certain sexual offenses committed against adult victims. The ASA window opened on Nov. 24, 2022 and closed on Nov. 24, 2023, more than six months before the plaintiff filed her action. Because the ASA preempted the GMV Amendment, and the plaintiff had not filed her action during the ASA's one-year window, defendants argued her claims were time-barred.

The Analysis: Field and Conflict Preemption

Judge Kaplan began his opinion by setting forth the applicable preemption principles. Under the New York State Constitution's "home rule" provision, a municipality has the authority to adopt local laws that are not inconsistent with state laws. Under the doctrine of preemption, a local law may be inconsistent with and therefore preempted by state law due to either "field preemption"—i.e., the state legislature has occupied the relevant field of regulation—or "conflict preemption"—i.e., the local law conflicts with state law. Turning first to field preemption, Kaplan explained that the state legislature may articulate its intent to occupy a field expressly or by implication.

Intent may be implied from the nature of the subject matter being regulated and the purpose or scope of the legislative scheme, including the need for statewide uniformity in a given area. He found that the CVA and ASA are comprehensive, in that they apply to all civil claims by child and adult victims for personal injuries arising from conduct constituting sexual offenses defined by Article 130 of the Penal Law. CPLR §§ 214-g, 214-j. He also held that the CVA and ASA are detailed, in that they provide specific time frames in which these claims may be brought.

Accordingly, the CVA and ASA "occupy the field" of revival of civil claims arising from violations of state penal statutes regarding sexual offenses, thus preempting the GMV Amendment (and any other similar local law) to the extent that it purports to revive the same category of claims.

Judge Kaplan noted that the sequence of enactments further underscored the legislature's intent to occupy the field of regulation:New York City enacted the GMV Amendment in January 2022, over four months before the state legislature passed the ASA.

The state Legislature, presumably aware of the GMV Amendment, could have "easily" excluded it from preemption by the ASA. But the ASA states that it applies "[n]otwithstanding any provision of law which imposes a period of limitation to the contrary[,]" CPLR §214-j, and Judge Kaplan emphasized that while the state legislature could have stated that the ASA applies notwithstanding any *more restrictive* limitations period, which would have left room for the GMV Amendment's *less restrictive* period, it did not do so.

Next moving to conflict preemption, Judge Kaplan determined that the revival windows

created by the ASA and GMV Amendment plainly conflict, with respect to both when they open and when they close. First, they conflict as to the dates the windows opened.

The ASA permitted claims to be brought starting on November 24, 2022, but the GMV Amendment did not allow the same claims to be commenced until March 1, 2023. This inconsistency, where the state law permitted conduct the local law did not—that is, the bringing of this category of otherwise time-barred claims—resulted in a conflict between the ASA and GMV Amendment. Judge Kaplan also found the ASA and GMV Amendment conflicted with respect to the closing dates of their respective claim-revival windows.

Under the plaintiff's theory, the window during which she could bring her claim began when the ASA window opened on Nov. 24, 2022 and extended until March 1, 2025, when the GMV Amendment window closes, thus affording plaintiff over 27 months in which to bring her claim.

Pointing again to the ASA's express provision that plaintiffs had until Nov. 24, 2023 to assert their claims "[n]otwithstanding any provision of law which imposes a period of limitation to the contrary[,]" Judge Kaplan determined that the GMV Amendment conflicted with the state Legislature's intent to open a limited claim-revival window of one year's duration.

A District Split on Preemption

Judge Kaplan's decision in *Parker* now sets up a split of authority within the Southern District of New York. In September 2024, Judge Jessica G.L. Clarke, in *Doe v. Black*, 2024 WL 4335453 (S.D.N.Y. Sept. 27, 2024), addressed whether the CVA preempted the GMV Amendment and determined there was no preemption. With respect to field preemption, Judge Clarke determined that nothing in the language of the CVA or its legislative history indicated an intent to create statewide uniformity.

Instead, she saw the statutory text as suggesting only that the CVA was intended to benefit all of New York's child sexual assault victims. And in her view, the CVA lacked the comprehensiveness of other regulatory schemes, such as those governing energy generation siting, workplace safety, minimum wage setting, and alcohol distribution control, which had been held by other courts to "occupy" fields of regulation.

In *Parker*, Kaplan distinguished the complexity and the comprehensiveness of the comparator schemes Judge Clarke invoked. While those she described were more detailed and complicated than the ASA and CVA, Kaplan explained that this did not equate to being more comprehensive. Comprehensiveness, he explained, concerns a legislative scheme's breadth of application. And the ASA and CVA are as detailed as they needed to be, precisely identifying the applicable claims and the exact starting and ending dates of their respective revival windows.

With respect to conflict preemption, Judge Clarke had only the CVA before her. Because the CVA window closed long before the GMV Amendment window opened, there was no "head-on collision" between the opening and closing dates of those windows.

Kaplan observed that Judge Clarke's decision failed to address the plain language of the CVA (and the ASA), i.e., that it applies "[n]otwithstanding *any* provision of law which imposes a period of limitation to the contrary[.]" (Emphasis added.)

In Judge Kaplan's view, Judge Clarke's determination that the CVA and GMV Amendment did not conflict because they furthered the same

goals and civil rights causes of action ignored both the plain language of the CVA and the state legislature's intention to create a *limited* window in which to pursue time-barred claims.

What's Next and Why It Matters

While it remains to be seen whether the Second Circuit will resolve the preemption question (or certify the question to the New York Court of Appeals), Judge Kaplan's analysis is compelling.

First, it is anchored in the plain meaning of the text of the ASA and CVA. Next, it assumes, properly, that the state legislature would have been aware of the GMV Amendment's enactment, which occurred months before the ASA was enacted.

With respect to field preemption, statewide uniformity is imperative when limiting the revival of time-barred claims, because the ability of victims to seek justice must be balanced with defendants' due process rights.

As to conflict preemption, if the state legislature's precise and explicit closing of the claim-revival window was meaningless, at least for New York City plaintiffs who would get the benefit of four-plus additional months in which to assert their claims, such an outcome would do violence to well-established principles of state law concerning revival of time-barred claims.

Indeed, courts interpreting New York law, including the New York Court of Appeals, have repeatedly held that claim-revival statutes are extreme exercises of legislative power which must be narrowly construed.

Finally, Judge Kaplan's decision vindicates the strong public policies favoring finality, predictability, fairness, and repose that statutes of limitations serve. Considerations of fairness, including lost evidence, faded memories, and witnesses who are dead or have disappeared, present challenges, particularly for institutional defendants faced with claims from decades ago. For these reasons, and as reflected by the measured action taken by the state Legislature, claim-revival windows should be limited in duration.

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