**State Interference: The Push to Erode Local Democracy**

Polling done by a variety of sources over the last decade shows that Americans overwhelmingly believe that their local lawmakers are best-qualified to make decisions about the policies affecting their local communities. Yet corporate lobbyists and special interest groups are pushing state lawmakers to pass **preemption laws** that limit the powers of local governments to act on the unique needs, views, and values of their residents.

Preemption occurs when higher-level governments pass laws **restricting the policy authority of lower-level governments**. Increasingly states are using preemption laws to limit the power of cities, towns and counties to:

* set standards that protect the health and safety of their communities;
* enact policies that increase economic and social equity
* control their own funds, personnel and other resources

State preemption is also being used to:

* overturn ballot initiatives;
* punish local government and local officials; and,
* perpetuate racial and economic inequality.

The effect of this state interference in local decision making is to void the will of local voters and lock out entire groups from participating fully in our democracy. Local communities and their residents have lost power in every legislative session since 2011. And while local power can be used to block as well as advance equity-promoting policies, at present, the erosion of local authority means that innovative and problem-solving policies have been stopped in many states.

But the tide may be turning. The 2019 legislative session also saw an unexpected and unprecedented number of bills filed to *repeal* state preemption laws and return legal authority for local decision-making. Bills to repeal state preemption of local minimum wage laws, rent control, tobacco tax, oil and gas well regulation, plastic bag bans, and broadband were introduced in several states. In its 2019 session, Colorado became the first state to legislatively repeal minimum wage preemption. Cross-issue coalitions working at the grassroots level also succeeded in killing or weakening preemption bills, and more state and local lawmakers pushed back on state interference and became public champions of local democracy.

One way to address the growing misuse of preemption in the long term is by **updating home rule** – the longstanding legal principle that ensures local municipalities have the power to make decisions about the issues that impact their residents. The home rule model has not been updated in 66 years. In that time, cities have become the engines of economic growth and policy innovation – putting forward solutions to complex problems across an array of issues that reflect the needs and values of their growing and increasingly diverse populations. But over the last decade, cities have seen their ability to make local decisions come under attack from corporate special interests and state lawmakers wielding an anti-regulatory – and increasingly punitive – preemption agenda.

Local Solutions Support Center (LSSC) is helping to coordinate and create opportunities to counter the increasing state abuse of preemption and working to strengthen local democracies so they have they have the authority they need to protect and promote the health and safety of their residents. This primer offers a high-level look at the reach of preemption, its impact on local communities and populations, and how we can enact reform through a modernization of home rule.

**Where Things Stand Now**

LSSC’s report [*The Growing Shadow State Interference: Preemption in the 2019 State Legislative Sessions*](http://www.supportdemocracy.org/wp-content/uploads/2019/07/LSSCSiXReportAugust2019.pdf)offers a look at the impact of preemption on local communities over the last decade, as well as the trends we saw in state legislatures during the 2019 session. As of September 2019:

* 25 states now preempt local minimum wage laws
* 23 states ban local paid sick days laws
* 42 states ban local regulation of ride sharing networks
* 44 states limit local authority to regulate guns or ammunition
* 20 states block or ban municipal broadband networks
* 23 states have banned local control over 5G technology
* 15 states ban local plastic bag bans
* 31 states bar local rent control
* At least 11 states preempt local sanctuary policies
* At least ten states preempt local regulation of e-cigarettes
* At least 9 states preempt local fair, predictable scheduling laws
* Five states have preempted local fair hiring, “Ban the Box” laws
* Four states now ban soda taxes

Here’s a look at some of the ways corporate special interests and state lawmakers are using preemption:

* **Punishing elected officials and cities:** Preemption is now being used to punish cities by cutting state funds and to threaten local officials with fines, removal from office, or jail. The most punitive measures have focused on local efforts to regulate firearms or deal with undocumented immigrants.
	+ One state – Arizona – has taken a punitive approach to all local laws subject to state preemption.
* **Overturning ballot elections:** Voters understandably view state legislatures reversing the results of ballot initiatives as a gross abuse of power – but that hasn’t stopped corporate special interests from successfully pushing state lawmakers to do just that:
	+ Tempe, Campaign Finance Disclosure Law, Passed 91% - 8% (2018)
	+ Austin, Defeated UBER’s efforts to escape regulation: 56% - 44% (2017)
	+ Nashville, Local Hire Law: Passed 57%-43% (2016)
	+ Denton, Texas Fracking Ban: Passed 59%-41% (2015)
	+ Fayetteville, Non-discrimination Ordinance: Passed 53% - 47% (2015)
	+ Milwaukee, Paid Sick Days: Passed 69% - 31% (2011)
* **Eradicating the ability of cities to protect public health via tobacco-related measures:** Vaping giant JUUL is facing an onslaught of well-deserved scrutiny for their marketing practices, and new reports emerge daily that point to the long-term health implications associated with using their products. But JUUL continues to copy the old tobacco playbook, advancing bills that are seemingly aimed at preventing underage youth from obtaining tobacco-related products – but in reality, the bills are preemption measures that prevent local communities from enacting their own restrictions on purchasing e-cigarettes and tobacco-related products.
	+ JUUL’s marketing and lobbying machines are unprecedented in their size, reach, and influence. The organization has more than 80 lobbyists spread out in state capitols all across the country, and their lobbying efforts have increased 300 percent in just the last two years.
	+ In 2019, three states – Arkansas (HB 1565), Utah (HB 324), and Texas (SB 21) – all passed “T 21” bills that raise the legal age for purchasing tobacco products to 21, but curb the abilities of cities to enforce their own policies.
* **Weakening the ability of cities to protect the environment:** Increasingly, preemption is used to prohibit cities from enacting bans on plastic bags, straws, and other measures meant to protect the local environment. Over the last year alone:
	+ At least 95 bills were introduced in 2019 aimed regulating plastic bag bans, according to the National Council of State Legislators.
	+ Four states passed measures aimed at banning local regulation of plastic bags and other types of auxiliary containers – North Dakota (HB 1200), Oklahoma (SB 1001), Pennsylvania (SB 712), and Tennessee (HB 1021).
* **Perpetuating economic and racial inequities:** Research shows that preemption legislation is often passed by predominantly white legislatures to block laws that would benefit low-wage workers, people of color, women, and LGBTQ people, among others.
* According to data from the National Council of State Legislatures, state legislatures are 83 percent white and 71 percent male.
* The most prolific forms of preemption measures over the last decade target local minimum wage and paid sick leave laws – local measures that benefit low-wage workers and others who are too often forced to work multiple jobs just to make ends meet; and sometimes must choose between caring for a sick loved one or keeping their job.
* Twenty-five states now preempt local minimum wage measures, and 23 states ban local paid sick leave laws. North Dakota and Maine joined that list this past year, with North Dakota moving to block local minimum wages, and Maine undercutting local paid sick leave policies.
* The city of Birmingham offers a good example of how preemption can be used to perpetuate longstanding racial inequities: In *Lewis v. Governor of Alabama*, the Eleventh Circuit decided to allow a challenge to the State of Alabama’s preemption of Birmingham’s minimum wage ordinance noting, “the disproportionate effect of the Minimum Wage Act on Birmingham’s poorest black residents; the rushed, reactionary, and racially polarized nature of the legislative process; and Alabama’s historical use of state power to deny local black majorities authority over economic decisionmaking.”

**Home Rule Modernization: The Key to Fighting Back against Preemption**

Despite the growing reach and impact of preemption, the 2019 legislative sessions also saw the introduction and passage of an unprecedented number of preemption repeal bills, successful local efforts by cross-issue coalitions to kill and weaken proposed state interference laws, and the emergence of vocal local and state lawmakers championing local control and the ability of local governments to address their own unique problems and act on the need and values of their residents.

Modernizing home rule, however, is one of the most promising long-term remedies for addressing preemption. Over the coming year, LSSC will be working with local, state, and national partners – like the National League of Cities – to advance commonsense reforms at bringing home rule into the 21st century. Our hope is that a holistic update to home rule will equip cities and municipalities with the power they need to enact policies that protect the health and safety of their residents – because local problems should be solved locally.