



## **State Interference Primer: An Introduction to the Growing Threat of “New Preemption”**

Cities have become a critical source of innovation across a wide array of policy areas that advance health, inclusion, equitable opportunity, and social justice. In recent years, cities and other local governments have taken the lead in tackling public health challenges, enacting minimum wage and paid sick leave policies, expanding the boundaries of civil rights, responding to emerging environmental threats, and advancing other important reforms. For America to progress, cities, counties, and towns must remain hubs of innovation and solutions testing. But the last seven years has seen [an increase in state interference](#) - in the form of preemption - to block local lawmaking across a broad and growing range of issues.

The increasing use of preemption threatens to perpetuate racial and economic inequality, limit local anti-discrimination efforts, and systematically strip local governments of their power to regulate and set health, safety and economic standards. States now, with growing regularity, overturn the outcomes of municipal decisions and threaten to withhold funds from cities, and punish local officials who defy them.

### **New Preemption: A Threat to Local Democracy**

Preemption is a tool, like the filibuster, that can and has been used by both political parties. In the past, preemption was used to nullify local measures inconsistent with state law. Preemption has also been used to advance well-being and equity. The federal Civil Rights Act of 1964, for example, allowed states and cities to increase protections, but prohibited them from falling below what was required under federal law. But, the present abuse of preemption is unprecedented and threatens the fundamental ability of cities to act on the unique views, values and needs of their communities.

The efforts to consolidate power at the state level and end local authority over a wide range of issues are part of a national long-term strategy - driven by corporate interests and very often orchestrated by the American Legislative Exchange Council (ALEC), an industry-funded organization of state lawmakers and lobbyists. Their strategy has succeeded at an alarming rate. Since 2011, with the advent of single party dominance in state houses across the country, the quantity of these “new” preemption laws has skyrocketed:

- [25 states now preempt local minimum wage](#) laws
- [22 states now ban local paid sick days](#)
- [41 states now prohibit local regulation of ride-sharing companies](#)
- [43 states limit local authority to regulate guns or ammunition](#)
- [20 states have banned local control over 5G technology](#)
- [10 state have prohibited local plastic bag bans](#)
- [3 states now ban soda taxes](#) - Arizona, California, Michigan

The state is now interfering on more policy areas:

- **Labor standards** (minimum wage, paid sick time, wage theft, local hire, pensions, fair scheduling)
- **Civil rights** (anti-discrimination, sanctuary cities, immigration)
- **Public health and safety laws** (gun safety, e-cigarettes sales, food labeling, sugar-sweetened beverages)
- **Technology** (broadband, 5G, self-driving vehicles)
- **Environmental protection** (factory farming, plastic bags, Styrofoam, energy benchmarking)
- **Local zoning** (fracking, inclusionary zoning, rent control)
- **Local taxes (tax and expenditure limitations)**

Preemption is being now being used to:

- [Punish 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.
- Overturn ballot elections
  - 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)
  - Milwaukee, Paid Sick Days: Passed 69% - 31% (2011)
- Eliminate, in one "Death Star" bill, local control over broad swaths of wage and workplace standards
  - In one preemption law (House Bill 4052), Michigan prohibited any local ordinance that controls minimum wage, benefits, sick leave, union organizing and strikes, wage disputes, apprenticeship programs, and "ban the box" policies (blocking employers from asking about felony convictions). Wisconsin has taken a similar approach.
  - In 2017, Iowa preempted in one law (House File 295) all local ordinances on employment leave, hiring practices, employment benefits, scheduling practices, and other terms or conditions of employment. Beyond just wage and workplace standards, the law also included sweeping preemption on plastic bags and other containers made of a cloth, paper, plastic, and a range of other materials.
- Perpetuate economic and racial inequity
  - Research shows that preemption [legislation is often passed by predominantly white legislatures to block laws benefiting and supported by majority communities of color.](#)
  - In the case of [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 decision-making.”

- Implement an anti-regulation agenda
  - The efforts to consolidate power at the state level and end local authority over a wide range of issues are part of a national long-term strategy - driven by corporate interests and very often orchestrated by the American Legislative Exchange Council (ALEC), an industry-funded organization of state lawmakers and lobbyists.
  - New preemption measures frequently outlaw local action on an issue, even when the state itself has no existing policy standard or regulation set in place. Increasingly, preemptive state laws are aimed at preventing any regulation at all.
  - States are increasingly passing sweeping preemption bills that seek to end local regulation of whole sectors of the government. According to the New York Times, “The states aren’t merely overruling local laws; they’ve walled off whole new realms where local governments aren’t allowed to govern at all.”
  - In response to “oppressive” local control, states are using preemption to “rein-in local government.” Texas Governor Greg Abbott has called “for legislation that reduces, restricts and prohibits local regulations...I think a broad-based law by the state of Texas that says across the board, the state is going to preempt local regulations, is a superior approach.”

In every legislative session since 2011, local governments have lost more power. Some recent examples include:

- In 2018, legislatures banned local sanctuary city ordinances which included punitive measures in Iowa, Tennessee and Virginia (vetoed by the Governor), barred cities in Pennsylvania and Hawaii from regulating the sale of tobacco products and e-cigarettes, passed sweeping preemption of Wisconsin’s labor laws and introduced a similar measure in Pennsylvania (HB861), which will be considered again on the fall.
- Also, in 2018, the American Beverage Association strong-armed the California legislature into passing a preemption bill banning local soda taxes until 2030. In return, the industry group dropped its November ballot initiative that would have seriously weakened the ability of local communities to raise revenue for police, fire, transit and other public services.
- Since 2017, four states have passed measures preempting local paid sick days ordinances without establishing any uniform state-level paid sick leave requirement: Arkansas, Iowa, Kentucky, and South Carolina. Three others - Maryland, New Jersey, and Rhode Island - have implemented statewide laws that guarantee workers a minimum amount of paid sick days but also preempt future local laws that might improve upon them.
- Three states - Kansas, Oklahoma, and South Carolina - passed bills that exempted faith-based adoption and foster care agencies from participating in child placements that violate their religious beliefs. Laws like these can weaken any local nondiscrimination efforts and limit the ability of local governments from guaranteeing inclusive adoptions and placements.
- This session also saw a broadening attack on the historic, basic powers of cities, including erosion of city powers to require certain standards from contractors (WI, AZ), to control their own elections (AZ) and to regulate zoning in the form of short-term rentals (multiple states).

[National polling shows that voters value local democracy](#) and trust local government more than any other level of government. According to the research, people believe local communities know how to best meet the needs of the people and businesses who live there and that to solve problems, local governments must be able to determine the laws and set standards that reflect the unique views, values and needs of their citizens.