



Preemption of Local Election Administration

Korey T. Johnson, Esq.

Summer 2022

Landscape

In the United States, election law [“voting law”] and election administration are powers that are distributed across three levels of government: federal, state, and local. While state-governed election law determines voting eligibility and processes, local administration of elections—everything from registering voters to tabulating ballots—is controlled by local election officials (LEOs). LEOs are primarily concerned with facilitating the process and integrity of voting pursuant to the requirements of state election law.

STATE & FEDERAL ELECTION (“VOTING”) LAW

The statutory and legal guidelines that establish standards, set deadlines, determine the equipment, and prescribe the process for counting, canvassing and reporting results.

Statutes determining voter eligibility

Voting methods (such as availability of mail-in ballots)

Processes for counting ballots and drawing legislative district lines

LOCAL ELECTION ADMINISTRATION

The aspect of the voting process voters experience and the carrying-out of procedural safeguards to include: voter registration; absentee ballot application processing; hiring and recruitment of poll-workers; management of poll places; operation and maintenance of machinery.

Actual registration of voters

Distribution and validation of mail-in ballots

Operation of Election Day polling places and tabulation of results

In 2020, as the pandemic impacted in-person voting, many LEOs worked to accommodate an increased number of first-time mail-in voters and streamline the mail-in ballot process. This process incorporated innovative and pro-voting solutions and actions to preserve the integrity of the voting process such as distributing mail-in ballots without receiving requests for them, designing drive-through/mobile voting locations, and creating satellite sites. This not only led to an uptick in voter turn-out, but it also demonstrated the impact of local authority within the democratic process.

As local governments work to expand access to the ballot, states are usurping local authority through three common preemptive practices that seek to restrict local election administration: (1) limitations on authority; (2) burdening local election administration; and (3) punitive preemption.

To read more about this growing trend of state preemption of local election administration, [read LSSC’s full white paper.](#)

Common Preemption Practices

1. Limitations on Authority

This type of anti-local state election law denies LEOs authority to take pro-voting actions that ensure the integrity of the voting process.

Ex. 1: State prohibitions that outright bar mobile, drive-through, and curbside voting

Ex. 2: Statewide bans that prevent LEOs from sending mail-in ballots to voters who have not requested them

2. Burdening Local Election Administration

This type of anti-local state election law places barriers to the carrying out of the duties of the LEOs

Ex. 1: State prohibitions that ban LEOs from accepting non-profit grants to help them execute their elections

Ex. 2: State increasing of more onerous reporting requirements such as requiring the printing of ballots on expensive “security paper” to enable ballot authentication

Ex. 3: Imposition of tighter deadlines for key election processes like absentee ballot processing and vote counting

3. Punitive Preemption

This type of anti-local state election law imposes arbitrary penalties for pro-democratic actions

Ex. 1: Imposition of fines and penalties for actions of LEOs deemed inconsistent with state law

Ex. 2: Creation of procedural safeguards that do not maximize the integrity of the voting process

