



## Repealing Preemption: Lessons from the 2019 Legislative Session

An unprecedented number of bills to repeal state preemption laws and return legal authority to local governments were filed during the 2019 legislative session. 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 legislatures across the country. (A list is included as an appendix).

While the preponderance of the repeal bills had little hope of passage and were intended to serve as “message” bills signaling local displeasure over state interference in local policy decisions, four repeal bills passed:

### Colorado:

- [HB 1210](#), the “Local Wage Option” bill, passed and made Colorado the first state in the nation to repeal minimum wage preemption. This bill allows localities to decide their own minimum wage.
- [HB 19-1033](#) repealed a law that has been on the books since the 1970’s and that prevented localities from attempting to regulate or tax tobacco. The new law allows localities to raise the age of sale for tobacco products to 21 and to tax and regulate cigarettes and other tobacco products.
- [SB 19-181](#) gives local governments control over the approval of oil and gas drilling sites and forces the Colorado Oil and Gas Conservation Commission to reprioritize its work to put public health and safety and the environment first in making decisions about the industry.

### Arkansas:

- [HB 2033](#) repealed parts of the state law preempting municipal broadband

The advocates and attorneys driving the repeal efforts broke new ground and shared their lessons learned in a debrief with the Local Solutions Support Center (LSSC), national hub that coordinates and creates efforts to counter the abuse of preemption and strengthen local democracy. Here are their major take-aways:

### 1. Legal review must be the first step.

Start with a home rule analysis. What powers would the cities have if the repeal effort is successful? What consequences would that have for county governments and for unincorporated areas?

In Colorado, some local governments under their home rule charter would clearly have the authority to decide whether or not to raise their minimum wage; but, in the case of other cities and

counties in the state, their powers were not as clear. Also, repealing state preemption can create unintended ripples. The city/county authority question can be complex legally and looks different in every state. The campaign must explore the legal ramifications of repeal on counties too.

**2. Connect repeal of preemption with an affirmation of city power.**

Consider a “repeal and replace” bill or two separate bills that take the power to decide from the state, but affirmatively ensures the city will have the authority it needs to act.

**3. Be prepared to fight on two fronts: local control and the issue that is presently preempted.**

You will need to make the case for local authority and why locals should decide this issue; *and* you need to be prepared to case for the policy you are working to advance. It is a challenge to separate the campaign for repeal from the merits of the issue that is preempted. But advocates were able to that repeal gave local governments the power to decide whether *or not* to raise the minimum wage, tax tobacco products, or create a municipal internet provider.

You may need to nest your repeal campaign into a broader context: Repealing rent control alone is not going to solve the housing problem; but defining repeal as a critical part of a package of policy solutions can help persuade lawmakers that current efforts aren’t succeeding and a different approach is needed.

**4. Provide data, maps and other tools that make the case for deciding the issue at the local level.**

It is hard to argue for a uniform minimum wage when confronted with a chart contrasting the cost of living in Pueblo with the much higher cost of living in Denver, CO. Maps made it very clear which rural areas of Arkansas did not have access to the internet and helped debunk coverage claims made by the telecom companies. You are persuading state lawmakers that the best answer to the problem is to let locals decide.

**5. Educate, Educate, Educate.**

Do not underestimate the need to educate state, county and municipal elected officials, allied groups, and the media. There is a basic and universal lack of information about preemption and its consequences. Problems that could be/should be solved at the local level, are not being addressed because state preemption has rendered local action impossible and illegal. Why is the issue best decided at the local level? What would a return to local decision making on your issue mean for cities and counties and for intergovernmental power?

**6. Build broader cross issue coalitions, including partners from across the political spectrum.**

You will need support from your traditional advocacy partners, social justice, unions and more in your push for a fundamental restructuring of city and state power. Reach out to the Municipal Leagues, the state association of counties, local community, faith, public health groups. Include municipal and county officials from rural and urban areas.