



ChangeLab Solutions

Law & policy innovation for the common good.

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Preemption, Public Health, and Equity: The Search for Local Solutions

changelabsolutions.org/the-series

October 16, 2018



Welcome to the Building Healthy, Equitable Communities Series

A virtual space for exploring the topic of health equity

-  **Episode 1: Health Equity** (April)
Building healthy, equitable communities through equitable laws and policies
-  **Episode 2: Healthy Children & Families** (May)
Building healthy, equitable communities through supports for working families
-  **Episode 3: Food Systems** (June)
Building healthy, equitable communities through a just food system
-  **Episode 4: Built Environment** (August)
Building healthy, equitable communities through comprehensive long-range planning
-  **Episode 5: Schools** (September)
Building healthy, equitable communities through transforming the school climate

Bonus Training: Preemption (October)
Preemption, public health, and equity - the search for local solutions

Episode 6: Community Pillar (October)
Building healthy, equitable communities through community-driven solutions



Welcome!



Sabrina Adler

*Senior Staff Attorney
& Program Director*
ChangeLab Solutions

Kim Haddow

Director
Local Solutions
Support Center

Miya Saika Chen

Staff Attorney
Partnership for
Working Families

Disclaimer

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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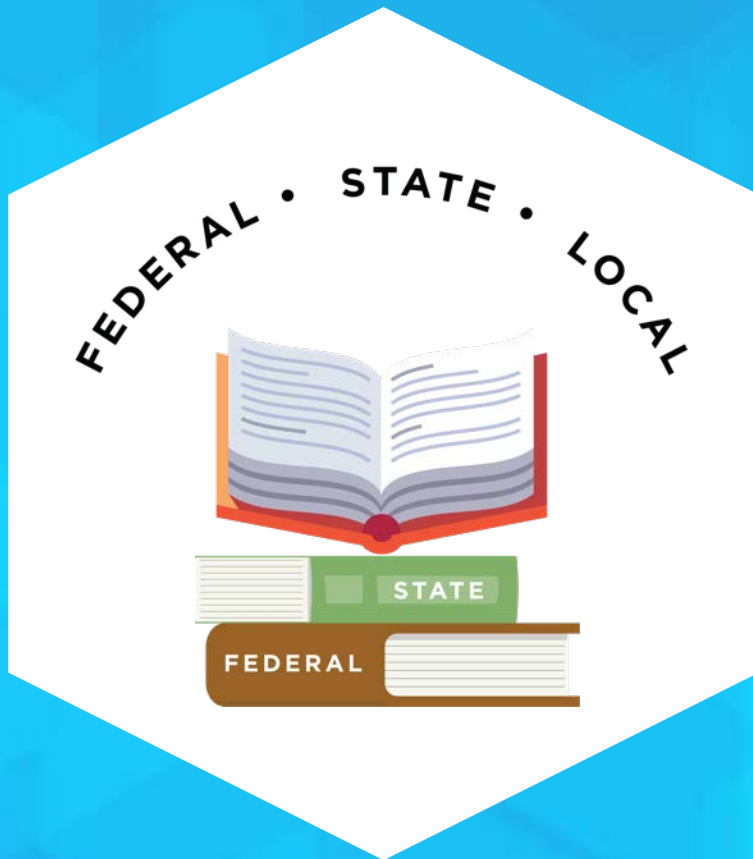
AGENDA



- What is preemption and how is it being used around the country?
- How is preemption related to public health and health equity?
- How is preemption affecting equity?
- What are some resources to address preemption?



What is preemption and how is it being used around the country?



Federalism & Police Power



What is preemption?

When the law of a higher level of government invalidates the law of a lower level of government

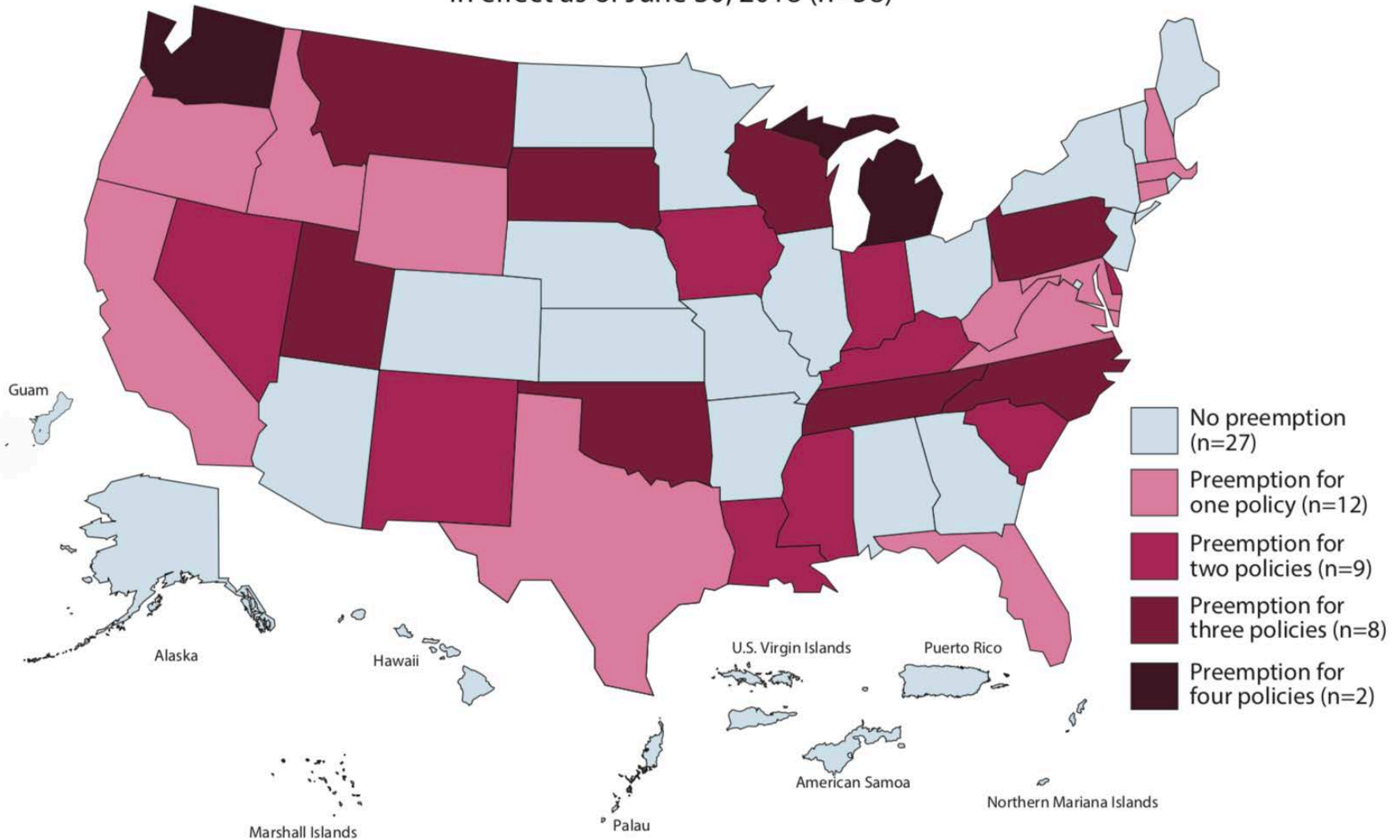


LSSC
Local Solutions
Support Center

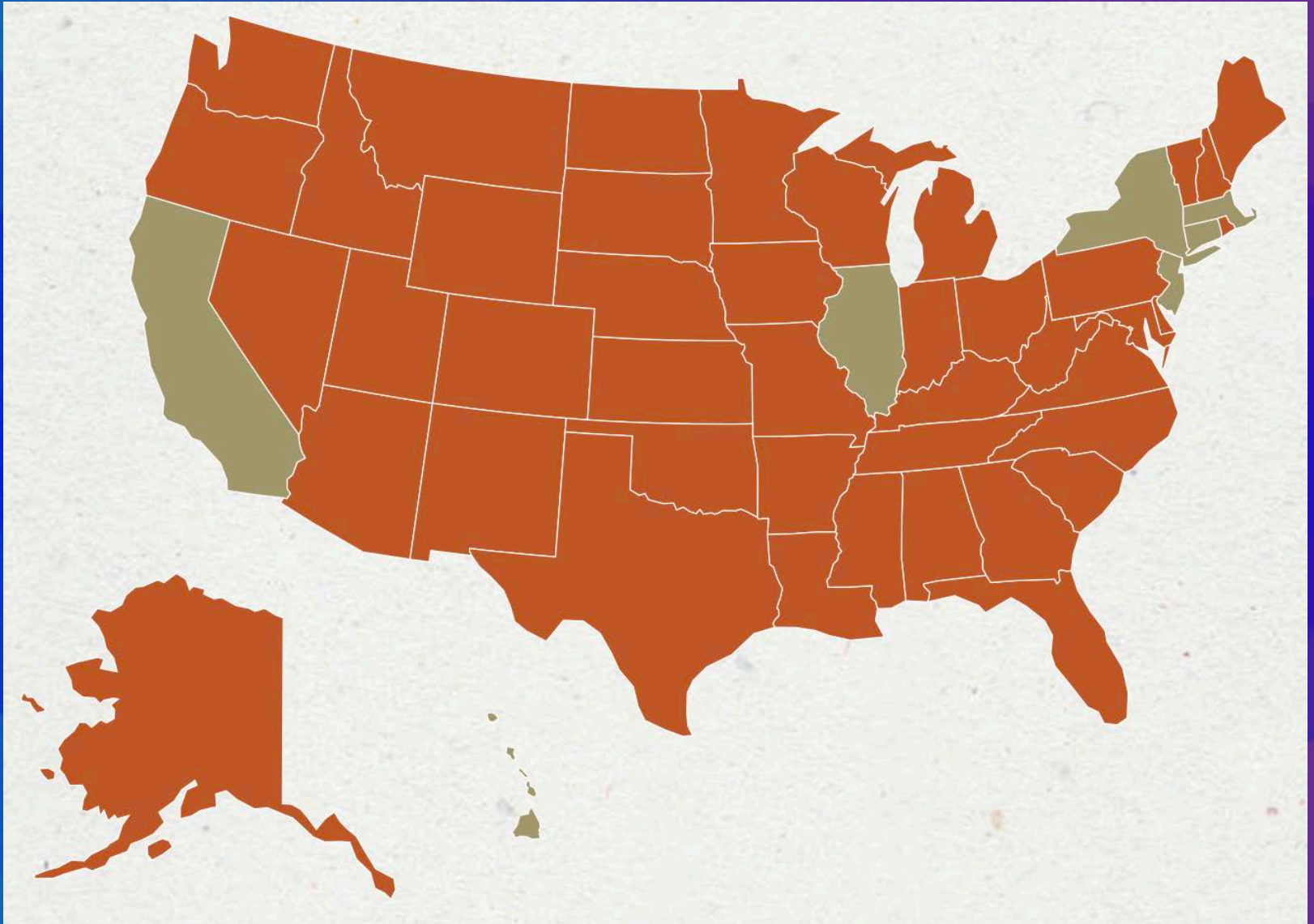
Kim Haddow

State Preemption of Any Local Tobacco Control Ordinances— Advertising, Licensure, Smokefree Indoor Air, or Youth Access

In effect as of June 30, 2018 (n=58)



Gun Preemption Laws



Source: Grassroots Change.

NEW PREEMPTION

// Sweeping state laws that clearly, intentionally, extensively, and at times punitively bar local efforts to address a host of local problems.

Often propelled by trade association and business lobbying, many preemptive state laws are aimed not at coordinating state and local regulation but preventing any regulation at all. //

– Richard Briffault, Columbia University School of Law

The **quantity** of 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

43 states
limit local
authority to
regulate guns
or ammunition

20 states
have banned
local control
over 5G tech

10 states have
prohibited
local plastic
bag bans

3 states
now ban
soda taxes

The state is **interfering** on more **policy areas**

LABOR
STANDARDS

PUBLIC
HEALTH &
SAFETY

CIVIL
RIGHTS

TAXING &
REVENUE

5G &
BROADBAND

ENVIRON-
MENTAL
PROTECTION

LOCAL
ZONING

Preemption is being used to **overturn elections**

TEMPE, AZ: Campaign finance disclosure law

91%

NASHVILLE, TN: Local Hire Law

57%

MILWAUKEE, WI: Paid Sick Days

69%

AUSTIN, TX: Defeated UBER's efforts to escape regulation

56%

DENTON, TX: Fracking Ban

59%

FAYETTEVILLE, AR: Nondiscrimination ordinance

53%



Preemption is being used to **perpetuate inequity**



Preemption bills have become **punitive, wider in scope**, more **hostile to home rule**

**PUNITIVE
PREEMPTION**

*Fines, firing, jail for
individual*

*Penalties, cuts in state
funding for local gov't*

**BLANKET
PREEMPTION**

DEATH STAR



// I am calling for legislation that reduces, restricts and prohibits local regulations. //

-Texas Governor Greg Abbott

// We promote [local control] as a means to achieve **liberty**...when it's being **oppressive**, then absolutely we believe in state control. //

-Christine Sandefur, the Goldwater Institute

The 2018 legislative session continued the **trend**

WI Death Star;
PA HB 861
moving now

TN and IA both
passed sanctuary
city bans w/
punitive
provisions

TX SB4 very
punitive actuary
city bill went into
effect after
unsuccessful legal
challenge

AZ preempted
Tempe's
Campaign
Finance Disclosure
Law 16 days after
passage

Preemption
banning cities from
regulating
tobacco & e-
cigarettes in
HI & PA

Traditional powers of cities are under **attack**

CONTRACTING

AZ, WI

ELECTIONS

AZ

ZONING

*Short-term
rentals,
multiple states*

California's Soda Tax Ban: A Chilling New Tactic

The American Beverage Association dropped its November ballot initiative that would have seriously weakened the ability of local communities to raise revenues - once the state legislature passed a law banning local soda taxes until 2030.

This form of extortion may be replicated.

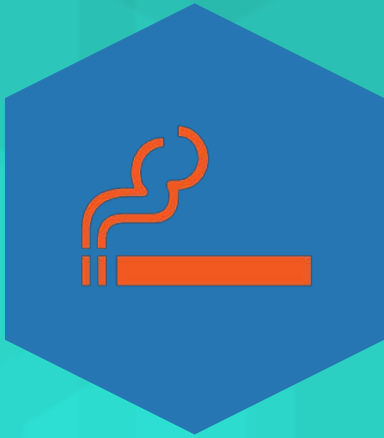
New recognition of the impact of preemption on racial equity

// Today, racism is no longer pledged from the portico of the capitol or exclaimed from the floor of the constitutional convention; it hides, abashed, cloaked beneath ostensibly neutral laws and legitimate bases, steering government power toward no less invidious ends. //

The U.S. Court of Appeals for the Eleventh Circuit found that advocates had established a plausible legal claim of race discrimination after the majority white Alabama legislature preempted a local minimum wage increase in Birmingham, a majority African-American city.



How is preemption related to public health and health equity?



Tobacco Control





The Equity Landscape





"People who live in cities and towns want control over their own destinies," said National League of Cities CEO and Executive Director Clarence E. Anthony. "When states take away the ability of local leaders to make decisions, the values and will of the people are ignored."



Preemption isn't
universally
negative
or even
inherently
partisan

Local Control





How preemption affects
health equity depends on
the type of preemption
&
how it's used

Ceiling Preemption



Uniform Standards

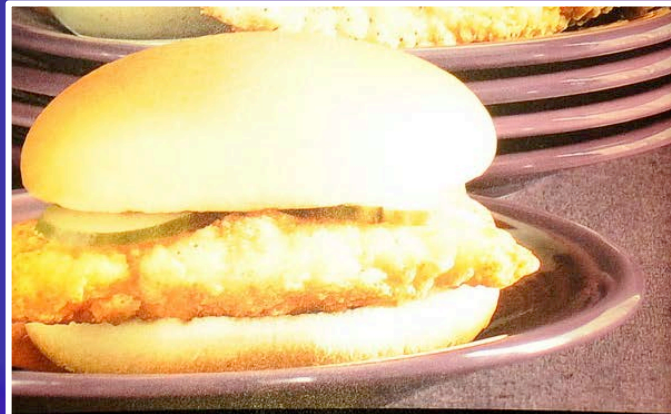


Efficiency ?



Equal Treatment

Ex: Menu Labeling



Southern Style Chicken

5.99 meal	3.69 sandwich
780-1020 Cal.	400 Cal.

Chicken Selects®

6.49 3 pc. meal	4.19 3 pc.
780-1020 Cal.	400 Cal.
7.89 5 pc. meal	Sauces
1040-1280 Cal.	70-200 Cal.



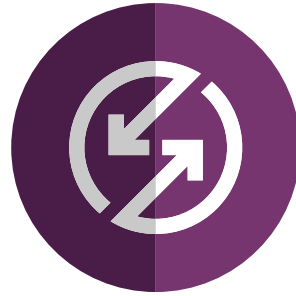
What about vacuum/null
preemption?

What are the consequences?



- Creating a regulatory vacuum
- Limiting local control
- Preventing some innovations without adding to uniformity

Floor Preemption



Flexibility



Innovation



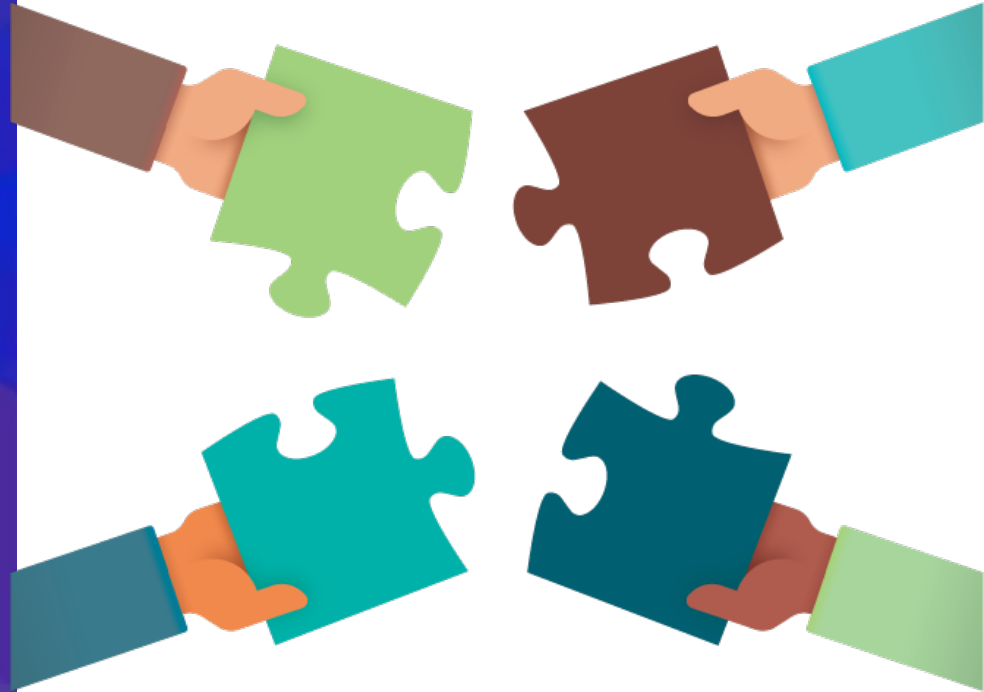
Progress

*Ex: School
Nutrition
Standards*





Advance Health Equity





Pushing
Back:
*Political
Process*





Pushing
Back:
Litigation





How is preemption affecting equity?



State Interference: Undermining Racial and Gender Justice

Miya Saika Chen
Partnership for Working Families

October 16, 2018



www.forworkingfamilies.org



State Interference: Undermining Racial and Gender Justice



Corporate
Capture of
State
Legislatures



Deregulation--
removing protections
for workers, tenants,
LGBTQ and vulnerable
communities, the
environment



Systems of Oppression--
white supremacy,
misogyny

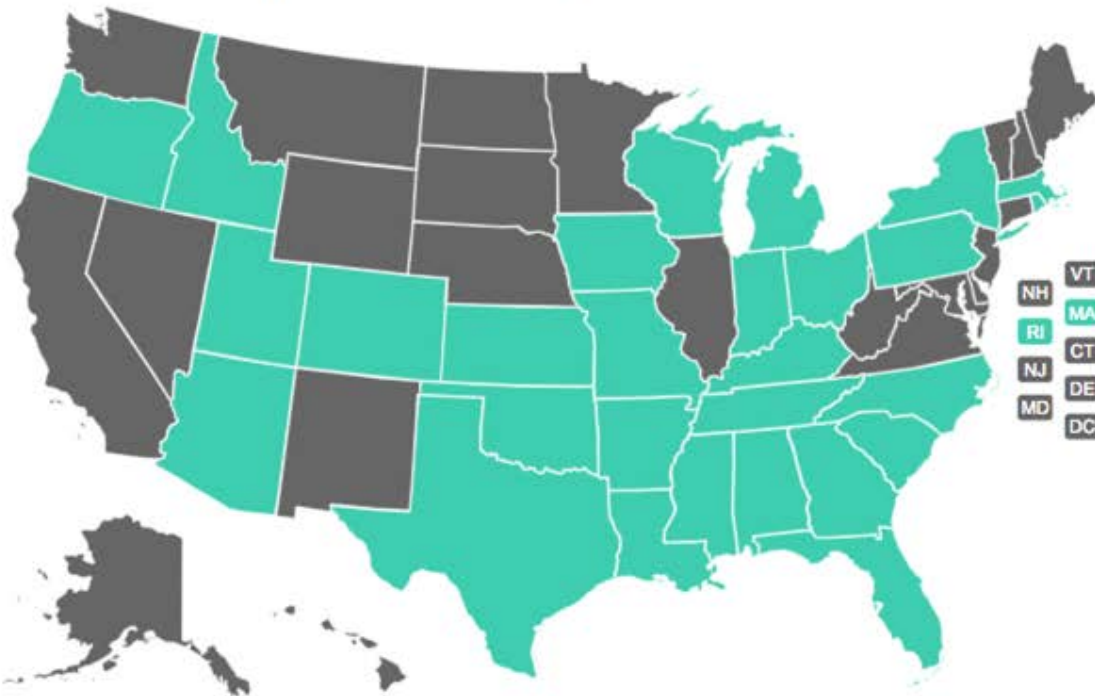




www.forworkingfamilies.org/preemptionmap

Minimum Wage

These state laws preempt (meaning prohibit or limit) local requirements that employers pay wages that exceed the federal or state minimum. These laws often exempt local governments as employers and sometimes exempt employers contracting with local government.



 Construction Jobs Standards

 Employee Benefits

 Fair Scheduling


 Gig Worker + Consumer Rights

 Housing Affordability

 Immigrants' Rights

 Minimum Wage

 Nondiscrimination

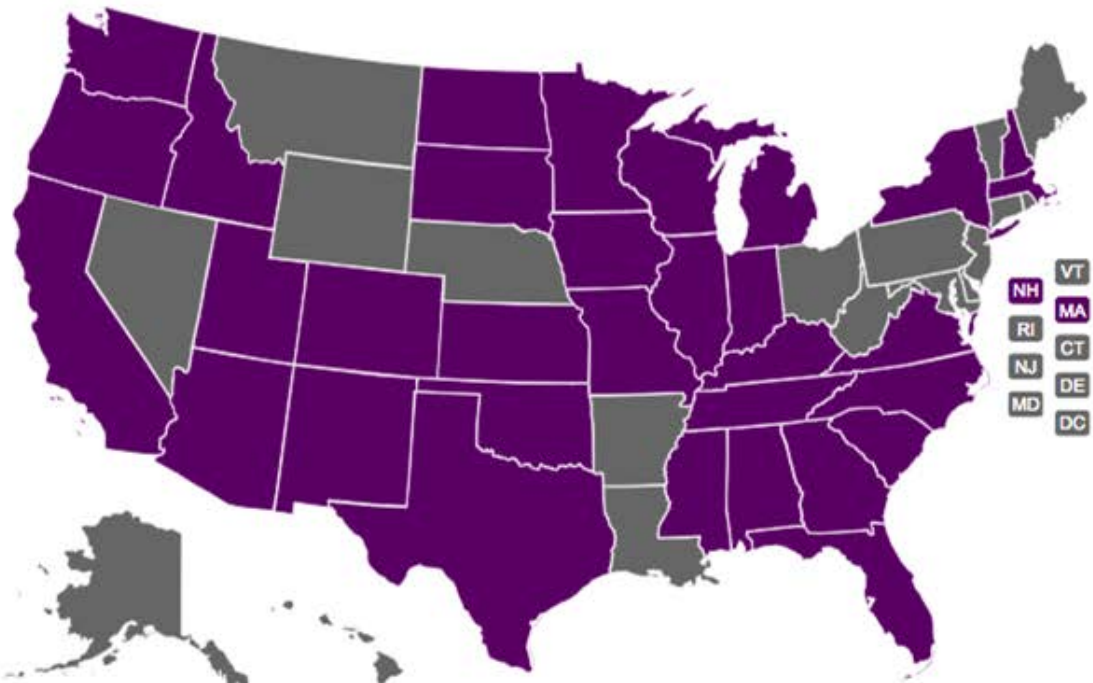
 Workplace Equity



www.forworkingfamilies.org/preemptionmap

Housing Affordability

These state laws and court decisions prohibit or limit local laws that regulate residential rents or provide for inclusionary zoning. Often these laws exempt property that the local government owns or in which it otherwise has a proprietary interest. KEY TERM: "Inclusionary zoning" means a requirement that a residential development project provide a certain share of units in the project as affordable at particular levels of affordability.



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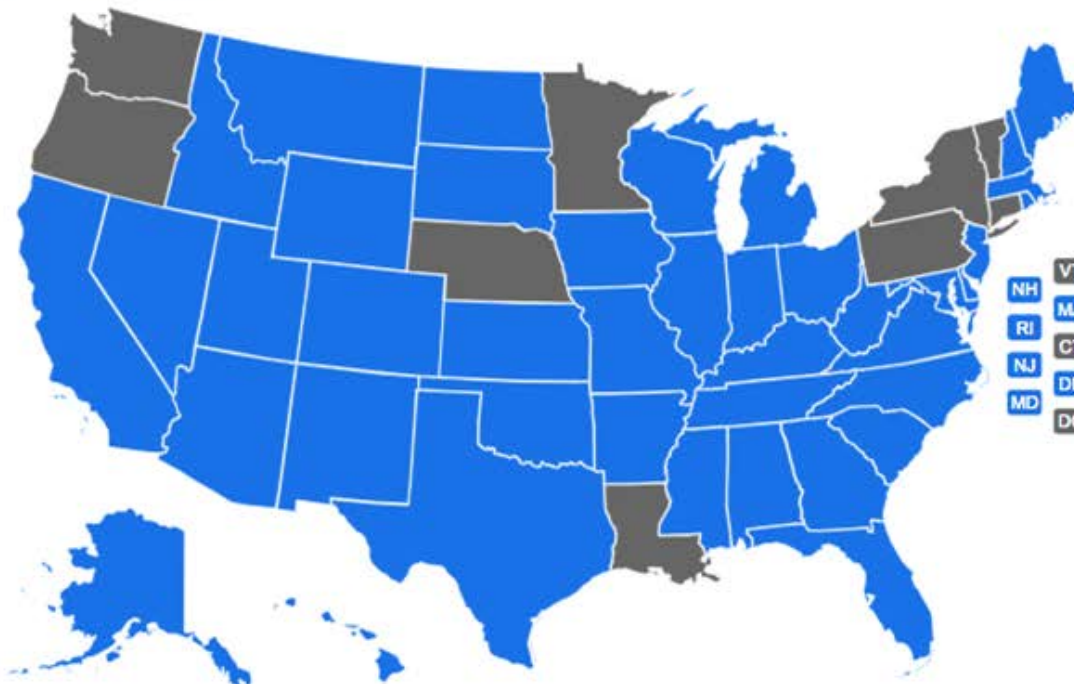
 Workplace Equity



www.forworkingfamilies.org/preemptionmap

Gig Worker + Consumer Rights

These state laws preempt (meaning prohibit or limit) local regulation or taxation of transportation network companies and in some cases provide that transit network company drivers are independent contractors, not employees, if certain conditions are met. KEY TERM: "Transportation Network Companies" are companies like Uber and Lyft that provide transportation services using a web-based platform to connect customers and drivers.



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Uber & Lyft: Running Over Local Democracy



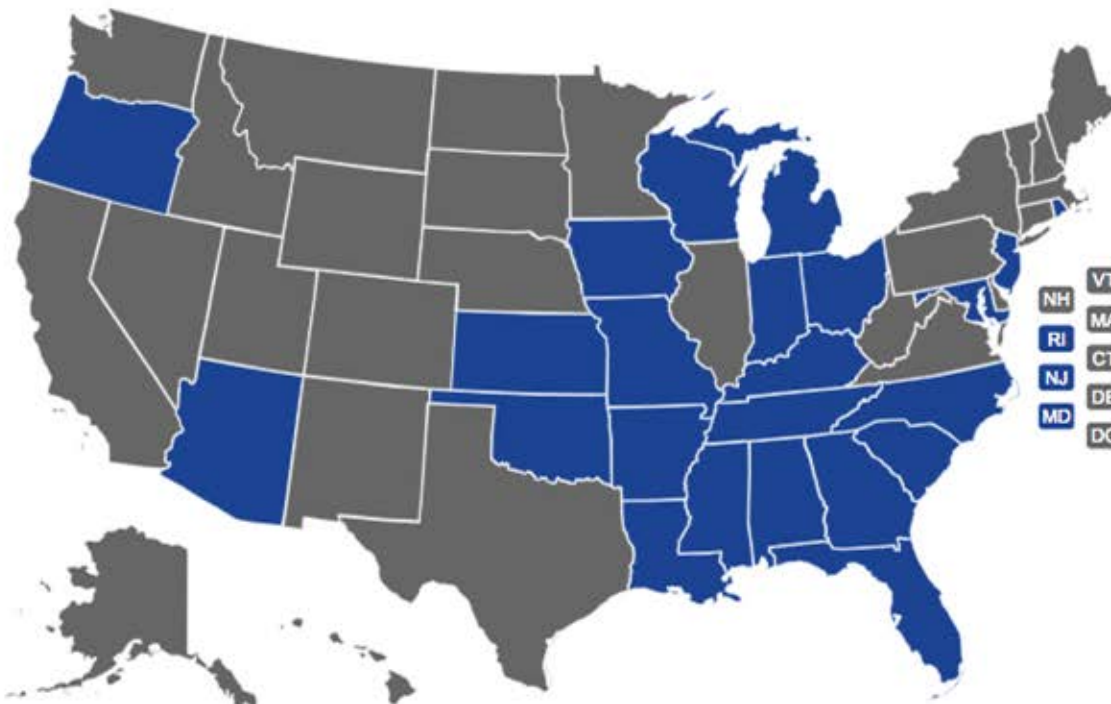
#uberinterference



www.forworkingfamilies.org/preemptionmap

Employee Benefits

These state laws preempt (meaning prohibit or limit) local laws that require employers to provide employment benefits to employees, including paid or unpaid sick or family leave, or health, retirement, vacation, disability, profit sharing or death benefits. Often these laws do not apply to local governments as employers.



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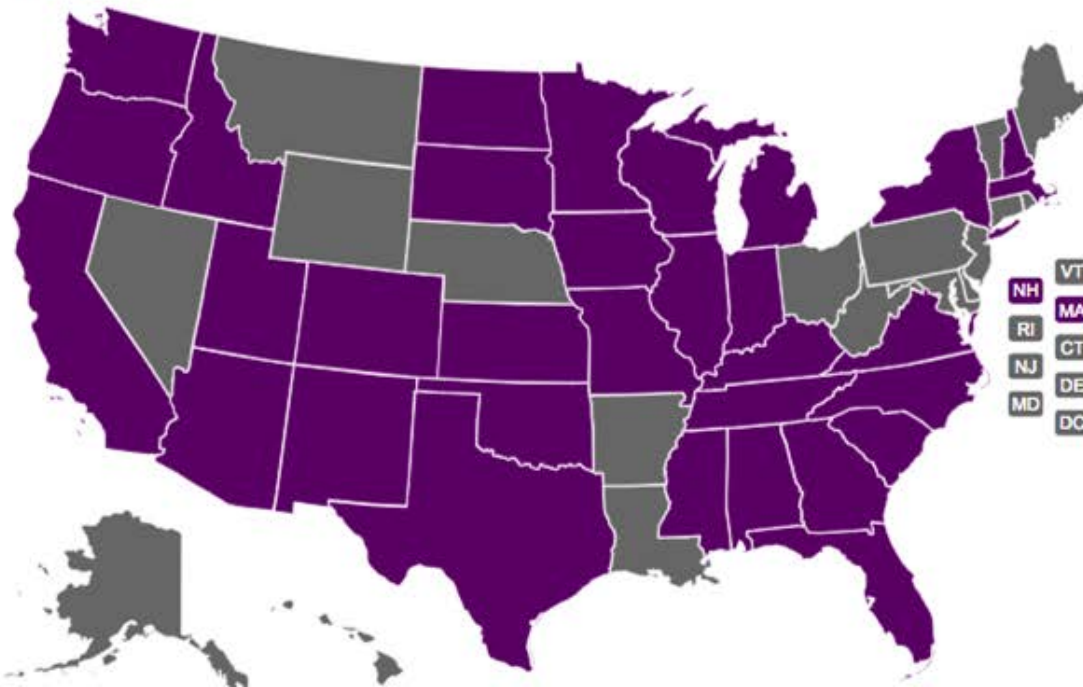
 Workplace Equity



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Housing Affordability

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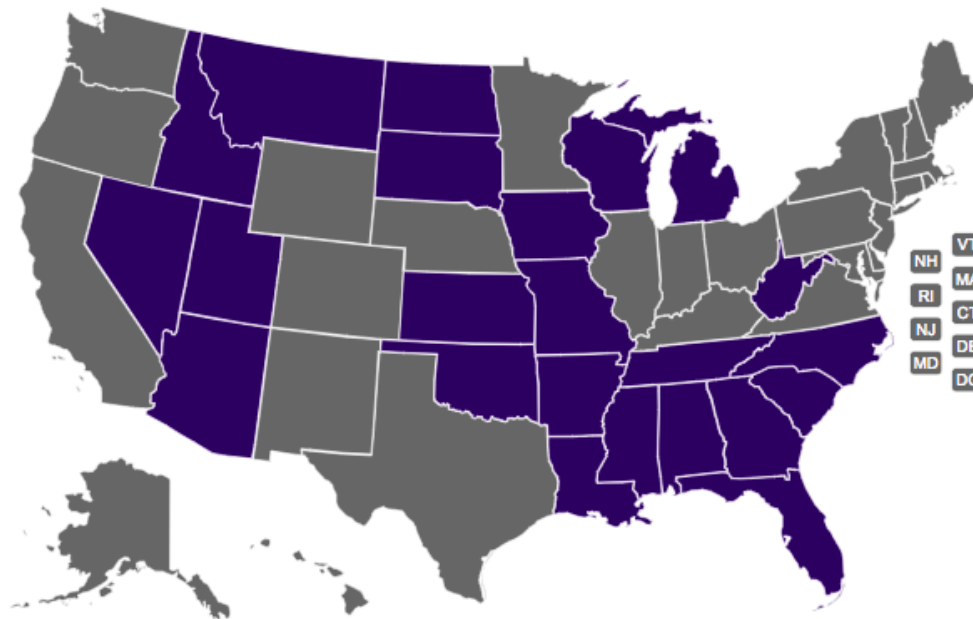
 Workplace Equity





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Construction Jobs Standards


These state laws preempt (meaning prohibit or limit) local laws requiring construction employers to become party to project labor agreements or other agreements with unions, pay prevailing wages, or participate in apprenticeship programs. KEY TERMS: A "project labor agreement" is an agreement between construction project owners and contractors and building trades unions that typically ensures no strikes or work stoppages and establishes uniform labor standards for the project. "Prevailing wages" are wage levels typically determined by a government agency to be the standard for a particular region based on what is being paid in that regional market. An "apprenticeship program" is a training program for new construction workers. "Labor neutrality agreements" are agreements under which an employer agrees to remain neutral toward union organizing activity.




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States Preempting Local Laws An Extension of Jim Crow

**NEXT
CITY**

Inspiring Better Cities



What's Holding Back Tenant Rights, Workplace Rights and Economic Justice

BY BEN BEACH AND MIYA SAIKA CHEN | OP-ED | APRIL 12, 2018



POWER, faith leaders, and elected officials held a one-day fast and press conference to announce the "I Am Human" Campaign, which calls for a raise in the minimum wage and an end to state preemption blocking local wage laws in Pennsylvania. (Credit: POWER)

Mostly White State Legislatures Stop Majority Black Cities from Addressing Racial Wage Gaps



Geography	Percent Black City Population	Avg. White Monthly Earnings in Lowest Wage Sector	Avg. Black Monthly Earnings in Lowest Wage Sector	Black Worker Earnings to White Worker Dollar	Percent Whites in State Legislature
Atlanta	52%	\$1,959	\$1,577	\$0.81	72%
Birmingham	73%	\$1,715	\$1,420	\$0.83	75%
Cleveland	53%	\$1,439	\$1,285	\$0.89	86%
Durham	41%	\$1,713	\$1,325	\$0.77	79%
Memphis	63%	\$1,952	\$1,361	\$0.70	85%
New Orleans	60%	\$2,108	\$1,707	\$0.81	76%
St. Louis	49%	\$1,650	\$1,343	\$0.81	87%
AVERAGE	55%	\$1,784	\$1,431	\$0.80	80%

Increased Consequences of Minimum Wage and Employee Benefits Preemption on Women



WOMEN

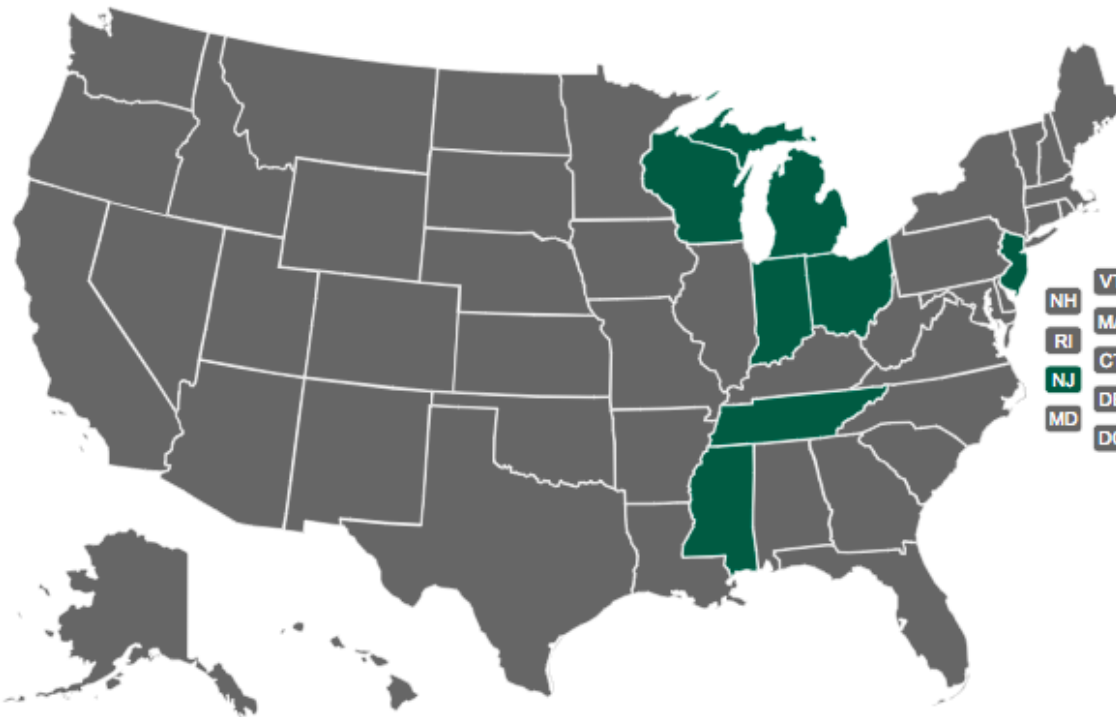
- = Majority of low-wage workers nationally
 - = 60% of the workers earning wages at or below the federal minimum in Pennsylvania
- = Less likely to have paid sick leave
- = Less likely to afford to take leave without pay
- = Two-thirds of all family caregivers
- In 29% of African American families with young children, the primary provider is a Black woman
- = Less likely to go to the doctor and access preventative care





www.forworkingfamilies.org/preemptionmap

Workplace Equity


These state laws preempt (meaning prohibit or limit) local laws protecting job applicants with criminal histories from discrimination in hiring and local laws that favor local residents for hiring by local government contractors.




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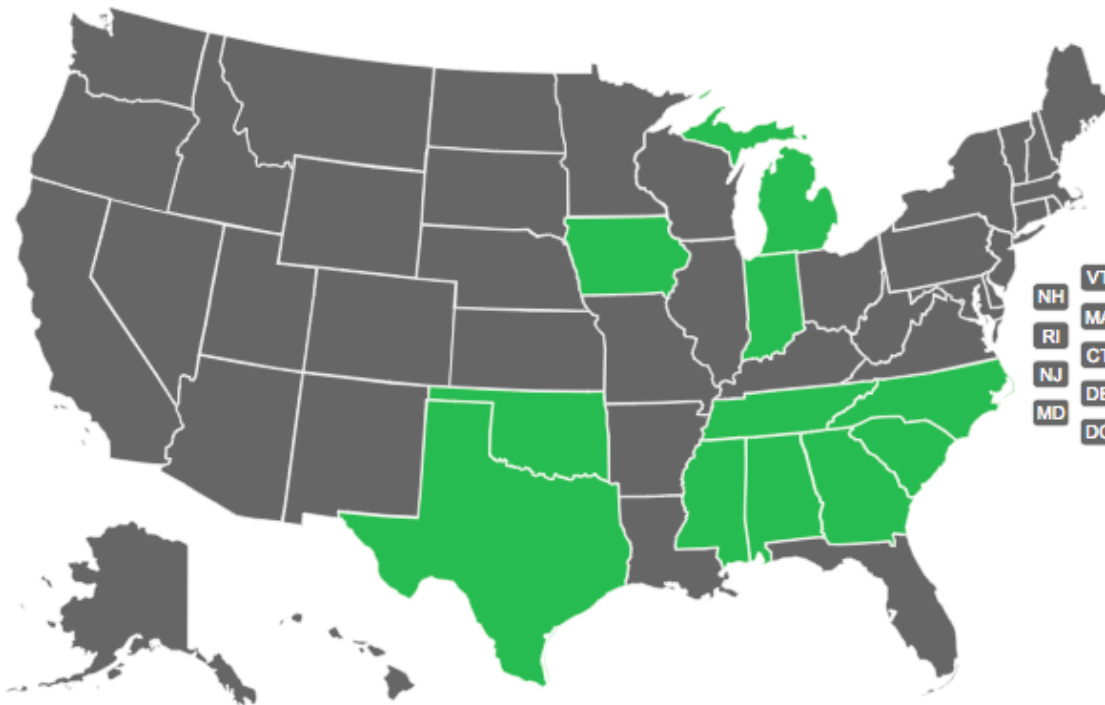
 Workplace Equity





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Immigrants' Rights


These state laws preempt (meaning prohibit or limit) local sanctuary city laws such as those that limit cooperation by local law enforcement with federal immigration enforcement officials.





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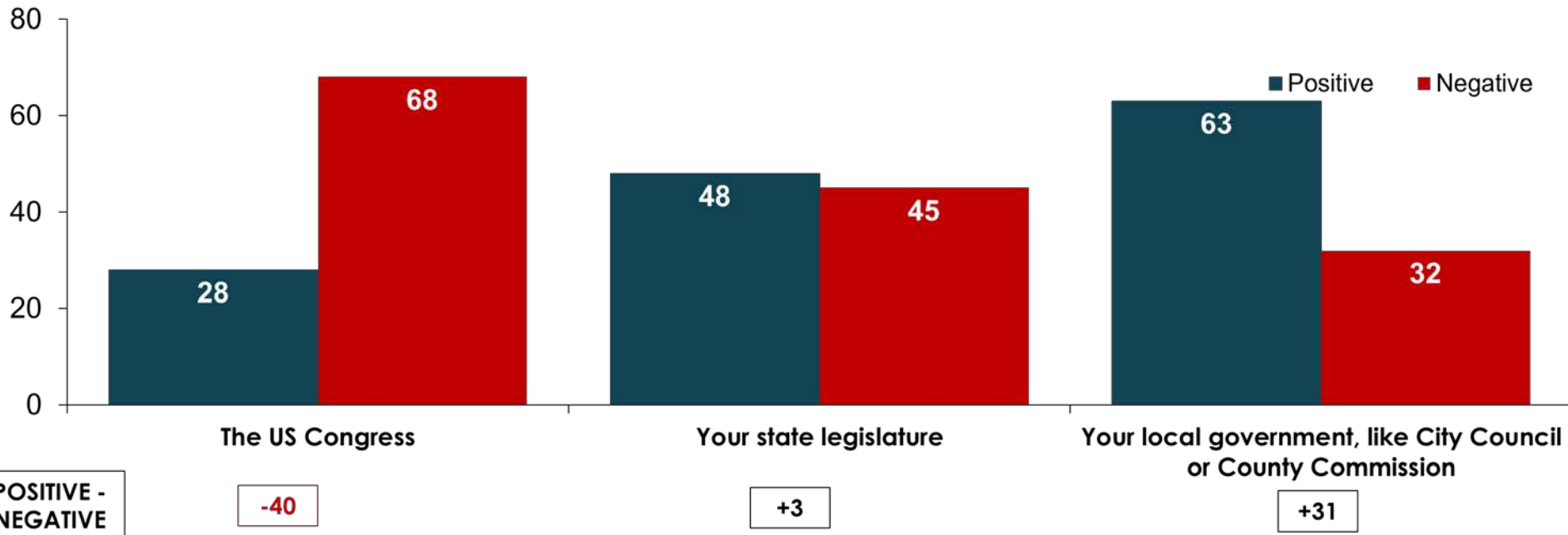


What are some resources to address preemption?

Voters have a high opinion of their local government, and are divided in their feelings towards state government.

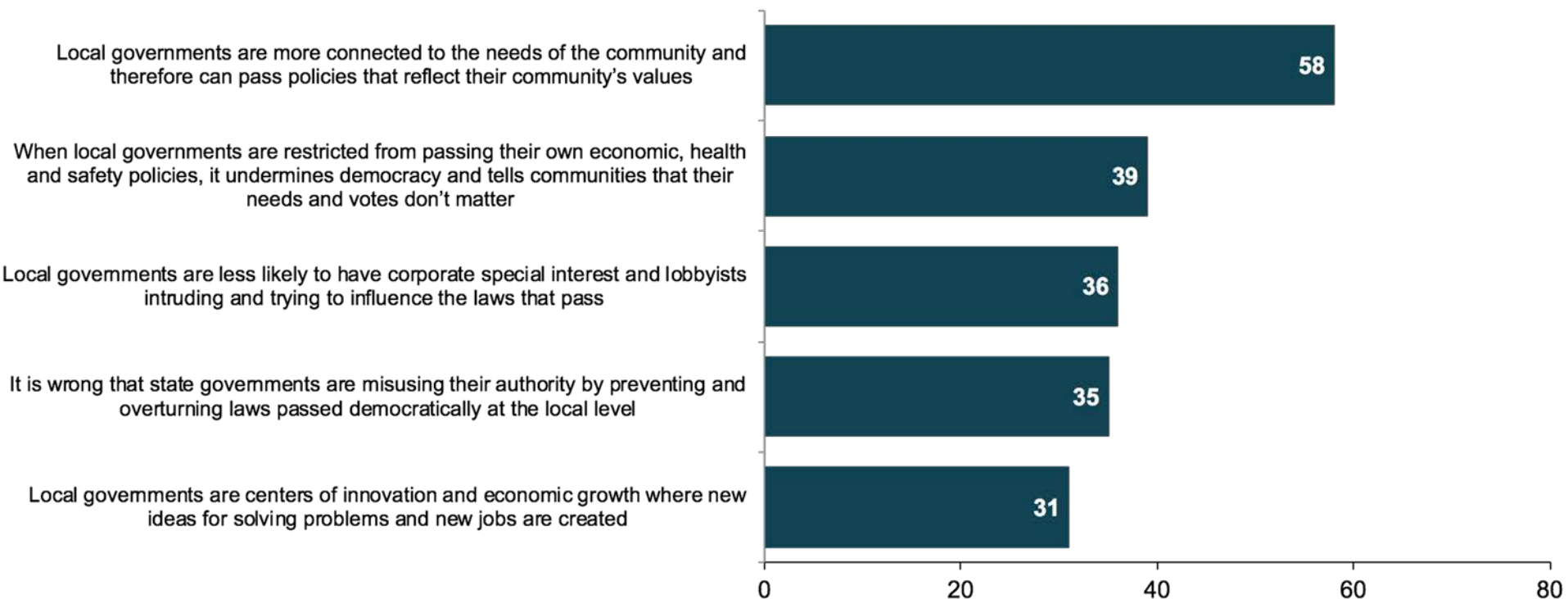
Congress receives incredibly negative reviews.

Now, you will see a list of different organizations and institutions. Please indicate whether you believe each is doing an excellent, good, not so good, or poor job of working on the issues that matter most to you. Here is the first one...



Voters agree that “local knows best.”

Below is a list of reasons that some people have given as to why it is important to protect local governments' ability to make their own laws. Please select the TWO most important reasons for you personally.



Voters believe preemption happens most frequently due to the influence of special interests.

Reasons for Preemption	%Frequently	%Frequently +sometimes	%Unsure
Corporate special interests and lobbyists convince state legislators to block a local law because it would hurt their profits.	30	70	12
Conservative state legislators vote to block a local law passed by a progressive city because they disagree with it.	18	59	12
State legislators vote to block a local law as a check and balance to ensure that local laws do not contradict or violate state laws.	13	59	18
Progressive state legislators vote to block a local law passed by a conservative town because they disagree with it.	12	52	17
State legislators vote to block a local law to avoid creating a patchwork of laws where cities across the state have different laws.	11	53	22
State legislators block a local law because local regulation can be oppressive and violate personal liberty and individual freedom.	10	48	16

Voters are deeply concerned about consequences of preemption, especially on workers, public health & protections.

Consequences of Preemption: Top Tier <i>%Concerns a great deal</i>	Overall	Move to Negative Impact	Move to threaten Democracy	Conflicted Voters
State legislators are undoing workplace policies that protect workers from wage theft and employer abuse, allow workers to earn paid sick time, and raise the local minimum wage. In one state, state legislators REDUCED a local minimum wage by almost \$3 an hour. Without these policies, workers risk being taken advantage of and losing the opportunity to earn their way out of poverty	58	64	65	59
Several state legislatures are passing laws that ban all local governments in their state from passing ANY policies that address economic issues, meaning that local communities are powerless to do anything that might help their local economy or protect workers.	54	60	51	53
State legislators in several states have voted to prevent local communities from passing protections that keep the community healthy, including clean air and water protections, and passing a ban on natural gas fracking even though a recent study came out that found that babies born in communities near fracking sites experience lower birth weights, and fracking is also known to cause lung damage and seizures	53	55	54	50

THE BEST MESSAGES AGAINST PREEMPTION: **LOCAL CONTROL**

Local communities know best how to meet the needs of the people living there. It is wrong for the state government to come in and dictate to local people what is best for them.

THE BEST MESSAGES AGAINST PREEMPTION: **LOCAL CONTROL**

Local communities pass policies to help their local businesses thrive and create an economy that works for the people who live there. When state lawmakers prevent communities from passing economic policies that work for them, they hinder economic growth and development.

THE BEST MESSAGES AGAINST PREEMPTION: **LOCAL CONTROL**

Sadly, political gridlock and corporate special interests have made it hard to get anything done at the state level.

At least at the local level, we can make our voices heard and demand change and accountability, from people we see here at home.

MAKING THE CASE

1

START WITH
NORMATIVE
VALUES

2

INTRODUCE
THE POLICY
IMPERATIVE

3

IDENTIFY THE
THREAT

4

CLARIFY NEGATIVE
CONSEQUENCES

RECOMMENDATIONS: DO'S

FIGHT VALUES WITH VALUES



THEM: Preemption advocates argue that preemption is necessary to escape the “oppression of local control” and that local regulations violate “personal liberty” and freedom.

US: Counter their claim with the VALUES of local democracy, control, and local leaders’ ability to best meet the community’s unique views, values and needs.

RECOMMENDATIONS: DO'S

GIVE EXAMPLES OF PREEMPTION'S NEGATIVE IMPACT



- The polling confirms that voters are deeply concerned upon learning that state legislators have undone workplace policies and protections.
- Past research has also found that prohibitions on localities from passing nondiscrimination policies are incredibly unpopular.
- There is also power in highlighting that preemption is being used to overturn election results.

RECOMMENDATIONS: DO'S

ASSIGN MOTIVE & CONSIDER LANGUAGE



- Don't talk about "preemption." Use the term "state interference" instead.
- Talk about the "misuse" or "abuse" of preemption.
- Use the terms "local democracy" and "local control."
- Remind voters who's behind this: deep-pocketed corporate special interests and their lobbyists.

RECOMMENDATIONS: DON'TS



**DON'T
MAKE THIS A
PARTISAN
ISSUE**

**DON'T
MAKE THIS A
PROCESS
DISCUSSION**

**DON'T
DISPARAGE
THE ROLE OF
STATE GOV'T**

**DON'T USE
TERMS LIKE
"AN ATTACK
ON CITIES"**

**DON'T ACCEPT
PATCHWORK
ARGUMENT**



LSSC
Local Solutions
Support Center

A hub that connects, supports, and creates cross-issue, coalitional opportunities and efforts to defend local democracy, repeal existing anti-democratic preemption laws, discourage the use of punitive preemption, and strengthen home rule.

LEGAL HOTLINE: 212.430.5989

FORDHAM'S URBAN LAW CENTER: <https://www.urbanlawcenter.org/>

A BETTER BALANCE: <https://www.abetterbalance.org/our-campaigns/defending-local-democracy/>



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Thank you!

Questions?

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Want more **health equity**?

Next up, our last episode: *Building Healthy, Equitable Communities Through Community-Driven Solutions*

Blog Post: *available now!*

Webinar & Interactive Panel: Oct. 30 (*register now!*)

changelabsolutions.org/the-series



ChangeLab Solutions

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Resources for changemaking:



- Fundamentals of Preemption
- The Consequences of Preemption for Public Health Advocacy
- Negotiating Preemption
- Preemption by Any Other Name

changelabsolutions.org/publications/understanding-preemption

For these and other resources, visit us at
changelabsolutions.org



Keep the conversation going

Sabrina Adler: sadler@changelabsolutions.org

Kim Haddow: kimshaddow@gmail.com

Miya Saika Chen: miya@forworkingfamilies.org

For questions about the series, Sophia Pennella:
spennella@changelabsolutions.org