

CONFRONTING PREEMPTION

THE PROBLEM

Corporate and special interests are systematically working at the state level to stifle the power of local governments, which provide essential hubs of policy innovation and progressive political power. The Koch Brothers-backed American Legislative Exchange Council (ALEC), the architect of this strategy, has in a vast number of states, moved state legislators and courts to gut the ability of local governments to take action on a range of critical issues. States across the country now restrict local policymaking on issues including the minimum wage (28 states), construction labor agreements (23 states), paid leave (20 states), inclusionary housing (11 states), rent control (27 states), tobacco products (31 states), fair work scheduling (10 states), immigrants' rights (8 states), nutrition and food policy (9 states), gun control (43 states), nondiscrimination measures (3 states), local and fair chance hiring (6 states), and ridesharing (41 states). This strategy has been particularly effective because while the vast majority of states give local governments broad powers under so-called home rule principles, most states also permit the state to preempt or otherwise limit those powers through legislation.

Although proponents of preemption laws often complain about local measures creating a “patchwork of regulations,”¹ many of the states that adopt these laws have minimal or no state regulation on those same issues. In other words, proponents actually don't want *any* regulation that would benefit workers, consumers, and tenants. Transportation network companies like Uber and Lyft have, through lavish spending and aggressive tactics, been particularly successful in deregulating their industry in this way.² Laws adopted in 41 states prevent local governments from regulating these companies across a broad range of issues, including licensing, background checks, vehicle safety, data reporting, and driver employment status, while setting negligible standards at the state level.

THE SOLUTION

There are two potential avenues for stopping individual state measures that interfere with local authority. The first is launching broad campaigns involving both local officials and advocacy groups to educate state legislators about the downsides of preemption, inoculate against preemption of new local proposals, and fight new preemption bills as they arise. The second possible path is pursuing direct legal challenges to these preemption laws. Such laws may run afoul of state home-rule principles, or federal laws and the U.S. Constitution, especially if they are punitive or discriminatory.

However, legislative victories may be temporary and legal victories may be narrow, such that neither prevent recurrence of state interference, even on the same issue. A more fundamental shift in the political (and possibly legal) landscape will be needed to protect the ability of cities to move progressive policy over the long term. Orchestrating such a shift will require careful work, because reform efforts that focus on “local control” alone ignore the fact that not all localities will use that control for progressive ends. Efforts to protect local authority should be clearly grounded in progressive values, and messaging should be framed in a way that reflects those values.

ROLE FOR LOCAL OFFICIALS

Local officials have a vital role to play in the movement to protect local authority. They can:

- push local government attorneys to be accurate and complete in their understanding and presentation of the law related to local authority, and to be willing to aggressively defend the city against state interference;
- work with advocates and colleagues in other parts of the state to form coalitions that can pressure state officials to protect the power of cities to adopt progressive policy; and
- find ways to smartly navigate preemption as they craft local policy by, for example, focusing on areas

protected from state interference under state home-rule principles.

MODELS FOR SUCCESS

Quite a few coalitions of local officials and advocates have successfully defeated preemption bills. In Minnesota, local officials and advocates persuaded Governor Dayton to veto a bill that would have voided minimum wage and paid-sick-leave laws in **Minneapolis** and **St. Paul** just before they were about to take effect. In Louisiana, similar coalitions have now successfully turned back state legislation targeting **New Orleans'** local-hire and inclusionary-housing laws. In Florida, a similar coalition defeated a state bill that would have only permitted localities to regulate in ways that the legislature had expressly authorized.

We have also seen cities and advocates fighting back against state interference through litigation. In Pennsylvania, **Pittsburgh** is aggressively defending its paid-sick-leave law against a legal challenge by a business association under the state home-rule statute; the case will soon be heard in the state Supreme Court. In Ohio, **Cleveland** won an important ruling in a case challenging a state law that preempts the city's longstanding local-hire law: the court found that the state law ran afoul of the state constitution's grant of authority to localities. In Alabama, a number of individuals and groups are challenging a state law that preempts local minimum-wage ordinances, adopted shortly after **Birmingham's** city council voted to create a city minimum wage of \$10.10, the first of its kind in the state. Their lawsuit alleges that the state law violates federal equal protection principles by discriminating against black workers, who would have disproportionately benefitted from Birmingham's minimum wage rule, and the Voting Rights Act, by stripping the political power of voters in an overwhelmingly black city.

The Birmingham case is one of a number of instances in which predominantly white legislatures acted to strip cities predominately populated by people of color of the power to protect the basic needs and livelihood of their residents, a trend that should provoke further legal and political challenges.³

LANDSCAPE AND RESOURCES

The **Partnership for Working Families** and **Preemption Watch** have interactive maps of preemptive state statutes across a wide range of issues. The **Local Solutions Support Center** provides a range of tools and support for local officials looking to understand and address preemption, including bringing together legal academics and advocates to provide legal strategies, resources and technical assistance, public opinion and messaging research, and support to the field. The **Campaign to Defend Local Solutions**, based in Florida, is one of the nation's leading organizations devoted to supporting cities and local

elected officials facing preemption, by providing communications, media, and litigation support, research, and resources. **Preemption Watch** helps advocates better understand and counter preemption by providing tools, research, and case studies along with a biweekly newsletter with coverage of federal and state preemption threats. The **Partnership for Working Families** provides legal, communications, and organizing support to campaigns to stop state interference.

Co-authored by the Partnership for Working Families

