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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](http://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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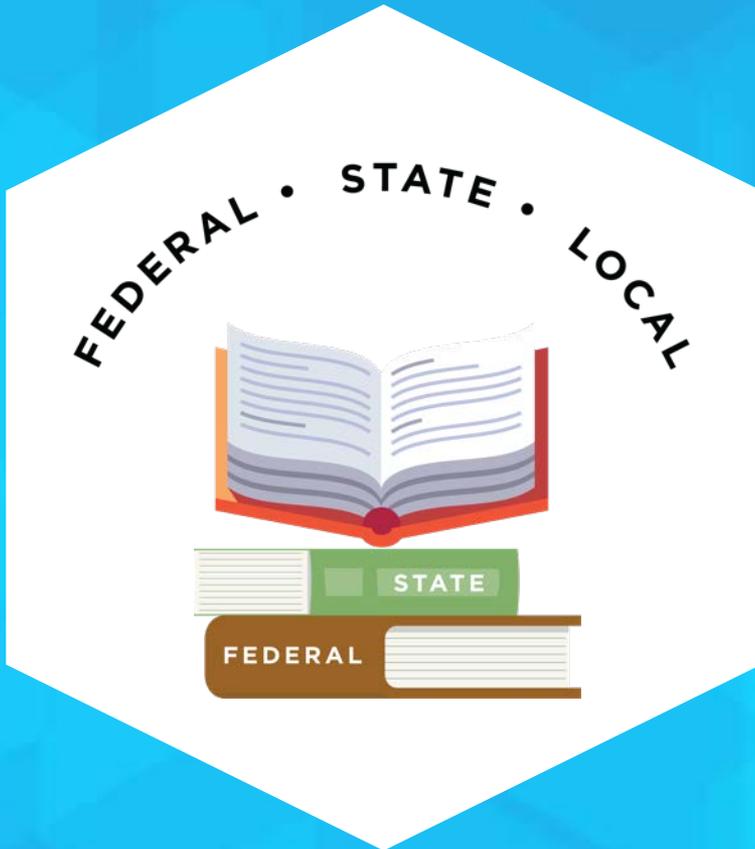
# AGENDA



- 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?

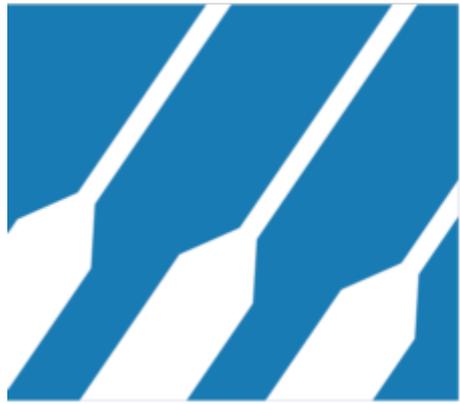


# Federalism & Police Power



## What is preemption?

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

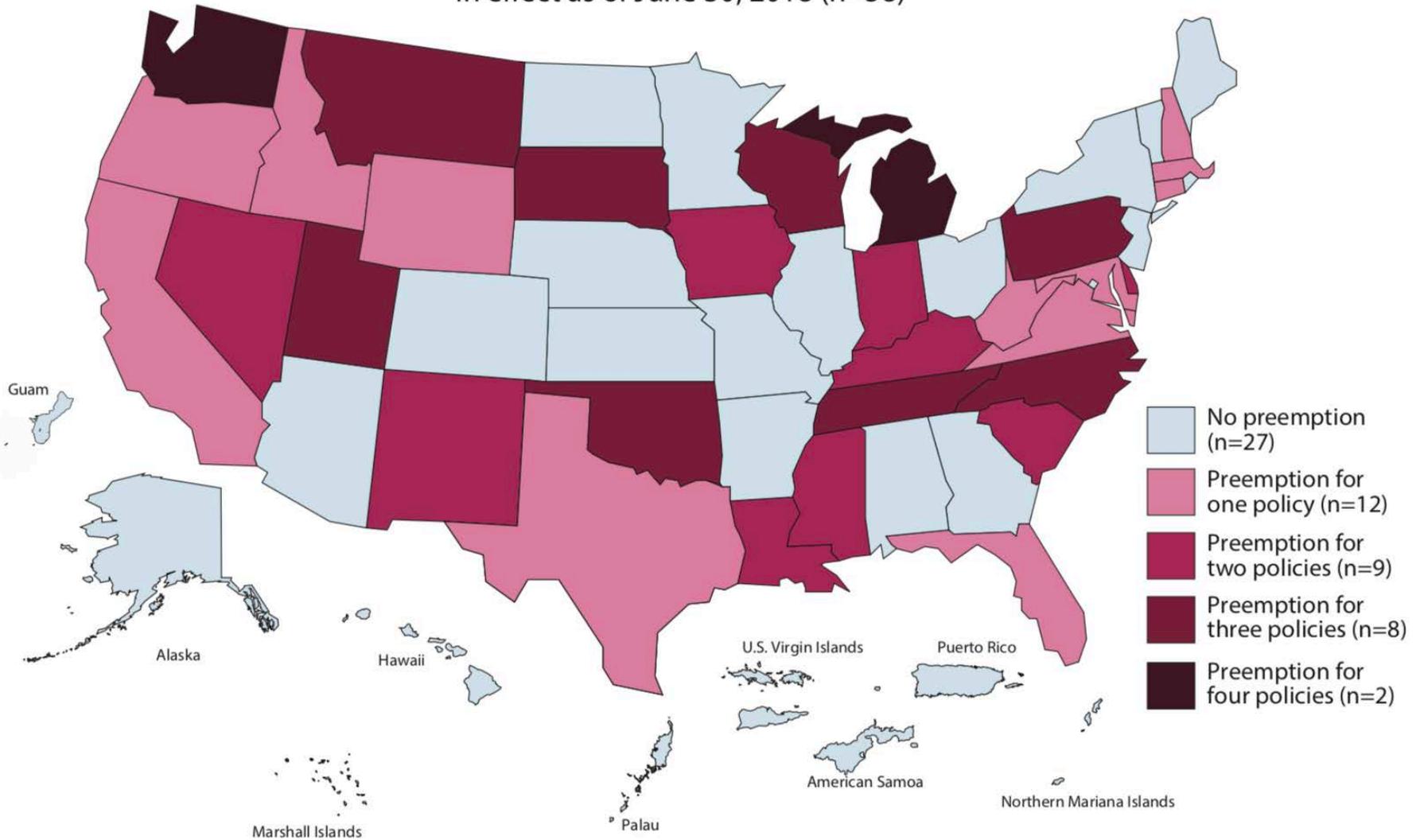


**LSSC**  
Local Solutions  
Support Center

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)





# 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.**

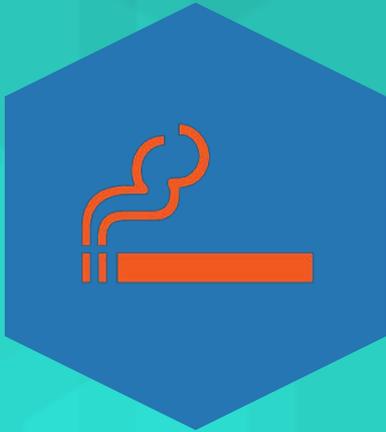
# New recognition of the impact of preemption on racial equity

// 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?

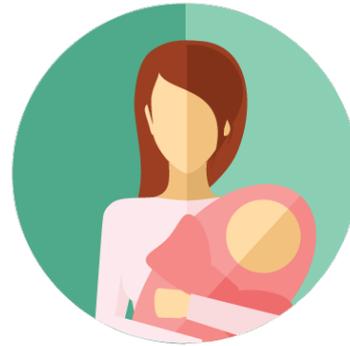


# Tobacco Control





# 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



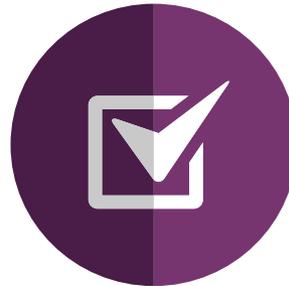


How preemption affects  
health equity depends on  
*the type of preemption*  
&  
*how it's used*

# Ceiling Preemption



Uniform Standards

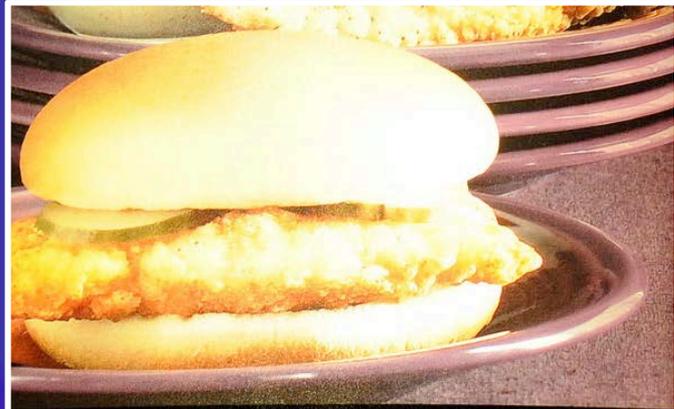


Efficiency ?



Equal Treatment

# Ex: Menu Labeling

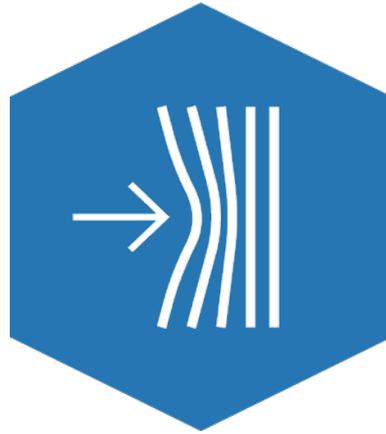


## Southern Style Chicken

<b>5.99</b> meal	<b>3.69</b> sandwich
<b>780-1020</b> Cal.	<b>400</b> Cal.

## Chicken Selects®

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



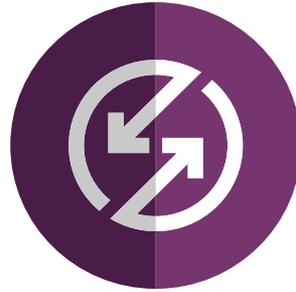
What about vacuum/null  
preemption?

# What are the consequences?

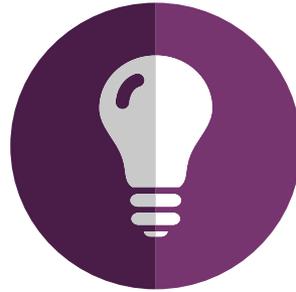


- Creating a regulatory vacuum
- Limiting local control
- Preventing some innovations without adding to uniformity

# Floor Preemption



Flexibility



Innovation



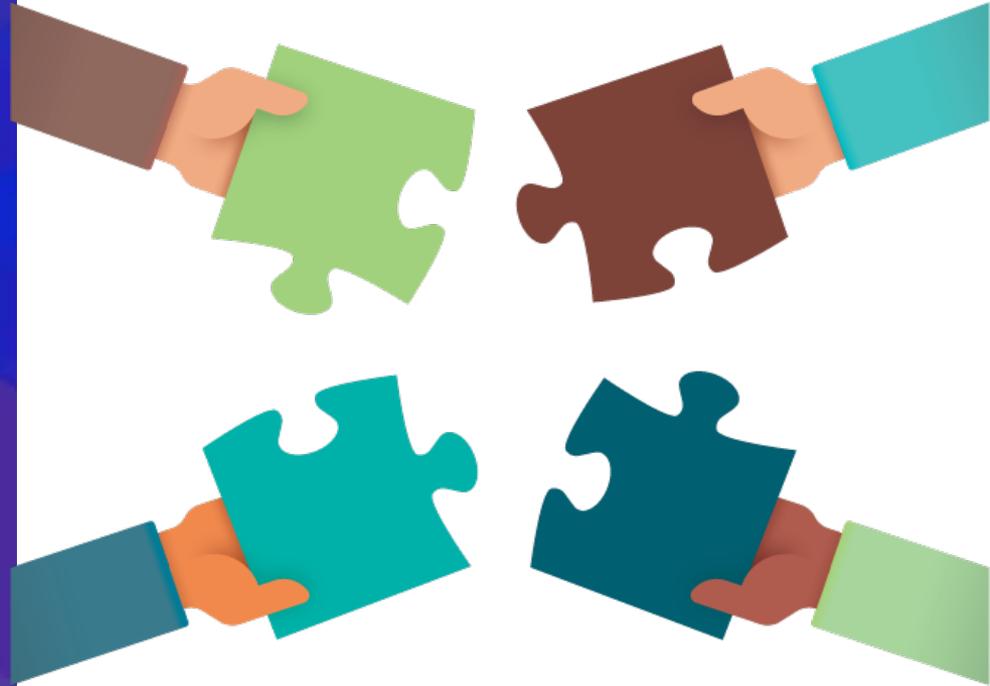
Progress

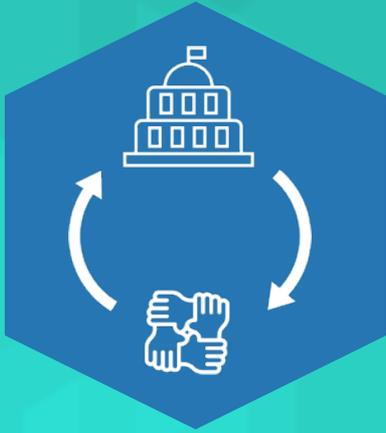
*Ex: School  
Nutrition  
Standards*





# 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](http://www.forworkingfamilies.org)



# State Interference: Undermining Racial and Gender Justice



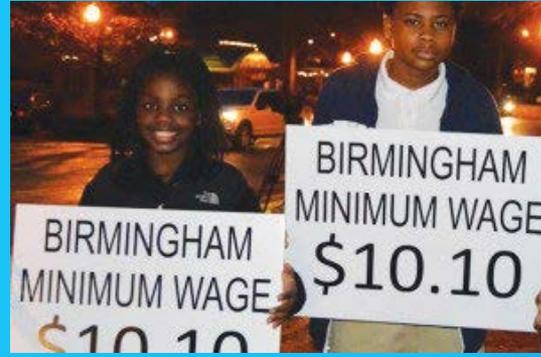
Corporate  
Capture of  
State  
Legislatures

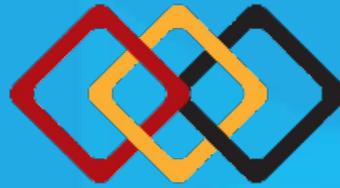


Deregulation--  
removing protections  
for workers, tenants,  
LGBTQ and vulnerable  
communities, the  
environment



Systems of Oppression--  
white supremacy,  
misogyny

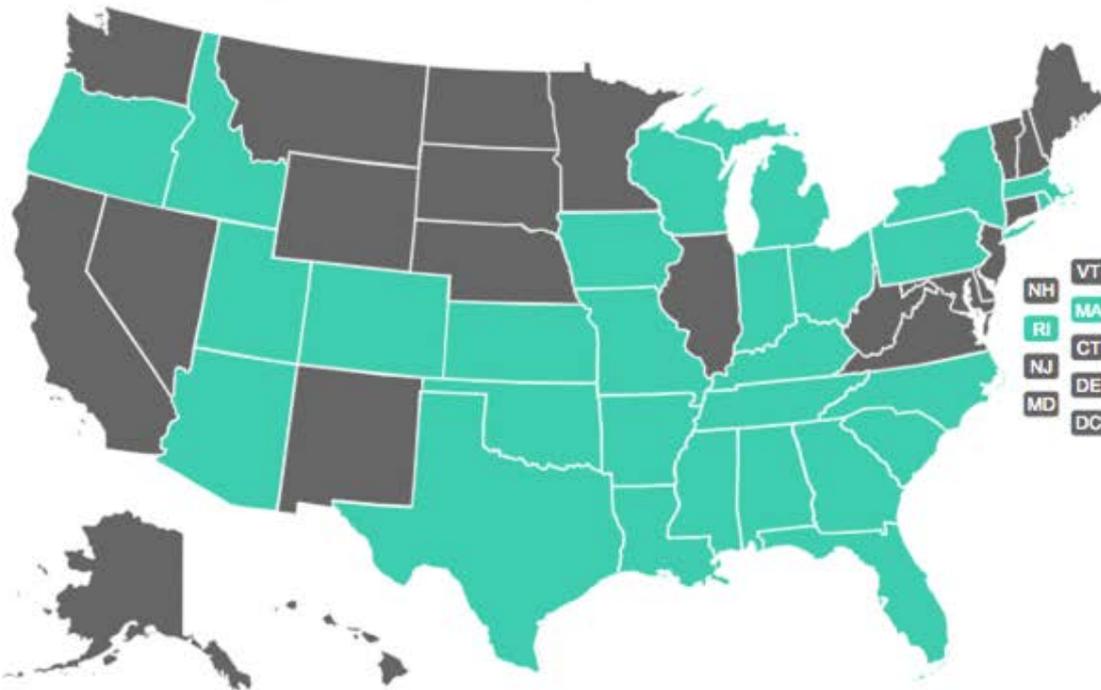




[www.forworkingfamilies.org/preemptionmap](http://www.forworkingfamilies.org/preemptionmap)

## **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

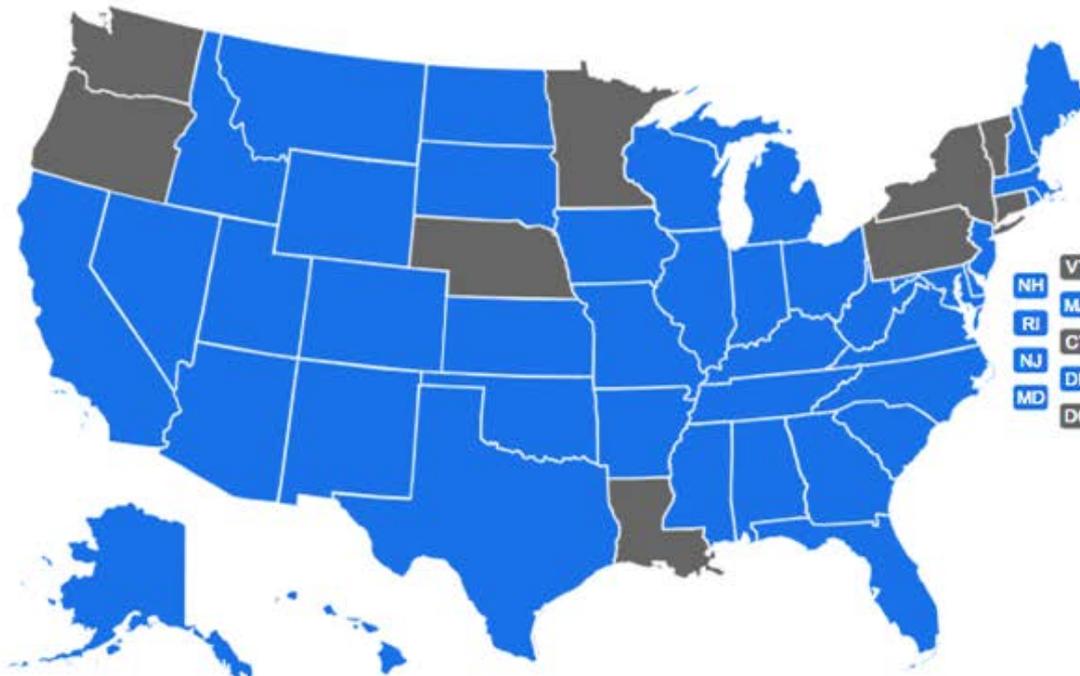




[www.forworkingfamilies.org/preemptionmap](http://www.forworkingfamilies.org/preemptionmap)

## 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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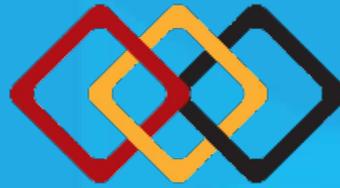
 Nondiscrimination

 Workplace Equity

# Uber & Lyft: Running Over Local Democracy



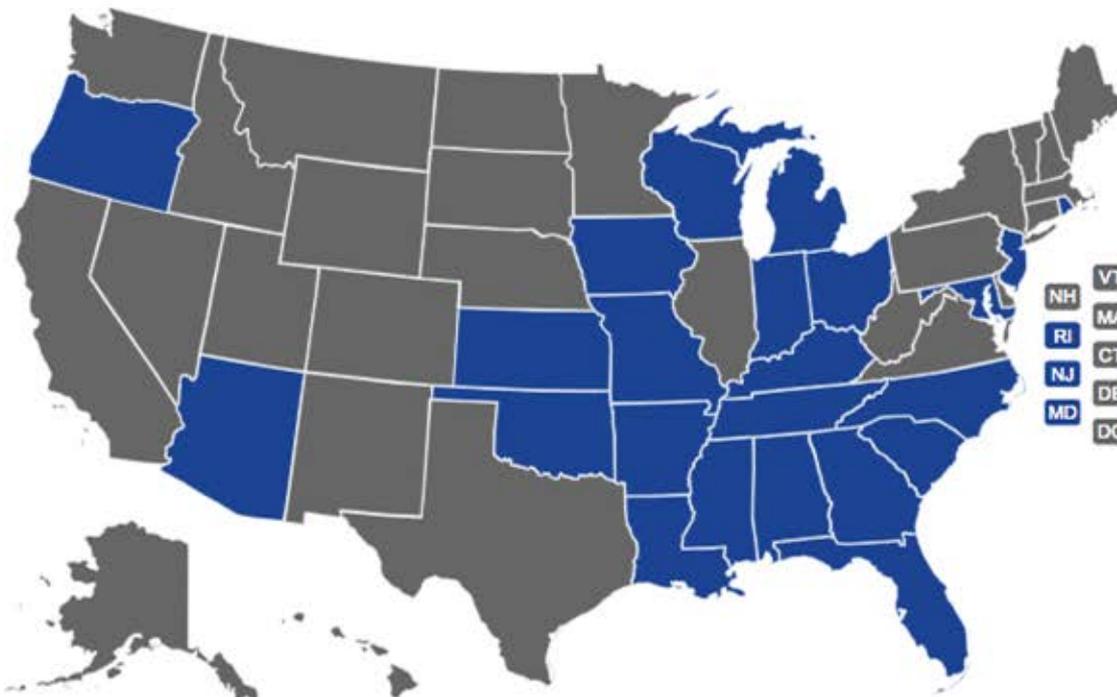
**#uberinterference**



[www.forworkingfamilies.org/preemptionmap](http://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.



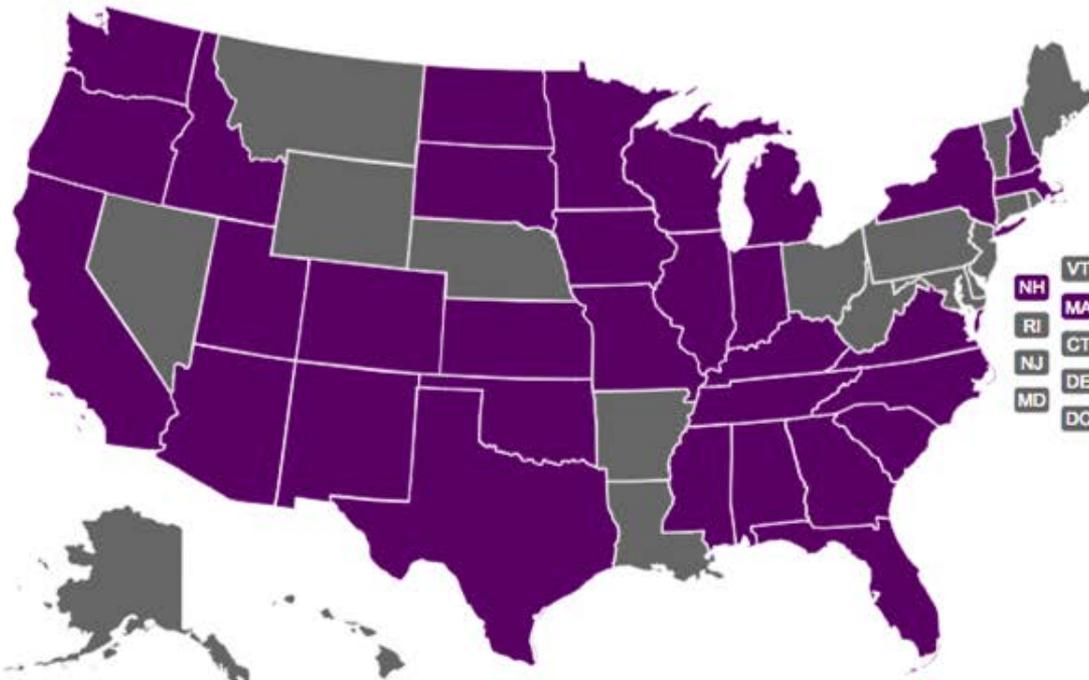
-  Construction Jobs Standards
-  Employee Benefits
-  Fair Scheduling
-  Gig Worker + Consumer Rights
-  Housing Affordability
-  Immigrants' Rights
-  Minimum Wage
-  Nondiscrimination
-  Workplace Equity



[www.forworkingfamilies.org/preemptionmap](http://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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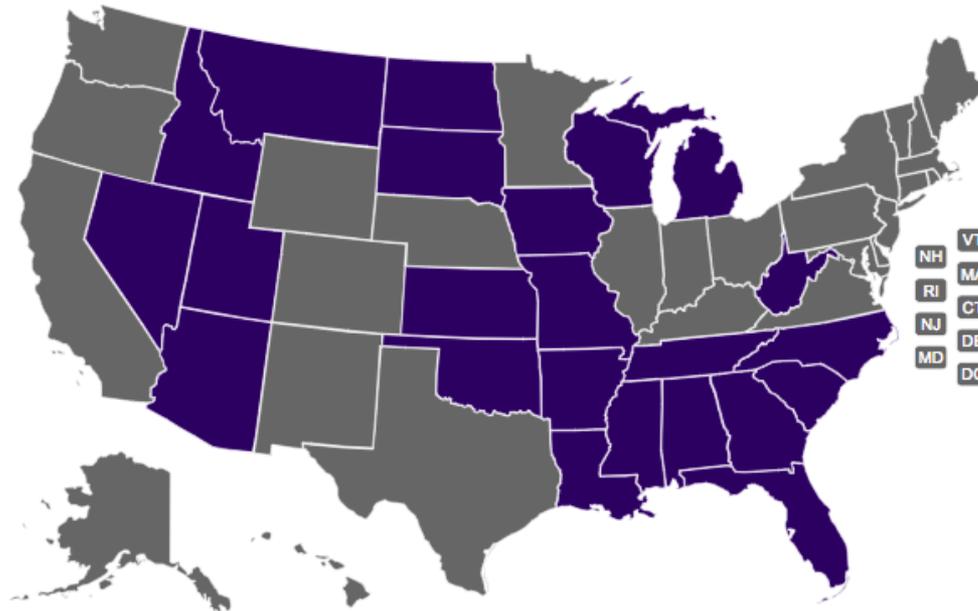
 Workplace Equity



[www.forworkingfamilies.org/preemptionmap](http://www.forworkingfamilies.org/preemptionmap)

## **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



<b>Geography</b>	<b>Percent Black City Population</b>	<b>Avg. White Monthly Earnings in Lowest Wage Sector</b>	<b>Avg. Black Monthly Earnings in Lowest Wage Sector</b>	<b>Black Worker Earnings to White Worker Dollar</b>	<b>Percent Whites in State Legislature</b>
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%
<b>AVERAGE</b>	<b>55%</b>	<b>\$1,784</b>	<b>\$1,431</b>	<b>\$0.80</b>	<b>80%</b>

# Increased Consequences of Minimum Wage and Employee Benefits Preemption on Women



## WOMEN

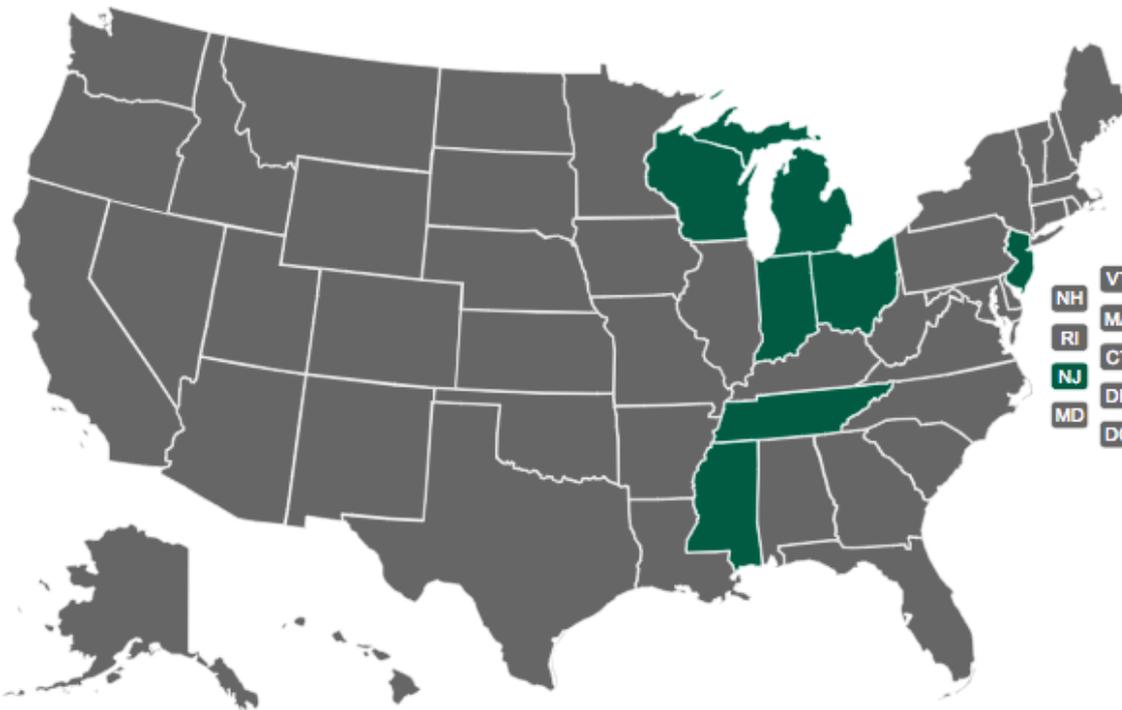
- = Majority of low-wage workers nationally
  - = 60% of the workers earning wages at or below the federal minimum in Pennsylvania
- = Less likely to have paid sick leave
- = Less likely to afford to take leave without pay
- = Two-thirds of all family caregivers
- In 29% of African American families 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](http://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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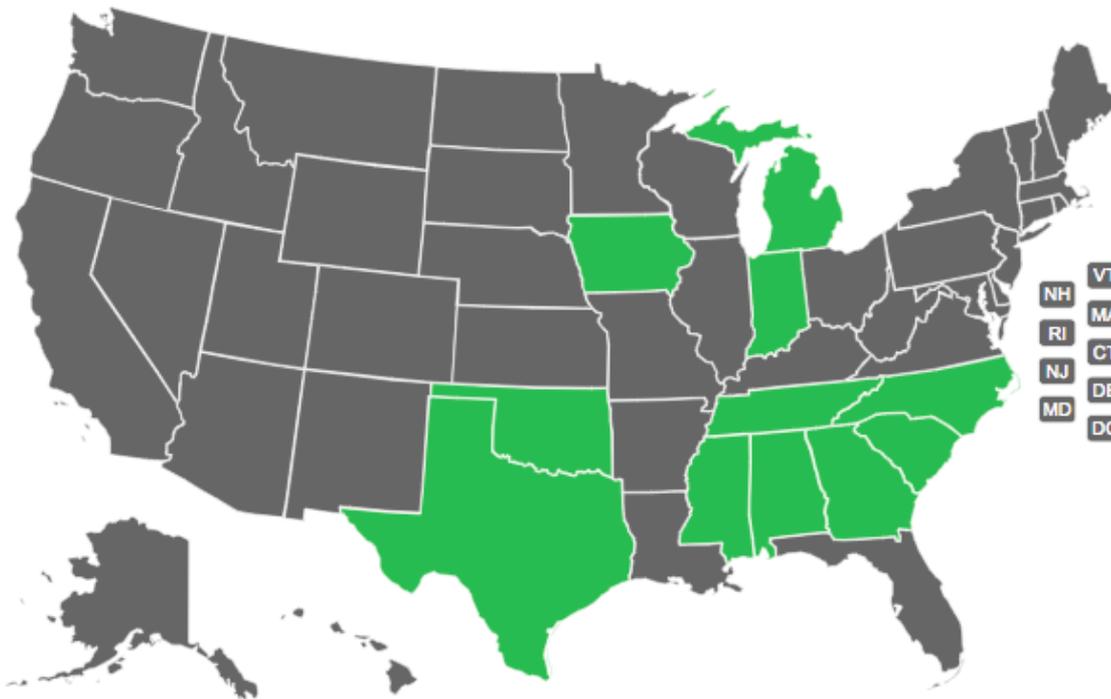
 Workplace Equity



[www.forworkingfamilies.org/preemptionmap](http://www.forworkingfamilies.org/preemptionmap)

## 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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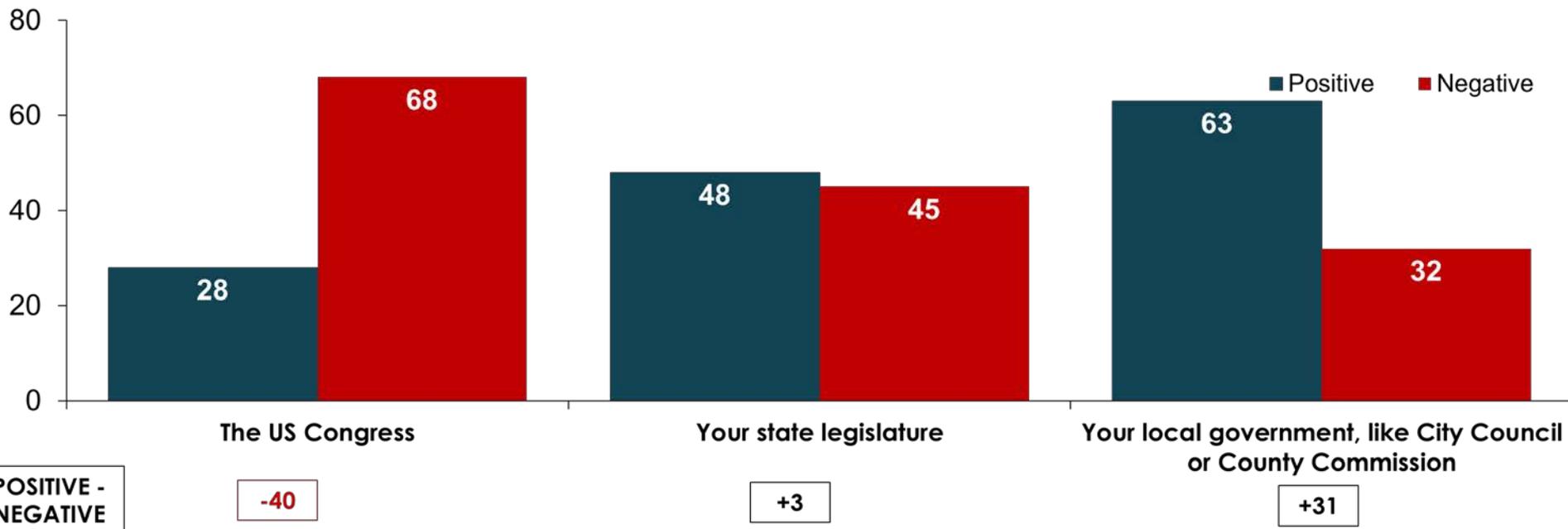


What are some resources to address preemption?

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

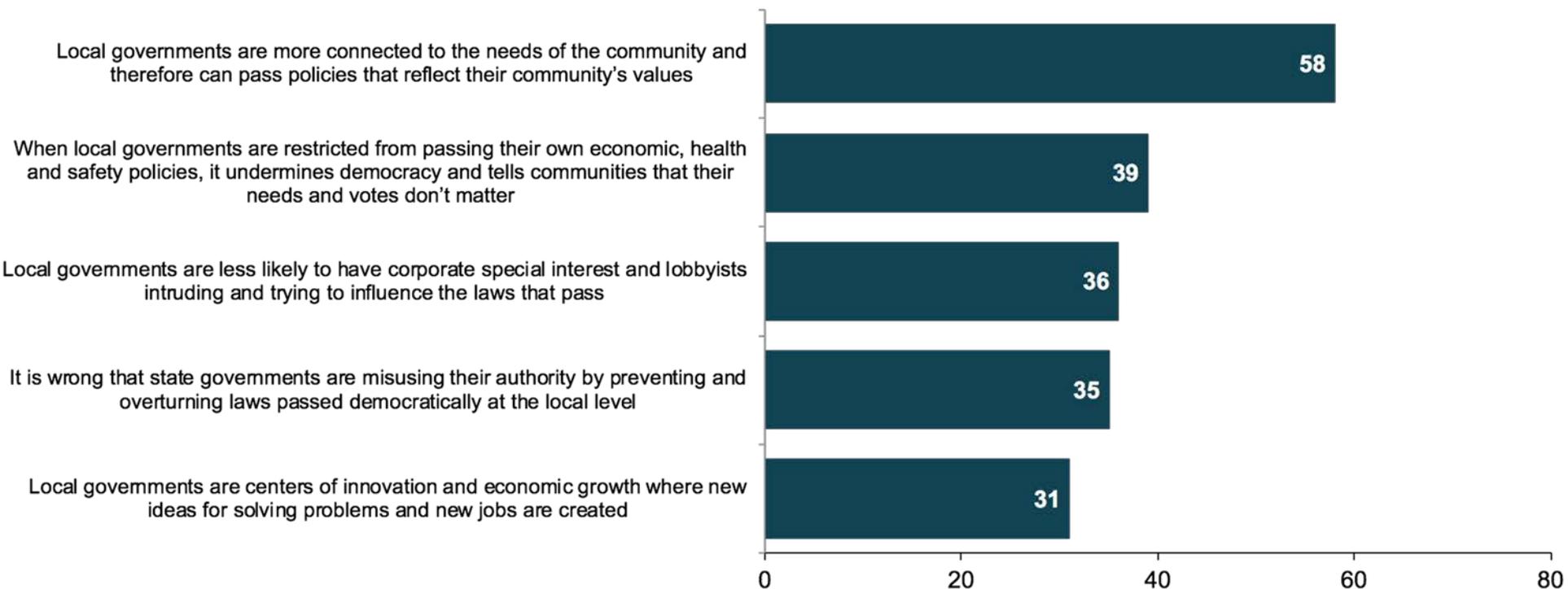
*Congress receives incredibly negative reviews.*

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



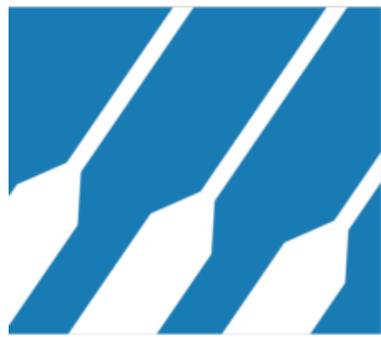
**DON'T  
MAKE THIS A  
PARTISAN  
ISSUE**

**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/>



**ChangeLab Solutions**  
Law & policy innovation for the common good.



**Thank you!**

Questions?

[changelabsolutions.org/the-series](http://changelabsolutions.org/the-series)



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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](https://changelabsolutions.org/the-series)



**ChangeLab Solutions**

Law & policy innovation for the common good.

## 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](http://changelabsolutions.org/publications/understanding-preemption)*

For these and other resources, visit us at  
[changelabsolutions.org](http://changelabsolutions.org)



# Keep the conversation going

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