

Study identifies strategies states use to limit local government control

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Local governments are often innovators of public health policymaking—the first smoke-free air acts, menu labeling laws, and soda taxes were all implemented locally. However, states are increasingly limiting local control over public health issues by passing laws that overrule local regulations, a practice known as preemption.

A new study by researchers at NYU School of Global Public Health, published in the *American Journal of Preventive Medicine*, takes a closer look at the strategies state legislatures use—often behind closed doors—to pass preemptive laws that limit local government control.

"These strategies used by state policymakers obscure public debate about preemption and the underlying public health and human rights issues at stake," said Jennifer Pomeranz, assistant professor of public health policy and management at NYU School of Global Public Health and the study's lead author. "By preempting local regulations, state legislatures concentrate power at state capitals, limit the capacities of [local governments](#) to protect their residents from public health harms, and minimize the nation's ability to learn from local policy successes."

While legal scholars know that various strategies are used by state legislatures to pass laws limiting [local control](#), the NYU researchers sought to gain a more detailed understanding of how preemptive laws are enacted. They analyzed bills from which preemptive laws passed over a five-year period (2014-2018), with a focus on five policy areas: tobacco control, firearms, paid [sick leave](#), food and nutrition, and civil rights.

The research identified five methods state legislators used to pass and support preemption:

- **Pass preemptive bills quickly:** The most common strategy for passing preemptive laws was to do so quickly—sometimes getting a bill passed on the same day it was proposed. Passing bills quickly minimizes open debate on the purpose of the bill, reduces opponents' ability to organize, and limits legislators' ability to consult with constituent groups.
- **Conceal preemption:** The researchers found that states hid preemptive measures by adding them to existing bills on unrelated topics (in Ohio, for instance, paid sick leave preemption was added to a bill outlawing "puppy mills"), using a misleading title for a bill that does not reflect its substance, or bundling preemption of multiple unrelated topics. While the bundling method violates rules found in many state constitutions requiring bills to focus on single subjects, the researchers write that most single-subject violations go unchallenged because it is resource intensive to bring legal challenges and courts struggle to interpret the requirements in these laws.
- **Repeal and replace preemption:** North Carolina's controversial "bathroom bill" asserting that an individual must use the bathroom corresponding with the sex on their birth certificate—effectively discriminating against transgender people—was passed in 2016, preempting local civil rights and paid sick leave laws. A year later, it was replaced with a bill using different language—but with the same preemptive effect.
- **Preempt litigation:** Utah enacted a law protecting the firearm industry from lawsuits. "By preempting lawsuits against entire industries, legislatures have reduced the policy agenda-setting and transparency benefits of litigation," the authors write.
- **Punitive preemption:** Several states allow for lawsuits against local governments and officials for acting in a way the state deems preemptive regarding firearms—for example, local regulations excluding licensed gun

owners from buildings. The authors note that even the threat of litigation, including the related costs and fees, intimidates localities with limited resources and reduces the likelihood that these topics will ever be openly discussed in communities.

The study also suggests state legislators are strategically adding preemptive measures to bills on topics with broad support, making it more difficult for opponents to contest or ultimately defeat the [bill](#).

"It appears that the use of these strategies sneaking in preemption may be accelerating," said Diana Silver, associate professor of public health policy and management at NYU School of Global Public Health and the study's coauthor. "We need increased transparency in state lawmaking, especially on matters of public health, which directly affect all of our lives."

While the study analyzed bills through 2018, the findings on preemption are particularly relevant to the current COVID-19 pandemic, which has brought about tensions between local and state governments on closures and "stay at home" orders. Florida's governor, for instance, signed an executive order in April overruling local regulations and forcing local governments to adhere to the state's restrictions.

Provided by New York University

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