

Preemption occurs when a higher level of government supersedes the authority of a lower level of government; it is a constraint on local policymaking power. Traditionally, preemption is a neutral legal policy tool used to avoid conflicting laws across different levels of government. However, in recent years, it has become an increasingly common legislative tactic that removes the regulatory power of local governments across a variety of issues while also limiting the average person's ability to participate in our democracy. Special interest groups are using their significant resources to make sure their interests and bottom lines are protected by supporting the consolidation of power at the state level, effectively stopping local policy innovation. The American Heart Association (AHA) supports science-based policy solutions at all levels of government, recognizes the importance of local policymaking to promote and protect public health and advance health equity, and believes in protecting local governmental power.

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government from passing or enacting laws that require different or more stringent standards than the higher level of government, stripping the power of lower levels of government to regulate certain issues. There can also be vacuum preemption, when a higher level of government prohibits lower levels of government from regulating an issue, while also failing to enact its own policies, therefore creating a policy vacuum that leaves an issue entirely unregulated.

Preemption may be either express or implied. It is express when a higher level of government clearly states that it intends to supersede the laws of a lower level of government on a specific issue. Implied preemption occurs when a court of law determines that a higher level of government intended to preempt more-local regulation based on the law's structure

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in part, by preempting discriminatory state and local laws that drive racial inequities and other injustices.”¹

The Misuse of Preemption

Preemption is not inherently bad, and as noted above, can be a useful and necessary legal policy tool. The problem is not preemption itself,

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always possible on a larger scale because implementation, enforcement, and adjustment are often easier on a smaller stage. Local policy experimentation can evolve into widescale adoption of public health policies. Many important policies evolved at the local level; traditional public health promoting strategies like smoke-free air laws and the regulation of tobacco and alcohol sales, as well as efforts to address social determinants of health through paid sick leave laws, mandatory inclusionary zoning, and expanded anti-discrimination protections.¹

Preemptive laws can effectively stop progress in public health policymaking and eliminate the ability of local governments to act to protect their citizens.

Preemption

Preemption can also be misused when legislation is drafted with imprecise, overly broad, or ambiguous language. When a state law does not explicitly preempt local authority, but the language implies that

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someone in a position of power.⁸ When local governments lose policymaking power, the average person's ability to engage with their representatives and participate in meaningful policymaking is diminished. Additionally, higher levels of government often offer less-reflective representation. There is a noticeable lack of diversity amongst state elected officials, with nearly every state legislature failing to achieve racial and gender parity when compared to the makeup of the population.⁹ Often the people most impacted by preemption are women and people of color, while the policymakers leading the effort to pass these preemptive laws are frequently white men who receive campaign donations from special interest groups that stand to gain financially from state preemption.¹⁰ Grassroots movements made up of passionate citizens pushing for policy change are also undermined by preemption; when the issue around which the movement is organized is effectively preempted, the original incentive to organize is gone and the movement may disband.

The Negative Impacts f

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worker socioeconomic status, employment status (full-time v. part-time), and employer size.^{22, 23}

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The AHA is dedicated to evidence-based, nonpartisan, equitable public policy that promotes and protects the health and wellness of all people. The AHA recognizes the importance of local lawmaking lan wmce eα(l)

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