



## **Local Power in the Face of State Hostility: What Cities Can Do**

Local governments and advocates are critically important for developing innovative and equitable laws that are responsive to community needs. Yet states are increasingly interfering with the power of localities to do just that, blocking—or “preempting”—local authority to legislate across an incredibly broad range of issues.

But even in the face of a state legislature hostile of local innovation, municipalities often have various options to pursue creative policymaking. Given that local authority and preemption laws vary from state to state, the following suggestions should act as a guide for local governments and advocates to start thinking about how to get around state hostility to local legislation.

### ***Enacting Local Legislation in the Face of State Hostility***

Even in states that are actively trying to block local policymaking, it can be possible for municipalities to enact legislation that reflects its own community’s values.

First, advocates should learn what local power looks like in their particular state. The Local Solutions Support Center has produced [state-by-state memos](#) describing each state’s approach to home rule (the power granted to municipalities to enact local legislation) and preemption.

Second, advocates should familiarize themselves with their state’s existing preemption laws. The [Partnership for Working Families](#) and [Grassroots Change](#) have put together a non-exhaustive list of state laws that interfere with local policymaking authority.

Once advocates and policymakers have an idea of what preemption looks like in their state, they can identify areas where local governments are not blocked from engaging in policymaking. Some states carve out certain areas where local actions are protected from preemption, such as in contracting policies or rules around local elections. A close look at particular preemption laws can also allow policymakers to find creative ways to work around those laws: for example, in a state that prohibits local employee benefits laws, localities can sometimes attach paid sick leave or minimum wage requirements to city contracts or procurement policies. Cities can also apply those policies to their own workforce as a way to highlight the importance of the underlying policy. Advocates should note, however, that exploiting these kinds of “gaps” in a preemption law can lead to states filling them with new prohibitions.

### ***Non-Legislative Approaches to Local Policymaking***

When enacting desired local legislation is infeasible or impossible, advocates can explore non-legislative ways to promote their desired policy outcomes. Some options and examples include:

- Passing local resolutions or joining alliances of local officials calling for the state legislature to grant cities home rule authority and/or repeal preemption laws. Local

elected officials can also reach out to advocates and issue experts to build or leverage existing cross-movement coalitions to engage constituents on the impact of state interference and the need to strengthen local democracy.

- Establishing certification programs, which set out standards for particular kinds of businesses and certifying that a provider meets those standards.
- Providing public services in areas where localities are blocked from regulating private service providers. Some municipalities provide public broadband services; others provide health insurance to fill gaps in coverage required by the Affordable Care Act.
- Entering into public-private partnerships to encourage the private sector to undertake actions that the municipality prohibited from. For example, Gary, Indiana, which is preempted from enacting gun regulations, partnered with local businesses to create a gun buy-back program where the businesses provide vouchers for individuals who voluntarily turn in firearms.

### *Options for Challenging Preemption Laws*

Local governments and advocates can also consider challenging state preemption laws.

Many state constitutions place substantive and procedural constraints on the ability of state legislatures to pass laws, including those that affect local governments. For example, many states prohibit “special laws” that single out a specific locality. And many states require the legislature to follow certain procedures during the legislative process, such as requiring that the bill have a clear title and deal with only one subject. Since preemption laws are often politically unpopular, state legislatures have often tried to obscure their effect or rush their passage, potentially violating these kinds of procedural requirements.

Some preemption laws also implicate federal constitutional concerns, which can be the basis of a legal challenge. Laws that either facially discriminate against protected classes or are motivated by an intent to discriminate against a specific group or class of individuals could run afoul of the 14<sup>th</sup> Amendment’s Equal Protection Clause. Similarly, laws based on religious preferences could violate the First Amendment’s Establishment Clause.

Finally, some punitive preemption laws—those that punish local governments or local officials for enacting local legislation—could violate state home rule laws or the First Amendment’s guarantee of freedom of expression.

### *Available Resources*

Since home rule and preemption analyses vary by state, this summary merely outlines several possibilities that local governments and advocates in states that are hostile to local policymaking can explore, and should not be considered legal advice.

For more information and state-specific research, contact A Better Balance at (212) 430-5989 or [dlankachandra@abetterbalance.org](mailto:dlankachandra@abetterbalance.org), or the Local Solutions Support Center at [info@supportdemocracy.org](mailto:info@supportdemocracy.org).