

"By introducing pre-emptive statewide legislation we can shift the battle away from the community level back to the state legislatures where we are on stronger ground."

— Tina Wells, Philip Morris, 1994

What is preemption? (The ABC's)

- A. **pre emp tion** \pre-'em(p)-shen\; n. 1: a provision in state (or federal) law that eliminates the power of local (or state and local) governments to regulate tobacco.
- B. **Preemption:** A legislative or judicial scheme in which a higher level of government (state or federal) strips lower level governments of their authority over a specific subject matter. Preemption wipes out local control – leaving local officials powerless to enact policies to protect the health and safety of their community. Preemptive tobacco laws eliminate the power of local governments to regulate tobacco.
- C. **PREEMPTION:** TOBACCO CONTROL'S #1 ENEMY...and the tobacco industry's top legislative goal, because it results in much weaker restrictions on smoking. It concentrates authority at the state level, where the industry is stronger and can more readily protect its interests.

Why (ELSE) Is It So Important for Tobacco Policy to be LOCAL?

LOCAL smoke-free regulations offer several advantages over state or federal legislation. Local regulations:

- Are easier to enact and strengthen
- Provide more comprehensive and stronger protection from SHS
- Offer more accessible and accountable enforcement mechanisms
- Serve as the source of innovation and advances in tobacco-control policymaking
- Involve grassroots public education and organizing, thus leading to cultural changes that decrease acceptance of smoking in society

FOUR KEY FACTS

- 1. Over the past 20 years the industry has managed to influence the passage of some form of preemption in 32 states, gutting dozens of local tobacco control laws and preventing hundreds more from passing. So far, North Dakota has escaped this pitfall—but we will need to work very deliberately to keep it that way!
- 2. The surest way to thwart preemptive legislation is to educate lawmakers to draft an explicit ANTI-preemption clause into each bill. E.g.: "The Legislature declares its intent not to preempt the field of regulation of smoking and/or sale of tobacco. A local governing body may ban completely the smoking of tobacco or may regulate tobacco use in any manner not inconsistent with provisions of state law."

- 3. The opposite of preemption is local control. “Preserving Local Control” is a widely supported concept across North Dakota, and a growing number of communities and organizations have precedents in favor of local control (and, thus, against preemption). The larger organizations include the North Dakota League of Cities, and the North Dakota Public Health Association. **Preventing preemption is the only way to protect local control.**

- 4. The public health community is unanimous in its opposition to preemptive tobacco control laws. The following national organizations have all adopted formal positions opposing preemption:
 - American Cancer Society
 - American Heart Association
 - American Lung Association
 - American Medical Association
 - Americans for Nonsmokers’ Rights
 - American Public Health Association
 - Association of State and Territorial Health Officials
 - Campaign for Tobacco-Free Kids
 - Institute of Medicine of the National Academy of Sciences
 - National Association of County and City Health Officials
 - National Association of Local Boards of Health
 - U.S. Department of Health and Human Services (Healthy People 2010)
 - Working Group [on Tobacco] of State Attorneys General

Three Easy Talking Points

- Preemption or any other threat to local control is unacceptable. “I would like our (city commission, county commission, organization, etc.) to adopt a formal policy statement or resolution supporting local control and opposing preemption.”
- Many North Dakota communities and organizations have precedents in favor of local control, and polls consistently show public support for local control.
- The public health community is unanimous in opposing preemptive tobacco laws.

**As always, if the tobacco industry WANTS something,
we health advocates should definitely OPPOSE it.**

Big Tobacco is determined to enact preemption, so we must prevent it.

Here are two more samples of the tobacco industry’s own pro-preemption statements:

“We could never win at the local level ...tobacco companies’ first priority has always been to preempt the field...because the health advocates can’t compete...on a state level.” (Former Tobacco Institute lobbyist Victor Crawford)

“...We’re dead serious about achieving pre-emption in all 50 states.” (Tina Walls, Phillip Morris)

P.S. If you would like to learn more about “preventing preemption” [including specific examples of preemptive language to watch out for], you will find a wealth of resources at:
 (1) the Americans for Nonsmokers’ Rights website at www.protectlocalcontrol.org and
 (2) the AMA’s preemption site at www.ama-assn.org/ama/pub/category/7323.html

How Can We Beat Preemption? -- **PREEMPT** It!

[I.e., How can WE "Get in" ahead of Big Tobacco's push for preemption in N.Dak.??]

A Resolution-Based Recipe - - - Easy-as-Pie ☺

STEP ONE: Now that you are The Local Expert on preemption in tobacco control, contact a "friendly" member of your city or county commission and ask for a few minutes to visit with her/him about this issue. Using the materials presented today, explain why you would like to have consideration of a pro-local-control resolution placed on that commission's next meeting agenda. Tell your contact commissioner that you (or another designated member of your coalition) will be present at the meeting to present the rationale for adopting such a resolution and/or to answer questions.

STEP TWO: Confirm with your friendly commissioner the date/time when the topic of preemption-prevention has been placed on the commission agenda.

STEP THREE: Send or deliver good, succinct, pro-local-control information to each commissioner ahead of the meeting date. You may want to use a version of "Sample # 1-Pre-Letter to your commission." Give each commissioner a copy of your suggested draft resolution, too; (this could be "Sample # 2-The Resolution"). If you sense that your commissioners would like more in-depth information, provide each person with access to the booklet "Preemption-Taking the Local Out of Tobacco Control," and refer them to the AMA website at www.ama-assn.org/ama/pub/category/7323.html

STEP FOUR: Attend the designated commission meeting. Come prepared with all your printed resources (including the preemption booklet, "nutshell" summary, copies of proposed resolution, and a copy of the North Dakota League of Cities resolution). Be flexible: Your commission may want you to orally summarize the reasons for adopting a resolution, or they may only want you to answer their specific questions, or they may be ready to adopt a good resolution without any further discussion at all. [Step Four should prove to be very interesting, and you can be absolutely certain that it will be educational for you.]



THE MOST IMPORTANT STEP

This is IT!

STEP FIVE:

- **THIS** is where the payoff comes: **THIS** is the whole reason you got that resolution passed! -

After your commission adopts a good pro-local-control resolution*, contact each legislator in your district/area and ask to set up an appointment to discuss local-control/preemption and how the next ND Legislative Assembly will be called on to deal with this issue. At each meeting, maximize your opportunity. Try to educate that legislator regarding (1) WHAT preemption is—and what preemptive language is; (2) WHERE preemptive language might be inserted [basically in any bill]; (3) WHO is pushing for preemption and WHY; and (4) WHO supports local control and WHY. Many lawmakers respect the medical community, so it's a good idea to stress that the American Medical Association has taken strong action to thwart preemption. You can even share the AMA's preemption-dedicated website: www.ama-assn.org/ama/pub/category/7323.html As always, leave your own contact information with them, and invite your legislators to communicate any preemption-related questions/concerns with you. → → And, BEFORE the Legislature convenes, BE SURE to follow up with a phone call to remind each legislator about watching for/heading off preemption – and warning us if they see trouble coming!!

*If for any reason your commission declines to adopt a resolution at this time, just move on to your next local commission, and plan to revisit the "declining" commission at a later date. ☺

**This is SAMPLE # 1:
'Pre' Letter to your commission(s)**

To: Members of the _____ Commission
From: _____
Date: _____

Re.: Taking action to preserve Local Control, and halt the tobacco companies' push to impose preemption on issues relating to tobacco control/prevention

In a nutshell, here's the issue:

For years, the tobacco industry has fought hard to remove ("preempt") local control over tobacco-related issues such as youth access to tobacco products, and policies protecting the public from toxic secondhand smoke. In fact, the industry's goal is to see all tobacco issues handled at the state or federal level.** Why? Because **THEY KNOW FROM EXPERIENCE THAT THEIR DEEP POCKETS OFTEN PRODUCE EXACTLY THE RESULTS THEY WANT** in Congress and in the State Legislatures. But their influence-buying does not work well for them at the city and county levels. Of course, from a public health point of view, that is precisely the reason it is so important to **PRESERVE** local control over all tobacco legislation. The American Medical Association feels so strongly about fighting back against preemption that they have designed their own website for that purpose: www.ama-assn.org/ama/pub/category/7323.html

At this time, the industry is playing their preemption card with renewed vigor right here in the Midwest. They are covertly pushing (by working through their favorite front groups) to get cities and counties to pass resolutions stating that all action on smoke-free policies must be handled by the state legislature, not local authorities. They've already hit close to North Dakota, as East Grand Forks has passed one of their resolutions.

Believing that the best defense is a good offense, we are asking the _____ Commission to approve a resolution affirming support for LOCAL control and asking the N.Dak. Legislature to strengthen its statewide clean-indoor-air protections as well. I've attached a possible resolution draft for you to consider.

The tobacco industry is sneaky, but we can beat them to the punch on this one.

Sincerely,

** "Pre-emption is the tobacco industry's top legislative goal," said an American Medical Association report, "Pre-emption: Taking the 'Local' out of Tobacco Control." The report, based on previously secret tobacco industry documents, reveals the industry's strategy to wipe out local control in favor of weak state laws that appear to safeguard public health, but actually benefit the industry. **And the reason is MONEY :**

In the tobacco industry's OWN WORDS - - -

[1] "Financial impact of smoking bans will be tremendous," the AMA report quotes a Philip Morris spokesman as saying. "Three-to-five fewer cigarettes per day per smoker will reduce annual manufacturer profits a billion dollars plus per year."

[2] "**We could never win at the local level,**" said Victor Crawford, a Tobacco Institute lobbyist. "So, the Tobacco Institute and tobacco companies' first priority has always been to pre-empt the field ... the health advocates can't compete with me on a state level."

[3] The AMA report quotes Tina Walls of Philip Morris saying, "While we're not married to any particular form of pre-emption language, **we're dead serious about achieving pre-emption in all 50 states.**"

SAMPLE # 2: The Resolution

_____ City(or County) Smoke-Free & 'Local Control' Resolution

WHEREAS, secondhand smoke is a Class A carcinogen containing over 4,000 chemicals, 200 of which are known poisons and 50 of which are known to cause cancer; and

WHEREAS, secondhand smoke kills 50,000 to 60,000 Americans every year from diseases such as heart disease and lung cancer; and

WHEREAS, children are particularly vulnerable to the hazards of secondhand smoke, which causes respiratory tract infections, asthma induction and aggravation, middle ear infections, sudden infant death syndrome (SIDS), and decreased lung function; and

WHEREAS, employees should not be forced to risk their health through exposure to dangerous and deadly toxins in their workplace; and

WHEREAS, the most effective way to protect employees and public health from the hazards of secondhand smoke is to eliminate secondhand smoke by creating smoke-free environments; and

WHEREAS, the City of _____ is responsible for protecting the health and safety of all who live, work and visit here; and

WHEREAS, the City of _____ believes that the issue of smoking in public places and work sites (including restaurants) should be a concern for all levels of government - federal, state and local;

THEREFORE, BE IT RESOLVED, by the City Commission of the City of _____, North Dakota:

1. The City of _____ hereby requests that the NORTH DAKOTA Legislature strengthen state laws to fully protect workers and the public from the known health dangers in secondhand smoke by adopting legislation that creates smoke-free workplaces.

2. The City of _____ also requests that any state legislation or regulation must preserve the right of local levels of government to adopt more restrictive measures to protect citizens from secondhand smoke.

Signed:

Date:

**SAMPLE # 3: Letter to set up meeting
to educate legislators AFTER
passage of your resolution(s)**

DATE

NAME of LEGISLATOR
ADDRESS
ADDRESS

Dear _____:

There's a new threat to the principle of local-government control over local issues in North Dakota.

For years, the tobacco industry has fought hard to remove ("preempt") local control over tobacco-related issues such as youth access to tobacco products, and policies protecting the public from toxic secondhand smoke. In fact, the industry's goal is to see all tobacco issues handled at the state or federal level. Why? Because **they know from experience that their deep pockets** often produce exactly the results they want in **Congress and in the State Legislatures**. But their influence-buying **does not work** well for them at the city and county levels. Of course, from a public health point of view, that is precisely the reason it is so important to PRESERVE local control over all tobacco legislation. The American Medical Association feels so strongly about fighting back against preemption that they have designed their own website for that purpose: www.ama-assn.org/ama/pub/category/7323.html

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Locally, both the _____ City Commission and the _____ County Commission recently adopted resolutions *opposing* such a preemption campaign in North Dakota. Also, the ND League of Cities has adopted a similar resolution. If possible, I would like to meet very briefly with you to share copies of those resolutions, along with other pertinent information about preemption. Do you think we can find a time in the next couple of weeks to do that?

I'll call to discuss a meeting time. (Or you can call or email me as indicated below.) Thank you!

Sincerely,

Vicki Voldal Rosenau, Tobacco Prevention Coordinator
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