What the Health Community Says About Preemption

Fundamentals of Smokefree Workplace Laws, November 2009

American Cancer Society (ACS), American Cancer Society Cancer Action Network (ACS-CAN), American Heart Association (AHA), American Lung Association (ALA), Americans for Nonsmokers’ Rights (ANR), American Public Health Association (APHA), Asian Pacific Partners for Empowerment and Leadership (APPEAL), Campaign for Tobacco Free Kids (CTFK), National African American Tobacco Prevention Network (NAATPN), National Association of Local Boards of Health (NALBOH), National Latino Tobacco Control Network (NLTNCN), The Praxis Project, Tobacco Control Legal Consortium (TCLC), Tobacco Control Network (TCN), Tobacco Technical Assistance Consortium (TTAC)

III. NEVER AGREE TO PREEMPTION

If you are working on a law at the state or county level, the opposition may try to add a preemption provision to your language. Preemption is unacceptable and should be avoided at all costs.

Preemption is a provision at one level of government (usually federal or state) that prevents a lower level from enacting stronger laws on an issue than exist at the higher government level. Since the 1980’s, one of the tobacco industry’s favorite tactics has been to lobby state legislatures to preempt local smokefree laws. Where successful, as it has been in a number of states, this tactic shifts the struggle for smokefree air from local jurisdictions, where grassroots smokefree advocates have the upper hand, to the state legislature, where the tobacco industry wields substantial influence. Local municipalities that have passed the first strong smokefree ordinances in a state, have passed a flurry of smokefree ordinances in a short period of time, or have passed a smokefree law in the capital city should be on special guard for attempts to preempt local smokefree activity.

Preemption is usually added to a weak bill regulating smoking, which is then used as a cover to give the impression that the state is actually doing something to protect nonsmokers when, in fact, it isn’t. Attempts to add preemption may be stealthy, employing technical, unclear language to bills that are placed on the fast track with little or no public notice. Preemptive amendments or riders can also be tacked on to unrelated bills. The tobacco industry’s push for preemption is a tribute to our success at the local level.

Local control is at the heart of our broader goal of educating the public about the health effects of secondhand smoke and changing social norms. Debates over proposed local smokefree ordinances typically generate extensive media coverage, letters to the editor, town hall meetings, and city council hearings, all of which increase public awareness of secondhand smoke and public support for smokefree laws.

For further information on preemption, visit the Protect Local Control website supported by Americans for Nonsmokers’ Rights and the American Cancer Society Cancer Action Network, at www.protectlocalcontrol.org.
American Cancer Society, *State Preemption of Local Tobacco Control Laws*, March 1992

“RESOLVED: That the American Cancer Society opposes any preemption clauses that are intended to remove or restrict power and authority from a unit of local government or regulate clean indoor air and/or other tobacco control laws.”

American Cancer Society of Wisconsin, American Heart Association of Wisconsin, American Lung Association of Wisconsin, and Smokefree Wisconsin, *Joint statement to Members of the Wisconsin State Legislature*, March 2005

The promotion of state legislation that preempts the authority of local government to enact and enforce tobacco control ordinances is a tobacco industry strategy that undermines public health. Preemption laws are promoted on the pretext of providing for uniform statewide statutes, but in fact serve the tobacco industry by weakening existing local laws and precluding stronger local laws from being passed in the future. Local ordinances are almost always stronger and more comprehensive than corresponding state tobacco control legislation because the tobacco industry exerts a stronger influence at the state level. According to internal industry documents, the enactment of preemptive tobacco control laws is one of the tobacco industry’s top priorities. Preemption compromises the health and rights of Wisconsinites and only benefits the tobacco industry.

American Heart Association, *American Heart Association Public Policy Agenda for the 107th Congress, 2001-2002*

“[T]he Association supports public policies in accordance with the following set of core principals for federal legislation: …oppose federal preemption of state and local statutes.”


“The American Lung Association/American Thoracic Society opposes all forms of preemption of state and local tobacco control authority. The ability of any government entity to enact tobacco control legislation is a cornerstone of an effective tobacco control policy. There is no trade-off worth the price of preempting a state or community’s right to pass tobacco legislation.”


“Local communities should continue to control smoking in public. State legislatures should assume responsibility for ensuring smoke-free areas. Any preemptive tobacco laws should be repealed by public demand.”


“The tobacco companies clearly recognize preemption as their best tactic against tobacco control. We know this through their behavior and through recently leaked internal documents... The only answer is NO PREEMPTION, ever. There’s never a benefit to the public from preemption, and there’s always a cost.”


The American Public Health Association “(1) Opposes state and federal laws preempting local governments’ ability and authority to enact their own more stringent restrictions on
alcohol and tobacco availability; and (2) Supports local governments' home rule to sue their zoning, planning, and other local police powers to control alcohol and tobacco problems, including advertising and access.”

Association of State and Territorial Health Officials, National Association of County and City Health Officials, and National Association of Local Boards of Health, Joint Policy Statement on Tobacco Use Prevention and Control, 2000

Advocate for local government legislative and regulatory autonomy to control tobacco:
- Support initiatives to repeal preemptive statutes or replace preemptive language in existing state legislation with specific non-preemptive language.
- Support the inclusion of specific anti-preemption language in all tobacco control legislation and oppose legislation containing any preemptive language.
- Expose legislative tactics that seek to rescind existing local tobacco control ordinances or invoke super-preemption of all local tobacco control legislation through language added to minor or unrelated bills.

Campaign for Tobacco-Free Kids, Actions Speak Louder than Words, 1996

“Any state-level tobacco control legislation should contain language expressly allowing local government authority to take stronger measures if necessary. Local control should be viewed as a public health tool to be protected and encouraged.”

Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, November 1995

“Local action by communities has proven to be effective in enforcing youth access legislation and reducing tobacco use among young persons. However, the tobacco industry has been equally successful in weakening local control and community involvement through state laws containing preemption provisions.”

Centers for Disease Control and Prevention, Reducing Tobacco Use: A Report of the Surgeon General, 2000

“Because regulations in general may be more effective if generated and enforced at the local level, considerable energy is devoted to the issue of opposing or repealing preemption of local authority by states. Public health analyses have resulted in strong recommendations that state laws not preempt local action…”

Congressional Advisory Committee on Tobacco Policy And Public Health (Co-Chairs: C. Everett Koop, M.D. and David A. Kessler, M.D.), Final Report, July 1997

“Any Federal or State regulation of tobacco products should contain unambiguous non-preemption provisions, expressly clarifying that higher standards of public health protection imposed by State and Local governments are preserved.”

Institute of Medicine of the National Academy of Sciences, 1994

“Repeal the federal law that precludes [i.e. preempts] states and local governments from regulating tobacco promotion and advertising within their jurisdictions.”
Missouri State Medical Association, April 2004

Resolved, that the Missouri State Medical Association, recognizing its role as protecting the health of the citizens of Missouri, hereby endorses the concept of clean indoor air legislation for all workplaces throughout the state, including, but not limited to, office buildings, indoor arenas, bars, restaurants, bowling alleys, taverns, casinos, private clubs and halls, and billiard parlors, and encourages all its members and component societies to actively support such activities through education, example and leadership; and be it further resolved, that the Missouri State Medical Association actively oppose any state legislation that would preempt local jurisdictions from enacting local ordinances mandating smoke-free workplaces.

National Association of African Americans for Positive Imagery, March 1996

“NAAAPI strongly opposes any preemption language regarding tobacco in any state bill... As African Americans, we are particularly opposed to state preemption of local laws, not only with respect to tobacco but in other issues as well. In many states, African Americans are concentrated in a few cities while the state population is overwhelmingly white... Therefore, on principal we support the concept of local decision-making.”

National Association of County and City Health Officials, Policy Statement on Opposition to Preemption of Local Tobacco Control Regulations, 1996, updated May 2013

The National Association of County and City Health Officials advocates for the inclusion of language in all state legislation to preserve local government autonomy for more restrictive tobacco control ordinances and regulations, including those governing smoke-free indoor air, restricting tobacco product advertising and promotion, and restricting minors’ access to tobacco products. NACCHO urges state legislatures to enact such legislation. NACCHO encourages local public health officials to work to see that all state tobacco control preemptive legislation be repealed.

U.S. Department of Health and Human Services, Healthy People 2020, Tobacco Use Objectives, 2009

TU-16.1 Eliminate State laws that preempt stronger local tobacco control laws on smoke-free indoor air.


“Legislative Recommendations:
State Legislation Should Not Preempt Local Ordinances”

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