Preemption: Arguments and Responses

The tobacco industry’s number one legislative goal is to enact preemptive laws in each state that would remove communities right to local control and prevent the enactment of highly effective smokefree indoor air policies that protect workers from exposure to secondhand smoke.

The Tobacco Industry’s Argument in Opposition to Local Control:

*We need a uniform state law that covers all businesses, rather than a patchwork quilt of local ordinances, which is confusing to the business community and patrons.*

➤ **Response:** Businesses in our state are used to complying with a variety of local laws. For example, businesses comply with different zoning laws, parking and traffic restrictions, health regulations, and tax laws.

Local business owners are familiar with their local community laws, and have no reason to be confused by varying laws in different communities. Businesses that cross jurisdictional lines in the course of their work—whether city, county, state, or national lines—understand that laws differ among jurisdictions and that they need to know the laws in the areas in which they operate. Would those same businesses that deal across state lines expect state laws to be changed to coincide with each other? Should international companies expect uniform national laws? Tobacco regulations are no different than other regulations that vary from jurisdiction to jurisdiction.

➤ **Response:** State laws normally serve as a “floor,” or minimum requirement, for a policy objective while allowing communities to enact stronger ordinances. Preemption reverses this norm, making the state law the “ceiling” and forbidding anything stronger. It does not make sense to reverse the normal operation of state law when the protection of the public health is at stake.

➤ **Response:** Local governments are more flexible and responsive than state government in effectively dealing with emerging problems, finding imaginative solutions to existing problems, and experimenting with new solutions. Local governments are closer to the community and its problems, and have been more effective than the state or federal government in addressing the problem of tobacco use.

A district judge in Idaho, commenting on the need for local government involvement in tobacco control, said that “with all due respect to the altar of uniformity, it would appear that the state would be best served by allowing each community to meet this question in the experimental workshop of its own environment.”

Arguments in Support of Local Control

1. **Preemption is a national tobacco industry strategy:** The tobacco industry’s main legislative goal has been the passage of preemption in state legislatures. Working with the hospitality and gaming industries, the tobacco industry has tried to build up support for preemptive legislation in order to maintain their interests. The tobacco industry knows that they are much more effective at the state and national level. At the local level, the tobacco industry is at a significant disadvantage and finds it nearly impossible to defeat local policy campaigns, so they try to prevent local ordinances via preemption at the state level.
2. Preemption as big government: It is ironic that in an era when the public is demanding the return of more control to local government, the tobacco industry wants to take it away. This is a centralized, “big government” bill that would tie the hands of cities and towns on the theory that only (the name of your state’s Capitol city) knows best. Who cares more about the public—the people in our own communities or lobbyists and lawmakers in (Capitol city)?

3. The health community opposes preempting local control: The country’s leading health organizations are united in their opposition to preemption in tobacco control. The American Medical Association, American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers’ Rights, American Public Health Association, Centers for Disease Control and Prevention, the Institute of Medicine of the National Academy of Sciences, the Association of State and Territorial Health Officials, the State Attorneys General Working Group on Tobacco and the Center for Tobacco Free Kids all oppose preemption. The tobacco industry and its partners, including the hospitality and gaming industries, tobacco retailers, grocers, and convenience store owners support preemption. Whom do you trust to protect our health: the health community or the tobacco industry and its front groups?

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