



Repealing Preemption: Defending Local
Democracy Now Includes A Growing
Focus on Recovering Lost Local Authority

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Introduction:

As recent reports by the Local Solutions Support Center (LSSC)ⁱ and the National Employment Law Project (NELP)ⁱⁱ have highlighted,ⁱⁱⁱ state legislatures around the country are increasingly abusing their power to preempt local authority on a wide range of issues. State preemption is not in itself a political or improper action. States have passed legislation to preempt local action for decades, and courts have dealt with countless cases involving preemption (e.g., resolving whether a particular local law is preempted by state law under a state's preemption jurisprudence).^{iv}

Today's abuse of preemption stems from the fact that special interests have seized control of numerous state legislatures and zeroed in on preemption as an effective solution to block local policies they oppose.^v In response to the recent onslaught of preemption, local officials, local residents, and advocates have mounted increasingly coordinated and effective campaigns to defend their local authority from new preemption bills,^{vi} and in 2019, a new trend emerged. Coalitions, in partnership with state policymakers, are pushing to repeal existing preemption laws and thus recover local power.

So far this year, LSSC and the State Innovation Exchange (SiX) have tracked preemption repeal bills in 22 states, covering issues like minimum wage, plastic bags, rent control, paid sick leave, Styrofoam products regulation, tobacco, and oil and gas.^{vii} Looking ahead to 2020, LSSC anticipates that many of the preemption repeal bills that did not succeed in the last session will be re-introduced or considered once again. LSSC also anticipates an even greater number of preemption repeal bills as more coalitions and policymakers make defeating the abuse of preemption and protection of local democracy a priority.

This white paper summarizes key lessons learned so far in the fight to repeal existing preemption. **Part I** offers a summary of three successful efforts to repeal preemption in Colorado in the 2019 legislative session. **Part II** distills useful and effective ways of building strong repeal campaigns, drawing largely from the 2019 Colorado experience around minimum wage preemption repeal. **Part III** highlights specific technical lessons learned from Colorado's experience for the drafting of preemption repeal

bills. Finally, **Part IV** summarizes where advocates anticipate continued or new efforts to repeal preemption along a range of issues that municipalities increasingly wish to address at the local level.

Part I. Colorado's Successful Repeal Efforts in 2019

Efforts to fight preemption in 2019 by repealing existing preemption laws offer insight into how similar fights might develop. As noted above, LSSC and SiX have tracked preemption repeal bills in 22 states so far this year, covering issues like minimum wage, plastic bag ban, rent control, paid sick leave, Styrofoam products regulation, tobacco, and oil and gas.^{viii} Four of these bills to repeal existing preemption succeeded. For example, Arkansas repealed state law preempting local municipal broadband regulation ([SB 150](#)).^{ix} This part focuses on the three successful repeal efforts in Colorado, where advocates successfully moved the state to repeal existing preemption over local minimum wage laws ([HB 19-1210](#)), local tobacco regulation ([HB 19-1033](#)), and oil and gas drilling regulation ([SB 19-181](#)).^x The case studies below briefly highlight how Colorado's 2019 repeal efforts emerged, who pushed them, and what they achieved.

Colorado's Repeal of Minimum Wage Preemption (HB 19-1210)

Colorado's state legislature enacted a law in 1999 to preempt all local minimum wage laws.^{xi} As noted in a recent NELP report on the impact of minimum wage preemption laws around the country, the minimum wage preemption bill was sponsored by two Colorado legislators with ties to the American Legislative Exchange Council (ALEC): Doug Lamborn, who served as a 1999 "ALEC Leaders in the States" and Ray Powers, who served as ALEC national chairman in 1995.^{xii} ALEC, a corporate-backed group, has been identified as a principal driver of state preemption of local policies in recent years.^{xiii} After state legislators also refused for years to raise the state's minimum wage, Colorado voters took the issue to the ballot, approving a gradual increase to a \$6.85 minimum wage in the 2006 election (Initiative 42) and a gradual increase to a \$12 minimum wage with the 2016 election (Amendment 70).^{xiv}

Despite the 2016 statewide minimum wage increase, the high cost of living in many parts of the state meant that many workers would continue to struggle to make ends meet. To that end, worker groups around the state began to advocate for repeal of the 1999 express minimum wage preemption law. With the support of state lawmakers, a bill was introduced in 2018 to repeal the state's preemption law.^{xv} The bill passed the House but not the Senate.^{xvi} After the November 2018 elections resulted in both a Democratic governor and legislature in Colorado,^{xvii} advocates and lawmakers once again introduced legislation (HB 19-1210) to repeal the state's minimum wage preemption law.^{xviii} This second version went beyond simply

repealing the old law—it affirmatively laid out various baseline mechanisms for how local governments could take advantage of the law. The adopted bill, for example, lays out a wide range of local enforcement powers to avoid any potential ambiguity as to what a local government could pursue in order to successfully implement a local minimum wage ordinance.^{.xix} The final version nevertheless did make several concessions to industry that could influence future repeal efforts, such as a cap on the total number of local governments that may enact local minimum wages prior to additional authorization, limits on how quickly a local government may raise the minimum wage, and guaranteed state reimbursements for certain nursing facilities that may face wage increases.^{.xx}

The adoption of HB 19-1210 marked the first time that a state legislature has repealed a minimum wage preemption law. Today, 25 other states continue to expressly preempt local minimum wages.^{.xxi} The strong coalition led by Colorado People’s Alliance (COPA) of worker advocates, local government officials, labor, business, local government organizations, and others, ultimately demonstrated through a two-year legislative fight how a diverse, well-organized coalition can successfully revert power back to local governments.^{.xxii}

Colorado’s Repeal of Preemption Over Tobacco Regulation (HB 19-1033)

Colorado’s fight to repeal preemption over tobacco regulation arguably began about a decade ago.^{.xxiii} Behind much of the state’s advocacy around local tobacco regulation stood a statute that taxed cigarettes but only shared the proceeds of that tax with local governments that did not impose a business license requirement, fee, or tax as a condition for selling cigarettes.^{.xxiv} This penalty effectively discouraged communities from passing policies to protect youth from tobacco.

According to a webinar detailing Colorado’s campaign to repeal tobacco preemption, around 2010, tobacco control groups convened a large group of stakeholders, including state and local officials, state agencies, youth representatives, university experts, and others.^{.xxv} As part of a year-long project, the group developed public recommendations for tobacco-related policy changes, and one of those recommendations consisted of removing the state’s effective preemption of local tobacco regulation.^{.xxvi} The partners behind the 2010 report subsequently worked on a variety of state-level and local campaigns to carry out those recommendation. Over time, a diverse set of national and in-state partners formed the Colorado Tobacco-Free Alliance, whose core concern was reducing “youth use, and access, to tobacco.”^{.xxvii} As of March 2019, despite the limits in state law for local regulation, 12

local governments had enacted ordinances requiring tobacco retailers to obtain a local license.^{.xxviii}

Around 2015, Colorado Tobacco-Free Alliance's campaign began to focus on preemption.^{.xxix} The campaign worked closely that year with both Republican and Democratic legislators in Colorado who agreed to sponsor the state's first bill to remove the existing tobacco regulation preemption (HB 15-1257).^{.xxx} This 2015 bill passed in the House but not the Senate.^{.xxxii} In 2016, industry responded to the 2015 preemption repeal bill by introducing ultimately unsuccessful legislation (HB 16-1370)^{.xxxii} to create a comprehensive list of retailers in the state selling cigarettes, tobacco products, or nicotine products and expand existing preemption (by prohibiting local governments from receiving cigarette tax revenue if they chose to impose their own fees, licenses, or taxes on cigarette sales, *as well as* tobacco products or nicotine products (or any combination)).^{.xxxiii} In 2017, the repeal campaign shifted to other advocacy at the local level.^{.xxxiv} In 2018, opponents of tobacco regulation introduced an even stronger bill (SB 18-139) to protect the industry,^{.xxxv} but a bipartisan effort defeated the legislation.^{.xxxvi}

With renewed control in 2019 of both the House and Senate, as well as the governor's office, legislators introduced legislation once again (HB 19-1033) to repeal the state's existing tobacco regulation preemption with bipartisan support.^{.xxxvii} The governor signed the bill in March, granting local governments strong authority to pass local ordinances addressing cigarettes, tobacco, and nicotine products.^{.xxxviii} The bill also expanded county authority to more closely match other local governments' powers.^{.xxxix} Ultimately, it took a strong and sustained effort lasting approximately a decade to successfully repeal Colorado's preemption around tobacco regulation and empower local governments to adopt the policies they believe are necessary to protect their residents.

Colorado's Repeal of Oil and Gas Drilling Preemption (SB 19-181)

The battle in Colorado over how to regulate the oil and gas industry and what level of government should make decisions is not in any way a new one. For example, following a 1984 explosion in La Salle, Colorado, and the fear of additional explosions from gas build-up resulting from oil and gas industry practices, Greeley, Colorado, voters approved a ban on new drilling in Greeley.^{.xl} The ban was quickly challenged. A lawsuit addressed, in part, whether state law preempted such local regulation by a home rule city, and the case made it to the Colorado Supreme Court in 1992.^{.xli} While the state's Supreme Court recognized that state law did not preempt

all efforts to use local land-use authority over land that “might be subject to oil and gas development,” the court ultimately invalidated the Greeley ban and held that state law preempted Greeley’s total ban on drilling.^{xliii} Numerous legal and legislative fights followed over local authority to regulate the oil and gas industry.^{xliiii}

In 2018, voters in Colorado voted on Proposition 112, which would have mandated that “new oil and gas development, including fracking, be a minimum distance of 2,500 feet from occupied buildings such as homes, schools, hospitals, and other areas designated as *vulnerable*.”^{xliv} The oil and gas industry raised “a record-setting \$38 million to help defeat the ballot initiative.”^{xlv} Colorado voters rejected Proposition 112, but the fight went to the legislature as Governor Jared Polis came into office with a Democratic-majority legislature.^{xlvi}

SB 19-181, enacted earlier this year, has, among other things, reverted much of the power over oil and gas drilling regulation to localities in the state.^{xlvii} The bill, for example, “clarifies that local governments have land use authority to regulate the siting of oil and gas locations to minimize adverse impacts to public safety, health, welfare, and the environment and to regulate land use and surface impacts, including the ability to inspect oil and gas facilities; impose fines for leaks, spills, and emissions; and impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and enforce local governmental requirements.”^{xlviii} The bill “also allows a local government . . . to request the director of the [Colorado Oil and Gas Conservation Commission] to convene a technical review board to evaluate the effect of the local government’s preliminary or final determination on [an] operator’s application,” and it repealed language preempting counties’ ability to regulate noise associated with oil and gas production.^{xlix} Other notable portions of the law require the Oil and Gas Conservation Commission “to prioritize and emphasize the protection of public health, safety, and the environment in its regulations,” while also mandating new rules over the pooling of “nonconsenting mineral interest owners.”¹

Looking ahead, the Colorado conversation has shifted at least some extent to whether the oil and gas industry will seek to repeal SB 19-181 through a ballot measure,ⁱⁱ and how the fight over oil and gas regulations will shift to local elections and campaigns.ⁱⁱⁱ

Part II: Colorado Lessons for Building a Strong Preemption Repeal Fight

Based on NELP's and LSSC's experience supporting the Colorado campaign to repeal the state's preemption of local minimum wage laws through HB 19-1210, at least four strategies employed effectively in that campaign stand out as potentially useful for preemption repeal efforts in other parts of the country: (1) building a diverse coalition that can work together long-term; (2) identifying strong sponsors who will work closely with experts to draft legislation; (3) deploying careful and consistent messaging; and (4) connecting the advocacy with research. As noted in Part I, the Colorado minimum wage preemption repeal campaign spanned at least two years, with the first repeal bill introduced as part of the 2018 legislative session. Advocates also successfully obtained the public support of now-Governor Jared Polis for a local minimum wage option when he ran for office,ⁱⁱⁱⁱ a strategy that could prove important in other campaigns.

1. Build A Diverse Coalition.

Colorado's minimum wage preemption repeal campaign built a coalition representing diverse but also key constituencies to help secure the passage of the bill. The diverse nature of the Colorado coalition also laid the groundwork for implementation and future coordinated action on other issues of home rule and local democracy. Specifically, the Colorado coalition deliberately engaged at least the following key groups:

- Local worker rights advocacy organizations representing workers who would stand to benefit from higher local minimum wages (including, for example, the Colorado People's Alliance (COPA), a principal leader in the effort; United for a New Economy (UNE); legal organizations serving workers; etc.).
- Local government organizations representing county, municipal, and other local interests.
- Local officials committed to protecting local authority and workers' interests in their communities.
- National organizations and academics with substantive expertise on the minimum wage issues involved as well as preemption and local government.

Notably, while opponents of the minimum wage preemption repeal bill pushed for a number of changes, many of which threatened to significantly weaken the bill's impact, the strong support of the diverse coalition behind the bill proved crucial in dispelling exaggerated worries and allowing the bill's sponsors to hold firm and recruit support when it came to the most crucial portions of the bill.

2. Identify a Strong Sponsor Willing to Work with Experts.

Colorado's HB 19-1210 incorporated input from a wide range of local, in-state, and national experts, which helped ensure that the bill was grounded in an understanding of Colorado-specific dynamics and law regarding home rule, as well as best practices for crafting effective local minimum wage laws. Future repeal bills will no doubt benefit from this type of input from experts on local government and whatever substantive issue(s) are addressed in the bill.

3. Deploy Careful and Consistent Messaging.

LSSC has conducted extensive polling and research on local government and what local constituents care about when it comes to protecting local home rule and local democracy. National research on the issue of local government and how to effectively engage communities on the issue informed the messaging employed by the Colorado campaign pushing for repeal of the state's minimum wage preemption laws. However, messaging around preemption repeal campaigns will, of course, always depend on unique in-state and local dynamics, as well as discussions among partners to find common ground. The Colorado campaign around minimum wage preemption repeal notably drew from extensive in-state experience on minimum wage issues, including the successful approval of a 2016 ballot initiative to raise the state's minimum wage to \$12 per hour.^{liv}

Local officials, local government organizations, bill sponsors, advocates, and others advancing preemption repeal initiatives in their state can consult LSSC's publicly available resources on their website^{lv} or reach out to LSSC or NELP for more in-depth support around messaging.

4. *Connect Advocacy with Research.*

The Colorado minimum wage preemption repeal campaign aimed to effectively connect research with advocacy throughout the entire process, ensuring that advocates and organizers would be ready for questions and concerns.

Early on in their campaign, for example, proponents of HB 19-1210 began to gather a variety of legal research, fact sheets, sample testimony, reports, and talking points to support every part of the proposed bill.^{lvi} Throughout the legislative fight, continuing to anticipate research needs and quickly respond to requests for additional information was crucial.

To the extent that coalitions around the country can anticipate any legal or other questions at the outset, recruiting the right experts to provide timely responses and respond to future requests can bolster a campaign's efforts from the start.

Part III: Drafting an Effective Preemption Repeal Bill

As noted above, in the 2019 legislative sessions to date, policymakers have introduced an unprecedented number of bills in state legislatures to repeal existing preemption.^{lviii} A number of these bills aimed to accomplish their goal by simply repealing express statutory language preempting local regulation of a particular issue.^{lviii} In some states, the straightforward repeal of express preemption language might be sufficient to not only repeal the express preemption but also allow local governments to exercise their existing home rule powers in that previously preempted space. However, in many cases, the simple repeal of existing preemptive language, without more, will likely leave behind questions that could hamper efforts to exercise local authority, such as:

- *Does the repeal of existing language, alone, evince a legislative intent to authorize any local government that was expressly prohibited from acting to act on the issue? Or do only the subset of local governments that would normally have the type of home rule powers to adopt local ordinances on that issue, such as specific types of home rule municipalities or home rule counties, be authorized to act going forward?*
- *If a local government adopts an ordinance on the issue previously preempted, is that local government nevertheless susceptible to an implied preemption challenge, such as one based on an alleged conflict with other state law or an argument that state law nevertheless preempts*

the field?

- *What will happen if a county enacts a law on the previously preempted issue? Will the county's law apply within towns or cities within the county?*
- *What options will be available to local governments to effectively enforce their law? Will they be able to enter into intergovernmental agreements? Will the set of remedies that they can adopt be limited by existing state law?*

Policymakers advancing the repeal of an existing preemption law should consider drafting a preemption repeal bill that starts by striking and repealing existing preemption language but also addresses, to the extent possible, the above questions and any other state-specific ambiguities or challenges that a policymaker can anticipate as a barrier to successfully exercising local authority on a particular issue. A drafter should, of course, consult state-specific guidelines and limitations for bill drafting, such as potential single-subject requirements.^{lix}

When possible, repeal preemption bills should be drafted to address, at a minimum, the following issues:

1. *Preemption repeal legislation should carefully identify any instances where state law preempts or limits local authority in a particular area in order to repeal all of the relevant sections and avoid conflicting statutory language.*

In some cases where state law has expressly preempted local authority in a particular area, only one statute or section addresses the preemption. In other cases, several statutes may partially limit local authority or otherwise address preemption. Each preemption repeal bill should take careful inventory of any instances in state law where the state language preempts or limits local powers in order to amend or repeal each of those provisions separately, as needed.

Colorado's [HB 19-181](#), which successfully repealed limitations on local authority over oil and gas regulation, offers an example of a preemption repeal bill addressing different existing limits on local authority in separate sections of a bill.

- 2. Preemption repeal legislation should specify which local governments will have authority to adopt local legislation.*

The nature and scope of home rule authority for different types of local entities, such as towns, cities, and counties, varies significantly from state to state. While express preemption statutes often prohibit local regulation by “local governments” or “political subdivisions,” broadly defined, a bill to repeal preemption should consider specifically laying out which categories of local governments will be authorized to regulate an issue locally.

A bill’s sponsor should ideally understand how home rule operates in their state, consult with local government officials and local government groups that could be impacted, and discuss options with advocates who may be able to anticipate how local authority in a particular jurisdiction might be used.

Colorado’s [HB 19-1210](#), which successfully repealed minimum wage preemption, specifically defined the “local governments” that will be expressly authorized to adopt higher local minimum wage ordinances as meaning: a city; home rule city; town; territorial charter city; city and county; county; or home rule county.

- 3. Preemption repeal legislation should clarify whether voters in a particular jurisdiction will be authorized to enact local legislation through their existing initiative powers.*

Legislation granting specific types of local governments authority to enact local laws once preemption has been repealed should avoid ambiguity as to whether local residents may exercise that power through a local initiative process separate from legislation adopted by the local governing body. This type of clarity may help avoid future litigation or questions regarding residents’ power to use the full scope of the local democratic process to advance their priorities.

Colorado’s [HB 19-1210](#), the minimum wage preemption repeal bill, addressed this potential ambiguity by stating: “NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A LOCAL GOVERNMENT MAY ENACT THROUGH ITS GOVERNING BODY OR, WHEN AVAILABLE, THROUGH ITS INITIATIVE OR REFERENDUM POWERS, A LAW ESTABLISHING MINIMUM WAGES”

4. *Preemption repeal legislation should consider how overlapping county and town/ city jurisdictions will exercise their new authority concurrently.*

States differ in how counties may exercise their powers when cities, towns, villages, and other entities exist within a county. The laws governing the interaction of these local entities might vary even within a state and depending on which counties or cities are at issue. Some counties may only, for example, exercise some of their powers within the unincorporated areas of a county, while other counties may override or supersede conflicting legislation adopted by municipalities within the county.^{ix} Policymakers repealing existing preemption statutes should take into account how repeal may play out given these varying dynamics and potentially consult with the relevant municipal and/or county leagues/associations.

Policymakers should also consult with local governments that may be impacted to better understand how overlapping jurisdictions address situations of concurrent authority and how the repeal bill should preserve or potentially alter those default structures.

Colorado's [HB 19-1210](#) took into account the fact that in Colorado, counties may not be able to enforce a county law within incorporated areas. The bill did not alter the default relationship between counties and their incorporated versus unincorporated areas. However, the bill did include language to expressly allow for intergovernmental agreements among jurisdictions adopting local minimum wage laws to avoid any ambiguity on that point. It expressly stated in Section 4 of the bill:

(3)(c)(I) . . . EXCEPT AS PROVIDED IN SUBSECTION 3(C)(II) OF THIS SECTION, A LOCAL MINIMUM WAGE ADOPTED BY A COUNTY IS ONLY ENFORCEABLE WITHIN THE UNINCORPORATED PORTION OF THE COUNTY.

(II) ONE OR MORE CONTIGUOUS COUNTIES AND ANY MUNICIPALITY WITHIN EACH COUNTY MAY ENTER INTO INTERGOVERNMENTAL AGREEMENTS TO ESTABLISH A LOCAL MINIMUM WAGE LAW WITHIN THE UNINCORPORATED PORTION OF EACH COUNTY AND WITHIN EACH MUNICIPALITY. AN INTERGOVERNMENTAL AGREEMENT ENTERED INTO IN ACCORDANCE WITH THIS SUBSECTION (3)(C) MUST ESTABLISH THE MANNER IN WHICH A LOCAL GOVERNMENT MINIMUM WAGE LAW WILL BE ENFORCED AND ADMINISTERED.

Colorado's successful [HB 19-181](#) (concerning oil and gas drilling) dealt with the issue of overlapping jurisdictions in its definitions, for example, stating in Section 7:

(5.3) "LOCAL GOVERNMENT" MEANS, EXCEPT WITH REGARD TO SECTION 34-60-104 (2)(a)(I), A:

(a) MUNICIPALITY OR CITY AND COUNTY WITHIN WHOSE BOUNDARIES AN OIL AND GAS LOCATION IS SITED OR PROPOSED TO BE SITED; OR

(b) COUNTY, IF AN OIL AND GAS LOCATION IS SITED OR PROPOSED TO BE SITED WITHIN THE BOUNDARIES OF THE COUNTY BUT IS NOT LOCATED WITHIN A MUNICIPALITY OR CITY AND COUNTY.

Colorado's successful [HB 19-1033](#), allowing certain local regulation of tobacco or nicotine products and addressing some of the dynamics between counties and municipalities, stated in Section 6, for example:

(3) IF A COUNTY LEVIES, COLLECTS, ENFORCES, AND ADMINISTERS A SPECIAL SALES TAX IN A MUNICIPALITY THAT HAS ALREADY OBTAINED VOTER APPROVAL TO LEVY A MUNICIPAL SPECIAL SALES TAX ON THE SALE OF CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS, THE COUNTY SPECIAL SALES TAX IS INVALID WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY UNLESS THE COUNTY ENTERS INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE MUNICIPALITY PURSUANT TO SUBSECTION (2)(a)(III) OF THIS SECTION THAT AUTHORIZES THE COUNTY TO CONTINUE TO LEVY, COLLECT, ENFORCE, AND ADMINISTER THE SPECIAL SALES TAX ON CIGARETTES, TOBACCO PRODUCTS, OR NICOTINE PRODUCTS WITHIN THE CORPORATE LIMITS OF THE MUNICIPALITY.

5. *Preemption repeal legislation should consider what type of enforcement tools local laws will need and expressly authorize specific types of local remedies and enforcement powers, as needed.*

Policymakers and advocates pushing to repeal existing preemption over a particular issue will no doubt want to ensure the success of future local ordinances. Part of setting up future local ordinances for success includes ensuring that local governments will have the authority they need to implement effective enforcement remedies and processes.

States vary in whether they generally impose limits on local governments regarding their enforcement powers. Some states, for example, may set limits on the amount that a local government may impose on an individual or business as a fine or penalty for a local violation. Some states may not allow local governments to create a private right of action locally, or the state's law may be ambiguous on this point.^{lxi}

A preemption repeal bill should consider what enforcement powers local governments may need in a particular state and include express language to remove any potential ambiguity that those powers will be available to them.

Colorado's [HB 19-181](#) (concerning local authority over oil and gas drilling) stated in Section 4:

(2) TO IMPLEMENT THE POWERS AND AUTHORITY GRANTED IN SUBSECTION (1)(h) OF THIS SECTION, A LOCAL GOVERNMENT WITHIN ITS RESPECTIVE JURISDICTION HAS THE AUTHORITY TO:

(a) INSPECT ALL FACILITIES SUBJECT TO LOCAL GOVERNMENT REGULATION;

(b) IMPOSE FINES FOR LEAKS, SPILLS, AND EMISSIONS; AND

(c) IMPOSE FEES ON OPERATORS OR OWNERS TO COVER THE REASONABLY FORESEEABLE DIRECT AND INDIRECT COSTS OF PERMITTING AND REGULATION AND THE COSTS OF ANY MONITORING AND INSPECTION PROGRAM NECESSARY TO ADDRESS THE IMPACTS OF DEVELOPMENT AND TO ENFORCE LOCAL GOVERNMENTAL REQUIREMENTS.

Colorado's [HB 19-1210](#) took into account expertise from in-state and national experts on minimum wage enforcement to ensure that local governments would have access to best practices for enforcement in their local wage laws. The bill states in Section 4:

(b) . . . A LOCAL GOVERNMENT THAT ENACTS A MINIMUM WAGE LAW IN ACCORDANCE WITH THIS SUBSECTION (3) MAY ADOPT PROVISIONS FOR THE LOCAL ENFORCEMENT OF THE LAW, INCLUDING:

(I) A PRIVATE RIGHT OF ACTION TO ENFORCE THE REQUIREMENT IN A COURT OF COMPETENT JURISDICTION;

(II) AT LEVELS THAT MAY EXCEED THOSE SET BY STATE LAW:

(A) FINES AND PENALTIES;

(B) PAYMENT OF UNPAID WAGES OR UNPAID OVERTIME BASED ON THOSE WAGES;

(C) LIQUIDATED DAMAGES;

(D) INTEREST;

(E) COSTS AND ATTORNEY FEES PAYABLE TO ANY AFFECTED PREVAILING EMPLOYEE; AND

(F) COSTS AND ATTORNEY FEES PAYABLE TO THE LOCAL GOVERNMENT OR ITS DESIGNATED ENFORCEMENT DEPARTMENTS;

(III) PROCEDURES FOR THE LOCAL GOVERNMENT TO ORDER ANY APPROPRIATE OR EQUITABLE RELIEF; AND

(IV) OTHER PROVISIONS NECESSARY FOR THE EFFICIENT AND COST-EFFECTIVE ENFORCEMENT OF A LOCAL MINIMUM WAGE LAW.

Part IV: The Landscape for Repeal in 2020 and Beyond

Preemption repeal legislation in 2019 demonstrated that the fight to protect local democracy has expanded decisively to include efforts to affirmatively repeal existing preemption, along with continued defensive fights to stem new preemption. As noted above, so far this year, LSSC and SiX have tracked preemption repeal bills in 22 states, covering issues like minimum wage, plastic bags, rent control, paid sick leave, Styrofoam products regulation, tobacco, and oil and gas.^{lxiii}

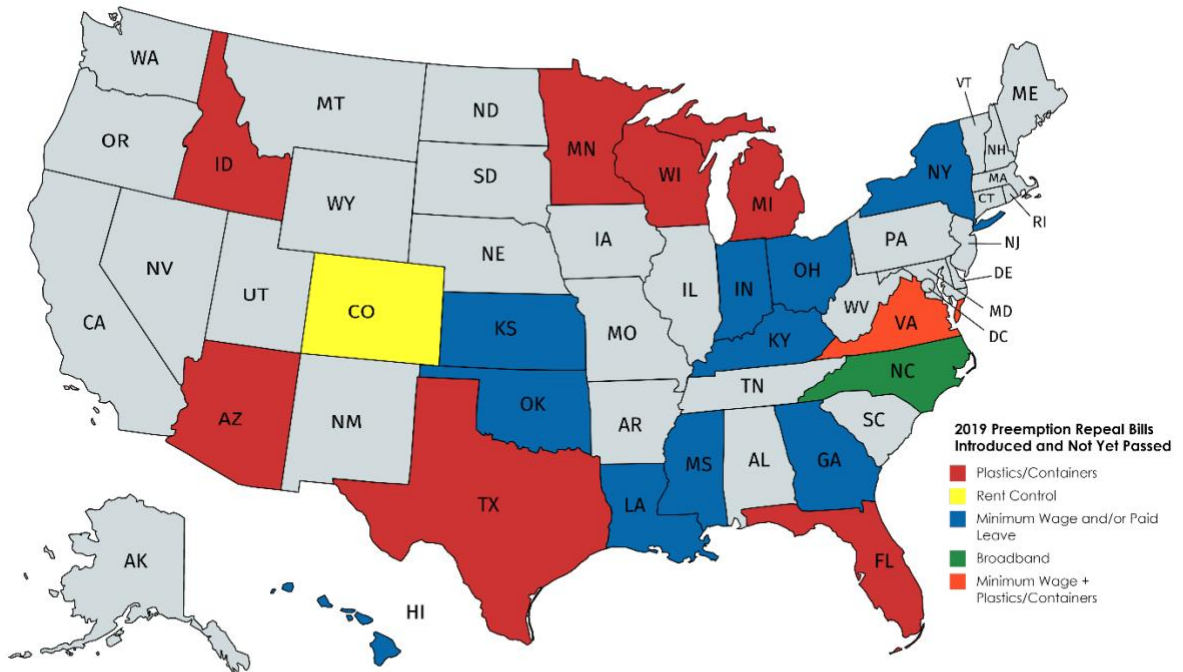
Below is a map of states where LSSC has identified preemption repeal bills (not yet passed) in the 2019 session and where, at a minimum, preemption repeal bills will likely come under consideration in 2020.^{lxiii} For more details on the bills considered, see [*The Growing Shadow of State Interference: Preemption in the 2019 State Legislative Sessions*](#).^{lxiv}

The significant uptick in the number of bills and campaigns focused on repealing preemption likely stems from a much wider understanding of preemption and how its abuse in recent years has cumulatively chipped away at large swaths of local home rule and, ultimately, local democracy. Moreover, many of the places that have seen local authority erode significantly have also seen inaction at the state level on a wide range of priorities for advocates, such as minimum wage increases and stronger environmental protections.

Progressive coalitions across states have gradually emerged to challenge preemption specifically, and this has created unprecedented infrastructure and opportunities for organizing around preemption and recovering lost powers. In Maryland, for example, advocates across a range of progressive issues announced the formation of the LOCAL Maryland coalition earlier this year to fight back against preemption across issues of public health, environmental protection, and economic justice.^{lxv} In Florida, the state's media has taken note of how advocates across the state have “joined forces” to tackle the rampant abuse of preemption in their state legislature.^{lxvi} In Louisiana, after years of fighting for wage increases at the state level and struggling to address workers' needs, the Unleash Coalition is advocating for express authorization to adopt local minimum wage and sick leave policies.^{lxvii} These are only a few examples.

As coalitions form and strengthen around the country to tackle preemption, repealing preemption will no doubt only become more important and common. The lessons

outlined here based on the successful Colorado experience in 2019 will hopefully offer an initial road map for how to leverage the power of new diverse and organized coalitions.



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Conclusion

City attorneys, policymakers, and advocates seeking to undo the damage done to local democracy through abusive state interference should consider advancing preemption repeal legislation in 2020. In doing so, the recommendations LSSC and NELP offer in this paper provide guidance for drafting effective repeal legislation and building strong coalitions. As preemption repeal efforts grow nationwide, new lessons will no doubt continue to emerge. LSSC will continue to offer support to preemption repeal and defensive campaigns through its wide network of academics, city attorneys, organizations, and other experts. NELP will also continue to offer support and technical assistance on minimum wage preemption repeal efforts and other preemption issues involving workers. Requests for assistance may be submitted to: lssc@supportdemocracy.org.

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- i Local Solutions Support Center & State Innovation Exchange, *The Growing Shadow of State Interference: Preemption in the 2019 State Legislative Sessions* 7 (July 2019), <http://www.supportdemocracy.org/wp-content/uploads/2019/07/LSSCSiXReportAugust2019.pdf>.
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