



Fighting Labor Policy Preemption That Undermines Local Power and the Democratic Process: The Experience of Colorado, Missouri, and Texas

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About NELP

Founded in 1969, the nonprofit National Employment Law Project (NELP) is a leading advocacy organization with the mission to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs. Together with local, state, and national partners, NELP advances its mission through transformative legal and policy solutions, research, capacity building, and communications. For more information, visit us at www.nelp.org

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By: Yannet Lathrop

Introduction

Over the past decade, as workers have increasingly made gains on a range of labor policies on the local level, corporate interests have responded aggressively by persuading state legislators to chip away at, or outright take away, those hard-fought wins. This has been particularly felt by workers in progressive cities or counties in conservative states, where state legislatures are more willing and able to overturn local labor protections through preemption laws, which blocks local jurisdictions from legislating on specific issues.

This report describes the experience of cities in Texas, Missouri, and Colorado, where workers and advocates fought for stronger local paid sick leave or minimum wage laws, only to be met with preemption threats. Some of those fights were won, while others were not. But regardless of outcome, these fights generally strengthened the leadership of underpaid workers—in particular, workers of color—and helped promote progressive infrastructure that has been or could be, helpful in fighting for other progressive policies down the road.

The report begins with an overview of the **history of preemption**, including its racist underpinnings. We then turn to **case studies** of paid sick leave campaigns in Austin, San Antonio, and Dallas, Texas, where advocates were able to temporarily stall preemption; the experience of minimum wage preemption in Missouri, which helped set the stage for a successful statewide minimum wage ballot initiative; and a historic minimum wage preemption repeal in Colorado, which led to the adoption of a robust minimum wage in Denver. We conclude with a **look ahead** to the ongoing challenges and **recommendations** for fighting preemption and promoting local control.

We chose to focus on the experience of Texas, Missouri, and Colorado for two main reasons: All three states faced preemption of pro-worker policies that fall within the interests and expertise of NELP; and in all three states, advocates organized robust responses to preemption threats, allowing us to understand the impact of those fights on political infrastructures.

The Racist History and Underpinnings of Preemption

There has long been a tense relationship between states and localities to assert their power to govern. Cities, counties, and other local jurisdictions have sought to respond to local needs by adopting local policies. States have often responded by asserting their intent to exclusively govern in a particular field.

Today, preemption—a legal doctrine that gives higher governments, such as states, the power to limit or altogether block lower governments from legislating on specific issues¹—is being abused by conservative state legislatures in concert with corporate interests, compromising not only the ability of localities to self-govern, but also posing a threat to the well-being of Black workers and people-of-color communities, and to local democracy. This abuse of preemption is consistent with its racist history and underpinnings.

Preemption originates from efforts to preserve white supremacy in the South following the end of the Civil War. During Reconstruction, a coalition of civil rights activists (from both the North and South) and newly enfranchised Black citizens in states such as Virginia and the Carolinas initially attempted to institute local governments modeled after New England towns to stimulate participatory democracy, self-governance, and greater racial equality.² These local governments gave rise to some political gains for formerly excluded Southerners, including freedmen, and in some cases to their election to office. White conservatives (who in the antebellum period had supported local governance at the county level) responded by adopting a three-prong strategy: Disenfranchisement, retrenchment, and—most significant for this paper—the weakening of local power.³ This strategy was successful. Over time, white Southern conservatives were able to regain political power, entrench white supremacy, and reserve more power for states at the expense of local governments.⁴ Although Southern white supremacists supported (and benefited from) a system that vested significant power to county governments, their support for local governance was never ideological. As legal scholar Daniel Farbman aptly summarized it, "The question for Redeemers [white supremacists who opposed Reconstruction efforts] was never whether, as an abstract matter, local control was preferable to centralized control. Rather, at decision point after decision point, the question was how the balance between local and state power could be manipulated and adjusted to protect the Redeemers' political power and further the struggle for white supremacy. This instrumental attitude towards localism was consistent with the struggles over localism under slavery and remains familiar today."⁵

More recently, the abuse of preemption can be traced to the 1980s, when local governments began adopting smoke bans and smoke-free requirements to address public health concerns. The tobacco industry responded by promoting preemption as a "most effective means" to counter local policymaking that threatened their bottom lines.⁶ Taking a page out of their

playbook, in the 1990s, the National Rifle Association deployed a similar use of preemption when faced with a torrent of local gun regulations.⁷ More recently—and more germane to labor policy—the American Legislative Exchange Council (ALEC), a powerful Washington, D.C. lobbying group, responded to a surge of local minimum wage campaigns in the early 2010s by promoting model minimum wage preemption legislation and offering resources like strategic planning assistance to state lawmakers interested in resisting the call for higher wages.⁸ Those efforts paid off. Since 2012, when the Fight for \$15 began, a dozen states have adopted minimum wage preemption policies. Today, a total of 25 states—most of them controlled by Republicans—preempt local minimum wages.

The successful use of preemption to advance corporate interests has emboldened conservative legislators to experiment with ever more extreme and anti-democratic policies. Among them is broad preemption, which would block localities from legislating on *entire fields* or *broad subjects*—for example, any employment requirements in addition to wages and salaries, such as paid or unpaid leave, health benefits, disability benefits, retirement benefits, profit-sharing, etc.; or any business regulations requirements, such as occupational and licensing requirements.⁹ Another is punitive measures—such as lawsuits, hefty fines, criminal liability, or removal from office—against individual local lawmakers, or threatening entire local governments with the withholding of state funds in response to perceived or actual violations of state preemption laws.¹⁰

Texas, Missouri, and Colorado Preemption Case Studies

Between November 2021 and March 2022, NELP spoke to Jonathan Lewis, then Senior Policy Analyst for Every Texan; Richard von Glahn, Policy Director for Missouri Jobs with Justice; and Lizeth Chacon, then Executive Director of Colorado People’s Alliance. They all have worked on their states’ anti-preemption fights, and either have led or played an active role in anti-preemption coalitions or campaigns. Their stories suggest that regardless of the outcome of those fights—whether wins or loses—their common experience is one of power-building. The threat of preemption—or, in Colorado’s case, the possibility of repealing preemption—motivated communities to begin organizing and building power to respond with strength. The process of building that power was not without challenges—as all three case studies make clear. But in engaging in that process, communities learned important lessons or engaged in public outreach and education that grew their strength.

Colorado

Background. Starting in 2017, the Colorado People’s Alliance (COPA) led a coalition of local worker justice groups (known as the “Work Here, Thrive Here” coalition) to repeal the state’s minimum wage preemption law—which had been in effect since 1999. The campaign gave leaders of color an opportunity to advocate for higher minimum wages, to strengthen their leadership, and to work with the communities they represented.

Colorado became the first state in the country to repeal its minimum wage law and inspired similar efforts throughout the nation.¹¹

The coalition did not originally think of the preemption repeal campaign as fundamentally a “preemption fight,” but rather as the means to an end, with the goal of giving Denver and other cities and counties across Colorado the ability to raise their minimum wages above the state rate.

Prior to the preemption repeal campaign, COPA and other advocates had been part of a 2016 statewide effort to raise the Colorado wage floor to \$12 via ballot initiative. Leaders behind the statewide campaign also resolved to win a \$15 minimum wage in Denver in a subsequent push. But for this to happen, they first needed to repeal a state minimum wage preemption law. After a 2-year campaign, the coalition succeeded in winning a minimum wage preemption repeal in 2019,ⁱ and immediately turned to pushing for a \$15.87 (by 2022) minimum wage ordinance in Denver, which also passed that same year.

Challenges. While the minimum wage inspires community activism, preemption typically does not. Lizeth Chacon, then executive director of COPA, explains that the minimum wage is a tangible concept that can be easily communicated to allies and the public to get their support. (“Hey, yes your wages are going to increase in four months”). Preemption, on the other hand, is abstract and technical—and in the case of Colorado, it was a first step towards another goal, which complicated the campaign’s ability to grow its coalition beyond a handful of core members because “it is hard to sell technical fixes that may or may not lead to a victory.”

Hence, one of the early challenges for the anti-preemption campaign was persuading members of the statewide 2016 state minimum wage coalition to join the preemption repeal fight. The 2016 state minimum wage coalition had been large and diverse, consisting of nearly four dozen state and national organizations including immigration, legal, faith, policy, education, healthcare, reproductive rights, business, Latinx, labor, civic engagement, youth, and environmental groups.¹² By contrast, the preemption repeal coalition consisted of just a handful of labor, grassroots, and progressive business organizations.

The technical nature of preemption also influenced the campaign’s strategy. One of the first steps the coalition had to take was to educate local officials about the need for preemption repeal. This required a different message than what is typically required for a minimum wage campaign: rather than emphasizing the policy benefits to workers, the coalition had to focus on the benefits to elected officials; and rather than targeting the public, the message was mainly directed at lawmakers. Chacon states that, “At one point our fight was not about local worker justice. It was not about making sure that people had the ability to pay their bills and support their families. Our fight became, ‘Give the power to elected officials who are closest to those who are in pain. They need to have the tools to address the issues that are affecting their community. Legislator, get out of the way, and give [local officials] the power

ⁱ There are important limits to Colorado’s preemption repeal law, which affect the ability of local governments to legislate on local wages. These are the result of compromises that the Work Here, Thrive Here coalition had to accept to secure a preemption repeal. Those limits include a provision capping the enactment of local wage laws to up to 10 percent of all local governments (with the potential to raise the limit via amendment); and a second provision limiting the *annual* step increase to \$1.75 or 15%, whichever is higher. For more detail, see Colorado General Assembly, *HB19-1210: Local Government Minimum Wage*, 2019 Regular Session, <https://leg.colorado.gov/bills/hb19-1210>.

to do their job.’ ” Alongside with a different messaging focus, the campaign had to organize local officials by asking them to sign petitions and lobby state lawmakers. “[When we started] we ‘knew’ it was going to be a worker and business [campaign]...That’s what we prepared for. [But] as we were moving forward...[we realized] it’s not just about business and workers. This is different. We are going to have to bring local elected officials into it.”

Although the campaign succeeded in repealing minimum wage preemption, preemption continues to be a threat in Colorado. Almost immediately after the coalition won preemption repeal and a \$15.87 minimum wage in Denver, the restaurant industry had a bill introduced during the 2020 legislative session that would have reversed the repeal. The bill nearly passed.

Invoking the history of preemption. The membership or leadership of many of the coalition partners—including COPA—were majority people of color and/or immigrants. They were keenly aware of the racist history of preemption and pointed to it to underscore the importance of repealing preemption. “We had [the racist history of preemption] as part of our educational materials. The Restaurant Association hated that...We also talked about the racist history of tips [and how they are rooted in slavery]...and they lost it.”

This knowledge informed the coalition’s outreach to legislators, and was reflected in their educational and advocacy materials, with mixed success: while advocates succeeded in getting lawmakers to cursorily pay attention to preemption’s racist history to avoid “saying the wrong thing,” coalition members did not observe a meaningful change in lawmakers’ concern with people-of-color communities, overall. The coalition did notice, however, that race and racism came up more often during minimum wage campaigns—perhaps a reflection that the tangible nature of the minimum wage lends itself more easily to a deep dive into its racist history, than the more abstract and technical problem of preemption.

Lessons learned. COPA reports that one of the main takeaways is that the funds available to fight preemption and promote local control is inadequate compared to what opponents have at their disposal. “We don’t have nearly the amount of funding, or the amount of power and influence at the Capitol that [minimum wage opponents] have.” The opposition’s vast resources allow them to move lawmakers more easily to their position, making the fight against preemption tougher.

A related lesson is that anti-preemption advocates could not always count on Democratic legislators to do the right thing by throwing their full weight behind local power—and in fact, some of the amendments that would have weakened the preemption repeal bill were proposed by Democrats.

A final lesson learned is that an organized and dedicated coalition can still prevail in the face of a powerful opposition boasting deep pockets and equally deep influence. The anti-preemption coalition credits organizing with beating the odds to win preemption repeal in Colorado, and a robust minimum wage in Denver: “We thought this fight was going to be about something; it became about something else. We improvised; we did all the organizing that we could; we did our work. And got a huge victory [in Denver]...The odds were against us, but we organized. And so, it proved that organizing is the right tool and the right vehicle for us to fight for this type of [policy change].”

Missouri

Background. In 2015, St. Louis passed a local minimum wage law that would gradually raise the city’s minimum wage rate to \$11 per hour by 2018. Opponents immediately challenged the ordinance in court by arguing, among other things, that the state’s minimum wage law preempted localities from passing higher local wages, delaying implementation of St. Louis’ minimum wage for nearly 2 years. When the Missouri Supreme Court eventually ruled in the city’s favor in 2017,¹³ more than 30,000 workers affected by the St. Louis minimum wage law (now \$10 an hour) received an immediate wage boost. The state legislature’s response was swift—passing a bill,¹⁴ long successfully blocked by worker advocates, that unequivocally prohibited localities from adopting higher local wages and nullifying the St. Louis ordinance—sending business a message that they could reverse the recently enacted wage increases.

The coalition that fought proactively for a St. Louis minimum wage, and the coalition that resisted preemption, were somewhat different in composition. While the St. Louis minimum wage coalition was made up of advocates, faith (including Black clergy), labor (SEIU and UFCW), and fast-food workers (most of whom were Black and female), the anti-preemption coalition, by necessity, also included elected officials—in particular, mayors, even those who opposed raising minimum wages in their jurisdictions, but who nonetheless recognized the importance of local power. According to Richard Von Glahn, Policy Director for Missouri Jobs with Justice, the anti-preemption coalition was more fluid (“When it was about encouraging the veto of a very specific bill, we could cobble something together”), and temporary (“Advocates of local control, especially locally elected officials, could recognize the threat posed by specific legislation and react defensively, but it was much harder to maintain a long term coalition dedicated to the issue. It just wasn’t a priority until specific legislation made it so.”). Despite this, the fight against preemption allowed a diverse group of advocates to develop a united narrative against corporate influence over the democratic process.

Challenges. One of the main challenges was getting potential campaign allies to cognitively separate the fight against preemption from the fight for higher minimum wages, since conflating the two had the effect of discouraging engagement on local control as a principle. Von Glahn states that, “We were trying to organize people around the principle of preemption and local control, and no one was viewing [local control] as a principle. They were all viewing it in the context of ‘Well, this is about the minimum wage thing that is happening.’ That made it very difficult to get other cities and different people to weigh in on principle of local control because they all viewed it as [if we were asking them] to support a higher minimum wage in these [other] cities...Everyone has often viewed preemption in the context of their own [policy] issue, not as a general principle worth fighting against. It was the classic Martin Niemöllerⁱⁱ warning, as preemption slowly worked across multiple issues without a unified response.”

ⁱⁱ Martin Niemöller was a German pastor who, during the 1920s and 1930s, embraced right-wing and Nazi ideology. However, after Adolf Hitler’s ascent to power and following his personal experience with repression under Nazi rule, Niemöller became a critic of Hitler. He is most famously remembered for his post-war statement known as, “First They Came for the Socialists, and I did not Speak Out...” For more information, see *Martin Niemöller: “First they came for...”*, United States Holocaust Memorial Museum, accessed October 7, 2022,

The conflation of anti-preemption with minimum wage also had the effect of limiting the coalition's membership to groups interested in labor issues. "There are a lot of people who have been very directly harmed by corporate-backed preemption, but it's been really hard to try and get all of those people unified on a shared strategy." The introduction of a "death star" preemption bill, HB1194, that targeted progressive labor issues did not help matters, as it further chilled discussions of a broad coalition.

A related challenge was that once minimum wage became tied to anti-preemption, Republican lawmakers were able to politicize the idea of local control to their advantage, thus negating Missouri's long history of support for robust local power. "[Missouri has a] long political tradition of local control, but that didn't matter at all. When the Republican leadership made this a key issue for their party...it became really difficult for us to have conversations with rank-and-file Republicans about the value and history of local control, because it really just became about the minimum wage and stopping these progressive cities from doing something in the state." However, this move also revealed that to Republican lawmakers, local control was never a deeply held principle, but rather a means to an end. A final challenge lay in the fact that the preemption bills were sponsored by lawmakers from rural areas of Missouri who were not accountable to St. Louis or Kansas City voters. This made advocacy significantly more difficult, as organizing under those circumstances required reaching out to communities whose local laws were not under immediate threat, to ask them to rally behind the abstract principle of local control: "You're organizing fast food workers in St. Louis to make phone calls to a community that they are not from, to talk to someone to say, 'Will you help *me* by contacting *your* politician who doesn't represent me, but is attacking me on this issue, which maybe could [also] impact you sometime in the future.'"

The leadership of people-of-color communities and the equity potential of local control and higher wages. The anti-preemption and the local minimum wage campaigns helped strengthen the leadership of people-of-color communities. As mentioned above, Black clergy were active participants in those campaigns, as were fast food workers (majority Black and female) whose experience with low wages were an important component of both campaigns' public education efforts.

The St. Louis minimum wage campaign (and a parallel effort in Kansas City) employed a messaging strategy that made use of impact analyses to emphasize the racial justice effects of higher minimum wages, and to highlight the lack of representation of Black workers in the state legislature.¹⁵ This allowed anti-preemption advocates to make the case that white male politicians' support for a preemption bill—that not only blocks local power, but ultimately harms Black and female workers the most—is a form of political and racial violence.

Although advocates were ultimately unable to defeat minimum wage preemption, they did succeed in advancing racial equity in two important ways. First, coalition members intentionally sought to understand the root causes of inequity and applied a racial lens to the issue of preemption. In doing so, they revealed that Missouri's political system promotes

<https://encyclopedia.ushmm.org/content/en/article/martin-niemoeller-first-they-came-for-the-socialists>.

white supremacy through laws that “cement white economic power in a community.” Second, the coalition was able to persuade the Ferguson Commission—an independent group appointed by then Governor Jay Nixon to study the barriers to equity in Missouri following the murder of Michael Brown, Jr. at the hands of police—to include local control among its policy recommendations.¹⁶ This was an important messaging victory, as it unequivocally connected local power with higher local wages and to the fight for racial justice. The Commission’s report reads, in part, that, “These factors promoted the Commission to *affirm the ability of local governments and workers to advocate for equity.*”¹⁷

Lessons learned. One main lesson is that there is room to engage the public around a discussion of local control as a *principle* and inspire their passion and activism. But the right circumstances need to be in place, and advocates need to be ready to identify and take advantage of them. While early in the anti-preemption campaign advocates had limited success organizing around local control, the legislature’s decision to introduce a preemption bill in response to St. Louis’ court victory was perceived as tactless and galvanized strong support for local power even among the business community. “The [2017] nullification bill brought people out in a different way. We actually organized business owners to stand up to bullies in Jefferson City [Missouri’s capital] ...They said, “I wasn’t thrilled that you [pushed for a minimum wage in St. Louis], but you did it and that’s what my community voted for...[Forget] these guys from outside of St. Louis telling us what to do!’ So, we got these business owners all organized.” The legislature’s ramming through of minimum wage preemption added urgency to the call for local control, in great part because preemption was now an immediate threat, rather than an abstract concept far removed from the realities of everyday life. “There’s a real difference between ‘We want to stop things that might happen in future’ [(preemption)] vs. repealing things that a community has already done.”

Another takeaway is that even the most crushing defeat can have silver linings. Although advocates could not prevent the adoption of minimum wage preemption or the nullification of St. Louis’ minimum wage law, they were able to direct the public’s anger towards support for a statewide \$12 minimum wage ballot initiative, which passed with support of 62 percent of voters in November 2018.¹⁸ Advocates also used the story of minimum wage preemption to make the case that the Missouri legislature had become venal and out of touch, and that corporate influence was jeopardizing the democratic process—a strategy that helped gather public support for a separate ballot initiative that increased limits on campaign contributions, capped the value of gifts from lobbyists to lawmakers to a nominal amount, and promoted fairness in the legislative redistricting system.¹⁹

Texas

Background. In February 2018, Austin enacted a local paid sick leave ordinance, making history as the first city in Texas (and first in the South)²⁰ to guarantee workers the right to earn paid time off for medical reasons. In August of the same year, San Antonio followed Austin’s lead,²¹ and in May 2019 Dallas joined them.²² Prior to the enactment of those laws, proponents of local paid sick leave laws had known that Texas preempted local minimum wages, but they did not believe that the law also preempted other local employment policies. Thus, they thought of the paid sick leave campaigns as an “opportunity for local communities to make an impact on [a policy area] that we didn’t see any movement on [at the state level],” according to Jonathan Lewis, then Senior Policy Analyst at Every Texan.

All three local paid sick leave ordinances were challenged in court by business opponents with known ties to the Koch brothers.²³ The opponents made the spurious claim that Texas' minimum wage preemption law also preempted local paid sick leave. The Austin lawsuit would initially be decided in the city's favor by the Austin trial court, and later in the opponents' favor by an appeals court. The Texas Supreme Court ultimately declined to hear the case,²⁴ leaving all three local laws preempted, per the appeals court ruling.

Around the same time as the courts were deciding the fate of paid sick days laws in Austin, San Antonio, and Dallas, the Texas legislature attempted to pass multiple preemption bills—some broad, which would have barred any local laws related to terms of employment, employment benefits, or commercial activity; and some more narrow, which targeted specific policy areas, such as fair scheduling, employment leave, and fair chance hiring.ⁱⁱⁱ When the Texas legislature introduced SB 15 / HB 1654 (one of the broad preemption bills), it provoked a strong response from groups as diverse as labor, faith, progressive, environmental, and gender and LGBTQI+ equity, which came together to form a strong anti-preemption coalition called the Coalition Against State Interference (CASI). This coalition successfully fought these and other preemption threats from the legislature by organizing, lobbying, and maintaining a united front. The coalition's success was in part a result of the diversity of its membership, and in part because it met the need to fight legislation that sought to defeat local power in one fell swoop.

By the time the legislature determined that broad preemption bills were hurting their cause more than helping—and attempted to change strategies by introducing a series of more narrow preemption bills—it was too late. The coalition had succeeded in running out the clock on preemption bills so many times that the idea of state preemption law became toxic. But opponents were able to win in the courts, with the Texas Supreme Court declining to hear the appeals court's ruling that the state's minimum wage preemption law invalidated local paid sick days laws.²⁵

Challenges. The abstract quality of preemption (and to some extent, local control) posed outreach challenges for the anti-preemption coalition. Lewis recalls that it was “really hard to talk about preemption [without tying it] to a specific issue.” Thus, early in the anti-preemption fight, advocates engaged the public by talking primarily about a defense of *paid sick leave*—a tangible issue—rather than talking about preemption or local control. Although paid sick leave ordinances in the three Texas cities were still new and the public was still absorbing their significance, messaging in their defense was straightforward: advocates could simply say that the local laws were allowing workers to accrue paid sick time off, but that the legislature was proposing to take that away. As the anti-preemption campaign progressed, so did its messaging: the message evolved from the defense of a specific policy (paid sick leave) to a call for local control to be able to adopt any number of local policies (“Tell state officials to stay out of our business...Locals know best”).

ⁱⁱⁱ The broad preemption bills were SB 15 / HB 1654, which would have preempted any *terms of employment* that exceeded state or federal laws; SB 2485 and SB 762, which would have prohibited local *employment benefits*; and HB 3899, which would have barred local laws that imposed a restriction, condition or regulation on *commercial activity*. The narrow preemption bills are SB 2486, SB 2487 and SB 2488.

Progressive infrastructure. The anti-preemption fight in Texas led to the development of a coalition that exists to this day to serve as an information and organizing space. As mentioned above, the coalition that came together to fight preemption in Texas was the Coalition Against State Interference (CASI). CASI was co-chaired by Every Texan (then known as the Center for Public Policy Priorities) and the Texas AFL-CIO. Its membership also included Faith in Texas, Equality Texas, Workers Defense Project, Planned Parenthood Texas Votes, and the Sierra Club, among others.²⁶ CASI was then, and still is an adaptable group of progressive advocates without a specific agenda or official membership—and that was by design. Early on, it became clear that CASI could not only be an effective tool to organize a response to preemption, but that it could also be a great space to share intelligence about upcoming legislation—and that an adaptable coalition would facilitate both. Over the years, CASI’s membership has fluctuated, reflecting changes in interests and legislative developments. The main drawback of an adaptable coalition, such as CASI, is that there may be less commitment from individual groups to engage in specific fights. But, as Lewis points out, “We like our looser formation better. A looser space provides more flexibility and brings in more partners to the table [than under a more rigid formation]...If we [were to] develop shared priorities, we’d lose [some] people.”

Additional lessons learned. One of the main lessons of Texas’ fight for local power is the importance of community involvement. Although advocates knew that they could generally count on local progressive legislators to pass paid sick leave ordinances in all three cities, some legislators tried to weaken the bills before passage. Advocates fought back by organizing community members to express their support for paid sick leave, and by encouraging them to remind their elected officials that “this is what we want, and what we put you in office for.”

Another important lesson is to try to anticipate all potential avenues of the fight on the front end. Since it was clear to advocates that—unlike minimum wage—paid sick leave was not preempted, advocates organized for legislative fights: first, to pass local paid sick leave, and later to defeat preemption threats by the state legislature. They did not anticipate that local power opponents would take the fight to the courts using the state’s minimum wage preemption law—and win.

An additional lesson to highlight is one that was alluded to, above: overly-broad preemption bills can threaten a wide range of communities—a fact that anti-preemption advocates can use to advance their goal. In Texas, when the CASI coalition determined that the broad preemption bills could harm the LGBTQI+ community, they reached out to key business leaders because they knew that those business leaders cared about harms to that community. With the backing of business leaders, CASI was able to decrease support for the measure.

Looking Ahead to Advancing and Embracing Local Power

The threats to local power are an ongoing and accelerating challenge. The Local Solutions Support Center (LSSC), a national hub that tracks preemption legislation and coordinates efforts to counter them, tracked over one-thousand bills during the 2022 legislative session—a significant uptick from the 475 preemption bills that LSSC identified and tracked in 2021.²⁷ These bills threatened local decision-making on a wide range of issues, “from environmental regulation to gun safety to worker pay.”²⁸ Although many of those bills failed to become law, the mere threat of preemption can have a chilling effect on local policymaking.²⁹

Many local governments are choosing to push back against state overreach—often with the support of allies such as LSSC and legal scholars—through a variety of tactics spanning a range from lawsuits to open defiance to public education. (See “Dissent, Litigation and Defiance” below). Many are also acting proactively, joining forces with advocates to visualize a legal structure that balances state and local authority while promoting and supporting local power. (See “Home Rule for the 21st Century”). Below is a summary of this activity.

- **Dissent, Litigation and Defiance:** In a blog for LSSC, Illinois State University professor, Lori Riverstone-Newell examined local governments’ response to state abuse of preemption over the past several years. According to her analysis, their response can be classified as **dissent** (such as when local lawmakers engage the media and the public to put pressure on the state legislature to relent); **litigation** (including bringing lawsuits against states, inviting litigation to bring the fight into the courts, and working with advocacy groups to challenge state preemption); and **defiance** (refusing to abide by state bans when all other options have failed or are not advisable).³⁰
- **Home Rule for the 21st Century:** Municipal home rule is the legal structure that underpins the scope of local lawmaking power and the balance between state and local authority. The federal Constitution leaves to states the power to determine the balance between state and local governing, and most states have adopted, either through their state constitutions or state laws, home rule systems granting localities the ability to act on certain areas.

Drawing from lessons learned of over 130 years of experience with home rule, the National League of Cities and the Local Solutions Support Center convened a working group tasked with examining the history and implementation of home rule. Based on that analysis, the working group drafted a document proposing four principles of home rule, which would strengthen local democracy and maintain a healthy balance of state and local authority.

1. **The Local Authority Principle:** “A state’s law of home rule should provide local governments full capacity to govern within their territorial jurisdiction, including the power to adopt laws, regulations, and policies across the full range of subjects—and with the powers—available to the state.”³¹

2. **The Local Fiscal Authority Principle:** “Home rule should guarantee local fiscal authority and recognize the value of fiscal stability at the local level. This principle accordingly includes local power to raise revenue and manage spending consistent with local budgets and priorities. To support local fiscal authority, a state should ensure adequate intergovernmental aid for general welfare at the local level and be prohibited from imposing unreasonable unfunded mandates.”³²
3. **The Presumption Against State Preemption Principle:** “To appropriately balance state and local authority, a system of home rule should provide that states may only act with respect to home rule governments expressly. And to exercise the power to preempt, the state must articulate—and, in the case of state-local conflict, must demonstrate—a substantial state interest, narrowly tailored. Moreover, state laws displacing local authority should be general, not unreasonably singling out individual local governments or groups of local governments.”³³
4. **The Local Democratic Self-Governance Principle:** “A state’s law of home rule should ensure that local governments have full authority to manage their own democratic process and structure of governance. Local democratic self-governance includes a local government’s authority over its personnel and property. Home rule should also protect local officials from individual punishment by the state for the exercise of local democracy. This protection includes barring states from holding local officials personally liable or removing local officials from office in the case of state-local policy conflicts. In addition, state ‘speech or debate’ immunity should extend to local lawmakers. And states should only act with respect to local democratic self-governance through express and general state laws that articulate an overriding state interest that is narrowly tailored to that interest.”³⁴

Conclusion

Preemption—a legal doctrine that gives higher governments, such as states, the power to limit or altogether ban local governments from legislating on specific issues—is being deployed by corporate actors and their allies in state legislatures to invalidate pro-worker policies and undermine local power. The use of preemption to curtail local power dates back to the Reconstruction period, when Southern white supremacists pushed for, and eventually won, the centralization of power in state legislatures which ultimately restored their political power.

The use of preemption to invalidate progressive policies has accelerated over the last few years, with disproportionate harm for people-of-color communities.³⁵ Advocates—such as those profiled in this paper—have organized their communities to repeal preemption laws (Colorado), to defend local laws already in the books (Missouri), and to fend off preemption threats (Missouri and Texas). Some also succeeded in developing progressive infrastructure. As preemption threats accelerate, there is a greater need for local governments and advocates to join forces. Some of this collaboration is already underway, such as the working group convened by National League of Cities and the Local Solutions Support Center, which drafted modernized principles for home rule. But as these case studies show, the grave

threat to local democracy and worker power posed by corporate interests' use of preemption demands a strong movement response before more rights continue to get rolled back.

Endnotes

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