

Preserving Local Control of Public Health Policies – Critical for Strong Public Health Policies

Many important public health policies are often developed and passed at the local level. Communities are also able to advance health equity when they can pass specific public health policies aimed at addressing local health disparities. But preemption—when a higher level of government revokes local authorityⁱ—can restrict local policymakers’ ability to pass, implement, and enforce innovative and proactive public health policies. States should be able to set a minimum standard for public health protections, but they should not pre-empt local governments from going above and beyond that minimum standard.

Why is Preserving Local Control of Public Health Policies Essential?

Regulating the sale of tobacco products and increasing the price of sugary drinks to support healthy eating choices are examples of the role public health policies can play to protect public health. In many cases, these efforts began at the local level and advocates learned over time how to improve these laws at the local level to make them as effective and impactful as possible. Allowing local governments to introduce and pass public health policies that best fit their communities is critical to advancing best practices across the country. Passing public health policies at the local level creates an opportunity for community debate, education, and engagement. This process fosters a broader, deeper understanding of the goals and importance of these public health approaches among local communities and can result in more sustainable, effective policies across issue areas.

The Negative Consequences of Preemption

Where states have passed preemption over public health policies, localities have been severely limited in their public policy options for achieving intended outcomes. Policies preventing local control are frequently requested by special interests. In fact, preemption has been shown to historically harm people of color, people with disabilities, individuals with limited-incomes, and individuals who identify as LGBTQ+.ⁱⁱ Once preemption is put in place, it is nearly impossible to remove^{iii,iv} and so preemption defense should be a consideration when pursuing public health campaigns.

Floor Preemption vs. Ceiling Preemption

Laws, rules, and regulations are passed, enacted, and implemented at the local, state, and federal level. Generally, the term “preemption” refers to a legal doctrine that prevents a lower level of government from regulating a particular issue. For example, a state law could preempt or block a municipality from passing an ordinance specifically tailored to address their community’s needs. There are two predominate types of preemption laws – “ceiling preemption” and “floor preemption.” “Ceiling preemption” occurs when the state government enacts a law revoking or invalidating the authority of the local government preventing their ability to regulate a specific public health issue beyond or differently than outlined in the state law. While “floor preemption” is where the state law establishes a minimum standard and allows local governments to pass more rigorous requirements.^v Floor preemption can be an effective tool in public health policy whereby everyone receives equal protection across the state, but local communities still have the power to pass policies that go above and beyond the minimum standard.

ACS CAN's Position

As a local, state and federal advocate, the American Cancer Society Cancer Action Network (ACS CAN) supports each level of government's ability to implement policies to protect the public's health. To reduce suffering and death from cancer effectively, we must preserve the right of local governments to pass public health policies that are as strong or stronger than state and federal laws.

References

ⁱ National Policy & Legal Analysis Network (NPLAN) & Public Health Law Center, The Consequences of Preemption for Public Health Advocacy (2010), available at <http://www.publichealthlawcenter.org/sites/default/files/resources/nplan-fs-consequences-2010.pdf>.

ⁱⁱ Yang, Y. T., & Berg, C. J. (2022). How Preemption Can Lead to Inequity. *International journal of environmental research and public health*, 19(17), 10476. <https://doi.org/10.3390/ijerph191710476>.

ⁱⁱⁱ Paul D Mowery et al., The Impact of State Preemption of Local Smoking Restrictions on Public Health Protections and Changes in Social Norms, *J ENVIRON PUBLIC HEALTH* 632629 (2012), available at <http://www.hindawi.com/journals/jeph/2012/63269>.

^{iv} National Policy & Legal Analysis Network (NPLAN) & Public Health Law Center, The Consequences of Preemption for Public Health Advocacy (2010), available at <http://www.publichealthlawcenter.org/sites/default/files/resources/nplan-fs-consequences-2010.pdf>.

^v ChangeLab Solutions. Assessing & Addressing Preemption: A Toolkit for Local Policy Campaigns, September 2020, accessed January 23, 2022, retrieved from https://www.changelabsolutions.org/sites/default/files/2021-05/PreemptionToolkit_FINAL_ACCESSIBLE_20200916.pdf.