

2021: A Session Like No Other





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[Grassroots Change](#)

[International Center for Not-for-Profit Law](#)

[Natural Resources Defense Council](#)



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INTRODUCTION

2021 was a legislative session like no other.

The pandemic forced state capitals to keep the public out. The halls remained mostly empty. No lobbyists. No advocates buttonholing lawmakers. No media scrums. Many legislators worked remotely. The public was allowed to watch floor debates online and testify at committee hearings via video chat. Voting was often virtual.

But the unique operating environment did not stop a torrent of legislation blocking, removing, or

The preemption bills introduced in 2021 were not as focused on deregulation as they have been since 2011, when conservatives began their wholesale efforts to limit local lawmaking, weaken local democracy, and block local policies intended to advance economic and racial equity. Instead, the 2021 session was characterized by a sharp turn to the right and a radically different set of policies. GOP-controlled states – including Florida, Tennessee, Georgia, Texas, Arizona, Iowa, and Montana – advanced an unmatched culturally conservative, pointedly partisan, and unashamedly racist agenda this session.

In response to the pandemic, the racial justice movement, the presidential election and the priorities of the Biden Administration,

Republican-dominated legislatures this year passed laws that made it harder to vote, banned school curriculums from examining racism in American history, criminalized penalties on public protesters, barred local governments from reducing their police budgets, blocked local school districts and officials from allowing transgender teens to compete in sports, and shut down municipal measures to combat climate change.

Right-wing groups such as the American Legislative Exchange Council (ALEC), Heritage Action, and the Alliance Defending Freedom (ADF) also made unprecedented efforts this session to encourage Republican-controlled states to pursue a common, conservative, and racially-divisive agenda.



penalizing local authority from being introduced and passed primarily in Republican-controlled states. The Local Solutions Support Center (LSSC), a national hub that coordinates and creates efforts to counter the abuse of preemption, tracked over 400 such state preemption bills this session, more than twice the number of bills LSSC tracked in 2019, the last full state legislative session. Seventy of those bills were filed in Florida and Texas alone.

White, male Republican state legislators representing predominantly white rural and exurban areas worked more aggressively this session to invalidate the policy choices of racially diverse, blue cities and counties. In 2021, red state lawmakers introduced a glut of preemption bills that give states more power over the administration of local government operations, signifying a new, deeper level of state interference with the inner workings of cities and counties. Some states now dictate how

local elections should be run, determine the process for issuing local public health orders, decree how much local governments can cut or shift funds in their budgets, and threaten to give state actors the authority to intervene in local criminal cases. Combined, these laws constitute an unprecedented state intrusion into the day-to-day management of cities and counties.

Finally, preemption has long been used as a tool to limit the economic and political power of Black, Indigenous, and other people of color (BIPOC) communities, women, immigrants, LGBTQ people, and workers in low-wage industries. But the number and types of state laws enacted in 2021 – as more Americans start to come to terms with the enduring legacy of the nation’s racist past – make it abundantly clear that preemption, like voter suppression, gerrymandering, and limiting ballot access, is part of the scaffolding of structural racism used traditionally and today to maintain white supremacy and keep BIPOC, women, LGBTQ people, and workers in low-wage jobs from gaining power.

The legislative session of 2021 was, indeed, like no other.

A note: This report is not an encyclopedic scan of every state preemption bill passed in 2021. It is, instead, an illustrative look at preemption trends across states and policies intended to inform elected officials, advocates, and their allies. [A chart of all the bills tracked by LSSC can be found here.](#)



The Pandemic and the 2021 Legislative Session

The pandemic disrupted many aspects of life across America, including the ways state lawmakers legislated and the public participated in the political process in 2021. Access to lawmakers became more limited - and lawmaking less transparent - in many states. [Some legislatures suspended in-person sessions, committee meetings, and public hearings.](#) Many state capitals were closed to the public; lobbyists and advocates had to watch sessions live streamed online, and the experts and the public testified virtually at committee hearings.

In Alaska, lawmakers were not allowed to congregate in chambers. They could not stand, but were required to sit at their desk behind a plexiglass screen when making remarks on the floor. On-site health screening, temperature checks, and facemasks were required for lawmakers in states where legislatures met in-person. In Nevada, lobbyists or members of the public who wanted to weigh in on a bill had to call in or connect virtually to lawmakers. But a [March 2021 survey by the Associated Press](#) found that 13 legislative chambers in eight states – Alabama, Arkansas, Iowa, Indiana, Louisiana, Missouri, Nebraska and Ohio – did not allow people outside the Capitol to testify remotely by phone or video during committee hearings. Traditional lobby days by policy advocates were cancelled across the country.

Essentially, lawmakers had less ability to meet with constituents, take public testimony, and deliberate. According to David Cuillier, president of the National Freedom of Information Coalition, the pandemic “created more problems” for public oversight of government, especially in states where lawmakers took advantage of the pandemic precautions to limit public participation. According to Ida Eskamani with Florida Rising, Florida lawmakers often only needed to give a day’s notice of a vote or hearing, with substantial amendments introduced and adopted with even less notice, forcing advocates to scramble to organize witnesses and prepare testimony.

NEW PREEMPTION

Preemption occurs when a higher level of government (state or federal) eliminates or reduces the authority of a lower level over a given issue.

Historically, preemption has been used to ensure that local and state regulations conform, and to create uniform minimum standards – “floors” that local governments could tailor or strengthen to meet their community’s needs. Traditional preemption emphasized balance between the state and local levels of government. While state policy still had primacy, according to Columbia Law School professor Richard Briffault, it was understood that “state policies could coexist with local additions or variations.”

What we are seeing now is “ceiling preemption” that prohibits local governments from doing more than what was proscribed by the state and, in many cases, from regulating at all. [“New Preemption”](#) laws, according to Briffault, “clearly, intentionally, extensively, and at times punitively, bar local efforts to address a host of local problems.”

The use of state preemption to limit local policymaking intensified after the GOP made extensive gains in 2010’s midterm elections. Many of those preemption laws were driven by an industry-backed anti-regulatory agenda intended to block a broad swath of local initiatives, from minimum wage hikes to fracking bans. In addition to pushing a vast deregulatory agenda, state legislatures have also worked to consolidate governing powers at the state level, taking control of “core” local powers including local zoning, local elections, and local revenues. Additionally, over the past decade, state lawmakers have adopted increasingly harsh methods for enforcing preemption laws, including the threat of fiscal penalties, removal of local officials from office, and civil and criminal sanctions.



In the 2020 midterms, the GOP again made gains in state elections and now control 61 of the nation’s 99 legislative chambers. This year, red-state lawmakers used their power to pass much more transparent politically, culturally, and racially-driven responses to the events of 2020 and to the Biden Administration’s efforts to combat climate change, advance racial equity, and end discrimination against transgender Americans.

THE MAKE-UP OF THE 2021 STATE LEGISLATURES

State legislators are overwhelmingly male, white, and Republican. And, as a result of the 2020 elections, red states became redder, more conservative, and more likely to use preemption laws to accomplish their aims.

By Party:

In 2021, the Republican Party controlled 61 legislature chambers and controlled both legislative chambers and the governor's office (trifectas) in 23 states. States that frequently pass preemption laws - Alabama, Arkansas, Florida, Georgia, Iowa, Mississippi, Missouri, Montana, Tennessee, and Texas - are all Republican trifecta states in 2021.

By Race:

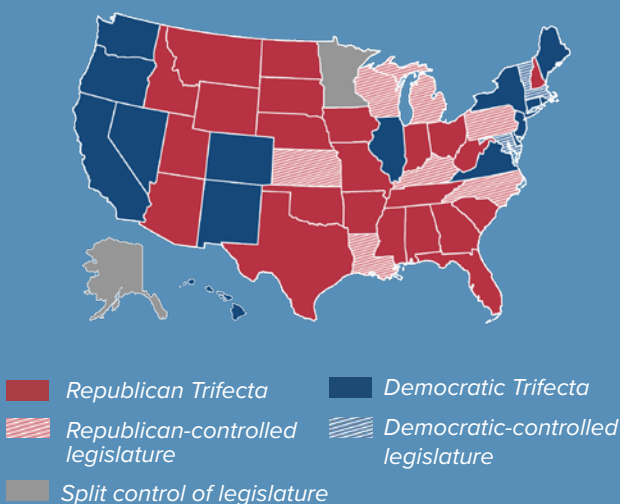
The nation's 7,383 state lawmakers are substantially whiter than America as a whole, and that is especially true in the South. According to [2020 research](#) by the National Council of State Legislatures (NCSL), legislatures remain overwhelmingly white, at 78%, while the white population of the US has declined to 60.1%.

Even though the majority of Black Americans (55%) live in the South and Southeast, white politicians make up the preponderance of state legislatures in the South:

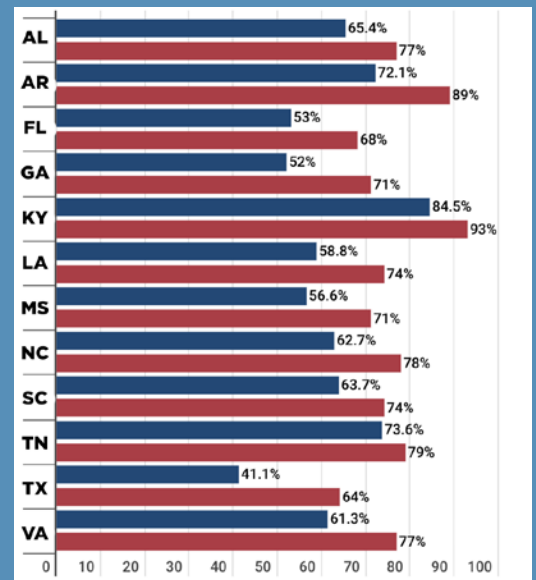
By Gender:

Women make up 50.8% of the US population. According to NCSL, they currently hold 29% of legislative seats. But women comprise less than 20% of legislators in Alabama, Louisiana, Mississippi, South Carolina, and Tennessee.

Partisan composition of state legislatures

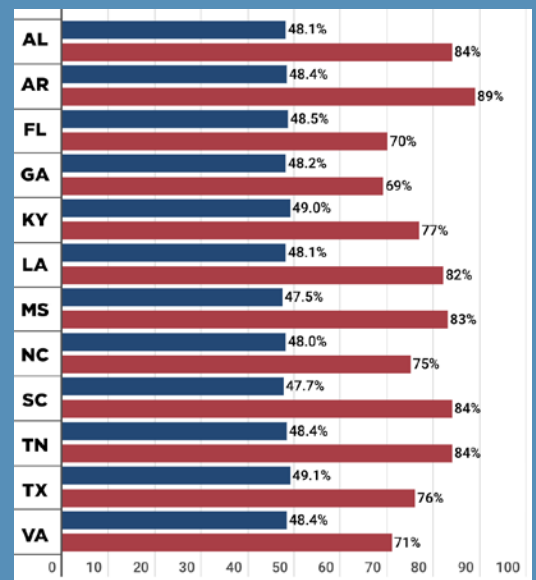


White representation of Southern state populations and in Southern legislatures



■ Percentage of State Population Who Are White
■ Percentage of State Legislators Who Are White

Male representation in southern state populations and in southern legislatures



■ Percentage of State Population Who Are Male
■ Percentage of State Legislators Who Are Male

Source: [Kaiser Family Foundation](#) / [NCSL](#) / [Mississippi Today](#)

2021
Preemption

RACIALLY TARGETED AND TRANSGENDER DISCRIMINATORY LAWS



Banning curricula that explores racism in American history

Just as the United States is beginning to come to terms with its racist past and acknowledge that structures in place have kept BIPOC communities from advancing toward economic and social equity, 27 states have [introduced or passed legislation](#) that bans the teaching of critical race theory, “divisive concepts,” and/or the [1619 Project](#), making it harder for teachers to talk about race, diversity, and discrimination in their classrooms. Some of these bills contain punitive measures: the Tennessee law, as well as proposed bills in Maine and Wisconsin, withhold state funding for schools that [“knowingly violate the prohibitions.”](#) and proposed bills in Kentucky, Maine, and Pennsylvania subject teachers who violate the law to disciplinary action and termination.

The bills mostly ban the discussion, training, and/or orientation that the United States is inherently racist, as well as any discussions about conscious and unconscious bias, privilege, discrimination, and oppression. Critical race theory (CRT) is an academic framework that examines history through the lens of racism. It centers on the idea that the nation’s institutions – the criminal justice system, education system, labor market, housing market, and healthcare system – have [racism](#) embedded in laws, regulations, and rules, functioning to maintain the dominance of white people in society.

Eight states have passed legislation that enacted bans, and the state school boards in Florida, Georgia, and Utah introduced new guidelines barring CRT-related discussions (see page 9):

Arizona [HB 2906](#) prohibits state and local government entities from requiring employees to take orientation, training, or therapy that suggest an employee is inherently racist, sexist, or oppressive, whether consciously or unconsciously. The state’s budget also contains similar language banning schools from teaching critical race theory.

Arkansas [SB 627](#) prohibits state agencies from teaching employees, contractors, or others to believe “divisive concepts.” The concepts include anything that says that the U.S. is fundamentally racist or sexist. The measure does not apply to public schools, colleges and universities, law enforcement training, or local governments.

Idaho [HB 377](#) prohibits public schools, including public universities, from teaching that “any sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior,” which, according to the bill, is often found in “critical race theory.”

Iowa [HF 802](#) prohibits critical race theory education in school curricula and in mandatory diversity, equity, and inclusion training. The new law applies to Iowa’s governmental agencies and entities, school districts, and public postsecondary educational institutions. Iowa’s new law, in parts, draws [nearly word for word from a Trump administration executive order](#) that targeted critical race theory, and the bill [bans 10 specific concepts from being taught](#).

New Hampshire [HB 544](#) was tabled by the House but was later inserted in the state budget and passed. The new law prohibits public employees from teaching or training that, “an individual, by virtue of his or her age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin is inherently racist, sexist, or oppressive, whether consciously or unconsciously.”

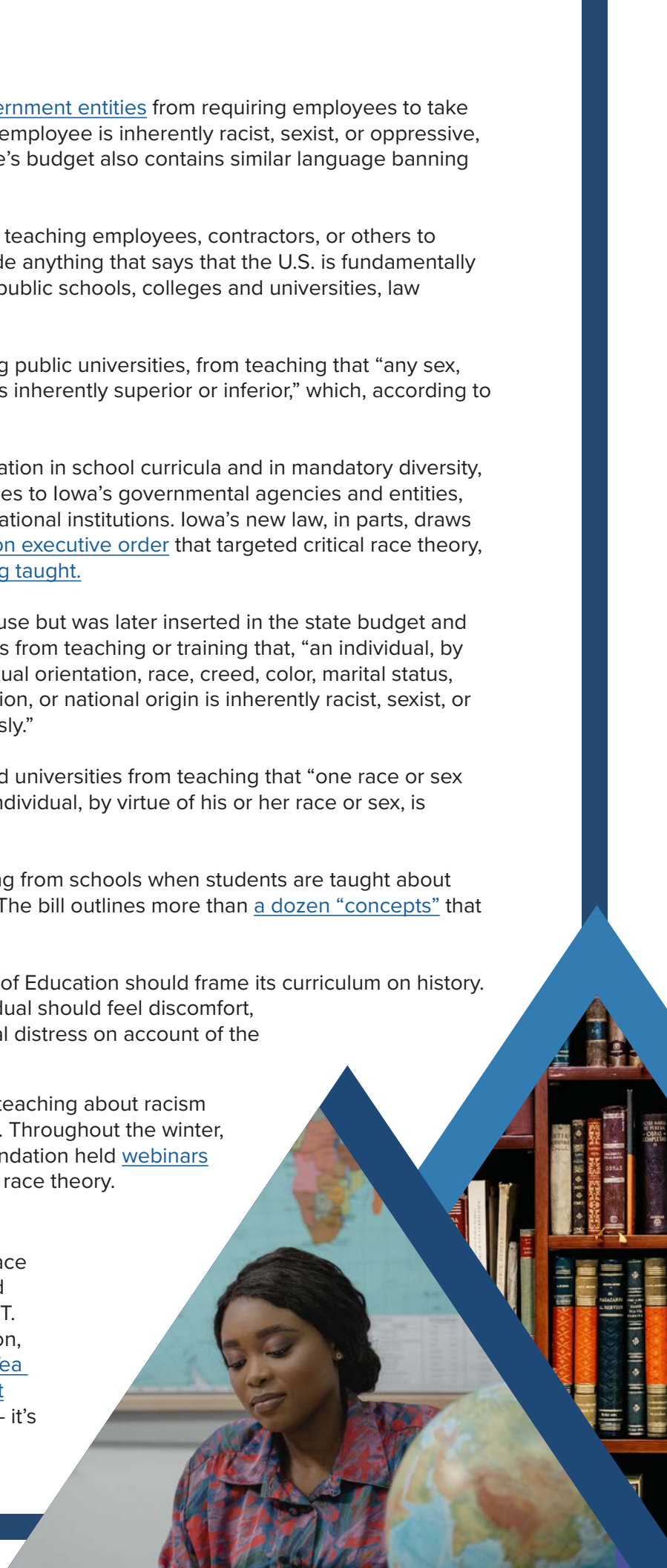
Oklahoma [HB 1775](#) prohibits public schools and universities from teaching that “one race or sex is inherently superior to another,” and that “an individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive.”

Tennessee [HB 0580/SB 0623](#) withholds funding from schools when students are taught about topics like systemic racism and white privilege. The bill outlines more than [a dozen “concepts”](#) that can’t be taught in schools

Texas [HB 3979](#) mandates how the State Board of Education should frame its curriculum on history. It says that schools cannot teach that “an individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of the individual’s race or sex.”

The sudden proliferation of these bills banning teaching about racism in America is part of a broad conservative effort. Throughout the winter, ALEC and conservative think-tank Heritage Foundation held [webinars](#) that [warned](#) about the threat of teaching critical race theory.

Now, according to [NBC News](#), at least 165 local and national groups aim to disrupt lessons on race and gender and are pushing to overturn elected school boards as part of a campaign against CRT. According to former Trump adviser Steve Bannon, the fight over CRT is an opportunity to [create “Tea Party 2.0.”](#) In May, Bannon [stated on his podcast](#) that “the path to save the nation is very simple – it’s going to go through the school boards.”



Criminal penalties for protestors

In response to racial justice protests that swept the country following the death of George Floyd, Republican state legislators across 34 states have introduced more than 80 punitive bills in the 2021 legislative season according to the [International Center for Non-Profit Law U.S. Protest Law Tracker](#).

While these bills do not appear to include a “preemption” component per se, they do limit the type of conduct that can take place on local streets and interfere with the way in which localities may wish to allow for public protests on their city streets, particularly where localities have historically allowed protests along public streets leading to the obstruction of traffic. In addition to undermining this local authority, these laws force localities to respond to protests or face funding cuts and/or civil action.

These bills redefine what constitutes a protest, criminalize involvement, grant civil immunity to people who harm protesters and encompass a wide range of punitive tactics. Some broaden the definition of “rioting” and “aggravated riot” to allow for dragnet arrests – in which police arrest people for being in the vicinity of an alleged

crime – and include felony charges with lengthy prison sentences. Legislators in [Oklahoma](#) and [Iowa](#) have passed bills granting immunity to drivers whose vehicles strike and injure protesters in public streets.

Some of the new anti-protest bills go beyond criminal punishment and cut basic benefits to people convicted of protest-related charges. A proposal in Indiana would have [prohibited anyone convicted of unlawful assembly from holding state employment](#), including elected office. A bill in Minnesota would disqualify people convicted of a protest-related crime from enrolling in public assistance programs, including those for food and unemployment.

Florida’s new [“Combating Public Disorder”](#) bill (HB 1), signed into law in April, [was called](#) “the strongest anti-looting, anti-rioting, pro-law enforcement piece of legislation in the country” by Gov. Ron DeSantis. The

bill expands the legal definition of “rioting” to allow for dragnet arrests and sets harsher penalties (and escalates some misdemeanor charges to felonies) for protesters who block roadways or deface public monuments. It also creates a new misdemeanor called “mob intimidation” and protects police budgets from cuts.


Many of the anti-protester bills use language that copies elements of the Florida legislation. New bills in Alabama and Montana, for example, draw from a 2017 model bill drafted by ALEC at the behest of fossil fuel companies, the so-called [Critical Infrastructure Protection Act](#). A response to the Dakota Access Pipeline protests, it set a precedent for severe criminal penalties against peaceful protesters.

Anti-protestor bills enacted in 2021 include:

Alabama SB 152 allows municipalities in Lauderdale County to control where protesters may gather and charge them sizable fees for a permit that includes “the actual cost of cleanup,” “the actual cost of the use of law enforcement officers,” and “any other actual administrative cost incurred by the municipality.”

Arkansas HB 1508 creates new penalties for protesters who block traffic, “riot”, or damage monuments. As enacted, the law increases the penalty for obstructing a “public passage,” from a Class C to a Class A misdemeanor, meaning a protester who makes a sidewalk “impassable to pedestrian...traffic” could face up to one year in jail. The law also creates a new mandatory minimum sentence of 30 days in jail for “rioting” and requires restitution for any injury or damage as a result of the offense. The law allows the state Attorney General, in addition to the municipality’s district attorney, to initiate an investigation into cases of riot, inciting riot, and obstructing a highway or other public passage. It also amends the definition of “act of terrorism” to include any act that causes “substantial damage” to a public “monument.”





Arkansas HB 1321 introduces harsh new penalties for protestors around gas and oil pipelines and other “critical infrastructure.” The law broadly defines “critical infrastructure” to include a range of posted or fenced-off areas associated with natural gas and crude oil production, storage, and distribution, including above and below ground pipelines as well as pipeline construction sites and equipment. Under the law, purposely entering or remaining on any “critical infrastructure” is a Class D felony, punishable by up to 6 years in prison and a \$10,000 fine.

Florida HB 1 creates a cause of action against a municipality for obstructing or interfering with reasonable law enforcement protection during a riot or an unlawful assembly, increases the offense severity ranking of an aggravated assault for the purposes of the Criminal Punishment Code if committed in furtherance of a riot or an aggravated riot, and prohibits defacing, injuring, or damaging a memorial. This bill also allows a city elected official or state attorney to challenge a municipal reduction of the law enforcement budget and creates a state commission that can unilaterally revise any such reduction.

Indiana SB 187 directs state police to prioritize the investigation of those who riot or incite violence, destroy monuments, or destroy religious property. It also allows the state to withhold discretionary grant funding from local governments that fail to protect public monuments from destruction. It absorbs the enhanced penalties for rioting from SB 198, making rioting a Level 6 felony if it results in serious bodily injury or property damage between \$750 and \$50,000. Rioting is a Level 5 felony if it results in catastrophic injury, death, or property damage of at least \$50,000.

Missouri SB 26 prohibits someone convicted of felony that endangers the life of a first responder from being eligible for parole, creates offense of “unlawful traffic interference” if someone impedes traffic on public street, highway, or interstate highway, increases penalties for unlawful traffic interference if they happen during an “unlawful assembly”, creates offense of institutional vandalism if someone defaces public monument or structure on public property, allows taxpayers to request injunction if governing body decreases law enforcement budget by more than 12 percent relative to budgets for other departments over 5 year aggregate amount, and establishes a “bill of rights” for law enforcement officers giving them more protections against discipline and dismissal.

Kansas SB 172 Creates the crimes of trespassing on a critical infrastructure facility and criminal damage to a critical infrastructure facility and eliminates the crime of tampering with a pipeline.

Iowa SF 342, also known as the “Back the Blue” bill, makes rioting a felony instead of a misdemeanor and increases penalties for blocking streets and highways or destroying public property and criminalizes shining lasers at police. It also makes drivers who hit protesters immune from civil liability in some circumstances. [The bill](#) also strengthens qualified immunity for law enforcement, making it more difficult to sue officers individually for misconduct.

Montana HB 481 provides new penalties for protests near gas and oil pipelines. Under this law, someone who trespasses on property containing critical infrastructure could be subject to being guilty of a felony punishable by a fine of not more than \$4,500 or by imprisonment for not more than 18 months or both. Damaging, defacing, or tampering with equipment on a critical infrastructure facility would carry penalties of up to 30 years in prison and a \$150,000 fine. It would also subject “an organization found to be in a conspiracy” to fines up to 10 times the amount levied on the person who committed the crime.

Oklahoma HB 1674 criminalizes the unlawful blocking of a public street and grants immunity to drivers who strike and injure protesters during a riot. It would also subject “an organization found to be a conspirator” to fines up to 10 times the amount levied on the person who committed the crime.

Tennessee SB 451/HB 881 is the state’s newest anti-protest law bill. As enacted, it expands the offense of aggravated rioting to include rioting by a person who travels from outside the state with intent to commit a criminal offense and participating in a riot in exchange for compensation and increases the mandatory minimum sentence for aggravated rioting to 60 days if the person commits more than one aggravating circumstance.

Texas HB 9 increases the criminal penalty to a state jail felony offense for anyone who knowingly blocks an emergency vehicle or obstructs access to a hospital or health care facility.

Keeping housing unaffordable

America's cities and counties have been on the frontlines of two related crises: COVID-19 and the increasingly severe economic and housing challenges worsened by the pandemic. The economic fallout from the pandemic turned America's existing [housing crisis](#) into an emergency that forced all levels

of government to implement [eviction and foreclosure moratoria](#) to keep families, especially BIPOC families, from losing their homes. Yet as municipalities worked to protect their residents from eviction, they faced hostility from states stopping local governments from taking action to make rents and housing more affordable.

Iowa [SF 252](#) would allow landlords to turn away tenants who receive Section 8 vouchers to help them pay rent. The bill prohibits counties from adopting laws that would prohibit a landlord "from refusing to lease or rent out a dwelling unit to a person because of the person's use of a federal housing voucher issued by the United States department of housing and urban development."

Montana [HB 259](#) prevents municipalities from requiring that a certain portion of qualifying new and existing housing is sold or rented at an affordable price. The new preemption law forces the cities of Bozeman and Whitefish to stop enforcing inclusionary zoning ordinances meant to increase the supply of affordable housing.

Banning sanctuary cities and targeting immigrants

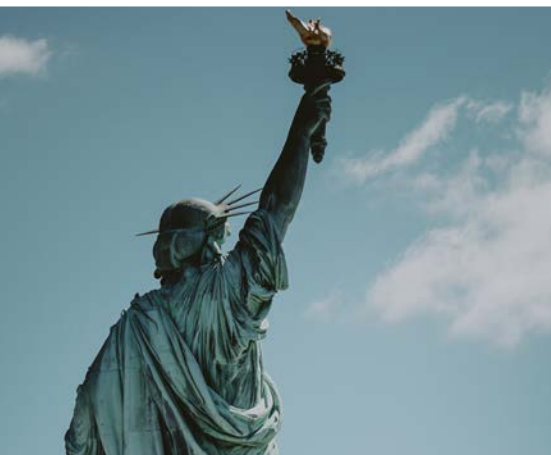
In a demonstration of how divided the nation is, lawmakers in Montana passed a bill this session that required localities to cooperate with federal immigration authorities while New Jersey made it illegal.

Montana [HB 200](#) prohibits state and local governments from putting in "sanctuary policies," – a general policy of refusing to provide another government with information about someone's immigration status or refusing to comply with federal requests to detain someone for possible immigration violations.

Montana [HB 223](#) gives state or local law enforcement the authority to hold someone based on a federal immigration detainer request.

New Jersey [HB 5207](#) prohibits state and local entities and private correctional facilities from entering into agreements with federal immigration authorities to detain noncitizens.

Oklahoma [HB 2774](#) requires all sheriffs, jailers, prison keepers, and their deputies to honor federal immigration detainers. Detainers are legal requests by Immigration and Customs Enforcement (ICE) to hold illegal aliens for up to 48 hours after their release on state charges so that ICE has time to pick them up and begin or resume the deportation process.



Preemption and the Perpetuation of Racial Inequity

Majority white legislatures have used preemption in the past and are using preemption now to maintain white supremacy by stopping Black- and brown-majority cities from advancing policies to further economic, public health, and racial equity in their own communities. A recent study by the Economic Policy Institute (EPI) and Economic Analysis and Research Network (EARN), [Preempting Progress](#), tracks the use of preemption to block policies, including minimum wage, local hire, paid leave, and fair scheduling laws, and to keep BIPOC, women, and workers in low-wage industries from gaining political and economic power in the South. Many of the local policies barred by the states would have been most beneficial to the [same communities disproportionately hurt most](#) by the health and economic effects of COVID-19.

The current-day use of preemption in the South is deeply rooted in the past, in the post-Reconstruction era, and designed to uphold white supremacy. Before the Civil War, according to legal historian Daniel Farbman, slaveholders had wide jurisdiction over slaves' bodies and social lives, [plantations were the primary unit](#) of local government for the vast majority of the Black population, and county governments were principally dedicated to protecting the property rights of white residents.

After the Civil War, the laws passed by Congress constituted a momentous expansion of civil and political rights for Black people, amounting to a wholesale remodeling of Southern society and instituting what historian Eric Foner calls a ["massive experiment in interracial democracy."](#) But the election of Black legislators, judges, sheriffs, and other officials with legal and political power over the white population sparked a violent backlash. Reconstruction formally ended in 1877 when President Rutherford B. Hayes pulled federal troops out of the South, keeping his end of the bargain that won him the contested election of 1876. Promises to protect civil and political rights of Black people were not kept. The end of federal oversight of southern affairs led to the dismantling of political and legal protections and the disenfranchisement of Black people.

From the late 1870s onward, southern legislatures passed a series of laws requiring the separation of white people from "persons of color" on public transportation, in schools, parks, restaurants, theaters, and other locations. These "Jim Crow" laws, which created an unequal society structurally divided by race, governed life in the South through the next one hundred years, ending formally with the successes of the civil rights movement in the 1960s. But underlying structural racism and racial animus still drive legislative and executive action, including state preemption.



Targeting transgender youth

Lawmakers [in 27 states](#) have proposed legislation that would ban transgender athletes from competing in school sports that match their gender identity. In 2020, [Idaho](#) became the first state to enact a transgender athlete ban, but it was blocked by a federal judge. That law would allow anyone to challenge a person's gender identity and require them to present a birth certificate as proof. This year, eight states enacted similar bans of their own.



Idaho's bill was sponsored by Republican state Rep. Barbara Ehardt, who worked with the Alliance Defending Freedom (ADF) in crafting the measure, according to [The Idaho Press](#). Founded in 1994 by Christian conservatives, the ADF has provided legal counsel for a variety of efforts to curtail LGBTQ rights, from fighting against marriage equality to defending businesses that refuse service to LGBTQ customers. The language in the Idaho bill is strikingly similar to the that of the transgender sports bans enacted in Florida, Mississippi, Montana, West Virginia and elsewhere.

ADF, which has been described by the Southern Poverty Law Center as a hate group, [formed a "partnership"](#)

in 2019 with the American Legislative Exchange Council (ALEC) – a bill mill that provides conservative state lawmakers with model legislation that often moves simultaneously in several states.

Seven states – Alabama, Arkansas, Florida, Mississippi, Montana, Tennessee, and West Virginia – have passed bans that prevent school districts from implementing trans-inclusive policies, preventing transgender girls from competing on the sports teams of their choice. A [similar bill](#) was vetoed in South Dakota, but [two executive orders](#) put in place by the governor have essentially the same effect.

Alabama [HB 391](#) prohibits public K-12 schools from participating in, sponsoring, or providing coaching staff for interscholastic athletic events at which athletes are allowed to participate in competition against athletes who are of a different biological gender, unless the event specifically includes both biological genders.

Arkansas [SB 354](#) bans transgender women and girls from playing school sports based on their gender identity.

Florida SB 1028 bans transgender girls and women from competing on female sports teams at the high school and college level. The approved measure stripped some of the most contentious elements from a proposal approved by the Florida House, including a requirement that transgender athletes in high schools and colleges undergo testosterone or genetic testing, as well as submit to having their genitalia examined. Under Florida law, a transgender student athlete would have to affirm her biological sex by supplying proof, such as a birth certificate. The law also allows another student to sue if a school allows a transgender girl or woman to play on a team intended for biological females.

Mississippi SB 2536 requires any public school, public institution of higher learning, or institution of higher learning that is a member of the NCAA, NAIA, MHSAA, or NJCCA to designate its athletic teams or sports according to biological sex; to provide protection for any school or institution of higher education that maintains separate athletic teams or sports for students of the female sex. The law also allows another student to sue if a school allows a transgender girl or woman to play on a team intended for biological females.

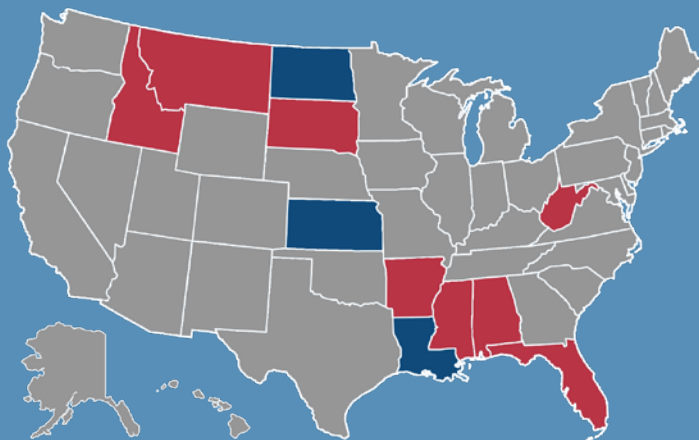
Montana HB 112 requires interscholastic athletes to participate under sex assigned at birth and immunizes educational institutions against “a complaint, ...an investigation, or any other adverse action against a school or institution of higher education for maintaining separate interscholastic, intercollegiate, intramural, or club athletic teams or sports for students of the female sex.”

Tennessee SB 0228/HB 0003 requires that a student’s gender, for purposes of participation in a public middle school or high school interscholastic athletic activity or event, be determined by the student’s sex at the time of the student’s birth, as indicated on the student’s original birth certificate.

West Virginia HB 3293 prohibits transgender female athletes from playing on women’s sports teams in public middle schools, high schools, and universities. While athletic bans are the most common forms of legislation targeting transgender individuals this session, a number of states considered prohibiting transition-related medical care for minors, some including criminal penalties.



State legislation restricting transgender students from participating in school athletics



■ Enacted ■ Vetoed by the Governor

The American Legislative Exchange

Council (ALEC) and Preemption

For the past 40 years, the American Legislative Exchange Council (ALEC) has worked with companies, trade associations, and conservative lawmakers to write and promote model bills. ALEC bills designed to advance the interests of their corporate and conservative members have become pervasive in the American legislative process. ALEC has claimed that its members introduce more than 1,000 bills based on its models each year, and about 20% become law.

ALEC has a long history of promoting preemption bills as part of its anti-regulatory, pro-industry agenda. But this session, ALEC also connected its large and influential network of lawmakers (about a quarter of all state legislators, almost all of them Republicans, are ALEC members) with its partners at the Heritage Foundation and the Alliance Defending Freedom (ADF) so that these right-wing organizations could promote and spread preemptive legislation to restrict voting, ban the teaching of America's racist history, and undermine the rights of transgender youth in multiple states simultaneously.

The 2021 legislative session continued to see longtime ALEC model bills being enacted, including:

- [Sanctuary Cities](#). ALEC developed and disseminated a bill that effectively barred sanctuary cities by creating new crimes of “trespass” for people without federal immigration papers and allowing private suits against police if they do not “fully” enforce immigration laws.
- [Plastic Bags](#). This ban on local container bans concludes, “The free market is the best arbiter of the container.”
- [5G Wireless](#). ALEC readopted a 2006 model bill in 2015, just a year before some states began passing small-cell laws.
- [Critical Infrastructure Protection Act](#). Newly enacted anti-protester bills in Alabama, Montana, and other states draw from a 2017 model bill drafted by ALEC at the behest of fossil fuel companies in response to the Dakota Access Pipeline protests. The ALEC model set a precedent for the severe criminal penalties against peaceful protesters aimed at chilling dissent that were enacted this session.

This session, ALEC took advantage of the pandemic to accelerate efforts to weaken local government authority. Its model bill, the [Emergency Power Limitation Act](#) provided the framework and language that states used to limit the emergency powers of the executive branch and curtail state and local public health authority. For example, Florida's [SB 2006](#) shares some of the language from the ALEC model:

“(b) It is the intent of the Legislature to minimize the negative effects of an emergency order issued by a political subdivision. Notwithstanding any other law, an emergency order issued by a political subdivision must be narrowly tailored to serve a compelling public health or safety purpose. Any such emergency order must be limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible.”

“An emergency order automatically expires 7 days after issuance but may be extended by a majority vote of the governing body of the political subdivision, as necessary, in 7-day increments for a total duration of not more than 42 days.”

North Carolina's [SB 481](#), which is still pending, also includes similar language, “All orders, including emergency orders, decrees, regulations, or other mandates, that bind, curtail, or infringe the constitutional rights of private parties must be narrowly tailored to serve a compelling public health or safety purpose. Each order shall be limited in duration, applicability, and scope in order to reduce any infringement of individual liberty.”

Newly evident this year is ALEC's alliance with Heritage Action for America, the sister organization of conservative think tank the Heritage Foundation. The Center for Media and Democracy (CMD) and the watchdog group, Documented, have revealed that ALEC is working closely with Heritage Action on a [\\$24 million campaign](#) to enact new voting restrictions in eight states (Arizona, Florida, Georgia, Iowa, Michigan, Nevada, Texas and Wisconsin), according to [internal documents](#) obtained by Documented. CMD has identified more than [100 Republican politicians](#) connected to ALEC in just six battleground states who are lead sponsors or cosponsors of those voter suppression bills. Additionally, ALEC is pushing to loosen restrictions on [poll watching](#) activities that historically have been used to intimidate Black voters.


ALEC has also partnered with the Heritage Foundation to push bills banning teaching about racism in America. Throughout the winter, the Heritage Foundation held [webinars](#) that [warned](#) about the threat of teaching critical race theory.

Finally, [ALEC has partnered](#) with the Alliance Defending Freedom (ADF), [the group behind the model bill](#) that bars transgender athletes from competing in school sports that match their gender identity. Language first crafted for Idaho's transgender sports ban in 2020 was included in transgender sports bans enacted in 2021 in Florida, Mississippi, Montana, West Virginia and elsewhere.

According to the [Southern Poverty Law Center](#), the legal advocacy and training group “has supported the recriminalization of sexual acts between consenting LGBTQ adults in the U.S. and criminalization abroad; has defended state-sanctioned sterilization of trans people abroad; has contended that LGBTQ people are more likely to engage in pedophilia; and claims that a “homosexual agenda” will destroy Christianity and society. ADF also works to develop “religious liberty” legislation and case law that will allow the denial of goods and services to LGBTQ people on the basis of religion.”

2021
Preemption

STATE INTERFERENCE IN LOCAL GOVERNMENT OPERATIONS



In 2021 legislative sessions, Republican state lawmakers introduced an avalanche of preemption bills that appropriated the machinery of local government operations, giving states more power over the administration of local government operations and signifying a new, deeper level of state interference into the inner workings of cities and counties. Combined, these laws constitute an unprecedented state intrusion into the day-to-day management of cities and counties.

Undermining the power of local elections officials

In response to the 2020 election and baseless allegations of voter fraud and election irregularities, state lawmakers have introduced a shocking number of bills to curb the vote. As of March 24, 2021, lawmakers in 47 states have introduced more than 360 bills this year with provisions that restrict voting access, according to New York University School of Law's [Brennan Center for Justice](#). For a rough comparison: The Brennan Center's tally in early February 2020 [identified 35 restrictive bills in 15 states](#). As of July 22, 18 states [enacted 30 new laws](#) that restrict access to the vote.

Much of this legislative blitz disproportionately targets voters of color – in particular Black voters, who played a critical role in winning both the White House and the US Senate for Democrats. According to Georgia Democratic Sen. Raphael Warnock, “We are witnessing right now a massive and unabashed assault on voting rights unlike anything we’ve ever seen since the Jim Crow era. This is Jim Crow in new clothes.”

Many of these bills limit and undermine the power of local elected officials. Some of the measures are even punitive, threatening local officials with felony charges, fines, and funding cuts. Those bills include:

Arizona [HB 2794](#) makes it a felony to modify an election-related date or deadline unless ordered to do so by a court.

Arkansas [SB 644](#) authorized the State Board of Election Commissioners to decertify local election officials and take over local election administration.

Georgia [SB 202](#) authorizes the State Elections Board – now controlled by the Republican state legislature – to suspend and temporarily replace local election officials.

Iowa [SB 413](#) makes it a felony for local election officials to disobey guidance from the Republican Secretary of State, subjects them to fines of up to \$10,000 for “technical infractions” of the election law, and makes it a crime for an election official to obstruct partisan poll watchers.

Limiting public health authority

In response to local public health orders designed to protect the public from the pandemic, many state legislators, convinced that local health officers had overstepped, moved to limit the power and independence of local public health departments and officers. Some of these bills blocked local efforts to respond to the pandemic, including banning masking mandates, orders to close businesses, and limitations on public gatherings. Other bills had broader and more long-lasting effects, stripping local health officials of their existing authority to issue orders and impose regulations and including a legislative or other government body sign-off on local orders at all times, not just during emergencies. Several of these bills are based on ALEC's model [Emergency Power Limitation Act](#).

The immediate effect will be to impede actions that have been shown to slow the spread of COVID-19. Moving power to state legislatures is also likely to result in the inability to locally tailor orders and could lead to slowed and/or poorly informed responses. Passage of these bills will change the contours of public health authority in states like Florida, Indiana, Missouri, Montana, and Ohio for years to come. These bills could worsen public health disparities and make it harder to advance health equity during a pandemic that has disproportionately sickened and killed Black and Brown Americans. These laws are also likely to have indirect effects by chilling action on the part of officials who fear repercussions resulting from potential violations of the new laws.

States that have passed laws limiting public health authority include: Arizona, Florida, Indiana, Kansas, Missouri, Montana, North Dakota, Ohio, Utah and West Virginia.

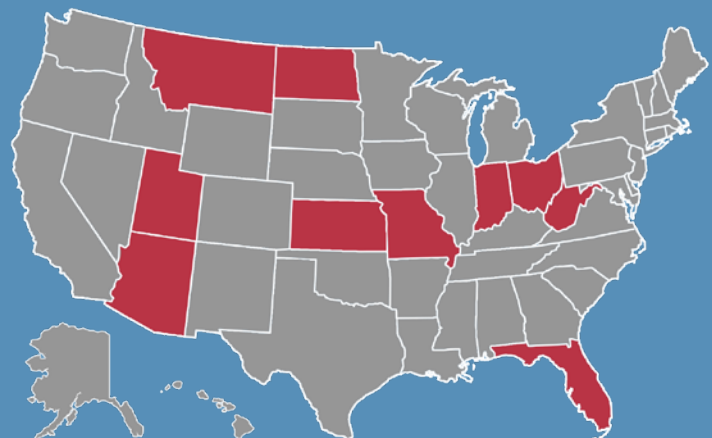
Arizona [HB 2770](#) allows a business to ignore a masking mandate. Under this law, “a business in this state is not required to enforce on its premises a mask mandate that is established by this state, a city, a town or county, or any other jurisdiction of this state”.

Florida [SB 2006](#) [severely restricts](#) local emergency public health authority. The relevant clause in the new act empowers the Governor to “at any time, invalidate an emergency order issued by a political subdivision if the Governor determines that such order unnecessarily restricts individual rights or liberties.” The bill stops local governments from closing businesses or keeping students out of in-person instruction at Florida schools and caps all local emergency orders at seven-day increments.

Indiana [Senate Enrolled Act 5](#) took away the independent authority of local health officials to impose emergency disease prevention measures on individuals and businesses that are more stringent than state rules. The new law mandates the local governing body overseeing a county or city health officer approve any health order whose provisions go beyond state requirements during an emergency.

Kansas [SB 40](#) establishes judicial review for certain executive orders issued during a state of disaster emergency and certain actions taken by a local unit of government during a state of local disaster emergency, authorizes the legislature or the legislative coordinating council to revoke certain orders issued by the secretary of health and environment, and limits powers granted to local health officers related to certain orders.

State legislation limiting public health authority



■ Enacted

Missouri [HB 271](#) limits the timeframe local health orders can be in effect and the authority of local health officials to close businesses, schools, and churches during a public health or safety emergency to a period of 30 days. Officials could extend the closure but only with the approval of the city council or other local governing body. Health orders issued outside of a state of emergency would be limited to 21 days and would require a two-thirds vote of the local governing body for an extension. The bill also allows local governing bodies to terminate a health order with a simple majority vote.

Montana [HB 257](#) and [HB 121](#) erase some local enforcement power entirely for policies like mask mandates and allow the public or local elected officials to curb health officers' power.

North Dakota [HB 1323](#) prohibits a statewide elected official or state health officer from requiring any individual in the state to wear a face mask, shield, or other type of face covering.

Ohio [SB 22](#) limits the duration of a public health emergency declaration to 90 days unless the state legislature extends it. The law allows the Ohio Legislature to unilaterally rescind "any order or rule for preventing the spread of contagious or infectious disease" issued by the Governor or the Ohio Department of Health (ODH). Other sections limit the ability of local boards of health to issue isolation and quarantine orders and allow the ODH to override local decisions.

Utah [SB 195](#) allows the state legislature alone to terminate state health department orders issued in a public health emergency, including stay-at-home orders, and allows county legislative bodies to terminate local health department orders. The law also requires public health department emergency orders lasting longer than 30 days to provide notice of proposed action to the legislative emergency response committee at least 24 hours before issuing the order.

West Virginia [SB 12](#) requires local governing body approval of rules proposed by local health boards. However, if there is an imminent public health emergency, rules will go into effect immediately with approval or disapproval from the local governing body within 30 days. During a statewide public health emergency, local health departments must comply with state health officer emergency policies and guidelines.

Allowing the state to intervene in local prosecution

Preemption has opened another new front – local prosecution. Decisions concerning which laws to enforce and how vigorously have long been left to locally-elected prosecutors. The rise of urban "progressive prosecutors" who are disinclined to prosecute certain offenses – such as low-level drug crimes, sex work, or activities in connection with political protests – has triggered a state response. In a measure blatantly targeting the current Philadelphia DA, Pennsylvania granted the state attorney general concurrent jurisdiction to prosecute certain crimes, but only in Philadelphia, and only during the term of the current DA.

No similar law has been enacted in any other states, but bills have been introduced in Indiana and Missouri that would either grant the state attorney general concurrent jurisdiction with the district attorney to prosecute certain crimes in certain cities or to appoint a special prosecutor for crimes the DA has declined to prosecute as a matter of policy. And the Ohio, Pennsylvania, and Tennessee legislatures have considered measures – introduced in the aftermath of the 2020 Black Lives Matter protests – that would give the state attorney general concurrent statewide jurisdiction over crimes related to protest and damage to monuments.

Controlling municipal and police budgeting

Four states – Georgia, Florida, Missouri and Texas – responded to last year’s wave of racial justice protests by enacting local budget control bills to prohibit, hamper, or punish localities that attempt to reallocate and reduce police budgets. The Texas bill punishes cities for reallocating police funds by freezing property tax rates and redirecting local sales tax dollars to state law enforcement.

Elected officials in Austin and Harris County, Texas, who want the ability to reallocate money from the police budget to provide increased services to the homeless, hire more mental health first responders, and invest in substance use care, said [“state officials want to punish not just local communities, but the Black and brown Texans harmed most by our systems of mass incarceration and policing.”](#) In Florida, West Palm Beach Mayor Keith James opposed the budget control bill there, saying: [“This is the evisceration of home rule on steroids.”](#)

The Wisconsin legislature has sent a local budget control bill, which punishes localities that reduce their police budgets by cutting state funding, to the Governor, who is expected to veto it.

Florida [HR 1](#) also allows a city elected official or state attorney to challenge a municipal reduction of the law enforcement budget and creates a state commission that can unilaterally revise any such reduction.

Georgia [HB 286](#) prohibits local governments from decreasing police budget by more than 5 percent of prior year budget (exemption if county revenues decrease by more than 5 percent) and prohibits local governments from decreasing police budget by more than 5 percent over a rolling ten year period.

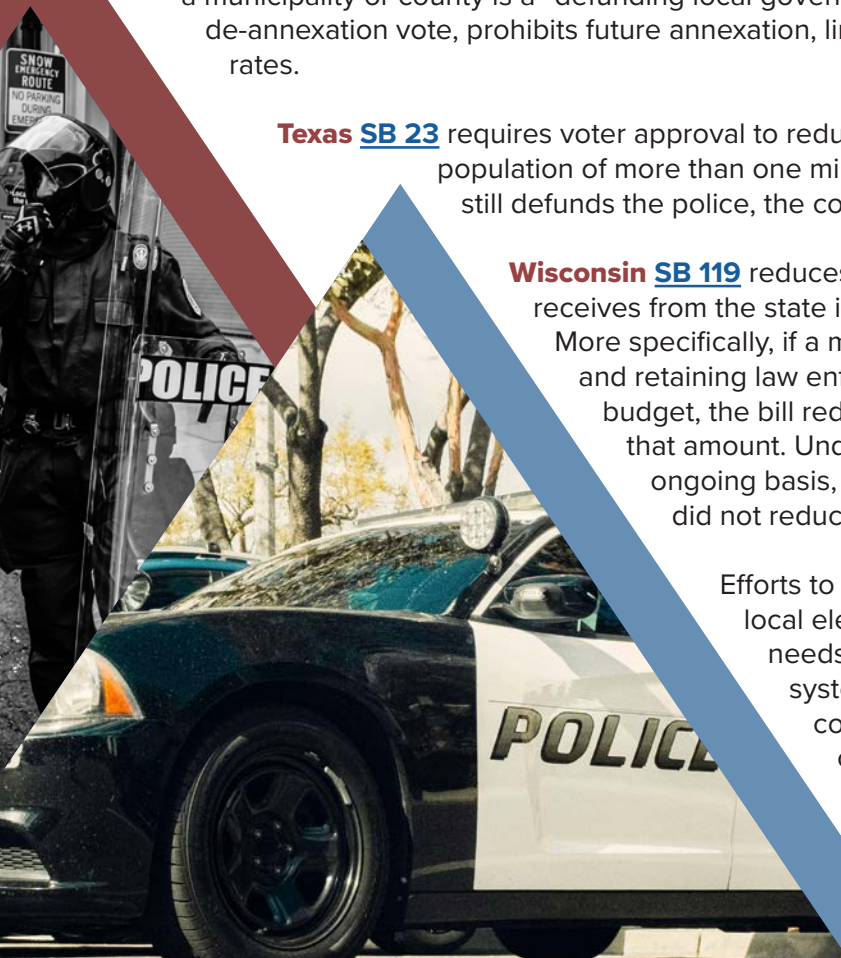
Missouri [SB 26](#) allows taxpayers to request an injunction if the governing body decreases the law enforcement budget by more than 12 percent relative to budgets for other departments over a five-year aggregate amount.

Texas [HB 1900](#) states that the criminal division of the governor’s office may issue a written declaration that a municipality or county is a “defunding local government”. If declared a “defunding government”, requires de-annexation vote, prohibits future annexation, limits tax rates, cuts off state funding, and limits utility rates.

Texas [SB 23](#) requires voter approval to reduce law enforcement budgets in counties with a population of more than one million. If voter approval is not received, but the county still defunds the police, the county’s property tax revenue will be frozen.

Wisconsin [SB 119](#) reduces the amount of shared revenue a municipality receives from the state if the municipality reduces its law enforcement budget. More specifically, if a municipality reduces its budget for hiring, training, and retaining law enforcement officers compared with its previous year’s budget, the bill reduces the municipality’s shared revenue payment by that amount. Under the bill, a reduction in shared revenue applies on an ongoing basis, and the funds are redistributed to municipalities that did not reduce their law enforcement budgets.

Efforts to preempt local police budgeting inhibit the ability of local elected officials to devise solutions that best meet the needs of their constituents, instead protecting an existing system that causes disproportionate harm. State laws to control municipal budgeting are more evidence of the use of preemption to take political power and local control away from BIPOC communities, immigrants, women, LGBTQ people, and workers in low-wage industries.



2021 Preemption

STOPPING LOCAL EFFORTS TO COMBAT CLIMATE CHANGE

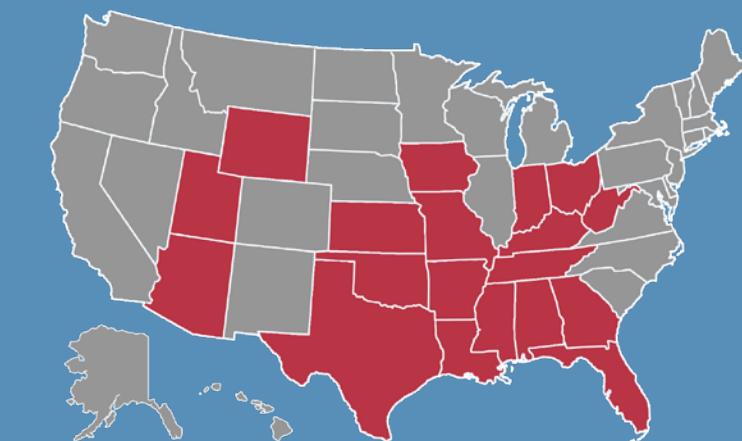


Banning natural gas hook-ups

Local governments have long led efforts to combat climate change, including a small but growing list of cities that are encouraging the building of all-electric buildings and banning natural gas hookups in an effort to reduce greenhouse gas emissions. But the gas industry and its lobby, the American Gas Association (AGA), sees these regulations to reduce fossil fuel use as an [“existential threat”](#) and has worked with local utilities to pass state laws that preempt these bans.

As a result of industry efforts, [19 states](#) have now enacted preemption laws that block cities and counties from banning natural gas hook-ups in new buildings. In 2021, according to the Natural Resources Defense Council, 15 states – [Alabama](#), [Arkansas](#), [Florida](#), [Georgia](#), [Indiana](#), [Iowa](#), [Kansas](#), [Kentucky](#), [Mississippi](#), [Missouri](#), [Ohio](#), [Texas](#), [Utah](#), [West Virginia](#), and [Wyoming](#) – passed bans on natural gas bans. Similar laws in Arizona, Louisiana, Oklahoma, and Tennessee went into effect last year.

State legislation banning bans of natural gas / fossil fuel use



Enacted

Source: [NRDC](#)

The speed and scale of this lobbying effort show how alarmed the gas industry is by the efforts of cities, states, businesses – and now the Biden administration – to sharply reduce fossil fuel use. Gas utilities and the AGA are working on multiple fronts to convince lawmakers and the public that using natural gas is compatible with addressing climate change, [despite scientific evidence to the contrary](#). An investigation by *The Guardian*, *The Texas Observer*, and *The San Antonio Report* found that [the AGA provided model legislation](#) and is coordinating and lobbying for these bills.

In **Florida**, a state where the consequences of climate change are already being felt, the legislature went even further. Governor Ron DeSantis has signed three energy preemption bills into law that would block and reverse the progress local governments have made:

- **SB 1128/HB 919** prohibits local decisions on energy sourcing, preempting those powers to the state legislature. It prevents Florida cities that have adopted 100-percent clean energy goals from implementing those, instead forcing them to allow the continued use of fossil fuels such as natural gas. As the Sierra Club Florida chapter [points out on its website](#): *As of late 2019, Florida cities making the commitment to 100% clean energy include Tallahassee, Gainesville, Orlando, Satellite Beach, Dunedin, Largo, Safety Harbor, St. Petersburg, Sarasota, and South Miami Beach.* Now each of these cities is prohibited from pursuing 100% clean energy initiatives.
- **SB 856** invalidates local comprehensive plans that restrict land use related to fossil fuel and renewable energy. It would prevent local governments from prohibiting natural gas fracking, nullify their solar permitting ordinances, weaken Southeast Florida's climate compact, end renewable energy grant programs and eliminate county authority over pipelines along roadways. It would also prevent local governments from regulating gas stations or from requiring them to provide electric-vehicle charging stations. What's more, [it peels back existing protections and clean-energy goals](#). That includes 11 local governments that have signed agreements to electrify their vehicle fleets to achieve goals of net zero dependence on fossil fuels.
- **HB 839/SB 896** preempts local governments from deciding whether or not solar facilities should be granted permits as agricultural land and redefines pulling methane gas from a landfill as renewable energy.

According to records obtained by the *Herald/Times Tallahassee Bureau*, the draft legislation in Florida was [written by the industry](#). For example, SB 856 and a similar bill, [HB 839](#), were written by the lawyers for the utility companies and follow model legislation advanced by the AGA.

Bans on plastic bag bans

This is the same playbook that's been used by the petroleum industry to pressure state legislatures to ban local plastic bag bans, considered to be a significant step toward eliminating plastic pollution and reducing reliance on fossil fuels and limiting climate change. The movement to eliminate plastic bags had been advancing in the past few years, with eight states banning them. But industry trade groups, the Plastics Industry Association and the American Progressive Bag Alliance, have convinced [19 states](#) to block local governments from banning their use. Many of these bills are based on a [model bill](#) developed by ALEC.



The industry [took advantage of the pandemic](#), raising fears of germ transmission early in the crisis, and now argue that bag bans burden struggling businesses. But this session saw two states, Arkansas and Montana, pass new bans on bag bans and, in fact, this year the state of Colorado became the [first state to repeal](#) its plastic bag and container preemption law. In Pennsylvania, cities and townships now have the legal authority to ban plastic bags. When the Republican-controlled legislature [passed the state budget](#) this session, it didn't renew the statewide preemption on single-use plastics, opening the door for cities and municipalities to approve new prohibitions or enforce existing bans. The ban preemption first went into effect in 2019 via a Republican-backed provision to the package of bills that make up the state budget.

Arkansas [HB 1704](#) makes it illegal for a municipality or county to "restrict, tax, prohibit, or otherwise regulate the use, disposition, or sale of auxiliary containers."

Montana [HB 407](#) preempts local ordinances, resolutions, initiatives or referendums regulating auxiliary containers.

Colorado Preemption Repeal Bill: [HB21-1162](#) bans single-use plastic bags at most stores and expanded polystyrene foam (EPS) takeout containers at most restaurants beginning January 1, 2024. Affected retailers will need to start charging a 10-cent bag fee for both paper and plastic bags starting January 1, 2023. The bill makes Colorado the first state to repeal its plastics preemption law.

2021 Preemption

BENEFITING SPECIFIC INDUSTRIES

Corporations prefer to work at the state level, where their lobbyists and allied groups have the most influence and can be most effective. It is more efficient for industries to push policy, often in partnership with ALEC, Chambers of Commerce, and specific trade organizations (American Gas Association, Plastics Industry Association, The National Restaurant Association, National Beverage Association, National Association of Manufacturers, etc.) in 50 state capitals than in 19,000 cities and 3,000 counties. This strategy of preempting local power continued to have success for the natural gas, plastics, and tobacco industries in 2021 sessions and will be used again by multiple industries in 2022.

Tobacco

The history of the tobacco-control movement is rife with examples of industry's use of state-level preemption to thwart local efforts to expand smokefree protections, reduce youth access to tobacco products, and counter the tobacco industry's pernicious targeting of underserved communities. In recent years, as more local communities sought to address the surge in youth e-cigarette use – particularly flavored e-cigarettes – the tobacco and vaping industries have renewed and redoubled their efforts to enact new (and expand existing) state tobacco preemption. At the same time, the rise in youth e-cigarette use has also provided an opening for advocates to push to repeal existing preemption laws and restore communities' abilities to adopt more protective tobacco control laws at the local level. Here is the list of 2021 bills that enacted new or expanded existing tobacco preemption:

Florida [SB 1080](#) preempts to the state the “establishment of the minimum age for purchasing or possessing, and the regulation for the marketing, sale, or delivery of, tobacco products”

Montana [SB 398](#) preempts local governments from adopting or enforcing any local ordinance or resolution “that prohibits the sale of alternative nicotine products or vapor products.” The legislation does, however, preserve local authority to enact “reasonable ordinances or resolutions relating to the sale of alternative nicotine products or vapor products.” Practically speaking, the bill prohibits local governments from imposing a complete ban on e-cigarettes and other electronic smoking devices, but it is unclear how the “reasonable” requirement will be interpreted with respect to local regulations that fall short of a complete ban.

Tennessee [SB 1047](#) extends existing preemption of local ordinances concerning the regulation of tobacco products that were enacted after March 15, 1994, to cover local ordinances concerning the regulation of vapor products that are enacted after July 1, 2021. The provision includes a small allowance for adopting local laws prohibiting smoking/vaping in government/educational/healthcare buildings and for certain municipalities to enact laws for parks/playgrounds.

Oregon [SB 587](#) has not yet been signed by the governor but would, if enacted, preempt new local laws that prevent pharmacies from operating as a tobacco retailer. Local tobacco-free pharmacy laws adopted before the effective date of the new state law may continue to be enforced.

West Virginia [SB 12](#) limits local Boards of Health from passing policies unless they receive county approval. This general preemption of municipal public health authority may affect the contours of local authority related to tobacco.



Overtaking the Results of Citizen-Led Ballot Measures

As more state legislators use preemption to stop localities from enacting policies they disagree with and refuse to move at the state level, residents in the [24 states that have a citizen initiative process](#) have increasingly turned to ballot measures to bypass their legislatures and enact laws themselves. However, state legislatures around the nation are also using preemption laws to overturn a variety of initiatives passed by voters, rendering their efforts to qualify for the ballot and their votes meaningless, ultimately suppressing their vote.

Examples of ballot measures approved by voters and then overturned by state preemption laws include:

- **Austin**, Defeated UBER's efforts to escape regulation: 56%-44% (2016)
- **Denton**, TX Fracking Ban: Passed 59% - 41% (2014)
- **Fayetteville**, AR, Nondiscrimination ordinance: Passed 53% - 47% (2015)
- **Kansas City**, MO, Minimum wage increase: Passed 68% - 32% (2017)
- **Milwaukee**, Paid Sick Days: Passed 69% - 31% (2008)
- **Nashville**, Local Hire Law: Passed 57% - 41% (2015)
- **South Dakota**, Reformed Campaign Ethics Regulation: Passed 52% - 48% (2016)
- **Tempe**, Campaign Finance Disclosure Law: Passed 91% - 8% (2018)

This year, the Florida legislature used preemption to override the vote of Key West residents.

In November 2020, Key West voters approved three ballot initiatives that combined to limit the sizes of cruise ships and the number of passengers allowed to visit the city daily. Each referendum drew at least 60 percent support. But a day before the 2021 legislative session ended, preemption was attached as an amendment to an unrelated transportation bill which declared that "any local ballot initiative or referendum may not restrict maritime commerce" at any Florida deep-water port. It passed.

Arlo Haskell, treasurer of the Key West Committee for Safer, Cleaner Ships, which pushed the referendums, said "[i]t seems like there's less and less respect for the democratic process. Things like voting are being made more difficult in many parts of the country. [Here we see that even when you do vote, it can be thrown out.](#) That is fundamental, [and] as an American, discouraging."

Preemption is the most straightforward way for legislators to block laws they don't like—but leaders can also ignore or amend them, delay their implementation, or refuse to fund them. After Maine voters passed a Medicaid expansion initiative by a 59-40 margin in 2017, Governor Paul LePage simply [refused to implement it](#), even after a [state judge ordered him to comply](#). In Missouri this year, the Republican-controlled House voted not to fund the Medicaid expansion that voters approved. And in Mississippi, a court challenge of the medical marijuana initiative approved by voters led to a [ruling that voided the state's entire ballot initiative process](#).

FIGHTING BACK

2021 was a session like no other and the changed terrain required advocates to develop new strategies, tactics, and narratives to counter the Republican onslaught. Carisa Lopez, the political director of the Texas Freedom Network, explained, “For progressive organizations ... [\[Republicans\] have been coming at us from all angles, and it has been exhausting](#). They have done almost everything they can.”

But local officials and policy advocates are fighting back, starting with the ability to offer a sharper, broader explanation of preemption and its consequences. Just four years ago, LSSC struggled to convince advocates and elected officials about the dangers and effects of state preemption. Now, because Americans have experienced the COVID crisis and the social justice movement, they know that the misalignment between city and state governments is not just a theoretical problem—it has life and death consequences.

Fractious, high-profile legislative efforts to consolidate power at the state level have raised the understanding of the high human costs incurred when states interfere in local decision-making and made it possible to communicate an evolved narrative about preemption that’s driven by corporate special interests and lawmakers looking to buttress systemic oppression and maintain white supremacy. This new narrative makes it possible to hold perpetrators more accountable.

In addition, advocates were able to push back and score wins in some states this session. Public health advocates and their allies in Alabama and Oklahoma successfully lobbied against bills that would have transferred local public health authority to the state. In Florida, the anti-preemption coalition weakened HB 1 by having a section removed that would have allowed any citizen to challenge a local budget; now only elected officials have that authority.

Litigation is also being used to challenge these bills. In Florida, for example, advocates are challenging new voting restrictions. HB1 is also facing a court challenge and the City of Gainesville has taken the first steps to explore a challenge to protect its local budgeting authority from infringement. This litigation represents a new wave of proactive efforts mounted by LSSC partner the Public Rights Project, a national nonprofit that builds state and local governments’ capacity to enforce their residents’ rights.

Long-term, there are two structural fixes that would slow or stop states from overriding localities: electing out current administrations and reforming home rule.

In Colorado, now a blue trifecta state, minimum wage, firearms, and plastic bag ban preemptions have all been repealed in the past two years, and the power to make policy in these realms have been returned to local governments. In Florida, a package of preemption repeal bills and a bill that raised the vote threshold to 60 percent in order to enact a preemption bill provided advocates with opportunities during the session to keep the issue in the media and before lawmakers.

Finally, the National League of Cities partnered with the Local Solutions Support Center to develop the [“Principles of Home Rule for the 21st Century,”](#) a roadmap that provides local governments with a new vision and legal framework for updating and reforming home rule to meet the challenges of the 21st Century. The crises of 2020 and the 2021 legislative response has made the need for proactive and responsive local government very evident. Local leaders need the authority to act on the unique needs and values of their communities, to lead their communities through crises, and to drive innovative, locally tailored solutions that increase equity in the years ahead. One way to better define, affirm, and protect this authority is by reforming home rule.



The Local Solutions Support Center is a national hub that coordinates and creates efforts to counter the abuse of preemption and strengthen the power of cities to advance policies that promote equity, inclusion, public health, and civic participation.

www.supportdemocracy.org