



CONNECTING THE DOTS

How to Message the Abuse of State Preemption

June 2022

State legislatures are abusing preemption at an alarming rate – in 2021, the Local Solutions Support Center tracked more than 475 preemption bills nationwide. Many state lawmakers wield preemption as a tool to entrench inequities and take power away from people and communities – much in the same way that tactics like voter suppression and gerrymandering are used.

Talking about preemption can be challenging – it's a wonky concept and can sound far-removed from the everyday issues we all face. But it's essential that advocates are able to easily explain how preemption is used across a host of issues to undermine local authority with the goal of upholding and advancing systems of oppression that harm BIPOC, immigrants, LGBTQ people, women, and working people.

LSSC is committed to providing the field with the best preemption resources. That's why we commissioned new message research and polling in late 2021. We partnered with the African American Research Collaborative (AARC) to help us identify the most effective ways to describe preemption and communicate its impact to wider audiences. This message guide reflects the most recent learnings from AARC's research.

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Key Takeaways

Top takeaways when talking about preemption:

- **Don't lead with preemption.** People get confused and tune out when we start off a conversation by immediately trying to define preemption. People do, however, respond to stories that focus on a specific issue or center powerful voices. So rather than starting with preemption, use that specific issue or local voice as an entry point. Then, explain how abusive preemption undermines policies related to that issue or harms that particular voice.
- **People are often more focused on policy outcomes and the tangible impacts on their lives – rather than what level of government is taking what actions.** This is another reason to ensure all your conversations are grounded in a particular issue or set of issues whenever possible, rather than a deep dive into preemption or the relationships between various levels of government.
- **Only after people learn more about preemption do they better understand how it's used to strategically take power away from people and communities** – particularly BIPOC, immigrants, LGBTQ people, women, and working people. We have to connect a few dots before most audiences understand the bigger-picture harms associated with preemption beyond their entry-point issue.
- **Don't lead with preemption.** You're reading this twice because *it's really important*. Use a specific issue as an entry point to establish a connection with your audience, and only after you've done so should you begin to explain preemption.

Some additional framing considerations to keep in mind:

- Whenever appropriate, **connect the negative impact of corporate power to the authority of local governments.**
- **Highlighting how preemption abuse can be used to advance racism and suppress power** are effective frames for BIPOC audiences, but less effective for white audiences.
- **Framing the abuse of preemption as a threat to our democracy** is effective across race.
- Whenever possible, **it's effective to frame remedies to preemption as “giving power back to voters” or the local community** – rather than “taking power back from state officials” or wonkier terms, such as resetting the relationship between state and local governments.

Defining Bad Preemption

Preemption is a tool that can and has been used by both political parties. Preemption isn't always a bad thing – when used correctly, it allows local communities to design tailored policies that meet their unique needs. Historically, states have used preemption to create a “floor” – ensuring a policy baseline upon which local communities could build. Many state civil rights laws, for example, allowed cities to increase protections – but prohibited them from falling below what was required under state law.

This is not how we typically see lawmakers use preemption today. Today, many state lawmakers abuse preemption to set a “ceiling” – banning local communities from enacting the policies that make the most sense for their constituents. Here's what abusive preemption looks like in action:

- The city of Birmingham, Alabama raised its minimum wage to \$10.10 per hour in 2016 – a policy that was quickly undercut by the majority-white Alabama state legislature. The legislature's preemption of the local policy meant that Birmingham's minimum wage was capped at \$7.25 per hour.
- Prior to the pandemic, the cities of Austin, Dallas, and San Antonio all passed local paid sick leave policies. Texas courts have blocked all of the policies from taking effect – even blocking the Dallas ordinance in the middle of the first COVID wave. The preemption of paid sick leave policies in Texas disproportionately harms BIPOC workers.
- Abusive preemption is used to advance policies that harm LGBTQ people – particularly transgender youth. This can take the shape of the “Don't Say Gay” law in Florida, which censors discussion of LGBTQ people, families, and history; to dangerous efforts that ban transgender kids from participating in school sports.



PREEMPTION MESSAGING FRAMEWORK

Here are four guideposts to follow when talking with others about preemption:

- 1** Begin by introducing a specific issue and establishing shared values.
- 2** Then, explain how preemption abuse adversely impacts that issue.
- 3** Next, connect the dots to the larger harms of preemption.
- 4** Lastly, end the conversation with a specific call to action. Perhaps it's advocacy against a specific bill in your state; or a broader explanation of longer-term solutions like home rule reform.

First: Establish Shared Values on a Specific or Narrow Set of Issues

Whenever possible, begin your conversation by establishing shared values around a specific issue – like paid sick leave, minimum wage, or efforts to protect our environment. We've included some suggested issue-specific starter language below. When you don't have a natural entry point with a specific issue, consider some of this broader language:

- Regardless of where you live, you should be able to trust that your local elected officials can make the right decisions about the issues impacting you and your loved ones. We elect our local officials to enact policies that protect our health, safety, and well-being.
 - » Every community is different – their populations, demographic make-ups, and economies are all different. Even their histories and cultures differ. That means the policies that may work best for one community just don't make sense for another.

Examples of issue-specific conversation starters:

- None of us should be forced to choose between taking care of a loved one or losing our jobs – but that's exactly what too many people often must do. Many people faced such a choice even as the pandemic raged.
 - » It's a decision that has significant consequences – for a worker, for a family, and for a community.
- Housing is a basic human need. No matter who you are or what's in your wallet, everyone needs a safe, stable, and sustainable place to live.
- We all want to breathe in clean, fresh air when we're outside. We want to be able to hear a thunderstorm passing through and not worry about cataclysmic flooding in our community. All of these issues tie back to our changing climate, and steps we can take now to curb climate change.
 - » Embracing clean and renewable energies is one of the best ways many communities can do their part. That's why there's a growing movement to end the burning of fossil fuels inside homes and buildings, instead turning to alternatives such as electric power.

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Second: Explain the Damaging Impact of Preemption

- Abusive preemption occurs when a state government takes power away from local governments, usually with the intent of undermining local policies designed to address local challenges and support local communities.
 - » Historically, states have set minimum standards for policies relating to health, safety, and well-being. Local governments could then build on and strengthen state laws to best meet the needs of their communities.
 - » But more recently, corporate power has worked with increasing success to chip away at the authority of local governments. On issues ranging from paid sick leave to minimum wage to environmental measures, state lawmakers have increasingly taken their cues from corporate lobbyists – rather than local elected officials and the people they represent.
 - » By design, BIPOC, immigrants, women, LGBTQ people, and working people often are the ones most harmed by preemption.

To the greatest extent possible, tailor the messaging above to both your specific issue and political environment.

- Unfortunately, we're seeing a steady rise in these types of special interest-driven preemption measures being used across a growing set of issues – from natural gas bans and internet access to minimum wage and public health authority.
- In fact, local communities have lost power to states across a widening range of issues in every single state legislative session since 2011.

Additional Explanatory Frames:

- *[Preemption is a danger to our democracy – strong framing for all audiences]* State lawmakers often put the interests of their wealthy donors above doing what is best for citizens. They pass unpopular laws and block local elected leaders who are trying to do the right thing. Addressing this interference with local decision-making is about restoring and protecting American democracy.
- *[Preemption is suppressing BIPOC power – effective framing for BIPOC audiences; less effective with white audiences]* Local officials are elected, often by BIPOC voters, to solve local problems. State legislators in many states, on the other hand, skew disproportionately older, white, and male.
 - » In many places, state lawmakers have blocked local governments from raising their minimum wage, requiring new affordable housing, or taking steps to protect people from COVID-19 – all of which would benefit BIPOC communities.

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Third: Connect the Dots – Preemption of X, Y, or Z Issue Is Part of a Broader Strategy

- This growing abuse of preemption isn't happening in a vacuum. It's not affecting just one issue, community, or city.
- Preemption is increasingly used as a tactic – just like voter suppression and gerrymandering – to take power away from BIPOC, immigrants, LGBTQ people, women, and working people.
- The current uptick in abusive preemption runs the gamut – preemption efforts now seek to curtail the ability of local governments to protect public health and ensure economic vitality. They undermine local budget control, stifle voting rights, and actively advance animus against BIPOC and transgender communities.

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Finally: What Can Be Done?

If possible, include a specific call to action here – ideally centered around talking to your local elected officials about bad preemption bills and how those bills will harm your community. Other potential calls to action could include urging someone to testify against a specific preemption bill during an upcoming hearing; writing an opinion piece for a local newspaper; etc. When giving this locally tailored call to action, be inspirational – reiterate that together, we all can help protect local authority and give power back to communities.

The guidance below is broader and intended for use in addition to or when there's no local call to action:

- The pandemic and the fight for racial justice have made more people than ever before aware of how preemption impacts their lives and communities.
- As a result, more local and state officials and advocates are taking action to protect local democracy and give power back to voters.
- At the end of the day, addressing abusive preemption will require changing the law in many states. Many advocates are organizing around home rule reform, which would update the legal framework governing the relationship between states and municipalities.
- Change requires all of us to be engaged. It is hard, and it takes time and persistence. Change is community-based – it will look different in different places, and it will reflect the specific needs of specific communities. But we all deserve to live in a place where our local elected officials and residents have the authority they need to make equitable decisions.