

# Impact of Federalism and Preemption on State and Local Efforts

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# The Next 60 Minutes...

- Federalism
- Preemption
- Equity



THINKFORWARD STRATEGIES



## Coordination

An effective response to COVID-19 requires coordination among federal, state, and local governments.



## Conflict and Confusion

Unfortunately, conflict and confusion among all levels of government – and between the same level of government - have stymied the U.S. response.

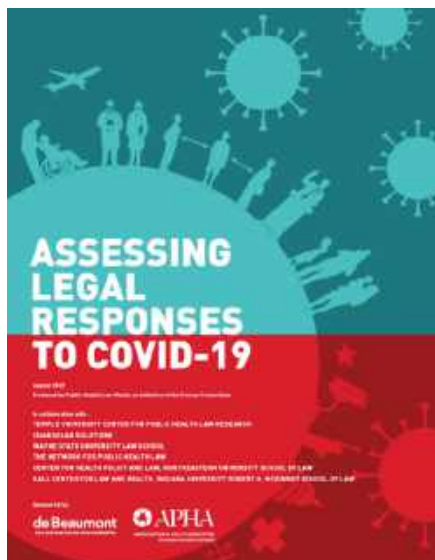


2020

PUBLIC HEALTH LAW  
**VIRTUAL  
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**COVID-19 Response  
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September  
**16-17**



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ChangeLab Solutions



# Our Mission

Healthier communities for  
all through equitable laws  
& policies

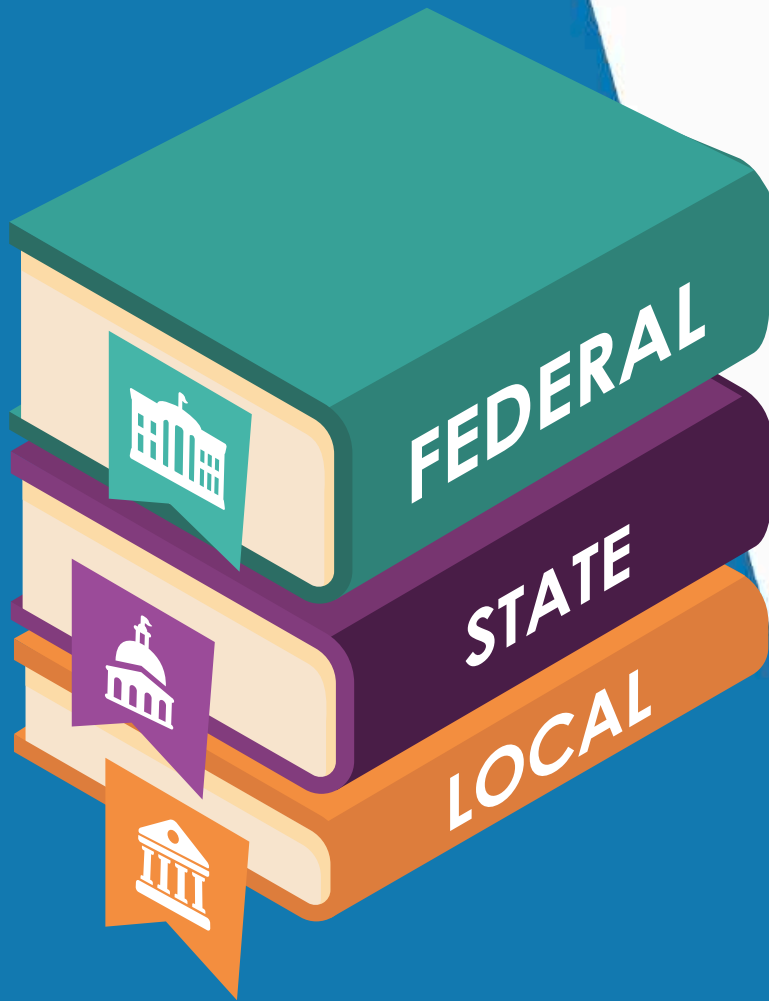
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# What is preemption?

Preemption is a legal concept that allows a higher level of government to limit or even eliminate the power of a lower level of government to regulate a specific issue.

# Preemption Comes in Many Forms



## Ceiling Preemption

(ie, "Maximum Standards")



## Floor Preemption

(ie, "Minimum Standards")



## Vacuum Preemption

(ie, "No Standards")





# Why Preemption?

Preemption has consequences  
on health and equity



# State Preemption & the Pandemic

Public Health Law Virtual Summit  
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# Past and New Preemption Laws Limit Local Efforts to Protect Public Health

- The pandemic has laid bare the high cost of a decade of state preemption designed to undermine local authority and independence.
- Preemption has hampered local response; made it harder to protect lives and livelihoods.
- Policies preempted before the pandemic, including paid sick days, equitable housing, minimum wage, and broadband forced cities to start from behind.

# The **quantity** of preemption laws has **skyrocketed**

**25 states**

preempt  
local minimum  
wage laws

**23 states**

ban local paid  
sick days

**33 states**

prohibit  
equitable  
housing  
policies

**48 states**

limit local fiscal  
authority

**21 states**

ban municipal  
broadband

**11 states**

prohibited  
local  
sanctuary  
cities

**3 states**

Ban local non-  
discrimination  
ordinances

# Characteristics of “New” Preemption

**Death Star  
deregulation**

**Blanket  
deregulation**

**Punishments  
for cities,  
electeds**

**Disproportionate  
effects on  
people of color,  
women**

**Targeting  
core local  
government  
functions**

**Chilling  
aspirations,  
innovations**

# Same people hurt by the pandemic and state preemption

- The victims of Covid-19: disproportionately black and brown
- The people who have lost their jobs: disproportionately black and brown
- People forced back to work: black and brown service workers and laborers
- People most hurt by state preemption: communities of color, low-wage workers, women

## Adjusted for age, other racial groups are this many times more likely to have died of COVID-19 than White Americans

*Reflects mortality rates calculated through Aug. 18.*



*Indirect age-adjustment has been used.*

Source: [APM Research Lab](#) • [Get the data](#) • Created with [Datawrapper](#)



**Setting the historical  
context of health equity**





**Local governments  
can and should be  
effective partners  
in addressing  
community priorities**

**BUT...**



# History of local authority

A path forward to improve health and equity





Preemption isn't  
*universally*  
*negative*  
**or**  
*inherently*  
*partisan*

**How  
preemption  
affects health  
equity depends  
on the type of  
preemption &  
how it's used**





# Misconceptions about minimum standards

# Preemption & The Pandemic: Trends

Emergency Paid  
Sick Leave Laws

Evictions &  
Foreclosures

Local Stay-at-  
Home Orders

Local Mask  
Requirements /  
Distancing

Emergency  
Broadband

Pausing Past  
Laws (e.g.,  
Minimum Wage  
Increases)

# COVID-19: State Executive Orders and the Preemption Patchwork

- In some states - Louisiana and Maryland, governors issued statewide stay-at-home orders but allowed local governments to implement additional restrictions based on local conditions, establishing a **regulatory floor**.
- In other states - Georgia, Florida, Texas, Arizona, the statewide stay-at-home orders established a **regulatory ceiling** banning efforts by cities and counties to impose stricter requirements.
- And, some states like Iowa didn't have any stay-at-home orders in effect but still preempted local governments from issuing their own orders.

# Executive Orders Handcuff Local Governments

- A Mississippi executive order issued on March 24 forbade political subdivisions (including cities, and counties) from imposing social distancing regulations or business shut-downs stricter than the state's (LSSC 2020a).
- On April 7, the Governor of South Carolina issued an Executive Order explicitly disallowing local stay-at-home orders stricter than the state's (S.C. Exec. Order 2020)
- On March 26, the Governor of Arkansas issued an Executive Order prohibiting local stay-at-home requirements, arguing that such regulations would interfere with essential operations and commerce (LSSC 2020b).
- Iowa Governor Kim Reynolds: "Schools that choose not to return to school for at least 50% in-person instruction are not defying me. They're defying the law."



# States Threaten Cities

- Georgia Governor Brian Kemp sued Atlanta Mayor Keisha Lance Bottoms to stop her from issuing a mandatory mask order and extending a local stay at home ordinance.
- Texas Attorney General Ken Paxton threatened to sue local officials in Austin, Dallas, and San Antonio unless they rolled back “unlawful” local emergency orders that imposed stricter public health safety measures than the state allowed.
- Nebraska’s Governor Pete Ricketts warned local governments they would not be receiving federal COVID-19 funds if they imposed mask or other local rules.
- Florida Governor Ron DeSantis threatened to withhold up to \$200 million in funding from the Hillsborough County School District, which covers Tampa and is one of the nation’s largest, if it did not reopen for in-person learning.

# Past and New Preemption Will Impede the Recovery

48 states limit local  
fiscal authority

Equitable housing  
policies preempted in  
31 states

City Bankruptcies  
Emergency Managers  
State Takeovers

Emergency Powers  
Worker Safety

Elections/Voting  
Vaccines

Corporate liability &  
limiting municipal  
litigation

# Preemption & The Pandemic: Structural Change

Efforts to  
Suspend/Repeal  
Preemption

Bills to  
Affirm/Expand  
Local Authority

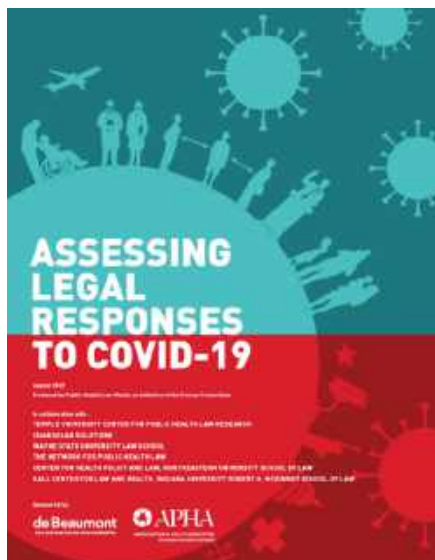
Home Rule  
Reform

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