

Preemption, Public Health, and Health Equity

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2021 Public Health Law Conference



ChangeLab Solutions



LSSC
Local Solutions
Support Center



ChangeLab Solutions



Our Mission

Healthier communities
for all through equitable
laws & policies

ChangeLab Solutions

Disclaimer

The information provided in this discussion is for informational purposes only, and does not constitute legal advice. ChangeLab Solutions does not enter into attorney-client relationships.

ChangeLab Solutions is a non-partisan, nonprofit organization that educates and informs the public through objective, non-partisan analysis, study, and/or research. The primary purpose of this discussion is to address legal and/or policy options to improve public health. There is no intent to reflect a view on specific legislation.

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Local Solutions Support Center

A national hub that coordinates and creates efforts to counter the abuse of preemption and strengthen local democracy.

Goals are to raise awareness of state preemption and its consequences, reduce the use of this threat to democracy, and strengthen the power of local governments to advance policies that promote equity, inclusion, public health, and civic participation.

www.supportdemocracy.org



Agenda

Setting the Context

Preemption 101 and current landscape

State Preemption and Population Health

Measuring preemption's impact

Preemption in Practice

Public health authority & equitable enforcement

Pushing Back & Looking Forward

Opportunities, Challenges, and Case Studies

Questions & Answers



Preemption, Public Health & Health Equity Setting the Context



THINKFORWARD STRATEGIES

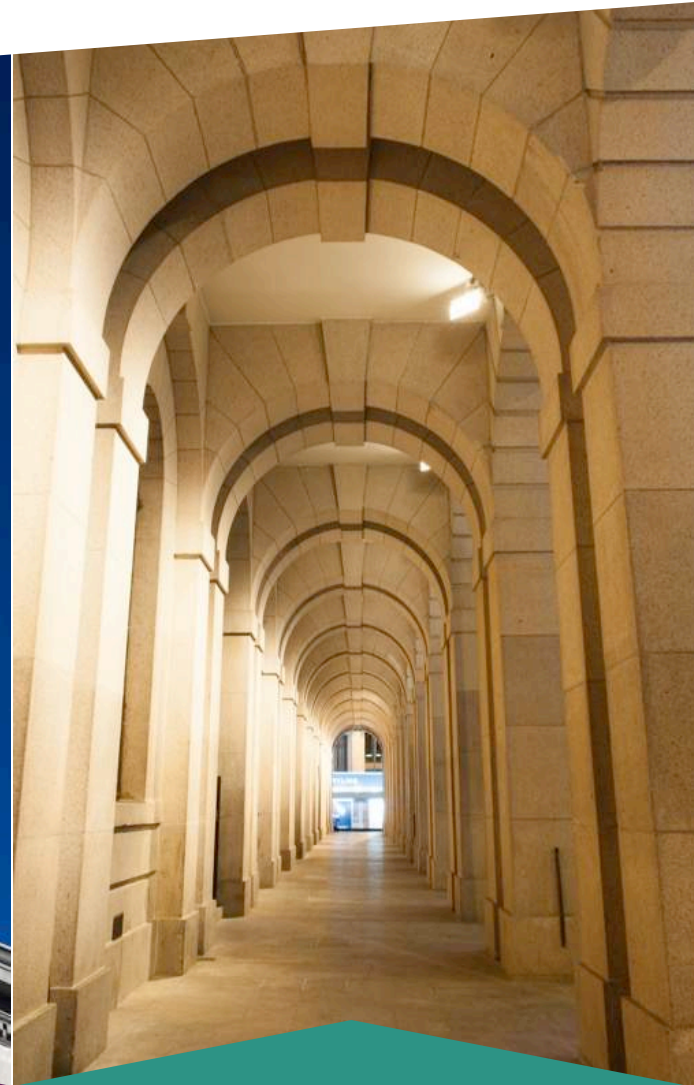
Federalism & Police Power



FEDERAL



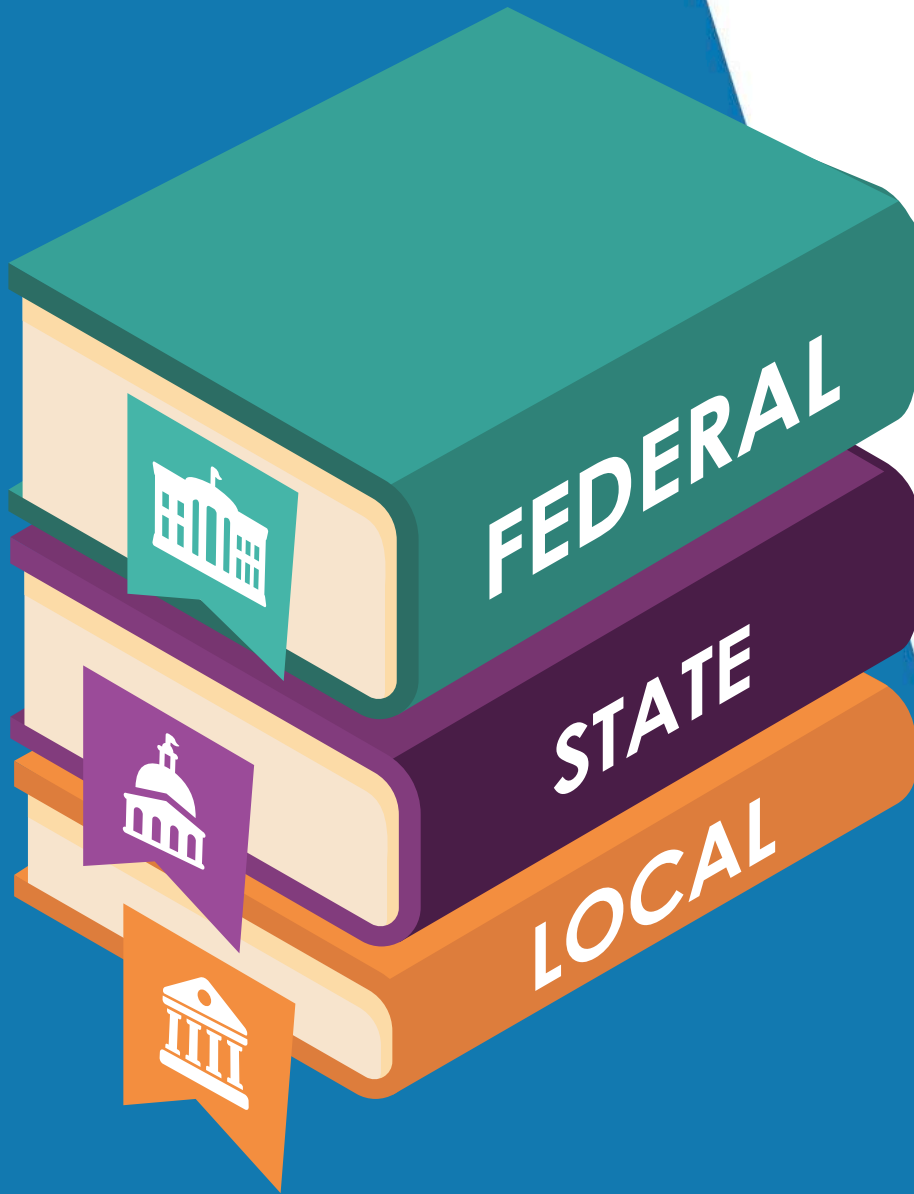
STATE



LOCAL

What is Preemption?

When the law of a higher level of government invalidates the law of a lower level of government



Preemption Comes in Many Forms



Ceiling Preemption
(ie, Maximum Standards)



Floor Preemption
(ie, Minimum Standards)



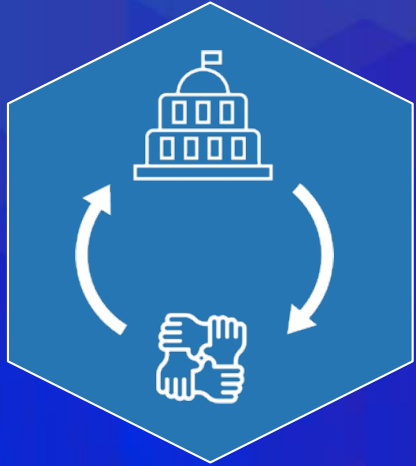
Vacuum Preemption
(ie, No Standards)



Why Preemption?

Preemption has consequences
on health and equity





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



Localism



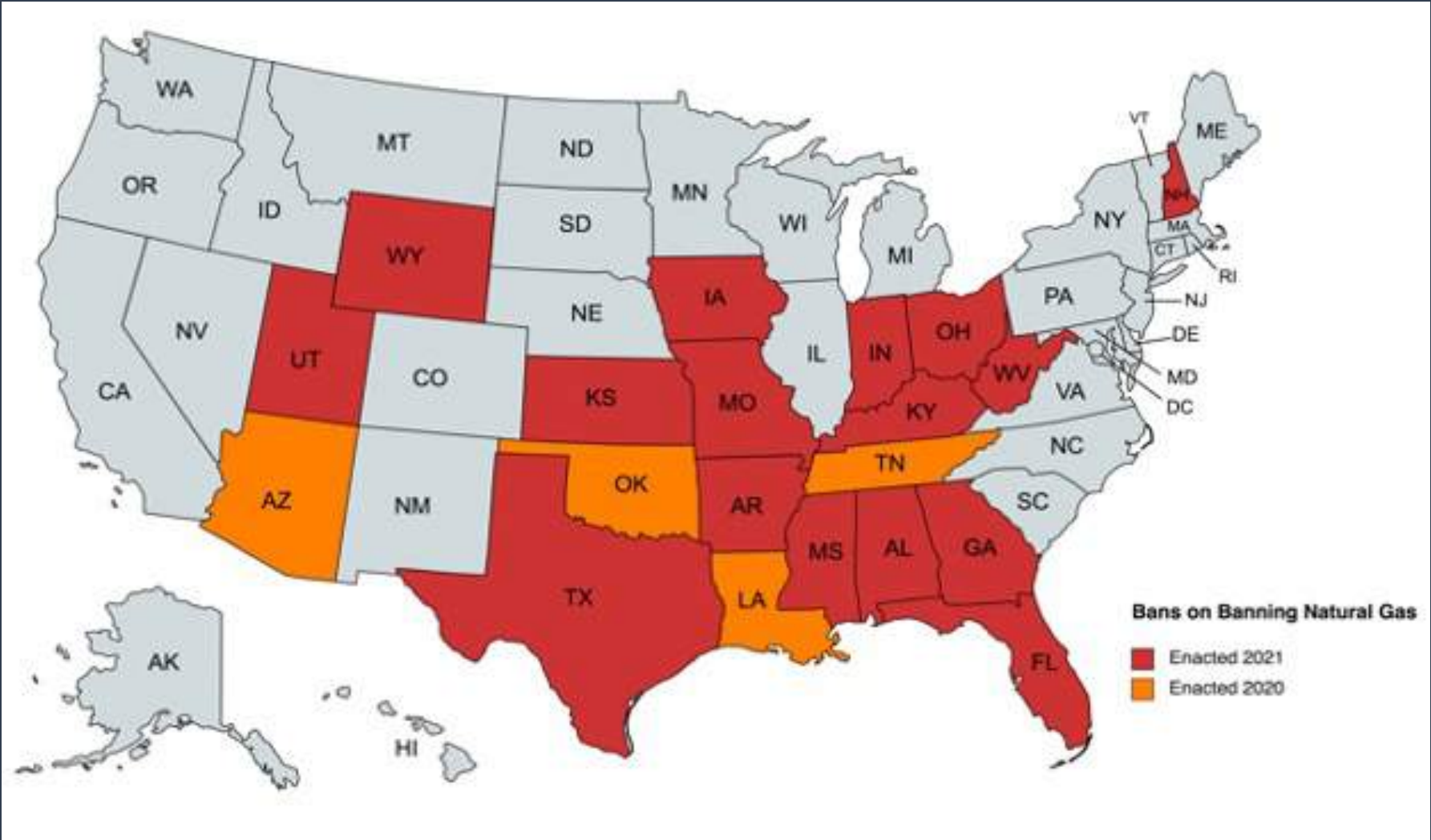


Preemption isn't
universally
negative
or
inherently partisan

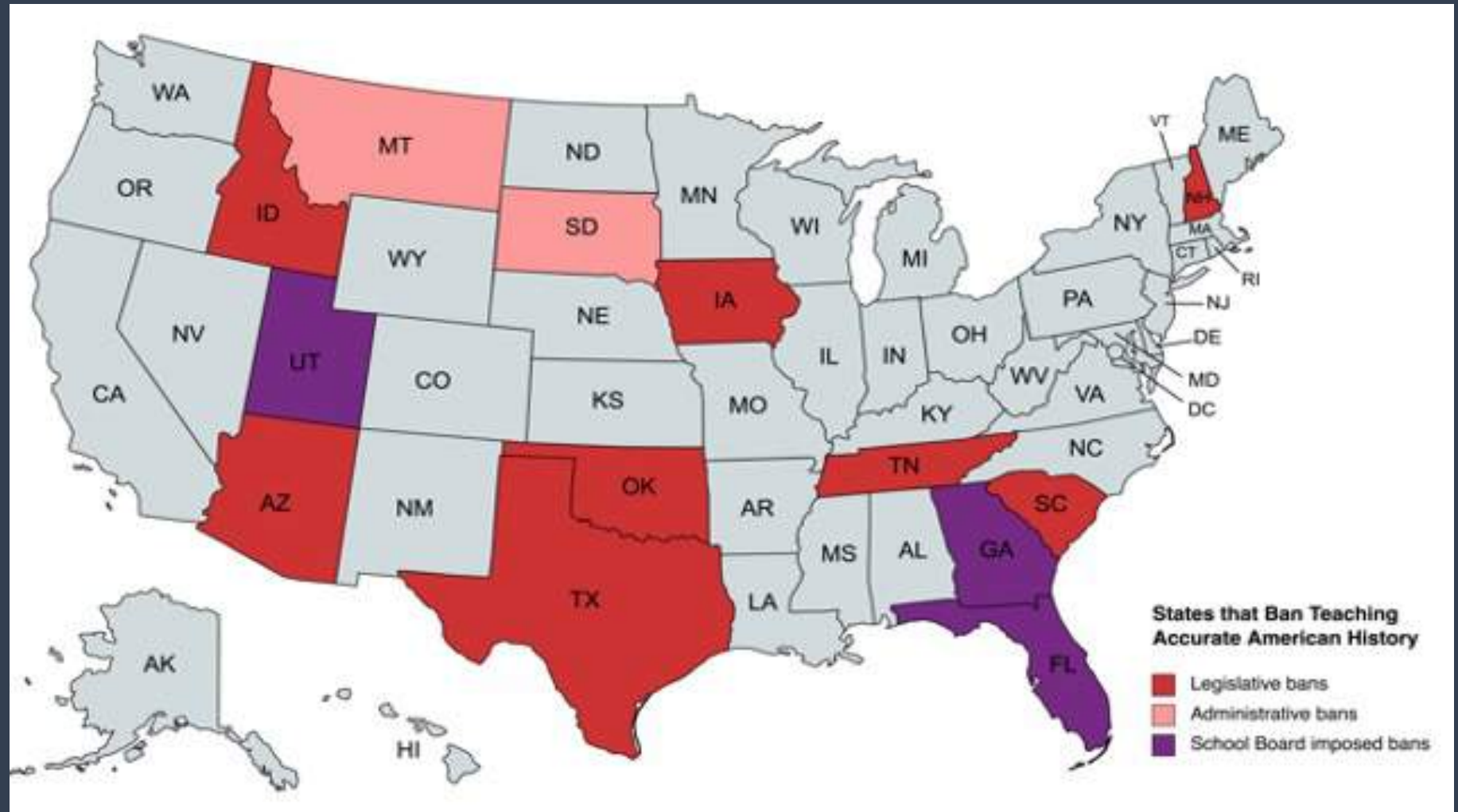
How preemption
affects health
equity depends on
the type of
preemption
&
how it's used



States that Preempt Natural Gas Bans



States that Ban Teaching Accurate History



2021

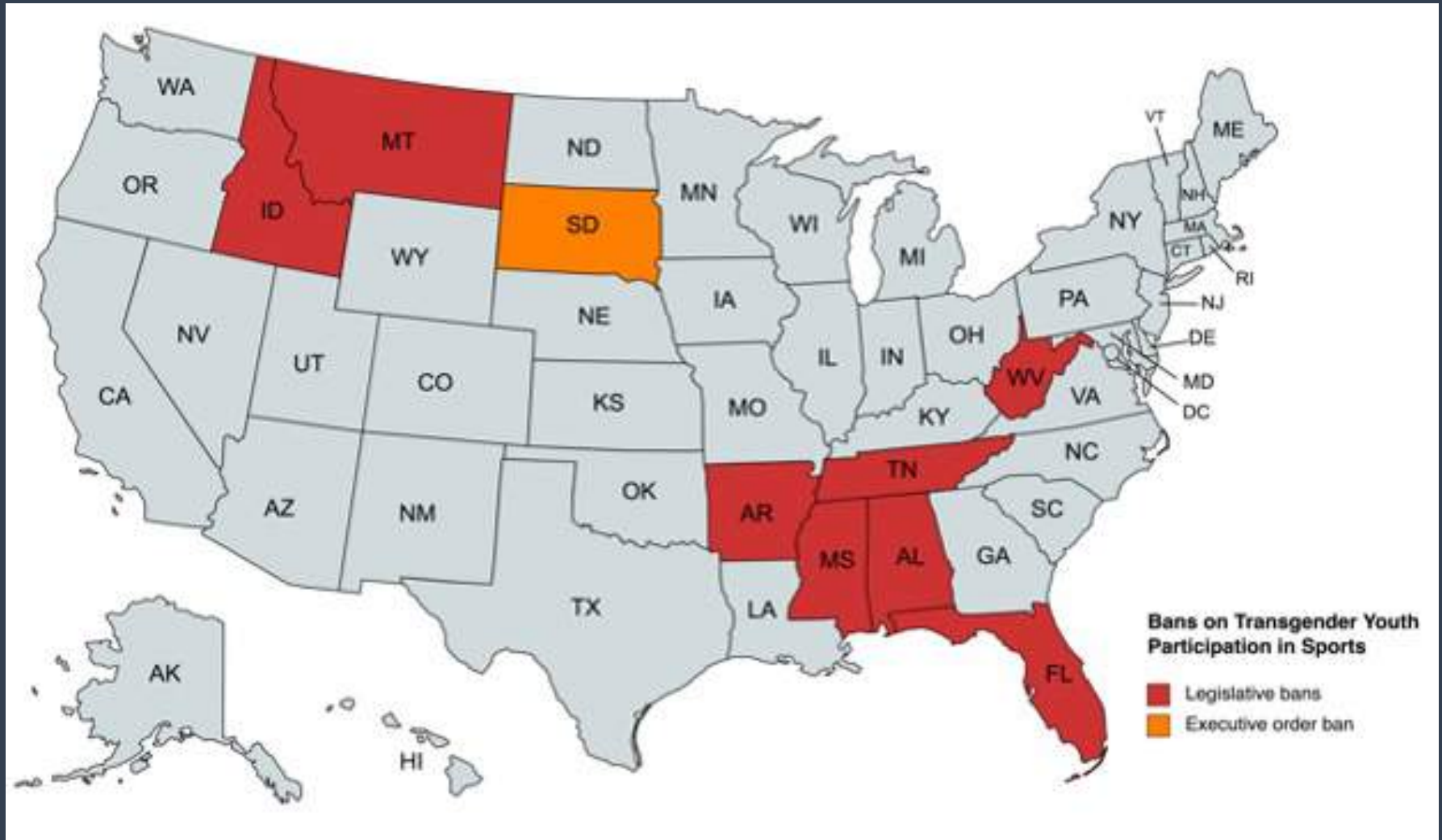
PUBLIC HEALTH LAW
CONFERENCE

Building and Supporting
Healthy Communities for All

Sep. 21-23, 2021
PHLC2021.org
#PHLC2021

Source: Brookings Institution (August 2021)

States that Ban Transgender Athletes



2021

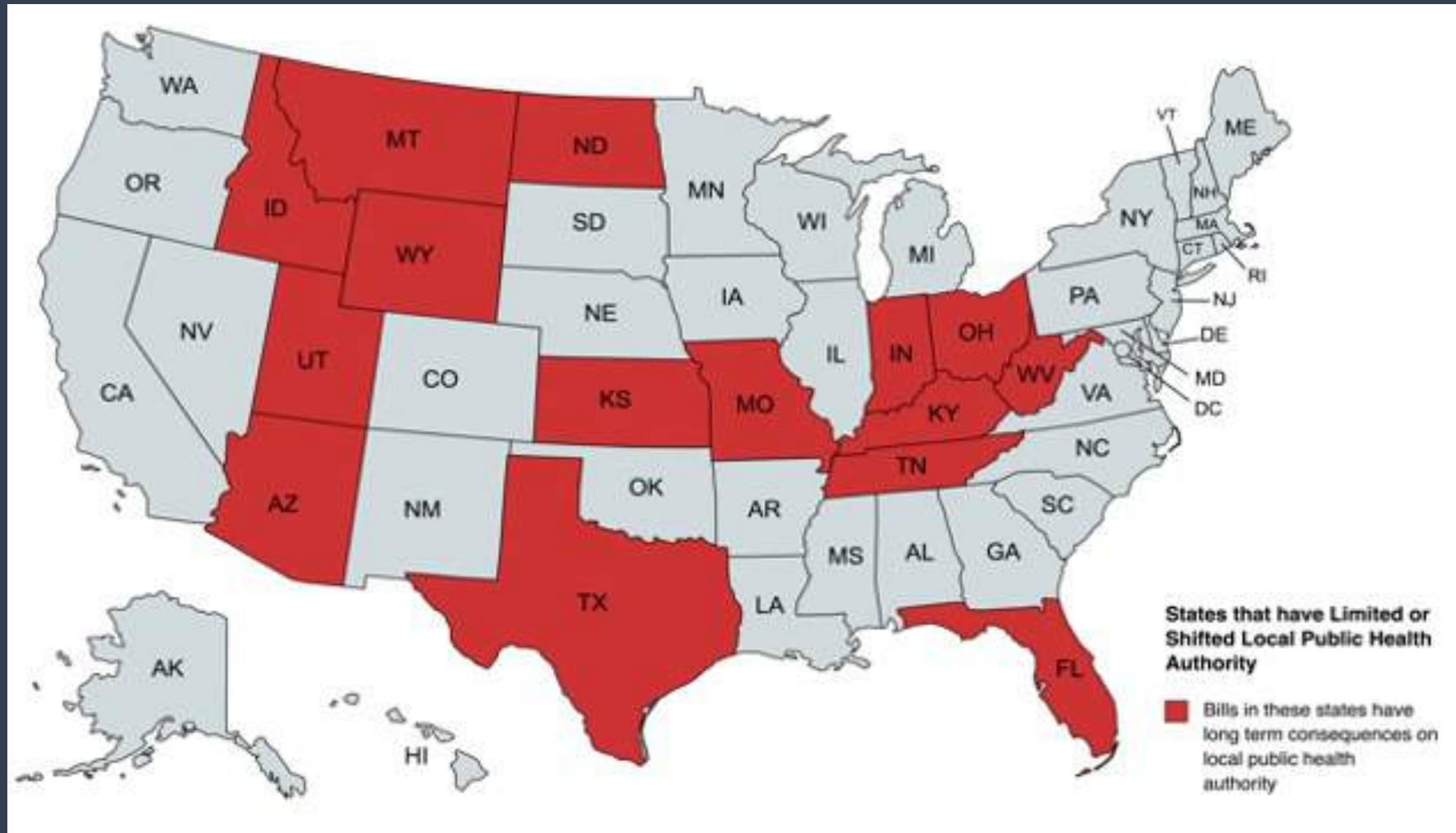
PUBLIC HEALTH LAW
CONFERENCE

Building and Supporting
Healthy Communities for All

Sep. 21-23, 2021
PHLC2021.org
#PHLC2021

Source: Movement Advancement Project (9/18/21)

States that Limit or Preempt Local PH Authority (New Restrictions)



2021

PUBLIC HEALTH LAW
CONFERENCE

Building and Supporting
Healthy Communities for All

Sep. 21-23, 2021
PHLC2021.org
#PHLC2021

Source: Local Solutions Support Center (September 2021)

State Preemption and Population Health

Jennifer Karas Montez

Professor of Sociology

Gerald B. Cramer Faculty Scholar in Aging Studies

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Syracuse University

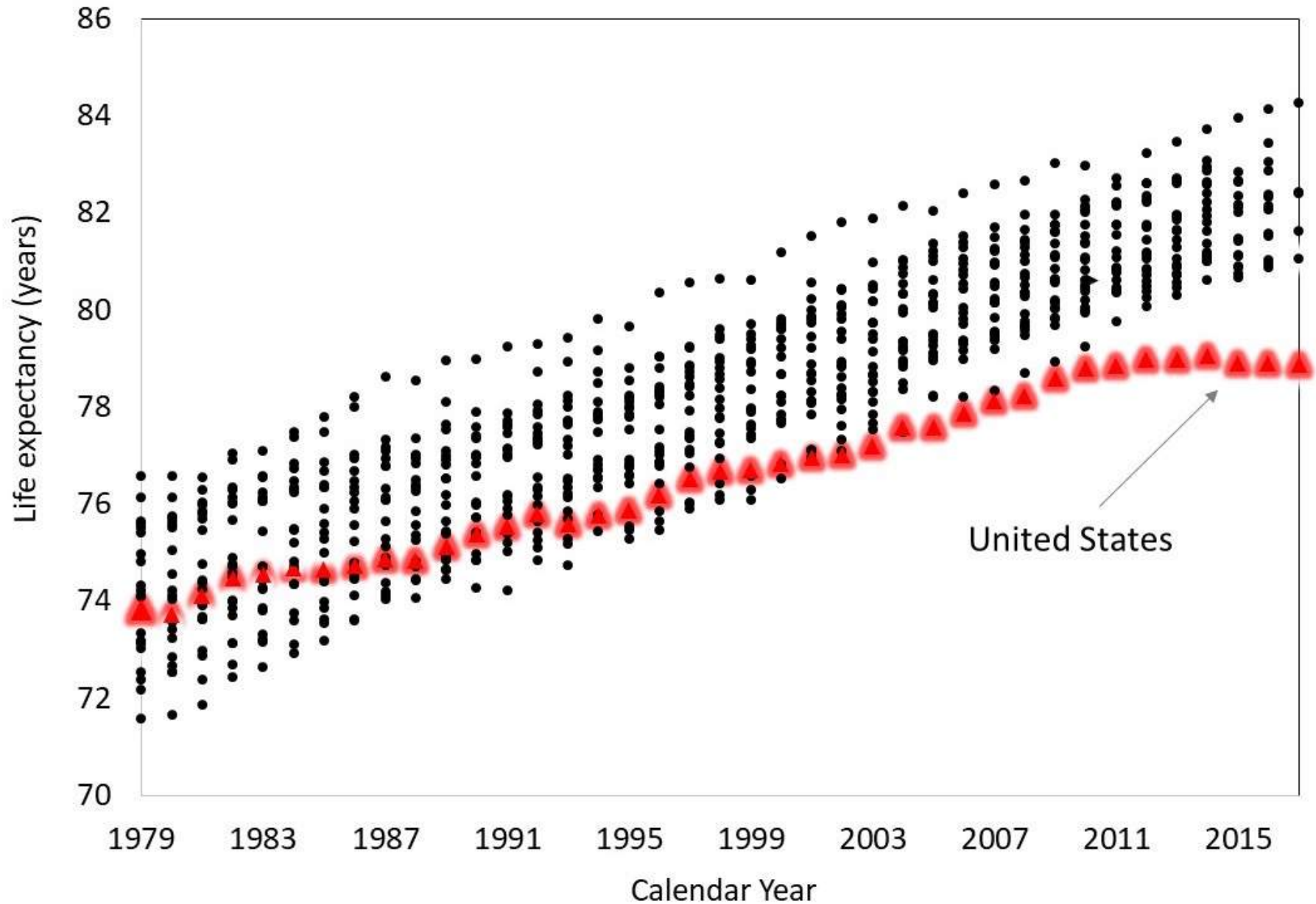
Key Collaborators: Douglas A. Wolf and Shannon M. Monnat

Presented at the 2021 Public Health Law Conference panel session on
“Preemption, Public Health and Health Equity: A Proposed Framework and Research
Agenda”

September 21, 2021

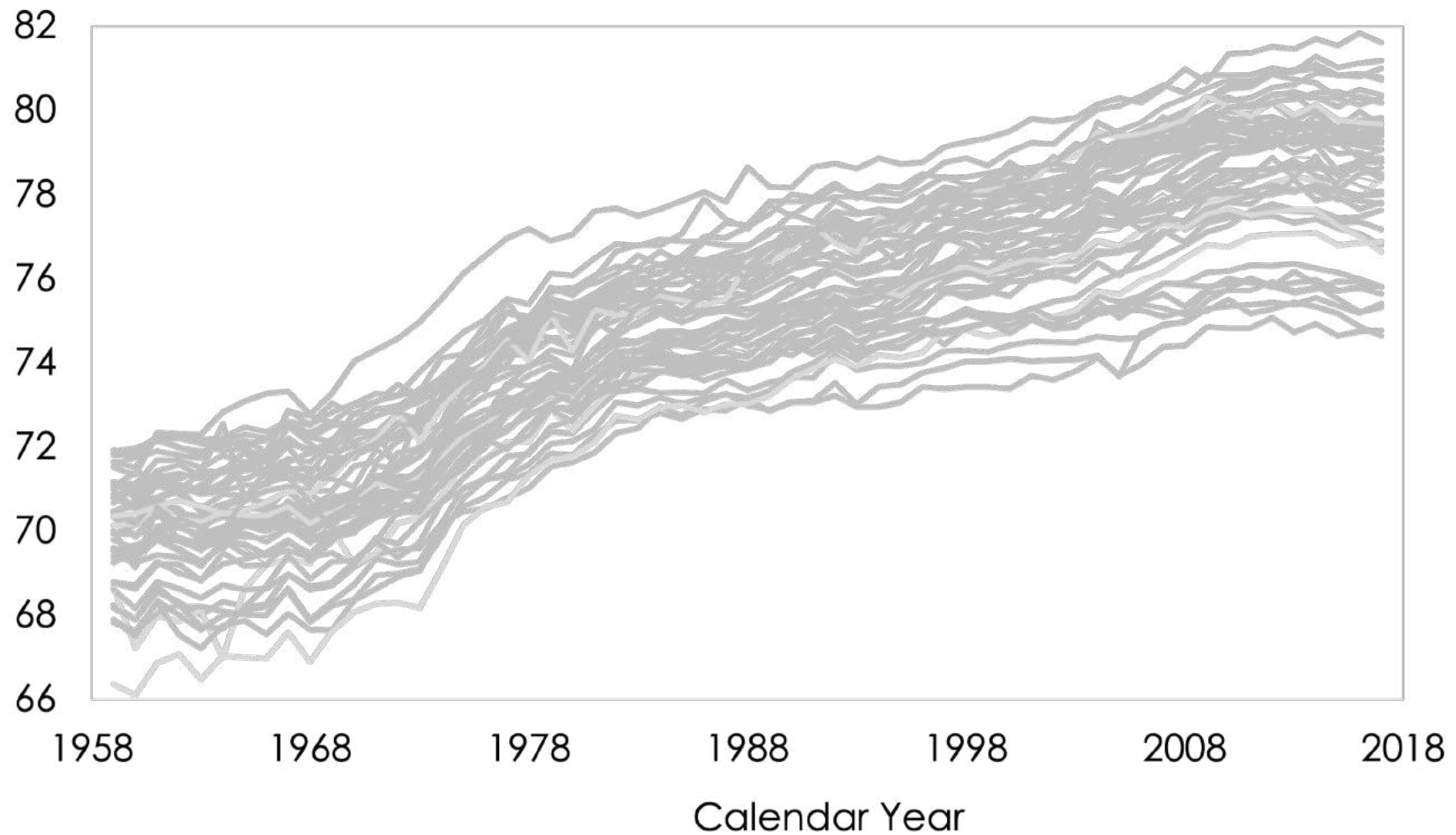
This research is funded in part by the Robert Wood Johnson Foundation and the Carnegie Corporation

US life expectancy lags other high-income countries



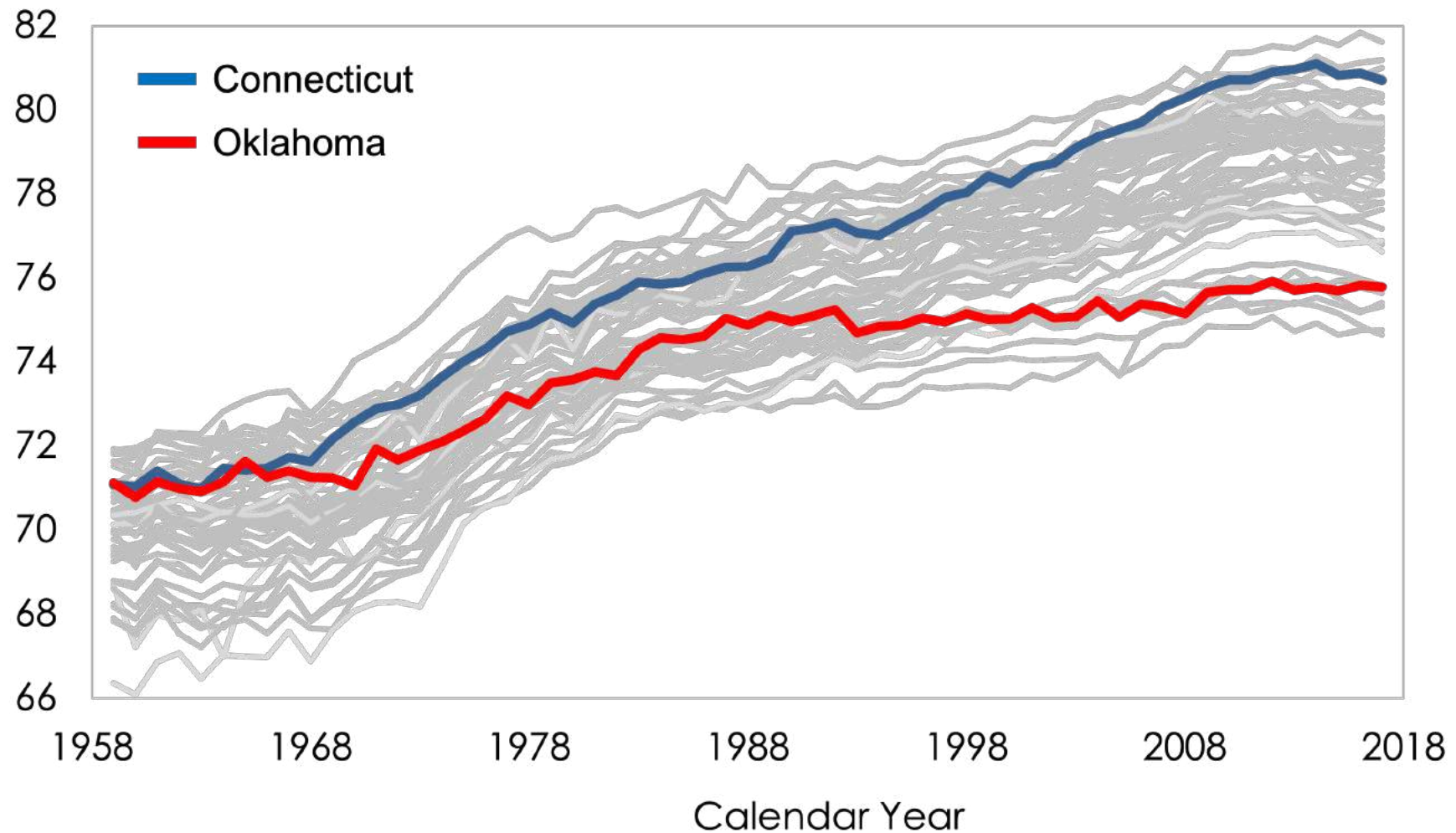
Source: Montez. 2020. "Policy Polarization and Death in the United States." *Temple Law Review* 92(4):889-916

Some states have done well, others have done poorly



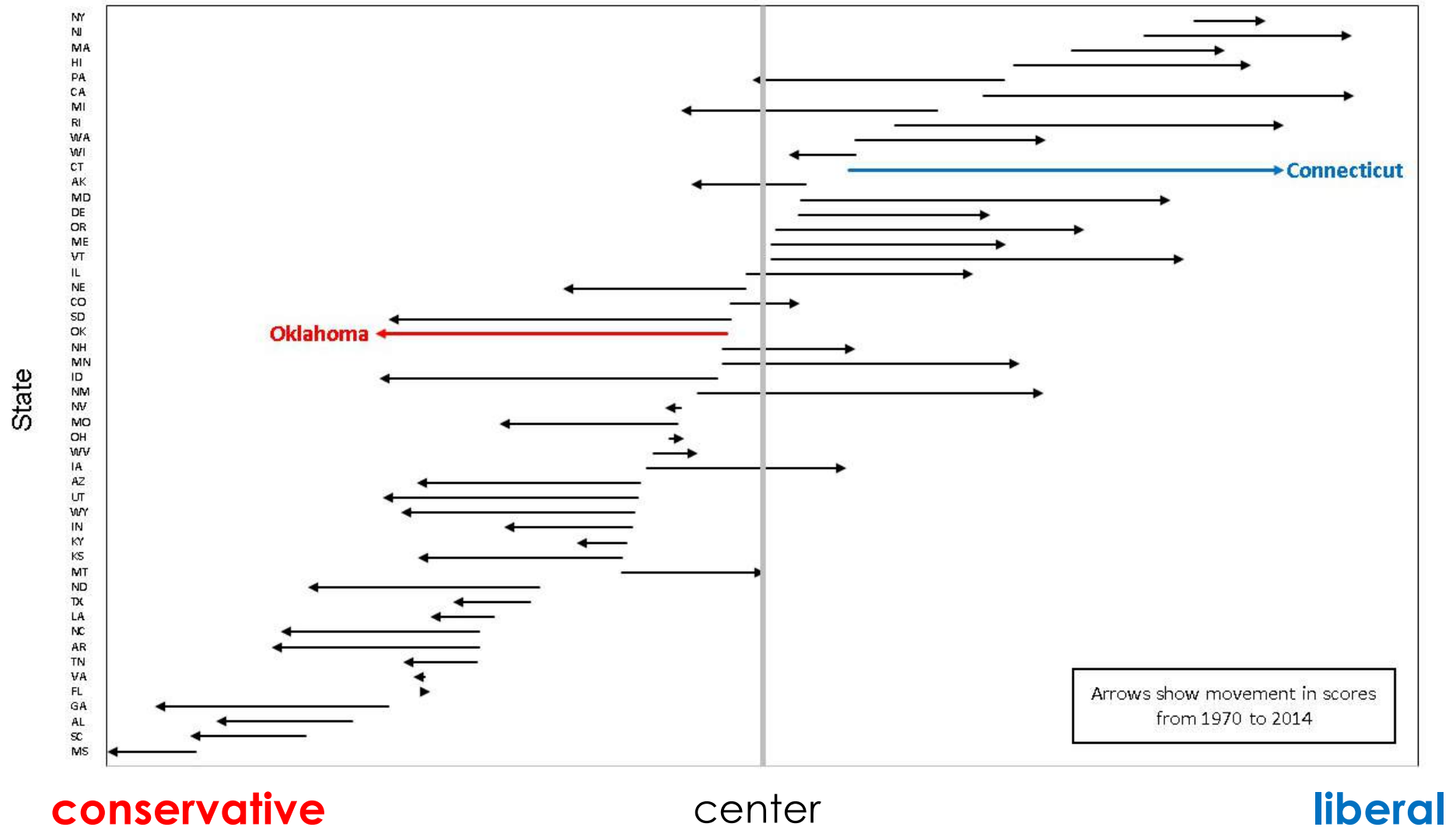
Source: Montez et al. 2020. "US State Policies, Politics, and Life Expectancy." *The Milbank Quarterly* 98(3):1-34.

Some states have done well, others have done poorly



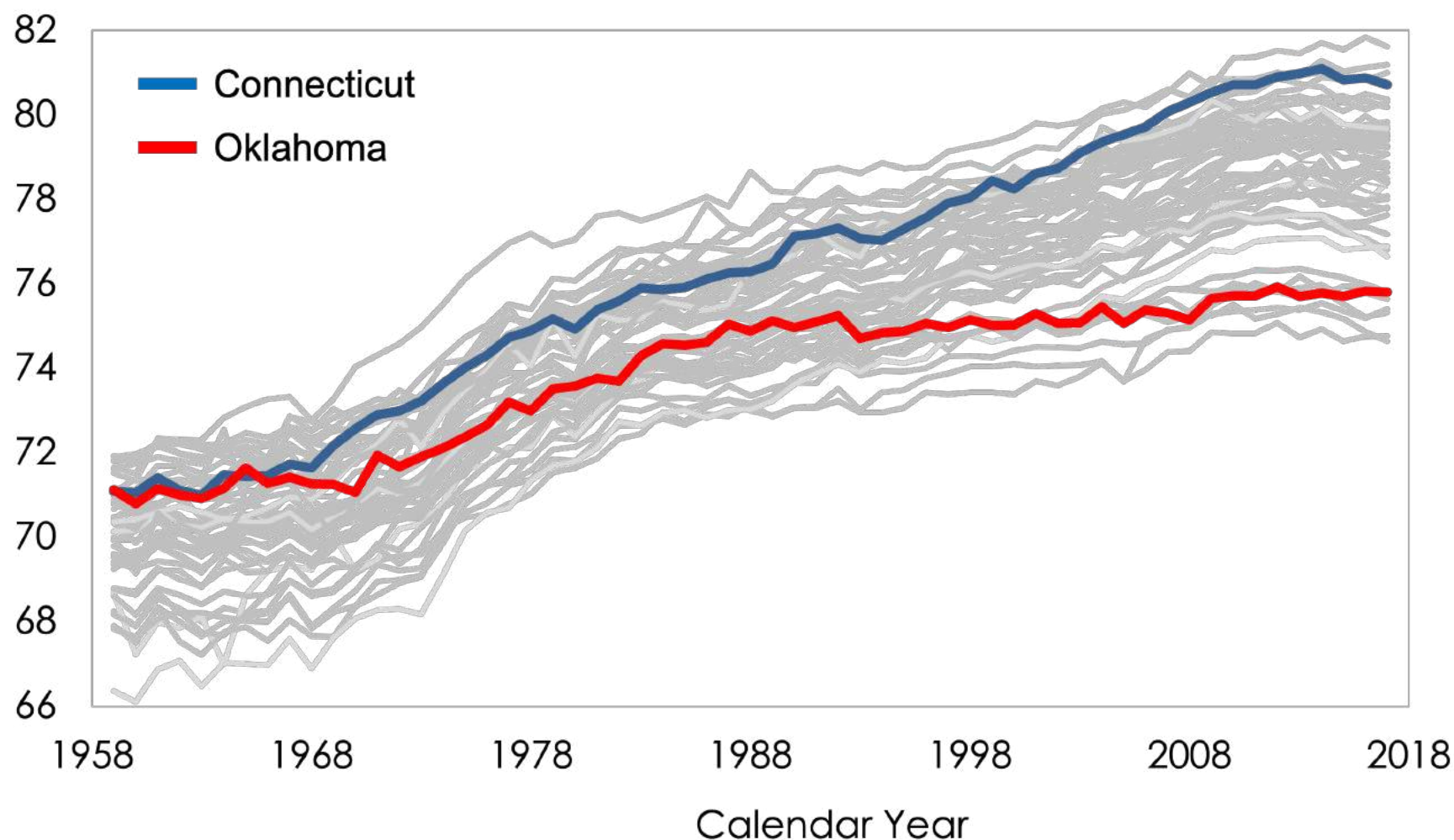
Source: Montez et al. 2020. "US State Policies, Politics, and Life Expectancy." *The Milbank Quarterly* 98(3):1-34.

Polarization in State Policy Contexts



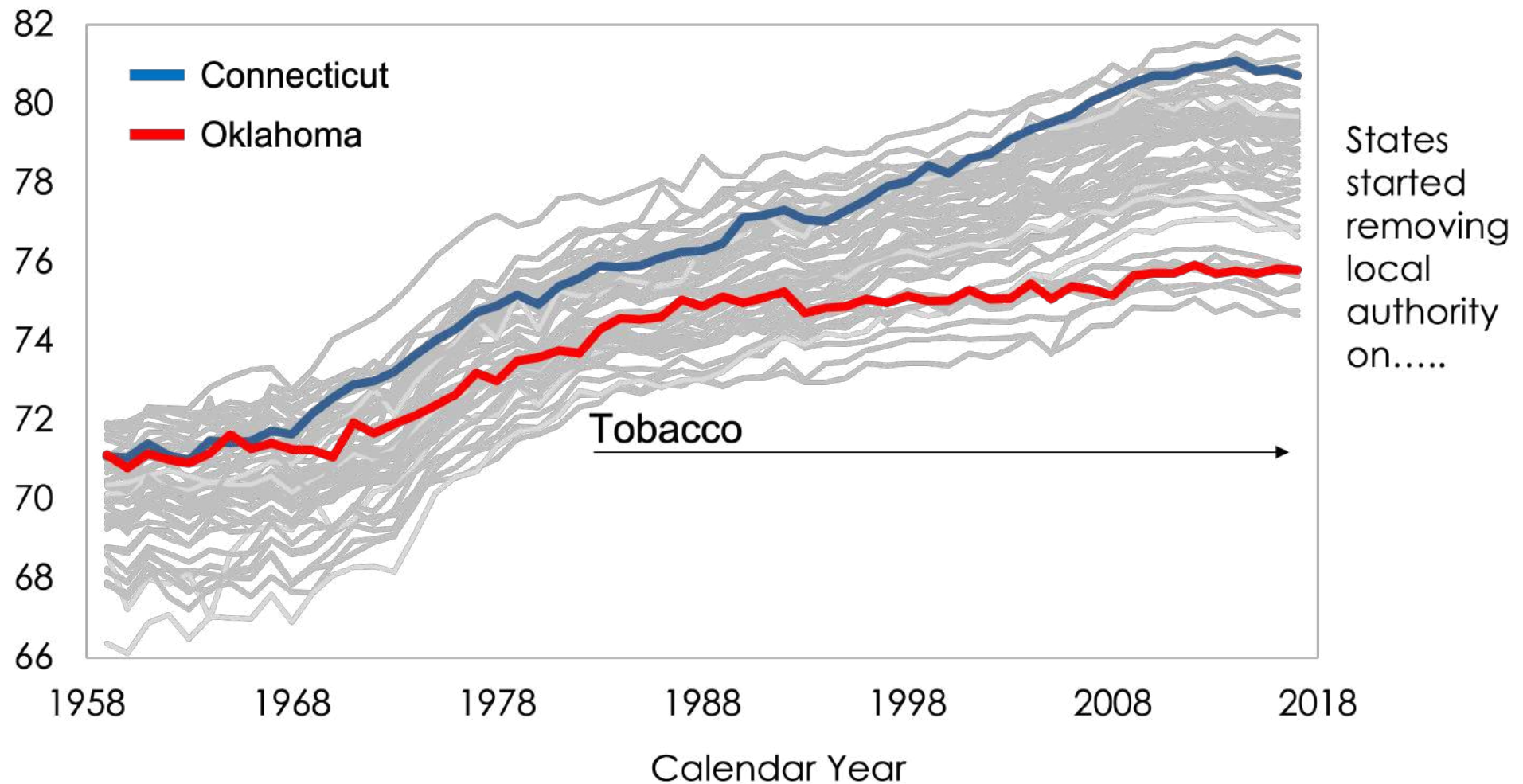
Source: Montez et al. 2020. "US State Policies, Politics, and Life Expectancy." *The Milbank Quarterly* 98(3):1-34.

The divergence in life expectancy & policy polarization coincides with 2 policy movements: devolution & preemption

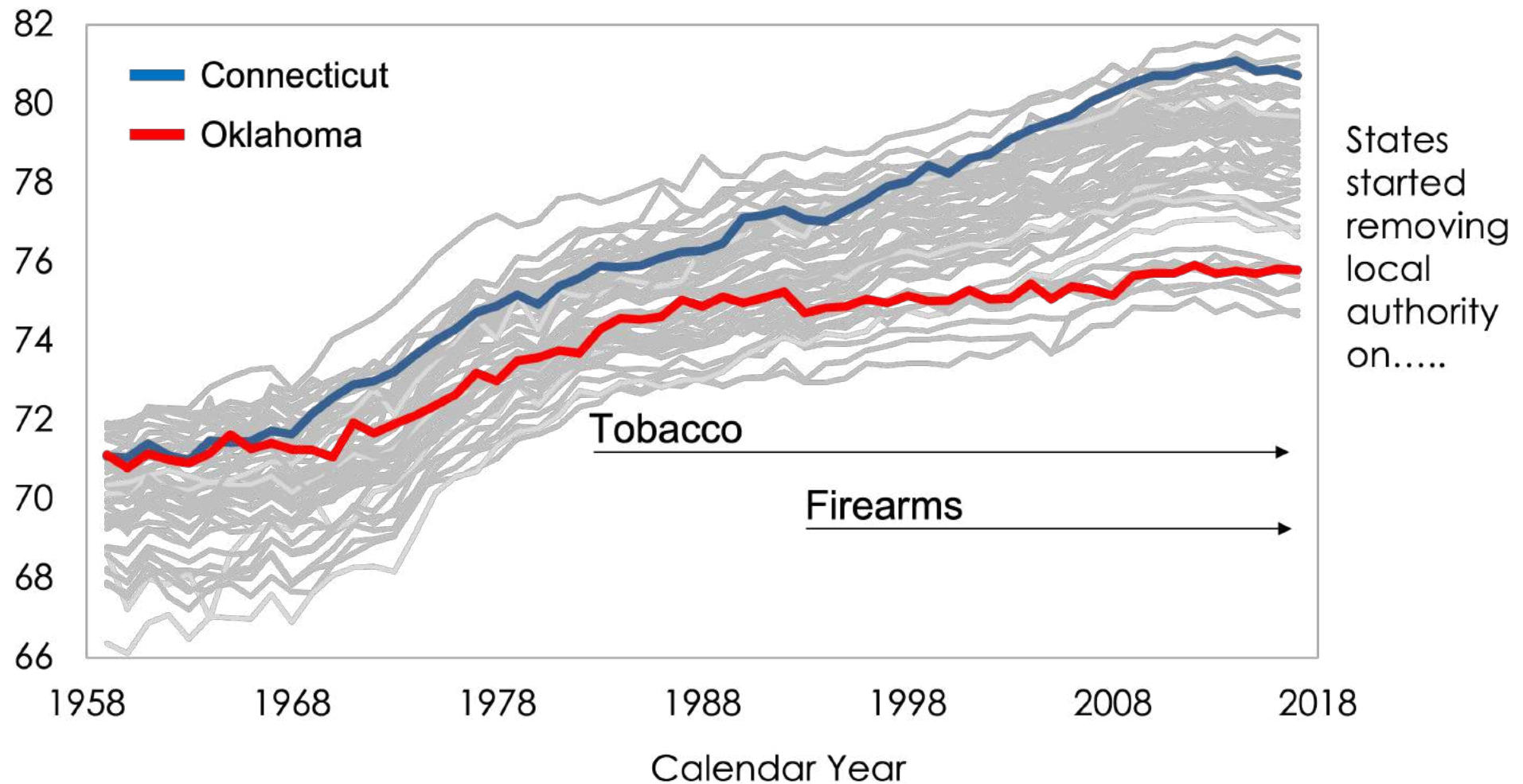


Source: Montez et al. 2020. "US State Policies, Politics, and Life Expectancy." *The Milbank Quarterly* 98(3):1-34.

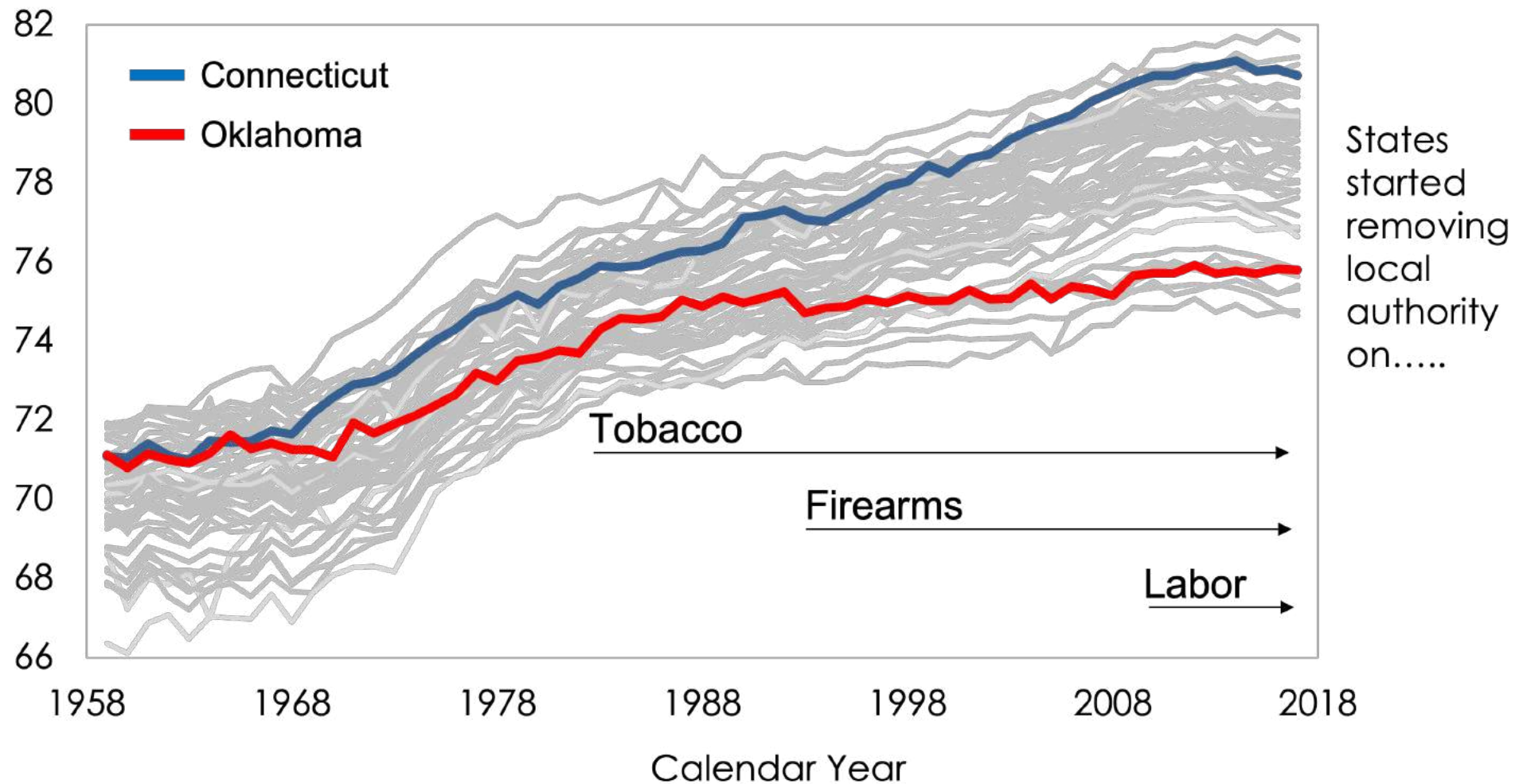
The divergence in life expectancy & policy polarization coincides with 2 policy movements: devolution & preemption



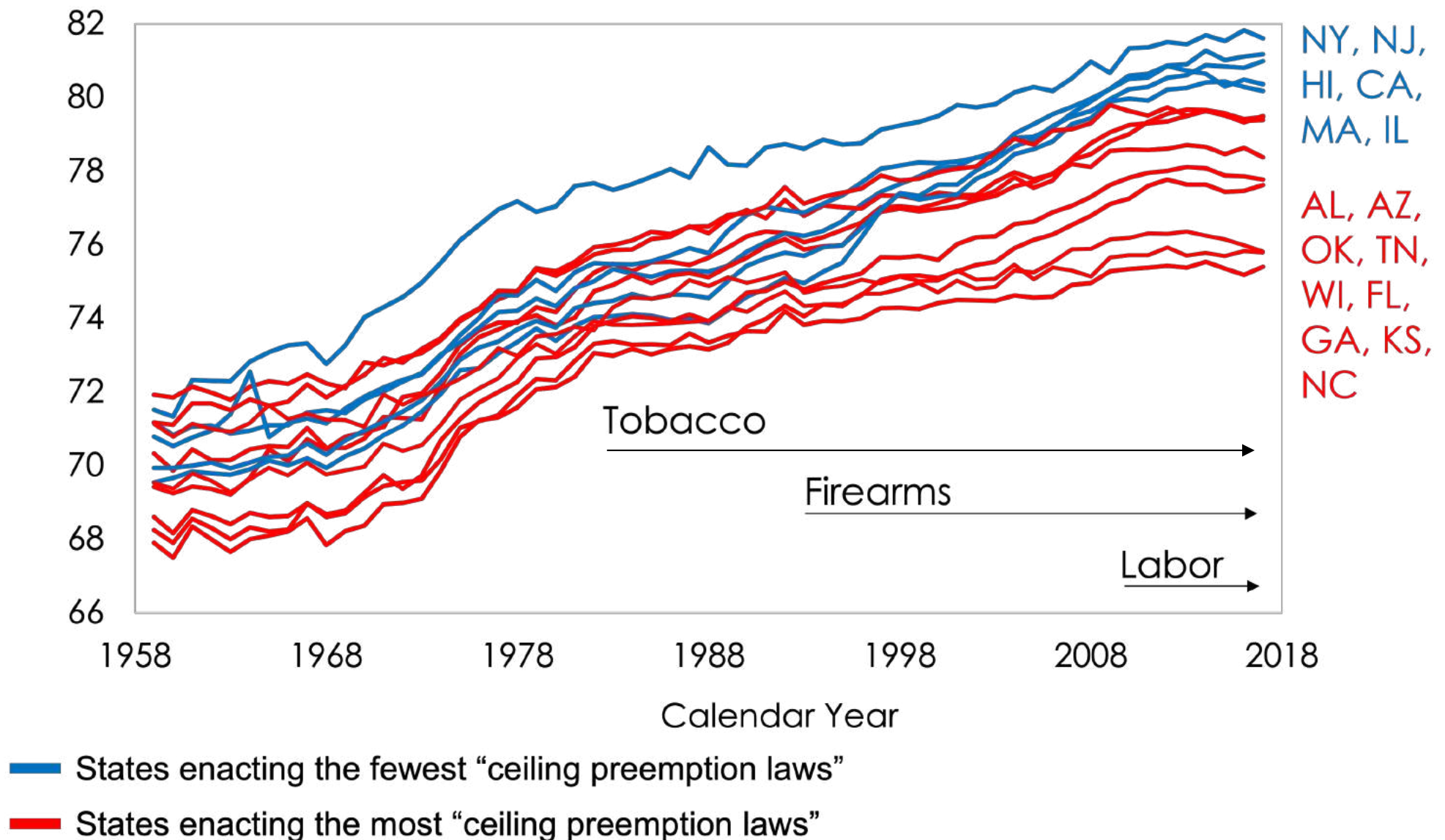
The divergence in life expectancy & policy polarization coincides with 2 policy movements: devolution & preemption



The divergence in life expectancy & policy polarization coincides with 2 policy movements: devolution & preemption

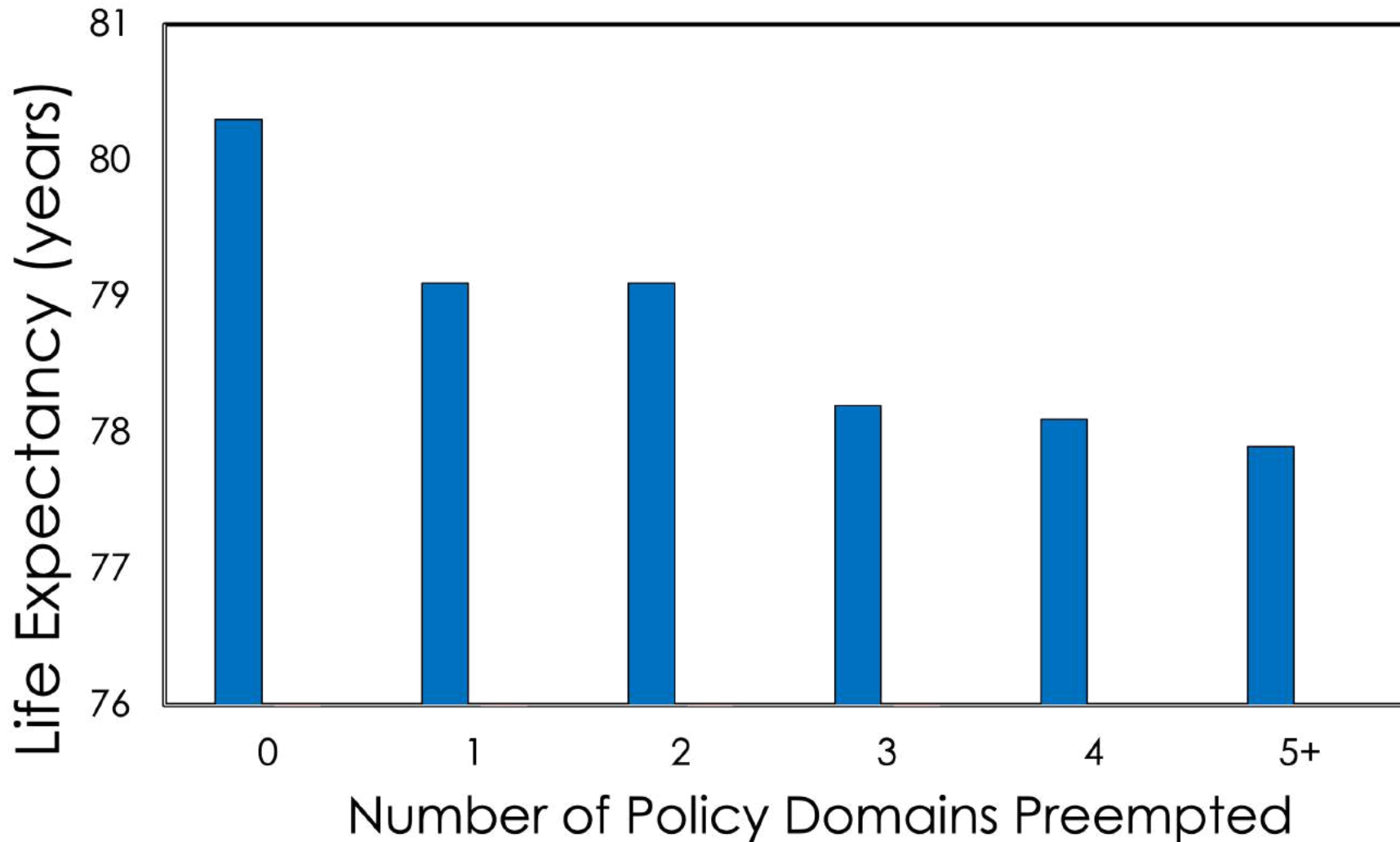


States that have done poorly have taken away local authority to improve people's standard of living and health



Source: Montez. 2018. "How state preemption laws prevent cities from taking steps to improve health and life expectancy" Scholars Strategy Network, Key Findings Brief. Eight domains include: discrimination, firearms, paid sick days, e-cigarettes, fire sprinklers, nutrition, smoke-free laws, and minimum wage. All preemption data from 2014.

States that enacted more preemption laws have lower life expectancy

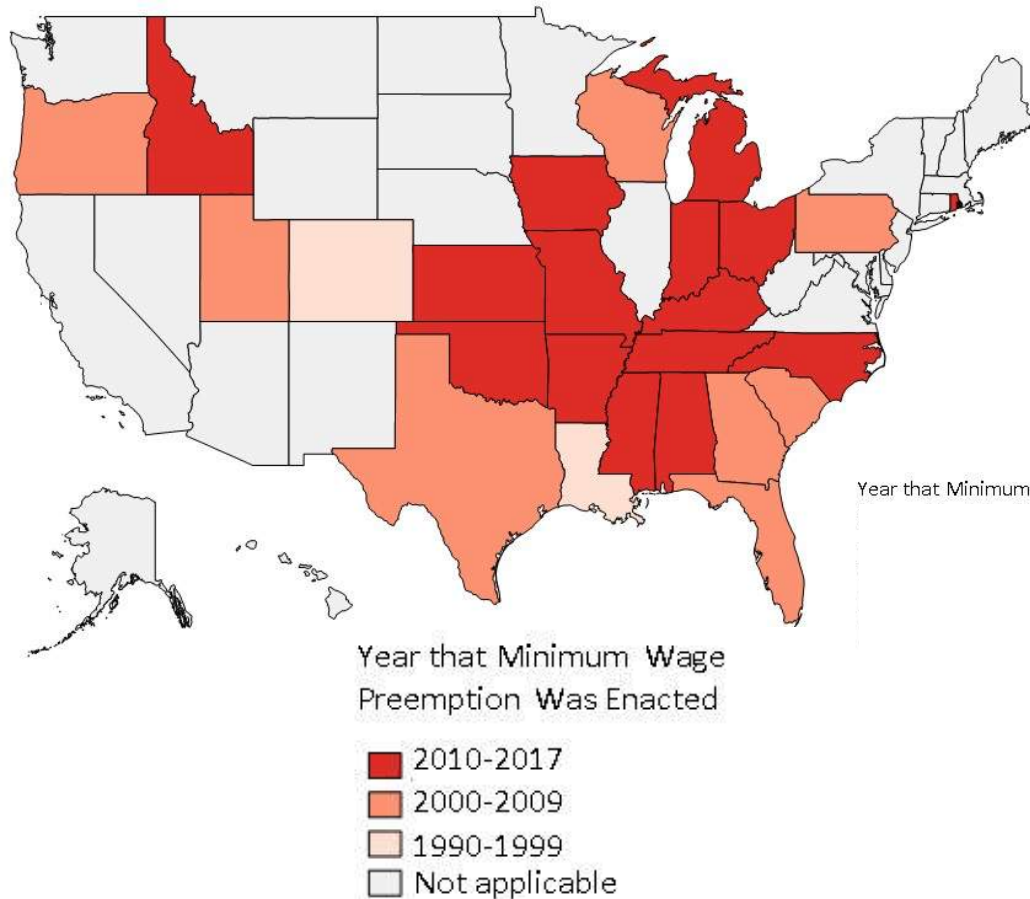


Source: Montez. 2018. "How state preemption laws prevent cities from taking steps to improve health and life expectancy" Scholars Strategy Network, Key Findings Brief. Eight domains include: discrimination, firearms, paid sick days, e-cigarettes, fire sprinklers, nutrition, smoke-free laws, and minimum wage. All preemption data from 2014.

Can we provide *causal* evidence that certain preemption laws cut lives short?

Wolf, Monnat, & Montez. 2021. "Effects of US state preemption laws on infant mortality." *Preventive Medicine* 145: 106417.

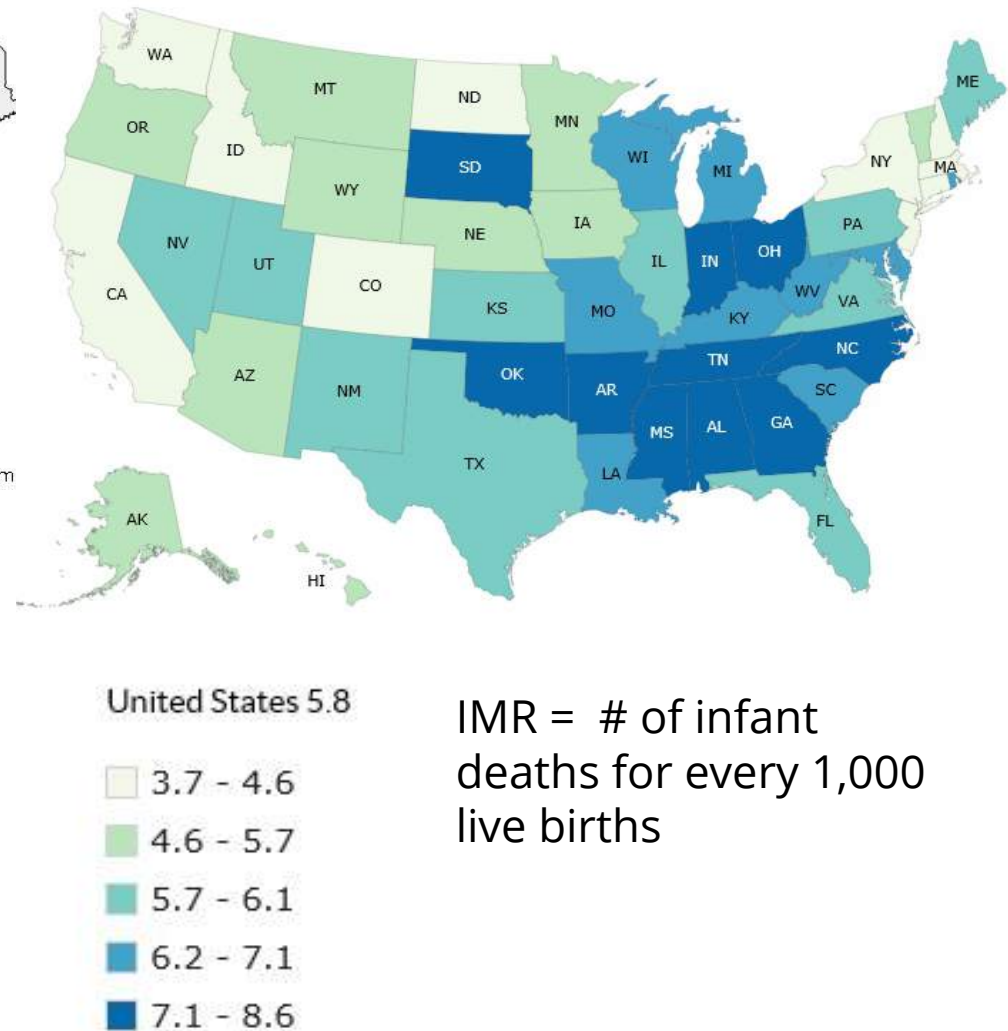
State Preemption of Local Minimum Wage Increase



Raising the minimum wage reduces.....

- Teenage pregnancy
- Smoking, BMI
- Low-weight births, infant mortality
- CVD death among working-age adults

Infant Mortality Rates by State (2017)



IMR = # of infant deaths for every 1,000 live births

Source: Centers for Disease Control and Prevention
<https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm>

Study Design

Data

- By county & quarter for 2001-2018, for all 50 states & DC (N=222,156)
- Data on Infant Deaths from the National Vital Statistics System
- Data on minimum wage from the Bureau of Labor Statistics

County-level Time Varying Covariates

- Labor force participation
- Race-ethnic composition
- Education distribution of mothers of infants born that year
- 9-category rural-urban designation

State-level Time Varying Covariates

- Tobacco Tax
- Safety net programs: Medicaid Income Eligibility Level, state EITC, TANF, SNAP

Analysis

- Estimate negative binomial regression models with fixed effects for time and geography
- Estimate counterfactual infant mortality for different preempted minimum wage levels

Study Results—Part 1

Estimate effect of minimum wage on infant mortality rate

Each \$1 increase in min wage decreases the infant mortality rate by ~ 1.3%

In large metro areas, the decrease is 1.5-1.8%

Study Results—Part 2

Conduct counterfactual analysis of preempted counties

	Minimum Wage	Annual Number of Infant Deaths Attributable to Preemption
9 metro areas* where minimum wage increases were rescinded by states	Actual: \$7.74 Preempted: \$9.99	25

*Birmingham, AL; Miami-Dade, FL; Lin and Polk Counties, IA; Louisville and Lexington, KY; Kansas City and St. Louis, MO; Madison, WI

Study Results—Part 3

Estimate total impact

Effect of Minimum Wage Preemption on Infant Mortality in 541 Large Metro Counties.

Counterfactual minimum wage	Baseline IMR	Counterfactual IMR	% reduction in IMR	Infant deaths attributable to preemption
\$8.75	6.1	5.8	4.2	393
\$9.99	6.1	5.7	6.4	605
\$10.60	6.1	5.6	7.5	708
\$11.70	6.1	5.5	9.4	892
\$12.80	6.1	5.4	11.4	1071
\$13.90	6.1	5.3	13.2	1247
\$15.00	6.1	5.2	15.0	1419

State preemption laws that prohibit local authority to improve living standards and health are a **significant risk to the population** and may be contributing to the deterioration of US life expectancy.

Questions? Please contact jmontez@syr.edu

Open access to the article on US state policies and life expectancy:

<https://onlinelibrary.wiley.com/doi/full/10.1111/1468-0009.12469>

Open access to the article on minimum wage preemption and infant mortality:

<https://www.sciencedirect.com/science/article/pii/S0091743521000013?via%3Dihub>



Preemption in Practice



AN EMERGING THREAT TO PUBLIC HEALTH AUTHORITY

INTRODUCTION

This spring, amid an ongoing pandemic, almost half of state legislatures are considering bills that could substantially limit state and local public health powers.

Some bills, such as Missouri Senate Bill 56, would fundamentally alter the general scope of public health authority by stripping county boards of health of their existing ability to issue orders and promulgate regulations. Others, like Michigan House Bill 6334, would stymie local efforts to respond to the pandemic, including by prohibiting localities from enacting mask mandates. Some of these bills are based on ALEC's model Emergency Power Limitation Act and are part of a nationally coordinated and longstanding effort to limit local authority and advance an anti-regulatory agenda. Many of them will likely hamstring both immediate and future responses to public health threats.

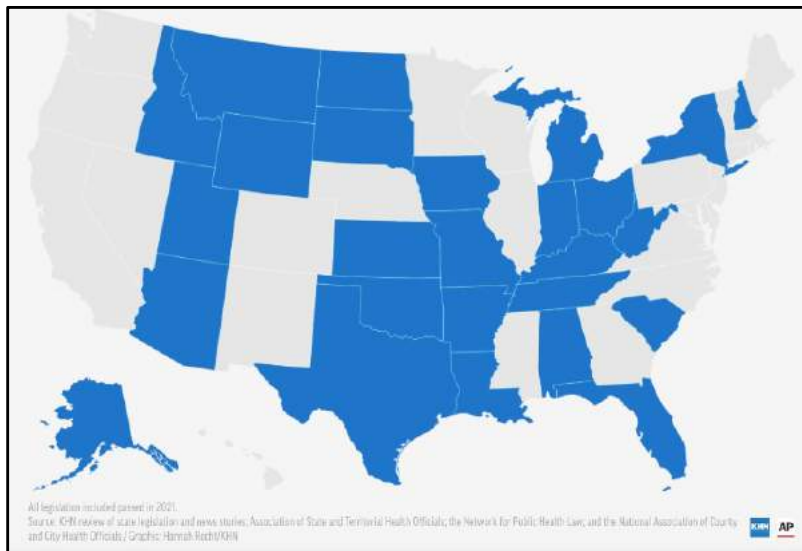
This fact sheet summarizes this emerging threat to state and local public health authority and identifies some of the possible outcomes.

NOTE: The information provided in this document does not, and is not intended to, constitute legal advice. Individuals and organizations should consult an attorney licensed to practice in their state to obtain advice with respect to a particular legal matter.

BACKGROUND

In the weeks and months following the outbreak of the COVID-19 pandemic, states and localities across the country declared emergencies, and governors, local governing bodies, and health departments issued orders and recommendations in an attempt to slow the spread of the virus, protect the public's health, and save lives. While the goals of such actions were mostly accepted by the public, the tools used to achieve those goals were not. Public health orders, including stay-at-home orders, face-covering mandates, and regulations temporarily banning in-person gatherings or shuttering businesses have been publicly contentious and led to vigorous debates in some states about the legality of government authority.

All three levels – federal, state, and local – and all three branches – executive, legislative, and judicial – of government have roles to play when it comes to protecting the public's health. In the United States, state and local governments have expansive authority to promote public health, welfare, and safety, often referred to as "police power." States and localities also have designated processes by which decisions can be made during public health emergencies, like the COVID-19 pandemic. The pandemic, however, has shown that these processes are not always clear cut, resulting in both confusion and controversy. Courts repeatedly have been called upon to help determine the limits of public health authority, but some state legislatures are now seeking to change the parameters of such authority through legislation.



Proposed Limits on Public Health Authority: Dangerous for Public Health

May 2021

 The Network
for Public Health Law

 NACCHO
NATIONAL ASSOCIATION OF COUNTY & CITY HEALTH OFFICIALS

Legislation Affecting Public Health Authority

Preemption and Equitable Enforcement

Immigration Enforcement

Sanctuary & Anti-Sanctuary States

Municipal Police Budgets & Police Oversight

Non-Police Traffic Enforcement

Berkeley, California

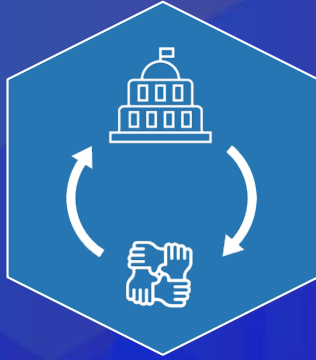
Drug Policy

- Syringe access
- Treatment facilities
- Prosecutorial discretion
- Drug possession (Washington)



The background is a teal-tinted photograph. On the left, there is a low-angle shot of a classical building with tall columns and ornate capitals. On the right, there is a close-up of a white, pyramid-shaped 'No Smoking' sign with a black circle and a diagonal line over a cigarette icon. A dark, rounded rectangular box is centered over the image, containing the title text in white.

Pushing Back and Looking Forward



Pushing Back

- **Advocacy**
 - Education
 - Grassroots organizing
- **The Political Process**
 - Legislation
 - Ballot measures
 - Repeal campaigns
- **Litigation**
- **Structural Reforms**
- **Research**



Local Sugary Drink Taxes in California



- **AB1838 (2018) enacted after beverage industry extortion**
 - Preempts new local sugary drink taxes and imposes harsh penalty on charter cities
- **Lawsuit filed in 2020 challenging penalty provision**
 - Undermines home rule authority
 - Violates constitutional protections of local sales tax revenues
- **Parallel organizing and legislative repeal efforts**



**Moving beyond minimum vs.
maximum standards**



What's around the corner?





ChangeLabSolutions



Thank you!

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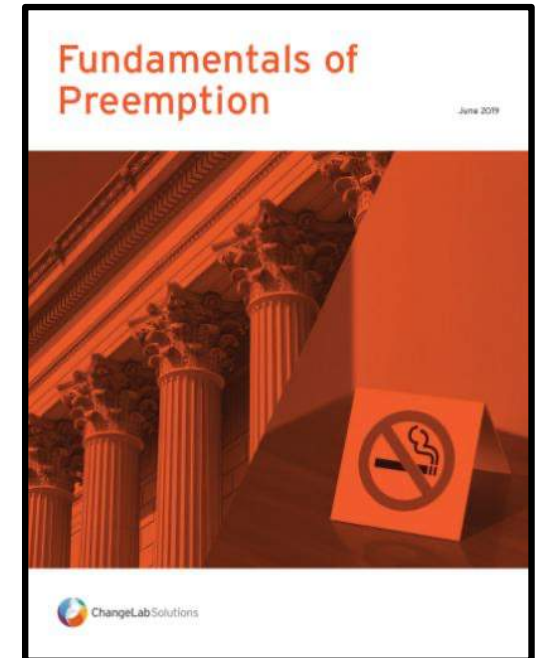
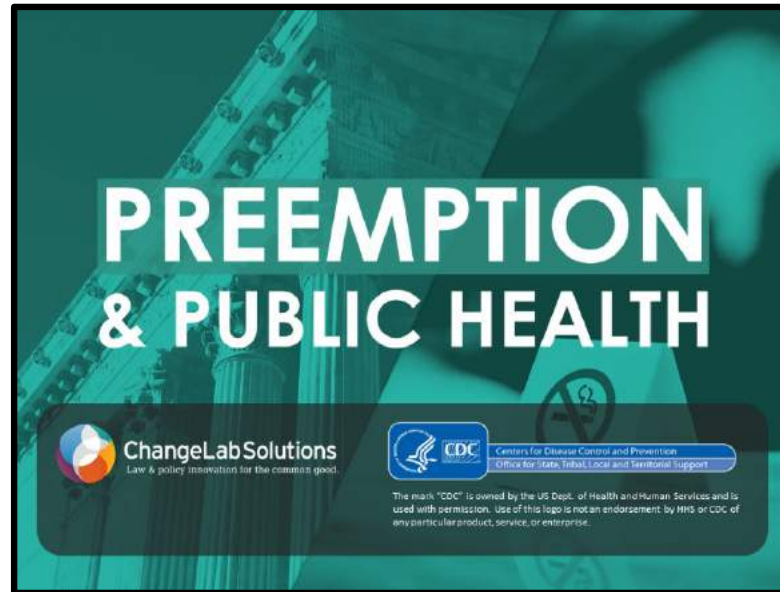
Benjamin D. Winig

ben@thinkforwardstrategies.com
ThinkForwardStrategies.com





Additional Resources



Preemption Resources

Fact Sheets, Trainings, Research, and Technical Assistance

<https://changelabsolutions.org/product/understanding-preemption>

<https://changelabsolutions.org/product/equity-first-approach-assessing-preemption>

Assessing & Addressing Preemption: A Toolkit for Local Policy Campaigns

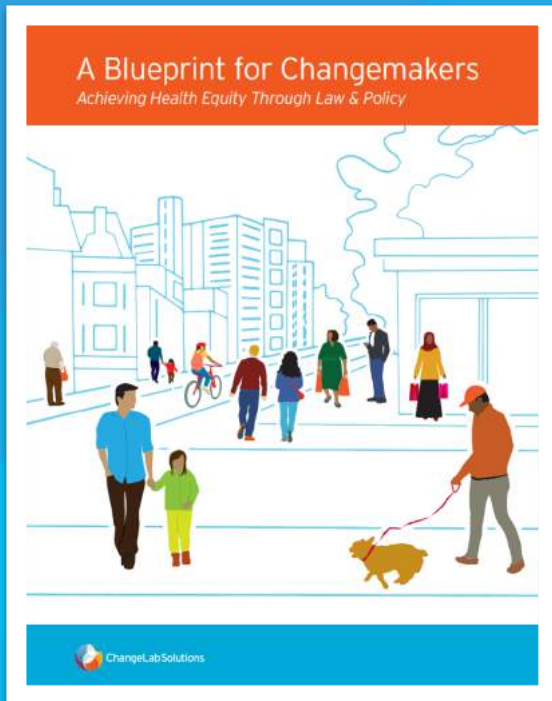
September 2020



Preemption Toolkit

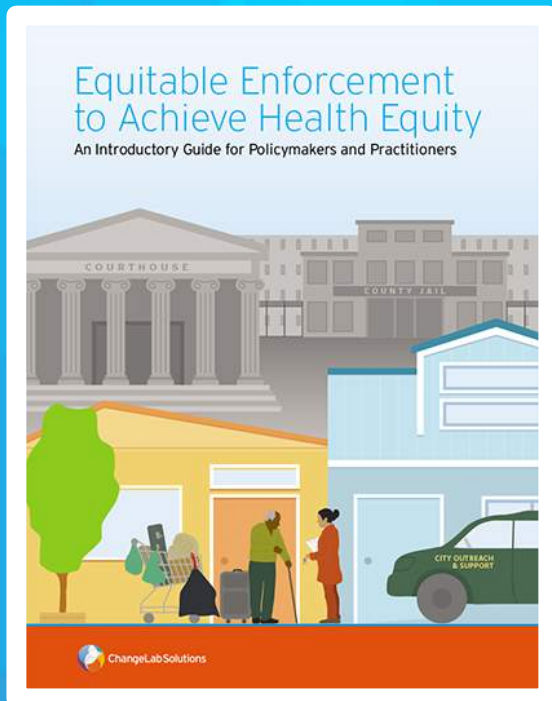
- ✓ Overview of preemption
- ✓ How preemption affects public health & health equity
- ✓ Guidance and resources on responding to threatened, proposed, or enacted state preemption

<https://changelabsolutions.org/product/assessing-addressing-preemption>



Blueprint for Changemakers

- Leverage the unique power and efficacy of local policy solutions
- Incorporate health in all policies
- Engage diverse community members in the policy process



Equitable Enforcement Guide

- Consider and minimize harm to people affected by health inequities when ensuring compliance with law & policy
- Hold wrongdoers accountable while protecting the health & well-being of individuals and the wider community
- Equitable options for administrative, civil, and criminal enforcement in a variety of public health policy areas

<https://changelabsolutions.org/product/blueprint-changemakers>

<https://changelabsolutions.org/product/equitable-enforcement-achieve-health-equity>



Local Solutions Support Center

- Legal
- Communications
- Organizing
- Research & Reports
- Training & Technical Assistance

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