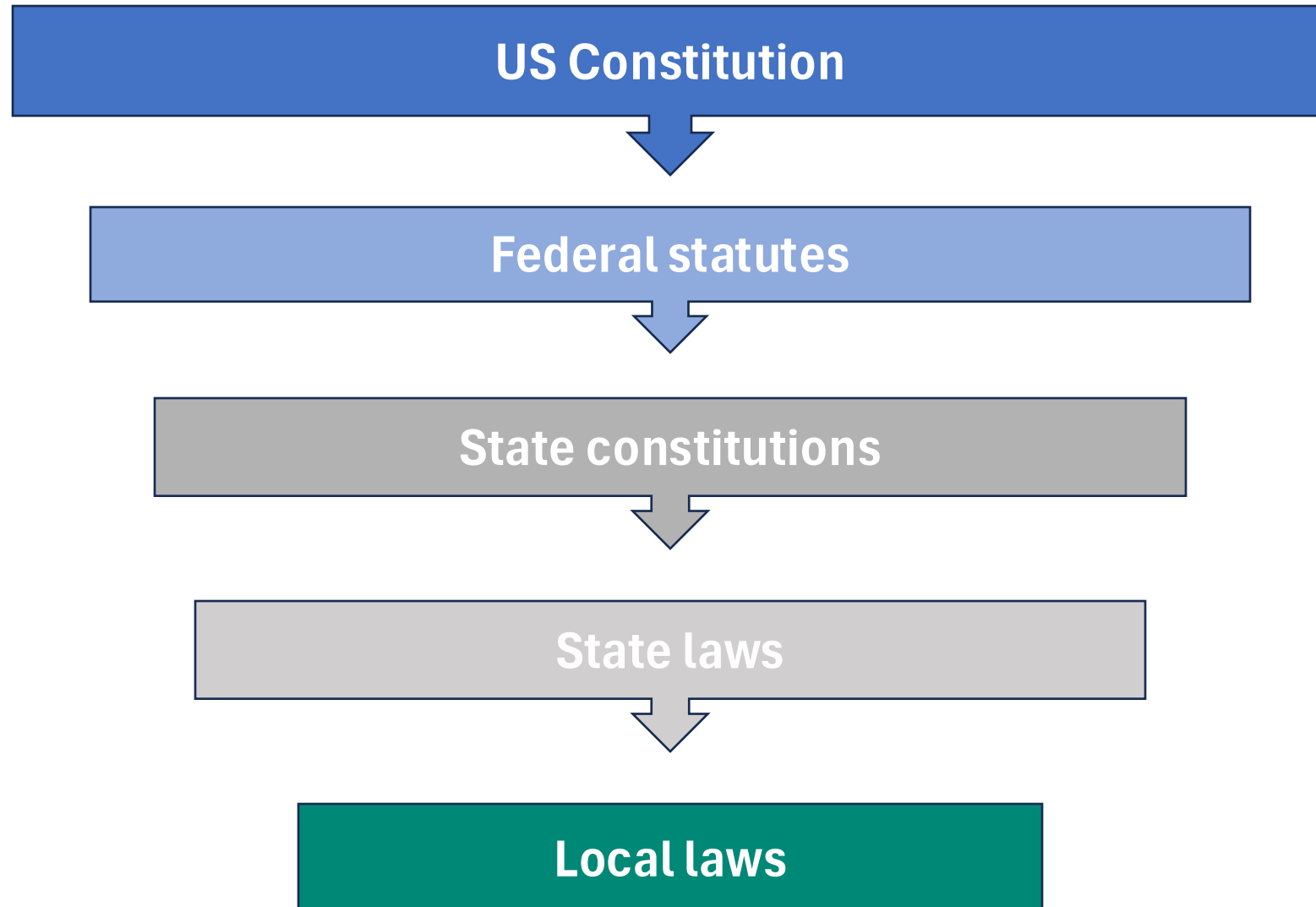


Preemption as a Political Tool: How State Governments are Limiting Local Governments

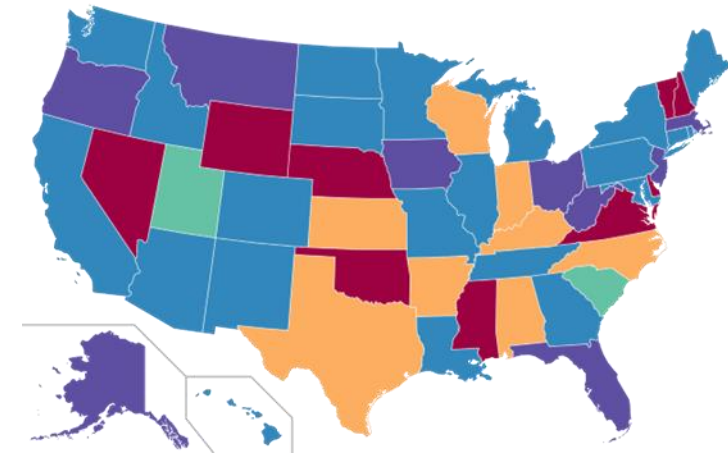
Amy Cook, JD
Senior Legal Program Manager,
Center for Public Health Law Research

What is preemption?



Local Public Health Powers

- **DILLON'S RULE:** a locality possesses only those powers expressly granted to it by the state
- **HOME RULE:** localities are authorized to exercise the full range of police power granted to the state, so long as their actions are not in conflict with state law



Home Rule in the United States.

- Yes Home Rule, No Dillon's Rule
- Yes Home Rule, Yes Dillon's Rule
- Limited Home Rule, No Dillon's Rule
- Limited Home Rule, Yes Dillon's Rule
- No Home Rule, Yes Dillon's Rule

Express Preemption

- State passes a law that specifically and directly limits local authority
- Three common forms of express preemption:
 - **Floor:** local government laws can go beyond state, but cannot go below the state minimum
 - **Ceiling:** prevents local government from establishing stricter laws than the ones established the state
 - **Vacuum:** the state prohibits local governments from doing something without setting any standards of its own

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state, hereby order as follows:

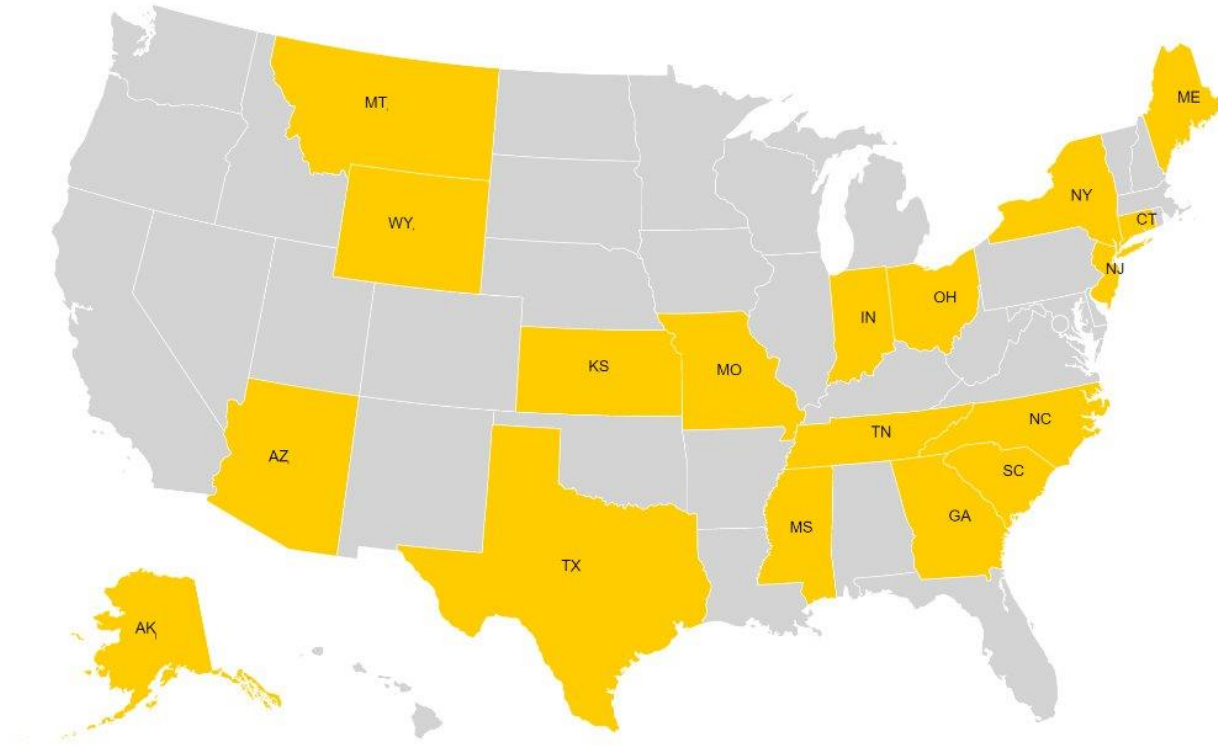
1. No county, city or town may make or issue any order, rule or regulation that restricts or prohibits any person from performing any function designated by either the Governor, the Director of the Arizona Department of Health Services, or the Division of Emergency Management as an essential function during the COVID-19 public health emergency.

Implied Preemption

- Two common forms of implied preemption
 1. **Conflict preemption:**
 - Local ordinance *prohibits* act permitted by state law
 - Local ordinance *permits* act prohibited by state law
 2. **Field preemption:**
 - Clear legislative intent that the “field” is preempted by state law
- Typically clarified through the courts



Preemption during COVID-19

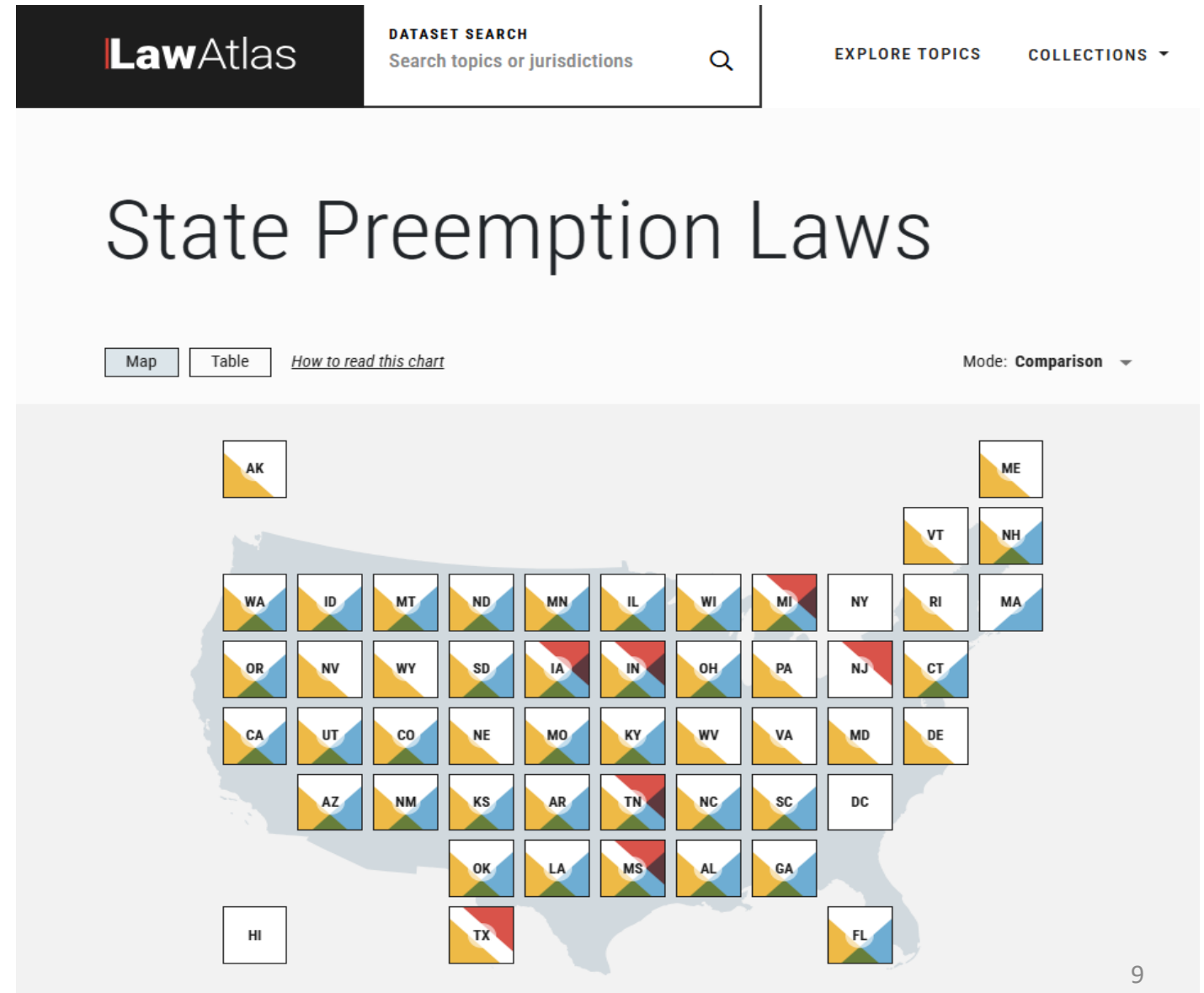


As of July 1, 2020,
eighteen states explicitly
preempted local regulation
of social distancing

Available on <http://lawatlas.org/datasets/covid-19-emergency-declarations>

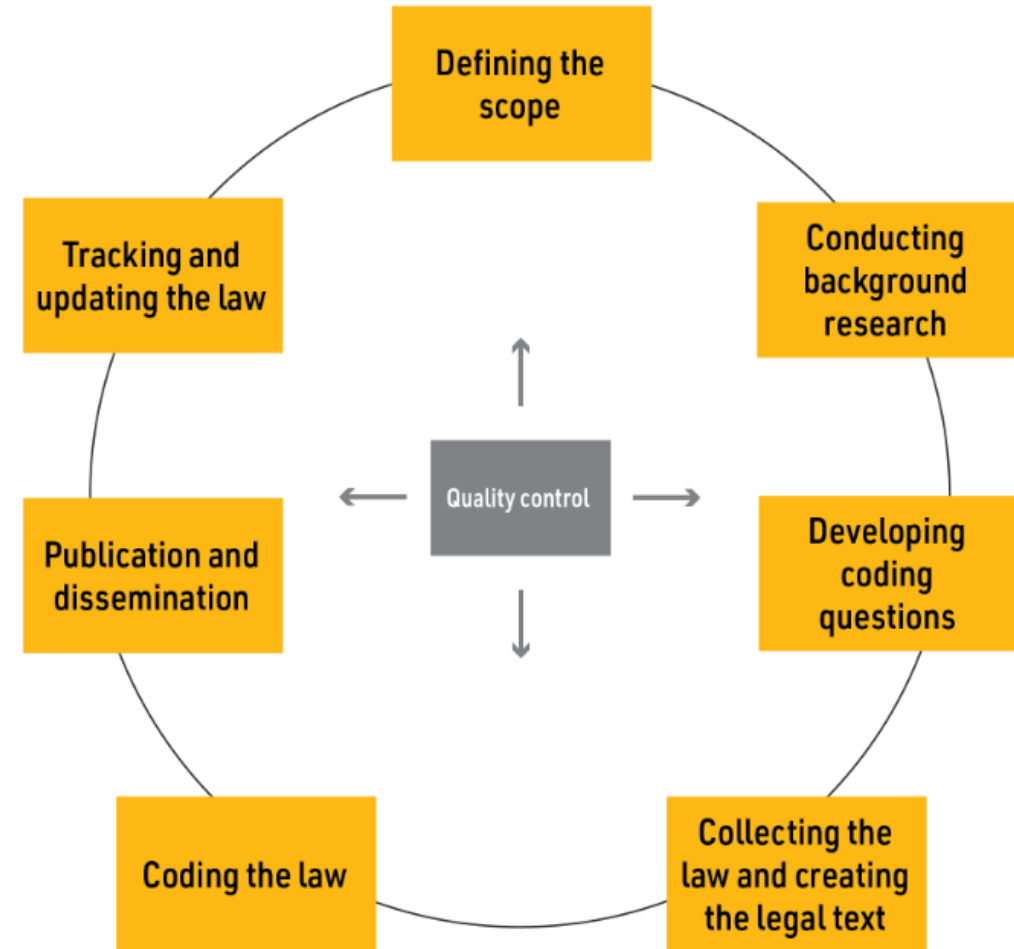
State Preemption Laws Project

Tracks state preemption laws in health-related domains from 2019 through 2024



Policy Surveillance

The systematic, scientific
collection and analysis of laws
of public health significance



LEGAL DOMAINS & EVOLUTION

Original Scope



Ban-the-Box



Paid Leave



Firearms



**Municipal
Broadband**



**Mandatory
Inclusionary Zoning**



Rent Control



6 Tax and Expenditure Limits:

- Full Disclosure Requirements
- General Revenue Limits
- Expenditure Limits
- Property Tax Rate Limits
- Property Tax Assessment Limits
- Property Tax Levy Limits

Note: Data as of August 1, 2019. Total express preemption by state, as tracked out of the 12 policy areas in this dataset.

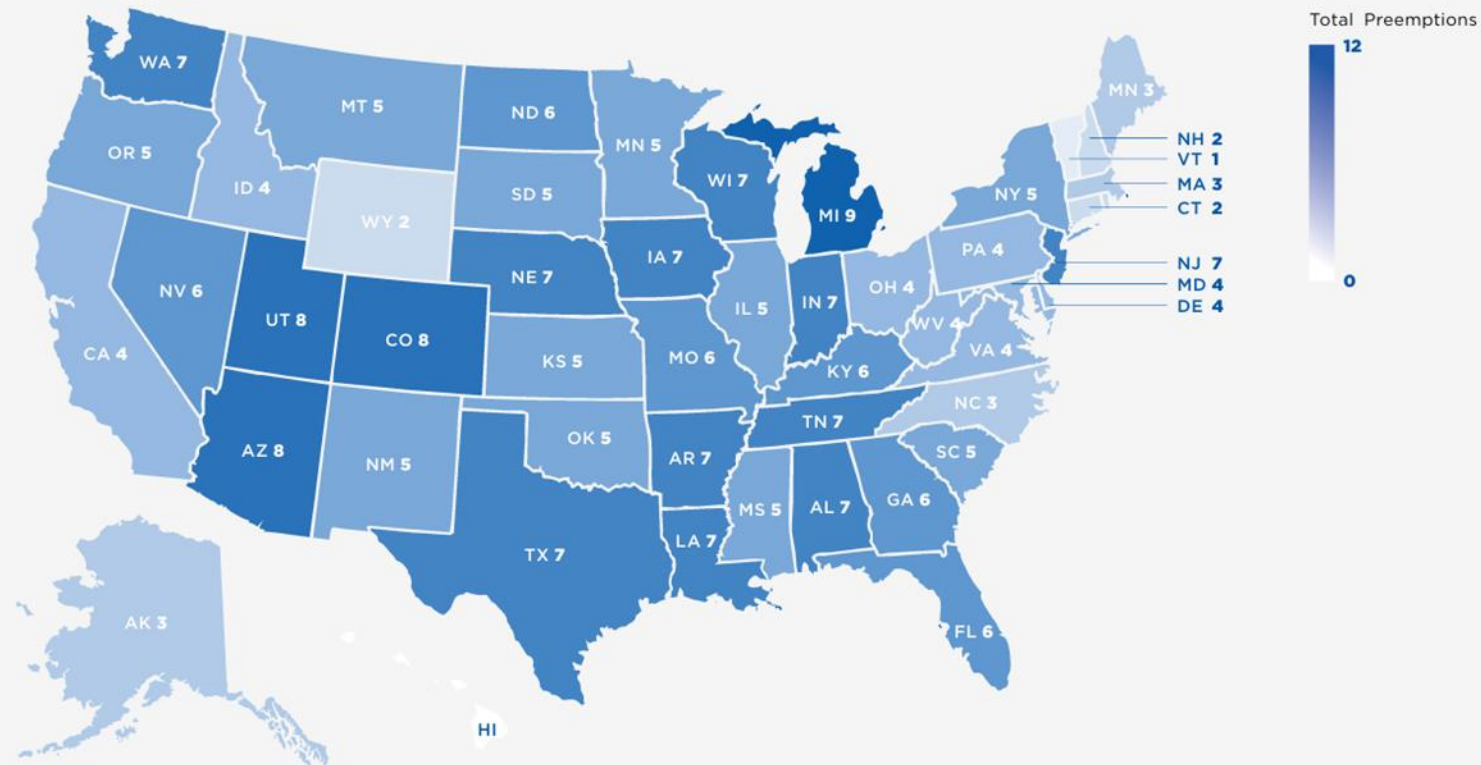


Image from Wagner, S., Cloud, L.K., McFarland, C.K. (2021). National League of Cities. <https://www.nlc.org/wp-content/uploads/2021/10/Preemption-Brief-3-CS-Preemption-State-by-State-Brief.pdf>

LEGAL DOMAINS & EVOLUTION

Expanded Scope



**Transgender
Rights**



**Local Law
Enforcement
Budgets**



**Election
Policies**



**Race & Racism
in School
Curriculum**

2019

- Cross sectional dataset of 12 domains as of August 1, 2019

2020

- Expanded into longitudinal dataset through July 1, 2020

2021

- Updated dataset through November 1, 2021

2022

- Added Transgender Rights, Local Law Enforcement Budgets, and Race and Racism in School Curriculum
- Updated dataset through November 1, 2022

2023

- Added Election policies and removed 6 TEL domains
- Updated dataset through December 31, 2023

2024

- Expanded Transgender Rights and Election Policies
- Updated dataset through December 31, 2024

Highlights from the dataset

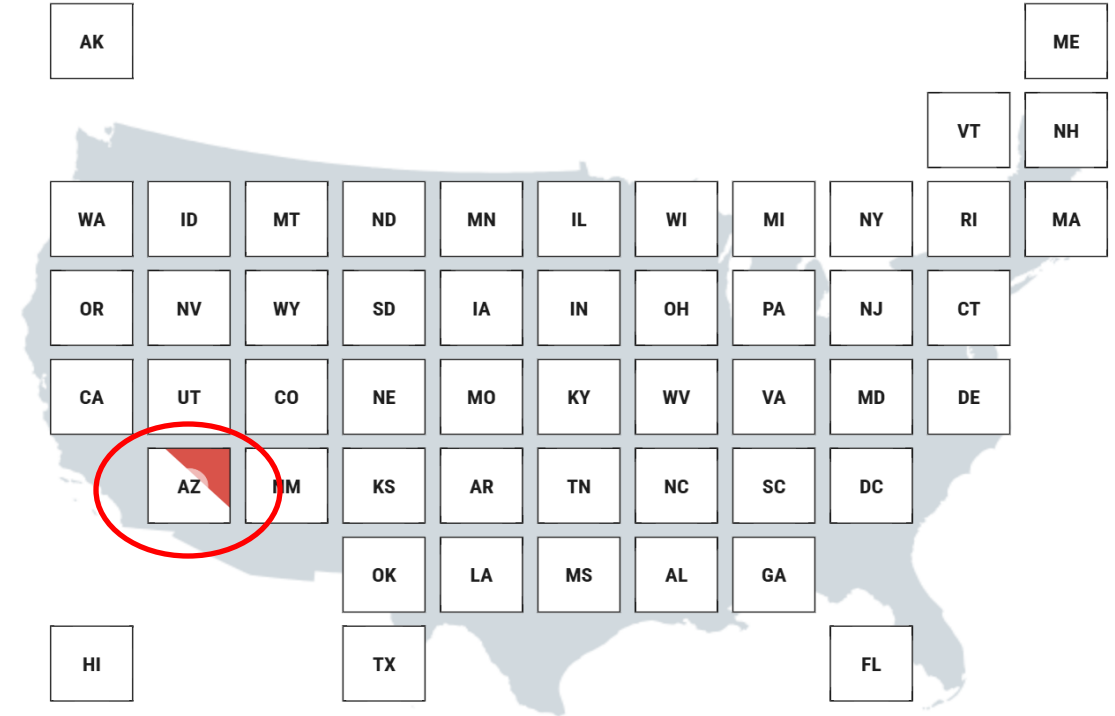
- Most states have increased in the number of topics preempted from 2019 to 2025
- **Transgender rights** and **Race and Racism in School Curriculum** are the two areas that had the biggest increase in preemption
- **Firearms** is the area that is most frequently preempted by state law
- **Ban the Box** is the area that had the least amount of preemption

Race & Racism in School Curriculum: August 2019

Ariz. Rev. Stat § 15-112.

A school district or charter school in this state shall not include in its program of instruction any courses or classes that include any of the following:

1. *Promote the overthrow of the United States government*
2. *Promote resentment toward a race or class of people*
3. *Are designed primarily for pupils of a particular ethnic group*
4. *Advocate ethnic solidarity instead of the treatment of pupils as individuals*



AREAS MATCHING ANY VARIABLES



19. Does state law preempt local policies regarding race and racism in school curriculum? : Yes

1 / 50

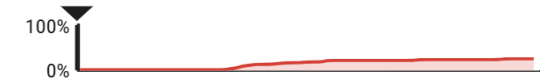


19.1. Is specific curriculum prohibited? : Yes

0 / 50

Showing laws as of August 1, 2019

POLICY ADOPTION



Race & Racism in School Curriculum: January 2022


Nine additional states passed laws regulating race and racism in school curriculum.

Some examples:


- **N.D. Cent. Code § 15.1-21** bans “instruction relating to critical race theory in any portion of the district’s required curriculum” and defines “Critical Race Theory” as “the theory that racism is not merely the product of learned individual bias or prejudice, but that racism is systematically embedded in American society and the American legal system to facilitate racial inequality”
- **Fla. Admin. Code r. 6A-1(3)(b)** prohibits material “from the 1619 Project”




AREAS MATCHING ANY VARIABLES

 19. Does state law preempt local policies regarding race and racism in school curriculum? : Yes

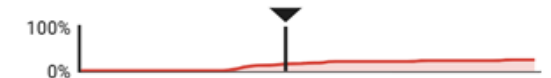
 10/ 50

 19.1. Is specific curriculum prohibited? : Yes

 10/ 50

Showing laws as of January 5, 2022

POLICY ADOPTION




Race & Racism in School Curriculum: December 2024


The number of states preempting curriculum around race and racism increased to 15


- **2022:** SD and GA banned “divisive concepts”
- **2023:** UT curriculum must be consistent with the following principles
 - No individual is inherently racist, sexist, or oppressive, whether consciously or unconsciously, solely by virtue of the individual’s race, sex, or sexual orientation
 - Meritocracy or character traits, including hard work ethic, are not racist nor associated with or inconsistent with any racial or ethnic group
 - An individual, by virtue of an individual’s race or sex, does not bear responsibility for actions that other members of the same race or sex committed in the past or present
- **2024:** LA “Parent’s Bill of Rights,” includes the right “that school shall not discriminate against their child by teaching the child that the child is currently or destined to be oppressed or to be an oppressor based on the child’s race or national origin”



AREAS MATCHING ANY VARIABLES

 19. Does state law preempt local policies regarding race and racism in school curriculum? : Yes

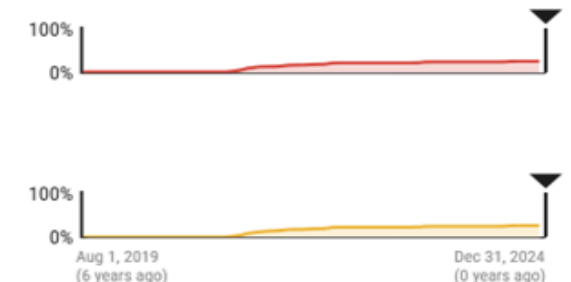
 15/ 50

 19.1. Is specific curriculum prohibited? : Yes

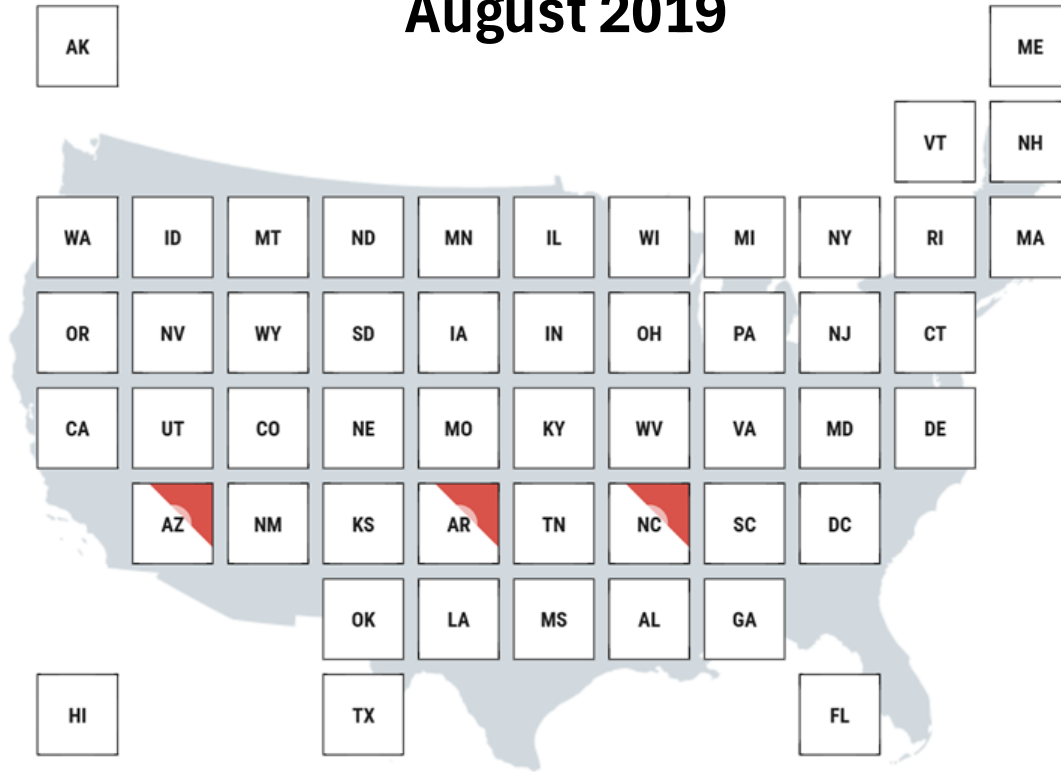
 15/ 50

Showing laws as of December 31, 2024

POLICY ADOPTION



Transgender Rights Preemption: August 2019



Showing laws as of August 1, 2019

AREAS MATCHING ANY VARIABLES



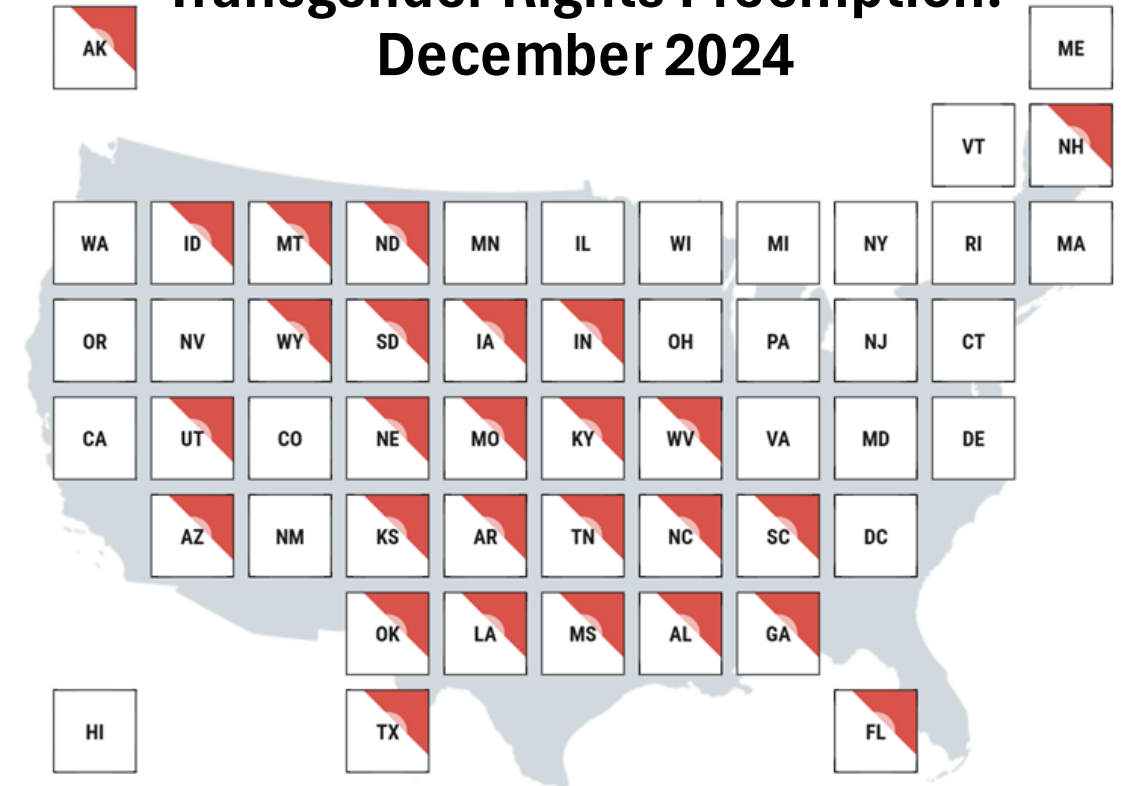
15. Does state law preempt local policies protecting transgender rights? : Yes

3/ 50

POLICY ADOPTION



Transgender Rights Preemption: December 2024



Showing laws as of December 31, 2024

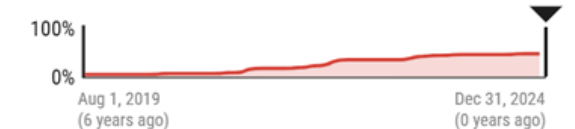
AREAS MATCHING ANY VARIABLES



15. Does state law preempt local policies protecting transgender rights? : Yes


27/ 50


POLICY ADOPTION




Gender Affirming Care Bans

AREAS MATCHING ANY VARIABLES

 15.1. What types of policies are preempted? : Bans on gender-affirming care

 10/ 50

 14. Which policies related to restricting transgender rights does the state regulate? : Bans on gender-affirming care

POLICY ADOPTION



Each chart above shows the % of jurisdictions that



Showing laws as of December 31, 2024

State-Local Preemption: Policy Surveillance of Firearm Regulation in Philadelphia

Philadelphia Department of Public Health

- Right to Bear Arms is in the PA Constitution:
 - Article I, section 21 of the Pennsylvania State Constitution states: “The right of the citizens to bear arms in defense of themselves and the State shall not be questioned
- Pennsylvania Courts have struck down many attempts by Philadelphia City Council to regulate firearms more strictly than the General Assembly:
 - Lost & Stolen Ordinance, Limiting handgun purchases to one per month, requiring a license to purchase firearms, confiscating firearms from someone posing risk of harm, etc.

“No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”

If Philadelphia had not been preempted from enforcing local gun laws over the past 20 years, how many deaths could have been preempted?

Hypothetical Philadelphia

- Modeled the relationship between gun laws and mortality with existing state data
- Created a hypothetical, un-preempted Philadelphia
- Identified 26 Philadelphia ordinances between 2000-2021 that could not be enforced due to PA preemption law
- Compared mortality in Philadelphia to hypothetical, un-preempted Philadelphia

The model estimated that in the absence of state preemption, **the lives of 541 Philadelphians** could have been saved between 2001 and 2020.

What does all this mean?

- Preemption is increasingly being used as a political tool to regulate in areas that disproportionately impact marginalized groups
- Undermines local authority and prevents local governments from creating policies that best address the needs of their own communities
- Stifles local policy innovation to develop unique solutions

Where do we go from here?

Center for Public Health Law Research

- Phlr.temple.edu
- LawAtlas.org
 - www.lawatlas.org/datasets/preemption-project



Amy Cook

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 **Temple
University**
Beasley School of Law

Center for
Public Health Law
Research

Please take this survey to evaluate conference sessions.



THANK YOU