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**Repealing Preemption: Lessons from the 2019 Legislative Session**

An unprecedented number of bills to repeal state preemption laws and return legal authority to local governments were filed during the 2019 legislative session. Bills to repeal state preemption of local minimum wage laws, rent control, tobacco tax, oil and gas well regulation, plastic bag bans and broadband were introduced in legislatures across the country. A list of preemption repeal bills is included as an appendix to this document.

While the preponderance of the repeal bills had little hope of passage and were intended to serve as “message” bills signaling displeasure over state interference in local policy decisions and to create an opportunity to discuss the consequences of preemption, four repeal bills passed:

**Colorado:**

* [HB 1210](https://leg.colorado.gov/bills/hb19-1210), the “Local Wage Option” bill, passed and made Colorado the first state in the nation to repeal minimum wage preemption through the legislature. This bill allows localities to decide their own minimum wage above the state floor.
* [HB 19-1033](https://leg.colorado.gov/bills/hb19-1033) repealed a law that has been on the books since the 1970’s and that prevented localities from attempting to regulate or tax tobacco. The new law allows localities to raise the age of sale for tobacco products to 21 and to tax and regulate cigarettes and other tobacco products.
* [SB 19-181](https://leg.colorado.gov/bills/sb19-181) gives local governments control over the approval of oil and gas drilling sites and requires the Colorado Oil and Gas Conservation Commission to reprioritize its work to put public health and safety and the environment first in making decisions about the industry.

**Arkansas:**

* [HB 2033](http://www.arkleg.state.ar.us/assembly/2011/2011R/Acts/Act1050.pdf) repealed parts of the state law preempting municipal broadband.

The advocates and attorneys driving the repeal efforts broke new ground and shared their lessons learned in a debrief with the Local Solutions Support Center (LSSC), a national hub that coordinates local and national partners to counter the abuse of preemption and strengthen local democracy. Here are their major take-aways:

1. **Legal review must be the first step.**

Start with a home rule analysis. What powers would the cities have if the repeal effort is successful, and do those powers differ depending upon the type of city or town? Can the bill simply repeal state preemption language, or is an affirmative grant of power required? What consequences would the repeal have for county governments and for unincorporated areas?

In Colorado, some local governments under their home rule charter would clearly have the authority to decide whether or not to raise their minimum wage; but the powers of other cities and counties in the state were not as clear. Also, repealing state preemption can create unintended ripples. The balance of city/county authority can be legally complex and looks different in every state. The campaign must explore the legal ramifications of repeal on counties too.

1. **In some states, you may need to connect repeal of preemption with an affirmation of city power.**

If legal review determines it is necessary, you may need to develop a “repeal and replace” bill or two separate bills that remove state preemption and affirmatively ensure the city (and potentially counties, towns, and other forms of local government) will have the authority it needs to act.

1. **Be prepared to fight on two fronts: local control and the underlying issue that is preempted.**

You will need to make the case for local authority and why locals should decide this issue. You will also need to be prepared to make the case for the policy you are working to advance. It is a challenge to separate the campaign for repeal from the merits of the issue that is preempted. But advocates were able to argue that repeal gave local governments the power to decide *whether or not* to raise the minimum wage, tax tobacco products, or create a municipal internet provider. These repeal laws simply empower local governments to make the decision themselves based on unique local needs and issues.

You may need to nest your repeal campaign into a broader context: Repealing rent control alone is not going to solve the housing problem; but defining repeal as a critical part of a package of policy solutions can help persuade lawmakers that current efforts aren’t succeeding and that a different approach is needed.

1. **Provide data, maps and other tools that make the case for deciding the issue at the local level.**

It is hard to argue for a uniform minimum wage when confronted with a chart contrasting the cost of living in Pueblo, CO, with the much higher cost of living in Denver, CO. Maps made it very clear which rural areas of Arkansas did not have access to the internet and helped debunk coverage claims made by the telecom companies. You are persuading state lawmakers that the best answer to the problem is to let locals decide; visually demonstrating the unique needs of each community is a powerful tool to reinforce this message.

1. **Educate, Educate, Educate.**

Do not underestimate the need to educate state, county and municipal elected officials, allied groups, and the media. There is a basic and universal lack of information about preemption and its consequences. Problems that could and should be solved at the local level are not being addressed because state preemption has rendered local action impossible and illegal. Why is the issue best decided at the local level? What would a return to local decision making on your issue mean for cities and counties and for intergovernmental power? It will be important to educate policymakers and other stakeholders on these questions.

1. **Build broader cross issue coalitions, including partners from across the political spectrum.**

You will need support from your traditional advocacy partners, social justice organizations, unions and more in your push for a fundamental restructuring of city and state power. Reach out to your state municipal league and/or association of counties, local community, faith, public health groups, and more. Include municipal and county officials from rural and urban areas and ensure the voices of local lawmakers are present in the campaign.