Leadership for Healthy Communities

Preempting Health: Understanding Preemption Challenges to HEAL Policies

The Future of Childhood Obesity Prevention: State and Local Success to National Progress

Baltimore, MD, Sept. 30, 2013

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Preemption and Movement Building in Public Health
Research, Professional Education, and the Institute of Medicine

Grassroots Change: Connecting for Better Health
June 2012 – June 2014
Advocacy, GrassrootsChange.net, and Movement Support

www.GrassrootsChange.net
Facebook: Grassroots Change
Twitter: @GCPublicHealth
RWJF Key Informant Interviews 2010

- National sample of 18 key informants, including:
  - Advocates
  - Researchers
  - Community organizers
  - Public officials

- Issues:
  - Obesity prevention
  - School food
  - Food safety
  - Alcohol
  - Tobacco
  - Gun violence
  - Reproductive health
  - Farm worker health
  - Health Care
  - HIV/AIDS
  - Environmental justice
  - LGBT health
  - Fire prevention
What We Asked

- Does preemption have a negative impact on public health?
- What does the word “preemption” mean to advocates and practitioners?
- Is the impact of preemption universal in public health?
- What role does Industry play in preemption?
- Does preemption have a negative impact on grassroots movements?
- Why is it important to build grassroots health movements?
“Preemption” defined

Grassroots Movement Building and Preemption in the Campaign for Residential Fire Sprinklers

Mark Pertschuk, JD, Robin Hobart, MPH, MPP, Marjorie Paloma, MPH, Michelle A. Larkin, JD, RN, MS, and Edith D. Balbach, PhD

Home fires account for 85% of fire deaths in the United States, the majority in 1- or 2-family homes lacking fire sprinklers. Since 1978, however, a grassroots movement has successfully promoted more than 360 local ordinances mandating sprinklers in all new residential construction, including 1- and 2-family homes. The homebuilding industry has responded by seeking state preemption of local authority, a strategy previously used by other industries concerned about protecting their profits. From 2009 through 2011, 13 states adopted laws eliminating or limiting local authority over residential fire sprinklers. This study of the residential sprinkler movement adds to our understanding of grassroots public health movements and provides additional evidence that preemption can have a negative impact on public health and safety. (Am J Public Health. 2013;103:1780–1787. doi:10.2105/AJPH.2013.301317)
Among public health practitioners (and most researchers), the term “preemption” usually refers to “ceiling preemption.”

On the other hand, setting minimum federal or state public health standards, which can be referred to as “floor preemption,” is rarely controversial in the public health community. According to the Institute of Medicine, “the presumption should be that ‘floor’ preemption is the more appropriate option …”

Therefore, we use the term “preemption” to signify ceiling preemption and recommend that, for the sake of clarity, other public health practitioners and researchers use this nomenclature as well.
All 18 key informants believed that preemption has a negative impact on public health:

- Limits innovation
- Takes away the ability of communities to respond to arising or diverse needs
- “Hands over control” of a public health issue to industry lobbyists at the federal or state levels (where they have greater influence)
- Takes away the incentive to organize and act at the local (or state) level
- Undermines grassroots movement building
- Bypasses the federal vision in which states serve as “laboratories of experiment”
Preemption:  
The Institute of Medicine weighs in

When the federal government regulates state authority, and the states regulate local authority in the area of public health, their actions ... should set minimum standards (floor preemption) allowing states and localities to further protect the health and safety of their inhabitants. Preemption should avoid language that hinders public health action.

For the Public's Health: Revitalizing Law and Policy to Meet New Challenges, Committee on Public Health Strategies to Improve Health National Research Council, Institute of Medicine. June 21, 2011
The Impact of Preemption on Grassroots Movement Building

- Preemption has a negative impact on grassroots movement building.

- “[T]here's far less incentive for people to organize and act because they don't have an opportunity to take action at the local level.”

- “[O]ne of the biggest detriments to building grassroots is people ... saying, ‘There isn’t anything we can do about that.’ [So if] the government has already said, ‘You’re right, you can’t do anything about this,’ then I’m much less likely to be able to move them to action.”

-- Preemption and Movement Building in Public Health, Robert Wood Johnson Foundation, Key Informant Interviews 2010
Grassroots Movement

Noun
1. An organized effort to address threats to the health of the community, led by grassroots advocates and groups.

2. How to make real change in public health.

Usage: <Grassroots movements change society, not just laws.>

The Benefits of Public Health Movement Building

- Power
- Education
- Passion
- Capacity
- Policy Change
- Innovation
- Social Change
- Social Capital
- Sustainability

“Residents and those who are directly impacted by an issue are... making change and taking leadership.”

“[I]t’s not just one local community struggling, but our struggles are related, connected - we have a broad view about how to move [the] landscape in fixing the [problems].”

“A grassroots movement [is] people organizing at the local level to bring about change on a particular issue... And sometimes that starts at the community level and grows to a state level movement or a national movement or even a global movement.”

- Key Informant interviews 2010
Lessons for Grassroots Movement Building

Preemption hinders grassroots movements... because it takes away the structural opportunity to advocate local policy change, a key reason that local movements form in the first place.

Preemption is Good News ...

“Pre-emption Of State And Local Menu Labeling Laws Good News For Franchise Restaurants”

“March 24, 2010 // Franchising.com // WASHINGTON — Federal government preemption of state and local menu labeling ... will provide more regulatory certainty...

"Franchise restaurants that are part of chains with 20 or more units nationally will no longer face a patchwork of state and local menu labeling mandates under this provision"

"While the IFA lobbied strongly in opposition to the health care reform package, the one bright spot of the bill is [PREEMPTION]."
Welcome to the Georgia Restaurant Association

Menu Labeling
What You Need To Know

June 29, 2010
Need for Federal Legislation

State and local menu labeling legislation

December 2006
STATE & LOCAL MENU LABELING PROPOSALS
As of May 2010

- **Menu labeling legislation enacted**
- **Menu labeling legislation introduced**
- **Menu labeling legislation defeated**
- **Menu labeling legislation anticipated**
- **Menu labeling legislation effective**

★ The Nashville/Davidson County Metropolitan Board of Health menu labeling regulations have been preempted by state law and are void.

★★ Nassau Co. legislature repealed the county menu labeling ordinance (May 2010)
## Nutrition Disclosure Law

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<th>MEAL Act (Harkin/DeLauro)</th>
<th>New Law</th>
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<tr>
<td>Applies Too</td>
<td>20 or more (Nationally)</td>
<td>20 or more (Nationally)</td>
<td>20 or more (Nationally)</td>
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<tr>
<td>Information Required on the Menu, Menu Board and Drive Thru</td>
<td>Information Available Upon Request</td>
<td>Calories Sodium Saturated Fat Trans Fat</td>
<td>Calories Additional Information Available Upon Request</td>
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<td>YES</td>
<td>NO</td>
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<tr>
<td>Liability Protections</td>
<td>YES</td>
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Assessing the Impact of Federal and State Preemption in Public Health: A Framework for Decision Makers

Mark Perschuk, JD; Jennifer L. Pomeranz, JD, MPH; Julie Ralston Aoki, JD; Michelle A. Larkin, JD, MS, RN; Marjorie Paloma, MPH

In the United States, state and local public health policies play a fundamental role in innovation and progress. Preemption, by which Congress or the state legislatures limit the authority of lower jurisdictions, can eliminate the benefits of state and local policy initiatives. Preemption can also have a negative impact on enforcement, civic engagement, and grassroots movement building.

Congress or federal regulators. As Justice Brandeis observed, “[i]t is one of the happy incidents of the federal system that a single courageous State may . . . serve as a laboratory” for experimentation and innovation. Cities and counties, in turn, serve both as policy laboratories and as the location for the implementation of most public health policies, services, and programs.

In the words of Assistant Secretary of Health Howard Koh, “all public health is local—it’s got to start and be...
Paid Sick Leave: An Interview with Vicki Shabo of the National Partnership for Women & Families

June 17, 2013 | Filed under: Blog, Health Access, Health Care, Paid Sick Days | Edit

Vicki Shabo is the Director of Work and Family Programs at the National Partnership for Women & Families. The National Partnership, which is 42 years old, fought for the Pregnancy Discrimination Act in 1978 and led a nine year fight to pass the 1993 Family and Medical Leave Act, which provides ...

GRASSROOTS SPOTLIGHT
Grassroots Power and the Future of Public Health: An Interview with Shannon Frattaroli
Preemption

Preemption occurs when higher levels of government (federal or state) eliminate or limit the authority of lower levels. Preemption has a negative impact on grassroots movement building, and concerns about preemption are nearly universal in public health, including in alcohol policy, nutrition, tobacco control, pesticide regulation, gun violence prevention, food safety, drug policy, and fire prevention.

- **Tools**: Fact sheets and our Preemption Framework to help understand and counter preemption.
- **Research**: Articles, reports, and a preemption bibliography.
- **Presentations**: Presentations on the impact of preemption on future progress in public health.
- **Join the conversation about preemption at** [GC Connect](http://www.grassrootschange.net).

**Preemptionwatch** on GrassrootsChange.net
Anatomy of a Grassroots Movement: At the intersection of Passion, Strategy, and Capacity

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Countering Preemption

- Remember that the facts and the public are on OUR side
- Decide **beforehand** where you’re willing to compromise. Don’t get so attached to a bill that you can’t walk away or kill it
- Make sure that everyone on your side is on the same page
- Prepare BEFORE the battle begins and don’t let the opposition frame the issue
- **Follow the money** - Track and expose campaign contributions, front groups, spokespeople, cross-industry lobbyists, etc.
- Educate the media and use the opposition's own behavior and sleazy tactics against them (e.g. the NRA)
Grassroots Change: Connecting for Better Health

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Robert Wood Johnson Foundation