

Combatting Preemption: Myths and Facts

PREEMPTION MESSAGING

Lobbyists and legislators who support state and federal preemption across different issues often use the same messages to support ending local control over public health policy. The following are some of the most common and predictable myths (and [messages](#)) promoted by the supporters of preemption. Each of these myths can be countered with evidence-based facts and research findings that public health advocates can use to combat preemption. These messages and counter-messages are shared below with real-world examples of each.

“UNIFORM STANDARDS”

	MYTH	FACT
Message	A “uniform” state (or federal) health standard benefits consumers.	The United States is made up of diverse states and communities. Communities must be allowed to adopt stronger protections than states to match the needs of their residents, and states also need the authority to adopt stronger protections than the federal government.
Example	<p>“We feel it is in the best interests of the consumer to have one uniform standard”¹</p> <p>- National Restaurant Association, Washington, DC</p>	<p>“It is not up to the state to tell the people at the local level what to do... They're just using this to mask what the bill is really about, which is about taking away home rule.”²</p> <p>- Mayor, Hernando, Mississippi</p>

“CONSUMER CONFUSION”

	MYTH	FACT
Message	Local health policies will confuse customers.	Consumers have the right to clear, accurate information that lets them make informed choices. This is an opportunity for businesses to promote the quality of their products. It is condescending to assume consumers lack the ability to understand health information.
Example	<p>“[Local nutrition laws] create a market that is confusing for consumers.”³</p> <p>- Kansas Restaurant & Hospitality Association</p>	<p>“The vast majority of residents and families welcome an opportunity to have the information <i>and</i> the choice in regards to the food and grocery purchases.”</p> <p>- Voter, Kansas</p>

“BURDEN ON BUSINESS”

	MYTH	FACT
Message	Stronger health and safety standards at the community level will place an unnecessary burden on businesses.	The same argument was used to oppose local smoking ordinances. There is now strong evidence from decades of experience that local health and safety ordinances do not hurt businesses and can, in some cases, improve business. ⁴
Example	“I was approached by some local restaurant owners and the state restaurant association, who told me about the dilemma they might find themselves in if we suddenly had a hodgepodge regulation across the state.” ⁵ - State Legislator, Alabama	“I think the less regulation, the better... [B]ut there are times when we have to pass ordinances for the health and safety of our people. We’re here every day, and [state legislators are in the capital] once every two years.” ⁶ - Mayor, Fort Worth, Texas

“LOCAL CONTROL IS A LIBERAL STRATEGY”

	MYTH	FACT
Message	The promotion of local policies is a liberal strategy contrary to conservative principles.	If anything, preserving local authority is a conservative principle fundamental to American federalism and democracy.
Example	“Texas is being California-ized with bag bans, fracking bans, tree-cutting bans.... We are forming a patchwork quilt of bans and rules and regulations that are eroding the Texas Model... Unchecked over-regulation by cities will turn the Texas miracle into the California nightmare.” ⁷ - Governor, Texas	“Cities, the government closest to the people, embody the idea that ‘We the People’ should be in control. Cities provide the services we cannot do without... They are not the kind of services people think of when they say they want less government.” ⁸ - Texas Municipal League

“A REASONABLE COMPROMISE”

	MYTH	FACT
Message	<p>Preempting local or state public health laws is a reasonable compromise to get a weak state (or federal) law passed. It assures that those cities and states that can't pass their own policies at least have some protections.</p>	<p>Federal and state health and safety laws can set minimum protections for the public without preempting stronger protections at lower levels. Preemption puts current and future public health at risk by setting a “ceiling” on the health and safety policies that local and state governments can adopt. In practice, local residents may <i>already</i> support higher levels of protection, even if their elected representatives don't realize it yet.</p>
Example	<p>“The experience of calorie labeling is a cautionary tale... It may seem easier to implement... policy through federal action... But this debacle offers a lesson to advocates looking for a quick federal solution: be careful what you wish for.”⁹ - Block JP. <i>New England Journal of Medicine</i> (2018)</p>	<p>“Federal or state (ceiling) preemption of state and local authority can often be harmful from a public health standpoint because it can compromise the ability of public health practitioners to implement more stringent standards that may be important and well accepted in a local setting. Ceiling preemption also interferes with local control over local needs and with local-level accountability...”¹⁰ - Institute of Medicine, <i>For the Public's Health: Revitalizing Law and Policy to Meet New Challenges</i></p>

“PREEMPTION IS DEMOCRATIC”

	MYTH	FACT
Message	Congress has the power to preempt states, and states can override local democracy, so preemption is how American democracy is intended to work.	The Founding Fathers believed that the government closest to the people governs best.
Example	<p>“State laws that defy the FCC’s net neutrality repeal will not survive challenge in federal court. Preemption is a slam dunk. The Constitution’s Supremacy Clause gives Congress the power to preempt state law, and a federal agency acting within the scope of its congressionally delegated authority has the power to preempt state regulation.”¹¹</p> <p style="text-align: right;">- Forbes.com, 8/13/2018</p>	<p>Thomas Jefferson explained why local control strengthens democracy: “What has destroyed liberty and the rights of man” is “concentrating” powers into one legislative body or an autocrat, because then they “become... oligarchical,” and less of a republic. Jefferson supported “dividing and subdividing” the government so that each level governs according to its competencies; for example, “Counties with the local concerns of the counties; and each Ward direct the interests within itself.”¹²</p> <p style="text-align: right;">- Thomas Jefferson to Joseph C. Cabell (1816)</p>

¹ Strom S. At the behest of restaurateurs, state legislatures are passing laws that override local antiobesity ordinances. GoUpstate.com (2011). <http://www.goupstate.com/article/20110701/ZNYT04/107013011/1106/sitemaps?p=2&tc=pg>

² Hess J. Soda Wars Backlash: Mississippi Passes 'Anti-Bloomberg' Bill. NPR.org (2013).

<http://www.npr.org/sections/thesalt/2013/03/12/174048623/mississippi-passes-anti-bloomberg-bill>

³ Wingenter J. Kansas House panel considers barring cities from passing nutrition labeling laws, Cjonline.com (2016).

<http://cjonline.com/news/2016-02-17/kansas-house-panel-considers-barring-cities-passing-nutrition-labeling-laws>

⁴ Developing Smokefree Implementation Regulations. Robert Wood Johnson Foundation (2009).

http://tacenters.emory.edu/resources/products_tools/tobacco/DSIR/background/economic_impact.html

⁵ Strom S. GoUpstate.com (2011). <http://www.goupstate.com/article/20110701/ZNYT04/107013011/1106/sitemaps?p=1&tc=pg>

⁶ Dewan S. *New York Times* (2015). http://www.nytimes.com/2015/02/24/us/govern-yourself-state-lawmakers-tell-cities-but-not-too-much.html?_r=0

⁷ Scanlon K. In Texas, State Leaders Attack Local Governments for Going Big on Regulations. *The Daily Signal* (2015).

<http://dailysignal.com/2015/03/15/in-texas-state-leaders-attack-local-governments-for-going-big-on-regulations/>

⁸ Texas Municipal League. *Texas Cities Do the State’s Local Work: Safe Communities, Essential Infrastructure, Vital Services.* (2014)

<http://www.tml.org/p/TXCitiesWorkOnePager.pdf>

⁹ Block JP. The Calorie-Labeling Saga - Federal Preemption and Delayed Implementation of Public Health Law. *New England Journal of Medicine.* May 23, 2018. <https://www.nejm.org/doi/full/10.1056/NEJMp1802953>.

¹⁰ Institute of Medicine. *For the Public’s Health: Revitalizing Law and Policy to Meet New Challenges.* Washington, DC: The National Academies Press (2011). <http://www.nationalacademies.org/hmd/Reports/2011/For-the-Publics-Health-Revitalizing-Law-and-Policy-to-Meet-New-Challenges.aspx>

¹¹ <https://www.forbes.com/sites/fredcampbell/2018/08/13/state-net-neutrality-regulations-are-an-exercise-in-futility/#7b8ffc9a4742>

¹² Thomas Jefferson to Joseph C. Cabell, Monticello. February 2, 1816. <https://founders.archives.gov/documents/Jefferson/03-09-02-0286>