





Tracking Preemption

Legal Epidemiology at Lunch Webinar

OUR PANEL TODAY



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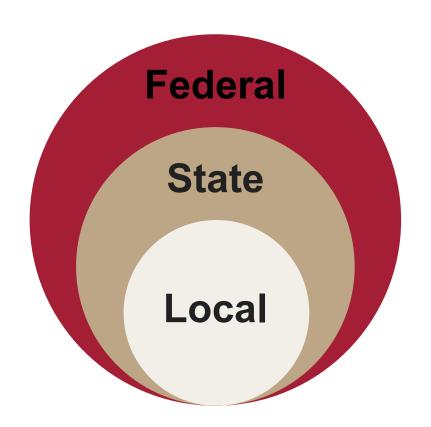


- What is preemption?
- State Preemption Laws Project
- State-Local Preemption of Firearm Regulation in Philadelphia
- Practical Application of Preemption Law Tracking
- Q&A (Please share questions using the Q&A feature)

REMINDER:

This will be recorded!

WHAT IS PREEMPTION?

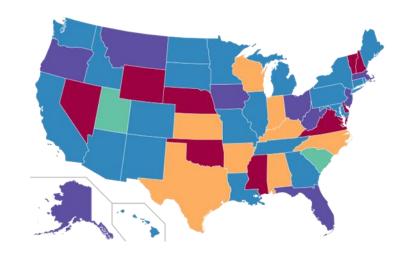


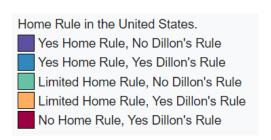
Local Public Health Powers



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- Derive powers from the state
- 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





Express Preemption



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- 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:

- 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.
- Any order restricting persons from leaving their home due to the COVID-19 public health emergency issued by a county, city or town shall be consistent with advice from the Arizona Department of Health Services. Any such restrictions shall be coordinated with the State prior to issuance.



- 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





State Preemption Laws

Tracking state preemption in health related domains 2019 - 2024

Roadmap

- Legal domains covered & project evolution
- Findings over time
- Highlights from the Transgender Rights domain

LEGAL DOMAINS & EVOLUTION

Original Scope

- 1. Ban-the-Box
- Firearms
- 3. Mandatory Inclusionary Zoning
- 4. Municipal Broadband
- 5. Mandatory Paid Leave
- 6. Rent Control
- 7. TELs:
 - Full Disclosure Requirements
 - o General Revenue Limits
 - Expenditure Limits
 - Property Tax Rate Limits
 - Property Tax Assessment Limites
 - Property Tax Levy Limits

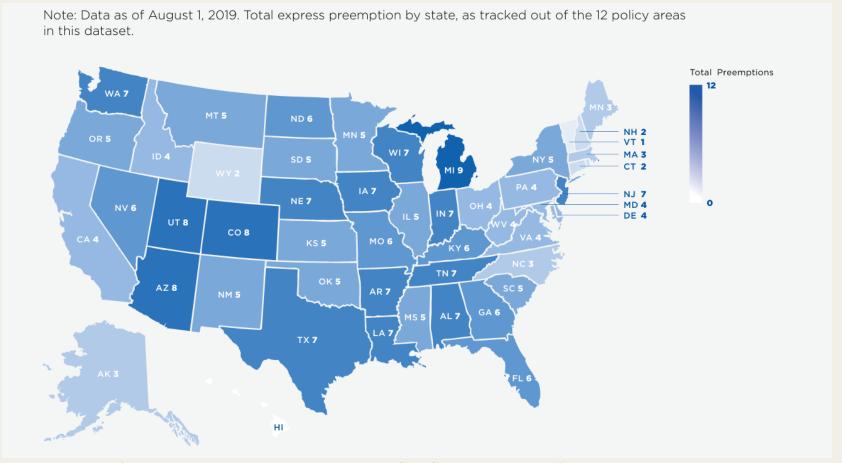


Image from Wagner, S., Cloud, L.K., McFarland, C.K. (2021). National League of Cities. https://www.nlc.org/wp-content/uploads/2021/10/Preemption-Brief-3-CS-Preemption-State-by-State-Brief.pdf

Project Progression

Added: Election Cross-**Policies** Longitudinal sectional 12 Removed 6 TEL domains as (through domains of Aug. 1, Nov. 1, (through Dec. 31, 2019 2021) 2023) 2019 2020 2021 2022 2023 2024 Added: Transgender Expanded Longitudinal + Rights, Transgender subject Rights and Local Law Enforcement matter expert Election Policies Budgets, feedback domains Race & Racism in School (through Jul. Curriculum (through Dec. 31, 1, 2020) 2024) (through Nov. 1, 2022)

LEGAL DOMAINS & EVOLUTION

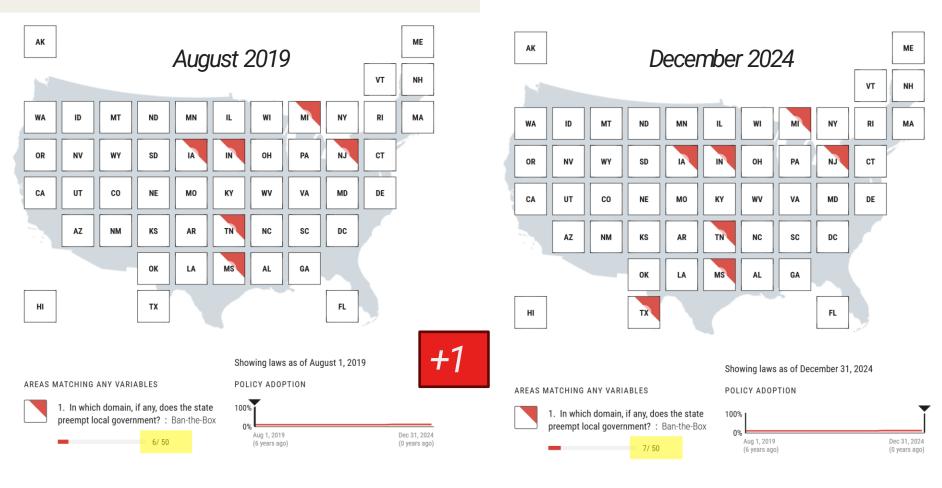
Expanded Scope

- 1. Transgender Rights
- 2. Local Law Enforcement Budgets
- 3. Race and Racism in School Curriculum
- 4. Election Policies

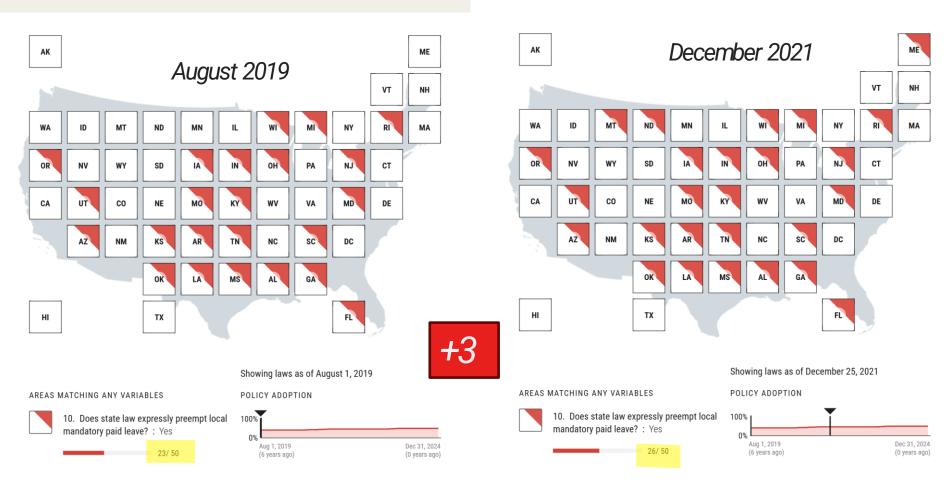
Findings Over Time

- 1. Few changes (Ban-the-Box)
- 2. Gradual change (Paid Leave)
- 3. Quick adoption that slows (Race & Racism in School Curriculum)
- Quick adoption that continues (Transgender Rights)

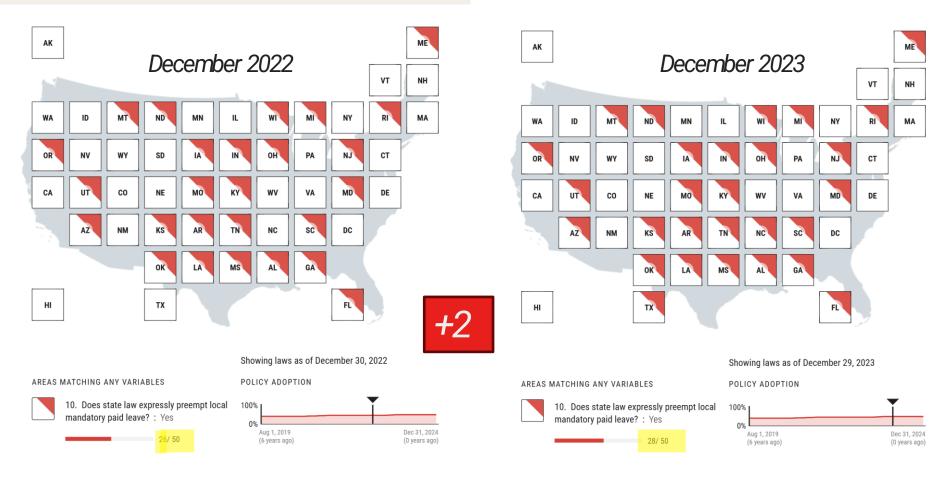
Findings Over Time - Ban-the-Box Preemption

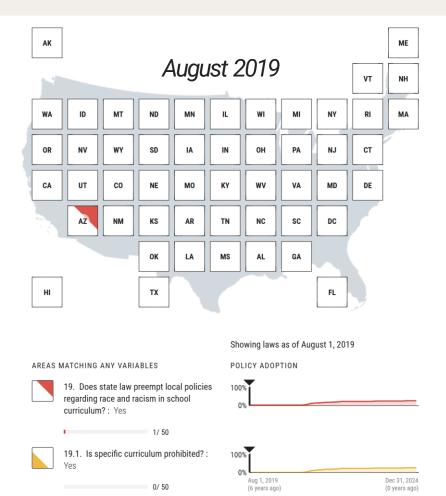


Findings Over Time - Paid Leave Preemption

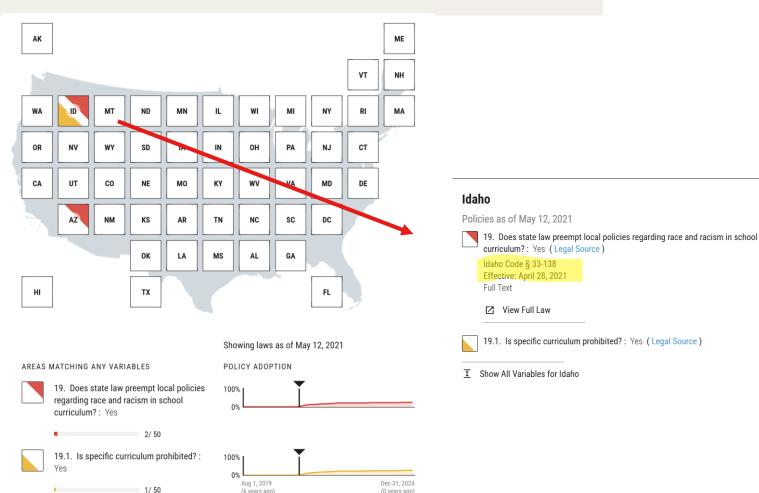


Findings Over Time - Paid Leave Preemption

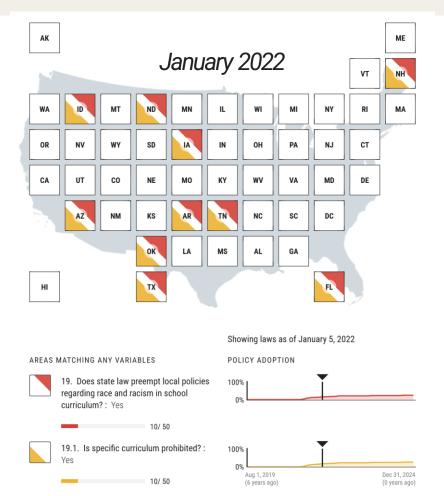




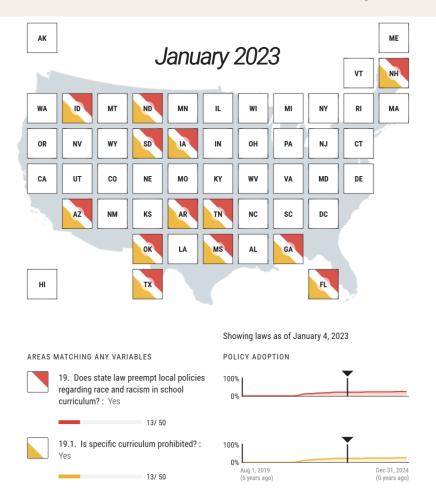
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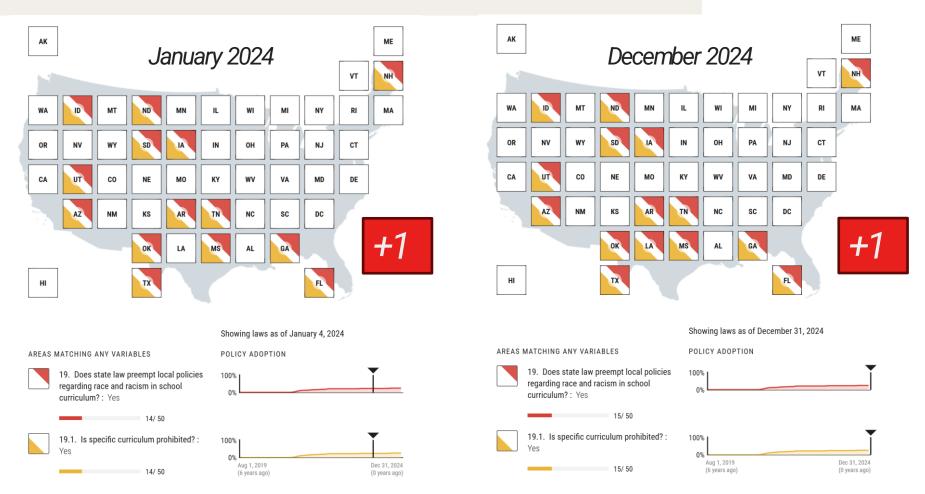
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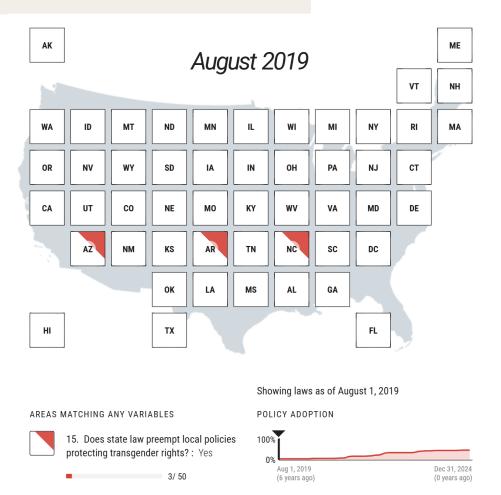








TRENDS IN TRANSGENDER RIGHTS PREEMPTION





Showing laws as of December 26, 2020

AREAS MATCHING ANY VARIABLES

POLICY ADOPTION

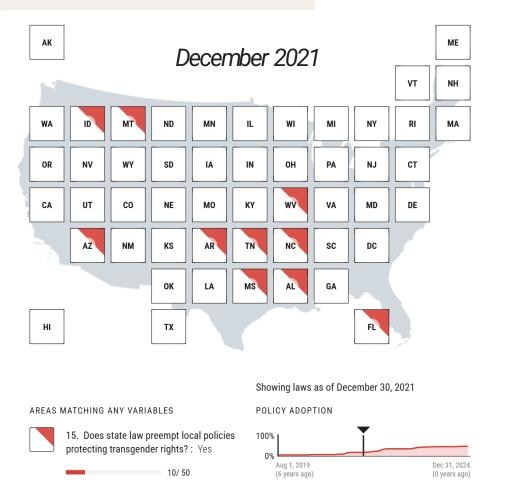
15. Does state law preempt local policies protecting transgender rights? : Yes

4/50

ON

Aug 1, 2019
(6 years ago)

Dec 31, 2024
(0 years ago)







Showing laws as of December 25, 2022

AREAS MATCHING ANY VARIABLES POLICY ADOPTION 15. Does state law preempt local policies protecting transgender rights?: Yes 20/ 50 POLICY ADOPTION 100% Aug 1, 2019 (6 years ago) Dec 31, 2024 (6 years ago)



Showing laws as of December 29, 2023

AREAS MATCHING ANY VARIABLES

POLICY ADOPTION

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

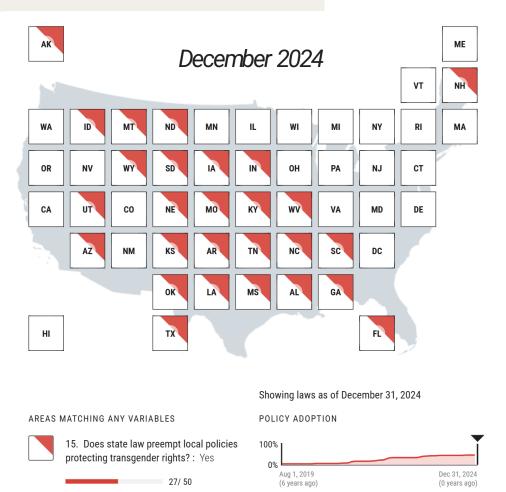
26/ 50

POLICY ADOPTION

100%

Aug 1, 2019
(6 years ago)

Dec 31, 2024
(0 years ago)



Express Preemption of Transgender Rights

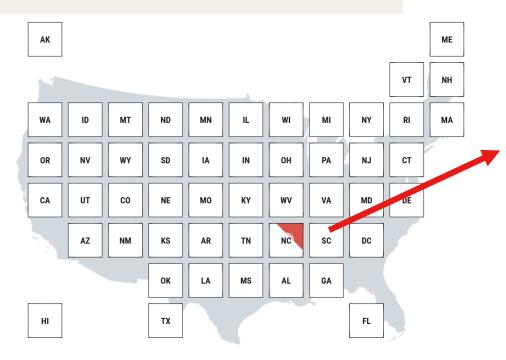
15. Does state law preempt local policies protecting transgender rights? 15.1. What types of policies are preempted? Creating new protected classes Inclusive school curriculum Bans on gender-affirming care Single-sex spaces Participation in sports for transgender athletes Required disclosures related to social transition (e.g., names, pronouns, related health services) Use of pronouns in educational or employment spaces

Implied Preemption of Transgender Rights

14. Which policies related to restricting transgender rights does the state regulate?

 \wedge





Showing laws as of August 1, 2019

AREAS MATCHING ANY VARIABLES



14. Which policies related to restricting transgender rights does the state regulate?: Single-sex spaces

POLICY ADOPTION



Each chart above shows the % of jurisdictions that

North Carolina

Policies as of June 29, 2021

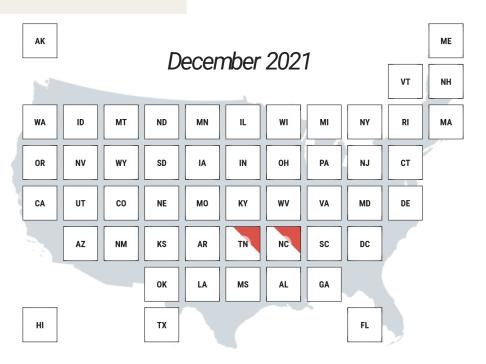


14. Which policies related to restricting transgender rights does the state regulate?: Single-sex spaces (Legal Source | Notes)

N.C. Gen. Stat. § 143-761 Effective: August 1, 2019

State agencies, boards, offices, departments, institutions, branches of government, including The University of North Carolina and the North Carolina Community College System, and political subdivisions of the State, including local boards of education, are preempted from regulation of access to multiple occupancy restrooms, showers, or changing facilities, except in accordance with an act of the General Assembly.

View Full Law



Showing laws as of December 30, 2021

AREAS MATCHING ANY VARIABLES



14. Which policies related to restricting transgender rights does the state regulate?: Single-sex spaces

POLICY ADOPTION



Each chart above shows the % of jurisdictions that



Showing laws as of December 25, 2022

AREAS MATCHING ANY VARIABLES



14. Which policies related to restricting transgender rights does the state regulate?: Single-sex spaces

4/50

POLICY ADOPTION



Each chart above shows the % of jurisdictions that



Showing laws as of December 29, 2023

AREAS MATCHING ANY VARIABLES

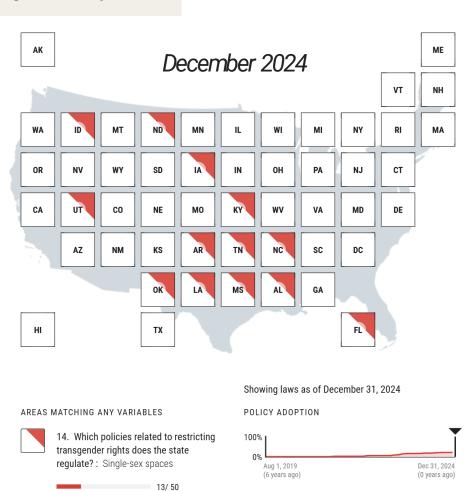


14. Which policies related to restricting transgender rights does the state regulate?: Single-sex spaces

10/50

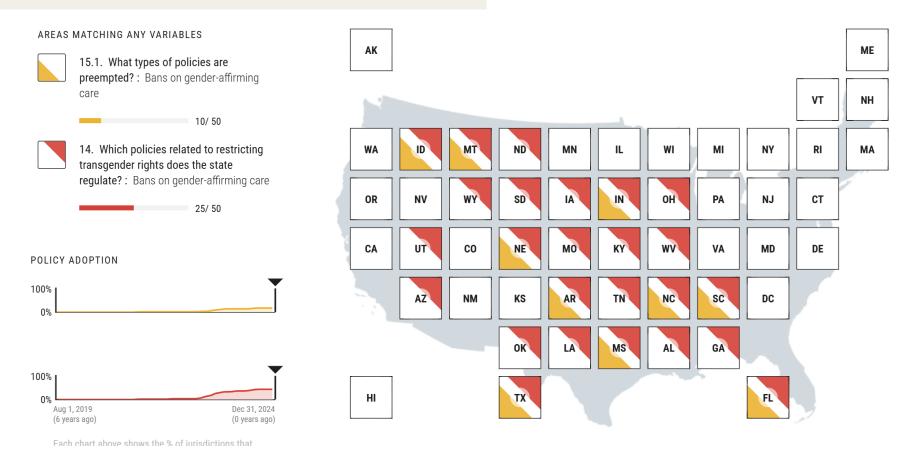
POLICY ADOPTION

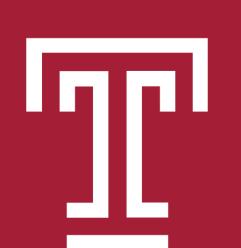




Fach chart above shows the % of jurisdictions that

Findings Over Time - Gender Affirming Care Bans





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

Ben Hartung, JD (<u>Benjamin.Hartung@phila.gov</u>)
Public Policy Advisor, Division of Chronic Disease and Injury Prevention
Philadelphia Department of Public Health

Preemption In Pennsylvania

Home Rule Authority

- Article 9, Section 2 of the PA Constitution: "A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time."
- Municipalities subordinate to State Legislature
- "Matters of State-wide Concern"
 - 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
 - Article 1, Section 1: All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.
- Potential for need to balance Constitutional Rights?

PA PREEMPTION STATUE

In Pennsylvania, the General Assembly has passed the Uniform Firearms Act (UFA). The UFA contains a section entitled "Limitation on the regulation of firearms and ammunition."

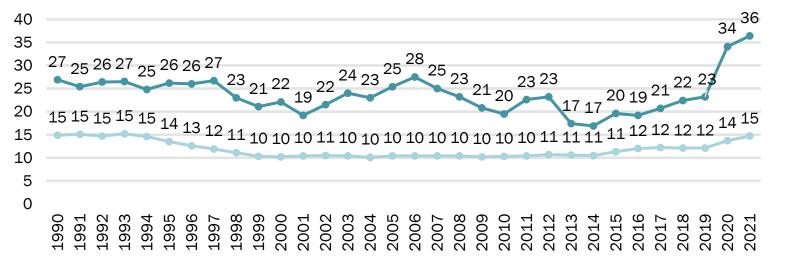
This section of the UFA provides that: "No county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth." 18 Pa. C.S.A. § 6120.

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.

Gun violence trends in the US and Philadelphia

Firearm crude death rate per 100K population, U.S. and Philadelphia County, 1990-2021

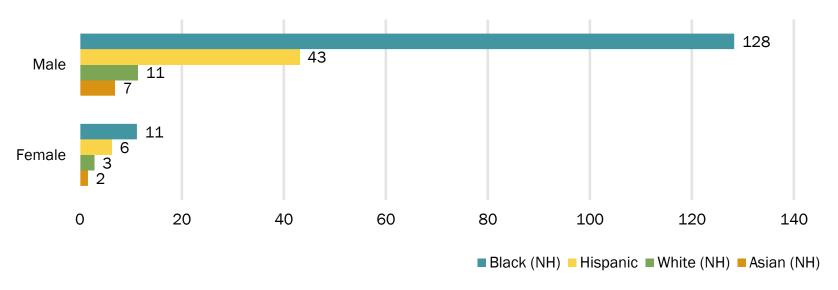


United States

Source: CDC Wonder

Gun violence in Philadelphia disproportionately impacts Black men

Firearm crude death rate per 100K population, U.S. and Philadelphia County, 1990-2021



Source: Philadelphia Police Department Shooting Victims Dataset

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

Philadelphia Firearm Ordinances Timeline

- In Effect Prior to 2001:
 - Licensing requirements for firearm and ammunition sellers
 - Prohibition on discharge of weapons (1864)
 - Acquisition or Transfer of Firearms
 - Firearms in Public Places
- 1.23.2001
 - Concealed Carry License and Reporting Requirements
- 5.12.2004
 - Possession of Weapons on School Property
- 1.23.2007
 - Responsibility to Avoid Possession and Discharge of Firearms by Children

2024 – Rate-of-fire Acceleration Device Ordinance

- 5.9.2007
 - Sale or Transfer of Ammunition
 - Failure to Report Lost or Stolen Firearm
 - Contraband, Weapons, Accessories, and Ammunition
 - Acquisition or Transfer of Firearms
 - Straw and Multiple Handgun Purchase Reduction
 - Prohibited Possession, Sale, and Transfer of Firearms by Persons Subject to Protection from Abuse Orders
 - Temporary Removal of Firearms of Persons Posing A Risk of Imminent Personal Injury To Self or Others
- 12.4.2013
 - 3-D Printing
- 2.18.2015 Trigger language package of bills
- 12.4.2019
 - Possession of Weapon at City Recreation Centers

Modeling the Mortality Impact of Firearm Preemption

<u>Data</u>

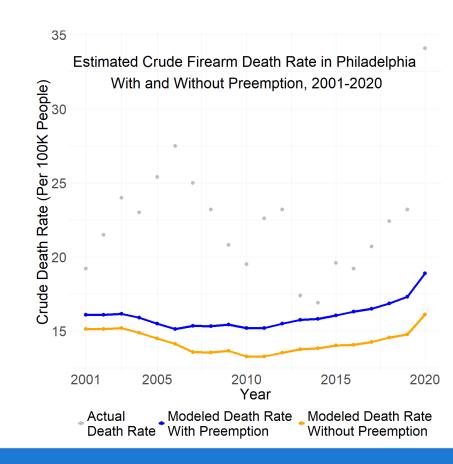
- Firearm mortality rates
 (CDC), demographic
 characteristics (Census), and
 number of firearm laws
 (Boston University) by state
- We developed a novel database of attempted municipal ordinances intended to regulate firearms in Philadelphia from 2001-2020 that would be enforced in the absence of preemption

Methods

- Trained a state-level multivariate model of mortality, firearm laws, and demographic characteristics by year
- Estimated the firearm mortality rate if local firearm ordinances had not been preempted.

Results

- We identified 26
 ordinances in Philadelphia
 that could not be enforced
 from 2001-2020
- Without preemption, there could have been 541 fewer deaths, or 1.8 fewer deaths per 100,000



Project Take Aways and Next Steps

Lessons Learned/Challenges

- Legal epidemiology can help us model the health impacts of preemption
- Investing in a database of locally enacted or preempted laws, while resource-intensive, would improve estimates of the relationship between regulation, preemption, and mortality
- It takes time to adapt methods from foundational studies to your project needs
- There are differences between state and local datasets
- Working with a multi-disciplinary team (lawyers and data scientists) can help guide policy surveillance (e.g. inform the Question Developing, Coding protocol)

Next Steps

- Work continues to build a complete longitudinal dataset for Philadelphia
- Integrate the extensive Pennsylvania firearm preemption caselaw in dataset
- "Five-city" memo in development to choose jurisdictions to compare to Philadelphia
 - Choose cities with similar and different firearm preemption statutes

Relevant Litigation

- Schneck v. City of Philadelphia (1978)
 - Local application and license
- Ortiz v. Commonwealth (1996)
 - Philadelphia and Pittsburgh assault weapon ban → UFA passed by PA Legislature
 - Nigro dissent: "Failure to address a continuing major concern"
- Clarke v. House of Representatives (2008)
 - Philadelphia 2007 bill package
 - Statutory argument about "when carried or transported" language
 - "FIELD PREEMPTION"

- Constitutional Argument:
 - Crawford v. Commonwealth
 - Constitutional Argument Fails Before PA Supreme Court
- Statutory Interpretation:
 - · City of Philadelphia v. Armstrong
 - Concurring Opinion: When a child cannot leave his home to walk to the corner of his street without risking the prospect of being caught in a crossfire, we are denying him the fundamental right of life and liberty."
 - Firearm Owners Against Crime v. City of Pittsburgh
 - Prohibits the "use" of assault weapons and

RECENT PENNSYLVANIA LEGISLATURE BILLS

- Two Bills Have Passed the PA House of Representatives May 2023
- <u>HB 1018</u> to create Extreme Risk Protection Orders (ERPOs) to prevent firearm suicides, mass shootings, and domestic violence homicides. This bill passed <u>102-99</u>.
- HB 714 to enact Universal Background Checks closing a gap in PA's system that allows long guns to be privately purchased or transferred without a background check. This bill passed 109-92.
- Several Bills Recently Passed Out of the PA House Judiciary Committee <u>January 2024</u>
- House Bill 335: Prohibits sale and possession of parts that accelerate the fire rate of a semiautomatic firearm to simulate the rate of fire of an automatic machine gun. This includes "bump stocks."
- House Bill 336: Bans the possession and sale of assault weapons. Would affect semiautomatic and burst-fire weapons, as well as guns that have features including military-style grips and magazines with a capacity of greater than 10 rounds.
- House Bill 777: Requires individuals who make guns to put serial numbers on the firearm's parts (Ghost Guns). The bill would also require serial numbers to be stamped on gun parts that are not otherwise required to be serialized under federal firearms law.
- House Bill 1157: Shortens the time that courts have to report to state police if a person's mental health status would disqualify them from owning a firearm. If passed, the bill would reduce the timeframe for notification from seven days to between 72 and 96 hours.
- House Bill 1190: HB 1190 would require 3-D-printed firearms to be treated as standard firearms and subjected to all standing laws and regulations. The bill would also prohibit anyone from printing a firearm without a federal license.

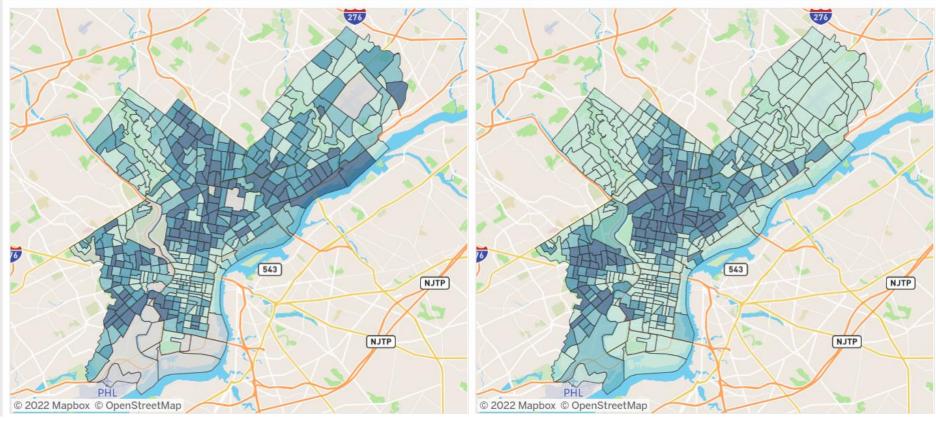


Percentage of people (ages 16+) unemployed by census tract in Philadelphia

Data source: U.S. Census American Community Survey, 2016-2020

Count of nonfatal and fatal shooting victims in Philadelphia, 2021

Data source: PPD Shooting Victims Dataset





Practical Preemption Tracking

Legal Epi at Lunch | Aug. 21, 2025

LSSC | Who We Are

A national hub that coordinates and creates efforts to counter the abuse of preemption. LSSC works to support partners and advocates by organizing efforts across four strategy areas.







Communications



Research



Legal





Legal

Rebalancing the power between state and local governments by providing deep legal technical assistance, conducting and publishing legal research, and identifying opportunities to advance long-term reform efforts.

Legal research, technical bill analyses, and memos to support campaigns

White papers and scholarships

Legislative Tracking & Trend Analysis

Amicus briefs, litigation, and legal strategy

10

Legal experts and law school professors who serve on LSSC's legal panel and help produce the foundation of legal expertise on abusive preemption.



DEFINITIONS | What is abusive preemption?

Abusive preemption occurs when a state government takes power away from local governments, usually with the intent of prohibiting local governments from advancing policies meant to address and advance equity, public health, worker protections, climate change, and more.

In doing so, states are perpetuating harmful, oppressive systems that exclude BIPOC, LGBTQ+ people, women, immigrants, and working people.



IMPACT | Abusive Preemption



Public Health



Curricular Decisions



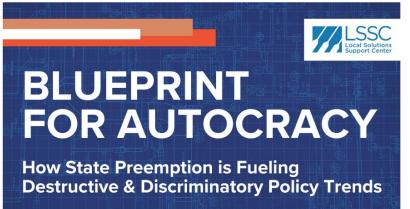








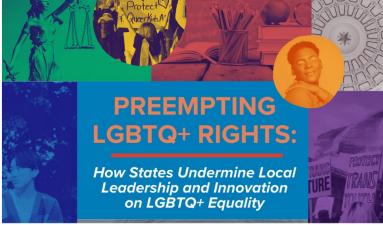




2025 Legislative Session Overview









TRACKING | Practical Uses

Trend analyses (what, where, who, how much?).

Policy details (scope, implementation, consequences)

Next steps (retaliation, litigation, advocacy and communication)



Questions & Discussion

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Let's stay in touch! Find us below and join our 2x week distribution list!

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Questions?

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Temple University