



**Evidence Summary of the Public Health Impact of Preemption of Local Authority to Engage in Evidence-Based Tobacco Prevention and Control Policies**

*For informational purposes only. Not for or against any specific legislative proposal.*

**The Importance of Local Tobacco Control Policy**

- The most effective tobacco control policies have most often originated at the local level.<sup>1,2,3</sup> This is especially true in the area of smokefree policies.<sup>1,2</sup>
- In addition, local smokefree policies are especially effective in changing public attitudes towards tobacco use in ways that discourage youth from initiating use and encourage adult tobacco users to quit.<sup>1</sup> This is true because these policies change environmental and social cues in the everyday community settings where people live, work, and gather.<sup>1</sup>
- Preemption prohibits communities from enacting laws that are more stringent than, or that vary from, the higher governing body's law.<sup>4,5,6</sup> As a result, preemptive legislation prevents local innovation.<sup>3,7,8</sup>
- Preemption also prevents communities from tailoring policies to fit local conditions and needs.<sup>6,9,10</sup>
- Research demonstrates that states with preemptive laws have fewer local ordinances restricting smoking, as would be expected, which results in reduced levels of worker protection from secondhand smoke.<sup>11</sup>
- The Guide to Community Preventive Services concluded that "In many states, preemption is a major barrier to the implementation of effective tobacco prevention policies and programs. It is a direct obstacle to the adoption of local clean indoor air ordinances and to local efforts to restrict youth access to tobacco products from commercial sources."<sup>3</sup>
- The U.S. Department of Health and Human Services also recognizes the damaging effects of preemption and the importance of local-level tobacco control policies, and has established a *Healthy People 2020* objective (TU 16) that calls for the elimination of all state laws that preempt local tobacco control policies.<sup>12</sup>
- Maintaining multiple tools for communities to address public health concerns—especially this extremely important and completely preventable issue of secondhand smoke exposure—can help each community choose the best way to meet their community's needs.
  - According to the National Association of Local Boards of Health, local level policymakers are most responsive to the concerns of constituents and less influenced by tobacco industry lobbyists, and local enforcement agencies such as health departments are easily accessible to the community.<sup>13</sup>

## Current Status of Preemption in the United States

- Between 2005 and 2009, eight states rescinded provisions preempting local ordinances restricting smoking in workplaces and public places through legislative action, ballot measures, or state court rulings.<sup>8</sup> As a result, the number of states that preempt local smoking restrictions decreased from 18 at the end of 2000 to 12 as of March 2015.<sup>14</sup>

---

<sup>1</sup> U.S. Department of Health and Human Services. *The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

<sup>2</sup> National Cancer Institute. State and local legislative action to reduce tobacco use. Smoking and Tobacco Control Monograph No. 11. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute, 2000. [http://dccps.nci.nih.gov/TCRB/monographs/11/monograph\\_11.pdf](http://dccps.nci.nih.gov/TCRB/monographs/11/monograph_11.pdf)

<sup>3</sup> The Task Force on Community Preventive Services. *The Guide to Community Preventive Services: What Works to Promote Health?* New York, NY: Oxford University Press, 2005.

<sup>4</sup> U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2000.

<sup>5</sup> Tobacco Control Legal Consortium. *Preemption: The Biggest Challenge to Tobacco Control*. Accessed October 22, 2014. Available at: <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-preemption-tobacco-control-challenge-2014.pdf>.

<sup>6</sup> Centers for Disease Control and Prevention. State preemption of local tobacco control policies restricting smoking, advertising, and youth access—United States, 2000–2010. *Morbidity and Mortality Weekly Report* 2011;60(33); 1124–7.

<sup>7</sup> U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General*. Atlanta, Georgia: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

<sup>8</sup> Centers for Disease Control and Prevention. State preemption of local tobacco control policies restricting smoking, advertising, and youth access—United States, 2000–2010. *Morbidity and Mortality Weekly Report* 2011;60(33); 1124–7.

<sup>9</sup> Institute of Medicine. *For the Public's Health: Revitalizing Law and Policy to Meet New Challenges*. Washington, DC: National Academies Press, 2011.

<sup>10</sup> Hobart R. *Preemption: Taking the Local Out of Tobacco Control—Updated Edition*. Chicago, IL: American Medical Association, Smokeless States National Policy Initiative, 2003.

<sup>11</sup> Mowey PD, Babb S, Hobart R, Tworek C, MacNeil A. The Impact of State Preemption of Local Smoking Restrictions on Public Health Protections and Changes in Social Norms. *Journal of Environmental and Public Health*. 2012 (2012), Article ID 632629. Accessed October 23, 2014. Available at: <http://www.hindawi.com/journals/jep/2012/632629/>.

<sup>12</sup> [www.healthypeople.gov](http://www.healthypeople.gov)

<sup>13</sup> National Association of Local Boards of Health. *Legal Authority for Tobacco Control in the United States: Third Edition*. Bowling Green, OH: National Association of Local Boards of Health, 2010.

<sup>14</sup> Centers for Disease Control and Prevention. State Tobacco Activities Tracking and Evaluation System. Accessed April 17, 2015. Available at: <http://www.cdc.gov/tobacco/statesystem>.