CLEARING THE AIR

THE PREEMPTION PARADIGM:
TAKING DOWN THE TOBACCO INDUSTRY TACTIC

VIEWING TIPS

WATCH IN FULL SCREEN MODE

MOVE THE PRESENTER BOX TO THE SIDE/BOTTOM WHEN SLIDE SHARING

KEEP THE CHAT BOX OPEN FOR QUESTIONS AND DISCUSSION

USE THE Q & A WIDGET
THE PREEMPTION PARADIGM: PANELISTS

Jeremy Kourvelas
Greg Puckett
Juliana Curry
Jamie Kent
What is Preemption?

A provision in state (or federal) law that eliminates the power of lower levels of government to regulate an issue. May prohibit existing and/or future laws.

Preemption is (still) tobacco industry’s #1 strategy

“While we’re not married to any particular form of pre-emption language, we’re dead serious about achieving pre-emption in all 50 states.”

-Tina Walls, Phillip Morris, July 8, 1994
What is Preemption?

1. **Express preemption**: Law contains language that specifically prohibits local laws.

2. **Implied preemption**: Doesn’t specifically prohibit local laws, but court may rule law is preemptive. Uncertainty may intimidate & discourage local laws.

To avoid preemption, laws should contain explicit anti-preemption clause that allows local control.
Power of Local Control

• Respond to community desires
• Meaningful local community change
  • Education & discussion → understanding → support
• Easier to enact strong & effective laws
  • Opportunity for innovation
  • Less industry interference
• Easier to achieve compliance
  • More understanding & respect for law
  • Enforcement agencies more accessible & responsive

Local leads the way!

www.no-smoke.org
WI preempts local laws restricting smoking in outdoor areas, except those laws applying only to public property.

VA: Local laws enacted prior to 1/1/90 are not preempted. Other local laws may require nonsmoking sections in public places and may allow employers to regulate smoking in private workplaces.

OK and UT preempt local laws other than those restricting smoking in public outdoor areas.

CT, NH, and SD have total preemption of smoking legislation.

MI preempts local laws relating to restaurants and bars.

NE preempts local laws relating to cigar bars.

NC: Local laws enacted/effective before 10/15/93 remain in force, but may not be strengthened. Local laws after that date may regulate smoking in local gov’t buildings and vehicles as well as in specified public places.

OK and UT preempt local laws other than those restricting smoking in public outdoor areas.

PA preempts local laws relating to smoking in enclosed workplaces & public places, but permits Philadelphia to enforce its smokefree laws, other than ones pertaining to gambling, provided it does not amend its laws so as to conflict with state law.

TN preempts entire field of regulations except for regulation in public buildings by cities and counties, airport authorities, utility districts, and special school districts, as well as on the grounds of municipal property.

FL preempts all local smoking legislation but allows local laws to regulate e-cigarettes.

Preemption

Yes

No

Note: American Indian and Alaska Native sovereign Tribal laws are not reflected on this map.
How Preemption is Enacted

Preemption language may appear:

1. In bills specifically intended to remove local control
2. In weak smokefree bills sponsored by the tobacco industry or its allies
3. In an amendment to strong smokefree bills
4. In bills not even related to tobacco control
5. Added to bills at last minute before passage

Preemption is ALWAYS a deal-breaker!
Common Smokefree Preemption Tactics

• Exempt & Preempt
• Venue-Specific Preemption
• Barrier to Local Control
• Multi-Issue Preemption

New York’s A04316: exempt & preempt bill
Big Picture: Local Control is Under Attack

- Activity nationwide to eliminate local control & innovation
- Blue cities/red states conflict
- Corporate interests > local needs
- ALEC driving legislation
- Using tobacco industry tactics

Upsides:
- Renewed awareness & interest
- Media attention
- New partners & collaborations
- Actively defending local control

✓ Tobacco control
✓ Gun control
✓ Nutrition/Menu labeling
✓ Minimum wage
✓ Paid sick leave
✓ LGBTQ/non-discrimination
✓ Plastic bags
✓ Fracking
✓ Rent control
✓ Municipal broadband
✓ Ride-sharing
✓ Home-sharing
✓ and more…

www.no-smoke.org
Big Tobacco’s Preemption Strategy

“We could never win at the local level…. So the Tobacco Institute and tobacco companies’ first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can’t do that, at least on the state level.” --- Victor L. Crawford, Former Tobacco Institute Lobbyist, Journal of the American Medical Association, 7/19/95

“Our top priority in fighting the proliferation of smoking bans and restrictions can be summed up in two words: ‘accommodation’ and ‘preemption.’” --Ellen Merlo, Philip Morris internal document, Bates No.: 2040236685/6706, 1994

“While we’re not married to any particular form of pre-emption language, we’re dead serious about achieving pre-emption in all 50 states.” --- Tina Walls, Philip Morris internal document, Bates No.: 2041183751/3790, 1994
**Words to Watch For**

**PREEMPT**
This legislation expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

**SUPERSEDE**
“This law supersedes any subsequently enacted local law, ordinance, or regulation that relates to the use, display, sale, or distribution of tobacco products.”

**OCCUPY THE FIELD**
“Accordingly, it is the intent of the Legislature to occupy the field of tobacco products regulation...”

**MORE RESTRICTIVE OR STRINGENT THAN**
“No local agency or political subdivision may impose ordinances or regulations relating to smoking in an office workplace which are more restrictive or stringent than this law after [DATE].

**UNIFORM STATEWIDE REGULATION**
“...uniform statewide regulation of smoking in public places, bars, restaurants, and workplaces...is required to maximize public awareness of and compliance with this act...”

**CONSISTENT WITH [STATE LAW]**
“When a municipality or county adopts an ordinance pertaining to the sales of tobacco products, the ordinance or regulation shall be consistent with the provisions of [state code].

www.no-smoke.org
Resources

Preemption Watch
Bill Tracking

www.protectlocalcontrol.org

Preemption of Smokefree Air Laws in the U.S.

Is not having local control a problem?
Unfortunately, yes. States without local control cannot provide effective protection from secondhand smoke in workplaces and public places.

Local control is critical for several reasons:
- Secondhand smoke is a local problem.
- Secondhand smoke is a local public health risk.
- Local control is needed to generate local political support for smokefree policies.

Local control.ny.leg

State with Any Type of Preemption of Smokefree Air Laws

Setting up a Preemption Strike Force

Goals of a Preemption Strike Force:
- Constant communication and quick mobilization
- A strike force makes communication easy by getting a message out to a large number of people to rally to a few
- A strike force allows for quick communication. It is easier to plan a rally or get advocates to the capitol on short notice
- Risk minimization
- A strike force will assign roles so that efforts to defeat preemption are not being duplicated and so that everyone is working together, as a team

Who Should Be a Part of a Strike Force?
- Coalition members from around the state who can rally advocates
- Coalition members
- Lobbyists from the American Heart Association, Lung Association and Cancer Society
- Lobbyists from organizations like municipal officers and labor groups that care about protecting local control
- Partners from organizations that support public health and may also have preemption threats, such as those lobbying for nutrition and smoking
- Local officials who are champions of smokefree air and local control

What Does a Strike Force Do?
- Proactive planning and rapid response
- Communication with partners and more strategies for defeating preemption
- Collect information on protecting local control from municipalities and from organizations
- Send too much money or support from districts around the state
- Educate the media
- Help bring people to the capitol for citizen rally days and critical hearings

Resources on Protecting Local Control

Visit www.protectlocalcontrol.org
Visit http://prosmokefreechange.net
Contact ANR for more information and to answer any questions, at (310) 841-5552

See this important public health and safety role of the local level, where health is most concerned and where policy is most needed by and work with their constituents. Communities often view that as the right-fit for its, which results in stronger workplace protections.

The right to make informed choices is a policy choice that isn't always the right one.

In terms to modern or protect local will you can help?
- The right and responsibility of local governments to address health and safety concerns in their communities.

Did you know?
- Use of preemption, local ordinances cannot adopt laws to smokefree air:
- Workplaces
- Public Places
- Restaurants
- Bars and taverns
- Music venues and clubs
- Casinos and gaming
- Outdoor workplaces
- Other specified venues
FIGHTING PREEMPTION IN WEST VIRGINIA

Greg Puckett, County Commissioner - Mercer County, WV
Juliana Frederick Curry - Chair, Coalition for Tobacco-Free WV
May 12, 2022
Clearing the Air Institute for Policy
"SB 12 would threaten the ability of local boards of health the ability to respond quickly to their community’s public health needs and threats, now and in the future.

The increased liability and potential cost adds a layer of politics that is simply not needed and erodes trust in your local health department.

These bills are designed to delay and avoid implementation of protective health rules put forth by local boards of health and are heavily supported by industries in an attempt to weaken, derail and undue protective policies."

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GREG PUCKETT
County Commissioner

Please oppose SB12

Coalition for a Tobacco-Free West Virginia

GREG PUCKETT
Coalition Director / Supporter for over 20 years
· Formerly named NPN (National Prevention Network) Interim Coordinator
· CADCA Coalition Advisory Committee since 2005 - CADCA Board of Directors (Secretary) 2018
· Awarded CADCA’s Advocate of the Year in 2005
· Actor – www.imdb.me/gregpuckett
· County Commissioner
· National Association of Counties (NACo) Board of Directors
    · Opioid Taskforce
    · Healthy Counties Initiative
    · Arts and Culture Subcommittee
    · Diversity
    · CHAIR – Rural Action Caucus

Thank you, Greg Puckett - Commissioner - Mercer County, West Virginia for speaking up for the health of all West Virginians during your testimony in the Senate Health Meeting.

Amidst a global pandemic, now is not the time to roll back health and safety measures, as well as erode the trust of local health departments.

Our local Boards of Health have the expertise to respond quickly to public health threats without being bogged down by political interference. This legislation adds undue burden on local public health leaders in an effort to limit the power of Boards of Health.

If passed, decades of progress improving public health with 100% smoke-free indoor air regulations could be reversed and progress with future health and safety measures impeded.

Vote NO on SB12.
WHAT COALITIONS KNOW...

Assessment
Capacity
Planning
Implementation
Evaluation
PLUS
Sustainability
Cultural Competence
Community-level change initiatives seek to:

- **Impact** a specific, defined community
- **Engage** all sectors of the entire community
- **Address** conditions and settings within the defined community
- **Promote** comprehensive strategies
- **Achieve** positive outcomes (reduce substance abuse) throughout the community
COMMUNITY LEVEL CHANGE

CADCA’s Seven Behavior Change Strategies

1. **Provide** information
2. **Build** skills
3. **Provide** social support
4. **Reduce** barriers/enhance access
5. **Change** consequences/incentives
6. **Alter** physical design of an environment
7. **Change** policy and rule

Individual

Environmental
If there was ever a time to show our appreciation and gratitude for West Virginia’s public health system, it’s now. Our county health departments have displayed leadership and necessity in response to the COVID-19 pandemic.

The network of public health professionals are following evidenced based best practice to drive decision making and are well equipped to respond to the needs of their communities.
Public health is NOT a partisan issue and when politics are prioritized, people are put at risk.

County commissions and city councils already appoint individuals to the boards of health. These boards exist to de-politicize public health. They make a myriad of rules and regulations involving emergency preparedness, environmental and community health. They’re detailed, complex rules, informed by evidence, data, and national guidelines.

The authority for local Boards of Health is directed to establish health ordinances for the common good. By design, that provides better, more stable health policy that represents all communities including the most vulnerable that are less likely to be represented in the political process.
Boards of health should not only develop well-informed policy but also adapt it over time based on experience, changing science and input from the public, elected officials and community partners.

Health departments set policies that have been tested and are tried and true under the court of law.

County Commissions are not properly educated on the complexities of policy and the potential litigious process that could follow if done wrong, or not done at all.

Top Message –
Keep Politics out of Public Health

SB12 – WHAT WE DIDN’T WANT
IT’S NOT JUST ABOUT SMOKING
PREPARING TO FIGHT PREEMPTION

Juliana Frederick Curry, MSJ
Chair, Coalition for Tobacco-Free West Virginia
PREPARING TO FIGHT

- **Start**
  - Start Early

- **Set up**
  - Set up a reliable legislative monitoring system

- **Messaging**
  - Hone messaging

- **Build**
  - Build a cross-sector coalition, but choose sectors strategically
  - Collaborate even more broadly when it makes sense
The Coalition for a Tobacco-Free WV has been successfully battling preemptive legislation for nearly two decades.

- The assault on smoking regulations, promulgated in West Virginia through local boards of health, was just barely defeated during several legislative sessions.
- Multiple bills have been introduced that threaten local control by limiting local governments authority to protect public health.
- In collaboration with partner organizations and creative work from our legislative champions, we were able to defeat preemptive bills that could have taken away current local smoke-free regulations. (31/55 counties have 100% smoke-free regulations in place, protecting over 1.8 million West Virginians from secondhand smoke)
IDENTIFYING PARTNERS

- Municipal League
- County Commission Association
- WV Council of Churches
- WV State Budget and Policy
- WV Think Kids
- American Heart Association
- Voices for Healthy Kids
- Americans for Non-Smokers Rights
- American Lung Association
- American Cancer Society Cancer Action Network
- Local Boards of Health
- Campaign for Tobacco-Free Kids
• We worked hard to defeat these efforts and made great effort in asking the Governor to Veto but were not able to get his support. Although passage of SB 12 is concerning, being able to maintain our current regulations that protect over 65% of our population was a win.

• Big Tobacco championed these preemption strategies to stifle strong and innovative local boards of health tobacco prevention measures we have across WV, because tobacco companies and their lobbyists have less political influence on local boards of health.
OPPORTUNITIES FOR ACTION

- Day at the Capitol
- Action Alerts
- Social Media Share/Tag
- Op Ed
- Letter to the Editor
- Press Conference
- Radio Interviews
- Radio Ads
- Patch through calls
- Weekly coalition calls
- Creative virtual tactics
THANK YOU
QUESTIONS???
CLEARING THE AIR

2021-2022 VIRTUAL INSTITUTE

THE PREEMPTION PARADIGM:
TAKING DOWN THE
TOBACCO INDUSTRY TACTIC

THANK YOU FOR ATTENDING

PLEASE COMPLETE THE EVALUATION POLL

LET US KNOW IF YOU HAVE ANY QUESTIONS