

The Rise of State Preemption Laws in Response to Local Policy Innovation

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This article analyzes the increasing use of state preemption law by conservative state leaders as a tool to rein in progressive local governments. The scope and special qualities of recent state preemption laws are explored by examining legislation preempting local fracking bans, preventing minimum wage ordinances, targeting sanctuary city policies, overturning LGBT rights ordinances, and enacting blanket preemption measures. Reasons for the recent surge of state preemption laws are suggested, and the overall effectiveness of these laws is discussed. I conclude that rising conservative dominance of state legislatures has provided the opportunity to thwart progressive local policies, and these efforts have been aided by various industry and conservative organized groups. State preemption laws are not always successful in their aims. In some cases, state supreme courts have sided with local officials' claims of state overreach. In others, local officials have simply refused to comply. In any case, the threat of preemption may have a chilling effect on local policy innovation.

Central to the study of federalism is the state-national balance of power, and much attention has been paid to its continuous renegotiation and resulting conflicts. Less attention has been paid to the hostilities and power negotiations that occur between states and localities, which remain quite fluid despite John F. Dillon's legal determination that localities are subordinate to states. Certainly, the role of localities in the federal system has fluctuated over time, leading states and localities to "bargain . . . lobby, confront, ignore, threaten, circumvent, and sue one another" (Sbragia 1996, 8). Over the past several decades, however, the tone of state and local conflicts has grown increasingly tense.

The reasons for this tension between state and local governments have been discussed elsewhere and at length. A short list would include the devolution of federal and state program responsibility to localities, often without sufficient resources to accomplish program goals (Bowman and Kearney 2011, 563–585). Federal and state mandates have grown, often expanding local functions while limiting local autonomy (Krane et al. 2004, 515). Gridlock at the state and federal levels has frequently left localities to solve their own problems (Schragger 2010, 39)

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which has promoted local innovation, self-sufficiency, and professionalism (Hodos 2009, 58), while also providing state leaders with ample opportunities to take credit for local achievements when things go well and to shift blame to localities when they do not (Nicholson-Crotty and Theobald 2011, 248).

Rather than passively waiting for their fortunes to change, many local officials have jumped into the policy vacuum left by state and federal inaction, resulting in “a flowering of progressive policy developments” (Schragger 2009, 39). Progressive policy experimentation contributes to the visibility and prestige of the locality, as well as to the local policy entrepreneur who may have ambitions beyond local office. In these instances, state and local conflict can serve as a vehicle to spotlight the vibrancy of a locality or a local leader’s willingness to go to battle, possibilities not lost on a growing number of local leaders (Riverstone-Newell 2013a). However, this same local aggression and increased visibility has also made targets of progressive local policies and the leaders who support them.

To rein in unruly localities, states may deploy one or more of a variety of strategies ranging from ignoring the infraction, to issuing informal warnings, threatening and/or pursuing legal action, or threatening and/or withholding state funding. In the past few years, however, a growing number of state officials have sponsored and supported preemption legislation with the intent to weaken local authority and to thwart local progressive policies. The purpose of this article is to examine the recent proliferation of preemption legislation. First, I document and illustrate the scope and special intensity of recent state preemption laws by exploring several areas of preemption activity. Second, the reasons for the recent surge of state preemption laws are explored, emphasizing the importance of the increasing alignment of a partisan-regional/spatial divide. Finally, I assess the overall effectiveness of recent state preemption laws. While some preemption attempts have been successful in thwarting local innovation, success is by no means assured. In some cases, state supreme courts have sided with local officials’ claims of state overreach. In others, local officials have simply refused to comply.

This article contributes to federalism scholarship in several ways. Most important, while previous scholarship has focused on the surge of local progressive policy innovation and acts of local defiance, little has been said about how the states have responded to these acts, responses which include recent state preemption laws (Riverstone-Newell 2013a; Schragger 2010; 2016). This article addresses this gap in scholarship. In addition, through a detailed analysis of laws passed in several key policy areas, this article demonstrates how recent preemption laws differ in important ways from prior state preemption laws. Finally, this article shows that the partisan polarization that has lately affected state-national relations in well-documented ways is also having significant effects on state-local interactions and in ways that call for similar documentation.

Explanations for Recent State Preemption Activity

While preemption laws have long been used to set minimum standards on local activity by setting a floor on local responsibilities and regulations, recent preemption laws are different in that they are meant to strip authority from localities altogether. These “maximum preemption” laws are not intended to merely shape local behavior in keeping with minimum state goals. Rather, they prohibit localities from passing any laws or regulations in specific policy areas, many of which reflect the progressive social values that are concentrated in cities or are of critical importance to local economies, environmental and public health, and community safety.

Recent preemption efforts can be understood, at one level, as part of longstanding campaigns waged by industry groups hoping to stop or limit progressive local policies in order to create a friendlier business environment for themselves. Industry groups and trade associations first began pressuring state legislatures to rein in their cities in the late 1980s. *The American Prospect* reported that R.J. Reynolds pressed states to enact preemption laws in the 1980s as a central strategy to overcome local smoking restrictions and bans (Rapoport 2016). State preemption of local tobacco controls peaked in the mid-1990s and “leveled off after 1996” (Mowery et al. 2012). Since then, a number of tobacco-related state preemption laws have been repealed or weakened in the courts; however, thirteen states continue to preempt local tobacco controls altogether, or disallow local smoking bans in specific places, such as government or private workplaces, or in restaurants (Grassroots Change 2017a). Taking a page from R.J. Reynolds’ playbook, the National Rifle Association (NRA) launched its campaign for state preemption of local gun regulation in the 1990s. The NRA’s campaign was successful and with lasting effect: “43 states now have some form of maximum preemption preventing localities from passing additional gun regulations on top of state law” (Rapoport 2016).

Other conservative interest and ideological groups joined tobacco companies and the NRA in lobbying state leaders to enact preemption laws with an eye to defeating local, progressive policies. These other groups include think-tanks and membership groups such as the American Legislative Exchange Council (ALEC), among other powerful industry groups and trade associations such as the National Restaurant Association. ALEC, a nonprofit organization and self-proclaimed “premier free-market organization that provides elected officials the resources they need to make sound policy” (About ALEC 2017), has been particularly active in supporting many state-level preemption campaigns, going so far as to offer “model legislation” and assistance with strategic planning. According to the group’s 2016 strategic plan, its membership now includes “25 percent of all legislative members and over 200 corporate and nonprofit members . . . 20 percent of Congress, eight

sitting governors and more than 300 local elected officials” (ALEC Strategic Plan 2016). The model legislation offered by ALEC currently includes several local preemption bills intended to foster “statewide stability and prosperity” through uniform, business-friendly policies (Russell and Bostrom 2016). Another important service provided by ALEC is an annual convention targeted to state lawmakers, industry leaders, and lobbyists, which serves the dual purpose of introducing and educating legislators on issues of import to ALEC while providing lawmakers with the opportunity to make the acquaintance of “industry experts and policy analysts,” who are also potential campaign donors (Kuby 2015).

If the surge of preemption legislation in recent years has been fueled in part by efforts of industry groups and conservative organizations to rein in cities, it can also be attributed to the growing Republican control of state legislatures, especially after the tide turned in Republicans’ favor during the 2010 elections (Greenblatt 2016b). Every year since 2011 has seen more preemption activity than the last, and with the effect of increasing tensions in state-local relations (Dewan 2015; Greenblatt 2016b; Einstein and Glick 2017). The Center for Media and Democracy reported that 2015 saw “more efforts to undermine local control on more issues than any other year in history” (Fischer 2016).

The 2016 elections continued this trend of recent gains in conservative control of state legislatures and statehouses generally. Before the 2016 election, Republicans controlled both legislative chambers in thirty states, twenty-two of which also had a Republican governor. Democrats were in control of both chambers in twelve states, eight of which also had a Democratic governor (Storey 2016). As a result of the 2016 election, Republicans gained control of both legislative chambers in an additional two states, bringing their number to thirty-two. Democrats now have control of both chambers in fourteen states, and power is split between the parties in three states—the lowest number in seventy years (Storey 2016). Of the Southern states, all thirty chambers are now under Republican control. In terms of unified control of the legislature and governorship, Republicans now control both the legislature and governor’s office in twenty-five states, while six states are under unified Democratic control (Storey 2016).

Partisan control affects cities. Republican state leaders are geographically and ideologically distant from city interests. They are elected by constituents who are removed from the types of challenges that cities face, challenges that accompany economic and social diversity and concentrated populations. They have little reason to support anything uniquely “city,” and are likely to be ideologically opposed to the progressive social policies favored by most who live there. Indeed, there is a long-standing difference between the political and social agendas of medium and large cities and the rest of their states. The conservative, rural dominance of state legislatures that lasted until the late 1960s posed challenges for cities, but they muddled along, winning favorable policies through compromise,

logrolling, and, of course, federal programs. However, the suburban dominance of state legislative seats that occurred after the nation's forced redistricting following *Reynolds v. Sims*, 377 U.S. 533 (1964), and a rising conservative sentiment and growing hostility toward taxes and government spending throughout the 1970s, changed the political game in ways that are instructive today.

Particularly instructive is how shifts in partisan power, then and now, correspond with a regional, spatial divide. Indeed, the current spatial divisions featuring conservative versus liberal regional differences “almost perfectly align with partisan divisions,” writes [Greenblatt \(2016b\)](#). Urban and inner-suburban areas are predominantly liberal; everywhere else tends to lean conservative. What results are spatially defined teams, us versus them, a zero-sum game. Add hyper-partisanship, the heightened tension and hostility that has characterized recent national and state politics, and even the most centrist, compromise-oriented elected leader will shy away from the very appearance of inter-party cooperation. As one scholar recently put it: “. . . compromise has become a dirty word. If you make one move in the direction of your opponents, that's treason” ([Greenblatt 2015b](#)).

The scope of recent preemption laws is vast. States have lately prohibited localities from requiring fire sprinkler systems in new homes; banning fracking or imposing other gas and oil regulations; imposing local nutrition and food policies, such as soda taxes, bans on toys in unhealthy meals, and requirements to display calorie counts in local restaurants; passing firearm regulations; requiring mandatory paid sick days and minimum wage increases; decriminalizing small amounts of marijuana; banning marijuana use (in the face of state legalization); banning plastic shopping bags; passing discrimination protections for LGBT workers; regulating e-cigarettes; regulating tobacco use in public, restaurants, and by minors and young adults; imposing regulations concerning land use; passing undocumented immigrant protections; regulating factory farms; banning police drones; regulating local airports; initiating municipal broadband services; creating anti-GMO policies; and offering various other civil rights protections.

Of the dozens of policy areas recently targeted by state preemption laws, several stand out as being the subject of intense and continuing activity. Grassroots Change, a nonprofit organization that curates and reports on state preemption laws, predicted that preemption activity in 2016 would center on broadband access, food and nutrition issues, fracking, gun violence, paid sick days and minimum wages, residential fire sprinklers, tobacco (including e-cigarettes), and several additional policy areas ([Grassroots Change 2017a](#)). Predictions for 2017 add several targets to the list: agriculture, local licensure and permitting, fire and building codes, chemical safety, environmental justice, predatory lending, disposable containers, climate change, immigration policies, and “blanket preemption,” as discussed below. The National League of Cities confirms rising preemption activity

and battles that have “pitted rural- and suburban-dominated state legislatures against cities with large populations of low wage earners and ethnic minorities,” bringing into question “the role of government and cities’ place within it” (DuPuis et al. 2017, 3). In early 2017, the organization reported that twenty-four states now have minimum wage preemption laws; seventeen states have preempted local laws regarding paid leave; three states have passed anti-discrimination preemption laws; thirty-seven states have preempted local ride sharing regulation; seventeen have preempted municipal broadband regulation; at least five states have preempted local plastic shopping bag bans; and eight states now preempt a variety of local nutrition-related regulations (DuPuis et al. 2017).

With the intent of analyzing recent state preemption activity and assessing the outcome of the ensuing battles between state and local governments, the remainder of this article focuses on state preemption of local fracking bans, minimum wage ordinances, sanctuary city policies, LGBT rights ordinances, and the rising use of “blanket preemption.” Although preemption laws have targeted additional policies, these cases were chosen because of their prominence and because these policy areas have been the subject of preemption campaigns across multiple states.

Preempting Local Fracking Bans

Over the past few years, a growing number of states have considered and enacted laws overturning and preempting local regulations related to oil and gas development, particularly bans on hydraulic fracturing (fracking). Local leaders in more than 530 localities across twenty-six states have acted to prohibit fracking within their jurisdictions, citing potential health, quality of life, economic, and environmental harms. The oil and gas industry has responded in two ways: by petitioning state courts with claims that local bans are preempted by existing law, and by pressuring state leaders to enact new laws preempting local regulation of the oil and gas industry. Both approaches have proven effective: State courts have generally overturned local bans in favor of state preemption, and conservative state leaders have introduced preemption legislation in nearly every state where local bans have been enacted.

Among the growing number of localities that have banned fracking, the most cited reason for acting is to protect against possible harms to local water quality. The process of fracking involves injecting millions of gallons of water and a variety of chemicals into natural or drilled crevices within rock formations in order to access oil and natural gas that is inaccessible using traditional oil extraction methods. Wastewater from fracking operations is stored in deep wells, or impoundments, which may leak and cause groundwater and well contamination. In addition to water quality concerns, local leaders point to possible harms to property values, increased seismic activity, and the disruptive effects of the rapid

population growth that accompanies fracking operations, including disruptions to education systems, insufficient emergency services, housing shortages, rapid commercial and residential development, increased traffic, and other inevitable lifestyle and quality of life changes (Bartik et al. 2016, 8). Given these stakes, many local officials believe that they are best positioned to determine local needs and preferences, and that it is their responsibility and duty to protect the health and safety of their communities.

The means by which localities attempt to control fracking include land-use plans and zoning ordinances, ballot measures that regulate or ban fracking outright, resolutions calling for state-wide bans, and temporary or long-term moratoria. As of April 2017, nearly 550 localities had passed one or more of these measures in twenty-six states. Of the twenty-six states involved, four have their own state-wide fracking bans: New York, Maryland, Massachusetts, and Vermont. However, Massachusetts and Vermont have no shale plays, so their bans are clearly symbolic. Meanwhile, Maryland's moratorium is scheduled to expire in 2017. Localities in six states have symbolically passed bans (involving Connecticut, Hawaii, Maine, Minnesota, New Jersey, and Wisconsin). These local measures are symbolic because there are no viable shale plays in their states. The remaining localities with fracking bans are situated in thirteen states where fracking is currently active, and another three states which will likely soon be active (Hirji and Song 2016).

Denton, Texas is ground zero for the current state backlash against local fracking bans. Denton was not the first city to ban fracking in the United States. Pittsburgh was the first to do so in 2010 (Fernandez 2012). But Denton's ballot initiative that passed in 2014 sparked a flurry of similar ballot initiatives and local legislation across the nation. In Denton's case, Texas's response to the local ban was a departure from business as usual in that state. Despite being an "oil state," Texas has allowed its localities to regulate the oil and gas industry in keeping with state regulations since the 1980s, when the Texas Court of Appeals in Fort Worth found that municipalities have the power to regulate drilling, and to prohibit drilling without a permit (*Unger v. State of Texas*, 629 S.W. 2d 811, 812 [Tex. Ct. App. 1982]). Although the case was argued on the basis of local zoning authority, the court based its decision on municipal police power, whereby cities can act "for the protection of their citizens and the property within their limits, looking to the preservation of good government, peace, and order therein" (*Unger v. State of Texas*, citing *Klepak v. Humble Oil & Refining Co.*, 177 S. W. 2d 215, 218 [Tex. Ct. App. 1944]). Texas municipalities subsequently passed numerous ordinances regulating, among other matters, "noise levels, drilling of fresh water wells, compressor stations, landscaping and screening, drilling within a floodplain, saltwater disposal, measures for controlling water quality, road repairs, and ...

allowable distance(s) from existing structures that wells may be drilled” (Smith 2011, 142).

Denton upset the status quo when it banned fracking outright. The city acted in response to the grandfathering in of old, conventional oil wells that predated local attempts to establish fracking setbacks, and other land use controls. Fracking, it turns out, makes old oil wells potentially viable again through a process called “secondary capture.” Locals feared that secondary capture would “lead to fracking in the city’s heart,” as development of the city had, over time, brought residential areas and other buildings close to the conventional wells that were thought to be permanently closed (van de Biezenbos 2017, 22). The local fracking-ban initiative passed easily in August 2014, despite being massively outspent in a head-to-head campaign against the Texas Oil and Gas Association, which mobilized in response to the grassroots effort, Frack Free Denton. The Texas Oil and Gas Association immediately filed an injunction and pivoted its efforts to the state legislature. Within a few months, the state passed a law, H.B. 40, expressly preempting local regulation of oil and gas, defending the bill as necessary to protect private property rights (van de Biezenbos 2017). House Bill 40, coauthored by ALEC’s national chair, Texas Representative Phil King, allows local governments to exercise some regulation of aboveground activity involving “fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements.” The caveat, however, is that such regulations must be “commercially reasonable,” a condition that clearly favors the oil and gas industry (H.B. 40, Tex. 84th Leg. Sess. 2015). Following Texas’s lead, Oklahoma and North Carolina passed fracking preemption laws in 2015. Bills were also introduced in Florida and Indiana.

In Colorado and Louisiana, the states fought local action by asserting that existing law grants them preemption authority, and their courts affirmed this position. In May 2016, the Colorado Supreme Court determined that regulation of the natural gas industry is not purely local, as it has an economic impact on the state. This would be particularly problematic if other localities followed suit, resulting in a “de facto statewide ban” (Trego 2016). A grassroots drive to place two constitutional amendments on the November 2016 ballot—one to allow for local fracking bans and another to buffer fracking efforts by at least a half mile from homes and schools—failed to meet signature requirements, causing some to allege sabotage (Light 2016). At the same time, the oil and gas industry successfully sponsored Amendment 71, raising nearly \$6 million for the effort. Amendment 71 made future initiative-based constitutional changes “nearly impossible” as two percent of registered voters in each of the state’s thirty-five Senate districts would have to sign a constitutional-initiative petition before it could be placed on the ballot; moreover, constitutional amendments will now have to be approved by 55 percent of voters rather than a simple majority (Denver Post 2016). The effort, called “Raise the Bar,” was made to appear grassroots, an attempt to protect the

state's constitution from special interests, but its largest donor was Protect Colorado, which contributed \$3 million to the effort ([Ballotpedia 2016](#)). Protect Colorado's mission is "to make sure Colorado continues to be a leader in responsible energy development, and . . . oppose any efforts that would destroy energy production in our state, including any ban or restrictions on fracking" ([Protect Colorado 2017](#)).

In Pennsylvania, localities were granted some room to regulate fracking after the state supreme court held that the state's preemption law was unconstitutional (*Robinson Township v. Commonwealth of Pennsylvania*, 83 A.3d 901 [Pa. 2013]). Rather than asserting local land use or police powers, the grounds used for protesting state preemption, the court cited the state constitution's Environmental Rights Amendment, which holds the state and localities as trustees for "clean air and pure water," a function that necessitates local control over zoning and land use planning. Since the court's original opinion, efforts to revisit the case have been promoted by the oil and gas industry in hopes of winning statewide preemption. The most recent effort was struck down by the Pennsylvania Supreme Court in September 2016.

In assessing the impact of state preemption activity in this policy area, the outcome leans heavily in favor of state control. Recall that there are thirteen states where fracking is currently allowed, and another three states that will soon join them, that have also experienced local fracking bans. Of these sixteen states, eight have successfully preempted local bans (Colorado, Louisiana, North Carolina, Ohio, Oklahoma, New Mexico, Texas, and West Virginia). Another two states passed preemption laws that were overturned by state courts. Pennsylvania's preemption law was struck down by the Pennsylvania Supreme Court in 2013 and New York's law was overturned in 2014 (with a state-wide ban enacted in 2015). At this time, Florida is considering a state-wide ban, following years of controversy and the enactment of seventy-six local bans ([Spillman 2017](#); [Grant 2016](#)). The remaining six states—California, Indiana, Michigan, North Dakota, Virginia, and Wyoming—have variously ignored the local bans in their states, been unable to pass preemption legislation, been distracted by federal fracking regulations, and/or have been largely quiet on the matter.

Limiting Minimum Wage Increases

Grassroots efforts to increase the minimum wage have been ongoing since the early 2000s. Recent efforts have concentrated at the state and local levels after having had only limited success at the federal level. As the push for a living wage gained support among citizens, culminating in a flurry of state and local wage hikes in 2016, an equal measure of resistance has come from pro-business legislators and groups, such as ALEC, and industry groups including the National Restaurant

Association and the American Hotel and Lodging Association (Grabar 2016). Thus, as the National League of Cities put it, 2016 was “the year of the minimum wage increase” as well as “the year of minimum wage preemption” (DuPuis et al. 2017, 6).

Successful wage increase campaigns at the state and local levels are credited to activist groups, such as “Fight for \$15,” as well as progressive local leaders and voters who, confronted with the day-to-day impact of inadequate wages, saw the need and responded. By November 2016, the number had grown to nearly forty cities and counties (UC Berkeley Labor Center 2016). The increased local wages, ranging from \$8.50 to \$15.75 per hour, are found in Arizona, California, Florida, Illinois, New Mexico, Maryland, Maine, Washington, and Washington, D.C. (UC Berkeley Labor Center 2016).

State responses to local minimum wage laws vary. Some states have joined in, passing their own statewide increases. Twenty-nine states now set minimum wages higher than the federal minimum, with state-wide ballot initiatives bringing about increases in Arizona, Colorado, Maine, and Washington in 2016 alone and other states increasing their minimum wage through legislation (Economic Policy Institute 2017). In contrast, other states have preempted local wage regulation (and oftentimes other labor-related regulations), arguing, as in the case of fracking bans, that a “patchwork” of wages will confuse the business environment, risking harm to the state’s economy. This position is supported by ALEC and other pro-business organizations.

As noted above, 2016 was a busy year for state preemption of local minimum wage laws. Several cases illustrate the political dynamics of these preemption acts as well as the occasional efforts by localities to push back against them. In Ohio, Republican Governor John Kasich in December 2016 signed into law a preemption bill that prevents the state’s localities from setting their minimum wage above the state rate, which is currently \$8.10 per hour. This law was written in “direct response” to Cleveland’s ballot initiative that was to be put before voters in May 2017, which would have gradually raised the city’s rate to \$15 per hour (Covert 2016).

Alabama’s 2016 preemption law came in response to Birmingham’s city council approving a measure that would raise the local minimum wage to \$10.10 per hour. The city council president responded, “People can not pull themselves up by the bootstraps if they can’t afford to buy boots” [sic] (Lyman 2016). After hearing that the Alabama House of Representatives had passed the preemption bill and, thus, it was moving forward, the city council quickly met and voted to implement their ordinance. Despite the rush, the preemption came days before their implementation plan went into effect (Lyman 2016).

Missouri’s 2015 preemption law was vetoed by Democratic Governor Jay Nixon, but that veto was handily overridden by the Republican legislature. The bill, HB 722, includes additional preemptions: Localities cannot “require employee benefits that exceed federal or state requirements. The bill also prohibits political

subdivisions of the state from banning or imposing a fee for the use of paper or plastic bags” (Barr 2015). Interestingly, a clause included in HB 722 stated that local wage ordinances passed before August 28, 2015, the day HB 722 passed, would not be preempted. As HB 722 was being debated, St. Louis rushed to pass its ordinance and managed to beat the clock. In February 2017, the Missouri Supreme Court found that St. Louis had acted “within its charter authority” when it passed the ordinance, allowing the city to move forward with its plans to raise its minimum wage to \$11 per hour by 2018 (Bott 2017).

A 2017 Iowa law goes further than others in that it has a retroactive effect. Four Iowa counties passed minimum wage increases in 2015, and two of those counties’ wage hikes took effect in January 2017. In March 2017, however, the Iowa legislature voted to roll back those wage increases to the federal wage, \$7.25 per hour. The law took immediate effect and preempted any future local wage laws that exceed Iowa’s minimum. According to Christine Owens of the National Employment Law Project, Iowa’s law “marks the first time anywhere in the U.S. that state lawmakers have actually taken away raises from workers who already received them” (Covert 2017).

Of the twenty-five states that now have local minimum-wage exemption measures in place, twelve passed their laws since 2013 (National Employment Law Project 2017, 5). In 2016, fourteen states introduced exemption bills and three states enacted such laws: Alabama, Idaho, and North Carolina (Casuga and Rose 2016). At least five states are considering minimum-wage exemption bills in 2017 (National Conference of State Legislatures 2017). All told, since 2011, legislators in thirty-one states have introduced 105 wage exemption bills, sixty-seven of which were sponsored by legislators affiliated with ALEC (National Employment Law Project 2013).

In terms of legal challenges involving these minimum-wage exemption laws, supporters of minimum-wage increases have enjoyed mixed success. As already noted, the Missouri Supreme Court sided with St. Louis in the city’s effort to sustain a local minimum-wage increase enacted just as a state exemption law was taking effect. But other legal challenges have been unsuccessful. The NAACP and other supporters of Birmingham’s minimum-wage ordinance filed a federal lawsuit charging that Alabama’s 2016 exemption law violates the Equal Protection clause of the U.S. Constitution and the federal Voting Rights Act in so far as the state act limits the ability of a majority-African American city to regulate its own affairs. A federal district judge dismissed the suit; but the case has been appealed to the U.S. Court of Appeals for the Eleventh Circuit (Poe 2017).

Banning Sanctuary Cities

While most persons have only recently heard of “sanctuary cities,” the phenomenon dates to the efforts of over 400 religious congregations and twenty-nine localities in

the U.S. that provided safe harbor to Guatemalan and Salvadoran refugees in the 1980s (Riverstone-Newell 2013a). The federal government's response to the sanctuary cities and states of the 1980s was, at least for a time, to ignore them. A more formal response came toward the end of the 1980s and 1990s sanctuary movement when Congress passed the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which forbade states and local governments from refusing to cooperate with federal immigration laws and enforcement. Because it was near the end of movement, and because the federal government has never attempted to enforce it, the law had little effect (McCormick 2016, 170). Of those cities offering sanctuary at the time, the common response was to ignore the law.

Today's sanctuary cities seek to assure law-abiding, undocumented immigrants that local officials will not comply with federal detention requests, and that one's undocumented status will not be reported to federal authorities. These cities claim that without the assurance of refuge, undocumented immigrants' fear of being deported might prevent them from "reporting crimes, seeking healthcare and enrolling in schools . . ." (The Economist 2016). Other localities, acting in response to the recent escalation of deportation and harsh policing policies, offer sanctuary to prevent their immigrant population from fleeing. This may be for purely humanitarian reasons, a liberal protest strategy, or to shore up a local economy that depends upon immigrant labor. Whatever the motivation, today's sanctuary movement is rapidly growing.

As the number of local sanctuaries increased during the 2010s, this generated a response from both state and federal officials. In 2010, the number of local sanctuaries in the United States was 162 (Riverstone-Newell 2013a, 188). Today, there are about 330 sanctuary cities, counties, and townships (Funkhouser 2017). This diffusion caught the attention of conservative state leaders (as well as national leaders), many of whom moved to introduce preemption legislation, particularly after sanctuary cities came under scrutiny during the 2016 campaign season. As a presidential candidate, Donald Trump added sanctuary cities to his target list after the July 2015 murder of a San Francisco woman, allegedly by an undocumented man who had been released from custody by a sanctuary city, San Francisco. As president, he pledged to "cancel" federal funding from any city that harbors undocumented immigrants, a threat reinforced recently by warning letters sent from the Department of Justice to several sanctuary cities (Tanfani 2017). In January 2017, the "Stop Dangerous Sanctuary Cities Act" was introduced in Congress and is expected to pass. In response to Trump's threats, "at least 37 cities . . . have doubled down . . . and at least four cities have newly declared themselves sanctuary cities since Trump's election" (Arrieta-Kenna 2016). Trump signed an executive order on January 25, 2017, to "strip federal grant money" from sanctuary cities. But it remains unclear what effect this order will actually have. A number of

localities are vowing to resist federal intervention, including by challenging this executive order in federal court (Reston 2017), and with some success in enjoining its enforcement in an April 2017 ruling in the U.S. District Court for the Northern District of California (*County of Santa Clara v. Trump*, 17-cv-00574 [N.D. Cal]). For conservative state officials operating in the current environment of heightened hostility toward undocumented immigrants, attacking sanctuary localities within their own states is top of list.

In 2015, at least eight states introduced preemption bills addressing local sanctuary. North Carolina's preemption law was signed in October 2015. Arizona joined in a few months later with SB 1070, which not only prohibited local noncooperation policies but "encouraged racial profiling by requiring police [to] inquire into the immigration status of anybody they 'suspect' is undocumented" (Fischer 2016). Alabama and Virginia followed. Virginia's law requires sanctuary cities to pay for property damages caused by undocumented immigrants. In 2016, an additional eighteen states considered passing sanctuary preemption laws, with mixed success (Morse 2016). The National Council of State Legislatures reports that, in 2017, twenty-nine states are considering sanctuary preemption legislation (Morse et al. 2017). Mississippi's S 2710 has passed, prohibiting state and local jurisdictions and colleges from noncooperation with federal agencies regarding immigration status verification or reporting. An additional 100 bills are still in play as of spring 2017 (Morse et al. 2017).

The latest trend in sanctuary preemption bills is to assign penalties to the jurisdiction and/or officials who refuse to comply with federal immigration policies. For example, Texas Republican Governor Greg Abbott pledged in January 2017 to sign SB 4, the state's sanctuary preemption bill. SB 4 is what legal theorists call a "super-preemption bill" because it stipulates penalties for noncomplying localities, including the withholding of state grant funding, and the removal of any noncompliant officials (Ward 2017). In the meantime, Governor Abbot blocked \$1.8 million in grant funding from Travis County due to its sanctuary policy. The Florida legislature is considering a bill that would impose a \$5,000 per-day fine on sanctuary cities. A proposal under consideration in the North Carolina General Assembly in its 2017 session "would withhold tax revenues from national gas, telecommunications and beer and wine sales from any locality that maintains a sanctuary policy" (Wilson 2017b).

Preempting LGBT Rights Protections

Progressive localities across the nation have long sought to protect the rights of their LGBT citizens with a variety of measures including same-sex partner registries (predating the nationwide legalization of same-sex marriage by a decade), requirements for contractors with the city to provide equal benefits to registered

domestic partners, and San Francisco's issuance of marriage licenses to same-sex couples, among others. According to the [Movement Advancement Project \(2017\)](#), over 225 localities have some sort of protection in place to prohibit discrimination based on sexual orientation or gender identity.

These local ordinances have in turn generated various state and federal government responses ([Riverstone-Newell 2013a](#)). The history of state preemption measures regarding LGBT rights dates to the 1990s, when Colorado voters approved a 1992 ballot initiative, Amendment 2, which prohibited local antidiscrimination laws. This state constitutional amendment was challenged in federal court and overturned by the U.S. Supreme Court in *Romer v. Evans*, 517 U.S. 620 (1996). After several decades passed, in the 2010s three states enacted laws preempting local antidiscrimination ordinances. Tennessee passed such a law in 2011 and Arkansas followed in 2015, with both states acting in direct response to the consideration or actual extension of local protections to the LGBT community ([Graham 2016](#)). However, neither of these laws attracted as much attention as North Carolina's HB2, enacted in March 2016 in response to a Charlotte "bathroom" ordinance passed one month earlier. The publicity around HB 2 sparked a strong response among those both supporting and opposing specific protections for those in the LGBT community.

Charlotte's ordinance extended its existing nondiscrimination protections to include "sexual orientation, gender identity, and gender expression," thereby allowing transgender people to use public bathrooms that aligned with their gender identity, among other protections. North Carolina's response was to enact a preemption law. HB 2, which passed both legislative chambers and was signed into law in a single-day special session, not only requires people to use public bathrooms consistent with the sex on their birth certificate but also holds that the "state's nondiscrimination policy, which doesn't include sexual orientation or gender identity, and state labor laws, including minimum wage regulations, 'supersede and preempt' local policies" ([Yee 2016](#)).

After North Carolina's preemption law passed, and despite considerable backlash and financial impact, which "cost the state millions of dollars, hundreds of jobs, numerous entertainment and sporting events and, arguably, one Republican governor" ([Margolin 2016](#)), other states have considered similar action. Texas legislators for example, introduced their own "bathroom bill," SB 6, as well as SB 92, "which would overturn local ordinances protecting LGBT people from workplace and housing discrimination . . ." ([Milburn 2017](#)). The passage of SB 6 would overturn local laws already in place, preempting those cities from providing bathroom protections to transgender people ([Milburn 2017](#)).

Over forty anti-LGBT bills across sixteen states have already been introduced in 2017. As of April 2017, similar preemption "bathroom bills" remain in play in thirteen states ([Grassroots Change 2017b](#)). While these states debated the pros and

cons of preemption, in March 2017 North Carolina's Republican-controlled legislature and newly elected Democratic Governor Roy Cooper finally reached a compromise to replace HB 2 with a revised law, HB 142. However, critics have dubbed the new law "HB 2.0" because the only real change to the preemption portion of the original law is to impose a moratorium on local anti-discrimination ordinances until 2020, rather than preempting them outright.

Although North Carolina's preemption bill was revised in response to pressure from the public and from athletic associations, corporations, and entertainers who removed business and events from the state, critics of these state preemption laws have enjoyed less success in court. After Arkansas passed a 2015 preemption law, Fayetteville nevertheless enacted an antidiscrimination ordinance protecting LGBT rights. When this ordinance was challenged on the ground that it was inconsistent with state law, a circuit judge initially ruled in favor of the city. But this judgment was reversed by the Arkansas Supreme Court in a February 2017 decision holding that the local ordinance was in fact preempted by state law (*Protect Fayetteville v. City of Fayetteville*, 2017 Ark. 49 [Ark. 2017]).

"Super-Preemption," "Blanket Preemption," and Local Autonomy

Targeted preemption laws, such as those discussed above, are but one strategy conservative state leaders are using to control local governments. Other types of preemption are becoming more common as well, including "super-preemption" and "blanket preemption." Super-preemption laws hold the locality and/or participating officials liable for local regulation or ordinances pertaining to specific policy areas, such as local firearm regulation. Florida's 2016 firearms statute, for example, exposes "local government officials to lawsuits, penalties, fees, and even removal from office for even attempting to pass a bill contravening state law" (Capps 2017). Tallahassee Mayor Andrew Gillum is currently navigating a lawsuit brought by two gun-rights organizations, and without the benefit of the city's legal department, because Florida's preemption law prohibits the use of public funds in defending gun ordinance cases. The charges against Mayor Gillum center on his (and other local officials') negligence in repealing local gun regulations after the state passed its preemption law. Local officials argued that removal was not required as the state law rendered them null and void. A state circuit court found in favor of the mayor, but the decision was appealed and continues before Florida's First District Court of Appeal in early 2017 (Capps 2017).

Texas's anti-sanctuary bill, SB 4, would allow for financial penalties and removal of officials, as well. The governor pledged to sign the bill, which is expected to pass in early 2017. Several states, including Pennsylvania, Tennessee, Wyoming, North Carolina, and Nevada, now have super-preemption laws related to gun control, most having a "private right of action" clause that allows "individuals or groups

the right to sue local governments and, in some cases, individual local officials, if they believe they are enforcing local firearms laws” (Fischer 2016). Similar bills have been introduced in Arizona, Iowa, Texas, and Michigan. In fact, Arizona’s SB 1487, “the mother of all local preemption bills” (Daigneau 2017) passed in 2016, allowing the state to withhold funds from localities that pass regulations or ordinances that contradict state law.

Blanket preemption laws are generally written with the intent to bar localities from enforcing any type of local regulation or legislation that does not exactly conform to state law. In other words, the state is “commanding the field.” The interesting feature of recent state-level blanket preemption laws is that “the field” is being interpreted as encompassing all state laws, rather than a single policy area, such as pensions or gun control. For example, Arizona’s Republican Governor Doug Ducey approved a law in early 2016 which allows for the denial of state funding to localities that pass any law that the state attorney general determines is in violation or conflict with a state law. In response, Executive Director of Arizona Cities and Towns, Ken Strobeck, said, “We’re spending an awful lot of time at the state government chasing cities for I’m not sure what kind of problem. We certainly do not like having shared revenue thrown around as a punishment” (Wingett and Rau 2016).

Other measures have been introduced but have not been enacted. Oklahoma’s SB 1289 was introduced in 2016 but pulled before a vote. SB 1289 would have prevented localities from enacting rules that do not conform to state laws or, as one observer put it, “doing almost anything that isn’t specifically authorized by the state legislature” (Fischer 2016). In 2015, Texas legislators introduced a bill that would have prohibited local legislation without state approval. It was rejected, but a bill preempting local fracking bans did pass leading one organization to surmise, “The blanket preemption strategy evidently is to start with a bill that would preempt everything, and then to reach a ‘compromise’ to preempt only some issues – like smokefree laws” (Americans for Nonsmokers’ Rights 2016).

Conclusion

When state and federal leaders fail to act on important social and economic issues, local governments often step into the breach, passing legislation that reflects local conditions, needs, and desires. This has certainly been the case over the last two decades, with progressive local governments adopting living-wage requirements, smoke-free ordinances, local gun regulations, LGBT rights and protections, undocumented immigrant sanctuary policies, local healthcare requirements, and much more. Localities have been policy laboratories, aggressively seeking solutions to needs and problems that concentrate in cities, but are often overlooked or left unattended by higher levels of government (Schragger 2010). Unsurprisingly,

Democrats and progressive interest groups have appreciated local innovation and experimentation, whether by ballot initiative or local legislation, particularly as Congress and state legislatures face gridlock and conservative majorities (Greenblatt 2016b).

In filling the gaps in policy leadership, localities have demonstrated their agility—their nimbleness—a quality in short supply at higher levels of government. Further, a policy that does well in one locality often diffuses to other local governments (Greenblatt 2015a), sometimes even to the states (Riverstone-Newell 2013b), allowing others to learn from the successes or failures of smaller scale policy experiments. In the past, conservatives have argued for local innovation and experimentation to offset the trend toward higher government bloat. For today's conservatives, however, local innovation and the potential for policy learning and diffusion, especially progressive innovation and diffusion, is exactly the problem. Thus, the current conservative fight for decentralization extends only as far as the states. Ohio Republican state senator Keith Faber sums it up this way: “[W]hen we talk about local control, we mean state control” (Wilson 2017a).

The rise in state preemption legislation as a means to undo progressive local policies is a departure from preemption's traditional use, that is, to establish a floor for local responsibilities and activities. The standards set by state preemption laws have often left to localities the choice to do more than their states require. Localities, for instance, often provide an array of services above and beyond the state-required “essential services.” This ability to do more is where local preferences are manifest, where the qualities of a population that are unique to a locality find expression - or not. Today's preemption legislation seeks to prevent those expressions, particularly those that take the form of progressive policies. Using their growing presence in state legislatures and gubernatorial offices, and prompted, educated, and supported by industry and conservative groups, Republican state leaders have set their sights on progressive cities, taking aim at local autonomy and control.

The outcome of this push for state preemption is, as has been discussed, mixed. While some state preemption laws have accomplished their intended goals, as in the case of laws barring local fracking bans in Texas, Oklahoma, and North Carolina, measures preempting local wage ordinances in Alabama and Ohio, and the preemption of local gun regulations in several states, other attempts have been challenged by interested groups or localities in the courts. Pennsylvania, for instance, lost its bid to preempt local fracking bans when the state Supreme Court issued a ruling grounded not in the virtues of local control but rather in a state constitutional environmental-protection guarantee.

Cities have taken strong stances against preemption legislation, leading to somewhat of a standoff with their states (and the federal government), as in the case of sanctuary cities. Cleveland fought back against Ohio's preemption of

local-hire laws, which preempted Cleveland's requirement that contractors with the city hire local, and the court granted an injunction citing the state's Home Rule Amendment, which grants its localities the "broadest possible powers of self-government . . ." The law is still under appeal. Therefore, preemption legislation is far from a sure thing in terms of accomplishing its aims. However, the threat of preemption may keep some localities from acting on issues that are likely to garner state attention. If personal penalties are attached, as is the case with "super-preemption," a further chilling effect is likely.

Donald Trump's election to the presidency, combined with Republican gains in state legislatures in 2016, stimulated a renewed push to enact state preemption laws (Wilson 2017a). Alan Greenblatt writes, ". . . in a lot of states, Republicans will be able to proceed in pretty much any front where they can find agreement amongst themselves" (2016a). Predictions are just that, but if the pattern that has developed over the past several years holds, local governments can expect to lose even more power, to have their decisions undone, to face legal challenges, and to face personal and jurisdiction penalties for actions the state determines to be "overreach." In short, the surge of state preemption activity during the last several years shows no signs of waning and is, if anything, increasing in scope and intensity.

The increasing prominence and change in character of state preemption laws, along with the threats they pose to local policy innovation, call for additional scholarly analysis. Much attention has been given to battles between federal and state officials regarding the extent of federal power vis-à-vis state autonomy. However, recent disputes between state and local officials' rival federal-state battles in their intensity, and in a way that would benefit from additional investigation of the sort provided in this article focusing on the causes and consequences of state preemption laws in several prominent policy areas.

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References

- American Legislative Exchange Council. 2017. About ALEC. <https://www.alec.org/about/>.
- . 2016. Strategic Plan 2016-2018. <https://www.alec.org/app/uploads/2016/06/ALEC-Strat-Plan-Final-051616.pdf>.
- Americans for Nonsmokers' Rights. 2016. The evolving face of preemption: new tactics to limit local control. www.protectlocalcontrol.org/docs/EvolvingPreemption.pdf
- Arrieta-Kenna, Ruari. 2016. Sanctuary cities stand firm against Trump. *Politico*, December 12. <http://www.politico.com/story/2016/12/sanctuary-cities-trump-immigration-232449>.

- Ballotpedia. 2016. Colorado imposition of distribution and supermajority requirements for citizen-initiated constitutional amendments, Amendment 71. [https://ballotpedia.org/Colorado_Imposition_of_Distribution_and_Supermajority_Requirements_for_Citizen-Initiated_Constitutional_Amendments,_Amendment_71_\(2016\)](https://ballotpedia.org/Colorado_Imposition_of_Distribution_and_Supermajority_Requirements_for_Citizen-Initiated_Constitutional_Amendments,_Amendment_71_(2016)).
- Barr, Diana. 2015. Missouri legislators block cities from raising minimum wage. *St. Louis Business Journal* September 17. http://www.bizjournals.com/stlouis/morning_call/2015/09/missouri-legislators-block-cities-from-raising.html.
- Bartik, Alexander W., Janet Currie, Michael Greenstone, and Christopher R. Knittel. 2016. The local economic and welfare consequences of hydraulic fracturing. SSRN: <https://ssrn.com/abstract=2692197>.
- Bott, Celeste. 2017. Missouri Supreme Court Upholds St. Louis Minimum Wage Hike. *St. Louis Post-Dispatch*, March 1. http://www.stltoday.com/news/local/crime-and-courts/missouri-supreme-court-upholds-st-louis-minimum-wage-hike/article_aaf8f23e-ae1c-51f7-9d78-381f82e3cfc.html.
- Bowman, Ann O'M and Richard C. Kearney. 2011. Second-order devolution: Data and doubt. *Publius: The Journal of Federalism* 41 (4): 563–585.
- Capps, Kriston. 2017. A Florida mayor fights the gun lobby. *Citylab*, January 6. <http://www.citylab.com/politics/2017/01/a-florida-mayor-fights-the-gun-lobby/512345/>.
- Casuga, Jay-Anne B., and Michael Rose. 2016. Are state workplace preemption laws on the rise? *Bloomberg BNA*, July 19. <https://www.bna.com/state-workplace-preemption-n73014444995/>.
- Covert, Bryce. 2016. John Kasich blocks Ohio Cities from raising their own minimum wages. *ThinkProgress*, December 21. <https://thinkprogress.org/kasich-minimum-wage-preemption-5b64b08f6efd#.6at37rx7i>.
- . 2017. Red State Legislatures are Taking Away Workers' Raises and Paid Leave. *ThinkProgress*. March 28. <https://thinkprogress.org/iowa-minimum-wage-paid-sick-leave-preemption-44168f0a223>.
- Daigneau, Elizabeth. 2017. Will states stop cities from combating climate change? *Governing*, January. <http://www.governing.com/topics/transportation-infrastructure/gov-climate-change-states-cities-preemption.html>.
- Denver Post Editorial Board. 2016. Don't be hoodwinked by the raise the bar campaign. *The Denver Post*, October 26. <http://www.denverpost.com/2016/10/26/dont-be-hoodwinked-by-the-raise-the-bar-campaign/>.
- Dewan, Shaila. 2015. States are blocking local regulations, often at industry's behest. *New York Times*, February 23. <http://www.nytimes.com/2015/02/24/us/govern-yourself-state-lawmakers-tell-cities-but-not-too-much.html>.
- DuPuis, Nicole, Trevor Langan, Christina McFarland, Angelina Panettieri, and Brooks Rainwater. 2017. City rights in an era of preemption: A state-by-state analysis. National League of Cities. <http://nlc.org/sites/default/files/2017-02/NLC%20Preemption%20Report%202017.pdf>

- Economic Policy Institute. 2017. Minimum Wage Tracker. Updated April 20. <http://www.epi.org/minimum-wage-tracker/>.
- Einstein, Katherine Levine, and David M. Glick. 2017. Cities in American federalism: Evidence on state-local government conflict from a survey of mayors. *Publius: The Journal of Federalism* Advance Access: <https://doi.org/10.1093/publius/pjx026>
- Fernandez, Manny. 2012. Drilling for gas under cemeteries raises concerns. *New York Times*, July 8. <http://www.nytimes.com/2012/07/09/us/drilling-for-natural-gas-under-cemeteries-raises-concerns.html>.
- Fischer, Brendan. 2016. Corporate interests take aim at local democracy. *PRWatch*, February 3. <http://www.prwatch.org/news/2016/02/13029/2016-ALEC-local-control>.
- Funkhouser, Mark. 2017. A strategy for conflict. *Governing*, January. <http://www.governing.com/pubdesk/gov-strategy-conflict.html>.
- Grabar, Henry. 2016. The shackling of the American City. *Slate*. September 9. http://www.slate.com/articles/business/metropolis/2016/09/how_alec_acce_and_pre_emptions_laws_are_gutting_the_powers_of_american_cities.html.
- Graham, David A. 2016. North Carolina overturns LGBT-discrimination bans. *The Atlantic*, March 24. <http://www.theatlantic.com/politics/archive/2016/03/north-carolina-lgbt-discrimination-transgender-bathrooms/475125/>.
- Grant, Mary. 2016. Local resolutions against fracking. *Food & Water Watch*, November 17. <https://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking#texas>.
- Grassroots Change. 2017a. Preemption map. <http://grassrootschange.net/preemption-map/>.
- . 2017b. Preemption update: Discrimination & sanctuary cities. <https://grassrootchange.net/2017/03/discrimination-sanctuary-cities/>.
- Greenblatt, Alan. 2016a. With control of more states, conservatives plan their course. *Governing*, November 11. <http://www.governing.com/topics/elections/gov-trump-states-election-legislatures-governors.html>.
- . 2016b. Beyond North Carolina's LGBT battle: states' war on cities. *Governing*, March 25. <http://www.governing.com/topics/politics/gov-states-cities-preemption-laws.html>.
- . 2015a. From campaign finance to pot, progressives look to local voters. *Governing*, October 2. <http://www.governing.com/topics/politics/gov-local-ballot-measures-election-2015.html>.
- . 2015b. Divided legislatures produce Gridlock, not compromise. *Governing*, June 2. <http://www.governing.com/topics/politics/gov-divided-legislatures.html>.
- Hirji, Zahra, and Lisa Song. 2016. Map: The fracking boom, state by state. *Inside Climate News*, January 20, 2015 (updated April 2016). <https://insideclimatenews.org/news/20150120/map-fracking-boom-state-state>.
- Hodos, Jerome. 2009. Against exceptionalism: Intercurrence and intergovernmental relations in Britain and the United States. In *The city in American political development*, ed. Richardson Dilworth, 44–63. New York: Routledge.

- Jacobs, Ken, and Annette Bernhardt. 2014. Minimum wage debate goes local. *SFGate*, April 18. <http://www.sfgate.com/default/article/Minimum-wage-debate-goes-local-5413650.php>.
- Krane, Dale, Carol Ebdon, and John Bartle. 2004. Devolution, fiscal federalism, and changing patterns of municipal revenues: The mismatch between theory and reality. *Journal of Public Administration Research and Theory* 14 (4): 513–533.
- Kuby, Lauren. 2015. ALEC and ACCE Pay-to-Play Meeting: in the Belly of the Beast in Scottsdale. December 14. <http://www.prwatch.org/news/2015/12/12998/alec-and-acce-pay-play-meeting-belly-beast-scottsdale>.
- Light, John. 2016. Oil Industry's sneaky plan could make it nearly impossible to ban fracking in Colorado. *Grist*, November 7. <http://grist.org/climate-energy/oil-industrys-sneaky-plan-could-make-it-nearly-impossible-to-ban-fracking-in-colorado/>.
- Lyman, Brian. 2016. New Alabama law blocks cities from setting their own minimum wage. *Governing*, February 29. <http://www.governing.com/topics/mgmt/tns-alabama-bentley-minimum-wage.html>.
- Margolin, Emma. 2016. Why is North Carolina's legislature so extreme? HB2 and the cost of gerrymandering. *NBC News*, December 23. <http://www.nbcnews.com/news/us-news/why-north-carolina-s-legislature-so-extreme-hb2-cost-gerrymandering-n699306>.
- McCormick, Elizabeth M. 2016. Federal anti-sanctuary law: A failed approach to immigration enforcement and a poor substitute for real reform. *Lewis & Clark Law Review* 20 (1): 165–235. <https://law.lclark.edu/live/files/22081-lcb201art4mccormickpdf>.
- Milburn, Forrest. 2017. LGBT advocates decry 'Bathroom Bill' and other measures. *Austin American-Statesman*, January 19. <http://www.mystatesman.com/news/state-regional-govt-politics/lgbt-advocates-decry-bathroom-bill-and-other-measures/K6SoQ8sqeW6G7VNKLgVqkO/>.
- Morse, Ann. 2016. What's a sanctuary policy? FAQ on federal, state, and local action on immigration enforcement. National Conference of State Legislatures, May 18. <http://www.ncsl.org/research/immigration/sanctuary-policy-faq635991795.aspx#bills>.
- Morse, Ann, Lydia Deatherage, and Veronica Ibarra. 2017. Sanctuary policy FAQ. National Council of State Legislatures, March 30. <http://www.ncsl.org/research/immigration/sanctuary-policy-faq635991795.aspx#bills>.
- Movement Advancement Project. 2017. Local non-discrimination ordinances. http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances/policies.
- Mowery, Paul D., Steve Babb, Robin Hobart, Cindy Tworek, and Allison MacNeil. 2012. The impact of state preemption of local smoking restrictions on public health protections and changes in social norms. *Journal of Environmental and Public Health*, <http://dx.doi.org/10.1155/2012/632629>.
- National Conference of State Legislatures. 2017. State minimum wages: 2017 minimum wage by state. January 5. <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>.
- . 2017. Minimum wage legislation database. <http://www.ncsl.org/research/labor-and-employment/minimum-wage-legislation-database.aspx>.

- National Employment Law Project. 2013. The politics of wage suppression: Inside ALEC's legislative campaign against low-paid workers. February. <http://www.nelp.org/content/uploads/2015/03/NELP-ALEC-Wage-Suppression.pdf>.
- . 2017. Fighting preemption: The movement for higher wages must oppose state efforts to block local minimum wage laws. February. <http://www.nelp.org/content/uploads/Fighting-Preemption-Local-Minimum-Wage-Laws.pdf>.
- Nicholson-Crotty, Sean, and Nick Theobald. 2011. Claiming credit in the U.S. Federal System: Testing a model of competitive federalism. *Publius: The Journal of Federalism* 41 (2): 232–256.
- Poe, Kelly. 2017. Birmingham \$10.10 minimum wage supporters file appeal after lawsuit dismissed. *Al.com.*, March 3. http://www.al.com/business/index.ssf/2017/03/birmingham_1010_minimum_wage_s.html
- Protect Colorado. 2017. Our mission. <http://www.protectcolorado.com/about-us/>.
- Rapoport, Abby. 2016. Blue cities red states. *American Prospect*, August 22. <http://prospect.org/article/blue-cities-battle-red-states>.
- Reston, Maeve. 2017. Big city mayors confident they'll remain sanctuaries. *CNN Politics*, January 27. <http://www.cnn.com/2017/01/26/politics/donald-trump-sanctuary-cities/>.
- Riverstone-Newell, Lori. 2013a. *Renegade cities, public policy, and the dilemmas of federalism*. Boulder, CO: Lynne Rienner Publishers.
- . 2013b. The diffusion of local bill of rights resolutions to the states. *State and Local Government Review* 45 (1): 14–24.
- Russell, Jon D., and Aaron Bostrom. 2016. Federalism, Dillon rule and home rule. *White Paper*. January. <http://www.acce.us/app/uploads/2016/06/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf>.
- Sbragia, Alberta M. 1996. *Debt wish: Entrepreneurial cities, U.S. federalism, and economic development*. Pittsburgh, PA: University of Pittsburgh Press.
- Schragger, Richard C. 2016. *City power: Urban governance on a global age*. New York: Oxford University Press.
- . 2010. The progressive city. The Eleventh Annual Liman Public Interest Colloquium. Virginia Public Law and Legal Theory Research Paper No. 2009-16. SSRN: <http://ssrn.com/abstract=1471430>.
- . 2009. Mobile capital, local economic regulation, and the democratic city. *Harvard Law Review* 123 (2): 482–540.
- Smith, Brian J. 2011. Fracing the environment? An examination of the effects and regulation of hydraulic fracturing. *Texas Wesleyan Law Review* 18: 129.
- Spillman, Benjamin. 2017. Nevada considers fracking ban. *Reno Gazette-Journal*, February 21. <http://www.rgj.com/story/news/2017/02/21/nevada-considers-fracking-ban/98226716/>.
- Storey, Tim. 2016. Moving ahead: What election 2016 meant for state legislatures. *State Legislatures Magazine*. December. <http://www.ncsl.org/bookstore/state-legislatures-magazine/what-election-2016-meant-for-the-states.aspx>.

- Tanfani, Joseph. 2017. Justice department warns sanctuary cities in California, 8 other jurisdictions to cooperate with immigration enforcement. *Los Angeles Times*, April 21. <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-justice-for-mally-wans-sanctuary-1492788670-htlmstory.html>.
- The Economist. 2016. What are sanctuary cities? November 22. <http://www.economist.com/blogs/economist-explains/2016/11/economist-explains-13>.
- Trego, Garrett D. 2016. Colorado Supreme Court holds state law preempts municipalities' fracking Moratoria. *Lexology Newsfeed*. June 2. <http://www.lexology.com/library/detail.aspx?g=219317f6-a716-49e7-a6fc-ce7b59abee8>.
- UC Berkeley Labor Center. 2016. Inventory of US City and County Minimum Wage Ordinances. November 16. <http://laborcenter.berkeley.edu/minimum-wage-living-wage-resources/inventory-of-us-city-and-county-minimum-wage-ordinances/>.
- van de Biezenbos, Kristen. 2017. Where oil is king. *Fordham Law Review* 85 (4): 1631–1672.
- Ward, Kenric. 2017. Texas Governor pledges to sign anti-sanctuary city bill. *The Daily Signal*, January 6. <http://dailysignal.com/2017/01/06/texas-governor-pledges-to-sign-anti-sanctuary-city-bill/>.
- Wilson, Reid. 2017a. GOP aims to rein in liberal cities. *The Hill*, January 5. <http://thehill.com/homenews/campaign/312766-gop-aims-to-rein-in-liberal-cities>.
- . 2017b. GOP states move to block sanctuary cities after Trump order. *The Hill*. February 9. <http://thehill.com/homenews/state-watch/318754-gop-states-move-to-block-sanctuary-cities-after-trump-order>.
- Wingett, Yvonne, and Alia Beard Rau. 2016. Bill targets local governments that violate state law. *The Arizona Republic*, February 1. <http://www.azcentral.com/story/news/arizona/politics/2016/02/01/bill-targets-local-governments-violate-state-la>.
- Yee, Allie. 2016. Growing southern cities are increasingly targets of state preemption. *Truthout*, April 4. <http://www.truth-out.org/news/item/35484-growing-southern-cities-are-increasingly-targets-of-state-pre-emption>.