

DON'T LET IT STOP YOU!

# PREEMPTION

## What is Preemption?

**Preemption** describes the action taken by a higher level of government (state or federal) to reduce the authority of a lower government (city or local) to enact a new policy.

A policy that includes language (or even implies) that little can be done to undermine that policy in the future is said to contain *preemptive language*. The policy may indicate that the state "shall be the only expressed regulator" of an issue or specify that no new ordinance "may supercede state [or federal] law".

The good news, however, is that preemption is not a law. That means preemption should only be considered a yield sign—not a stop sign.

“ **Preemption should be considered a YIELD sign—not a STOP sign!** ”



## Can You Fight Preemption?

# YES

## Repeal, Fight, Prevent

- ▶ Argue that the preemption a government has put in place prevents localities from fully protecting the health of all of its citizens or that it prevents them from acquiring needed resources to serve their citizens.
- ▶ Remind decision makers that preemption threatens both democratic authority and public health.
- ▶ To prevent preemption of a new policy, include a non-preemption clause, or *savings clause*, such as "nothing in this law preempts more restrictive state or local regulation or requirements."

**Never let preemption stop you from pursuing healthy policies for your community or state.**

## How Preemption Plays Out

**The tobacco industry is the original abuser** of preemption. For decades they have pursued preemption as a tactic to remove communities' rights to enact strong, innovative smoke-free air laws and youth prevention policies. In fact, they have written the preemption playbook for other big industries. Because 90% of state bills fail to become law, it benefits big corporations to tie issues up at the state level despite community health concerns.

**Although we know that taxes on sugar-sweetened beverages reduce consumption**, promote public health and save billions in healthcare costs, beverage companies spent \$30 million in California alone defending state preemption to prevent communities from establishing a local soda tax.



**During the global COVID-19 pandemic, Atlanta Mayor Keisha Lance-Bottoms mandated mask-wearing within the city** to help reduce the rapid spread of the virus. Governor Brian Kemp sued the city mayor claiming that the local directive was "inconsistent" with state-wide orders and was, therefore, preempted.

**Preemption prevents localities from fully protecting the health of all of its citizens.** ”



THE CENTER FOR  
BLACK HEALTH & EQUITY

For support in combating preemption, contact the Public Health Law Center or visit [www.CenterforBlackHealth.org](http://www.CenterforBlackHealth.org).