

Center for Gun Policy and Research

Preemption of Local Gun Laws: *Questions and Answers*

What is preemption?

Preemption refers to the ability of laws at one level of government to negate laws at a lower level. In the United States, there are three basic levels of government -- federal, state, and local. The U.S. Constitution has a "supremacy clause" which declares that federal laws are the "supreme law of the land" and supersede any conflicting state law.¹ This means that federal laws can "preempt" or invalidate state laws under certain circumstances.

Similarly, state laws can sometimes preempt local laws. States generally have very broad authority, called their "police powers," to pass laws protecting the health and safety of their citizens. States may choose to delegate some of their police powers to localities, like cities or municipalities, so that they can pass laws about matters of local concern. Examples of typical local laws to protect the public's health, enacted under these so-called "home rule" provisions, include anti-smoking ordinances, building codes, and zoning laws.²

How are local laws preempted?

In general, local laws can be preempted in two different ways -- either expressly or implicitly. Express preemption occurs when a state law or a provision of the state constitution specifically prohibits localities from regulating in a particular area. An example of express preemption is Maine's law which declares that "no political subdivision of the state...may adopt any order, ordinance, rule, or regulation concerning the sale, purchase, purchase delay, transfer, ownership, use, possession, bearing, transportation, licensing, permitting, registration, taxation or any other matter pertaining to firearms, components, ammunition or supplies."³

Implied preemption occurs when the body of state laws within a given subject matter (like the regulation of guns) suggests an intention by the state legislature to "occupy the field" of regulation in that subject, to the exclusion of local laws. Implied preemption can also occur when a local law would clearly contradict a state law or would frustrate the accomplishment of the state law's objectives. Express preemption is usually clear from the language of the law; implied preemption is based upon a finding by a judge in a specific case.

Why is preemption a problem for gun violence prevention advocates?

For many gun violence prevention advocates, restrictive state-wide laws might be preferable to varying local measures. But it is often more difficult to enact state-wide, rather than local laws.

In most states the burden of gun violence is not evenly distributed by race, class, or geography. Large cities usually experience rates of gun violence many times higher than their rural neighbors.^{2,4} For this reason, representatives from rural areas may choose to block enactment of gun violence prevention laws in the state legislature. If a state has not preempted local gun laws, however, then localities most affected by gun violence can act without the acquiescence of the rest of the state.

What is the NRA's position on preemption?

The NRA strongly supports firearm preemption. In a 1986 statement, the NRA called enactment of firearm preemption its "top legislative priority" to combat the "recent popularity of restrictive local ordinances." The NRA argues that firearm preemption would eliminate the potential hodgepodge of different local laws within a state -- which would pose, in their view, a problem for transient gun owners.^{2,5} Proponents of local gun laws argue that this variation is a reasonable public health response for different localities with their own unique problems. The NRA's position on preemption is similar to that of other targets for public health intervention, such as the tobacco industry, that prefer to challenge regulation in fifty state venues rather than in thousands of local ones.

How do I know if my state preempts local gun laws?

The NRA and others have been very successful in advocating for firearm preemption. Today, more than 40 states preempt at least some kinds of local gun laws, either expressly or by implication. Within the past few years, Georgia, Utah, and Wyoming have enacted firearm preemption. But preemption does not mean the same thing in every state. In some states nearly all local gun laws are preempted, while in others only some aspect of local law is affected. For example, in California local laws pertaining to the "registration or licensing" of firearms are expressly preempted, but other kinds of local gun laws remain valid.^{6,7} Since the scope of preemption varies from state to state, a chart indicating the presence or absence of preemption in each state could be misleading or even needlessly discouraging to health advocates. Instead, consider contacting a local attorney or gun violence prevention advocacy organization to understand the specific parameters of preemption in your state.

For Further Reading

Teret SP, DeFrancesco S, Bailey LA. Gun deaths and home rule: a case for local regulation of a local public health problem. *American Journal of Preventive Medicine*. 1993;9(suppl. 1):44-46.

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4. Centers for Disease Control and Prevention. Injury mortality atlas of the United States, 1979-1987. Atlanta, Georgia: U.S. Department of Health and Human Services (Centers for Disease Control and Prevention). 1991.
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7. Gorovitz E. California Dreamin': the myth of state preemption of local firearm regulation. *University of San Francisco Law Review*. 1996;30:395-426.

THE JOHNS HOPKINS CENTER FOR GUN POLICY AND RESEARCH is dedicated to reducing gun-related injuries and deaths through the application of a public health perspective to the issue of gun violence prevention. Its faculty and affiliated experts have pioneered innovative strategies for reducing gun violence, and achieved a national reputation for high-quality, unbiased policy-relevant research. The Center examines the public health effects of guns in society and serves as an objective resource for the media, policy makers, advocacy groups, and attorneys. In 1995, the Center was formally established with funding from The Joyce Foundation of Chicago. For more information, contact the Center at 410.614.3243 or jhcgpr@jhsph.edu.