

# Preemption Strategy

## *The Attack on Home Rule in Florida*

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January 2020



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## Executive Summary

For several years a revolution has been underway in the relationship between states and their local governments. In many states, including Florida, legislative majorities, particularly Republicans, are passing legislation that weakens the home rule powers of cities and counties.

The states' mechanism is preemption, the legal doctrine that empowers states to override local governments when they differ. Preemption has evolved from a practice that involved narrow issues of regulation and was designed to align state and local laws to make sure there were no inconsistencies. Now new, more aggressive types of preemption practiced by states erode the power of local governments over vast areas of law and regulation. Although Democrats have, and continue to, use preemption to block actions on the local level, it has become a strategy for Republicans who win the governorship and majorities in the state house and senate. Republican majorities in some states, including Florida, admittedly use preemption to punish local governments for enacting progressive legislation.

The new forms of preemption include punitive provisions, which hold local governments and officials liable for violating state preemption legislation. In addition to blocking local governments' action, punitive preemption subjects local governments and officials to penalties such as fines, damages and removal from office.

The use of punitive preemption in Florida is now at issue in an appellate court in Tallahassee. The case in question involves punishments inflicted by the Legislature in 2011 for any violation of the state's "occupying the whole field", or preemption, of firearms regulation. It results from suits filed by cities, counties and local officials after the Parkland High School shooting and challenges the 2011 punitive revisions to the 1987 firearms preemption law.

The increased use of the preemption strategy in Florida comes with consequences. Preemption interferes with voters' ability to determine the direction of their own communities and receive adequate responses to local conditions. Government action is moved from the entity closest to the people – local governments – and empowers the Legislature in Tallahassee. Preemption can block local ordinances that reflect a community's will to help women, people of color, LGBTQ people and those in poverty. And punitive preemption laws, if determined to be constitutional, would change the type of candidates who run for office, deterring qualified people from seeking election to local positions.

Special-interest groups and the conservative American Legislative Exchange Council often find agreeable legislatures for their agendas. They attain their goals in part by using cookie-cutter legislation passed in many states.

The use of preemption in the states, including Florida, is rising. No indications point to a decrease in the practice. Public education and the ballot box are the avenues available for slowing the increase in legislatures' appetite for preemption.

## **Key Findings**

- Home rule powers granted to municipalities and counties do not protect local governments against aggressive preemption of their actions.
- Traditionally preemption was used to align state and local laws to make sure there were no inconsistencies. New types of powerful preemptions – called maximum preemption, blanket preemption, nuclear preemption and super-preemption – are now often used to void or block local government actions.
- Increasingly, super-preemption laws that hold local governments liable for action in specific policy areas are being used to punish or threaten punishment of local officials.
- Preemption is not always “bad”. “Bad” preemption deters policy innovation, limits local governments' ability to make policy or undermines protection of individual rights.
- New preemptions are driven by partisan, ideological or special-interest motivations.
- Some state preemptions have been stimulated by corporate interests to block regulations they dislike.
- Some Republicans have expressly acknowledged that the use of preemption is a strategy to block progressive local actions and to punish “rogue” local governments.
- Aggressive use of preemptions has many negative consequences. Preemptions interfere with local residents' ability to determine the direction of their communities. They block local attempts to add protections for LGBTQ individuals, black residents and the poor. They prevent local governments from enacting strong environmental and community health measures. Use of punitive preemption changes the kind of candidate who would serve under punitive laws.
- Use of preemption as a legislative strategy is increasing in Florida.
- Bills containing multiple preemptions are becoming common in the Florida Legislature.

- Business-funded corporate interest groups are using their considerable political influence, gained through campaign contributions and lobbying expenditures, to push preemption legislation in the Florida Legislature.

## **Policy Options**

- Require two-thirds or super-majority vote for passage of legislation that preempts local government authority (similar to what is required for local unfunded mandates and public record exemptions).
- Establish by rule or law a single-subject requirement for preemption legislation.
- Prohibit any fines or punitive liabilities for local governments that violate legislative preemptions.

## **Introduction**

For many years state governments have limited the authority of local governments through preemption. The goal of older preemptions was to set a uniform standard that coordinated state and local regulation. But the number and scope of preemption actions have accelerated in recent years as state legislatures carve out areas of law that only they, and not local governments, can address. The goal of so-called “old” preemptions “has, in many cases, given way to the desire to prevent ‘any regulation at all.’”<sup>1</sup>

As has been the case nationally, the Florida Legislature in recent years has expanded its use of preemption into new areas of regulation, hampering local governments’ ability to respond to an array of local challenges and chipping away at home rule authority.

Florida’s trend toward more state preemption is the result in part of two decades of Republican control of the governorship and both the state House of Representatives and state Senate.

Republican and conservative supporters of preemption have made clear that preemption is a strategy rooted in partisan, ideological and urban-rural concerns. One Florida legislator has predicted that preemption will accelerate because of “an ideological battle developing between a conservative state Legislature and more liberal urban centers.”<sup>2</sup> A national group says state preemption is justified because “local governments have become victims of far left organizations manipulating the public and local officials.”<sup>3</sup> Preemptions often are created at the instigation and with the support of business and conservative organizations and other special interests desiring to

overthrow local initiatives inimical to their interests.<sup>4</sup> Preemption frequently constitutes “a conservative blockade against progressive interests.”<sup>5</sup>

An example of how preemption is effectuated comes from the Florida Legislature’s preemption of local regulation of firearms three decades ago, when Democrats were in power. The 1987 Joe Carlucci Uniform Firearms Act prohibited any local ordinances and regulations concerning firearms. It is that law that prevents city or county action in Florida on gun regulations, even in the wake of the Marjory Stoneman Douglas High School shootings.

That law is clear in outlining sweeping preemption authority by the Legislature:

Except as expressly provided by general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or regulations relating thereto. Any such existing ordinances are hereby declared null and void.<sup>6</sup>

In that case, gun rights organizations pressed for a statewide ban on gun regulation by local governments and the Democratic governor and Legislature agreed.

Since the 1987 firearms law the appetite of the Florida Legislature to preempt local actions has grown enormously. The Legislature has asserted its powers of preemption on an increasing number of issues, including smoking, sanctuary cities, banning polystyrene and plastic bags, pest control, local signage, affordable housing and the minimum wage.<sup>7</sup> Nineteen separate preemption issues were proposed in the Legislature in its 2019 session, although some were rejected and some substantially watered down.<sup>8</sup> The increase in Florida accompanies a similar increase throughout the nation, where state action is being applied to such issues as labor standards, civil rights, public health and safety, technology, environmental protection, local zoning and local taxes.<sup>9</sup> Many of those preemption attempts have been pushed by conservative groups such as the American Legislative Exchange Council.<sup>10</sup>

The defense of the rights of states to preempt represents a reversal of previous arguments of conservatives.

Until recently, preemption was regarded more as a tool of liberal federal governments wanting to protect marginalized communities against local provincialism, while local autonomy was at the top of the list of far-right conservative values. But norms have shifted: localism is now associated with progressive causes and Democratic Party politics. Today, many

conservative politicians view both local and federal government as threats to liberty, seeing states as the right level to govern.<sup>11</sup>

Efforts of legislatures nationally to usurp local home rule are expected to continue unabated under the anti-regulation philosophy of Republicans who have gained control over the legislature and/or governorship in various states. A similar onslaught against home rule can be expected in Florida until the Legislature's hunger for preemption is tempered, perhaps through elections and public education.

## **Analysis of the Use of Preemption**

### **Home Rule**

Preemption opponents argue that the aggregation of power by the Legislature chips away at their home rule authority and therefore local governments' ability to address local needs of their citizens.

Before home rule powers were granted to local governments, counties and municipalities existed only as creatures of the state. Local governments had no inherent powers of their own; even enacting a local ordinance required a special bill passed by the legislature.

Until adoption of the 1968 Florida Constitution, Florida was one of the states that followed the legal concept known as "Dillon's Rule," named after two court decisions by Judge John F. Dillon of Iowa in 1868. The rule "affirms the previously held, narrow interpretation of a local government's authority, in which a substate government may engage in an activity only if it is specifically sanctioned by the state government."<sup>12</sup>

The 1968 Constitution approved by Florida voters moved state-local relations away from Dillon's Rule and gave broad home rule powers to counties and municipalities. Counties were provided the powers of local self-governance "not inconsistent" with general law.<sup>13</sup> Municipalities were granted "governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."<sup>14</sup> Local governments were not granted fiscal home rule authority, however. Local taxation was limited in another section of the Constitution that said most "forms of taxation shall be preempted to the state except as provided by general law."<sup>15</sup>

After several court challenges, the Legislature adopted in 1973 the Municipal Home Rule Powers Act that spelled out municipalities' authority.<sup>16</sup>

Despite that authority and similar laws in other states, home rule is increasingly being overridden by preemptions. “At the heart of the local challenge to state preemption is home rule, the idea, grounded in the constitutions of the vast majority of states, that local governments have state-constitutionally-protected law-making status. The problem is that in nearly all states for most local regulatory measures, *home rule fails to protect against preemption.*”<sup>17</sup> (Emphasis added.)

## **Preemption Defined**

Preemption is the legal doctrine that allows a higher level of government to supersede the authority of a lower level.<sup>18</sup> State preemption allows the Florida Legislature to override actions of local governments or to totally eliminate the power of local governments to address a certain area of law.

Preemption laws are not new (although they have been applied recently in novel forms), and in some areas are not in contention. For example, the Florida Constitution establishes that most taxation is preempted to the state.<sup>19</sup> Municipalities and counties have long been prohibited from some regulation in areas involving emergency medical services, purchasing, environment management, records management, growth management, sanitation and transportation.<sup>20</sup> Many preemption laws in the past have set a floor for regulation by local government, requiring municipalities to act in areas where they might have done little or nothing – for example, state requirements in environmental protection.<sup>21</sup>

## **Benefits of Preemption**

Opponents of preemption acknowledge that it is not inherently bad. “Until recently, state governments exercised preemption mainly in accordance with its original purpose: enforce balance and efficiency in our multi-tiered system of government.”

There can be

valid reasons for preempting local decisions. Unconstrained local autonomy does not have a spotless record, after all, especially where civil rights are concerned. Preemption scholars offer multiple examples of ‘good’ uses for preemption, such as in response to a local policy that carries demonstrable negative [effects], or when local policies violate state or federal laws concerning fundamental rights, like equal protection.<sup>22</sup>



“Bad” preemption “damages the intergovernmental power structure, deters policy innovation, and undermines basic principles of democracy” or “threatens a local government’s ability to make effective policies” or “undermine[s] a locality’s ability to advance or protect racial, gender, economic, and health equity.”<sup>23</sup>

## Legal Authority for Preemption

Florida law provides for two kinds of preemption. Express preemption involves a clear statement by the Legislature that indicates it is occupying a whole field of regulation, as in the firearms statute. Implied preemption results when state law contains no clear preemption language but preemption can be inferred from existing law.<sup>24,25</sup> “[A] finding of implied preemption is based on a court’s gleaning of legislative intent and can also substantially infringe upon a local government’s home rule authority in violation of the direct mandate of the constitutional home rule provision and MHRPA (Municipal Home Rule Powers Act).”<sup>26</sup>

## New Types of Preemption

In addition to the legal concepts of express and implied preemption, preemption is often discussed in terms that describe various new types of preemptive actions, dubbed “the new preemption” by some. The term “**maximum preemption**” is used to describe laws that prevent local governments from passing any ordinances or regulations in specific policy areas,<sup>27</sup> as opposed to “**minimum preemption**” that sets a floor for regulation and forces local governments to do something they would not otherwise have done.<sup>28</sup>

The term “**blanket preemption**” is used to describe laws that prohibit a local government from passing regulations or ordinances that do not conform exactly to state law. The state “commands the field” in an area of regulation,<sup>29</sup> preempting “broad swaths of preexisting home rule powers.”<sup>30</sup>

“**Nuclear preemption**” is a term used to describe laws that neuter the ability of local governments to act in certain areas of policy without state authorization.<sup>31</sup> Florida’s House Bill 3 in the 2019 session, ultimately unsuccessful,<sup>32</sup> is an example of a so-called nuclear preemption. It “expressly preempt[ed] the regulation and licensing of professions and occupations” and superseded “any local government regulation or license requirement of professions and occupations.”<sup>33</sup> The National Employment Law Project said HB 3 would have

blocked all future local business regulations – unless the local government could prove through a burdensome process that the regulation was necessary to protect the public health, safety, or welfare from “significant and discernible harm or damage” and that the local power “being exercised

[was] only being exercised to the extent necessary for that purpose.” Because virtually every type of local regulation will impact local businesses, the proposed bill essentially sought to eliminate the role of cities and counties in policymaking, threatening even the most basic local decision making in areas like land use and zoning.<sup>34</sup>

Another version of House Bill 3 has been filed for the 2020 legislative session.<sup>35</sup>

## **Florida Legislature’s Use of Punitive Preemption**

“**Super-preemption**” laws hold the local government or its officials liable for local regulation in specific policy areas, such as local firearm regulation.<sup>36</sup> In recent years several state legislatures have adopted such **punitive** laws that enact penalties on local officials or governments for having on their books ordinances dealing with a preempted area of regulation. They “do not merely nullify inconsistent local rules – the traditional effect of preemption – but impose harsh penalties on local officials or governments simply for having such measures on their books.”<sup>37</sup>

The Florida Legislature enacted punitive provisions concerning firearm regulation in 2011. That legislation, as summarized by a Circuit Court judge in July 2019, created

civil penalties for any person who violates that preemption by enacting or causing to be enforced a firearm or ammunition regulation. These penalties are both official and personal, meaning not only is the local governmental entity liable, the individual officials can be sued personally also. These officials, along with any other person who enacts or causes to be enforced a preempted firearm regulation, can also be removed from office by the governor.<sup>38</sup>

The legislation also imposed a fine of up to \$5,000 and provided authority for damages up to \$100,000 to be awarded in a civil suit against the government official.<sup>39</sup>

In a ruling during a legal challenge to the law, Circuit Court Judge Charles Dodson wrote that “[T]he State has never created legislation that would impose penalties on local officials and local governments for the violation of a preemption statute. In every other circumstance, the only consequence of a determination that local action violates express preemption would be a finding that such local action is null and void.”<sup>40</sup>

Dodson’s ruling struck down the punitive provisions of the law as unconstitutional while upholding the legislative preemption authority over firearms regulation.<sup>41</sup> But the case is under review in the First District Court of Appeal following an appeal by the state, supported by the

National Rifle Association and opposed by many local governments and officials, the Florida League of Cities and the Florida Association of Counties.<sup>42</sup>

The NRA argues in its brief that

The penalty provisions are necessary to preserve and protect the Florida Legislature’s prerogative to occupy the field of firearm regulation to preempt unlawful local action. Local authority and home rule cannot constrain the Legislature’s enforcement of its preemption prerogative because local governments do not have any independent rights or powers beyond those granted by the Florida Legislature. Nor do the penalty provisions violate the principles of legislative and governmental immunity flowing from the doctrine of separation of powers because that doctrine applies exclusively to state government.<sup>43</sup>

The Florida League of Cities and Florida Association of Counties argue that “A determination that the penalty provisions are constitutional increases the threat of liability at significant cost to local government officials and will also have a chilling effect on individuals desiring to serve in local government.”<sup>44</sup>

## **New Preemptions Differ from Traditional Ones**

In the past, preemptions were “narrow, targeted removals of individual regulatory powers”<sup>45</sup> and were about “aligning state and local law – making sure there were no inconsistencies.”<sup>46</sup>

“[O]ld preemption ‘consisted of a judicial determination of whether a local law is inconsistent with pre-existing state law.’ It was a mechanism for resolving episodic legal disputes between state and local regulatory powers, and for managing the relationships between those powers.” The belief that local variations could coexist with state law undergirded decisions about preemptions. “Old preemption decisions considered to what extent such local additions and variations made sense; new preemption considers whether they should exist at all.”<sup>47</sup>

“Classic preemption disputes continue to arise, but the real action today is the new preemption: sweeping state laws that clearly, intentionally, extensively, and at times punitively bar local efforts to address a host of local problems.”<sup>48</sup> Uses of new types of preemption “run the gamut of legislative subjects, from hot-button social issues like firearms regulation, sanctuary cities, and the rights of transgender individuals; to workplace disputes over wages, leave policies, and scheduling, to ostensibly more prosaic subjects like plastic bags, menu labeling, residential sprinkler systems, and puppy mills.”<sup>49</sup>

In addition, “Recent preemption legislation seems to incorporate new tactics...: provisions designed to hold local governments fiscally accountable, provisions designed to hold local officials personally liable, and provisions designed to structurally alter the ability of local governments to contest state preemption.”<sup>50</sup>

The Florida Legislature has been active in using some of the new kinds of preemptions. A report by preemption opponents found that

In less than a decade, for instance, the State of Florida has passed nearly 20 laws whose sole purpose is to preempt local legislation dealing with a particular topic – from plastic bags to bio-medical waste to vacation rentals and beyond. These targeted removals of discrete home rule powers do not follow the commonly understood parameters of preemption, in which the State adopts a general policy or uniform standards and declares its application to be exclusive across the state. States have become fond of using preemption as a means of creating a regulatory vacuum, adopting statutes whose sole purpose is to invalidate the decisions of locally elected governments whose policies differ from the preferences of the state legislative majority.<sup>51</sup>

### **Other Partisan Use of New Preemption Authority**

Use of new types of preemptions is not solely the province of Republicans. Democrats have used preemptions, although not nearly as often. “[T]he new preemption is not confined to Republican-controlled states, nor is it a distinctly Republican Party strategy. States with Democratic-majority legislatures and governors are executing the new preemption, too, although the targeted policies are different. In Republican states, preemptive action is about both economic deregulation and social conservatism....”<sup>52</sup>

Examples of Democratic preemptions include Florida’s Carlucci firearms preemption passed by Democrats in 1987 with the urging of gun rights groups. In Rhode Island, the Democratic majority in 2014 joined with business interests to use preemption to block a minimum wage increase.<sup>53</sup> In Minnesota in 2017, the Democratic governor approved state preemption of local bans against the use of plastic bags.<sup>54</sup> In New York, the Democratic legislature and governor asserted state power to delay imposition of a plastic bag ban approved by New York City government.<sup>55</sup> In 2018 in California, the legislature preempted local taxes on soda, a goal of the beverage industry.<sup>56</sup> Laws preempting local control have also been passed recently in the Democratic-majority states of Maine and Oregon.<sup>57</sup>

## The Motivations for New Preemptions

Preemptions have been described in terms of motivation. One set is called “**partisan**” and/or “**policy-driven**.” They often involve national wedge issues opposed by Republican majorities in some states, such as sanctuary cities and the minimum wage. Another set is “**special-interest driven**,” in which “a special interest group, usually a business group that is frustrated by a specific situation in a specific city or county...takes that to the state legislature and has a state remedy to address a local problem.”<sup>58</sup>

## Partisan Preemptions

A discussion of preemption by Florida Republican State Representative Paul Renner highlights the partisan and ideological nature of many preemptions. Preemptions have been passed by the Legislature to stop “rogue” local governments from enacting ordinances on such matters as sanctuary cities, he said. Local governments are “doing things that really are sharp departures from the way the country has become so prosperous, so strong and so free, and so states are stepping in to say, look, we’re not going to let you destroy all the good work that we’re doing.

“So there is that ideological struggle that I think may become more and more prevalent “where you see battles nationwide, more battles between states as a whole that tend to be more as a whole, center-right, and cities, again as a whole more big cities...tend to be more to the left,” Renner said. “The Democrat Party has really become a party of dense urban areas and the rest of the country tends to be more conservative, more Republican.”<sup>59</sup>

His description of the battle underway echoes explanations for many preemptions by academic and other researchers. Increased preemption legislation can be attributed in part to “the growing Republican control of state legislatures, especially after the tide turned in Republicans’ favor during the 2010 elections,” one study said.<sup>60</sup> By 2017 Republicans had the majority in both houses of the legislature in 36 states and control of the legislature and governorship in 25 states.<sup>61,62</sup> Republican ascendancy in statehouses has resulted in the GOP holding more legislative seats than ever before – slightly more than 4,000 compared to slightly more than 3,000 Democrats. For the first time since 1945, the numbers of Republicans in legislatures surpassed Democrats after the 2010 election that was highlighted by a wave of Tea Party candidates.<sup>63</sup>

Another study says

The rise of the new preemption is closely connected to the interacting polarizations of Republican and Democrat, conservative and liberal, and non-urban and urban... [T]he preponderance of deregulatory, punitive, and

nuclear preemptive actions and proposals have been advanced by Republican-dominated state governments, embrace conservative economic and social causes, and respond to – and are designed to block – relatively progressive regulatory actions adopted by activist cities and counties....

Even as a majority of states are controlled by Republicans, most cities, particularly big cities, are led by Democrats...The not-so-irresistible force of cities pushing progressive agendas in environmental regulation, public health, anti-discrimination, and workplace equity increasingly runs into the immovable object of conservative state resistance, manifested by aggressive preemption.<sup>64</sup>

## **Special-Interest Driven Preemptions**

Special interests have been active for decades in pushing for preemptions. “Often propelled by trade association and business lobbying, preemptive state laws are aimed not at coordinating state and local regulation but preventing any regulation at all,” says one academic study.<sup>65</sup> “Recent preemption efforts [are] 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,” concludes another study.<sup>66</sup>

Special interest driven preemptions began in the late 1980s when the tobacco industry sought legislative aid to overcome local smoking restrictions. Then in the 1990s the National Rifle Association began seeking state preemption of local gun regulation. The NRA effort resulted in firearms preemption laws in 43 states, preventing local governments from enacting their own firearms regulations. Thereafter, “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.”<sup>67</sup>

Opponents of preemption of labor-related preemptions have called “the corporate lobby” the “most significant force behind the recent wave of preemption laws nationwide.”

Failing to stop the adoption of local pro-worker laws, the corporate lobby has persuaded state-level lawmakers to revoke the underlying local authority to adopt such policies, in some cases rolling back wage increases that were already enacted by city and county governments. In doing so, the corporate lobby has not only captured the political lever closest to the people (their city or county government) it has also hampered the democratic process at its most intimate level.”<sup>68</sup>

## Rationales for New Preemptions

In many cases, proponents of preemption – whether partisan, special-interest driven or independent of those motivations – argue that statewide laws and regulations bring needed standardization to an area that otherwise would be regulated in a piecemeal fashion. “Pro-business conservatives argue that pre-emption has kept at bay an incomprehensibly complex patchwork of local regulations.”<sup>69</sup> Those who support minimum wage preemption, for example, assert that the state

has an interest in employment regulation uniformity, so that companies operating in multiple jurisdictions do not have to master multiple legal regimes, thereby increasing compliance costs, and thus, the cost of doing business in the state. Second, the state can argue that the wage rate in one jurisdiction will affect the wages employers must offer in neighboring jurisdictions as well; thus, it has an interest in limiting these spillover effects to ensure that high wages do not increase unemployment or make the state unattractive to business.<sup>70</sup>

## Areas of Law and Regulations Subject to New Preemptions

State legislators have preempted local laws in four main areas of governance: economics, social policy, health and safety, according to the National League of Cities.<sup>71</sup> “The new preemption is broad in scope and wide-ranging in subject matter,” a study says. It has encompassed such areas as “sanctuary cities... firearms, workplace relations, public health and the environment, anti-discrimination, Civil War monuments, the sharing economy, and puppy mills.”<sup>72</sup>

“Local workplace regulation may be the most significant target of the new preemption, triggered by the leadership role many local governments have taken in strengthening worker rights” by enacting minimum wages higher than the state or federal minimum, paid sick leave and family leave policies.<sup>73</sup>

State legislatures also have acted to preempt local environmental and public health rules, local nutrition regulations of calorie counts and other menu labeling, restrictions on promotional toys with fast-food meals or addressing “food deserts” where few stores exist for the purchase of fruit and vegetables. Others include regulation of pesticides, tobacco products, fracking, antidiscrimination laws, fire sprinkler installation in new homes and plastic bags, municipal broadband services, ride-sharing activities and rent-control ordinances.<sup>74</sup>

## **Preemptions in Other States**

In 2017 the National League of Cities found that 24 states had preempted laws involving minimum wage, 17 paid leave, 17 local broadband, 37 ride-sharing and three each home-sharing and antidiscrimination ordinances and regulations.<sup>75</sup> By 2019, 43 states prohibited firearms legislation, 44 ride-hailing ordinances, 31 local rent-control policies, 25 the minimum wage, 23 paid sick leave laws, and 20 blocking bans on legislation concerning municipal broadband networks and 15 blocking plastic bag bans.<sup>76</sup>

## **Preemption Strategy in the Florida Legislature**

From 2017 through the 2019 legislative sessions, there have been a total of 119 bills filed that contain some form of state preemption of local governments (see Appendix). Integrity Florida research shows the number of bills is increasing each year with 36 bills filed in 2017,<sup>77</sup> 38 filed in 2018<sup>78</sup> and 45 filed in 2019.<sup>79</sup> Only a small number of those bills (11) were passed into law, but it is clear, that on a yearly basis, there is a concerted and strategic effort in the Florida Legislature to strip local government of its power to act on a wide variety of issues.

The local issues that are the subject of preemption bills run a wide gamut and often return year after year because they fail to pass. Each year from 2017 through 2019 there were bills preempting local regulation of short-term vacation rentals like Airbnb. An example of this legislation is House Bill 733<sup>80</sup> filed in 2018.

Other bills that were filed three years in a row and failed to pass each year include legislation to preempt to the state local use of red-light cameras. House Bill 6003<sup>81</sup> filed in 2019 would have prohibited local governments from implementing red-light camera programs.

While some preemption legislation is narrowly targeted like 2019's Senate Bill 82,<sup>82</sup> which preempted local regulation of vegetable gardens, other legislation is notable for the range and scope of its preemption. In 2017, House Bill 17<sup>83</sup> would preempt to the state all local regulation of businesses, professions or occupations, unless the regulation is authorized by law. Any regulations that were adopted by local governments before the bill became law would have been repealed in July 2020. A similar bill in the Senate (SB 1158<sup>84</sup>) would have preempted local regulation of "matters of commerce, trade and labor."

A 2016 Politico report<sup>85</sup> determined that "preemptions are playing more of a key role in environmental issues..." The report cited support for preemptions on "regulation of plastic bags, polystyrene containers and landscape fertilizer" by the business group the Florida Retail



Federation. The headline of the report was: “Business groups enlist Legislature to preempt local environmental regs.”

Samantha Padgett, the Retail Federation’s general counsel, is quoted in the report as saying, “From our perspective, preemptions are appropriate when a patchwork of local regulation is overly burdensome to what I call multi-jurisdictional operators.” The report says “preemptions are not confined to environmental issues” and cites three bills filed in 2016 as examples, including a bill preempting regulation of rideshares, a bill preempting municipal election dates to coincide with statewide primaries and general elections and a bill preempting local red light cameras ordinances.

Past, present and future legislative leadership, particularly in the Florida House of Representatives, appear committed to using the preemption strategy to attack the home rule authority of local governments. Richard Corcoran, who served as House Speaker for 2017 through 2018, told Politico that he can give a thousand examples of when preemptions are needed to thwart burdensome local regulations and tax increases.<sup>86</sup> Corcoran said, “I absolutely believe in preemption when those people are violating the principles and philosophy that make society great.”

In 2018, Speaker Corcoran spoke favorably about preemption again, saying governments create a “patchwork quilt” of policies that are unsustainable and bog down businesses in regulation.<sup>87</sup> Corcoran told WFSU-FM, “Every year it’s something we can’t even fathom or conceive the stuff that they come up with at the local government level.”

Representative Jose Oliva, who is serving as House Speaker from 2019 through 2020, has also spoken publicly about using the preemption strategy to roll back local government regulations. Speaker Oliva told reporters in 2019, “The greater the government involvement in something, the less there is true free market.”<sup>88</sup>

Representative Chris Sprowls, the Speaker in line to follow Speaker Oliva in 2021, did not list preemption as one of his priorities when he was designated Speaker-elect in September 2019.<sup>89</sup> But he has sponsored preemption legislation in the past, including the high profile bill in 2017 to preempt local regulation of ride-share companies like Uber and Lyft.<sup>90</sup>

Representative Paul Renner is expected to be Speaker of the House following Representative Sprowls, for the 2023 and 2024 legislative sessions. Representative Renner is an outspoken advocate for state preemption of local regulations as evidenced in a 2017 interview he gave on WNZF-FM in Flagler County. As reported by FlaglerLive,<sup>91</sup> Renner talked about how preemption is used by the legislature to combat “rogue” cities.

“Part of this, to be real blunt about it,” Renner said, “what you’re seeing and this is part of a larger conversation (we) could have is the concentration of support for a more center-left or left-wing viewpoint, and this is again not Flagler County, but our major cities, San Francisco, New York. So part of the fight, part of the sub-context of this whole discussion, is the reason we think they’re going rogue is because it’s Bernie Sanders in charge of your local city government ...”

“And so states are stepping in to say,” Renner continues, “look we’re not going to let you destroy all the good work that we’re doing and all the economic growth we’re creating in the state for people by trying to ban or shut down particular industries that you don’t like.”

In addition to preempting local governments, Renner also threatened to withhold state funding from cities that choose to be “sanctuary cities” and take in undocumented immigrants. “If you don’t want to follow the law because of your ideological view on immigration and refuse to follow the law, we’re not going to fund you anymore.”

The 2019 legislature adopted a sanctuary city preemption similar to that described by Representative Renner.<sup>92</sup> Senate Bill 168<sup>93</sup> prohibits local officials from implementing “sanctuary policies.” To show local governments how serious the state is when it comes to limiting home rule, the law gives the governor the authority to remove those officials who do not comply with the law. The bill was passed and signed into law even though there were no sanctuary cities in Florida at the time.

## **2020 Florida Legislative Session**

With more than a month away from the bill filing deadline for the 2020 legislative session, 16 bills had already been filed containing some form of state preemption of local regulation. As of December 10, 2019, nine preemption bills had been filed in the House and seven bills had been filed in the Senate (see Appendix).

As in previous sessions, the proposed preemptions cover a wide variety of issues ranging from home-based businesses to fireworks, towing services, and monuments and memorials.

## **The Role of ALEC (American Legislative Exchange Council)**

The American Legislative Exchange Council (ALEC) has played an important role in advancing preemption legislation, according to researchers as well as the organization itself. Its support for preempting the power of local governments includes creating model legislation, hundreds of which are included on its website. (See examples<sup>94</sup>)

ALEC says its task forces

have considered, written and approved hundreds of model bills on a wide range of issues, model legislation that will frame the debate today and far into the future. Each year, close to 1,000 bills, based at least in part on ALEC Model Legislation, are introduced in the states. Of these, an average of 20 percent become law.<sup>95</sup>

It also says its membership 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.”<sup>96</sup> (Although it is not known how many Florida legislators are or have been ALEC members, a few have been mentioned in 2019 press reports: Representative Amber Mariano has been named the organization’s Legislator of the Week<sup>97</sup> and four legislators from Polk County discussed attending ALEC’s 2019 national conference.<sup>98</sup>

ALEC’s trade association and corporate members include the National Association of Manufacturers, the U.S. Chamber of Commerce, the National Federation of Independent Business, Pharmaceutical Research and Manufacturers of America (PhRMA), Pfizer, Koch Enterprises, Altria (whose brands include Philip Morris USA and the U.S. Smokeless Tobacco Company), State Farm Insurance and Peabody Energy (the largest private-sector coal company in the world).<sup>99,100</sup>

State preemption “exploded with the lobbying efforts, through ALEC and other groups, of the tobacco industry, followed by the National Rifle Association in the early 1990s, as tobacco bills were handed out at ALEC conferences and new legislators were greeted with free cigarettes,” influencing states to pass “dozens of tobacco pre-emption bills a year. The Consistency in Firearms Regulation Act, a onetime ALEC model bill that abolishes local gun laws, was to some extent ‘the model of models,’ for today’s pre-emption policies.”<sup>101</sup>

In recent years ALEC has fought minimum wage laws enacted by many cities throughout the nation. It has provided model legislation preempting local minimum wages since 2002, reaffirming it in 2013.<sup>102</sup>

Leaked accounts of a December 2014 ALEC meeting included discussion by a staff member of an “onslaught” of bills at all levels of government to raise minimum wages. “Perhaps the biggest threat comes from the local level,” she said. “Our solution that Alec has passed is state legislation that pre-empts the politics from within the state from raising the minimum wage higher than state level.”<sup>103</sup>

ALEC has been clear about its intent to rein in local governments. They “have become victims of far-left organizations manipulating the public and local officials to create policies that hurt economic development and individual freedom,” Jon Russell, the director of ALEC’s American City County Exchange, wrote in 2015. His article, titled "Preemption Laws Provide Backstop for Localized Progressive Politics," said “big government activists have begun targeting local governments to create oppressive policies that could not survive at the state capitol. As a result, state lawmakers have found themselves in the precarious position of passing preemption laws to get a handle on intrusive government at the local level.”<sup>104</sup>

## **Consequences of State Preemptions**

### **Positive**

1. Businesses have one uniform law to comply with, instead of possibly dozens of ordinances or regulations enacted by local governments.
2. Preemption can be used to require that local governments meet or exceed state requirements on a certain issue.

### **Negative**

1. Aggressive use of state preemption weakens home rule and the power of local governments.
2. Preemption interferes with voters’ ability to determine the direction of their own communities and receive adequate responses to local conditions. Communities are different and therefore may have differing needs and desires from local government. For example, said an August 2019 report about preemption, “urban areas may be disproportionately affected. This means the urban areas where gun homicides are most prevalent have their hands tied in mitigating these circumstances by rural legislators who have little connection to these cities and the problems they face.”<sup>105</sup>
3. Government is most effective and accountable at the local level. Local governments hold meetings in areas close to their residents, as opposed to state-level meetings in Tallahassee. Local officials also represent fewer people, making it easier for them to respond to the needs of their constituents.<sup>106</sup>
4. Local ordinances that reflect a community’s will to help women, people of color and LGBTQ people may be blocked. For example, the North Carolina Legislature initially

blocked an antidiscrimination ordinance passed in Charlotte.<sup>107</sup> The frequent use of state preemption “threaten[s] to stymie any form of local progress protecting individual rights.”<sup>108</sup>

5. Preemption may block local policies that seek to mitigate the disproportionate impacts of state government on people of color. “Preemption laws are not inherently anti-democratic but become so when used to amplify existing racial and economic inequality,” a 2018 report said. “What we’re seeing is conservative, mostly white legislatures really tying the hands of cities that are majority people of color.”<sup>109</sup>
6. Similarly, low-wage earners may be disadvantaged by state preemptions. “[W]hen corporate-friendly, overwhelmingly white legislatures decide to tie the hands of local policymakers to raise the wage floor in their cities, it is typically communities earning low wages, in many cases disproportionately people of color, who suffer...,” said a report titled Fighting Wage Preemption: How Workers Have Lost Billions in Wages and How We Can Restore Local Democracy. “They feel the economic effects of wages insufficient to meet local costs of living.”<sup>110</sup>
7. Punitive preemption laws would change the type of candidates who run for office. “By imposing personal liability, state legislation may “deter qualified individuals from seeking local office” and “distort the thinking of the individuals who do serve, thus discouraging valid local legislative action in areas that are not reserved to the state,” according to a Columbia Law Review article. “Although local governments are inherently restricted in their powers, they serve an important role in passing regulations that their constituents favor, and such a power should not be limited by fear of punitive retribution.”<sup>111</sup>
8. Health-related organizations oppose preemptions of ordinances and regulations designed to improve community health. “[S]tate legislators across the political spectrum are increasingly supporting “preemption policies intended to improve community health and address social and economic disparities, including policies related to tobacco control, firearm safety, food and nutrition...”, according to an article in the American Journal of Public Health.<sup>112</sup> “Local governments are... often best positioned to address health and social disparities caused by inequities that are not present or obvious at a statewide level.”<sup>113</sup>

## **Anatomy of a Preemption (Single-Use Plastic Straws)**

The following is a case study meant to demonstrate how a proposed preemption becomes a bill in the Florida Legislature, the forces at work that move the bill through the legislative process and

what happens when the bill becomes law. For this case study, Integrity Florida examined House Bill 771, which would have placed a moratorium on local regulation of single-use plastic straws until July 2024. The bill was filed and passed in the 2019 legislative session but was eventually vetoed by Governor Ron DeSantis.

## **The Beginning of Session 2019**

As the 2019 legislative session began, 10 Florida cities had adopted ordinances regulating the use of plastic straws. According to a legislative staff analysis,<sup>114</sup> those cities included St. Petersburg, Town of Fort Myers Beach, City of Coral Gables, Village of Pinecrest, Town of Surfside, Miami Beach, City of Delray Beach, Fort Lauderdale, Deerfield Beach and the City of Hallandale Beach.

Those cities took action in response to growing concerns about the environmental impact of single-use plastic straws on trash in the ocean and the harmful effects on sea life. The Florida Department of Environmental Protection also had concerns about plastic straws and initiated a “skip the straw” campaign before the legislative session began in an effort to reduce use.<sup>115</sup>

Before the 2019 legislative session began on March 5, three bills were filed in the House and Senate that preempted local regulation of single-use plastic straws to the state. The bills were HB 1299 by Representative Spencer Roach,<sup>116</sup> HB 603 by Representatives Anthony Sabatini and Randy Fine<sup>117</sup> and SB 588 by Senator Travis Hudson.<sup>118</sup>

### **Senate Bill 588**

Senate Bill 588 was first heard in the Commerce and Tourism Committee on March 4, the day before the legislative session began. The committee adopted what’s known as a “strike all amendment” that revised the original bill. The new proposed legislation did five things:<sup>119</sup>

- Establishes a moratorium on the local regulation and enforcement of single-use plastic straws;
- Requires the Department of Environmental Protection, or an entity designated by DEP, to conduct a study to evaluate the environmental impact of single-use plastic straws and to report the results of the study to the Legislature by January 1, 2024;
- Provides that the moratorium is lifted, effective July 1, 2024, if the Legislature does not enact a general law specifying a statewide policy regarding single-use plastic straws;
- Provides it is a violation if a local government attempts to adopt or enforce single-use plastic straw regulations before July 1, 2024, which shall result in a fine to the offending local government entity in the amount of \$25,000; and

- Preempts the regulation of over-the-counter proprietary drugs and cosmetics to the state, notwithstanding any other law or local ordinance to the contrary.

The new language differed from the original bill filed by Senator Hutson, which would have prohibited a food service establishment from distributing single-use plastic straws unless a customer requested it. The original bill also preempted all regulation of plastic straws to the state with no moratorium and no study by DEP.

The new bill added the five-year moratorium, required the DEP study and added a new preemption on local regulation of over-the-counter proprietary drugs and cosmetics. It was an early example of what became a relatively common tactic of “bundling” multiple preemptions and leaving legislators a take it or leave it vote, amounting to a Hobson’s choice.

The preemption of local regulation of “proprietary drugs and cosmetics” was prompted by the City of Key West which, in February of 2019, voted to ban the sale of certain types of sunscreen believed to contain chemicals that damage coral reefs.<sup>120</sup>

### **Political Influence Brought to Bear**

After the new, amended version of SB 588 was adopted, the Commerce and Tourism Committee began to hear testimony from the public. It became apparent that four of the most powerful business groups in the state were supporting the new proposed preemptions while opposition came mainly from environmental advocacy groups and the Florida League of Cities and the Florida Association of Counties.

Indicating their support of SB 588 at the meeting were the Florida Retail Federation, Associated Industries of Florida, the Florida Chamber of Commerce and the Florida Restaurant and Lodging Association. The political influence in the Florida Legislature, measured by campaign donations and lobbying expenditures, of any one of these groups would be considered among the highest in the state. Combined it is even more powerful. (See charts below.)

The following charts show the campaign spending of the four business groups during the 2018 election cycle as reported by the Florida Division of Elections.<sup>121</sup> The 2018 election cycle preceded the 2019 legislative session which saw the passage of House Bill 771 placing a five-year preemption on local regulation of plastic straws.

### **Expenditures by Florida Retail Federation PACs in 2018 Election Cycle**

FRF PAC	\$760,290
FRF Beauty Industry Council PAC	\$12,015

FRF Pharmacy Council PAC	\$25,119
FRF Retail Beverage Council PAC	\$6,015
FRF Grocery Council PAC	\$4,200
<b>FRF Total</b>	<b>\$807,639</b>

The largest contributor to the Florida Retail Federation’s PACs is the grocery supermarket chain Publix. In the 2018 election cycle, Public contributed \$500,000 to the FRF PAC, which raised a total of just under \$700,000. Other top contributors include the Walgreens pharmacy chain and Macy’s/Bloomingdale’s department stores.<sup>122</sup>

**Expenditures by Associated Industries of Florida PACs in 2018 Election Cycle**

Associated Industries of Florida PAC	\$3,247,181
Florida Prosperity Fund PAC	\$3,615,433
Voice of Florida Business PAC	\$4,772,922
<b>Total</b>	<b>\$11,635,536</b>

The biggest contributors to the Associated Industries PACs include U.S. Sugar Corporation, Florida Crystals and Florida Power and Light energy company.<sup>123</sup>

**Expenditures by Florida Chamber of Commerce PACs in 2018 Election Cycle**

Florida Chamber of Commerce PAC	\$2,717,276
Florida Chamber of Commerce Alliance PAC	\$1,359,027
Florida Jobs PAC	\$5,147,131
<b>Total</b>	<b>\$9,223,434</b>

Among the biggest contributors to the Florida Chamber of Commerce PACs are Publix, Florida Power and Light, U.S. Sugar, Walt Disney Parks and Resorts and Florida Crystals.<sup>124</sup>

**Expenditures by Florida Restaurant and Lodging Association PAC in 2018 Election Cycle**

Florida Restaurant and Lodging PAC	\$709,262
<b>Total</b>	<b>\$709,262</b>

The biggest contributors to the Florida Restaurant and Lodging PAC are Walmart, Disney World Services and the Florida Restaurant and Lodging Association itself.<sup>125</sup>

**Total 2018 campaign expenditures for all four business groups - \$22,375,522**



The following chart shows the number of registered lobbyists and the estimated amount of compensation paid for lobbying in the 2019 legislative session by each of the four business groups. The estimated compensation covers January through June of 2019 when the plastic straw preemption was passed and is aggregated based on a range of reported compensation. For example, the category of \$1 to \$9,999 is aggregated to \$5,000. Categories continue to be aggregated until compensation reaches \$50,000. Any compensation over \$50,000 is reported by the actual amount. The data is from the Florida Lobbyist Registration Office.<sup>126</sup>

<b>Business Group</b>	<b>Number of registered lobbyists</b>	<b>Estimated Lobbyist Compensation</b>
Fl. Retail Federation	7	\$40,000 – Paid to 2 lobby firms
Associated Industries of Fl.	27	\$190,000 – Paid to 8 lobby firms
Fl. Chamber of Commerce	25	\$110,000 – Paid to 7 lobby firms
Fl. Restaurant and Lodging	17	\$70,000 – Paid to 2 lobby firms
<b>Combined Total</b>	<b>76</b>	<b>\$410,000</b>

## **The End of Session 2019**

After its passage by a 3 to 1 vote in the Commerce and Tourism Committee, Senate Bill 588 was heard next on April 9 at the last meeting of the Senate Community Affairs Committee.<sup>127</sup> The committee adopted a committee substitute for the bill, which removed the single-use plastic straw preemption. Senate Bill 588<sup>128</sup> was never heard by the Rules Committee, its last committee of reference. At that time, it appeared the plastic straw preemption was dead in the Senate.

### **House Bill 603**

Meanwhile, in the House of Representatives, three bills containing the plastic straw preemption were moving through the legislative process. As originally filed, House Bill 603 was a pure single-use plastic straw preemption.<sup>129</sup> It did not provide for a moratorium on local regulation or for penalties if a local government acted despite the preemption.

At its first committee hearing in the Business and Professions Subcommittee, members passed a committee substitute that added the five-year moratorium on local plastic straw regulation, a required plastic straw study by the Florida Department of Environmental Protection and a \$25,000 fine for local governments that violate the preemption. Three of the four business lobby groups mentioned above indicated their support for the bill.<sup>130</sup> The bill passed by a 10 to 4 vote, but HB 603 never received another committee hearing and died in the Appropriations Committee.<sup>131</sup>

## **House Bill 1299**

From the beginning, House Bill 1299 contained multiple preemptions, including a preemption on local regulation of single-use plastic straws.<sup>132</sup> As passed in the Business and Professions Subcommittee, the bill also preempted local regulation of over-the-counter drugs and cosmetics (sunscreen), regulation of alternate generated power sources and the establishment of the minimum age for the sale of tobacco and nicotine dispensing devices.<sup>133</sup>

HB 1299 had two other committee stops in the House before being debated by the full House of Representatives.<sup>134,135</sup> The bill continued to enjoy the support of the four business lobby groups as it moved through the process. The plastic straw preemption was also supported by Disability Rights Florida, an advocacy group for individuals with disabilities in Florida. They argued at every committee stop that plastic straws were “assistive technology” for persons with disabilities and could not be replaced by paper or reusable straws.

The plastic straw preemption also continued to be opposed by environmental groups and the Florida League of Cities. On several occasions, legislators on committees that heard HB1299 voiced objections to the multiple preemptions, addressing a wide variety of subjects contained in the bill. In the State Affairs Committee, Representative Margaret Good said, “I’m also concerned that there are so many preemptions in this bill... It would be nice if we could have taken them up individually and really had robust discussions about each of them.”<sup>136</sup>

House Bill 1299 was passed by the full House of Representatives by a 71 to 41 vote. It then went to the Senate with just days remaining in the legislative session. It was referred to the Commerce and Tourism Committee where it died when the session ended.<sup>137</sup>

## **House Bill 771**

At this point, all the bills that originally contained a version of the plastic straw preemption were either dead or stalled in a committee. Enter House Bill 771. As originally filed, HB 771 dealt with local government recycling programs.<sup>138</sup> The bill remained substantially unchanged through its first two subcommittee hearings, passing by unanimous votes in both. With just two weeks and two days left in the legislative session, HB 771 received its first and only full committee hearing in the State Affairs Committee.<sup>139</sup>

The bill’s sponsor, Representative Toby Overdorf, offered an amendment adding the plastic straw preemption.<sup>140</sup> The amendment to the bill established a moratorium on local regulation of single-use plastic straws until July 2, 2024. The amendment passed, but for the first time the bill had opposition with six members of the committee voting “no.”<sup>141</sup>

On April 25, with eight days remaining in the session, HB 771 was heard by the full House of Representatives. Representative Overdorf proposed another amendment refining the straw preemption to include a study by the legislature’s Office of Program Policy Analysis and Government Accountability (OPPAGA).<sup>142</sup>

The amendment required OPPAGA to study each local regulation of plastic straws to determine “the data and conclusions on which the county, municipality or special district used in adopting such ordinance or regulation.” OPPAGA was to report its findings back to the legislature by December 2019. The bill passed the House as amended with 23 of the 120 members voting “no.”

On April 30, with three days remaining in the session, HB 771 was taken up by the full Senate. The Senate rejected an amendment to the bill that would have excluded any local plastic straw regulation adopted prior to July 2019.<sup>143</sup> HB 771 passed the Senate by a 24 to 15 vote.<sup>144</sup>

### **Florida Governor Ron DeSantis**

With the 2019 legislative session over, it appeared the plastic straw preemption in HB 771 would soon become law, barring an unlikely veto from Governor Ron DeSantis. But veto the bill is exactly what Governor DeSantis did and maybe it shouldn’t have been a surprise.<sup>145</sup> The Tampa Bay Times reported the Governor had hinted as much a week or so earlier during a visit to Key Biscayne, saying, “My general view is locals should make decisions and if you don’t like them you can vote someone else in.”

In his veto message,<sup>146</sup> Governor DeSantis wrote, “HB 771 originally addressed issues with contaminated recyclable materials, but a provision was added that includes a moratorium on local regulation of single-use plastic straws until 2024.”

The message also said, “A number of Florida municipalities, including Sanibel, Ft. Myers Beach and Miami Beach, have enacted ordinances prohibiting single-use plastic straws. These measures have not, as far as I can tell, frustrated any state policy or harmed the state’s interests. In fact, the Florida Department of Environmental Protection has encouraged Florida residents, schools and businesses to reduce plastic straw use.”

And in a nod to the principle of home rule, Governor DeSantis concluded, “Under these circumstances, the State should simply allow local communities to address this issue through the political process. Citizens who oppose plastic straw ordinances can seek recourse by electing people who share their views.”

## Conclusion

Home rule powers granted to municipalities and counties do not protect local governments against aggressive preemption of their actions by state legislatures.

Traditionally preemption was used to align state and local laws to make sure there were no inconsistencies. New types of powerful preemptions – called maximum preemption, blanket preemption, nuclear preemption and super-preemption – are now often used to void or block local government actions.

Increasingly, super-preemption laws that hold local governments liable for action in specific policy areas are being used to punish or threaten punishment of local officials.

Preemption is not always “bad”. “Bad” preemption deters policy innovation, limits local governments’ ability to make policy or undermines protection of individual rights.

New preemptions are driven by partisan, ideological or special-interest motivations. Some state preemptions have been stimulated by corporate interests to block regulations they dislike.

Some Republicans have expressly acknowledged that the use of preemption is a strategy to block progressive local actions and to punish “rogue” local governments.

Aggressive use of preemptions has many negative consequences. Preemptions interfere with local residents’ ability to determine the direction of their communities. They block local attempts to add protections for LGBTQ individuals, black residents and the poor. They prevent local governments from enacting strong environmental and community health measures. Use of punitive preemption changes the kind of candidate who would serve under punitive laws.

Use of preemption as a legislative strategy is increasing in Florida. Bills containing multiple preemptions are becoming common in the Florida Legislature. Business-funded corporate interest groups are using their considerable political influence, gained through campaign contributions and lobbying expenditures, to push preemption legislation in the Florida Legislature.

## Policy Options

- Require two-thirds or super majority vote for passage of legislation that preempts local government authority (similar to what is required for local unfunded mandates and public record exemptions).

- Establish by rule or law a single-subject requirement for preemption legislation.
- Prohibit any fines or punitive liabilities for local governments that violate legislative preemptions.

# Appendix

## Preemption Bills Filed in the 2017 Legislative Session<sup>147</sup>

36 total bills, 18 House Bills, 18 Senate Bills.

HB 425 – vacation rentals, failed  
HB 901 / SB 1700 – building codes, failed  
HB 6007 / SB 178, SB 630 – red light cameras, failed  
HB 77 / SB 122 – professional sports facilities, failed  
HB 17 / SB 1158 – regulation of businesses, failed  
HB 553 / SB 244 – applicants criminal background, failed  
HB 353 / SB 428 – retirement plans, failed  
HB 751 / SB 1378 – stormwater management, failed  
HB 599 / SB 534 – public works contracts, passed  
HB 221 / SB 340 – regulation of rideshare, passed  
HB 1027, HB 601 / SB460 – regulation of drones, passed  
HB 687, HB865 / SB596 – wireless antenna placement, passed  
HB 7069 – charter school facilities, passed  
SB 990 / SB 7103 - municipal elections, failed  
HB 803 / SB 908 – firearm regulation, failed  
SB 626 – firearm regulation, failed  
SB 140 – firearm regulation, failed  
SB 320 / HB 627 – dogs in vehicles, failed  
HB 193 – towing and storage fees, failed  
SB 324 – fireworks, failed

## Preemption Bills Filed in the 2018 Legislative Session<sup>148</sup>

38 total bills, 18 House Bills, 20 Senate Bills

HB 17 / SB 432 – CRA's, failed  
HB 6001 / SB 548, SB 176 – red light cameras, failed  
HB 987 / SB 1328 – affordable housing, failed  
HB 697 / SB 324 – impact fees, failed  
HB521 / SB 574 – tree trimming, failed  
HB 815 / SB 1180 – travel expenses, failed  
HB 7037 / SB 1262 – election dates, failed  
HB 773/ SB 1400 – vacation rentals, failed  
HB 299 – Building Commission membership, failed

HB 879 / SB 1326 – storm debris and solid waste, failed  
SB 1776 – vegetable gardens, failed  
HB 883 / SB 1348 – community development districts, failed  
HB 6029 – cardrooms, failed  
HB 1433 / SB 1774 – government actions/ wedding cake, failed  
SB 378 – parking garages, failed  
HB 871 / SB 1290 - government actions/ wedding cake, failed  
HB 963 / SB 1632 – towing fees, failed  
SB 702 / HB 433 – criminal history employment screening, failed  
HB 6037 / SB 198 – fireworks, failed  
SB 1082 – electric vehicle charging stations, failed  
HB 647 / SB 926 – natural gas fuel tax, failed

### **Preemption Bills Filed in the 2019 Legislative Session<sup>149</sup>**

45 total bills, 25 House Bills, 20 Senate Bills

HB 407 – public records, failed  
HB 101 / SB246 – retainage, failed  
HB 1237 / SB 1792 – towing rates, failed  
HB 6003 / SB 622 – red light cameras, failed  
HB 3 / SB 1748 – preemption of local business regulations, failed  
HB 603 / SB 588 – single use plastic straws, failed  
HB 1299 – multiple preemptions including plastic straws, sunscreen and tobacco, failed  
HB 987 / SB 824 – short-term rentals, failed  
SB 82 / HB 145– vegetable gardens – passed  
HB 905 / SB 1044 – transportation, passed  
HB 1159 / SB1400 – private property rights, passed  
HB 7103 – growth management, passed  
SB 1000 / HB 693 – telecommunications, passed  
HB 771 – recycling and 5-year moratorium on plastic straw bans, passed but vetoed  
HB 715 / SB 1036 – building code enforcement, failed  
HB 7095 – charter school land use, failed  
HB 27 / SB 1640 – deregulation of professions, failed  
HB 1333 – building construction, failed  
SB 1364 – assisted living facilities, failed  
HB 161 / SB 494 – firefighters, failed  
HB 97 / SB 288 – monuments, failed  
HB 847 / SB 432 – employment conditions, failed  
HB 667 / SB 394 – criminal history employment screening, failed

HB 723 / SB 908 – fire safety systems, failed  
HB 157 / SB 1716 – fertilizer, failed  
HB 1169 / SB 1572 – private waste companies, failed

**Preemption Bills Filed in the 2020 Legislative Session (as of 12/10/2019)<sup>150</sup>**

16 total bills, 9 House Bills, 7 Senate Bills

HB 31 – monuments and memorials  
HB 65 / SB 140 - fireworks  
HB 101 / SB 246 - retainage  
HB 133 – towing  
HB 195 – public records  
HB 215 / SB 620 – firefighter bill of rights  
HB 225 – clean energy  
HB 305 – conditions of employment  
SB 474 – deregulation of businesses and professions  
HB 537 / SB 778 – home-based businesses  
SB 766 – lobby registration  
SB 768 – lobby registration fees



## Endnotes

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