

STATE PREEMPTION OF LOCAL LAWS:
PRELIMINARY REVIEW OF SUBSTANTIVE AREAS

Snapshot as of March 2017

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INTRODUCTION

In an effort to map the current landscape of state preemption of local laws, this memorandum describes by subject matter a range of preemptive state statutes. The memorandum is both selective and a snapshot. It is selective in that it does not canvass the full panoply of state laws. State lawmaking across a range of subject matters is ubiquitous. Here we focus on subject areas that have generated the most interest of progressive policymakers. It is a snapshot, insofar as preemptive state laws continue to be proposed and adopted in many states.

We consider this to be a possible foundation for a more systematic tracking of preemptive legislation. Some of that tracking is being done by the National League of Cities and other policy-specific organizations. An excel spreadsheet accompanies this memorandum and is intended to be modified as additional information is received.

Subject Areas:

ENVIRONMENT

Fracking

Oklahoma and Texas have explicitly preempted local regulation of hydraulic fracturing, or fracking. Oklahoma's preemptive statute provides that political subdivisions "may not effectively prohibit or ban any oil and gas operations, including oil and gas exploration, drilling, fracture stimulation, completion, production, maintenance, plugging and abandonment, produced water disposal, secondary recovery operations, flow and gathering lines or pipeline infrastructure..." with few exceptions.¹ The Oklahoma statute went in to effect on August 21, 2015. The Texas statute, also passed in 2015, is very similar.²

The Colorado Supreme Court invalidated two cities' bans on fracking and the storage of fracking waste within the cities' limits in 2016.³ The court stated that when a home-rule ordinance conflicts with state law in a matter of either statewide or mixed state and local concern, the state law supersedes that conflicting ordinance. In this instance, the court found that the Longmont ordinance at issue "materially impede[d] the application of state law," so it was preempted despite express or even implied preemption in the Oil and Gas Conservation Act.⁴

¹ OKLA. STAT., tit. 52, § 137.1 (2016) (effective Aug. 21, 2015).

² TEX. NAT. RES. CODE ANN. § 81.0523 (West 2015) (effective May 18, 2015).

³ City of Longmont Colo. V. Colo. Oil & Gas Ass'n, 369 P.3d 573 (Col. 2016).

⁴ *Id.* at 54.

As of April 28, 2016, fracking occurred in twenty-one states.⁵ We can expect to see more fracking legislation and local regulation as the practice spreads.

Plastic Bags

Missouri and Idaho explicitly preempt localities from banning plastic bags.⁶

Austin, TX has a local ordinance banning plastic bags and Brownsville, TX imposes fees on the use of plastic bags. There is a bill pending in committee in the Texas state legislature that would preempt the regulation of plastic bags by municipalities in Texas.⁷ New York also has pending legislation that would preempt municipalities from banning plastic bags.⁸

Pesticides

Twenty-nine states, as of 2013, had explicitly preemptive language over local pesticide regulation. Most of these states' laws read very similar to the American Legislative Exchange Council's (ALEC) *Model State Preemption Act*. This Act states that "No city, town, county, or other political subdivision of this state shall adopt or continue in effect any ordinance, rule, regulation or statute regarding pesticide sale or use, including without limitation: registration, notification of use, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal, disclosure of confidential information, or product composition."⁹

Nineteen states delegate all of the authority to regulate pesticide use to a commissioner or pesticide board, which implies preemption of local regulation of pesticides. Some of these states, like Louisiana, allow to petition the commissioner for exceptions to the pesticide regulations.¹⁰

Climate Change

According to Kim Tyrrell, program director on the environment for the National Conference of State Legislatures (NCSL), "no states enacted legislation that would

⁵ *Map: The Fracking Boom, State by State*, INSIDE CLIMATE NEWS, <https://insideclimatenews.org/news/20150120/map-fracking-boom-state-state>.

⁶ *State Plastic and Paper Bag Legislation*, NATIONAL CONF. OF STATE LEGS., <http://www.ncsl.org/research/environment-and-natural-resources/plastic-bag-legislation.aspx>.

⁷ S.B. 1806, 84th Leg., Reg. Sess. (Tex. 2015).

⁸ S.B. 7336, 2017 Leg., Reg. Sess. (N.Y. 2017).

⁹ Matthew Porter, *State Preemption Law: The Battle for Local Control of Democracy*, BEYOND PESTICIDES, <http://www.beyondpesticides.org/assets/media/documents/lawn/activist/documents/StatePreemption.pdf>.

¹⁰ LA. STAT. ANN. § 3:3222 (2016) (amended July 6, 1988).

preempt local governments from taking climate change into account.” To her knowledge, only Oklahoma and North Carolina have passed such legislation in the last five years.¹¹

Factory Farms

Many localities have begun regulating industrial agriculture in light of the threat it poses to community health and the environment, primarily through zoning ordinances. At least thirteen states have preempted this authority.¹²

For example, Wisconsin law provides that local governments cannot exceed statewide standards for the siting or expansion of large livestock facilities.¹³ In addition, Tennessee prohibits local zoning regulation of buildings used primarily for agricultural purposes.¹⁴

GMOs

President Obama signed the National Bioengineered Food Disclosure Standard on July 29, 2016. The Act preempted existing state and local laws relating to GMO labeling.¹⁵

PUBLIC HEALTH

E-Cigarettes

At least seven states have preempted local regulation of e-cigarettes.¹⁶

States have primarily preempted local regulation of e-cigarettes by amending their existing tobacco preemption statutes to explicitly include e-cigarettes or vapor products. One state that has done this is Oklahoma. In 2014, the Oklahoma legislature amended section 600.10 of the Prevention of Youth Access Tobacco Act to prevent political subdivisions from regulating “vapor products” in addition to tobacco products.¹⁷ Washington’s legislature, on the other hand, passed a comprehensive regulation of vapor products in 2016 that includes a section preempting local regulation of vapor products.¹⁸

¹¹ Elizabeth Daigneau, *Will States Stop Cities from Combating Climate Change?*, GOVERNING, Jan. 2017, <http://www.governing.com/topics/transportation-infrastructure/gov-climate-change-states-cities-preemption.html>.

¹² *Preemption Map*, GRASSROOTS CHANGE, <https://grassrootschange.net/preemption-map/#/category/factory-farms>.

¹³ WIS. STAT. § 93.90 (2016) (enacted April 13, 2004).

¹⁴ TENN. CODE ANN. § 13-7-114 (2016) (effective March 12, 2014).

¹⁵ National Bioengineered Food Disclosure Standard, Pub. L. No. 114-216, 130 Stat. 834.

¹⁶ ARK. CODE ANN. § 26-57-267 (2016) (amended April 7, 2015); IOWA CODE §§ 453A.56, 435A.1 (2016) (amended May 23, 2014); NEV. REV. STAT. § 202.249(4) (2016) (amended June 1, 2013); OKLA. STAT. tit. 37 § 600.10 (2016) (amended April 25, 2014); S.C. CODE ANN. § 16-17-504 (2016) (amended June 7, 2013); S.D. CODIFIED LAWS §§ 34-46-20, 34-46-6 (2016) (amended March 28, 2014); WASH. REV. CODE § 70.345.210 (2016) (effective June 28, 2016).

¹⁷ OKLA. STAT. tit. 37 § 600.10 (2016) (amended April 25, 2014).

¹⁸ WASH. REV. CODE § 70.345.210 (2016) (effective June 28, 2016).

This is a new area of regulation for states, as most legislation has been passed since 2015. Localities can expect to see increasing pushback from states on local regulation in the area as more tobacco companies pressure state legislatures in to preempting such activity by amending their current tobacco statutes to include e-cigarettes.

Tobacco Products, More Generally

Thirty-one states have some form of preemption of local regulation of tobacco products.¹⁹ Two states, Washington and Michigan, preempt advertising, licensure, smoke-free indoor air, and youth access. The other twenty-nine states preempt some combination of advertising, licensure, smoke-free indoor air, and youth access. Ten states specifically preempt the licensure of vending machines containing tobacco products.

As of February 2017, there were two pending preemptive statutes in state legislatures. In New York, a bill sponsored by democratic assemblyman J. Gary Pretlow would preempt local regulation of tobacco use on casino patios.²⁰ In Texas, republican representative Matt Shaheen introduced a bill that would preempt local regulation of tobacco use in cigar bars.²¹

Nutrition

Nine states currently preempt local control over nutrition and food policy.²² These laws range from preempting local regulation that requires nutrition labeling, like in Alabama, to local laws that prevent restaurants from including toys in children's meals, like in Wisconsin.

In New York, pending legislation would preempt local regulation of "food labels or the portion of food produced, processed, transported, stored, marketed, distributed, sold or offered for sale."²³

Gun Control

Forty-three states have enacted broad preemption statutes related to firearms and ammunition. Eleven of these states have an absolute preemption of municipal firearm

¹⁹ CTR. FOR DISEASE CONTROL & PREV. PREEMPTION ON ADVERTISING, LICENSURE, SMOKE-FREE INDOOR AIR, AND YOUTH ACCESS (2016), <https://www.cdc.gov/statesystem/preemption.html>.

²⁰ S.B. 00736, 2017 Leg., Reg. Sess. (N.Y. 2017).

²¹ H.B. 1279, 85th Leg., Reg. Sess. (Tex. 2017).

²² ALA. CODE § 20-1-7 (2016) (effective June 9, 2011); ARIZ. REV. STAT. ANN. § 44-1380 (2016) (enacted April 13, 2011); FLA. STAT. § 509.032 (2016) (amended June 2, 2011); GA. CODE ANN. § 26-2-373 (2016) (amendment May 12, 2008); KAN. STAT. ANN. § 12.16.137 (2017) (enacted July 1, 2016); MISS. CODE ANN. § 75-29-901 (2017) (effective March 18, 2013); OHIO REV. CODE ANN. § 3717.53 (LexisNexis 2016) (amended Dec. 24, 2007); UTAH CODE ANN. §§ 10-8-44.5, 17-50-329 (LexisNexis 2016) (enacted March 24, 2009); WIS. STAT. § 66.0418 (2016) (effective July 2, 2013).

²³ S.B. 03877, 2017 Leg., Reg. Sess. (N.Y. 2017).

regulations, permitting no exceptions whatsoever.²⁴ Notably, New Mexico implemented this rule through an amendment to the state constitution.²⁵

Note that the Colorado Supreme Court affirmed a trial court ruling which found that the state law that expressly preempted localities from regulating firearms unconstitutionally infringed on the City of Denver's home rule authority.²⁶ The Court went on, however, to invalidate Denver's ordinances that dealt with juvenile possession of firearms, carrying concealed firearms with a permit in a public park, and concealed weapon permitting because they conflicted with state law. Thus, localities in Colorado may enact some, but not any, regulation of firearms and/or ammunition. Home rule challenges, however, are not always successful. For example, the Ohio Supreme Court rejected the City of Cleveland's home rule challenge to Ohio's broad preemption statute for gun control in 2010.²⁷

Pennsylvania did have a statute that absolutely preempted local government regulation of firearms, however in *Leach v. Commonwealth* the Supreme Court of Pennsylvania found this law to be in violation of the state Constitution, and thus voided it in its entirety.²⁸

The seven states that do not have broad preemption statutes are California, Nebraska, Connecticut, Hawaii, Massachusetts, New Jersey, and New York. California and Nebraska expressly preempt some local regulation of firearms or ammunitions, but otherwise permit broad local regulation of firearms and ammunition. Neither Connecticut, Hawaii, Massachusetts, New Jersey, nor New York have a provision or statute expressly preempting local regulation of firearms or ammunition.²⁹ In addition, the courts of those states have not found broad *implied* preemption of local firearms and/or ammunition regulation.³⁰

EDUCATION

Charter Schools

²⁴ These states are Arkansas, Indiana, Iowa, Kentucky, Michigan, New Mexico, Oregon, Rhode Island, South Dakota, Utah, and Vermont. Ark. Code Ann. §14-54-1411 (1993); Ind. Code Ann. §35-47-11.1-2 (2011); Iowa Code Ann. §724.28 (1990); Ky. Rev. Stat. Ann. §65.870 (2012); Mich. Comp. Laws Ann. §123.1102 (2015); N.M. Const. Art. II §6 (1986); Or. Rev. Stat. §166.170 (1995); R.I. Gen. Laws. Ann. §11-47-58 (1986); S.D. Codified Laws §7-18A-36 (1983), §9-19-20 (1983), §8-5-13 (1983); Utah Code §76-10-500 (1999); Vt. Stat. Ann. §24-2295 (1987).

²⁵ N.M. Const. Art. II §6 (1986).

²⁶ *State v. City and County of Denver*, 139 P.3d 635 (Colo. 2006).

²⁷ *City of Cleveland v. State*, 128 Ohio St. 3d 135 (Ohio 2010).

²⁸ *Leach v. Commonwealth*, 141 A.3d 426 (2016).

²⁹ *Local Authority to Regulate Firearms*, LAW CTR. TO PREVENT GUN VIOLENCE, <http://smartgunlaws.org/gun-laws/policy-areas/other-laws/local-authority/>.

³⁰ See, e.g. *Town of Amherst v. Att'y Gen.*, 502 N.E.2d 128 (Mass. 1986); *Township of Chester v. Panicucci*, 299 A.2d 385, 389 (N.J. 1973); *People v. Stagnitto*, 691 N.Y.S.2d 223 (N.Y. App. Div. 1999).

The Mississippi Charter Schools Act of 2013 provides that “Although a charter school is geographically located within the boundaries of a particular school district and enrolls students who reside within the school district, the charter school may not be considered a school within that district under the purview of the school district's school board. The rules, regulations, policies and procedures established by the school board for the noncharter public schools that are in the school district in which the charter school is geographically located do not apply to the charter school unless otherwise required under the charter contract or any contract entered into between the charter school governing board and the local school board.”³¹

It is also notable that the American Legislative Exchange Council (ALEC) released its education model policy, *The Next Generation Charter Schools Act*, in September 2016.³² This model policy contains similar preemptive language to the Mississippi legislation which would exempt charter schools from most or all of the local regulations on education.

School Discipline

In 2015, Illinois governor Bruce Rauner signed in to law a sweeping school discipline reform bill. The bill rewrote the entire section of the Illinois code that dealt with school discipline. The new law preempts “zero tolerance” suspensions and expulsions and requires that school exhaust all other solutions before expelling students or suspending them for more than three days, in addition to other changes.³³

There is a similar bill pending in the Virginia state legislature that has bipartisan support. The bill would limit suspensions greater than ten days or expulsions except for “drug offenses, firearm offenses, certain criminal acts, or if the underlying conduct involves other weapons, inappropriate sexual behavior, or serious bodily injury.”³⁴ While these bills do not explicitly preempt local control over school discipline, they do so implicitly by regulating the subject area comprehensively.

TAXATION

Limitations on Property Tax Increases

³¹ MISS. CODE ANN. § 37-28-45 (2016) (effective July 1, 2013).

³² *The Next Generation Charter Schools Act*, AMERICAN LEGISLATIVE EXCHANGE COUNCIL, <https://www.alec.org/model-policy/amendments-and-addendum-the-next-generation-charter-schools-act/> (last visited Feb. 15, 2017).

³³ 105 ILL. COMP. STAT. 5 / 10-22.6 (2016) (enacted Aug. 24, 2015).

³⁴ S.B. 997, 2017 Gen. Assemb., Reg. Sess. (Va. 2017).

Thirty-four states, as of 2015, imposed property tax rate limits on localities.³⁵ In Florida, for example, counties, municipalities, and school districts are each limited to 10 mills, excluding debt service.³⁶ There are higher limits for special districts other than water management districts, counties that provide a municipal service, and consolidated cities and counties. A majority of voters may authorize an increase in millage for no more than two years. Six other states also have override provisions.

Nevada is one of the states that does not provide a public override of a property tax limitation. The Nevada Constitution set the maximum property tax rate to \$5 per \$100 of assessed value.³⁷ In addition, there is a statutory limit for public purposes of overlapping districts of \$3.64 per \$100 of assessed value. If the combined rates of taxing jurisdictions within a county exceed the limit, and the local governments do not agree to a new rate that falls below the limit, the state will set the rate for that county.³⁸

Limitations on Assessed Values Increases

Eighteen states imposed limits on assessment value increases as of 2015.³⁹ In Maryland, assessment of eligible residential property is capped at 110% of the prior year's value for county and municipal purposes.⁴⁰ There is no override mechanism for this provision.

In fact, only one state explicitly provides an override procedure for limitations on assessed value increases: Georgia. But, it is the localities in Georgia that are authorized to implement homestead exemptions that freeze the value of property at the base year valuation for as long as the homeowner resides on the property, not the state.⁴¹

Limitations on Tax Levies

Thirty-five states impose limitations on tax levies, primarily through tax caps.⁴² New York, for example, limits the amount raised by taxes on real estate in any fiscal year to the amount equal to the following percentages of the average full valuation of taxable real estate: 1.5-2% of counties, 2% for cities and villages, and 2.5% for New York City and the counties therein.⁴³ The levy cap can be exceeded with 60% of the governing body in each budget year for local government and of district voters for school districts.

³⁵ *Significant Features of the Property Tax*, LINCOLN INST. OF LAND POLICY & GEORGE WASHINGTON INST. OF PUBLIC POLICY, http://datatoolkits.lincolninst.edu/subcenters/significant-features-property-tax/Report_Tax_Limits.aspx.

³⁶ FLA. STAT. § 200.065 - § 200.181 (2016); FLA. CONST. art. VII, §9.

³⁷ NEV. CONST. art. 10, § 2.

³⁸ Nev. Rev. Stat. §§ 361.453; 361.4545; 354.705; 450.760 (2016).

³⁹ *Significant Features of the Property Tax*, *supra*.

⁴⁰ MD. CODE ANN., TAX-PROPERTY § 9-105 (LexisNexis 2016).

⁴¹ GA. CODE ANN. § 48-5-50.1 (2016); GA. CONST. art. VII, § II.

⁴² *Significant Features of the Property Tax*, *supra*.

⁴³ N.Y. CONST. art. VIII, § 10.

Five of the thirty-five states that impose these limitations do not provide for override procedures like New York does. One such state is Delaware which limits county property tax revenues to 15% of the total property taxes imposed for the preceding fiscal year, but does not include new construction.⁴⁴

Truth in Taxation Requirements

Twelve states impose truth in taxation or full disclosure requirements on localities.⁴⁵ Missouri's truth in taxation statute provides that county governments must hold a public hearing on the proposed tax rate prior to fixing the tax rate. The statute also provides that the notice of the hearing, including several financial disclosures, must be published in at least one newspaper qualified under the laws of Missouri of general circulation in the county at least seven days prior to the hearing.⁴⁶

North Dakota law provides that notice be given to property owners by mail at least seven days prior to a public hearing on raising taxes.⁴⁷ This limitation, however, only applies to cities, counties, school districts, and city park districts that levy more than \$100,000.

No limit on local taxation, as of 2015

According to the Lincoln Institute of Land Policy and George Washington Institute of Public Policy, there are three states that do not impose limitations on local taxation. These states are Hawaii, New Hampshire, and Vermont.⁴⁸

SHARING ECONOMY

Thirty-seven states have preempted local regulation of ride-sharing platforms. Wyoming passed a comprehensive statute regulating ride-sharing and preempting local regulation as recently as March 3, 2017.⁴⁹ Most of these statutes refer to ride-sharing platforms, like Uber and Lyft, as "transportation network companies" or "TNCs."⁵⁰

Of the thirteen states that do not currently preempt local regulation of ride-sharing platforms, some still provide some statewide regulation. This non-preemptive regulation is typically insurance-related. For example, Texas provides comprehensive regulation for

⁴⁴ DEL. CODE. ANN. tit. 9, § 8002(c) (2016).

⁴⁵ *Significant Features of the Property Tax, supra.*

⁴⁶ MO. REV. STAT. § 137.055 (2016).

⁴⁷ N.D. CENT. CODE § 57-15-02.1 (2016).

⁴⁸ *Significant Features of the Property Tax, supra.*

⁴⁹ WYO. STAT. § 31-20-111 (2017) (enacted March 3, 2017).

⁵⁰ *See, e.g.* TENN. CODE ANN. § 65-15-302 (enacted May 20, 2015).

ride-sharing drivers and companies.⁵¹ However, the statute does not purport to explicitly or implicitly preempt local regulation of the industry. There is legislation pending in the Texas legislature that would preempt local regulation of ride-sharing platforms, but it has not moved to committee as of March 4, 2017.⁵²

Only one state has explicitly preempted local regulation of home-sharing platforms, like AirBnB and VRBO. Arizona law prohibits a county from disallowing short-term rentals in its jurisdiction.⁵³ The statute effectively mandates the existence of home-sharing platforms in Arizona localities. Alternatively, New York effectively preempts local law that would allow home-sharing platforms by criminalizing short-term rentals less than thirty days and the advertisement of such rentals.⁵⁴

While the growth of ride-sharing regulation has expanded exponentially since 2014, home-sharing regulation has remained virtually non-existent. It will be interesting to see if more states adopt language similar to Arizona, which preempts localities from preventing home-sharing in their jurisdictions, or to New York, which effectively preempts localities from allowing home sharing in their jurisdictions.

HOUSING

Affordable Housing Requirements (Inclusionary Zoning)

At least eleven states have enacted laws preempting local authority to issue inclusionary zoning ordinances and/or requirements that private developers include affordable housing units in their projects. These states include: Arizona (2015),⁵⁵ Colorado (2010),⁵⁶ Texas (2005),⁵⁷ Arkansas (restrictions only apply to manufactured homes) (2003),⁵⁸ Massachusetts (2003),⁵⁹ Oregon (1999),⁶⁰ Tennessee (1996),⁶¹ New Hampshire (1991),⁶² New Jersey (1975),⁶³ Rhode Island,⁶⁴ and North Carolina*.⁶⁵

⁵¹ TEX. INS. CODE § 1954.001 *et seq.*

⁵² H.B. 100, 85th Leg., Reg. Sess. (Tex. 2017).

⁵³ ARIZ. REV. STAT. § 11-269.17 (enacted May 12, 2016).

⁵⁴ N.Y. MULT. D. LAW § 121 (Consol. 2017) (effective Oct. 21, 2016).

⁵⁵ A.R.S. § 9-461.16.

⁵⁶ C.R.S. § 38-12-301.

⁵⁷ Tex. Local Gov't Code § 214.905.

⁵⁸ Ark. Code 14-54-1604.

⁵⁹ M.G.L. 40B §§ 20-23.

⁶⁰ Or. Rev. Stat. § 197.309.

⁶¹ Joey Garrison, Legal Threat Hangs Over Nashville Affordable Housing Proposal, The Tennessean (Sept. 6, 2016, 7:04 a.m.). See also Joey Garrison, Senate Bill would Prohibit Affordable Housing Mandates, The Tennessean (Jan. 19, 2016, at 10:38 p.m.). See Tenn. Code § 66-35-102(b).

⁶² RSA 674:59 . See also Cordell A. Johnston, New Laws Require Updates to Zoning Ordinances, New Hampshire Municipal Association (Dec. 2008).

⁶³ Southern Burlington County, NAACP v. Township of Mount Laurel, 336 A.2d 713 (N.J. 1975).

⁶⁴ R.I. Gen. Law 45-24-46.1. See also Rhode Island Statewide Planning Program, Inclusionary Housing Zoning Guidance: A Handbook for Rhode Island Municipalities.

In New Hampshire and New Jersey, the states have preempted local authority in so far as they require localities to adopt policies that promote affordable housing. Rhode Island allows localities to promulgate such ordinances but applies various restrictions.⁶⁶ Similarly, Massachusetts allows localities to enact such ordinances but allows developers to bypass them in certain circumstances.⁶⁷

Wisconsin may also preempt local authority in this area because a state appellate court held that the city of Madison's affordable housing ordinance violated Wisconsin state law because it was functionally, an act of rent control.⁶⁸

Rent Control

At least twenty-seven states have enacted laws preempting local authority to set the price of rent for private housing units. These states include: Arizona (2015),⁶⁹ Colorado (2010),⁷⁰ Utah (2006),⁷¹ Wisconsin (2006 – Madison ordinance overturned by the courts),⁷² Indiana (2002),⁷³ Kansas (2001),⁷⁴ Connecticut,⁷⁵ Florida (2001),⁷⁶ Massachusetts (exceptions apply)(1997),⁷⁷ Illinois (1997),⁷⁸ Tennessee (1996),⁷⁹ Alabama (1993),⁸⁰ Arkansas (1993),⁸¹ North Dakota (1993),⁸² Kentucky (1992),⁸³ New Mexico (1991),⁸⁴ South Dakota (1990),⁸⁵ Missouri (1989),⁸⁶ Oklahoma (1988),⁸⁷ Michigan

⁶⁵ City of Raleigh Housing and Neighborhoods Department, Affordable Housing Improvement Plan FY 2016-FY 2020 (mandatory inclusionary zoning is illegal but some cities have them (Chapel Hill, Davidson, and Monteo) but other actions are allowed). But see Tyler Mulligan, A Primer on Inclusionary Zoning, Coates' Cannons: NC Local Government Law (Nov. 16, 2016) (arguing that the law is uncertain regarding this issue.)

⁶⁶ Rhode Island Statewide Planning Program, Inclusionary Housing Zoning Guidance: A Handbook for Rhode Island Municipalities.

⁶⁷ M.G.L. 40B §§ 20-23.

⁶⁸ Terrance Wall, How Inclusionary Zoning Backfired in Madison, ISTHMUS (Mar. 15, 2007). Rent control statute: Wis. Stat. § 66.1015

⁶⁹ A.R.S. § 9-461.16.

⁷⁰ C.R.S. § 38-12-301.

⁷¹ Utah Code § 57-20-1. (unless approved by the legislature)

⁷² Wall, supra note 68.

⁷³ IC. § 32-31-1-20.

⁷⁴ KA. Code § 12-16, 120.

⁷⁵ Julia Singer Bansal, States Authorizing Rent Control, Office of Legislative Research, Connecticut General Assembly (2015). See Old Colony Gardens, Inc. v. Stamford, 147 Conn. 60 (1959)(finding that municipalities have not been delegated authority to enact rent control laws).

⁷⁶ Fla. Code § 125.0103 (an exception is provided for housing emergencies – see subsection (2)).

⁷⁷ M.G.L.A. 40P § 4.

⁷⁸ 50 ILCS 825.

⁷⁹ Tenn. Code Ann. § 66-35-102(a).

⁸⁰ Code of Ala. 11-80-8.1.

⁸¹ A.C.A. §14-16-601.

⁸² N.D. Code § 47-16-02.1.

⁸³ KY. Code § 65.875.

⁸⁴ N.M. Code § 47-8A-1.

(1988),⁸⁸ North Carolina (1987),⁸⁹ Oregon (1985),⁹⁰ Georgia (1984),⁹¹ Minnesota (1984),⁹² Washington (1981),⁹³ and New Hampshire.⁹⁴

In Texas (2001), municipalities may enact rent control ordinances, but only if the municipality finds that a housing emergency exists due to a disaster (defined in section [418.004](#)) and upon approval of the governor.⁹⁵ The municipality “shall continue or discontinue its rent control ordinance in the same manner that the governor continues or discontinues a state of disaster under section [418.004](#)”⁹⁶

Linkage Fees

To date, it does not appear that any state has enacted a law preempting the authority of local governments to exact linkage fees. Very few localities employ such fees. Municipalities in Washington,⁹⁷ Massachusetts,⁹⁸ Florida,⁹⁹ and Colorado¹⁰⁰ have enacted such fees. Los Angeles has drafted such an ordinance, but it has not yet been enacted.¹⁰¹

Discrimination in Housing

Utah has enacted legislation (2015) that preempts or may preempt local authority to prohibit private parties from discriminating against specified categories of persons in housing.¹⁰² Rhode Island (1990*) might also preempt local authority to enact anti-discrimination ordinances because the “Finding and declaration of policy” of its anti-discrimination statute declares that it is “the policy of the state” to fight discrimination.¹⁰³ Moreover, discrimination is described as an evil that harms the entire state, thus it “is necessary to safeguard the right of all individuals to equal opportunity in obtaining

⁸⁵ [S.D. Code § 6-1-13](#).

⁸⁶ [Mo. Code § 441.043](#).

⁸⁷ [Ok. Stat. § 11-14-101.1](#).

⁸⁸ [Mich. Code § 123.411](#).

⁸⁹ [N.C. § 42-14.1](#).

⁹⁰ [2015 O.R.S. § 91.225](#).

⁹¹ [O.C.G.A. § 44-7-19](#).

⁹² [MN. Code § 471.9996](#). (unless approved in a general election).

⁹³ [RCW 35.21.830](#).

⁹⁴ [National Multifamily Housing Council, Rent Control Laws by State](#).

⁹⁵ [Tex. Local Government Code § 214.902](#).

⁹⁶ *Id.*

⁹⁷ [Affordable Housing, Seattle City Council](#) (2014 resolution with final implementation by fall 2017).

⁹⁸ [Abt Associates, Inc., Research on State and Local Means of Increasing Affordable Housing](#) (Jan. 2008).

⁹⁹ *Id.*

¹⁰⁰ [Denver City Code § 27-153](#).

¹⁰¹ [Affordable Housing Linkage Fee, Los Angeles City Council](#) (Sept. 20, 2016).

¹⁰² [Utah Code § 57-21-2.5](#).

¹⁰³ [Rhode Island Code § 34-37-1, 2](#). Based on a WestLaw search, this language may have been adopted through the 1990 amendment but prior versions of the statute are not available so the language may have been enacted prior to this amendment.

housing accommodations free of discrimination.”¹⁰⁴ The statute does not, however, contain any explicit preemption language.

New Hampshire may also preempt local authority. New Hampshire law might, implicitly, preempt such ordinances because it is a Dillon’s Rule state and it has not enacted legislation that expressly empowers localities to prohibit discrimination.¹⁰⁵

MUNICIPAL CONTRACT REQUIREMENTS

Hire Local

North Carolina (2016),¹⁰⁶ Ohio (2016),¹⁰⁷ and Tennessee (1994)¹⁰⁸ have enacted laws that prohibit local governments from promulgating ordinances which require private contractors that acquire municipal contracts to hire some specified amount of local residents, or which give preference to contractors that employ local residents over their competitors in bidding for municipal contracts.

Minimum Wage

At least North Carolina (2016),¹⁰⁹ Tennessee (2013),¹¹⁰ Arizona (2011),¹¹¹ Georgia (2005),¹¹² and Utah (2001)¹¹³ have enacted laws that prohibit local governments from mandating the wages which private contractors fulfilling a municipal contract pay their employees. The state legislatures for Utah and Tennessee have limited the scope of their laws. The former creates an exception in situations where “federal law requires the payment of a specified wage to persons working on projects funded in whole or in part by federal funds.”¹¹⁴ For the latter, the law does not apply in cases in which compliance “would result in the denial of federal funds that would otherwise be available to the local government...”¹¹⁵ In such cases, a “local government may require a private employer to pay its employees a wage necessary to meet the federal requirements to obtain the federal funds, but only relative to such contract, project, or program.”¹¹⁶

¹⁰⁴ Rhode Island Code § 34-37-1, 2.

¹⁰⁵ N.H. Code 354-A:1.

¹⁰⁶ N.C.G.A. HB 2.

¹⁰⁷ HB 180 (2016). See also Cleveland Sues Ohio over Prohibition on Local Hiring Laws, The News-Herald (Aug. 24, 2016, 11:54 a.m.).

¹⁰⁸ TN. Code 62-6-101, et. seq.

¹⁰⁹ N.C. Gen. Stat. § 153A-449 and N.C. Gen. Stat. § 160A-20.1. (Neither refer to wages explicitly but “employment practices.”)

¹¹⁰ Tenn. Code Ann. § 50-2-112.

¹¹¹ A.R.S. § 34-321(b).

¹¹² O.C.G.A. § 34-4-3.1.

¹¹³ Utah Code Ann. § 34-40-106.

¹¹⁴ Utah Code Ann. § 34-40-106.

¹¹⁵ Tenn. Code Ann. § 50-2-112.

¹¹⁶ Tenn. Code Ann. § 50-2-112.

Leave

North Carolina (2016) has enacted a law which prohibits local governments from passing ordinances that alter private contractors' employee leave policies as a condition of accepting a municipal contract.¹¹⁷

Benefits

North Carolina (2016),¹¹⁸ Tennessee (2011),¹¹⁹ and Georgia (2005)¹²⁰ prohibit municipalities from altering the employee benefits policies of private contractors that acquire municipal contracts as a condition of as a condition of bidding for or receiving a public contract.

Labor Agreements and Union Membership

Seven states (Alabama (2016),¹²¹ North Carolina (2013),¹²² Arizona (2011),¹²³ Missouri (2007),¹²⁴ Tennessee (2011),¹²⁵ Georgia (2005),¹²⁶ and Nevada (1953)¹²⁷) prohibit local governments from requiring private contractors to engage in collective bargaining, become subject to labor agreements, or other related requirements as a condition of bidding for or receiving a public contract. Missouri's law provides exceptions, however. Local governments may enter into "union-only project labor agreement(s) for the procurement of construction services... on a project-by-project basis only if the project is funded fifty percent or less with state funds" and in light of other specified conditions.¹²⁸

Anti-Discrimination in Municipal Contracting

North Carolina (2016) preempts the authority of localities to enact anti-discrimination ordinances.¹²⁹ Kansas might also preempt such local authority because the Kansas Act Against Discrimination explicitly states that it does not preempt local authority to prohibit discrimination in housing transactions (44-1024), yet it does not state any such

¹¹⁷ N.C. Gen. Stat. § 153A-449 and N.C. Gen. Stat. § 160A-20.1. (cannot regulate employers' "practices.")

¹¹⁸ N.C. Gen. Stat. § 153A-449 and N.C. Gen. Stat. § 160A-20.1.

¹¹⁹ Tenn. Code Ann. § 7-51-1802. (Only prohibits mandating health insurance).

¹²⁰ O.C.G.A. § 34-4-3.1. (does not refer to union agreements but does prohibit seeking to control or affect wages which would occur if collective bargaining were required).

¹²¹ Ala. Code 25-7-42. See also Code of Ala. § 11-80-16.

¹²² N.C. Gen. Stat. § 143-133.5.

¹²³ A.R.S. § 34-321(c).

¹²⁴ Mo. Rev. Stat. § 34.209. See also Mo. Rev. Stat. § 34.216.

¹²⁵ Tenn. Code Ann. § 12-4-903.

¹²⁶ O.C.G.A. § 36-91-21.

¹²⁷ N.R.S. 613.250.

¹²⁸ Mo. Rev. Stat. § 34.216.

¹²⁹ N.C.G.A. 153A-449.

disclaimer regarding discrimination (44-1009) in labor or municipal contracts (44-1030).¹³⁰

LABOR, EMPLOYMENT, AND WAGES

Minimum Wage

At least twenty-five states have enacted laws that preempt local authority to mandate a minimum wage to be paid by private employers to their employees. These states include: Wisconsin (2017),¹³¹ New Hampshire, (2016),¹³² Ohio (2016),¹³³ North Carolina (2016),¹³⁴ Alabama (2016),¹³⁵ Kentucky (2016)*,¹³⁶ Michigan (2015),¹³⁷ Missouri (2015),¹³⁸ Mississippi (2015),¹³⁹ Oklahoma (2014),¹⁴⁰ Rhode Island (2014),¹⁴¹ Florida (2013),¹⁴² Tennessee (2013),¹⁴³ Kansas (2013),¹⁴⁴ Indiana (2011),¹⁴⁵ Pennsylvania (2006),¹⁴⁶ Utah (2005),¹⁴⁷ Georgia (2004),¹⁴⁸ Texas (2003),¹⁴⁹ South Carolina (2002),¹⁵⁰ Oregon (2001),¹⁵¹ Colorado (1999),¹⁵² Louisiana (1997),¹⁵³ Idaho (pre-1990),¹⁵⁴ and Virginia.¹⁵⁵

¹³⁰ Kansas Code 44-1001, et. seq.

¹³¹ Wisconsin Code 104.001.

¹³² N.H. Code § 279:21. (The New Hampshire Minimum Wage Law does not explicitly preempt local authority to set wages but New Hampshire is a Dillon's Rule state and they have not been delegated such authority. Therefore, they may not set their own minimum wages. See Nicole DuPuis, et al., City Rights in an Era of Preemption: A State-by-State Analysis, National League of Cities 6 (2017)).

¹³³ Ohio Senate Bill 331.

¹³⁴ N.C. Gen. Stat. § 95-25.1.

¹³⁵ Ala. Code 25-7-41(9)(b).

¹³⁶ The Kentucky Supreme Court held that the state's minimum wage law preempts local authority to create minimum wage laws, but, as the dissent noted, the statute in question does not explicitly preempt such authority; it merely mandates a statewide minimum wage. See Ryland Barton, Kentucky Supreme Court Strikes Down Louisville Minimum Wage Ordinance, Kentucky Public Radio (Oct. 20, 2016). For the statute, see KRS §337.275.

¹³⁷ M.C.L.S. § 123.1385.

¹³⁸ Mo. Rev. Stat. § 285.055 (unless local ordinances were implemented by Aug. 28, 2015).

¹³⁹ M.C.A. § 17-1-51.

¹⁴⁰ Okla. Stat. tit. 40, § 160.

¹⁴¹ R.I. Gen. Laws § 28-12-25.

¹⁴² Fla. Stats. § 218.077(2).

¹⁴³ Tenn. Code Ann. § 50-2-112.

¹⁴⁴ K.S.A. § 12-16.130.

¹⁴⁵ In.C. § 22-2-2-10.5.

¹⁴⁶ 43 P.S. § 333.114a.

¹⁴⁷ Utah Code 34-40-106.

¹⁴⁸ O.C.G.A. § 34-4-3.1.

¹⁴⁹ Tex. Lab. Code § 62.0515.

¹⁵⁰ S.C. Code Ann. § 6-1-130.

¹⁵¹ Or. Rev. Stat. § 653.017.

¹⁵² C.R.S. § 8-6-101(3)(a).

¹⁵³ La. R.S. § 23:642(A)(3).

¹⁵⁴ Id.C. § 44-1502.

¹⁵⁵ VA SB. 704 (failed and would have allowed localities to adopt minimum wage ordinances)

Maryland is an odd case because its minimum wage law (enacted in 2014) suggests that local authorities cannot set a minimum wage because employers must pay employees the higher of state minimum wage or federal minimum wage.¹⁵⁶ However, *City of Baltimore v. Sitnick*, 255 A.2d 376 (Md. Ct. App. 1969) states that municipalities can enact minimum wage laws.¹⁵⁷ While Maryland's minimum wage law predates this act, WestLaw does not report the case to be abrogated by the minimum wage law.

Benefits

At least twelve states have enacted laws that preempt local authority to regulate the benefits private employers provide their employees. These states include: Alabama (2016),¹⁵⁸ North Carolina (2016),¹⁵⁹ Michigan (2015),¹⁶⁰ Missouri (2015),¹⁶¹ Arizona (2013),¹⁶² Florida (2013),¹⁶³ Indiana (2013),¹⁶⁴ Kansas (2013),¹⁶⁵ Tennessee (2013),¹⁶⁶ Mississippi (2013),¹⁶⁷ Georgia (2004),¹⁶⁸ and Pennsylvania (1996).¹⁶⁹

Leave

At least fifteen states have enacted laws that preempt local authority to regulate the amount of paid or unpaid leave that private employers provide their employees. These states include: Alabama (2016),¹⁷⁰ Wisconsin* (2016),¹⁷¹ North Carolina (2016),¹⁷²

¹⁵⁶ Md. Code Ann. § 3-413. (applies to “governmental units” of which local governments appear to be. See Md. Code Ann. § 1-610).

¹⁵⁷ *City of Baltimore v. Sitnick*, 255 A.2d 376 (Md. Ct. App. 1969).

¹⁵⁸ Ala. Code 25-7-41.

¹⁵⁹ N.C. Gen. Stat. § 95-25.1.

¹⁶⁰ M.C.L.S. § 123.1386 (including wages or benefits in the prevailing community). See also M.C.L.S. § 123.1391 (cannot require giving of specific fringe benefits or covering expenses), and M.C.L.S. § 123.1389 (scheduling and hours).

¹⁶¹ Mo. Rev. Stat. § 285.055.

¹⁶² A.R.S. § 23-204. See also A. R. S. § 23-205 (scheduling but not benefits more generally). A.R.S. § 23-364(I) states otherwise but there is no indication that A.R.S. § 23-204 is not current.

¹⁶³ Fla. Stats. § 218.077.

¹⁶⁴ In.C. § 22-2-16-3.

¹⁶⁵ K.S.A. § 12-16,130.

¹⁶⁶ Tenn. Code Ann. § 7-51-1802 (solely health insurance benefits).

¹⁶⁷ M.C.L.S. § 123.1386. (refers to fringe benefits).

¹⁶⁸ O.C.G.A. § 34-4-3.1.

¹⁶⁹ Chris Potter, Court Rejects as “Unenforceable” Two Pittsburgh Labor Ordinances, Pittsburgh Post-Gazette (Dec. 22, 2015, 4:29 p.m.). See *Bldg. Owners & Managers Ass'n of Pittsburgh v. City of Pittsburgh*, 985 A.2d 711, 714 (Pa. 2009) (holding that Pennsylvania state law prohibits municipalities from regulating businesses by determining their “duties, responsibilities, or requirements.”).

¹⁷⁰ Ala. Code 25-7-41. See also Code of Ala. § 11-80-16.

¹⁷¹ Wis. Stat. § 103.10. (preempted in part by ERISA) (only applies to mandating leave for: medical reasons, or family issues, including helping family members with medical conditions, helping family members relocate due to domestic assault, sexual assault, or stalking or to seek services due to such issues, or to prepare to testify, testify, or participate in proceedings about such issues).

¹⁷² N.C. Gen. Stat. § 95-25.1.

Oregon (2016),¹⁷³ Michigan (2015),¹⁷⁴ Missouri (2015),¹⁷⁵ Oklahoma (2014),¹⁷⁶ Arizona (2013),¹⁷⁷ Indiana (2013),¹⁷⁸ Florida (2013),¹⁷⁹ Kansas (2013),¹⁸⁰ Mississippi (2013),¹⁸¹ Tennessee (2013),¹⁸² Louisiana (2012),¹⁸³ and Pennsylvania (1996).¹⁸⁴

Georgia (2004) may also preempt local authority to enact leave ordinances.¹⁸⁵ Georgia has enacted a statute which preempts local authority to alter a private employer's employee benefits. The law does not explicitly mention leave policies but it benefits could plausibly include leave policies.

Discrimination in Hiring

At least four, but perhaps seven or more, states have enacted laws that preempt local authority to issue ordinances prohibiting or allowing private employers to discriminate in hiring, discharge, wage, and other employment practices. These states include: North Carolina (2016),¹⁸⁶ Arkansas (2015),¹⁸⁷ Utah (2015),¹⁸⁸ and Tennessee (2011).¹⁸⁹ They may also include Kansas, New Hampshire, and South Carolina. Kansas might also preempt such local authority because the Kansas Act Against Discrimination explicitly states that it does not preempt local authority to prohibit discrimination in housing transactions (44-1024), yet it does not state any such disclaimer regarding discrimination (44-1009) in labor or municipal contracts (44-1030).¹⁹⁰ New Hampshire law might, implicitly, preempt such ordinances because it is a Dillon's Rule state and it has not enacted legislation that expressly empowers localities to prohibit discrimination.¹⁹¹ South Carolina may preempt local anti-discrimination laws because the South Carolina Human

¹⁷³ Or. Rev. Stat. § 653.661 (only applies to sick leave).

¹⁷⁴ M.C.L.S. § 123.1388.

¹⁷⁵ Mo. Rev. Stat. § 285.055 (unless local ordinances were implemented by Aug. 28, 2015).

¹⁷⁶ Okla. Stat. tit. 40, § 160.

¹⁷⁷ A.R.S. § 23-204.

¹⁷⁸ In.C. § 22-2-16-3.

¹⁷⁹ Fla. Stats. § 218.077.

¹⁸⁰ K.S.A. § 12-16.130.

¹⁸¹ M.C.A. § 17-1-51.

¹⁸² Tenn. Code Ann. § 7-51-1802.

¹⁸³ La. R.S. § 23:642.

¹⁸⁴ Chris Potter, Court Rejects as "Unenforceable" Two Pittsburgh Labor Ordinances, PITTSBURGH POST-GAZETTE (Dec. 22, 2015, 4:29 p.m.). See Bldg. Owners & Managers Ass'n of Pittsburgh v. City of Pittsburgh, 985 A.2d 711, 714 (Pa. 2009) (holding that Pennsylvania state law prohibits municipalities from regulating businesses by determining their "duties, responsibilities, or requirements.").

¹⁸⁵ O.C.G.A. § 34-4-3.1, (p.22) (Does not refer to leave but preempts "all...employment benefits").

¹⁸⁶ N.C. Gen. Stat. § 143-422.2.

¹⁸⁷ SB 202. See also Elizabeth Reiner Platt, States Attempting to Preempt LGBT-Friendly Municipalities, Public Rights, Private Conscience Project, Columbia Law School (Feb. 11, 2016).

¹⁸⁸ Utah Code § 34A-5-102.5.

¹⁸⁹ HB 600 (2011). See also Elizabeth Reiner Platt, States Attempting to Preempt LGBT-Friendly Municipalities, Public Rights, Private Conscience Project, Columbia Law School (Feb. 11, 2016).

¹⁹⁰ Kansas Code 44-1001, et. seq.

¹⁹¹ N.H. Code 354-A:1.

Affairs law explicitly states that it does not preempt local laws applicable to “food handling” if those laws are “designed to protect the public health from individuals who pose a significant risk to the health or safety of others...”¹⁹² Since the statute does not include any other disclaimer of preemption, it may preempt local authority to enact anti-discrimination regulations.

Wage Theft

At least one state (Tennessee) has enacted a law that preempts local authority to regulate wage theft by private employers against their employees.¹⁹³ While Pennsylvania and Arizona have not enacted a wage theft preemption law specifically, they have enacted other preemption laws which may prohibit localities from regulate wage theft by private employers. In Pennsylvania, for example, localities cannot regulate businesses by determining their “duties, responsibilities, or requirements.”¹⁹⁴ In Arizona, the state legislature has passed a wage theft law but that law does not contain any explicit language empowering localities to enact similar laws unlike its prior minimum wage statute which did expressly empower localities to enact minimum wage ordinances.¹⁹⁵

Collective Bargaining/Union Membership

At least twenty-eight states have enacted “Right to Work” laws. These laws prohibit a private employer from discriminating against an employee, in any way, on the basis of non-membership in a union as well as prohibit a private employer from requiring any of its employees to join a union or to pay dues to a union as a condition of employment. Implicitly, these laws preempt local authority to require private employees to unionize or prohibit private employers from hiring non-union members. These states include: Missouri (2017),¹⁹⁶ Kentucky (2017),¹⁹⁷ Alabama (1953 – statute; 2016 – constitutional amendment),¹⁹⁸ West Virginia (2016),¹⁹⁹ Wisconsin (no expressed mention of preemption, however)(2015),²⁰⁰ Michigan (2012),²⁰¹ Indiana (2012),²⁰² Oklahoma (2001),²⁰³ Idaho (1985),²⁰⁴ Louisiana (1976),²⁰⁵ Wyoming (1963).²⁰⁶ Kansas (1958),²⁰⁷

¹⁹² S.C. Code 1-13-10 et. seq.

¹⁹³ Tenn. Code Ann. § 50-2-113.

¹⁹⁴ *Bldg. Owners & Managers Ass’n of Pittsburgh v. City of Pittsburgh*, 985 A.2d 711, 714 (Pa. 2009) (holding that Pennsylvania state law prohibits municipalities from regulating businesses by determining their “duties, responsibilities, or requirements.”). Philadelphia has passed such an ordinance but it may be illegal.

¹⁹⁵ ARS § 23-364.

¹⁹⁶ SB 19 (2017).

¹⁹⁷ HB 1 (2017).

¹⁹⁸ Ala. Code 25-7-41. See also Ala. Code 25-7-30-36.

¹⁹⁹ West Virginia Code §21-1A-3.

²⁰⁰ 2015 Wisconsin Act 1.

²⁰¹ M.C.L.S. § 408.875, but the law is limited to construction, repair, remodeling, or demolition of a facility. See also M.C.L.S. § 123.1390 (no apprenticeship programs can be required).

²⁰² Indiana Code § 22-6-6.

²⁰³ <http://www.legis.nd.gov/cencode/t34c01.pdf>; Okla. Const. art. 23, § 1A;
<https://www.multistate.com/insider/2016/12/right-to-work-to-expand-in-2017/>

Utah (1955),²⁰⁸ Mississippi (1954),²⁰⁹ South Carolina (1954),²¹⁰ Nevada (1951),²¹¹ Georgia (1947),²¹² Iowa (1947),²¹³ Arkansas (1947),²¹⁴ Texas (1947),²¹⁵ Virginia (1947),²¹⁶ North Dakota (1947),²¹⁷ North Carolina (1947),²¹⁸ Tennessee (1947),²¹⁹ Arizona (1946),²²⁰ South Dakota (1946),²²¹ Nebraska (1946),²²² and Florida (1944).²²³ New Hampshire may become the 29th “Right to Work” state.²²⁴

ANTIDISCRIMINATION

“Bathroom Bills”

“Bathroom bills” restrict access to multi-user restrooms and locker rooms on the basis of an individual’s assigned biological sex at birth.²²⁵ These laws are preemptive in that almost all of the proposed legislation would require local school officials to designate the use of bathrooms in public schools based only on biological sex. Some of the bills explicitly preempt local governments from adopting non-discrimination ordinances or require all public restrooms in a locality to be designated based on biological sex. Thirteen states are considering or have passed this type of legislation.²²⁶

North Carolina enacted the first bathroom bill in 2016, which overturned an anti-discrimination ordinance that had been enacted by Charlotte.²²⁷ Of the twelve bills

²⁰⁴ I.C. § 44-2001, et. seq.

²⁰⁵ LSA-R.S. § 23.981, 984.

²⁰⁶ Wyo. Stat. § 27-7-109.

²⁰⁷ Kan. Cons. art. XV, § 12.

²⁰⁸ Utah Code § 34-34-8.

²⁰⁹ MS. Con. § 198-A.

²¹⁰ S.C. Code Ann. § 41-7.

²¹¹ NRS § 613.250. <https://www.multistate.com/insider/2016/12/right-to-work-to-expand-in-2017/>

²¹² O.C.G.A. § 34-6-21

²¹³ Iowa Code § 731.4.

²¹⁴ Ark. Cons. Amend. 34, § 1.

²¹⁵ Tex. Lab. Code § 101.003. <https://www.multistate.com/insider/2016/12/right-to-work-to-expand-in-2017/>

²¹⁶ VA. § 40.1-60.

²¹⁷ N.D. Code § 34-01-14.

²¹⁸ N.C.G.S. § 95-80.

²¹⁹ Ten. Code § 50-1-2011. <https://www.multistate.com/insider/2016/12/right-to-work-to-expand-in-2017/>

²²⁰ Ariz. Cons. XXV, 23-8-1.

²²¹ S.D. Const. art. 6, § 2. <https://www.multistate.com/insider/2016/12/right-to-work-to-expand-in-2017/>

²²² Neb. Const. art. XV, § 13. <https://www.multistate.com/insider/2016/12/right-to-work-to-expand-in-2017/>

²²³ Fl. Con. Art. I, § 6.

²²⁴ Bill Kramer, *Right-to-Work to Expand in 2017*, MULTISTATE INSIDER (Dec. 15, 2016).

<http://www.nationalreview.com/corner/444716/slow-steady-march-right-work-laws>.

²²⁵ NAT. CONFERENCE OF STATE LEGISLATURES, “BATHROOM BILL” LEGISLATIVE TRACKING, <http://www.ncsl.org/research/education/-bathroom-bill-legislative-tracking635951130.aspx>.

²²⁶ *Id.*

²²⁷ An Act to Provide for Single-Sex Multiple Occupancy Bathroom and Changing Facilities, N.C.G.S. § 143-422.11(b) (2016).

currently being considered by state legislatures, three explicitly preempt local governments from adopting non-discrimination ordinances (Missouri, South Carolina, and Texas).²²⁸ Most of the legislation focuses on public schools and public restrooms generally, however Wyoming's bill would make using a restroom that does not correspond to one's birth sex a crime of public indecency.²²⁹

Two states – South Dakota and Virginia – had bathroom bill legislation introduced in the 2017 legislative session that failed to pass.²³⁰ Nineteen states considered this type of legislation in 2016 with only North Carolina enacting a “bathroom bill.”²³¹

Paid Family Leave

Paid family leave policies provide compensation for people who need to take time off of work to care for a newborn, child, or aging family member. These tasks have traditionally fallen on women, and research shows that paid family leave policies benefit women's outcomes in the work place as well as the financial outcomes for families generally.²³² Seventeen states have preempted local governments from passing laws requiring companies in their jurisdiction provide paid family leave.²³³

IMMIGRATION

Sanctuary Cities

Sanctuary policies “limit how local law enforcement can cooperate with federal immigration agents.”²³⁴ Following the election, there is an overall trend of state legislatures proposing bans on sanctuary cities. Arizona, Georgia, Indiana, North Carolina, and Missouri all have bans against sanctuary cities that predate the election.²³⁵

²²⁸ The twelve states with bills in the legislature are Alabama, Illinois, Kansas, Kentucky, Minnesota, Missouri, New York, South Carolina, Tennessee, Texas, Washington, and Wyoming. NAT. CONFERENCE OF STATE LEGISLATURES, *supra*, note 1.

²²⁹ NAT. CONFERENCE OF STATE LEGISLATURES, *supra*, note 1.

²³⁰ NAT. CONFERENCE OF STATE LEGISLATURES, *supra*, note 1.

²³¹ These states are Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Mississippi, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, Washington, and Wisconsin. NAT. CONFERENCE OF STATE LEGISLATURES, *supra*, note 1.

²³² Claire Cain Miller, *The Economic Benefits of Paid Parental Leave*, N.Y. TIMES, Jan. 30, 2016, <https://www.nytimes.com/2015/02/01/upshot/the-economic-benefits-of-paid-parental-leave.html>.

²³³ These states are Arizona, Georgia, Florida, Indiana, Kansas, Louisiana, Maryland, Mississippi, Missouri, Michigan, New Hampshire, North Carolina, Oklahoma, Oregon, Tennessee, Wisconsin, and Virginia. NAT. LEAGUE OF CITIES, CITY RIGHTS IN AN ERA OF PREEMPTION: A STATE BY STATE ANALYSIS, (2017), <http://nlc.org/sites/default/files/2017-02/NLC%20Preemption%20Report%202017.pdf>.

²³⁴ Jasmine C. Lee, Rudy Omri & Julia Preston, *What are Sanctuary Cities?*, N.Y. TIMES, Feb. 6, 2017, <https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html>.

²³⁵ Ariz. Rev. Stat. §11-1051 (2011); Ga. Code Ann. §36-80-23 (2009); Ind. Code Ann. §5-2-18.2-4 (2011); N.C. Gen. Stat. §153A-145.5 (2015); Mo. Rev. Stat. §67.307 (2009).

The Arizona law was partially struck down by the Supreme Court in Arizona v. United States, however the key preemption provisions remain.²³⁶

Since November, fifteen states have proposed legislation to preempt sanctuary cities. Of those states four do not have any known sanctuary cities: Arkansas, Idaho, Oklahoma, and Tennessee.²³⁷ The bills in Mississippi, Texas, Pennsylvania, and Virginia have passed senate in each state, and are now being considered by the house.²³⁸ In the remaining seven states the laws will be considered by the legislature later this year.²³⁹ Notably, the proposed law in Ohio will hold local government officials criminally liable for the acts of undocumented immigrants, and the law in Texas will impose criminal

²³⁶ *Arizona v. United States*, 567 U.S. 387 (2012).

²³⁷ Benjamin Hardy, *Bill Introduced to Strip State Funds from Hypothetical Sanctuary Cities in Arkansas*, ARKANSAS TIMES, Dec. 2, 2016, <http://www.arktimes.com/ArkansasBlog/archives/2016/12/02/bill-introduced-to-strip-state-funds-from-hypothetical-sanctuary-cities-in-arkansas>; Betsy Z. Russell, *Proposed Law in Idaho Would Discourage Sanctuary Cities*, THE SPOKESMAN-REVIEW, Jan. 30, 2017, <http://www.spokesman.com/stories/2017/jan/30/idaho-house-panel-introduces-immigration-bill-targ/>; Abby Broyles, *"You Incentivize a Lot of Bad Things," Oklahoma Senator Files Bill to Ban Sanctuary Cities in Oklahoma*, KFOR, Feb. 1, 2017, <http://kfor.com/2017/02/01/you-incentivize-a-lot-of-bad-things-oklahoma-senator-files-bill-to-ban-sanctuary-cities-in-oklahoma/>; Ariana Maia Sawyer, *Lawmaker Introduces Tennessee "Sanctuary City" Ban*, THE TENNESSEAN, Feb. 8, 2017, <http://www.tennessean.com/story/news/politics/2017/02/08/lawmaker-introduces-tennessee-sanctuary-city-ban/97166104/>.

²³⁸ Kendra Ablaza & Kate Royals, *Senate Approves Bill Banning "Sanctuary Cities,"* MISSISSIPPI TODAY, Feb. 9, 2017, <http://mississippitoday.org/2017/02/09/senate-approves-bill-banning-sanctuary-cities/>; Claire Sasko, *Controversial Sanctuary Cities Bill That Could Defund Philly Clears Pennsylvania Senate*, PHILADELPHIA, Feb. 8, 2017, <http://www.phillymag.com/news/2017/02/08/sanctuary-cities-bill-clears-pa-senate/>; Jim Vertuno, *"Sanctuary Cities" Ban May Let Texas Oust Officials*, THE WASHINGTON TIMES, Feb. 8, 2017, <http://www.washingtontimes.com/news/2017/feb/8/sanctuary-cities-bill-may-let-texas-oust-elected-o/>; Alan Suderman, *Virginia Senate Passes Anti-Sanctuary Cities Bill*, THE WASHINGTON POST, Feb. 22, 2017, https://www.washingtonpost.com/local/virginia-senate-passes-anti-sanctuary-cities-bill/2017/02/22/e06a8078-f92f-11e6-aa1e-5f735ee31334_story.html?utm_term=.88c876775956.

²³⁹ Kristen M. Clark, *Florida Lawmakers Unveil Plan to Ban "Sanctuary" Cities*, MIAMI HERALD, Feb. 9, 2017, <http://www.miamiherald.com/news/politics-government/state-politics/article131577564.html>; Brianna Pfannenstiel, *Anti-Sanctuary City Bill Targeting Cities, Universities Advances in Iowa House*, THE DES MOINES REGISTER, Feb. 2, 2017, <http://www.desmoinesregister.com/story/news/politics/2017/02/02/anti-sanctuary-city-bill-targeting-cities-universities-advances-iowa-house/97398108/>; Phillip Bailey, *Bill Would Block Sanctuary Cities in Kentucky*, COURIER-JOURNAL, Feb. 8, 2017, <http://www.courier-journal.com/story/news/politics/ky-general-assembly/2017/02/08/bill-would-block-sanctuary-cities-ky/97658500/>; Michelle D. Anderson, *Michigan GOP Joins Trump in Targeting Sanctuary Cities*, REWIRE, Feb. 3, 2017, <https://rewire.news/article/2017/02/03/michigan-gop-joins-trump-targeting-sanctuary-cities/>; Colton Lochhead, *Robertson to Bring Bill That Would Prevent Sanctuary Cities in Nevada*, LAS VEGAS REVIEW-JOURNAL, Feb. 13, 2017, <http://www.reviewjournal.com/news/politics-and-government/nevada/robertson-bring-bill-would-prevent-sanctuary-cities-nevada>; Robert Higgs, *Ohio Dems Respond to Proposed Sanctuary City Ban with Own Plan*, CLEVELAND.COM, Feb. 7, 2017, http://www.cleveland.com/open/index.ssf/2017/02/ohio_dems_respond_to_proposed.html; Laurel White, *Wisconsin Bill Imposing Sanctuary City Penalties Resurfaces*, WISCONSIN PUB. RADIO, Feb. 3, 2017, <https://www.wpr.org/wisconsin-bill-imposing-sanctuary-city-penalties-resurfaces>.

liability against city officials that do not intend to comply with the law. Alabama state legislators may be considering legislation to ban sanctuary cities.²⁴⁰

Four states have considered bans on sanctuary cities in past legislative sessions, but do not appear to be considering them now.²⁴¹

Five states – California, Connecticut, Oregon, Rhode Island, and Vermont –have established sanctuary policies on a state level, effectively preempting localities that might wish to enact an “anti-sanctuary” policy.²⁴² There is proposed legislation in New Mexico to enact sanctuary policies on a state level.²⁴³ Seventeen states have neither preempted local sanctuary policies, nor enacted a sanctuary policy statewide; of these states eight have sanctuary cities.²⁴⁴ In New Jersey, legislators have proposed a bill to match the amount of funds sanctuary cities might lose from the federal government.²⁴⁵ The states of New York and Oregon have signaled that they will support municipalities’ decisions to adopt sanctuary policies.²⁴⁶

Day-Labor Sites

²⁴⁰ Brandon Mosely, *Bentley Says Alabama Will Not Support Sanctuary Cities*, ALABAMA POLITICAL REPORTER, Feb. 2, 2017, <http://www.alreporter.com/2017/02/01/bentley-says-alabama-will-not-support-sanctuary-cities/>.

²⁴¹These states are Kansas, Maryland, Louisiana, and *Kansas Among Several States Looking to Ban Sanctuary Cities*, ASSOC. PRESS, Feb. 2, 2016, <http://ksn.com/2016/02/02/kansas-among-several-states-looking-to-ban-sanctuary-cities/>; Anjali Shastry, *Maryland Bill Aims to Punish Sanctuary Cities*, WASHINGTON TIMES, May 24, 2016, <http://www.washingtontimes.com/news/2016/jan/19/maryland-bill-aims-to-punish-sanctuary-cities/>; Greg Hilburn, *Sanctuary Cities Bill Dies; Lafayette, NOLA Avoid Penalties*, THE NEWS STAR, Jan. 19, 2016, <http://www.thenewsstar.com/story/news/2016/05/24/sanctuary-cities-bill-dies-lafayette-nola-avoid-penalties/84769550/>; *City Enforcement of Immigration Laws Before Panel*, BILLINGS GAZETTE, Jan. 14, 2013, http://billingsgazette.com/news/state-and-regional/montana/city-enforcement-of-immigration-laws-before-panel/article_552b1c9f-f3e0-51bd-9064-1778ebfcf246.amp.html.

²⁴² Lee, Omri & Preston, *What are Sanctuary Cities?*, *supra* note 234; *see, e.g.*, Rene Ray De La Cruz, *Hesperia City Council Considers Adopting Sanctuary City Ban*, DAILY PRESS, Feb. 12, 2017, <http://www.vvdailypress.com/news/20170212/hesperia-city-council-considers-adopting-sanctuary-city-ban>.

²⁴³ Dan McKay, *Bill Would Make NM Sanctuary State*, ALBUQUERQUE JOURNAL, Jan. 24, 2017, <https://www.abqjournal.com/934690/new-mexico-bill-would-halt-enforcement-of-immigration-laws.html>.

²⁴⁴ These states are Alaska, Delaware, **Illinois**, Hawaii, Maine, **Minnesota**, **Nebraska**, New Hampshire, **North Dakota**, Rhode Island, South Carolina, **South Dakota**, Utah, **Vermont**, **Washington**, West Virginia, and **Wyoming** (states with sanctuary cities in bold). *See* Lee, Rudy & Preston, *What are Sanctuary Cities?*, *supra* note 234.

²⁴⁵ Steve Strunsky, *N.J. Bill Would Fund Sanctuary Cities Denied Federal Dollars by Trump*, NJ.COM, Feb. 7, 2017,

http://www.nj.com/hudson/index.ssf/2017/02/state_bill_would_fund_sanctuary_cities_denied_fede.html.

²⁴⁶ANTICIPATING MAJOR CHANGES TO FEDERAL IMMIGRATION ENFORCEMENT, A.G. SCHNEIDERMAN PROVIDES LOCAL GOVERNMENTS WITH LEGAL TOOLS TO PROTECT IMMIGRANT COMMUNITIES, (Jan. 19, 2017), <https://ag.ny.gov/press-release/anticipating-major-changes-federal-immigration-enforcement-ag-schneiderman-provides>; Aaron Mesh, *Gov. Kate Brown: Oregon Won't Use State Dollars to Arrest Undocumented Immigrants*, WILLAMETTE WEEK, Jan. 26, 2017, <http://www.wweek.com/news/2017/01/26/gov-kate-brown-trumps-deportation-demands-violate-oregon-law/>.

Some municipal governments have enacted ordinances banning day laborers from congregating in public areas. Advocates for day laborers are challenging these laws through lawsuits disputing the constitutionality of these ordinances rather than through urging state preemption of these local laws.²⁴⁷

Local Identification Laws

Lack of government issued identification disproportionately affects vulnerable populations like undocumented immigrants, the homeless, the elderly, formerly incarcerated, and transgender individuals. Some cities and municipalities have issued “municipal IDs” that allow the bearer better access to certain city services, health care, and financial institutions.²⁴⁸ Ten states have local governments in their jurisdiction that have adopted such a policy.²⁴⁹ One state, Wisconsin, has preempted municipal IDs, while bills to ban municipal IDs failed in the Arizona state senate.²⁵⁰ However, these types of programs may be declining in popularity, as the recent controversy about the possibility of data from NYC’s ID being used by the Trump Administration to identify undocumented immigrants.²⁵¹

²⁴⁷ NYCLU, *Day Laborer Organizations Challenge Unconstitutional Anti-Immigration Ordinance in Oyster Bay*, May 18, 2010, <https://www.nyclu.org/en/press-releases/day-laborer-organizations-challenge-unconstitutional-anti-immigrant-ordinance-oyster>.

²⁴⁸ CENTER FOR AM. PROGRESS, PROVIDING AUTHORIZATION TO UNAUTHORIZED IMMIGRANTS, 10 (Nov. 2015); *see also*, CENTER FOR MIGRATION STUDIES, MUNICIPAL IDs AND STATE AND LOCAL MEASURES TO REGULARIZE THE LIVES OF THE AUTHORIZED, <http://cmsny.org/municipal-ids-and-state-and-local-measures-to-regularize-the-lives-of-the-unauthorized/>.

²⁴⁹ These states are Arizona, California, Connecticut, Iowa, Illinois, Michigan, New Jersey, New York, North Carolina, Ohio, and Wisconsin. *See*, Sarah A. Niemann, *Phoenix Municipal ID to Provide Access to City Services*, AZ P.B.S., Oct. 31, 2016, <https://cronkitenews.azpbs.org/2016/10/31/phoenix-id-provides-access-to-city-services/>; San Francisco, California, Municipal Code §95.2 (2007); Hartford, Connecticut, Municipal Code §2-930 (2015); JOHNSON COUNTY, IOWA ID, http://www.johnson-county.com/dept_community_id.aspx?id=18367; CHICAGO MUNICIPAL ID, https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2016/october/Municipal-ID-Program.html; DETROIT ID, <http://www.detroitmi.gov/DetroitID>; MERCER COUNTY, NEW JERSEY ID, <http://nj.gov/counties/mercer/officials/clerk/services/countyid.html>; ID NYC, <http://www1.nyc.gov/site/idnyc/index.page>; *Cincinnati Council OKs Photo IDs for Immigrants, Homeless*, A.P., May 11, 2016,

http://www.cleveland.com/nation/index.ssf/2016/05/cincinnati_council_oks_photo_i.html MILWAUKEE MUNICIPAL ID, <http://city.milwaukee.gov/cityclerk/license/Municipal-Identification.htm#.WLoh3RNViko>.

²⁵⁰ Wi. Stat. §66.0438 (2016); Dustin Gardiner, *Arizona Bill to Block Phoenix ID for Undocumented Immigrants Fails in Senate*, AZ CENTRAL, Feb. 21, 2017, <http://www.azcentral.com/story/news/politics/legislature/2017/02/21/arizona-bills-block-phoenix-identification-cards-undocumented-immigrants/98162832/>.

²⁵¹ Liz Robbins, *New York City Should Keep ID Data for Now, Judge Rules*, THE N.Y. TIMES, Dec. 21, 2016, <https://www.nytimes.com/2016/12/21/nyregion/new-york-city-should-keep-id-data-for-now-judge-rules.html>; Tricia Nadolny, *Philly’s Municipal-ID Plan on Ice Over Privacy Concerns*, PHILADELPHIA ENQUIRER, Feb. 22, 2017, <http://www.philly.com/philly/news/politics/Plans-for-Philadelphia-to-offer-municipal-IDs-on-hold-amid-concerns-about-data-privacy.html>.

PUBLIC SAFETY

Distracted Driving Regulations

In 2013, 10% of car accidents resulting in fatalities and 18% of car accidents resulting in injury were caused by distracted driving, specifically cell phone usage.²⁵² In response, some state and local governments have enacted bans on hand held cell phone usage, all cellphone usage, and text messaging (with some jurisdictions creating special rules for novice and school bus drivers).²⁵³ According to the American Automobile Association (AAA), thirteen states have preempted local regulation of distracted driving.²⁵⁴

Breed-Specific Legislation

Public safety concerns about dog bites and dog attacks have led to the enactment of “breed-specific legislation” in some states and localities. These laws ban the ownership of dogs that are perceived to be dangerous based on their breed – typically Bull and Staffordshire Terriers (Pit Bulls), Rottweilers, and Mastiffs.²⁵⁵ The efficacy of these laws is debated, with the ASPCA publically opposing them.²⁵⁶ Fifteen states have preempted local breed-specific legislation.²⁵⁷ Four states – California, Colorado, Florida, and Illinois – all have bans against local breed-specific legislation, but due to home rule or a grandfather clause they are not uniformly enforced in all municipalities.²⁵⁸

²⁵² NAT. HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS (April 2015)

https://www.distraction.gov/downloads/pdfs/Distracted_Driving_2013_Research_note.pdf.

²⁵³ GOVERNORS HIGHWAY SAFETY ASS’N., DISTRACTED DRIVING, <http://www.ghsa.org/state-laws/issues/Distracted-Driving>.

²⁵⁴ These states are Arkansas, Florida, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, New Jersey, Oklahoma, Pennsylvania, South Carolina, and Washington. AM. AUTO. ASS’N., DISTRACTED DRIVING LAWS, <http://exchange.aaa.com/wp-content/uploads/2015/07/Distracted-Driving-012417.pdf>.

²⁵⁵ Dana M. Campbell, *Pit Bull Bans: The State of Breed-Specific Legislation*, AMERICAN BAR ASSOCIATION NEWSLETTER, July/August 2009, http://www.americanbar.org/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/pitbull.html.

²⁵⁶ ASPCA, BREED-SPECIFIC LEGISLATION, <http://www.aspc.org/animal-cruelty/dog-fighting/what-breed-specific-legislation>.

²⁵⁷ These states are Arizona, Connecticut, Oklahoma, Pennsylvania, Maine, Massachusetts, Minnesota, New Jersey, New York, Nevada, Rhode Island, South Dakota, Texas, Utah, and Virginia. Ariz. Rev. Stat. §11-1005 (2016); Conn. Gen. Stat. §7-148-7D (2013); Okla. Stat. Ann. §4-46 (2006); 3 P.S. §459-507-A (2008); Me. Rev. Stat. Ann. §7-9-725-3950 (2005); Mass. Gen. Laws §140-157 (2012); Minn. Stat. Ann. §347.51 (1989); N.J. Rev. Stat. §4:19-36 (1990); McKinney Cons. Law of N.Y. Ann. §69-7-107; Nev. Rev. Stat. §202.500 (2010); R.I. Gen. Laws Ann. §4-13.1-16 (2013); S.D. Codified Laws §40-34-16 (2014); Vernon’s Tex. Stat. & Code Ann. §822.047; Utah Code §18-2-101 (2015); Va. Code Ann. §3.2-6540 (2013).

²⁵⁸ West Ann. Cal. Food & Agric. Code §31683 (2006) (17 municipalities have enacted BSL); Colo. Rev. Stat. §18-9-204.5 (7 municipalities have enacted BSL); Fla. Stat. §767.14 (2016) (3 municipalities have enacted BSL); Ill. Comp. Stat. Ann. §510-5-24 (2003) (29 municipalities have enacted BSL). For a comprehensive review of BSL, see BSL CENSUS, <http://bslcensus.com/>.

CAMPAIGN FINANCE

In a 2016 report, the Brennan Center for Justice found that the level of fully transparent campaign spending at the state and local levels has declined from 76% in 2006 to 29% in 2014.²⁵⁹ There are several notable instances of dark money influence on local elections.²⁶⁰ The public financing of campaigns is the least-used method of election regulation, but its proponents believe that it has the potential to make sure no one donor has an “outsized influence” on elections.²⁶¹ Until 2016, local governments in California (excepting charter cities) were prohibited from adopting public financing for elections due to the passage of Proposition 73 in 1988.²⁶² However, the passage of SB 1107 in 2016 has lifted this ban, making California localities ripe for additional public financing advocacy efforts.²⁶³

²⁵⁹ BRENNAN CENTER FOR JUSTICE, SECRET SPENDING IN THE STATES 2 (June 2016)

https://www.brennancenter.org/sites/default/files/analysis/Secret_Spending_in_the_States.pdf (based on a dataset of six states that represent approximately 20% of the U.S. population: Alaska, Arizona, California, Colorado, Maine, and Massachusetts).

²⁶⁰ See Daniel DeBolt, *Landlords Hid Big Election Spending*, MOUNTAIN VIEW VOICE, Feb. 6, 2015, <http://www.mv-voice.com/news/2015/02/06/landlords-hid-big-election-spending> (landlord advocacy PAC called the “Neighborhood Empowerment Coalition”); Howard Blume, *P.A.C. Shielded \$2.3 Million in Donations by L.A. Charter School Backers*, THE L.A. TIMES, Dec. 2, 2015, <http://www.latimes.com/local/education/la-me-charter-donations-20151202-story.html> (the “California Charter Schools Association Advocates” in L.A. supported school board candidates in favor of charter schools); Dan Morian, *Beware of Good Schools and Good Jobs, and Cynical Politics*, THE SACRAMENTO BEE, Mar. 16, 2016, <http://www.sacbee.com/opinion/opn-columns-blogs/dan-morain/article66972377.html> (oil company Phillips 66 donated to “Californians for Good Schools and Good Jobs” which opposed increased oil taxes).

²⁶¹ NAT. CONF. OF STATE LEGISLATORS, PUBLIC FINANCING OF CAMPAIGNS,

<http://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx>.

²⁶² Jeremy White, *Public Financing of Elections Could Expand in California*, THE SACRAMENTO BEE, Aug. 31, 2016, <http://www.sacbee.com/news/politics-government/capitol-alert/article99167697.html>.

²⁶³ Patrick McGreevy, *Taxpayer’s Group Sues Governor Brown to Overturn Public Financing of Campaigns*, THE L.A. TIMES, Dec. 13, 2016, <http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-taxpayers-group-sues-gov-brown-to-1481656430-htmlstory.html>.