

Use of Local Preemption to Undermine Public Health or How did a Grocery Tax Exemption End Up in Oregon's Education Funding Bill?

Brief overview

Preemption occurs when a "higher" level of government (state or federal) eliminates or reduces the authority of a "lower" level over a given issue.¹ The federal government has very broad authority to preempt state and local laws under the Supremacy Clause of the U.S. Constitution.¹ Similarly, states almost always have broad authority to preempt local laws.¹

Pomeranz and colleagues call state preemption a "significant and quiet threat" to public health in the United States and offer examples of preemption undermining increased minimum wages, paid family and sick leave, firearm safety, and nutrition policies.^{2,3}

The beverage industry has found state preemption to be a successful legislative strategy as of late. In 2014, Berkeley, California became the first city in the nation to pass a tax on sugary drinks.⁴ While reductions in sugary drink consumption have been sustained in demographically diverse Berkeley neighborhoods over the first 3 years of the tax (and three more cities in California have since pass their own sugary drink taxes),⁵ the California legislature passed a bill in June 2018 to preempt any new local beverage or food taxes for 12 years.⁴

Just last year, sugary drink tax preemption proposals were put to Oregon and Washington State voters as Measure 103 (the Ban Tax on Groceries Initiative) and Initiative 1634 (the Prohibit Local Taxes on Groceries Measure), respectively.^{6,7} While the measure failed in Oregon (57% voted no), Washington State voters approved the initiative (56% voted yes).

Despite preemption of local grocery taxes failing when put to the Oregon voters, the issue has reemerged during the 2019 Oregon Legislative Session as House Bill 3427.⁸ While House Bill 3427 is primarily "establishes a fund for student success" (a \$2 billion dollar education revenue, reform bill), a local grocery tax exemption was included in amendments introduced and approved by the House. The bill now awaits a third reading in the Senate on May 9, 2019.

Questions

1. What do we know from policy process theory that could explain why this tactic is working for the industry? (Values? Policy brokers? Issue linkage? Bargaining?)
2. What are the implications of this strategy for public participation in the democratic process? (Why do we vote? Should we be mad?)
3. How do we address claims that local grocery tax preemption supports equity?
4. Similarly, how does the larger conversation about regressive tax policy affect this industry strategy? How can we (public health) promote equitable policy passage while also not supporting industry tactics?

Readings

- Public Health Law Center. Preemption and Public Health. Available here: <https://publichealthlawcenter.org/topics/other-public-health-law/preemption-public-health> (it's short!).
- Pomeranz JL, Pertschuk M. State Preemption: A Significant and Quiet Threat to Public Health in the United States. (PDF provided)
- House Bill 3427 (PDF provided; read "LOCAL TAX PREEMPTION" section on page 42)

Optional Readings

- [Research Article] Pomeranz JL, Zellers L, Bare M, Pertschuk M. State Preemption of Food and Nutrition Policies and Litigation: Undermining Government's Role in Public Health (PDF provided).
- [Policy Statement] Impact of Preemptive Laws on Public Health. American Public Health Association Policy Statement. Available <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2016/01/11/11/08/impact-of-preemptive-laws-on-public-health>. Accessed May 8, 2019.
- [News Article] California, of All Places, Has Banned Soda Taxes. How a New Industry Strategy Is Succeeding. The New York Times. Available <https://www.nytimes.com/2018/06/27/upshot/california-banning-soda-taxes-a-new-industry-strategy-is-stunning-some-lawmakers.html>. Accessed May 8, 2019.
- [News Article] Where 'Yes! To Affordable Groceries' Really Means No to a Soda Tax. The New York Times. Available <https://www.nytimes.com/2018/11/02/health/grocery-taxes-oregon-washington-soda-tax.html>. Accessed May 8, 2019.
- [News Article] Oregon House to vote on \$2 billion education revenue, reform bill. The Statesman Journal. Available <https://www.statesmanjournal.com/story/news/education/2019/04/29/oregon-house-vote-2-billion-education-funding-reform-bill-goes-floor-vote/3575880002/>. Accessed May 8, 2019 (highlights the larger issue of education to which the beverage industry was able to couple their issue).

References

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- ¹ Public Health Law Center. Preemption and Public Health. Available <https://publichealthlawcenter.org/topics/other-public-health-law/preemption-public-health>. Accessed May 8, 2019.
- ² Pomeranz JL, Pertschuk M. State Preemption: A Significant and Quiet Threat to Public Health in the United States. *Am J Pub Health*. 2017;107(6):900-902. doi: 10.2105/AJPH.2017.303756. Epub 2017 Apr 20.
- ³ Pomeranz JL, Zellers L, Bare M, Pertschuk M. State Preemption of Food and Nutrition Policies and Litigation: Undermining Government's Role in Public Health. *Am J Prev Med*. 2019;56(1):47-57. doi: 10.1016/j.amepre.2018.07.027. Epub 2018 Nov 19.
- ⁴ O'Connor A, Sanger-Katz M. California, of All Places, Has Banned Soda Taxes. How a New Industry Strategy Is Succeeding. *The New York Times*. Available <https://www.nytimes.com/2018/06/27/upshot/california-banning-soda-taxes-a-new-industry-strategy-is-stunning-some-lawmakers.html>. Published June 27, 2018. Accessed May 8, 2019.
- ⁵ Lee MM, Falbe J, Schillinger D, Basu S, McCulloch CE, Madsen KA. Sugar-Sweetened Beverage Consumption 3 Years After the Berkeley, California, Sugar-Sweetened Beverage Tax. *Am J Public Health*. 2019;109(4):637-639. doi: 10.2105/AJPH.2019.304971. Epub 2019 Feb 21.

⁶ Ballotpedia.com. Oregon Measure 103, Ban Tax on Groceries Initiative (2018). Available [https://ballotpedia.org/Oregon_Measure_103,_Ban_Tax_on_Groceries_Initiative_\(2018\)](https://ballotpedia.org/Oregon_Measure_103,_Ban_Tax_on_Groceries_Initiative_(2018)). Accessed May 8, 2019.

⁷ Ballotpedia.com. Washington Initiative 1634, Prohibit Local Taxes on Groceries Measure (2018). Available [https://ballotpedia.org/Washington_Initiative_1634,_Prohibit_Local_Taxes_on_Groceries_Measure_\(2018\)](https://ballotpedia.org/Washington_Initiative_1634,_Prohibit_Local_Taxes_on_Groceries_Measure_(2018)). Accessed May 8, 2019.

⁸ 80th Oregon Legislative Assembly—2019 Regular Session. House Bill 3427 (A-Engrossed). Available <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3427/A-Engrossed>. Accessed May 8, 2019.