

Do the Effects of a Regulatory Patchwork Justify State Preemption of Local Laws?

Executive Summary

*Mark Treskon, John Marotta, Prasanna Rajasekaran, Kriti Ramakrishnan, and Aaron Shroyer
with Solomon Greene*

The recent growth in state legislation that preempts local laws and regulations has led to an increasingly fraught battleground over the balance between local policymaking and oversight by higher government levels. These issues are particularly salient during the COVID-19 pandemic, when states and municipalities have fought over who has the authority to mandate social distancing and the closing and opening of businesses.

Proponents of preemption argue that local laws produce a harmful “patchwork” of regulations within a state, increasing costs for businesses, government, residents, and consumers. However, those opposed to preemption argue that local variation more effectively responds to local market conditions, accounts for residents’ preferences, and creates opportunities for policy innovation and testing.

This report presents findings from an investigation into the use and merits of the regulatory patchwork argument in favor of preemption across 10 policy areas. We identify how and where proponents use these arguments to justify or oppose preemption and review the evidence around the patchwork argument’s merits. We examine four policies in detail: paid sick leave, rent control, plastic bag bans/regulations, and antidiscrimination laws. In the report’s appendix, we provide short overviews of the other six policies: firearms regulations, inclusionary zoning, minimum wage laws, municipal broadband, sanctuary cities, and tobacco regulations.

Arguments for Preemption Are Generally about Regulation and Rarely Include Evidence

Little evidence exists, either in policy debates or academic research, that a patchwork of local laws harms businesses, residents, and consumers. When proponents of preemption provide examples, their arguments are generally arguments about the supposed harm of the regulation itself, rather than about the marginal costs of a patchwork of local laws.

Pro-preemption arguments tend to cite the patchwork most plausibly when it can be linked to clear economic harms caused to businesses, consumers, or residents, because of variation in regulation or costs. Preemption debates about labor laws are the most likely to make these claims. However, concrete examples refer to overall regulatory costs and not the marginal costs of variation.

Research on policy costs and benefits tends to focus on the regulation’s overall costs and not the local patchwork’s marginal effect. Research on these marginal costs—to businesses, consumers, and residents (and to a somewhat lesser extent, local/state governments)—could help inform ongoing policy debates and future policy design. However, because research on these policies has shown both positive and negative economic effects that can be smaller than both opponents and proponents claim, we expect that the actual marginal effects of a regulatory patchwork would be small even if measurable.

These arguments have ramifications for the concept of cities as “laboratories of democracy.” If a local law does not work or the costs outweigh the benefits, it can be amended or dropped. If the local law works, other governments, even at the state or federal level, can pass it. To the extent that state-level preemption debates are making claims about the harms of a local patchwork, then, there is an underpinning of paternalism: the state is protecting cities from themselves.

Arguments for Local Lawmaking Point to the Importance of Tailoring Laws to Local Conditions

Supporters of local lawmaking (and opponents of preemption) point to the importance of tailoring local laws to local conditions and, more broadly, to their constituents’ requests. In some areas, they can also point to positive spillover effects. Stronger local laws have resulted in businesses’ implementing more stringent protection standards across their workforce, even in locations not directly affected by a given local regulation.

Given the lack of evidence examining the marginal effects of a “patchwork” of local laws, a research agenda needs to focus on the marginal costs and benefits—to businesses, consumers, residents, and local and state governments—of having different local laws in various jurisdictions.

For more information, see the full report at <https://www.urban.org/research/publication/do-effects-regulatory-patchwork-justify-state-preemption-local-laws>.