



RESEARCH REPORT

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

An Examination of the Merits of the Patchwork Argument

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Executive Summary

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 in Support of 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 in Favor of 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.

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

Local policymaking has been a key feature of US democracy since the nation's founding. But Americans have long debated what the appropriate balance is between local action and oversight by higher levels of government. A recent rise in the number of state preemption laws that prevent local jurisdictions from enacting laws and regulations across a range of policy areas has made this question increasingly relevant. The issue has been particularly salient during the COVID-19 pandemic as states and municipalities have fought over who has the authority to mandate social distancing, mask wearing, and the closing and opening of businesses.

Preemption can be justified in several ways, but state legislatures and advocates for preemption often cite a concern that local policies create a “patchwork” of laws and regulations across a state that reflect different local policy priorities and result in a diversity of local regulation. Preemption proponents rarely specify the harms that a regulatory patchwork can cause, but, generally, their concerns relate to business costs and uncertainty. Preemption proponents argue that local regulation may not only increase the cost of doing business within a municipality but also result in spillover costs that affect surrounding jurisdictions and a state more broadly. They also claim that a regulatory patchwork can increase costs because firms that work in multiple places in a state must educate themselves on, comply with, and manage each of the various local regulations. For large businesses, these costs are likely already internalized; smaller businesses that operate in multiple jurisdictions, however, may be less able to manage the costs of compliance.

On the other hand, city leaders and advocates for local power who oppose state preemption argue that local governments can most effectively address issues important to their constituents with laws and policies tailored to the realities of their jurisdictions. Advocates for local control argue state and federal legislation should provide a foundation, or floor, on which local governments can build policy responses that fit their jurisdictions, rather than a limit, or ceiling, on what is possible. They also point out that if state or federal governments do not act on important issues, local policymakers can fill the gap.

Study Approach

This report examines the use and characteristics of the “regulatory patchwork” argument across several policy areas. We identify how and where these arguments are used to justify preemption, examine the evidence on the merits of the patchwork argument, and identify future avenues for research and data that could test the relevant questions. This report is intended to be a resource for practitioners and researchers who are interested in the knowledge base on preemption and want to expand it.

For our analysis, we identified seven policy realms in which local laws have been subject to state preemption and selected 10 policies from these realms (in bold, below) to investigate the extent to which the patchwork argument was made during debates over them:

- employment (e.g., **minimum wage**, **paid sick leave**, family leave, fair scheduling, local hiring requirements)
- transportation and infrastructure (e.g., ride-sharing, **municipal broadband**, distracted driving)
- health (e.g., **minimum age for tobacco sales**, tobacco advertising, nutrition labels)
- environment (e.g., pesticides; hydraulic fracturing, or “fracking”; **plastic bags**)
- safety and justice (e.g., **firearms**, **sanctuary cities**)
- housing (e.g., **rent control**, home sharing, **inclusionary zoning**)
- antidiscrimination (ban the box, **anti-LGBTQ discrimination**)

For each of the 10 policies, we examined court decisions and filings, legislation, policy debate transcripts and recordings, media accounts, and interest group materials. These sources allowed us to identify arguments and the people and organizations making them.

From those 10 policies, we chose for an in-depth analysis 4 policies that were subject to the patchwork argument: paid sick leave, rent control, plastic bag bans/regulations, and antidiscrimination laws. Our deep-dive analysis included an investigation of how the patchwork argument was made, justified, and supported, whether in favor of or in opposition to preemption; an examination of whether research or evidence existed on the effects of a patchwork of local laws; and an overview of potential research themes that could be used to evaluate patchwork effects.

In this report, we focus on the costs created as a result of having a patchwork of local policies, rather than on broad concerns such as the overall cost of regulation. In other words, we examine the variable or marginal cost of compliance that arises from a patchwork of local regulation, the increase in

costs that stems from the need among businesses, residents, consumers, and governments to account for local regulatory frameworks and multiple sets of requirements.

The goal of this work is to understand the rhetoric of the debates that include the patchwork argument, evaluate their distinctions, and map out a way to explore them more systematically. In practice, even though a patchwork argument is commonly used in favor of preemption, little research exists on the concrete marginal effects of having a patchwork.

Justifying Preemption

We focus on three arguments that tend to come up in policy preemption debates (table 1):

- whether the policy *itself* is harmful (e.g., to businesses, residents, consumers)
- whether *local* action is harmful or inappropriate
- whether local *variation* is harmful

In the first argument, policymakers decide whether a policy itself is faulty. This could be because its costs supposedly outweigh its benefits, but moral or political considerations may also come into play—for example, state policymakers may be ideologically opposed to a local policy’s aims. In this case, state lawmakers may engage in what is known as *vacuum* (or *null*) preemption: forbidding local governments from passing laws in this policy area while declining to enact regulation at the state level. This is a purely deregulatory argument.

With the second argument, those in favor of preemption think local action is harmful unless it adheres to a minimum standard. This perspective justifies policies on the other end of the spectrum—specifically, *floor* preemption, which is when the state or federal government imposes minimum standards that local governments must follow and allows those governments to adopt more stringent or protective laws that are locally tailored. For an example, consider minimum wage laws: the federal minimum wage is \$7.25 an hour, but states and many municipalities can set their own minimum higher than the federal one.

Finally, in the third argument, preemption proponents argue that variation in policies on a particular topic across localities is a problem, even if regulation itself may have some value, and that this justifies *ceiling* preemption. This type of preemption prohibits local governments from passing laws that are more stringent or protective than those at the state or federal level. An example of this is states that

have set a minimum wage that is equal to or more than the federal minimum but prohibit municipalities from going any higher.

TABLE 1
Arguments against Local Action

General normative argument	Rationale	Logical state response
Any action is harmful	Costs of regulation outweigh benefits.	Vacuum (or null) preemption
Local action may be insufficient	Local action can be beneficial with minimum standards.	Floor preemption
Local variation (“patchwork”) is harmful	Regulation can be beneficial, but local variation adds costs.	Ceiling preemption (or uniformity)

Sources: Authors’ analysis; ChangeLab Solutions, “[Fundamentals of Preemption](#)” (Oakland, CA: ChangeLab Solutions, 2019).

Among the three arguments noted here, calls for ceiling preemption are the most directly related to the patchwork issue. In policy debates, the term “patchwork” tends to have a negative connotation (i.e., something that has been randomly pieced together). Opponents argue that local variation increases compliance costs, inhibits economic development, leads to consumer confusion and additional costs, and creates inconsistent protections for state residents. However, local variation has its supporters as well. They argue that it responds to local contexts and market conditions, accounts for the preferences of residents (and as such promotes local democracy), and creates opportunities for policy innovation and testing.

This report focuses on the debate about the *economic* effects of regulatory variance. This approach lets us identify ways to measure the negative effects of a patchwork of local laws. For example, certain categories of businesses are more likely than others to be affected by a regulatory patchwork, and focusing on those would presumably allow for an effect to be observed. A small business operating within one location or one jurisdiction is unlikely to experience a patchwork effect because it would only be directly affected by the costs of the regulation itself. Similarly, large firms that operate across local and state borders already account for a diversity of local health, tax, licensing, and other regulations across jurisdictions and would likely not experience a patchwork effect. Compliance costs for smaller businesses operating in multiple jurisdictions could presumably be more noticeable (although in our review of the research we find no evidence that this has a measurable effect on operational decisionmaking).

During debates over some types of legislation, such as labor or housing regulations, the economic arguments for preemption are front and center. However, when regulation touches on a controversial social issue, other, noneconomic justifications may be more central (e.g., “people in this state are morally

opposed to passing a law regulating X or protecting group Y”). In practice, arguments get muddled: this is especially the case with antidiscrimination legislation, which we discuss in more detail below.

Policy Scans

In this section, we present findings from our deep-dive analysis of four policies—paid sick leave, rent control, plastic bag bans/regulations, and antidiscrimination laws—including a discussion of the claims that stakeholders make for and against state preemption and with a focus on how the patchwork argument is being used. We also present an overview of existing research that examines claims related to the supposed effects of a patchwork of these laws.

Paid Sick Leave

The primary public policy goals of paid-sick-days legislation are to improve public health by slowing the spread of contagious illnesses and to provide economic security to workers and their families (Marotta and Greene 2019). Paid-sick-days laws require employers to allow workers to accrue paid sick time at a specified rate to be used for various reasons, including recovering from illnesses, accessing preventive care, and providing care to a sick family member. The specific features of these policies—such as exemptions, accrual rates and maximum amounts of paid time off, and who qualifies for coverage—vary widely.

In 2007, San Francisco adopted the nation’s first policy requiring employers to provide paid sick days; since then, paid-sick-days laws have been adopted in 11 states, the District of Columbia,¹ and more than 30 localities.² But as these laws have become more popular, they have also become a target of state preemption: 23 states have passed laws that prevent localities from requiring employers to provide workers with paid sick time. Among those are 5 states that also passed laws that prohibit localities from establishing paid-sick-days requirements that differ from state standards.³

CLAIMS FOR AND AGAINST PREEMPTION

Of the policy areas this report examines, paid sick leave (and other labor laws such as minimum wage and predictive scheduling policies) most clearly illustrates the potential relevance of the patchwork argument and how direct costs could lead to other effects that are less direct but more wide-reaching.

Associations that represent restaurants, retail businesses, and chambers of commerce have opposed paid-sick-days legislation, saying these laws increase compliance costs for businesses. For

instance, counsel for the American Staffing Association, a national business group involved in challenging city ordinances, argued that paid-sick-days laws were particularly harmful to “staffing firms, because they must track the hours of large numbers of employees on short-term, intermittent job assignments for purposes of leave accrual and utilization.”⁴

Others have taken the more general concern about compliance costs to argue that they may be particularly noteworthy in states with different local laws. Lisa Nagele-Piazza, a senior legal editor with the Society for Human Resource Management, has said that among employers, establishing different organizational policies because of variation in local laws within a state is a principal compliance concern.⁵ Others have argued that different local laws create complexity and uncertainty for businesses and employees. For example, opponents of paid-sick-days legislation in Austin, Texas, noted questions about how the ordinance would apply as employees moved across municipal boundaries.⁶

For proponents of preemption, the end result of multiple local laws is a confusing patchwork that businesses must navigate, leading to limited economic growth that harms both employers and employees.⁷ At scale, these decisions could reduce employment, lower the tax base, and lead to regional or state-level impacts. According to preemption proponents, any mandate placed on employers undermines a state’s economic competitiveness by creating regulatory complexity and unpredictability and leading to a perception that the state is not economically competitive compared with peers that do not have multiple local laws.⁸

However, opponents of preemption have argued that variation in local paid-sick-leave policies could have benefits. For one, it allows governments to respond to local conditions and meet the needs of their residents. Access to paid sick leave has been found to be inequitably distributed along racial, ethnic, and other lines such as immigrant status (Xia et al. 2016), so enacting a paid-sick-days law in a jurisdiction with significant populations of people of color or immigrants could directly address inequities.

Other proponents of local legislation have argued that local lawmaking can result in potentially positive spillover effects: if businesses find that paid sick leave makes finding and retaining workers easier and that workers’ performance improves, there could be a “race to the top” effect that increases the well-being of workers beyond the locality with the most stringent standards. Take Maryland as an example. The state enacted a paid-sick-days law that mandates minimum leave accrual rates and other features but also allows localities to establish their own policies. As a result, even though the state law requires employers to provide workers with up to 40 hours of paid sick leave, Montgomery County requires up to 56 hours. In response, a business owner with establishments in multiple counties in

Maryland stated that at all locations, “we will stick with the more generous [Montgomery County] plans. It’s easier this way.”⁹

EVIDENCE AND RESEARCH AGENDA

Although the argument that a patchwork of fringe benefit requirements across a state creates undue complexity for businesses and weakens a state’s economic attractiveness has often been invoked by lawmakers and advocates, research on this claim is scarce. Studies have generally found that implementation of the policy has not been overly burdensome for employers and that access to paid sick time has lowered rates of “presenteeism,” the phenomenon of working while sick (Marotta and Greene 2019). The research suggests that workers feel more satisfied and secure with paid sick time and that employment, wages, and labor force participation are not significantly reduced by paid-sick-time mandates. Research also suggests that providing near-universal access to paid sick time can help reduce racial disparities in labor market and health outcomes. Agreement is growing across the research literature about the health benefits of access to paid sick time, including less emergency department use and greater use of preventive care.

However, little work has been done to evaluate the *marginal* costs or benefits of a patchwork of local labor laws. The most potentially useful avenue for research on this issue would focus on decisionmaking by firms and compliance costs across multiple jurisdictions and would attempt to determine the extent to which the existence of varying laws has affected operational costs or decisionmaking. Many of the relevant questions can be answered through original research and primary data collection, by speaking to and surveying employers, workers, and policymakers.

Rent Control

Since the 1940s, local governments have used rent control as a tool to protect tenants from rapidly increasing rents. Historically, policymakers have enacted several different versions of rent control, from early laws that enforced strict price ceilings to the modern “rent stabilization” regimes that allow annual increases and provide various exemptions (Rajasekaran, Treskon, and Greene 2019). In the 1980s and 1990s, several state governments passed laws that preempted all local rent control ordinances because of concerns about their unintended adverse effects.¹⁰ Today, only five states—California, Maryland, New Jersey, New York, and Oregon—and Washington, DC, allow rent control.¹¹

However, in response to a growing affordable housing crisis, state and local governments are reconsidering rent control. In 2019 alone, California, Oregon, and New York passed statewide rent

control laws that strengthened tenant protections, while Illinois and Colorado considered bills that would have overturned preemption. Rent control's revival at the state level has sparked a new debate on its merits, and some opponents defend state preemption laws by arguing that a patchwork of local rent control regulations may create uncertainty for developers and discourage housing construction.

CLAIMS FOR AND AGAINST PREEMPTION

Contemporary debates on state preemption of rent control have generally focused on the merits of local rent control *per se*, rather than on local regulatory patchworks. However, proponents of state preemption occasionally invoke the patchwork argument within the context of broader critiques (Rosen 2018). This argument has tended to be made by representatives of landlord associations and most commonly appears in policy debates surrounding the repeal of statewide rent control bans.

California has been at the center of much of these debates. Some cities in the state have enacted local rent control policies, but the 1995 Costa-Hawkins Rental Housing Act placed significant limits on what these policies could include (e.g., rent control could not be applied to single-family homes or condominiums or to units built after February 1, 1995).¹² This has led to two failed ballot initiatives seeking to overturn Costa-Hawkins: Proposition 10 in 2018 and Proposition 21 in 2020. But proponents of rent control have had successes as well, notably the 2019 passage of a statewide rent control law that limits annual rent increases and bans landlords from evicting people without a reason.

The patchwork argument has been cited multiple times in media reports on the proposed Costa-Hawkins repeals.¹³ Opponents of repeal tend to treat the existing, if limited, patchwork of local laws allowed under Costa-Hawkins as a sort of understood baseline while arguing that giving localities more power to craft laws “could create a haphazard patchwork of differing rent control rules in cities across the state” and “untold uncertainty for property owners, investors, lenders and developers” (Rosen 2018, 9–10). Landlord groups and developers opposed to Proposition 10 also used the patchwork argument: a San Diego-based nonprofit developer argued that a patchwork of local rent control laws could make “it very hard for developers to get things done efficiently” because it adds to the cost of development and creates uncertainty that can derail project funding opportunities.¹⁴ A public radio show focused on Proposition 10 reported that developers feared a patchwork of local regulation, noting that “if all of a sudden every individual city has their own rent control laws, that can make business harder for them.”¹⁵

On the other hand, the patchwork argument found its way into some (admittedly measured) support for statewide rent control (which, again, California passed in 2019): one lawyer argued that

statewide rent control like Oregon's was bad for the real estate industry but that at least it hit everyone in the state the same way.¹⁶

Patchwork arguments were also made in Colorado and Illinois as efforts to repeal the states' rent control preemption laws were under way. In Colorado, a vice president of the Colorado Apartment Association wrote that the repeal bill "abdicates state responsibility to stable economic policy for the more volatile local governments," creating "a patchwork of rental housing pricing policies...that would impact the entire community."¹⁷ In Illinois, the mayor of Harvey, a Chicago suburb, said that "rent control would bring a patchwork of rules that would stifle our efforts to continue our community improvements."¹⁸ Another opponent in Illinois brought up a slightly different patchwork argument, noting that various local laws could confuse tenants moving to new cities and pit cities against one another.¹⁹

Preemption debates about housing policy are fraught, especially given that municipalities have historically used local control to exclude communities of color and residents with lower incomes. So, some affordable housing advocates (especially those pushing for more housing construction in general) have occasionally aligned with landlords and property developers in opposing laws, such as rent control, thought to limit construction. If we think of housing markets as regional in nature, a policy like rent control could distort what gets built and where.

Local rent control proponents have also made patchwork-related arguments, primarily focused on the benefits of local tailoring: because housing market conditions can be extremely localized, municipalities best know what protections are needed, and rent control legislation is one tool to respond to local conditions.

EVIDENCE AND RESEARCH AGENDA

Little empirical research exists to test the claims made as part of the patchwork argument for preemption of local rent control laws. Some people who make the patchwork argument point to the research on rent control's general impact on the housing supply to bolster their claims (Rosen 2018), although the actual research evidence on its effects is more nuanced (see Rajasekaran, Treskon, and Greene 2019).

A large body of research considers the effectiveness of local rent control, but little of it focuses on the marginal effects of regulation itself. Research has found that rent control benefits targeted tenants by protecting them from eviction, increasing housing stability, and reducing overall rent burden. However, several studies have shown rent control does not effectively target lower-income tenants,

and the evidence on whether rent control disproportionately benefits people of color is mixed. Finally, some research indicates rent control can hurt the quality and quantity of the housing supply by creating incentives for landlords to reduce maintenance or convert rental units to nonrental property.

Several potential research approaches could examine the effects of a patchwork of rent control policies, and the extensive existing research on rent control often asks questions and uses data sources that are, at least indirectly, relevant to patchwork-related questions. Examining the effects of new state-level policies in California and Oregon and the updated policy features in New York, as well as housing market conditions in states (California and New Jersey in particular) with multiple local rent control policies, could be one pathway forward.

Plastic Bag Bans/Regulations

Bans and limitations on the use of plastic bags have become increasingly popular policies that states and cities have used to support a healthier environment, both by reducing emissions caused when the bags are manufactured and reducing waste when bags end up in landfills or the natural environment.

Regulation of plastic bags has increased substantially since San Francisco first banned them in 2007. In total, 345 municipalities in 25 states have banned plastic bags and/or placed fees on their use (Romer 2019). In recent years, California and New York have banned plastic bags statewide.²⁰ But other state governments are moving in the opposite direction. As of August 2019, 17 states had passed preemption laws to prevent local governments from banning various plastic items, and several others had introduced similar legislation.²¹

CLAIMS FOR AND AGAINST PREEMPTION

Preemption proponents have argued that a patchwork of local regulations would harm retailers and confuse consumers. Proponents—including state legislators, interest groups, and retail associations—claim that varying laws would add complexities for retailers, especially those that operate in multiple jurisdictions within a single state. According to the former executive director of the American Recyclable Plastic Bag Alliance, plastic bag bans drive up costs, impose confusing regulations, and put decisions that should be made by consumers and businesses in the hands of governments.²² Proponents of preemption also argue that a regulation patchwork would lead to uneven pricing, which would encourage consumers to shop in jurisdictions with less regulation and therefore make businesses in communities with more regulation less competitive.²³ Chambers of commerce also claim that local regulation of plastic bags increases costs for consumers.²⁴

Opponents of preemption argue that local governments are best equipped to create policies in their jurisdictions and that state laws strip jurisdictions of local control. In addition, local governments claim that they often bear the cost of cleaning up plastic waste and therefore should have the authority to address the issue.²⁵ Preemption opponents also cite the toll that plastic bags take on the environment. Discarded plastic bags are one of the most common forms of litter, are often eaten by animals, and ultimately end up in human food.²⁶ Preemption opponents cite a recent study that shows plastic bag bans in 139 California cities and counties led to a 40 million pound reduction in plastic trash annually.²⁷

Proponents of state preemption assert that the costs created by local plastic bag regulation are passed on to consumers through price increases. As a result, these proponents posit, consumers will shop at stores in jurisdictions without plastic bag bans, which will ultimately decrease economic activity and reduce employment at affected stores. Proponents also claim that a regulatory patchwork imposes enforcement costs on cities while harming cities' business friendly reputations.

Proponents of local action on plastic bags often focus on the benefits of regulation. With plastic bag bans, they argue, municipal landfills will contain less pollution, considering that plastic bags break down into microplastics that can contaminate soil and water and enter the food chain when ingested. Opponents of preemption also say that if plastic bag bans represent the will of the people, enacting those bans will improve the legitimacy of the local government in the eyes of its citizens. Similarly, by enacting bag bans, jurisdictions could be seen as environmentally friendly, which might help them attract like-minded businesses.

EVIDENCE AND RESEARCH AGENDA

As more jurisdictions have banned plastic bags, research that measures the effects of the bans has grown. These studies generally track reductions in plastic bag consumption and reductions in litter, two commonly stated benefits of banning plastic bags. As previously mentioned, one researcher, using retail scanner data, found that bans in California reduced the use of plastic bags by 40 million pounds a year (Taylor 2018). But this study also found that 12 million pounds were offset by an increase in trash bag purchases.²⁸ In addition, studies of plastic bag fees, which many jurisdictions use as an alternative to bans, show that modest fees lead to a stark reduction in consumption and litter.²⁹

However, other studies have called into question whether plastic bag bans are beneficial for the environment or the economy. Some research on alternatives to plastic bags, such as paper bags and tote bags, have found that they have their own environmental costs (International Reference Centre on the Life Cycle of Process Products and Services 2017; Kimmel, Cooksey, and Littman 2014),³⁰ while other research has found that bag policies may increase supermarket check-out duration and increase line

congestion (Taylor 2020). A report that has more sweeping claims and is commonly cited by ban proponents is from the National Center for Policy Analysis, which surveyed store managers in Los Angeles County in 2011 (Villarreal and Feigenbaum 2012). The study found that stores in municipalities with bans saw sales decrease while stores in municipalities without such bans saw sales increase. However, the study did not undergo external peer review, and its small sample size and lack of controls for other potential causal factors limit its value (Equinox Center 2013).

A research agenda that looks into the marginal cost of a patchwork of plastic bag regulations would focus on the effects on retailers (e.g., the costs of complying with the regulations or obtaining alternatives in some locations), local governments (e.g., the costs of regulation and enforcement versus revenue collected), and consumers (whether bans affect behavior—for example, increasing the number of trips to municipalities without bans). How the laws would affect plastic bag manufacturers (which would be harmed) and the environment are not obviously relevant to these sets of arguments. Additionally, a situation in which the jurisdiction on one side of a state line has a plastic bag ban while the jurisdiction on the other side does not would present an opportunity for a useful study.

Antidiscrimination Laws

Local governments are increasingly passing ordinances that extend protections to groups, often LGBTQ people, not protected by state or national nondiscrimination laws. More than 300 cities and counties have passed nondiscrimination protections for LGBTQ people, covering around 47 percent of LGBTQ people in the US (Movement Advancement Project 2018). In response, three states—Tennessee, Arkansas, and North Carolina—passed preemption laws that prevent the local adoption of nondiscrimination ordinances that do not conform with the state’s standards, while several other states introduced preemption legislation that ultimately failed to pass. Although these preemption laws do not specify which groups local protections cannot cover, state preemption has ostensibly been a response to the passage of local protections for LGBTQ residents.

CLAIMS FOR AND AGAINST PREEMPTION

State preemption legislative efforts have often explicitly made the patchwork argument, claiming that the goal is to ensure consistent nondiscrimination regulation throughout a state. Legislative texts mention that preemption will create a better economic climate for businesses by ensuring uniform laws, and several pieces of legislation have contained the same language and shared a title, the “Intrastate Commerce Improvement Act.” In the debate about Tennessee’s law, a state representative claimed that the goal of the law was to keep “everything uniform so businesses can thrive from city to city or county

to county” and that “the more laws you have that are not uniform, my goodness, that is a hurdle that the small businessman cannot overcome.”³¹ Before reversing its stance under public pressure, the Tennessee Chamber of Commerce and Industry supported preemption legislation because consistent statewide regulation was preferable to inconsistent or “potentially conflicting local regulations.”³² In response to the passage of North Carolina’s House Bill 2 in 2016 (which overturned and banned local laws protecting people from discrimination based on sexual orientation or gender identity and prohibited transgender people from using bathrooms and locker rooms for their gender identities), then-Governor Pat McCrory discussed the inconsistency of local nondiscrimination ordinances as a reason for preemption.³³ House Speaker Tim Moore said that “we don’t need a patchwork.”³⁴

Despite the arguments that a patchwork of nondiscrimination laws would create additional costs for businesses, business industry groups have tended to oppose state preemption, expressing fear that such legislation would cause the state to appear unfriendly to LGBTQ people and workers and to lose business. In Texas, the Texas Association of Business opposed a preemption bill³⁵ because of its possible negative economic impacts. In some cases, employers have claimed that a regulation patchwork creates a need to give more attention to compliance with various laws and statutes, but even so, “many employers have elected to be maximally inclusive”³⁶ and are pressing for expanded protections at the state or federal level, rather than preemption of local laws. In Tennessee, businesses did not vocally support statewide preemption, and major employers opposed the bill.³⁷

Opponents of state preemption have argued that preemption laws have caused states to lose money and have not improved state commerce. A former mayor of Lewisburg, West Virginia, cautioned that a preemption bill would be economically harmful for areas that rely on tourism because the state would be seen as unfriendly to LGBTQ people.³⁸

Although policymakers who favor preemption have made the patchwork argument a key part of their justification, these efforts have generally not included state-level protections even though expanding state-level protections to additional groups would technically remove the “costs” to businesses of having a regulatory patchwork.

In fact, the patchwork has occasionally been invoked by advocates for national protections for LGBTQ people. Some advocates have argued that having a myriad of local laws and a patchwork of protections has created a confusing landscape for both workers and employers.³⁹ In response, the business community and activists have supported national legislation that would eliminate the patchwork and create consistent protections for LGBTQ people and workers.⁴⁰

Underpinning the debate about preemption of nondiscrimination laws has been the extent to which the moral case for or against expanding protections for LGBTQ people is made explicit. Proponents of preemption rarely make the moral argument explicitly because legal precedent could invalidate a law based on denying protections to a particular group of people (Reed 2013). Opponents of preemption have called out the economic arguments for preemption as being a cover for allowing discrimination against LGBTQ people. In other words, even though the state-level preemption laws in these debates were *rhetorically* framed as responses to economic harms, in practice they were vacuum preemptions that used economic justifications to support a morally based effort to limit the promotion of LGBTQ rights.

For the state laws preempting local antidiscrimination ordinances we examined, there were both manifest (“expressed”) justifications *and* latent moral justifications for preemption. The manifest justifications were strictly economic: to promote intrastate commerce by limiting costs and confusion associated with complying with varying local regulations.

Supporters of local policy action have also used both economic and moral arguments, claiming that preemption is discriminatory and harmful for businesses.⁴¹ In Texas, local nondiscrimination laws were explicitly protected during debates on labor law preemption because business groups were concerned that such preemption would cost the state money by leading to less interest from businesses in other states.⁴²

EVIDENCE AND RESEARCH AGENDA

Little rigorous research has been done on the economic effects of a patchwork of local nondiscrimination policies. Some research has been done, however, on the benefits of expanding statewide protections to LGBTQ workers. In 2015, the Williams Institute at the UCLA School of Law analyzed the economic impact of investigating additional discrimination complaints if protections for LGBTQ workers were extended statewide, a potential solution to the regulatory patchwork of local nondiscrimination laws. Researchers estimated that an additional 22 discrimination complaints would be reported annually (Mallory and Sears 2015). This poses a negligible cost to the administrative or judicial systems in the state. Evidence also exists that expanding legal protections for LGBTQ employees can have positive economic impacts. In a 2016 article in the *Harvard Business Review*, Gao and Zhang wrote that companies in states that passed statewide protections for LGBTQ workers saw an increase in the number of patents and patent citations compared with companies in states without such protections.⁴³

The primary stated focus of those supporting preemption of local nondiscrimination laws has been to reduce the burden on businesses operating across jurisdictions. To this end, research on the marginal costs of a regulatory patchwork should focus on the concrete costs and spillover effects of local laws across a state. Direct costs would be those associated with legal compliance across multiple jurisdictions with different policies. Indirect costs of a regulatory patchwork could be diminished business interest and investment, whether because businesses perceive complications stemming from a set of inconsistent local laws or have an ideological opposition to locating in places where such protections have been enacted. Because evidence exists that state preemption of local nondiscrimination laws has itself caused economic harm (e.g., North Carolina's House Bill 2), studies could focus on the costs not only of compliance when a state has a regulatory patchwork but also of *preemption* itself. More generally, even though preemption supporters had clear legal reasons for focusing on economic rather than moral arguments, their justifications raise an interesting question about the extent to which business owners weigh cultural effects and signals (such as antidiscrimination policies) in their decisions to locate or not locate in particular places.

Key Takeaways and Conclusions

Although the patchwork argument comes up across policy areas as a justification for preempting local laws, no systematic evidence exists to support claims that a patchwork of local laws has harmful effects. Efforts in favor of preemption that use a patchwork argument tend to refer to overall costs of the regulation and *not* to the marginal costs of varying compliance. In our review, preemption debates around labor laws (paid sick leave, minimum wage, etc.) and consumer laws (plastic bags in particular) were more likely to specify the marginal costs of varying regulation, although even here, the costs themselves were rarely specified. Pro-preemption arguments have also been made to the effect that a patchwork of local laws creates business climate uncertainty or produces regional or state-level market distortions. However, except for some research on regional distortions of local housing regulations, these arguments tend to lack even anecdotal supporting evidence.

Although our research covered a broad range of laws, a three-part set of themes emerged in the claims made about the supposed harms of a patchwork of local laws: direct marginal costs of compliance, indirect spillover costs, and indirect market distortions and inefficiencies. These go from most to least direct, concrete, and measurable. The first is focused on the direct costs to businesses; the second is focused on how the direct costs of compliance alter business, consumer, and government decisionmaking; and the third is focused on how that altered decisionmaking has regional- and state-

level effects even where the regulation itself does not exist. If we follow the logic, the direct marginal costs of compliance supposedly lead to the indirect spillover effects.

These supposed costs to businesses and governments are measurable. One could examine how much it costs a business to implement compliance procedures and recordkeeping and then tease out the marginal additional costs of dealing with multiple regulations in multiple municipalities. These direct patchwork costs would generally only be relevant for businesses in multiple locations, however; a business with one location or locations only within one city would not have marginal costs from regulatory variation. In contrast, a business with locations in two municipalities (one with a regulation and one without) would need to manage different requirements and costs across those locations. This could involve things like staffing (e.g., employees in one location may have mandated paid sick laws, while those in another location may not), accounting (e.g., managing separate pay scales in separate locations), or stocking (e.g., plastic bags in one location but not in another).

Enforcement or regulatory costs for municipalities are likewise measurable, but, again, most of these costs will adhere to the costs of regulation generally and *not* the costs of the patchwork (this also ignores policies that could be revenue-neutral or revenue-positive). However, to the extent that costs of implementation and enforcement affect consumer and business decisionmaking, they could presumably and indirectly lead to some sort of market distortion.

Less direct than the immediate costs of compliance are the subsequent reactions to these costs by consumers or businesses. Do businesses raise prices, reduce hours or lay off staff, increase automation, or close or relocate entirely? Do consumers decide to shop elsewhere? Do people looking for housing go to other municipalities? In a given locality, this could lead to lower employment, a shrinking tax base, or insufficient housing construction.

However, while these supposed negative effects could plausibly be linked to the effects of having a patchwork, they are more about the effects of the regulation itself. To the extent that the concept of “laboratories of democracy” applies to cities, though, this should not be a big problem. If the law does not work, it can be amended or dropped. If it works, it can be passed elsewhere. To the extent that participants in state-level preemption debates are making these arguments, then, it is more about paternalism than anything else: the state is protecting cities from themselves.

Most of the discussion around policy preemption has focused on more conservative state governments preempting more progressive policies in municipalities. This is not surprising, both because of the well-documented cultural and political “sorting” that is taking place (Bishop 2008) and is leading to numerous cases of liberal cities in conservative states⁴⁴ and because state preemption of

local laws has been an explicit goal of conservative policy agendas in recent years.⁴⁵ However, this is not necessarily a one-way political dynamic; issues of local control and preemption could come up where more conservative local governments exist within a more liberal state-level policymaking environment. This is all the more reason to research the costs and benefits of a local patchwork of laws in a range of policy areas and from multiple perspectives.

Supporters of local lawmaking (and opponents of preemption) make several arguments themselves. They point to the importance of tailoring local laws to local conditions and, more broadly, to the requests of their constituents. In some policy areas (e.g., paid sick leave), they can also point to positive spillover effects where stronger local laws have resulted in businesses' implementing more stringent protection standards regardless of employee location. Given the relative lack of evidence examining and specifying 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 different jurisdictions.

Appendix. Other Policies

Here, we detail the six policies in our overall scan that were not selected for a deep-dive analysis. We present short overviews of the policies and debates and comment on the extent to which patchwork-related arguments are used in policy debates.

Firearms Regulation

The patchwork argument has frequently been made by advocates for state preemption of local firearms regulations, including the National Rifle Association, local government officials, and members of gun rights groups. Preemption proponents have argued that having a myriad of local laws and restrictions on firearms ownership would be confusing for law-abiding citizens and lawful gun owners to navigate.⁴⁶ They emphasize that ordinary gun owners would be most negatively affected by trying and failing to abide by various restrictions as they travel within a state (for example, to go hunting) or from one state to another or if they live away from home temporarily. Preemption advocates have also argued that expecting gun owners to be aware of or to keep up with different laws within a state is unreasonable.⁴⁷ In addition, they argue that enforcing a patchwork of local restrictions would be difficult, if not impossible.⁴⁸

In addition to the patchwork argument, advocates for state preemption invoke the importance of an individual's gun rights and claim that regulations violate those rights.⁴⁹

Opponents of preemption have argued that local variation in firearms regulations allows for better tailoring of approaches to reduce gun violence in different areas and that preemption would hinder local innovation of violence-prevention strategies.⁵⁰

For firearms, the presumed patchwork-related harm comes from gun owner confusion caused by multiple laws within a state and complexities in local enforcement. The claim is less economic in nature than focused on Second Amendment liberties and is less focused on the patchwork-related harms than on opposition to regulation more generally: states that preempt local firearms laws are not passing other gun control measures but are generally enacting vacuum preemption.

Inclusionary Zoning

Inclusionary zoning policies are those that require or encourage developers to set aside a share of new or rehabilitated housing units to be sold or rented at below-market rates, with the goal of providing housing to households with low or moderate incomes. Although preemption and inclusionary zoning have been the objects of robust debates, these discussions have generally not focused on the patchwork argument (Ramakrishnan, Treskon, and Greene 2019). Proponents of state preemption of inclusionary zoning policies are generally developer or real estate industry groups that argue that inclusionary zoning laws harm the private housing market. Those in favor of preemption have argued that inclusionary zoning leads to higher housing prices, infringes on private property rights, and violates free-market principles.⁵¹ Opponents of state preemption have emphasized that inclusionary zoning is an important tool for increasing the supply of affordable housing and that preemption language and legislation are sometimes overly broad, banning inclusionary zoning in states where the policy has not been implemented or considered.⁵²

Opponents of preemption have used a version of the patchwork argument, saying that localities have varied regulations, markets, and challenges and therefore local decisionmakers are best suited to understanding local conditions.⁵³

Finally, preemption of inclusionary zoning is often grouped with broader restrictions on local housing market regulation, generally related to rent control. In Colorado and Wisconsin, preemption of rent control has been used to invalidate local inclusionary zoning ordinances (DuPuis et al. 2018). Many of the preemption arguments for and against inclusionary zoning are similar to those related to rent control.

Minimum Wage Laws

Discussions of and debates about preempting local minimum wage laws, particularly those that invoke the patchwork dimension, have been relatively common in both national and local media. In general, proponents of state preemption have included conservative elected officials, business associations, and conservative research institutions. Opponents to state preemption of local employment laws have included progressive elected officials, labor and community organizations, and progressive research institutions.

Preemption proponents have argued that a patchwork of minimum wage laws within a state creates confusion for business owners and that businesses are already subject to myriad federal and state

employment standards. Some lawmakers in favor of preemption have claimed that local governments are not capable of determining an appropriate minimum wage or estimating its impacts. Others have argued that cities and counties are creations of state government and therefore state government has the right to assert when those jurisdictions can establish laws that differ from the state's.

Preemption opponents have argued that communities have different needs and that one-size-fits-all minimum wage laws are not appropriate responses to local issues. Those against preemption have also claimed that cities act in part because of state and federal government failures to set minimum wages that provide low-income workers with adequate earnings.

Municipal Broadband

Debates about preempting municipal broadband efforts have tended to focus on how municipal ownership may give government an unfair market advantage over private corporations and lead to less efficient system management. To the extent that they have been made, patchwork arguments have been employed by preemption opponents, who have noted significant disparities in local internet access and speed. This is especially relevant to rural areas with limited high-speed options. On the federal level, the US Department of Agriculture has a rural broadband infrastructure initiative that has led some states, such as Arkansas and Mississippi, to loosen state restrictions on local efforts. Still, local broadband initiatives tend to be highly constrained by state laws that curtail their actions and scale.

Municipal broadband presents an interesting turn on the traditional use of the patchwork argument, considering that advocates for local control are the primary wielders of it. Preemption proponents have focused on other economic issues. Combined with the federal government's action in this policy area, the arguments being made here do not fit in neatly with debates in other policy areas.

Sanctuary Cities

Sanctuary cities are municipalities with policies that limit cooperation with enforcement of federal immigration laws. Current debates around sanctuary cities take place in an environment where local and state policymaking can conflict and where the federal government has tried to limit sanctuary city (and state) regulations by cutting funding or imposing other sanctions. Debates have focused less on a patchwork of local regulations and more on whether local officials and law enforcement agencies can be compelled to cooperate with the US Department of Homeland Security.

Minimum Age for Tobacco Sales

State-level debates about tobacco minimum age policies often include the patchwork argument. But unlike some other policies discussed here, the state-level policies under consideration often did not simply preempt local regulation; they often included provisions that raised the minimum age for buying tobacco products from 18 to 21. This was part of a broader push that culminated in a 2019 federal law that raised the minimum age for sales of tobacco products to 21.⁵⁴

Arguments for preemption focus on preventing a patchwork of laws, promoting healthy behavior, and reducing health care costs. For example, before the minimum age was raised to 21, Massachusetts had more than 100 cities and towns with a minimum age higher than 18, while the minimum age in the rest of the state was 18. Lawmakers reasoned that teenagers who wanted to buy tobacco products but lived in towns with a higher minimum age could simply travel to towns with a lower minimum age, and they advocated for more consistent policies across the state. Preemption advocates also wanted to prevent young people from buying harmful products that could lead to a lifelong nicotine addiction.⁵⁵ Some states pointed to increases in teen smoking and vaping rates when arguing that more regulation was necessary.

Here, opposition to preemption focused on the importance of local decisionmaking and the limits of state policies. For example, a local health official thought that preemption would remove the right of local health departments to make decisions about the health of their communities.⁵⁶ Others were skeptical that state intervention would prevent teens from picking up smoking.⁵⁷

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