

**November 10, 2014**

**To: Interested Parties**

**Fr: Molly Murphy and Pia Nargundkar**

**Re: How to talk about preemption and its consequences**

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An in-depth research project designed to help elected officials and the public interest community talk about preemption and to raise public awareness and engagement on the consequences of state intervention into local law-making provided incredible insight into opportunities and challenges this issue presents.

The research endeavor – focus groups, an online survey, and a national telephone survey of registered voters – also helped identify the most effective language and messages to educate, engage, and persuade the public. The following are key findings, followed by strategic recommendations based on the research connected. A full description of each phase of research can be found in Appendix A.

### **The challenges**

There is very little awareness about the occurrence of preemption. Second, when introduced as “state governments intervening in laws a local government can pass,” participants in focus groups have more questions than opinions; many believe that the state has the right (and the duty) to ensure that local governments are not passing laws that conflict with state law. And finally, it occurs to very few people that the state intervene for any reason other than to protect the public interest.

### **The opportunities**

The public supports local governments building upon state minimums. In the focus groups, participants see state government playing an important role in establishing laws that apply to the state as a whole. In the survey, a strong majority of respondents support state governments establishing these minimum standards, but local governments can build and improve upon them.

When preemption is explained as state legislators reacting to policies they disagree with, voters strong oppose preemption. Nationally, 64% of respondents in the national survey opposed legislators intervening in local laws they disagree with.

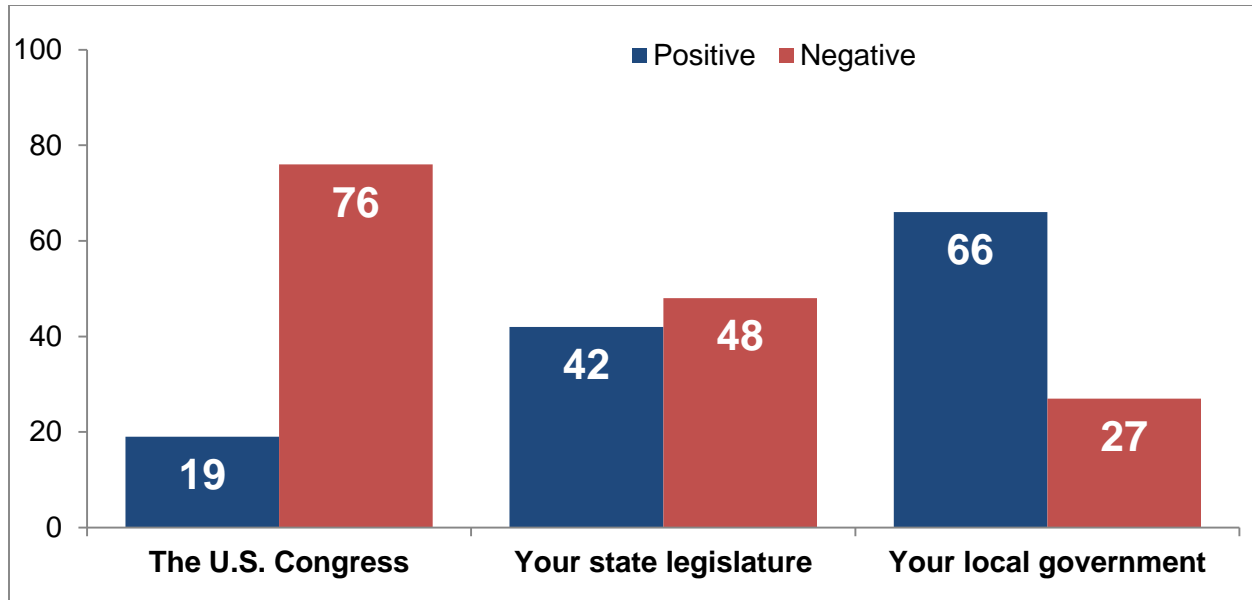
Specific instances of preemption were deeply troubling across the board, particularly efforts to block earned sick time, preventing a local community from restricting pollution from local

industry, and restricting gun safety laws like background checks. Minimum wage and fracking are also troubling for many.

The strongest message tested in both the telephone survey and online survey acknowledge that a one-size-fits-all policy does not work for all places – that every community is different and has a unique character and needs, and that communities should be allowed to improve on state law to respond to those local needs and values.

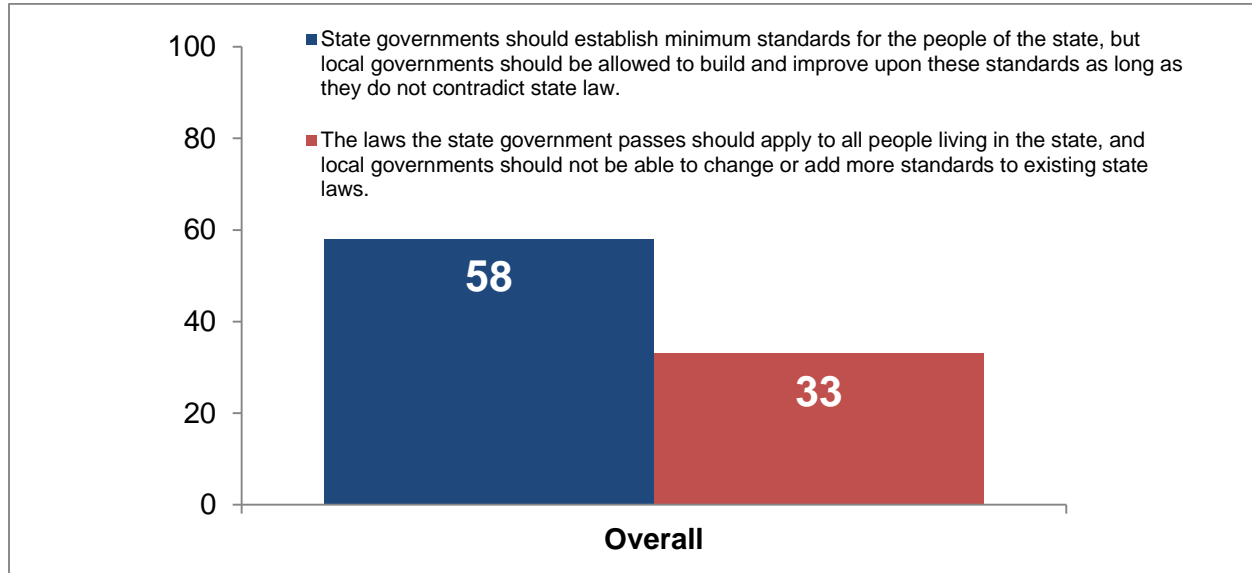
### **Key Findings**

- 1. Voters believe state government, in the abstract, acts in their best interest.** In the focus groups, we heard resoundingly that participants prefer state government to handle a range of issues, from food labeling to anti-discrimination policies, and do not offer distrust of state government. Only when explicitly asked about their level of trust in government do participants volunteer their frustration with *politicians* in general, and even then it does not translate into distrust of state government as a whole. Without information on a state government's true motives for preemption, participants assume the state is justified in intervening, thanks in part to participants' understanding of how federalism works.
- 2. Local government receives strongest approval ratings of any governmental body, but we should not go so far as to say they are beloved.** The national survey of registered voters confirms the focus groups -- local government receives very strong approval ratings (66% approve / 27% disapprove). Survey respondents trust local government more than they trust Congress (19% approve / 76% disapprove) or their state legislatures (42% approve / 48% disapprove). However, no governmental body receives extraordinarily strong approval (only 10% give local government an 'excellent' rating and the other bodies are in single-digits). As we heard in the focus groups, while participants believe that state and local governments act in their best interest, they will not go so far as to say they trust any level of government.

**Table 1: Approval Rating of Levels of Government**

3. **Voters support local governments building upon state minimums.** In the focus groups, participants clearly see state government playing an important role in establishing laws that apply to the state as a whole. In fact, when we began the discussion by asking participants to choose between whether they prefer the state or local government to be responsible for a specific issue, it became clear that this is NOT how they view the relationship between state and local governments. To them, the two bodies should complement one another, and the state has the right and the duty to pass strong state minimums. They also believe local governments have the right and the duty to build upon these minimums to best meet the needs of their unique communities.

While they support local governments passing unique laws, it was important to clarify that local governments are not usurping power from the state, but are building upon what the state does. In the survey, 58% of voters support state governments establishing minimum standards, but allowing local governments to build and improve upon those minimums. Just 33% believe state laws should rule the state without changes at the local level. In the focus groups, it was very clear that we need to explicitly state that local governments are not contradicting or undermining state laws; they are acting well within their legal bounds. Otherwise, some perceived that state intervention was triggered by a need to uphold state law.

**Table 2: States establishing minimums vs states setting laws unilaterally**

4. **In the early phases of research, we received mixed reactions to preemption when it was explained as states intervening in local issues.** In the focus groups, participants had mixed reactions to preemption, and in the online survey, respondents were split 51% favor / 49% oppose when asked *do you favor or oppose state governments intervening in the types of laws local governments can pass*. Participants in the focus groups largely believe that states act out of positive intent, and that intervention is likely appropriate and in the best interest of the public.
5. **When preemption is explained as state legislators reacting to policies they disagree with, respondents oppose preemption.** Nationally, 64% of survey respondents oppose legislators intervening in local laws they disagree with, just 22% favor the action when the question is introduced with *when state legislators learn that the people of a local community are planning to pass a certain law they disagree with, they intervene by prohibiting the local community from passing their own law*. By assigning motive, it clarifies that preemption does not occur because the state is acting in the public's best interest, or to uphold state law. Because there is such a low level of awareness to this issue currently, we believe it is critical that we include motive when engaging the public on this issue.
  - *Partisanship is not predictive of opposition to preemption.* Because preemption is a little-known issue, it is not viewed through a partisan lens. As we heard in the focus groups, the idea that this is happening by Republican legislatures trying to circumvent Democratic localities is not intuitive. To the degree that participants do see lobbying involved, they assume it is "politics as usual" and that it is done by both sides. Some even assume preemption is supported by Democrats because

Democrats “support government.”

This bears out in the national survey and if anything, opposition is lower than expected among Democrats. Democrats, Republicans, and Independents all strongly oppose preemption, but Republicans are the most intense in their opposition. Republicans oppose it 73% to 17%. Among Independents, opposition is 65% / 22%, and Democrats oppose 58% / 27%. Appendix B has a table with a full demographic breakdown of opposition to this description.

6. **Respondents believe that special interests will corrupt any level of government, and messages that touch on this are persuasive.** Messages that attribute the rise in preemption to the growing influence of special interests are also effective, and also make the conversation less dry and process-focused. In the focus groups, when we introduce the idea that preemption could be connected to lobbying from corporate special interests, participants found it highly believable and start to question the state’s true motives. Participants are jaded, and believe that special interests can find a way to exert their power at all levels. Therefore, bringing them into the equation helps them to understand that this is a problem in need of fixing. In the online survey, the growing power of special interests in stopping policies like minimum wage, background checks, and earned sick time was a particularly strong message among Democrats. In the national survey, we tested it a couple of ways. For a full list of the messages tested, see Appendix C.

- *Special interest lobbies already have too much influence over national and state politicians, and now they are using their influence to come into our communities and take power away from us at the local level to protect their profits. They are violating our right to make laws that reflect our values, like making our work places healthier, raising the minimum wage, and making our air and water cleaner and safer: 43% very convincing*
- *When big special interests get together behind closed doors with lobbyists, they should not be allowed to overturn decisions they don’t like made by local governments, but that is what is happening. Lobbyists try to fight change at the local level, and when communities reject them, they go to state politicians to get their way: 43% very convincing*

*In some places, Big Oil and Gas lobbyists use their power in state governments to force towns and counties to allow energy companies to drill in their communities. Natural gas drilling, or fracking, causes environmental and often health risks for the people who live near there. It is wrong for special interests to have the final say when it is local communities that live with the consequences: 44% very convincing*

7. **Specific examples of preemption help illustrate the problem and are deeply troubling.** As previously stated, this is not an issue that is familiar to most people, and giving real-world examples of how and why it has occurred helps make the issue more pertinent and less conceptual. The most effective issues by which to illustrate

preemption are: states' efforts to block earned sick time (58% bothers them a great deal), preventing a local community from restricting pollution from local industry (54%), restricting gun safety laws like background checks (51%), and preventing the passage of earned sick days (51%). Minimum wage and fracking also emerge as troubling examples in the open-ended exercise.

Earned sick time, background checks for gun sales, and allowing communities to have a voice in the pollution local industries emit top the list across the partisan spectrum, though there are nuances by partisanship as well. For instance, along with issues above, Democrats were deeply troubled by efforts to block minimum wage increases (55% bothers a great deal). Republicans were very concerned about state control of local school curriculum (54% bothers a great deal) and efforts to prevent the expansion of broadband (51%). Independents were most bothered by efforts to prevent food labeling (54%).

8. **The strongest message in each phase of research was the same and provides a bit of education along with persuasion.** More than half of voters (53%) believe this message about a one-size-fits-all approach not reflecting the values of a community is very convincing. This needs to be a cornerstone for how we talk about this issue. This was also the best-testing message in the online message poll, appealing to voters of all races, ages, regions, and partisan backgrounds.

*It is wrong for the state government to take a one-size-fits-all approach to law-making. The needs of people living in urban areas are not always the same as the needs of people in small towns. This is why local governments exist - to make sure that laws and policies meet the needs and values of the people who live there. As long as local laws do not violate state laws, the state government shouldn't punish localities by standing in their way. (53% very convincing)*

This message clarifies that this issue is not about manipulating state laws or superseding them, but simply acknowledging that not all communities have the same needs. In cases where a community has come together to improve upon a state law, this should be encouraged and allowed.

- *This message fits well with other messages.* In the online survey, we coupled this message with others, including messages about the importance of local communities being able to innovate, that special interests are using their power at the national and state levels to manipulate policies at the local level, and that as citizens, our best chance to make our voices heard is locally. By combining the “one size fits all” message with these other messages, we are able to expand our reach across different demographic groups and best explain the consequences of preemption.
9. **Demonstrating the risks and potential negative consequences that preemption can have on the community is also persuasive.** In the focus groups, it was clear that fracking is a divisive and hot-button issue; we want to avoid getting bogged down in a debate about whether or not communities should frack – this is a distraction. Instead,

communicating a message about why it is important to allow local communities to make their own zoning and land use decisions – which the public defines as a core and perhaps the key responsibility of local government. Specifically, using language that notes that it is communities who accept the risk, and therefore should have a say is powerful (44% very convincing). This message helps show the urgency of the situation, through an example that people are familiar with.

**10. After providing messages against state intervention, opposition increases**

**slightly, to 67%.** Overall, there is little movement towards opposition for state intervention in part because opposition starts out so high (we move from 22% favor / 64% oppose to 22% favor / 67% oppose). However, we do make critical gains among key groups:

- *While our goal is to engage the public broadly, there are demographic groups who are most receptive to our messages and move towards greater opposition after hearing more about preemption.* We begin with lower levels of opposition from Democrats (58% oppose / 27% favor), African Americans (47% oppose / 36% favor), and seniors (56% oppose / 28% favor). These groups move towards us in large numbers, as do women voters who start out in strong opposition. After messages, we are able to move African Americans a net 27 points towards opposing state intervention, seniors by 14 points, Democrats by 11 points, and women by 9 points (driven by an 18 point shift among unmarried women). We also pick up opposition among non-college educated voters (7 points).

## Recommendations on how to engage effectively on this issue

1. **Talk about this issue in the context of local communities building upon state minimums.** As we learned in the focus groups, it is important that pushing back on state intervention not come across as anti-state government or too permissive of rogue action at the local level. A strong majority of survey respondents (58% / 33%) support state governments establishing minimums and allowing local governments to build and improve upon minimums. This is important context to explain how and when local communities do take action, and also helps the anti-preemption side not come across as anti-state government, or fringe. By making this about building upon what the state does, it also projects an image of cooperation and cohesiveness, and when the state then intrudes, the state is left looking adversarial, as opposed to the local government.
  - *It is critical to establish that local communities are not violating or undermining state law.* In the focus groups, participants assumed that state governments intervene to protect the public, and to ensure that local communities are not violating state law. We need to make it explicit that when instances of state intervention (aka preemption) have occurred, local communities were not violating or subverting state law.
2. **Provide motive for why preemption occurs to prevent the notion that states are acting in the public's interest, rather than corporations' interests.** In the MaxDiff survey, when preemption is explained as "state governments intervening in the types of laws local governments pass" support is divided (51% favor / 49% oppose). As we heard this explained in the focus groups, there is a belief that the state government serves as a check to local power. However, in the national telephone survey when the motive of preemption is explained (as legislators learning of laws they disagree with an intervening) when gauging support, respondents oppose it by more than 3:1.
3. **Do not use the term preemption, which carries no meaning and sounds dry and procedural. Instead, use terms like "interference", "intervention", and "intrusion" which helps assign motive.** Preemption is not a term that people understand as it relates to this issue. Instead, we suggest terms like interference, intrusion, or intervention to help characterize the state as getting involved where they do not belong.
4. **Do not marginalize or disregard the importance of state government in setting laws that impact the population as a whole.** As we learned in the groups, people believe state governments should be in charge of setting policies that impact the entire population. From there, local governments should have authority over issues that are specific to people within a community. In some cases, the same issue can strike voters as being both a state and local issue depending on how it is framed, and it is incumbent upon us to frame it in a locally-rooted way.



In fact, the focus groups made clear that participants feel state and local governments should both engage on important issues. We do not want this to be an either/or debate about whether state government should play a role in setting policies; they should. It is about whether local governments should be able to determine how to build upon existing laws to reflect the values of their community.

5. **Use relevant examples of state intervention to illustrate the problem.** In the national survey, respondents were most troubled by examples of state intervention where it was clear that the local community had a stake in the policy. For instance, we learned in the focus groups that participants believed that it was the responsibility of the state government (or even national) to set pollution standards. In the survey, when framed as “...stopped town residents from penalizing local factories that release harmful pollutants into the air” it was one of the most troubling examples of intervention (54% bothers a great deal). By establishing the local authority, it helps affirm that decisions should not be left up to the state. Other good examples:

- Passing earned sick time policies
- Raising the local minimum wage
- Restricting local communities from determining how to zone or use their land (specifically fracking when framed as a local control issue, rather than an energy issue)
- Strengthening background checks for gun sales
- Allowing local schools to determine their curriculum

6. **Meet people where they are by affirming that one size doesn't fit all for all communities, and citizens can make their voices heard loudest at the local level.**

These two messages are incredibly powerful and open a conversation with the public that appeals to people across party, gender, age, and regional lines. These messages affirm the role of state government, and that local communities are NOT violating state laws; rather, they allow local people to have a voice in making their communities stronger. These messages also meet people where they are by acknowledging that government at all levels can be ineffective, and we can take action to help see change on things we care about.

*It is wrong for the state government to take a **one-size-fits-all approach to law-making**. The needs of people living in urban areas are not always the same as the needs of people in small towns. This is why local governments exist - **to make sure that laws and policies meet the needs and values of the people who live there**. As long as local laws **do not violate state laws**, the state government shouldn't punish localities by standing in their way*

*It is sad to say, but it is hard to trust politicians at any level of government. But **our best opportunity to bring change is at the local level**, where we can hold our politicians accountable, **take action within our communities**, and vote directly on local issues through ballot initiatives.*

7. **Building on this, highlight the adverse consequences state intervention can have on a community, and the corporate greed that motivates it.** As mentioned above, we want to open up the dialogue with the public by talking about how local communities can and should have a voice in what happens there. This will help educate the public on what state intervention is and why it can threaten their local values. However, to make it clear that there are real consequences at stake, we need to take it one step further and show that the true perpetrators are corporate special interests who are forcing their way in towns and cities through their influence at the state and national level. In the online survey, pairing this, along with the messages above proved to be highly effective. And, by painting the picture of what local communities risk when they are forced to allow things like fracking, we can engage the public in why they should care.

*Special interest lobbies already have **too much influence over national and state politicians**, and now they are using their influence to come into our communities and **take power away from us at the local level to protect their profits**. They are **violating our right to make laws that reflect our values**, like making our work places healthier, raising the minimum wage, and making our air and water cleaner and safer.*

*In some places, Big Oil and Gas lobbyists use their power in state governments to force towns and counties to allow energy companies to drill in their communities. Natural gas drilling, or fracking, causes environmental and often health risks for the people who live near there. **It is wrong for special interests to have the final say when it is local communities that live with the consequences.***

### At-A-Glance Dos and Don'ts when Engaging the Public on State Intervention

#### DOs:

- Discuss in the context of the state's role in establishing minimum standards on a range of important issues that impact everyone, but local governments also play a role in protecting the values of their community and can build and improve upon those standards.
- Give motive for state intervention: when lawmakers learn about a law they disagree with, they intervene by prohibiting the local community from passing their own law.
- Extend the motive for state intervention by pointing to the corporate special influences who want to stop local action they disagree with; we can even go so far as to say they are corrupting the democratic process.
- Use terms like "interference", "intervention", and "intrusion" rather than "preemption." Talk about "local authority."
- Use terms like "one size does not fit all" to describe why local governments exist and should be able to determine what works best.

- Assert that local communities are not violating state laws or doing anything to undermine existing state laws – in the focus groups, participants clearly believe that if there is a conflict between a local and state law, the state law should supersede.
- Describe the stakes by giving specific examples of instances where this has occurred, but always include why the local community has a stake in the issue – earned sick time, wages, fracking, establishing local limits on pollution to improve the health of the community, and guns.

DON'Ts:

- Exclude or neglect the important role state government plays in establishing strong policies that impact everyone.
- Make this a partisan issue, or point fingers as extreme right-wing partisan actors looking to advance an agenda; avoid hot language like “hijacking”, “power grab”, and Big Brother or David and Goliath comparisons.
- Make this a process argument or debate about the role of government. Avoid calling this “preemption.”
- Get into a debate about whether state vs local “owns” an issue. Voters want to see all levels of government working on key issues, but in a pick-or-choose situation will pick the largest government due to perceived experience and resource advantage.

## Appendix A

### Focus Group Research

Date	Location	Demographics
9/30/14	Denver, CO	White women, aged 40-60
9/30/14	Denver, CO	White men, aged 30-50
10/1/14	Orlando, FL	Hispanic women, aged 25-50
10/1/14	Orlando, FL	White men, aged 40-60
10/2/14	Philadelphia, PA	White seniors, mixed gender
10/2/14	Philadelphia, PA	White women, aged 25-50

All participants were registered voters and soft partisans. Each group had a mix of educational attainment, marital status, and parental status.

### Online Survey

From October 15-19, 2014, Anzalone Liszt Grove Research conducted a national online survey of N=609 registered voters. The survey also included a the statistical tool known as Maximum Difference Scaling to help identify messages that were most compelling, and how to best couple messages together to reach the greatest number of people.

### National Telephone Survey

From October 28 – November 2, 2014, Anzalone Liszt Grove Research conducted a national telephone survey of N=800 registered voters, including 28% of all interviews gathered via cell phone. The survey results are subject to a margin of error of 3.5 percentage points at the 95% confidence interval.

## Appendix B – Opposition to State Intervention by Demographic

Demographic	Favor	Oppose	Margin
<b>Total</b>	<b>22%</b>	<b>64%</b>	<b>+42</b>
White	19%	68%	+49
African-American	36%	47%	+11
Hispanic	32%	59%	+27
18-34 years old	20%	72%	+52
35-49 years old	21%	63%	+42
50-64 years old	20%	69%	+49
65+ years old	28%	56%	+28
Men under 50	19%	67%	+48
Men 50+	27%	61%	+34
Women under 50	23%	66%	+43
Women 50+	22%	64%	+42
Self-ID Democrats	27%	58%	+31
Self-ID Republicans	17%	73%	+56
Self-ID Independents	22%	65%	+43
College graduates	20%	66%	+46
Non-college graduates	25%	64%	+39

## Appendix C – Messages Tested Against State Intervention

% Very Convincing	Overall
<p>It is wrong for the state government to take a one-size-fits-all approach to law-making. The needs of people living in urban areas are not always the same as the needs of people in small towns. This is why local governments exist - to make sure that laws and policies meet the needs and values of the people who live there. As long as local laws do not violate state laws, the state government shouldn't punish localities by standing in their way.</p>	53
<p>In some places, state governments are violating local zoning rules and forcing towns and counties to allow energy companies to drill for natural gas in their communities. Natural gas drilling, or fracking, causes environmental and often health risks for the people who live near there. It is wrong for the state to have the final say when it is local communities that live with the consequences. [SPLIT C]</p>	46
<p>It is sad to say, but it is hard to trust politicians at any level of government. But our best opportunity to bring change is at the local level, where we can hold our politicians accountable, take action within our communities, and vote directly on local issues through ballot initiatives.</p>	45
<p>In some places, Big Oil and Gas lobbyists use their power in state governments to force towns and counties to allow energy companies to drill in their communities. Natural gas drilling, or fracking, causes environmental and often health risks for the people who live near there. It is wrong for special interests to have the final say when it is local communities that live with the consequences. [SPLIT D]</p>	44
<p>When big special interests get together behind closed doors with lobbyists, they should not be allowed to overturn decisions they don't like made by local governments, but that is what is happening. Lobbyists try to fight change at the local level, and when communities reject them, they go to state politicians to get their way. [SPLIT D]</p>	43
<p>Special interest lobbies already have too much influence over national and state politicians, and now they are using their influence to come into our communities and take power away from us at the local level to protect their profits. They are violating our right to make laws that reflect our values, like making our work places healthier, raising the minimum wage, and making our air and water cleaner and safer.</p>	43
<p>As citizens, it is our democratic right to decide what types of laws and policies are best for the people who live in our communities. In many states, state lawmakers are taking away our local control by preventing local laws from passing. Some state governments have even banned people from voting on initiatives to strengthen the laws where they live. [SPLIT C]</p>	40

<p>As citizens, it is our democratic right to decide what types of laws and policies are best for the people who live in our communities. In many states, state lawmakers are taking away our local control by preventing local laws from passing. [SPLIT D]</p>	<p>39</p>
<p>When local communities get to decide what is best for them, it fosters innovation. Some of the best ideas start in local communities. Denying people this right cuts off our ability to discover solutions and bring changes that could help the state as a whole.</p>	<p>38</p>
<p>When special interests lose at the local level, they should not be able to turn to the state to override local voices on issues like public land zoning, natural gas drilling and minimum wage, but that is what is happening. Lobbyists try to fight change at the local level, and when communities reject them, they go to state politicians to get their way. [SPLIT C]</p>	<p>37</p>
<p>The same special interests who oppose letting local communities set their own rules are also blocking passage of statewide policies on raising the minimum wage and passing paid sick time. Their real goal is to stop laws like these from passing at any level of government.</p>	<p>29</p>