

## **Top Ten Reasons Preemption Is Always Harmful**

**1. Preemption is a serious threat to preventing tobacco use effectively.**

Preemption comes in a variety of packages, almost always disguised in good-guy wrapping. The tobacco industry clearly recognizes preemption as their best tactic against tobacco control. "The key to the tobacco industry's strategy is state preemption of local action." -- *Michael Pertschuk, Advocacy Institute*

**2. With preemption in place, local governments would not be able to respond to changing situations.**

New studies are emerging every year that show the detrimental effects of secondhand smoke and the need for stronger control over youth access to tobacco products. As these studies are published, the public outcry is for stronger restrictions against smoking in public. Yet with preemptive laws, those communities that want to further protect their own health would not be allowed to do so.

**3. It is much simpler for the tobacco industry to undermine one state law than for them to rescind hundreds of local laws.**

No law is tamper proof. Once enacted, a state law isn't cast in stone to remain protected forever. There are only 50 state legislatures, and the tobacco lobby is an effective presence working in every one of them. As the Tobacco Institute's own spokesman said: "There are some 95,000 local units of government, and it's hard to keep track of them."

-- *Walker Merryman, Tobacco Institute*

**4. Preemptive laws eliminate the PROCESS of passing local legislation, which is crucial to educating communities and changing social norms.**

The process of community involvement that leads to the passing of a local ordinance creates the public understanding and support that is needed to achieve compliance. "There is NO better tobacco 'intervention,' no better media advocacy angle, no better public education than the mere process of working on local legislation."

-- *Julia Carol, co-director of Americans for Nonsmokers' Rights.*

**5. Preemption does not protect the public's health.**

A study published in March 1995 concluded that, despite 89 new regulations being adopted during a three-month window of opportunity after a preemptive statewide law was enacted in North Carolina, no private employees will be guaranteed complete protection from work site environmental tobacco smoke by the year 2000. Passive smoking is a proven killer. The North Carolina law is called a "setback for public health."

(Journal of the American Medical Association, vol. 273, No. 10)

**6. The success rate at the local level remains remarkably high. Local legislation remains far easier to pass than state initiatives.**

In Georgia communities, like Albany and DeKalb County, local governments are passing or considering passage of clean indoor air laws that can make a difference. Other communities throughout Georgia are interested in working on similar laws and must not have the right to do this taken away from them.

**7. Local ordinances are generally much better enforced than state laws.**

Enforcement at the local level is often easier because the community, having been involved in its development, is more aware of and more supportive of the law.

**8. All major tobacco use prevention and control advocacy groups oppose preemption.**

The American Cancer Society, American Lung Association, American Heart Association, Americans for Nonsmokers' Rights, and The American Public Health Association, the Centers for Disease Control and Prevention, and many more have all issued statements, position papers, or resolutions opposing preemption and supporting local control.

**9. Preemption is difficult to remove after insertion into a state law.**

Many advocates are tempted by the opportunity to cover an entire state with a tobacco control law, rather than taking several years to pass strong local laws. It is not a good trade.

**10. Preemption runs counter to standard legislative practices of setting minimum standards that local governments may exceed.**

The message that we have been hearing nationwide is clear: return lawmaking power to the local level. Remove state impositions. A preemptive statewide law undermines the principle of local control that is so important to cities and counties across Georgia.

For more information, contact: Kristen Betts at the American Cancer Society (404) 816-7800.

## The Tobacco Industry on Why it Needs Preemption

"We could never win at the local level... So the Tobacco Institute and tobacco companies' first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can't do that, at least on the state level."

*Victor L. Crawford, Former Tobacco Institute Lobbyist, Journal of the American Medical Association, 7/19/95*

"Our record in defeating state smoking restrictions has been reasonably good. Unfortunately, our record with respect to local measures...has been somewhat less encouraging... Over time, we can lose the battle over smoking restrictions just as decisively in bits and pieces - at the local level - as with state or federal measures."

*Raymond Pritchard, Brown and Williamson, US Tobacco & Candy Journal, 7/17/86*

"About 90% of legislation at the state level [adversely] affecting our industry will not be enacted... [Why?] Because we're good. That may sound arrogant, but I don't know any other way to put it."  
Governing, May 1989

Walker Merryman, Vice President, The Tobacco Institute

"It's barely controlled chaos [at the local level]. We can't be everywhere at once."

*Walker Merryman, The Tobacco Institute, San Francisco Examiner, 5/12/91*

"You can't sue every place every time... or even send people to challenge every proposal every place anymore."

*Thomas Lauria, The Tobacco Institute, San Jose Mercury News, 5/8/94*

"When you have 95,000 local units of government in this country, and you have a finite amount of resources, then the smart thing to do is to try to limit the potential for mischief [i.e. seek preemption]."

*Walker Merryman, The Tobacco Institute, Los Angeles Times, 3/25/90*

Part of the proposed global settlement of tobacco litigation calls for the elimination of the Tobacco Institute and the Council for Tobacco Research (CTR). When asked about this, Merryman replied "All we're going to do is change the name on the door." Merryman further stated, "We're going to continue to do what we've always done. I don't really understand why they're going through this exercise, frankly." Cimon, M., "Tobacco Institute workers confident of reincarnation", *Los Angeles Times*: A9, June 24, 1997

"Putting an end to the litigation would free the cigarette makers to reassess their business. Initially the settlement would force the companies to make some changes, but throughout its long history the tobacco industry has always been as flexible as a rubber band snapping back into shape despite events that have stretched it to the limit."

Shea, Jane, [TI editorial re: global settlement], *Tobacco International* 199(5): 3, May 1997  
Jane Shea, Editor, "Tobacco International"

"I've learned from experience that as soon as I'm identified as a representative of the Tobacco Institute, I lose all credibility. They just sneer us away... so I try to work behind the scenes whenever I can."

*Ron Saldana, The Tobacco Institute, Los Angeles Times, 8/24/86*