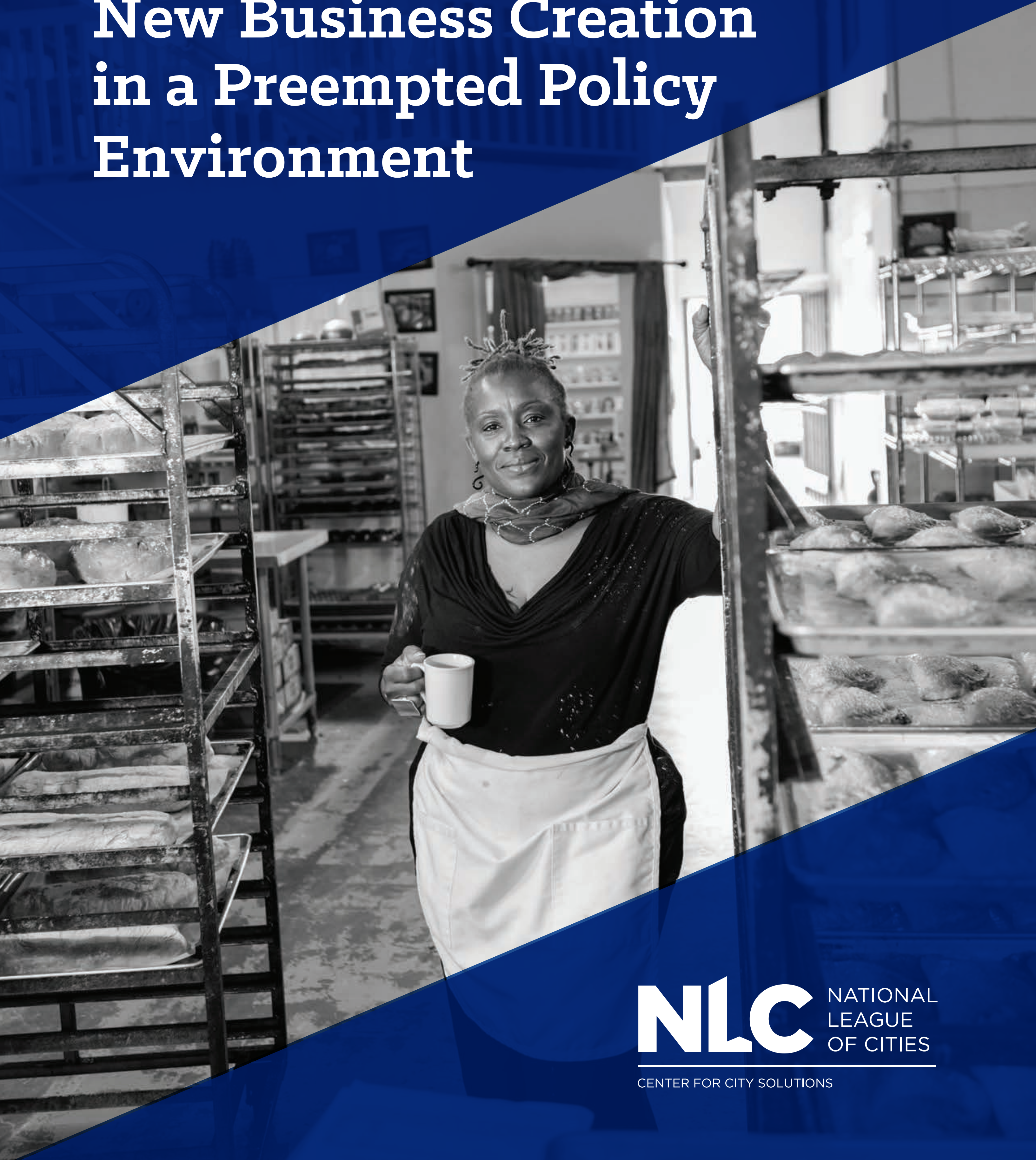
How to Support New Business Creation in a Preempted Policy Environment



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ABOUT THE NATIONAL LEAGUE OF CITIES

The National League of Cities (NLC) is the voice of America's cities, towns and villages, representing more than 200 million people. NLC works to strengthen local leadership, influence federal policy and drive innovative solutions.

NLC's Center for City Solutions provides research and analysis on key topics and trends important to cities, creative solutions to improve the quality of life in communities, inspiration and ideas for local officials to use in tackling tough issues, and opportunities for city leaders to connect with peers, share experiences and learn about innovative approaches in cities.

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ABOUT NLC'S LOCAL DEMOCRACY INITIATIVE

This text is part of NLC's broader Local Democracy Initiative. This Initiative strengthens the capacity and vibrancy of local governance through research and engagement on issues from state preemption to civic engagement. These efforts would not be possible without the support of the Kauffman Foundation.

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Letter from the CEO

Our cities are dynamic places—rich ecosystems of people, businesses, local institutions, and innovators. Throughout America's cities, towns and villages are downtowns, main streets, and blocks where the rubber meets the road of America's economy. Small businesses and entrepreneurs are continuously innovating to provide new products, services, and solutions for their communities, and their communities would not be the same without them.

Municipal leaders know their local economies are important. They also know its intricacies and know what their residents and innovators need. They are the government closest to the people.

As mayors and councilmembers have sought out solutions to the problems their communities face, however, they have faced resistance from state interference. Throughout the last decade in particular, states have preempted the ability of localities to engage with their business community. Preemption occurs when a state restricts or removes the policy options of local governments, essentially tying their hands.

Cities need their local institutions, small businesses, and entrepreneurs. And those same innovators need their cities. It is a partnership. While the misuse and abuse of preemption causes a problem rather than solving one—as states claim to avoid a "patchwork" of regulations, a claim we argue against here—there are still options for local leaders to work with their business leaders.

It is my hope that with this toolkit, local officials, businesses, and entrepreneurs will be equipped with the information, strategies, and policy options they need to work collaboratively and towards the best outcomes for their communities. We at the National League of Cities know those closest to the people understand what they need most. Even with unnecessary obstacles, there are ways to get there.

Whether that is to support the young entrepreneur, or to provide equitable prosperity, or to ensure the best and safest practices for residents, these are options for local leaders to consider as they operate in their preempted policy environments.

Together, we can promote the best economies for our communities. We invite our state partners to join in this partnership.

CEO and Executive Director
National League of Cities

How to Support New Business Creation in a Preempted Policy Environment

Introduction

Cities have become a new focal point in their efforts to promote policies amid governmental infighting and continued lack of action. Not only are state and federal governments failing to provide any support but are also placing tight constraints on cities, leaving them with less control to tailor laws to fit their needs. A major threat to local decision-making is state preemption, or the use of state law to nullify or restrict a municipal ordinance or authority. In the economic development space, proponents of preemption believe a key rationale for removing local authority is to support a business by preventing a "patchwork" of local regulations throughout a state in which that business operates. Assuming that preventing this patchwork leads to positive outcomes for businesses (i.e., where businesses in state-preempted environments are assumed to face less regulation and greater profitability than businesses in non-state-preempted environments), states prevent localities from setting their own minimum wage or enacting tailored paid leave.

The reality, however, is the evidence linking preemption to positive outcomes does not bear out, and cities seem to be doing fine in the absence of state control. As a matter of fact, the relevant literature finds *little to no detrimental outcomes* for businesses in cities that implement typical economic development policies such as paid leave or minimum wage increases where state preemption does not exist.[1,2] For example, while proponents of preemption tend to cite administrative burden and potential cost of implementation as arguments against paid leave, surveys of employers do not find municipal paid leave policies to be overly burdensome for businesses to implement or to hurt their profitability.[3] And while proponents tend to cite disproportionate budgetary impacts on small firms as arguments against minimum wage increases, case studies of cities find firm size has nothing to do with how they respond to minimum wage ordinances.[4]

While preemption's relationship with economic development has been explored, what has not been explored is its relationship with entrepreneurship. Businesses typically choose to locate in areas that will provide business supports and allow them to be profitable. Yet, governments do not always promote policies that spur economic growth and opportunity. For example, while the majority of job creation occurs in small businesses with fewer than 100 employees, there exist obstacles in the form of regulatory and tax burdens on those businesses. This research explores the relationship between preemption and entrepreneurship using state-level data for seven policy areas over the period 2010-2018. The analysis generally finds there is no statistical relationship between state preemption and new business creation, as typically advanced by special interest groups representing large businesses.[5] Despite these findings, states continue to pursue preemption in the name of business development, creating a restrictive environment for local economic development policy. And city leaders continue to feel helpless in their pursuit of authority over decisions that affect their businesses, residents, and communities.

This Municipal Action Guide shares an overview of the research and provides strategies and policy recommendations for local elected leaders, entrepreneurs, and community business leaders to support entrepreneurship within the confines of a preempted policy environment. Specifically, the guide shares recent examples of cities supporting voluntary certification and accreditation programs, community benefit agreements, zoning reforms, public-private partnerships, administrative burden relief, preferential procurement, and entrepreneurs extension programs (see Table 1 for a quick overview of each policy option).

TABLE 1

POLICY OPTION	DESCRIPTION	LEARN MORE ON PAGE...
Voluntary Certification & Accreditation Programs	Cities that are prevented from implementing requirements for local businesses can encourage their community to adopt the policy through voluntary programs.	14
Community Benefit Agreements	Community benefit agreements (CBAs) are negotiated agreements between residents and businesses.	16
Zoning Reforms	Options for cities can range from zoning for multi-story, pedestrian-oriented mixed-use districts; requiring new developments to set aside space for local businesses; and giving preference to local businesses for city purchasing and leasing city space.	17
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A Background on Preemption

Preemption affects multiple policy areas and comes in varied forms.[6] However, there is a particular concentration of preemption laws in municipal policy areas that can be described as business regulation or employer-employee policies (see Table 2). For instance, 25 states preempt local minimum wage laws, 38 states preempt regulation of ride sharing companies, and 23 states preempt paid leave policies.[7]

Another popular policy is municipal broadband. The idea, at its core, is that the city provides internet connection as a public utility. This can involve being its own internet service or building the necessary infrastructure for private providers to offer internet access. For local businesses, it can be a cheaper option, or in areas that did not have previous access, it can be a first opportunity to connect. For example, Wilson, North Carolina decided to pursue its own network after not being served by large internet providers. However, after building a successful network, lobbyists for these internet providers were able to pass a preemption bill in the state to prevent other cities from doing something similar, with an exception for Wilson's existing infrastructure.[8] Similar laws following the "model legislation" style from corporate special interest groups such as the American Legislative Exchange Council have popped up in other states such as Utah and Louisiana.[9]

TABLE 2.

NUMBER OF STATES TO PREEMPT GIVEN POLICY, BY YEAR

Year	Minimum Wage	Paid Leave	Ride Sharing	Project Labor Agreement	Prevailing Wage	Municipal Broadband	Fair Scheduling
2010	0	0	0	0	0	0	0
2011	1	1	0	3	2	0	0
2012	0	1	0	3	0	2	0
2013	3	5	0	2	3	0	0
2014	2	2	1	3	0	0	0
2015	2	4	17	3	2	0	1
2016	4	2	15	1	0	0	4
2017	3	5	4	4	2	0	4
2018	0	2	1	0	0	0	0
Total	15	22	38	19	9	2	9

Source: Economic Policy Institute, Institute for Local Self-Reliance

All the above policy areas have seen their highest levels of implementation since 2011. For instance, 15 of the 28 minimum wage preemptions have occurred in 2011 or later (the first occurring in 1997 in Louisiana). Ride sharing, however, arguably could be the poster child of post-2010 preemptions, as Uber and Lyft did not exist before 2009 and 2012, respectively, and the first of the 38 preemptions occurred in 2014 in Colorado. The next year, 17 preemptions were adopted, highlighting the corporate influence the transportation networks wield.

The ability of states to implement these various preemptive laws can depend on whether the state has "home rule", which gives cities the power to decide which services they provide and the policies they implement, or the extent to which the home rule authority protects cities. Home rule varies from state to state—and does not exist in certain states—but can be a powerful source of authority for its impacts on regulatory matters, fiscal responsibility, governance structure, and daily municipal operations.[10, 11]

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WHAT IS PREEMPTION?

Preemption occurs when a higher level of government supersedes the authority of lower levels.[12] For example, a state can preempt cities by saying localities cannot set their own minimum wage and must adhere to the state's minimum wage. In the past decade, preemption has grown as a tool of state legislatures and business interests to remove the authority of local governments. Special interests use preemption to create barriers for new entrants, or to push back against what they claim to be burdensome requirements.

WHY DOES PREEMPTION MATTER?

As a legislative tool, preemption is neither inherently good nor bad. But the misuse and abuse of preemption can be harmful, especially when it limits the ability of cities to respond to the needs of their residents. Throughout its history, preemption has been used to set "floors," where there is a minimum standard across the state but localities are able to implement higher standards. But, more and more states have set "ceilings," which does not allow cities to tailor the policy to their needs. It is when states preempt a policy and implement no statewide standard at all that creates a policy vacuum.

WHAT ARE THE TYPES OF PREEMPTION?

EXPRESS PREEMPTION: Express preemption is when a law or executive order explicitly states that there may not be any local action. Key phrases would include "exclusive regulatory authority," "sole authority," and "this act shall supersede."[13]

IMPLIED PREEMPTION: Implied preemption occurs when the language of the law can be construed to imply a lack of local authority. Courts can interpret laws to be a matter only for the state, or states can implement stringent barriers to enacting a local policy, such as many states having barriers towards enacting municipal broadband.

WHAT ARE THE FORMS OF PREEMPTION?

VACUUM PREEMPTION: This is when a state prohibits cities from doing something without setting any standards of its own. For example, Wisconsin does not allow municipalities to enact paid leave law, but it did not create its own policy either, thus leaving a policy vacuum.

CEILING PREEMPTION: This is when a state prohibits cities from doing anything different from what state law already mandates. For example, in the case of health insurance, the state would have an interest in preventing city-by-city regulation in a manner that could be chaotic for insurance markets.

FLOOR PREEMPTION: This is when a state sets a minimum standard and allows cities to enact laws with requirements above that minimum standard. For example, a state could set a minimum wage of $12 an hour, but allow localities to set a higher minimum wage of $15 if it is an expensive city to live in.

PUNITIVE PREEMPTION: This is when a higher level of government threatens to punish a lower level of government. For example, the state of Arizona threatens to withhold shared revenue from cities that have ordinances found to be in conflict with state law.

NULLIFICATION PREEMPTION: This is when a state retroactively nullifies something that a city has already passed. Some instances include the state of North Carolina preempting Charlotte's LGBTQ+ friendly ordinance, as well as the state of Texas preempting a ballot referendum in Denton to ban fracking.

Research Findings

To better understand whether state preemption affects entrepreneurial outcomes, we examined the following preempted policy areas known to affect the ability of localities to regulate businesses or employer-employee relations: minimum wage increase, municipal broadband access, transportation network company (or ride sharing) regulation, fair scheduling practices, paid family or medical leave, contractor prevailing wage and municipal project labor agreement standards. We also examined several indicators developed by the Kauffman Foundation, related to the rate of new business owners, the rate of new business owners who created a business out of choice instead of necessity, the number of jobs created in the first year of business, and the rate of survival in the first year of business.[14]

The results from a regression analysis suggest that, when aggregated, preemption of any of the seven policy areas over the period 2010-2018 does not statistically affect entrepreneurship. When we separate out the policies, the only policy that statistically and significantly affects entrepreneurship is municipal project labor agreement standards, although the effect is very negligible (see Appendix for more information on research methods and data). Generally, there are few statistically significant findings to suggest that preemption provides greater entrepreneurial outcomes, which has important policy implications. A claim that state interference in a "patchwork of local regulations" will help businesses does not weigh strongly against these findings. Rather, these findings suggest that states that remove local decision-making are creating a problem for cities, towns, and villages rather than solving one, as there is little to suggest entrepreneurs are struggling in non-preempted environments. Instead, states are weakening the decision-making ability of municipalities and leaving them without the policy tools and options they could use to respond to the needs of their communities.

Perhaps of greater interest here is whether localities in different states tend to experience similar entrepreneurial outcomes or whether neighboring states, in particular, experience more similar outcomes than non-neighboring states. To put the statistical findings into context, we analyzed three metropolitan statistical areas (MSA) that span multiple states: 1) Portland–Vancouver–Hillsboro MSA, which spans Oregon and Washington, 2) Fayetteville-Springdale-Rogers MSA, which spans Arkansas and Missouri, and 3) Cincinnati MSA, which spans Ohio, Indiana, and Kentucky.

PORTLAND–VANCOUVER–HILLSBORO MSA

Out of Oregon and Washington, only Oregon has preempted paid leave, specifically paid sick leave and family medical leave, as of 2015. The state requires employers with at least 10 employees to provide these benefits in certain circumstances but does not allow localities to build upon this standard, thus preempting them. While proponents of preemption often cite bad outcomes for businesses in cities that exercise control, paid sick leave, in particular, is not found to be "overly burdensome" for employers, where labor force participation is not significantly affected.[15]

What our regression analysis tells us is that Oregon tends to create 0.6 more startup jobs, but 1.9 and 16.2 percent lower startup early survival and opportunity share of new entrepreneurs, respectively, than Washington. These mixed results suggest that a state-imposed paid leave requirement does not necessarily spur new business creation, where if "preventing a patchwork of local regulations leads to positive outcomes", we should see positive impacts on all the entrepreneurial outcomes and not just startup jobs. This tell us that the problem does not necessarily lie with the paid leave policy itself but with its implementation through preemptive measures that disallow local tailoring. Despite these measures, localities in Oregon and Washington support entrepreneurship in various ways. Through the Portland Community College Small Business Development Center, local businesses can enroll in classes and connect with experts and advisors to navigate how to start and grow their businesses.[16] Across the Columbia River, Vancouver, Washington offers a variety of partners, funding opportunities, and advisors in a central location.[17]

FAYETTEVILLE-SPRINGDALE-ROGERS MSA

Arkansas has preempted minimum wage, paid leave, ride sharing, project labor agreements, fair scheduling, and municipal broadband, while Missouri has preempted minimum wage, paid leave, ride sharing and project labor agreements. However, as of 2019, Arkansas has begun reforming its municipal broadband law to give greater power to localities. What our regression analysis tells us is that Arkansas tends to create 1.8 fewer startup jobs and experience 1.3 percent lower startup early survival than Missouri. Both states implemented various employment policies over the period 2010-2018. Arkansas implemented both minimum wage and paid leave policies in 2017 compared to Missouri in 2015. Arkansas also implemented municipal project labor agreement standards in 2015 compared to Missouri in 2017, and additionally implemented fair scheduling policy in 2017 whereas Missouri has not yet.

While both states have implemented employment policies, jurisdictions in Arkansas could be experiencing relatively negative entrepreneurial outcomes due to the state's implementation of municipal project labor agreement standards and fair scheduling policy. For example, in its 2015 law, Arkansas preempted local governments from using project labor agreements with contractors that would allow the city to ask for policies such as a living wage. Still, cities like Fayetteville are findings ways to support entrepreneurs and innovators. Through the city's Economic Vitality Department, entrepreneurs are able to seek out a "strong support system" to get their businesses launched and established through consulting and workforce development.[18]

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CINCINNATI MSA

Out of Ohio, Indiana and Kentucky, Indiana was the first to implement employment policies. For example, Indiana implemented minimum wage policy in 2011, whereas Ohio and Kentucky followed much later in 2016 and 2017, respectively. Similarly, Indiana implemented paid leave policy in 2013, whereas Ohio and Kentucky followed again in 2016 and 2017, respectively. Indiana also implemented prevailing wage in 2015 compared to Kentucky in 2017. Lastly, both Indiana and Ohio implemented fair scheduling policy in 2016. Given the states' proximity to each other, the pattern of one state adopting a policy and another state eventually adopting the policy affirms the policy diffusion that can occur as states learn from each other, particularly neighboring states or states with similar governments.[19]

What our regression analysis tells us is that Ohio tends to experience a 30 and 38 percent higher opportunity share of new entrepreneurs, or the percentage of new entrepreneurs who created a business out of choice instead of necessity, than Indiana and Kentucky, respectively. However, Ohio tends to experience a less than one percent lower share of new entrepreneurs than both Indiana and Kentucky. This suggests that Ohio tends to foster an environment that promotes choice-based entrepreneurship considerably more than need-based entrepreneurship compared to either Indiana or Kentucky. Based on the timelines of policy implementation above, Ohio could be experiencing relatively positive entrepreneurial outcomes due to its later implementation of employment policies. Additionally, in 2018, Cincinnati supports its local entrepreneurs with resources on licensing, technical assistance, certifications, financing, contracting opportunities, and more.[20] And in Kentucky, cities like Covington offer local tax incentives and provide access to accelerators and incubators that offer mentorship, investors and other support that help them become stable, self-sufficient businesses.

Local leaders should not accept the argument that preemption is needed to avoid a patchwork of regulation, as corporate special interests will claim. Instead, cities in preempted policy environments, or even those without state interference, can promote entrepreneurship through building local ecosystems, as communities in the above three MSAs have done.

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The Toolkit

City leaders can pursue tangible policy options to engage their business community and encourage entrepreneurship. But, before they consider any of these policy recommendations, they must first engage local business leaders, who can provide insights and guidance on implementing the below recommendations and become powerful advocates and partners. These trusted community business leaders—entrepreneurs, small businesses, and local institutions—can be powerful allies in a successful coalition and campaign to advance local democracy and help foster thriving small business and entrepreneurial communities.

Voluntary Certification & Accreditation Programs

Cities that are prevented from implementing requirements for local businesses can encourage businesses to adopt an employer-employee policy through voluntary certification or accreditation programs, where the city rewards its businesses for meeting certain criteria (e.g., adopting a specific standard or providing a living wage). Such accreditation programs are not uncommon and are used to achieve a variety of policy outcomes.

For example, the **City of Chicago** offers several business education programs, one of which offers a business start-up certificate. The city partnered with the Canadian Imperial Bank of Commerce to offer low-interest, no fee loans to new and established businesses that complete the program. Besides helping these entrepreneurs build their best business through developing a business plan and creating a website, Chicago can expose them to city priorities, such as inspections and licensing by attending these workshops.[21]

To encourage safe policies and practices in the community's restaurants and bars, Arlington County, Virginia launched the Arlington Restaurant Initiative (ARI), which provides accreditation to establishments that complete various trainings and adopt polices that meet specific criteria related to public health and safety.[22] Through the program, these businesses learn "responsible alcohol service, public safety expectations, fire code/safety, food safety, and zoning compliance."[23]

These localities demonstrate the value of voluntary accreditation and certificate programs, which offer the city an opportunity to interact with entrepreneurs on the ground and offer businesses an opportunity to implement best practices that the municipality may not be able to otherwise enact.

Community Benefit Agreements

Community benefit agreements (CBA) are negotiated agreements between residents and businesses.[24] To receive the community's support, businesses typically agree to implement policies such as making local hires, procurement standards such as hiring minority-owned firms, or if they are a developer, building affordable units or public spaces.[25] The success of CBAs has been mixed, but these agreements represent a key factor: community engagement. Involving local organizations bridges divides and can address issues of equity up front, allowing those affected to put forward solutions and entrepreneurs to learn implementation practices.

The **City of San Francisco** implemented a CBA program and tax incentive with businesses in its Central Market and Tenderloin neighborhoods. Businesses in these areas can receive a payroll tax exemption in exchange for implementing local hiring practices and supporting neighborhood-based organizations. The city specifically requires businesses with more than $1 million in payroll expenses to agree to a CBA with community partners, a way to address the rapid gentrification of these neighborhoods.[26]

CBAs present an opportunity to make change as a business starts or grows.[27] Since they are voluntarily negotiated, they present an opportunity to seek policy change and incentives if preempted from requiring such measures.

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Zoning Reforms

One of the most basic functions of local government, zoning, can be a powerful tool for easing the demands on businesses. Options for cities can range from zoning for multi-story, pedestrian-oriented mixed-use districts, preservation of historic spaces, requiring new developments to set aside space for local businesses, implementing business diversity ordinances aimed at promoting local business alongside national chains, and giving preference to local businesses for city purchasing and leasing city spaces.[28]

While cities can get creative with the use of space mentioned above, landlords can also become a key partner. For example, the **Brooklyn Navy Yard** writes into its leases preferences for local hiring and provides an on-site employment office that can connect businesses with local workforce development providers.[29]

Land regulation can also take the form of Community Land Trusts (CLT). Frequently used for affordable housing, these programs form a trust to acquire land and own it permanently. These trusts then lease property on the land in long-term leases rather than traditional sales. The land itself is kept affordable by this long-term ownership and by earning profits off leases that goes back towards maintaining the trust.[30]

A similar CLT can be established for commercial and retail use, as the **Anchorage Community Land Trust** has done. The Anchorage CLT acquires properties that it leases to entrepreneurs with an aim of uplifting these local businesses and supporting the community.[31] One of the first projects the CLT implemented was the purchase of a vacant gas station and conversion into a credit union because the Mountain View neighborhood of Anchorage lacked a full-service bank.[32]

Public-Private Partnerships

A growing number of cities—big and small—are forming public-private partnerships to leverage their investments and to encourage private and philanthropic investment in the community. Supporting undercapitalized entrepreneurs is often a central component of their strategies. Local governments can play any number of roles in these arrangements, from providing catalytic seed funding for a new microenterprise fund to serving as the primary convener and strategic linchpin of new initiatives.

One way that localities have partnered with the private sector is through direct support of community development financial institutions (CDFI). The mission of a CDFI is to serve low- and moderate-income people and communities by increasing access to capital for projects that might otherwise be viewed as too risky for standard bank financing. Because CDFIs are typically located in the communities they serve, they tend to be better positioned to identify community needs as well as reliable investment opportunities.

Many CDFIs, however, decline to take on debt to make additional loans because of unfavorable terms offered by state governments, including high interest rates. Some localities attempt to improve the lending environment by providing credit enhancements to CDFIs. For example, the City of Lawrence, Massachusetts contributes a 10 percent loan loss reserve to the Venture Loan Fund, which is administered by the local CDFI Mill Cities Community Investments.[33]

Localities also partner with the private sector in the launch of accelerators and incubators for entrepreneurs and start-up founders. These programs can come with short-term support in the form of networking, business development, and competitive seed capital upon participants' "graduation".

In 2019, the **city of Long Beach** allocated a third of the capital used to launch the Long Beach Accelerator. California State University-Long Beach and Sunstone Management, an international investment firm, contributed the other two-thirds.[34]

Seed capital isn't the only asset local governments bring into partnerships with the private sector. They also bring extensive knowledge of the needs, capabilities, and opportunities present in their community and can bring credibility and public support to new investments.

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Administrative Burden

Although entrepreneurs rarely cite business-friendly regulations or low tax rates as specific reasons for starting their business in a given city, government regulations do have a large impact on very small businesses. There is a general consensus that streamlining regulatory approval processes is "low-hanging fruit" for local policy makers in the sense that it is essentially a cost-free intervention that makes entrepreneurship more attractive and lessens the bureaucratic headache in city hall.

Some cities create boards or commissions to evaluate the regulatory landscape that entrepreneurs and small- and medium-sized enterprises face. These commissions are typically composed of members of the business community and include representatives of the mayor's office and city economic development staff.

In **Albuquerque, New Mexico**, the Small Business Regulatory Advisory Commission meets monthly to review new policies and regulations that have the potential to burden entrepreneurs and small businesses.[35] In New York City, Mayor De Blasio formed the "Red Tape Commission" in 2016 which ultimately made 60 recommendations for improving the efficiency of onerous permitting and licensing processes.[36] The recommendations included items like establishing clear timelines for agency processes, holding agencies accountable and making technical assistance free and more widely available.

In Chicago, Illinois, Mayor Rahm Emanuel's administration identified inefficient regulatory systems as one of the primary impediments to entrepreneurship. As a result, the city passed an ordinance reducing the number of types of business licenses from 117 to 49, consolidating licenses where appropriate and dismantling ones that were no longer needed. This generated annual savings for small businesses and entrepreneurs of roughly $10 million.[37]

Local governments should also evaluate the indirect ways that regulation can negatively impact entrepreneurs and innovation. For instance, overly burdensome permitting processes for the construction of university laboratories and science buildings—places where the most innovative, high-growth companies often form—can also hamper entrepreneurship.

Preferential Procurement

Cities can develop procurement policies that preferentially prioritize businesses (e.g., local suppliers) according to a set of criteria that reflects the values for that city.[38] While there have been some legal challenges to such preferential policies in the past, the courts have generally upheld them as legitimate tools, especially when a clear connection is made between such policies and local interests.[39]

The **city of Phoenix, Arizona** launched a Local Small Business Enterprise Program which gave registered businesses the opportunity to submit bids first. After one year of the program, the amount of money Phoenix spent on small and local businesses increased from $50,000 in 2011 to $2.3 million in 2013.

The practice of preferential procurement has also been pursued within the context of racial equity efforts. For example, the Government Alliance on Race and Equity (GARE) has advocated that cities should adopt policies that ensure that the distribution of local procurement contracts accurately reflect the diversity of local communities.[40]

Cities that have enacted such policies include Tacoma, Washington, which has an "Equity in Contracting" program.[41] The first stage of this program involved creating a list of minority- and women-owned businesses within the city. Beyond that, the city is providing a variety of technical assistance, compliance tracking and other related services to support such businesses as they are given access to procurement opportunities as suppliers.[42]

Municipalities can also participate in the City Accelerator program, a joint initiative of the Citi Foundation and Living Cities.[43] This accelerator promotes innovative and inclusive growth through a focus on increasing procurement opportunities for local minority-owned businesses. These policies are especially important given the current status of state preemption, where 21 states have enacted project labor agreements restrictions. These restrictions prohibit cities from passing regulations requiring contractors to abide by certain labor requirements.[44]

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Entrepreneurs Extension Partnership

The traditional way in which many cities promote entrepreneurship is through public venture funds and/or incubation centers.[45] However, such approaches not only present sizable risks to cities, but also oftentimes do not align with the type of expertise that cities possess. The Kauffman Foundation articulates an alternative pathway for cities centered around a focus on later stage entrepreneurial engagement. The National League of Cities similarly recommends that cities consider the adoption of the Entrepreneurs Extension Partnership, which specifically supports the transition from early stage start-up to long-term sustainable business.[46]

One specific type of support that cities can provide as part of such a partnership is a platform for networking and connections. Rather than focusing on early-stage funding, cities can leverage their position as a convening platform to assist entrepreneurs in connecting with others within the business and political community. Pursuing such an initiative would allow cities to support entrepreneurs through the provision of social capital rather than a heavy emphasis on financial investment. This is particularly important within the context of state preemption, as it presents cities with a tool to support entrepreneurs that aligns with local values.

The **city of Memphis, Tennessee** created an Entrepreneurs Network Center that exemplifies this type of networking platform.[47] Serving as a centralized resource platform for small business owners, the center offers a range of services including training, mentorship and other types of relevant information. Training opportunities, in particular, could allow cities to highlight their Voluntary Certification program (described above) if that was something the city was engaged in.

The city of Philadelphia, Pennsylvania has an Economic Equity Network that works to connect small- and minority-owned businesses to inclusive capital opportunities.[48] The network serves as a convening platform that supports the needs of entrepreneurs who have historically experienced disinvestment by providing connections to funding opportunities.

Conclusion

Special interest groups representing large businesses have typically advanced the idea that state preemption prevents a patchwork of local regulations that leads to positive outcomes for businesses, where businesses in state-preempted environments are assumed to face less regulation and greater profitability. Yet, there is not much research to back this claim. In fact, our analysis reveals few statistically significant findings to suggest that preemption provides greater entrepreneurial outcomes. These findings suggest that states that remove local decision-making are creating a problem for cities, towns, and villages rather than solving one, as there is little to suggest entrepreneurs are struggling in non-preempted environments. The misuse of preemption has hindered cities, towns and villages from being able to appropriately engage their local economy and entrepreneurs.

Local leaders know best what their communities require. For cities in preempted policy environments, there are policy options mayors and council members can implement to achieve their policy goal. For example, if a state preempts local leaders from implementing a living wage, they can seek to use voluntary certification programs or preferential procurement. Additionally, local leaders can support community benefit agreements, zoning reforms, public-private partnerships, administrative burden relief, preferential procurement, and entrepreneurs extension programs.

Despite these innovative solutions, city leaders working in preempted policy environments know that state interference remains a structural barrier to effective local governing. To advance local decision-making against state interference, local leaders can still implement fundamental strategies such as communicating the problem of state interference, building coalitions and campaigns, seeking litigation if necessary, and advancing home rule reform.[49, 50]

Preemption that prevents cities from expanding rights, from building stronger economies, and from promoting innovation can be counterproductive when decision-making is divorced from the core wants and needs of community members. Greater authority allows cities to experiment within the constraints and opportunities of their local economies.

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Appendix: Method and Data

To understand how preemption of a given policy affects entrepreneurial outcomes, we apply a generalized difference-in-differences regression design. Difference-in-differences methods are widely used to understand how a change in treatment status—here, when a state switches from not preempting a given policy to preempting a given policy—affects a particular outcome–here, entrepreneurial outcomes.

The preempted policy area data was provided by the Economic Policy Institute, and the data included year of passage. Municipal broadband preemption data was provided by the Institute for Local Self-Reliance. Combining the preemption data from multiple sources, we created a longitudinal database that includes an observation for each of the 50 states for each of the nine years over the period 2010-2018 for each of the seven policy areas.

Economic outcome data was collected from The Kauffman Foundation and the U.S. Census Bureau's Business Dynamics Statistics (BDS). The Kauffman Foundation provides measurements of the success of entrepreneurs across the country, while the BDS data tracks establishment and job statistics. Using the U.S. Census Bureau's Current Population Survey, the Kauffman Foundation calculated the rate of new entrepreneurs, or new business owners; opportunity share of new entrepreneurs, or the percentage of new entrepreneurs who created a business out of choice instead of necessity; startup job creation, or the number of jobs created in the first year of business per capita; and startup early survival rate, or the rate of survival in the first year of business. The purpose of these indicators is to track early-stage entrepreneurial activity, given by an index that combines the four indicators.

Given that this research focused on preemption occurring through state legislatures, NLC used control variables focused on the likelihood of a state government to preempt a given policy area. These included partisanship, legislative professionalism, election data, as well as demographic measurements for the state, based on a preemption symposium edited by Hicks and Weissert (2018).[51]

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Endnotes

[1] Marotta, John, and Solomon Greene. Minimum Wage: What Does the Research Tell Us about the Effectiveness of Local Action. Rep. Washington: Urban Institute, 2019. 1-13. Print.

[2] Marotta, John, and Solomon Greene. Paid Sick Days: What Does the Research Tell Us about the Effectiveness of Local Action. Rep. Washington, DC: Urban Institute, 2019. Print.

[3] Ibid.

[4] Marotta, John, and Solomon Greene. Minimum Wage: What Does the Research Tell Us about the Effectiveness of Local Action. Rep. Washington: Urban Institute, 2019. 1-13. Print.

[5] Haddow, Kim, Anthony Gad, and Katy Fleury. The Growing Shadow of State Interference. Rep. Local Solutions Support Center State Innovation Exchange, 2020. Print.

[6] Wagner, Spencer, Nestor M. Davidson, Kim Haddow, Christiana K. McFarland, and Brooks Rainwater. Restoring City Rights in an Era of Preemption. Rep. Washington, DC: National League of Cities, 2019. Print.

[7] Economic Policy Institute. “Worker Rights Preemption in the U.S.: A Map of the Campaign to Suppress Worker Rights in the States.” Economic Policy Institute. Aug. 2019. Web. 15 Oct. 2020.

[8] Sayre, Wilson, and Kenny Malone. “Small America Vs. Big Internet.” NPR, 30 May 2020. Web. 15 Oct. 2020.

[9] O’Dell, Rob, Michael Squires, Josh Susong, and Shawn Sullivan. “How Laws Are Written by Corporations and Interest Groups, Explained Visually.” USA Today. Gannett Satellite Information Network, 2019. Web. 15 Oct. 2020.

[10] DuPuis, Nicole, Trevor Langan, Christiana McFarland, Angelina Panettieri, and Brooks Rainwater. City Rights in an Era of Preemption: A State-by-State Analysis. Rep. Washington, DC: National League of Cities, 2018. Print.

[11] Davidson, Nestor, Richard Briffault, Paul Diller, Sarah Fox, Laurie Reynolds, Erin Adele Scharff, Richard Schragger, and Rick Su. Principles of Home Rule for the 21st Century. Rep. Washington, DC: National League of Cities, 2020. Print.

[12] ChangeLab Solutions. June 2019 ed., ChangeLab Solutions, 2019, pp. 1–6, Fundamentals of Preemption.

[13] Public Health Law Center “Preemption by Any Other Name,” 2010

[14] Kauffman Foundation. “Kauffman Indicators of Entrepreneurship.” Kauffman Indicators of Entrepreneurship. Web. 15 Oct. 2020.

[15] Marotta, John, and Solomon Greene. Paid Sick Days: What Does the Research Tell Us about the Effectiveness of Local Action. Rep. Washington, DC: Urban Institute, 2019. Print.

[16] Marquez-Oldham, Tammy. “Small Business Advising and Training in Portland Metro.” Oregon Small Business Development Center Network. 2020. Web. 15 Oct. 2020.

[17] City of Vancouver. “Additional Business Resources.” Additional Business Resources | City of Vancouver Washington. 2020. Web. 15 Oct. 2020.

[18] Economic Vitality, City of Fayetteville. “Fayetteville-ar.gov.” Fayetteville, AR - Official Website. 2020. Web. 15 Oct. 2020.

[19] Berry, Frances Stokes, and William D. Berry. “State Lottery Adoptions as Policy Innovations: An Event History Analysis.” The American Political Science Review, vol. 84, no. 2, 1990, pp. 395–415. JSTOR, www.jstor.org/stable/1963526. Accessed 15 Oct. 2020.

[20] City of Cincinnati Economic Inclusion. “Business Resource Guide - Cincinnati.” City of Cincinnati. 2018. Web. 15 Oct. 2020.

[21] City of Chicago. “Business Education.” City of Chicago :: Business Education. 2020. Web. 15 Oct. 2020.

[22] Arlington County. “Arlington Restaurant Imitative.” Arlington County. Web. 2020.

[23] Arlington County. “Arlington Restaurant Initiative Launched to Maintain Nightlife Safety in Arlington County.” Newsroom. 2018. Web. 15 Oct. 2020.

[24] Wolf-Powers, Laura. “Community Benefits Agreements and Local Government: A Review of Recent Evidence.” Journal of the American Planning Association (2010). Print.

[25] Ibid.

[26] ICIC. “San Francisco Engages Tech Companies Through Community Benefits Agreements.” ICIC. 28 Apr. 2016. Web. 15 Oct. 2020.

[27] Partnership for Working Families, and Community Benefits Law Center. Common Challenges in Negotiating Community Benefits Agreements and How to Avoid Them. Rep. 2016. Print.

[28] Mitchell, Stacy. “8 Policy Strategies Cities Can Use to Support Local Businesses.” Institute for Local Self-Reliance. 12 June 2020. Web. 15 Oct. 2020.

[29] Brooklyn Navy Yard. “Job Opportunities with Yard Businesses.” 2020. Web. 2020.

[30] Community Wealth. “Community Land Trusts (CLTs).” Community Wealth. 22 Sept. 2020. Web. 15 Oct. 2020.

[31] Anchorage Community Land Trust. “Anchorage Community Land Trust.” Anchorage Community Land Trust. 03 Dec. 2019. Web. 15 Oct. 2020.

[32] LaVecchia, Olivia. “Commercial Community Land Trust.” Institute for Local Self-Reliance. Web. 2020. https://ilsr.org/rule/community-ownership-commercial-spaces/commercial-community-land-trust/.

[33] Mill Cities Community Investments. “Mill Cities Community Investments.” Mill Cities Community Investments. 22 July 2020. Web. 15 Oct. 2020.

[34] Maschke, Alena. “New Startup Accelerator Plans To Bring Tech Boom To Long Beach.” New Startup Accelerator Plans To Bring Tech Boom To Long Beach. 2019. Web. 15 Oct. 2020.

[35] City of Albuquerque. “Small Business Regulatory Advisory Commission (SBRAC).” City of Albuquerque. 2020. Web. 15 Oct. 2020.

[36] City of New York Red Tape Commission. Red Tape Commission: 60 Ways to Cut Red Tape and Help Small Businesses Grow. Rep. New York City: City of New York. Print.

[37] Regulatory Reform Team. “Case Study: Chicago Licensing and Permitting Reform.” Data-Smart City Solutions. 2015. Web. 15 Oct. 2020.

[38] Mitchell, Stacy, and Olivia LaVecchia. “Local Purchasing Preferences.” Institute for Local Self-Reliance. Web. 2020. https://ilsr.org/rule/local-purchasing-preferences/.

[39] Ackerman, Amy S. “Buy Healthy, Buy Local: An Analysis of Potential Legal Challenges to State and Local Government Local Purchase Preferences.” The Urban Lawyer 43.4 (2011): 1015-034. Print.

[40] Government Alliance on Race and Equity. “Contracting for Equity: Best Local Government Practices That Advance Racial Equity in Government Contracting and Procurement.” Government Alliance on Race and Equity. 12 Aug. 2017. Web. 15 Oct. 2020. http://www.racialequityalliance.org/2015/12/01/contracting-for-equity/.

[41] City of Tacoma Community and Economic Development. “Small Business Enterprise.” Small Business Enterprise - City of Tacoma. Web. 15 Oct. 2020; https://www.cityoftacoma.org/government/city_departments/community_and_economic_development/small_business_enterprise.

[42] Ibid.

[43] Reynoso, Elizabeth, and Kristen Scheyder. “Five Cities That Are Buying into Equity.” Living Cities. 2017. Web. 15 Oct. 2020.

[44] Economic Policy Institute. “Worker Rights Preemption in the U.S.: A Map of the Campaign to Suppress Worker Rights in the States.” Economic Policy Institute. Aug. 2019. Web. 15 Oct. 2020.

[45] Motoyama, Yasuyuki, and Jason Wiens. Guidelines for Local and State Governments to Promote Entrepreneurship. Rep. 1st ed. Ewing Marion Kauffman Foundation, 2015. Print.

[46] Andes, Scott. Place-Based Policies for America’s Innovation Ecosystem. Rep. Washington, DC: National League of Cities, 2019. Print.

[47] Black Business Association of Memphis. “Entrepreneurs Network Center.” Black Business Association of Memphis. 26 Mar. 2020. Web. 15 Oct. 2020. https://bbamemphis.com/entrepreneurs-network-center/.

[48] Business Wire. “Economic Equity Network Convenes Investors and Entrepreneurs of Color to Discuss Framework for Building Inclusive Capital Continuum for Minority-Business in Philadelphia Opportunity Zones.” Business Wire. 12 Dec. 2019. Web. 15 Oct. 2020.

[49] Wagner, Spencer, Nestor M. Davidson, Kim Haddow, Christiana K. McFarland, and Brooks Rainwater. Restoring City Rights in an Era of Preemption. Rep. Washington, DC: National League of Cities, 2019. Print.

[50] Davidson, Nestor, Richard Briffault, Paul Diller, Sarah Fox, Laurie Reynolds, Erin Adele Scharff, Richard Schragger, and Rick Su. Principles of Home Rule for the 21st Century. Rep. Washington, DC: National League of Cities, 2020. Print.

[51] Hicks, William D., and Carol Weissert. “Home Rule Be Damned: Exploring Policy Conflicts between the Statehouse and City Hall.” PS: Political Science & Politics 51, no. 01 (2017): 26-38. Accessed May 20, 2019. doi:10.1017/s1049096517001421.

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