NATIONAL LEAGUE OF CITIES
CENTER FOR CITY SOLUTIONS

THE IMPACTS OF PREEMPTION ON EQUITY RESEARCH BRIEFS

The Relationship Between State Preemption of Inclusionary Zoning and Health

Introduction

Americans are becoming increasingly burdened by rising housing costs, with renters and people of color disproportionately spending more of their incomes on housing[1]

In 2018, 20.9 percent of homeowners and 40.6 percent of renters were cost burdened (i.e., spending 35 percent or more of income on housing costs).[2] Among people of color, 54.9 percent of Black renters and 53.5 percent of Latinx renters were cost-burdened compared to 42.6 percent of white renters. These racial disparities were present among homeowners as well. In 2017, 30.2 percent of Black homeowners and 29.6 percent of Latinx homeowners were cost burdened compared to 20.4 percent of white homeowners.[3]

In addition to causing financial distress, housing affordability issues are associated with a decreased ability to pay for health care and other essential needs and poorer physical and mental health outcomes.[4, 5] Quality, affordable housing is vital for good health.[6] The connection between housing affordability and health is an under-researched pathway, yet it is vitally important given the housing affordability crisis and longstanding inequities in health between racial groups.[7, 8]

About the series: This brief was produced as a result of collaboration between the National League of Cities, the Policy Surveillance Program (PSP) of the Center for Public Health Law Research at Temple University Beasley School of Law, the Urban Affairs Association, and the authors. The authors, using preemption data produced by NLC & PSP, were able to explore the impact of preemption on the health and wellness of cities, towns, and villages and their residents. Support for this research was provided by the Robert Wood Johnson Foundation. The views expressed here do not necessarily reflect the views of the Foundation.

About the author: Courtnee Melton-Fant, PhD, MS, is an Assistant Professor in the Division of Health Systems Management and Policy in the School of Public Health at the University of Memphis. Her research interests include state- and local-level public policy, health outcomes, and racial health inequities. She is particularly interested in how broad-based public policies can be used as tools to improve the health of populations.

The lack of supply of affordable housing has contributed to an increase in the number of cost-burdened households, particularly among renters.[9, 10] Inclusionary zoning (IZ) policies are one policy tool used by local governments, particularly in cities with high rates of development and high housing costs, to increase the share of affordable housing.[11] Typically, local governments will require and/or encourage private developers to set aside a specific proportion, 10-15 percent most commonly, of market-rate housing for below-market (i.e., affordable housing) units.[12] Others make IZ voluntary and incentivize developers to include affordable units. Developers may have the option to contribute fees instead of below-market rate units, called an in-lieu fee option. In general, mandatory policies are more effective than voluntary and in-lieu fees policies to create more affordable housing.[13] Some local governments also offer density bonuses which allow developers to build more market-rate units than they typically would be allowed in order to offset some of the costs of providing affordable units.[14]

The effectiveness and merits of IZ can be debated.[15, 16, 17, 18] Nonetheless, state preemption of local IZ policies prevents local governments from determining whether IZ is a viable policy for increasing the supply of affordable housing. Despite the evidence, some states restrict local governments from using this tool. This study combines publicly available data along with the Policy Surveillance Program preemption data, supported by the National League of Cities and the Robert Wood Johnson Foundation, to examine the relationship between state preemption of inclusionary zoning policies and health outcomes.

This study explores the following research questions:

- Is there a relationship between IZ preemption and health outcomes, measured by self-rated health status and delaying medical care due to cost?
- Does the relationship between IZ preemption and health outcomes vary by race and ethnicity?
- Does the relationship between IZ preemption and health vary by health outcome?

Given the connection between affordable housing and health, state preemption of inclusionary zoning may hinder local governments' ability to address housing-related health inequities.[19] Indeed, this study finds that:

- Adults living in states that preempt inclusionary zoning were more likely to have poor or fair self-rated health status.
- Black adults in preemption states were more likely to report delaying medical care due to cost and were the only racial/ethnic group to experience this outcome.

The study assumes that IZ creates more affordable housing and preemption hinders the development of affordable housing. Consequently, less affordable housing contributes to poorer health outcomes. This is one of the first studies to explore the connection between preemption of IZ and health outcomes. While this is an important first step, more research is needed to determine mechanisms linking IZ preemption and health.

Study findings highlight the importance of zoning policy as a tool to improve population health, preemption as a threat to public health, and that policy often has different effects on different groups of people. Local leaders will learn the importance of using racial equity frameworks when developing their housing policies and how reforming land use regulation is an opportunity to improve population health and make housing more affordable.

Since 2011, state preemption of local control has accelerated and strained relationships between states and localities.[20] Local governments are increasingly unable to enact policies that can improve public health. In addition to supporting efforts to amend state law to allow inclusionary zoning, local leaders can modify local zoning policy. Current and historical zoning policy has hindered the supply of affordable housing.[21, 22] Specifically, exclusionary zoning policies (i.e., density restrictions, minimum lot size requirements, multifamily housing construction prohibition) are a prime target for reducing racial and socioeconomic health disparities as they impact health through multiple pathways by decreasing the supply of affordable housing and promoting segregation.[23, 24, 25, 26] Communities of color are more likely to be segregated in communities with less access to health care, quality housing, places for physical activity, and availability of nutritious food.[27]

Data and Methods

DATA

This study combined preemption data from the Policy Surveillance Program at Temple University and the National League of Cities, health data from the Centers for Disease Control and Prevention's Behavioral Risk Factor Surveillance System (BRFSS), the United States Census Bureau, and United States Bureau of Economic Analysis. More information on the data and methodology can be found in the Appendix.

METHODS

The study population included adults 18 years of age and older that lived within a metropolitan statistical area (MSA). Descriptive statistics were used to describe and summarize the preemption status of each state state-level economic characteristics, and individual health and demographic information of city residents in each state. Next, the relationships between state preemption status and individual level health outcomes

were examined. The primary analysis described below included examining relationships between state-preemption status and individual level health outcomes while accounting for other state-level and individual-level characteristics. Details about the data and study methods can be found in the Appendix.

Findings

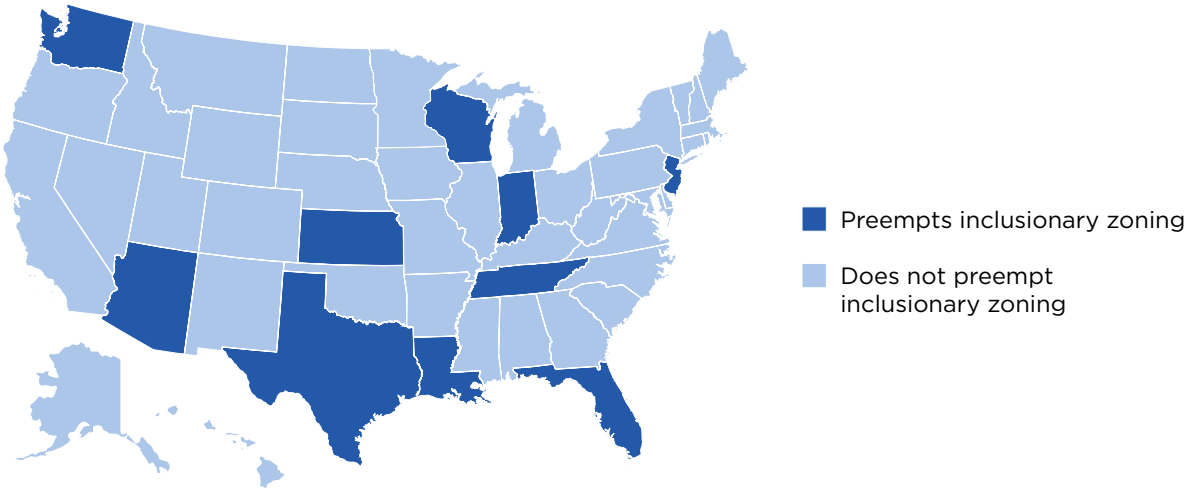
DIFFERENCES BETWEEN PREEMPTION AND NON-PREEMPTION STATES

Approximately 9 percent of the study population reported delaying medical care due to cost and 19 percent reported poor or fair self-rated health. The prevalence of these two outcomes was significantly higher in preemption states compared to non-preemption states. Other notable differences between preemption and non-preemption states were the higher proportion of Latinx people, households making less than $25,000 per year, and people without health insurance. Preemption states also had lower per capita GDP and per capita income compared to non-preemption states.

9%
reported delaying medical care due to cost

19%
reported poor fair self-rated health

FIGURE 1. STATE PREEMPTION OF LOCAL INCLUSIONARY ZONING



Note: Preemption status is accurate as of August 1, 2019

RESEARCH QUESTION 1

IS THERE A RELATIONSHIP BETWEEN IZ PREEMPTION AND HEALTH OUTCOMES?

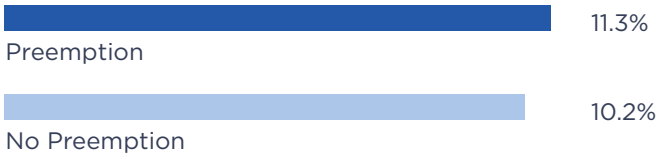
Yes, the study found a significant relationship between state preemption of inclusionary zoning and health outcomes. Adults living in states that preempted IZ were more likely to have poor or fair self-rated health status even after controlling for state- and individual-level factors.

RESEARCH QUESTION 2

DOES THE RELATIONSHIP BETWEEN IZ PREEMPTION AND HEALTH OUTCOMES VARY BY RACE AND ETHNICITY?

Yes, the study found racial differences in the relationship between IZ preemption and health outcomes. Black adults were the only racial group that were more likely to report delaying medical care due to cost when living in a state that preempted inclusionary zoning. The probability of delaying medical care due to cost was 1.1 percentage points higher for Black adults living in preemption states. The relationship between preemption and health outcomes was not significant among Latinx adults.

FIGURE 2. PROBABILITY OF DELAYING MEDICAL CARE DUE TO COST AMONG BLACK ADULTS, BY STATE PREEMPTION STATUS AND RACE



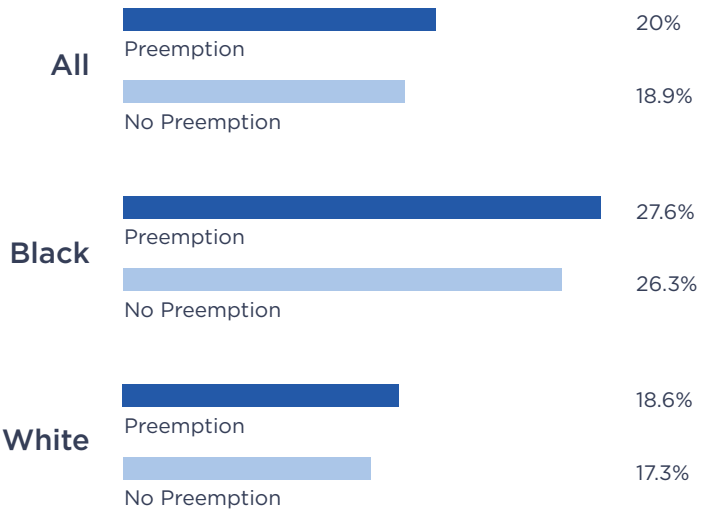
Note: Figure display the predictive margins (predictive probability) of outcomes based on multivariate logistic regression models where the preemption variable was significant that adjusted for individual and state-level covariates and state-level clustering.

RESEARCH QUESTION 3

DOES THE RELATIONSHIP BETWEEN IZ PREEMPTION AND HEALTH VARY BY HEALTH OUTCOME?

Yes, the relationship between IZ preemption and health do vary by health outcome. In the total population, adults living in preemption states were more likely to have poor or fair self-rated health status but were not more likely to report delaying medical care due to cost.

FIGURE 3. PROBABILITY OF HAVING POOR OR FAIR SELF-RATED HEALTH STATUS BY STATE PREEMPTION STATUS AND RACE



Note: Figure display the predictive margins (predictive probability) of outcomes based on multivariate logistic regression models where the preemption variable was significant that adjusted for individual and state-level covariates and state-level clustering.

Recommendations/Considerations for Local Leaders:

PUBLIC POLICIES OFTEN HAVE DISPARATE EFFECTS

Black people have a long history of segregation and exclusion from housing markets. While considered a "race-neutral" policy, preemption of IZ is consistent with a long line of policies that negatively affect the financial and physical well-being of Black people. Black people are not a monolith and there are Black people of varying incomes. In this study, income was statistically significantly related to health outcomes among Black people. However, policies that only address income-related disparities are inadequate because race has a unique and multiplying effect on outcomes. Structural racism is a key determinant of health that has produced health disparities through multiple pathways. While some of these pathways are through socioeconomic deprivation, racism has an independent effect on health irrespective of socioeconomic status.[28, 29, 30]

Housing policy should be targeted not only to specific income groups but also be race-conscious in an effort to consider the distinctive historical barriers and systemic racism Black people experience in the housing market.[31, 32, 33] The study findings also point to the importance of evaluating the outcome of policies on different demographic groups.

PREEMPTION IS A PUBLIC HEALTH ISSUE

Because local governments are both creatures of state governments and independent entities, they are subject to state-level preemption.[34] Preemption of local government is mainly being used to purposefully prevent local governments from addressing local problems or punish localities for their actions.[35] The current use of preemption means localities are increasingly unable to enact policies that may reduce inequities and improve health such as increasing the minimum wage, requiring paid leave, regulating firearms, and adopting smoke free laws.[36, 37] Recent use of preemption has been characterized as harmful to health, but preemption is not inherently negative. Historically, the federal government has preempted states and localities from enacting discriminatory policies.[38] Preemption should be viewed through an equity-first lens that evaluates preemption policies based on how these policies affect health outcomes and inequities.[39] Public policies, including preemption policies, can produce or ameliorate health inequities.

CHANGES TO ZONING AND LAND USE REGULATION ARE NEEDED TO INCREASE THE SUPPLY OF AFFORDABLE HOUSING AND REDUCE RACIAL INEQUITIES

While amending state law is a worthy goal, preemption policies are very difficult to overturn.[40] As zoning policy has hindered the supply of affordable housing, changes to zoning policy must be part of the solution.[41, 42]

Density restrictions are associated with increased income segregation, particularly by creating concentrations of affluent households.[43] In addition to the social and economic influences on health, current and historical zoning practices resulted in industrial and manufacturing facilities being disproportionately located in low-income areas and communities of color. This results in increased exposures to environmental contaminants, air pollution, and noise, which are all harmful for health.[44]

Removing restrictions on multifamily housing construction and minimum lot size requirements for single-family homes are zoning choices that could reduce segregation and ultimately improve health outcomes. Zoning policy should also be used to protect communities of color from hazardous environmental exposures. For example, local governments could deny industrial permits in areas that already have high concentrations of these facilities, requiring buffers, and downzoning.[45]

The city of Minneapolis included zoning reform in their Minneapolis 2040 Comprehensive Plan.[46] The Minneapolis plan explicitly connects racial disparities to zoning policy and was developed by working with community members to develop policy solutions.

The plan includes some the following zoning reforms:[47]

- Eliminating parking minimums to reduce the cost of developing multi-unit housing
- Permitting higher density construction in resource rich areas
- An inclusionary zoning ordinance
- Allowing up to 3 unites on a standard city lot
- Rezoning areas that were only zoned for single-family homes, particularly in high resource areas

The plan was adopted by the city council October 25, 2019 and went into effect January 1, 2020. The implementation of Minneapolis 2040 will be a lesson for other cities.

Although not as comprehensive as Minnesota's plan, Oregon passed legislation allowing duplexes to be built in areas zoned for single-family housing. Local governments are also permitted to build triplexes, quadplexes, townhomes, and cottage clusters in these areas as well.[48]

USE A RACIAL EQUITY FRAMEWORK WHEN IMPLEMENTING INCLUSIONARY ZONING AND OTHER AFFORDABLE HOUSING APPROACHES

Local leaders must be intentional about eliminating racial disparities in housing and health. Using a racial equity framework can guide leaders as they develop policies and programs in their municipalities. In general, frameworks include plans for addressing structural racism, engaging communities of color, and having measurable outcomes to track progress. However, the details of frameworks are adapted to the particular location. The city of Portland is using a framework to develop their affordable housing, and the Government Alliance on Race and Equity (GARE) has a framework for equitable development, including affordable housing.[49, 50]

Additional research and evaluation are needed to make better informed decisions

More research in this area is needed. Some areas of inquiry that may be particularly helpful to local leaders are:

THE IMPACT OF POLICIES ON RENTERS

This study found that people that rented their homes had poorer health outcomes compared to homeowners. In general, homeowners have better health outcomes compared to people who rent, and renters are more vulnerable to the adverse mental health effects of having unaffordable housing.[51] Lack of affordable housing may also lead low-income renters to live with inadequate housing conditions such as mold, lead paint, and pest infestation leading to health problems such as asthma and lead poisoning. Resolving these issues requires landlord intervention and some renters are reluctant to report these problems out of fear of retaliation.[52] Additionally, resolving many of these hazards is dependent upon the responsiveness, willingness, and financial resources of landlords.[53]

Because of the relationship between homeownership and better health and the complexity of resolving hazardous home issues as a renter, individuals that rent are likely more sensitive to the connection between affordable housing and health. Local leaders may explore policies that target the specific healthy housing needs of this population, particularly the quality and safety of rental properties and landlord-tenant relationships.

THE ROLE OF INCLUSIONARY ZONING IN COMPREHENSIVE AFFORDABLE HOUSING PLANS

Inclusionary zoning is typically a part of a more comprehensive affordable housing approach. Evaluation of how inclusionary zoning interacts with other housing policies (e.g. exclusionary zoning, land use planning, rental assistance) is needed. The long-term effects of these policies are also important.

IMPLEMENTATION OF INCLUSIONARY ZONING POLICIES

The current study did not consider the different elements of IZ policies in states that allow them or account for differences in how policies were implemented (e.g., spatial distribution of affordable housing, types of incentives for developers, etc.). Case studies of successful and unsuccessful inclusionary zoning programs would be beneficial learning experiences for all local leaders.

COVID-19 has exacerbated existing health and housing racial disparities

The Great Recession of 2008 and Hurricane Katrina have shown us that people of color are more vulnerable to and disproportionately affected by economic recessions and natural disasters. These disparities exist independently of economic downturns but are exacerbated by them.[54] Covid-19 is no different and has exacerbated racial disparities in both health and housing affordability and stability.[55] For example, in May 2020, 25 percent of Black and Latinx renters were more likely to miss rent in May compared to 14 percent of white renters.[56] These disparities were even larger among homeowners. Twenty-eight percent of Black homeowners missed or deferred mortgage payments in May compared to 9 percent of white homeowners. Initial policy responses have included moratoriums on foreclosures and evictions, but these will not address the long-term effects on housing markets and people's financial situations.[57] Policymakers are challenged with addressing immediate COVID-19 related needs and making long-term changes that address the preexisting racial disparities. Some promising interventions include:

- Offering direct rental assistance to people of color and those with lower-incomes instead of funneling support through financial institutions that those populations are less likely to use[58]
- Increasing access to other essential needs such as internet, food, and medical care[59]
- Providing need-based income supplements unrelated to previous tax filing status

- Using private capital to preserve and increase the supply of affordable workforce housing. This is especially important given the budget shortfalls faced by state and local governments. The Washington Housing Initiative is a successful example of this approach[60]
- Being flexible, fully leveraging federal funding, and utilizing US Department of Housing and Urban Development's (HUD) waivers. HUD has created waivers for rental assistance programs and grant administration to make it easier for organizations to distribute funds[61]

Conclusion

Affordable, quality housing is important for the health of individuals and communities. Due to systemic racism and public policy, Black people and other people of color are more likely to be cost burdened and have poorer health outcomes. Housing policy reform is needed to eliminate persistent racial health and housing disparities.

Although preemption has hindered local governments from enacting some policies that may improve health and housing conditions, localities have other policy levers available to them. Some cities have already started this process through both targeted and comprehensive changes to their land use regulation and zoning policies. As cities continue to address the affordable housing needs of their communities, research and evaluation is needed to ensure that these policies are equitable and do not deepen existing disparities.

Appendix

PREEMPTION DATA

The Policy Surveillance Program at Temple University and the National League of Cities created a cross-sectional dataset analyzing twelve domains of state preemption laws, including inclusionary zoning. The dataset covered the time period of April 10, 2014 – August 1, 2019. The process for collecting and coding legal data has been previously discussed elsewhere.[62, 63] The dataset identified states that preempted local governments from using inclusionary zoning and also asked additional questions such as:

- Does state law preempt local mandatory inclusionary zoning for residential units?
- What types of units are preempted?
- Does the law expressly permit voluntary inclusionary zoning?
- What incentives (i.e. density bonuses, voluntary programs) are permitted in the law?

HEALTH DATA

The 2016-2018 Behavioral Risk Factor Surveillance System (BRFSS) data was used for individual-level health and demographic information. The BRFSS is an annual state-level survey that collects data about US adults' health-related risk behaviors, chronic health conditions, and their use of preventive services.[64] Data from 2016-2018 were combined to ensure adequate sample size for subgroup analysis. The CDC recommends reweighting data when multiple years of data are combined.[65] To create a final weight, we checked the sample size of each data set, compared the sample size in each data set, and calculated a final weight by multiplying by the proportion of the whole. The analytic sample consisted of adults living within a metropolitan statistical area (MSA). Adults living outside of an MSA were excluded from the study to focus on the effects of preemption among individuals living in cities and towns.

HEALTH VARIABLES USED IN ANALYSIS

The outcomes of interest were delaying medical care due to cost and poor or fair self-rated health status. Delaying medical care due to cost was selected as an outcome variable because lack of affordable housing creates financial hardships for households. Due to the financial strain of unaffordable housing, people must choose between paying for medical care and expenses like food, childcare, and transportation. This is also one of the proposed pathways connecting inclusionary zoning, affordable housing, and health outcomes. Self-rated health status is a commonly used outcome in public health research and is considered valid predictor of morbidity and mortality.[66]

All outcomes were dichotomous and coded as yes or no. Individuals were coded as delaying medical care due to cost if they answered yes to the following question: "Was there a time in the past 12 months when you needed to see a doctor but could not because of cost?" Individuals were classified as having poor or fair self-rated health status if they answered the following question with "poor" or "fair": "Would you say that in general your health is:"

Individual-level control variables are from the BRFSS data and included health insurance status, home ownership status, tobacco use, and income.

ADDITIONAL DATA SOURCES

State-level economic indicators were from the United States Census Bureau and Bureau of Economic Analysis data for state-level economic indicators.

STATE-LEVEL CONTROL VARIABLES USED IN ANALYSIS

Per capita gross domestic product (GDP), new housing building permits per 1,000 residents, and net population growth were included to account for differences in the economic output, housing markets, and demand for housing across states.

METHODS

Descriptive and bivariate statistics were conducted to describe the study sample and examine associations between preemption of IZ and health outcomes. Multivariable logistic regression models included preemption policy indicator, individual-level controls, state-level controls, and accounted for clustering of standard errors by state of residence. This approach is consistent with other studies that have examined the effects of state policies on individual outcomes.[67, 68, 69] Covariates were included based on theoretical and statistical relevance (i.e., AIC). To assess differential effects of preemption on different racial/ethnic, separate models for each racial/ethnic group and were run. This approach allowed the exploitation of within group variability and will aid in the understanding of causal mechanisms and the development of more targeted policy interventions.[70] Variables were considered statistically significant if $p < .05$. The postestimation margins command was used to obtain predicted probabilities and marginal effects for models with significant findings. All analyses were performed in StataMP v16.

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