

The Role of State Preemption in Denying Local Self-Governance

by Virginia Rasmussen

Cleveland, Ohio was poised for a May 2017 vote by its residents on raising the minimum wage to \$12 in 2018 and then \$15 in 2021. But in late December, **Ohio's Governor John Kasich signed legislation that quashed local government's right to lift minimum wages above the state level of \$8.10 an hour.**¹

In May of 2016 the Ohio legislature prohibited any local government or public official from requiring contractors on public projects to hire a certain percentage of residents from the project's jurisdiction.

Preemption law grants state legislatures the authority to supersede local statutes.

Examples abound of state legislatures or courts acting to preempt local governance:

- In **Michigan and Wisconsin** they recently preempted local governments from banning plastic grocery bags;
- The city of **Morgantown, West Virginia**, passed a community ban on horizontal drilling for oil and gas within two miles of its borders. A drilling company promptly sued the city and the circuit court decided that cities are mere "creatures of the state," lacking the authority to

protect themselves from this corporate activity;²

- In **Denton, Texas**, a 2014 town referendum resulted in a ban on fracking. In short order the Texas legislature passed a law stating that cities and towns cannot do that sort of thing, preempting the Denton ban;
- In 2016 the **Colorado** Supreme Court struck down two municipal bans on hydraulic fracking, stating that the local laws were preempted by state law;
- Last year, **North Carolina's** legislature preempted the city of Charlotte's anti-discrimination law that was stronger than the state's;
- On November 8, Arizona and Maine citizens voted to raise the minimum wage. But this is being challenged in both states by corporate lobbyists and compliant legislators "working to block, delay, even rewrite the laws approved on Election Day."³

What prompts these preemptions of community decision-making? We can assume that many are repayment for generous corporate donations to candidates and parties. Why else would legislators oppose a

fracking ban that protects water quality or a minimum wage that helps an entire local economy? As an example, every Texas legislator who received money from the billionaire Wilks family whose fortune was made in the fracking and fossil fuel industries, voted to preempt the Denton, Texas fracking ban.⁴

It's important to note, however, that a different result holds in New York State where courts upheld local fracking bans and the right of communities to *prohibit* oil and gas drilling in order to protect the safety and welfare of residents. New York's "home rule" provisions, say the courts, limit the state's authority to *regulating* oil and gas activity only after it is underway.

Also, with legal guidance from the **Community Environmental Legal Defense Fund (CELDF – www.celdf.org)**, approximately 200 communities around the country have passed Bill of Rights ordinances establishing legal authority to protect their natural resources, local economy, affordable housing, worker rights, among others.⁵ While some of these laws have been struck down by the courts as beyond a community's authority, most of them continue to serve the interests of a place and its people against harmful corporate activity.

The distribution of legal powers among local, state and federal governments has a shifting history.

State and local law has not always served democracy or human and nature's rights. The local control approach, once favored by conservatives, is now being looked on by liberals as a means to fend off policies the new administration might launch. **Cities are cooperating to form "issue groups" on matters of gun safety, policing policy, infrastructure financing and spending, immigration law, and the right to establish Sanctuary Cities. According to the Immigrant Legal Resource Center located in San Francisco and Washington, over 500 counties and cities have policies to limit cooperation with federal immigration authorities.**

According to author Benjamin Barber [*Strong Democracy* (1984), *When Mayors Rule the World* (2013)], long associated with matters of democracy and citizenship in arenas from politics to education: "If national governments do not uphold the rights to life, liberty, and property that are the basis of the social contract," they will have defaulted on their democratic commitment. "Sovereignty then passes to those who can make good on that contract." Cities and towns will step in and claim authority to protect and serve their people and environments.⁶

If real democracy is to come to life in local jurisdictions and eventually the country, it is clear that ordinary people must define, fund and execute their own elections, not a wealthy few or those who sit in corporate boardrooms. And until the authority of states to preempt local law enacted to protect a jurisdiction's

residents is withdrawn, the self-governing rights of citizens will be subject to denial. The research and organizing work of **POCLAD** (www.poclad.org) has long supported this analysis and the current grassroots movement, **Move to Amend** (www.movetoamend.org) is committed to building real democracy in communities around the nation, as well as promoting the passage of a 28th Amendment to the Constitution that would deny money as equal to free speech and corporations as equal to people with constitutional rights.

References:

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POCLAD is a group of 10 people instigating democratic conversations and actions that contest the authority of corporations to govern. Our analysis evolves through historical and legal research, writing, public speaking and working with organizations to develop new strategies that assert people's rights over property interests.

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