

Localism and Gun Control in the United States: How Political Partisanship Exploits the Intrastate Regulatory Dynamic

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Abstract

“Most Americans live in urban areas, and a disproportionate number of gun-homicide victims die in them.”¹ However, cities are largely left unable to address gun violence. Professor Blocher suggests that this is not because of the Second Amendment, but rather a result of intrastate preemption. The current U.S. constitutional order does not explicitly afford local governments specific authority, so the states are left to decide whether cities are afforded power and, if so, the extent of this power. Typically, states have construed this authority narrowly. The aim of this research was to investigate how the silence on the role of local government in the U.S. Constitution affects the authority of cities to regulate in response to local concerns and how political partisanship and the urban-rural divide factor in the current state of play in intergovernmental relations. This narrative was established first by conducting an investigation resulting in a database of preemption bills introduced between 2016 and 2020, and secondly, the identification of local gun control ordinances enacted by the cities of Seattle and Pittsburgh and the state preemption-based legal challenges to these ordinances. It emerged that most proposed and enacted bills in the dataset were Republican-sponsored and focused on expanding preemption and imposing new hyper preemption measures. Measures proposing a greater degree of local authority, sponsored by Democrats, were in the minority. Some judges in the Pennsylvania state judiciary showed a willingness to accord a greater degree of local authority to regulate firearms than currently possible. However, this has not translated into a recalibration of the municipal regulatory authority in relation to firearms due to the inhibiting effect of preemption. This project contends that the U.S. constitutional order is not correctly calibrated for 21st Century America with the role of local governments as a primary service provider in mind. This project has located city firearms regulation within what Professor Briffault as termed a new era of preemption and what Professor Schragger identifies as an attack on American cities and contributes to the debate on the place of local government in the U.S. constitutional order.

¹ Joseph Blocher, Opinion, *American cities have always regulated guns. Now, most can't*, WASH. POST (Mar. 25, 2021), https://www.washingtonpost.com/outlook/american-cities-have-always-regulated-guns-now-most-cant/2021/03/25/c346597c-8ce7-11eb-9423-04079921c915_story.html.

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Chapter I: Introduction

As Professor Ran Hirschl has pointed out, the role of cities in their constitutional structures is under considered in comparative constitutional scholarship.² Many constitutions—such as the U.S. Constitution—do not empower cities to address local issues.³ This is because cities are not afforded express authority within the federal constitutional order, thereby relegating them to a subordinate position—in the case of American cities—with their authority dictated by state law. Hirschl recognizes this phenomenon as constitutional silence and argues that this “exacerbates, rather than addresses, the challenges”⁴ faced by people living in cities.

One of the challenges facing cities today is that of gun control. There are more guns than people in the U.S. – an estimated 393,300,000 guns were in private hands as of 2017.⁵ Gun violence and how to deal with it is at the top of the regulatory agenda at all levels of government but for cities in particular. However, there are significant obstacles. The Second Amendment to the U.S. Constitution guarantees that “[a] well-regulated Militia, being necessary for the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”⁶ The U.S. Supreme Court has interpreted this to confer an individual right that is constitutionally protected by means of strict scrutiny.⁷ The position is complicated by political partisanship. There has been a rise in intense polarization since the 1990s. As the tightly contested presidential election results of the last 15 years demonstrate, Americans are sorting themselves along party lines.⁸ Pro-gun rights groups, particularly the NRA, have expanded their influence and become more partisan. The election of Ronald Reagan in 1980, the first NRA-endorsed candidate,⁹ laid the foundations for the place of opposing gun control

² Hirschl, *infra* note 4, at 29.

³ U.S. CONST. AMEND X. (The Tenth Amendment declares “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” Absent from this text is the role of local governments).

⁴ RAN HIRSCHL, *CITY, STATE: CONSTITUTIONALISM AND THE MEGACITY* 36 (2020).

⁵ See Aaron Karp, *Estimated global civilian-held firearms numbers*, SMALL ARMS SURVEY (2018).

⁶ U.S. CONST. AMEND II.

⁷ *D.C. v. Heller*, 554 U.S. 570, 595 (2008).

⁸ *Election and vote information*, Fed. Election Comm’n, <https://www.fec.gov/introduction-campaign-finance/election-and-voting-information/>. Recent presidential elections have been tightly contested. (In 2020, Democrat Joe Biden received 51.31% of the votes and Republican incumbent Donald Trump 46.86%. In 2016, 48.18% of Americans voted for Democrat candidate Hillary Clinton, and 46.09% voted for Republican candidate Donald Trump. In 2012, 51.6% of voters voted for Democrat incumbent Barack Obama, and 47.2% voted for Republican challenger Mitt Romney. In 2008, 52.93% of votes were cast for Democrat Barack Obama, and 45.65% were cast for Republican John McCain.)

⁹ See Ron Elving, *The NRA wasn’t always against gun restrictions*, NPR (Oct. 10, 2017), <https://www.npr.org/2017/10/10/556578593/the-nra-wasnt-always-against-gun-restrictions>.

within the Republican party platform. The role of protecting gun rights within the Republican agenda has continued to grow.

As a 2018 Pew Research Center survey revealed, it seems that Americans now align themselves geographically and on party lines. Residents of cities are now more likely to vote Democrat, but Americans living in rural communities are likely to vote Republican.¹⁰ At the state level, where a state may be predominantly rural, but there are large centers of population living in cities, the effect is likely to be tension between cities attempting to put in place or increase measures of gun control and oppositional state legislatures and pro-gun pressure groups which may do one of two things. The first is to put in place preemptive legislation, which will place the area of firearms regulation outside the regulatory competencies of local authorities. The second is to challenge the status of city regulation by litigation in state courts.

This research examined firearms preemption bills and located the phenomenon of firearms preemption within the literature on ‘new preemption’¹¹ and the ‘attack on American cities’.¹² I aimed to draw upon the results of my inquiries to contribute to the current debate on the role of local government in America and consider whether the current arrangement, dictated in the 18th century, is appropriately calibrated for the 21st century.¹³ This project collected firearms preemption proposals considered in state houses between January 1, 2016 and December 31, 2020.¹⁴ Previous research by Pomeranz *et al* located enacted bills through the end of 2018.¹⁵ My project updates the state of play from the Pomeranz *et al* project. It also goes further by locating proposals that were successful and that were unsuccessful. As firearms preemption had been widely adopted prior to this project, I looked to the sponsorship data of recent preemption proposals as possible indicators of political partisanship and anti-urban sentiment. Professor Kristen Gross observed that the initial proliferation of intrastate firearms

¹⁰ See Carroll Doherty, Jocelyn Kiley, Alec Tyson, Bradley Jones, Baxter Oliphant, Hannah Fingerhut, Hannah Hartig, & Aldo Iturrios, *Wide Gender Gap, Growing Educational Divide in voters’ party identification*, PEW RESEARCH CTR. (2018), <https://www.pewresearch.org/politics/2018/03/20/1-trends-in-party-affiliation-among-demographic-groups>. (62% of registered voters in urban counties identify as a Democrat or lean Democrat. 54% of registered voters in rural counties identify as a Republican or lean Republican. The rural county voter identification statistics shifted from a more equally divided partisan affiliation between 1999 and 2009 to a 16% lead for Republicans in 2018).

¹¹ See Briffault, *infra* note 30.

¹² See Schragger, *infra* note 35.

¹³ See, e.g., Tartakovsky, *infra* note 304.

¹⁴ This time period is referred to in this thesis as the period under review.

¹⁵ Pomeranz et al, *infra* note 66.

preemption was done in response to city gun control efforts.¹⁶ I sought indicators that some recent preemption bills might have been proposed as a response to specific city gun control efforts.

The other side of the state-local government relationship is city governments. This project sought new city gun control efforts to attempt to identify what cities were attempting to regulate and indicators of why cities are trying to regulate that may extend beyond what is determinable through the texts of their enactments. It was assumed that cities would face preemption-based lawsuits. It was hoped that chronicling these lawsuits would locate signs of state judges receptive to a greater degree of local authority than currently possible due to precedent.

Research Questions

- In the period under review, what changes in firearms preemption laws at the state level have been attempted and what has been successful?
- How have state courts responded to attempts by municipalities to exercise police power in relation to firearms?
- How do these attempts reflect changing conceptualizations of the regulatory role of municipalities within existing constitutional and state frameworks?

The first tactic of the investigation was to determine what amendments to firearms preemption have been proposed and what amendments have been enacted. As firearms preemption legislation is arguably the biggest obstacle to gun control, those who want local gun control would presumably want to amend or repeal this. As discussed above, the initial proliferation of firearms preemption laws is said to have been enacted in response city gun control enactments.¹⁷ Pittsburgh and Seattle are two of several cities that recently enacted local gun control measures. As a result of these recent local enactments and because of the history of preemption enactments in response to local gun control laws, it was assumed that some proposals will include bills to expand preemption and/ or impose new hyper preemption.¹⁸ This

¹⁶ See Gross, *infra* note 36.

¹⁷ *Id.*

¹⁸ Hyper preemption is preemption measures that go beyond reserving a policy field and imposes penalties on cities and their local officials for regulating in conflict with state preemption. These measures can include civil liability, criminal liability, and removal from office.

project also sought to determine whether some preemption bills were enacted as a result of specific local gun control enactments.

The second element of this investigation is the tracing of preemption-based litigation challenging enacted gun control measures to determine how these cases and relevant precedents can inform our understanding of the role of local government in the U.S. Constitutional system. The presumption was that the cities examined would not be successful in defending their ordinances. However, it was hoped that these cases would provide an opportunity to identify dissent in the state judiciaries on the scope of intrastate preemption and whether these dissents can develop a path to altering the role of local government at least in the area of firearms regulations.

The final research question seeks to reflect upon the changing conceptualizations of the relationship between municipalities and states. From this reflection, a consideration is undertaken of whether the changing nature of the relationship between states and their municipalities now requires a structural response, and if so, how this might be accomplished.

Structure

This thesis has two parts. Part I consists of two chapters. In this Introduction, which is Chapter I, I set out the aims and objectives of this project. I identify my research questions and set out in more detail the strategy adopted for pursuing the project aims and objectives. I reflect on my method and methodology and, pointing ahead to my conclusions, I reflect on the importance of this project as a contribution to our understanding of the current state of play in relation to intragovernmental relations in the United States and the extent to which these are shaped by considerations of political partisanship.

Chapter II is contextual. It considers the issue of ‘constitutional silence’ – i.e., the place of local governments within U.S. constitutional arrangements and their historical importance. The demographic shift in America from a more rural to a more urban country is discussed. The chapter then considers the traditional explanations of state-city relations as offered by Dillon’s rule and the Cooley doctrine, the growth of the city’s importance in U.S. service arrangements, and the increasing demands for a greater measure of local government autonomy as an aspect of U.S. democracy. It discusses home rule, and the limitations placed on exercising home rule

powers. The chapter outlines the issue of preemption as a legal doctrine.¹⁹ It explains the scope of the doctrine at the state level. It considers the phenomenon of a new type of preemption, hyper preemption, that now appears to be a new weapon in the gun control wars waged by some state legislatures actuated by motives of political partisanship. Chapter II considers the Second Amendment, political division in the U.S., and gun regulation as particularly politically divisive issues.

Part II is divided into three chapters. In Chapter III, I consider the results of my investigation into state preemptive legislation in the field of firearms regulation from 2016 to 2020. Chapter IV considers two examples of recent city efforts to regulate firearms: Seattle and Pittsburgh. These cities implemented enhanced local gun control measures and faced immediate legal challenges. The ordinances and the legal challenges to these ordinances are considered.

In Chapter V, I return to the issue of constitutional silence. I consider the scholarship to date and reflect on the extent to which my work represents a significant contribution to knowledge concerning the workings of U.S. governmental relations. I conclude with some reflections on the place of local democracy in U.S. constitutional thought and history. I argue that U.S. constitutional arrangements which have nothing to say regarding the role of local government, are, in this respect, not optimally calibrated for 21st Century America.

Problem statement

In 2020, 79% of all homicides and 53% of all deaths by suicide involved a firearm.²⁰ Gun deaths were the leading cause of death for American children in 2020.²¹ Concerns about gun violence have led some city governments to put in place various measures of gun control. They have done this by exercising the powers conferred on them by state legislation or state constitutions. These powers are subject to the overriding authority of the state, and oppositional

¹⁹ Preemption is a legal doctrine to the effect that state law on a particular topic or policy area will take precedence over municipal attempts to regulate in that area.

²⁰ *Firearms grow, disparities widen*, U.S. CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/vitalsigns/firearm-deaths/index.html>, (last visited Jan. 31, 2024), *see also* New York Pistol & Rifle Ass'n. v. Bruen 597, U.S. (2022) 1, 131 (Breyer J., dissenting). (Justice Breyer contended that “firearms in public present a number of dangers, ranging from mass shootings to road rage killings, and are responsible for many deaths and injuries in the United States”).

²¹ BBC News, *Gun deaths were the leading killer of US children in 2020*, BBC News (Apr. 22, 2022), <https://www.bbc.co.uk/news/world-us-canada-61192975>.

state measures can thwart their exercise. In a climate of intense and increasing political polarization, the doctrine of intrastate preemption, which subordinates local legislative rules to those of the state, can be a powerful tool and has come to be deployed across a spectrum of ‘hot button’ issues that range from fracking to LGBTIQ+ rights but of which gun control is potentially the most divisive.

As previously discussed, the Constitution is silent on the role of local government. The U.S. Constitution, which dictates the distribution of power, was drafted in the late 18th century. The country has changed significantly, but the constitutional silence has remained. As previously stated, gun violence is a significant concern. However, gun control for cities, which are disproportionately impacted by gun violence, remains elusive. Professor Joseph Blocher argues that it is not the Second Amendment that is the greatest obstacle to gun control but rather intrastate preemption.²²

Research Aims

This research aimed to investigate how the Federal Constitution’s silence on the role of local government affects the authority of cities to regulate in response to local concerns and how partisanship and the urban-rural divide factor in the current state of play in intergovernmental relations. The project also sought to uncover the place of local governments within the broader considerations of American democracy. This was done to contribute to the debate on the place of local governments within the U.S constitutional structure in the 21st Century.

Research Objectives

- To locate proposals for amending state firearms preemption laws during the period under review.
- To identify the role of partisanship and pro-gun pressure groups in those legislative proposals.

²² Joseph Blocher, *The biggest legal obstacle to gun regulation: state preemption laws, not the Second Amendment*, 111 AM. J. PUB. H. 1192 (2021).

- To identify municipal efforts to put in place gun control in the face of state preemption and the oppositional measures faced by those efforts in the form of preemption-based litigation.
- To draw conclusions from the inquiry concerning the status of municipal authority in the 21st Century U.S. constitutional order.

Research Strategy

This project considers the tactics of using the levers of state legislative power to alter or repeal state firearms preemption legislation and the legal challenges to the status of city regulation by litigation in state courts. As explained below, a dataset consisting of state legislative attempts to reserve, extend, or alter, and in some cases reduce, the scope of firearms regulation has been compiled from 2016 to 2020. The rationale for choosing this time frame is to include more than one elected legislature in each state so that the results will not be disproportionately influenced by one election. The bills' sponsors were identified to locate the link between this type of legislation and political affiliation. The results are laid out in Chapter III of this thesis.

The second tactic, litigation, required a narrower research strategy. The United States has 19,519 municipalities,²³ so a comprehensive survey of all city regulatory attempts in this area is not possible. Instead, an examination of city gun control efforts that have faced legal challenges was chosen as a viable method to attempt to identify how cities factor in the local-state government conflict in relation to gun regulation. The criteria for selection are set out in detail below, and the results are examined in Chapter IV.

Methodology and Research Territory

This research is primarily doctrinal²⁴ and focused on constitutional issues and the distribution of power. It is framed by the contemporary phenomenon of state-local government conflict in intrastate legal systems and the academic debates concerning the role of cities in the

²³ Carma Hogue, *Government Organization Summary Report: 2012*, U.S. CENSUS BUREAU, <https://www.census.gov/content/dam/Census/library/publications/2013/econ/g12-cg-org.pdf>.

²⁴ Paul Chynoweth, *Legal Research*, in *ADVANCED RESEARCH METHOD IS BUILT ENVIRONMENT* 29 (Andrew Knight & Lee Ruddock ed., 2008). (“Doctrinal research [...] is concerned with the formulation of legal ‘doctrines’ through the analysis of legal rules.”).

U.S. constitutional order of the 21st century. This research starts by considering the arguments of Professor Ran Hirschl that the current era is that of the city, and that a re-orienting of constitutional structures to take account of the fact that most people live in cities and city governments are underrepresented in those constitutional structures is required. The effect of this constitutional silence, Professor Hirschl argues, is that it exacerbates the issues facing urban dwellers.²⁵ More than 80% of Americans now live in urban areas.²⁶ The U.S. constitutional structure does not account for this. As a result, the question of local authority is left to state law which relegates cities to being mere ‘creatures of the state.’²⁷ The point is that there are many local governments, but they are creatures of the state with no independent source of authority. When states have recognized the significance of cities by giving them specific powers, as Professor Erin Scharff observed, the exercise of those powers must either reflect or be compatible with the policy preferences of the state in which they are situated. In so far as they seek to take an independent line, they risk being “stymied by state statutes.”²⁸ Professor Scharff was commenting on the effects of intrastate preemption. The doctrine of preemption is not new and is well-established at the federal/state level, where it operates to accord primacy to federal law over state law. This is a constitutional doctrine and a function of the Supremacy Clause, which declares the Federal Constitution and federal law to be the supreme law of the land.²⁹ There is an advanced body of jurisprudence in this area, which I address in Chapter II.

Of particular interest for this dissertation is what appears to be a new era of preemption that shows signs of differentiating itself from earlier preemption eras. Professor Richard Briffault argues that the previous decade has seen “the emergence and rapid spread of a new and aggressive form of state preemption of local government action.”³⁰ Professor Briffault distinguishes what he calls ‘classic preemption’ or state efforts to harmonize regulatory authority in policy areas where state and local governments enjoyed authority, from a ‘new preemption,’ which he detects can take two forms.³¹ On the one hand, are efforts by state

²⁵ Hirschl, *supra* note 4, at 230-32.

²⁶ U.S. Census Bureau, *infra* note 98.

²⁷ *Clinton v. Cedar Rapids & Missouri R.R.* 24 Iowa, 455, 475 (1868) (Dillon CJ) (Municipalities “owe their origins to, and derive their rights and powers wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control”).

²⁸ Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO.L.J. 1469,1472 (2018).

²⁹ U.S. CONST. art VI, clause 2.

³⁰ Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997 (2018).

³¹ *Id.*

governments to displace local government regulation without replacing it with state regulation, thereby deregulating the policy field.³² On the other hand, are punitive measures put in place by some states specifically to deter local government officials who seek to enact or implement regulatory measures that the state considers incompatible with its policy preferences. Professor Erin Scharff has used the term ‘hyper preemption’ to describe this tactic.³³ Reflecting on the hyper preemption measures associated with this era, Professor Nestor Davidson concluded that “[t]o call this a sea change in state-local relations would be an understatement.”³⁴ My work reflects on observations of recent legislative activity at the state level to locate intrastate firearms conflict in the context of this new era which Professor Richard Schragger argues represents an “attack on American cities.”³⁵

State preemption has been observed to be a response to local government regulation. With firearms in particular, Professor Kristen Goss has claimed that the initial proliferation of firearms preemption was a response to municipal gun control efforts.³⁶ I address whether this phenomenon continues in recently enacted preemption laws in Chapter III. Preemption has been observed to be a tool for pressure groups to oppose local policies they do not like.³⁷ The support and opposition of recent preemption bills by pro-gun pressure groups are discussed in Chapter III. In Chapter IV, the oppositional measures of pro-gun pressure groups, in this case, preemption-based litigation, are considered.

Anti-urbanism features in the U.S. Constitution.³⁸ The recent trends of preemption also have indicators of anti-urbanism. Professor Richard Schragger argues that this anti-urbanism reinforces a widening political gap between American cities and the rest of the country.³⁹ Schragger is referring to an expanding urban-rural divide. My work reflects on observations of recent legislative activities to locate anti-urbanism with the recent trends of firearms preemption bills introduced in state legislatures.

³² *Id.*

³³ Scharff, *supra* note 28, at 1469.

³⁴ Nestor Davidson, *Localism in an Era of Polarization*, 128 YALE L. J. 954, 958 (2019).

³⁵ Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163 (2018).

³⁶ Kristin Goss, *Policy, Politics, and Paradox: The Institutional Origins of the Great American Gun War*, 73 FORDHAM L. REV. 681, 706 (2004).

³⁷ Paul Diller, *Intrastate preemption*, 87 B.U. L. REV. 1113, 1133 (2007).

³⁸ Diller, *infra* note 254, at 291.

³⁹ Schragger, *supra* note 35, at 1168.

This project assumed that cities might want to alter their position in the current distribution of power within their states in relation to firearms regulation. The two most likely avenues to seek such an alteration are the state legislatures and the state courts. Recognizing this, I sought to locate recent proposals in state legislatures to alter state preemption in their respective states and lawsuits that provided a potential opportunity for cities to assert their authority to regulate firearms in a way not currently envisioned by their state legal frameworks. To analyze and interpret these two data sets, I employed different methods that fit the specific needs of these two endeavors. For the bills data set, I engaged in a thematic analysis, and I used a doctrinal legal research method for the lawsuits data set.

Bills data set

For the data set featured in Chapter III, I employed a thematic analysis method. This approach is one of the most widely used methods in research and requires the researcher to go beyond counting words or phrases and instead focus on identifying and describing the implicit and explicit themes in the data set.⁴⁰ Thematic analysis also promotes reliability when used due to its structure and systemic approach to data analysis.⁴¹ As previously discussed, the goal of this investigation was to locate state firearms preemption bills and analyze these bills to identify what changes to state preemption laws were proposed and enacted during the period under review. This required drawing connections between the relevant provisions of bills in the data set. Due to these considerations, it was determined that a thematic analysis was the most appropriate approach.

The use of this method allowed for the discovery of legislative trends in the firearms preemption bills during the period under review and facilitated the categorizing of themes of the bills in a way that allows the information to be disseminated in Chapter III. One way in which this contributed to the project was by providing a means to determine what type of bills Republicans sponsored and what type of bills Democrats sponsored. These findings aligned with what was indicated in existing research and, as my findings demonstrate, partisanship and political partisanship in particular played a determinant factor during the period under review.⁴²

⁴⁰ GREG GUEST, KATHLEEN M. MACQUEEN & EMILY E. NAMEY, APPLIED THEMATIC ANALYSIS 10-11 (2012).

⁴¹ Muhammed Naeem, Wilson Ozue, Kerry Howell, and Silvia Ranfagni, *A Step-by-Step Process of Thematic Analysis to Develop a Conceptual Model in Qualitative Research*, 22 INT'L J. QUALITATIVE METHODS 1, 2 (2023).

⁴² See Ch III, Part II.

Previous scholarship indicated that the urban-rural divide might factor in the dataset.⁴³ Categorizing the bills and linking them to the geographic makeup of the bill sponsors' legislative district facilitated the finding that confirmed that the urban-rural divide factored into the bills and presented what type of bills representatives of urban and rural districts sponsored.

Another important benefit of using the thematic analysis approach is that it requires the researcher to immerse themselves in the data. This was helpful for me as I was new to researching U.S. municipal law in general and intrastate preemption in particular. While the area of intrastate preemption has significant scholarship, becoming immersed in specific bills gave practical examples of how intrastate preemption functions. It also afforded me the opportunity to see the policy field of firearms as something that extends beyond firearms and ammunition. This helped guide me to locate bills that proposed and enacted preemption aimed at limiting specific types of gun control. As I was conducting my project, scholars located an enacted anti-red flag law that was a preemption enactment. I demonstrated that preemption proposals regarding specific types of gun control went beyond red flag laws and included tactics like regulating ghost guns and gun-free school zones.

Litigation data set

A different approach was required for the data set featured in Chapter IV. For this investigation, I employed a doctrinal legal research method.⁴⁴ There are several considerations that factored into the selection of this approach. Chief among these is that the key arguments advanced by the litigants in the lawsuits featured in the data set are about legal doctrine. Pro-gun pressure groups and individual complainants advance the doctrine of preemption. The cities take a different approach and advance the doctrines of home rule, municipal police power, and state-created danger. The presence of these legal doctrines required a doctrinal, black letter law approach.

The research question was focused on attempting to locate new legal developments. In this case, it was hoped that the project would uncover state court judges dissenting from the current articulation of the distribution of power between states and their cities in relation to

⁴³ See, e.g., Schragger, *supra* note 35, at 1184, and Briffault, *supra* note 30, at 1997.

⁴⁴ See Chynoweth, *supra* note 24.

firearms. A doctrinal legal research method was ideal for situating the research as one of the key features of this approach is that it ‘systematizes’ present law.⁴⁵ This means that the research is organized into seven steps that ensures a coherent analysis and synthesis of the legal rules and doctrine applicable to firearms preemption in Washington and Pennsylvania.

To locate the legal basis of the various arguments employed by the parties to the cases, the applicable state constitutional provisions, statutes, and jurisprudence were sought. These materials were analyzed in an attempt to uncover the legal rules and doctrines that apply to the lawsuits and the municipal regulations challenged by those lawsuits. These sources require a black letter law approach to uncover legal rules applicable to the legal controversy featured in the lawsuits. This reenforced the necessity of employing a doctrinal legal research method for this investigation.

Having identified the legal rules and doctrines applicable to the lawsuits, I was able to engage in an evaluation of the legal arguments employed by the parties to the lawsuits. This permitted analysis of the likelihood of success for the parties to the lawsuits by applying their arguments to the legal rules and doctrines located during background research. This led to the assumption that the cities were not likely to be successful in defending their ordinances. As a result, I concluded that the cities may be hoping for state court judges to dissent from the current understanding of the distribution of power between the states and their cities in relation to gun control. Dissents were located as part of this project.⁴⁶ In my concluding chapter, I suggest that the current distribution of power between states and their cities is not right and should be recalibrated. I look to three potential avenues for this, and I reflect on the likelihood of success for each avenue.

Method

The following research strategies have been adopted:

Dataset

⁴⁵ See Jan Smits, *What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research*, in *RETHINKING LEGAL SCHOLARSHIP: A TRANSATLANTIC DIALOGUE* (Rob van Gestel, Hans W. Micklitz & Edward L. Rubin eds.) 213 (2017).

⁴⁶ These dissents are considered in Ch. IV, Parts III-IV.

A dataset of firearms preemption bills introduced in state houses between 2016 and 2020 was compiled. The research was conducted by accessing state legislature websites. The text of the bills was analyzed to identify the stated objectives and drafting patterns in the bills. Furthermore, the research tried to uncover why the bills were drafted and why the sponsors introduced the bills. The legislative debate in committee and floor data was collected to do this. This approach was undertaken to the extent that debates were available. The availability of legislative history varied from state to state.

The bills introduced before July 2019 were identified during an initial search. Bills introduced after July 2019 were identified by monitoring state websites and conducting regular news searches. The bills were identified using keyword searches for ‘firearms’ and for ‘preemption’, ‘preempt’, and ‘preempts’. The dataset includes 98 bills introduced between January 1, 2016 and December 31, 2020. A textual analysis of the bills was conducted, and the bills were categorized as follows:

- Expanding preemption
- Hyper preemption
- Restricting preemption
- Repealing preemption

The identified bills were tracked for bill status on the state legislature websites to determine where they were in the legislative process. Regardless of the outcome, bills were included to uncover a more complete picture of recent intrastate firearms preemption efforts.

The bills added to the dataset were re-evaluated to identify bill sponsors by political party affiliation. This was done to observe trends related to partisanship and whether party dominance factored in bill success. A search of the websites of governors was conducted in states where bills were introduced to complete the data collection on political party power.

Tracing litigation

This inquiry identified city gun control ordinances enacted by Seattle and Pittsburgh and traced preemption-based legal challenges to these ordinances. This approach was identified as a useful investigation tool to uncover examples of what were presumed to be attempts by cities to leverage local authority to regulate gun control. This was done to identify what

authority the cities were attempting to rely on. It was also designed to focus on lawsuits relying on state preemption in response to local gun control ordinances to obtain the legal arguments made by the litigants and the receptiveness of the courts to the arguments advanced by the cities.

The investigation was designed to identify what aspect of gun control the cities were trying to regulate and to consider how the regulations that they produced might conflict with state law or be drafted to avoid express or implied preemption. The city regulations were to be recently enacted and make a claim that can be linked to notions of home rule and local autonomy in the field of firearms. Access to filings and the ordinances under legal challenges was a prerequisite.

The lawsuits were identified by conducting news searches on recent city firearm regulations. From this, a search for specific cases filed was conducted. This included looking at news sources previously identified while identifying the lawsuits against Pittsburgh and Seattle. Additionally, the website of the NRA-ILA was utilized to confirm information for prospective cases.⁴⁷ I chose Seattle and Pittsburgh for the following reasons. First, these cities are home rule municipalities that had enacted local gun control ordinances in response to each city's specific concerns about gun violence.⁴⁸ These enactments were subject to immediate legal challenges. However, there is an additional dimension. Firearms regulation is a politically divisive issue in the context of increasing political partisanship in the United States. Broadly speaking, and at the risk of simplification, typically Democrats advocate for gun control, whilst Republicans take the opposite position. The political landscapes in Washington and Pennsylvania are nuanced and make an interesting comparison. Seattle is a city in a blue state; Democrats have a trifecta in Washington state government.⁴⁹ On the other hand, Pennsylvania is a purple state⁵⁰ and a battleground state in recent national elections.⁵¹ The point is that both cities are outside the traditional narrative, which sees the preemption conflict as an issue of blue cities attempting to regulate in red states.⁵² Because of this, these exemplars offer an

⁴⁷ *Current litigation*, NAT'L RIFLE ASS'N-INST. LEG. ACTION, <https://www.nraila.org/legal-legislation/current-litigation/> (last visited Dec. 29, 2023).

⁴⁸ See Gajanan, *infra* note 713.

⁴⁹ See Muller, *infra* note 714.

⁵⁰ Republicans control the Pennsylvania Senate, See Scanland, *infra* note 715. Republicans controlled the House until 2023. Now Democrats control the House. See Julia Muller, *infra* note 715. The governor is a Democrat. See Gabbat, *infra* note 715.

⁵¹ See, e.g., Milligan, *infra* note 716.

⁵² See, e.g., Kasakove, *infra* note 717.

opportunity to consider the extent to which firearms regulation is not simply a matter explained in terms of partisan politics but also raises the extent to which cities now seek to assert their local regulatory power in the context of their role as a primary service provider and the first line of response to the changing requirements of the urban populations subject to their governance. Three cases against Pittsburgh were identified: *Anderson v. Pittsburgh*,⁵³ *Allegheny County Sportsmen's League v. Pittsburgh*,⁵⁴ and *Firearms Owners Against Crime v. Pittsburgh*.⁵⁵ The investigation uncovered one against Seattle: *Alim v. Seattle*.⁵⁶

The ordinances have other commonalities. Both cities faced lawsuits by claimants seeking to invalidate city firearms ordinances by reference to state firearms preemption laws. Both cities cited concerns about gun violence and a need to protect public health and safety when enacting their ordinances. From this, it was hoped that tactics used by cities to avoid the express confines of firearms preemption laws would be identified. It was assumed that the cases would show the nullifying effect of preemption, thereby demonstrating the consequences of not affording authority to local governments in the U.S. Constitution.

The data collection started by compiling complaints filed in the respective courts. This was done to identify and frame the legal issues and arguments at the center of the cases. From this review, the corresponding city ordinances were identified and collated. These ordinances were: Pittsburgh City Bill (CB) 2018-1218, Pittsburgh CB 2018-1219, Pittsburgh CB 2018-1220, and Seattle CB 119266. The Pittsburgh ordinances, *inter alia*, imposed a local assault weapons ban, prohibited high-capacity magazines, prohibited armor-piercing ammunition, and created a municipal extreme risk protection order (ERPO) scheme. Seattle's ordinance created a safe storage requirement and civil infractions for gun owners who permit minors and other unauthorized users to access their firearms. Seattle CB 119267, enacted at the same time as CB 119266, was also analyzed. CB 119267 required reporting lost or stolen firearms but was not challenged in *Alim*. As the cases made their way through the state courts, available filings and

⁵³ *Anderson v. City of Pittsburgh*, GD-19-005308 (Ct. Comm. Pl. Allegheny Cnty. Oct. 29, 2019), and *Anderson v. Pittsburgh*, 1753 CD 2019, at 3 (Pa. Comm. Ct. May 27, 2022).

⁵⁴ *Allegheny Cnty. Sportsman's League v. City of Pittsburgh*, GD-94-001499 (Allegheny Cnty. Ct. Comm. Pl., Pa. Nov. 19, 2019).

⁵⁵ *Firearms Owners Against Crime v. City of Pittsburgh*, GD-19-005330 (Allegheny Cnty. Ct. Comm. Pl., Pa. Oct. 29, 2019), and *Firearms Owners Against Crime v. City of Pittsburgh* 276 A.3d 878 (Pa. Commw. Ct. 2022).

⁵⁶ *Alim v. City of Seattle*, 18-2-18114-3 SEA, (King Cnty. Superior Ct., Wash. Sept. 28, 2019), and *Alim v. City of Seattle* 474 P.3d 589 (Wash. Ct. App. 2020).

judgments were collected and reviewed. While monitoring the cases against Pittsburgh and Seattle respectively, additional cases that could have a bearing on the outcomes of the cases against Pittsburgh and Seattle were located. *Crawford v. Commonwealth*,⁵⁷ a case challenging the constitutionality of the Pennsylvania firearms preemption statute, and *Bass v. Edmonds*,⁵⁸ a lawsuit against Edmonds, Washington challenging a municipal regulation similar to Seattle's, were included.

Research Challenges

The major challenge faced by this project was the availability of data on state legislation being introduced and city ordinances. Statenet⁵⁹ was not available during data collection. As a result, data was collected manually using the website of each legislature. The availability of bills via the website of the state legislatures proved indispensable for the project.

A difficulty was faced in identifying potential lawsuits. The NRA does post a list of the litigation they are involved with on the website of the NRA-ILA.⁶⁰ Still, a more comprehensive database not hosted by a party to the litigation was not located during the project. As a result, a news search was identified as the best means by which to locate cases.

Tracing cases from the initiation of a legal challenge can create challenges in obtaining case documents. In the case of *Alim*, the trial court did not have its decision publicly available. Seattle was supported by Everytown for Gun Safety,⁶¹ which did provide filings and judgments on its website. The court of first instance for the Pittsburgh cases provided filings and judgments on their case database. Everytown for Gun Safety also supported Pittsburgh. The filings for the cases against Pittsburgh were also made available on Everytown for Gun Safety's website. The availability of these sources allowed the research project to overcome issues with document access.

⁵⁷ *Crawford v. Commonwealth*. 277 A.3d 649 (Pa. Commw. Ct. 2022), and *Crawford v. Commonwealth*, 19 EAP (Pa. 2024).

⁵⁸ *Bass v. Edmonds* 508 P.3d 172 (Wash. 2022).

⁵⁹ Statenet is the leading database for state and local legislation.

⁶⁰ NRA, *supra* note 47.

⁶¹ Everytown for Gun Safety is a pro-gun control organization that seeks to address gun violence by promoting gun control at the local, state, and federal levels. Its legal arm, Everytown Law, provided legal support and representation for Seattle and Pittsburgh.

The COVID-19 pandemic impacted the progress of both this thesis and of the lawsuits. These delays made the development of the lawsuits difficult at times, but this is understandable and unavoidable. While the Seattle and Pittsburgh cases were pending before their respective appeals courts, I attempted to locate other cases in Pennsylvania and Washington. I located *Crawford v. Commonwealth* (2022)⁶² via an online news search. In this case, I identified dissent to the broad interpretation of the state preemption statute in *Ortiz* from Pennsylvania state judges.⁶³ Another news search also uncovered the case of *Bass v. Edmonds* (2022).⁶⁴

Ethical Considerations

This work was conducted using publicly available data on the websites of state legislatures, state courts, and litigants. This was done in compliance with the university's ethical guidelines and my work has successfully undergone an ethics review by the university. There are no ethical concerns with the use of publicly obtained materials. No interviews were conducted as part of this project. As a result, there are no ethical concerns related to the treatment of interview subjects or any information obtained because there were no interview subjects, and all information is publicly available. Although this work considers ordinances and cases that are backgrounded in episodes of violence that have caused intense physical and emotional distress, this research is first and foremost doctrinal.

Contribution to knowledge/ importance of this research

This research builds on the research project by Professor Jennifer Pomeranz, Professor Diana Silver, and Dr. Sarah Leif from NYU's School of Global Public Health which investigated recent intrastate firearms preemption in the new era of preemption.⁶⁵ Their research evaluated state firearms and firearms preemption laws enacted between 2008 and 2018.⁶⁶ My research is more recent, with the inclusion of 2019 and 2020. This is important because 2020 saw a significant increase in the enactment of intrastate firearms preemption in

⁶² *Crawford*, 277 A.3d.

⁶³ *Ortiz v. Pennsylvania*, 681 A.2d 152 (Pa. 1996). *Ortiz* is a long-standing precedent that has interpreted that state firearms statute broadly. This interpretation faced criticism in the dissent of Nigro J and has seen growing dissent in recent cases before the Pennsylvania Commonwealth Court.

⁶⁴ *Bass*, 508 P.3d. This case was not available on Lexis Nexis or Westlaw when it was initiated.

⁶⁵ This was the first attempt to study whether there is a connection between state firearms preemption adoption and the enactment of other gun regulations. In part, this looks at whether local authority is being denied with the state enacting more regulation or if preemption is leading to a deregulation of the field.

⁶⁶ Jennifer L. Pomeranz, Diana Silver & Sarah A. Leif, *State Gun-Control, Gun-Rights, and Preemptive Firearm-Related Laws Across 50 US States for 2009–2018*, A. J. PUB. H. 111 (2021).

the United States. Pomeranz, Silver, and Leif's research focused on enacted laws. My work collected bill data regardless of bill success.

Professor Richard Schragger argues that what he calls an 'attack' on cities has a strong partisan basis.⁶⁷ While, as this research confirms, there are situations where Democrats sponsor bills that preempt regulation by Democrat-led local governments, it is largely the case that the majority of deregulatory and hyper preemption actions and proposals have been advanced by state governments dominated by Republicans and are designed to block progressive measures adopted by activist municipalities.⁶⁸ This research examines Republican bills to block firearms regulations by cities and those of Democrats to curtail and/or repeal firearms pre-emption and reveals the partisan dynamics concerning intrastate firearms preemption.

This research argues that the inability of cities to regulate to protect their citizens from public health and public safety concerns, in this instance with measures of firearms regulation, is a consequence of what Professor Hirschl has termed a constitutional silence in relation to the position of cities within the U.S. constitutional order, which needs to be addressed.

A solution has been proposed. A project led by Professor Nestor Davidson, in collaboration with some of the leading scholars of state and local government law,⁶⁹ has put forward a proposal of home rule for the 21st Century that would give cities⁷⁰ the ability to govern within their jurisdiction and limit state oversight.⁷¹ The proposal includes a presumption against state preemption whereby the state is presumed not to preempt local regulation unless it has done so expressly. This proposal may address concerns that local governments need more authority in policy areas that are not controversial or politically charged. However, it leaves questions about those policy areas in which there is significant state opposition to local regulation. The proposal also leaves the definition of municipal authority to the state. This

⁶⁷ Schragger, *supra* note 35.

⁶⁸ *Id.*

⁶⁹ These experts are Professor Richard Briffault, Columbia Law School; Professor Paul Diller, Willamette University College of Law; Professor Sarah Fox, Northern Illinois University College of Law; Professor Emeritus, Laurie Reynolds, University of Illinois College of Law; Professor Erin Adele Scharff, Arizona State University Law School; Professor Richard Schragger, University of Virginia School of Law; and Professor Rick Su, University of North Carolina Law School.

⁷⁰ Nestor Davidson, Richard Briffault, Paul Diller, Sara Fox, Laurie Reynolds, Erin Adele Scharff, Richard Schragger & Rick Su, *Principles of Home Rule for the 21st Century*, NAT'L LEAGUE OF CITIES, <https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf>, (2020).

⁷¹ *Id.*, at 24.

dissertation contends that the U.S. is at a reflection point in which the role of local authority in the constitutional order must be reconsidered. However, the options to alter the role of local authority are difficult and unlikely to be successful in the short term.

This thesis makes a significant contribution to knowledge as follows:

1. A contribution to the debate on whether local government should be subservient to state governments. This was done by investigating the question of local government authority through the lens of firearms preemption. Seattle and Pittsburgh are two cities that put in place gun control tailored in line with evidence-based research to reduce gun violence. The inability of cities to address gun violence in this way raises questions about whether the current constitutional structure, with its silence on local government authority, should continue.
2. Providing a dataset of firearms preemption bills in U.S. states between 2016 and 2020. This dataset contributes by providing clear evidence of continued interest in state firearms preemption despite the already wide adoption of broad intrastate firearms preemption. It locates firearms preemption within the ongoing era of preemption.
3. Showing that, in the context of firearms, focusing only on enacted bills rather than investigating all bills, provides an incomplete picture of the recent state preemption legislation. For example, the proposed but unsuccessful bills included a proposed preemption of the regulation of ghost guns and a resolution to remove Pittsburgh's Mayor from office for his part in the enactment of the three Pittsburgh ordinances in Chapter IV.
4. Locating recent dissents by members of the Pennsylvania judiciary to the broad interpretation of the state preemption statute. Some of the judges recognized the local impact of gun violence in urban areas as a rationale for revisiting and potentially overruling the current interpretive precedent. These dissents reveal an incipient receptiveness on the part of certain members of the state judiciary to arguments in favor of increased weight to be given to claims of city autonomy or at least a greater role for local government.

Further Research

This project collected data on the role of pro-gun rights pressure groups like the NRA. This project also located indicators of pro-gun control groups. For example, Everytown for Gun Safety supported Seattle and Pittsburgh in the cases included in Chapter IV. Further research on the role of pro-gun control pressure groups would provide a more complete picture of the role of pressure groups in recent firearms preemption trends in particular and their roles in the current era of preemption more generally. This could lead to a more complete picture of the actors involved in the current era of preemption.

Ohio HB 228, one of the bills in the data set, expanded the expressly preempted field of firearms and added new hyper preemption measures. In his gubernatorial veto letter, Governor John Kasich pointed to the erosion of home rule as one of his reasons for vetoing the bill.⁷² HB 228 was subject to a legal challenge from the city of Columbus.⁷³ In 2022, the Franklin County Court of Common Pleas granted a preliminary injunction. In petitioning for the injunction, Columbus argued that HB 228 “infringes on [Columbus’] ability to exercise its home rule authority to regulate firearms within its municipality and subjects the City to damages for exercising such authority.”⁷⁴ This first point, that preemption infringes on home rule authority, is not new. Still, the second point, that a preemption statute damages or causes harm to the city, is similar to the argument put forth by Philadelphia in its legal challenge of the Pennsylvania preemption statute.⁷⁵ If Columbus’ lawsuit is successful, but Philadelphia’s is not successful, then further research on the differences in approach to home rule, firearms preemption, and legal strategy could contribute to our understanding of the current state of play in relation to intergovernmental relations and how it might be possible successfully alter the state-local government dynamic to address local concerns such as gun violence. If both cities are successful in their cases, uncovering whether there has been an alteration of intergovernmental relations would be an important contribution. Regardless of the outcome of these cases, there is the potential for contribution by attempting to locate other cities using arguments of harm to their city as grounds to challenge preemption.

⁷² Gov. John Kasich, Veto Letter Amended Substitute H.B. 228 (Dec. 19, 2018). [Hereinafter Kasich HB 228 veto]. This veto was overridden.

⁷³ City of Columbus v. Ohio, 19 CV 2811 (Franklin Cnty. Ct. Comm. Pleas, Ohio, Nov. 2, 2022), https://city-attorney.columbus.gov/pdf/press/decision_and_entry_on_motion_for_pi_110222.pdf.

⁷⁴ *Id.*

⁷⁵ The Philadelphia case is considered in Chapter IV.

Chapter II: Context

Introduction

This project aimed to explore intrastate intergovernmental relations in a federal constitutional structure that does not recognize the division of power between municipalities and the state to which they belong. This lack of recognition of local governments is what Professor Ran Hirschl calls a “constitutional silence.”⁷⁶

The project explored the dynamics of these relationships by reference to the issue of firearm regulations. The research strategy was to explore this dynamic by reference to what Professor Robert Kagan has called “Adversarial Legalism” or “the American Way of Law.”⁷⁷ In his much-cited work, he has argued that policymaking, policy implementation, and dispute resolution in the United States are characteristically dominated and driven by controversy and conflict over the legal process in a way that is not the case in other economically advanced countries, which, like the United States, subscribe to the rule of law but which manage these issues largely by bureaucratic means. This research compiled two data sets that explore two distinct aspects of this reliance on law and legal process to deliver, implement, and change public policy and its administration.

The first aspect is that of regulating - or attempting to regulate for political effect. A data set was compiled of state bills introduced in state legislatures between 2016 and 2020 to extend or reduce firearms regulation. Most of these bills were unsuccessful and had little prospect of success from their inception. This begged the question of why they were introduced or even contemplated in the first place. My argument is that what we see here can be explained in terms of political posturing⁷⁸ or attempting to regulate politically contentious issues in a way that will appeal to a specific political base. This is a practice that indeed is by no means unknown in other countries but which, in the current climate of intensified political partisanship in the United States, has assumed considerable political significance.

⁷⁶ Hirschl, *supra* note 4, at 36.

⁷⁷ ROBERT KAGAN, *ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW* 3 (2d ed, 2019). Kagan defines adversarial legalism as “policymaking, policy implementation, and dispute resolution by means of party-and-lawyer-dominated legal contestation.”

⁷⁸ This project defines political posturing as statements or actions undertaken for political gain.

For this reason and to demonstrate these connections, this project obtained and presents details concerning the sponsors and co-sponsors of these preemption bills. This approach aligns with that taken by the Lugar Center and Georgetown University's McCourt School of Public Policy, which has investigated political partisanship in the context of bill sponsorship. The aim of their dataset was to support their specific project of encouraging bipartisanship in the congressional legislative process.⁷⁹ I adopted this approach to explore the issue of firearms preemptive legislation with a view to revealing the extent to which partisan legislators at the state level use the legislative process to appeal to their partisan bases and to align with relevant political ideologies.⁸⁰ This approach revealed that many liberal legislators represent urban districts while conservative legislators represent rural districts. An urban-rural divide over gun control became a particular feature of political partisanship following the NRA reorganization of the 1970s, which I deal with later in this chapter. My data set clearly shows this urban-rural divide playing out in the context of partisanship. The research shows that the sponsorship of the bills I have identified is clearly grounded in political affiliations.

The second aspect of this reliance on law and legal process for political purpose or effect is that of dispute resolution by means of lawyer-dominated litigation.⁸¹ The second data set consists of a collection of city gun control ordinances enacted by two cities: Seattle, WA, and Pittsburgh, PA in an attempt to use the powers given to them by their states to put in place enhanced measures of gun control within their borders and the legal challenges to those attempts. These state court challenges were brought by anti-gun control advocates who have come together and formed activist organizations to oppose the regulations in the courts in a way that has become typical across a spectrum of contentious issues in the United States. Chief amongst these is the NRA, but it is clear that a significant number of special interest groups have been formed specifically to oppose this type of regulation. The challenges have, in the main, been successful, and the result has been that these cities will likely be forced to withdraw

⁷⁹ Former U.S. Senator Richard Lugar founded the Lugar Center. The bi-partisan index is a collaboration between the Lugar Center and Georgetown University's McCourt School of Public Policy. The Lugar Center justifies this approach as "[f]irst, they [bill sponsor and co-sponsor data] allowed us to construct a highly objective measure of partisan and bipartisan behavior. Second, sponsorship and co-sponsorship behavior [are] especially revealing of partisan tendencies. Members' voting decisions are often contextual and can be influenced by parliamentary circumstances. Sponsorships and co-sponsorships, in contrast, exist as very carefully considered declarations of where a legislator stands on an issue". See *Bi-partisan index*, THE LUGAR CTR., <https://www.thelugarcenter.org/ourwork-Bipartisan-Index.html>.

⁸⁰ Professor Jay van Bavel and Dr. Andrea Pereira define ideology as "a system of beliefs and values that represent one's worldview." See Jay van Bavel & Andrea Pereira, *The Partisan Brain: An Identity-Based Model of Political Belief*, 22c TRENDS IN COGNITIVE SCI. 213, 214 (2018).

⁸¹ Kagan, *supra* note 77.

their regulations. However, of interest for this dissertation is the emergence of a recognition on the part of some members of the state judiciaries that the interests of localities within their boundaries are not necessarily the same as those of the wider state and a growing acceptance of a need for an enhanced measure of local democracy which de Tocqueville argued is the bedrock of American democracy.⁸²

Structure

This project sought to uncover why cities cannot enact gun control and what the inability of cities to regulate guns says about the broader conflict between state and city power. The project also sought to explore American democracy and the role of local democracy within the American constitutional order and whether that order can cope with the challenges faced by 21st century America. Partisanship and pro-gun pressure group involvement were presumed. This project presumed that given the high levels of intrastate firearms preemption enactment before the project, new preemption bills would propose limiting or repealing preemption. Democrats were expected to sponsor these bills. It was also presumed that cities were enacting local gun control knowing that they would face legal challenges, and their ordinances would likely be found to be preempted.

This chapter's purpose is to set out the context for the two pieces of original research presented in chapters III and IV of this thesis. I conducted this research through the lens of firearms regulation to observe the state-local government conflict. This dynamic has several dimensions. The first is the issue of the power relationship within the state. The second is the issue of how that relationship is affected by political partisanship, and how that can be affected by an urban-rural dynamic. The third is the issue of gun regulation and how this can impact upon these other two dynamics. These themes come together in gun control and how gun control has been entangled in political partisanship. This chapter introduces these themes as follows.

Section I explains the federal constitutional origins of state and local authority. It follows with the role of local government and the country's demographic shift since the drafting of the Federal Constitution. This section lays out the federal structure, which has facilitated the

⁸² ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 109 (Eduardo Nolla ed., Liberty Fund Inc. 2012).

power imbalance in intrastate systems. Section II outlines the diffusion of intrastate power in five sub-sections: police power, Dillon's rule, the Cooley doctrine, home rule, and preemption. It describes how power is split in intrastate legal systems and who dictates this diffusion. Section III considers partisanship and its influence on intergovernmental relations including a discussion on the polarized political climate in America. The section then explores the urban-rural divide and the phenomenon of anti-urbanism. Interest groups are involved in state legislative activities.⁸³ They also build relationships with legislators. Previous scholarship identified the contribution of the NRA in the broad adoption of firearms preemption before this project.⁸⁴ This is because the stories of the modern NRA and intrastate firearms preemption are intertwined. The NRA's role in the two tactics of oppositional efforts to restrict local gun control is investigated in Chapters III and IV. Pro-gun rights interest groups like the NRA were included in the investigation in the hope of demonstrating that the interest groups continue to play a role in preemption legislation efforts and preemption-based lawsuits against cities. Section IV considers gun control. This starts with laying out the Second Amendment and state constitutional right to bear arms protections. It proceeds with a discussion of the policy field of firearms. Identifying what can be included in the field of firearms also identifies the terminology that would be utilized in firearm regulations more generally and firearms preemption in particular.

Federal constitutional origins of state and local power

The first dynamic of this project's exploration of intergovernmental relations is the division of power. This starts with how the Federal Constitution distributes power and which governmental bodies it expressly recognizes. The Tenth Amendment to the U.S. Constitution declares, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."⁸⁵ This is an express constitutional recognition of the sovereignty already held and exercised by the states before the drafting of the Constitution. This recognition has been interpreted as creating dual sovereignty in which the states and the federal government have sovereignty.⁷¹ The U.S. Supreme Court

⁸³ This includes involvement in intrastate preemption. *See, e.g.*, Diller, *supra* note 37, at 1133-1140. Diller also observes that businesses and interest groups also use the courts to override local policies they do not like.

⁸⁴ *See, e.g.*, Schragger, *supra* note 35, at 1170. "The firearms industry has been particularly successful in large part because the National Rifle Association has acted aggressively at the state level. Firearm- and ammunition-specific preemption statutes have been enacted in forty-three states".

⁸⁵ U.S. CONST. amend. X.

has observed that with this recognition, “[t]he framers split the atom of sovereignty.”⁸⁶ The enumerated powers in this constitution are seen as powers surrendered or delegated to the federal government by the states. The Federal and state governments are “in fact but different agents and trustees of the people constituted with different powers and designed for different purposes.”⁸⁷ While the Supremacy Clause dictates that the Federal Constitution is the supreme law of the land,⁸⁸ the scope of application is limited to the enumerated powers and other powers expressly or implicitly granted to the federal government in the Constitution. The powers retained by the states are “numerous and indefinite.”⁸⁹ State constitutions are subnational constitutions that operate within the national constitutional order, creating a relationship of *imperium in imperio* (sovereignty within sovereignty or empire within the empire).⁹⁰

The states have their own constitutions, distinct from one another and the Federal Constitution. As Professor Richard Williams observes, “it is more accurate to view the United States as having two kinds of constitutional law: federal and state.”⁹¹ All state governments govern and exercise their legal authority through delegated authority. State governments’ authority comes from the state constitution and the consent of their people through elections at regular intervals. This ensures renewed consent and continuing democratic accountability for elected state officials.

As previously stated, state government authority is laid out in state constitutions. For example, Washington’s Constitution recognizes political power as inherent in the people and that the authority of government is derived from the consent of the people.⁹² In Pennsylvania, political power is constitutionally defined as “inherent in the people, and all free governments are founded on their authority and instituted for peace, safety, and happiness. For the advancement of these ends, they always have an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.”⁹³ A recurring theme in state constitutions is that the power of government originates from the people who delegate that power to the state government.

⁸⁶ U.S. v. Wheeler, 435 U.S. 312, 320 (1978).

⁸⁷ THE FEDERALIST NO. 46, at 211 (James Madison) (Clinton Rossiter ed., 1961).

⁸⁸ U.S. CONST. art. VI, clause 2.

⁸⁹ THE FEDERALIST NO. 45, at 210 (James Madison) (Clinton Rossiter ed., 1961). See also U.S. v. Lopez, 514 U.S. 549, 551 (1995). (The Court recognized this as a “constitutionally mandated division of authority”).

⁹⁰ RICHARD F. WILLIAMS, THE LAW OF AMERICAN STATE CONSTITUTIONS 15 (2009).

⁹¹ *Id.*

⁹² WASH. CONST., art. 1, §1.

⁹³ PENN. CONST., art. 1, §2.

In contrast to the authority of sub-national entities like states, old-world constitutions,⁹⁴ like the U.S. Constitution, provide limited local authority.⁹⁵ This is because matters related to sub-national government are limited by centuries-old ideas about federalism.⁹⁶ In the case of the U.S. Constitution, this has left local governments with no express authority. Professor Ran Hirschl observed that this silence on local authority is not limited to constitutions but also includes the academic discourse on comparative constitutional law.⁹⁷ The result is that cities are underrepresented in the Constitution and in efforts to analyze and propose theories to improve the Constitution.

The constitutional order in the U.S. has stayed the same since the late 18th Century, but the country has transformed. The U.S. in 2024 differs considerably from the country in the late 18th century. From thirteen states, there are now 50. The population has grown significantly, and the number of municipalities has substantially increased. In 1790, the population of the United States was approximately 3,929,214 people.⁹⁸ In contrast, there are cities with a larger population today. For example, in 2020, New York City's population was 8,804,190.⁹⁹ The 2020 census found that there are now over 326,000,000 Americans making the current population about 82 times the size of the country's population in 1790.

After independence, the country had few cities. Today, it is markedly different. There were 19,519 municipalities as of 2012.¹⁰⁰ Today's U.S. does not resemble the country in 1790. However, the role of city governments in the U.S. constitutional order remains unchanged.

Population growth is only one part of the demographical change in America. More Americans now live in urban areas. This contrasts with early America, where most Americans lived in more rural settings. According to the U.S. Census Bureau, 86% of Americans live in

⁹⁴ Hirschl refers to the global north as the old world and the global south as the new world.

⁹⁵ See Hirschl, *supra* note 4, at 36 (2020).

⁹⁶ *Id.* at 28-29.

⁹⁷ *Id.* at 29.

⁹⁸ *1790 Census fast facts*, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/fast_facts/1790_fast_facts.html (last accessed Dec. 15, 2023)

⁹⁹ *NYC Population*, C. OF NEW YORK, <https://www1.nyc.gov/site/planning/planning-level/nyc-population/nyc-population.page>.

¹⁰⁰ Hogue, *supra* note 23.

metro areas as of 2020.¹⁰¹ As a result, most Americans likely receive essential services such as trash collection from local governments.

This constitutional reality for local governments has left the decisions on local authority to state law. The Supreme Court has recognized the city as a creature of the state,¹⁰² thereby relegating local governments to a subservient position. This makes urban governments subordinate even though many Americans live in urban settings. The position of cities in the constitutional order is made possible by the silence in a constitution drafted in an America that does not reflect the realities of the country today.

Struggles for American local democracy

There is another, though controversial, interpretation of the place of local democracy in the U.S. Constitutional order. This argument advanced by Thomas Linzey and Daniel Brannen,¹⁰³ contends that “[t]he right of community self-governance is both deeply rooted in our nation’s history and tradition and fundamental to any scheme of ordered liberty”¹⁰⁴ and that the denial of the right to self-government was a primary cause of the American Revolution.¹⁰⁵ This contention is based on claims of local authority by early settlers of what would become the United States. The Pilgrims who voyaged to the New World aboard the Mayflower agreed to the Mayflower Compact (1620).¹⁰⁶ Its signatories declared the formation of a body politic.

¹⁰¹ Press Release, U.S. Census Bureau, 2020 Census statistics highlight local population changes and nation’s racial and ethnic diversity (Aug. 12, 2021), <https://www.census.gov/newsroom/press-releases/2021/population-changes-nations-diversity.html>. There was a nine percent increase in Americans living in metro areas from 2010 to 2020. In the era from 1790 to 1830, roughly 5% of Americans lived in cities. *See, also* ERIC H. MONKKONEN, AMERICA BECOMES URBAN: THE DEVELOPMENT OF U.S. CITIES & TOWNS 1780-1980 5 (1988).

¹⁰² *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

¹⁰³ Thomas Linzey is Senior Legal Counsel for the Center for Democratic and Environmental Rights. *See* Ctr. for Democratic and Env’t Rights, *Thomas Linzey*, <http://www.centerforenvironmentalrights.org/team/thomas-linzey>. (According to the Center, Linzey is the “founder of the contemporary community rights movement”). Daniel Brannen is a Legal Consultant for the Center for Democratic and Environmental Rights. *See* Ctr. for Democratic and Env’t Rights, *Daniel Brannen*, <http://www.centerforenvironmentalrights.org/team/daniel-e-brannen-jr>. (According to the Center, Brannen “has devoted much of his career to developing, litigating, and consulting on the legal bases for ending constitutional rights for corporations and securing right of local self-government and nature.”).

¹⁰⁴ Thomas Linzey and Daniel Brannen, *A Phoenix from the Ashes: Resurrecting a Constitutional Right of Local Community Self-Government in the Name of Environmental Sustainability*, 8 ARIZ. J. ENV’T L. POLY. 1, 8 & 17 (2017). While Linzey and Brannen’s contention was controversial when published, it has received mainstream support from researchers at the Brookings Institute. *See also* Hais, Ross, & Winograd, *infra* note 996.

¹⁰⁵ *Id.*, Linzey & Brannen, at 12-13, *See, also* Krane ET AL., *infra* note 147, at 8.

¹⁰⁶ Agreement between the Settlers of New Plymouth (1620) (“The Mayflower Compact”). (“We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, Having undertaken by the Glory of God, and

This declaration of a body politic could be interpreted as based on the belief that the Pilgrims had the power to create a governing document and grant authority to local government.

Seventeen years after the Mayflower Compact, The United Colonies of New England,¹⁰⁷ was formed. Arguably, this confederation recognized the right to community self-government. These colonies came together to sign the Articles of Confederation of the United Colonies of New England.¹⁰⁸ By creating and empowering the confederation, these colonies and their residents were recognizing and exercising what they saw as their right to form their own government. The confederation engaged in external affairs, including with other colonies with empowered local governments.

The English colonies were not the only colonies to recognize the right to community self-government. In 1640, the Dutch Colony of New Netherland, according to Professor Albert McKinley, extended local government privileges to its settlements and representation to its settlements in “the conduct of central affairs”.¹⁰⁹

Arguably, the King of England’s infringement on the right to community self-government was one of the causes that led to the colonies declaring their independence. When the colonists felt their grievances with the Crown could no longer receive redress as part of the British Empire, the colonies declared their independence. By doing so, they were exercising their perceived right of self-governance and self-determination. One of the justifications for declaring independence was that the King had “dissolved Representative Houses repeatedly, for opposing with many Firmness, his invasion of the Rights of the People.”¹¹⁰ The opening sentence of the U.S. Declaration of Independence recognized the right of the people to

Advancement of the Christian Faith, and Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of Good and one another, covenant and combine ourselves together in a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officer, from time to time, as shall be thought most meet and convenient for the general Good of the Colony, unto which we promise all due Submission and Obedience.”).

¹⁰⁷ It comprised four colonies: Massachusetts Bay, Plymouth, Saybrook, and New Haven. These colonies bordered each other and now comprise present-day Massachusetts and Connecticut.

¹⁰⁸ Articles of Confederation of the United Colonies of New England (1643).

¹⁰⁹ Albert McKinley, *The English and Dutch towns of New Netherland*, 6 AM. HIS. REV. 1, 3-4 (1900).

¹¹⁰ THE DECLARATION OF INDEPENDENCE (1776).

determine their government, including the ability to reject their government and establish a new government under terms dictated by the people.¹¹¹

One interpretation of American Democracy in the early 19th century is that the place for local democracy has been an established part of governance over local issues. Alexis de Tocqueville observed that “[t]own liberty in the United States follows ... from the very dogma of the sovereignty of the people”.¹¹² For de Tocqueville, the sovereignty of the people was both a legal and omnipotent fact that ruled American society.¹¹³ One factor in the role of local governments in American life prior to the industrial revolution is that American society was less connected to the federal government and the state government. There was an element of necessity in local government having the autonomy to act.

After the U.S. Civil War, new assertions of local authority were proposed as a means to protect the people from the effects of political dysfunction at the state and federal levels. As American political theorist Lawrence Goodwyn observed, “[a] large number of people in the United States discovered that the economic premises of their society were working against them”.¹¹⁴ Farmers took to local efforts of collective self-help by forming cooperatives which were meant to fill the void left by state and federal governments.¹¹⁵ By doing so, these cooperatives arguably were engaging in an exercise of local autonomy and were tacitly recognizing their right to do so.

Recently, there been discussions on the broader consideration of intergovernmental relations, in relation to local authority. At the federal level, The House of Representatives considered H.R. 5546.¹¹⁶ This resolution proposed limiting the authority of states to preempt big cities from regulating firearms-related conduct in their cities .¹¹⁷ At the state level, the

¹¹¹ *Id.*, THE DECLARATION OF INDEPENDENCE. “When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature’s God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.”

¹¹² de Tocqueville, *supra* note 82, at 109.

¹¹³ *Id.* at 92.

¹¹⁴ LAWRENCE GOODWYN, THE POPULIST MOMENT: A SHORT HISTORY OF THE AGRARIAN REVOLT IN AMERICA vii (1978).

¹¹⁵ *Id.* (“American farmers developed new methods that enabled them to try to regain some measure of control over their own lives.”).

¹¹⁶ H. Res. 5546, 114th cong. (2016).

¹¹⁷ *Id.*, §1(b)(2). (“The term “major city” means a city that has a population of at least 500,000 inhabitants, as determined by the most recent decennial population census conducted by the Bureau of the Census.”).

division of intrastate authority has been a point discourse, of which firearms regulation is a part of, but also includes much wider implications that are being worked out regarding issues ranging from anti-discrimination to minimum wage with states preempting local regulation in these areas.¹¹⁸

Diffusing intrastate power

The second aspect of the division of power within this project's exploration of intergovernmental relations is the intrastate diffusion of power. As previously stated, the sovereignty of the states is constitutionally recognized. However, there is no similar concept of sovereignty for local government in any sphere.¹¹⁹ Without a similar concept of sovereignty expressly afforded to local governments, they are in a subordinate position in intrastate legal systems. This section explores the diffusion of intrastate power and how power is split between state and local governments, starting with police power. Dillon's rule, which promotes the 'creature of the state' theory of local government, is considered next. This is contrasted with the Cooley Doctrine, which saw a different place for local government in the diffusion of power. Home rule, a framework of local authority granted by state law, follows. Preemption, a legislative tool that permits the state to foreclose a policy field from local regulation, and hyper preemption, a particular form of preemption that can impose punitive measures against local governments and local officials, are then considered.

Police power

The term police power has been attributed to Chief Justice John Marshall in *Brown v. Maryland*.¹²⁰ However, he did not define police power. In 1991, the U.S. Supreme Court defined police power as "the authority to provide for the public health, safety, and morals."¹²¹ The U.S. Constitution protects the States' police power. The Tenth Amendment recognizes the policing power of the states by declaring that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or

¹¹⁸ According to the National League of Cities, twenty-eight states have preempted minimum wage regulation and three of preempted anti-discrimination regulation. See DuPuis ET AL, *infra* note 386, at 3.

¹¹⁹ See Scharff, *supra* note 28, at 1475.

¹²⁰ *Brown v. Maryland*, 12 Wheat. 419, 442-43 (1827).

¹²¹ *Barnes v. Glenn Theatre, Inc.*, 501 U.S. 560, 569 (1991).

to the people.”¹²² The police power is fundamental to a state's regulatory authority and the exercise of that authority.

The same cannot be said for city governments. Cities do not have an inherent police power.¹²³ States can grant power to their municipalities to regulate certain issues arising within their borders. However, state law defines the scope of this delegated authority.¹²⁴ Some states delegate more police power to municipalities than others. Cities have relied on delegated police power to respond to public health crises. In *Jacobson v. Massachusetts*,¹²⁵ the U.S. Supreme Court upheld a mandatory smallpox vaccination scheme operated by Cambridge, Massachusetts.

Writing for the majority in *Jacobson*, Justice John Marshall Harland declared, “[r]eal liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own [liberty], whether in respect of his person or his property, regardless of the injury that may be done to others.”¹²⁶ Justice Harland further elaborated on the balance on personal liberties and the public good by concluding that “in every well ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.”¹²⁷ Importantly, however, the Court determined that the authority to impose such measures resided with Massachusetts. The state had granted Cambridge the authority to act as it did.¹²⁸

Dillon’s rule

The theory of state preeminence over local governments is often attributed to Judge John Forest Dillon. In his treatise *Municipal Corporations*, he explained that in contrast to the powers of states, municipalities only have the powers that are expressly granted to them.¹²⁹

¹²² U.S CONST. amend X.

¹²³ CHARLES S. RHYNE, *MUNICIPAL LAW* 528 (1957).

¹²⁴ *Id.*

¹²⁵ *Jacobson v. Massachusetts*, 192 U.S. 11 (1905).

¹²⁶ *Id.*

¹²⁷ *Id.* at 29.

¹²⁸ *Id.* at 12.

¹²⁹ 1 JOHN FORREST DILLON, *THE LAW OF MUNICIPAL CORPORATIONS* 173 (James Cockcroft & Co., 1873) (1871).

Municipal Corporations elaborated on concepts first advanced by Dillon in *Clinton v. Cedar Rapids and the Missouri River Railroad* (1868).¹³⁰ In that case, Dillon held that “[m]unicipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control.”¹³¹ Dillon construed local government authority narrowly.¹³² Effectively, cities lack sovereignty and can have their powers reduced or completely removed without consent or consultation from the local government or the local electorate.

The U.S. Supreme Court supported Dillon’s rule in *Hunter v. Pittsburgh* (1907),¹³³ and recognized municipal corporations as subdivisions of the state.¹³⁴ Under traditional Dillon’s rule, there was little need for intrastate preemption as municipal ordinances and state law rarely overlapped.¹³⁵ However, Dillon’s rule is not without its critics. Judge Eugene McQuillin¹³⁶ contended that there are inconsistencies in Dillon’s rule, noting that local government proceeded more central rule in the colonies.¹³⁷ Thomas Linzey and Daniel Brannen argue that Dillon’s rule is unconstitutional, in part because the Crown viewed colonial governments as creatures of the state in the same way Dillon’s rule defines municipalities as creatures of the state.¹³⁸ Linzey and Brannen contend that the colonists rejected the creature of the state concept.¹³⁹

¹³⁰ *Clinton v. Cedar Rapids and the Missouri R. R.*, 24 Iowa 455 (1868). [hereinafter *Cedar Rapids & Missouri R.R.*]

¹³¹ *Id.*

¹³² Frank Vram Zerunyan, *The Evolution of the Municipal Corporation and the Innovations of Local Governance in California to Preserve Home Rule and Local Control*, 44 *FORDHAM URB. L.J.* 217, 220 (2017).

¹³³ *Hunter*, 207 U.S.

¹³⁴ *Id.* at 178.

¹³⁵ Diller, *supra* note 37, at 1123.

¹³⁶ Judge McQuillin was a circuit court judge in St. Louis and a legal scholar in the late 19th and early 20th century.

¹³⁷ 1 EUGENE MCQUILLIN, *A TREATISES ON MUNICIPAL CORPORATIONS* 153-4 (Callaghan & Co.,1940)(1911). (“[a]mong the colonists the creation of government for the management of local concern, in most cases, antedates the establishment of central or state authority. It should be observed, however, it is not accepted theory in this country that the states have received delegations of power from independent towns; on the other hand, the theory is that the state governments precede the local, create the latter at its discretion and endow them with corporate life. But, historically, it is difficult to prove this theory as it would demonstrate the origin of government is in compact or that title to property comes from occupancy. The historical fact is that local governments preceded the more central authority.”).

¹³⁸ Linzey & Brannen, *supra* note 104, at 47.

¹³⁹ *Id.*

Cooley doctrine

In contrast to Dillon's rule, the Cooley doctrine proposed a different approach to interpreting the scope of local authority and the state's ability to restrict that authority. As explained by Former Chief Justice of the Michigan Supreme Court, Thomas McIntyre Cooley, administrative divisions of the state, such as cities, have inherent powers of governance that do not depend upon delegation from the state to which they belong. In *Le Roy v. Hurlbut*,¹⁴⁰ Judge Cooley concluded, "local government is [a] matter of absolute right; and the state cannot...take it away."¹⁴¹ This means that, according to this doctrine, there are some areas of local authority that, once granted to the local government, the state government cannot displace.

Professor Paul Carrington suggested that "[i]n his preference for localism, Cooley followed [Francis] Lieber, who contended that civil liberty was dependent on active self-government, and that self-government could be best conducted locally."¹⁴² Under Dillon's rule, the power within the state-local relationship was nearly exclusively with the state. Both theories were seen to be influential at the time, but Dillon's rule remains the predominant theory. The Cooley doctrine has never gained much lasting acceptance.¹⁴³ However, some recent jurisprudence in Pennsylvania, analyzed in Chapter IV, has shown a growing concern from members of the state judiciary about the lack of local authority, arguing in the case of public safety issues such as gun violence, that local solutions may be the best way to address these issues.

Home rule

Most states grant authority to local governments to regulate certain matters without the need to refer the matter to the state.¹⁴⁴ States that do this are said to accord a measure of 'home rule' to their local governments. Some states afford more home rule authority than others. Professor Kenneth Vanlandingham defined home rule as "[t]he principal legal device employed

¹⁴⁰ *People ex rel. Le Roy v. Hurlbut*, 24 Mich. 44 (1871).

¹⁴¹ *Id.*, at 108.

¹⁴² Paul Carrington, *The Constitutional Law Scholarship of Thomas McIntyre Cooley*, 41 AM. J. LEGAL HIST. 368, 378 (1997).

¹⁴³ Kenneth Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269, 272 (1968).

¹⁴⁴ Local governments are units of government, including cities and towns. These units are also municipal corporations or municipalities.

by [municipalities] to obtain some measure of freedom from state control.”¹⁴⁵ Richardson, Zimmerman, Gough, and Puentes define home rule as “the ability of a local government to manage local affairs without oversight from the state legislature.”¹⁴⁶ Home rule has also been defined as “the power to act without state authorization.”¹⁴⁷ Most states now grant some measure of home rule by legislation or constitutional provision. Only Virginia and North Carolina have no home rule.¹⁴⁸ Home rule has taken two forms: *imperio* and legislative. These two forms are discussed in this sub-section.

It is difficult to generalize the home rule powers afforded to municipalities.¹⁴⁹ There is considerable variance between the home rule structures in the states. There is a structural element to home rule. Home rule was meant to structure local government authority to redistribute as much power down to the local level as possible and reduce the amount of legislative interference and interference by other state agencies.¹⁵⁰

Practical necessities can be inherent in grants of home rule. Some state legislatures meet infrequently. For example, in Wyoming, the legislature meets only forty days every other year.¹⁵¹ Before the Wyoming constitution was amended to include home rule, municipalities had to request grants of authority on local matters from the legislature. This could lead to long delays between a request for authority and that request being taken up by the legislature. This could be problematic when municipalities’ requests are time sensitive. Permitting local governments to regulate certain local matters allows for a locally focused approach and more timely responses to pressing policy matters. It also helps state legislatures to focus on more pressing statewide issues.

¹⁴⁵ Vanlandingham, *supra* note 143, at 269.

¹⁴⁶ JESSE J. RICHARDSON JR., MEGHAN ZIMMERMAN GOUGH, & ROBERT PUENTES, BROOKINGS INST. CTR. ON URBAN AND METRO. POL’Y, *Is Home Rule the Answer? Clarifying the Influence of Dillon’s Rule on Growth Management*, 1, 7 (2003), <https://www.brookings.edu/wp-content/uploads/2016/06/dillonsrule.pdf> (last accessed 18 April 2019).

¹⁴⁷ See DALE KRANE, PLATON N. RIGOS & MELVIN B. HILL, JR., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK 11-12 (2001). [Hereinafter Krane ET AL.].

¹⁴⁸ See Frayda Bluestein, *Do North Carolina Local Governments Need Home Rule?*, 84 N.C. L. REV. 1983, 1989 (2006). This means that 48 of 50 states have some form of home rule.

¹⁴⁹ Rick Su, *Have Cities Abandoned Home Rule?*, 44 FORD URB L. J. 181 (2017).

¹⁵⁰ See Hugh Spitzer, “Home Rule” vs. “Dillon’s Rule” for Washington Cities, SEATTLE U. L. REV. 809-810, 809 (2015); See, also Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 38 MINN. L. REV. 643, 644 (1964).

¹⁵¹ See Thomas S. Smith & Shane T. Johnson, *No Home on the Range for Home Rule*, LAND & WATER L. REV. 791, 797 (2007).

Proponents of home rule sought to address acute societal concerns within cities. These societal concerns became more pronounced as urbanization proliferated due to industrialization and immigration. Poor housing conditions and substandard sanitation in urban areas were legitimate concerns in late 19th-century American cities.¹⁵² The lack of a concerted effort by state legislatures to address the needs of city dwellers and the growing number of urban centers pushed the need for reforms.

The home rule movement of the late 19th and early 20th century sought to increase local autonomy.¹⁵³ The movement initially pushed for the amendment of state constitutions and the enactment of state laws to increase the power of local governments while at the same time seeking to decrease the power state legislatures held over the functioning of local governments.¹⁵⁴ These proposals were typically two-fold: to restrict state legislatures' ability to pass local or special privilege laws and permit localities to write a charter and decide on a form of government.¹⁵⁵ The use of special or local privilege legislation, which included state laws that detailed every aspect of local government activity¹⁵⁶ led to complaints about abuse of state authority.

Imperio home rule, an early form of home rule,¹⁵⁷ was meant to provide local autonomy within the sphere of municipal or local affairs.¹⁵⁸ Missouri enacted the first state constitution with *imperio* home rule in 1875. The Missouri Constitution of 1875 authorized municipalities to draft their charters and choose their form of government consistent with the laws of the State.¹⁵⁹ In 1876, St. Louis voters approved separating the city of St. Louis from St. Louis County and adopting the U.S.' first home rule charter.¹⁶⁰ Some *imperio* home rule grants still exist. For example, Rhode Island's constitution declares that home rule cities and towns have local legislative power to "adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this Constitution and laws enacted by the general assembly in conformity with the powers reserved to the general

¹⁵² David Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2257, 2288-9 (2005).

¹⁵³ Krane, ET AL., *supra* note 147, at 11.

¹⁵⁴ *Id.* at ix.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 4.

¹⁵⁷ See Diller, *supra* note 37, at 1124-25.

¹⁵⁸ Kenneth Vanlandingham, *Constitutional Home Rule Since the AMA (NLC) Model*, 17 W. M. L. REV. 1, 1-2 (1976).

¹⁵⁹ MO. CONST. art. IX, § 16 (1875).

¹⁶⁰ *A Brief History of St. Louis*, C. OF ST. LOUIS, <https://www.stlouis-mo.gov/visit-player/stlouis-history.cfm>.

assembly.”¹⁶¹ *Imperio* home rule was meant to create a federal relationship in which local governments had autonomy over local affairs by transforming the relationship between states and local governments.¹⁶² However, the judiciary is left to determine boundaries of municipal or local affairs.¹⁶³ Some state courts defined local authority narrowly.¹⁶⁴

The Home rule movement was not limited to expanding local authority. It recognized and sought to address concerns of abuse of state authority. These concerns related to, *inter alia*, the use of so-called ripper bills, i.e., special bills that removed powers from local officials or abolished local offices.¹⁶⁵ For example, a ripper bill passed by the Pennsylvania legislature in 1901 abolished the office of mayor for second-class cities, of which Pennsylvania had three at the time, and established in its place the office of recorder,¹⁶⁶ to be appointed by the Governor. Philadelphia was a second-class city at the time. The effect of this ripper bill was to remove the ability of citizens of a city to elect the executive of their city thereby excluding the local electorate from the decision-making process.

After decades of *imperio* home rule, concerns about local authority continued. Issues with *imperio* home rule led to renewed calls for an increase in the scope of local autonomy. The 1950s and 1960s saw a new reform movement with a new proposal for home rule. The American Municipal Association and the National Municipal League proposed a new framing of home rule that would involve granting delegated police power to local governments.¹⁶⁷ These approaches to home rule are referred to as legislative home rule. Many states today have some form of legislative home rule.¹⁶⁸ However, it is subject to the preemptive power of the state legislature. Scholars such as Professor David Barron have questioned whether home rule has provided greater authority to local governments.¹⁶⁹ Professor Paul Diller contended that home rule increased the policymaking authorities of cities beyond what was permissible under

¹⁶¹ RI. CONST. art. XIII s. 2.

¹⁶² See Kenneth Stahl, *Preemption, Federalism and Local Democracy*, 44 FORDHAM URB. L. J. 133, 171 (2017).

¹⁶³ See Paul A. Diller, *Reorienting Home Rule: Part 2- Remediating the Urban Disadvantage through Federalism and Localism*, 77 LA. L. REV. 1045, 1066 (2017). (“In a classic “imperio” regime, the state judiciary divides the realm of local enactments into matters of local, statewide, or mixed concern.”).

¹⁶⁴ See Davidson ET AL., *supra* note 70, at 11-12.

¹⁶⁵ See JOSEPH ZIMMERMANN, *STATE AND LOCAL INTERACTIONS* 4 (2012).

¹⁶⁶ See Amasa Eaton, *Ripper Cases*, 15 HARV. L. REV. 468 (1902).

¹⁶⁷ See Diller, *supra* note 37, at 1125.

¹⁶⁸ *Id.* at 1126-27.

¹⁶⁹ Barron, *supra* note 152, at 2291-2300.

Dillon's Rule's meager grant.¹⁷⁰ This may be true in policy fields that are not preempted, but fields that are preempted may not have space reserved for local regulation.

As previously stated, home rule grants can also be limited by the interpretative power of state courts. The courts can adopt a restrictive view of the scope of municipal powers, which can affect the effectiveness of home rule grants. Cases in which a state court protects local policy initiatives from state override are generally based on some state constitutional protection.¹⁷¹ In Wyoming, the state Supreme Court did not acknowledge the home rule provision in the 1972 state constitutional amendment as a redistribution of power even though voters overwhelmingly supported the amended constitution.¹⁷² In *Coulter v. City of Rawlins*, the Wyoming Supreme Court held that "it is settled that municipal corporations are creatures of the legislature and thereby subject to statutory control."¹⁷³ Wyoming is not the only state to amend its constitution to recognize a broader interpretation of home rule authority. The Illinois Constitution declares that the "powers and functions of home rule units should be construed liberally."¹⁷⁴ This "construed liberally" phrase was added by an amendment enacted in response to state courts being slow to limit the value placed on Dillon's rule and narrowly interpreting home rule.¹⁷⁵

Grants of home rule are usually defined as limited by reference to 'local concerns' or matters of 'local concern'. State courts must balance legitimate local concerns and legitimate state-wide concerns.¹⁷⁶ State courts have sided with local governments in recognizing local concerns as overriding state concerns. For example, in *Johnson v. Bradley*,¹⁷⁷ the California Supreme Court struck a balance between local concern and state-wide concern. Voters in Los Angeles approved a change municipal election funding program for Los Angeles with Proposition 73.¹⁷⁸ The successful proposition amended Los Angeles' charter and imposed a complete ban on the public funding of any candidate. The California Constitution specifically

¹⁷⁰ Diller, *supra* note 37, at 1124.

¹⁷¹ See Paul Diller, *Reorienting Home Rule: Part 2 – Remedying the Urban Disadvantage Through Federalism and Localism* 77 LOU. L. REV. 1049 (2017).

¹⁷² See Smith & Johnson, *supra* note 151, at 791.

¹⁷³ *Coulter v. City of Rawlins*, 662 P.2d 888, 895 (Wyo. 1993).

¹⁷⁴ ILL. CONST., art. VII, § 6.

¹⁷⁵ See Richard Wandling, *Illinois*, in HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (Krane et al, 2001), at 129-30.

¹⁷⁶ See Richard Briffault, *Home Rule and Local Political Innovation*, 22 J.L. & Pol. 1, 18 (2006).

¹⁷⁷ *Johnson v. Bradley*, 841 P.2d 990, 993 (Cal. 1992).

¹⁷⁸ Briffault, *supra* note 176, at 20.

recognizes city charters' competency to regulate the conduct of elections.¹⁷⁹ The court concluded that Los Angeles had the plenary authority to “make and enforce all ordinances and regulations in respect to municipal affairs.”¹⁸⁰ The Court acknowledged that the electoral process was an issue of state and local concern. It ultimately concluded that the interest of the municipalities in local elections outweighed the state interest.¹⁸¹ However, as the litigation in Chapter IV demonstrates, state courts do not always take this approach to interpreting state and local interests.

A new solution has been proposed to address limitations placed on local authority in the current framing of home rule. A project led by Professor Nestor Davidson,¹⁸² in collaboration with some of the leading scholars of state and local government law, has proposed a new 21st century home rule charter that would allow cities to govern within their jurisdiction and limit state oversight. It also features a presumption against state preemption.¹⁸³ This presumption is described as follows:

“[t]o appropriately balance state and local authority, a system of home rule should provide that states may only act with respect to home rule governments expressly. And to exercise power to preempt, the state must articulate—and, in the case of state-local conflict, must demonstrate—a substantial state interest, narrowly tailored. Moreover, state laws displacing local authority should be general, not unreasonably singling out individual local governments or groups of local governments”.¹⁸⁴

This project has been unable to uncover any states that have adopted this proposal.

Intrastate preemption

Intrastate preemption is a legal doctrine at the state level that permits the state legislature to reserve a policy area for the state legislature to regulate.¹⁸⁵ It applies when there is a conflict between state and local law.¹⁸⁶ State law will prevail when there is an apparent

¹⁷⁹ CAL. CONST., art IX, § 5(b)(3) (1970).

¹⁸⁰ *Johnson*, 841 P.2d, at 994.

¹⁸¹ *Id.*

¹⁸² Davidson, ET AL., *supra* note 70.

¹⁸³ *Id.*, at 26.

¹⁸⁴ *Id.*

¹⁸⁵ Professor Paul Diller coined this term. *See* Diller, *supra* note 37.

¹⁸⁶ *Id.*, at 1121, (“[p]reemption only occurs when two levels of government operate within the same sphere”).

conflict between state and local law.¹⁸⁷ While intrastate preemption has been interpreted as negatively impacting local autonomy, some situations justify preemption. Each state is also different in the way it preempts. Some states preempt more than others.¹⁸⁸

Most states' preemption frameworks are similar to the federal model. However, states can choose which elements of the federal preemption doctrine they wish to use or disregard for state preemption. It may be more appropriate to see the doctrine of intrastate preemption as a repurposing of the federal preemption doctrine with no requirement to follow it *verbatim*. All U.S. states have their own constitution, legal traditions, and, in some cases, their own legal doctrines to interpret the conflict of laws between state preemption and local regulations. Only one state, Utah, has formally applied the federal doctrine as the template for its internal intrastate preemption doctrine.

Interstate preemption is one of the tactics used by interest groups to oppose local policies they dislike. Professor Diller has argued that implied preemption is susceptible to strategic litigation efforts by interest groups like the NRA.¹⁸⁹ As this research suggests, this is a tactic that is extensively used by the NRA and other pro-gun rights groups, which lobby for state legislation that will preempt local regulation that might seek to extend existing measures of gun regulation within their areas. However, the use of preemption by interest groups to oppose local policies is not limited to firearms and includes other policy areas like fracking and smoking.

¹⁸⁷ See GERALD E. FRUG, RICHARD T. FORD & DAVID J. BARRON, *LOCAL GOVERNMENT LAW: CASES AND MATERIALS* 218 (6th ed., 2015).

¹⁸⁸ *Compare* 18 PA. CONS. STAT. § 6120(a) (2014) (“[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”) *with* WASH. REV. CODE 9.41.290 (1994) (“[t]he state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law... and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality”).

¹⁸⁹ Diller, *supra* note 37, at 1134-40. (Diller does not specifically reference the NRA). Chapter IV of this thesis includes cases where pro-gun interest groups, like the NRA, have been involved in preempted-based litigation filed in response to local gun control enactments.

Preemption can be expressed or implied. Express preemption occurs when the state legislature has clearly preempted a policy field from local regulation. For example, when a state has expressly included all regulation of ammunition in the state's firearms preemption statute, ammunition cannot be regulated by local governments. However, when the express provisions of a preemption statute are ambiguous or do not expressly mention all sub-areas that may comprise a policy field, it can be challenging to identify the boundaries of the preempted field. Though not expressly in the state preemption statute, portions of the policy field can still be found to be implicitly preempted.

When the text of a state preemption statute and a local ordinance does not reveal an express conflict or clear guidance from the legislature on the limits of the preempted field, state courts may be asked to determine whether local authority has been implicitly preempted.¹⁹⁰ Every state except Illinois has some form of implied preemption.¹⁹¹ Implicit preemption comes in two types: conflict and field.¹⁹² In the next chapter, bills expanding the explicitly preempted field of firearms and bills restricting the expressly preempted field are discussed.¹⁹³ The cases in Chapter IV include questions of statutory interpretation as to whether the respective state firearms preemption statutes implicitly preempt the entire field of firearms.¹⁹⁴

Conflict preemption occurs when state courts review the municipal ordinance in question for possible interference with the state law or the state's constitutional obligations.¹⁹⁵ Many states apply the prohibit/permit test.¹⁹⁶ This test asks whether the municipal regulation has permitted an act prohibited by state law or prohibits an act permitted by state law. The presumption is that state law sets the regulatory floor; anything above that floor is prohibited by state law and may not be regulated. Businesses have seized upon this test to successfully

¹⁹⁰ Diller, *supra* note 37, at 1115-16; See also Lauren Phillips, *Impeding Innovation: State Preemption of Progressive Local Regulations* 117 COLUM. L. REV. 2225, 2234-35 (2017).

¹⁹¹ *Id.*, Diller, at 1141.

¹⁹² *Id.*

¹⁹³ See, e.g., Texas HB 3231 (2019). This bill added the possession, wearing, and carrying of firearms to the expressly preempted field of firearms in Texas.

¹⁹⁴ See, e.g., *Bass*, 508 P.3d (Wash. 2022). In this case, the Washington Supreme Court considered whether the state firearms preemption statute implicitly preempted the entire field of firearms regulation.

¹⁹⁵ See Diller, *supra* note 37, at 1142.

¹⁹⁶ *Id.*

seek the invalidation of municipal ordinances on issues ranging from LGBTIQ+ rights protections to environmental protections.¹⁹⁷

Field preemption occurs when a preemption statute is considered to have reserved a field for exclusive regulation by the state government. Implied field preemption occurs when the statute does not expressly preempt an entire policy field. Still, the preemption statute can be interpreted as broad enough to preempt the whole policy field. For example, a lawsuit against a city on preemption grounds challenging a city safe storage of firearms ordinance may be based on the argument that the state firearms preemption statute is so broad that the state legislature intended to preempt the entire field of firearms. The recent case of *Bass v. Edmonds*, presented in Chapter IV, considered this legal claim.¹⁹⁸

Recent trends in intrastate preemption have featured what Professor Erin Scharff of Arizona State University termed hyper preemption.¹⁹⁹ They are also called super preemption²⁰⁰ and punitive preemption.²⁰¹ These terms describe state preemption laws that go beyond reserving the policy field and instead seek to impose some form of punishment on municipalities or local legislators who regulate in conflict with state preemption laws. Briffault *et al.* summarized this phenomenon as going beyond traditional preemption with the aim of “actually punishing cities and their officials for adopting preemptive measures – or even failing to formally repeal local laws that have been rendered ineffective.”²⁰² This thesis presumed hyper preemption would be present in the data set presented in Chapter III. Twenty-six preemption bills with hyper preemption provisions are included in the data set, and three of those bills were enacted.

¹⁹⁷ See, e.g., Public Facilities Privacy & Security Act, H.B. 2, 2016 2d. Leg. Sess (NC, 2016). This bill, also known as the ‘bathroom bill’, preempted cities from permitting people to use any bathroom other than bathrooms designated for their gender at birth. It was enacted in response to Charlotte, North Carolina enacting an ordinance that expanded state anti-discrimination protections to LGBTIQ people.

¹⁹⁸ *Bass*, 508 P.3d (Wash. 2022).

¹⁹⁹ Scharff, *supra* note 28.

²⁰⁰ See Bradley Pough, *Understanding the Rise of Super Preemption in State Legislatures*, 34 J.L. & POL. 67, 68 (2018).

²⁰¹ See Briffault, *supra* note 30, at 1997 & 2002-07.

²⁰² Richard Briffault, Nestor Davidson, Paul A. Diller, Olatunde Johnson & Richard C. SCHRAGGER, AM. CONST. SOC’Y FOR LAW & POL’Y, *The Troubling Turn in State Preemption: The Assault on Progressive Cities and How Cities Can Respond*, Policy, AM. CONST. SOC’Y FOR L. & POLICY 9 (2017). The question of whether failing to repeal city ordinances that conflict with a state preemption statute render local officials liable under the hyper preemption laws in Florida was one of the legal questions considered in *Florida Carry v. Tallahassee*. This case is discussed below.

Hyper preemption can take the following forms: civil liability against the municipality or local officials, criminal liability for local officials, removal from office of local officials, and other punitive financial measures. Criminal liability can include both misdemeanor offenses and felony offenses. The expanded liability that local officials face from hyper preemption may discourage local governments from enacting regulations with majority support within the community.²⁰³ This means that local officials may not be able to act in the way they were elected to do. Professor Scharff warns that hyper preemption can punish local governments for taking a policy stance that “only arguably violate[s] state law.”²⁰⁴ Hyper preemption can also threaten local legislative immunity.

Some states have enacted legislation that not only reserves to the state the regulation of policy areas, such as firearms but also seeks to deter municipalities and their officials from regulation in the first place by imposing forms of civil and criminal liability. There are so far, not many states that have done this. One example is Arizona SB 1487, which provides that a local lawmaker could face a civil penalty of up to \$50,000 for violating the state’s firearms preemption statute.²⁰⁵ This is a heavy deterrent for lawmakers, some of whom are part-time and may struggle to pay the fine if the maximum penalty is levied.²⁰⁶

Florida has also enacted punitive measures of this kind; fines for regulating in conflict with state firearms preemption can amount up to \$5,000.²⁰⁷ If a court finds that a local official has knowingly and willfully violated the preemption statute, a similar standard as Arizona, then the court shall impose a civil penalty of up to \$5,000.²⁰⁸ Local officials may not use public funds to defend themselves.²⁰⁹ This means that local officials must personally pay legal costs to defend themselves against civil action. This includes when the challenged action was undertaken as part of the elected official's official duties.

²⁰³ See Proctor May, *infra* note 261, at 6.

²⁰⁴ Scharff, *supra* note 28, at 1473.

²⁰⁵ ARIZ. REV. STAT. § 13-3108(I) (2021).

²⁰⁶ Ryan Santistevan, *Gilbert Cuts Politicians’ Pay but What is the Going Rate for City Officials in Arizona?*, THE REPUBLIC (Dec. 11, 2019), <https://eu.azcentral.com/story/news/local/gilbert/2018/04/17/mayor-and-city-council-salaries-metro-phoenix/501030002/>.

²⁰⁷ FLA. STAT. § 790.33(3)(c) (2011).

²⁰⁸ *Id.*

²⁰⁹ FLA. STAT. § 790.33(3)(d) (2011).

Arizona²¹⁰ and Florida²¹¹ have also granted authority to their governor to remove local officials who violate the state preemption statute. The law in Arizona permits the removal of a local official from office when the official has knowingly and willfully violated the preemption statute.²¹² Recent cases that address the constitutionality of the Florida preemption law are analyzed later in this sub-section.

Using hyper preemption to deter local legislators raises questions about whether it conflicts with legislative immunity. The U.S. Constitution protects legislative immunity for Congress. Article I, Section 6 states that members of Congress shall in “all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.”²¹³ This speech and debate clause originates in Parliamentary privilege in the United Kingdom. The U.S. Supreme Court concluded in *Tenney v. Brandhove* (1951), “[t]he privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings has taproots in the Parliamentary struggles of the Sixteenth and Seventeenth Centuries.”²¹⁴ The Court has recognized legislative immunity as extending to state legislators.²¹⁵ The question of the applicability of legislative immunity for local officials in response to hyper preemption has been raised in Kentucky, which has expressly waived legislative immunity for local officials who regulate in conflict with state firearms preemption.²¹⁶ This creates an exception to the general rule under the Kentucky Constitution that affords legislative immunity.²¹⁷

Florida state courts have considered legislative immunity for local officials. One such case is *Florida Carry v. City of Tallahassee* (2015).²¹⁸ Florida Carry and the Second Amendment Foundation brought a lawsuit against the city of Tallahassee and four elected city officials who refused to vote to repeal two city ordinances alleged to conflict with the state firearms preemption statute. The city enacted the ordinances in 1957 and 1984, respectively.

²¹⁰ ARIZ. REV. STAT. § 13-3108(J) (2019).

²¹¹ FLA. STAT. § 790.33(3)(e) (2011).

²¹² § 13-3108(J).

²¹³ U.S. CONST. art I, § 6.

²¹⁴ *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951).

²¹⁵ *Id.*, at 372-4.

²¹⁶ KY. REV. STAT. ANN. § 65.870(4) (2012).

²¹⁷ KY. CONST., §231.

²¹⁸ *Florida Carry Inc. & the Second Amend. Found. Inc. v. City of Tallahassee*, 212 So.3d 452 (2017).

The state legislature passed a firearms preemption law in 1987.²¹⁹ In 2011, the state legislature added the hyper preemption measures discussed above,²²⁰ but the city government took no action on the two ordinances. In 2011, the Tallahassee Police Chief issued a memorandum recognizing that the ordinances were unenforceable.²²¹

The respondents filed a counterclaim arguing, *inter alia*, that they had legislative immunity.²²² The trial judge found that since the respondents had not promulgated within the meaning of the statute, there was no violation of the statute. As a result, there was “no case in controversy upon which the Court needs to address.”²²³ The trial court did not directly address the question of legislative immunity. The Florida Court of Appeal affirmed the decision not to address legislative immunity.²²⁴ As a result, whether the hyper preemption provisions conflicted with legislative immunity was left unanswered.

The recent Florida Supreme Court case of *Weston v. Florida* (2022)²²⁵ was filed by Florida municipalities challenging the Florida preemption statute’s hyper preemption provisions on, *inter alia*, legislative immunity grounds.²²⁶ One of the original plaintiffs is Dan Daley, now a Democrat member of the state legislature who introduced a bill (HB 6006) proposing to repeal the preemption statute. Chapter III considered this bill. *Weston* grew in the number of plaintiffs to more than 30 Florida municipalities and the Agriculture Commissioner and former Democrat candidate for Governor, Nikki Fried. The Florida Supreme Court decided the case in favor of the state.²²⁷

²¹⁹ *Id.*, at 455-56.

²²⁰ § 790.33(3)(c)–(e).

²²¹ *Florida Carry*, 212 So.3d, at 456.

²²² Defendant’s Answer and Counterclaim for Relief at 11-12, *Florida Carry & Second Amend. Found. v. City of Tallahassee*, (Leon Cnty. Cir. Ct., Fla. Jul. 26, 2015), 37-2014-CA-001168.

²²³ *Florida Carry & Second Amend. Found. v. City of Tallahassee*, 37-2014-CA-001168, at 9-12 (Leon Cnty. Cir. Ct., Fla. Jul. 26, 2015). (The court found that promulgation for the purpose of the statute is “used in a legislative sense as in legislatively adopting or enacting.” The defendants’ inaction did not meet the definition of promulgation.).

²²⁴ *Florida Carry*, 212 So.3d, at 465-66.

²²⁵ *Weston v. Florida* was consolidated with *Fried v. Florida* 355 So.3d 899 (Fla. 2023). The plaintiff’s arguments for legislative immunity are threefold: 1) it is based in Florida common law, 2) it is based in the Florida Constitution and 3) it is based in federal law.

²²⁶ *Weston v. DeSantis*, 2018-CA-000699 (Leon Cnty., Fla. Cir. Ct. Jul. 27, 2019).

²²⁷ *Fried*, 355 So.3d. This lawsuit was consolidated with *Weston*. The Florida Supreme Court determined that local officials did not have immunity in relation to the preemption statute.

In *Weston*, the trial judge held that local officials had no Florida common law immunity as “the legislature had abrogated the common law legislative immunity”²²⁸ in relation to firearms. However, relying on the U.S. Supreme Court decision in *Bogan v Scott-Harris* (1998),²²⁹ where the Supreme Court held that “the rationales for according absolute immunity to federal state and regional legislatures apply with equal force to local legislatures”,²³⁰ the trial judge in *Weston* noted that the language used by the Court in *Bogan* goes to the heart of the case in *Weston*. The Supreme Court in *Bogan* based its interpretation of legislative immunity by relying partly on *Tenney v Brandhove* (1951) and extended legislative immunity to local governments.²³¹ On this basis, the trial court in *Weston* concluded that “[b]ecause local governments must have what amount to small legislatures, and because courts cannot interfere in legislative processes, neither this court nor any other court in Florida, can enforce the civil penalty provisions ... against local legislators”.²³²

In *Tenney*, the U.S. Supreme Court considered the actions of the California Senate Committee on un-American relations.²³³ The majority in *Tenney* recognized immunity for the Senate Committee.²³⁴ Writing for the majority, Justice Frankfurter; in response to criticisms of the committee as being dishonest and vindictive; concluded that such controversies were not for the courts, but rather the electorate was the best source of accountability.²³⁵ However, Justice Douglas dissented and argued that there is a limit to this immunity.²³⁶ While this was not his point of contention with the majority opinion, Justice Douglas could not agree “that all abuses of legislative committees are solely for the legislative body to police.”²³⁷ Douglas was concerned with using immunity for illegal or corrupt purposes and suggested that when this happens, immunity ends.²³⁸

The Florida Court of Appeal reversed the trial court’s decision in *Weston* and held that legislative immunity does not shield local officials from the preemption statute.²³⁹ The

²²⁸ *Weston*, 2018-CA-000699, at 3.

²²⁹ *Bogan v. Scott-Harris* 523 U.S.44 (1998).

²³⁰ *Weston*, 2018-CA-000699, at 4.

²³¹ *Bogan* 523 U.S., at 48.

²³² *Weston*, 2018-CA-000699, at 5.

²³³ *Tenney*, 341 U.S. at 370.

²³⁴ *Id.*, at 377-8.

²³⁵ *Id.*, at 378.

²³⁶ *Id.*, at 381 (Douglas, J, dissenting).

²³⁷ *Id.*, at 381-382 (Douglas, J, dissenting).

²³⁸ *Id.*, at 382 (Douglas, J, dissenting).

²³⁹ *State v. Weston*, 316 So. 3d. 398, 404 (Fla. Dist. Ct. App. 2021).

municipalities appealed to the Florida Supreme Court. On January 19, 2023, the Supreme Court affirmed the court of appeal's judgment.²⁴⁰ The Court held that legislative immunity did not apply in relation to local officials regulating in conflict with the preemption statute. The Court concluded that "because legislative immunity as applied to local officials is a common law doctrine that the Legislature abrogated in the context covered by the Preemption Statute [...] legislative immunity does not prohibit the statutory penalties."²⁴¹ A conclusion that can be drawn from this is that legislative immunity may not protect local officials from hyper preemption.

Partisanship

The second dynamic of this project's exploration of intergovernmental relations is that of partisanship and how partisanship affects the relationships between state and city governments. The divisiveness of contemporary American politics continues to grow, including around hot-button issues like gun control. It is in this environment that progressive cities are attempting to enact gun control, and conservative state legislatures are enacting expanded preemption measures and hyper preemption measures.

On January 6, 2021, rioters attacked the capitol building while Congress was certifying the recent presidential election.²⁴² Following these events, questions re-surfaced about why America is divided.²⁴³ The question of why is important, but also of importance is how America is divided. Professor Eli Frankel *et al.* have argued that what is being seen in America is political sectarianism.²⁴⁴ This political sectarianism, according to these scholars, is growing for three main reasons: the Democrat and Republican parties have sorted into ideological identity and demography, Americans have become more receptive to receiving information and news with a partisan slant,²⁴⁵ and politicians and other political elites have diverged on ideological

²⁴⁰ *Fried*, 355 So.3d.

²⁴¹ *Id.*, at 10.

²⁴² Ted Barrett & Manu Raju, *US Capitol Secured, 4 Dead After Rioters Stormed the Halls of Congress to Block Biden's Win*, CNN (Jan. 7, 2021), <https://edition.cnn.com/2021/01/06/politics/us-capitol-lockdown/index.html>.

²⁴³ Ian Bremmer, *The U.S. Capitol Riot Was Years in the Making. Here's Why America Is So Divided*, TIME (Jan. 16, 2021), <https://time.com/5929978/the-u-s-capitol-riot-was-years-in-the-making-heres-why-america-is-so-divided/>.

²⁴⁴ Eli J. Finkel, Christopher A. Bail, Mina Cikara, Peter H. Ditto, Shanto Iyengar, Samara Klar, Lilliana Mason, Mary C. McGrath, Brendan Nyhan, David G. Rand, Linda J. Skitka, Joshua A. Tucker, Jay J. Van Bavel, Cynthia S. Wang & James N. Druckman, *Political Sectarianism in America*, 370 SCI. MAG. 533 (2020).

²⁴⁵ Finkel ET AL. have also argued that the media ecosystem has inflamed political secularism.

grounds.²⁴⁶ These three factors contribute to a more divided political environment in the country. Chapter III presented the results of an investigation into recent state legislative behavior in this political environment. These factors also suggested that there would be a partisan element to recent preemption bills presented in state legislatures. The data presented in the next chapter demonstrates that this assumption was correct.

The result of the surge in sectarianism is that there has been an increase in the social distance between Democrats and Republicans.²⁴⁷ The current political landscape has caused an observed increase in Members of Congress putting partisan purity over compromises that appeal to many Americans.²⁴⁸ This thesis presumed that a similar prioritization of partisan purity occurs at the state level. Just as political sectarianism limits the federal government's ability to confront national challenges, so does it limit state governments' ability to face state-level challenges. It also disincentivizes states from empowering local governments to address their local concerns when the local policy preferences conflict with the ideology of the party in power in state government. As a result, local governments' ability to address local concerns is limited in politically divisive policy areas.

The increase in political sectarianism has also seen a rise in outgroup hate.²⁴⁹ The term ingroup refers to the group an individual identifies as part of, in this case, their political party. The outgroup is the other party and those affiliated with that group. The favored policy aims of the ingroup and outgroup are important aspects of the groups' identities. This increase in outgroup hate has grown to the point where outgroup hate is a stronger feeling than ingroup love.²⁵⁰ That means that it has become more common to hate the opposing party than to like the party one associates with. Such realities extend the social distance between Democrats and Republicans, thereby deepening the political divisions in America. These divisions are not only political. There are also geographic divisions. These geographic divisions have connections to political partisanship.

Urban-rural divide and anti-urbanism

²⁴⁶ Finkel ET AL., *supra* note 244, at 534.

²⁴⁷ *Id.*, at 535.

²⁴⁸ *Id.*

²⁴⁹ *Id.*, at 534.

²⁵⁰ *Id.*, at 536.

The term urban-rural divide refers to the different political views of urban and rural inhabitants. The modern form of this divide in America started during the New Deal era.²⁵¹ Democrats became a more urban party as they formed links with labor unions and urban industrial workers.²⁵² At the same time, Republicans started forming connections with rural and exurban groups. The extent of the divide started becoming more pronounced in the 1980s. This has led to urban-rural polarization. The urban-rural divide is not unique to the United States. However, due to the rigid two-party system and the winner-take-all elections of the United States, the urban-rural divide in the country is especially consequential. Professor Jonathan Rodden argues that when the urban-rural divide is combined with a winner-take-all election system like in the United States, cities lose.²⁵³

Anti-urbanism, which is hostility towards urban areas and cities, is a result of this urban-rural divide. Professor Paul Diller has argued that an anti-urban bias is built into the U.S. Constitution, including in the composition of the two houses of the legislative branch. This bias is also a feature seen in the redistricting of state and congressional districts.²⁵⁴ This means that anti-urban bias in the U.S. constitutional structure has manifested in the composition of Congress. This bias featured in the Federal Constitution influences the makeup of the membership of Congress. It has also been argued that this structural anti-urbanism further reinforces a widening political gap between cities and the rest of the country.²⁵⁵ The composition of the membership of the U.S. Senate has been seen as an impediment to city power.²⁵⁶ The U.S. Senate's membership composition violates the one person, one vote principle and commentators such as Professor Diller see this as a distinct detriment to voters in very populous states with major metropolitan areas.²⁵⁷ This, argues Professor Schragger, is due to malapportionment,²⁵⁸ i.e., “a clear discrepancy between the share of seats in the legislature

²⁵¹ See Melissa De Witte, *A growing rural-urban divide has led to the political underrepresentation of people living in cities, Stanford political scientist finds*, STANFORD NEWS, <https://news.stanford.edu/2019/06/03/urban-rural-divide-shapes-elections/>. This Article was an interview with Professor Rodden.

²⁵² *Id.*

²⁵³ See Rodden, *infra* note 263, at 10 & 72. (Rodden also argues that the geographic polarization in the United States has developed to the point that at the point of the 2016 elections, ‘left’ was practically synonymous with urban, and ‘right’ was practically synonymous with non-urban).

²⁵⁴ Paul Diller, *Reorienting Home Rule: Part 1 – The Urban Disadvantage and State Lawmaking*, 77 LA. L. REV. 287, 291 (2016).

²⁵⁵ Schragger, *supra* note 35, at 1168.

²⁵⁶ *Id.*, at 1188.

²⁵⁷ Diller, *supra* note 254, at 308.

²⁵⁸ Schragger, *supra* note 35, at 1188.

and the share of population held by the geographical units”,²⁵⁹ which leaves urban residents underrepresented at the federal level. For example, Wyoming is the least populated state with a population of about 576,000 people.²⁶⁰ Its residents have the same representation as the state of California, which has a population of approximately 39,000,000. This means the Senate’s composition violates the one person, one vote principle. As a result, the anti-urban bias in the U.S. Constitution arguably can be seen as undemocratic and facilitating the underrepresentation of Americans living in urban areas.

Rachel Proctor May contends that because there are no limitations on political gerrymandering, “while urban electorates bleed blue, election maps sweep red.”²⁶¹ This means that, due to political gerrymandering, urban electorates are underrepresented in legislatures. Democrats also gerrymander, but the fact that Republicans control a majority of state legislatures translates into more opportunities for Republicans to gerrymander.²⁶² As cities become more Democrat-leaning, cities are disadvantaged when the party city voters tend to vote for, the Democratic party, is not in control of the state legislature. Winning the most votes is sufficient for a party to claim victory in most democracies. This is not always the case in the U.S. Political parties can win a majority of seats in the Houses of Congress or win the Presidency without winning the majority of the vote.²⁶³ For example, during the 2012 U.S. general elections, Democrats received 1,500,000 more votes than Republicans but ended up with only 45% of the seats in the House of Representatives, which demonstrates the disadvantage faced by Democrats.²⁶⁴ This means that Democrats must win big to win control of the House of Representatives. It also creates an advantage gap for Republicans.²⁶⁵

²⁵⁹ See David Samuels & Richard Snyder, *The Value of a Vote: Malapportionment in a Comparative Perspective*, 31 B.J. POL. S. 651, 652 (2001).

²⁶⁰ *America Counts staff, Wyoming remains the nation’s least populated state*, U.S. Census Bureau (Aug 25, 2021), <https://www.census.gov/library/stories/state-by-state/wyoming-population-change-between-census-decade.html>.

²⁶¹ Rachel Proctor May, *Punitive Preemption and the First Amendment*, 55 SAN DIEGO L. REV. 1, 3 (2018).

²⁶² According to the National League of State Legislators, Republicans control both houses of the legislature in 28 states. See also State Partisan Control, NAT’L LEAGUE OF STATE LEGISLATORS, <https://www.ncsl.org/about-state-legislatures/state-partisan-composition>.

²⁶³ See JONATHAN RODDEN, *WHY CITIES LOSE: THE DEEP ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE* 1 (2019).

²⁶⁴ *Id.*

²⁶⁵ See Laura Bronner & Nathaniel Rakich, *Advantage, GOP*, FIVE THIRTY-EIGHT (Apr. 29, 2021), <https://fivethirtyeight.com/features/advantage-gop/>.

Cities are also underrepresented at the state level. For example, geographic sorting²⁶⁶ and gerrymandering gave Republicans control of four state legislative houses after the 2020 elections, even though Democrats won the popular vote in those states.²⁶⁷ This means city voters had disproportionately less representation in those state legislatures. The underrepresentation of city voters can also lead to the overrepresentation of rural voters in state legislatures. This only widens the urban-rural divide at the state level. It can also lead to the deprioritizing of issues facing cities.

Professor Schragger argues that in the recent era of preemption: “state legislatures have been motivated by hostility to local regulation—and in almost all cases to regulations adopted by specific cities. Cities such as Cleveland, New York, Detroit, Birmingham, El Paso, Austin, Miami, Charlotte, Greensboro, and others have been the main targets of their respective legislatures’ preemptive legislation”.²⁶⁸ This suggests that anti-urbanism features in the recent era of preemption. To test this, this project investigated the potential role of anti-urbanism in recent legislative trends in relation to firearms preemption. The results of this investigation are considered in the next chapter.

Firearm regulation is a politically contentious issue. In 2016, gun rights were a central issue in the U.S. general election.²⁶⁹ This was the first time since 1994 when Democrats suffered a backlash from gun rights groups after President Bill Clinton signed a gun control bill into law.²⁷⁰ On December 14, 2012, the Sandy Hook Elementary shooting changed the national gun violence discourse.²⁷¹ The shooting left 20 six and seven year old children and six adults dead.²⁷² It was not the first mass shooting of the year, but something about Sandy Hook and the young victims caused a change in the politics of firearms.

²⁶⁶ This project defines geographic resorting as the moving of populations in America from rural and exurban areas to urban areas. See also John Burnett, *Americans are fleeing to places where political views match their own*, NPR (Feb. 18, 2022), <https://www.npr.org/2022/02/18/1081295373/the-big-sort-americans-move-to-areas-political-alignment>. (“America is growing more geographically polarized — red ZIP codes are getting redder and blue ZIP codes are becoming bluer. People appear to be sorting.”).

²⁶⁷ See Bronner & Rakish, *supra* note 265.

²⁶⁸ Schragger, *supra* note 35, at 1165.

²⁶⁹ Philip Elliott, *The New Politics of Gun Control*, TIME (Sept. 12, 2016), <https://time.com/4475624/the-new-politics-of-gun-control/>.

²⁷⁰ *Id.*

²⁷¹ See ADAM WINKLER, *GUN FIGHT: THE BATTLE OVER THE RIGHT TO BEAR ARMS IN AMERICA* xi (2013); See also Powell, *infra* note 304, at 9. (Joshua Powell, the former Chief of Staff of Wayne LaPierre, recalled, “Sandy Hook marked a turning point for the NRA, and America, in terms of gun violence.”).

²⁷² *Id.*, Winkler.

Views on firearms correlate to political views and affiliation. At the risk of oversimplification, Republicans take an anti-gun control stance, and Democrats support gun control. The 2016 Republican National Committee platform frames the party's position on firearm regulations as part of the party's effort to protect the right to bear arms.²⁷³ The platform openly opposed restrictions on the capacity of firearm magazines and efforts to ban what the platform calls "sales of the most popular and common modern rifle."²⁷⁴ This appears to be a reference to assault weapons like the AR-15. The platform also opposed the deprivation of the rights of people to keep and bear arms without due process. This appears to be related to ERPO or red flag laws. Chapter III presents preemption bills, including provisions to preempt assault weapons bans and red flag laws. Chapter IV presents city ordinances that, *inter alia*, banned assault weapons and created a municipal red flag law.

Republicans have faced backlash for supporting gun control. In July 2022, two Republicans Congressmen who voted for an assault weapons ban were called traitors by the pro-gun advocacy group the American Firearms Association.²⁷⁵ Republican John Kasich faced backlash from the NRA for vetoing a pro-gun omnibus bill during his time as Ohio's Governor.²⁷⁶ The party platform and pro-gun rights organizations encourage a pro-gun stance from Republicans and rebuke Republicans for supporting gun control.

Democrats take the opposite position. Their platform calls for more gun control and presents it as part of a strategy to end the epidemic of gun violence.²⁷⁷ This includes incentivizing states to put in place red flag laws.²⁷⁸ Democrats also take the opposite view of Republicans on assault weapons and high-capacity magazines by pledging to ban their sale and manufacture and support safe storage laws.²⁷⁹ Chapter IV presents regulations enacted by

²⁷³ *Republican Platform: 2016*, The Republican Nat'l Comm., https://prod-static.gop.com/media/Resolution_Platform.pdf, at 12. Note: the 2020 National Convention kept the 2016 platform. A new platform will next be considered in 2024.

²⁷⁴ *Id.*

²⁷⁵ See Aila Slisco, *Pro-Gun Group Slams 'Traitor' Republicans Who Voted for Assault Weapons Ban*, NEWSWEEK (July 29, 2022), <https://www.newsweek.com/pro-gun-group-slams-traitor-republicans-who-voted-assault-weapons-ban-1729341>.

²⁷⁶ See, e.g., Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Ohio: Self-Defense Legislation Heads to Gov. Kasich's Desk After House concurrence (Dec. 6, 2018), <https://www.nraila.org/articles/20181206/ohio-self-defense-legislation-heads-to-gov-kasichs-desk-after-house-concurrence>. This bill, HB 228, is presented in Chapter III.

²⁷⁷ *2020 Democrat Platform*, Democratic Nat'l Comm., <https://democrats.org/wp-content/uploads/2020/08/2020-Democratic-Party-Platform.pdf>.

²⁷⁸ *Id.*

²⁷⁹ *Id.*, at 48.

Seattle and Pittsburgh. Both cities put in place safe storage requirements, and Pittsburgh put in place a ban on high-capacity magazines and an assault weapons ban.

The Republican party has become more aligned with an increasingly more partisan NRA. Democrats have become more aligned with a pro-gun control stance. The story of the NRA and the history of intrastate firearms preemption are intertwined. As the NRA shifted from a marksmanship organization to an assertive defender of the right to bear arms, it developed its influence, in part, by supporting efforts to enact intrastate preemption. Today, 45 of 50 states have firearms preemption laws. Due to the past NRA success in relation firearms preemption, this project included pro-gun interest groups like the NRA in both investigations.

Interest groups

Another dynamic within partisanship is the connection between interest groups and elected politicians. Interest groups are involved in the legislative processes of all three levels of government in the United States. Interest groups have made positive contributions but concerns about the dark side of interest group influence were voiced during the early days of American independence. Founding Father James Madison was concerned about the negative impact of factions. By factions, Madison meant:

“a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community”²⁸⁰

Following World War II, the federal and state governments started assuming more control over the ‘economic affairs’ of the country.²⁸¹ This assumption of power by the state and federal governments led to a more diverse set of interest groups with a greater sense of urgency for their policy preferences. Lobbying and interest group influence were not new phenomena, but the feeling of urgency increased the intensity of lobbying efforts.

²⁸⁰ THE FEDERALIST NO. 10, at 48 (James Madison) (Clinton Rossiter ed., 1961).

²⁸¹ See Daniel Dykstra, *The Impact of Pressure Groups on the Legislative Process*, 3 WASH. U. L. REV 306 (1951).

While legislators debate and vote on bills, private lawmakers have written bills. One type of private lawmaker is the interested private lawmaker, which is the legislative arm of interest groups.²⁸² The NRA's Institute for Legislative Action (NRA-ILA) is an interested private lawmaker. The NRA-ILA is discussed below.

The influence of interested private lawmakers has grown after the U.S. Supreme Court's decision in *Citizens United v. FEC* (2010).²⁸³ In that case, the Court recognized political spending as free speech. This decision further empowered interest groups.²⁸⁴ This increased empowerment and influence of interest groups as a result of *Citizens United* necessitated the inclusion of interest groups in this project.

Politicians do not just respond to solicitations from interest groups. They also take an active role in setting the politician-lobbyist relationship.²⁸⁵ By forming lobbying enterprises with interest groups with shared policy views, politicians can provide access to their like-minded colleagues in the legislative body. Politicians are also able to make exchanges with colleagues that lobbyists cannot.²⁸⁶ The following sub-section discusses the NRA and its influence, but this project recognizes that the interest group-politician is not a one-way interaction where the interest groups alone dictate the relationship but instead is a multifaceted relationship.

The NRA

²⁸² See Barak Orbach, *Invisible Lawmaking*, 79 U. CHI. L. REV. 1 (2012). (Professor Orbach defines private lawmaking as "an ordinary rent-seeking activity of interest groups: the pursuit of self-interest through regulation.").

²⁸³ *Citizens United v. FEC*, 558 U.S. 310 (2010).

²⁸⁴ See Orbach, *supra* note 282. (Orbach argues that with its decision in *Citizens United*, the Supreme Court has "empowered interest groups, strengthening their influence over public lawmakers".); See also Amanda Marcotte, *Citizens United and the NRA: to Fix Gun Laws, We Have to Fix Campaign Finance Laws First*, SALON (Mar. 28, 2018), <https://www.salon.com/2018/03/28/citizens-united-and-the-nra-to-fix-gun-laws-we-have-to-fix-campaign-finance-laws-first/> ("The NRA offers one of the most prominent examples of how that this massive deregulation of campaign finance law has reshaped politics. Prior to these court decisions (*Citizens United v. FEC* and *SpeechNOW.org v. FEC*), the group had spent \$10 million on the 2008 election. In 2016, that number had ballooned to \$54 million").

²⁸⁵ See Scott Ainsworth, *The Role Legislators Play in the Determination of Interest Group Influence*, 22 LEG. S. Q. 517, 517-18 (1997).

²⁸⁶ *Id.*, at 518.

The link between gun rights interest groups, like the NRA, and the Republicans was established before this project.²⁸⁷ In the next chapter, I discuss the role of the NRA in recent preemption bills. The role of the NRA in the lawsuits is analyzed in Chapter IV. The NRA has been credited for contributing to the initial proliferation of intrastate firearms preemption.²⁸⁸ The NRA has also filed lawsuits to invalidate city firearms regulations on preemption grounds.²⁸⁹ Given its previous role in intrastate preemption, the investigations into recent preemption bills in state legislatures and the lawsuits filed against Pittsburgh and Seattle included examining the role of the NRA and other pro-gun pressure groups.

The NRA is the most well-known pro-gun rights pressure group. The organization was founded in 1871 by former Union Army officers Col. William C. Church and Gen. George Wingate in response to their observation of the poor marksmanship by Union soldiers during the U.S. Civil War.²⁹⁰

The organization's communication strategies to engage supporters and members are vital to its operations as well as building and exercising its influence. In 1934, the NRA founded its magazine, the *American Rifleman*. The magazine is still in circulation today and represents an essential medium through which the NRA can communicate to its supporters. Professor Matthew Lacombe's work used editorials published in the *American Rifleman* to trace how the NRA has promoted talking points and policy perspectives concerning gun control and rights.²⁹¹ Today, the NRA also uses social media and its websites to communicate with supporters. In part, this project examined the influence of the NRA by searching for communications from the NRA on specific bills and intrastate preemption.

The NRA was seen as a quasi-state organization before the 1970s. It received federal support for its marksmanship courses and shooting competitions. The NRA lobbied for the Gun

²⁸⁷ See, e.g., Scharff, *supra* note 28, at 1481. See also Amber Phillips, *The NRA-fication of the Republican Party*, WA. POST (Aug. 14, 2015), <https://www.washingtonpost.com/news/the-fix/wp/2015/08/14/the-nra-fication-of-the-republican-party/>.

²⁸⁸ See Gross, *supra* note 36.

²⁸⁹ See, e.g., *National Rifle Association v. Philadelphia* 977 A.2d 78 (Pa. 2009). The jurisprudence considered in Chapter IV in relation to the lawsuits includes preemption-based litigation filed by the NRA and other pro-gun rights interest groups.

²⁹⁰ *A brief history of the NRA*, NAT'L. RIFLE ASS'N., <https://home.nra.org/about-the-nra>. (last accessed Dec. 15, 2023).

²⁹¹ See MATTHEW LACOMBE, FIREPOWER (2020).

Control Act of 1934.²⁹² However, following the enactment of the Gun Control Act of 1968, a rift between the federal government and the NRA developed. In 1974, the NRA became a registered lobby.²⁹³ In 1976, President Gerald Ford lost his re-election bid, but future President Ronald Reagan came close to beating Ford in the Republican primaries.²⁹⁴ Reagan, aligned with the new right, was set up for success in 1980.²⁹⁵ In the 1970s, the NRA's old guard wanted to focus on gun safety and sport shooting.²⁹⁶ They were still open to some gun regulation. A group led by Harlon Carter was not interested in backing down on gun regulation.²⁹⁷ The old guard fired 80 of Carter's supporters to re-assert their authority.²⁹⁸ This did not work. In 1977, the revolt at the NRA annual convention in Cincinnati took place in a carefully orchestrated effort to use organization procedures to oust the old guard. At the end of the convention, the old guard was out, and a new leadership team was in control.²⁹⁹ This led to a reorganization that resulted in the modern NRA.³⁰⁰

The Institute for Legislative Action (NRA-ILA), the NRA's lobbying arm,³⁰¹ was founded two years before the revolt. By its admission, "the Institute employs a staff of more than 80, with a team of full-time lobbyists defending Second Amendment issues on Capitol Hill, in state legislatures and in local government bodies".³⁰² For this research, the role of the NRA in focus is its role at the state level. The NRA-ILA efforts include promoting "preemption bills to prevent attacks on gun owner rights by local anti-gun politicians."³⁰³ Because of the NRA-ILA's admitted interest in firearms preemption, indicators of the NRA involvement in preemption bills were sought with the hope of uncovering signs of NRA influence on recent firearms preemption trends.

²⁹² See Winkler, *supra* note 271, at 64-65.

²⁹³ See FRANK SMYTH, *THE NRA: THE UNAUTHORIZED HISTORY* 95 (2020).

²⁹⁴ *Id.* at 162-3.

²⁹⁵ *Id.* The NRA was not alone in its alignment with the GOP. Gun owners also became more supportive of the Republicans. See Lacombe, *supra* note 291, at 170.

²⁹⁶ See JOSEPH BLOCHER & DARRELL A. H. MILLER, *THE POSITIVE SECOND AMENDMENT: RIGHTS, REGULATION AND THE FUTURE OF HELLER* 55-56 (2018).

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ See Smyth, *supra* note 293, at 99-100.

³⁰¹ *About the NRA's Institute for Legislative Action*, NAT'L RIFLE ASS'N-INST. LEG. ACTION, <https://www.nraila.org/about/>.

³⁰² *Id.*

³⁰³ *Id.*

One of the first lobbying efforts for the post-revolt NRA promoted state preemption laws. This was very successful.³⁰⁴ In 1979, only two states had full preemption laws. By 2005, 45 states had firearms preemption.³⁰⁵ The NRA, at least in part, is as powerful as it is because of firearms preemption. The results of this research suggest that the NRA has not lost interest in preemption and has been influential in the renewed interest in preemption at the state level. Chapters III and IV present these findings.

The NRA also influences by grading and endorsing candidates running for federal, state, and local offices. Republicans receive support for their pro-gun stance. The NRA's Political Victory Fund (NRA-PVF) graded and endorsed candidates in all 50 states in the lead-up to the 2022 midterm elections.³⁰⁶ Most endorsees were Republican, with many Republicans receiving an "A" or "A+" grade. Democrats tend to receive the opposite treatment. For example, every graded Democrat running for office in Arizona received an "F" rating.³⁰⁷

The NRA supports candidates through donations to parties and direct lobbying efforts. The NRA has lobbyists in every state capitol.³⁰⁸ In 2019, the NRA spent \$1.9 million on lobbying against a bill that would have expanded background checks at the federal level.³⁰⁹ However, financial resources are not the only resources of the NRA. The pro-gun voting bloc, one of the NRA's ideological resources, is considered in the following sub-section.

NRA state lobbyists have influenced state gun laws. One influential lobbyist was Florida's Marion Hammer, a former President of the NRA. Her impact on Florida has led some commentators to refer to Florida as the 'Gunshine State', a play-on of the state motto, the 'Sunshine State.'³¹⁰ As Joshua Powell, former Chief of Staff to NRA CEO Wayne LaPierre, observed, Hammer "is the ultimate example on the part of the NRA to focus its lobbying efforts

³⁰⁴ See JOSHUA POWELL, *INSIDE THE NRA* 119-20 (2019). See, also Joseph Tartakovsky, *Firearms preemption laws and what they mean for cities*, 54 MUN. LAW. 31 (2013).

³⁰⁵ *Id.*, Powell, at 120.

³⁰⁶ *Grades and Endorsements*, NAT'L RIFLE ASS'N-POL. VICTORY FUND, <https://www.nrapvf.org/grades/> (last accessed Oct. 15, 2022).

³⁰⁷ *Grades and Endorsements: Arizona*, NAT'L RIFLE ASS'N-POL. VICTORY FUND, <https://www.nrapvf.org/grades/arizona> (last accessed Oct. 15, 2022).

³⁰⁸ Powell, *supra* note 304, at 8.

³⁰⁹ See Brian Schwartz, *NRA Spent \$1.6 Million Lobbying Against Background Check Expansion Laws in Months Leading up to Latest Mass Shootings*, CNBC (Aug. 5, 2019), <https://www.cnbc.com/2019/08/05/nra-spent-1point6-million-lobbying-against-expanded-background-check-laws.html>.

³¹⁰ See, e.g., Randy Schultz, *The Gunshine State*, BOCA MAG. (Oct. 12, 2018), <https://www.bocamag.com/gunshine-state/>.

on individual states.”³¹¹ Hammer herself has suggested that preemption “restores citizen rights and stops future abuse.”³¹² She has also argued that “[w]ith the growing arrogance and misconduct by local governments, more preemption laws are inevitable and necessary.”³¹³

Powell uses the example of Ray Pilon, a former Republican state legislator, to illustrate Hammer’s influence in Florida. Pilon missed a crucial committee meeting for a bill supported by Hammer. The NRA rating for Pilon was dropped from “A+” to “C” and Hammer, in turn, supported one of Pilon’s fellow Republican state legislators instead of Pilon for an open state senate seat.³¹⁴ Pilon was not elected to the Florida Senate.

Senior members of the Florida Republican Party were not immune from Hammer’s influence. A Hammer-backed enhanced stand-your-ground law went to the judiciary committee of the Florida House of Representatives. The committee chairperson was retiring Republican Charles McBurney. He had problems with the bill and couldn’t support it. As a result, the bill was defeated.³¹⁵ A few months later, McBurney hoped to get appointed as a circuit judge. A nominating committee had McBurney on a list of six finalists sent to the governor for approval.³¹⁶ Hammer allegedly contacted the governor’s office and pressured the governor on McBurney.³¹⁷ McBurney was not approved.

Local leaders also feel the influence of NRA lobbying at the state level. A 2018 New Yorker article looked at the impact of Marion Hammer. The reporter spoke to Dan Daley,³¹⁸ then a city council commissioner of Coral City, Florida. Coral Springs is next to Parkland, Florida. Parkland’s Stoneman Douglas High was the site of a mass shooting on February 14, 2018, that saw 17 people killed and 17 more injured.³¹⁹ In addressing his ability to respond to the shooting, Daley, recalling a conversation with a Stoneman Douglas student, said: “[h]is

³¹¹ Powell, *supra* note 304, at 119.

³¹² Marion Hammer, Opinion, *Abuse of Home Rule Necessitates Preemption Laws*, TALLAHASSEE DEMOCRAT (Dec. 12, 2017), <https://eu.tallahassee.com/story/opinion/2017/12/02/opinion-abuse-home-rule-necessitates-preemption-laws/912210001/>.

³¹³ *Id.*

³¹⁴ See Powell, *supra* note 304, at 126-27.

³¹⁵ *Id.* at 126.

³¹⁶ *Id.*

³¹⁷ *Id.* at 127.

³¹⁸ Dan Daley was one of the plaintiffs in *Weston v. DeSantis* discussed above. He is also an alumnus of Stoneman Douglas according to his campaign website. See *About*, DAN DALEY FOR SENATE, <http://www.electdandaley.com>.

³¹⁹ See Curt Anderson, *3 Years Later, Parkland School Shooting*, ABC NEWS (Feb. 11, 2021), <https://abcnews.go.com/US/wireStory/years-parkland-school-shooting-trial-limbo-75827501>.

only words to me were ‘Do something.’ I had to tell him that I legally can’t do anything because the governor could take away my job if I tried.”³²⁰ Daley was referring to the Florida hyperpreemption law, discussed above, that permits the governor to remove a local official from office for regulating in conflict with state preemption.³²¹ Hammer lobbied for that statute. Daley is one of the original applicants that unsuccessfully challenged the constitutionality of the provision he is referenced. Daley, a Democrat and now a member of the Florida House of Representatives, sponsored HB 6033.³²² HB 6033 proposed repealing firearms preemption in the state of Florida. Hammer voiced her opposition in a letter shared by the NRA-ILA.³²³ That bill failed. Another Daley-sponsored bill that proposed preemption repeal is presented in Chapter IV.³²⁴

Polling on gun control suggests that many Americans favor some gun control.³²⁵ Only limited gun control efforts have been successful at the federal level. One reason for this is the pro-gun voting bloc, an active and reliable source of votes for politicians, generally Republicans, that appeal to the voting bloc. The pro-gun voting bloc is what Professor Matthew Lacombe classifies as one of the NRA’s ideological resources.³²⁶ This ideological resource is one of the reasons why the NRA’s influence is not limited to its spending.

The NRA has been successful in cultivating a strong pro-gun voting bloc. Professor Lacombe observed that the NRA “has assiduously and strategically cultivated a distinct and politicized gun owner social identity over the course of many years, which enables it (the NRA) to influence politics by mobilizing supporters into frequent and intense political action on its behalf.”³²⁷ The NRA has used its membership communications, such as the American Rifleman, and its training programs “to strategically cultivate a distinct gun owner identity and that it has politicized this identity by framing gun control policies as not merely ill-conceived

³²⁰ Mike Spies, *The N.R.A. Lobbyist Behind Florida’s Gun Policies*, THE NEW YORKER (Feb. 23, 2018), <https://www.newyorker.com/magazine/2018/03/05/the-nra-lobbyist-behind-floridas-pro-gun-policies>.

³²¹ § 790.33(3)(e).

³²² H.B. 6033, 2021 Leg., Reg. Sess (Fl. 2021).

³²³ Marion Hammer, Florida Alert! Gun Bills Filed in Florida So Far, Nat’l Rifle Ass’n – Inst. for Legis. Action, Jan. 15, 2021, <https://www.nraila.org/articles/20210115/florida-alert-gun-bills-filed-in-florida-so-far>.

³²⁴ See Fla. H.B. 6009.

³²⁵ Rani Molla, *Polling Is Clear: Americans Want Gun Control*, VOX (Jun. 1, 2022), <https://www.vox.com/policy-and-politics/23141651/gun-control-american-approval-polling>.

³²⁶ Lacombe, *supra* note 291, at 6.

³²⁷ Matthew Lacombe, *The political weaponization of gun owners: The National Rifle Association’s cultivation, dissemination, and use of a group social identity*, 41 J. POL. 1342 (2019).

but existential threats to gun owners and the things they collectively value.”³²⁸ For this research, this politicized social structure is also seen as a voting block that Republicans would want to engage in seeking election and re-election.

Professor Lacombe observed the pro-gun voting bloc through the lens of federal elections. This project presumes that the utility of engaging the pro-gun voting bloc for Republicans running for federal office is the same for Republicans running for state office. Given the shift in party politics to political identity, attempting to appeal to this voting bloc as protectors of the Second Amendment and protecting gun rights is a reasonable strategy for Republicans. This, in turn, further solidifies the influence of the NRA.

Gun control

The third dynamic of this thesis is gun control and how the other two dynamics impact it. To complete the discussion of the third dynamic, this section lays out the right to bear arms and defines the policy field of firearms. This section is divided into two sub-sections: the right to bear arms in federal and state constitutions and the policy field of firearms.

Many countries recognize the right to bear arms. However, the regulation of firearms and the prevalence of firearms in the United States is unique. As stated in the previous chapter, there are more guns in private hands in the country than there are people in the country.³²⁹ This chapter discussed the alignment of the two major political parties, the Democrats, and the Republicans, on the right to bear arms and gun control.

The right to bear arms

The right to bear arms is constitutionally recognized in the United States. The Second Amendment to the U.S. Constitution declares that “[a] well-regulated Militia, being necessary for the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”³³⁰ The interpretations of the scope of the right and the rights entailed in the Second Amendment are subject to continued debate. In *Miller (1939)*, the U.S. Supreme Court

³²⁸ *Id.* at 1353.

³²⁹ See Karp, *supra* note 5.

³³⁰ U.S. CONST. amend. II.

determined that the right to bear arms protected by the Second Amendment had a “reasonable relationship to the preservation or efficiency of a well-regulated militia.”³³¹

The decision in *Miller* was left largely untouched until 2008. In *D.C. v. Heller* (2008), Justice Antonin Scalia, writing for the majority, recognized that the right to bear arms conferred an individual right.³³² However, the majority decision in *Heller* also recognized that the Second Amendment was not absolute and could be restricted for specific purposes. Scalia determined that reasonable restrictions included restrictions on the possession of firearms by felons or the mentally ill, prohibiting the carrying of weapons in sensitive places, and the imposition of conditions and qualifications on the commercial sale of firearms are permissible.³³³ Scalia also recognized that prohibiting dangerous and unusual weapons could be constitutionally permissible.³³⁴ This means that, according to *Heller*, there are types of gun control that would continue to pass constitutional muster. Two years later, in *McDonald v. Chicago* (2010), the Supreme Court held that *Heller*’s interpretation of the Second Amendment as conferring an individual right applied to states and municipalities via the Fourteenth Amendment.³³⁵

The Supreme Court recently considered a case challenging gun control measures in New York. In *New York Rifle & Pistol v. Bruen* (2022),³³⁶ the regulation of concealed carrying permits was the legal controversy before the Court. Writing for the majority, Justice Clarence Thomas found a New York state law that required applicants for a public carry permit to establish “proper cause”³³⁷ was an unconstitutional infringement of the individual right to bear arms for protection in public.³³⁸ The respondents argued that the proper cause provision was a “sensitive places law”, but the majority rejected this argument. Justice Thomas distinguished the sensitive places exemption laid out by Justice Scalia in *Heller* by noting that there are some sensitive places where restrictions are permitted, but the New York law applied to all places and was thus overbroad.³³⁹ Justice Thomas argued that allowing the definition of sensitive places to include all places where people congregate would exempt cities from the Second

³³¹ *U.S. v. Miller*, 307 U.S. 174 (1939).

³³² *Heller*, 554 U.S., at 602 (Scalia J).

³³³ *Id.* at 625-8.

³³⁴ *Id.*

³³⁵ *McDonald v. Chicago*, 561 U.S. 741, 790 (2010).

³³⁶ *New York Pistol & Rifle Ass’n. v. Bruen* 597 U.S. (2022).

³³⁷ According to the Court, only six states and the District of Columbia have proper cause requirements. Those states are California, Hawaii, Maryland, Massachusetts, New Jersey, and New York.

³³⁸ *Bruen*, 597 U.S., at 30 (Thomas J).

³³⁹ *Id.* at 22.

Amendment and “would eviscerate the general right to publicly carry arms for self-defense.”³⁴⁰ An effect of the ruling was an increase in applications for concealed carry permits in other states with proper cause requirements, like Maryland.³⁴¹ This was likely in anticipation of states amending or states being forced to amend their requirements for concealed carry permits. In *the Matter of William Rounds*, the Maryland Special Court of Appeal determined that Maryland’s good and substantial reason requirement for a concealed weapons permit was analogous to a proper cause requirement and was thus unconstitutional in light of the *Bruen* decision.³⁴²

Some states have enacted, and others have considered laws to recognize sensitive places where they prohibit firearms because of the *Bruen* decision.³⁴³ Federal judges have applied the *Bruen* decision when determining the constitutionality of other gun control measures. A Federal judge in West Virginia ruled that there is a right to remove serial numbers from firearms.³⁴⁴ In that case, the judge appeared to rely on an argument that serial numbers were not required when the Second Amendment was drafted. Serial numbers are used to trace firearms, including firearms used in the commission of a crime. This would impact ghost guns, including homemade ones with no serial numbers. Several states have attempted to regulate ghost guns.³⁴⁵ This could be due to the increase in the prevalence of ghost guns and the rise in the recovery of ghost guns at crime scenes. The U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has reported a 1,000% rise in ghost guns recovered at crime scenes since 2017.³⁴⁶

³⁴⁰ *Id.*

³⁴¹ See Fredrick Kunkle, *Supreme Court Gun Ruling, Hogan Open Up Concealed Carry in Maryland*, WA. POST (July 17, 2022), <https://www.washingtonpost.com/dc-md-va/2022/07/15/concealed-carry-maryland-guns-hogan/>.

³⁴² *In the Matter of William Rounds*, 255 Md. App. 205 (2022).

³⁴³ See Herb Pinder & Olivia Eberz, *Expect More ‘Weird’ Court Rulings on New York Gun Laws and Other States’ Restrictions*, GOTHAMIST (Oct. 17, 2022), <https://gothamist.com/news/expect-more-weird-court-rulings-on-new-york-gun-laws-and-other-states-restrictions>. Maryland has recently enacted SB 1, which will prohibit the “wearing, carrying, or transporting a firearm in certain locations” when it comes into force on October 1, 2023. See Gun Safety Act of 2023, S.B. 1, 432d Gen. Assemb., Reg. Sess. (Md. 2023). An NRA-backed legal challenge to the bill was filed. See also Press Release, Nat’l Rifle Ass’n-Inst. Legis. Action, NRA-ILA Backed Lawsuit Challenging Maryland’s Unconstitutional Carry Restrictions Filed in Federal Court (May 16, 2023), <https://www.nra-ila.org/articles/20230516/nra-ila-backed-lawsuit-challenging-marylands-unconstitutional-carry-restrictions-filed-in-federal-court/>.

³⁴⁴ *U.S. v. Price*, No. 2:22-cr-00097, 2022 U.S. Dist. Ct. (So. Dist. W.V., Oct. 12, 2022).

³⁴⁵ See, e.g., N.Y. PENAL CODE §265.55 (2022). This criminalized the carrying of an undetectable firearm, rifle, or shotgun.

³⁴⁶ See Nada Tawfik, *Why GhostGuns Are America’s Fastest-Growing Gun Problem*, BBC (Apr. 14, 2023), <https://www.bbc.com/news/world-us-canada-65170507>.

The *Bruen* decision has arguably made it more difficult for cities to implement gun control by setting a higher bar than was previously set for firearm regulations to pass constitutional muster. The majority in *Bruen* adopted a one-step test for the permissible regulation of firearms which requires that “the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.”³⁴⁷ This new test is not without its critics. Professor Joseph Blocher argued that the *Bruen* test is “willfully disdainful of modern empirical evidence.”³⁴⁸ Blocher also notes that the gun violence issue faced in America radically differs from anything Americans in 1791 could have imagined. This chapter has demonstrated how drastically different present-day America is compared to late 18th-century America. However, as Professor Blocher has argued, the biggest obstacle to gun control is not the Second Amendment but rather intrastate preemption.³⁴⁹

The Federal Constitution is not the only U.S. constitution that protects the right to bear arms. According to the Second Amendment Foundation, 44 states have the right to bear arms provisions in their constitution.³⁵⁰ The six states without such a provision in their constitution are California, Iowa, Maryland, Minnesota, New York, and New Jersey. Wisconsin’s Constitution, for example, declares that “[t]he people have the right to keep and bear arms for security, defense, hunting, recreation or any other lawful purpose.”³⁵¹ Contrasting this state protection with the Second Amendment, the inclusion of hunting and recreation is more expansive than what is expressly part of the Second Amendment. Nebraska’s constitution defines the right to bear arms under state law as “for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes.”³⁵² The protection of the home, a personal property, is also more expansive than the express provisions of the Second Amendment. Oklahoma’s right to bear arms is similar to Nebraska’s. Oklahoma recognizes the right to bear arms, including in relation to protecting one’s home and property.³⁵³

³⁴⁷ *Bruen*, 597 U.S., at 12.

³⁴⁸ Pinder & Eberz, *supra* note 343.

³⁴⁹ Blocher, *supra* note 22.

³⁵⁰ *State Constitutional Protections*, SECOND AMEND. FOUND., <https://www.saf.org/state-constitutional-protections-2/>. SAF is clear that their tally is limited to states that expressly protect the right to bear arms in their constitution.

³⁵¹ W.I. CONST. art. I §25.

³⁵² NE. CONST. art. I §1.

³⁵³ OK. CONST. art. II §26.

States not only have state constitutional protections for the right to bear arms in addition to the Second Amendment, but some states also define the right more expansively than the express words of the Second Amendment. The expansion of the right to include the right to bear arms to protect property, for example, is absent in the wording of the Second Amendment. This means that when contrasting the text of the Second Amendment with the text of state constitutional protections of the right to bear arms, like Nebraska and Oklahoma, the express scope of the right to bear arms at the state level can be more expansive than the Second Amendment.

The field of firearms regulation

Providing an exhaustive definition of the field of firearms regulation is challenging. This is partly because states, as demonstrated above, can and do take differing approaches in defining the right to bear arms. The same applies to the policy field of firearms. The policy area entails more than stock firearms.³⁵⁴ The field can include the regulation of the purchase, ownership, sale, carrying, transfer, licensing, transportation, and storage of firearms. It also includes the use of firearms. The use of firearms can entail using ammunition and accessories or attachments. The removal of firearms from an owner or authorized user of a firearm, such as with extreme risk protection orders (ERPOs) or red flag laws, can also fall within the field of firearms.³⁵⁵ This can be intertwined with the ownership and possession of a firearm.

The definition of the field of firearms preempted by state law can vary by state. Florida's preemption statute, for example, states that "the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation."³⁵⁶ In its *amicus* brief to the Florida Supreme Court in *Fried v State*,³⁵⁷ the NRA contended that this provision means that the state has expressed its intention to occupy the entire field of firearms regulations.³⁵⁸ In 2020, the Virginia legislature enacted two companion bills that permitted municipalities to regulate the carrying of firearms in public places.³⁵⁹ Less than two months

³⁵⁴ A stock firearm is a firearm in the state in which it comes from the factory. This reflects a lack of modification or attachment of accessories and excludes ammunition.

³⁵⁵ Republicans in Oklahoma preempted EPROs with SB 1081 in 2020. It is presented in Chapter III.

³⁵⁶ FLA. STAT. § 790.33(1) (2011).

³⁵⁷ *Fried*, 355 So.3d.

³⁵⁸ Brief of Nat'l. Rifle Ass'n as Amicus Curiae at 2, *Fried v. State*, 355 So.3d. (Fl. Sup. Ct. 2022), SC21-917, SC21-918.

³⁵⁹ H.B. 421, 2020 Leg., Reg. Sess., Acts 2020, cc. 1205 (Va. 2020) and S.B. 35, 2020 Leg. Sess., Acts 2020, cc. 1247 (Va. 2020). Chapter III presents both bills.

after these bills were enacted, Alexandria, Virginia, passed an ordinance banning the carrying of firearms in public places.³⁶⁰ This suggests that the regulation of the carrying of firearms is not just the act of carrying a firearm but also includes the location in which firearms can be carried. Such regulations that regulate the right to bear arms in sensitive places were one of the recognized permissible areas of firearms regulations in Scalia's decision in *Heller*.³⁶¹

Pennsylvania's HB 740, introduced in 2019, is a further example of how expansive the field of firearms regulation can be. HB 740, presented in more detail in Chapter III, sought to regulate the sale of realistic-looking toy firearms to minors by creating a new criminal offense for selling realistic-looking toy firearms to minors and expressly stating that regulating the sale of realistic-looking toy firearms was expressly preempted.³⁶² Pennsylvania is not the only state to consider regulating toy firearms. The State of New York recently enacted SB 687, which created a requirement that imitation weapons, such as realistic-looking toy firearms, must have bright colors on the front of the barrel.³⁶³ This was done to prevent toy firearms from being mistaken for real firearms.

Conclusion

This chapter introduced intrastate firearms preemption and provided context for the following two chapters. Chapter III presents the results of an investigation into intrastate firearms preemption bills introduced in state houses across the U.S. between 2016 and 2020. Chapter IV presents the results of tracing lawsuits filed against the cities of Pittsburgh and Seattle. From the results of these investigations, broader observations can be made on the suitability of a constitutional arraignment without express authority for municipalities in the 21st century. A contribution can then be made to the discussion on whether local governments should have the power to regulate local concerns.

The investigation of recent firearms preemption legislation in the next chapter was conducted with the presumption that a partisan element would be located. This context chapter has argued that broadly speaking, Republicans oppose gun control while Democrats take the opposite position. The next chapter will consider whether recent state firearms preemption

³⁶⁰ ALEXANDRIA, VA. C. Bill. 20-0967 (2020), ALEXANDRIA, VA. C ORD. 5282 (2020).

³⁶¹ *Heller*, 554 U.S.

³⁶² H.B. 740, 2019 Leg., Reg. Sess. (Pa, 2019).

³⁶³ S.B. 687, 2021-2 Leg., Reg. Sess. (N.Y. 2022).

trends feature partisanship and whether the alignment of political parties on gun control at the federal level is replicated at the state level.

This chapter presented the political environment in the U.S. and the issue of gun control to suggest possible reasons why firearms preemption is so politically divisive and to provide a plausible explanation as to why bills' sponsors support the bills they do. This included outlining the Democrat and Republican parties' platforms on firearm regulation. From this, assumptions about the partisan divide on firearm regulation can be drawn. The next chapter challenges these assumptions about partisanship and political party-interest group alignment. Within the polarized political setting, the issue is the problem of gun violence. This issue is one that other developed countries suffer from, but the magnitude of the loss of life and injury is a uniquely American reality. It is this reality that cities such as Pittsburgh and Seattle are attempting to change.

Chapter III: Intrastate Firearms Preemption Bills: 2016 to 2020

Cities want to enact gun control, but many cannot.³⁶⁴ For gun control proponents, the logical next step would be to remove the obstacles to gun control, with the biggest obstacle being preemption.³⁶⁵ One element of this project was an examination of the use of the state levers of legislative power in relation to firearms preemption. This chapter discusses the results of the investigation. It analyzes a data set assembled with the aim of uncovering what was proposed and what was enacted at the state level.

This chapter considers the following research question: In the period under review, what changes in firearms preemption laws at the state level have been attempted, and what has been successful? As discussed above, the data set of state preemption bills introduced between 2016 and 2020 was assembled to answer this research question. The following subset of questions are put to the data set:

- What type of bills do Republicans sponsor, and what type of bills do Democrats sponsor?
- What was the success rate and why?
- Did party dominance factor in the enactment of bills?
- How does the urban-rural divide factor into the bills?
- How have pressure groups influenced the introduction and enactment of bills?
- Has gun control featured in the bills in the data set?
- To what extent were bills motivated by local attempts at regulatory responses to specific acts of gun violence?

Background

In 1979, two states had firearms preemption laws. By 2000, this number had increased to 39.³⁶⁶ Several explanations for this have been put forward. Professor Gross suggests firearms

³⁶⁴ See Blocher, *supra* note 1.

³⁶⁵ See Blocher, *supra* note 22.

³⁶⁶ See Gross, *supra* note 36, at 706.

preemption started as a response to municipal gun control.³⁶⁷ In the 1970s, the strategies of most gun control advocates focused on handguns including the possession of handguns.³⁶⁸ Local handgun bans became a pressing issue when Morton Grove, IL enacted a handgun ban in 1981.³⁶⁹ The ban was challenged on Second Amendment grounds with support from the NRA and the Second Amendment Foundation.³⁷⁰ The Seventh Circuit determined that the ban was constitutional.³⁷¹ This, argues Professor Gross, forced the NRA to develop new strategies to combat gun control. Challenging ordinances city by city was not a sustainable strategy, so the NRA looked to state law.³⁷² As Professor Gross reports, this strategy, deeply rooted in Dillon's rule, had significant success.³⁷³

In 2010, pro-gun rights groups secured the overturning of handgun bans. In *MacDonald v. Chicago* (2010), the U.S. Supreme Court invalidated Chicago's handgun ban.³⁷⁴ However, this victory only intensified firearms preemption efforts by gun rights advocates.³⁷⁵ As Professor Jackman's work shows, preemption continued after *MacDonald*. For example, nine preemption bills were introduced during the 2011-2012 legislative session.³⁷⁶

I hazard some states might have been motivated by the increased attention lawsuits brought in challenging city regulations and the fear of increased city regulation and, therefore, might have been tempted to expand existing firearms preemption. In 2013, the New York State Pistol & Rifle Association³⁷⁷ and several gun owners filed a lawsuit against the City of New York in the U.S. District Court for the Southern District Court of New York challenging, on

³⁶⁷ *Id.*, at 681.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ See Sharon Rutenberg, *Morton Grove's Handgun Ban Upheld*, UPI (Dec. 30, 1981), <https://www.upi.com/Archives/1981/12/30/Morton-Groves-handgun-ban-upheld/1540378536400/>. The lawsuits discussed in the next chapter also feature litigants supported by the NRA and the Second Amendment Foundation.

³⁷¹ *Quilici v. Morton Grove* 695 F.2d 261 (7th Cir. 1982). The Supreme Court refused the appeal. See *Quilici v. Morton Grove* 464 U.S. 863 (1983).

³⁷² Gross, *supra* note 36, at 704-5.

³⁷³ *Id.*, at 705. Dillion's rule is a theory of state pre-eminence over local governments. This means that given the dominance of the state government over local governments, the NRA's strategy was to leverage this dominance for their policy objectives.

³⁷⁴ *McDonald*, 561 U.S., at 791.

³⁷⁵ See Joseph Blocher, *Firearms Localism*, 123 YALE L. J 83, 133 (2013); See also Rachel Simon, *The Preemption Phenomenon* 43 CAR. L. REV 1441, 1466 (2021).

³⁷⁶ Molly Jackman, *ALEC's Influence over Lawmaking in State Legislatures*, BROOKINGS INST. (Dec. 6, 2013), <https://www.brookings.edu/articles/alecs-influence-over-lawmaking-in-state-legislature>.

³⁷⁷ New York State Pistol & Rifle Association is the official NRA-affiliated State Association in New York.

Second Amendment grounds, the constitutionality of the city firearms licensing scheme that restricted the transportation of firearms.³⁷⁸ In 2015, the district court dismissed the case.³⁷⁹ The applicants appealed to the Second Circuit Court of Appeals. On February 23, 2018, the district court's ruling was affirmed.³⁸⁰ The Second Circuit's decision was appealed to the U.S. Supreme Court. In 2019, the City repealed the challenged rule. As a result, the Supreme Court determined that the case was moot.³⁸¹

Recent firearms preemption is part of the current wave of preemption that Professor Briffault argues "is closely connected to the interacting polarizations of Republican and Democrat, conservative and liberal, and non-urban and urban."³⁸² He acknowledged that some Democrat-led state governments preempt Democrat-led local governments but concluded that the 'preponderance' of new preemption proposals has come from Republican-led states that embrace conservative causes. These proposals are designed to block progressive municipal regulatory actions.³⁸³ This is at a time of increased polarization in America,³⁸⁴ and a widening urban-rural divide. Professor Schragger argues that this "spate of preemptive state legislation reveals the deep roots of the constitutional anti-urbanism in the U.S. federal system."³⁸⁵ The observed urban-rural divide in preemption trends necessitated an investigation into whether the urban-rural divide featured in the data set.

According to *DuPuis et. al.*, preemption measures often focus on politically divisive issues and are enacted relying on single-party dominance.³⁸⁶ Trifectas in state government were present for the enacted bills in the data set with eight bills enacted in states where the sponsor's party had a trifecta. All three successfully enacted hyper preemption bills passed in states with

³⁷⁸ *New York State Pistol & Rifle Ass'n. v. City of New York* 86 F. SUPP. 3D. 249 (S.D.N.Y. 2015).

³⁷⁹ *Id.*

³⁸⁰ *New York State Pistol & Rifle Ass'n. v. City of New York* 833 F. 3D. 45 (2D. CIR 2018).

³⁸¹ *New York State Pistol & Rifle Ass'n. v. City of New York* 140 S. CT. 1525 (2020).

³⁸² Briffault, *supra* note 30, at 1997.

³⁸³ *Id.* See also Stahl, *supra* note 162. Professor Kenneth Stahl argues that the driving force behind the current preemption trend is that cities are becoming more Democrat and state legislatures are becoming more Republican AND Lorenzo Gamio, *Urban and Rural America Are Becoming Increasingly Polarized*, WA. POST (Nov. 16, 2016), <https://www.washingtonpost.com/graphics/politics/2016-election/urban-rural-vote-swing/>.

³⁸⁴ See Richard Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 128-131 (2004).

³⁸⁵ Schragger, *supra* note 35, at 1167. See, also Diller, *supra* note 254, at 291. Professor Paul Diller concludes that there is an anti-urban bias in the U.S. Constitution.

³⁸⁶ Nicole DuPuis, Trevor Langan, Christiana McFarland, Angelina Panettiere & Brooks Rainwater, *City Rights in an Era of Preemption: A State-by-State Analysis 2018 Update*, Nat'l League of Cities, 1, 3 (2018), <https://www.nlc.org/wp-content/uploads/2017/02/NLC-SML-Preemption-Report-2017-pages.pdf>.

Republican trifectas. This means that the successful bills comport with other observations on the reliance on trifectas.

Today's major American political parties are networks of individuals and organizations.³⁸⁷ This includes elected officials, party officials, and interest groups. As a result, this project attempted to locate indicators of pressure group involvement. It was presumed that there would be an NRA presence. This chapter affirms this presumption and discusses the role of other pro-gun pressure groups uncovered in the dataset.

Most bills were unsuccessful. Many state bills fail. Only 21% of bills introduced in 2021 were successful.³⁸⁸ The data set had a lower success rate of approximately 12%. The low success rate of state bills overall, partially explains the low success rate in the data set failed. Other potential factors include: 1) firearms preemption was already widely adopted, resulting in less need or motivation for new preemption, and 2) the bills were sponsored as an act of political posturing. Both parties did this to demonstrate their position on gun control.

Investigative method

Time period

The period under examination is from January 1, 2016, to December 31, 2020. Regardless of the outcome, every firearms preemption bill was sought during data collection. The period was chosen to include more than one elected legislature in each state so as not to be disproportionately influenced by one election. The observed period had more recent bills than the Pomeranz *et al.* data set, which covered 2009-2018.³⁸⁹ The inclusion of bills regardless of the outcome and the inclusion of bill sponsor information provides a better vantage point on the role of partisanship than is possible with the Pomeranz *et al.* data set and the Pomeranz and Ochoa data set.

Data collection and analytical method

³⁸⁷ See Jessica Bulman-Pozen, *Partisan Federalism*, 127 HARV. L. REV. 1077, 1084 (2014).

³⁸⁸ Fiscal note, *infra* note 653.

³⁸⁹ Pomeranz ET AL., *supra* note 66.

Bills were collected from state legislatures' websites. The data set includes the sponsors of the bills and their political party affiliation. As discussed in Chapter I, I engaged in a thematic analysis to analyze the data set presented in this chapter. To do this, I followed a six step process which entails: getting familiar with the data, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and producing a report.³⁹⁰ This form of analysis is one of the most widely used in research and requires the researcher to go beyond counting words or phrases and instead focus on identifying and describing the implicit and explicit themes featured in the data set.³⁹¹ The research question required an investigation of what legal changes were proposed and enacted in state legislatures in relation to firearms in the period under review. A thematic approach allowed for this type of analysis.

To familiarize myself with the data, I conducted a textual analysis of each bill to identify key concepts in order to determine the aims of each bill and the impact the bill would have on its respective state firearms preemption laws. Initial observations were noted. After familiarizing myself with the data, I set out to generate initial codes.³⁹² The codes were reviewed with the research question in mind. Then the codes were named to reflect the changes to firearms preemption laws that were proposed and enacted at the state level during the observed period. For example, Oklahoma S.B. 1081 added red flag laws to the preempted field of firearms in the state of Oklahoma. This bill was coded, *inter alia*, as a bill preempting specific gun control measures.

Connecting these codes based on observed commonalities, I built themes from the data set. For thematic analysis, themes are meant to represent patterns within the data set.³⁹³ Themes “capture something important about the data in relation to the research question and represents some patterned response or meaning within the data set.”³⁹⁴ The final themes that emerged from this data set led to the classification of the bills into four categories:

Limiting preemption – removes one or more express provisions of a preemption statute or adds wording to the preemption statute that expressly authorizes local

³⁹⁰ See Virginia Braun & Victoria Clarke, *Using Thematic Analysis in Psychology*, 3 QUANTITATIVE RSCH. IN PSYCH. 77, 87 (2006).

³⁹¹ Guest, ET. AL., *supra* note 40, 10-11.

³⁹² See Braun & Clarke, *supra* note 390, at 88 (“Codes identify a feature of the data set [...] that appears to be interesting to the analyst”). Examples of my codes feature in the horizontal titles on Figure 3.1.

³⁹³ *Id.*, at 83.

³⁹⁴ *Id.*, at 82.

governments to regulate on a specific matter (e.g., permitting local regulation of carrying firearms in a publicly owned building).

Preemption repeal – repeals the state firearms preemption statute or removes a substantial portion of the preemption statute.

Expanding preemption – expands the field of firearms by adding to the express wording of the statute (e.g., adding safe storage to the expressly preempted field)

Hyper preemption – adds hyper preemption to state law where the state does not have hyper preemption or adds additional forms of hyper preemption (e.g., permitting the governor to remove local elected officials from office for regulating in conflict with state law).

From these classifications, the data shows the policy preferences of each party as it relates to intrastate firearms preemption.

Data on party control of state governments was sought to investigate the influence of political partisanship. This included data on party control of both houses of the legislature and the governorship. Additional data were collected on interest group activity. The project also sought interest groups' statements from their websites and, where possible, documentation of engagement in the legislative process. This was done by searching state legislatures' websites. The final step of thematic analysis is to produce report. This report is presented in Part I of this chapter. The findings from this analysis feature in Part II of this chapter.

Accounting for bills with multiple preemption provisions

The project located 98 bills. This reflects the number of bills considered during the period under review. However, the analysis of these bills determined that some bills had more than one provision that proposed altering their respective state preemption laws. When these provisions were determined to be proposing different legal results (i.e. proposing expanding the preempted field and proposing new hyper preemption), these provisions were counted separately. This chapter presents the data using bill provisions. This was done to present a more detailed account of what was proposed and enacted during the observed period in relation state firearms preemption.

Structure

This chapter proceeds as follows: Section I presents the bills in the data set. That Section is divided into four sub-sections: restricting preemption, repealing preemption, expanding preemption, and hyper preemption in line with the above classifications. This section lays out what was proposed and what was enacted during the period under observation. Section II discusses the trends uncovered in the data set. It presents the partisan trends uncovered during this investigation. Correlations between the party affiliation of bill sponsors and bill objectives are discussed. Bills that appear to respond to gun violence innovation are presented. The role of the NRA is also considered. The identified trends between the partisan affiliation of bill sponsors and support from the NRA are presented. The urban-rural divide is present in the bills in the data set. Section II lays out how the urban-rural divide and anti-urbanism feature in the data set. This includes bills sponsored by Republicans representing rural districts that proposed expanding preemption and hyper preemption. In Section III, I return to the question of what changes to state preemption laws were proposed and what changes were enacted. I consider the implications of the findings from the data set in the broader examination of the contention between states and their local governments.

I. The bills

This section discusses the 98 bills in the data set and is divided into four parts based on the classification of bill objectives outlined above. From the discussions of the bills, themes will emerge about the type of bills proposed and enacted and the links between the political party of the sponsors of the bills and the stated objectives of the bills.

A. Limiting preemption

This category consists of 15 bills/15% of the data set and were primarily sponsored by Democrats. This shows that there was a partisan dimension to the types of bills introduced to during the period of observation and that these bills would have had the effect of expanding local authority were in the minority. The bills took five general forms: removing express prohibitions, expanding exceptions to the preemption statute, expressly permitting limited local regulation, expressly excluding topics from preemption, and city specific grants of authority.

This sub-section discusses these bills as part of the discussion on what was proposed and enacted during the period under observation.

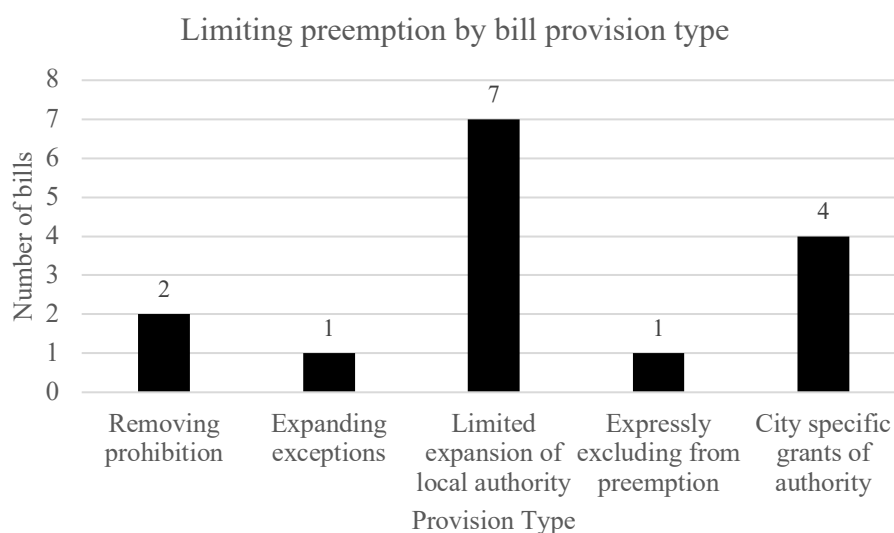


Figure 3.1: Limiting preemption by bill provision type

Some bills proposed narrowly limiting preemption. In Mississippi, Democrat State Representative Earle Banks sponsored HB 561 (2016).³⁹⁵ The Mississippi preemption statute states that “no county or municipality may adopt any ordinance that restricts or requires the possession, transportation, sale, transfer or ownership of firearms or ammunition or their components.”³⁹⁶ The bill proposed limiting firearms preemption by removing a prohibition on municipalities using their written notice authority to prohibit the concealed carry of a firearm in a building under municipal control.³⁹⁷ The bill failed. Banks’ legislative district may indicate his motivation to sponsor a bill proposing to limit preemption. His district includes part of Jackson, the largest city in the state and the state capital. In 2018, the Jackson City Council approved an agreement between the city’s police department and Jackson State University to study gun violence.³⁹⁸ This was done in response to increased shooting deaths in the city. It appears that gun violence is an important issue for Banks’ constituents.

³⁹⁵ H.B. 561, 2016 Leg., Reg. Sess. (Miss. 2016).

³⁹⁶ MISS. CODE ANN. §45-9-51 (West 2014).

³⁹⁷ Miss. H.B. 561.

³⁹⁸ See Justin Vicory, *Jackson, Miss., Turns to Innovated program to lower its gun deaths*, MISS. CTR. FOR INVESTIGATIVE REPORTING (Feb. 27, 2019), <https://www.mississippicir.org/news/mississippi-guns>.

In 2018, Banks sponsored HB 627.³⁹⁹ That bill also proposed limiting firearms preemption by removing a prohibition on municipalities using their written notice authority to prohibit the carrying of concealed weapons on property controlled by the municipality.⁴⁰⁰ The bill died in committee without explanation. Banks also sponsored HB 22 (2019).⁴⁰¹ This bill proposed removing the same prohibition on municipalities using their written notice authority to prohibit the carrying of concealed weapons on property controlled by the municipality.⁴⁰² It also died in committee. While the concerns of gun violence in Representative Bank's district may have factored into his decision to sponsor these three bills, he also sponsored these bills in a state where Republicans held a trifecta in state government. It appears that making a political statement in support of gun control may have factored into the decision to sponsor these bills.

Democrats used other strategies to propose a limited expansion of authority for local firearms regulation. In Virginia, Democrats sponsored bills that proposed expressly permitting local regulation that was limited in scope. Democrat Deloris McQuinn sponsored HB 1418 (2017).⁴⁰³ McQuinn and two co-sponsors represent urban districts, including cities. The bill proposed limiting preemption by creating a new exception to the preemption statute that would have permitted municipalities to prohibit firearms, ammunition, or components in libraries.⁴⁰⁴ The bill died in committee.

McQuinn also sponsored HB 68 (2018). Like HB 1418, HB 68 proposed permitting municipalities to regulate the carrying of firearms in their libraries.⁴⁰⁵ The co-sponsors included representatives of the two most densely populated House districts.⁴⁰⁶ The bill's sponsor and six co-sponsors represent districts that have part of a major city within their district boundaries or districts in major metro areas. HB 68 was assigned to sub-committee 1 of the House Committee on Militia, Police, and Public Safety, which voted on party lines, four to two, to pass on the bill

³⁹⁹ H.B. 627, 2018 Leg. Reg. Sess. (Miss. 2019).

⁴⁰⁰ *Id.*

⁴⁰¹ H.B. 22, 2019 Leg., Reg. Sess. (Miss. 2019).

⁴⁰² *Id.*

⁴⁰³ H.B. 1418, 2017 Leg., Reg. Sess. (Va. 2017). Democrats Lamont Bagby, Kaye Kory, and Barbara Favola co-sponsored the bill.

⁴⁰⁴ *Id.*

⁴⁰⁵ H.B. 68, 2018 Leg., Reg. Sess. (Va. 2018).

⁴⁰⁶ Democrat State Representative Alfonso Lopez's 49th House District was the most densely populated in Virginia. Democrat State Representative Patrick Hope's 47th House District was the second most densely populated district.

indefinitely.⁴⁰⁷ The four Republican members of the sub-committee voted against the bill. This shows that political partisanship factored decisively in the consideration of the bill as Republicans defeated the bill in committee.

The bill provides an example of the urban-rural divide in the data set. It was sponsored by Democrats representing urban districts. Representatives of rural districts thwarted the bill by voting against the bill in committee. One Republican on the committee was Thomas Wright, who represents the second least densely populated district in Virginia.⁴⁰⁸ Another Republican sub-committee member, Michael Webert, represents a district that ranks 82nd out of 100 districts in population density.⁴⁰⁹ The other two Republicans on the sub-committee were Matt Fariss and Nick Freitas. Both represent rural districts.⁴¹⁰

Virginia's bi-partisan bill, HB 4007 (2019), was sponsored by representatives of districts in the Virginia Beach area during the 2019 special legislative session called by Democrat Governor Ralph Northam in response gun violence, including a shooting in Virginia Beach.⁴¹¹ The NRA openly opposed the special legislative session and called on its members and supporters to oppose its agenda.⁴¹² The bill proposed permitting municipalities to adopt ordinances prohibiting firearms, ammunition, and components in buildings owned or operated by the municipality. This is similar to the other Democrat-sponsored bills considered in Virginia. The bill would have required a municipality to have reasonable security measures before imposing such restrictions. SB 4001 was introduced on the same day as HB 4007 but was sponsored by two Democrats. One of the sponsors of SB 4001 (2019) represented a district that includes part of the Virginia Beach metro area. The Republican sponsor of HB 4007, Glenn

⁴⁰⁷ Comm. Vote on HB 68, House Militia, Police & Pub. Safety Comm., Subcom. 1, 160th Gen. Assemb., Reg. Sess. (Va. 2018), <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=Hb68>.

⁴⁰⁸ Wright represents the 61st Virginia House District.

⁴⁰⁹ Webert represents the 18th House District.

⁴¹⁰ Fariss' district is the 5th least densely populated district in the state. Freitas' district ranks 81st out of 100 in population density.

⁴¹¹ A mass shooting had occurred in Virginia Beach on May 31, 2019. See Reid Wilson, *Northam calling a special session on gun control legislation after Virginia Beach shooting*, THE HILL (Jun 4, 2019), <https://thehill.com/homenews/state-watch/446809-virginia-governor-calling-special-session-on-gun-control-legislation>.

⁴¹² Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Virginia: General Assembly to convene July 9th for a special session on gun control (June 12, 2019), <https://www.nraila.org/articles/20190612/virginia-general-assembly-to-convene-july-9th-for-special-session-on-gun-control>. The NRA argued that the two bills presented in this chapter would create "[a] weakened Virginia firearms preemption statute that would empower local governments to create a complicated patchwork of gun laws."

Davis, is a former mayor of Virginia Beach and still lives there.⁴¹³ His connection to Virginia Beach may have factored into his sponsorship of the bill.

On July 9, 2019, the Militia, Police, and Public Committee table the bill on party lines twelve to nine. All twelve votes in favor of tabling the bill were Republicans. The nine votes against were Democrats.⁴¹⁴ Again, political partisanship factored decisively in defeating the bill. The Democrats in Virginia would propose restricting state firearms preemption again in 2020 after securing a trifecta during the 2019 elections. After years of trying, Virginia Democrats successfully enacted two companion bills, HB 421 and SB 35 (2020). HB 421 and SB 35⁴¹⁵ are identical. HB 421 is presented in this section.

HB 421 created exceptions to preemption by expanding local regulatory authority to adopt ordinances that prohibit the transportation, possession, or carrying of a firearm, ammunition, or components in any local government buildings used for government purposes.⁴¹⁶ The bill also permitted regulating the transportation, carrying, or possession of a firearm, ammunition, or components in a public park owned or operated by the municipality.⁴¹⁷ A local government can also regulate the possession, transportation, and carrying of firearms, ammunition, or components in a recreation or community center owned, operated, or controlled by the municipality. Similar regulations applicable to any public street, road, alley, sidewalk, public right of way, or any other place open to the public and used for or adjacent to a permitted event or any event that would normally require a permit are also permitted.⁴¹⁸ To regulate under these exceptions, local governments must take measures to protect the safety of the location in question, including preventing unauthorized access. Municipalities are required to post notices of any such ordinance at all the location entrances to provide public notice of any restrictions on the possession, transportation, or carrying of firearms or ammunition.

Delegate Cia Price pre-filed HB 421 on January 3, 2020. The bill passed the House Public Safety Committee on party lines 13 to 9. Glenn Davis, the Republican sponsor of HB

⁴¹³ *About Glenn Davis*, FRIENDS OF GLENN R. DAVIS, <https://www.glennrdavis.com/about-glenn-davis>.

⁴¹⁴ Comm. Vote on HB 4007, House Militia, Police and Pub. Safety Comm., 161st Gen. Assemb., 2019 Special Sess I (Va. 2019), <https://lis.virginia.gov/cgi-bin/legp604.exe?192+vot+H15V0007+HB4007>.

⁴¹⁵ S.B. 35, 2020 Leg., Recon. Sess, Acts 2020, cc. 1247 (Va. 2020). SB 35 incorporated SB 450, SB 505, SB 506, and SB 615. As a result, SB 450, SB 505, SB 506, and SB 615 are not treated by this project as separate bills.

⁴¹⁶ Va. H.B. 421.

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

4007 in 2019, voted against HB 421. It passed the House with a vote of 48 to 45. All 48 votes in favor were Democrats and 45 Republicans voted against the bill. The Senate consented to the bill on party lines 21 to 19. The voting records suggest that HB 421 and the failure of previous preemption limitation proposals suggest that the bills would not have been enacted without the Democrats' trifecta. Not only did having a majority in both houses assist in the adoption of the bills, but it also appears that the Democrats' control of the committee contributed to the success of the bills. This suggests that single-party dominance was necessary to enact a limited expansion of the local authority to regulate firearms.

In Pennsylvania, Democrats proposed expressly excluding toy guns from the preempted field, arguably expanding local governments' authority to regulate firearms.⁴¹⁹ State Representative Brian Kirkland sponsored HB 740 (2019). He represents a district which includes portions of Philadelphia.⁴²⁰ Five co-sponsors represent districts that include parts of Philadelphia. This means HB 740 was a bill sponsored by state legislators representing Pennsylvania's largest city. However, this bill had limited chances of success. Republicans controlled both houses of the legislature.

HB 740 also proposed a new criminal offense for selling a realistic toy firearm to someone under 18.⁴²¹ This bill has been included in the data set because toy firearms are regulated due to their resemblance to real firearms. Interest in the regulation of toy firearms may be linked to tragedies involving toy firearms.⁴²² The objective of HB 740 aligns with a position taken by local leaders in Philadelphia. In December 2018, the city's District Attorney called for a ban on selling realistic toy guns.⁴²³ HB 740 was referred to the judiciary committee on March 6, 2019, with no further action taken. Republicans controlled both houses of the legislature. It appears that this bill was sponsored to make a political point as opposed to enactment as a reasonably expected outcome.

⁴¹⁹ H.B. 740, 2019 Leg., Reg. Sess. (Pa. 2019).

⁴²⁰ Philadelphia is Pennsylvania's largest city and one of the largest cities in America.

⁴²¹ Pa. H.B. 740.

⁴²² In 2014, twelve-year-old Tamir Rice was carrying a toy firearm when he was shot and killed by police. *See Cleveland cops 'recklessly' shot boy, 12, over toy gun, suit claims*, ABC NEWS (Dec. 5, 2014), <https://abcnews.go.com/US/cleveland-cops-recklessly-shot-boy-12-toy-gun/story?id=27402837>. The shooting deaths of people in possession of a toy firearm continue to be an issue in the U.S. In July 2022, a New York City corrections officer was charged with murder after shooting an eighteen-year-old man while off duty. The victim reportedly had a toy firearm. *See Mark Morales, Off-duty New York correction officer charged in connection to fatal shooting of 18-year-old in the Bronx*, CNN (July 22, 2022), <https://www.cnn.com/2022/07/22/us/new-york-correction-officer-fatal-shooting/index.html>.

⁴²³ Tom MacDonald, *Philadelphia DA: Stop sales of realistic-looking toy guns*, WHYY (Dec. 20, 2018), <https://whyy.org/articles/philadelphia-da-stop-sales-of-realistic-looking-toy-guns/>.

One bill proposed effectively repealing a Republican-sponsored bill that was enacted during the period under review and expanded preemption. Oklahoma Democrat Representative Jason Lowe⁴²⁴ sponsored HB 3357 (2020). State law prohibits municipalities from punishing an individual who is lawfully carrying or possessing a firearm for disorderly conduct, disturbing the peace, or similar offense against public order. HB 3357 proposed amending the preemption statute by:

- replacing carrying with open carrying
- removing the regulation of possession of a firearm⁴²⁵

The bill appears to be a proposal to undo the legal effect of HB 2597, which is presented below. HB 2597 amended state law that previously prohibited local governments from regulating the open carrying of a handgun and expanded the prohibition by removing open carry and adding carry and possession. It also replaced 'handgun' with 'firearm', significantly expanding the prohibition. HB 3357 was not enacted. Oklahoma is a red state where Republicans have party dominance in state government. Given the limited chance for success, it appears that HB 3357 may have been introduced to make a political statement.

Three bills proposed expanding city authority by granting new authority to specific cities. This was proposed in two ways: two bills proposed adding provisions to the city charter that require the safe storage of firearms and create a criminal infraction for a breach of this provision and the other proposed permitting new local regulation by cities that are of a certain population range thereby limiting the new authority to one city.

Vermont considered two bills that would have only applied to Burlington. Democrat State Representative Joana Cole sponsored both bills with support from Twenty-four other House Democrats, three members of the liberal Vermont Progressive Party, and Republican Kurt Wright, a former Burlington city council member. The Vermont firearms preemption statute states that “[e]xcept as otherwise provided by law, no town, city, or incorporated village, by ordinance, resolution, or other enactment, shall directly regulate hunting, fishing, and trapping or the possession, ownership, transportation, transfer, sale, purchase, carrying,

⁴²⁴ Lowe represents the 97th House District, which includes the suburbs of Oklahoma City.

⁴²⁵ H.B. 3357, 58th Leg., Reg. Sess (Okla. 2020).

licensing, or registration of traps, firearms, ammunition, or components of firearms or ammunition.”⁴²⁶ HB 566 (2016) proposed amending Burlington’s charter to:

- permit the city to regulate the possession and carrying of a firearm.
- require a person possessing a firearm to keep it in their possession unless securely stored.
- create a criminal penalty for failing safely store firearms with a maximum fine of \$2,500 or up to 90 days in jail or both.
- create a civil penalty of \$200 to \$500.⁴²⁷

The bill died in committee. No explanation was uncovered.

Representative Cole sponsored HB 568 (2016),⁴²⁸ with the same co-sponsors as HB 566, except for James Masland. It proposed:

- prohibiting carrying a firearm where alcohol is served.
- creating a criminal offense for breaching this prohibition.⁴²⁹
- granting city authority to regulate the possession and carrying of firearms in certain circumstances, including where alcohol is sold.

Like HB 566, HB 568 died in committee. No explanation was uncovered. Both bills proposed expanding local authority to regulate firearms. The bill’s sponsor and sixteen co-sponsors represent districts in Chittenden County, the most populous county in Vermont. It also includes Burlington, Vermont, the most populated town in Vermont. As a result, the bills are interpreted as being sponsored by Democrats representing Vermont’s more populous districts, proposing expanding city authority to regulate firearms.

The Democrats had a trifecta. Senior Democrats supported both bills. One co-sponsor, Jill Krowinski, became majority leader in 2017 and Speaker of the House in 2021. However, there appears to be little effort in seeking the enactment of these bills. As a result, it is reasonable to question whether there was actual intent to enact the bill. It appears that sponsoring these bills may have been done to make a political statement.

⁴²⁶ 24 VT. STAT. ANN. §2295 (1988).

⁴²⁷ H.B. 566, 2015-2016 Leg., Reg. Sess. (Vt. 2016).

⁴²⁸ H.B. 568, 2015-2016 Leg., Reg. Sess. (Vt. 2016).

⁴²⁹ The penalty would have been a fine not exceeding \$1,000 or 90 days in jail, or both.

Another Democrat-sponsored bill was drafted to apply only to one city. Louisiana State Senator Wesley Bishop sponsored SB 185 (2018). His district includes parts of New Orleans which may indicate why he sponsored SB 185. The bill proposed, *inter alia*, permitting a municipality that exceeds 300,000 in population but not 400,000 in population to regulate the “sale, purchase, possession, ownership, transfer, transportation, license, or registration of firearms, ammunition, or components firearms or ammunition.”⁴³⁰ This proposed authority was limited to:

- requiring reporting lost or stolen firearms to prevent firearms trafficking.
- prohibiting the carrying of firearms at a public event that is permitted by a public body.
- restricting the carrying of firearms where alcohol can be legally consumed.
- prohibiting the carrying of firearms in public buildings or at recreation centers
- preventing children from having unsafe access to firearms.

The bill appears to have been drafted with New Orleans,⁴³¹ with an estimated population of 376,971,⁴³² in mind. At first glance, the bill appears to be an effort by a Democrat representing a city district to expand that city’s authority to regulate firearms. However, with Republicans controlling the legislature, this bill had little chance of success.

In 2020, Florida considered Democrat-sponsored HB 885 (2020). The bill proposed adding an exception to the preemption statute. The bill would have permitted municipalities to regulate the sale of firearms or ammunition on property owned by the municipality.⁴³³ It died in committee. Cindy Polo sponsored the bill.⁴³⁴ Javier Hernandez⁴³⁵ and Carlos Guillermo Smith⁴³⁶ co-sponsored HB 885. The bill had little chance of success. The NRA opposed the bill,⁴³⁷ and Florida Republicans had a trifecta. As a result, it seems reasonable to presume that the sponsorship of this bill was a political statement. Another view is that sponsoring this bill

⁴³⁰ S.B. 185, 70th Leg., Reg. Sess. (La. 2018).

⁴³¹ New Orleans has an acute gun violence problem. For example, the city’s University Medical Center’s trauma unit treated 673 people with gunshot wounds in 2022. See Rachel Hernandez, *New Orleans officials discuss impact of gun violence*, WGNO (June 2, 2023), <https://wgno.com/news/crimes/new-orleans-officials-to-discuss-impact-of-gun-violence/>.

⁴³² *Quick Facts: New Orleans*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/neworleanscitylouisiana>.

⁴³³ H.B. 885, 2020 Leg., Reg. Sess. (Fla. 2020).

⁴³⁴ Polo represents the 103rd House District, which includes Broward County and Miami-Dade County.

⁴³⁵ Hernandez represented House District 113, which includes parts of Miami.

⁴³⁶ Smith represents House District 49, which includes Central Florida University.

⁴³⁷ As discussed in Chapter II, the NRA is significantly influential in the Florida legislature. See Schulz, *supra* note 310.

was an act of doing something instead of doing nothing in response to mass shootings in Florida such as the Parkland shooting and the Orlando Nightclub shooting. Florida municipalities also brought a lawsuit challenging firearms preemption. Both interpretations can be true. The bill appears to be an act of political posturing but also appears to be a part of a broader effort by Florida municipalities and their representatives to enact gun control by empowering local governments to do so.

Democrat-sponsored SB 1538 (2020) proposed an amendment to the Oregon firearms preemption statute. The statute declares that “[e]xcept as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.”⁴³⁸ Local governments are prohibited from enacting “civil or criminal ordinances, including but not limited to zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition.”⁴³⁹ SB 1538 proposed granting express local authority to regulate the carrying of concealed firearms by a person with a concealed permit.⁴⁴⁰ The bill was not enacted.

Oregon Democrats had a trifecta and party leadership was involved in the bill’s sponsorship. Given this, it appears reasonable to question the motivation of the bill sponsors. The sponsors included Senate Majority Leader Ginny Burdick and Senate President *Pro Tempore* Laurie Monnes. Despite Democrat state government dominance, the bill died in committee. While there may have been motivation to amend the preemption statute, it also appears reasonable to conclude that making a political statement on gun control was a consideration.

B. Preemption repeal

This category includes fourteen bills which were all sponsored by Democrats. These bills show a type of bill that Democrats proposed and illustrates the conflicting positions of firearms preemption taken by Republicans and Democrats. However, the limited amount of

⁴³⁸ OR. REV. STAT. §166.170(1) (1995).

⁴³⁹ OR. REV. STAT. §166.170(2) (1995).

⁴⁴⁰ S.B. 1538, 80th Leg, Reg. Sess. (Or. 2020).

this type of bills and the small amount of preemption repeal bills out of a dataset of 98 shows that bills to expand local authority were in the minority. The bills also show how Democrats take an opposing position on firearms preemption to that of the Republicans. None of these bills were enacted. Preemption repeal proposals are divided into three categories: partial, full, and hyper preemption repeal.

Preemption repeal bills by bill sponsor's party

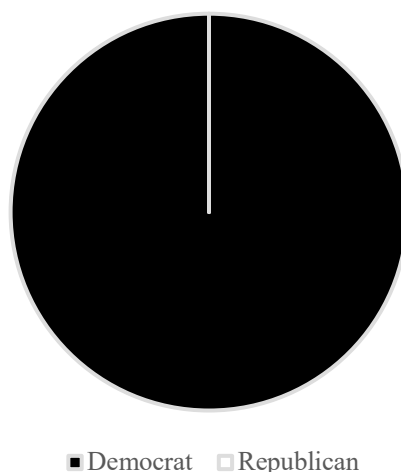


Figure 3.2: Preemption repeal proposals by bill sponsor's party

Two bills, Rhode Island Democrat-sponsored SB 2822 (2018) and HB 7762 (2018), proposed partially repealing their preemption statute. The statute declares that “control of firearms, ammunition, or their component parts regarding their ownership, possession, transportation, carrying, transfer, sale, purchase, purchase delay, licensing, registration, and taxation shall rest solely with the state.”⁴⁴¹ SB 2822 proposed a partial repeal preemption in relation to the “ownership, possession, transportation, and sale of firearms and ammunition.”⁴⁴² HB 7762 also proposed a partial repeal.⁴⁴³

Democrats representing urban districts sponsored SB 2822. Four of the five sponsors’ districts include Providence⁴⁴⁴ or represent districts in the Providence metro area. Two co-sponsors represented two of the most densely populated districts in the state.⁴⁴⁵ One co-sponsor

⁴⁴¹ R.I. GEN. LAWS § 11-47-58 (1986).

⁴⁴² S.B. 2822, 2018 Leg., Reg. Sess. (R.I. 2018).

⁴⁴³ H.B. 7762, 2018 Leg., Reg. Sess. (R.I. 2018).

⁴⁴⁴ Providence is the state capital and the most populous city in the state.

⁴⁴⁵ Bill co-sponsor Ana Quezada represents the 2nd Senate District, which is the third most densely populated district and contains parts of Providence. Co-sponsor Gayle Goldin’s 3rd Senate District is the fifth most densely populated district and includes portions of Providence.

was a former temporary mayor of Providence and currently represents a district that includes a part of Providence. Four sponsors have ties to Providence. As a result, these bills are interpreted as bills sponsored by Democrats representing urban districts that proposed partially repealing preemption and, by extension, expanding local authority to regulate firearms. The Democrats held a trifecta in Rhode Island when both bills were introduced, but neither bill was enacted. It appears reasonable to conclude that making a political statement was a motivating factor in sponsoring the bills.

Eleven bills, all sponsored by Democrats, proposed a full repeal of their preemption statutes. None of the bills were enacted. Only four states, Washington, Nevada, Florida, and North Carolina, considered preemption repeal proposals. This means that there was limited consideration of full preemption repeal during the period of observation.

Washington's Democrat-sponsored companion bills, SB 6146 (2018) and HB 2666 (2018). The bills' sponsors included representatives of Washington's most populous and densely populated districts. Most sponsors and co-sponsors represented a district that consists of a portion of Seattle⁴⁴⁶ or represented a district in the Seattle metropolitan area. Both bills proposed repealing firearms preemption.⁴⁴⁷ Washington's firearms preemption statute declares that "[t]he state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components."⁴⁴⁸ It also forbids local firearm regulation not expressly permitted by state law.⁴⁴⁹

The sponsors and co-sponsors of HB 2666 represented urban areas of Washington. The companion bill, SB 6146, had similarities in its sponsor and co-sponsors. The sponsor and four co-sponsors represented districts that included parts of Seattle. Both SB 6146 and HB 2666 proposed repealing firearms preemption.⁴⁵⁰ Both bills failed to be enacted. Had the bills been passed, it would have granted greater authority to local legislators to enact local gun control regulations. However, despite a Democrat trifecta in Washington, these bills were

⁴⁴⁶ Preemption-based lawsuits filed against Seattle are discussed in Chapter IV.

⁴⁴⁷ S.B. 6146, 65th Leg., Reg. Sess. (Wash. 2018) and H.B. 2666, 65th Leg., Reg. Sess. (Wash. 2018).

⁴⁴⁸ WASH. REV. CODE 9.41.290 (1994).

⁴⁴⁹ *Id.* The scope of this prohibition is one of the legal issues at the heart of *Alim v. Seattle* and *Bass v. Edmonds* which are presented in the next chapter.

⁴⁵⁰ Wash. (S.B. 6146) and Wash. (H.B. 2666).

unsuccessful. No reason was uncovered. This is a recurring theme in Washington. Democrats proposed repealing preemption, but those bills failed despite party dominance in state government.

In 2019, Washington Democrats again proposed repealing the preemption statute.⁴⁵¹ Speaker of the House Laurie Jenkins and Majority Whip Marcus Riccelli sponsored HB 1374. Democrats continued to have a trifecta in state government. The bill was referred to the House Civil and Human Rights Committee and was considered in a January 21, 2020 hearing. However, it was not enacted. The failure of firearms preemption repeal proposals by Democrats in a state where they have single-party dominance raises questions about the motivating factors behind sponsoring these bills. The party leadership was involved in the sponsorship of these bills and if they wanted these bills enacted, they could have used their party whips to get their members to vote in favor of the bills. Governor Jay Inslee is a vocal proponent of gun control.⁴⁵² As a result, the proposals by Washington Democrats to repeal preemption are interpreted by this project as efforts to make a political point. The impact of firearms preemption in Washington is discussed in the next chapter in relation to preemption-based lawsuits filed against Seattle.

Virginia was not the only state to consider bills in response to gun violence. Nevada Democrat Assemblywoman Sandra Jauregui⁴⁵³ introduced AB 291 in response to the shooting on the Las Vegas Strip in 2017.⁴⁵⁴ That shooting took 60 lives.⁴⁵⁵ The bill proposed repealing the preemption statute.⁴⁵⁶ The repeal provisions were amended from the bill by the Assembly Judiciary Committee. The NRA opposed the proposed repeal of firearms preemption. The NRA argued that the bill would create a patchwork of laws and do nothing to ensure public safety.⁴⁵⁷ The next day, Jauregui proposed a conceptual amendment to the bill that no longer proposed

⁴⁵¹ H.B. 1374, 66th leg., Reg. Sess (Wash. 2019).

⁴⁵² See e.g., Hanna Scott, *Gov. Inslee, AG Seek 'Assault Weapons' Ban, More Gun Laws to Fight Mass Shootings*, MY NORTHWEST NEWS (Dec. 12, 2019), <https://mynorthwest.com/1636992/inslee-ag-assault-weapons-ban/>.

⁴⁵³ Jauregui's district, the 41st Assembly District, is an urban district that includes part of the Las Vegas Strip.

⁴⁵⁴ See Susan Miller, *Las Vegas Shooting Now Tops List of Worst Mass Shootings in U.S. History*, NASHVILLE TENNESSEAN (Oct. 2, 2017), <https://eu.tennessean.com/story/news/2017/10/02/las-vegas-shooting-mass-shootings-stephen-paddock-us-list-history-orlando-sandy-hook-virginia-tech/722716001/>.

⁴⁵⁵ Rio Lacanlale, *Las Vegas Woman Becomes 60th Victim of October 2017 Mass Shooting*, LAS VEGAS REV.J. (Sep. 17, 2020), <https://www.reviewjournal.com/crime/shootings/las-vegas-woman-becomes-60th-victim-of-october-2017-mass-shooting-2123456/>.

⁴⁵⁶ Assemb. B. 291, 80th Leg., Reg. Sess. (Nev. 2019).

⁴⁵⁷ Letter to Assemb. Judiciary Comm., Nat'l Rifle Ass'n-Inst. Leg. Action, March 31, 2019, https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=39272&fileDownloadName=0401AB291_NRA_ltrInOpposition.pdf.

repealing the entire preemption provision.⁴⁵⁸ It appears that there was interest group pressure behind the scenes to stop the repeal of firearms preemption in Nevada.

In Florida, Democrats proposed the most preemption repeal bills in the data set. State Senator Annette Taddeo sponsored SB 1662 (2019), which proposed repealing preemption.⁴⁵⁹ This included the hyper preemption provisions. The hyper preemption provisions in Florida law include civil penalties for local elected officials.⁴⁶⁰ Democrat State Representative Richard Stark sponsored HB 6069 (2019), a companion bill to SB 1662. HB 6069 was an identical proposal to repeal the preemption statute. Both bills were withdrawn and postponed indefinitely.

Democrat State Representative Ben Diamond sponsored HB 6061 (2019).⁴⁶¹ Ben Diamond represents a district that includes St. Petersburg, Florida. In 2018, St. Petersburg was one of ten cities to file a lawsuit challenging the legality of the state preemption statute.⁴⁶² In this case, the Florida Supreme Court determined that the hyper preemption provisions of the statute are constitutional.⁴⁶³ Democrat State Senator Daryl Rouson sponsored SB 1532. His district also includes St. Petersburg. Democrats representing urban districts sponsored these bills. However, the bills were unlikely to pass as Florida Republicans have a trifecta. It appears that these bills were sponsored, in part, to make a political point.

Democrats Dan Daley and Doty Joseph sponsored HB 6009 (2020). The bill was co-sponsored by Cindy Polo and Carlos Guillermo Smith, the sponsor and one of the co-sponsors of HB 885. Richard Stark, the sponsor of HB 6069 in 2019, was also a co-sponsor of HB 6009. The bill proposed repealing the preemption statute.⁴⁶⁴ However, it died in committee.

Dan Daley was elected in 2019.⁴⁶⁵ Before his election, Daley was a city commissioner for Coral Springs, Florida. As City Commissioner, he was one of the litigants who filed a

⁴⁵⁸ Minutes of Apr. 1, 2019 joint meeting, Assem. Judiciary Comm. & the S. Judiciary Comm., 18th Sess, Reg. Sess. Apr. 1, 2019, at 13 (Nev. 2019).

⁴⁵⁹ S.B. 1662, 2019 Leg., Reg. Sess. (Fla. 2019).

⁴⁶⁰ FLA. STAT. § 790.33(3)(c) (2011).

⁴⁶¹ H.B.6061, 2019 Leg., Reg. Sess. (Fl. 2019).

⁴⁶² Liz Crawford & Garin Flowers, *St. Petersburg Mayor Joins Cities Suing Rick Scott Over Gun Regulation*, WTSP (Apr. 11, 2018), <https://www.wtsp.com/article/news/local/st-petersburg-mayor-joins-cities-suing-rick-scott-over-gun-regulations/67-537275823>.

⁴⁶³ *Fried*, 355 So.3d.

⁴⁶⁴ H.B. 6009, 2020 Leg., Reg. Sess. (Fla. 2020).

⁴⁶⁵ Sharon Aron Baron, *Coral Springs' Dan Daley Wins Florida House Seat*, CORAL SPRINGS TALK (Feb. 14, 2019), <https://coralringstalk.com/dan-daley-wins-florida-house-seat-22119>.

lawsuit to challenge the state preemption statute in *Weston v. DeSantis*.⁴⁶⁶ This case, discussed in Chapter II, unsuccessfully challenged, *inter alia*, the constitutionality of the hyper preemption provisions of Florida's preemption statute under the Florida Constitution and the U.S. Constitution. The plaintiffs included more than 30 Florida municipalities and Agriculture Commissioner and Democrat candidate for Governor, Nikki Fried.

State Senator Annette Taddeo sponsored SB 134 (2020). Fellow Democrat Jose Javier Rodriguez co-sponsored the bill. Like HB 6009, SB 134 proposed repealing preemption.⁴⁶⁷ The bill died in committee. Like in 2019, the Democrat-sponsored bills proposing repealing preemption were unlikely to succeed. Florida Republicans held a trifecta. Given the gun violence faced by Florida, including the Stoneman Douglas High School shooting discussed in Chapter II, it is possible that there was a desire to repeal preemption on the part of the bill sponsors. However, it appears political posturing may have factored into the decision to sponsor the bill.

These bills are examples of Republicans and pro-gun groups like the NRA thwarting efforts to expand the authority of local governments to regulate firearms. The NRA opposed both bills. According to Marion Hammer, a former NRA lobbyist and NRA President, the NRA was responsible for failure of these bills.⁴⁶⁸ As a result, it appears reasonable to assume that the NRA factored into the defeat of these bills. The Republicans' trifecta also limited the likelihood of success for the bills. This means that Republican and pro-gun pressure group influence in Florida created an insurmountable obstacle to the enactment of these Democrat-sponsored bills. This further puts into question the motivation behind sponsoring these bills. Given the efforts by some of the bill sponsors such as Dale Dailey to repeal firearms preemption in Florida, it appears that proposing preemption repeal was seen as a pathway to empower cities to put in place local gun control and reduce gun violence in Florida. However, the limited likelihood of success also suggests that it is reasonable to assume that making a political point factored into the decision to sponsor these bills.

⁴⁶⁶ *Weston*, 2018-CA-000699 .

⁴⁶⁷ S.B. 134, 2020 Leg., Reg. Sess. (Fla. 2020).

⁴⁶⁸ Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Florida Alert! Dozens of gun control bills died in Florida this session. Thank NRA (Mar. 24, 2020), <https://www.nraila.org/articles/20200324/florida-alert-dozens-of-gun-control-bills-died-in-florida-this-session-thank-nra>.

In North Carolina, Democrat State Representatives⁴⁶⁹ sponsored HB 86 (2019). The sponsors and co-sponsors included representatives of more urban districts.⁴⁷⁰ The North Carolina preemption statute declares that “the regulation of firearms is properly an issue of general, state-wide concern, and that the entire field of regulation of firearms is preempted from regulation by local governments.”⁴⁷¹ HB 86 proposed repealing this statute in full.⁴⁷² The bill died in committee and no explanation was located. Republican dominance of the state legislature may provide the answer. The Republicans controlled both houses. Due to this, it was unlikely that the bill would have passed either house. It appears that part of the motivation behind sponsoring the bill was to demonstrate a position in support of gun control.

Mississippi considered a hyper preemption repeal proposal. HB 22 (2019),⁴⁷³ sponsored by Democrat Earle Banks, proposed repealing the civil liability for persons impacted by municipalities using their written notice authority to restrict their ability to carry concealed weapons on property controlled by the municipality. This bill died in committee without further explanation. Republicans had a trifecta in the state in 2019. As a result, this bill likely had little possibility of success. Representative Banks is a repeat sponsor of bills that proposed either to limit or repeal preemption. However, as previously discussed, gun violence is an important challenge faced by Jackson, a city considered one of the deadliest cities in the country due in part to gun violence.⁴⁷⁴ Banks’ district includes Jackson, and taking steps like proposing limiting preemption and hyper-preemption repeal could earn Banks political points. His repeated sponsorship could also be interpreted as a sincere effort to expand local authority or, in the case of HB 22, to limit the legal consequences for cities and their officials should they attempt to regulate in conflict with state preemption. This project interprets the sponsorship of HB 22 as partially an effort to make a political statement.

C. Expanding preemption

⁴⁶⁹ Those representatives are Christy Clark, Marcia Morey, Mary Harrison, and Shelly Willingham.

⁴⁷⁰ Clark’s 98th House District includes portions of the Charlotte metropolitan area. Morey’s 30th House District includes part of Durham. Most of the city of Greensboro is part of Harrison’s 61st House District. The co-sponsors represent districts with parts of Raleigh, Greensboro, and Durham.

⁴⁷¹ N.C. GEN. STAT §14-409.40 (2015).

⁴⁷² H.B. 86, 154th Leg., Reg. Sess. (N.C. 2019).

⁴⁷³ H.B. 22, 2019 Leg., Reg. Sess. (Miss. 2019).

⁴⁷⁴ See Peter Nickeas & Priya Krishnakumar, *‘We’ve Seen Lifelong Friends Kill Each Other’: How a State Capital Became One of the Deadliest US Cities*, CNN (Dec. 28, 2021), <https://edition.cnn.com/2021/12/28/us/jackson-mississippi-pandemic-homicides-gun-violence>.

This category includes 59 bills/60 % of the data set. Republicans sponsored most of these bills. This highlights the conflict between Republicans and Democrats. Republicans supported expanding preemption while, as shown above, Democrats supported limiting and repealing preemption. These proposals included limiting local tax authority, removing expressly granted local authorities, limiting local governments' rights as an employer, expanding the expressly preempted field, preempting gun control measures, and proposing preemption in states without preemption. The impact of these bills is that they would expressly limit the authority of local governments by expanding the scope of the preemption statute and, in the states where there is no preemption statute, would add firearms preemption to state law.

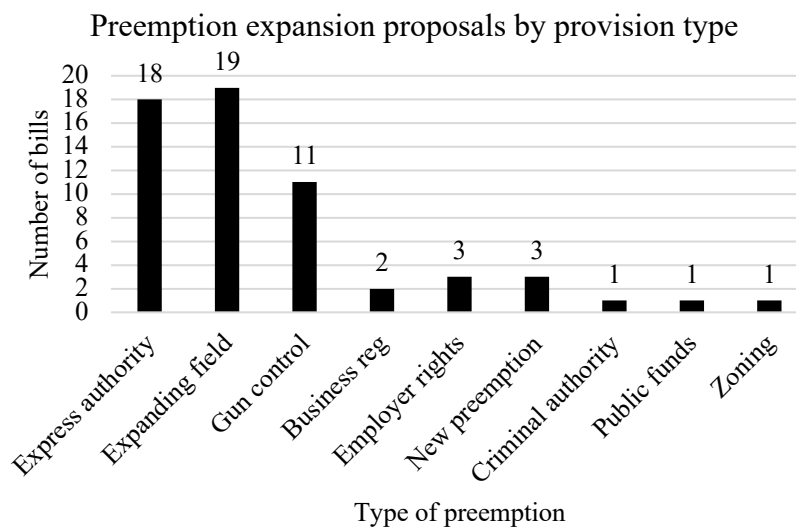


Figure 3.3: Preemption expansion proposals by provision type.

Republicans-sponsored bills proposed repealing grants of local authority. This is significant because the express grants of authority to local governments are generally enacted as exceptions to the preemption statutes. By reducing the exceptions to the preemption statute, these bills would expand the scope of the preemption. This would have the effect of curtailing the scope of local authority to regulate firearms.

Mississippi's Republican-sponsored HB 758 (2016) proposed expanding preemption by expressly prohibiting municipalities from imposing regulations on the discharge of firearms

on property owned, controlled, or regulated by the municipality.⁴⁷⁵ The state preemption statute preempts any local ordinance that restricts:⁴⁷⁶

- possession
- carrying
- transportation
- sale
- transfer
- ownership of firearms or ammunition or their components.

The bill passed the House but died in the Senate Judiciary Committee. No information about why the bill died was obtained. The lack of success, combined with the Republicans holding a trifecta in Mississippi, raises questions about whether the bill was sponsored with success in mind. One possible explanation is that the sponsor and co-sponsors wanted to be seen as pro-gun rights as a political statement to appeal to pro-gun rights voters.

Illinois considered a unique bill. Democrat-sponsored HB 3449 (2019) proposed expanding preemption by expressly prohibiting municipalities from imposing: “a tax, fee, or other assessment other than the normal sales tax for goods on a firearm, firearm attachment or firearm ammunition.”⁴⁷⁷ The preemption statute declares that “the regulation, licensing, possession, registration, and transportation of handguns by licensees are exclusive powers and functions of the state.”⁴⁷⁸ HB 3449 did not pass. It is one of only a few examples of a Democrat-sponsored bill proposing preemption expansion. One potential motivating factor in sponsoring the bill was to appeal to voters in a competitive district. The sponsor, Jerry Costello, had just won a close election in 2018 against Republican David Friess in 2018. Friess now represents the district. Friess’ campaign website has the 2nd Amendment as one of his campaign’s key issues.⁴⁷⁹ This suggests that gun rights resonate with the constituents of the district.

Republican State Representative Patrick Windhorst sponsored HB 3176 (2019). His district is Illinois’s 5th least densely populated district. The bill proposed a significant

⁴⁷⁵ H.B. 758, 2016 Leg., Reg. Sess. (Miss. 2016).

⁴⁷⁶ MISS. CODE ANN. §45-9-51 (West 2014). (“no county or municipality may adopt any ordinance that restricts the possession, carrying, transportation, sale, transfer or ownership of firearms or ammunition or their components”).

⁴⁷⁷ H.B. 3449, 101st Gen. Assemb., Reg. Sess. (Ill. 2019).

⁴⁷⁸ 430 ILL. COMP. STAT. 65/13.1(a) (2013).

⁴⁷⁹ DAVID FRIESS FOR STATE REPRESENTATIVE, <https://www.davidfriess.com>.

expansion of the preemption statute. First, it proposed repealing the authority of municipalities to require the registration of firearms or impose greater restrictions on the acquisition, possession, and transfer of firearms.⁴⁸⁰ The bill also proposed adding to the following declaration to the preemption statute:

“[t]he regulation of the ownership and possession of firearms and ammunition, components, accessories, or accoutrements for firearms are exclusive powers of this State. A unit of local government, including a home rule unit, may not require the registration of the person of firearm or ammunition as a condition of ownership or possession of the firearm or ammunition”.⁴⁸¹

The bill died in committee. No vote information was located. This bill had a limited chance of success. Democrats had a trifecta in Illinois.

Windhorst also sponsored HB 4391 (2020). This bill proposed expressly preempting municipalities from taxing firearms and ammunition at different rate than is applicable to the sale of goods.⁴⁸² Like HB 3349, the proposed preemption provisions in HB 4391 would have expressly applied to home rule municipalities. However, neither bill passed. Both were unlikely to pass. Democrats held a trifecta, including a supermajority in the House. One interpretation of the sponsorship of these bills is that they appear to be an expression of support for preemption and opposition to gun control. It also appears that one potential conclusion is that these two bills were sponsored for political purposes.

In 2020, Louisiana enacted HB 140.⁴⁸³ Republican State Representative Blake Miguez sponsored the bill with 33 co-sponsors: 31 Republicans and two Democrats. The state preemption statute preempts the sale, purchase, transfer, possession, ownership, licensing, registration, and transportation of firearms.⁴⁸⁴ The preemption statute before the enactment of HB 140 included an exception to the application of the statute where the statute did “not apply to the levy and collection of sales and use taxes, license fees and taxes and permit fees, nor shall it affect the authority of political subdivisions to prohibit the possession of a weapon or firearm in certain commercial establishments and public building.”⁴⁸⁵ The bill removed the

⁴⁸⁰ H.B. 3176, 101st Gen. Assemb., Reg. Sess. (Ill. 2019).

⁴⁸¹ *Id.*

⁴⁸² H.B. 4391, 101st Gen. Assemb., Reg. Sess. (Ill 2020).

⁴⁸³ H.B. 140, 71st Leg., Reg. Sess., 2020 Acts, No. 299 (La. 2020).

⁴⁸⁴ LA. STAT. ANN. §40:1796 (2011).

⁴⁸⁵ LA. REV. STAT. §40:1379.3(N) (2010).

word ‘certain’ and replaced it with a list of buildings and places. The list includes places like the capitol building where local governments do not exercise authority.⁴⁸⁶ This list appears to have shrunk the scope of the local authority, albeit in a limited way.

It seems that Representative Miguez attempted to use HB 140 for political gain. He posted a video of his defense of HB 140 during the bill’s final debate on Facebook.⁴⁸⁷ Miguez argued that the law he proposed to amend created confusion for those just trying to follow the law. He also equated his sponsorship of HB 140 with defending the Second Amendment, but he did not demonstrate a threat to the Second Amendment that the bill removed. One of the motivators for Representative Miguez’s sponsorship of this bill appears to be to appeal to pro-gun rights voters.

Miguez also sponsored HB 281 (2020), a bill that proposed removing an exception to the preemption statute that permits municipalities to regulate the possession of a firearm in certain commercial buildings and public buildings.⁴⁸⁸ The bill passed the House by more than a 2/3rd majority but died in the Senate Judiciary Committee. Nothing uncovered suggests that the committee considered the bill. The bill appears to address the same issue of municipal regulation of firearms in certain buildings as HB 140. The fact that HB 281 had similar objectives as an enacted bill suggests that sponsoring HB 281 may have been done for political gain.

Some preemption bills appear to have been introduced because of cities putting in place local measures of gun control. Missoula, Montana, enacted Ordinance 3581 on September 26, 2016.⁴⁸⁹ The ordinance required background checks for all firearms sales and transfers in Missoula. Sometime between the enactment of the ordinance and January 26, 2017, then Speaker of the Montana House Austin Knudsen wrote to Montana Attorney General Tim Fox for an advisory opinion on the legality of the Missoula ordinance. On January 26, 2017, Fox issued an advisory opinion that concluded, *inter alia*, that regulations such as Ordinance 3581

⁴⁸⁶ LA. REV. STAT. §40:1379.3(N) (2020).

⁴⁸⁷ Blake Miguez, *HB140 House Floor Debate* (Defending LA Citizen's 2A Rights), FACEBOOK (May 28, 2020), <https://www.facebook.com/blake.miguez/videos/hb140-house-floor-debate-defending-la-citizens-2a-rights/755175298560231/>.

⁴⁸⁸ H.B. 281, 71st Leg., Reg. Sess. (La 2019).

⁴⁸⁹ Complaint at 2, *City of Missoula v. Fox*, DV-18-429 (4th Dist. Ct. Missoula Cnty, Mont. 2018).

were prohibited by state law.⁴⁹⁰ On April 11, 2018, Missoula challenged the opinion of the Attorney General.⁴⁹¹

Montana Republican Representative Matt Regier introduced HB 325 on January 29, 2019. Regier's 4th House District is rural. The bill proposed removing the express authority of municipalities to regulate the carrying of concealed weapons.⁴⁹² The bill also proposed removing the express authority of cities to regulate the discharge of firearms, including at schools.⁴⁹³ Additionally, it proposed removing municipalities' authority to regulate firearms possession by convicted persons, persons with mental health issues, illegal immigrants, and minors.⁴⁹⁴ The bill passed both houses of the legislature. The House voted 57 to 24 in favor. The Senate voted 29 to 20 in favor with one excused absence.⁴⁹⁵ The vote was on party lines. The Democrats who voted against the bill include six State Senators who represent Missoula and nine other Democrat Senators who represent some of the largest cities in Montana.

Democrat Governor Steve Bullock vetoed the bill on May 3, 2019. In his veto letter, Bullock argued that "[i]n Montana, local decisions about the proper role of guns in public, or concealed weapons, have always been the norm".⁴⁹⁶ Bullock referred to the Town of Glendive's 1885 regulation prohibiting carrying handguns in certain places. This was four years before Montana became a state. In response to Bullock's veto, Regier introduced HB 357.⁴⁹⁷ Republicans used a novel approach with HB 357 in comparison to the other bills in the data set. HB 357 put the issue of firearms preemption on the ballot for Montana voters in November 2020. The ballot initiative, LR-130, passed with 52% support.

The effect was that local governments' "power to restrict or regulate the possession of firearms"⁴⁹⁸ was repealed by HB 357. It also removed local government authority to regulate firearms in a manner previously permitted under state law. Before HB 357, a local government

⁴⁹⁰ Op. Att'y. Gen. No. 1, Vol 57, <https://www.dojmt.gov/wp-content/uploads/Knudsen-AG-Opinion-Final.pdf> (Mont. 2017).

⁴⁹¹ *Fox, DV-18-429*.

⁴⁹² H.B. 325, 2019 Leg., Reg. Sess. (Mont. 2019).

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

⁴⁹⁵ S. vote tabulation for HB 325, 2019 Leg., Reg. Sess. (Mont. 2019), [http://laws.leg.mt.gov/legprd/LAW0211W\\$BLAC.VoteTabulation?P_VOTE_SEQ=S1156&P_SESS=20191](http://laws.leg.mt.gov/legprd/LAW0211W$BLAC.VoteTabulation?P_VOTE_SEQ=S1156&P_SESS=20191).

⁴⁹⁶ Gov. Steve Bullock, Veto letter HB 325 (May 3, 2019).

<https://leg.mt.gov/bills/2019/AmdHtmH/HB0325GovVeto.pdf>.

⁴⁹⁷ H.B. 357, 66th Leg., Reg. Sess., Act 2019, ch. 218, (Mont. 2019).

⁴⁹⁸ *Id.*

in Montana with self-governing powers was generally prohibited from exercising that right in relation to the right to keep or bear arms, except the carrying of concealed weapons.⁴⁹⁹ State law previously permitted local governments to prevent the carrying of concealed or unconcealed weapons in publicly owned buildings, parks, or schools and to a public assembly. The law also permitted local government to prevent the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.⁵⁰⁰ This provision has similarities with the text of HB 421 and SB 35 of Virginia. The Virginia bills authorized local governments to regulate the carrying of firearms in certain public buildings and public places such as parks.

HB 357 removed an exception to the general prohibition on local governments with self-governing powers exercising firearms-related authority. It also removed an exception that states that “a local government has the power to regulate the carrying of concealed weapons.”⁵⁰¹ Additionally, the bill limited the scope of local government’s power to regulate unpermitted concealed weapons and the carrying of unconcealed weapons in publicly owned and occupied buildings under the jurisdiction of the local government in question.⁵⁰² Now local governments are prohibited from regulating the carrying of concealed and unconcealed weapons at a school unless the school fits within the definition of a building publicly owned and occupied. The bill removed the authority of local governments to regulate the possession of firearms by convicted felons, adjudicated mentally incompetents, and minors. These areas of firearms regulation were previously within the authority of local governments. The enactment of this bill effectively eliminated significant portions of what was already the limited authority of local government to regulate firearms. The result is that the power dynamic between Montana and its local governments in relation to the regulation of firearms has been altered.

A preemption expansion proposal was introduced on behalf of a pro-gun pressure group. Kansas Republican Representative Blake Carpenter introduced HB 2718 (2019)⁵⁰³ on behalf of the National Shooting Sports Foundation (NSSF).⁵⁰⁴ The Kansas House Committee

⁴⁹⁹ MONT. ANN. CODE. §7-1-111(9) (2019).

⁵⁰⁰ MONT. ANN. CODE. §45-8-351(2)(1) (2019).

⁵⁰¹ *Id.*

⁵⁰² Mont. H.B. 357.

⁵⁰³ H.B. 2718, 2019-2020 Leg., Reg. Sess. (Kan. 2020).

⁵⁰⁴ Kansas State Legislature, HB 2718 (2019), http://kslegislature.org/li_2020/b2019_20/measures/hb2718/. The National Shooting Sports Foundation refers to itself as the firearm industry trade association, *see* NAT’L SHOOTING SPORTS FOUND., <https://www.nssf.org/>.

on Federal and State Affairs sponsored HB 2718. The bill proposed expanding state preemption by prohibiting municipalities from using their zoning authority that has “the effect of excluding federally licensed firearms manufacturers, importers or dealers from the entire zoning jurisdiction of the governing body.”⁵⁰⁵ The bill also proposed prohibiting municipalities from adopting or enforcing zoning regulations that “could be reasonably construed to solely affect federally licensed firearms manufacturers, importers or dealers.”⁵⁰⁶ The bill was referred to the Committee on Federal and State Affairs, the bill’s sponsor, but the bill died in committee.

HB 2718 stands out because it was introduced on behalf of the NSSF. This project presumed that pro-gun groups would play a role but did not expect a pressure group would have a bill introduced on its behalf. HB 2718’s failure to receive approval from the Committee that sponsored the bill permits questions about whether there was motivation to seek its enactment or whether it was sponsored to show support for preemption and, by extension, demonstrate opposition to gun control. It also appears reasonable to assume that part of the motivating factor in introducing the bill was to be seen favorably by the NSSF.

Two bills in the data set proposed amendments to their state preemption statutes that would have limited local governments’ employer rights. The Mississippi legislature considered both bills. In 2017, Republican Representative Randy Rushing sponsored HB 620. The bill is an example of how firearms preemption can go beyond firearms and impact other areas of local government authority. HB 620 proposed preventing municipalities from prohibiting their employees from carrying firearms provided that the employee had a license to carry a firearm and had received the training required under state law.⁵⁰⁷ As HB 620 engages the employer-employee relationship, it goes beyond merely regulating firearms. Even if a municipality, as an employer worried about workplace safety, would want to prohibit some of their employees from carrying a firearm for safety or civil liability reasons, this bill would have barred municipalities from doing so. This could arguably restrict municipalities’ freedom of contract within the context of employment relations.

Two years later, Rushing sponsored HB 524. The bill was co-sponsored by Republicans Shane Barnett and William Shirley. It proposed prohibiting a public employer, such as a

⁵⁰⁵ Kan. H.B. 2718.

⁵⁰⁶ *Id.*

⁵⁰⁷ H.B. 620, 2017 Leg., Reg. Sess. (Miss. 2017).

municipality, from adopting a policy banning an employee with a valid license from carrying a concealed firearm on any property or building controlled by the employer.⁵⁰⁸ This bill aimed to impact the employee-employer relationship by restricting public employers from having policies to protect job site safety. This bill had no legislative activity after referral and died in committee.

Another Rushing-sponsored bill focused on restricting the use of public funds to expand the scope of the state firearms preemption statute. Rushing co-sponsored HB 614 (2017) with Republican Representative Karl Oliver. HB 614 proposed preempting municipalities from using public funds to regulate firearms, ammunition, and accessories in conflict with state law, albeit permissible under federal law.⁵⁰⁹ The bill died in committee. Oliver's 46th House District is Mississippi's 3rd least densely populated house district. Rushing's 78th House District is also rural. This suggests that this bill is an example of bills sponsored by Republicans representing rural districts that proposed limiting local authority to regulate firearms.

The sponsorship of preemption expansion bills by representatives of rural legislative districts has a political dimension. Rural residents tend to oppose gun control, and this aligns with the Republican party platform. Sponsoring bills that limit local regulatory authority to enact gun control is politically advantageous for politicians seeking to secure the support of rural voters.

Proposals to restate the legislative intent to preempt in the field of firearms were considered during the period of review (2016-2020). The Pennsylvania legislature considered two bills that proposed clarifying preemption provisions to make it clear that the statute preempts and supersedes any local ordinance or rule inconsistent with the preemption statute. Pennsylvania has two key firearms preemption provisions: “[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation, or possession of firearms”⁵¹⁰ and “[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not

⁵⁰⁸ H.B. 524, 2019 Leg., Reg. Sess. (Miss. 2019).

⁵⁰⁹ H.B. 614, 2017 Leg., Reg. Sess. (Miss. 2017).

⁵¹⁰ 53 PA. CONS. STAT. 2962(g) (West, 1996).

prohibited by the laws of this Commonwealth.”⁵¹¹ Republican-sponsored SB 1330 (2016) proposed adding an additional preemption provision that would have declared that the two provisions referenced above “shall preempt and supersede any local ordinance or rule insofar as the local ordinance or rule is inconsistent.”⁵¹² As the existing preemption provisions in Pennsylvania are already broad, one conclusion that could be drawn is that the primary motivation for the sponsors was political posturing, i.e., to demonstrate support for the right to bear arms to a voting bloc that is receptive to a pro-gun rights position.

The bill sponsor and eight co-sponsors represent some of the least densely populated districts. This means that SB 1330 is a bill sponsored by Republicans representing rural districts seeking to expand preemption and impose new hyper preemption measures. The bill was also unlikely to succeed with a Democrat governor who had openly criticized the preemption statute and supported gun control.⁵¹³ It appears reasonable to conclude that this bill was sponsored by Republicans representing rural districts proposing to expand preemption through hyper preemption and expanding preemption to appeal to pro-gun rights voters.

Republican Wayne Langerholc sponsored SB 5.⁵¹⁴ It was co-sponsored by 24 Republicans and one Democrat. One of the co-sponsors sponsored SB 1330 in 2016. The wording of SB 5 is very similar to SB 1330. The bill proposed restating the legislature’s intent to preempt the field of firearms and expanding the scope of liability for municipalities that attempt to regulate firearms in conflict with state preemption. SB 5 was not successfully enacted.

The sponsors included Republicans representing rural districts. The districts of Langerholc and two of the co-sponsors are three of Pennsylvania’s least densely populated districts. The bill did not pass and did not have a good chance of success. SB 5 had a similar obstacle as SB 1330. It was likely that the Democrat governor would have vetoed the bill. However, the bill did not get to the governor for him to veto it. Because of that, this project has interpreted the sponsorship of this bill, at least in part, as political posturing. It also appears

⁵¹¹ 18 PA. CONS. STAT. § 6120(a) (2014).

⁵¹² S.B. 1330, 2015-2016 Leg., Reg. Sess. (Pa. 2016).

⁵¹³ Press Release, Off. of Governor, Governor Wolf: Pennsylvanians Deserve Safety, Republicans ‘Dealing Peril’ with Dangerous Bills (Nov. 9, 2021), <https://www.governor.pa.gov/newsroom/governor-wolf-pennsylvanians-deserve-safety-republicans-dealing-peril-with-dangerous-bills/>.

⁵¹⁴ S.B. 5, 2017-2018 Leg., Reg. Sess (2017).

that one interpretation of SB 5 is that it is an example of bills sponsored by representatives of rural districts proposing preemption expansion and new hyper preemption to make a political point.

In 2020, Utah considered HB 271. Republican State Representative Cory Maloy and Republican State Senator Curtis Bramble sponsored the bill. It proposed adding a provision to the preemption statute stating, “that the Legislature occupies the whole field of state regulation of firearms and ammunition.”⁵¹⁵ The bill also proposed expanding the field by adding ammunition and firearms accessories to the expressly preempted field.⁵¹⁶ The bill went further by proposing prohibiting cities from requiring a license or permit to purchase, own, possess, or keep a firearm was already preempted.⁵¹⁷ The bill proposed amending this provision to include the preemption of requiring an individual to have a license or permit to purchase, own, possess, transport, or keep ammunition and firearms accessories. The authority to require a license or permit to purchase, own, possess, or keep a firearm was already preempted.⁵¹⁸

The bill also proposed adding prohibiting local governments, unless expressly authorized by state law, from regulating firearms “that in any way inhibits or restricts the possession or use of firearms, ammunition, or a firearm accessory on either public or private property.”⁵¹⁹ This provision would have had wide-reaching implications. It is possible that this provision would have prevented local governments from regulating the public carrying or public possession of firearms and ammunition within the local government’s jurisdiction. Despite Republicans having a trifecta in state government, the bill did not pass. As a result, one potential interpretation is that this bill was sponsored to make a political point as opposed to amend the law.

In 2017, Illinois considered a preemption expansion proposal. The Illinois preemption statute declares that “the regulation, licensing, possession, registration, and transportation of handguns by licensees are exclusive powers and functions of the state.”⁵²⁰ Republican State Senator Dale Fowler sponsored SB 1673. The previous year, Fowler won the 59th Senate District by flipping a seat previously held by a Democrat. He took over the district in January

⁵¹⁵ H.B. 271, 63rd Leg., Reg. Sess. (Utah 2020).

⁵¹⁶ *Id.*

⁵¹⁷ UTAH CODE. ANN. §53-5a-102(3)(b) (2013).

⁵¹⁸ *Id.*

⁵¹⁹ Utah H.B. 271.

⁵²⁰ 430 ILL. COMP. STAT. 65/13.1(a) (2013).

2017 and introduced the bill on February 9th, 2017. His district is the sixth least densely populated senate district in Illinois.⁵²¹ The bill proposed amending state law to expand the preempted field of firearms by amending the definition of a handgun.⁵²² SB 1673 would have added “all handgun components and accessories” to the definition of a handgun.⁵²³ Illinois cities have regulated firearm accessories. For example, it is prohibited in Chicago to “carry, possess, display for sale, sell, or otherwise transfer any laser sight accessory, or a firearm silencer or muffler.”⁵²⁴ SB 1673 likely would have forced Chicago to repeal this provision. The bill died in committee without explanation.

This bill had a limited chance of success. Democrats controlled both houses of the legislature. As a result, the sponsorship of this bill is interpreted as political posturing. It is also a bill proposed by a Republican representing a rural district that proposed restricting municipal authority. This comports with the trend seen throughout the data set in which Republicans representing rural districts sponsored bills that proposed limiting local authority to regulate firearms. The stated objectives of the bill also appear to be to force cities like Chicago to repeal their firearms accessories ordinances.

In Ohio, HB 228 (2018) was enacted in December 2018. Republican Governor, John Kasich, vetoed the bill because of safety and gun violence concerns.⁵²⁵ He also contended that the bill would erode home rule authority as part of his rationale for vetoing the bill.⁵²⁶ Kasich’s rationale for exercising his veto power was arguably also based on a recognition of a tradition of local democracy in Ohio. HB 228 expanded the expressly preempted field to include the “manufacture, taxation, keeping, and reporting of loss or theft, of firearms, their components, and their ammunition.”⁵²⁷ This is a significant expansion of the scope of the field.

HB 228 originally appeared to have died in committee in 2017. However, the bill was revived, amended, and passed out of the House Federalism and Interstate Relations Committee on May 23, 2018. The committee’s passage of the substitute bill appears to be a response to

⁵²¹ *Illinois Senate*, STATISTICAL ATLAS, <https://statisticalatlas.com/state-upper-legislative-district/Illinois/State-Senate-District-59/Population#figure/upper-state-legislative-district-in-illinois>.

⁵²² S.B. 1673, 100th Gen. Ass., Reg. Sess. (Ill., 2017).

⁵²³ *Id.*

⁵²⁴ CHI., IL. CITY CODE 8-20-060 (2010).

⁵²⁵ Kasich HB 228 veto, *supra* note 72.

⁵²⁶ *Id.*

⁵²⁷ H.B. 228. 132nd Leg, Reg. Sess., Ohio Laws File 159 (Ohio 2018).

new city gun control regulations. On May 9, 2018, Cincinnati enacted gun control. On May 14, 2018, Columbus passed gun control ordinances. Cincinnati's ordinance made it "unlawful for any person to own, possess, sell, or use a trigger activator, as defined herein, within the municipal limits of Cincinnati."⁵²⁸ A person violating this section would be guilty of a first-degree misdemeanor. For this section, a trigger activator included: "bump stocks, trigger cranks, slide fire devices, and other similar accessories."⁵²⁹ The Columbus ordinance also included a provision banning bump stocks.⁵³⁰

Republican sponsor Terry Johnson represented the 90th Ohio State House District and ran for state senate in November 2018. He was term-limited in the house. His campaign website touted his endorsement from the NRA's Political Victory Fund and the A+ rating he received.⁵³¹ The 90th House District is rural. Another sponsor, Republican Sarah LaTourette's 76th House District, is also rural. It appears reasonable to interpret the bill as a preemption bill sponsored by Republicans that represented rural districts and enacted in response to city gun control efforts. It also appears that one conclusion that can be drawn is that making a political point factored in the sponsorship and the enactment of HB 228.

The NRA's support started early in the process and appears to have been important to the enactment of the bill. They encouraged supporters to attend house committee meetings to express their support for the bill. The NRA also encouraged supporters and followers to contact their local state representatives to encourage them to override Kasich's veto.⁵³²

The NRA's first statement on HB 228 argued that the preemption provisions would "[s]trengthen firearms preemption ensuring that laws regarding firearms and ammunition are uniform across the state to guarantee that gun owners and sportsmen are able to exercise their rights equally across Ohio."⁵³³ On December 6, 2018, as the bill went to the House for

⁵²⁸ CINCINNATI, OHIO, CITY EMER. ORD. NO. 091-2018 (2018).

⁵²⁹ *Id.*

⁵³⁰ COLUMBUS, OHIO, CITY ORD. 1116-201 (2018). A review of the current online municipal code suggests this ordinance was repealed.

⁵³¹ TERRY JOHNSON FOR OHIO, <https://drterryjohnsonforohio.com/>.

⁵³² Press Release, Nat'l Rifle Ass'n-Inst. Leg. Action, Ohio: Your Action Needed – Contact Your Lawmakers In Support of Veto Override (Dec. 26, 2018), <https://www.nrila.org/articles/20181226/ohio-your-action-needed-contact-your-lawmakers-in-support-of-veto-override>.

⁵³³ Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Ohio: Committee to Hear Self-Defense Bill again (Apr. 16, 2018), <https://www.nrila.org/articles/20180416/ohio-committee-to-hear-self-defense-bill-again>.

concurrence, the NRA contended that the legislation included a “[c]ritical expansion of preemption to ensure that localities do not create a patch work of gun laws throughout Ohio.”⁵³⁴

On December 3, 2018, the Ohio Senate Government and Reform Committee held a meeting to allow interested parties to express their views on the bill just before it went to a vote. The NRA encouraged its members to attend the hearing.⁵³⁵ Representatives of the NRA, the Ohio Municipal League and the bill sponsors, and other elected representatives give testimony on the bill. The testimonies given provide helpful insight into the impact of the bill.

In his testimony to the Committee, Ohio Municipal League Executive Director Kent Scarrett argued that HB 228, if enacted, would conflict with home rule authority as the bill prohibited “a city or village from passing a local ordinance dealing with firearm regulations – regardless of what local leaders deem is best and most safe for their local community.”⁵³⁶ This statement echoes concerns about the ability of municipalities to address local challenges. As a result of Kasich’s veto letter and Scarrett’s testimony, it can be said that this bill was enacted despite concerns from Ohio municipalities and Governor Kasich that the bill would erode Ohio’s tradition of local democracy.

In Pennsylvania, Republican State Representative Mark Keller sponsored HB 1066 (2019). The bill proposed expanding the scope of firearms preemption in Pennsylvania by adding magazines, accessories, use, and discharge to the firearms preemption statute.⁵³⁷ 76 Republicans co-sponsored the bill.

The fact that HB 1066 had 83 sponsors and co-sponsors raises questions about why it failed to pass. The house has 203 members in total. This means the bill needed only nineteen more votes to pass the House. Additionally, the bill was introduced two days after Pittsburgh passed the ordinances subject to the legal challenges discussed in Chapter IV. It seems that the bill may have been effort to respond to Pittsburgh’s efforts to implement gun control. HB 1066

⁵³⁴ Press Release, Nat’l Rifle Ass’n-Inst. Legis. Action, Senate committee to consider multiple pro-gun bills this week (Dec. 2, 2018), <https://www.nraila.org/articles/20181202/ohio-senate-committee-to-consider-multiple-progun-bills-this-week>.

⁵³⁵ *id.*

⁵³⁶ 6th Hearing on HB 228 before the S. Gov’t. Oversight & Reform Comm., 132nd leg, Reg. Sess. (Ohio 2018) (Statement of Kent Scarrett, Ohio Mun. League).

⁵³⁷ H.B. 1066, 2019 Leg., Reg. Sess. (Pa. 2019).

was also unlikely to be enacted once it left the legislature as it likely would have been vetoed by Governor Tom Wolf, a vocal proponent of local gun control and opponent of the state's preemption laws.⁵³⁸ As a result, the sponsorship of this bill is interpreted as a political statement.

Oklahoma's preemption statute declares that "[t]he State Legislature hereby occupies and preempts the entire field of legislation in this state touching in any way firearms, components, ammunition, and supplies to the complete exclusion of any order, ordinance, or regulation by any municipality or other political subdivision of this state."⁵³⁹ Republican-sponsored SB 775 (2019) proposed adding firearms components and ammunition components to the preempted field.⁵⁴⁰ It also proposed hyper preemption measures in the form of civil liability for municipalities regulating in conflict with the statute.⁵⁴¹ It would have permitted courts to award reasonable expenses, including, but not limited to, attorney fees, expert witness fees, and court costs.⁵⁴² The bill died in committee despite a Republican trifecta in Oklahoma. Given the single party dominance of the bill sponsor's party and the fact that the bill was not enacted, it appears the bill was sponsored to make a political point.

Oklahoma State Senator Nathan Dahm sponsored SB 1490. The bill proposed expanding preemption by adding firearm and ammunition components to the expressly preempted field.⁵⁴³ The express provisions of the statute raise questions about the need for SB 1490. The passages of 'touching in any way' and 'to the complete exclusion' appear to already exclude any municipal firearm regulation not expressly permitted by state law. Dahm, by sponsoring SB 1490, may have been able present himself as protecting gun rights, but it is unclear what his bill protects gun rights from. Given the Republican's trifecta in Oklahoma and the perceived limited impact of the bill had it been enacted, this project has interpreted this bill as, at least in part, having been sponsored to make a pro-gun rights political statement.

Republican Representatives Jon Echols and Kim David sponsored HB 2597. There were 34 co-sponsors, all Republicans. One of the co-sponsors was Senator Dahm. State law

⁵³⁸ See, e.g. Gov. Tom Wolf, Veto letter H.B. 979 (Feb. 22, 2022), <https://www.legis.state.pa.us/cfdocs/legis/cl/public/ViewVetoMessage.cfm?sessyr=2022&sessInd=0&billbody=H&billtype=B&billnbr=979&pn=1706&vetonbr=3>.

⁵³⁹ OKLA. STAT. tit. 21 §1289.24 (2014).

⁵⁴⁰ S.B. 775, 57th Leg, Reg. Sess. (Okla. 2019).

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ S.B. 1490, 58th Leg, Reg. Sess. (Okla. 2020).

prohibits municipalities from regulating the open carrying of a handgun.⁵⁴⁴ HB 2597 was enacted and amended this provision by changing the phrase ‘open carry’ to ‘carry’ and adding ‘possession’.⁵⁴⁵ It also replaced the word ‘handgun’ with the word ‘firearm’.⁵⁴⁶ Previously, the prohibition was limited to the lawful open carrying of a handgun. Now it includes the lawful carrying or possession of a firearm.

In South Carolina, the legislatures considered Republican-sponsored SB 875 (2020). It proposed amending the statute by adding to the preemption statute the “manufacture, assembly, storage, warehousing, distribution, or sale” of firearms, ammunition, accessories or components of firearms.⁵⁴⁷ The South Carolina firearms preemption statute prohibits, *inter alia*, municipalities from regulating or attempting to regulate the “transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms, or any combination of these things.”⁵⁴⁸ Like most bills in the data set, this bill was not enacted.

i. Preempting gun control tactics

Some preemption bills proposed preempting certain gun control tactics. Extreme risk protection orders (ERPOs) or ‘red flag laws’ were the most common gun control tactic subject to preemption proposals. Five states considered preempting ERPOs, and Oklahoma enacted SB 1081, which preempted ERPOs.⁵⁴⁹ This bill was the first enacted ERPO preemption bill. However, my dataset shows that the preemption of gun control tactics went beyond ERPOs. South Carolina considered a bill that would have preempted ghost guns.⁵⁵⁰ Wyoming considered a bill proposing to preempt firearms buyback programs and a bill that proposed preempting gun-free zones.⁵⁵¹

⁵⁴⁴ OKLA. STAT. tit. 21 §1290.25 (2012).

⁵⁴⁵ H.B. 2597, 2019 Leg., Reg. Sess., 2019 Okla. Sess. Law Serv. Ch. 1 (Okla. 2019).

⁵⁴⁶ *Id.*

⁵⁴⁷ S.B. 875, 2020 Leg., Reg. Sess. (Sc. 2020).

⁵⁴⁸ S.C. CODE ANN. 23-31-510 (2008).

⁵⁴⁹ S.B. 1081, 57th Leg., 2nd Sess, Anti-Red Flag Act, 2020 Okla. Sess. Law Serv. Ch. 63 (Okla. 2020).

⁵⁵⁰ According to Brady United, ghost guns are “unserialized and untraceable firearms that can be bought online and assembled at home” *see* Brady United, *What are Ghost Guns?*, <https://www.bradyunited.org/fact-sheets/what-are-ghost-guns>.

⁵⁵¹ H.B 180, 2020 Leg., Reg. Sess. (Wyo. 2020).

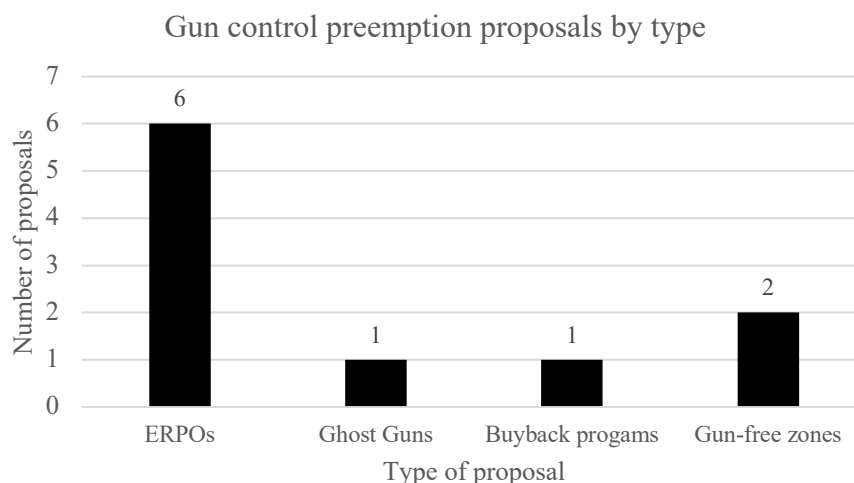


Figure 3.4: Gun control preemption proposals by type

Oklahoma enacted State Senator Nathan Dahm’s SB 1081 (2020). He was recently given an A+ rating by the NRA’s Political Victory Fund⁵⁵² in the lead-up to the June 2022 primaries in which Dahm unsuccessfully ran to replace retiring U.S. Senator Jim Inhofe. Dahm was not the only sponsor or co-sponsor to seek higher office after SB 1081’s enactment. Co-sponsor, Republican State Representative Dustin Roberts, ran for the Republican nomination for Oklahoma’s 2nd Congressional District in 2020 but lost the primary. Another co-sponsor, Republican State Representative Sean Roberts, ran for the Republican nomination for Oklahoma’s Insurance Commissioner. Roberts lost the runoff in August 2022.

SB 1081 passed the Oklahoma House of Representatives 77 to 14 with nine members excused.⁵⁵³ The bill passed the Senate 34 to 9 with four members excused and one vacant senate office at the time of the vote.⁵⁵⁴ At the time, the Oklahoma Senate had 38 Republicans and nine Democrats. The House of Representatives had 77 Republicans and 23 Democrats. The bill preempted extreme risk protection orders (ERPOs) and was the first such preemption law enacted in the U.S.⁵⁵⁵ The bill’s definition of an ERPO includes having a primary purpose of reducing the risk of gun-related injuries or death.⁵⁵⁶ This appears to be an acknowledgment of

⁵⁵² Email: Vote Freedom First on or before June 26th – Vote Nathan Dahm for U.S. House of Representatives!, NAT’L RIFLE ASS’N – POL. VICTORY FUND, <https://www.nrapvf.org/emails/2018/oklahoma/nathan-dahm-endorsement-email-ok-01/>.

⁵⁵³ H. vote on SB 1081, 57th Leg., 2nd Sess (Okla. 2020), http://webserver1.lsb.state.ok.us/cf/2019-20%20SUPPORT%20DOCUMENTS/votes/House/SB1081_VOTES.HTM.

⁵⁵⁴ S. vote on SB 1081, 57th Leg. 2nd Sess. (Okla. 2020), Senate Vote http://webserver1.lsb.state.ok.us/cf/2019-20%20SUPPORT%20DOCUMENTS/votes/Senate/SB1081_VOTES.HTM.

⁵⁵⁵ See Pomeranz & Ochoa, *infra* note 658.

⁵⁵⁶ Okla. S.B. 1081.

the use of ERPOs as a tool to reduce the risk of gun-related injuries or death. Nothing in the text suggests ERPOs do not work.

Six Georgia Republicans sponsored HB 751 (2020), which proposed preempting ERPOs.⁵⁵⁷ This is like Oklahoma SB 1081. The bill also had similar wording as SB 1081. Like Oklahoma SB 1081, HB 751 defines the purposes of ERPOs as having a “primary purpose [...] to reduce the risk of firearm-related death or injury.”⁵⁵⁸ The bill also proposed making the enforcement of an ERPO in Georgia a felony with the punishment for the offense of up to one year in prison and/or a fine of not less than \$1,000 and not more than \$5,000.⁵⁵⁹ This provision would have expressly applied to law enforcement officers. This would have made it difficult to enforce an ERPO ordinance.

HB 751, had it been enacted, would have been called the Anti-Red Flag – Second Amendment Conservation Act. The NRA has been opposed to red flag laws.⁵⁶⁰ One bill sponsor, Joseph Gullet, was endorsed by the NRA for the November 2022 general election and given an A rating by the NRA.⁵⁶¹ The Republicans held a trifecta in Georgia state government. The bill was introduced on January 13, 2020, and had no activity after January 15, 2020. With the sponsors’ party holding a trifecta and limited legislative activity, it appears that one reasonable conclusion is that part of the motivation behind the bill was political posturing. The sponsors may have wanted to show their position on gun control and align with the NRA’s position in an election year.

Kansas’ legislature considered two ERPO preemption bills: HB 2425,⁵⁶² sponsored by Republican Michael Houser, and SB 245,⁵⁶³ sponsored by Republican State Senator Richard Hildebrand. Both bills proposed reserving the regulation of ERPOs for the state, thereby preempting local ERPO ordinances. The bills also proposed hyper preemption. This would have made it a felony to violate the proposed preemption of ERPOs. Both bills died in committee. According to the Kansas House Federal and State Affairs Committee’s 2020 bill

⁵⁵⁷ H.B. 751, 155 Gen. Assemb., Reg. Sess (Ga. 2020).

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

⁵⁶⁰ See, e.g., Victor Joecks, *NRA lobbyist Dan Reid on background checks, red flag laws, lawsuits*. LAS VEGAS REV. J. (Feb. 14, 2019), <https://www.reviewjournal.com/opinion/opinion-columns/victor-joecks/nra-lobbyist-dan-reid-on-background-checks-red-flag-laws-lawsuits-1597030/>.

⁵⁶¹ *Grades: Georgia*, NAT’L RIFE ASS’N-POL. VICTORY FUND, <https://www.nrapvf.org/grades/Georgia>. (last accessed Oct. 15, 2022).

⁵⁶² H.B. 2425, 2019-2020 Leg., Reg. Sess. (Kan. 2020)

⁵⁶³ S.B. 245, 2019-2020 Leg., Reg. Sess. (Kan. 2020).

action index, HB 2425 did not receive a hearing.⁵⁶⁴ The Senate Judiciary Committee's 2020 index shows no action on SB 245.⁵⁶⁵

Representative Houser, HB 2425's sponsor, had NRA links. He was given an 'A' rating by the NRA and was endorsed by the NRA for the November 2022 general election.⁵⁶⁶ The NRA rate politicians through their Political Victory Fund (NRA-PVF).⁵⁶⁷ The NRA's Kansas affiliate, the Kansas State Rifle Association, also endorses him.⁵⁶⁸ HB 2425's objectives are aligned with the NRA in opposition to red flag laws. The Republicans had control of both houses of the legislature, but the bill did not pass. Additionally, the Democrat Governor, Laura Kelly, has voiced support for gun control.⁵⁶⁹ The bills likely would have been vetoed. As a result, it appears that one possible interpretation of the introduction of these bills is that it was, in part, an act of political posturing.

Eight Minnesota Republicans sponsored HF 3692. The bill proposed preempting ERPOs.⁵⁷⁰ It also proposed making it a felony to enforce an ERPO with penalties including up to 18 months of imprisonment and/or up to \$5,000 in fines. This is like the Kansas ERPO preemption bills. The bill died in committee. The Minnesota legislature's website indicates no record of any hearings in committee.

The NRA gave bill sponsor John Heinrich an 'A' rating and endorsed him for the November 2022 general election.⁵⁷¹ This bill appears to follow a pattern of bills sponsored by NRA-linked Republicans that propose expanding preemption but do not advance far in the

⁵⁶⁴ *2020 bill action index*, KAN. HOUSE FED. & STATE AFFAIRS COMM., http://kslegislature.org/li_2020/b2019_20/measures/documents/ctte_h_fed_st_1_index_2020.

⁵⁶⁵ *2020 Senate Judiciary index*, KAN. SENATE JUDICIARY COMM., http://kslegislature.org/li_2020/b2019_20/measures/documents/ctte_s_jud_1_index_2020.

⁵⁶⁶ *Grades: Kansas*, NAT'L RIFLE ASS'N-POL. VICTORY FUND, <https://www.nrapvf.org/grades/kansas/>. (last accessed Oct. 15, 2022).

⁵⁶⁷ *About PVF*, NAT'L RIFLE ASS'N-POL. VICTORY FUND, <https://www.nrapvf.org/about-pvf/>. ("The NRA-PVF ranks political candidates – irrespective of party affiliation – based on voting records, public statements and their responses to an NRA-PVF questionnaire"). The rankings range from A+ to F. These rankings appear to reflect the candidate's stance on gun rights. The better the ranking, the more pro-gun rights the candidate presumably is.

⁵⁶⁸ *Endorsements – 2020 General*, KAN. STATE RIFLE ASS'N, <https://kansarifle.org/ksra-pac/endorsements-2022-general/>.

⁵⁶⁹ *Public Safety*, LAURA KELLY FOR KANSAS, <https://www.laurakellyforkansas.com/issues/public-safety/>.

⁵⁷⁰ H.F. 3692, 91st Leg., Reg. Sess. (Minn. 2020).

⁵⁷¹ *Grades: Minnesota*, NAT'L RIFLE ASS'N-POL. VICTORY FUND, <https://www.nrapvf.org/grades/minnesota> (last accessed Oct. 15, 2022).

legislative process. One possible interpretation of HF 3692 is that this bill was enacted to make a political statement in an election year.

Republican David Eastman sponsored HB 296 (2020) in Alaska. The bill proposed prohibiting:

- municipalities ERPO scheme
- enforcing a red flag order.⁵⁷²

Eastman represents the rural 10th House District. HB 296 is like the other ERPO preemption bills introduced in 2020. It defined an ERPO as an "executive order, written order, or warrant issued by a federal or state court or signed by a magistrate or comparable officer of the court for which the primary purpose is to reduce the risk of firearm-related death or injury."⁵⁷³ This definition of the primary purpose of an ERPO is also in Oklahoma's SB 1081. HB 296's commonalities with other ERPO preemption bills suggest that this bill may have been part of a broader effort to oppose red flag laws though, a model bill could not be located. However, it appears that one conclusion that could be drawn is that the bill was sponsored to make a political point.

The Pennsylvania legislature considered SB 531(2019). This bill proposed expanding the scope of the preemption statute to include reporting lost or stolen firearms.⁵⁷⁴ The bill appears to be motivated by Pittsburgh's efforts to regulate in response to the Tree of Life shooting. One of the Pittsburgh bills discussed in the following chapter included a requirement that lost or stolen firearms be reported. Republicans controlled the Senate, but nothing in the bill history shows the bill was considered by the committee it was assigned to. This suggests that one interpretation of the bill is that it was sponsored to demonstrate a political position against local gun control. More specifically, the bill was sponsored to demonstrate a position against Pittsburgh's ordinances. The opposition to gun control, proposed so soon after Pittsburgh's widely publicized ordinances, appears to further support the conclusion that this bill was sponsored for political purposes.

South Carolina considered Republican-sponsored SB 875 (2020). This bill proposed preempting the regulation of ghost guns. South Carolina's firearms preemption statute declares

⁵⁷² H.B. 296, 31st Leg., 2nd Sess. (Alaska. 2020).

⁵⁷³ *Id.*

⁵⁷⁴ S.B. 531, 2019 Leg., Reg. Sess. (Pa. 2019).

that municipalities cannot regulate or attempt to regulate the transfer, ownership, possession, carrying or transportation of firearms, firearm components or ammunition.⁵⁷⁵ SB 875 proposed amending the statute by adding the “manufacture, assembly, storage, warehousing, distribution, or sale”⁵⁷⁶ of firearms and adding homemade firearms created or assembled without a serial number.⁵⁷⁷ Republican State Senator Danny Verdin sponsored the bill. Verdin was the Senate Majority Whip. The bill died in the Senate Judiciary Committee. Republicans had a majority in the committee and a trifecta in the state government. However, the bill was not enacted.

At least seven states and the District of Columbia have implemented laws to address ghost guns.⁵⁷⁸ The states that have put these laws in place are blue. California, a deep blue state, passed the first state bill in 2016, requiring a ghost gun builder to obtain a serial number.⁵⁷⁹ The Biden Administration took steps to crack down on ghost guns.⁵⁸⁰ Given the lack of success for the bill in a state where Republicans have a trifecta, one plausible motivating factor in introducing this bill was to express opposition to gun control and opposition to the regulation of ghost guns. It is presumed that this was done for political gain.

Buyback programs are another gun control tactic that has been subject to preemptive proposals by Republicans. Buyback programs are when governments provide an incentive to owners to voluntarily surrender their firearms.⁵⁸¹ In Wyoming, HB 28 (2020) proposed adding buyback programs to the preempted field of firearms.⁵⁸² The preemption statute already declares “[t]he sale, transfer, purchase, delivery, taxation, manufacture, ownership, transportation, storage, use and possession of firearms, weapons and ammunition shall be

⁵⁷⁵ S.C. CODE ANN. §23-31-510 (2008).

⁵⁷⁶ S.B. 875, 123rd Leg., Reg. Sess. (Sc. 2020).

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.*

⁵⁷⁹ A.B. 857, 2015-2016 Leg., Reg. Sess., Cal. Stats. 2016, Ch. 60, Sec. 4. (Cal. 2016).

⁵⁸⁰ *Fact sheet: The Biden Administration Cracks Down on Ghost Guns, Ensures That ATF Has the Leadership it Needs to Enforce Our Gun Laws*, THE WHITE HOUSE, Apr. 11, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/11/fact-sheet-the-biden-administration-cracks-down-on-ghost-guns-ensures-that-atf-has-the-leadership-it-needs-to-enforce-our-gun-laws/>.

⁵⁸¹ *E.g.*, the State of New York has a program where firearms owners are given up to \$500 in exchange for their firearm. This has reportedly resulted in thousands of firearms being taken off the streets. *See* Maya Yang, *New York gun buyback program takes thousands of firearms off the streets*, THE GUARDIAN (May 1, 2023), <https://www.theguardian.com/us-news/2023/may/01/new-york-gun-buyback-program-firearms-off-street>.

⁵⁸² H.B. 28, 2020 Leg., Reg. Sess. (Wyo. 2020).

authorized, regulated and prohibited by the state, and regulation thereof is preempted by the state.”⁵⁸³

Wyoming also considered a proposal to preempt gun-free zones.⁵⁸⁴ This includes places like schools. The rationale behind gun-free zones is that if fewer people are permitted to carry firearms in sensitive places like schools, then the likelihood of gun violence is reduced. It is hoped that fewer guns in sensitive places means less opportunity for gun violence. Regulating to limit the carrying of firearms in sensitive locations is one of the presumptively permissible forms of gun control recognized by Justice Scalia in *Heller*.⁵⁸⁵ Firearms in schools and mass shootings in schools are sensitive topics in America. School shootings have become such a concern that, according to Everytown for Gun Safety, at least 40 states require active shooter drills in schools.⁵⁸⁶ The bill, HB 180, was sponsored by Republican Representative Tim Salazar. Fifteen Republicans co-sponsored the bill. SF 88 (2020) also proposed allowing concealed carry permit holders to carry in gun-free zones.⁵⁸⁷

HB 180⁵⁸⁸ proposed the same amendment to the preemption statute as SF 88. HB 180 also had the same provisions that would have allowed concealed permit holders to carry in gun-free zones.⁵⁸⁹ The sponsors of HB 180 included all the sponsors of SF 88, along with Republican State Senator Dave Kinskey and Republican State Representative Art Washut. The bill was not considered. The gun-free zone provisions likely contributed to the lack of success.

These three Wyoming preemption bills were sponsored by Republicans when Republicans had a trifecta in Wyoming. Wyoming already had an expansive preemption statute that covers a significant portion of the policy field of firearms regulation. The focus on gun control tools coupled with the lack of bill success despite single party dominance on the part of the bill sponsors’ party suggests that one plausible conclusion is political considerations may have factored in the sponsorship of these bills.

⁵⁸³ WYO. STAT. ANN. §6-8-401(c) (West 2010).

⁵⁸⁴ Wyo. H.B 180.

⁵⁸⁵ *Heller*, 554 U.S., at 627-8 (Scalia J). (“... nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in *sensitive places such as schools* and government buildings”). (Italics are my emphasis).

⁵⁸⁶ See *The impact of active shooter drills in schools: Time to rethink school safety strategies*, EVERYTOWN POL’Y & RESEARCH, <https://everytownresearch.org/report/the-impact-of-active-shooter-drills-in-schools/>.

⁵⁸⁷ S.F. 88, 2020 Leg., Reg. Sess. (Wyo. 2020).

⁵⁸⁸ H.B. 180, 2020 Leg., Reg. Sess. (Wyo. 2020).

⁵⁸⁹ *Id.*

Enacting preemption in new states

Three bills proposed enacting state firearms preemption in states that do not have it. Only two states, Connecticut and Massachusetts, considered adding preemption. This is likely because there are limited opportunities for bills like this as 45 of 50 states already have preemption. None of these bills were successful.

Connecticut is one of only a few states that does not have firearms preemption. SB 74 (2017), introduced by Connecticut Republican Senator John Kissel and co-sponsored by Republican Senator Craig Fishbein, proposed “prohibit[ing] a municipality from adopting an ordinance to regulate firearms.”⁵⁹⁰ The stated intention of the bill was to “prevent the regulation of firearms by municipalities.”⁵⁹¹ The bill died in committee, and no legislative history was uncovered. Democrats’ trifecta in state government likely contributed to the failure of SB 74. It appears that the Republican sponsors of this bill knew it was unlikely to succeed.

Two years later, HB 5227 (2019) was introduced. The House Judiciary Committee sponsored the bill. The bill had ten co-sponsors who were all Republicans. HB 5227 proposed enacted a broad preemption statute that would have declared that:

“No municipality may regulate, restrict, prohibit or affect the ownership, possession, use, purchase, sale, transportation or transfer of firearms or components for firearms, nor may any municipality maintain or enact any ordinance or regulation which in any way regulates, restricts, prohibits or affects the ownership, possession, use, purchase, sale, transportation or transfer of such firearms or components except as otherwise provided in state or federal law.”⁵⁹²

Democrats eventually defeated the bill. The Joint Judiciary Committee held a public hearing on March 11, 2019, with over 125 testimonies heard. Many of the testimonies related to HB 5227. Lucy Dathan, a Democrat from the 142nd House District, voiced her opposition to HB 5227 and said that municipalities should have the power to determine where guns are and are not allowed.⁵⁹³ Her District includes portions of Norwalk, the state's sixth largest city by

⁵⁹⁰ S.B. 74, 2017 Leg., Reg. Sess. (Conn. 2017).

⁵⁹¹ *Id.*

⁵⁹² H.B. 5227, 2019 Leg., Reg. Sess. (Conn. 2019).

⁵⁹³ Public Hearing for Mar. 11, 2019, Joint Judiciary Comm. 2019 Leg. Reg. Sess. (Conn. 2019) (Testimony of Representative Lucy Dathan), <https://www.cga.ct.gov/2019/JUDdata/Tmy/2019HB-05227-R000311-Dathan,%20Lucy,%20State%20Representative-TMY.PDF>.

population. The bill was rejected 21 to 19.⁵⁹⁴ Democrat Minority Whip Patricia Dillon, who represents parts of New Haven, was one of the Democrats who voted against the bill. Democrat Representative and Committee Chairperson Steven Stafstrom also voted against the bill. Stafstrom represents Bridgeport. This means that Democrats representing urban districts were able to leverage their control of the committee to defeat an effort to enact preemption in a state without firearms preemption.

Democrat-sponsored HB 2122 (2019)⁵⁹⁵ represents an outlier in the data set. The bill proposed enacting preemption in Massachusetts which does not have firearms preemption.⁵⁹⁶ The bill includes Republican co-sponsors, but since the bill's sponsor is a Democrat, the bill is classified as a Democrat-sponsored bill. The bill appears to have died in committee with no additional information uncovered.

David Robertson, who represents the 19th Middlesex District, sponsored the bill. Massachusetts is a blue state. However, in 2016, 93 Massachusetts communities voted for Donald Trump.⁵⁹⁷ One of the towns that voted for Trump is Tewksbury. Robertson's district includes parts of Tewksbury. The previous Democrat who held the seat was Jim Miceli, who was known as a conservative Democrat.⁵⁹⁸ This suggests the district is more conservative despite being a Democrat-held seat. One potential motivating factor for Robertson's bill sponsorship is the political makeup of his district.

Two Republican-sponsored bills in Oklahoma, SB 345 (2019)⁵⁹⁹ and SB 12 (2019)⁶⁰⁰ focused on municipal enforcement of criminal law in relation to gun control. SB 345 and SB 12 proposed amending the statute to prohibit cities from punishing someone lawfully carrying or possessing a firearm as a public order offense. The provision the bills proposed to amend currently only applies to the lawful carrying of a handgun. These bills would have prohibited Oklahoma cities from regulating the lawful carrying or possession of any firearm, which would

⁵⁹⁴ Voting tally sheet for HB 5227 on Apr. 8, 2019, Joint Judiciary Comm., 2019 Leg. Reg. Sess. (Conn. 2019), <https://www.cga.ct.gov/2019/TS/h/pdf/2019HB-05227-R00JUD-CV112-TS.pdf>.

⁵⁹⁵ H.B. 2122, 191st Leg., Reg. Sess. (Mass. 2019).

⁵⁹⁶ *Id.*

⁵⁹⁷ *See Trump Won These 93 Massachusetts Communities in the 2016 Election*, WCVB BOSTON (Oct 27, 2020), <https://www.wcvb.com/article/how-massachusetts-has-voted-for-president-in-the-past-trump-2016-communities-won/34492658>.

⁵⁹⁸ Amaris Castillo, *Town Streets to Statehouse Halls, Jim Miceli is Mourned*, LOWELL SUN (Apr. 21, 2018), <https://www.lowellsun.com/2018/04/21/town-streets-to-statehouse-halls-jim-miceli-mourned/>.

⁵⁹⁹ S.B. 345, 57th Leg, Reg. Sess. (Okla. 2019).

⁶⁰⁰ S.B. 12, 57th Leg, Reg. Sess. (Okla. 2019).

have expanded the prohibition currently in place. SB 345 was sponsored by Republican State Senator Casey Murdock, and SB 12 was sponsored by Senator Nathan Dahm and Representative Roberts. Neither bill passed even though Republicans held a trifecta. The fact that the bills failed despite the Republicans having party dominance in Oklahoma means that one conclusion that can be drawn is that these bills were sponsored for a political purpose.

ii. Restricting business regulation

One Republican-sponsored bill in Illinois proposed expanding preemption by expressly restricting local authority to regulate businesses in relation to firearms. HB 274 (2019) proposed, in relation to businesses permitting concealed carry on their premises,⁶⁰¹ prohibiting Illinois municipalities from:

- preventing a business from receiving a liquor license
- revoking a liquor license
- suspending a liquor license
- restricting a liquor license.

Republican Steven Reick sponsored HB 274. He had six Republican co-sponsors and one Democrat co-sponsor. The bill went before the Judiciary Committee and the Judiciary Subcommittee on Firearms and Firearms Safety on March 26, 2019, but died in committee. The meeting minutes were unavailable on the legislature's website.

Not all bills were politically divisive. Wisconsin considered two proposals to expand preemption in a limited way. In 2020, Wisconsin enacted AB 75.⁶⁰² The bill's companion, SB 102,⁶⁰³ failed. 34 Republican state representatives and three Democrat state representatives sponsored AB 75. Six Republican state senators and two Democrat state senators co-sponsored the bill. The Republicans controlled both houses of the state legislature at the time. The governor was a Democrat. Most of the sponsors and co-sponsors are Republican. However, a Democrat sponsored the bill and the Senate Majority Leader, Democrat Senator Janis Ringhand, is a co-sponsor. Therefore, the bill is classified as bipartisan. The bill preempted local municipalities from regulating the discharge of blanks fired for ceremonial purposes including military funerals.⁶⁰⁴

⁶⁰¹ Only applicable where the person carrying a concealed firearm has a conceal license.

⁶⁰² Assemb. B. 75, 2020 Leg., Reg. Sess, 2019 Wis. Act 124 (Wis. 2019).

⁶⁰³ S.B 102, 2020 Leg., Reg. Sess. (Wis. 2020).

⁶⁰⁴ Wis. A.B. 75.

The focus on the ceremonial use of firearms likely has limited practical impact on municipalities. Given that the bill is meant to facilitate the use of firearms in ceremonies such as providing honors at military funerals and its limited practical effect, it is likely the least controversial of the enacted bills. However, these two bills appear to be outliers.

D. Hyper preemption

This category includes Twenty-seven bills. Republicans sponsored these bills. Most of the bills proposed adding new civil liability provisions to state law. Only three bills of this type were enacted.⁶⁰⁵ However, this shows that new hyper preemption enactments were in the data set. Some bills proposed removing local legislative immunity from local governments and local officials. Four bills proposed making it a felony to enforce or attempt to enforce a red flag law. None of these bills were enacted.

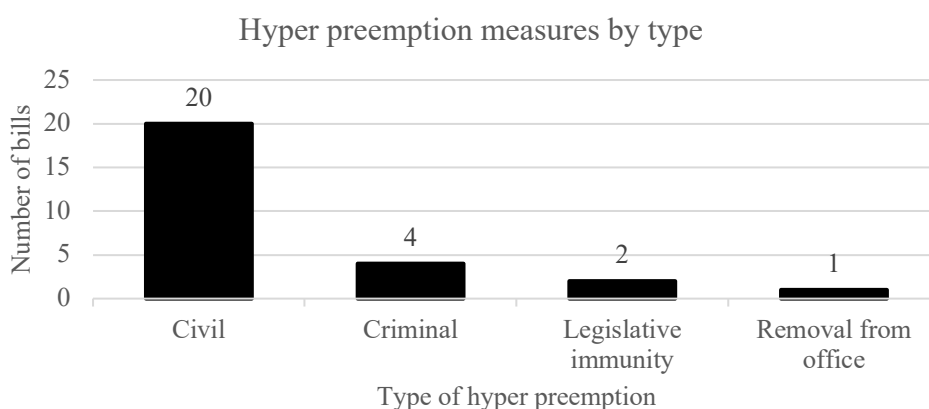


Figure 3.5: Hyper preemption measures by type

Many hyper preemption proposals in the data set proposed civil liability for local governments and local officials who enact or enforce local laws that conflict with state firearms preemption. For example, New Hampshire HB 512 (2016) proposed expanding firearms preemption to include confiscation of firearms during a state emergency by rendering any such scheme difficult to enforce by imposing civil penalties.⁶⁰⁶

⁶⁰⁵ These bills were enacted in Ohio, Texas, and Iowa.

⁶⁰⁶ H.B. 512, 2016 Leg. Reg. Sess. (N.H. 2016).

Kansas considered HB 2425 (2020). The bill’s ERPO provisions are discussed above. However, the bill went further and proposed making it a felony for any person, including a law enforcement officer to enforce or attempt to enforce an ERPO.⁶⁰⁷ Its companion bill, SB 245 (2020), also proposed making it a felony to enforce or attempt to enforce an extreme risk protection order.⁶⁰⁸ These bills were not successful. Minnesota considered a hyper preemption proposal to make it a felony to enforce or attempt to enforce an ERPO.⁶⁰⁹ Like the Kansas bills, Minnesota’s HF 3692 was proposed in 2020. Alaska’s HB 296 also proposed creating a new felony offense for enforcing an ERPO.⁶¹⁰ This bill was also proposed in 2020. All four bills are Republican sponsored. It appears that these bills are outliers and given that they were proposed in an election year and take an extreme position, it appears that one reasonable conclusion is that these bills were introduced to make a political statement.

As previously discussed, Pennsylvania has two key firearms preemption provisions:

- “[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation, or possession of firearms”⁶¹¹
- “[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”⁶¹²

Republican-sponsored SB 1330 proposed adding an additional preemption provision that would have declared that the two provisions referenced above “shall preempt and supersede any local ordinance or rule insofar as the local ordinance or rule is inconsistent.”⁶¹³ As the existing preemption provisions in Pennsylvania are already broad, it is reasonable to speculate about whether the primary motivation for the sponsors was political posturing, i.e., to demonstrate support for the right to bear arms to a partisan audience.

⁶⁰⁷ Kan. H.B. 2425.

⁶⁰⁸ Kan. S.B. 245.

⁶⁰⁹ Minn. H.F. 3692.

⁶¹⁰ Alaska H.B. 296.

⁶¹¹ 53 PA. CONS. STAT. 2962(g) (West, 1996).

⁶¹² 18 PA. CONS. STAT. § 6120(a) (2014).

⁶¹³ S.B. 1330, 2016 Leg., Reg. Sess. (Pa. 2016).

The proposed hyper preemption provisions would have:

- permitted a person adversely affected by a preempted city regulation to sue the city.⁶¹⁴
- recognized standing injunctive or declaratory relief.
- added actual and consequential damages attributable to a violation.⁶¹⁵

An ordinance would not need to be found to be preempted for the hyper preemption provisions to apply. The bill proposed allowing a claim against a municipality for an ordinance rescinded or repealed after a lawsuit had been filed.⁶¹⁶ The municipality could be liable regardless of whether the ordinance was preempted. This could discourage municipalities from attempting to regulate firearms.

The bill sponsor and eight co-sponsors represent rural districts. This means that SB 1330 is a bill sponsored by Republicans representing rural districts seeking to expand preemption and impose new hyper preemption measures. The bill was also unlikely to succeed with a Democrat governor who has been openly criticized the preemption statute and supported gun control.⁶¹⁷ It appears reasonable to conclude that this bill was sponsored by Republicans representing rural districts proposing to expand preemption through hyper preemption and expanding preemption to appeal to pro-gun rights voters.

Republican Wayne Langerholc sponsored SB 5. Twenty-four Republicans and one Democrat co-sponsored the bill. One of the co-sponsors sponsored SB 1330 in 2016. The wording of SB 5 is similar to SB 1330. SB 5 proposed restating the legislature's intent to preempt the field of firearms and expanding the scope of liability for municipalities that attempt to regulate firearms in conflict with state law. SB 5 failed and did not have a good chance of success. SB 5 had a similar obstacle as SB 1330. It was likely that the Democrat governor

⁶¹⁴ *Id.* The definition of an adversely affected person went beyond an individual impacted by a municipal ordinance. A membership organization could bring a lawsuit so long as at least one member of the organization was an adversely affected person. To be an adversely affected person, the individual needed to be subject in any manner to a promulgated or enforced municipal action in violation of the state preemption statute. This means that the ordinance would need to impact or apply to the individual, and the ordinance must conflict with the state preemption statute. This is regardless of whether the enforcement action had been initiated or threatened to be initiated. This means that being threatened with an enforcement action could give standing to bring a lawsuit.

⁶¹⁵ *Id.* There was no definition of consequential damages.

⁶¹⁶ Pa. S.B. 1330.

⁶¹⁷ HB 979 veto letter, *supra* note 538.

would veto the bill.⁶¹⁸ A possible conclusion is that bill sponsorship, at least in part, was political posturing.

In 2019, HB 1066 was introduced in Pennsylvania. The bill proposed a new civil action for individuals and organizations impacted by cities regulating in conflict with state law.⁶¹⁹ These provisions mirrored the hyper preemption provision in SB 1330 from 2016. Like SB 1330, HB 1066 was not enacted. Given the lack of success of similar hyper preemption proposals, it appears reasonable to conclude that the sponsorship of HB 1066 was done for political purposes.

As previously discussed, Ohio enacted HB 228. The bill's hyper preemption provisions now permit any person, group, or entity adversely impacted by a municipal regulation, ordinance, resolution, rule, practice, or any other related municipal action is permitted to seek damages against a municipality.⁶²⁰ The remedies that can be sought include any actual damage and costs which are not only awarded when there is a prevailing party. If the challenged ordinance is repealed or rescinded after the case is filed but before the courts adjudicate the case, then the complaints have a claim for actual damages and costs. The challenged ordinance does not need to be proven to conflict with the state preemption statute.⁶²¹

Oklahoma considered four hyper preemption bills, more than any other state. SB 775 (2019) proposed hyper preemption in the form of civil liability for municipalities regulating in conflict with the preemption statute.⁶²² The bill would have permitted courts to award reasonable expenses, including, but not limited to, attorney fees, expert witness fees, and court costs.⁶²³ This would have expanded the potential liability of Oklahoma cities that attempt to regulate firearms in conflict with the state preemption statute. The bill had one sponsor, Republican State Senator Paul Scott. He faced a strong primary challenge in 2020 and lost the Republican nomination. One interpretation of these factors is that Scott's sponsorship of a bill with limited activity after introduction where his party held a trifecta was a political statement.

⁶¹⁸ *Id.*

⁶¹⁹ H.B. 1066, 2019 Leg., Reg. Sess (Pa. 2019).

⁶²⁰ Ohio HB 228.

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ *Id.*

SB 1490 proposed amending the civil liability provisions of the Oklahoma preemption statute by removing the provision that limited standing to persons whose rights had been violated and replacing it with someone adversely affected by an ordinance conflicting with state law.⁶²⁴ This would have arguably expanded liability for municipalities as claimants would have only needed to prove they were adversely affected instead of proving an infringement of their rights. The bill died in the Senate Public Safety Committee. Twelve of the fourteen seats in the committee were held by Republicans. The fact that the bill died in a committee controlled by Republicans and Republicans held at trifecta in state government suggests that it is reasonable to conclude that the sponsorship of this bill was a political statement.

Republican State Senator David Bullard sponsored SB 1605. It failed at introduction. SB 1605 is like SB 1490. It proposed the same amendment to the preemption statute and the same hyper preemption provisions. HB 2587, sponsored by Republican State Representative Jim Olsen, is like SB 1605 and SB 1490 in that it proposed similar measures. HB 3036,⁶²⁵ sponsored by Olsen and Republican State Senator Hall, also proposed similar measures. All of these bills failed.

Texas enacted a hyper preemption measure that expanded civil liability for local government officials. Texas Governor Greg Abbott signed HB 3231 on June 16, 2019 and it came into force on September 1, 2019. Republicans have a trifecta in Texas state government. HB 3231 expanded the expressly preempted field of firearms by amending the area preempted area from including ‘private ownership’ of firearms to the more general term ‘ownership’ of firearms.⁶²⁶ The bill also changed the preempted field from keeping firearms to storing firearms.⁶²⁷ It also added possession, wearing, and carrying of firearms. As will be seen in the next chapter on the legal challenges faced by Pittsburgh and Seattle, both cities attempted to put in place safe storage requirements. HB 3231 was enacted after the cities enacted their safe storage ordinances.

The bill also added a new provision that preempted the commerce in firearms, ammunition, and supplies to the preempted field of firearms.⁶²⁸ The types of local legislative

⁶²⁴ S.B. 1490, 58th Leg., Reg. Sess. (Okla. 2020).

⁶²⁵ H.B. 3036, 58th Leg., Reg. Sess. (Okla. 2020).

⁶²⁶ H.B. 3231, 86th Leg., Reg. Sess., Acts 2019, 86th Leg., ch. 1164 (Tex. 2019).

⁶²⁷ *Id.*

⁶²⁸ *Id.*

actions preempted by the statute were expanded by HB 3231. Now ordinances, resolutions, rules, or policies adopted or enforced by a municipality, including by exercising municipal police power, are expressly preempted.⁶²⁹

The exercise of a municipality's proprietary rights as a property owner and operator was also included in HB 3231. The bill limited the authority of municipalities to regulate firearms using zoning regulations.⁶³⁰ In June 2018, following the shooting at Santa Fe High School, the city of San Antonio's Public Safety Committee considered how to regulate firearms to reduce the risk of gun violence in San Antonio.⁶³¹ The deputy city attorney for San Antonio advised the committee that state law preempts many municipal firearms regulations, but one of the ways for cities to regulate firearms is by using zoning regulations. In January 2020, the City of Galveston repealed its land-use regulation that prohibited gun shops and shooting ranges from being located near places of worship.⁶³² This was done to avoid a lawsuit.

Representative Clardy represented a rural district. Other sponsors, Trent Ashby, Cole Hefner, and Pat Fallon's also represented rural districts. The NRA referred to the bill as a key NRA-supported measure.⁶³³ As a result, HB 3231 is interpreted as an NRA-supported bill sponsored by Republicans representing rural districts responding to new city gun control enactments by enacting hyper preemption provisions.

Utah's HB 271 proposed hyper preemption measures that would have expanded liability for local governments and elected officials. It would have expressly eliminated the ability of local elected officials to assert legislative immunity when they regulate in conflict with the state firearms preemption statute. Local governments and their elected officials could have been civilly liable for regulating in conflict with the preemption statute. This proposal faced opposition. During the floor debate on the bill in the House, Republican Paul Ray voiced opposition to the civil liability for local officials provision, saying such measures were "not

⁶²⁹ *Id.*

⁶³⁰ *Id.*

⁶³¹ Jeffrey Sullivan, *Public Safety Committee Gets Heated While Pushing for Local Gun Regulations*, SAN ANTONIO REPORT (June 28, 2018), <https://sanantonioreport.org/public-safety-committee-pushes-for-local-gun-regulations/>.

⁶³² *See Galveston Repeals Gun Regulations to Avoid City Lawsuit*, AP (Jan. 24, 2020), <https://apnews.com/article/06de69762577fd3ccb8964215c3bdaac>.

⁶³³ Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Texas: House finishes up action on more pro-gun Bills & Senate committee Sets NRA-backed evacuation carry bill for Monday hearing (May 10, 2019), <https://www.nrila.org/articles/20190510/texas-house-finishes-up-action-on-more-pro-gun-bills-senate-committee-sets-nra-backed-evacuation-carry-bill-for-monday-hearing>.

where we want to go.”⁶³⁴ He stated, "at no time do we want to open up an elected official to be sued.”⁶³⁵ Representative Ray proposed an amendment that would have, *inter alia*, removed the civil liability provisions from the bill.⁶³⁶ HB 271 was not enacted in 2020. It appears that, even in the Republican party, there is not uniform support for hyper preemption.

Two states considered creating an exception to the immunity afforded local officials by state law. This was done to remove the availability of immunity in relation to firearms thereby effectively adding hyper preemption to their respective state’s law. South Dakota’s SB 89 (2017) proposed removing sovereign immunity⁶³⁷ for municipalities for “civil damages resulting from any injury that is proximately caused by a crime of violence” on premises owned by a municipality if the municipality had not allowed the victim to carry a firearm on said premises.⁶³⁸ State Senator Stace Nelson (R) and Republican State Representative Tim Goodwin (R) sponsored the bill. It was deferred by the Senate Judiciary Committee a week after its introduction. The committee voted four to three to defer the bill, with three Republicans, including the Majority Whip, voting to defer. The quick deferment of the bill, when the sponsor’s party held a trifecta, suggests that the bill’s introduction can be reasonably interpreted as political posturing.

The bill sponsors’ districts are rural. This means that SB 89 is a bill sponsored by rural district representatives proposing hyper preemption. This fits a trend in the data set of Republicans representing rural districts sponsoring bills proposing expanding preemption or new hyper preemption.

Pennsylvania Republicans sponsored a bill that is arguably the most directly confrontational with local officials. HR 426 (2019) called for the removal of Pittsburgh Mayor Bill Peduto for his part in enacting the three Pittsburgh ordinances discussed in the next chapter.⁶³⁹ Republican State Representative Daryl Metcalfe introduced HR 426 on June 24, 2019, less than three months after Pittsburgh enacted its ordinances.⁶⁴⁰ Metcalfe represented District 12, a rural district. Eleven Republicans co-sponsored the bill. Metcalfe is A+ rated by

⁶³⁴ House Floor Debate on HB 271, 63d Leg. Reg. Sess. (Utah 2020) (Statement of Rep. Paul Ray).

⁶³⁵ *Id.* He also said this was a concern raised in the committee.

⁶³⁶ *Id.*

⁶³⁷ Sovereign immunity, for the purposes of SB 89, is a common law immunity from civil liability usually afforded to local government officials.

⁶³⁸ S.B. 89, 92nd Leg. Ass., Reg. Sess. (S.D. 2017).

⁶³⁹ H. Res. 426, 2019 Leg., Reg. Sess. (Pa. 2019).

⁶⁴⁰ The Pittsburgh ordinances were enacted on April 2, 2019.

the NRA according to the NRA's Institute for Legislative Action.⁶⁴¹ Firearms Owners Against Crime, an organization that filed one of the lawsuits presented in the next chapter, called on its members to contact their state legislators in support of HR 426.⁶⁴² This bill had similarities with 'ripper' bills.⁶⁴³ It proposed the impeachment of then Pittsburgh Mayor Bill Peduto.⁶⁴⁴ This is a novel approach to hyper preemption. However, it died in committee. Given the lack of progress in the Republican-controlled legislature and that the resolution was non-binding, it is reasonable to assume the sponsorship of this bill was political posturing.

II. Findings

The analysis of preemption bills introduced between 2016 and 2020 reveals the following:

- Partisanship played a determinant role in the proposal of preemption bills. Republicans sponsored bills proposed expanding preemption and new hyper preemption measures. Democrats-sponsored bills proposed limiting preemption and repealing preemption. Examples of this include Republican-sponsored HB 751 in Georgia and Democrat-sponsored HB 6061 in Florida.
- Most enacted bills were enacted where the bill sponsor's party had a trifecta.
- Few bills were enacted. This raises questions about the motivation behind the introduction of bills in the data set.
- Some Republican-sponsored bills appear to target gun control tactics such as SB 875 in South Carolina, and some Republican-sponsored bills appear to be a response to city gun control efforts such as HB 228 in Ohio.
- Pro-gun rights pressure groups, including the NRA, factored into the introduction and promotion of preemption expansion and hyper preemption. This is evident in Ohio and Texas.

⁶⁴¹ Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Pennsylvania: Please attend an annual Second Amendment rally in Harrisburg on June 7, 2021 (May 28, 2021), <https://www.nraila.org/articles/20210528/pennsylvania-please-attend-annual-pro-second-amendment-rally-in-harrisburg-on-june-7>. The NRA, through their Political Victory Fund (NRA-PVF) rate candidates on their stance on gun rights. See NRA-PVF, *supra* note 567.

⁶⁴² Press Release, Firearms Owners Against Crime, Another Monumental Win: FOAC and FPC Defeat Pittsburgh in Preemption Battle; Peduto Plans Revenge on Gun Owners (Oct. 31, 2019), <https://foac-pac.org/Action-Alerts/71>.

⁶⁴³ Ripper bills were state bills that removed local authority and, in some cases, dissolved local elected offices, in 19th and 20th centuries. See Eaton, *supra* note 166.

⁶⁴⁴ The resolution proposed recognizing Peduto's part in enacting the three city regulations as an impeachable offense.

- There is an urban-rural divide in relation to intrastate firearms preemption. State legislators representing rural districts have sponsored bills proposing to expand preemption and create new hyper preemption measures. Legislators representing urban districts sponsored bills proposing limiting preemption and repealing preemption. This is evident for SB 5 in Pennsylvania (rural) and HB 86 in North Carolina (urban).

A. Political partisanship

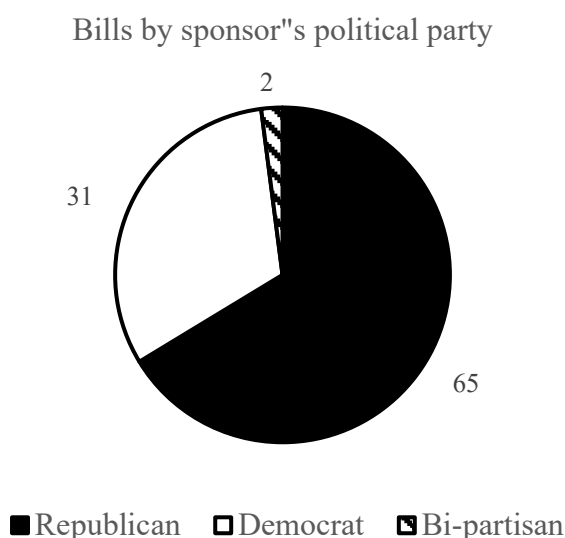


Figure 3.6: Bills by sponsor's political party

This project assumed that party partisanship would feature in the data set. Professor Kenneth Stahl argues that the new era of preemption is “the result of a profound political realignment within many states”,⁶⁴⁵ while Professor Erin Scharff contends that preemption has taken a “decidedly partisan tone” in recent years.⁶⁴⁶ Professor Richard Briffault observed that the ‘preponderance’ of new preemption proposals has come from Republican-led states.⁶⁴⁷ The work of these scholars suggested that party partisanship would feature in the data set and Republicans would sponsor more new preemption bills, and these bills would propose limiting local authority through expanding preemption and new hyper preemption measures. However, 45 of 50 states already had firearms preemption. Because of this, the project presumed that the data set may conflict with Briffault’s observation and feature more Democrat-sponsored bills.

⁶⁴⁵ Stahl, *supra* note 162, at 134.

⁶⁴⁶ Scharff, *supra* note 28, at 1481.

⁶⁴⁷ Briffault, *supra* note 30, at 1997.

As presented in Chapter II, the national party platform of the Democrats is pro-gun control. As a result, I assumed that Democrat-sponsored bills in the data set would propose to limit or repeal preemption. To evaluate these assumptions with the dataset, a secondary research question was considered: what type of bills do Republican sponsor and what type of bills do Democrats sponsor?

Despite the broad adoption of firearms preemption prior to the period under observation, Republicans sponsored more bills than Democrats. However, other assumptions were proven correct. The data set showed the type of bills Republicans and Democrats sponsored. Republican-sponsored bills proposed expanding preemption and new hyper preemption. Democrat-sponsored bills proposed limiting and repealing preemption.

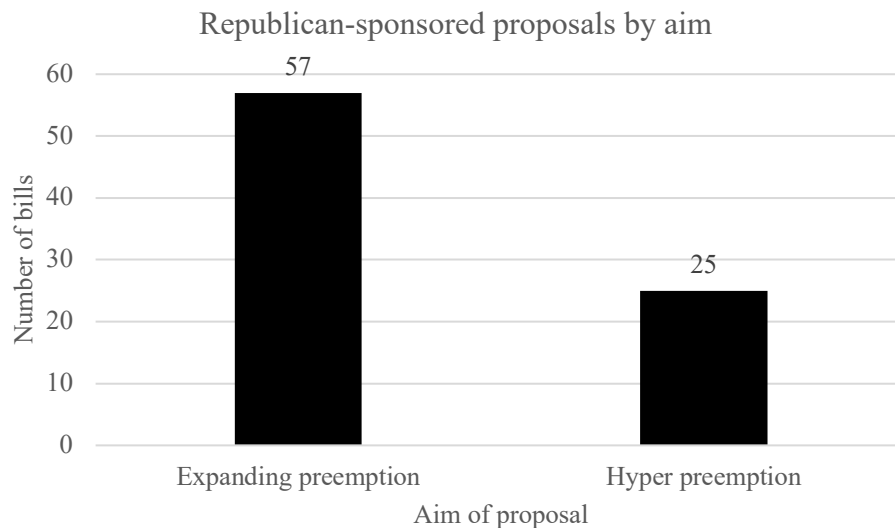


Figure 3.7: Republican-sponsored proposals by aim

Note: Some Republican-sponsored bills had preemption expansion provisions and hyper preemption measures.

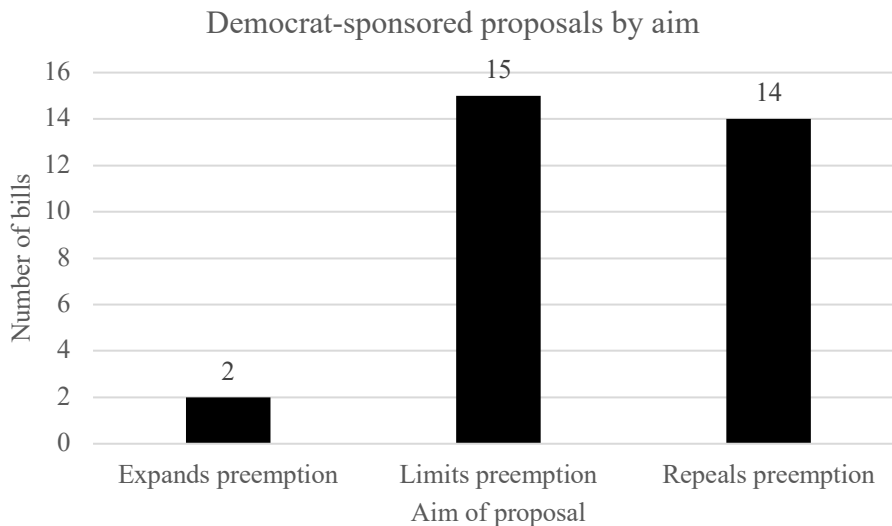


Figure 3.8: Democrat-sponsored proposals by aim

Enacted bills and single-party dominance

This investigation considered the secondary research question: did party dominance factor into the bills? DuPuis *et al* argued that preemption bills are often enacted by relying on ‘single-party dominance’.⁶⁴⁸ Professors Flavin and Shufeldt observed that Republican trifectas were the greatest indicator of state preemption enactment.⁶⁴⁹ These observations led to the presumption that enacted bills in the data set were likely to be enacted in states where the bill sponsor’s party held a trifecta. Successful proposals were expected to be largely sponsored by Republicans. These presumptions were proven to be correct. Single-party dominance in state government factored in the enacted bills in the data set. Nine successful bills were enacted when the sponsor’s party held a trifecta. This includes Democrat-sponsored and Republican-sponsored bills. Democrats needed a trifecta to enact their successful bills. The reliance on single-party dominance to enact bills suggests that the enactment of firearms preemption during the observed period is significant because these bills may have been enacted without much input from the opposition party. In the case of firearms preemption, this means that Republicans can further restrict the authority of cities to put in place gun control without input from state representatives, generally Democrats, that represent those cities. It means that the authority of

⁶⁴⁸ DuPuis ET AL., *supra* note 386.

⁶⁴⁹ Patrick Flavin & Gregory Shufeldt, *Explaining State Preemption of Local Laws: Political, Institutional, and Demographic Factors*, 50 PUBLIUS 280, 297 (2020).

local governments can be dictated by the state without the consent of the representatives of city residents.

Single-party dominance

Trifectas in state government present for enacted bills

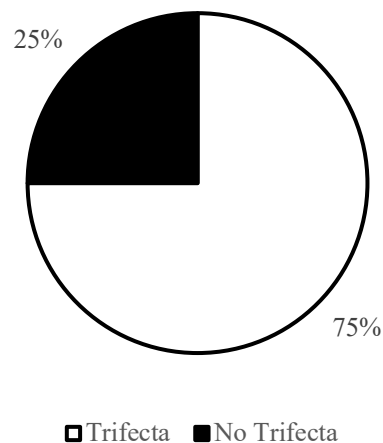


Figure 3.9: Trifectas in state governments present for enacted bills

The new era of preemption is distinguished from classical preemption, *inter alia*, due to the use of hyper preemption measures.⁶⁵⁰ Because of this, it was assumed that some bills would have hyper preemption measures. Given that Republicans have been seen as aligned with anti-urban conservatives⁶⁵¹ and hyper preemption in relation to firearms would likely target cities and their officials, it was assumed that hyper preemption bills would be sponsored by Republicans. As Flavin and Shufeldt have contended a Republican trifecta is the best indicator of preemption enactment,⁶⁵² this project assumed that Republican trifectas would be required for these bills to be enacted. These presumptions were largely proven correct. The three enacted bills with hyper preemption provisions were only enacted in states with a Republican trifecta. Republicans introduced hyper preemption bills in states where they did not have a trifecta, but these proposals were unsuccessful. This means that only viable political environment during the observed period where hyper preemption was possible was when the Republicans held a trifecta. This seems to support a conclusion that the Republican party

⁶⁵⁰ Briffault, *supra* note 30, at 1997-8; See also Nestor Davidson, The Dilemma of Localism in an Era of Polarization 128 YALE L. REV. 954, 958 (2019).

⁶⁵¹ Schragger, *supra* note 35, at 1212. This anti-urbanism is explored below in the urban-rural divide subsection.

⁶⁵² Flavin and Shufeldt, *supra* note 649.

dominance was a determinant factor in the expansion of hyper preemption during the period of observation.

B. Few enacted bills

One of the secondary research questions considered in the interrogation of the data set was what the success rate of the bills was and why. According to Fiscal Note⁶⁵³ more than 150,000 bills were introduced in state legislatures in 2021. Almost 33,000 bills were enacted.⁶⁵⁴ This is a success rate of 21%.⁶⁵⁵ Only twelve of the 98 bills in the data set were enacted. This is a success rate of 12%. It is assumed that part of the reason for this is that 45 states already had preemption. This project presumed that this created less opportunity to propose preemption in states without firearm preemption. The proliferation of firearms preemption before the period under observation (2016-2020) could have made it more difficult to establish the need for bills proposing preemption expansion. Only three bills proposed enacting preemption in a state without firearms preemption.⁶⁵⁶

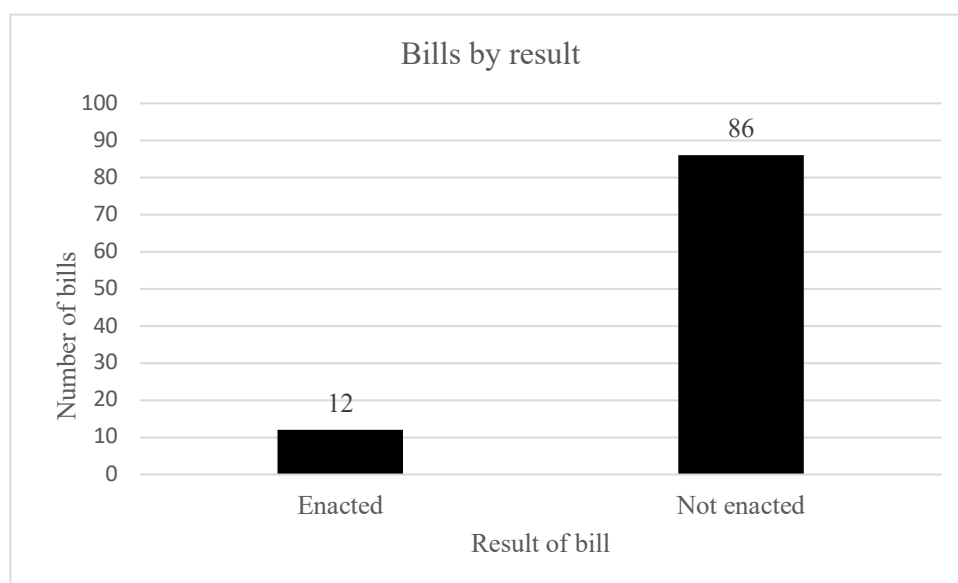


Figure 3.10: Bills by result

The prior proliferation of preemption only partially explains the low success rate. This project anticipated more bills proposing limiting or repealing preemption. This did not happen. Part of this is because Republicans controlled more legislatures and held more trifectas in state

⁶⁵³ Fiscal note is a government relationship management service that tracks legislation. SEE <https://fiscalnote.com/>.

⁶⁵⁴ *The Most Effective States: 2021 Report*, FISCALNOTE, https://fiscalnote-marketing.s3.amazonaws.com/Most_Effective_States2021_v1_v4.pdf.

⁶⁵⁵ *Id.*

⁶⁵⁶ Conn. S.B. 74, Conn. H.B. 5227, and Mass. H.B. 2122.

governments.⁶⁵⁷ As shown above, preemption measures are enacted through leveraging single-party dominance. The Republican's control of more state governments than the Democrats limited the opportunity for bills proposing limiting preemption or repealing preemption to be proposed or adopted.

One plausible factor in the success rate is that bills were sponsored to demonstrate a position on a politically divisive issue for political gain. For Republicans, sponsoring bills to expand preemption and add new hyper preemption measures was a way to demonstrate commitment to the Republican national platform of protecting the Second Amendment and demonstrating this commitment to the pro-gun voting bloc. For Democrats, it was an opportunity to demonstrate a commitment to ending the public safety and public health epidemic that is gun violence in line with the Democrat's national platform. For political posturing, sponsoring a bill that aligns with the party platform was enough. Bill enactment was not needed. However, when bills were enacted, the stated objectives of the bills generally aligned with their party's platform on gun control and gun rights. One interpretation of this is that the enactment of preemption bills had an element of political posturing.

C. Preempting gun control

It was assumed that gun control would feature in the data set. To attempt to verify this assumption, a secondary research question was considered: has gun control featured in the bills in the data set? As I was analyzing my data following collection, other researchers published work that located and discussed some preemption bills that are also in my data set. Pomeranz and Ochoa's work determined that extreme risk protection orders or red flag laws were the subject of preemption proposals.⁶⁵⁸ The six ERPO bills in their data set are also in mine. An analysis of these bills showed that five states considered preempting ERPOs, and Oklahoma enacted ERPO preemption. That bill was the first ERPO preemption bill enacted. These findings necessitated another review of the data set with an assumption that the preemption of other forms of gun control methods would be identified. My dataset shows that the preemption of gun control tactics went beyond ERPOs. Some bills proposed preempting gun control tactics

⁶⁵⁷ *Partisan composition*, NAT'L CONF. OF STATE LEGISLATURES, <https://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>.

⁶⁵⁸ Jennifer L. Pomeranz & Gilberto Ochoa, *Firearm extreme risk protection order laws and preemption: new developments and outstanding issues*, 50 states, 2020, 63 AM. J. PREV. MED.455, 456-7 (2021).

that have been employed by liberal states and cities.⁶⁵⁹ The most popular was the preemption of extreme risk protection orders (ERPO) or red flag laws. My project found sponsor information on the six ERPO preemption bills. Republicans sponsored all six.

An analysis of the bills in the data set determined that proposals to preempt gun control tactics went beyond preempting red flag laws. For example, South Carolina SB 875 proposed preempting ghost guns.⁶⁶⁰ The bill proposed prohibiting municipalities from regulating ghost guns. Ghost guns have also been called America's biggest problem.⁶⁶¹ As discussed in Section I, ghost guns can be made at home and without serial numbers, making them difficult to trace. The preemption of ghost guns also appears to align with the policy preferences of pro-gun interest groups. The pro-gun rights organization Firearm Owners Against Crime has come out against prohibiting ghost guns.⁶⁶² The Second Amendment Foundation has likened ghost guns to colonists making guns at home in colonial America.⁶⁶³ The NRA opposed a 2019 Rhode Island bill⁶⁶⁴ that proposed a ban on the sale, purchase, or possession of ghost guns.⁶⁶⁵

Assault weapons have long been a point of conflict within the area of firearm regulation. On February 9th, 2017, Illinois Republican Dale Fowler introduced SB 1673. That bill proposed adding assault weapons to the expressly preempted field of firearms.⁶⁶⁶ Buyback programs were also subject to Republican-sponsored preemption efforts. Buyback programs facilitate the voluntary surrender of certain firearms to authorities. Municipalities have used these programs. Incentives can be offered to participants who surrender their firearms. Wyoming HB 28 proposed adding buyback programs to the preempted field of firearms.⁶⁶⁷

The reporting of lost or stolen firearms has also been the subject of Republican-sponsored bills. Cities have enacted local lost or stolen firearms reporting requirements. On

⁶⁵⁹ *Id.*

⁶⁶⁰ S.C. S.B. 875.

⁶⁶¹ See Tawfik, *supra* note 346.

⁶⁶² *There's No Such Thing as Ghost Guns*, FIREARM OWNERS AGAINST CRIME, Apr. 28, 2022, <https://foac-pac.org/Theres-No-Such-Thing-As-Ghost-Guns/News-Item/13545>. This organization sued Pittsburgh in FOAC v. Pittsburgh. This case is discussed in the next chapter.

⁶⁶³ *Debunking the 'ghost gun' propagandists*, SECOND AMEND. FOUND., <https://www.saf.org/debunking-the-ghost-gun-propagandists/>.

⁶⁶⁴ H.B. 5703, 2019 Leg., Reg. Sess. (R.I. 2019).

⁶⁶⁵ Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Rhode Island: Gun day hearing scheduled in house committee on Tuesday (Mar. 15, 2019), <https://www.nraila.org/articles/20190315/rhode-island-gun-day-hearing-scheduled-in-house-committee-on-tuesday>.

⁶⁶⁶ Ill. S.B. 1673.

⁶⁶⁷ Wyo. H.B. 28.

July 18, 2018, Seattle enacted a city ordinance requiring reporting lost or stolen firearms.⁶⁶⁸ Philadelphia's ordinance requiring the reporting of lost and stolen firearms was challenged in the case of *Armstrong v. Philadelphia*, presented in the next chapter. Republican-sponsored Pennsylvania SB 531 proposed preempting the reporting of lost or stolen firearms.⁶⁶⁹

These findings suggest that one of the goals of Republican-sponsored bills is to demonstrate opposition to gun control tactics and to align themselves with the policy preferences of pro-gun interest groups and, by extension, to appeal to the pro-gun voting bloc that Professor Matthew Lacombe has demonstrated is an active and reliable voting bloc.⁶⁷⁰ This further supports the conclusion that political posturing factored into the sponsorship of bills. Some bills went beyond preempting gun control tactics and appeared to be responses to efforts by specific cities to put in place local gun control.

D. Preemption as a response to city regulation

Republican-controlled state legislatures often attempt to limit progressive policies enacted by liberal local governments.⁶⁷¹ These preemptive efforts tend to focus on policies such as firearms regulation.⁶⁷² Professor Gross argued that the initial proliferation of firearms was a response to local gun control.⁶⁷³ Professor Schragger contended that almost all preemption legislation he discussed responded to local regulations.⁶⁷⁴ The observations of these scholars suggested that cities enacting new gun control ordinances would induce states to consider new preemption proposals. In response to these arguments, this project attempted to answer the question of to what extent were bills motivated by local attempts at regulatory responses to specific acts of gun violence. Given the previous political considerations discussed above, it presumed that the preemption proposals would be sponsored by Republicans. These presumptions were proven correct. Indicators of Republican-sponsored bills being a response to city gun control measures were located. This means that Republicans used the preemption powers of their state to respond to cities attempting to assert their authority to put in place gun

⁶⁶⁸ SEA., WASH. C. Bill 119267.

⁶⁶⁹ Pa. S.B. 531.

⁶⁷⁰ Lacombe, *supra* note 291.

⁶⁷¹ Briffault, *supra* note 30, at 1997-8; *see also* Lori Riverstone-Newell, *The Rise of State Preemption Laws in Response to Local Policy Innovation*, 47 PUBLIUS 403, 404 (2017), AND Nester Davidson & Richard Schragger, *Do Local Governments Really Have Too Much Power: Understanding the National League of Cities' Principles of Home Rule for the 21st Century*, 100 N. C. L. REV. 1385, 1392(2022).

⁶⁷² *Id.*, Davidson & Schragger, at 1413-14; *see also* Riverstone-Newell, *supra* note 671, at 407.

⁶⁷³ Gross, *supra* note 36.

⁶⁷⁴ Schragger, *supra* note 35, at 1165-6.

control. A probable explanation of this is that part of the motivation behind Republicans sponsoring preemption was to express opposition to city enacted gun control.

One example is Ohio HB 228. This bill appears to be a response to Ohio cities putting in place gun control. On May 9, 2018, the Cincinnati City Council enacted an ordinance that made it “unlawful for any person to own, possess, sell, or use a trigger activator, as defined herein, within the municipal limits of Cincinnati.”⁶⁷⁵ On May 14, 2018, the Columbus City Council passed gun control ordinances, including a ban on bump stocks.⁶⁷⁶ Ohio HB 228, which appeared to have died in committee, was amended and passed out of committee on May 23, 2018. It was then enacted despite a gubernatorial veto. The bill preempted the local regulation of firearms accessories such as the trigger activator and bump stock bans in Cincinnati’s and Columbus’ ordinances.

In Montana, a preemption proposal appears to have been in response to Missoula enacting gun control. On September 26, 2016, the city enacted an ordinance that required background checks for unlicensed firearms sales.⁶⁷⁷ The city relied on a power granted by state law to “prevent and suppress the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.”⁶⁷⁸ Republican Representative Matt Regier sponsored HB 357, which put the question of whether to remove this power to the voters in a legislative referendum. The referendum passed. This authority is now not available to Montana’s local governments. Arguably, this bill was enacted as a response to Missoula’s gun control ordinance.

In South Carolina, the city of Columbus banned ghost guns in 2019.⁶⁷⁹ In 2020, SB 875, which proposed the preemption of ghost guns, was introduced in the South Carolina Senate. While the sponsor of the bill did not directly state that the bill was a response to Columbus’ ordinance, the fact that both the city ordinance and SB 875 related to the regulation of ghost guns, it appears that one reasonable conclusion that can be drawn is that the sponsorship of SB 875 was motivated by Columbus’ ghost gun ban.

⁶⁷⁵ CINN. OH CITY EMER. ORD. NO. 091-2018.

⁶⁷⁶ COLUM. CITY ORD. 1116-201.

⁶⁷⁷ MISSOULA MT. C. Ord. 3581 (2016).

⁶⁷⁸ MONT. CODE ANN. 45-8-351(2) (2019) (repealed 2021).

⁶⁷⁹ Bristow Marchant, *Columbia gun rule would probably be struck down in court, SC attorney general*, THE STATE. (Sept. 20, 2019), <https://www.thestate.com/news/local/article235293432.html>.

Pennsylvania Republicans sponsored three bills that appear to be because of Pittsburgh's three ordinances in response to the Tree of Life shooting.⁶⁸⁰ One example is HR 426. This bill called for the part that Pittsburgh Mayor Bill Peduto played in enacting the three Pittsburgh ordinances to be recognized as an impeachable offense.

In the end, these examples appear to demonstrate that part of the motivation for Republicans sponsoring and enacting firearms preemption bills was to respond to specific city gun control efforts. In two instances, this was done despite objections by the state governors that passing such measures would erode their state's traditions of local democracy. Arguably, these bills can be seen as attempting to further restrict local democracy. It also appears that another plausible conclusion can be drawn. These bills are also examples of bills that preempt liberal cities that are attempting to regulate in conflict with the policy preferences of the Republicans.

E. Urban-rural divide

As discussed in Chapter II, the Democratic party has become a more urban party that has formed links with labor unions and urban industrial workers.⁶⁸¹ As Democrats became a more urban party, Republicans formed connections with rural and exurban groups. Professor Richard Schragger interpreted recent intrastate preemption trends as revealing the deep roots of anti-urbanism in the U.S. Constitutional order.⁶⁸² He also argues that “states and state officials are in competition with cities and city officials for political power and economic spoil”.⁶⁸³ Professor Richard Briffault sees the rise of new preemption as being closely connected to both political and geographic polarization in America.⁶⁸⁴ The political divide between urban and rural areas largely align with party lines which in turn fuels state preemption as state legislatures dominated by representatives of rural districts seek to limit the influence of urban governments.⁶⁸⁵ The observations of these scholars were interpreted as suggesting that anti-urbanism and, by extension, the urban-rural divide would feature in the data set. To attempt to determine the accuracy of this assumption, a secondary research question was put to the data

⁶⁸⁰ These ordinances are presented in chapter IV.

⁶⁸¹ De Witte, *supra* note 251.

⁶⁸² Schragger, *supra* note 35, at 1168.

⁶⁸³ *Id.* at 1184.

⁶⁸⁴ Briffault, *supra* note 30, at 1997.

⁶⁸⁵ *Id.*, at 1997-8; *See also* Riverstone-Newell, *supra* note 671, at 404.

set: how does the urban-rural divide factor into the bills? I presumed that bills that proposed expanding preemption and adding hyper preemption provisions would be sponsored by Republicans representing rural districts. Democrats representing urban districts and cities were presumed to sponsor bills that proposed limiting preemption and bills that proposed repealing preemption. These presumptions were validated. The urban-rural divide featured in the data set. Bills sponsored by Republicans representing rural districts proposed expanding preemption and adding hyper preemption. Pennsylvania SB 5 (2017), a bill that proposed hyper preemption, is an example of this. The sponsor and two co-sponsors of the bill were Republicans representing rural senate districts.

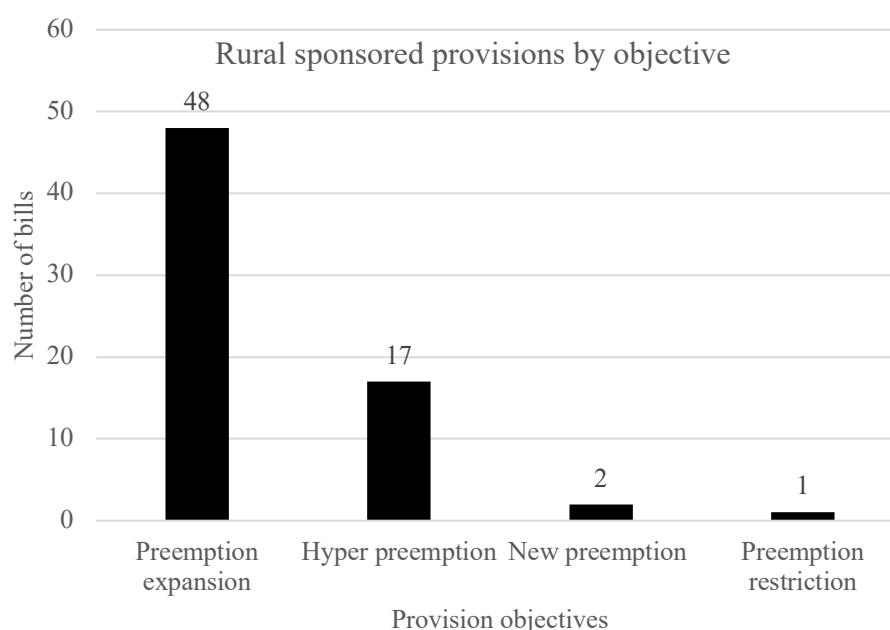


Figure 2.11: Rural sponsored provisions by objective.

The bills sponsored by representatives of rural districts might inform us of the views of rural residents in relation to intrastate preemption and the distribution of intrastate power. 48 preemption expansion bills sponsored by rural state legislators suggests that rural residents would respond positively to expanding preemption. The seventeen bills that proposed hyper preemption suggest that preventing cities from regulating firearms by imposing punitive measures for regulating in conflict with state preemption also appears to be supported by rural residents albeit to a lesser degree. The two bills that proposed preemption in states that have no preemption statute further support a view that rural residents support preemption.

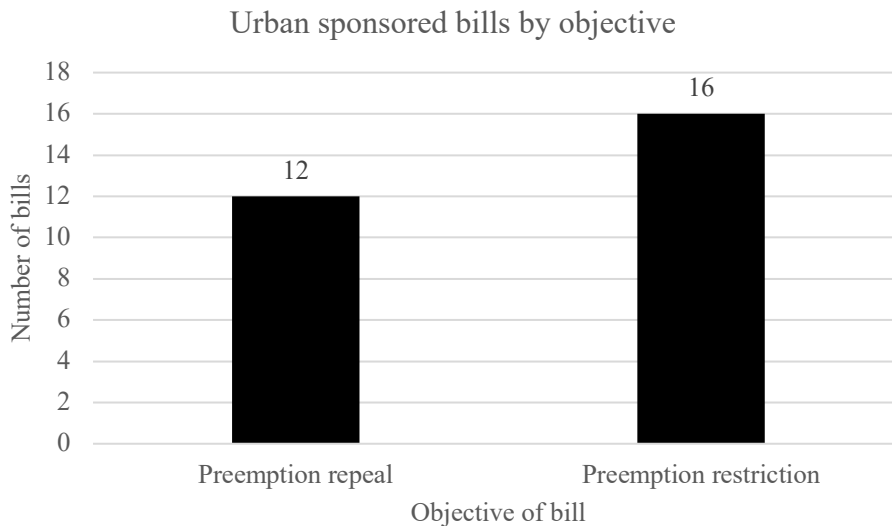


Figure 3.12: Urban sponsored bills by objective

Bills were sponsored by Democrats representing urban districts and cities. These bills proposed repealing preemption and limiting preemption. Two examples of efforts to repeal preemption are Washington SB 6146 and HB 2666. Both bills were introduced in 2017 and proposed repealing preemption.⁶⁸⁶ The sponsor and four co-sponsors of HB 2666 represented districts that include parts of Seattle.

There were also Democrats representing urban districts and cities in red states who sponsored bills that proposed restricting or repealing preemption. Jason Lowe, HB 3357's sponsor, represents the 97th Oklahoma State House District. Lowe's district includes parts of Oklahoma City. This bill proposed undoing some of the legal effects of Republican-sponsored HB 2597. In Louisiana, Senator Wesley Bishop, who represents parts of New Orleans, sponsored SB 185. This bill proposed limiting preemption by expanding the authority to regulate firearms in a limited way. This expansion of authority was drafted to only apply to cities with a population like New Orleans. In Florida, four bills were sponsored by Democrats in 2019, and three bills were sponsored by Democrats in 2020 that proposed repealing the state preemption statute. The bill sponsors included Democrats representing urban districts.

The fact that representatives of urban districts sponsored only bills proposing to repeal or restrict preemption tells us about what urban residents might support. Presumably,

⁶⁸⁶ Wa. S.B. 6146 and Wa. H.B. 2666.

representatives of urban districts sponsored bills to repeal and restrict preemption because these are the desired policy objectives of their residents. At first glance, the twelve preemption repeal bills suggest that urban voters strongly support preemption repeal. However, these bills were only considered in four states. Arguably, a different interpretation is possible. All 28 bills sponsored by representatives of urban districts tell us that urban residents object to the current state of intrastate firearms preemption and the current distribution of intrastate power.

This means that the presumption that the urban-rural divide would feature in the data set has been confirmed. Representatives of rural districts propose expanding preemption, hyper preemption, and preemption in states that do not have preemption. On the other hand, representatives of urban districts proposed preemption repeal and restriction. One interpretation of these contrasting trends is that these trends demonstrate a divide between urban residents and rural residents on preemption and the role of local government in the regulation of firearms.

F. Pro-gun rights pressure groups

Professor Schragger advanced the argument that “preemption is often a strategy of industry and trade groups seeking more favorable legislation at the state level.”⁶⁸⁷ Professor Blocher argues that gun lobbies push for greater preemption at the state level,⁶⁸⁸ and Professor Gross observed that the NRA contributed to the initial proliferation of intrastate firearms preemption.⁶⁸⁹ The works of these scholars suggested that pro-gun pressure groups would be involved in new preemption proposals. This project interrogated the dataset with the secondary research question of: how have pressure groups influenced the introduction and enactment of bills? It was assumed that the NRA would support preemption expansion and hyper preemption while opposing limiting or repealing preemption. Pro-gun rights groups' involvement was located. The NRA was the most identified supporter of expanding preemption and hyper

⁶⁸⁷ Schragger, *supra* note 35, at 1184; *See also* Riverstone-Newell, *supra* note 671, at 405 (“Recent preemption efforts can be understood, at one level, as part of long standing campaigns waged by industry groups hoping to stop or limit progressive local policies in order to create a friendlier business environment for themselves”).

⁶⁸⁸ Blocher, *Firearms Localism*, *supra* note at 133. As discussed in Ch II, the NRA’s Institute for Legislative Action has preemption promotion included in its website’s about page. *See* About the NRA-ILA, *supra* note 301.

⁶⁸⁹ Gross, *supra* note 36.

preemption bills. This was expected. The NRA openly expressed its support for firearms preemption.⁶⁹⁰

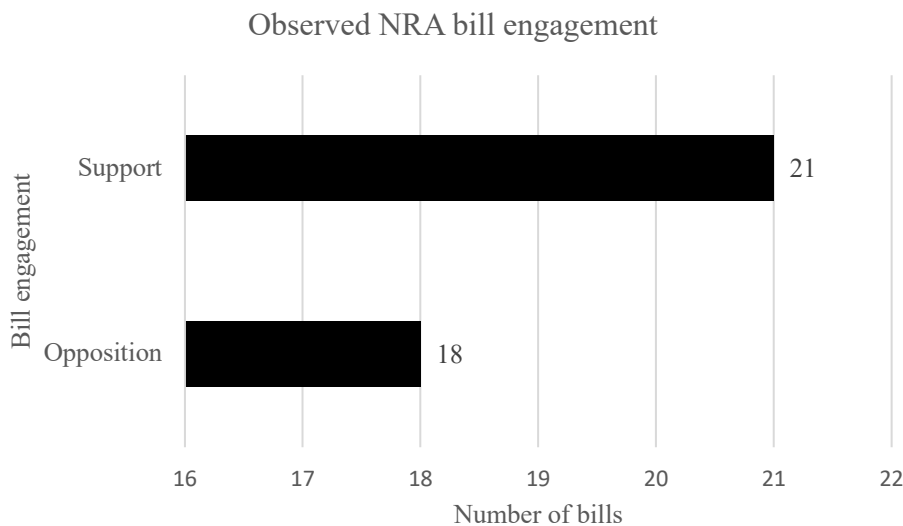


Figure 3.13: Observed NRA engagement in bills

However, the NRA was not alone. Other pro-gun rights organizations like the Iowa Minuteman Civil Defense Corps, Iowa Firearms Coalition, and the National Shooting Sports Foundation lobbied for Republican-sponsored bills.⁶⁹¹ This aligns with the findings of the next chapter in regional and local organizations, including the Firearm Owners Against Crime, the Allegheny County Sportsmen’s League, and national organizations like the Second Amendment Foundation⁶⁹² and the NRA, have sought to promote and use intrastate firearms preemption to stifle local gun control. This comports with what was presumed.

The NRA played a role in the bills in the data set by promoting efforts to expand preemption and efforts to add hyper preemption. The organization also played a role in combating efforts to limit and repeal preemption. The positions of the NRA in proposing expanding preemption and new hyper preemption measures, at the risk of oversimplification,

⁶⁹⁰ *Firearms preemption laws*, NAT’L RIFE ASS’N-INSTIT. LEG. ACTION, <https://www.nrila.org/get-the-facts/preemption-laws/>.

⁶⁹¹ NSSF had a Kansas Republican state representative introduce a bill expanding preemption on their behalf. See Kan. H.B. 2718.

⁶⁹² The Second Amendment Foundation also has a history of using lawsuits and the threat of lawsuits against local governments to counter efforts to put in place local gun control. See Hannah Levintova, *The Gun Lobby’s Stealth Assault on Small-Town America*, MOTHER JONES (Dec. 11, 2013), <https://www.motherjones.com/politics/2013/12/gun-laws-second-amendment-foundation/>.

aligned with the Republicans' positions. These Republican positions were expressed by sponsoring bills that proposed expanding preemption and proposed hyper preemption measures. This is partly due to an alignment between the NRA and the Republican party on pro-gun policy stances. As presented in Chapter II, the Republican's national platform takes a stance against gun control from the perspective of protecting the right to bear arms and the NRA is now a partisan organization with a similar stance on gun control. This means that part of the partisanship featured not only politicians but also pro-gun rights groups taking a partisan stance against gun control.

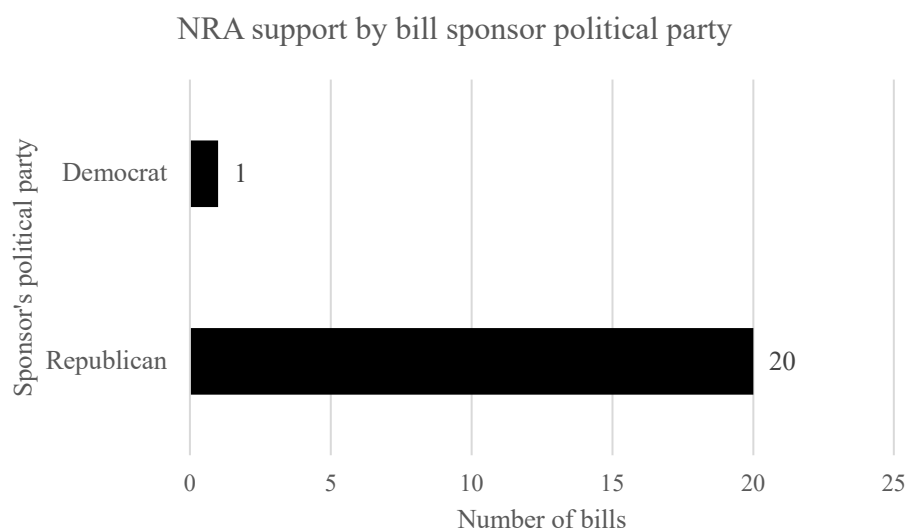


Figure 3.14: NRA support by bill sponsor political party

There were also indications of NRA support for the enacted bills. Seven of the ten bills that were successfully passed had NRA support. The NRA was an active supporter of all three hyper preemption bills that were enacted. The NRA were observed to have lobbied for all three hyper preemption bills. This project located NRA testimony supporting Ohio HB 228 and Texas HB 3231.

Enacted Bills by NRA involvement

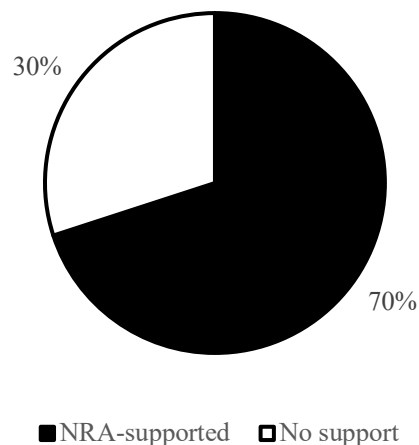


Figure 3.15: Enacted bills by NRA involvement

The first successful bill in the data set, Republican-sponsored HB 228 had early and sustained NRA support.⁶⁹³ The NRA encouraged their supporters to attend house committee meetings to express their support for the bill.⁶⁹⁴ The NRA encouraged supporters and followers to reach out to their local state representatives to encourage those representatives to vote to override Kasich’s veto.⁶⁹⁵ The NRA’s support for HB 228 was throughout the enactment process. It mobilized supporters to pressure legislators to pass the bill and, when Governor Kasich vetoed it, to override the veto. Those representatives voted to override Kasich’s veto.⁶⁹⁶ As presented above, this bill also appears to have been a response to efforts by Cincinnati and Columbus to put in place local gun control measures. This means that the NRA openly supported preemption to respond to local assertions of authority to regulate firearms.

Republican-sponsored bills with stated aims aligned with NRA policy positions were located. One example is NRA-supported Louisiana HB 781.⁶⁹⁷ The NRA had declared the use emergency declarations to regulate firearms in relation to Covid-19 a threat to the Second

⁶⁹³ See, e.g., Press Release, Nat’l Rifle Ass’n-Inst. Legis. Action, Ohio Self-Defense Legislation Passes Senate Immediately Heads for House for Concurrence (Dec. 6, 2018), <https://www.nrila.org/articles/20181206/ohio-self-defense-legislation-heads-for-final-vote-in-the-house-contact-your-representative>.

⁶⁹⁴ Press Release, Nat’l Rifle Ass’n-Inst. Legis. Action, Ohio: Senate Committee to Consider Self-Defense Legislation Next Week (Nov. 29, 2018), <https://www.nrila.org/articles/20181129/ohio-senate-committee-to-consider-self-defense-legislation-next-week>.

⁶⁹⁵ Press Release, Nat’l Rifle Ass’n-Inst. Legis. Action, Ohio: Your Action Needed – Contact Your Lawmakers in Support of Veto Override (Dec. 26, 2018), <https://www.nrila.org/articles/20181226/ohio-your-action-needed-contact-your-lawmakers-in-support-of-veto-override>.

⁶⁹⁶ *Id.*

⁶⁹⁷ H.B. 781, 71st Leg., Reg. Sess, 2020 La. Sess., Act 2020, No. 325 (La. 2020).

Amendment. One such statement was released on March 27, 2020.⁶⁹⁸ HB 781 was introduced three days later. When enacted, it preempted the regulation of firearms during a declared emergency or disaster.⁶⁹⁹ The NRA's policy position of opposition to red flag laws⁷⁰⁰ also featured with Six red flag preemption bills sponsored by Republican state legislators in 2020. One of these bills, HB 1081 of Oklahoma, was the first enacted red flag preemption law in the U.S.⁷⁰¹ These examples suggest that the NRA's policies on certain types of gun control featured in bills in the data set. This means that bills included the desired policy objectives of the NRA. Arguably, it could also be said that some bills may have been drafted for the purpose of garnering support from the NRA.

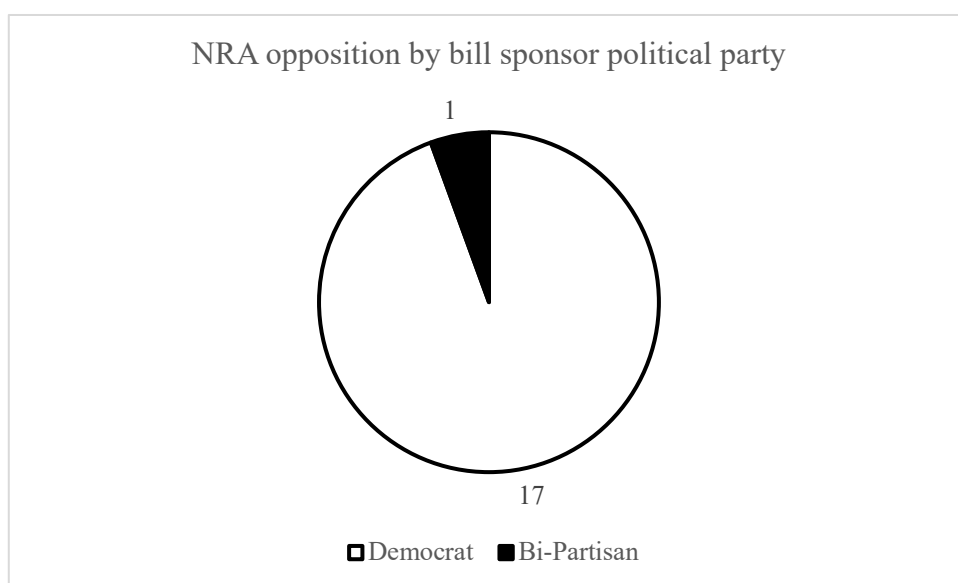


Figure 3.16: NRA opposition to bills by bill sponsor political party

The NRA also opposed efforts to restrict or repeal preemption. For example, during the Virginia legislature's special session on gun violence in 2019, the NRA opposed Virginia HB 4007 and Virginia SB 4001. These bills would have restricted preemption by permitting cities to prohibit firearms, ammunition, and components in buildings owned or operated by the municipality. The NRA's opposition to the Democrat-sponsored bills in Florida is another example of the NRA opposing bills sponsored by representatives of urban districts. The NRA opposed HB 885, HB 6009, and SB 134. According to Marion Hammer, these bills failed due

⁶⁹⁸ Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, COVID-19 draws attacks on Second Amendment (Mar. 26, 2020), <https://www.nraila.org/articles/20200327/covid-19-draws-attacks-on-second-amendment>.

⁶⁹⁹ La. Act 325.

⁷⁰⁰ See Joecks, *supra* note 560.

⁷⁰¹ Okla. S.B. 1081 (2020).

to the NRA.⁷⁰² This means that not only did the NRA play a part in the expansion of preemption, but it was also involved in thwarting efforts to expand local authority to enact gun control.

III. Conclusion

This chapter discussed the results of an investigation into state preemption bills introduced between January 1, 2016 and December 31, 2020. Having identified the proposals to change state preemption laws during this period, conclusions can be drawn about the results this investigation and how these results factor into the broader contentious relationship between state governments and their local governments.

My investigation found that a primary factor was partisanship. The first was political partisanship. Many bills appear to have been sponsored to make a political statement. This political partisanship was driven by Republicans wanting to position themselves in line with gun rights groups and to present themselves as pro-Second Amendment. This positioning with gun rights groups would, in turn, endear them with the pro-gun voting bloc that Professor Lacombe's work has demonstrated as being politically active.⁷⁰³ This was done by sponsoring and enacting bills that proposed expanding preemption and adding new hyper preemption measures.

Some proposals appear to have been pushbacks against gun control tactics implemented predominantly by liberal states. According to Pomeranz and Ochoa, nineteen states, mostly liberal states, have enacted 'red flag' laws.⁷⁰⁴ The enactment of HB 1081 in Oklahoma was the first red flag preemption law in America. This is not the only gun control tactic subject to preemption proposals. In Wyoming, the legislature considered a proposal to preempt gun buyback programs. As discussed above, gun buyback programs are voluntary programs that gun owners participate in by exchanging their firearms for a benefit. This can be in exchange for cash. In South Carolina, a proposal to preempt ghost guns was introduced. As discussed above, ghost guns include guns made at home without serial numbers, making them difficult to trace, for example, if they are used in the commission of a crime. Liberal states, such as

⁷⁰² Hammer, *supra* note 312.

⁷⁰³ Lacombe, *supra* note 291.

⁷⁰⁴ See Pomeranz & Ochoa, *supra* note 658, at 456.

California, have put in place regulations on ghost guns. These Republican-sponsored preemption proposals appear to be a different means by which to express a political position against gun control. Sponsoring these bills allows Republicans to oppose liberal policies even though the South Carolina legislature, for example, has no authority to repeal the California legislation on ghost guns. In the end, Republicans were making political statements by other means.

However, Democrats were also prioritizing politics. For example, Democrats have a trifecta in Washington and had senior party leadership involved in some of their preemption repeal bills. Despite this clear pathway to enactment, none of the Washington bills were enacted. Arguably, Democrats sponsored preemption repeal proposals to position themselves as pro-gun control. One interpretation of this phenomenon is that this is the hyper partisanship and prioritization of partisan purity that has become commonplace at the national level is playing out at the state level. Regardless of party, state legislatures use the preemptive power of the state to make political points.

Single-party dominance factored into the enactment of bills in the data set. Seven of the Republican preemption bills were enacted in states where the Republicans held a trifecta. This means that Republicans leveraged single-party dominance to further limit the authority of local governments to put in place gun control. Democrats enacted their only amendment to state law, leveraging party dominance. One possible interpretation of these trends is that the decisions on the distribution of power were not made by bipartisan consensus but rather by one party forcing its will on the whole state.

The second element of partisanship was geographical. The urban-rural divide was present in the data set. Representatives of rural districts, largely Republicans, sponsored and enacted bills proposing limiting the authority of local governments to regulate and impose hyper preemption measures. Representatives of urban districts, nearly always Democrats, propose limiting and repealing preemption. Some Republican proposals also appear to have been sponsored to respond to specific cities attempting to assert their authority to regulate firearms. For example, Ohio HB 228 appeared to have died in committee. After Cincinnati and Columbus enacted local gun control ordinances, the bill was amended and passed out of committee before finally being enacted. Weeks after Pittsburgh enacted gun control bills in response to the Tree of Life Synagogue shooting, Pennsylvania Republicans proposed three

preemption bills, including a resolution that called for removing Pittsburgh's Mayor from office.⁷⁰⁵ In both instances, the bill sponsors included representatives of rural districts. This means that rural voters, through their representatives, may have more of a say in the authority of cities than city voters.

In some instances, there were objections to the enactment of preemption. In response to HB 228, Governor Kasich vetoed the bill, and one of the grounds he relied upon was the historic tradition of local democracy in Ohio. In his veto letter on HB 325, Montana Governor Steve Bullock argued that expanding preemption would erode a state tradition of local democracy that predated Montana's statehood. This means that this investigation has located arguments that preemption undermines state traditions of local democracy. This argument also suggests that not only does America have a national tradition of local democracy, as argued by Linzey and Brennan,⁷⁰⁶ but states also have traditions of local democracy.

America has a gun violence problem.⁷⁰⁷ According to the Gun Violence Archive, there were about 44,400 gun-related deaths in America in 2022.⁷⁰⁸ There were also about 38,544 gun-related injuries in 2022.⁷⁰⁹ Gun-related homicides disproportionately impact cities.⁷¹⁰ These statistics suggest that what is missing is a discourse about how power is distributed between states and their cities in relation to gun regulation. Cities have attempted to assert their authority to regulate firearms but are facing preemption proposals in response sponsored by representatives of rural districts that seek to convey political messages to rural voters and garner support from pro-gun rights groups. Given the continuing concerns of gun violence in urban areas and suggestions that urban residents want their local governments to address gun violence in a way largely not possible at present, it appears reasonable to question the prioritization of political considerations in the decision process of whether cities should be empowered to address the local effects of gun violence.

⁷⁰⁵ As will be seen in the next chapter, one of the Pittsburgh bills included a ban on one of the firearms used by the perpetrator of the Tree of Life Synagogue shooting.

⁷⁰⁶ Linzey & Brennan, *supra* note 104.

⁷⁰⁷ See, e.g., Ivan Pereira, *America has a gun violence problem. What do we do about it?* ABC NEWS (Oct. 25, 2021), <https://abcnews.go.com/US/america-gun-violence-problem/story?id=79222948>.

⁷⁰⁸ *Past Polls*, GUN VIOLENCE ARCHIVE, <https://www.gunviolencearchive.org/past-tolls>.

⁷⁰⁹ *Id.*

⁷¹⁰ According to Everytown for Gun Safety, in 2015, 54% of all gun-related homicides occurred in just 127 cities. See *City Gun Violence*, EVERYTOWN FOR GUN POL'Y & RESEARCH, <https://everytownresearch.org/issue/city-gun-violence/>.

The cities' attempts to assert their authority to regulate is part of a broader pattern and history of cities asserting their authority. City assertions of authority have occurred at times of political dysfunction. For example, the home rule movement, in part, sought to address abuses of state authority. One such abuse of authority was the use of ripper bills. These bills included provisions that dissolved local government positions without the input, approval, or consultation of the local electorate. Removing the consent of the governed from the decision-making process raises broader questions about whether such actions are democratic and whether they are aligned with the democratic principles of the U.S. Constitutional order. The fact that cities are attempting to assert their authority to regulate on a broad range of issues from gun control to LGBTIQ rights suggests that these assertions may not only be assertions of authority but also are potential warnings that the political dysfunction in the country has reached a point where the current distribution of power is not correctly balanced to address the pressing issues that the country faces. As a result, it also suggests that there may be a discussion that needs to be had as to whether, as Hais, Ross & Winograd have suggested, a greater degree of local democracy is necessary to meet the challenges of the 21st Century and to undo the negative effects of the political dysfunction in American politics and government is needed.⁷¹¹

⁷¹¹ Hais, Ross, & Winograd, *infra* note 996.

Chapter IV: Seattle and Pittsburgh: the conflict between city gun control efforts and state preemption

Introduction

How have state courts responded to attempts by municipalities to exercise police power in relation to firearms? This chapter explores the state-local government dynamic by reference to city gun regulation efforts and lawsuits filed in response to those efforts. It is of interest because members of the state judiciary have called into question the preemption statute, and arguably by extension, the current relationship between the state and its local governments which might need to be reconsidered. This chapter also considers whether state courts are being used to fight political battles.⁷¹²

The lawsuits were analyzed with hope that the receptiveness of the courts to the cities' arguments could be located. It was presumed that there would be varying levels of receptiveness on the part of the courts, but the result was expected to be that regardless of receptiveness, the courts would not afford the cities the authority they seek. From this, it was presumed that these cases could highlight the restrictive nature of preemption and the powerlessness of the cities in the face of preemption. It was hoped that support for a potential alternative approach to the current conceptualization of the state-local government relationship might be found in the dissents.

Gun control ordinances enacted by Seattle and Pittsburgh were chosen in an attempt to answer this research question. This collection of ordinances was chosen for the following reasons. First, both cities are home rule municipalities, and both had recently enacted local firearms ordinances that were subject to immediate legal challenges. These ordinances were enacted in response to each city's specific concerns about gun violence.⁷¹³ However, there is an additional dimension. Firearms regulation is a politically divisive issue in the context of increasing political partisanship in the United States. Broadly speaking, and at the risk of

⁷¹² As Professor Robert Kagan argues, adversarial legalism or the 'American way of law' turns the courts into "arena[s] of continuing political struggle over social policy and its implementation". See Kagan, *supra* note 77, at 198.

⁷¹³ Pittsburgh enacted its three ordinances, in part, because of three Tree of Life Synagogue shooting. See Mahita Gajanan, *Pittsburgh is moving forward with gun reform after the Tree of Life shooting. But the legal battle is just beginning*, TIME (Apr. 3, 2019), <https://news.yahoo.com/pittsburgh-moving-forward-gun-reform-210325289.html>. Seattle enacted its ordinance on the basis that current issues related to children's access to firearms presented a public health and safety issue for the city that required the enactment of the ordinance. See SEA., WASH. C BILL 119266 (2018).

simplification, typically Democrats advocate for gun control, whilst Republicans resist these attempts.

In Washington and Pennsylvania, the political landscapes are nuanced and make an interesting comparison. Seattle is a city in what can be termed a blue state; Democrats have a trifecta in Washington state government.⁷¹⁴ Pennsylvania, on the other hand, is a purple state⁷¹⁵ and a battleground state in recent national elections.⁷¹⁶ The point is that both cities are outside the traditional narrative, which sees the preemption conflict as an issue of blue cities attempting to regulate in red states.⁷¹⁷ For this reason, they offer an opportunity to consider the extent to which firearms regulation is not simply a matter explained in terms of partisan politics but also raises the extent to which cities now seek to assert their local regulatory power in the context of their role as a primary service provider and the first line of response to the changing requirements of the urban populations subject to their governance. One assertion by the cities was that they have home rule authority to regulate as they have. An additional assertion was that the cities have a municipal police power to regulate in response to local public health and safety challenges. The police power argument questions whether the U.S. constitutional arrangement, with its lack of express authority for cities, is able to respond to the issues faced by 21st Century America. In an attempt to answer this, the city bills and the lawsuits in this chapter were analyzed and contrasted. From this, a contribution is made to the broader discussion about whether local governments should have more authority to regulate local concerns.

⁷¹⁴ See Julia Muller, *Here Are The States Where Democrats Won Full Government Control on Election Night*, THE HILL, Nov. 9, 2022, <https://thehill.com/homenews/campaign/3727351-here-are-the-states-where-democrats-won-full-government-control-on-election-night/>.

⁷¹⁵ Republicans control the Pennsylvania Senate, See Brendan Scanland, *PA Senate GOP Announce Leadership Team for 2023-24 session*, WENY NEWS (Nov. 15, 2022), <http://www.weny.com/story/47708438/pa-senate-gop-announce-leadership-team-for-202324-session/>. Republicans controlled the House until 2023. Now Democrats control the House. See Julia Muller, *Democrats Win Back Pennsylvania House in Three Special Elections*, THE HILL, Feb. 8, 2023, <https://thehill.com/homenews/state-watch/3849571-democrats-win-back-pennsylvania-house-in-three-special-elections/>. The governor is a Democrat. See Adam Gabbat, *Josh Shapiro Wins Pennsylvania Governor Race in Blow to Trump*, THE GUARDIAN (Nov. 9, 2022), <https://www.theguardian.com/us-news/2022/nov/09/josh-shapiro-wins-election-pennsylvania-governor-democrats>.

⁷¹⁶ See, e.g., Susan Milligan, *The Battleground States: Pennsylvania*, U.S. NEWS (Aug. 18, 2020), <https://www.usnews.com/news/elections/articles/the-2020-swing-states-pennsylvania-who-votes-past-results-and-why-it-matters>.

⁷¹⁷ See, e.g., Sophie Kasakove, *How Red States Stifle Blue Cities*, NEW REPUBLIC (Sept. 26, 2018), <https://newrepublic.com/article/151401/red-states-stifle-blue-cities>.

Professor Paul Diller observes that interest groups are among the most common litigants to challenge city regulations on preemption grounds.⁷¹⁸ He suggests that when cities ‘adopt policies that differ from state law’, and some segment of the business community is negatively impacted by the new city regulation, preemption litigation is expected to follow.⁷¹⁹ This was confirmed by the legal challenges to the city regulations brought by the NRA and other pro-gun pressure groups. This also supports an assumption that the cities likely knew that pro-gun interest groups or pro-gun individuals would challenge their ordinances. This also suggests that facing litigation may have factored into the cities’ decision to enact these ordinances and may have been a part of their plan. Pittsburgh and Seattle’s rationale for enacting their ordinances suggest that they may have planned to be sued in an attempt to use the court to bring about social change in the form of a new conceptualization of the authority of cities to regulate firearms.

Key legal arguments advanced by the litigants are about doctrine. On one side, pro-gun pressure groups and individual complainants advance the doctrine of preemption. As previously discussed, this argument interprets state preemption as reserving a policy field for exclusive state regulation. On the other side, cities advance the doctrines of home rule, municipal police power, and state-created danger.⁷²⁰ These arguments are premised on notions of state law affording a level of authority for local regulation and, in the case of state-created danger, states either contributed to or exacerbated pressing issues faced by cities.

These cities enacted their ordinances in an era of preemption called ‘new preemption’⁷²¹ or an ‘attack on American cities’.⁷²² Scholars have argued that the distribution of authority between states and their cities must be re-evaluated.⁷²³ A new approach to home rule has been

⁷¹⁸ Diller, *supra* note 37, at 1114.

⁷¹⁹ *Id.* at 1115.

⁷²⁰ See *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189,196 (1989), (The U.S. Supreme Court held that, in relation to the due process clause, the U.S. Constitution “conferr[ed] no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual”. However, two exceptions to the rule were identified. One exception was when the state went beyond just failing to act and contributed to the dangers that the victims faced or made the victims more vulnerable to the dangers.).

⁷²¹ Briffault, *supra* note 30.

⁷²² Schragger, *supra* note 35.

⁷²³ See Davidson & Schragger, *supra* note 671, at 1418. (Professors Davidson and Schragger argued that “the increasing abuse of that state supremacy in so much of the country has undermined policy innovation, harmed public health, and threatened what democracy has been allowed at the local level. We need a different approach”). Professor Ran Hirschl has advocated for the constitutional empowerment of cities. See, e.g., Hirschl, *supra* note 4, at 173-232.

proposed. This proposal also included an argument that local authority must be updated.⁷²⁴ These arguments have found support in the Pennsylvania state courts, where some members of the state judiciary have called into question the preemption statute, and arguably by extension, the current relationship between the state and its local governments which might need to be reconsidered. If these arguments were to be taken up by the state supreme court in a pending case the consequences to local democracy in Pennsylvania could be significant.⁷²⁵

Rationale

i) The Context

As of 2012, there were 19,519 municipalities in America.⁷²⁶ Given the sheer number of municipalities, a comprehensive survey of all cities is impossible. For this reason, I adopted a research strategy of using city ordinances as examples of city gun control efforts and the legal challenges that such efforts attract. Two cities were chosen: Pittsburgh and Seattle. They were selected because both enacted ordinances, presumed to have been in the exercise of their home rule powers, and their ordinances faced immediate challenges. The NRA and NRA-supported individual complainants filed these lawsuits on the grounds that the state preemption statute preempts the cities' ordinances. These cities were also chosen based on the availability of filings related to lawsuits brought against the cities and the cities being in states that are not considered red states. The choice of non-red states was to attempt to demonstrate that preemption goes beyond the blue cities in red states narrative.

The ordinances I have focused on purported to regulate, *inter alia*, the safe storage of firearms and access to firearms for minors. They were drafted to exploit the loopholes in their states' preemption statutes to avoid express conflict with those statutes.

The legal arguments deployed by both sides speak to the nature of home rule powers and regulatory authority in relation to local affairs. The cities were regulating firearms in a limited way with the ordinances only applicable within the cities' jurisdictions. The cities' legal arguments relied on a narrow interpretation of the preemption laws within their respective

⁷²⁴ Davidson *et. al*, *supra* note 70.

⁷²⁵ Crawford, 19 EAP. The cases involved a challenge of the constitutionality of the Pennsylvania firearms preemption statutes on the grounds that, *inter Alia*, the statutes amount to a state-created danger, infringe on the exercise of delegated authority and violate due process protections.

⁷²⁶ Hogue, *supra* note 23.

states to assert their authority to regulate outside the express confines of the wording of the statutes. So far, these arguments have met with little success.⁷²⁷ State court rulings to date suggest that the outcome of the litigation is likely to be that the Seattle and Pittsburgh ordinances will be found to be preempted. The cities' home rule authority will not extend to cover this particular aspect of firearms regulation so that, absent an express grant of authority to regulate firearms, this kind of city regulation at the local level will be ruled to be not possible.

While these chosen examples of Seattle and Pittsburgh cannot provide a comprehensive analysis of all city efforts to regulate firearms, this study of Pittsburgh and Seattle contributes to a broader discussion concerning the legal relationship between state and local governments. This research considers this discussion within the context of firearms. Furthermore, this study of the legal effect of local attempts at firearms regulation contributes to a broader consideration of intrastate intergovernmental relations, which has much wider implications that are being worked out regarding issues ranging from anti-discrimination to minimum wage⁷²⁸

Investigative method

Seattle and Pittsburgh were chosen in this way: an internet search was conducted to locate recent efforts by cities to regulate firearms, identify the ordinances they put in place to accomplish this, and identify the litigation that followed their enactment. The focus on recent efforts was chosen to coincide with the data collection period on proposed firearms preemption bills under examination in the previous chapter.

I focused on ongoing litigation to locate the legal arguments used by cities to assert authority to regulate firearms in the face of preemption-based lawsuits. Having identified the ordinances and the litigation, I researched the legislative history. I used city legislative databases hosted by Legistar⁷²⁹ to gain access to the legislative history of city regulations. The

⁷²⁷ Two lawsuits against Pittsburgh are now pending before the state supreme court, with the other pending before the Commonwealth Court (an appeals court). The lawsuit against Seattle went before the state court of appeal before being remitted back to the trial court. The Washington Supreme Court recently decided another case on similar legal grounds.

⁷²⁸ DuPuis ET AL, *supra* note 386, at 4-5. See Ch II for the discussion on these considerations.

⁷²⁹ Legistar is a cloud-based tool used by governments to share important documents such as meeting notices, new bills, and newly engaged legislation.

identified cities were considered in an attempt to uncover any firearms ordinances that were subject to lawsuits on preemption grounds.

Having identified the ordinances and the lawsuits, I located the party filings on Everytown for Gun Safety website.⁷³⁰ This organization supported Pittsburgh and Seattle in responding to legal challenges. The arguments advanced relied on similar lawsuits that had already been decided or were working their way through the state courts.

<u>Seattle</u>	<u>Pittsburgh</u>
Alim v. Seattle	Anderson v. Pittsburgh
	Allegheny County Sportsmen’s League (ACSL) v. Pittsburgh
	Firearm Owners Against Crime (FOAC) v. Pittsburgh

Table 4.1: Lawsuits against cities

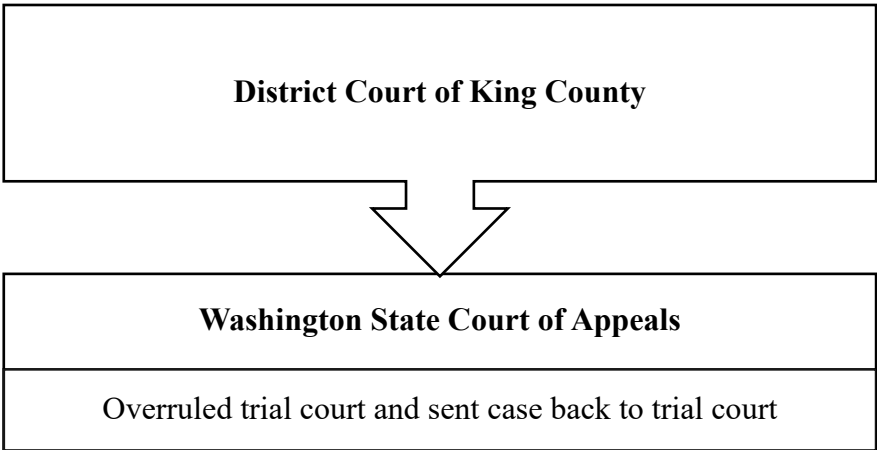


Figure 4.1: Alim v. Seattle

⁷³⁰ The filings for *Alim* at the court of first instance were not available on Westlaw. Everytown for Gun Safety is a pro-gun control organization that has supported cities attempting to regulate firearms. This support included legal support in responding to preemption-based lawsuits.

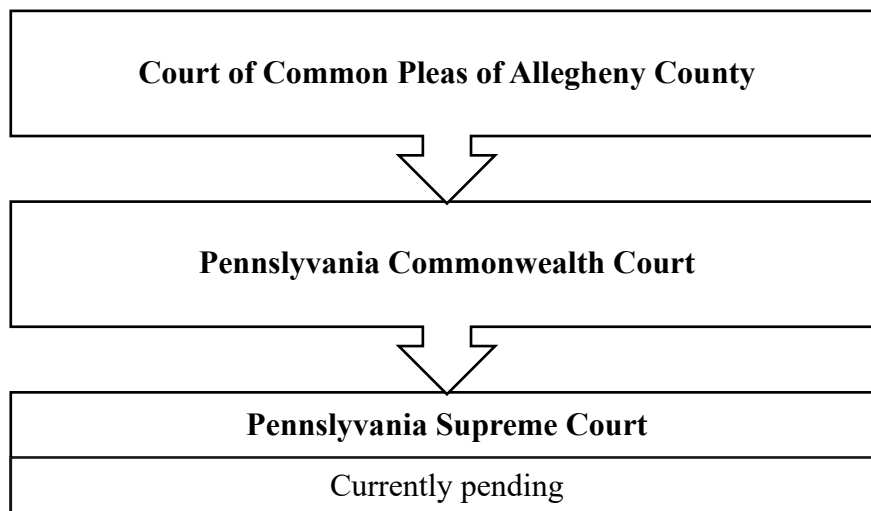


Figure 4.2: Anderson v. Pittsburgh

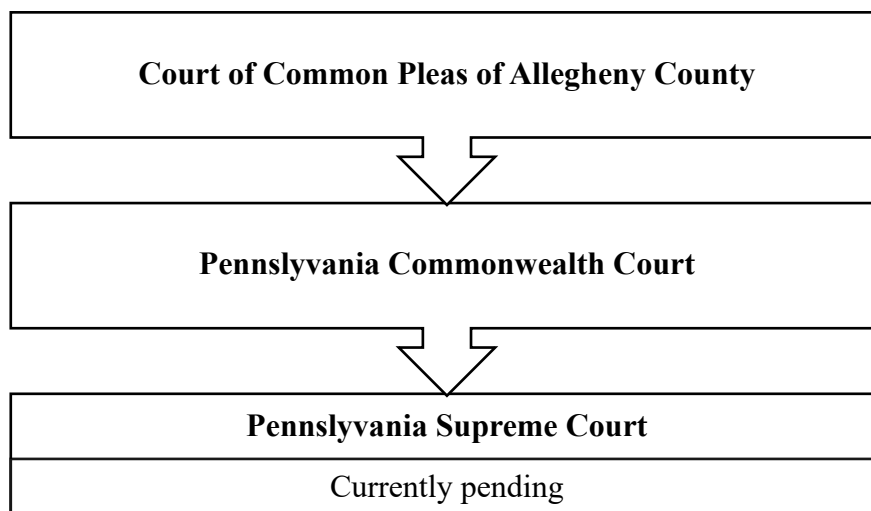


Figure 4.3: Firearms Owners Against Crime v. Pittsburgh

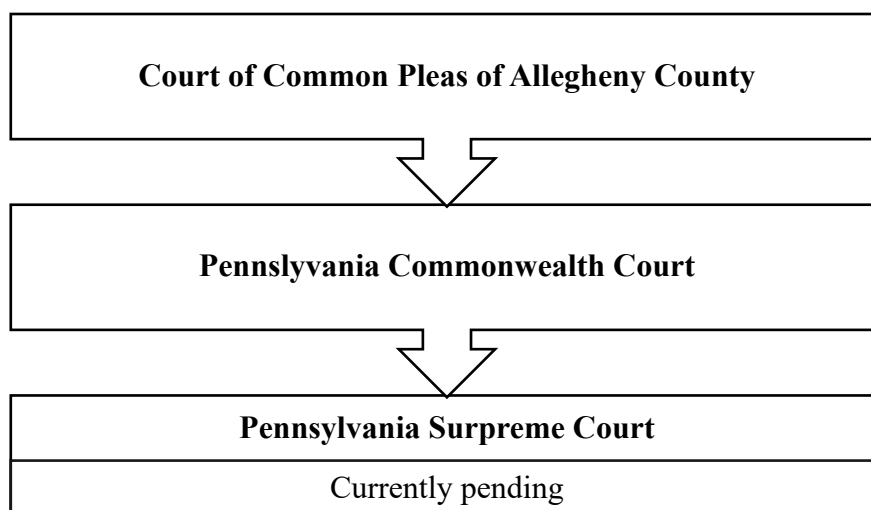


Figure 4.4: Allegheny County Sportsmen's League v. Pittsburgh

Analytical method

As discussed in Chapter I, I employed a doctrinal legal method to collect and analyze the dataset presented in this chapter. This black letter law approach focuses on the analysis of legal rules in order to identify the formulation of legal doctrines,⁷³¹ and is the “most frequently applied” method of legal research.⁷³² The data collected for this project consists of legal texts in the form of jurisprudence, state constitutional provisions, state statutes, city charters, and city regulations. The cases featured in this chapter are about legal doctrine. To conduct my doctrinal research, I adopted a seven-step approach that included choosing the research problem, engaging in preliminary data collection, framing the research question, formulating a hypothesis, exhaustively collecting data, discussing through analysis, and making suggestions through reforms.⁷³³

As previously stated, the research was focused on locating new legal developments. In this instance, it was hoped that the project would uncover state court judges dissenting from the current articulation of the distribution of power between states and their cities in relation to firearms. A doctrinal legal research method was ideal for situating the research as one of the key features of this approach is that it ‘systematizes’ present law.⁷³⁴

The background research to inform the analysis of the data collection for this data set was grounded in state constitutional and state statutory doctrine regarding the distribution of power between states and their cities. It also sought key jurisprudence that interpreted the legal doctrines of state preemption in the respective states. The requirement can be narrowed down to a pursuit of what the law is. Doctrinal legal research is uniquely suited for identifying legal rules.⁷³⁵

For the first step, I established my research problem. Given that broad preemption was adopted prior to this project and that I had assumed cities were still attempting to enact firearms preemption, it was expected that cities might face lawsuits as a result of their enactments.

⁷³¹ See Chynoweth, *supra* note 24, at 29.

⁷³² P. ISHAWARA BHAT, IDEA AND METHODS OF LEGAL RESEARCH, 143 (2020).

⁷³³ *Id.*, at 156-61.

⁷³⁴ See Smits, *supra* note 45, at 213.

⁷³⁵ See Chynoweth, *supra* note 24.

To engage in preliminary data collection, I conducted a news search to identify recent preemption-based lawsuits filed in response to municipal gun control enactments. The cities of Pittsburgh and Seattle were identified as fitting the parameters. The cases of interest were *Alim v. Seattle* for Seattle and *Allegheny County Sportsmen's League v. Pittsburgh*, *Firearms Owners Against Crime v. Pittsburgh* and *Anderson v. Pittsburgh* for Pittsburgh. Data collection started by compiling cases filed in the respective courts. This was done to identify and frame the legal issues. Building on this, the relevant state constitutions and statutes were identified. I present these state constitutions and preemption statutes in part I of this chapter. The city charters of Pittsburgh and Seattle along with the challenged municipal ordinances were located. The city charters are presented in Part I and the municipal ordinances are laid out in Part II of this chapter.

Having read the sources collected during the initial data collection and reflecting again on the broad adoption of state firearms preemption prior to the project, I concluded that these cities may be responding to these legal challenges as a means to assert their authority to regulate as they have. This led to the research question of: how have state courts responded to attempts by municipalities to exercise police power in relation to firearms? After developing my research question, I developed a presumption that some state court judges might object to their state's current distribution of power between the state and its cities. A textual analysis of the respective state preemption statutes suggested that it was unlikely that the courts would overrule the established interpretations of the state preemption statutes. However, it was hoped that some judges would dissent. This presumption was proven correct. I present these dissents in Part III of this chapter and reflect on these dissents in the Part IV of this chapter.

To facilitate exhaustive data collection, I monitored the lawsuits as they made their way through the courts. As they became available, I collected submissions from the parties to the cases. As the cases may their way to the state appellate courts, interested third parties submitted *amicus* briefs. I collected these briefs and present them in Part II. The cases were delayed due to the Covid-19 pandemic. This delay provided me an opportunity to locate other cases in Washington and Pennsylvania that might be engaging in similar legal controversies. I located two: *Bass v. Edmonds* in Washington and *Crawford v. Commonwealth* in Pennsylvania. *Bass* considered the enforceability of ordinances enacted by the city of Edmonds which had similarities to the Seattle ordinance challenged in *Alim*. *Crawford* was a case that challenged

the constitutionality of the Pennsylvania preemption statute under the Pennsylvania Constitution. These additional cases are presented in Part III and reflected upon in Part IV.

The sixth step of legal doctrinal research is to reflect through analysis. My analysis is presented in Part IV of this chapter. I reflect on whether the cities attempted to draft their ordinances so as to avoid the express provisions of their preemption statute, whether the cities may have wanted to induce these lawsuits as a means to challenge their states distribution of power between their state and its cities, and whether the tracing of the lawsuits reflects the inhibiting effect of preemption. I consider the receptiveness of the state courts to a different conceptualization of local authority, the role of interest groups in the lawsuits, and whether the lawsuits are political battles by other means. In my concluding chapter, I suggest that the current distribution of power between states and their cities is not right and should be recalibrated. I look to three potential avenues for this, and I reflect on the likelihood of success for each avenue.

Structure

This chapter proceeds as follows: Section I outlines the sources of the legal authority of cities to regulate firearms to establish the legislative environment in which Pittsburgh and Seattle enacted their ordinances. The home rule authority of each city, through their state home rule grants, is laid out. The preemption statutes of each state are then set out. Section II considers the city firearms regulations enacted by Seattle and Pittsburgh. A textual analysis of the text of the bills, including the drafting techniques employed, was conducted. The results are compared with the text of the relevant preemption statutes to determine whether the ordinances were in express conflict with the state preemption statutes. From my analysis, reasonable grounds are established to suggest that the cities were attempting to exploit a gap in their respective state preemption statutes. Indicators also emerged from a textual analysis of the ordinances suggesting that the ordinances engaged narrowly defined areas of firearms regulation and were limited to applying only within the cities' jurisdictions. However, it is reasonable to assume that the cities also knew these bills were unlikely to be successfully defended if they faced legal challenges.

Section III discusses the legal challenges to the city ordinances. All the legal challenges argue that the ordinances are preempted. The challenge to the Seattle ordinances is considered first. *Alim v. Seattle* was a direct challenge and is considered in the context of *Bass v. Edmonds*,

another Washington case in which the challenged ordinance has similarities to the Seattle ordinance. Section III then considers the three cases against Pittsburgh. Section III ends with the case of *Crawford v. Commonwealth*, a lawsuit challenging the constitutionality of the Pennsylvania firearms statute currently pending before the Pennsylvania Supreme Court.

The chapter concludes with the key issues flagged up by the examples of Seattle and Pittsburgh: the cities were attempting to regulate in a limited way and likely knew their ordinances would not withstand legal challenges, the number of dissents located in the precedents and in the cases analyzed in this chapter was beyond what was anticipated. The opinions of some state court judges went so far as to question the current interpretative precedent and advanced an alternative and more narrow interpretation of the preemption statute that would, if accepted, recalibrate the relationship between Pennsylvania and cities at least with respect to firearms regulation.

I. The local authority in Washington and Pennsylvania

This part proceeds by laying out the authority of municipalities in Washington and Pennsylvania under state law. It considers the grant of home rule authority and the firearms preemption statutes of each state. Both state grants of home rule authority have a state law supremacy clause which requires home rule authority to be exercised in line with the general laws of the state.

Home rule, as discussed in Chapter II, is a grant of authority to local governments. It permits local governments to regulate certain local matters. Washington and Pennsylvania have home rule. Washington's constitution grants home rule authority with other municipal authority delegated by statute.⁷³⁶ Pennsylvania's constitution recognizes home rule but leaves defining home rule authority to statute.⁷³⁷

A. Washington

This section lays out local authority to regulate firearms in Washington, starting with the home rule authority granted by the Washington Constitution. The section continues by discussing the Washington firearms preemption statute. This identifies the legislative

⁷³⁶ WASH. CONST. art. XI, §11.

⁷³⁷ PENN. CONST. art. IX, §2.

environment in which Seattle has enacted a firearms regulation and with which the Seattle ordinance and the legal challenge to that ordinance are interpreted.

Washington authorizes: “[a]ny county, city, town, or township [to] make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”⁷³⁸ This limitation clause requires home rule authority to be exercised not to conflict with the general laws of the state and is an essential qualifier to exercising this authority.

Seattle’s City Charter declares that it was enacted “[u]nder authority conferred by the Constitution of the State of Washington.”⁷³⁹ The charter reserves a legislative power for the city council and mayor, including “the power to propose for themselves any ordinance dealing with any matter within the realm of local affairs or municipal business.”⁷⁴⁰ The city charter goes further by recognizing the city government’s power to exercise home rule authority authorized in the state constitution.⁷⁴¹

Washington, like most U.S. States, has a firearms preemption statute. It states that:

“[t]he state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law... and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality”.⁷⁴²

⁷³⁸ *Id.*

⁷³⁹ SEA. WASH. City Charter, pmbl.

⁷⁴⁰ *Id.*, art. IV, s. 1.

⁷⁴¹ *Id.* (This includes the power “[t]o make all such local, police, sanitary and other regulations as are not in conflict with the laws of the state.”).

⁷⁴² WASH. REV. CODE 9.41.290 (1994).

Implied preemption can extend the scope of a preemption statute beyond a strict letter interpretation. The Washington Supreme Court considered the scope of the statute in *Cherry v. Seattle* (1991). The court found that the statute was enacted to respond to overlapping jurisdictions in relation to criminal offenses.⁷⁴³ The Court examined the statute's legislative history when reaching this conclusion. The Court did not address civil sanctions. However, one potential interpretations of the judgment is that it left the door open for local regulation so long as the sanctions are limited to civil law sanctions. A textual analysis of the Seattle ordinance under legal challenge, discussed below, initially suggested that it might have been written to limit its sanctions to civil law sanctions so as to not be preempted.

B. Pennsylvania

This section sets out the authority of Pennsylvania municipalities to regulate firearms starting with the home rule authority granted by state law. The section then continues onto the Pennsylvania state firearms preemption statute. The texts of the Pittsburgh ordinances can then be compared with these sources of law. Part III considers the Courts' interpretation of these two sources of law.

The Pennsylvania Constitution authorizes municipalities to adopt home rule charters by referendum and permits municipalities with home rule authority to “exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly.”⁷⁴⁴ Pittsburgh’s home rule charter defines the city government’s home rule power to include the ability to “perform any function and exercise any power not denied by the Constitution, the laws of Pennsylvania, or this charter.”⁷⁴⁵ The Charter also declares home rule powers must be construed liberally in favor of the city, but this is not binding on the state.

Additionally, Pennsylvania has a similar provision to that of Washington. Pennsylvania’s statute states that “[a]ll grants of municipal power to municipalities governed by a home rule charter...whether in the form of specific enumeration or general terms, shall be

⁷⁴³ *Cherry v. Seattle*, 808 P.2d 747, 750 (Wash. 1991). (The Court held that the statute “was enacted to reform that situation in which counties, cities, and towns could each enact conflicting local criminal codes regulating the general public’s possession of firearms”).

⁷⁴⁴ PENN. CONST. art. IX, §2.

⁷⁴⁵ PITTSBURGH, PA. CITY CHARTER, art. 1, 101.

liberally construed in favor of the municipality”.⁷⁴⁶ However, the preceding phrase of that provision provides an important clarifier. It states, “[a] municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter.”⁷⁴⁷ This means that state law, including the firearms preemption statute, would take priority, rendering a conflicting city regulation void. Dillon’s rule has received long-standing acceptance in Pennsylvania.⁷⁴⁸

Pennsylvania's firearms preemption statute declares that “[n]o county, municipality or township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth.”⁷⁴⁹ Additionally, another preemption provision, included in the Home Rule and Optional Code Law, declares that “[a] municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation, or possession of firearms.”⁷⁵⁰ Thus, even when granting home rule, the Pennsylvania legislature included an overriding provision preempting local firearms regulation.

The preemption statutes do not preclude all municipal regulation of firearms. Some municipal regulation is expressly permitted. Pennsylvania cities are authorized to regulate “the unnecessary firing and discharge of firearms in or into the highways and other public places thereof, and to pass all necessary ordinances regulating or forbidding the same and prescribing penalties for their violation.”⁷⁵¹ This limited authority was granted to municipalities in 1921, the year before the home rule amendment to the Pennsylvania constitution was passed. Cities are also permitted to regulate, prevent, and impose criminal or civil sanction on, *inter alia*, the discharge of firearms “in the streets, lots, grounds, alleys, or in the vicinity of any buildings; to prevent and punish the carrying of concealed deadly weapons.”⁷⁵² There is a caveat. The power to regulate may be exercised “[t]o prevent and restrain riots, routs, noises, disturbances or disorderly assemblies, in any street, house or place in the city.”⁷⁵³

⁷⁴⁶ 53 PA. CONS. STAT. §2961 (2014).

⁷⁴⁷ *Id.*

⁷⁴⁸ *See Fox v. Philadelphia*, 64 Pa. 169, 182 (Pa. 1870). the Pennsylvania Supreme Court determined that Philadelphia was a creature of the state.

⁷⁴⁹ 18 PA. CONS. STAT. § 6120(a) (2014).

⁷⁵⁰ 53 PA. CONS. STAT. 2962(g) (2018).

⁷⁵¹ 53 PA. STAT. AND CONS. STAT. § 3703 (West, 1921).

⁷⁵² 53 PA. STAT. AND CONS. STAT. § 23131 (West, 1901).

⁷⁵³ *Id.*

II. City firearms ordinances

Pittsburgh passed three ordinances in April 2019 that were immediately subject to legal challenges in state court. Seattle passed two ordinances in July 2018, one was challenged in state court by the NRA, the Second Amendment Foundation, and two individuals. Section III analyzes these lawsuits. This section presents and discusses these ordinances as efforts by both cities to assert their authority to regulate firearms.

A. The Ordinances

City	Ordinance
Seattle	CB 119266
Pittsburgh	CB 1218-2018
Pittsburgh	CB 1219-2018
Pittsburgh	CB 1220-2018

Table 4.2: City ordinances

On July 18, 2018, Seattle passed CB 119266 and CB 119267. CB 119266 required the safe storage of firearms and imposed civil penalties for failure to store a firearm safely.⁷⁵⁴ The bill also created a civil infraction of permitting unauthorized firearms access by minors or at-risk persons.⁷⁵⁵ CB 119267 required reporting lost or stolen firearms.⁷⁵⁶ It was passed at the same time as CB 119266 but is not subject to the legal challenge discussed in Part III.

Pittsburgh enacted CB 2018-1218, CB 2018-1219, and CB 2018-1220. CB 2018-1218 prohibited the discharge of ammunition in Pittsburgh except in certain locations, such as a shooting range, and imposed an assault weapon ban.⁷⁵⁷ CB 2018-1219 prohibited the use of armor-penetrating ammunition, large-capacity magazines, and banned the use of rapid-fire devices.⁷⁵⁸ CB 2018-1220 prohibited the unauthorized use of firearms by minors and permitted

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.*

⁷⁵⁶ SEA., WASH. CITY B 119267, SEA., WASH. ORD. 125621(2018). State law does recognize some authorized use of firearms for minors. For example, for hunting, on their own property or the property of their parents or guardians with their parent or guardian's consent, and as part of service in the military. *See* WASH. REV. CODE 9.41.042 (2023).

⁷⁵⁷ PITTSBURGH, PA. CITY B. 2018-1218, PITTSBURGH, PA. CITY ORD. No 14-2019 (2019).

⁷⁵⁸ PITTSBURGH, PA. CITY B. 2018-1219, PITTSBURGH, PA. CITY ORD. No 15-2019 (2019).

extreme risk protection orders (ERPOs).⁷⁵⁹ The ERPOs provision permits a court to order the removal of firearms for persons who pose a risk to themselves or others.

Significant differences exist between the Pittsburgh ordinances and the Seattle ordinances. The difference in approach to regulating firearms by Pittsburgh compared to Seattle is likely due to the different state regulatory environments. One difference is Pittsburgh's enactment of an ERPO scheme. Seattle did not follow suit presumably because Seattle police can petition for an ERPO under state law.⁷⁶⁰ In Pennsylvania, protection orders are limited to cases of domestic violence or sexual violence. The victim must apply for the order. Washington's ERPOs can be issued against people who pose a risk to themselves or others. Police officers, not just victims, have standing to petition for an ERPO in Washington.

There are similarities in the two cities' ordinances. First, both cities relied on home rule authority to justify their gun control ordinances. Pittsburgh did so expressly, noting its home rule authority. Seattle alluded to home rule by noting the regulation was "an evidence-based approach to addressing the public health and public safety crisis of gun violence."⁷⁶¹ Public health and public safety form core components of municipal police power and are arguably the two earliest grants of municipal authority in Washington.⁷⁶² Washington's constitutional home rule grant includes police power.⁷⁶³ These justifications suggest that the goals of the cities may have gone beyond just defending their ordinances but also to advance arguments for greater local authority to address the local effects of gun violence.

A second similarity is that both cities enacted ordinances requiring the safe storage of firearms and preventing the unauthorized access of firearms by minors. As a matter of federal law, everyone, including an unlicensed seller, is prohibited from selling a handgun to anyone

⁷⁵⁹ PITTSBURGH, PA CITY B. 2018-1220, PITTSBURGH, PA CITY ORD. NO. 15-2019 (2019). (The provision on unauthorized use by minors applied to the custodian of a firearm and created a civil infraction where a firearm's custodian permits a minor to gain access to the firearm, and the custodian "knew or reasonably should have known that a minor was likely to gain access to the firearm."). Pennsylvania state law recognizes some authorized firearms uses for minors such as hunting, target shooting or safety training so long as the minor is supervised by a parent, grandparent, guardian, or a responsible adult authorized by the minor's parent or guardian to supervise the minor. See 18 PA. STAT. AND CONS. STAT. §6101.1 (b) (West, 1995).

⁷⁶⁰ WASH. REV. CODE 7.94.010 (2017).

⁷⁶¹ SEA., WASH. CITY B. 119266, SEA. WASH, CITY ORD. 125620 (2018).

⁷⁶² Hugh Spitzer, *Municipal Police Power in Washington State*, 75 WASH L. REV. 495, 497 (2000). ("The police power of local government is, at root, the inherent power of the community to regulate activities for the protection of public health and safety. This is probably the oldest type of local government power").

⁷⁶³ WASH. CONST. art. XI, § 11. ("[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws").

they believe may be under eighteen.⁷⁶⁴ While federal law does not address long guns, it does expressly prohibit selling handguns to a minor.

Regulating children's access to firearms is a gun control strategy that is growing in use. Fourteen states have child access prevention (CAP) laws.⁷⁶⁵ Washington state law only permits a person under eighteen to possess a firearm in limited circumstances.⁷⁶⁶ Pittsburgh's ordinance prohibiting unauthorized access to firearms by minors⁷⁶⁷ is similar to that of Seattle. This was done by creating a civil infraction for permitting⁷⁶⁸ The bill also prohibited permitting access for at risk persons.

Pittsburgh and Seattle's ordinances engage a small portion of the policy field of firearms. On the face of their ordinances, neither city intended to regulate outside their boundaries. Instead, both cities enacted ordinances that applied only within their respective jurisdictions. The cities also made it clear in their ordinances that they were not attempting to regulate in conflict with the express provisions of their state's preemption statutes.⁷⁶⁹

Prolonged interest in local gun control

Seattle and Pittsburgh are long-time proponents of local gun control. Both have been challenging state firearms preemption laws for decades. For example, both cities were parties to key legal precedents in their state's jurisprudence on firearms preemption.⁷⁷⁰ They have been active in the legal debate around the interpretation of their respective states' firearms preemption statutes and have supported the efforts of other cities' to regulate firearms by

⁷⁶⁴ 18 U.S.C. 922(x) (2015).

⁷⁶⁵ EVERYTOWN GUN POLICY AND RESEARCH, Responsible Gun Storage, <https://everytownresearch.org/solution/responsible-gun-storage/>.

⁷⁶⁶ WASH. REV. CODE 7.41.042 (2023).

⁷⁶⁷ PITT., PA. CITY B 2018-1220, (The bill made it an infraction for a "minor [t]o gain access to and use the [f]irearm" when the "[f]irearm's custodian knew or reasonably should have known that a minor was likely to gain access to the [f]irearm.").

⁷⁶⁸ *Id.* (The civil infraction will have been committed "if any person knows or reasonably should know that a minor, an at-risk person, or a prohibited person is likely to gain access to a firearm belonging to or under the control of that person, and a minor, an at-risk person, or a prohibited person obtains the firearm.").

⁷⁶⁹ See e.g. PITTSBURGH, PA. CITY B. 2018-1218 (stated that the preemption statutes of Pennsylvania "restrict municipal regulation of ownership, possession, transfer, and transportation" and "ammunition and ammunition components."). For Seattle, see SEATTLE, WASH. CITY B. 119266 (clarified that the bill "is not intended to regulate the registration, licensing, possession, purchase, sale, acquisition, transfer, discharger or transportation of firearms, or any other elements relating to firearms or parts thereof, including ammunition and reloader components.").

⁷⁷⁰ See, e.g., *Cherry*, 808 P.2d (Wash. 1991) and *Chan v. Seattle* 265 P.3d. 169 (Wash. 2011) for Seattle, and *NRA v. City of Pittsburgh* 999 A.2d 1256 (Pa. Commw. Ct. 2009) for Pittsburgh. Pittsburgh was also involved in *Ortiz*, 681 A.2d (Pa. 1996).

submitting *amicus* briefs in preemption cases.⁷⁷¹ These *amicus* briefs are presented later in this chapter. This history of advocating the expansion of local gun regulatory authority suggests that enacting the ordinances was not just about enacting new local laws that expand local gun control but also intended to advance discussions on the recalibration of the state-local government relationship.

Examples of other cities' interest in gun control

Seattle and Pittsburgh are not alone in their desire to put in place local gun control measures but join other cities, including Philadelphia, one of the largest cities in America, and several other municipalities.⁷⁷² These cities are in blue states like Washington and red states like Florida. Similar to Seattle and Pittsburgh, they have attempted to assert their authority to regulate firearms within their jurisdiction in a manner akin to the local concerns goal of the home rule movement. They have attempted to regulate the policy area of firearms on such issues as preventing children's access to firearms and safe storage requirements.

Pittsburgh is not the only city to attempt to assert its authority to ban assault weapons. In 2018, Boulder, Colorado enacted an ordinance prohibiting the sale of assault weapons in Boulder.⁷⁷³ On March 22, 2021, a man took an AR-15 assault weapon into a shopping center in Boulder, Colorado, and killed ten people.⁷⁷⁴ Months before the shooting, in a courtroom only miles from where the shooting took place, a Boulder city firearms ordinance under legal challenge was ruled preempted by state law.⁷⁷⁵ Reflecting on the shooting in Boulder, Professor

⁷⁷¹ For Seattle, *see, e.g.*, Washington cities' brief, *infra* note 842. For Pittsburgh, *see, e.g.*, Pittsburgh's *amicus* brief for Crawford, *infra* note 896.

⁷⁷² *See, e.g.*, Complaint, *Missoula v Fox* DV-18-429, Apr. 11, 2018, <https://everytownlaw.org/wp-content/uploads/sites/5/2020/07/Missoula-Lawsuit-Background-Check-Law.pdf>. (Missoula, Montana passed an ordinance in 2016 requiring background checks for firearms sales in the city). *See also* *Chambers v. Boulder*, 2018CV30581, (Dist. Ct. Boulder Cnty. Mar. 12, 2021), and James Dawson, *Boise City Council calls for more gun control*, Boise State Public Radio, Jun 28, 2022, <https://www.boisestatepublicradio.org/politics-government/2022-06-28/boise-city-council-calls-for-more-gun-control> (Boise, Idaho wants more gun control, but given that the legislature preempted municipalities from regulating firearms in 2008, the council saw its best option was to call on the state and federal governments to take action), and Jake Zuckerman, *Columbus mulls new strategy to limit gun violence. Could it work?*, OHIO CAPITAL J., Jun 8, 2022, <https://ohiocapitaljournal.com/2022/06/08/columbus-mulls-new-strategy-to-limit-gun-violence-could-it-work/> (Columbus, Ohio is concerning new gun control regulations under public health authority as a strategy to attempt to avoid state firearms preemption). This project was unable to locate definitive statistics on the number of cities enacting gun control.

⁷⁷³ BOULDER, CO. CITY ORD. 8245 (2018).

⁷⁷⁴ Jennifer Oldham, Francis Stead Sellers, Shayna Jacobs & Marc Fisher, *Terror in a Boulder supermarket: How the King Soopers shooting unfolded*, WASH. POST. (Mar. 24, 2021), <https://www.washingtonpost.com/nation/2021/03/24/what-happened-boulder-shooting>.

⁷⁷⁵ *Chambers*, 2018CV30581.

Joseph Blocher concluded that "[i]n Colorado and elsewhere, state laws keep cities and towns from passing measures that could prevent death and injury — and allow citizens to move through public spaces without fear."⁷⁷⁶ Blocher is referring to firearms preemption statutes.

i. Pittsburgh ordinances

Pittsburgh enacted three ordinances on April 2, 2019.⁷⁷⁷ Currently, these three ordinances are invalid as they were held to be preempted by state law. Still, the decisions of the courts invalidating these ordinances are subject to ongoing appeals, which are discussed later in Part III. During the initial cases before the court of first instance, Pittsburgh agreed not to enforce the ordinances while the cases were pending.

CB 1218-2018
CB 1219-2018
CB 1220-2018

Table 4.3: Pittsburgh city bills

CB 2018-1218 prohibited:

- the discharge of ammunition within Pittsburgh's jurisdiction, subject to exceptions including the discharge of ammunition at a firing range.⁷⁷⁸ The preemption statute includes ammunition but does not expressly include the discharge of ammunition.
- the use of assault weapons and provides a list of banned firearms. Included in that list is the AR-15.⁷⁷⁹

⁷⁷⁶ Blocher, *supra* note 1.

⁷⁷⁷ According to Pittsburgh's Mayor, the city enacted these ordinances to: "ban the use of assault weapons in the city; the use of certain ammunition and modified guns; and implement[ing] Extreme Risk Protection Orders, in which courts would temporarily take firearms away from those shown to be a danger to themselves or others."⁷⁷⁷ This list was not exhaustive. See Press Release, Off. of the Mayor of Pittsburgh, Mayor William Peduto Signs Legislation on Firearms and Gun Violence (Apr. 9, 2019), <https://pittsburghpa.gov/press-releases/press-releases/2816>.

⁷⁷⁸ *Id.*

⁷⁷⁹ *Id.* The perpetrator of the Tree of Life Synagogue shooting used an AR-15. See Megan Guza, *Son of Tree of Life Victims Sues NRA, Alleging Gun Lobby Spread 'White Supremacist' Conspiracies*, TRIBLIVE, (Jan. 22, 2021), <https://triblive.com/local/son-of-tree-of-life-victims-sues-nra-alleging-gun-lobby-spread-white-supremacist-theories/>. As result, it appears reasonable to conclude that Pittsburgh attempted to prevent a similar mass shooting from happening again in Pittsburgh.

CB 2018-1218 also restricts access to large-capacity magazines.⁷⁸⁰ Some weapons used by the perpetrator of the Tree of Life Synagogue shooting had high-capacity magazines. As will be seen in Part III with the case of *Anderson*, there is a point of disagreement between Pittsburgh and the complainants on how to characterize these magazines. The complainants prefer to refer to them as standard-capacity magazines, while Pittsburgh refers to them as large-capacity magazines.

Pittsburgh's CB 2018-1219 prohibited:

- the “use of certain accessories, ammunition, and modifications.”⁷⁸¹
- armor-penetrating ammunition and prohibited rapid-fire devices.⁷⁸²

Pittsburgh CB 2018-1220 created a civil infraction for permitting a minor to gain access to a firearm.⁷⁸³ The key provisions include:

- an onus on a firearm custodian to prevent minors from accessing the custodian's firearm.⁷⁸⁴
- firearm use does not include possession, ownership, transportation, or transfer.⁷⁸⁵
- use includes the discharge or attempted discharge of a firearm, loading the firearm in question with ammunition, brandishing the firearm, pointing the firearm at another person, or employing a firearm for a purpose prohibited by state or federal law.⁷⁸⁶
- a firearm custodian would not be liable for a minor gaining access to their firearm if the minor does so due to illegal entry.

⁷⁸⁰ PITTSBURGH, PA. C. BILL 2018-1218 (2019) (enacted as PITT. PA. C. ORD. No. 15-2019. (“[a] Firearm magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of Ammunition.”))

⁷⁸¹ *Id.*

⁷⁸² *Id.* These devices can permit a semi-automatic weapon to fire more rapidly. This could increase the number of victims in a mass shooting incident. Such devices were used in the Route 91 Harvest Music Festival shooting in Las Vegas on October 1, 2017, which left at least 58 people dead. See Larisa Epatko, *Updated: Gunman kills At Least 58 People at a Concert in Las Vegas*, PBS, Oct. 2, 2017, <https://www.pbs.org/newshour/nation/las-vegas-shooting-outdoor-concert-kills-20>. At the federal level, in the aftermath of the Las Vegas shooting, Republican President Donald Trump supported a ban on one such device, a bump stock. See Jeremy White, *US Justice Department to Ban Rapid-Fire ‘Bump Stocks’ Used by Las Vegas Shooter*, INDEPENDENT, Mar. 23, 2018, <https://www.independent.co.uk/news/world/americas/us-politics/bump-stock-ban-donald-trump-las-vegas-stephen-paddock-a8271411.html>.

⁷⁸³ PITTSBURGH, PA. C. BILL 2018-1220.

⁷⁸⁴ *Id.* (If a minor gains access to a firearm and uses it, and the custodian knew or reasonably should have known that the minor was likely to gain access to the firearm, then the custodian would be liable).

⁷⁸⁵ *Id.* This appears to be draft to avoid express conflict with the state preemption statute.

⁷⁸⁶ *Id.*

- if the firearm is stored securely, the custodian would not be liable for a minor gaining access.⁷⁸⁷

CB 2018-1220 also permits extreme risk protection orders (ERPOs).⁷⁸⁸ The scheme particulars include:

- an ERPO can be issued to protect people subject to a protection order from harming themselves.
- an order authorizes the police to seize firearms.
- a petition must be made to a court and can only be made by a select group of individuals.⁷⁸⁹
- an interim order does not permit the person subject to the order to challenge the order before issuance.
- firearms owner or custodian still has the right to challenge the grounds for removing the firearm after the fact and challenge any continued loss of possession.
- a person subject to an order automatically has a hearing scheduled within ten days of the order being granted. At the hearing, a court reviews the grounds for the order and any extension.⁷⁹⁰
- at any time when the order is in force, the person subject to the order can petition for a termination hearing and can challenge the continued validity of the order.⁷⁹¹
- provisions to discourage abuse.⁷⁹²

ii. Seattle ordinances

⁷⁸⁷ This appears to be a *de facto* safe storage requirement.

⁷⁸⁸ PITTSBURGH., PA. C. BILL 2018-1220. (ERPOs are also referred to as ‘red flag’ laws. The bill defines an ERPO as “[a] court order prohibiting a person from having possession or control, purchasing or receiving or attempting to purchase or receive, a Firearm, based upon a finding that the person presents a risk of suicide or of causing the death of, or Serious Bodily Injury to, another person through the use of a firearm.” Serious bodily injury is defined as “bodily injury that creates a substantial risk of death or causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.”).

⁷⁸⁹ *Id.* (A law enforcement officer, family member, or household member have standing. The courts have the discretion to issue an order to remove firearms from individuals where there is cause to believe this is necessary to protect persons at risk, including the owner is perceived to be a suicide risk. An order can also be granted where the person in respect of whom the order was being sought is a person believed to present of causing the death of, or extreme bodily injury to another person.).

⁷⁹⁰ *Id.*

⁷⁹¹ *Id.*

⁷⁹² *Id.* (Anyone found to have abused the process of the ERPO regime can be subject to a fine of up to \$1,000 and may be ordered to pay full restitution if found to have acted in bad faith or in a way that constitutes an abuse of the process.).

This section considers the Seattle ordinance under legal challenge and its companion ordinance. Washington has broad firearms preemption. RCW 9.41.360 created two offenses: “[c]ommunity endangerment due to unsafe storage of a firearm in the first degree”,⁷⁹³ which is a felony, and “[c]ommunity endangerment due to unsafe storage of a firearm in the second degree”,⁷⁹⁴ which is a misdemeanor. RCW 9.41.360 creates an excuse for the firearm owner if “[t]he firearm was in secure gun storage or secured with a trigger lock or similar device that is designed to prevent the unauthorized use or discharge of the firearm.”⁷⁹⁵ State law also has provisions related to other persons who are prohibited from having firearms, including “involuntarily committed for mental health treatment.”⁷⁹⁶ Washington state law also prohibits the possession of a firearm by someone under the age of 18.⁷⁹⁷ State law imposes criminal penalties for the unsafe storage of firearms.⁷⁹⁸ However, CB 119266 goes further than state law by creating an obligation to safely store firearms.

Seattle passed CB 119266 and 119267 in 2018. CB 119266 includes:

- an obligation on gun owners to safely store firearms.⁷⁹⁹
- a civil infraction for storing or keeping a firearm in any premises unless the weapon is secured in a locked container to render that weapon inaccessible or unusable for anyone other than the owner or authorized user.⁸⁰⁰
- civil penalties for breach of the above.⁸⁰¹

III. Legal Challenges to ordinances

This section presents the legal challenges to the city ordinances brought on the grounds that the ordinances are preempted by state law. Pittsburgh has faced three legal challenges:

- *Anderson v. Pittsburgh*

⁷⁹³ WASH. REV. CODE 9.41.360 (2)(a) (2019).

⁷⁹⁴ *Id.*

⁷⁹⁵ WASH. REV. CODE 9.41.360 (3)(a) (2019).

⁷⁹⁶ WASH. REV. CODE 9.41.040(2)(iv) (2019).

⁷⁹⁷ WASH. REV. CODE 9.41.040 (2019).

⁷⁹⁸ WASH. REV. CODE 9.41.360 (2019).

⁷⁹⁹ Compared to the Seattle safe storage ordinance, the state law imposes sanctions if a firearm owner’s firearms are used in a manner that amounts to community endangerment.

⁸⁰⁰ SEA., WASH. CITY B 119266 (2018)(enacted as SEATTLE, WASH. CODE 10.79.020). (The civil infraction arises when any person, who owns a firearm or is in control of a firearm, knows or reasonably should know that a minor, an at-risk person, or a prohibited person is likely to obtain the owner or controller’s firearm and the minor, at-risk person or prohibited person obtains that firearm. An authorized user is someone authorized by the owner to use the firearm. The provision states that a weapon “shall be deemed lawfully stored or lawfully kept if carried by or under the control of the owner or other lawfully authorized user.”).

⁸⁰¹ *Id.* (Specific provision referenced was enacted as SEATTLE, WASH. CODE 10.79.40).

- *Allegheny County Sportsmen's League (ACSL) v. Pittsburgh*
- *Firearms Owners Against Crime (FOAC) v. Pittsburgh*

Pro-gun pressure groups feature in all three cases.⁸⁰² ACSL and FOAC are pro-gun pressure groups. *Anderson* is a legal challenge brought by four Pittsburgh residents supported by the NRA.⁸⁰³ Pro-gun control interest group Everytown for Gun Safety⁸⁰⁴ assisted Pittsburgh in all three cases. The plaintiffs in *Anderson* argued that the state preemption statute prohibits local regulation of the possession and transportation of firearms, ammunition and firearms components.⁸⁰⁵ The trial court agreed and held that the ordinance was preempted.⁸⁰⁶ This case is currently pending before the Pennsylvania Supreme Court.

The next case is *FAOC*⁸⁰⁷ *v. Pittsburgh*. The plaintiffs included three individual plaintiffs, and two organizational plaintiffs that challenged all three city ordinances on preemption grounds.⁸⁰⁸ The trial judge determined that the ordinances were preempted. Pittsburgh appealed this case, along with *Anderson* to the Pennsylvania Supreme Court which has held these cases pending the outcome of *Crawford*.

The ACSL's lawsuit can be distinguished from the other cases against Pittsburgh. It raises a contempt of court claim against Pittsburgh and city officials relating to a settlement agreement in which the plaintiffs had agreed to discontinue a legal challenge to a city gun control ordinance Pittsburgh itself conceded was preempted as part of the settlement agreement. ACSL contended that all three Pittsburgh ordinances were enacted in conflict with

⁸⁰² This was expected. As Professor Diller observed, one of the most common litigants are pressure groups. *See* Diller, *supra* note 37, at 1114.

⁸⁰³ Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Pennsylvania Court Knocks Out Pittsburgh Gun Control in NRA-Backed Case (Oct. 29, 2019), <https://www.nraila.org/articles/20191029/pennsylvania-court-knocks-out-pittsburgh-gun-control-in-nra-backed-case>.

⁸⁰⁴ Everytown for gun safety openly opposes intrastate firearms preemption. *See* Preemption laws fact sheet, EVERYTOWN FOR GUN SAFETY, <https://www.everytownresearch.org/report/fact-sheet-preemption-laws/>. (The organization contends that "state firearms preemption laws override commonsense by limiting cities wracked with gun violence to the identical laws that apply in rural areas where responsible gun ownership is more embedded in daily life".).

⁸⁰⁵ Complaint at 7-9, *Anderson v. City of Pittsburgh*, (Ct. Comm. Pl. Allegheny Cnty., Pa 2019).

⁸⁰⁶ *Anderson*, GD-19-005308.

⁸⁰⁷ FOAC is an organization that has a history of filing legal challenges to municipal firearms ordinances on preemption grounds. *See, e.g.,* *FOAC v. City of Harrisburg* 218 A.3d 497 (Pa. Commw. Ct. 2019), *and* *FOAC v. Lower Marion Township* 151 A.3d 426 (Pa. Commw. Ct. 2016). *See also* *Mission Statement*, FIREARM OWNERS AGAINST CRIME, <https://foac-pac.org/Mission-Statement>. (FOAC "was formed shortly after the City of Pittsburgh's illegal gun and ammunition ban of 1993.").

⁸⁰⁸ Complaint at 5 & 14-15, *Firearms Owners Against Crime v. City of Pittsburgh*, (Ct. Comm. Pl. Allegheny Cnty, Pa. 2019), GD-19-005330.

Pittsburgh's obligations under the agreement.⁸⁰⁹ The trial judge in *ACSL* found the contempt of court claim moot since all ordinances were preempted.⁸¹⁰ The plaintiffs' appeal to the Commonwealth Court was dismissed.⁸¹¹

Seattle faced a legal challenge in *Alim v. Seattle*. The complaint was filed two days after the mayor signed CB 119266 and before the bill came into force. As result, Seattle objected to the plaintiff's standing and the ripeness of the case. The plaintiffs included the NRA and the Second Amendment Foundation. The plaintiffs argued that CB 119266's safe storage requirement was a regulation of the possession of firearms and was preempted by state legislation. The focus on firearms possession for the challenge to CB 119266 could explain why the plaintiffs did not challenge CB 119267's reporting of lost or stolen firearms requirement. If a firearm is lost or stolen, it would not be in the physical possession of the owner. The trial court dismissed *Alim* on procedural grounds, but the Court of Appeal reversed this and remitted the case back to the trial court.⁸¹²

The issues raised by the lawsuits under examination are not unique to Pittsburgh and Seattle. Similar legal challenges involving the cities of Philadelphia and Edmonds could impact the outcome of the cases faced by Pittsburgh and Seattle. *Bass v. Edmonds*,⁸¹³ is a legal challenge to a city firearms safe storage ordinance like the Seattle one under challenge in *Alim*. *Crawford v. Commonwealth*⁸¹⁴ is a lawsuit challenging the constitutionality of the Pennsylvania firearms preemption statute.⁸¹⁵ The Washington Supreme Court recently rendered its decision in *Bass*. Pennsylvania Supreme Court's decision in *Crawford* is pending.

A. Lawsuits challenging Seattle's ordinance

As discussed above, Seattle faced a legal challenge to CB 119266 on the grounds that the state preemption statute extends to the subject matter of the ordinance and preempts it. Seattle's counter argument is that enacting the ordinance was a valid assertion of inherent authority. The lawsuit against Seattle challenges the enforceability of the ordinances and the

⁸⁰⁹ *Id.*

⁸¹⁰ *Allegheny Cnty. Sportsman's League v. City of Pittsburgh*, 2-3 (Ct. Comm. Pl. Allegheny Cnty. Nov.19, 2019), GD-94-001499.

⁸¹¹ *Allegheny Cnty. Sportsman's League v. City of Pittsburgh*, 1810 CD 19 (Pa. Commw. Ct 2023).

⁸¹² *Alim*, 474 P.3d, at 599.

⁸¹³ *Bass*, 508 P.3d.

⁸¹⁴ *Crawford*, 19 EAP.

⁸¹⁵ *Id.*

ability of Seattle and, by extension, all Washington cities to regulate the safe storage of firearms.⁸¹⁶ The next sub-section presents the case against Seattle. The subsequent sub-section presents *Bass v. Edmonds*, which has similar legal issues to *Alim*. The Washington Supreme Court recently rendered its decision in *Bass*. This decision will impact Seattle’s case in *Alim* and the authority of Washington cities to regulate firearms.

i. Alim v. Seattle (2018)

On July 20, 2018, two individuals along with the NRA and the Second Amendment Foundation (SAF),⁸¹⁷ filed a complaint against Seattle, contending that Seattle’s CB 119266 had the effect of “regulating the possession of firearms by mandating how firearms are stored within the city.”⁸¹⁸ Relying on *Chan v. Seattle (2011)*,⁸¹⁹ the applicants in *Alim* asserted that the preemption statute preempts municipalities from regulating the possession of firearms.⁸²⁰ In *Chan*, a Seattle ordinance regulating the possession of firearms was held to be preempted.⁸²¹

In *Alim*, Seattle filed a motion to dismiss on the grounds that the applicants lacked standing and did not have a ripe issue as the ordinance were not yet in force.⁸²² Seattle argued that neither the SAF nor the NRA had standing on the basis that neither had “alleged an organizational purpose to promote [...] irresponsible storage”.⁸²³ This means that Seattle argued that the two organizations had not demonstrated any harm from the enactment of the ordinance.⁸²⁴ On October 18, 2018, the court dismissed the case on the grounds that it was not

⁸¹⁶ Complaint at 2, *Alim v. City of Seattle*, (Super. Ct. King Cnty., Wash. 2018), 18-2-18114-3 SEA. [Hereinafter *Alim* Complaint.]

⁸¹⁷ SAF is a pressure group that describes its mission statement as “dedicated to promoting a better understanding about our Constitutional heritage to privately own and possess firearms.” See Mission Statement, Second Amend. Found., <https://www.saf.org/mission/>.

⁸¹⁸ *Alim* Complaint, at 1.

⁸¹⁹ *Chan*, 265 P.3d.

⁸²⁰ *Alim* Complaint, at 2.

⁸²¹ *Chan*, 265 P.3d, at 177.

⁸²² Seattle’s Motion to Dismiss at 2, *Alim v. City of Seattle*, (Super. Ct. King Cnty., Wash. 2019), 18-2-18114-3 SEA.

⁸²³ *Id.*

⁸²⁴ The NRA has encouraged members to store firearms safely. SAF’s gun rights FAQ suggests that “[f]amilies that own guns have a responsibility to keep them safely stored so that only the intended users can actually use them.” See Gun Rights FAQs, Second Amendment Foundation, <https://www.saf.org/gun-rights-faq/>. However, the plaintiffs argued that “[i]f the Ordinance becomes effective, these Plaintiffs will be forced to alter the manner in which they possess and store firearms to their detriment and encroaching on the right to self-defense in their homes. These interests are at the core of the SAF and NRA’s respective organizational purpose.” See Plaintiff Opposition to Defense Motion to Dismiss at 4-5, *Alim v. City of Seattle*, (Super. Ct. King Cnty., Wash. 2019), 18-2-18114-3 SEA, 2019.

ripe and did not engage a justiciable issue. The plaintiffs appealed to the Washington Court of Appeal.

The Court of Appeal ruled in the plaintiffs' favor determining that there was a justiciable controversy.⁸²⁵ With *Alim* sent back to the district court, it was likely going to take time for the case to conclude. However, *Bass v Edmonds*, a legal challenge to municipal safe storage regulations that appear to have employed similar drafting techniques as Seattle, was recently decided by the Washington State Supreme Court. As a result, *Bass* will likely impact the outcome of *Alim*. *Bass* is considered in more detail below.

ii. Bass v. Edmonds (2018)

In January 2022, the Washington Supreme Court heard oral arguments in *Bass*.⁸²⁶ The judgment will likely significantly impact *Alim* and could have a wide-reaching effect on the ability of Washington cities to regulate firearms. In *Bass*, one of the challenged Edmonds' ordinances required the safe storage of firearms. The other ordinance created a civil infraction for any person knowingly permitting a minor, an at-risk person, or a prohibited person to access a firearm. These bills have similar policy objectives as Seattle's.⁸²⁷

The challenged ordinance was enacted on July 2, 2018.⁸²⁸ It created a civil infraction that arises when any person keeps or stores any firearm in any premises unless such weapon is secured by a locking device, properly engaged to render such weapon inaccessible or unusable to any person other than the owner or other lawfully authorized user".⁸²⁹ The creation of civil infractions in the Edmond ordinance appears to be a similar drafting strategy to that employed by Seattle. Employing similar tactics as the plaintiffs in *Alim*, the *Bass* plaintiffs argued that safe storage requirements are regulations on firearms possession and are expressly preempted.⁸³⁰

⁸²⁵ *Alim v. City of Seattle*, 474 P.3d 589 (Wash. Ct. App. 2020).

⁸²⁶ Like *Alim*, the original plaintiffs included individuals along with the NRA and the SAF.

⁸²⁷ CB 119266 is challenged in *Alim*.

⁸²⁸ EDMONDS, WASH. CITY ORD. 4120 (enacted as Edmonds, Wash. City Code 5.26.020 and 5.26.030) (repealed 2022).

⁸²⁹ EDMONDS, WASH. CITY CODE 5.26.020 (repealed 2022).

⁸³⁰ Complaint 1-2, *Bass v. City of Edmonds*, (Super. Ct. Snohomish Cnty., Wash. 2018), 8-2-07049-31.

The NRA was an initial plaintiff,⁸³¹ but withdrew from the case.⁸³² Edmonds' objection to the NRA's representational standing and direct standing as an organization may have encouraged the NRA's withdrawal.⁸³³ The SAF also withdrew as plaintiffs. As the Washington Supreme Court indicated in *Bass v. Edmonds* (2022), both organizations continued to fund the litigation throughout the legal process.⁸³⁴

The court at first instance in *Bass* agreed with the applicants in part and in part found that they lacked standing.⁸³⁵ The judge also determined that the legislature had fully occupied the field and the Edmonds' ordinances were preempted.⁸³⁶ Edmonds appealed, challenging the applicants standing.⁸³⁷ The Plaintiffs appealed the decision to recognize their standing only in part.⁸³⁸ The Court of Appeal in *Bass* upheld the decision to grant relief while also determining that the trial court erred in rejecting standing for the plaintiffs.⁸³⁹

Edmonds then appealed to the state supreme court, arguing the pertinent legal question was whether the preemption statute "preempts all local regulation related to firearms, or whether the local regulation is preempted only when it falls within the enumerated topics defining the "field" that are listed in the statute."⁸⁴⁰ Edmonds relied on a principle of statutory construction to the effect that the expression of the specific excludes the general: *expressio unius exclusio alterius*. In other words, the fact that the state firearms preemption statute provided an exhaustive list of the topics included in the preempted field of firearms meant that topics not listed in the statute would be outside its preemptive scope. The court addressed this theory of interpretation in their judgment.

⁸³¹ See Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Washington: NRA and SAF File Lawsuit Against City of Edmonds (Aug 8, 2018), <https://www.nraila.org/articles/20180808/washington-nra-and-saf-file-lawsuit-against-city-of-edmonds>.

⁸³² See Larry Vogel, *Gun rights groups pull out of suit against Edmonds gun storage law*, MY EDMONDS NEWS (June 29, 2019), <https://myedmondsnews.com/2019/06/gun-rights-groups-drop-suit-against-edmonds-gun-storage-law/>.

⁸³³ Defense Motion to Dismiss at 7-9, *Bass v. Edmonds* (Snohomish Cnty. Superior Ct., Wash. 2019), 8-2-07049-31.

⁸³⁴ *Bass*, 508 P.3d, at 175.

⁸³⁵ *Bass v. City of Edmonds*, (Snohomish Cnty. Superior Ct., Wash. Oct. 18, 2019), 8-2-07049-31.

⁸³⁶ *Id.*

⁸³⁷ Notice of Appeal at 1, *Bass v. Edmonds*, (Snohomish Cnty. Superior Ct., Wash. 2019), 8-2-07049-31.

⁸³⁸ Notice of Cross-Appeal at 1, *Bass v. Edmonds* (Snohomish Cnty. Superior Ct., Wash. 2019), 8-2-07049-31.

⁸³⁹ *Bass*, 481 P.3d, at 604.

⁸⁴⁰ Petition for review at 2, *Bass v. City Edmonds* (Wash. Ct. App. 2021), 80755-2-I.

Concern about the impact of *Bass* on the authority of cities to regulate firearms led to the cities of Seattle, Walla Walla, Olympia, and Kirkland to file a joint *amicus* brief in support of Edmonds.⁸⁴¹ *Amici* argued that the decision by the Court of Appeal in *Bass* “undermines the bedrock presumption that exercises of municipal police power are valid unless unambiguously preempted.”⁸⁴² However, as *amici* conceded, the court in *Detamore* went on to clarify that local action must not conflict with the general laws of the state.⁸⁴³ The *amici* did not address the supremacy of the general laws. The general laws of the state include preemption statutes.

On April 21, 2022, the Washington Supreme Court decided in favor of the plaintiffs.⁸⁴⁴ In determining whether a city ordinance is preempted; the critical question is whether the ordinance regulates firearms.⁸⁴⁵ The court determined that previous precedents make it clear that the statute “broadly preempts local ordinances that directly regulate firearms themselves, but not necessarily ordinances that have an incidental effect on the use and enjoyment of firearms or exercises of municipal authority that do not establish rules of general application to the public.”⁸⁴⁶

The court rejected Edmonds’ argument that the scope of the statute was limited to the nine enumerated areas of firearm regulation, concluding that the introductory phrase was broad, and as a result, the listed areas of regulation were illustrative and not exhaustive.⁸⁴⁷ Edmonds’ *ejusdem generis* argument was also considered. The Court rejected this argument because it would be inconsistent with the text of the statute.⁸⁴⁸

This decision in *Bass* is likely a fatal development for Seattle’s case in favor of the validity of CB 119266. As a result, Seattle will likely need to repeal the ordinance or ultimately

⁸⁴¹ Walla Walla, Olympia, and Kirkland, as *amici*, are arguably supporting Edmonds’ and Seattle’s assertions of local authority.

⁸⁴² Brief for City of Seattle, et al, as Amici Curiae at 2-3, *Bass v. City of Edmonds* 508 P.3d. (Wash. 2022), 99596-6. (citing *Detamore v. Hindley* 145 Pac. 462 (1915) in which the Washington Supreme Court determined that the state constitutional home rule provision included a “direct delegation of the police power as ample within its limits as that possessed by the Legislature itself.”)).

⁸⁴³ *Id.*, *Detamore*, 145 Pac.

⁸⁴⁴ *Bass v. Edmonds*, 508 P.3d. 172 (Wash. 2022).

⁸⁴⁵ *Id.*, at 178.

⁸⁴⁶ *Id.*

⁸⁴⁷ *Id.*

⁸⁴⁸ *Id.*

be ordered by a court to do so. The Second Amendment Foundation and The NRA celebrated the decision.⁸⁴⁹ As a result of this decision, Edmonds repealed its regulation.⁸⁵⁰

Seattle's safe storage ordinance remains in the city code as of February 1, 2024.⁸⁵¹ Seattle Mayor Bruce Harrell did not address *Bass* directly but did address firearms preemption in his statement on the shooting in Uvalde, Texas. Harrell said, "[i]n Washington, because of state preemption, cities are nearly completely prohibited from passing our own laws to keep our communities safe from gun violence."⁸⁵² The *Bass* decision suggests that Mayor Harrell is likely correct. While *Bass* focused on firearms preemption, such a broad interpretation of the scope of preemption could arguably impact the authority of Washington municipalities in other preempted policy areas.

B. Lawsuits challenging Pittsburgh's ordinances

There are three cases of interest: *Allegheny County Sportsmen's League v. Pittsburgh*, *Anderson v. Pittsburgh*, and *Firearms Owners Against Crime v. Pittsburgh*. The Allegheny County Sportsmen's League is an affiliate of the NRA.⁸⁵³ Firearms Owners Against Crime (FOAC) is a pressure group with a history of undertaking preemption-based litigation against cities. All three cases contended that state law preempted Pittsburgh's ordinances.

In all three cases, Pittsburgh asserted that the enactment of their ordinances was a valid exercise of home rule authority in respect to an area of activity not covered by the state preemption laws. However, the ordinances were held to be preempted on the basis that the state

⁸⁴⁹ See Isabella Breda, *Justices: State Law Supersedes Edmonds Gun Storage Requirement*, HAROLDNET (Apr. 21, 2022), <https://www.heraldnet.com/news/justices-state-law-supersedes-edmonds-gun-storage-law/>. (The Second Amendment Foundation called the decision "a great victory for the principle of state preemption"). See also Press Release, Nat'l Rifle Ass'n-Inst. Legis. Action, Victory in Washington preemption case (Apr. 25, 2022), <https://www.nraila.org/articles/20220425/victory-in-washington-preemption-case>. (The NRA called the decision "a win for gun owners in Washington, and more importantly, a win against activist local governments that attempt to illegally infringe on their citizens' rights. This decision says clearly that local governments in the Evergreen State do not have the authority to restrict Second Amendment rights").

⁸⁵⁰ Edmonds Repeal Gun Safety Law After State High Court Ruling, AP (Jul 27, 2022), <https://www.seattletimes.com/seattle-news/politics/edmonds-repeals-gun-safety-law-after-wa-supreme-court-ruling/>.

⁸⁵¹ According to the Second Amendment Foundation's website, *Alim* is still active. See *Alim v. Seattle*, Second Amendment Foundation (Last accessed Feb. 12, 2024).

⁸⁵² Press Release, Off. of the Mayor of Seattle, Mayor Harrell statement on Texas school shooting (May 25, 2022), <https://harrell.seattle.gov/2022/05/25/mayor-harrell-statement-on-texas-school-shooting/>.

⁸⁵³ The NRA backed the plaintiffs in *Anderson*.

legislation manifests a clear intention to occupy every aspect of the field of firearms regulation. The Pennsylvania Supreme Court interpreted this intent broadly in *Ortiz*.

Members of Philadelphia's city council, along with families of victims of gun violence from Philadelphia and Pittsburgh, filed a lawsuit against Pennsylvania challenging the constitutionality of the firearms preemption statutes. This case, so far, has proven unsuccessful. However, members of the Commonwealth Court have questioned the current role of local governments and others have called on the Pennsylvania Supreme Court to overturn or reign in *Ortiz*.⁸⁵⁴ Other judges proposed an alternative interpretation of the preemption statutes. These divergent views are considering in Part IV.

i. Allegheny County Sportsmen's League (ACSL) v. Pittsburgh (2019)

ACSL⁸⁵⁵ sought to have Pittsburgh held in contempt for breaching a 1995 settlement agreement and a court order.⁸⁵⁶ This settlement agreement and the court order resolved a ACSL lawsuit against Pittsburgh. One of the legal issues was whether a Pittsburgh ordinance conflicted with the state firearms preemption statute.

ACSL challenged all three Pittsburgh ordinances.⁸⁵⁷ The Plaintiffs argued that the three ordinances were in conflict with Pittsburgh's home rule charter,⁸⁵⁸ and exceeded the limits of a second-class municipality's authority to impose civil penalties.⁸⁵⁹ Pittsburgh relied on its statutory authority to imposed fines.⁸⁶⁰ However, the fines in the ordinances exceeded the statutory limit of \$300. This means that Pittsburgh is likely unable to rely on its levy authority.

On November 19, 2019, the trial court dismissed the lawsuit, noting that the court had already found the ordinances preempted and this rendered ACSL's petition moot.⁸⁶¹ These decisions, *FAOC* and *Anderson*, are discussed below. On December 5, 2019, ACSL filed a

⁸⁵⁴ *Id.*

⁸⁵⁵ ACSL is an NRA-affiliated organization. See *Member Clubs*, ALLEGHENY CNTY. SPORTSMAN'S LEAGUE, <http://acslpa.org/Member-Clubs/member-clubs.html>.

⁸⁵⁶ Petition for Contempt of Court at 2, Allegheny Cnty. Sportsman's League v. City of Pittsburgh, (Allegheny Cnty. Ct. Comm. Pl. Pa., 2019), GD-94-001499.

⁸⁵⁷ *Id.* at 7-8.

⁸⁵⁸ *Id.* at 13 (arguing that such regulation is prohibited by Pitt City Charter, Art III, Sec.310(i)).

⁸⁵⁹ *Id.* at 14 (arguing that 53 PA. CON. STAT. § 23158 expressly limits the maximum civil penalty that a second-class municipality can impose to \$300.).

⁸⁶⁰ 53 PA. STAT. AND CONS. STAT. § 23158 (West, 1959). Second class municipalities like Pittsburgh can impose fines of up to \$300.

⁸⁶¹ *Firearms Owners Against Crime*, GD-19-005330, at 2-3.

notice of appeal to the Pennsylvania Commonwealth Court.⁸⁶² On March 3, 2023, the Commonwealth Court affirmed its dismissal.⁸⁶³ ACSL appealed that decision to the state Supreme Court. That case is on hold while *Crawford* is pending.

ii. Firearms Owners Against Crime (FOAC) v. Pittsburgh (2019)

Like the ASCL, FOAC challenged all three of Pittsburgh’s city ordinances on April 10, 2019.⁸⁶⁴ They brought their action on the grounds that all three ordinances were, *inter alia*, preempted.⁸⁶⁵ This project focused on the preemption-based arguments. The trial judge held that Pittsburgh ordinances were preempted.⁸⁶⁶

The Commonwealth Court’s decision in *Clarke v. Commonwealth* (2008)⁸⁶⁷ suggests that Pittsburgh’s ERPO and lost and stolen firearms provisions are likely preempted. In *Clarke*, Philadelphia had enacted seven firearms ordinances requiring, *inter alia*, the reporting of lost or stolen firearms and the creation of an ERPO scheme similar to Pittsburgh’s scheme. Philadelphia attempted to defend the ordinances in the face of state preemption by arguing that the statute infringed on Philadelphia’s right to pass and enforce gun regulations.⁸⁶⁸ Philadelphia also argued that gun regulation was an issue of local concern and not a state-wide concern.⁸⁶⁹ The local concern/state-wide concern distinction goes back to the initial goals of the home rule movement in which the ability to enact laws to grant cities authority to address local concerns was sought. The Commonwealth Court held that Philadelphia’s bills were preempted.⁸⁷⁰

The broad interpretation of the statute has faced recent scrutiny from members of the state judiciary including calls for reconsidering *Ortiz*. In the recent Commonwealth Court

⁸⁶² Notice of Appeal, at 2, *Firearms Owners Against Crime v. City of Pittsburgh*, Ct. Comm. Pl. Allegheny Cnty. (2019).

⁸⁶³ *Allegheny Cnty. Sportsman’s League*, 1810 CD, at 19.

⁸⁶⁴ Complaint at 4, *Firearms Owners Against Crime v. City of Pittsburgh* Ct. Comm. Pl. Allegheny Cnty. (Pa. 2019), GD-19-005330.

⁸⁶⁵ *Id.* at 2. (Specifically, the plaintiffs argued the ordinances “violat[ed] Article 1, Section 21, Article 2, Section 1, Article 3, Section 1, 4, and 8 of the Pennsylvania Constitution, 18 Pa.C.S. § 6120, 53 Pa.C.S. § 2962, and other statutory proscriptions and protections too numerous to list”).

⁸⁶⁶ *Firearms Owners Against Crime*, GD-19005330, at 4 (“[a]s the name indicates, the Pennsylvania Uniform Firearms Act (“UFA”) 18 Pa. C.S. §§6101-6127 regulates the entire field of firearms and ammunition across the state of Pennsylvania”. [On the preemption question, it was determined that] “[d]espite the City’s efforts to avoid the specific preemption set forth ... they were not able to avoid the obvious intent of the legislature to preempt this entire field”).

⁸⁶⁷ *Clarke v. House of Representatives*, 957 A.2d 362 (Pa. Commw. Ct. 2008).

⁸⁶⁸ *Id.*

⁸⁶⁹ *Id.*

⁸⁷⁰ *Id.*

decision of *Philadelphia v. Armstrong*⁸⁷¹ there was a shift in the views of Senior Judge Bonnie Leadbetter, who wrote the majority's opinion in *Clarke*. Her concurring opinion is considered in Part IV. *Armstrong* is on hold pending the state supreme court's disposition of *Crawford*.

Local governments, local officials, and the municipal league filed an *amicus* brief with the state supreme court in support of the petitioners and of overturning the Commonwealth Court's *Armstrong* decision. *Amici* argues that the majority in *Armstrong* had decided firearms preemption cases based on "a fundamental misreading" of the *Ortiz* decision.⁸⁷² Their brief did not provide a reference in the *Ortiz* decision that expressly supports this argument.

The majority in the Pennsylvania Commonwealth Court's decision in *Firearm Owners Against Crime v. Pittsburgh* (2022),⁸⁷³ though ultimately siding with FAOC, observed that "the systematic issues and divisiveness in this once united nation are painfully apparent".⁸⁷⁴ The Court concluded this observation by citing President Lincoln's 1858 speech in which Lincoln warned "[a] house divided cannot stand".⁸⁷⁵ The Court also noted the significant issue that is gun violence.⁸⁷⁶ However, the court determined that the preemption statute broadly preempts local gun regulation.⁸⁷⁷ There was also a concurring and dissenting opinion representing the views of three judges which is discussed in Part IV.

iii. **Anderson v. Pittsburgh (2019)**

Anderson is another case challenging the Pittsburgh ordinances. The plaintiffs are Pittsburgh residents supported by the NRA. The challenged Pittsburgh bill, *inter alia*, banned assault weapons. Again, the question for the court was whether the ordinance was preempted.

⁸⁷¹ *Philadelphia v. Armstrong*, 271 A.3d 555 (Pa. Commw. Ct. 2022). This case involved a Philadelphia ordinance requiring the reporting of lost or stolen firearms.

⁸⁷² Press Release, Langer, Grogan & Diver P.C., Langer Grogan & Diver P.C. Retained to Represent Local Governments in Gun Control Fight (Mar. 22, 2022), https://www.langergrogan.com/news_and_cases/armstrong/.

⁸⁷³ *Firearms Owners Against Crime*, 276 A.3d.

⁸⁷⁴ *Id.* at 898.

⁸⁷⁵ *Id.* (citing Abraham Lincoln, House divided speech (1858)).

⁸⁷⁶ *Id.* at 897. (The majority stated, "the precious lives lost to senseless violence is beyond tragic").

⁸⁷⁷ *Firearm Owners Against Crime*, 276 A.3d, at 897.

Pittsburgh argued that the ordinance was “carefully crafted to comply with Pennsylvania’s preemption laws.”⁸⁷⁸ Pittsburgh was attempting to avoid the scope of the preemption statutes by drafting its ordinance to avoid the specific wording of the statutes. The city argued that the statutes limit local regulation in four specific areas.⁸⁷⁹ The city further argued that their regulation of use was distinct from what the statutes prohibited cities from regulating.⁸⁸⁰ The ordinance’s definition of use includes a clarification that it “does not include possession ownership, transportation or transfer.”⁸⁸¹ This argument was unsuccessful. On the same day as the *FAOC* decision, the same conclusion was reached in *Anderson*. The trial judge again concluded that the preemption statute showed legislative intent to preempt Pennsylvania’s entire field of firearms and ammunition.⁸⁸² *Anderson* is currently on hold before the state supreme court.

Pittsburgh’s claim that enacting its three ordinances was a permitted exercise of home rule authority appears unlikely to be successful at present. In *Ortiz*,⁸⁸³ the state supreme court held that the field of firearms was preempted so that all municipalities are prevented from regulating the ownership, possession, or transfer of firearms.⁸⁸⁴ Pittsburgh and Philadelphia were parties to that case. The cities argued that the ability of the General Assembly to limit or curtail specific aspects of the home rule powers of cities did not extend to restricting the ability of a municipal government to fulfill a fundamental purpose for which the city exists.⁸⁸⁵ The Court declared the assertion of Pittsburgh and Philadelphia to be frivolous about the regulation of firearms.⁸⁸⁶ Effectively, home rule authority does not extend to firearms regulation.

⁸⁷⁸ Defense Cross-Motion for Summary Judgement at 3, *Anderson v. City of Pittsburgh*, (Ct. Comm. Pl. Allegheny Cnty., Pa. 2019), GD-94-001499.

⁸⁷⁹ *Id.* (“by their plain text [...] municipalities from regulating four specific things: the ownership, possession, transfer or transportation of firearms, ammunition and ammunition components.”).

⁸⁸⁰ *Id.* (“[a] regulation on “use” is distinct from any of these four categories of preempted regulation, and is defined in the Ordinance as employing it to discharge or in attempt to discharge [a]mmunition by means of a firearm, loading it with ammunition, fitting or installing it into a firearm, brandishing it with a firearm, displaying it with a firearm, and employing it for any purpose prohibited by the laws of Pennsylvania or the United States”).

⁸⁸¹ *Id.*

⁸⁸² *Anderson*, GD-19-005308, at 5.

⁸⁸³ *Ortiz*, 681 A.2d.

⁸⁸⁴ *Id.* at 156.

⁸⁸⁵ *Id.* at 155-56.

⁸⁸⁶ The Court relied on PENN. CONST, art. 9, §2, which permits home rule municipalities any power or function not denied to them by the state constitution, their home rule chapter or state law. It appears that the court saw the case as frivolous because the preemption statute is state law.

Pittsburgh and Philadelphia’s argument found support from one member of the court in *Ortiz*. Justice Russell Nigro, in his dissent, argued that “whenever the state legislature fails to enact a statute to address a continuing problem of major concern to the citizens of the Commonwealth, a municipality should be entitled to enact its own local ordinance in order to provide for the public safety, health and welfare of its citizens.”⁸⁸⁷ Nigro’s dissent can be interpreted as arguing that preemption should not be used to blunt the efforts of municipalities to address continuing significant concerns of its citizens when the legislature is failing to address those concerns. While Nigro’s opinion is a dissent, there have been some arguments put forward by Philadelphia in its lawsuit against Pennsylvania concerning the protection of public health and safety of citizens that echo Nigro’s dissent.

The Commonwealth Court’s majority in *Anderson*, again determined that the Pittsburgh ordinances are preempted.⁸⁸⁸ The majority also reiterated the concerns it raised in *FOAC*, including the political divisiveness in the country and concerns about gun violence. However, the majority followed precedent. As with *FOAC*, there were dissenting opinions which are considered in Part IV.

If the Pennsylvania Supreme Court in *Crawford v. Commonwealth* (2020) heeds the calls to reign in or overturn *Ortiz*, this could significantly impact the authority of Pennsylvania cities like Pittsburgh to regulate firearms. The case, brought by Philadelphia and others, challenges the constitutionality of the firearms preemption statutes. If the statutes are ruled invalid, Pennsylvania municipalities would have greater authority to regulate firearms. However, Philadelphia has taken a different approach from Pittsburgh’s to challenge preemption.

iv. Philadelphia challenge to Pennsylvania preemption laws

Philadelphia has attempted to regulate firearms. Due to the restraining effect firearms preemption has had on Philadelphia’s efforts to implement local gun control, Philadelphia has filed suit challenging the statute’s constitutionality under the state constitution. This is a direct challenge to the validity of the preemption statute. By suing to invalidate the preemption statute, Philadelphia is arguably attempting to assert its authority to regulate firearms in

⁸⁸⁷ *Ortiz*, 681 A.2d, at 156-7 (Nigro J., dissenting). Nigro did not reference a legal precedent or statute.

⁸⁸⁸ *Anderson*, 1753 CD 2019, at 3. Cohn Jubelirer J joined the majority in result only.

particular and to attempt to secure a greater degree of local democracy more generally. This case, *Crawford v. Commonwealth*, has a bearing on the Pittsburgh cases. In all those cases, the state preemption laws were construed broadly and with the effect of ruling out the exercise of local authority in this area. As mentioned above, there are signs that some members of the state judiciary are arguably willing to recognize the desirability of a greater measure of local authority in this area. So far, however, this has not yet translated into limiting the scope of state preemption.

CeaseFirePA⁸⁸⁹ is a pro-gun control interest group and one of the plaintiffs in *Crawford*. One interpretation of the plaintiffs' claims, as they relate to CeaseFirePA, is that at least one interest group has determined that preemption and the current formulation of the relationship between Pennsylvania and its cities as the problem for which the solution is to invalidate the preemption statute thereby affording a greater degree of local authority to regulate firearms. This means that demands for greater local authority present in the case are not only coming from cities but from interest groups.

While Pittsburgh is not a party to the suit, the petitioners include Pittsburgh residents.⁸⁹⁰ Pittsburgh also submitted an *amicus* brief in support of the petitioners. This case represents a direct attack on the underlying assumption on which Judge James gorily constructed his decisions against Pittsburgh. *Crawford* sought a permanent injunction prohibiting further enforcement of the preemption laws.⁸⁹¹

The plaintiffs claimed three causes of action: state-created danger, substantive due process, and interference with delegation.⁸⁹² The plaintiffs interpret the legislature's exercise of authority, including but not limited to, the enactment and refusal to repeal of the preemption statute as rendering the plaintiffs more vulnerable to gun violence. According to the plaintiffs, this is contrary to the state's obligation under Article I of the state constitution, which protects

⁸⁸⁹ CEASEFIREPA, <http://www.ceasefirepa.org>. The organization contends that "We [Pennsylvania] have a gun violence problem created through policy action and inaction". This position appears to broadly align with the arguments advanced in *Crawford*.

⁸⁹⁰ Brief of City of Pittsburgh as Amicus Curiae at 2, *Crawford v. Commonwealth* 277 A.3d. (Pa. Commw. Ct. 2022), 562 MD 2020. [Hereinafter Pittsburgh Amicus brief for *Crawford*]

⁸⁹¹ Petition for Review at 87, *Crawford v. Commonwealth* 277 A.3d (Pa. Comm. Ct. 2022), 562 MD 2020. [Hereinafter *Crawford* petition].

⁸⁹² *Id.* at 79-86.

the right to life and liberty.⁸⁹³ They also contended that Pennsylvania had “affirmatively used their authority in a way that renders Petitioners more vulnerable to gun violence than had Respondents not acted at all”.⁸⁹⁴ This arguably engages the rendering ‘victims more vulnerable to the dangers’ element of the state-created danger doctrine recognized in *DeShaney*.⁸⁹⁵

The substantive due process claim is also based on Article I. According to the Plaintiffs, the exercise of the municipal police power to protect their residents, including by regulating firearms, protects their residents’ substantive due process rights. The plaintiffs contend that these rights include an interest in protecting oneself from unlawful violence. In this instance, the unlawful violence is gun violence. The plaintiffs also asserted that the preemption statute does not represent a real government purpose. The claim of interference with delegation asserts that municipalities have already been delegated the necessary authority to address public health concerns. As a result, according to the plaintiffs, the preemption statute interferes with their delegated authority.

Given the implications of *Crawford* for the three cases against Pittsburgh, the city submitted an *amicus* brief in *Crawford*, arguing that the state preemption law threatens the safety of the residents of Pittsburgh⁸⁹⁶ and that of the residents of Philadelphia. In its brief, Pittsburgh argued that the residents of Pennsylvania generally, and more specifically Pittsburgh, are acutely impacted by gun violence which Pittsburgh attempted to address through firearms regulations only to be thwarted by state preemption. Pittsburgh noted that it had outlawed the type of firearms used at the Tree of Life Synagogue shooting in 1993. However, that regulation was invalidated by *Ortiz* when the court ruled that a similar Philadelphia regulation was preempted. Pittsburgh is, in effect, arguing that the availability of assault weapons in Pittsburgh, and by extension, Philadelphia and other Pennsylvania municipalities, is due, in part, to the preemption statute.⁸⁹⁷

⁸⁹³ PENN. CONST. art. I §1. (“All men are born equally free and independent, and have certain inherent rights and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness”).

⁸⁹⁴ *Crawford* petition, at 80.

⁸⁹⁵ *DeShaney*, 489 U.S., at 196 ([in relation to the due process clause, the U.S. Constitution] “conferr[ed] no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual”). However, two exceptions to the rule were identified: when the state went beyond just failing to act and contributed to the dangers that the victims faced or made the victims more vulnerable to the dangers.).

⁸⁹⁶ Pittsburgh Amicus Brief for *Crawford*, *supra* note 890, at 5-9.

⁸⁹⁷ *Id.*, at 6.

The Commonwealth Court in *Crawford*, determined that Philadelphia, like all home rule cities, is prohibited from regulating contrary to the state's general laws, including the firearms preemption statutes.⁸⁹⁸ The court followed the precedent in *Ortiz* and determined that the preemption statutes broadly preempt the local regulation of firearms. This decision was not unanimous. The dissenting opinion is discussed in Part IV.

Pittsburgh's new Mayor, Ed Gainey, announced that Pittsburgh would appeal the decisions in *FAOC* and *Anderson* concerning the assault weapons ban.⁸⁹⁹ *Crawford* was appealed to the state supreme court and oral arguments were heard on September 13, 2023.⁹⁰⁰ The Pennsylvania Supreme Court may be pressured to re-consider *Ortiz*. The objections to *Ortiz* are growing and now include four state court judges. However, as Mayor Gainey conceded, the case for affirming the municipal authority to regulate firearms is an uphill battle.⁹⁰¹ The success of any appeal will rest on persuading the Pennsylvania Supreme Court to overturn its precedent. Gainey also called on the state legislature to grant greater authority to municipalities. Given that Republicans controlled both houses, and the legislature considered a resolution calling for the impeachment of Gainey's predecessor, Bill Peduto, for his role in enacting the three challenged Pittsburgh ordinances, the legislature will likely ignore Gainey's calls.⁹⁰²

IV. Analysis

The following points emerge:

1. City ordinances appear to have been drafted in attempt to avoid conflicting with their state preemption statutes. This appears to have been done by attempting to avoid the express provisions of the statute and by attempting to exploit a perceived exception to the statute.

⁸⁹⁸ *Crawford*, 277 A.3d. Judge Fizzano Cannon joined the majority in result only.

⁸⁹⁹ See Andy Sheehan, *Pittsburgh to appeal assault weapons ban ruling to state Supreme Court*, CBS PITT. (June 22, 2022), <https://www.msn.com/en-us/video/416bdebb-9377-4024-8e0f-22a0adf01605/pittsburgh-to-appeal-weapons-ban-ruling-to-state-supreme-court/>.

⁹⁰⁰ The Pennsylvania Supreme Court docket sheets indicate that this case is still active before the court as of Feb. 21, 2024.

⁹⁰¹ Sheehan, *supra* note 899.

⁹⁰² The previous chapter demonstrated that recently proposed legislation on preemption in statehouses had a political dimension, and very few bills have been enacted. In Pennsylvania, recent preemption legislation has proposed expanding preemption and hyper preemption. These factors do not paint a positive outlook on the state legislature addressing preemption in the way Gainey and Peduto want. However, the elections of pro-gun control candidates Ed Gainey in Pittsburgh and Bruce Harrell in Seattle suggest that residents of Seattle and Pittsburgh have reaffirmed their support for their local governments to put in place gun control measures.

2. Cities likely knew their ordinances would be found to be preempted under legal challenge and may have enacted their bills, in part, to induce lawsuits. This was arguably done to challenge the interpretative precedents that interpret preemption broadly and the current distribution of power between the cities and their states, at least in relation to firearms regulation.
3. Tracing the lawsuits showed the restraining effects of preemption.
4. Some state court judges were receptive to the contention that the current role for cities, at least in relation to firearms, may not be correctly calibrated.
5. Interest groups factored into the lawsuits. Interest groups were plaintiffs in majority of cases and supported other cases against the cities.
6. The lawsuits were another means to fight a political battle. In this case, the political battle was over the contentious issue of firearms regulation.

A. Avoiding express conflict

Having previously discussed the nullifying effect of express preemption in Chapter II, this project presumed that bills might be drafted so as to not conflict expressly with the preemption statutes. Part of this presumption was an assumption that the cities did not draft their bills just to be held to be preempted under legal challenge. A comparison of the textual analysis of the preemption statutes and the cities bills confirms that this was the case.

Pittsburgh appears to have drafted its bills to expressly claim that it is regulating outside the confines of Pennsylvania’s preemption statutes. CB 1218-2018 provides an example of this. The preemption statute expressly preempts, *inter alia*, the regulation of the “lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth”.⁹⁰³ Pittsburgh’s bill prohibited large-capacity magazines.⁹⁰⁴ However, the bill clarifies that its regulation of large capacity magazine “does not include possession, ownership, transportation or transfer.”⁹⁰⁵ However, the bill was found to be preempted.⁹⁰⁶

⁹⁰³ § 6120(a). The other Pennsylvania preemption statute also preempted these four areas of firearms regulation expressly. *See* 2962(g).

⁹⁰⁴ PITTSBURGH, PA. CITY B. 1218-2018 (2019). Enacted as PITTSBURGH, PA. CODE. § 697.03 (2019).

⁹⁰⁵ PITTSBURGH, PA. CITY B. 1218-2018 (2019). Enacted as PITTSBURGH, PA. CODE. § 697.03 (B) (2019).

⁹⁰⁶ *See, e.g.*, FOAC, 276 A.3d, at 897.

The expressly preempted field of firearms in Washington is broad and includes “the entire field”.⁹⁰⁷ As a result, it appears that it would likely not be possible to avoid the expressly preempted field so it was assumed that Seattle may have sought to exploit an exception to the statute. This presumption was confirmed. It appears that Seattle may have drafted CB 119266 so as to exploit a perceived exception. The bill limits sanctions for a breach to civil sanctions only. It also expressly declares that it does not impose criminal sanctions.⁹⁰⁸ In *Cherry*, the Washington Supreme Court found that the legislative intent of the preemption statute was to respond to overlapping local criminal codes and to create uniformity in criminal firearms regulation.⁹⁰⁹ This appears to suggest that limiting penalties for city regulations to civil penalties, as Seattle has, might allow a city gun control ordinance to escape the preemptive scope of the statute. However, this did not withstand scrutiny in *Bass*. That court held that Seattle in *Cherry* was acting in its private capacity as employer and proprietor in those two cases. This means that Cherry created a limited exception to the preemption statute that only applied to municipal regulation enacted in their private capacity and did not extend to permitting cities to regulate so long as they limit their sanctions to civil sanctions as Seattle and Edmonds appear to have done.

B. Cities might have wanted litigation

One conclusion that can be drawn from the city ordinances being held to be preempted due to well established precedent is that the cities likely knew that this was a likely result. The cities had been subject to preemption-based legal challenges previously in which other gun control ordinances they had enacted were determined to be preempted. One possible interpretation of this is that the cities may have enacted their laws in part to encourage preemption-based legal challenges.⁹¹⁰

Part of this strategy may have been to hope that state court judges would be receptive to a recalibration of the division of power between the states and their cities. This could be

⁹⁰⁷ 9.41.290.

⁹⁰⁸ SEA., WASH. CITY B. 119266. (“this ordinance does not impose criminal penalties on any person for any act or omission, and is not intended to regulate the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, or transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader component”).

⁹⁰⁹ *Cherry*, 808 P.2d., at 749.

⁹¹⁰ The National League of Cities suggested that litigation was a strategy for cities to consider to promote local democracy. See Spencer Wagner, Nestor Davidson, Kim Haddow, Alex Jones, Christiana K. McFarland and Brooks Rainwater, *Restoring City Rights in an Era of Preemption: A Municipal Action Guide*, NAT’L LEAGUE OF CITIES, 18-20 (2018).

successful in two ways: 1) the state courts could overrule or ignore precedent and recognize the cities' authority to regulate as they have or 2) some state judges could voice dissent to the current interpretative precedent which could eventually lead to a new precedent that recalibrates the distribution of power. The first path was unlikely. Both cities faced an uphill battle in the face of legal precedents that interpreted state preemption broadly. The second, though by no means a guarantee for success, is likely the most plausible positive outcome for the cities.

The cities may also have sought to use the courts to bring about social change. By advancing arguments that cities should have a greater role than currently envisioned, cities are seeking more local democracy. Linzey and Brannen contend that the right to local democracy is a principle of American democracy.⁹¹¹ Applying their argument to the assumed city strategy of legislating to encourage legal challenges, the cities arguably may have been seeking a greater recognition of the right to local democracy than is currently possible given the effect of preemption. This means that the tactics employed by the cities may go beyond preemption and seek to afford greater representative rights for urban residents at a time in which most Americans are living in urban settings.

C. Tracing of cases demonstrates inhibiting effect of preemption

The results of the tracing of the lawsuits highlighted the challenges cities face when attempting to defend their ordinances against preemption-based lawsuits. This struggle is compounded by broad interpretative precedents by state courts which can extend the preemptive scope beyond the specific provisions of preemption statutes. The arguments employed by the litigants also highlight the effects of preemption. The plaintiffs have been able to rely on preemption statutes and precedent in support of their claim that the city ordinances they challenge are preempted. In defense of their ordinances, cities must attempt to argue for a narrower interpretation of the preemption statute than is currently possible due to precedent. The cases have also shown the limited recourse available to courts when actions to address pressing local concerns are in a preempted field.

⁹¹¹ Linzey and Brannen, *supra* note 104.

The oral arguments before the Washington Supreme Court in *Bass* are example of the limited legal arguments that cities have available to them with which to attempt to defend their ordinances. Counsel for Edmonds conceded that the language of the statute was broad but also argued that from the court’s jurisprudence, it was also clear that the statute does not extinguish all local authority related to firearms.⁹¹² She conceded that the statute preempts the entire field of firearms regulation.⁹¹³ The preemption statute Edmond’s counsel is referring to states that:

“[t]he state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts hereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law... and are consistent with this chapter. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality”.⁹¹⁴

Counsel for Edmonds argued that the statute does not define what exactly that field is. Justice Gordon-McCloud interjected and stated that “the qualifier was the entire field.”⁹¹⁵ Gordon-McCloud was quoting the introductory phrase of the statute. This exchange between counsel and Justice Gordon-McCloud is illustrative of the restraining effects of preemption. While doing her best to advance a legal argument that distinguishes her client’s ordinance from the scope of preemption, counsel is faced with the text of the statute as a retort to her assertion.

Arguably, the cases also show that even when a majority of judges are concerned that a pressing societal issue are not being addressed in a preempted field and that political

⁹¹² Oral Argument at 01:56, *Bass v. Edmonds*, 508 P.3d 172 (Wash. 2022). [Hereinafter Edmonds oral argument]

⁹¹³ *Id.*, at 2:18.

⁹¹⁴ WASH. REV. CODE 9.41.290 (1994).

⁹¹⁵ Edmonds oral argument, *supra* note 912, at 2:47.

dysfunction may prevent the state legislature from taking action, the courts are not able to act due to binding precedent. For example, the majority in *Crawford*, like the majorities in *FOAC* and *Anderson*, stated that “[t]he precious lives lost to senseless violence in our nation is beyond tragic”.⁹¹⁶ The violence the majority is referring to is gun violence. The majority in *Crawford* also reiterated the concerns of the majorities in *FOAC* and *Anderson*, about the divisiveness of the country and suggesting that the country is politically divided.⁹¹⁷ One interpretation of this statement about the political divisiveness in the country is that the majority recognizes that there is political dysfunction in the country and, arguably, the majority was conscious that such dysfunction may also exist in Pennsylvania. One conclusion that could be drawn from the fact that the majority was not able to address the issue and appears to know the state legislature may not address it either, is that the current distribution of intrastate power, at least in relation to firearms regulation, may need to be reconsidered. The state legislature may be unwilling or unable to address gun violence and the courts are restrained by precedent.

D. Receptiveness of state courts to different conceptualization of local authority

State court justices were receptive to claims that cities should be afforded a greater degree of local authority than is currently possible due to interpretative precedent. The extent in which judges were open to this varied. Some judges, while ultimately concurring with the broad interpretation of their preemption statutes, questioned whether the distribution of power should be recalibrated in favor of more local authority to regulate than precedent allows. Other judges went further and dissented from the current interpretation of the statute and proposed a new and more narrow interpretation of preemption that would afford a greater degree of local regulatory authority in relation to firearms.

Two of the cases against Pittsburgh, *Anderson* and *Firearm Owners Against Crime*, were decided in favor of the plaintiffs concluding that Pittsburgh’s ordinances were preempted. However, some judges departed from the judgement. In *Firearm Owners Against Crime*, Judge Ellen Ceisler, joined by Judge Renée Cohn Jubelirer and Judge Michael Wojcik, concurred and dissented from the judgement. While the dissenting judges recognized that the court must side with the plaintiffs given the precedent in *Ortiz*, the judges also questioned the precedent’s

⁹¹⁶ *Crawford*, 277 3d., at 678. (citing *FOAC*, 276 A.3d, at 897-8)

⁹¹⁷ *Id.*

interpretation of the preemption statutes and contended that “the General Assembly *has not* preempted the field of firearms, but instead has placed limited constraints on municipal authority in that area”.⁹¹⁸ The dissenting judges were also critical of the precedent in *Ortiz*, arguing that the Pennsylvania Supreme Court should reign in or overturn *Ortiz* because, as they contended, the scope of two Pennsylvania preemption statutes is “more limited” than currently envisioned by case law.⁹¹⁹ They concluded their dissent by arguing that only an interpretation that considers only the plain language of the statute will give “full and proper effect ... to both the General Assembly’s preemptive intent and the City’s home rule powers”.⁹²⁰ This recognition of both the intent of the General Assembly and Pittsburgh’s home rule powers suggests that, according to three members of the Pennsylvania Commonwealth Court, there is a place for the municipal regulation of firearms in Pennsylvania beyond what is currently envisioned due to binding precedent.

The dissenting judges “agree[ed] that [while] the regulation of firearms is a matter of statewide concern, it cannot be disputed that the impacts of gun violence are inevitably local.”⁹²¹ This is an argument that firearms regulation is an area of general concern across the state but that does not necessarily foreclose a policy field from local regulation. This tacitly supports a greater degree of authority for cities to regulate in response to the local effects of gun violence. The judges also distinguished between the impact of gun violence in urban and rural areas,⁹²² and contended that this difference supports the need to differentiate approaches to affording local regulatory authority in relation to firearms between urban and rural areas. This contention appears to endorse a greater degree of local authority while also recognizing that state-wide concerns are legitimate in some instances. The dissent also observed continuing concerns with gun violence in Pennsylvania cities in the 26 years since *Ortiz*.

⁹¹⁸ *FOAC*, 276 A.3d., at 900 (Ceisler J concurring and dissenting). The Italics are Ceisler’s emphasis.

⁹¹⁹ *Id.*, at 901 (Ceisler J concurring and dissenting). (Ceisler also argued that the two preemption statutes “collectively preempt the regulation of ownership, possession, transfer, and transportation of the three classes, i.e., firearms, ammunition, and ammunition components, but extend not further”).

⁹²⁰ *Id.*

⁹²¹ *Crawford*, 277 A.3d, at 689 (Ceisler J dissenting).

⁹²² *FOAC*, 276 A.3d, at 680. (“[t]he significant difference in gun violence rates between urban and rural communities in Pennsylvania, as alleged in the Petition for Review, demonstrates precisely why there is a need for local regulation in this area”). *See also* Blocher, *supra* note 375, at 85. (Blocher advocates that courts “can and should incorporate the longstanding and sensible differences regarding guns and gun control in rural and urban areas, giving more protection to gun rights in rural areas and more leeway to gun regulation in cities”). While Blocher’s work is focused on federal courts, the logic is arguably applicable to state courts as well.

An analysis of the recent precedents related to the cases featured in this chapter uncovered additional judges open to, at minimum, questioning whether the current role of local authorities in the regulation of firearms envisioned by precedent needs to be updated. In *Clarke*, Judge Smith-Ribner concurred with and dissented from the majority decision written by Senior Judge Bonnie Leadbetter.⁹²³ Smith-Ribner argued that the majority had incorrectly interpreted the precedent in *Ortiz* as forbidding nearly all local gun regulation.⁹²⁴ She argued that a narrower interpretation, in which cities have more authority to regulate, was the correct interpretation. In the recent case of *Armstrong*, Leadbetter took a different position than she had previously in *Clarke*. She acknowledged that “the policy issues argued by the City [...] call for a recognition that local conditions may well justify more severe restrictions than are necessary statewide”⁹²⁵ and went on to “urge our [the Pennsylvania] Supreme Court to reconsider the breadth of the *Ortiz* doctrine and allow for local restrictions narrowly tailored to local necessities.”⁹²⁶ Her analysis could be interpreted as arguing that regulating firearms is a mixed-concern policy area with a place for cities and the state. While Leadbetter ultimately sided with the majority, she did so only because precedent dictated, she must. Arguably, this suggests that, at least in the Pennsylvania state courts, that there is a level of openness on the part of state court judges to question whether cities ought to have more authority to regulate firearms that extends beyond the recent Pittsburgh cases decided by the Pennsylvania Commonwealth Court.

However, the receptiveness of some state judges went further than supporting a narrower interpretation of the preemption statute. The dissent in *Crawford* objected to the majority’s determination that the petitioners had failed to make a sufficient claim for state-created danger.⁹²⁷ It did so by focusing on the individual complaints and how gun violence negatively impacts urban areas and areas of Pittsburgh and Philadelphia inhabited by people of color and by people of limited financial means. This is a significant argument. As the majority

⁹²³ *Clarke*, 957 A.2d, at 365 (“While we understand the terrible problems gun violence poses for the city and sympathize with its efforts to use its police powers to create a safe environment for its citizens, these practical considerations do not alter the clear preemption imposed by the legislature, nor our Supreme Court’s validation of the legislature’s power to so act”).

⁹²⁴ *Id.*, at 370 (Smith-Ribner J. concurring and dissenting) (“there is nothing in Section 6120 [one of Pennsylvania’s firearms preemption statutes] to demonstrate legislative intent to occupy the entire field of firearm regulation.”).

⁹²⁵ *Armstrong*, 271 A.3d, at 569 (Leadbetter S.J. concurring).

⁹²⁶ *Id.*

⁹²⁷ *Id.*, at 688-9 (Ceisler J. dissenting).

recognized, the state-created-danger theory has never been used to displace state law.⁹²⁸ Judge Ceisler advanced a theory where state firearms preemption could amount to state-created danger. If this theory is adopted, it could rebalance the division of power between state and local governments. More generally, she is also arguably advancing a broad state-created danger theory that could nullify state law. This too would impact the distribution of power.

The receptiveness of state court judges did not translate into the recognition of a new conceptualization of the role of local governments. However, the dissenting voices on the court do suggest that efforts to forge a recalibration of the division of power between cities and their states are more likely to be successful in state courts than through other means. One judge, Senior Judge Leadbetter, has already changed her position on local authority in relation to firearms regulation. One state court decision in favor of a narrower interpretation of their preemption statute could be the starting point for state courts in other states to follow.

E. Interest groups factored into the lawsuits

Professor Paul Diller has observed that interest groups are among the most common litigants to challenge city regulations on preemption grounds.⁹²⁹ He suggested that when cities “adopt policies that differ from state law”, and some segment of the business community feels negatively impacted by that regulation, preemption-based litigation is expected to follow.⁹³⁰ Professor Scharff concluded that filing preemption-based lawsuits was how interest groups “traditionally used the courts to challenge local regulation”.⁹³¹ Diller and Scharff’s arguments suggested that interest groups regularly use the courts to challenge local regulation and do so by filing lawsuits against the cities. These observations led the project to presume that interest groups might be involved in the lawsuits against the cities. In Chapter III, national pro-gun rights interest groups like the NRA and the Second Amendment Foundation as well as regional and local groups involved in proposals and enactments of state firearms preemption laws. The

⁹²⁸ *Id.*, at 664-5. (The majority (citing *Johnston v. Township of Plumcreek* 859 A.2d 7, 12-13 (Pa. Commw. Ct. 2004), in which the Commonwealth Court determined that the state-created theory is “not used to nullify statutory law”), claimed they did independent research on the matter.). *But see Crawford*, 277 A.3rd, at 690 (Ceisler J dissenting). (Ceisler objected to the majority’s use of *Johnston* to effectively nullify all state-created danger challenges to state law, and she argued that *Johnston* “was clearly limited to its facts”).

⁹²⁹ Diller, *supra* note 37, at 1114.

⁹³⁰ *Id.*

⁹³¹ Scharff, *supra* note 28, at 1495.

cases laid out in this chapter confirm that interest groups were prominently involved in the lawsuits.

The NRA and the Second Amendment Foundation were named plaintiffs in the lawsuits against Seattle and Edmonds. The NRA also supported the plaintiffs in *Anderson* and *Firearms Owners Against Crime*, which brought a legal challenge against Pittsburgh, is an NRA affiliate. While the NRA and the Second Amendment Foundation removed themselves as plaintiffs in *Bass*, the NRA continued to support the plaintiffs as the Washington Supreme Court noted the NRA's role in its judgement.⁹³² Arguably, these pro-gun rights interest groups used preemption-based litigation to nullify local gun control. This use of the courts to counter local gun control regulation also has a political element that is discussed in the next section.

Pro-gun control pressure groups also participated in the cases presented in this chapter. Everytown for Gun Safety supported Seattle, Pittsburgh and Edmonds in their lawsuits. CeaseFirePA was one of the plaintiffs that brought the lawsuit in *Crawford*. One conclusion that can be drawn from tracing these cases is that they are legal disputes between pro-gun rights pressure groups and pro-gun control pressure groups.

F. Lawsuits: a political battle

As discussed above, Professor Robert Kagan contends that the 'American way of law' includes using the courts as a venue to fight political battles.⁹³³ The regulation of guns is a politically divisive issue. As presented in Chapter II, the Republican party opposes gun control and sees this as a key facet of its fight to protect the right to bear arms.⁹³⁴ This position includes opposing restrictions on magazine capacity and assault weapons bans⁹³⁵ The NRA is now a partisan organization and aligns with the Republicans.⁹³⁶ The organization opposes safe storage requirements⁹³⁷ and red flag laws.⁹³⁸ It was also one of the plaintiffs who sued Seattle in *Alim*,

⁹³² *Bass*, 508 P.3d., at 175.

⁹³³ Kagan, *supra* note 77, at 198.

⁹³⁴ Republican party platform, *supra* note 273.

⁹³⁵ *Id.*

⁹³⁶ *Elving*, *supra* note 9.

⁹³⁷ See, e.g., Press Release, Nat'l. Rifle Ass'n. – Inst. for Leg. Action, Misconceptions about so-called "Safe Storage Laws". <https://www.nraila.org/articles/20230221/misconceptions-about-so-called-safe-storage-laws>.

⁹³⁸ Joecks, *supra* note 560,

challenging the city's safe storage regulation, and supported the plaintiffs in *Anderson* in which Pittsburgh's EPRO scheme was challenged.

The cities enacted bills that conflict with the position of the Republicans on gun control. For example, Pittsburgh imposed bans on assault weapons and high-capacity magazines⁹³⁹ and enacted its own ERPO scheme.⁹⁴⁰ Seattle enacted a safe storage ordinance.⁹⁴¹ One interpretation of this is that the cities, in part, enacted these bills to engage in a political battle. This battle aligned cities with the Democrats' party position on gun control and against the Republican's position on firearms regulation. Beyond enacting firearms, the mayors both cities at the time of the enactment of their bills, were Democrats⁹⁴² who supported gun control.⁹⁴³

The involvement of the NRA brings another dimension to the political side of the lawsuits. As Professor Matthew Lacombe's work shows, the NRA has cultivated a pro-gun voter bloc.⁹⁴⁴ The NRA has not remained silent in its involvement in these cases and has publicized its involvement.⁹⁴⁵ This suggests that the NRA has, at least in part, used its involvement in the lawsuits for political gain. This includes publicizing the lawsuits to keep pro-gun voters engaged. It appears that the cases were not just about preemption but were also different means to fight a political battle.

⁹³⁹ PITT., PA C. BILL 2018-1218.

⁹⁴⁰ PITT., PA C. BILL 2018-1220.

⁹⁴¹ SEA., WA C. BILL 119266.

⁹⁴² For former Seattle Mayor Jenny Durkin see Jamiles Lartey, *A night of firsts: 10 historic victories from the US elections*, THE GUARDIAN (Nov. 8, 2017), <https://www.theguardian.com/us-news/2017/nov/08/us-election-results-10-historic-victories-night-firsts>. For former Pittsburgh Mayor Bill Peduto see Tal Axelrod, *Pittsburgh mayor concedes to challenger in Democratic primary*, THE HILL (May 18, 2021), <https://thehill.com/homenews/campaign/554253-pittsburgh-mayor-concedes-to-democratic-primary-challenger/>.

⁹⁴³ Seattle's Mayor at the time of CB 119266's enactment, Jenny Durkan was endorsed when running for mayor by the Alliance for Gun Responsibility. In the Organization's endorsement announcement, the organizations CEO said that Durkan had "...a proven track record working on gun violence prevention." See Press Release, Alliance for Gun Responsibility, Alliance for Gun Responsibility Victory Fund Endorses Jenny Durkan for Seattle Mayor, Legislative and Local Candidates Throughout Washington State, (Sept. 18, 2017), <https://gunresponsibility.org/news/alliance-gun-responsibility-victory-fund-endorses-general-election-2017/>. Pittsburgh Mayor Bill Peduto joined other U.S. Mayors at the White House to call for gun control. See Bob Bauder & Natasha Lindstrom, *Peduto joins mayors at White House to pressure Senate vote on gun control bills*, TRIBLIVE (Sept. 9, 2019), <https://triblive.com/local/pittsburgh-allegheeny/peduto-meeting-with-white-house-officials-on-gun-control/>.

⁹⁴⁴ Lacombe, *supra* note 327.

⁹⁴⁵ See, e.g., Press Release, Nat'l Rifle Ass'n – Inst. Legis. Action, Pennsylvania Court Knocks Out Pittsburgh Gun Control in NRA-Backed Case (Oct. 29, 2019), <https://www.nraila.org/articles/20191029/pennsylvania-court-knocks-out-pittsburgh-gun-control-in-nra-backed-case>.

V. Conclusion

This chapter set out to describe certain city gun control ordinances and the preemption-based legal challenges to these ordinances. The courts' unwillingness to expand their interpretations of the scope of local authority comports with what was understood to be the place of local authority. The precedents discussed in this chapter suggest that the cities had little chance of success and likely knew this. This was affirmed by the decisions in the cases chronicled in this chapter. The Courts interpreted the assertions of authority by Seattle and Pittsburgh as preempted by state law. This investigation started with an assumption that the cities drafted their ordinances to exploit a perceived *lacuna* in their respective state preemption laws. This appears to be confirmed. However, it appears reasonable to argue that the cities enacted their ordinances, at least in part, to attract litigation. There were two points to this tactic: 1) to attempt to assert local authority to regulate as they have through state courts and 2) to use the expected lawsuits to call for greater local authority. This call for greater authority can be interpreted as advocating for social change by advancing demands for a greater degree of local democracy, at least in terms of firearms regulation. It also appears reasonable to conclude that litigation that followed the enactment of the city ordinances was part of the tactics employed by pro-gun rights interest groups to frustrate city efforts to put in place gun control.

It was hoped that this project would uncover dissenting opinions in support of interpreting the preemption statutes to recognize city authority to regulate as Seattle and Pittsburgh. However, it was unexpected that some Pennsylvania state judges would call for a reconsideration or repeal of the current interpretative precedent. While in the short term, this may not alter the place of local governments in the division of power, these dissents provide a basis to see litigation and the courts as a path to a reconsideration of the constitutional arrangements in a way that expands local authority. Judge Ceisler's dissent, joined by Judge Wojcik, in *Crawford* recognized the local impact of gun violence. This dissent recognized that firearm regulation is a state-wide concern, but also called into question the interpretative precedent, and proposed a narrower alternative interpretation of the preemption statute that, if accepted, would expand the scope of local regulatory authority in relation to firearms. It would also alter the relationship between Pennsylvania cities and their state at least in relation to firearms. *Crawford* is currently pending before the Pennsylvania Supreme Court and whether that court heeds the call of some members of the Commonwealth Court to reconsider *Ortiz* remains to be seen. Regardless, the recent dissents and reluctant concurring opinions in the

cases discussed in this chapter arguably suggest that there is a growing willingness on the part of state court judges to afford a greater degree of local authority to regulate firearms.

The dissent in *Crawford* in particular questioned whether the state-created danger theory could be used to nullify state law.⁹⁴⁶ As the majority in *Crawford* observed, this theory has not been used to do so. However, there is a question of what can be done when state action contribution to problems for urban residents but does not address those problems.

All of the cases against Pittsburgh and Seattle were filed by or supported by pro-gun interest groups. The cases also seem to have a political dimension. It appears that the lawsuits were another means to fight a political battle. As discussed in Chapter II, the regulation of firearms is a contentious political issue in which the parties have align themselves largely on opposite sides. Cities enacted ordinances that align with the Democratic party's platform on gun control and conflict with the Republican's stance on gun rights. When these bills were enacted, partisan interest groups like the NRA have filed suit. As discussed above, the NRA has publicized their role in these cases. One interpretation of this is that the NRA is using their efforts to challenge city gun control to energize the pro-gun voting bloc that Professor Matthew Lacombe's work has uncovered.

The cases have also shown another element of the restraining effect of preemption. The majorities in the Commonwealth Court's decisions *Anderson*, *FOAC* and *Crawford* all recognized the serious issue of gun violence that acutely impacts urban areas. These majorities also highlighted the political dysfunction in America. One conclusion that can be drawn from these observations is that the courts are aware that the issue of gun violence may not be addressed by the legislature, but it is unable to remedy the situation itself or recognize the authority of cities to do so.

⁹⁴⁶ *DeShaney* 489 U.S., at 196 ([in relation to the due process clause, the U.S. Constitution] "confer[ed] no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual"). However, two exceptions to the rule were identified: when the state went beyond just failing to act and contributed to the dangers that the victims faced or made the victims more vulnerable to the dangers.

Chapter V: Localism in the United States: A Movement Whose Time Has Come?

This dissertation chose to examine the tension between states and their local governments by reference to the issue of gun regulation. It considered what changes in firearms preemption laws have been proposed at the state level and what changes have been successful in the period under review. It has also considered how state courts have responded to attempts by municipalities to exercise police power in relation to firearms.

Firearms regulation is a matter of widespread public concern that can bring together citizens from across the political spectrum.⁹⁴⁷ However, it is by no means the only area of contention – the state-local government friction is evident across a number of policy areas. – from minimum wage to anti-discrimination.⁹⁴⁸ This chapter now steps back from the specific issue of firearms to address the wider question of how these attempts reflect the changing conceptualizations of the regulatory role of municipalities within existing constitutional and state frameworks in 21st Century America and to ask whether the changing nature of the relationship between states and their municipalities now requires a structural response – and if so – how this might be accomplished.

In Part 1, I consider the arguments of those who claim that despite the absence of a formal place for local governments within the Federal Constitution, that document is most properly construed by reference to the values upon which it rests.⁹⁴⁹ Foremost among these values is a commitment to localism as the bedrock upon which American democracy has been built. Leading proponents of these arguments are Thomas Linzey and Daniel Brannen. This part examines their claims and the evidence with which they support them.

In Part 2, I locate contemporary concerns by reference to previous episodes in U.S. history, notably the Agrarian Movement of the 19th century and the Home Rule Movement of

⁹⁴⁷ According to Ipsos Mori, a plurality of Americans see gun violence as one of the country's most critical issues. *See* Ipsos Mori, Americans are more worried about gun violence compared to most other issues, (Jul. 26, 2023), <https://www.ipsos.com/en-us/americans-are-more-worried-about-gun-violence-compared-most-other-issues>.

⁹⁴⁸ Dupuis *et. al.*, *supra* note 386, at 3-4.

⁹⁴⁹ Professor Ronald Dworkin argued that the U.S. Constitution, and the Bill of Rights in particular, is designed to protect individual and collective rights. *See* RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY*, 165, Harvard Univ. Press, 1977.

the early 20th Century, both of which foregrounded claims of localism in response to perceptions of political dysfunction.

In Part 3, I return to my third research question: how do these attempts reflect changing conceptualizations of the relationship between municipalities and states in 21st Century America? I note the current resurgence of interest in the role of municipalities as manifestations of local democracy in action. I consider the reappearance and reformulation of these claims in contemporary publications of the National League of Cities and ask whether the comments of some members of the state judiciary, as discussed in Chapter IV above, represent an emerging understanding that these are claims that have resonance largely because they speak to concerns regarding the dysfunctionality of political life to which localism may be seen as an appropriate response.

In my conclusion, I consider the potential for change at the federal and state levels. I ultimately argue that the rights to community self-government and local democracy are fundamental principles of the U.S. Constitutional order. This is because there are reasonable questions about whether the current distribution of power between state and local governments is correctly calibrated for 21st Century America. The most likely means by which this power imbalance can be addressed is by one willing state supreme court to recognize this constitutional norm of local democracy. That one willing state supreme court could be an example for other state courts to follow.

The more dominant conceptualization of the power of cities is that are creatures of the state. In this chapter, I consider what my research suggests in terms of the imbalances in the relationship between cities and their states and consider ways in which such imbalances might be addressed. The position of local government in the U.S. Constitutional structure and whether it is inconsistent with the historical role of local government and local democracy envisioned during the founding of the United States and in pre-independence America is addressed in Section I. The country has a tradition of recognizing and exercising local authority. This chapter discusses examples of the recognition of local democracy in America that predate the Federal Constitution and arguments put forth claiming that the text of the Constitution recognizes the right to self-governance and community self-governance. Linzey and Brannen argue that “[t]he right of community self-governance is both deeply rooted in our nation’s

history and tradition and fundamental to any scheme of ordered liberty.”⁹⁵⁰ They further claim that early colonial America had numerous “constitutions, compacts, and agreements” that demonstrated a self-organizing form of government that included for the people of the respective colonies, the right to organize, amend, or dissolve their systems of government.⁹⁵¹ This means the colonies established a history of recognizing and asserting local democracy. Examples of this pattern and history of asserting local democracy are discussed in the next section.

I. Local Democracy in Colonial America

In this section, I consider the claim that local democracy is a feature of the U.S. Constitutional order. Commentators have drawn on the Mayflower Compact, the Articles of Confederation of the United Colonies of New England, New Netherland, the Declaration of Independence, and the U.S. Constitution to advance this claim. I note that this claim has reemerged from the work of commentators and specifically that Linzey and Brannen.

One argument that is made is that there is a history and pattern of local governments attempting to assert their authority to regulate in response to local concerns. Linzey and Brannen contend that “no principle has been more seminal than that of the people’s collective authority to govern, and no right more fundamental than the right of local, community self-government.”⁹⁵² They argue that community self-government in America dates back to the Mayflower Compact.⁹⁵³ The Pilgrims who voyaged to the New World aboard the Mayflower agreed to the Mayflower Compact (1620).⁹⁵⁴ Its signatories declared the organization of a body politic. Arguably, this recognition of the right to form a body politic suggests that 17th-century America embraced the right to local government. The declaration that the parties to the compact

⁹⁵⁰ Linzey & Brannen, *supra* note 104, at 8.

⁹⁵¹ *Id.* at 11.

⁹⁵² *Id.* at 8.

⁹⁵³ *Id.* at 9.

⁹⁵⁴ Agreement between the Settlers of New Plymouth (1620) “The Mayflower Compact”. “We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, Having undertaken by the Glory of God, and Advancement of the Christian Faith, and Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of Good and one another, covenant and combine ourselves together in a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid: And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officer, from time to time, as shall be thought most meet and convenient for the general Good of the Colony, unto which we promise all due Submission and Obedience.”.

came together in a body politic could be interpreted as being predicated on the belief that they held the power to enact a governing document and authorize a local government.

The pattern and tradition of the exercise of the right to self-government continued in colonial America. The United Colonies of New England,⁹⁵⁵ formed 17 years after the Mayflower Compact, recognized community self-government. On May 19, 1643, these colonies bound themselves under the Articles of Confederation of the United Colonies of New England.⁹⁵⁶ The colonies granted powers to the confederation, including the authority to wage war. This grant of authority has a strong element of independence. By recognizing their authority to wage war and granting it to a centralized government, the colonies recognized that their residents had a right to form their own government. This right to self-government extended beyond the English colonies. According to Professor Albert McKinley, in 1640, the Dutch colony of New Netherland extended local government privileges to its settlements and representation of its settlements in “the conduct of central affairs.”⁹⁵⁷ This means local settlements of New Netherland had local governmental authority and a place in the central affairs of the colony. This suggests that the current conceptualization of this relationship between states and their cities and specifically the inability of cities to assert themselves in the face of state policies is out of line with historic understandings of the place of local government in America.

Abuse of the right to community self-government was one of the causes that led to the thirteen colonies taking the decision to make the break from Britain. When the colonists felt their grievances with the Crown could no longer be resolved under the Crown, they declared their independence. Issuing their declaration could be interpreted as an exercise of self-governance and self-determination. One of the justifications for declaring independence was that the King had “dissolved Representative Houses repeatedly, for opposing with many Firmness, his invasion of the Rights of the People.”⁹⁵⁸ This grievance objects to how the Crown governed the colonies and recognizes that the individual's rights can override the government's will. The opening sentence of the Declaration recognized the right of the people to determine

⁹⁵⁵ It comprised four colonies: Massachusetts Bay, Plymouth, Saybrook, and New Haven. These colonies bordered each other and now comprise present-day Massachusetts and Connecticut.

⁹⁵⁶ Articles of Confederation of the United Colonies of New England (1643).

⁹⁵⁷ See McKinley, *supra* note 109.

⁹⁵⁸ THE DECLARATION OF INDEPENDENCE (1776), para. 5. Linzey and Brennan contend that the Crown's denial of these rights was a primary cause of the U.S. revolution. See Linzey & Brannen, *supra* note 104, at 14.

their government, including the ability to reject their government and establish a new government under terms dictated by them.⁹⁵⁹

The American colonies continued the pattern of recognizing local democracy in their colonial declarations of independence. This recognition was tied to the philosophical basis of their views on who controlled the levers of power. Linzey and Brannen find in the Declaration of independence and colonial declarations, specifically that of Virginia, as expressions of community rights to local self-government and autonomy that they claim represent the foundations upon which the early republic rested.⁹⁶⁰ As in the American colonies, France went through a politically turbulent period in which the people of France started to question their relationship with their government and who were the ultimate holders of power in France.⁹⁶¹

Indicators of recognizing the right to local and community self-government are arguably in the text of the Federal Constitution.⁹⁶² John Locke, a key influence of the founding fathers, supported community independence.⁹⁶³ He saw the willingness of people to form communities and consent to government as part of a social contract. Linzey and Brannen contend that the phrase ‘we the people’ in the Declaration of Independence,⁹⁶⁴ expresses a

⁹⁵⁹ *Id.*, THE DECLARATION OF INDEPENDENCE. (“When in the Course of human Events, it becomes necessary for one People to dissolve the Political Bands which have connected them with another, and to assume among the Powers of the Earth, the separate and equal Station to which the Laws of Nature and of Nature’s God entitle them, a decent Respect to the Opinions of Mankind requires that they should declare the causes which impel them to the Separation.”).

⁹⁶⁰ Linzey & Brannen, *supra* note 9, at 18-19. (citing the Virginia Bill of Rights, §3 (1776) which declared “declared “[t]hat government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to those purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal”).

⁹⁶¹ These reflections on government and individual rights were influenced by French political theorists such as Voltaire and Montesquieu. John Locke was also influential. Voltaire spent two and half years in London in the early 18th century studying Locke. Like Locke, Voltaire and Montesquieu defended individual rights including the freedom of expression. Montesquieu also advocated for the separation of powers and wrote *L’esprit des lois* (the Spirit of Laws) in which he argued for a separation of powers and political liberty. The Spirit of Laws was highly influential on the United States’ Founding Fathers.

⁹⁶² Linzey & Brennan, *supra* note 104, at. 25.

⁹⁶³ For John Locke, his ideas of ‘commonwealth’ was not a republic or a democracy, but rather any independent community. According to Locke, men are “all free, equal, and independent.” See JOHN LOCKE, SECOND TREATISE IN TWO TREATIES OF GOVERNMENT §95 (Peter Laslett ed., Cambridge Press, 1988)(1689).

⁹⁶⁴ U.S. CONST., pmb. (“[w]e, the people, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the blessings of Liberty to ourselves and to our posterity, do ordain and establish this Constitution of the United States of America”. See also *Marbury v. Madison* 5 U.S. 137, 176 (1803), (“the people have an original right to establish, for their future government, such principles as, in their own opinion, shall most conduce to their own happiness, is the basis on which the whole American fabric has been erected.”).

“principle that governmental authority stems from the people of the community exercising the powers of government and is to be exercised for their benefit only.”⁹⁶⁵

II. Localism in 19th and 20th Century America

Proponents of local democracy advance the argument that the recognition and exercise of local democracy continued in post-independence America. Alexis de Tocqueville argued local government was the bedrock of American democracy.⁹²³ In his observation of early 19th century America, de Tocqueville concluded that “[t]own liberty in the United States follows ... from the very dogma of the sovereignty of the people”.⁹²⁴ In other words, his argument was that local democracy and the authority of local government are of fundamental importance because they are manifestations of the sovereignty of the people:

There is a pattern and history of Americans resorting to demands for greater local authority when the other levels of government are unwilling and unable to address the key issues Americans face, including in times of political dysfunction. Assertions of local authority after the American Civil War were proposed as a means to protect the people from the effects of political dysfunction at the state and federal levels. As American political theorist Lawrence Goodwyn observed, “[a] large number of people in the United States discovered that the economic premises of their society were working against them”.⁹⁶⁶ We can see the same themes in the farmers cooperatives. Starting in the 1870’s, farmers in several states came together to form cooperatives to provide alternative means of credit and product distribution and to fill the void left by state and federal governments.⁹⁶⁷

Demands for a greater degree of local authority received support from state court judges. For example, Thomas Cooley, the former Chief Justice of the Michigan Supreme Court and esteemed 19th century constitutional law scholar, argued that “local government is [a] matter of absolute right; and the state cannot...take it away.”⁹⁶⁸ This recognition of a right to local government that cannot be taken away by the state conflicts with Judge John Forest Dillon’s theorization of cities as creatures of the state. Cooley’s doctrine never gained much

⁹⁶⁵ Linzey & Brannen, *supra* note 104, at 25.

⁹⁶⁶ Goodwyn, *supra* note 114, at vii.

⁹⁶⁷ *Id.* “American farmers developed new methods that enabled them to try to regain some measure of control over their own lives.”

⁹⁶⁸ *Hurlbut*, 24 Mich., at 108.

traction, while Dillon's rule⁹⁶⁹ has been widely accepted including by the U.S. Supreme Court.⁹⁷⁰ Linzey and Brannen now controversially argue that Dillon's rule is unconstitutional, in part because Dillon's rule is the same theory that the colonists rejected, namely, that the Crown viewed colonial governments as creatures of the state in the same way Dillon's rule defines municipalities as creatures of the state.⁹⁷¹ Other commentators have been critical of what they interpret as problems with Dillon's rule. As Judge Eugene McQuillin highlighted several American cities were founded before their states.⁹⁷²

In the 19th and 20th centuries, local leaders started to reject perceived abuses of state power and demanded more recognition for local authority. Some states had enacted ripper bills, which removed democratically elected local officials from power without the consent of the residents of the municipality. In one example, the Pennsylvania legislature passed a 'ripper bill' abolishing a Pittsburgh city office, replacing it with a new office appointed by and answerable to Pennsylvania's Governor and not the people of Pittsburgh.⁹⁷³ As a result, the home rule movements of the late 19th and early 20th century sought to restrict state government authority to enact special legislation like ripper bills⁹⁷⁴ and to enact new state laws granting local governments authority to address issues of local concern. According to Professor Dale Krane *et al*, the movements also sought to increase the power of local governments while at the same time seeking to decrease the power state legislatures held over the functioning of local governments.⁹⁷⁵ An early form of home rule, *imperio* home rule, according to Professor Vanlandingham, was meant to provide local autonomy within the sphere of municipal or local affairs.⁹⁷⁶ Additional support for local authority would follow in the 1950s and 1960s. According to Professor Paul Diller, the American Municipal Association and the National Municipal League followed *imperio* home rule with a new home rule proposal that included

⁹⁶⁹ Dillon's rule states that "[m]unicipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control." See *Cedar Rapids & Missouri R.R.* 24 Iowa, at 475; See, also Dillon, *supra* note 129, at 173.

⁹⁷⁰ *Hunter*, 207 U.S.

⁹⁷¹ Linzey & Brannen, *supra* note 104, at 47.

⁹⁷² McQuillin, *supra* note 137, at 153-4.

⁹⁷³ Eaton, *supra* note 166.

⁹⁷⁴ Zimmerman, *supra* note 165. These movements included local governments.

⁹⁷⁵ Krane ET AL., *supra* note 147, at ix. The proposals for change included home rule.

⁹⁷⁶ Vanlandingham, Constitutional home rule since the AMA (NLC) model, *supra* note 158, at 1-2. Professor Kenneth Stahl argued *Imperio* home rule was meant to create a federal relationship in which local governments had autonomy over local affairs by transforming the relationship between states and local governments. See Kenneth Stahl, *supra* note 162, at 171 (2017).

granting a delegated police power to local governments.⁹⁷⁷ Several states amended their laws to incorporate these proposals in their state laws. The resulting legislation is what is now classified as legislative home rule.⁹⁷⁸ The continuing advocacy for and recognition of local democracy in America not only supports the claim that local democracy and the right to community self-government are inherent in the U.S. Constitutional order and also recognizes the role local government can have as a mechanism to respond to abuses of power by the other two tiers of government. It can also provide a viable response to serious issues that are not addressed by the other two tiers of government due to political dysfunction.

One interpretation of the partisanship in state houses discussed by this project is that the divisiveness in American politics is playing out at the state level. This placement of political considerations and partisan purity as primary considerations arguably suggests that there is political dysfunction in the country similar to the time of the farmers collectives and the home rule movements. Current efforts to resort to local government to address issues left unresolved by the other levels of government are part of a pattern and history of attempts to assert democracy and local control.

III. Changing perceptions of the relationship between states and their municipalities

The United States has transformed itself from a largely agrarian society to a largely urban society with about 86% of Americans now living in urban areas.⁹⁷⁹ There has also been significant population growth. The United States had 3,929,214 people in 1790.⁹⁸⁰ Now, there are more than 326,000,000 Americans. The founding fathers' determination of the division of power in the federal constitutional order may have been suitable for 18th-century America, but today's America would likely be unrecognizable to them. While the country has transformed, the distribution of power among the three levels of government has remained largely unchanged. However, concerns about the current role of local governments have led to questions about whether the distribution of power is correctly calibrated.

⁹⁷⁷ Diller, *supra* note 37, at 1125.

⁹⁷⁸ *Id.*

⁹⁷⁹ U.S. Census Bureau, *supra* note 101.

⁹⁸⁰ 1790 Census fast fact, U.S. CENSUS BUREAU, https://www.census.gov/history/www/through_the_decades/fast_facts/1790_fast_facts.html.

As previously discussed, cities are inhibited in their ability to regulate in conflict with state preemption. This restraining effect is magnified by broad interpretative precedents which extend preemption beyond the specific text of the statute. Despite these impediments, cities like Pittsburgh and Seattle are attempting to regulate in preempted fields. The cities are attempting to regulate for two purposes: 1) to enact their ordinances with the hope that innovative drafting techniques might help their ordinances evade the scope of preemption likely with realization that success under legal challenge is unlikely and 2) to induce lawsuits which will be the means in which they seek to challenge the broad interpretative precedents currently restraining these local governments from addressing the issues their residents demand.⁹⁸¹ Arguably, these efforts to encourage legal challenges could lead to a new conceptualization of the division of power between states and their cities that is recalibrated for the roles in which cities now take on as the primary service provider for their residents in a country with most of its citizens living in urban areas.

Some State legislatures have considered proposals for an expanded role for local governments in the regulation of firearms, but these are in the minority.⁹⁸² These proposals are primarily advanced by Democrats but by and large have so far been unsuccessful. Even with Democrat party leadership involvement, bills that would have expanded local authority have largely failed. This project has interpreted this as, due in part, to political posturing. Democrats may have sponsored these bills to make a political point as opposed to expanding local authority. Republicans have taken the opposite position, proposing and enacting bills that expanded preemption and imposed hyper preemption measures. Part of this is because of the prioritization of political considerations. Party dominance was key to the enactment of bills. Nine of the twelve bills enacted during the observed period were enacted in a state where the bill sponsor's party had a trifecta in state government. Republicans enacted nine bills with three of the bills having hyper preemption measures. Seven of these bills were enacted in states where Republicans had a trifecta. The net result is that firearms preemption expanded during the observed period. This means that the role of local authority in the regulation of firearms was reduced. Political partisanship had an additional dimension. Some Republican bills appear to have been proposed as a response to specific city gun control enactments. Other Republican bills seem to have been enacted to take an opposing stance on specific types of gun control.

⁹⁸¹ The National League of Cities have encouraged cities to consider this as a strategy to advance local democracy. *See* Wagner ET AL, *supra* note 910.

⁹⁸² *See* Ch V, Part II for a discussion on partisanship in the data set.

This project has interpreted those efforts as making a political statement. Anti-urbanism was also present in the data set. Republicans representing rural districts proposed and enacted bills that expanded the scope of preemption and added new hyper preemption measures. This means that rural voters may have had a greater say in the determination of the authority of cities to regulate firearms than city residents.

The suggestion that there is need to change how local governments are allocated authority through their constitutional structure is not limited to the United States. Professional Ran Hirschl has argued that since we are in an age of the city, “a rethink... of orthodox federalism practice in theory” is necessary.⁹⁸³ He raises specific concerns about the United States. He argues urban voters, contrary to the principle of one person, one vote, are being underrepresented in government. Hirschl summarized the result of this underrepresentation as reducing city residents to being “one person, [but having] half a vote.”⁹⁸⁴ This is due in part to what Hirschl observes as the overwhelming of urban districts by rural districts through redistricting which dilutes the representation of urban voters in state legislatures and congress.⁹⁸⁵ One of the criticisms of local government is its vulnerability to being overly influenced by interest groups and business interests. Part of this vulnerability is a consequence of their limited authority. Professor Hirschl has argued that cities must be constitutionally empowered to reduce their dependence on big business.⁹⁸⁶ Big business can be viable partners in service provisions such as sponsoring new community centers. Still, this support from businesses could come with the expectation that the local government regulates or behaves in a way that is in the best interest of the business or businesses and not in the best interest of their community. By empowering local government, cities can avail themselves to further options that avoid entanglement with big business when that is undesirable.

Questions have been raised about whether the U.S. Constitution and its allocation of authority is correctly calibrated for the challenges of the 21st Century. In the aftermath of the fall of the Mubarak regime in Egypt, Justice Ruth Bader Ginsberg was asked which country’s constitution the drafters of a new Egyptian constitution should take inspiration from. Justice

⁹⁸³ Hirschl, *supra* note 4, at 176-7 (Hirschl observes that “politically motivated redistricting and gerrymandering—controlled by state legislators—has effectively reduced the power of urban areas by slicing them up or redrawing districts such that the rural parts of each district overwhelm the urban ones.” This watering down of urban voting influence is what Hirschl refers to as ‘one person, half a vote’).

⁹⁸⁴ *Id.*

⁹⁸⁵ *Id.*, at 177.

⁹⁸⁶ *Id.*, at 175.

Ginsberg suggested not the U.S. Constitution but rather the South African Constitution be used as a model.⁹⁸⁷ She particularly valued constitutions written after World War II because of the advancements in human rights and equal rights.⁹⁸⁸ Arguably, Justice Ginsberg recognized the U.S. Constitution as dated. This is especially significant because she was a sitting Justice on the U.S. Supreme Court.⁹⁸⁹ Ginsberg's favored Constitution of South Africa affords a degree of recognition of local authority not present in the U.S. Constitution⁹⁹⁰ and protects local democracy from interference from national or provincial (state) governments.⁹⁹¹

Ginsberg was particularly concerned with the lack an Equal Rights Amendment in the U.S. Constitution. Many post-World War II constitutions have provisions analogous to an equal rights amendment. A point can be made that this distinction between an old constitution like the U.S. Constitution and post-World War II Constitutions is not only about time but also about representation and democratic principles. As Ginsberg rightly noted, when the Constitution was drafted, slavery was legal, and women could not vote. Arguably, this can be interpreted as recognizing the U.S. Constitution as not representative. Extending this to the underrepresentation of urban residents as noted by Professor Paul Diller⁹⁹² and Professor Richard Schragger⁹⁹³ including the composition of the U.S. Senate which has been seen as a distinct detriment to urban voters,⁹⁹⁴ further supports the contention that the U.S. Constitution is not representative.

⁹⁸⁷ Ariane de Vogue, *Ginsburg Likes S. Africa as a Model for Egypt*, ABC NEWS (Feb. 3, 2012), <https://abcnews.go.com/blogs/politics/2012/02/ginsburg-likes-s-africa-as-model-for-egypt>.

⁹⁸⁸ *Id.* (Reflecting on the South African Constitution, Ginsberg stated “[t]hat was a deliberate attempt to have a fundamental instrument of government that embraced basic human rights, had an independent judiciary. . . . It really is, I think, a great piece of work that was done. Much more recent than the U.S. Constitution.”). In 2013, Ginsberg was asked about her comments in the 2012 interview. She said that “[t]here isn't a Constitution in the world written since 1950 that doesn't have an Equal Rights Amendment”. See Justice Ruth Bader Ginsberg, Gillian Metzger, & Abbe Glick, *A Conversation with Justice Ruth Bader Ginsberg*, 25 COLUM. J. GENDER & L. 1, 22-23 (2013).

⁹⁸⁹ Justice Ginsberg also offers the perspective of being a civil rights lawyer who advanced individual rights claims throughout the federal court system, including before the U.S. Supreme Court. Her work included challenging precedent that limited or excluded individual rights protections.

⁹⁹⁰ Chapter 7 of the South African Constitution is dedicated to local governments. For example, section 151(3) states that “[a] municipality has the right to govern, on its own initiative, the local affairs of its community, subject to national and provincial legislation, as provided for in the Constitution.” See Const. of S. Africa, §151(3).

⁹⁹¹ S. AFR. CONST. §151(4) (declaring that “[t]he national or a provisional government may not compromise or impede a municipality's ability or right to exercise its powers or perform its functions”).

⁹⁹² Diller, *supra* note 254 at 291.

⁹⁹³ Schragger, *supra* note 35, at 1168.

⁹⁹⁴ Diller, *supra* note 254 at 308.

IV. Support for expanding local authority

Brookings Institute researchers Michael Hais, Doug Ross,⁹⁹⁵ and Morley Winograd have argued that localism is the answer to the current political stasis in the United States.⁹⁹⁶ However, the place of local governments in the U.S. Constitutional Structure is not always a primary consideration. As previously discussed, indicators in the data set in Chapter III suggest that considerations of partisan politics are the primary concerns in many state houses, with proposals to expand local authority in the minority and largely unsuccessful. Cities like Pittsburgh and Seattle justify their attempts at firearm regulation with claims of home rule or municipal police power. However, these cities are likely regulating to appease their constituents with no real prospect of success in defending their ordinances in court. To date, the state courts have responded negatively to these efforts. Despite this, there are growing signs of discontent from state court judges.

This project has presented cases in which state court judges signaled their receptiveness to concerns that the current division of power between their state and its cities is out of balance. This receptiveness has been varied.⁹⁹⁷ Some judges have concurred with majority decisions that have found city ordinances preempted but have done so with reluctance. This is due to, what these judges have interpreted as, being bound by precedent to concur with the majority's decision. However, these concurring views have reflected on how cities are acutely impacted by gun violence and questioned whether according a greater degree of local authority is the appropriate response to this. One judge departed from her previous position where she had interpreted the preemption statute broadly and now has taken a new position in which she questioned whether the current distribution power might be in need of reconsideration.⁹⁹⁸ Some concurring opinions have called for the state supreme court to reconsider its precedent that interprets preemption broadly and local authority narrowly.⁹⁹⁹ One dissenting opinion has gone so far as to contend that the broad interpretation of the preemption statute is wrong and has proposed an alternative interpretation in which local authority is more broadly interpreted and

⁹⁹⁵ Doug Ross is a former Michigan State Senator.

⁹⁹⁶ Hais, Ross & Winograd, *Is Constitutional Localism the answer to what ails American democracy?*, Brookings Inst. (Apr. 3, 2018), <https://www.brookings.edu/articles/is-constitutional-localism-the-answer-to-what-ails-american-democracy/>.

⁹⁹⁷ For the discussion on how the judges' receptiveness varied, see Ch. IV, Part IV.

⁹⁹⁸ *Compare Clarke*, 957 A.2d, at 364-5 (Leadbetter J), *with Armstrong*, 271 A.3d, at 569 (Leadbetter SJ concurring).

⁹⁹⁹ *See, e.g., Crawford*, 277 A.3d (Pa. Commw. Ct. 2022) (Cohn Jubelirer J Concurring).

preemption is more narrowly construed in line with a ‘more straightforward reading’ of the statute.¹⁰⁰⁰

Concerns about the current conceptualization of the city-state relationship have been expressed at the federal level. The House of Representatives has considered a bill that proposed a new formulation of the relationship between states and their cities. More specifically, the House considered a resolution calling for state firearms preemption to be more narrowly defined. In 2016, Democrat Congressman Bob Brady introduced H.R. 5546.¹⁰⁰¹ The non-binding resolution proposed limiting the authority of states to preempt big cities from regulating firearms-related conduct in their cities.¹⁰⁰² The bill was referred to committee without further action. In the current divisive legislative environment, with partisan purity prioritized,¹⁰⁰³ it is unlikely that Congress can provide a solution. However, Congressional legislative action to expand the scope of local authority would also raise questions about the constitutionality of such an action. It would conflict with the anti-commandeering doctrine.¹⁰⁰⁴

The politically divisive legislative environment in Congress and questions of the constitutionality of any legislative attempt by Congress to expand the scope of local authority means that another solution is required. I now suggest three potential paths forward. All have their limitations. The first path is amending the U.S. Constitution to expressly recognize the authority of local governments. The second is to reform and restructure home rule at the state level. The third would be to rely on state judiciaries to deviate from precedent and interpret the scope of local authority in a new and more expansive way.

A. Federal constitutional amendment

Ideally, the path forward would be a constitutional amendment expressly recognizing the authority of local governments. This would provide a place for local government in the U.S. Constitutional structure currently it is not afforded. One option would be an amendment to expressly recognize a municipal police power to address local public health and safety

¹⁰⁰⁰ *Id.*, at 679 (Ceisler J., dissenting).

¹⁰⁰¹ H.R. 5546.

¹⁰⁰² According to the census, big cities are defined as municipalities with over 500,000 residents.

¹⁰⁰³ Finkel ET AL., *supra* note 244, at 535.

¹⁰⁰⁴ *See, e.g., New York v. United States*, 505 U.S. 144, 161 (1992). (“Congress may not simply commandeer the legislative process of the states by directly compelling them to enact or enforce a federal regulatory program”).

concerns. There are significant obstacles to this approach. First, a high bar has been set for ratifying amendments. The ratification process is laid out in Article V of the Constitution and requires a proposed amendment to receive the support of two-thirds of both houses of Congress or three-fourths of all states.¹⁰⁰⁵ This is very difficult to accomplish. Many proposed amendments, such as the Equal Rights Amendment,¹⁰⁰⁶ have failed to be ratified. In the current political climate, where there is increasing social distance between Republicans and Democrats, a constitutional amendment to expressly recognize a place for local government in the constitutional order has no chance of success. This means that the solution likely lies at the state level.

B. Home Rule for the 21st Century

A new solution has been advanced for a recalibration of the relationship between cities and their states. A project organized by the National League of Cities (NLC)¹⁰⁰⁷ and led by Professor Nestor Davidson has proposed the Principles of Home Rule for the 21st Century.¹⁰⁰⁸ This project started with the formation of a workgroup in 2018,¹⁰⁰⁹ and was undertaken after identifying a perceived need to reform home rule after determining that state oversight authority was, in the views of the NLC, no longer being exercised to serve a constructive and collaborative role in the state-local government legal relationship.¹⁰¹⁰ The project is also based on a starting point that recognizes local governments' vital role in self-government and that local governments should play a central role in state constitutional law.¹⁰¹¹ It had also been over 60 years since the last time the NLC proposed a new approach to home rule. The new Principles of Home Rule for the 21st Century include a local authority principle, which states,

¹⁰⁰⁵ U.S. CONST. art. V.

¹⁰⁰⁶ Proposed Amendment to the U.S. Constitution, 2nd Sess., 94th Cong. (1972). (This amendment proposed adding, *inter alia*, to the Constitution: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex").

¹⁰⁰⁷ The National League of Cities is an advocacy organization that represents the United States' municipalities and municipal leagues. It was founded in 1924 as the American Municipal Association. *See*, NAT'L LEAGUE OF CITIES, <http://www.nlc.org> (last visited Feb. 22, 2024). At the state level, state legislators are represented by the National Conference of State Legislators.

¹⁰⁰⁸ Davidson ET AL., *supra* note 70.

¹⁰⁰⁹ The workgroup members are some of the leading Constitutional and. Municipal scholars including Professor Nestor Davidson, Fordham Law School; Professor Richard Briffault, Columbia Law School; Professor Paul Diller, Willamette University College of Law; Professor Sarah Fox, Northern Illinois University College of Law; Professor Emeritus, Laurie Reynolds, University of Illinois College of Law; Professor Erin Adele Scharff, Arizona State University Law School; Professor Richard Schragger, University of Virginia School of Law & Professor Rick Su, University of North Carolina Law School.

¹⁰¹⁰ Davidson ET AL., *supra* note 70, at 14.

¹⁰¹¹ *Id.* at 20.

“[a] state’s law of home rule should provide local government full capacity to govern within their territorial jurisdiction, including the power to adopt laws, regulations, and policies across the full range of subjects — and with the powers — available to the state.”¹⁰¹² This principle would set a minimum standard for the powers entailed in the home rule grants to local governments by their states, subject to state oversight and state preemption so long as the state’s preemption action can overcome the presumption against preemption.

This presumption would prevent state preemption laws from singling out individuals or groups of local governments.¹⁰¹³ Preemption bills that single out municipalities were one of the issues targeted by the initial home rule movement. According to the workgroup, the presumption against preemption would “appropriately balance state and local authority.”¹⁰¹⁴ They also argued that, as part of this presumption, the state should only have the authority to act in relation to home rule governments when they do so expressly. Specifically on the use of preemption powers, the work group contended that the state should be required to demonstrate “a substantial state interest, narrowly tailored.”¹⁰¹⁵ Should the principles be adopted and implemented as recommended by the workgroup members, the result would likely be that local governments would have greater authority to address local concerns. The requirement that a state demonstrate a narrowly tailored substantial state interest to exercise the power to preempt would protect against state interference. It would still provide a place for state preemption in intrastate legal systems.

The Principles of Home Rule for the 21st Century face two overarching issues. It is not the first proposal for home rule reform, and it requires political will at the state level to be successful.¹⁰¹⁶ Chapter II discussed three proposals for home rule that have already been considered and implemented to varying degrees. Like the proposals before, the principles ultimately leave the question of dividing power between state and local governments to the state government. This is because state law defines home rule, and alterations to home rule are subject to state law and the ability of the state legislature to amend state law.

¹⁰¹² *Id.* at 24.

¹⁰¹³ *Id.*

¹⁰¹⁴ *Id.* at 26.

¹⁰¹⁵ *Id.*

¹⁰¹⁶ See Nester Davidson and Richard Schragger, *supra* note 671, at 1386. (Davidson and fellow Principles of Human Rule for the 21st century workgroups member Richard Schragger concede that “[s]tate officials do not readily choose to give up power, especially if they contemplate it being potentially wielded by political opponents.”).

A challenge that the Home Rule for the 21st Century proposal will face is that it needs to be adopted state-by-state. The proposal may have a positive impact on the authority of local governments in states that adopt the principles, but this impact would be limited to municipalities in those adopting states. Success in one state is not a guarantee of success in another state, but early adopting states and cities asserting their newly granted authority could build a movement towards broader adoption. The regulation of firearms is one area in which this may be true. Suppose a city, relying on new authority, enacts local gun control. In that case, this might be used as a catalyst to build support for adopting home rule for the 21st Century in other states.¹⁰¹⁷

C. State courts

Another opportunity at the state level may be developing. With firearms preemption in particular, members of the Pennsylvania State judiciary have voiced concern over the current precedent in relation to the broad interpretation of the scope of the state preemption statute. The case of *Crawford* could represent a watershed moment for expanding the scope of local authority. On September 13, 2023, the Pennsylvania Supreme Court heard oral arguments.¹⁰¹⁸ The case was filed by the families of victims of gun violence, arguing that the state preemption statute is unconstitutional. The plaintiffs sought a permanent injunction prohibiting further enforcement of the statute.¹⁰¹⁹

In the late 19th century, the farmers who participated in the farmers alliance recognized that their governmental system was working against them.¹⁰²⁰ Arguably, the same can be said about intrastate firearms preemption working against residents of cities. It might be said that by ignoring the right to community self-government through preempting the local regulation of firearms and arguably not addressing the local effects of gun violence, Pennsylvania has put its urban residents in the position that they may now feel that their state government is working against them. They may have encouraged their city governments through electing them to

¹⁰¹⁷ This project was unable to uncover any states that have adopted this proposal of home rule for the 21st century.

¹⁰¹⁸ This case is still pending as of Feb. 21, 2024.

¹⁰¹⁹ Petition for Review at 87, *Crawford v. Commonwealth* 277 A.3d (Penn. Comm. Ct. 2022), 562 ND 2020.

¹⁰²⁰ Goodwyn, *supra* note 114.

challenge the preemption statute by enacting local laws that were susceptible to preemption-based lawsuits with the hope that lawsuits would be filed.

As discussed above, some Pennsylvania state court judges have been receptive to the contention that the relationship between Pennsylvania and their cities might need to be reassessed. They have been receptive to the suggestion that local governments may be best placed to respond to the impact of gun violence on their communities. It is possible that state courts might be the most receptive venue in which to seek a recalibration in the relationship between states and their cities.

In the short term, all these paths are unlikely to be successful. Even though there is scope for state preemption, the clear suggestion is that balance between state authority and local authority is out of balance. The scales tip too far in favor of the state. This project has demonstrated that in the context of firearms, this power imbalance between state and local governments has left cities largely unable to respond to gun violence as their local electorate will expect.

One argument that has been put forth against permitting local regulatory authority is that local regulation can create a patchwork of laws.¹⁰²¹ The argument suggests that a patchwork of local laws reduces legal certainty and creates confusion for state residents on their legal obligations and rights. The patchwork of local laws can increase costs for businesses. According to proponents of this argument, state regulation creates a uniform approach that avoids the suggested negative consequences of the patchwork of local regulations. However, there are responses to this argument. The Urban Institute has questioned the evidentiary basis for these arguments to conclude that there is little evidence of a negative impact of a patchwork of local laws.¹⁰²²

¹⁰²¹ For example, when signing a Fracking preemption bill in 2015, Texas Governor Greg Abbott argued that the bill would prevent a patchwork of local laws that could negatively impact oil and gas production. See Jim Malewitz, *Curbing Local Control, Abbott Signs "Denton Fracking Bill"*, TEXAS TRIB. (May 18, 2015), <https://www.texastribune.org/2015/05/18/abbott-signs-denton-fracking-bill/>. This patchwork of laws argument was also employed by the NRA-ILA in response to a bill in the data set. Nevada AB 291 proposed repealing preemption in the state. The NRA-ILA claimed that the bill would create ‘a patch work of laws’. NRA, Letter to Nevada Assembly Judiciary Committee, *supra* note 457. Mississippi Republican State Representative Blake Miguez used the ‘patchwork of local laws’ argument in defense of his HB 140. See Miguez, HB140 House Floor Debate, *supra* note 487.

¹⁰²² Mark Treskon, John Marotta, Prasanna Rajasekaran, Kriti Ramakrishnan, Aaron Shroyer & Solomon Greene, *Does the effect of Regulatory Patchwork Justify State Preemption of Local laws?*, URBAN INST. (2021),

It is claimed that this imbalance between state and local government is incompatible with the historical tradition of local government and community self-government established long before the American experiment was contemplated. Ultimately, all forms of government are established to protect the individual and collective rights of their citizens and residents. The Plaintiffs in *Crawford* believe that the state of Pennsylvania is not fulfilling this most fundamental of governmental purposes. Arguably, the state is acting against the interests of cities and their residents.¹⁰²³ The analysis of the bills in the data set featured in Chapter III suggests that more states are doing the same. Instead of fulfilling the right to local government, political partisanship has been prioritized to the detriment of local democracy. This leaves pressing urban issues, such as gun violence, unaddressed.

It is the conclusion of this dissertation that the U.S. Constitutional order is not correctly calibrated with the role of local governments as a primary service provider in mind. Arguably, the right to community self-government was historically recognized and was not surrendered or repudiated in the U.S. Constitution and still resides with the people. This recognition of local authority should expressly reside in the U.S. Constitution. However, this is an unlikely outcome. Political sectarianism and the over-prioritization of partisan purity make express recognition of local democracy in the Federal Constitution nearly impossible in the short term. At a minimum, the authority of local government should include the ability to regulate issues of local concern. The most likely avenue for this is the state courts. In the end, it will likely be the actions of a state court that starts the process toward the legal recognition of local democracy as an inherent right.

<https://www.urban.org/sites/default/files/publication/103422/do-the-effects-of-a-regulatory-patchwork-justify-state-preemption-of-local-law-0.pdf>, at vi.

¹⁰²³ States do have an interest in uniformity across their state. Professor Barry Friedman has argued that uniformity can be essential to the provision of certain public goods. See Barry Friedman, *Valuing Federalism*, 82 MINN. L. REV. 317, 406-7 (1997). However, in policy areas where the interests of urban and rural residents may not align, uniform approaches may not be fit for purpose.

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Appendix A: List of bills in data set

<u>Year</u>	<u>Bill</u>	<u>State</u>	<u>Sponsor party</u>	<u>House</u>	<u>Expands preempt.</u>	<u>Repeals preempt.</u>	<u>Limits preempt.</u>	<u>Hyper preempt</u>
2016	HB 758	MS	Republican	House	Yes	No	No	No
2016	SB 1330	PA	Republican	Senate	No	No	No	Yes
2016	HB 512	NH	Republican	House	Yes	No	No	Yes
2016	HB 561	MS	Democrat	House	No	No	Yes	No
2016	HB 568	VT	Democrat	House	No	No	Yes	No
2016	HB 566	VT	Democrat	House	No	No	Yes	No
2017	SB 74	CT	Republican	Senate	Yes	No	No	No
2017	SB1673	IL	Republican	Senate	Yes	No	No	No
2017	HB 614	MS	Republican	House	Yes	No	No	No
2017	HB 620	MS	Republican	House	Yes	No	No	No
2017	LC 1305	MT	Republican	House	No	No	No	No
2017	SB 89	SD	Republican	Senate	No	No	No	Yes
2017	SB 5	PA	Republican	Senate	No	No	No	Yes
2017	HB 1418	VA	Democrat	House	No	No	Yes	No
2018	SB 6146	WA	Democrat	Senate	No	Yes	No	No
2018	HB 2666	WA	Democrat	House	No	Yes	No	No
2018	SB 185	LA	Democrat	Senate	No	No	Yes	No
2018	HB 627	MS	Democrat	House	No	No	Yes	No
2018	HB 68	VA	Democrat	House	No	No	Yes	No
2018	SB 2822	RI	Democrat	Senate	No	Yes	No	No
2018	HB 7762	RI	Democrat	House	No	Yes	No	No
2018	HB 228	OH	Republican	House	Yes	No	No	Yes
2018	SB 1308	OK	Republican	Senate	Yes	No	No	No

2018	HB 1749	NH	Republican	House	Yes	No	No	Yes
2019	HB 1066	PA	Republican	House	Yes	No	No	Yes
2019	SB 531	PA	Republican	Senate	Yes	No	No	Yes
2019	HR 426	PA	Republican	House	No	No	No	Yes
2019	SB 775	OK	Republican	Senate	Yes	No	No	No
2019	HB 2546	OK	Republican	House	Yes	No	No	No
2019	HB 2547	OK	Republican	House	Yes	No	No	No
2019	SB 345	OK	Republican	Senate	Yes	No	No	No
2019	SB 12	OK	Republican	Senate	Yes	No	No	No
2019	SB 894	OK	Republican	Senate	Yes	No	No	Yes
2019	HB 2597	OK	Republican	House	Yes	No	No	No
2019	HB 5227	CT	Republican	House	Yes	No	No	No
2019	HB 3231	TX	Republican	House	Yes	No	No	Yes
2019	SB 1927	TX	Republican	Senate	Yes	No	No	Yes
2019	HB 524	MS	Republican	House	Yes	No	No	No
2019	HB 357	MT	Republican	House	Yes	No	No	No
2019	HB 325	MT	Republican	House	Yes	No	No	No
2019	HB 281	LA	Republican	House	Yes	No	No	No
2019	HB 3176	IL	Republican	House	Yes	No	No	No
2019	HB 274	IL	Republican	House	Yes	No	No	No
2019	SF 100	WY	Republican	Senate	No	No	No	No
2019	HB 178	OH	Republican	House	Yes	No	No	No
2019	SB 102	WI	Republican	Senate	Yes	No	No	No
2019	HB 740	PA	Democrat	House	No	No	Yes	No
2019	HB 2122	MA	Democrat	House	Yes	No	No	No
2019	HB 22	MS	Democrat	House	No	Yes	No	No
2019	AB 291	NV	Democrat	Senate	No	Yes	No	No

2019	HB 86	NC	Democrat	House	No	Yes	No	No
2019	HB 6069	FL	Democrat	House	No	Yes	No	No
2019	HB 6061	FL	Democrat	House	No	Yes	No	No
2019	SB 1532	FL	Democrat	Senate	No	Yes	No	No
2019	SB 1662	FL	Democrat	Senate	No	Yes	No	No
2019	HB 3449	IL	Democrat	House	Yes	No	No	No
2019	SB 4001	VA	Democrat	Senate	No	No	Yes	No
2019	HB 1374	WA	Democrat	House	No	Yes	No	No
2019	HB 4007	VA	Bi-Partisan	House	No	No	Yes	No
2020	AB 75	WI	Bi-Partisan	House	Yes	No	No	No
2020	HB 751	GA	Republican	House	Yes	No	No	Yes
2020	HB 1215	MS	Republican	House	Yes	No	No	No
2020	HB 140	LA	Republican	House	Yes	No	No	No
2020	HB 781	LA	Republican	House	Yes	No	No	No
2020	HB 865	LA	Republican	House	Yes	No	No	No
2020	HB 271	UT	Republican	House	Yes	No	No	Yes
2020	SB 1081	OK	Republican	Senate	Yes	No	No	No
2020	SB 1490	OK	Republican	Senate	Yes	No	No	Yes
2020	SB 1605	OK	Republican	Senate	Yes	No	No	Yes
2020	HB 2785	OK	Republican	House	Yes	No	No	Yes
2020	HB 3036	OK	Republican	House	Yes	No	No	Yes
2020	HB 2718	KS	Republican	House	Yes	No	No	No
2020	SB 245	KS	Republican	Senate	Yes	No	No	Yes
2020	HB 2425	KS	Republican	House	Yes	No	No	Yes
2020	HF 2502	IA	Republican	House	Yes	No	No	Yes
2020	HB 4376	WV	Republican	House	Yes	No	No	No
2020	SB 96	WV	Republican	Senate	Yes	No	No	No

2020	SB 531	PA	Republican	Senate	Yes	No	No	Yes
2020	SF 88	WY	Republican	Senate	Yes	No	No	No
2020	HB 180	WY	Republican	House	Yes	No	No	No
2020	HB 28	WY	Republican	House	Yes	No	No	No
2020	HF 3692	MN	Republican	House	Yes	No	No	Yes
2020	HB 4391	IL	Republican	House	Yes	No	No	No
2020	HB 4397	IL	Republican	House	Yes	No	No	No
2020	HB 296	AK	Republican	House	Yes	No	No	Yes
2020	SB 2614	TN	Republican	Senate	No	No	No	Yes
2020	HB 2536	TN	Republican	House	No	No	No	Yes
2020	SB 875	SC	Republican	Senate	Yes	No	No	No
2020	HB 4561	IL	Republican	House	Yes	No	No	No
2020	HB 4290	IL	Republican	House	Yes	No	No	No
2020	SB 35	VA	Democrat	Senate	No	No	Yes	No
2020	HB 421	VA	Democrat	House	No	No	Yes	No
2020	HB 147	LA	Democrat	House	No	No	Yes	No
2020	SB 134	FL	Democrat	Senate	No	Yes	No	No
2020	HB 885	FL	Democrat	House	No	Yes	No	No
2020	HB 6009	FL	Democrat	House	No	Yes	No	No
2020	HB 3357	OK	Democrat	House	No	No	Yes	No
2020	SB 1538	OR	Democrat	Senate	No	No	Yes	No

Appendix B: Bill sponsors

Mississippi HB 561 (2016)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Earle Banks		Democrat	67th House District

Mississippi HB 758 (2016)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Joey Hood		Republican	35th House District
	Ken Morgan	Republican	100th House District
	Randall Patterson	Republican	115 House District
	Nolan Mettetal	Republican	100th House District
	Jim Beckett	Republican	23rd House District
	Ray Rogers	Republican	61st House District
	Mark Tullos	Republican	79th House District
	Karl Oliver	Republican	46th House District
	Mark Baker	Republican	74th House District
	Bill Kinkade	Republican	52nd House District
	Jeff Hale	Republican	24th House District
	Randy Rushing	Republican	78th House District
	Mark Formby	Republican	108th House District
	Gary Chism	Republican	37th House District
	Larry Bird	Republican	104th House District
	Sam C. Mims V	Republican	97th House District

	Dana Criswell	Republican	6th House District
	Patricia H. Willis	Republican	95th House District
	Becky Currie	Republican	92nd House District
	Randy P. Boyd	Republican	19th House District
	Ashley Henley	Republican	40th House District
	Joel Bomgar	Republican	58th House District
	Steve Hopkins	Republican	7th House District
	Tom Weathersby	Republican	62nd House District
	John L. Moore	Republican	60th House District
	William Shirley	Republican	84th House District
	Gary V. Staples	Republican	88th House District
	Carolyn Crawford	Republican	121st House District
	Deborah Butler Dixon	Democrat	63rd House District
	Steven A. Horne	Republican	81st House District
	Chris Brown	Republican	20th House District
	Timmy Ladner	Republican	93rd House District

SB 1330 (2016)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Sponsor party</u>	<u>District</u>
Richard Allaway		Republican	33rd Senate District
	Joe Scarnati	Republican	25th Senate District
	Guy Reschenthaler	Republican	37th Senate District
	Donald White	Republican	41st Senate District
	John Eichelberger	Republican	30th Senate District
	Scott Wagner	Republican	28th Senate District

	Michael Folmer	Republican	48th Senate District
	Camera Bartollota	Republican	46th Senate District
	Randy Vulakovich	Republican	38th Senate District
	Scott Hutchinson	Republican	21st Senate District
	John Rafferty	Republican	44th Senate District
	John Gordner	Republican	27th Senate District
	Ryan Aument	Republican	36th Senate District
	Bob Mensch	Republican	24th Senate District
	Gene Yaw	Republican	23rd Senate District
	Elder Vogel	Republican	47th Senate District
	Patrick Stefano	Republican	42nd Senate District
	James Brewster	Republican	45th Senate District
	Kim Ward	Republican	39th Senate District
	Michele Brooks	Republican	50th Senate District

Vermont HB 568 (2016) and HB 566 (2016)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Joanna Cole		Democrat	Chittenden-6-1 House District
	Clement Bissonnette	Democrat	Chittenden-6-7 House District
	Johanna Donovan	Democrat	Chittenden-6-5 House District
	Jill Krowinski	Democrat	Chittenden-6-3 House District
	Curtis McCormack	Democrat	Chittenden-6-3 House District
	Jean O'Sullivan	Democrat	Chittenden-6-2 House District
	Christopher Pearson	Progressive	Chittenden-6-4 House District
	Barbara Rachelson	Democrat	Chittenden-6-6 House District

	Kesha Ram	Democrat	Chittenden-6-4 House District
	Mary Sullivan	Democrat	Chittenden-6-5 House District
	Kurt Wright	Republican	Chittenden-6-1 House District
	Diana Gonzalez	Progressive	Chittenden-6-7 House District
	Steven Berry	Democrat	Bennington-4 House District
	Mollie Burke	Progressive	Windham-2-2 House District
	Alison Clarkson	Democrat	Windsor-5 House District
	Rachael Fields	Democrat	Bennington-2-1 House District
	Patsy French	Democrat	Oregon-Washington-Addison
	William Frank	Democrat	Chittenden-3 House District
	Warren Kitzmiller	Democrat	Washington-4 House District
	Gabrielle Lucke	Democrat	Windham-4-2 House District
	James Masland	Democrat	Windsor-Orange-2 House District
	James McCullough	Democrat	Chittenden-2 House District
	Alice Miller	Democrat	Bennington-3 House District
	Marjorie Ryerson	Democrat	Oregon-Washington-Addison
	Thomas Stevens	Democrat	Washington-Chittenden House District
	George Till	Democrat	Chittenden-3 House District
	Tommy Walz	Democrat	Washington-3 House District
	Michael Yantachka	Democrat	Chittenden-4-1 House District
	Michael Mrowicki	Democrat	Windham-4 House District

Note: James Masland only sponsored HB 568

New Hampshire HB 512 (2016)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Shari LeBreche		Republican	HD-06-Bel

	James Spillane	Republican	HD-02-Roc
	Alfred Baldasaro	Republican	HD-05-Roc
	John Burt	Republican	HD-39-Hil
	Deborah Wheeler	Democrat	HD-06-Mer
	John Balcom	Republican	HD-21-Hil
	Sam Cataldo	Republican	HD-03-Str
	Brian Gallagher	Republican	HD-04-Bel

Illinois HB 1673 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Dale Fowler		Republican	59th Senate District

Connecticut SB 74 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
John Kissel		Republican	7th Senate District
	Craig Fishbein	Republican	90th House District

Mississippi HB 614 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Karl Oliver		Republican	46th House District
	Richard Bennett	Republican	120th House District
	Robert Foster	Republican	28th House District
	Steve Massengill	Republican	13th House District

	Jody Steverson	Republican	4th House District
	Shane Aguirre	Republican	17th House District
	Randy P. Boyd	Republican	19th House District
	John Thomas Lamar III	Republican	8th House District
	Doug McLeod	Republican	107th House District
	Brad Touchstone	Republican	101st House District
	Shane Barnett	Republican	86th House District
	Deborah Butler Dixon	Democrat	63rd House District
	Vince Mangold	Republican	53rd House District
	Randy Rushing	Republican	78th House District
	Jason White	Republican	48th House District

Mississippi HB 620 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Randy Rushing		Republican	78th House District

Montana LC 1305 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Mike Hopkins		Republican	92nd House District

South Dakota SB 89 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Stace Nelson		Republican	19th Senate District

Tim Goodwin		Republican	30th House District
	Brock Greenfield	Republican	2nd Senate District
	Phil Jensen	Republican	33rd Senate District
	Jeff Monroe	Republican	24th Senate District
	Lance Russell	Republican	30th Senate District
	Jim Stalzer	Republican	11th Senate District
	Thomas Brunner	Republican	29th House District
	Drew Dennert	Republican	3rd House District
	Lyni DiSanto	Republican	35th House District
	Dan Kaiser	Republican	3rd House District
	Oren L. Lesmeister	Republican	28A House District
	Sam Marty	Republican	28B House District
	Elizabeth May	Republican	27th House District

Pennsylvania SB 5 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Wayne Langerholc		Republican	35th Senate District
	Richard Allaway	Republican	33rd Senate District
	Camera Bartolotta	Republican	46th Senate District
	John R. Gordner	Republican	27th Senate District
	John H. Eichelberger	Republican	30th Senate District
	Mike Folmer	Republican	48th Senate District
	John C. Rafferty Jr	Republican	44th Senate District
	Patrick J. Stefano	Republican	32nd Senate District
	Scott Martin	Republican	30th Senate District

	Scott E. Hutchinson	Republican	21st Senate District
	Joseph B. Scarnati III	Republican	25th Senate District
	Kim L. Ward	Republican	39th Senate District
	Ryan P. Aument	Republican	36th Senate District
	Randy Vulakovich	Republican	38th Senate District
	Gene Yaw	Republican	23rd Senate District
	Mario M. Scavello	Republican	40th Senate District
	Guy Reschenthaler	Republican	37th Senate District
	David G. Argall	Republican	29th Senate District
	John DiSanto	Republican	15th Senate District
	Scott Wagner	Republican	28th Senate District
	Bob Mensch	Republican	24th Senate District
	Donald C. White	Republican	41st Senate District
	James R. Brewster	Democrat	45th Senate District
	Elder A. Vogel Jr	Republican	47th Senate District
	Mike Regan	Republican	31st Senate District
	Michele Brooks	Republican	50th Senate District

Virginia HB 1418 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Delores McQuinn		Democrat	70th House District
	Lamont Bagby	Democrat	74th House District
	Kay Kory	Democrat	38th House District
	Barbara Favola	Democrat	31st Senate District

Washington SB 6146 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Rebecca Saldana		Democrat	37th Senate District
	Jamie Pederson	Democrat	43rd Senate District
	Karen Keiser	Democrat	33rd Senate District
	Reuven Carlye	Democrat	36th Senate District
	David Frockt	Democrat	46th Senate District
	Sam Hunt	Democrat	22nd Senate District
	Lisa Wellman	Democrat	41st Senate District
	Pattie Kuderer	Democrat	48th Senate District

Washington HB 2666 (2017)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Nicole Macri		Democrat	43rd House District
	Sharon Wylie	Democrat	49th House District
	Javier Valdez	Democrat	46th House District
	Gerry Pollet	Democrat	46th House District
	Sherry Appleton	Democrat	23rd House District
	Zack Hudgins	Democrat	11st House District
	Laurie Dolan	Democrat	22nd House District
	Cindy Ryu	Democrat	32nd House District
	Eileen Cody	Democrat	34th House District
	Strom Peterson	Democrat	21st House District
	Laurie Jinkins	Democrat	27th House District
	June Robinson	Democrat	38th House District

	Gael Tarleton	Democrat	36th House District
	Tana Senn	Democrat	41st House District
	Mia Gregerson	Democrat	33rd House District
	Joan McBride	Democrat	48th House District
	Beth Doglio	Democrat	22nd House District
	Vandana Slatter	Democrat	48th House District
	Sharon Tomiko Santos	Democrat	37th House District

Mississippi HB 627 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Earle Banks		Democrat	67th House District

Virginia HB 68 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Delores L. McQuinn		Democrat	70th House District
	Dawn Adams	Democrat	68th House District
	Mark Levin	Democrat	45th House District
	Alfonso Lopez	Democrat	49th House District
	Marcus Simon	Democrat	53rd House District
	Kathleen Murphy	Democrat	34th House District
	Lamont Bagby	Democrat	74th House District
	Jennifer Boysko	Democrat	33rd House District
	Betsy Carr	Democrat	69th House District
	Patrick Hope	Democrat	47th House District

	Kenneth Plum	Democrat	36th House District
	Roslyn Tyler	Democrat	75th House District
	Paul Krizek	Democrat	44th House District
	Marcia Price	Democrat	95th House District

Rhode Island SB 2822 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jeanine Calkin		Democrat	30th Senate District
Ana Quezada		Democrat	2nd Senate District
Joshua Miller		Democrat	28th Senate District
Gayle Goldin		Democrat	3rd Senate District
Maryellen Goodwin		Democrat	1st Senate District

Rhode Island HB 7762 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
John Lombardi		Democrat	8th House District
Scott Slater		Democrat	10th House District
Teresa Anne Tanzi		Democrat	34th House District
J. Aaron Regunberg		Democrat	4th House District
Marcia Ranglin-Vassell		Democrat	5th House District

Louisiana SB 185 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Wesley Bishop		Democrat	4th Senate District

Ohio HB 228 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Terry Johnson		Republican	90th House District
Sarah LaTourette		Republican	76th House District
	Niraj Antani	Republican	42nd House District
	Kevin Bacon	Republican	3rd Senate District
	John Becker	Republican	65th House District
	Andy Brenner	Republican	19th Senate District
	Dave Burke	Republican	26th Senate District
	Jim Butler	Republican	41st House District
	Rick Carfagna	Republican	68th House District
	Bill Coley II	Republican	4th Senate District
	Bill Dean	Republican	74th House District
	Mike Duffey	Republican	21st House District
	Keith Faber	Republican	84th House District
	Theresa Gavarone	Republican	2nd Senate District
	Tim Ginter	Republican	5th House District
	Doug Green	Republican	66th House District
	Bob Hackett	Republican	10th Senate District
	Christina Hagan	Republican	50th House District
	Mike Henne	Republican	40th House District

	Frank Hoagland	Republican	30th Senate District
	Ron Hood	Republican	78th House District
	Jim Hoops	Republican	81st House District
	Jay Hottinger	Republican	31st Senate District
	Larry Householder	Republican	72nd House District
	Matt Huffman	Republican	12th Senate District
	Kris Jordan	Republican	67th House District
	Candice Keller	Republican	53rd House District
	Darrell Kick	Republican	70th House District
	Kyle Koehler	Republican	79th House District
	Scott Lipps	Republican	62nd House District
	Riordan McClain	Republican	87th House District
	Darrell Merrin	Republican	47th House District
	Larry Obhof	Republican	22nd Senate District
	Tom Patton	Republican	7th House District
	Dorothy Pelanda	Republican	86th House District
	Rick Perales	Republican	73rd House District
	Bob Peterson	Republican	17th Senate District
	Wes Retherford	Republican	51st House District
	Craig Riedel	Republican	82nd House District
	Kristina Roegner	Republican	27th Senate District
	Mark Romanchuk	Republican	2nd House District
	Tim Schaffer	Republican	20th Senate District
	Kirk Schuring	Republican	29th Senate District
	Bill Seitz	Republican	30th House District
	Marilyn Slaby	Republican	38th House District

	Ryan Smith	Republican	93rd House District
	Robert Sprague	Republican	83rd House District
	Dick Stein	Republican	57th House District
	Lou Terhar	Republican	8th Senate District
	Andy Thompson	Republican	95th House District
	Joe Uecker	Republican	14th Senate District
	A. Nino Vitale	Republican	85th House District
	Scott Wiggam	Republican	1st House District
	Shane Wilkin	Republican	91st House District
	Ron Young	Republican	61st House District

New Hampshire HB 1749 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
J.R. Hoell		Republican	Merrimack 23 House District
	John Burt	Republican	Hillsborough 39 House District
	James McConnell	Republican	Cheshire 12 House District
	Ed Comeau	Republican	Carroll 5 House District
	Daniel Itse	Republican	Rockingham 10 House District
	James Spillane	Republican	Rockingham 2 House District
	Scott Wallace	Republican	Rockingham 12 House District
	Jeanine Notter	Republican	Hillsborough 21 House District
	Michael Sylvia	Republican	Belknap 6 House District
	Alfred Baldasaro	Republican	Rockingham 5 House District

Oklahoma SB 1308 (2018)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Joseph Silk		Republican	5th Senate District

Wisconsin SB 105 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
David Craig		Republican	28th Senate District
Lena Taylor		Democrat	4th Senate District
André Jacque		Republican	1st Senate District
Chris Kapenga		Republican	33rd Senate District
Dale Kooyenga		Republican	5th Senate District
Stephen Nass		Republican	11th Senate District
Janis Ringhand		Democrat	15th Senate District
Duey Stroebel		Republican	20th Senate District
Roger Roth		Republican	19th Senate District
	Rob Strafsholt	Republican	29th Assembly District
	Christine Sinicki	Democrat	20th Assembly District
	Mark Born	Republican	39th Assembly District
	Janel Brandtjen	Republican	22nd Assembly District
	Robert Brooks	Republican	60th Assembly District
	Cindi Duchow	Republican	99th Assembly District
	James Edming	Republican	87th Assembly District
	Rick Gundrum	Republican	58th Assembly District
	Cody Horlacher	Republican	33rd Assembly District
	John Jagler	Republican	37th Assembly District
	Scott Krug	Republican	72nd Assembly District

	Mike Kuglitsch	Republican	84th Assembly District
	Bob Kulp	Republican	69th Assembly District
	John Macco	Republican	88th Assembly District
	Gae Magnafici	Republican	28th Assembly District
	David Murphy	Republican	56th Assembly District
	Jeffery Mursau	Republican	36th Assembly District
	Jim Ott	Republican	23rd Assembly District
	John Plumer	Republican	42nd Assembly District
	Treig Pronschinske	Republican	92nd Assembly District
	Romaine Quinn	Republican	75th Assembly District
	Tim Ramthun	Republican	59th Assembly District
	Mike Rohrkaste	Republican	55th Assembly District
	Joe Sanfelippo	Republican	15th Assembly District
	Michael Schraa	Republican	53rd Assembly District
	John Spiros	Republican	86th Assembly District
	Ken Schowronski	Republican	82nd Assembly District
	David Steffen	Republican	4th Assembly District
	Lisa Subeck	Democrat	78th Assembly District
	Jeremy Thiesfeldt	Republican	52nd Assembly District
	Paul Tittl	Republican	25th Assembly District
	Travis Tranel	Republican	49th Assembly District
	Ron Tusler	Republican	3rd Assembly District
	Don Vruwink	Democrat	43rd Assembly District
	Chuck Wichgers	Republican	83rd Assembly District
	Shannon Zimmerman	Republican	30th Assembly District

Pennsylvania SB 531 (2019)

Wayne Langerholc		Republican	35th Senate District
	Joseph Scarnati	Republican	25th Senate District
	Michael Folmer	Republican	48th Senate District
	Elder Vogel Jr	Republican	47th Senate District
	Camera Bartolotta	Republican	46th Senate District
	Kristin Phillips-Hill	Republican	28th Senate District
	Scott Martin	Republican	13th Senate District
	John Gordner	Republican	27th Senate District
	Kim War	Republican	39th Senate District
	Gene Yaw	Republican	23rd Senate District
	Giovani DiSanto	Republican	15th Senate District
	Scott Hutchinson	Republican	21st Senate District
	Michael Regan	Republican	31st Senate District
	James Brewster	Democrat	45th Senate District
	Ryan Aument	Republican	36th Senate District
	Robert Mensch	Republican	24th Senate District
	Patrick Stefano	Republican	32nd Senate District
	Mario Scavello	Republican	40th Senate District
	Judith Ward	Republican	30th Senate District

Pennsylvania HB 1066 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Mark Keller		Republican	86th House District
	Daryl Metcalfe	Republican	12th House District
	Stephen Barrar	Republican	160th House District

	Aaron Bernstine	Republican	10th House District
	Martin Causer	Republican	67th House District
	Jim Cox	Republican	129th House District
	Russ Diamond	Republican	102nd House District
	Matthew Dowling	Republican	51st House District
	George Dunbar	Republican	56th House District
	Torren Ecker	Republican	193rd House District
	Joseph Emrick	Republican	137th House District
	Garth Everett	Republican	84th House District
	Melinda Fee	Republican	37th House District
	Jonathan Fritz	Republican	111th House District
	Matthew Gabler	Republican	75th House District
	Barbara Gleim	Republican	199th House District
	Neal Goodman	Democrat	123rd House District
	Seth Grove	Republican	196th House District
	Johnathan Hershey	Republican	82nd House District
	David Hickernell	Republican	98th House District
	Rich Irvin	Republican	81st House District
	Robert James	Republican	64th House District
	Mike Jones	Republican	93rd House District
	Barry Jozwiak	Republican	5th House District
	Robert Kauffman	Republican	89th House District
	Dawn Keefer	Republican	92nd House District
	Fred Keller	Republican	85th House District
	Kate Klunk	Republican	169th House District
	William Kortz	Democrat	38th House District
	Ryan Mackenzie	Republican	134th House District

	David Maloney	Republican	130th House District
	James Marshall	Republican	14th House District
	Kurt Masser	Republican	107th House District
	David Millard	Republican	109th House District
	Brett Miller	Republican	41st House District
	Dan Moul	Republican	91st House District
	Eric Nelson	Republican	57th House District
	Tedd Nesbit	Republican	8th House District
	Donna Oberlander	Republican	63rd House District
	Michael Peifer	Republican	139th House District
	Tina Pickett	Republican	110th House District
	Jeffrey Pyle	Republican	60th House District
	Jack Rader	Republican	176th House District
	Kathy Rapp	Republican	65th House District
	Harry Readshaw	Democrat	36th House District
	Bradley Roae	Republican	6th House District
	Greg Rothman	Republican	87th House District
	Stanley Saylor	Republican	94th House District
	Paul Schemel	Republican	90th House District
	Curtis Sonney	Republican	4th House District
	Jesse Topper	Republican	78th House District
	Ryan Warner	Republican	52nd House District
	Parke Wentling	Republican	17th House District
	Jeff Wheeland	Republican	83rd House District
	David Zimmerman	Republican	99th House District
	Louis Schmitt	Republican	79th House District
	Sheryl Delozier	Republican	88th House District

	Keith Greiner	Republican	43rd House District
	Cris Dush	Republican	66th House District
	Pam Snyder	Democrat	50th House District
	Craig Staats	Republican	145th House District
	Justin Walsh	Republican	58th House District
	Joseph Petrarca	Democrat	55th House District
	Susan Helm	Republican	104th House District
	Donald Cook	Republican	49th House District
	Michael Reese	Republican	59th House District
	Jason Ortitay	Republican	46th House District
	Stephanie Borowicz	Republican	76th House District
	James Rigby	Republican	71st House District
	Frank Burns	Democrat	72nd House District
	Joshua Kail	Republican	15th House District
	James Gregory	Republican	80th House District
	Mark Gillen	Republican	128th House District
	Timothy O'Neal	Republican	48th House District
	Francis Ryan	Republican	101st House District
	Justin Simmons	Republican	131st House District
	Gary Day	Republican	187th House District
	Lynda Schlegel Culver	Republican	108th House District
	Marci Mustello	Republican	11th House District
	David Rowe	Republican	85th House District
	Clinton Owlett	Republican	68th House District
	Michael Puskaric	Republican	39th House District
	Carl Metzgar	Republican	69th House District

Pennsylvania HR 426 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Daryl Metcalfe		Republican	12th House District
	Francis Ryan	Republican	101st House District
	Seth Groe	Republican	196th House District
	Aaron Bernstine	Republican	10th House District
	Donald Cook	Republican	49th House District
	Cris Dush	Republican	66th House District
	Stephanie Borowicz	Republican	76th House District
	Dan Moul	Republican	91st House District
	Curtis Sonney	Republican	4th House District
	Eric Nelson	Republican	57th House District
	Rich Irvin	Republican	81st House District
	Jerome Knowles	Republican	124th House District

Pennsylvania HB 740 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Brian Kirkland		Democrat	169th House District
	Michael Schlossberg	Democrat	132nd House District
	Mary Isaacson	Democrat	175th House District
	Stephen Kinsey	Democrat	201st House District
	Mary Jo Daley	Democrat	148th House District
	Donna Bullock	Democrat	195th House District
	Isabella Fitzgerald	Democrat	203rd House District
	Joanne McClinton	Democrat	191st House District

	Ben Sanchez	Democrat	153rd House District
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Oklahoma SB 345 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Casey Murdock		Republican	27th Senate District
Daniel Pae		Republican	62nd House District
	Trey Caldwell	Republican	63rd House District

Oklahoma SB 894 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Nathan Dahm		Republican	33rd Senate District

Oklahoma HB 2547 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Sean Roberts		Republican	36th House District
Michael Bergstrom		Republican	1st Senate District
	Dustin Roberts	Republican	21st House District
	Justin Humphrey	Republican	19th House District
	Kevin McDugle	Republican	12th House District

Oklahoma HB 2546 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Sean Roberts		Republican	36th House District

Oklahoma HB 2597 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jon Echols		Republican	90th House District
Kim David		Republican	18th Senate District
	Sean Roberts	Republican	36th House District
	Dustin Roberts	Republican	21st House District
	Kevin West	Republican	54th House District
	Nathan Dahm	Republican	33rd Senate District
	Casey Murdock	Republican	27th Senate District
	Paul Scott	Republican	43rd Senate District
	Joe Newhouse	Republican	25th Senate District
	Joseph Silk	Republican	5th Senate District
	Greg Treat	Republican	47th Senate District
	Mark Allen	Republican	4th Senate District
	Gary Mize	Republican	31st House District
	Denise Crosswhite Hader	Republican	41st House District
	Tammy Townley	Republican	48th House District
	Kevin McDugle	Republican	12th House District
	Tom Gann	Republican	8th House District
	Jay Steagall	Republican	43rd House District
	Anthony Moore	Republican	57th House District
	Justin Humphrey	Republican	19th House District
	Mark McBride	Republican	53rd House District
	Toni Hassenbach	Republican	65th House District

	Kenton Patzkowsky	Republican	61st House District
	Rusty Cornwell	Republican	6th House District
	Kyle Hilbert	Republican	29th House District
	Dean Davis	Republican	98th House District
	Johnny Tadlock	Republican	1st House District
	Todd Russ	Republican	55th House District
	Avery Frix	Republican	13th House District
	Mark Lawson	Republican	30th House District
	Lonnie Sims	Republican	68th House District
	Charles McCall	Republican	22nd House District
	Terry O'Donnell	Republican	23rd House District
	Zack Taylor	Republican	28th House District
	John Pfeiffer	Republican	38th House District
	Chris Sneed	Republican	14th House District

Oklahoma SB 775 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Paul Scott		Republican	43rd Senate District

Oklahoma SB 12 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Nathan Dahm		Republican	33rd Senate District
Sean Roberts		Republican	36th House District

Illinois HB 3176 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Patrick Windhorst		Republican	118th House District

Illinois HB 3449 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jerry Costello		Democrat	116th House District

Illinois HB 274 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Steven Reick		Republican	63rd House District
	Patrick Windhorst	Republican	118th House District
	Tony McCombie	Republican	71st House District
	Andrew Chesney	Republican	89th House District
	Michael Unes	Republican	91st House District
	Chris Miller	Republican	110th House District
	Margo McDermed	Republican	37th House District
	Lance Yednock	Democrat	76th House District

Virginia HB 4007 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Glenn Davis		Republican	84th House District
	Kelly Convirs-Fowler	Democrat	21st House District

Virginia SB 4001 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
John Edwards		Democrat	21st Senate District
	Jennifer Boysko	Democrat	3rd Senate District

Montana HB 357 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Matt Regier		Republican	4th House District

Montana HB 325 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Matt Regier		Republican	4th House District

Florida HB 6069 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Richard Stark		Democrat	104th House District

Florida HB 6061 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Ben Diamond		Democrat	68th House District

Florida SB 1532 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Darryl Rouson		Democrat	19th Senate District

Florida SB 1662 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Annette Taddeo		Democrat	40 th Senate District

Mississippi HB 524 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Randall Rushing		Republican	78th House District
	Shane Barnett	Republican	86th House District
	William Shirley	Republican	84th House District

Mississippi HB 22 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Earle Banks		Democrat	67th House District

Connecticut HB 5227 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
House Judiciary Committee			

	Brian Lanoue	Republican	45th House District
	Craig Fishbein	Republican	90th House District
	Mike France	Republican	42nd House District
	John Kissel	Republican	7th Senate District
	Rick Hayes	Republican	51st House District
	Douglas Dubitsky	Republican	47th House District
	Gale Mastrofrancesco	Republican	80th House District
	Robert Sampson	Republican	16th Senate District
	Anne Dauphinais	Republican	44th House District
	Ben McGorty	Republican	122nd House District

Texas HB 3231 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Travis Clardy		Republican	11th House District
Matt Krause		Republican	93rd House District
Trent Ashby		Republican	57th House District
Cole Hefner		Republican	5th House District
Pat Fallon		Republican	30th Senate District
	Bob Hall	Republican	2nd Senate District
	Charles Anderson	Republican	56th House District
	Stan Lambert	Republican	71st House District
	Tom Oliverson	Republican	130th House District
	Valoree Swanson	Republican	150th House District

Texas SB 1927 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Pat Fallon		Republican	30th Senate District

Massachusetts HB 2122 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
David Robertson		Democrat	19th Middlesex House District
	Donald Berthiaume	Republican	5th Worcester House District
	Shaunna O'Connell	Republican	3rd Bristol House District
	Timothy Whelan	Republican	1st Barnstable House District
	Michael Brady	Democrat	2nd Plymouth House District
	Russell Holmes	Democrat	6th Suffolk House District
	Bradley Jones	Republican	20th Middlesex House District

Nevada AB 291 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Sandra Juaregui		Democrat	41 st Assembly District

Louisiana HB 281 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Blake Miguez		Republican	49th House District

North Carolina HB 86 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Christy Clark		Democrat	98th House District
Marcia Morey		Democrat	30th House District
Mary Harrison		Democrat	61st House District
Shelly Willingham		Democrat	23rd House District
	Johnnie Autry	Democrat	100th House District
	Cecil Brockman	Democrat	60th House District
	Deb Butler	Democrat	18th House District
	Carla Cunningham	Democrat	106th House District
	Allison Dahle	Democrat	11th House District
	Susan Fisher	Democrat	114th House District
	Rosa Gill	Democrat	33rd House District
	Zack Forde-Hawkins	Democrat	31st House District
	Verla Insko	Democrat	56th House District
	Nasif Majeed	Democrat	99th House District
	David Martin	Democrat	34th House District
	Amos Quick	Democrat	58th House District
	Kandie Smith	Democrat	8th House District
	Evelyn Terry	Democrat	71st House District

Wyoming SF 100 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Mark Jennings		Republican	30th House District
David Miller		Republican	55th House District

Tim Salazar		Republican	34th House District
Wyatt Agar		Republican	20th Senate District
Dennis Biteman		Republican	21st Senate District
Anthony Bouchard		Republican	6th Senate District
Dan Dockstader		Republican	16th Senate District
Ogden Driskill		Republican	1st Senate District
Larry Hicks		Republican	11th Senate District
David Kinskey		Republican	22nd Senate District

Ohio HB 178 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Ron Hood		Republican	78th House District
	Brian Baldrige	Republican	90th House District
	John Becker	Republican	65th House District
	Louis Blessing	Republican	8th Senate District
	James Butler	Republican	41st House District
	Sara Carruthers	Republican	51st House District
	Jon Cross	Republican	83rd House District
	Bill Dean	Republican	74th House District
	Kris Jordan	Republican	19th Senate District
	Candice Keller	Republican	53rd House District
	Kyle Koehler	Republican	79th House District
	George Lang	Republican	52nd House District
	Scott Lipps	Republican	62nd House District
	Susan Manchester	Republican	84th House District

	Don Manning	Republican	59th House District
	Riordan McClain	Republican	87th House District
	Derek Merrin	Republican	47th House District
	Jena Powell	Republican	80th House District
	Craig Riedel	Republican	82nd House District
	Mark Romanchuk	Republican	2nd House District
	Timothy Schaffer	Republican	77th House District
	Ryan Smith	Republican	93rd House District
	Todd Smith	Republican	43rd House District
	Nino Vitale	Republican	85th House District
	Scott Wiggam	Republican	1st House District
	Shane Wilkin	Republican	91st House District
	Paul Zeltwanger	Republican	54th House District

Washington HB 1374 (2019)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Nicole Macri		Democrat	43rd House District
Laurie Jenkins		Democrat	27th House District
Tim Ormsby		Democrat	3rd House District
Beth Doglio		Democrat	22nd House District
Eileen Cody		Democrat	34th House District
Jake Fey		Democrat	27th House District
Vandana Slatter		Democrat	44th House District
Lauren Davis		Democrat	32nd House District
Noel Frame		Democrat	36th House District

Laurie Dolan		Democrat	22nd House District
Joe Fitzgibbon		Democrat	34th House District
Sherry Appleton		Democrat	23rd House District
Marcus Riccelli		Democrat	3rd House District
Javier Valdez		Democrat	46th House District
Sharon Tomiko Santos		Democrat	37th House District

Georgia HB 571 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Ken Pullin		Republican	131st House District
Kevin Cooke		Republican	18th House District
Matt Gurtler		Republican	8th House District
Colton Moore		Republican	1st House District
Joseph Gullet		Republican	19th House District
Phillip Singleton		Republican	71st House District

Illinois HB 4290 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Steve Reick		Republican	63rd House District
Daniel Swanson		Republican	74th House District
Terri Bryant		Republican	115th House District
Margo McDermed		Republican	37th House District
Allen Skillicorn		Republican	66th House District

Illinois HB 4391 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Patrick Windhorst		Republican	118th House District
	Terri Bryant	Republican	58th Senate District
	Dan Caulkins	Republican	101st House District
	Michael Marron	Republican	104th House District
	Dan Brady	Republican	105th House District
	Lindsay Parkhurst	Republican	79th House District

Illinois HB 4561 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Allen Skillicorn		Republican	66th House District

Illinois HB 4397 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Patrick Windhorst		Republican	118th House District
	Terri Bryant	Republican	115th House District
	Randy Frese	Republican	94th House District
	Michael Marron	Republican	104th House District
	Dan Bradley	Republican	105th House District
	Lindsay Parkhurst	Republican	79th House District

South Carolina SB 875 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Danny Verdin		Republican	9th Senate District

Minnesota HF 3692 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jeremy Munson		Republican	23B House District
Steve Drazkowski		Republican	21B House District
Tim Miller		Republican	17A House District
John Poston		Republican	9A House District
John Heinrich		Republican	35A House District
Brian Johnson		Republican	32A House District
Eric Lucero		Republican	30B House District
Carl Bahr		Republican	31B House District

Tennessee HB 2536 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Clay Doggett		Republican	70th House District
David Byrd		Republican	71st House District
Jay Reedy		Republican	74th House District
Bruce Griffey		Republican	75th House District
James Van Huss		Republican	6th House District
Debra Moody		Republican	81st House District
Timothy Hill		Republican	3rd House District

Jimmy Eldridge		Republican	73rd House District
Sabi Kumar		Republican	66th House District
Jerry Sexton		Republican	35th House District
Chris Todd		Republican	73rd House District

Tennessee SB 2614 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Joey Hensley		Republican	28th Senate District

Kansas HB 2718 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Blake Carpenter		Republican	81st House District
Committee on Federal and State Affairs			

Kansas HB 2425 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Michael Houser		Republican	1st House District

Kansas SB 245 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Richard Hildebrandt		Republican	13th Senate District

Louisiana HB 781 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Blake Miguez		Republican	49th House District
	Beryl Amadée	Republican	51st House District
	Tony Bacala	Republican	59th House District

Louisiana HB 865 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Beryl Amadée		Republican	51st House District

Louisiana HB 140 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Blake Miguez		Republican	49th House District
	Beryl Amadée	Republican	51st House District
	Tony Bacala	Republican	59th House District
	Beau Beaulieu	Republican	48th House District
	Ryan Bourriaque	Republican	47th House District
	Rhonda Butler	Republican	38th House District

	R. Dewith Carrier	Republican	32nd House District
	Mack Cormier	Democrat	105th House District
	Raymond Crews	Republican	8th House District
	Phillip DeVillier	Republican	41st House District
	Daryl Deshotel	Republican	28th House District
	Mary DuBuisson	Republican	90th House District
	Michael Echols	Republican	14th House District
	Kathy Edmonston	Republican	88th House District
	Julie Emerson	Republican	39th House District
	Les Farnum	Republican	33rd House District
	Gabe Firment	Republican	22nd House District
	Bryan Fontenot	Republican	55th House District
	Larry Frieman	Republican	74th House District
	Foy Gadberry	Republican	15th House District
	Ray Garofalo	Republican	103rd House District
	Jonathan Goudeau	Republican	31st House District
	Lance Harris	Republican	25th House District
	Valarie Hodges	Republican	64th House District
	Dodie Horton	Republican	9th House District
	Mike Huval	Republican	46th House District
	Barry Ivey	Republican	65th House District
	Mike Johnson	Republican	27th House District
	C. Travis Johnson	Democrat	21st House District
	Danny McCormick	Republican	1st House District
	Jack McFarland	Republican	13th House District
	Scott McKnight	Republican	68th House District
	Buddy Mincey	Republican	71st House District

	Charles Owen	Republican	30th House District
	Bob Owen	Republican	76th House District
	Thomas Pressly	Republican	6th House District
	Neil Riser	Republican	20th House District
	Troy Romero	Republican	37th House District
	Rodney Schamerhorn	Republican	24th House District
	Alan Seabaugh	Republican	5th House District
	John Stefanski	Republican	42nd House District
	Christopher Turner	Republican	12th House District
	Bill Wheat	Republican	73rd House District
	Mark Wright	Republican	77th House District

Louisiana HB 147 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jason Hughes		Democrat	100th House District

Florida HB 885 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Cindy Polo		Democrat	103rd House District
	Carlos Guillermo Smith	Democrat	49th House District
	Javier Hernandez	Democrat	113th House District

Florida HB 6609 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Dan Daley		Democrat	97th House District
Dotie Joseph		Democrat	108th House District
	Richard Stark	Democrat	104th House District
	Carlos Guillermo Smith	Democrat	49th House District
	Cindy Polo	Democrat	103rd House District

Florida SB 134 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Annette Taddeo		Democrat	40th Senate District
	Jose Javier Rodriquez	Democrat	37th Senate District

Virginia SB 35 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Scott Surovell		Democrat	36th Senate District
Barbara Favola		Democrat	31st Senate District
John S. Edwards		Democrat	21st Senate District
R. Creigh Deeds		Democrat	25th Senate District
	Jennifer Boysko	Democrat	33rd Senate District
	Adam Ebbin	Democrat	30th Senate District
	Jennifer McClellan	Democrat	9th Senate District
	Joseph Morrissey	Democrat	16th Senate District

Virginia HB 421 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Marcia Price		Democrat	95th House District
Jennifer Boykso		Democrat	33rd Senate District
	Betsy Carr	Democrat	69th House District
	Eileen Filler-Corn	Democrat	41st House District
	Patrick A. Hope	Democrat	47th House District
	Kaye Kory	Democrat	38th House District
	Mark Levine	Democrat	45th House District
	Alfonso Lopez	Democrat	49th House District
	Marcus B. Simon	Democrat	53rd House District

West Virginia SB 96 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Charles Trump		Republican	15th Senate District
	Sue Cline	Republican	9th Senate District
	Patricia Rucker	Republican	16th Senate District
	Michael Azinger	Republican	3rd Senate District
	Mark Maynard	Republican	6th Senate District
	Rollan Roberts	Republican	9th Senate District
	Dave Sypolt	Republican	14th Senate District
	Randy Smith	Republican	14th Senate District
	Bill Hamilton	Republican	11th Senate District
	Michael Romano	Democrat	12th Senate District
	Doug Facemire	Democrat	12th Senate District

West Virginia HB 4376 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Chris Phillips		Republican	47th House District
	Dean Jefferies	Republican	41st House District
	Amy Summers	Republican	49th House District
	Erikka Storch	Republican	3rd House District
	Joe Jefferies	Republican	22nd House District
	Larry Kump	Republican	59th House District
	Tom Fast	Republican	32nd House District
	Randy Swartzmiller	Democrat	1st House District
	Jason Barrett	Republican	61st House District
	Brent Boggs	Democrat	34th House District

Utah HB 271 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
A. Cory Maloy		Republican	6th House District
Curtis Bramble		Republican	16th Senate District

Alaska HB 296 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
David Eastman		Republican	10th House District

Oklahoma SB 1490 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Nathan Dahm		Republican	33rd Senate District

Oklahoma SB 1081 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Nathan Dahm		Republican	33rd Senate District
Jay Steagall		Republican	43rd House District
	Dustin Roberts	Republican	21st House District
	Sean Roberts	Republican	36th House District
	Chad Caldwell	Republican	40th House District
	Mark Lawson	Republican	30th House District
	Kevin West	Republican	54th House District
	Zack Taylor	Republican	28th Senate District
	Michael Bergstrom	Republican	1st Senate District
	Casey Murdock	Republican	27th Senate District
	David Bullard	Republican	6th Senate District
	Jim Grego	Republican	17th House District
	David Hardin	Republican	86th House District
	Brian Hill	Republican	47th House District
	Kenton Patzkowsky	Republican	61st House District
	David Smith	Republican	18th House District
	Brad Boles	Republican	51st House District

Oklahoma SB 1605 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
David Bullard		Republican	6th Senate District

Oklahoma HB 2785 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jim Olsen		Republican	2nd House District

Oklahoma HB 3036 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jim Olsen		Republican	2nd House District
Chuck Hall		Republican	20th Senate District

Oklahoma 3357 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jason Lowe		Democrat	97th House District

Wyoming SF 88 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Anthony Bouchard		Republican	6th Senate District
	Bo Biteman	Republican	21st Senate District

	Tom James	Republican	13rd Senate District
	Cheri Steinmetz	Republican	3rd Senate District
	Jim Blackburn	Republican	42nd House District
	Scott Clem	Republican	31st House District
	Roy Edwards	Republican	53rd House District
	Chuck Gray	Republican	57th House District
	Mark Jennings	Republican	30th House District
	Dan Laursen	Republican	25th House District
	Garry Piiparinen	Republican	49th House District
	Tim Salazar	Republican	26th House District
	Clarence Styvar	Republican	12th House District
	Richard Tass	Republican	40th House District

Wyoming HB 180 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Tim Salazar		Republican	26th House District
	Jim Blackburn	Republican	42nd House District
	Scott Clem	Republican	31st House District
	Roy Edwards	Republican	53rd House District
	Chuck Gray	Republican	57th House District
	Mark Jennings	Republican	30th House District
	Dan Laursen	Republican	25th House District
	Garry Piiparinen	Republican	49th House District
	Clarence Styvar	Republican	12th House District
	Richard Tass	Republican	40th House District

	Art Washut	Republican	36th House District
	Bo Biteman	Republican	21st Senate District
	Tom James	Republican	13rd Senate District
	Cheri Steinmetz	Republican	3rd Senate District
	Anthony Bouchard	Republican	6th Senate District
	Dave Kinskey	Republican	22nd Senate District

Wyoming HB 28 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Tyler Lindholm		Republican	1st House District
	Jim Blackburn	Republican	42nd House District
	Scott Clem	Republican	31st House District
	Mike Greear	Republican	27th House District
	Carl Loucks	Republican	59th House District
	Stan Blake	Democrat	39th House District
	Joe MacGuire	Republican	35th House District
	Jared Olsen	Republican	11th House District
	Hank Coe	Republican	18th Senate District
	Ogden Driskill	Republican	1st Senate District
	Bill Landen	Republican	27th Senate District
	Stephan Pappas	Republican	7th Senate District
	Wendy Davis Schuler	Republican	15th Senate District

Minnesota HF 3962 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Jeremy Munson		Republican	23B House District
Steve Drazkowski		Republican	21B House District
Tim Miller		Republican	17A House District
John Poston		Republican	9A House District
John Heinrich		Republican	35A House District
Brian Johnson		Republican	32A House District
Eric Lucero		Republican	30B House District
Carl Bahr		Republican	31B House District

Oregon SB 1538 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Ginny Burdick		Democrat	18th Senate District
James Manning Jr.		Democrat	7th Senate District
Mark Hass		Democrat	14th Senate District
	Lee Beyer	Democrat	6th Senate District
	Michael Dembrow	Democrat	23rd Senate District
	Shemia Fagan	Democrat	24th Senate District
	Lew Frederick	Democrat	22nd Senate District
	Sara Gelser Boulin	Democrat	8th Senate District
	Jeff Golden	Democrat	3rd Senate District

Wisconsin AB 75 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Rob Strafsholt		Republican	29th Assembly District
Christine Sinicki		Democrat	20th Assembly District
Mark Born		Republican	39th Assembly District
Janel Brandtjen		Republican	22nd Assembly District
Robert Brooks		Republican	60th Assembly District
Cindi Duchow		Republican	99th Assembly District
James Edming		Republican	87th Assembly District
Rick Gundrum		Republican	58th Assembly District
Cody Horlacher		Republican	33rd Assembly District
John Jagler		Republican	37th Assembly District
Scott Krug		Republican	72nd Assembly District
Mike Kuglitsch		Republican	84th Assembly District
Bob Kulp		Republican	69th Assembly District
John Macco		Republican	88th Assembly District
Gae Magnafici		Republican	28th Assembly District
David Murphy		Republican	56th Assembly District
Jeffery Mursau		Republican	36th Assembly District
Jim Ott		Republican	23rd Assembly District
John Plumer		Republican	42nd Assembly District
Treig Pronschinske		Republican	92nd Assembly District
Romaine Quinn		Republican	75th Assembly District
Tim Ramthun		Republican	59th Assembly District
Mike Rohrkaste		Republican	55th Assembly District
Joe Sanfelippo		Republican	15th Assembly District

Michael Schraa		Republican	53rd Assembly District
John Spiros		Republican	86th Assembly District
David Steffen		Republican	4th Assembly District
Lisa Subeck		Democrat	78th Assembly District
Jeremy Thiesfeldt		Republican	52nd Assembly District
Paul Tittl		Republican	25th Assembly District
Travis Tranel		Republican	49th Assembly District
Ron Tusler		Republican	3rd Assembly District
Don Vruwink		Democrat	43rd Assembly District
Chuck Wichgers		Republican	83rd Assembly District
Shannon Zimmerman		Republican	30th Assembly District
Ken Schowronski		Republican	82nd Assembly District
	David Craig	Republican	28th Senate District
	Lena Taylor	Democrat	4th Senate District
	André Jacque	Republican	1st Senate District
	Chris Kapenga	Republican	33rd Senate District
	Dale Kooyenga	Republican	5th Senate District
	Stephen Nass	Republican	11th Senate District
	Janis Ringhand	Democrat	15th Senate District
	Duey Stroebel	Republican	20th Senate District

Iowa HF 2502 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
House Committee on Public Safety			
	Jason Schulz	Republican	9th Senate District

	Steven Holt	Republican	18th House District
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Pennsylvania SB 531 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Wayne Langerholc		Republican	35th Senate District
	Joseph Scarnati	Republican	25th Senate District
	Michael Folmer	Republican	48th Senate District
	Elder Vogel Jr	Republican	47th Senate District
	Camera Bartolotta	Republican	46th Senate District
	Kristin Phillips-Hill	Republican	28th Senate District
	Scott Martin	Republican	13th Senate District
	John Gordner	Republican	27th Senate District
	Kim War	Republican	39th Senate District
	Gene Yaw	Republican	23rd Senate District
	Giovani DiSanto	Republican	15th Senate District
	Scott Hutchinson	Republican	21st Senate District
	Michael Regan	Republican	31st Senate District
	James Brewster	Democrat	45th Senate District
	Ryan Aument	Republican	36th Senate District
	Robert Mensch	Republican	24th Senate District
	Patrick Stefano	Republican	32nd Senate District
	Mario Scavello	Republican	40th Senate District
	Judith Ward	Republican	30th Senate District

Mississippi HB 1215 (2020)

<u>Sponsor</u>	<u>Co-Sponsor</u>	<u>Party</u>	<u>District</u>
Shane Barnett		Republican	86th House District
	Chris Brown	Republican	16th House District
	Fred Shanks	Republican	60th House District
	Donnie Scoggin	Republican	89th House District
	Randy Rushing	Republican	78th House District
	Brady Williamson	Republican	10th House District

Appendix C: State preemption provisions by type

Limiting preemption

Preemption provision type	Number of instances
Removing prohibitions	2
Expanding exceptions to the preemption statute	1
Limited expansion of local authority	7
Expressly excluding from preemption	1
City specific grants of authority	4

Preemption repeal

Preemption provision type	Number of instances
Partial repeal of preemption	2
Full repeal of preemption	12
Hyper preemption repeal	1

Preemption expansion

Preemption provision type	Number of instances
Preempting express local authority	18
Expanding preempted field	19
Preempting gun control	11
Preempting business regulation	2
Preempting exercise of employer rights	3
New preemption in states without preemption	3
Preempting criminal authority	1
Preempting use of public funds	1
Preempting exercise of zoning authority	1

Hyper preemption expansion

Preemption provision type	Number of instances
Civil hyper preemption	20
Criminal hyper preemption	4
Removal of legislative immunity	2
Removal from office	1

Appendix D: State preemption proposals in response to specific city enactments

Year	State	Bill	Party	City
2018	OH	HB 228	Republican	Columbus and Cincinnati
2019	MT	HB 325	Republican	Missoula
2019	MT	HB 357	Republican	Missoula
2019	PA	HR 426	Republican	Pittsburgh
2019	PA	SB 531	Republican	Pittsburgh
2019	PA	HB 1066	Republican	Pittsburgh
2020	SC	SB 875	Republican	Columbus

Note: The city refers to the city that enacted an ordinance that appears to have motivated the corresponding preemption bill.

Appendix E: Enacted state preemption bills

<u>Year</u>	<u>Bill</u>	<u>State</u>	<u>Sponsor party</u>	<u>House</u>	<u>Lower House Control</u>	<u>Upper House Control</u>	<u>Governor</u>	<u>Trifecta</u>
2018	HB 228	OH	Republican	House	Republican	Republican	Republican	Yes
2019	HB 3231	TX	Republican	House	Republican	Republican	Republican	Yes
2019	HB 2597	OK	Republican	House	Republican	Republican	Republican	Yes
2020	HF 2502	IA	Republican	House	Republican	Republican	Republican	Yes
2020	HB 4376	WV	Republican	House	Republican	Republican	Republican	Yes
2020	AB 75	WI	Republican	House	Republican	Republican	Democrat	Yes
2020	SB 35	VA	Democrat	Senate	Democrat	Democrat	Democrat	Yes
2020	HB 421	VA	Democrat	House	Democrat	Democrat	Democrat	Yes
2020	HB 140	LA	Republican	House	Republican	Republican	Democrat	No
2020	HB 781	LA	Republican	House	Republican	Republican	Democrat	No
2020	SB 1081	OK	Republican	Senate	Republican	Republican	Republican	Yes
2020	HB 357	MT	Republican	House	Republican	Republican	Democrat	No