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COLLEGE OF GLOBAL
PUBLIC HEALTH

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Preemption in Nutrition and Obesity Policy

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Preemption and Food Policy



- What is preemption?
- How it can negatively affect our work
- What are some things organizations can do?

Federalism

- U.S. Constitution established federal government and states as separate sovereigns



What about Local Governments?

- U.S. Constitution does not mention local governments
 - But they existed at the time of its ratification
- Local governments are a creation of the state
 - Diversity
 - Autonomy
 - Functions



Preemption

- When a higher level of government limits or restricts the authority of a lower level to address an issue
 - Federal → States/Locales
 - States → Locales



Preemption and Public Health

- The federal government ought not preempt state and local authority in advancing the public's health.
- The federal and state governments should set minimum standards (floor preemption) allowing states and localities to further protect the health and safety of their inhabitants. Preemption should avoid language that hinders public health action.

Institute of Medicine, 2011

Preemption Terms: Ceiling Preemption

- Sets **maximum** standards
- State and local law may not exceed federal law
- Local law may not exceed state or federal law
- Creates uniformity

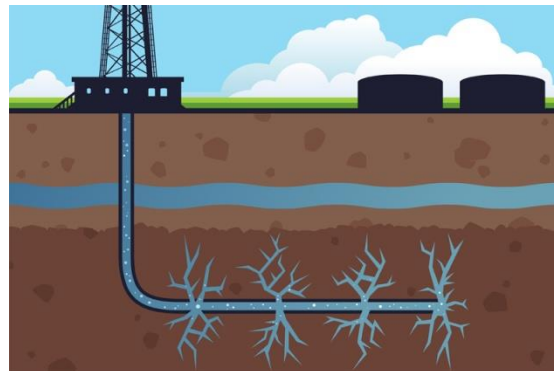


Preemption Terms: Floor Preemption

- **Minimum Standards**
- Locals may go beyond this floor
- Allows for local innovation and additional protection
- Good for public health/social justice
- *Major success: Civil Right Act*



State Preemption of Evidence-Based Public Health Policy



Preemption of Food Policy

Federal Preemption

- Common for food labels
 - Nutrition Labeling and Education Act
 - GMO Labeling
 - Menu/Vending Labeling



Nutrition Facts	
8 servings per container	
Serving size	2/3 cup (55g)
Amount per 2/3 cup	
Calories	230
% DV*	
12%	Total Fat 8g
5%	Saturated Fat 1g
	Trans Fat 0g
0%	Cholesterol 0mg
7%	Sodium 160mg
12%	Total Carbs 37g
14%	Dietary Fiber 4g
	Sugars 1g
	Added Sugars 0g
	Protein 3g
10%	Vitamin D 2mcg
20%	Calcium 260mg
45%	Iron 8mg
5%	Potassium 235mg
* Footnote on Daily Values (DV) and calories reference to be inserted here.	

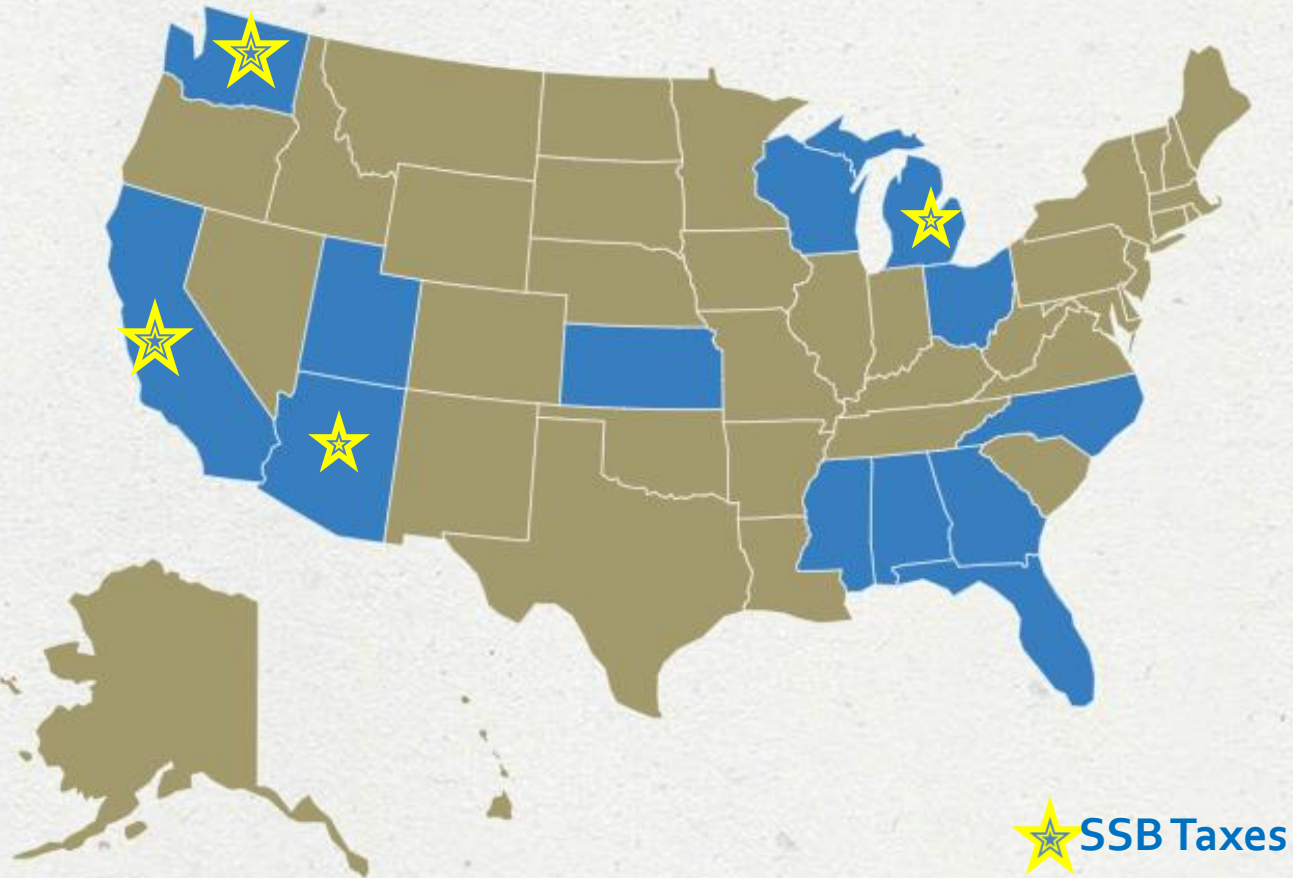
Example: Minimum Standards: National School Lunch Program



“State agencies and/or local educational agencies may **impose additional restrictions** on competitive foods, *provided that they are not inconsistent* with the requirements of this part.”

State Preemption of Local Food Policy

State Preemption: Food/Nutrition Laws



Nutrition

Preemption and Local Governments

- Local governments historically innovative
 - Laboratories for novel policy
 - Local policy often spreads nationally
- Local democracy
 - Self-determination
 - Responsive to needs and values of community members

Part of the Playbook

Big Tobacco

Big Soda

International
Strategy



Preemption



Lobby v. PH



Fund Politicians



Fake Science



Front Groups/Trade
Associations*



Media



*ALEC

ALEC Model Policy = Kansas Law

The State of Kansas and All Political Subdivisions Cannot Address:

- food nutrition information
- consumer incentive items
- food-based health disparities
- foods and beverages approved for sale
- the growing or raising of livestock or crops for food and approved for sale
- “Retail Food Establishment” or “Food Service Operation”
 - Any place food given/sold



**AMERICANS FOR
PROSPERITY®**
KANSAS

February 16, 2016

Testimony in Support of HB 2595

Chairman Hutton and Members of the Committee:

On behalf of Americans for Prosperity activists across the state, thank you for this opportunity to voice our support for HB 2595.

Kansas has more than 700 municipal and county governments that currently have authority to impose local ordinances on the labeling and nutritional information requirements for retail and vending food sales. HB 2595 steers policy away from a development of a balkanized series of different food sales requirements and restrictions.

HB 2595 recognizes that consistency in labeling requirements across the state will provide uniformity that is in the best interest of consumers and the food sales industry. Consumers will know exactly what to look for whether they are eating in Atchison or Elkhart. Restaurant operators will not be faced with a maze of different requirements and restrictions. A restaurateur with multiple restaurants in the Kansas City metro area could have more than a half-dozen sets of regulations to sort through.

This bill in no way interferes with FDA and food labeling and food safety rules, and gives statewide authority to the Legislature to impose labeling requirement and restrictions on sales of food items. However, municipalities do not have the resources and expertise of federal and state agencies to fully investigate and implement such policies. Moreover, because of the proximity of cities and mobility of consumers in major Kansas metro areas, labeling ordinances enacted by one municipality in expectation


Preemption in Food Policy

- Divide: often corporate vs. human interests
 - Tension between maximizing profits of harm-causing industries vs. community members wish to protect their own health and safety
- Equity implications of local self-determination in communities with health disparities
 - Local policies often address disparities and inequitable health outcomes
 - Local issues overlooked when states preempt

State Cannot Always Anticipate Local Issues

myPalmBeachPost

LOCAL TRUMP EXCLUSIVES WEATHER SPORTS TRAVEL FOOD EPAPER

SUBSCRIBE  LOG IN

Senator: Core right to home-grown vegetables lives in Senate bill 1776

POLITICS

By Kenya Woodard - Post Capital Correspondent



MELANIE BELL

Summary

- Preemption being passed on its own without state law to fill the gaps
- Multiple issues = increases adversaries
- May be *snuck* in at the last minute
- Time between proposal and passage very quick!
- Preemption of taxes impacts fiscal strength of communities
- May include language prohibiting state activity too
- Up next? Sanctions for localities and local officials

Why Public Health Is Losing


Because of the way industry is winning...


Powerful Supporters of Preemption

- Multinational corporations
- Trade Associations
- Front Groups
- American Legislative Exchange Council (ALEC)
 - Americans for Prosperity



Closed door/non-transparent dealings with elected officials

 61°
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In a photo obtained by The Sacramento Bee, Gov. Jerry Brown and his wife, Anne Gust Brown, pose with representatives of Pepsi, Coca-Cola and the American Beverage Association, among other unidentified individuals, following a private dinner at the governor's mansion on June 6, 2018. The photographer is unidentified. Special to The Sacramento Bee

Confuse the Issues

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Buying Signatures to get on Ballot

- Washington: YES! TO AFFORDABLE GROCERIES
- Coca-Cola Company, Pepsico, Dr Pepper Snapple Group, Red Bull North America
- As of July 2018, spent \$1.3 million to signature-gathering firm

And Finally: What is Preemption?

- Removing voter will
- Undoing of democracy



Countering and Preventing Preemption

Spotting Preemption

Look for key terms/sections:

- State, city or county shall not regulate
- State, local ordinance is null and void
- Government has “sole” authority to regulate
- Government has “exclusive” authority to regulate
- Matter of statewide concern/ statewide interest/
requires statewide regulation
- Rules shall be applied “uniformly” throughout the state
- Need for uniformity

Savings Clause: Express Protection Against Preemption

- Expressly **allows** state/local laws
- Often seen with minimum standards (floor preemption)

“Nothing in this Act shall be construed as impairing or in any way affecting any right or jurisdiction of the States with respect to this issue.”

An important strategy for food policy stakeholders!

Where 'Yes! To Affordable Groceries' Really Means No to a Soda Tax



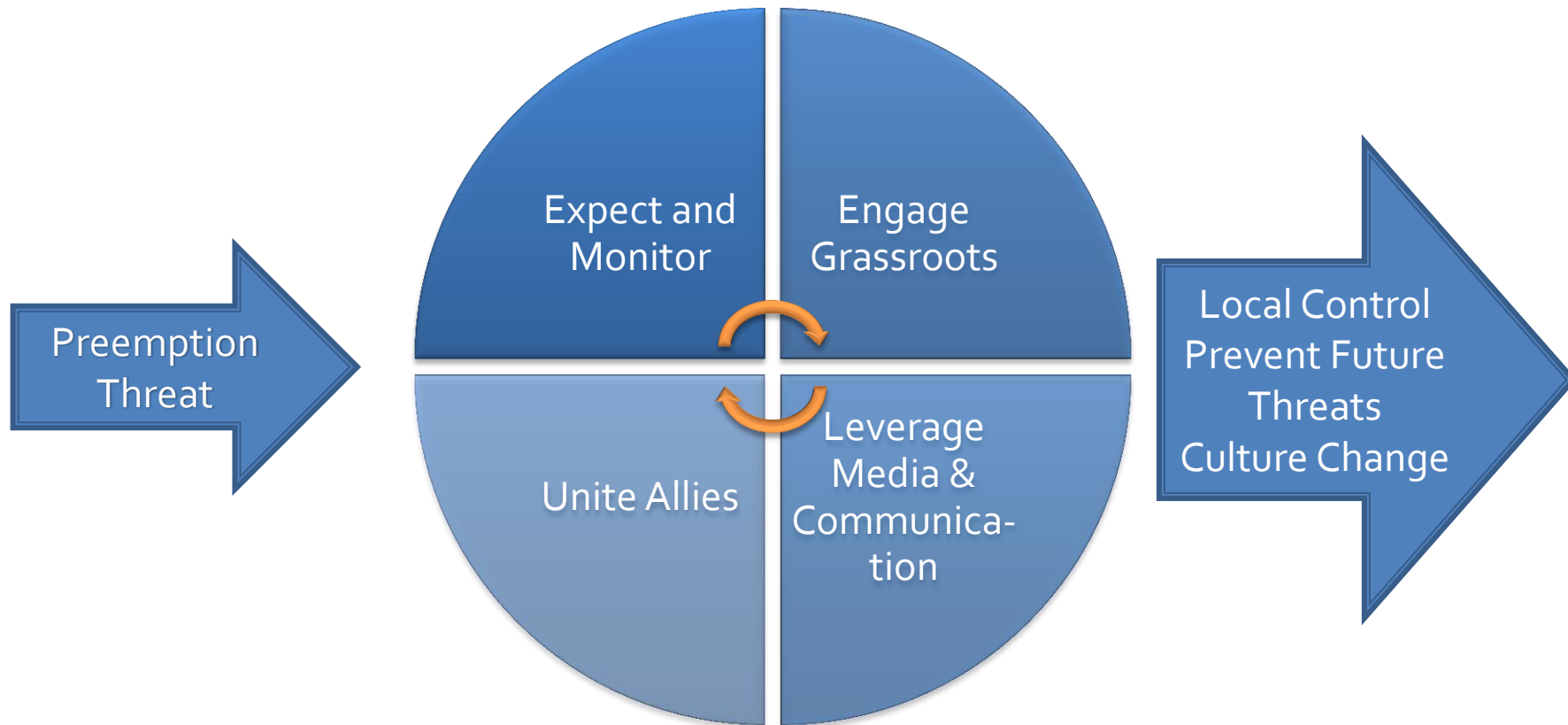
Ed Gallagher of Seattle shopping in Burien, Wash. The soda industry is spending millions of dollars to push ballot measures that would permanently deny cities the ability to tax sugary drinks and other items. Wqian Ang for The New York Times

By **Andrew Jacobs**

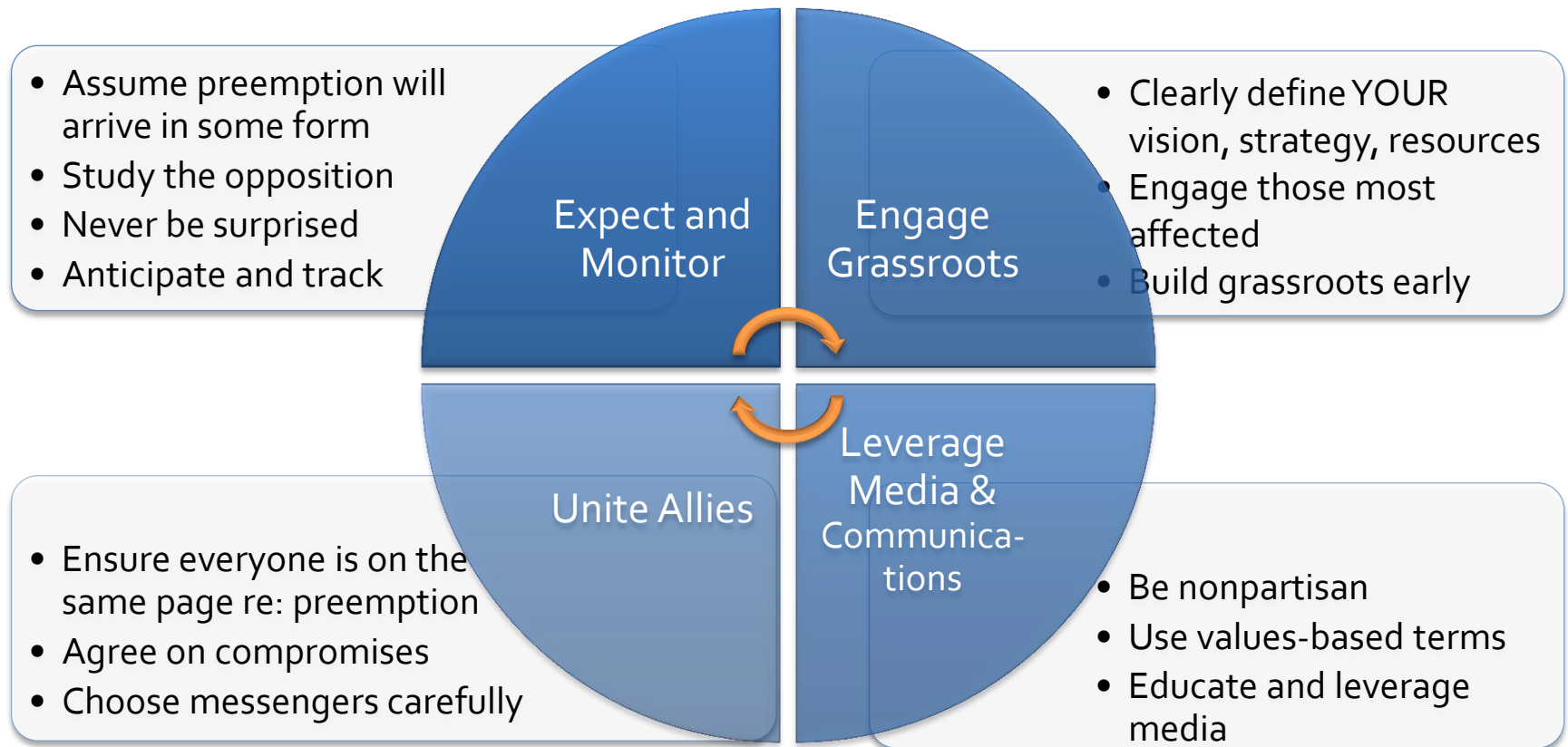
The New York Times

Nov. 2, 2018

Countering and Preventing Preemption Model



Elements of the Strategy



Preemption and Food Policy



- Tools to educate/advocate for food policy must be simultaneously used to fight preemption
 - Media advocacy and education
 - Grassroots movements/nontraditional allies
 - Unify allies
- Anticipate that preemption is coming!

Thank you!
Questions, Comments?

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