

# **Bond Case Briefs**

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## **Cities Clash With State Governments Over Social and Environmental Policies.**

RALEIGH, N.C.—When North Carolina lawmakers enacted a law governing transgender bathroom access in response to a Charlotte ordinance, they also spurred on a battle between conservative states and liberal cities over the right to have final say on everything from plastic bags to minimum wage.

The nation's 15,000 municipalities are lawmaking laboratories, particularly on the West Coast, where cities banned smoking and offered health benefits to domestic partners well ahead of most states.

Cities are strategically enacting new laws on social and environmental issues as the Republican Party exercises historic strength in state houses. The party controls the legislature and governor's office in 23 states including North Carolina, according to Ballotpedia, a nonpartisan organization that collects election data.

"We're just seeing kind of a mismatch of policy goals," said Brooks Rainwater, who directs the Center for City Solutions at the National League of Cities.

Lawyers say most states claim a right to exert control over cities because of a century-old legal doctrine known as Dillon's Rule, named for an Iowa judge, saying city governments are subdivisions of a state and should do only what is necessary. The Colorado Supreme Court in May found that the state had the right to pre-empt cities from banning hydraulic fracking, a decision cheered by business leaders as good for individual property rights and the state's economy.

"If there's a fiscal impact, if there's something that a state might perceive that's going to hurt the state, then states are going to be concerned about that," said Susan Frederick, senior federal affairs counsel of the nonpartisan National Conference of State Legislatures.

Lawmakers used pre-emption sparingly until the 1980s and 1990s, when the tobacco industry and gun lobby used state pre-emption laws to block local restrictions on smoking and weapons, said Mark Pertschuk, director of Preemption Watch, an Oakland, Calif., watchdog group largely funded by the health-focused Robert Wood Johnson Foundation. In 1998, the Centers for Disease Control and Prevention said the upswing in pre-emption laws on tobacco in North Carolina and a half-dozen other states posed an obstacle to its public-health goals.

GOP statehouse gains in 2014 led to an "unprecedented and historic" use of pre-emption on local environmental, social and public health policy, Mr. Pertschuk said. Last year, at least 29 states considered laws that would pre-empt cities from adopting policies that are stronger than state law on social, public health and environmental issues, he said.

Conservative lawmakers say they are using pre-emption to block policies pushed by special interests, such as environmental groups seeking bans on plastic products, and unions pushing an expansion of worker sick leave.

The American Legislative Exchange Council, a conservative group representing roughly a quarter of state legislators, maintains model legislation to help states pre-empt local policies on minimum wage, collective bargaining, the use of pesticide and other environmental issues.

As Republicans began gaining strength as state lawmakers about six years ago, special-interest groups switched their focus to changing local laws, said Jon Russell, executive director of the American City County Exchange, whose group is a task force of ALEC.

"They lost control in the state house, so they're trying to do a workaround by having local governments pass things that can't get through," Mr. Russell said. "It's happening over and over and over again."

The GOP has also aimed upward at the Obama administration. Texas and 25 other Republican-leaning states won a U.S. Supreme Court contest last month when the high court deadlocked, 4-4, in a case that killed President Barack Obama's immigration plan.

A growing number of cities that restrict plastic bags are running into state opposition in places such as Arizona, where a law signed in March pre-empts towns and cities by saying they can't impose taxes or other charges on "auxiliary containers," including bags.

Florida lawmakers in March passed a bill preventing cities from restricting expanded polystyrene, the foam product behind lightweight cups and containers after Jan. 1, 2016. The state law didn't affect earlier bans, such as Miami Beach's restrictions on the foam product.

Sunbelt states like North Carolina have booming cities in states with traditions of fiscal and social conservatism. The divide is prompting a growing list of pre-emption laws seeking to restrain cities' rule-making powers.

In North Carolina, the House speaker and Senate president hail from rural areas, still a powerful constituency in a state where 55% of the people live in unincorporated areas or towns of less than 10,000 people, according to the Carolina Population Center, a project of the University of North Carolina at Chapel Hill.

Since taking control of the state government in 2013, Republicans have adopted a law banning so-called sanctuary city policies, which instruct police to not ask people they detain about their immigration status.

The legislature also gave control of Asheville's water system to a regional authority, changed the organizational structure of Charlotte's airport and redrew city council lines in Greensboro. The cities each sued and the court cases are continuing.

"It's frustrating when you have a legislature, who instead of taking care of their business, is sticking their nose in our business," said Greensboro Mayor Nancy Vaughan.

But Republicans say they are reining in cities that don't represent the state's prevailing values.

"The state government is the government that's closest to the people," said Lawrence Shaheen, a Republican strategist in North Carolina who supports the new bathroom law. "If you don't like it, run for state government and try and change it."

North Carolina state lawmakers in March enacted its bathroom law, known as HB2, requiring transgender people to use bathrooms in schools and public buildings corresponding to the sex on their birth certificate, in response to Charlotte's ordinance protecting the rights of transgender people, enacted in February. The state law takes away the right of municipalities to pass their own

bathroom rules while also limiting the ability of cities to raise the local minimum wage that businesses must pay workers.

The minimum-wage struggle has become a common battle around the U.S. as cities look to push beyond the \$7.25-an-hour floor set by the federal government or specific state-set minimums. In Alabama, the GOP-controlled legislature passed a bill in February that bars cities from going beyond the \$7.25 mark, nixing an effort in Birmingham, the state's largest city, to raise the level to \$10.10.

Fast-food workers and civil rights groups in Birmingham are fighting back in federal court, arguing the bill was tainted with "racial animus" toward the predominantly African-American city.

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