

How to Respond to State Efforts to Punish Progressive Cities by Withholding Funds from Local Governments: *An Arizona Case Study*

As cities lead the way in pushing for progressive policies to benefit and protect their residents, state legislatures are becoming more and more aggressive in blocking—or “preempting”—those policies. In recent years, states have gone so far as to pass laws punishing cities for passing ordinances that create stronger protections for their citizens and their environments than the state provides. This has already happened in Arizona, where the state Legislature enacted a law that withholds state shared revenues from cities with ordinances that conflict with state laws.

As more states look towards this kind of extreme and punitive preemption, advocates and elected officials should be prepared to counter such threats to local democracy by raising the serious political and legal concerns that these statutes raise.

Arizona’s Preemption Statute: Putting Local Revenue Streams At Risk

Arizona’s preemption law¹, which was passed in 2016, provides that:

- Upon the request of any one state legislature, the state Attorney General will investigate whether a local ordinance violates state law.
- If the Attorney General determines that a city ordinance violates state law and the city does not repeal the ordinance, the city in question will lose access to state shared revenue, their portion of which would be redistributed to other cities.
- If the Attorney General is unsure whether a city ordinance violates state law, the city must post a bond equal to six months of its state shared revenue before they could defend the validity of ordinance before the state Supreme Court.

This law is an especially egregious example of how states are becoming increasingly hostile to municipal attempts to engage in local policymaking. Previously, cities could keep preempted ordinances on the books since they were, by definition, unenforceable. The only purposes this law serves are to punish cities that pass ordinances that conflict with state policies and to chill future municipal lawmaking due to fear of putting a municipality’s funding at risk. And the practice is spreading: Texas’s infamous SB4, for example, which was recently partially enjoined, imposes fines of up to \$25,500 per day on local governments that do not comply with federal immigration detainer requests.²

¹ See A.R.S. § 41-194.01.

² See *City of El Cenizo v. Texas*, 2017 WL 4250186, ___ F.3d ___ (5 th Cir., Sept. 25, 2017).

Preemption Laws Imposing Financial Penalties on Cities Are Vulnerable to Legal Challenge

The Arizona Supreme Court had its first opportunity to address the legality of Arizona's preemption scheme in 2017 with the case *Tucson v. State ex rel. Brnovich*. Although the court side-stepped many of the more problematic aspects of the state statute, the decision cast significant doubt on the constitutionality of the law.

In *Brnovich*, the Court expressed serious legal concerns with the financial penalties the Arizona statute imposed on cities, but ultimately declined to address whether they were constitutional since they were not *technically* implicated in the underlying fact pattern. In this particular case, the Attorney General determined that a Tucson regulation *may* have been preempted by state gun preemption statutes. And while the statute required Tucson to post a bond equal to six months of its state shared revenues before the case could be heard before the Supreme Court, Tucson never posted that bond and the Court did not ask it to. Thus, the Court declined to decide on the constitutionality of that provision. The Court did, however, express a certain amount of skepticism about the provision, remarking that it “share[d] the City’s concerns regarding the bond’s purpose, basis, practical application, and constitutionality.”³

What to Do When Your Legislature Is Considering a Preemption Statute That Imposes Financial Penalties on Localities

Raise legal concerns:

- As is discussed above, the court in *Brnovich* expressed serious doubts about the constitutionality of requiring a city to post a huge bond before its case can be heard.
- Furthermore, there are a number of legal theories available to challenge preemption laws that impose financial penalties on municipalities.
- Once a preemption bill that imposes financial penalties on municipalities passes into law, legal challenges should be considered. Experts at A Better Balance and the Local Solutions Support Center are available to help and discuss legal options with you.
- If you would like more information on the legal arguments against these laws, contact A Better Balance at (212) 430-5989 or dlankachandra@abetterbalance.org.

Consider pushing back politically through organizing and communications work:

- The Local Solutions Support Center (LSSC) is here to help with messaging and communications resources, organizing support, and other information or suggestions on how to effectively challenge punitive preemption statutes. You can contact LSSC at LSSC@supportdemocracy.org.

For more information or help with further research on this issue in your state, contact:

**A Better Balance at (212) 430-5989 or dlankachandra@abetterbalance.org, or
The Local Solutions Support Center at LSSC@supportdemocracy.org**

³ *Tucson v. State ex rel. Brnovich*, 399 P.3d 663, 671 (2017).