



Local Decision Making & Preemption in National Perspective

Texas City Attorneys Association
Fall Conference
October 15, 2020

State Preemption: State Interference

Preemption:

Allows a higher level of government to limit or eliminate the power of a lower level of government

Used to ensure state and local regulations conform, create uniform minimum standards to advance wellbeing and equity

Misused to stop local laws that promote equity, health, and civic participation; used to limit the voice and power of people of color and women

Preemption drivers:

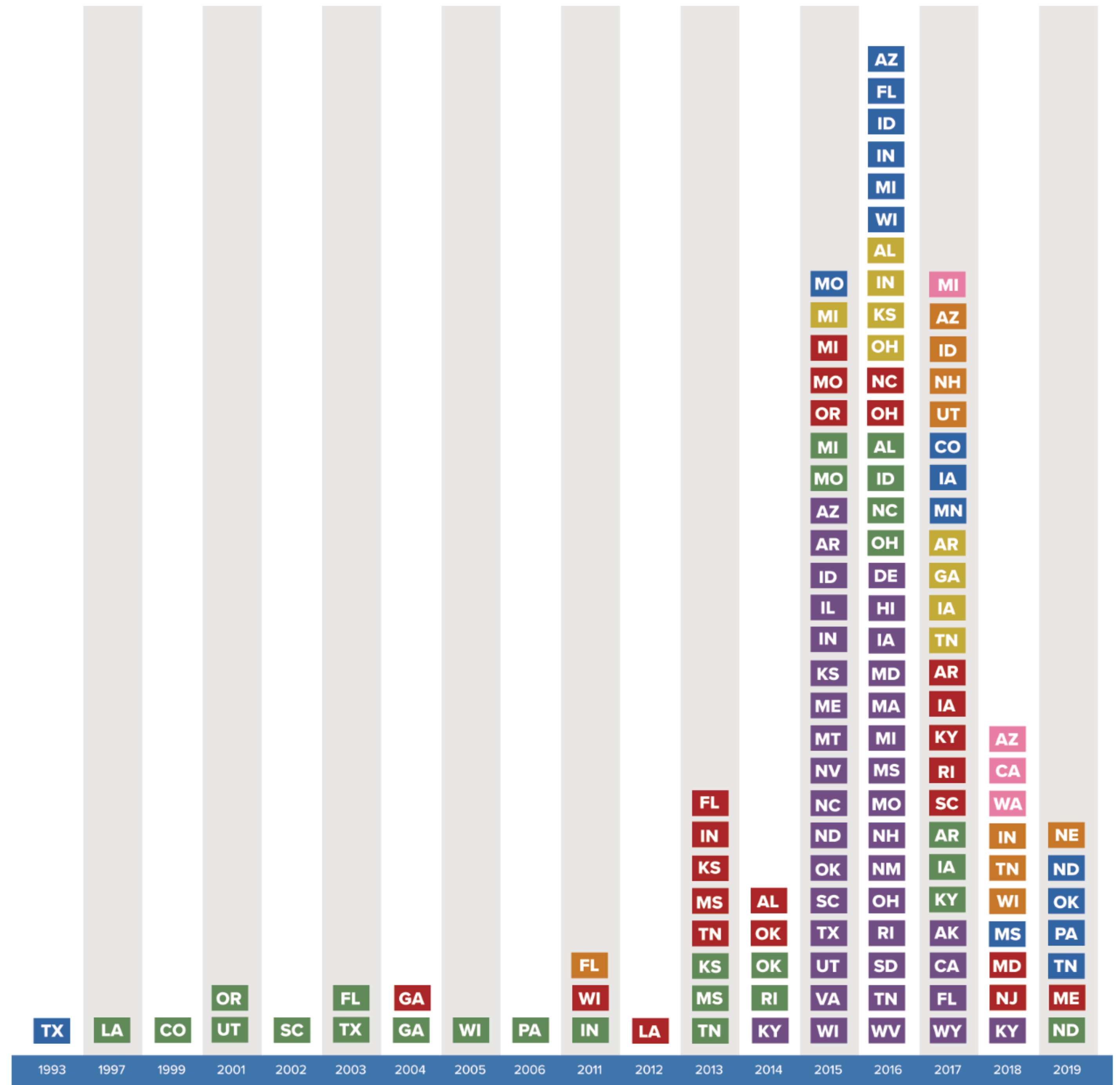
Corporations will continue to work their agenda:
Tobacco, American Beverage Association, Plastics, Telecom (Broadband and 5G)

ALEC model Anti-regulatory bills:
Employment, protests, taxes and spending, campaign financing occupational licensing

Coordinated effort:
Limit ability of cities to litigate and hold corps accountable (Chamber of Commerce campaign)

Passage of State Legislation Preempting Local Laws About:

- Gig Economy*
- Paid Leave*
- Minimum Wage*
- Single-Use Plastic Bags*
- Soda Taxes*
- Short-Term Rentals*
- Fair Scheduling*



The **quantity** of preemption laws has **skyrocketed**

25 states
preempt
local minimum
wage laws

23 states
ban local paid
sick days

33 states
prohibit
equitable
housing
policies

48 states
limit local fiscal
authority

21 states
ban municipal
broadband

11 states
prohibited
local
sanctuary
cities

3 states
Ban local non-
discrimination
ordinances

Past and New Preemption Laws Limit Local Efforts to Protect Public Health

- The pandemic has laid bare the high cost of a decade of state preemption designed to undermine local authority and independence. Preemption has hampered local response; made it harder to protect lives and livelihoods.
- Policies preempted before the pandemic, including paid sick days, equitable housing, minimum wage, and broadband forced cities to start from behind.
- Same people who would have benefited most from these preempted policies – People of Color, women, workers in low wage jobs – are the people suffering the most from the pandemic.

Past and New Preemption Laws Limit Local Efforts to Protect Public Health

- Express preemption included in Executive Orders hobbled local efforts to vulnerable communities – Georgia, Texas, South Carolina, Mississippi
- States are threatening to punish cities by withholding state (FL) or federal funds (NE), taking or threatening legal action (GA, TX)
- The recovery will also be hamstringing by preemption – fiscal authorities, housing vaccines, voting, worker safety, corporate immunity, emergency managers

To Rein in Cities, Texas Tries to Ban Their Lobbying

The Demise of Local Control

Survey finds that Texans are likely to let the state take charge.

In the Lone Star State, Cities Feel the Heat

Some Texas lawmakers say the state's 'overreach' meddles with their local purview.

What Do States Have Against Cities, Anyway?

Legislatures regularly interfere with local affairs. The reasons, according to research, will surprise you.

When states overrule cities: report finds preemption is spreading

POLITICS
What Can Texas Cities Do When State Legislators Admit to Hating Them?

Local Texas leaders have a target on our backs in the Legislature

House Speaker Bonnen confirmed our fears. This must change.

Preemption in Texas

- Revenue Caps
- Annexation
- Bag Bans
- Fracking
- Ride Share
- Building Materials
- Trees
- Historic Preservation
- Utilities on the Right-of-Way
- Lobbyists
- Lemonade Stands
- Chickens

2020 in Texas

- COVID-19 Pandemic
 - Authority? Praise? The state giveth, the state taketh away
 - Masks, Occupancy, etc.
- Austin's Rules on Homeless Encampments
- Austin's Funding of Police Department

Call for Partnership

“Texas’ leading political figures have made it clear they don’t have much use for local government. From curbing cities’ ability to generate property tax revenue to a call for banning localities from lobbying in Austin, state officials continue to limit the power of local governments.” William Fulton, Rice-Kinder Institute for Urban Research, (Houston Chronicle Dec. 2019)

Voice of Reason

“ it’s time for state officials and local governments to recommit themselves to a productive and positive relationship. Local elected officials in communities across Texas have provided strong, decisive leadership in this crisis. Along the way, the state has often been an able and helpful partner. But it’s difficult to imagine that the contempt for locally elected officials that has often emanated from the Texas Capitol in recent years has helped. It’s time for various forms of government to treat each other as partners and not adversaries — during crises like this, for sure, but also in more normal times.” - Joe Straus, former Speaker, Texas House of Representatives (DMN April 15, 2020)

Preemption & The Pandemic: Structural Change

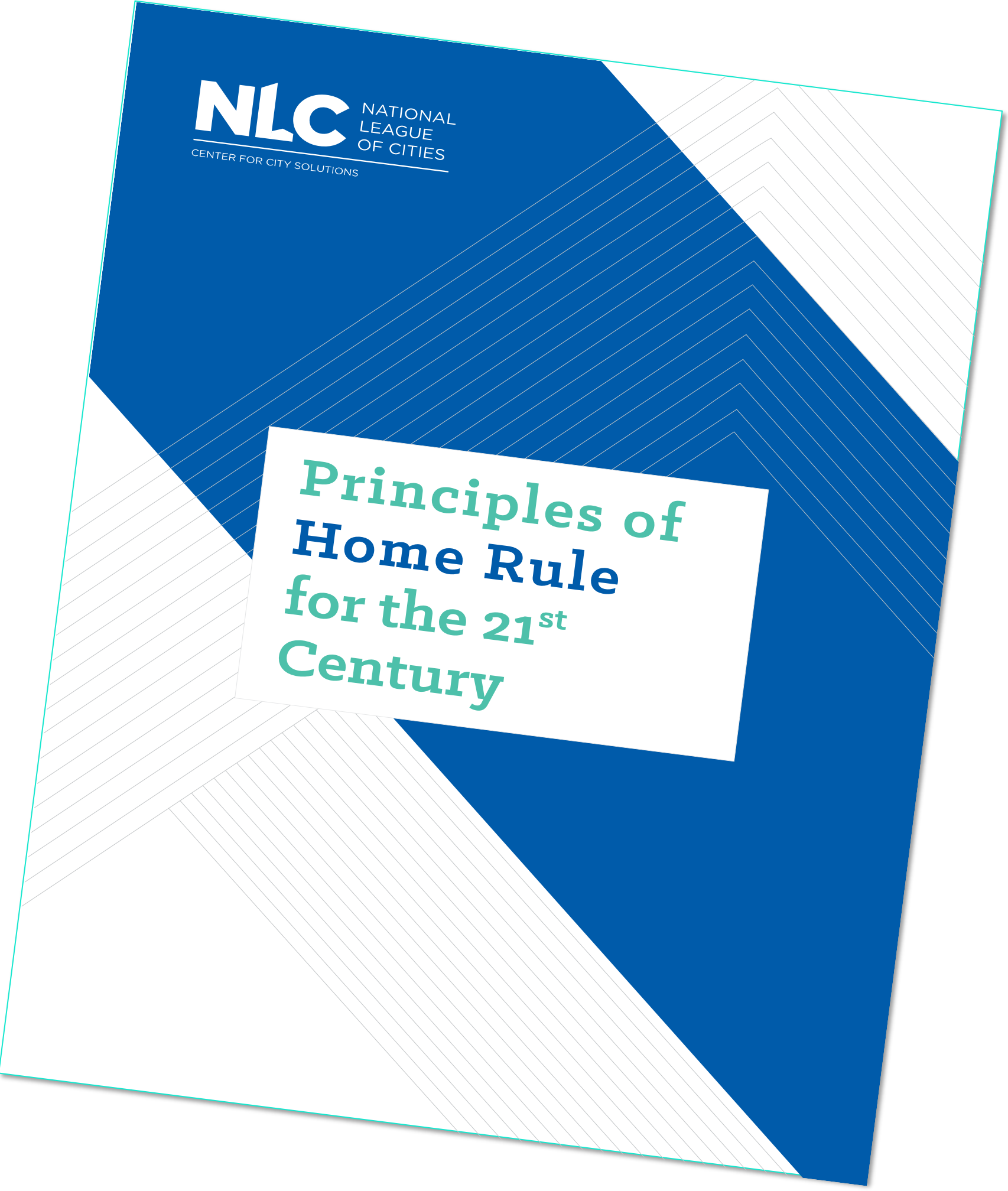
Efforts to
Suspend/Repeal
Preemption

Bills to
Affirm/Expand
Local Authority

Home Rule
Reform

The Pandemic Has Underscored Home Rule's Structural Flaws

- Ambiguity in authority
- Fiscal stability under threat
- Preemption
- Serious consequences before the crisis—even more now...



Principles of Home Rule for the 21st Century

- Local Authority
- Local Fiscal Authority
- Presumption Against State Preemption
- Local Democratic Self-Governance

Path for Moving Home Rule into the Future

- End to session-by-session, issue-by-issue conflicts
- Allow advocates to advance their work holistically – an attempt to slow the endless one-off battles
- The pandemic has changed the landscape – and given new imperative to reform