

STATE FIREARM PREEMPTION LAWS

- ❑ **Bottom Line:** As the result of a lobbying campaign by the National Rifle Association, more than 40 states have passed broad firearm preemption laws that block local governments from adopting reasonable gun laws tailored to local conditions. These laws prevent local mayors and police chiefs — the officials best suited to understand local crime and how to address it — from passing common-sense public safety measures designed to keep their communities safe. State firearm preemption laws:
 - Override common sense 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;
 - Are associated with increased rates of gun trafficking; and
 - Lead to dangerous and illogical results, such as allowing a city to keep knives out of parks, rec centers, and city halls, but forcing the same city to allow guns in these sensitive places.
- ❑ **State firearm preemption laws are a relatively recent phenomenon inconsistent with centuries of American history in which cities and rural areas had different gun laws.**
 - From the earliest days of the republic, communities adopted a wide range of gun laws tailored to local conditions, with generally stronger gun laws in densely populated cities that have greater potential for violent crime, and fewer regulations in less crowded, rural areas.
 - Cities like Philadelphia, New York, and Boston had extensive laws on gunpowder and gun use dating to the colonial era,¹ and throughout the 19th century state legislators expressly granted newly incorporated cities the power to enact such laws.²
 - As the country expanded, “Wild West” cities like Dodge City, Tombstone, and others adopted strong firearm regulations. Many banned firearms altogether within city limits, requiring visitors from frontier areas — where gun possession and use was widespread — to leave their firearms with law enforcement at the city limits.³
 - Throughout the nation’s history, local communities faced few obstacles to enacting locally-tailored gun laws. Indeed, prior to 1980, only a handful of states had any form of firearm preemption laws.
 - Consistent with the tradition of local gun laws, in 1981, Morton Grove, Illinois adopted an ordinance that prohibited the possession of handguns. This sparked a backlash from the gun lobby, and the NRA launched a concerted effort to persuade state legislators to bar municipalities from enacting gun laws.⁴
 - The NRA’s campaign succeeded: Today, 42 states have broad firearm preemption laws. Only California, Connecticut, Hawaii, Illinois, Massachusetts, Nebraska, New Jersey and New York generally allow local officials to pass firearms-related public safety laws.⁵
- ❑ **The gun lobby’s preemption campaign aims not only to tie the hands of local officials, but to intimidate and punish those who attempt to reduce gun violence through local law.**
 - The most sweeping firearm preemption laws contain onerous, punitive provisions designed to intimidate city officials from even attempting to address gun violence.
 - Under Florida’s preemption statute, for example, local officials who adopt any firearm rules or regulations are subject to removal from office and fines up to \$5,000; they are also prohibited from using any public funds to defend any local public safety rules.⁶



- Under a Nevada preemption law passed in 2015, a person who succeeds in challenging a local firearm law is entitled to attorney's fees and costs — and may be eligible to receive a monetary award of up to three times the actual damages proved in court.⁷
- Under a 2014 Pennsylvania law, which was later declared invalid, if a locality was sued over its gun laws, it was required to pay the legal fees and costs of the law's challenger — even if it repealed the law *before* the court issued a ruling.⁸
- The gun lobby has also conducted a litigation campaign to punish local officials.
 - The invalidated 2014 Pennsylvania law expressly gave groups like the NRA the ability to sue localities. The legislation was a direct response to courts that had concluded the NRA did not have legal “standing” to sue cities.
 - The gun-lobby group Second Amendment Foundation has initiated litigation campaigns against cities it claims have violated preemption laws — suing or threatening to sue hundreds of cities in states from Maryland and Virginia to Oregon and Washington.⁹
- **These relatively new preemption laws are associated with increased rates of gun trafficking: states with broad preemption laws export guns used in crime to other states at a rate more than four times greater than states that allow local control.**
 - States that allow local regulation of firearms export crime guns at a rate of 4.4 guns per 100,000 residents. By contrast, the 42 states with broad preemption laws have an export rate of 18.2 crime guns per 100,000 residents.¹⁰
- **Preemption laws lead to dangerous and illogical results. For example, some localities can prohibit knives from their buildings, but not guns. And some states can and do prohibit guns from *state* government buildings, but cities are powerless to do so on their property.**
 - In Pennsylvania, for example, the state legislature has prohibited guns in the state capitol¹¹ and on state agency property,¹² but it has preempted local governments from regulating firearms — so guns cannot be restricted in municipal buildings, or in any city or town hall.¹³
 - On August 5, 2013, an armed man entered the municipal building in Ross Township and shot and killed three people and injured at least two others.¹⁴ Because of the state preemption law, Ross Township officials are forced to allow people to bring guns into the building.
 - Florida's very broad firearms preemption law has also led to dangerous and absurd results.
 - Similar to Pennsylvania, guns are not allowed at Florida state legislative meetings,¹⁵ but Florida law prohibits cities, towns, and counties from passing local laws — forcing localities allow guns in their municipal buildings and city halls.¹⁶
 - Palm Beach County had to rescind ordinances that kept guns out of government buildings and parks — and a law that prohibited firing guns in densely populated areas.¹⁷
 - And in Fort Lauderdale, it is illegal to bring a knife to a parade — but guns are allowed.¹⁸
- **Some states also prohibit public universities from setting campus firearm policy — despite the dangers of guns where young people and alcohol frequently mix.**
 - In Colorado, Utah and Oregon, the state supreme courts found that state law preempts colleges from setting their own gun policy and forces them to allow guns on campus.¹⁹
 - Meanwhile, Utah, and Idaho state laws expressly prohibit colleges from adopting policies that bar guns on campus.²⁰



- ❑ **In Florida, voters recognized that local gun laws should reflect local conditions — even if the state legislature does not.**
 - In 1998, Florida voters amended the state constitution to create an exception to the legislature’s broad firearm preemption law. The amendment expressly allows counties to require background checks for gun sales that occur on property with a public right of access.
 - The anti-preemption amendment passed with 72% of the vote.²¹
- ❑ **By preventing cities from tailoring gun laws to local conditions, preemption laws threaten public safety, and defy centuries of tradition in which cities adopted stronger gun laws than rural areas.**
 - Local law enforcement and government officials know best how to keep their communities safe. They should be able to determine local public safety policies, not state legislators following the lead of the gun lobby.
 - States should repeal laws that prevent local leaders from passing reasonable gun laws. If states do not repeal their preemption laws entirely, they should adopt reasonable exceptions, such as:
 - Allowing local communities to require background checks on gun sales, ban the firing of weapons in densely populated areas, and prohibit guns in government buildings and other sensitive places; and
 - Allowing larger cities above a given population to adopt gun laws to protect public safety.

¹ Churchill, R. H. (2007). Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment. *Law and History Review*, 25(01), 139–176; Cornell, S., & DeDino, N. (2004). A Well Regulated Right: The Early American Origins of Gun Control. *Fordham Law Review*.

² Blocher, J. (2013). Firearm Localism. *Yale Law Journal*.

³ Dykstra, R. R. (1983). The Cattle Towns (pp. 119–121). University of Nebraska Press; Winkler, A. (2011). *Gunfight: The Battle over the Right to Bear Arms in America* (pp. 165–173). W. W. Norton.

⁴ Zorn, E. (1986, June 15). Morton Grove Gun Ban Quietly Turns 5. *The Chicago Tribune*. Retrieved from <http://trib.in/2ag4jFA>.

⁵ Illinois allows localities to regulate possession and transfer of long guns and the transfer of handguns — but it does not allow localities to regulate handgun possession or carry.

⁶ Fla. Stat. § 790.33 (2016).

⁷ Nev. S.B. 175, 2015 S., 78th Sess. (Nev. 2015).

⁸ H.B. 80, 198th Gen. Assemb., 2013-2014 Reg. Sess. (Pa. 2014).

⁹ Levintova, H. (2013, December 11). How a pro-gun group has been bullying small towns since Sandy Hook. *Mother Jones*. Retrieved from <http://bit.ly/1dfrarv>.

¹⁰ Mayors Against Illegal Guns. (2010). *Trace the Guns: The Link between Gun Laws and Interstate Trafficking*. Retrieved from <http://maig.us/1uAEZIO>.

¹¹ Visit the Capitol Complex. *Pennsylvania Department of General Services*. Retrieved August 3, 2016, from <http://bit.ly/2asLx8Y>.

¹² 49 Pa. Code § 61.3 (2015).

¹³ 18 Pa. Cons. Stat. § 6120 (2015).

¹⁴ Mcevoy, C. (2013, August 6). Ross Township, Pa., shooting draws differing opinions on municipal meeting gun bans. *The Express-Times*. Retrieved from <http://bit.ly/2aLhgXr>.

¹⁵ Fla. Stat. § 790.06(12)(a)(8) (2015).

¹⁶ Fla. Stat. 790.33 (2015).

¹⁷ Alvarez, L. (2011, September 10). Florida Forces Cities to Pull Local Laws Restricting Guns. *The New York Times*. Retrieved from <http://nyti.ms/2aysYEh>.

¹⁸ Wyman, S. (2011, October 4). Fort Lauderdale to allow guns – but no other weapons – at parades. *Sun-Sentinel*. Retrieved from <http://bit.ly/2aqsePE>.



¹⁹Students for Concealed Carry on Campus, LLC v. Regents of the Univ. of Colo., 2012 CO 17; *Oregon Firearms Educ. Foundation v. Board of Higher Education*, 245 Ore. App. 713 (2011); *Univ. of Utah v. Shurtleff*, 2006 UT 51.

²⁰ Idaho Code § 18-3309; Utah Code Ann. §§ 53-5a-102(4), 53B-3-103 (2015).

²¹ Jamison, P. (2013, April 6). Gun-show loophole laws on the books in Florida, but ignored. *Tampa Bay Times*. Retrieved from <http://bit.ly/2aqsNsS>.