

## VIEWPOINT

# State Preemption to Prevent Local Taxation of Sugar-Sweetened Beverages

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**Taxes on sugar-sweetened beverages** can reduce their consumption, generate revenues, and promote public health.<sup>1,2</sup> However, the beverage industry is using a strategy called *preemption* that poses a serious threat to the ability of localities to levy such taxes. Preemption occurs when a higher level of government (eg, a state) limits the authority of a lower level (eg, a city) to enact new policies. Since the 1980s, the tobacco industry has successfully lobbied policymakers for state preemption of local initiatives restricting tobacco advertising and smoking in public places.<sup>3</sup> Lessons learned from experiences with the tobacco industry can inform public health responses to the beverage industry's advocacy for state preemption of taxes on sugar-sweetened beverages.

As of November 2018, 7 cities in the United States have enacted added taxes on sugar-sweetened beverages. Four of the cities are in California, and other cities include Philadelphia, Boulder, and Seattle (Table). A tax was also enacted in Cook County, Illinois, but was subsequently repealed. Three additional localities in California—Marin County, Richmond, and Santa Cruz—have considered such legislation. However, 4 states—Arizona, California, Michigan, and Washington—have enacted laws preempting local taxes on sugar-sweetened beverages, and additional states have considered such legislation. Under the state preemption laws in California and Washington, existing local soda taxes were allowed to remain in effect, so the taxes in the 4 Californian cities and Seattle are still being collected.

In 2016, beverage companies spent \$30 million to oppose local taxes on sugar-sweetened beverages in California.<sup>4</sup> In addition, between April and June 2018, the American Beverage Association, a trade organization with funding from such companies as Coca-Cola, Pepsi, and Dr Pepper Snapple, spent \$7 million to gather voter signatures on a broad tax measure for California's November 2018 ballot. The measure would have required local jurisdictions to obtain a two-thirds margin to enact any local tax change. Passage of this initiative would have impaired the ability of local governments to fund public services, including fire and police departments, public libraries, and schools. Concerned that the state's voters would approve the antitax ballot initiative, the California legislature quickly agreed to prohibit localities from passing new taxes on sugar-sweetened beverages for 12 years, and the ballot initiative was withdrawn.<sup>5</sup> One state legislator compared the vote to a "nuclear weapon" aimed at local government budgets.<sup>4</sup> California's governor immediately signed the legislation into law,<sup>6</sup> calling it a compromise bill.<sup>4</sup>

Since 1986, the tobacco industry has spent tens of millions of dollars to support state legislation and ballot measures that are favorable to the industry.<sup>7</sup> The indus-

try established alliances with restaurant and hotel associations, as well as trade and labor groups, and argued that a consistent state legal standard would be superior to a patchwork of local laws. As of 2018, 25 states have enacted state laws that preempt tobacco regulation at the local level. Although often labeled as antitobacco initiatives, the effect of these laws has been to weaken more substantial local regulatory initiatives.

Initially, tobacco-control preemption was poorly understood. The views of health organizations were divided, particularly when the laws were spun as "pro-health." For example, the American Heart Association and the American Lung Association initially accepted state preemption as a compromise, hoping the laws could be repealed later. Other organizations, however, opposed state preemption.<sup>7</sup>

In the 1990s, after 17 states had enacted preemption laws,<sup>8</sup> a public health consensus to oppose such legislation emerged. In 1995, the National Tobacco Preemption Task Force, composed of attorneys and health advocates, was formed to lead the opposition. With support from influential state legislators and the legal community, advocates used public relations tactics to highlight the negative aspects of preemption, including its threats to local democratic authority and to public health. An additional 12 states that were considering preemption laws never enacted them. However, efforts to reverse existing preemption laws have been less successful. For example, in the case of prohibiting smoking in public places, our analysis suggests 10 of the 25 state preemption laws have been fully repealed; repeal, however, took an average of 11 years from the date the law was enacted.

Sugar-sweetened beverages are the primary source of added sugars in the US diet. In 2016, 2 years after Mexico established a nationwide penny-per-ounce sugar-sweetened beverage tax, sales declined by 7.6%, and the sales of nontaxed beverages increased by 2.1%.<sup>2</sup> According to a 2015 estimate, a national penny-per-ounce tax on sugar-sweetened beverages in the United States would save \$23.6 billion in health care spending over 10 years and generate \$12.5 billion in annual revenue for public health interventions.<sup>9</sup>

Since 2017, the 4 states that have approved preemption laws prohibiting local taxes on sugar-sweetened beverages have done so with little public debate. Similar to the rapid approval of tobacco preemption, lawmakers in Arizona and Michigan took only 30 days to introduce and approve preemption laws; in California, they took only 5 days. On the November 2018 ballot, preemption initiatives supported by the American Beverage Association were enacted in Washington but rejected in Oregon (Table). State preemp-

Table. Local and State Legislation About Sugar-Sweetened Beverages

Pro-Sugar-Sweetened Beverage Tax Legislation			Anti-Sugar-Sweetened Beverage Tax Legislation (Preemption)		
Locality (Tax \$ per oz)	Date Introduced	Date Implemented	State	Date Introduced	Date Implemented
Berkeley, California (0.01) <sup>a,b</sup>	June 28, 2014	January 1, 2015	New Mexico <sup>c</sup>	February 14, 2017	Withdrawn
Philadelphia, Pennsylvania (0.015) <sup>c,d</sup>	February 2, 2016	January 1, 2017	Illinois <sup>c</sup>	August 15, 2017	Withdrawn
Oakland, California (0.01) <sup>a,b</sup>	June 28, 2016	July 1, 2017	Michigan <sup>c</sup>	September 20, 2017	October 26, 2017
Albany, California (0.01) <sup>a,b</sup>	June 28, 2016	July 1, 2017	Arizona <sup>c</sup>	January 30, 2018	March 16, 2018
Boulder, Colorado (0.02) <sup>a,e</sup>	June 18, 2016	July 1, 2017	Pennsylvania <sup>c</sup>	April 8, 2018	Withdrawn
Cook County, Illinois (0.01) <sup>c,f</sup>	September 10, 2016	August 2, 2017	Oregon <sup>g</sup>	June 18, 2018	Rejected by voters
San Francisco, California (0.01) <sup>a,b</sup>	June 28, 2016	January 1, 2018	California <sup>h</sup>	Never introduced	Withdrawn
Seattle, Washington (0.0175) <sup>a,g</sup>	June 10, 2016	January 1, 2018	California <sup>c,h</sup>	June 24, 2018	June 28, 2018
			Washington <sup>h</sup>	July 6, 2018	November 6, 2018

<sup>a</sup> Ballot initiative.<sup>b</sup> No earmarking, but independent advisory boards directed tax proceeds to health and social services.<sup>c</sup> Legislative bill.<sup>d</sup> Earmarked for expansion of prekindergarten education, addition of community schools, and the Rebuild program that renovates city parks, recreation centers, libraries.<sup>e</sup> Earmarked for public health programming (support of health promotion, general wellness programs, chronic disease prevention, administrative costs).<sup>f</sup> Tax repealed December 1, 2018 (in effect for 4 months).<sup>g</sup> Earmarked for healthy food and early learning programs, community college sponsorships, and administrative costs.<sup>h</sup> Preempts local sugar-sweetened beverage taxes until 2031.

tion was discussed but withdrawn in Illinois, New Mexico, and Pennsylvania.

The beverage industry may pursue not only state preemption, but also national and global preemption of taxes on sugar-sweetened beverages. In a related international effort that follows the tobacco industry's playbook,<sup>10</sup> food and beverage companies, as part of the North American Free Trade Agreement renegotiations, are attempting to preempt nations from adding health-based warning labels to food and beverage packaging. Given that 33 countries have enacted or implemented laws to tax sugar-sweetened beverages as of December 2018, the food and beverage industries may continue their global preemption efforts.

California's swift passage of a law banning local taxes on sugar-sweetened beverages should be a wake-up call to the medical and

public health communities. In the tobacco experience, the initial response to the preemption of local initiatives was largely reactive. Settling for industry-funded "compromise bills" crippled advocacy for tobacco-control policies and delayed these efforts for decades.

State preemption prevents local governments from using effective strategies to decrease the consumption of sugar-sweetened beverages. And given the reliance on tobacco taxes to fund tobacco-control efforts, preemption of taxes on sugar-sweetened beverages may also limit efforts to prevent cardiovascular disease, diabetes, obesity, and dental caries at the population level. Although medical societies and the public health community have been caught off guard by the beverage industry's recent legislative successes, it is time to effectively counter state preemption of local initiatives to tax and regulate sugar-sweetened beverages.

## ARTICLE INFORMATION

Published Online: January 22, 2019.

doi:10.1001/jamainternmed.2018.7770

**Conflict of Interest Disclosures:** Dr Schillinger reports serving in 2016 as a paid scientific expert for the City and County of San Francisco in its defense against a lawsuit brought by the American Beverage Association, the California Retailers Association, and the California State Outdoor Advertising Association related to a city ordinance mandating that sugary drink advertisements post a warning label alerting consumers that the drinks can contribute to obesity, tooth decay, and diabetes. No other disclosures are reported.

**Funding/Support:** This article was supported by the National Center for Advancing Translational Sciences (UCSF-CTSI UL1 TR001872), the National Cancer Institute training grant (2T32 CA113710-11), the National Institute of Diabetes and Digestive and Kidney Diseases Center for Type 2 Diabetes Translational Research grant (2P30 DK092924, R01 DK116852), and the University of Nevada, Reno.

**Role of the Funder/Sponsor:** The funders had no role in the design and conduct of the study; collection, management, analysis, and

interpretation of the data; preparation, review, or approval of the manuscript; and decision to submit the manuscript for publication.

**Disclaimer:** The article reflects the views of the authors, not the views of the National Institutes of Health nor the University of Nevada, Reno.

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