

State preemption and affordable housing policy

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Abstract

Many affordable housing policies are the domain of local governments. While subnational housing policies can be used to increase racial and economic segregation, they can also protect renters, and thus are not without controversy. Local affordable housing policies include inclusionary zoning, rent control, short-term rental regulation and source of income discrimination. Starting in the 1980s, states began to preempt these local laws, preventing their cities from adopting affordable housing policies. We ask why states choose to preempt one or more of these four affordable housing policies. Using a cross-sectional, time-series dataset of preemptions, we find evidence that more conservative legislatures are more likely to adopt preemptions, while more professional legislatures and states with higher rental rates and previous preemptions are less likely to preempt. Contrary to expectations, interest group density, electoral competition and policy diffusion are not significant predictors of preemption. For advocates and policymakers concerned with increasing affordable housing in their jurisdictions, these results raise unease about the ability to further an affordable housing agenda at the local level, particularly in more conservative political environments, suggesting instead that affordable housing may need to return to the purview of the federal government.

Keywords

affordable housing, ideology, preemption, rent control, source of income discrimination

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摘要

许多保障性住房政策的制定和实施是地方政府的管辖范围。虽然地方住房政策可能会增加种族和经济隔离，但它们也可以保护租房者，因此并非没有争议。地方保障性住房政策包括包容性分区、租金控制、短期租金监管和收入来源区分。从 1980 年代开始，各州开始出台凌驾于这些地方法律之上的法律，阻止其城市采用保障性住房政策。为什么各州会选择出台法律，凌驾于这四项保障性住房政策中的一项或多项之上呢？我们对此提出了疑问。利用优先权的横截面时间序列数据集，我们发现更保守的立法机构更有可能采用优先权，而更专业的立法机构以及租金较高和先前采用过优先权的州可能较少采用优先权。与人们的预期相反，利益集团密度、选举竞争和政策扩散并不是优先权的重要预测因素。对于关心在其所在辖区内增加保障性住房的倡导者和政策制定者来说，这些结果会让他们不安，让他们对地方一级推进保障性住房议程的能力产生怀疑，特别是在更保守的政治环境中，这表明保障性住房可能需要回到联邦政府的管辖范围内。

关键词

保障性住房、思想、优先权、租金控制、收入来源区分

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Introduction

In the US, many affordable housing policies are the domain of local governments. States often set the floor on housing regulations (Hatch, 2017), with cities choosing to enact their own policies that may be more interventionist than the state standard. Local affordable housing policies include inclusionary zoning, rent control, short-term rental regulation and source of income discrimination. Starting in the 1980s, as part of a larger trend towards state preemptions of city laws (Goodman et al., 2020), states began to preempt these laws, preventing their cities from adopting affordable housing policies. Legislative politics, such as ideology (Riverstone-Newell, 2017), professionalism (Jansa et al., 2019) and single party control (Flavin and Shufeldt, 2020; Swindell et al., 2018) may explain the likelihood that a state will preempt its cities. In fact, the most common explanation is that preemption is most likely to occur when more conservative states preempt policies enacted by their liberal cities (Swindell et al., 2018). Other authors emphasise the role of powerful interest groups (Givel and Glantz, 2001; Riverstone-Newell, 2017), which use their political

capital to lobby against particular policies. A limitation of many studies seeking to understand the reasons for preemption is that they are cross-sectional and do not take advantage of the temporal nature of preemptions. We address this shortcoming by using a cross-sectional, time-series dataset to examine the causes of affordable housing preemptions in the US.

Affordable housing is an appropriate case study of state preemptions of city laws because it represents an area with many different policy approaches (Hatch, 2017) with substantial history of controversy. Furthermore, it is an area of increased public interest in recent years, with the COVID-19 pandemic bringing it to the forefront of the public consciousness. This attention to affordable housing is only likely to grow as large cities, particularly in coastal areas, face skyrocketing prices and limited housing supplies (Richardson, 2019).

We find evidence that affordable housing preemption is driven by legislative politics (ideology and professionalism) and the power of renters. More conservative legislatures increase the likelihood of preemption, while more professional legislatures, a greater percentage of the population as

renters and previous housing preemptions decrease the likelihood of preemption. Contrary to expectations, real estate interest groups and construction employment density, electoral competition and policy diffusion are not significant predictors of preemption. This research makes two fundamental contributions to the literature. Methodologically, it is one of the first papers, to our knowledge, to use a cross-sectional, time-series approach to model the determinants of state preemptions over time. Substantively, it identifies the factors most likely to lead to preemptions of cities' affordable housing policies. For advocates and policymakers concerned with increasing affordable housing in their jurisdictions, these results raise unease about the ability to further an affordable housing agenda and respond to citizen needs (Blair and Starke, 2017) at the local level, particularly in more conservative political environments. In an era of rising state preemptions (Haddow, 2021), affordable housing may need to return to the purview of the federal government.

State preemption

Preemption is 'the use of coercive methods to substitute state priorities for local policymaking' (Goodman et al., 2020: 147). All three branches of government in the US can initiate preemptions. While Governor (Chief Executive)-initiated preemptions were widespread during the COVID-19 pandemic (McDonald et al., 2020) and court-driven preemptions do occur (Swanson and Barrilleaux, 2020), preemptions that emanate from the legislature are more common and are the focus of this research. Much like the diffusion of innovations (Eyestone, 1977), one can think of preemption as having several different waves. According to Goodman et al. (2020) there are four such epochs of modern preemption. First,

preemption took the form of tax and expenditure limits (TEs) in the 1970s and 1980s. This was followed in the 1980s and early 1990s by a series of unfunded mandates. The third wave of preemptions was in the 1990s and early 2000s, when states preempted laws focussed on public health. Finally, the most recent wave of preemptions, which started in the mid-2000s, lacks a clear pattern, but is likely to include punitive consequences for violating the preemption combined with a lack of state policymaking on the topic. These epochs help to explain preemption mechanisms over time but should not be seen as clear temporal delineations. For example, fair housing policy preemptions started in the 1980s, with a spike in the latter half of the 2010s.

While recognising that preemption mechanisms change over time, scholars have hypothesised several reasons for preemptions. The most frequent set of explanations are legislative politics, led by ideology. Riverstone-Newell (2017) argues that most recent preemptions are conservative states limiting the actions of their more liberal cities, a sentiment shared by Phillips (2017). In one of the only other studies to examine state preemptions using a cross-sectional, time-series methodology, Goodman and Hatch (2019) find more conservative states are likely to preempt the labour policies of their more liberal cities. Two other potential political factors affecting the likelihood of a state preemption are legislative professionalism and competition. Less professional legislatures are more likely to copy legislation (Jansa et al., 2019), and therefore may be more likely to pass model preemption legislation, although Kim et al. (2021) do not find legislative professionalism to be a significant factor in labour preemptions. When there is more political competition and one party has less control of the legislature, legislators are more likely to be punished for passing controversial bills (Rogers, 2017).

States are more likely to pass preemption legislation when one party is in control of both branches of the legislature and the executive branch, regardless of what party is in control (Swindell et al., 2018). Therefore, we hypothesise that states with more conservative legislatures and those with less competition will be more likely to adopt affordable housing preemptions while states with more professionalized legislatures will be less likely to adopt preemptions.

Another possible explanation for state preemption is the influence of interest groups in state policymaking. Powerful groups such as the firearm, alcohol and tobacco industries were key actors in state preemptions regulating their industries in the 1990s and early 2000s (Givel and Glantz, 2001; Goodman et al., 2020). Groups such as the American Legislative Exchange Council (ALEC) have been associated with general policy diffusion (Hertel-Fernandez, 2019), ideological (rather than partisan) based policy adoption (Hertel-Fernandez, 2014) and preemption adoption (Pomeranz and Pertschuk, 2017). ALEC, for example, has model legislation preempting city regulation of short-term rentals¹ and rent control,² while the Goldwater Institute has model legislation preempting regulation of short-term rentals.³ Business interests' influence in state policymaking may be particularly acute in places with low legislative capacity (Hertel-Fernandez, 2019). Relevant interest groups in the affordable housing arena include the real estate lobby and the construction industry. In addition, non-elites can exhibit power over the policymaking process. For example, organised renter groups have had success in persuading local governments to adopt policies that are beneficial to them (Michener, 2020; Michener and SoRelle, 2022). We therefore expect a positive relationship between the size of the real estate and construction industries and affordable housing preemptions and a negative relationship

between the number of renters in the state and housing preemptions.

There are two potential reasons why research finds such different explanations for preemptions. First, states preempt a wide variety of policies including tobacco (Douglas et al., 2015; Givel and Glantz, 2001), food and beverages (Crosbie et al., 2019; Pomeranz and Pertschuk, 2019), guns (Gorovitz et al., 1998), immigration (Blizzard and Johnston, 2020), fracking (Goho, 2012), COVID-19 pandemic responses (McDonald et al., 2020), labour policies (Goodman and Hatch, 2019; Kim et al., 2021) and LGBTQ + discrimination (Ellis, 2016). As Grossmann (2013: 77) contends, the politics of policy areas vary significantly, and '[i]ssue area case-selection decisions make large differences in likely findings'. For example, 58% of housing policy enactments involve interest groups while only 31% of criminal justice policies involve these actors. Grossmann (2013) finds housing is a centralised network with significant state/local influence and strong ties between the legislative and executive branches. In contrast, criminal justice policy is a small network with primarily judicially-made policy. We therefore would expect the reasons for preemptions in each of these two issue areas (as well as other issue areas) to be different. Kim et al. (2021) take this approach, focussing on the causes of labour rights preemptions, finding labour-specific factors such as unionisation rates and the state minimum wage are significantly associated with preemption.

Second, previous studies have not examined the temporal nature of preemptions, in part because of a lack of time-series data. Our unique dataset contains these data, which allow us to situate our question about the spread of preemptions in terms of policy diffusion. Early policy diffusion literature focussed on the reasons why policy innovations spread, generally concentrating on

internal factors such as political structure (Walker, 1969) and economic conditions (Gray, 1973) as well as external factors such as neighbouring jurisdictions with similar policies (Lutz, 1986). Foundational research by Berry and Berry (1990) focuses on the importance of examining these internal and external factors together. We take this approach to ask why states preempt city affordable housing laws, focusing on the role of legislative politics, interest group power and geographic diffusion.

Affordable housing policies

Local governments can have a substantial impact on housing within their jurisdictions. For example, zoning determines everything from where homes can be built to lot size. Historical (and currently illegal) policies such as racial covenants and redlining determined who was excluded from certain neighbourhoods. Trounstein (2018) argues segregation is the result of public policies adopted in response to white property owners and businesses concerned about property values. Opposition to affordable housing is often framed in terms of race and class (Nguyen et al., 2013; Tighe, 2012). Yet, local policies can also make neighbourhoods inviting. Source of income discrimination laws can enable housing voucher recipients to move into neighbourhoods to which they previously did not have access (Tighe et al., 2017).

Housing is an important policy area for governments because of the far-reaching effects housing (in)stability has on all aspects of individuals' (Baker et al., 2017) and communities' lives. At an individual level, housing is linked to physical (Fuller-Thomson et al., 2011), mental (Hatch and Yun, 2021; Suglia et al., 2011) and financial health (Desmond and Gershenson, 2017), as well as child educational achievement (Haveman et al., 1991). At a community level, housing

matters for crime and gang activity (Boggess and Hipp, 2010; Dupéré et al., 2007), civic engagement (Temkin and Rohe, 1998) and neighbourhood attachment (Taylor, 1996). Housing policies create feedback effects (Grogan-Myers and Hatch, 2019), such that inequitable policies create the political environment that leads to more inequitable policies. Therefore, jurisdictions considering a housing policy approach should consider the long-term consequences of that path. With over 47% of renters in the US classified as cost burdened (spending more than 30% of their income on housing) (Joint Center for Housing Studies of Harvard University, 2017), housing affordability is a policy concern for many jurisdictions. Four of these policies are examined here: inclusionary zoning, rent control, short-term rentals and source of income discrimination.

Inclusionary zoning policies require or incentivise affordable housing development. These policies can vary in their characteristics and strictness. Schuetz et al. (2011) identify key characteristics of inclusionary zoning policies: whether they are mandatory or voluntary; what types of developments they apply to; whether there are cost offsets to the developer; if there are buyout options; the share of units that must be affordable and what 'affordable' means; and the length of time the policies apply. Therefore, these policies can vary from broad, voluntary requirements to strict, long-term, mandatory requirements. In some jurisdictions, inclusionary zoning only applies to owner-occupied housing because of concerns that including rental housing would violate state rent control bans (Hickey, 2013). Evidence on the effects of these policies is inconclusive. For example, some authors find inclusionary zoning increases the supply of long-term affordable housing (Thaden and Wang, 2017), while other authors observe that in competitive housing markets when housing prices are rising, inclusionary zoning policies

increase housing prices (Schuetz et al., 2011). In one of the only studies on the effects of affordable housing preemptions, Melton-Fant (2020) finds more adults report poor health in states with inclusionary zoning preemptions, an effect that is particularly acute for Black adults. She hypothesises this effect is predominantly due to people delaying medical care because of high housing costs, and that inclusionary zoning preemptions decrease affordable housing, thus increasing costs.

Rent control laws put a limit on the amount of rent or how much rent can be increased and when for specific units. Like inclusionary zoning, these laws vary significantly. Rent control is often divided into three generations, with first-generation controls being rent freezes for some or all the rental market and second/third-generation rent controls limiting some rent increases within and between or within tenancies, respectively (Whitehead and Williams, 2018). Therefore, rent control laws vary on whether they allow any rent increases, how much and when the rent can be increased. Research on the effects of rent control, both in the US and other countries, is mixed. Rent control can both increase and decrease rents in the non-rent controlled market (Hubert, 1993), with the effects likely varying by the policy's specifics (Skak and Bloze, 2013). Rent control increases the likelihood of families staying in rent controlled units, but also reduces the overall supply of rental housing (Diamond et al., 2019). Landlords and real estate corporations are some of the biggest opponents of rent control, recently spending more than \$70 million to stop a ballot initiative in California to repeal the state's rent control preemption (BondGraham and Lempres, 2018).

Short-term rentals, such as Airbnb, are a relatively new phenomenon. Short-term rentals increase capital flows to

neighbourhoods (Wachsmuth and Weisler, 2018) and can increase tax revenue (Gottlieb, 2013). However, short-term rentals are associated with increased gentrification in New York City, US (Wachsmuth and Weisler, 2018); Lima, Peru (del Castillo and Klaufus, 2020); and Madrid, Spain (Ardura Urquiaga et al., 2020), among others. State preemptions of short-term rental policies take three forms: 'a ban on local bans of short-term rentals, a requirement that short-term rentals be allowed by right in residential zones, or a ban on local regulation' (Rosebrook, 2019: 78). In one of the only studies to examine the factors associated with short-term rental preemptions, Rosebrook (2019) finds that only legislative professionalism—not partisan control or interest groups—is associated with the adoption of this type of preemption, with more professional legislatures less likely to preempt their cities.

Source of income discrimination laws prohibit landlords from discriminating against tenants or potential tenants because of their lawful source of income, including housing vouchers, military benefits and government programmes. The protection these laws afford varies, from excluding vouchers as a source of income, to naming voucher holders as a protected class, to not defining what source of income means (Tighe et al., 2017). While these laws cover more than Housing Choice Voucher Programme vouchers, much of the literature focusses on the effect of source of income discrimination laws on voucher holders. These laws may allow voucher holders to move to more desirable neighbourhoods, defined as being safer (Lens et al., 2011) and less segregated (Freeman and Li, 2014). Voucher holders are more likely to be able to use their vouchers in jurisdictions with source of income discrimination laws (Freeman, 2012). Opponents of these laws, in addition to being against any rental market

regulation (Tighe et al., 2017), argue that accepting vouchers can represent a significant time and financial burden to landlords (Greenlee, 2014).

All four of these affordable housing policies are therefore contentious. While hostility to government regulation, particularly of business, may explain state preemption in general, undergirding preemptions of affordable housing policies specifically is a concern that housing market regulation leads to inefficiencies and can increase housing costs and/or reduce supply (Gyourko and Molloy, 2015). Those opposed to such preemptions argue the policies are necessary on equity grounds and decisions about affordable housing are best made at the local level (Ramakrishnan et al., 2019). In the next section, we discuss how common affordable housing preemptions are and when they occur.

Data and empirical strategy

Preemption of affordable housing policies

Data on state preemption of local laws are notoriously difficult to track (Goodman and Hatch, 2019). Currently, there is no centralised database of state preemptions or unifying structure to track such legislative actions. To overcome this obstacle, we rely on the initial work of the Local Solutions Support Center (LSSC) to form the basis of our preemption data.⁴ LSSC provides the legislative citations for preemptions in the four housing policy areas outlined above—essentially a cross-sectional dataset of preemption. Since our strategy (explained below) relies upon within-state time-series variation, we examine each legislative action and extract the date of adoption to form the final cross-sectional, time-series data for analysis.⁵ From the raw data, we construct our dependent variable, recorded as a one if any housing policy preemption is adopted in a year and zero otherwise. This variable allows us to

analyse the *within-state* probability of preemption (Goodman and Hatch, 2019).⁶

The timing and scope of state preemption of affordable housing policies varies across states.⁷ While outside of our analysis time frame, preemption of local rent control was a staple of legislative action in the 1980s and continued to be through the 1990s and early 2000s (see Figure 1, panel a). More recently in 2018, two states preempted local rent control ordinances. Preemption of inclusionary zoning happened a little later, first in 1990 and then sporadically until 2018. Source of income discrimination preemptions all occurred in 2015, while short-term rentals are also a relatively new development, beginning in 2011.

States vary in their total number of affordable housing preemptions from zero to four (see Figure 1, panel b). One state (Indiana) preempts all four policies we examined in this study, and five states (Arizona, Idaho, Tennessee, Texas and Wisconsin) preempt three policies. Looking at Figure 1, panel b, there appears to be a geographic variation in the number of preemptions, with states in the northeast and upper plains states having no preemptions except for New Hampshire's recent short-term rental preemption. The states with the highest levels of preemption are largely in the sunbelt region with the exception of Indiana. This suggests there may be geographic diffusion patterns, justifying a policy diffusion approach (Berry and Berry, 1990).

Other data

Data on state legislative ideology is provided by Shor and McCarty (2011). They use the Project Vote Smart National Political Awareness Test (NPAT) and roll call voting records to calculate legislator-specific ideal points. These data are then aggregated to the legislative chamber level and median ideal points are calculated. Following Shor

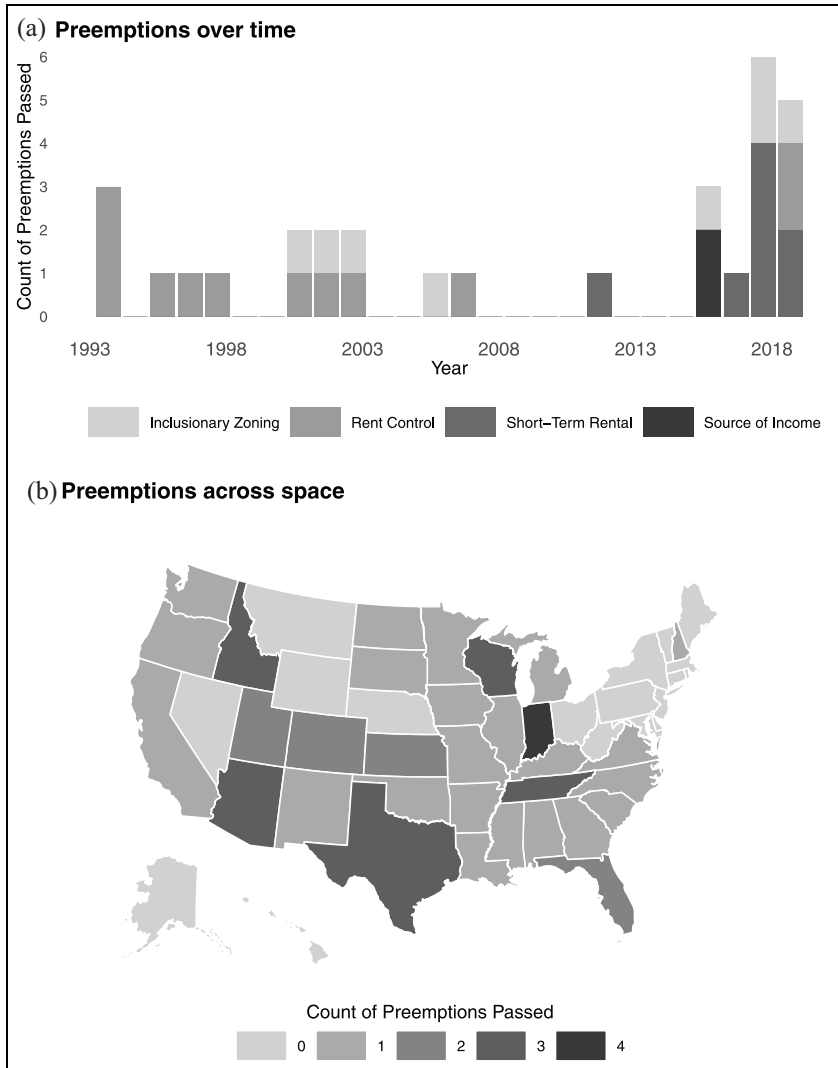


Figure 1. Preemption of affordable housing laws across time and space, 1993–2018.

and McCarty (2011), we then average to two median ideal points to form average state legislative ideology. This value is centred on zero with scores below zero indicating a more liberal state legislature and scores above zero indicating a more conservative legislature. As seen in Table 1, the average state is slightly conservative; however, there is wide variation across states and time with

state legislatures taking a decidedly conservative turn in 2010.

In addition to legislative ideology, we include other facets of legislative politics. First, we include legislative professionalism. This variable is operationalised using data from Squire (1992, 2000, 2007, 2012, 2017) and measures state legislative professionalism relative to US congressional professionalism.

Table 1. Summary statistics.

Variables	Source	Units	Mean	SD	Minimum	Maximum
Any housing related preemption	LSSC	Indicator, 0 or 1	0.029	0.168	0.000	1.000
Source of income discrimination preemption	LSSC	Indicator, 0 or 1	0.003	0.051	0.000	1.000
Inclusionary zoning preemption	LSSC	Indicator, 0 or 1	0.011	0.102	0.000	1.000
Short-term rental preemption	LSSC	Indicator, 0 or 1	0.011	0.102	0.000	1.000
Rent control preemption	LSSC	Indicator, 0 or 1	0.013	0.114	0.000	1.000
Average state legislative majority ideology (higher = more conservative)	ShMc	Common Space	0.139	0.772	-1.672	1.370
Average state legislative chamber ideology (higher = more conservative)	ShMc	Common Space	0.166	0.568	-1.367	1.151
FHFA house price index (1975 = 100)	FHFA	Index	426.254	159.426	209.580	1230.350
Rental rate	Census	Percentage	0.312	0.048	0.212	0.462
Employment in construction of single-family homes per capita	CBP	Fraction	0.003	0.001	0.001	0.008
Employment in real estate per capita	CBP	Fraction	0.001	0.000	0.000	0.003
State direct expenditures on housing and community development per capita	CoG	Fraction	0.025	0.027	0.000	0.191
Population	Census	1000s	6925.919	7295.614	638.168	39461.590
Personal income per capita	REIS	\$1000s	41.709	6.600	28.124	68.627
Population density	Census	Ratio	125.508	149.235	9.249	882.389
% urban population	Census	Percentage	0.726	0.162	0.314	0.997
% 65 and older	SEER	Percentage	0.132	0.020	0.085	0.205
% 19 and younger	SEER	Percentage	0.277	0.023	0.217	0.385
% population with BA+	CPS-ASEC	Percentage	0.232	0.051	0.110	0.415
Ethnic fractionalisation ^a	SEER	Fraction	0.269	0.114	0.041	0.508
State legislative professionalism	Squire	Fraction	0.188	0.120	0.027	0.629
Folded Ranney index	BH	Fraction	0.837	0.080	0.638	1.000
Electoral competition	Klarner	Index	38.322	12.319	7.198	71.776
% of neighbouring states preempting	LSSC	Percentage	0.757	0.265	0.000	1.000

Note: BH, Bibby and Holbrook (2004); CBP, County Business Patterns, Census, Census Bureau; CoG, Census of Governments; CPS-ASEC, Current Population Survey – Annual Social and Economic Supplement; FHFA, Federal Housing Finance Agency; Klarner, Klarner (2018); LSSC, Local Solutions Support Center; REIS, Regional Economic Information System; SEER, surveillance, epidemiology, multiple years; ShMc, Shor and McCarty (2011); Squire, Squire (various years). Data are for 49 states from 1993 to 2018 excluding Nebraska.

^aSee Alesina et al. (1999) for a further explanation of fractionalisation and its uses as a measure of ethnic fragmentation.

Professionalism is a function of three equally weighted factors: legislator salary, number of legislative staff per member and the total days in session. On average, professionalism is low: approximately 20% of the professionalism of the US Congress. Second, we include the strength of one-party control via the folded Ranney index (Bibby and Holbrook, 2004). A value of 0.5 indicates perfect one-party control of state government and as the index increases, the control of state politics becomes more fractured. The average state-year in our data is a 0.84 on the Ranney index—reasonably far from one-party control. Lastly, we include legislative electoral competition using the Holbrook and Van Dunk (1993) index.⁸ The index is a composite of four electoral factors by district: winning percentage of the popular vote, the winning candidate's margin of victory, an indicator of whether the district is 'safe' and an indicator of whether the district is contested. District-level measures are aggregated to the state. A value of zero indicates a complete absence of electoral competition and electoral competition increases to a maximum (theoretical) value of 100. The average state-year is 38.3, suggesting reasonable competitiveness.

Interest group power is operationalised by three variables. First is the rental rate measured as one minus the homeownership rate by state. Second is the number of realtors and real estate brokers in a state, per capita. These data are extracted from County Business Pattern data for North American Industry Classification System (NAICS) four-digit code 5312, Offices of Real Estate Agents and Brokers. Third is employment in the residential building industry per capita, operationalised as employment in NAICS four-digit code 2361, Residential Building Construction. In addition to housing interest groups, we include two additional housing related variables to control for baseline housing conditions: the

Federal Housing Finance Agency (FHFA) house price index to control for average house prices and state spending on housing and community development per capita to control for direct state action in the housing market. Lastly, we account for geographic diffusion using the percentage of neighbouring states adopting a housing related preemption in the current year.⁹ The remaining economic and demographic control variables can be found in Table 1.

Empirical strategy

We analyse the probability of adopting any housing related preemption. We specify the dependent variable as dichotomous [0,1]. We wish to explain *within-state* variation in preemption activity necessitating the need to include state-level fixed effects to control for any time-invariant, unobserved heterogeneity (Green et al., 2001). Following the advice of Beck (2015) for the estimation of binary dependent variables with fixed effects, we use a linear probability model with state and year fixed effects (Angrist, 2001). Additionally, we constrain the data to only those states that exhibit time-series variation (Beck, 2015) to eliminate the potential for the 'ALL0' group to bias the coefficients towards zero. Standard errors are clustered on the state.

Results

Table 2 shows the results of two regression models where the dependent variable is binary, indicating one if a state had a legislative preemption of local affordable housing ordinances of any kind in a given year. The first set of results uses average ideology of the controlling majority of legislators averaged across both houses (column 1), and the second set of results relaxes this choice to include the ideology of the entire chamber, regardless of controlling party (column 2).¹⁰

Table 2. Linear probability model results.

	(1)	(2)
Average state legislative majority ideology	0.0362* (0.0145)	
Average state legislative chamber ideology		0.0607* * (0.0220)
State legislative professionalism	-0.3096* (0.1363)	-0.3220* (0.1374)
Folded Ranney index	-0.1104 (0.1113)	-0.1005 (0.1123)
Electoral competition	0.0001 (0.0011)	0.0001 (0.0011)
Rental rate	-0.9359* (0.4359)	-0.9182* (0.4339)
Employment in construction of single-family homes per capita	-12.4135 (9.8366)	-13.2225 (9.8335)
Employment in real estate per capita	-1.4996 (39.3503)	-0.8590 (38.1683)
FHFA house price index (1975 = 100)	-0.0002 (0.0001)	-0.0002 (0.0001)
State direct expenditures on housing and community development per capita	-0.1697 (0.4472)	-0.1267 (0.4353)
Population (1000s)	0.0000 (0.0000)	0.0000 (0.0000)
Personal income per capita	0.0011 (0.0041)	0.0017 (0.0041)
Population density	0.0007 (0.0010)	0.0006 (0.0010)
% urban population	0.1958 (0.1794)	0.1993 (0.1788)
% 65 and older	-0.2091 (2.2252)	-0.0625 (2.2241)
% 19 and younger	-2.7829 (2.1136)	-2.8583 (2.1038)
% population with BA+	0.5218 (0.5015)	0.5344 (0.4988)
Ethnic fractionalisation	1.7369* (0.8244)	1.7805* (0.8254)
% of neighbouring states preempting	0.0404 (0.1156)	0.0416 (0.1148)
Number of previous preemptions	-0.0487* (0.0188)	-0.0492* (0.0189)
Constant	0.4818 (0.9208)	0.4185 (0.9206)
State fixed effects	Yes	Yes
Year fixed effects	Yes	Yes
N	759	759

Note: Dependent variable: 1 if state adopts any preemption in year t . Robust standard errors clustered on the state in parentheses. Higher levels of ideology indicate greater political conservatism. FHFA, Federal Housing Finance Agency.
[†] $p < 0.1$. * $p < 0.05$. ** $p < 0.01$.

Regardless of specification, the sign on legislatively ideology is positive, indicating more conservative legislatures are more likely to preempt. Depending on the specification, a one standard deviation increase in legislative ideology (indicating an increase in conservatism; 0.772 and 0.568, respectively) is associated with a 2.8 (majority) to 3.4 (chamber) percent increase¹¹ in the risk of preemption in any given year. These results echo Goodman and Hatch (2019), who finds roughly similar results (both in sign and magnitude) regarding labour rights preemptions.

Legislative professionalism exerts a consistent negative influence on the probability

of preemption. More professionalised legislatures are less likely to preempt. Increasing a state's legislative professionalism from 0 (completely unprofessionalised) to 0.5 (half as professional as the US Congress), roughly equivalent to moving from the minimum to maximum observed level of professionalism, decreases the likelihood of preemption by about 15 percentage points. The direction and magnitude of the effect are roughly like those found by Rosebrook (2019). Neither the folded Ranney index or the index of political competition is influential on the probability of preemption. The proportion of neighbouring states adopting an affordable housing related preemption has no

influence on a state's probability of preemption; however, previously adopting an affordable housing related preemption decreases the likelihood of a preemption in the current period by about five percentage points on average.

Of the variables measuring the influence of housing-related interest groups, only the state rental rate is influential on the probability of preemption. A 1% increase in a state's rental rate is associated with roughly a one percentage point decline in the probability of preemption. Typically, renters are not thought to have much political power, especially relative to homeowners; however, our results suggest renters exert some political power when it comes to allowing local control over affordable housing laws. Employment in the construction or real estate industries, house prices and state spending on community development are not influential on the probability of preemption.

The remaining social and demographics variables largely have no effect on the probability of preemption with one exception, ethnic fractionalisation. As a state becomes more diverse, the probability of preemption increases substantially. We interpret these results recognising that few places are truly integrated, so increasing diversity is largely increasing segregation. In this light, it is possible these results are driven by a declining majority seeking to lock in systematic advantages via state law, but more research is necessary in this area.

Discussion and conclusion

Despite expectations set by Grossmann (2013) that housing policy is a highly centralised network with significant interest group involvement, we find that legislative politics, particularly ideology and legislative professionalism, explain state affordable housing

preemptions and that powerful interest groups do not have a significant impact on preemptions. Rather than being influenced by elites, states appear to respond to their constituents in that states are less likely to adopt affordable housing preemptions when a greater share of their population comprises renters. This finding is worthy of future study because it challenges the idea that the developer lobby and other housing-related interest groups are strong while renters are weak in their ability to influence affordable housing policies. This raises questions of whether it is the presence of renters alone that influences policy decisions, or whether it reflects renters' political power. This political power could occur because of the way renters organise (Michener, 2020) or if renters vote at similar rates to homeowners, reducing participation bias (Franko, 2013). Contrary to our expectations, we do not find evidence of preemption policy diffusion, but we do observe path dependency, whereby a previous affordable housing preemption decreases the likelihood of another preemption, which is consistent with Grossmann's (2013) contention that housing policy is a highly path dependent policy area. We also do not find electoral competition or the percentage of the state that is urban to have a significant effect on the likelihood of a state adopting an affordable housing preemption.

One of the contributions of this research is methodological: it is among the first studies to take advantage of longitudinal trends to determine the factors associated with state preemption over time. This is important because policy is cumulative. Because the characteristics of preemptions change over time (Goodman et al., 2020), it is reasonable to expect that the reasons for those preemptions would also change. Longitudinal data on state preemptions can be difficult to find because there is no one database containing information on all state preemptions, yet

longitudinal analysis is necessary for a complete picture of the causes of these preemptions.

This study is not without limitations. Institutional housing investors may seek preemptions to lessen the local regulatory burden placed on them by some city governments. We are unable to effectively control for this possibility, particularly over the long time-frame of our analysis. Given the documented importance of the business community on preemption in other policy areas (Hertel-Fernandez, 2019), the political influence of a well-resourced, influential industry may well be large. Future research should focus on exploring the political activities of institutional housing investors. Furthermore, we are unable to control for two factors that may influence our results: the overall frequency of preemptions within states and the frequency with which local governments adopt affordable housing policies due to data limitations. No comprehensive longitudinal database of state preemptions or local affordable housing policies currently exists. If and when such data are to become available, future research should explore the extent to which the volume of local policymaking and state preemptions generally affect state affordable housing preemptions.

Understanding why states pass affordable housing preemptions is important for cities that wish to strategise about their own policymaking. Cities have very little influence over legislative ideology and professionalism, which raises questions about their ability to prevent state preemption. Swindell et al. (2018) and the National League of Cities (Wagner et al., 2019) recommend cities lobby their state legislature to expand, rather than restrict through preemption, their powers. While this is a potential long-term solution to preemption, cities may also want to explore non policy approaches to expanding affordable housing in states that preempt or are likely to preempt these policies. Just as

community groups came together in Oklahoma to change societal norms surrounding tobacco use despite the state's tobacco regulation preemption (Douglas et al., 2015), renters, tenant organisations and other community groups could work together to find a workaround to provide affordable housing that does not violate the state preemption, or even help repeal state preemptions.

The results of this study reinforce our argument that state preemptions need to be studied by policy area, rather than as a monolith. While ideology, legislative professionalism and renters affect affordable housing preemption, interest groups are a driving force behind public health preemptions (Pomeranz and Pertschuk, 2017) and unionisation and state minimum wages are associated with labour preemptions (Kim et al., 2021). Further research is needed using longitudinal data to determine the factors influencing state preemption across policy domains. Eventually, this will allow scholars to theorise about the relationship between the characteristics of different policies and the likelihood of state preemption of those policies. Such theory development is important for local policymakers who want to respond to their constituents' needs, but whose policy options are constrained by state preemption.


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Notes

1. <https://alec.org/model-policy/an-act-relating-to-online-lodging-marketplaces-establishing-statewide-standards-protecting-privacy-and-enabling-efficient-tax-remittance/>
2. <https://alec.org/model-policy/rent-control-preemption-act/>
3. <https://goldwaterinstitute.org/article/the-property-ownership-fairness-act-protecting-private-property-rights/>
4. <https://www.supportdemocracy.org/equitablehousing>
5. Our dataset includes information on preemptions starting in 1980; however, we only use data from 1993 to 2018 due to limitations in the state legislative ideology data. Our data focusses exclusively on *legislative* preemptions—preemptions implemented by the passage of a law. This necessarily excludes some preemptions adopted via referendum (such as Massachusetts' Question 9 in 1994) or via judicial decree. See Goodman et al. (2020) for more information.
6. We also analyse the number of preemptions or the intensity of preemption (Bucci and Jansa, 2021) per year. No variables are statistically significant in this analysis. The results are available upon request.
7. In general, the preemptions presented are 'negative' in the sense that the prohibition against implementation potentially harms renters or homeowners. However, preemption can be 'positive'. See Goodman et al (2020) for more information.
8. As Shufeldt and Flavin (2012) explain, the correlation between the Ranney index and Holbrook and Van Dunk index is historically positive; however, there is a divergence between the two in the period we analyse, indicating distinct concepts.
9. The inclusion of prior housing-related preemptions creates a potential ceiling effect in the results. Eliminating this potential effect by excluding the variable does not qualitatively change the regression results presented

below. We thank an anonymous reviewer for suggesting the possibility.

10. We include both measures of state legislative ideology to account for two potential scenarios. The ideology of the legislative majority assumes no bipartisanship in preemption. Only the ideology of the controlling majority is important. Including the ideology of the legislative chamber as a whole expressly allows for bipartisan preemption by including the ideology of both parties in the legislature.
11. The 95% confidence interval for these two predictions is [0.513, 5.076] for column 1 and [0.904, 5.985] for column 2.

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