

PROTECTING LOCAL CONTROL

HOW STATE LAWMAKERS' POWER GRAB
HARMS COMMUNITIES OF COLOR

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INTRODUCTION

Local communities should be able to protect and empower workers, improve the health of their residents, make sure housing is safe, and take steps to address the harmful effects of racial discrimination. These functions are especially important during the pandemic, which has sickened many people in Wisconsin and led to job and housing insecurity, especially for residents of color.

However, the Wisconsin legislature has systematically prohibited Wisconsin local governments from successfully taking on these tasks, by misusing a strategy called preemption. “Preemption” in this context refers to a situation in which state lawmakers block local ordinances from taking effect, or dismantle an existing ordinance, thereby limiting the authority of residents to govern their communities.

Over the past decade, state lawmakers have consistently worked to curtail the efforts of local communities to raise labor standards and improve families’ economic security. When the pandemic brought a health and economic crisis, the state government response was woefully inadequate and local governments were left with severely diminished power to address the situation.

These power grabs by the legislature have especially harmed Wisconsin’s communities of color. Many of the times that the legislature took power away from local governments, it was to prohibit local governments from curtailing predatory actions by employers, landlords, and businesses that hit residents of color especially hard.

The pace of the power grab has slowed with the change in administration. Lobbied by special corporate influences, Governor Walker and the Wisconsin legislature worked together to intrude on local communities in an attempt to lower labor standards. In contrast, Governor Evers has taken a different approach, vetoing recent preemption bills passed by the legislature instead of signing them into law. Of the nine preemption attempts described in this report, seven were signed by Governor Walker,

and one was vetoed by Governor Evers. The legislature is continuing to attempt to limit the capacity of local governments, especially in the area of actions to mitigate the spread of COVID-19. And significant damage has already been done in terms of the legislature usurping powers from local communities.

Wisconsin isn't the only state in which the state legislature is obstructing local policymaking. Preemption is rampant in [the Midwest](#) and the South, and two reports by the Economic Policy Institute have shown how state lawmakers in those regions are blocking shared prosperity and racial, gender, and immigrant justice.

HOW PREEMPTION REINFORCES RACIAL DISCRIMINATION

Preemption occurs when a state law, passed by the state legislature, interferes with local laws passed by city councils or county boards. If there is a conflict between state and local law, state law often “preempts” local regulations with state law taking effect, thereby enabling state lawmakers to override the will of local residents.

Preemption can take several forms. In some cases, the state legislature may strike down a law that a local government has already passed. For example, the will of the community led to Milwaukee passing a requirement that employers must provide paid sick leave. The Legislature subsequently blocked the requirement.

Another way that the state legislature preempts local governments is by passing laws that prohibit local governments from taking a certain course of action, even though no local governments have yet done

so. For example, the legislature blocked local governments' ability to prohibit employers from asking about salary history. There weren't any local regulations about salary history on the books when the legislature prohibited them, but the preemption still ties the hands of local governments in the future.

These types of legislature blockages have had a disproportionately severe effect on urban areas, where many of the state's residents of color live, with far less effect on other areas of the state that have a less racially and ethnically diverse population. Milwaukee and Madison are more likely to pass progressive policies that Wisconsin's more conservative legislature would like to stop.

Milwaukee and Madison—especially Milwaukee—also have populations in which people of color make up a far larger share of the residents than in the rest of the state. Nearly two-thirds of Black residents of the state live in Milwaukee or Madison, and one out of every three Latinx residents. In contrast, just one out of every 12 white residents lives in those two cities. When the state legislature targets Milwaukee and Madison and prevents those local governments from taking action, those restrictions affect a much larger share of residents of color than of white residents.

The growing use of preemption works with other legislative actions to discourage voting by people of color and other city residents. They are more likely than other Wisconsinites to have to wait in long lines to cast their ballots, and preemption gives them less reason to make that effort. The legislature draws district boundaries that ensure the legislators elected from urban areas will be in the minority party, where they have very little power, and preemption precludes city officials from adopting local ordinances to address concerns that the gerrymandered legislature chooses not to act on. Even if city residents overwhelmingly approve a referendum to change local policy, the legislature can use preemption to block the will of the voters.

One effect of preemption is that public policy choices that could previously be made by local elected officials in urban areas are now in the hands of rural and suburban legislators who bear little resemblance to the residents of Wisconsin cities. For example, only 7% of the Wisconsin

legislature is Black or Latinx, compared to 58% of the population in Milwaukee and 16% in Madison.

The power grabs passed by the legislature affect residents' ability to govern different aspects of their communities, including environmental protection, K-12 school systems, and safety. This review focuses on preemption in the area of worker protection, housing, and health, but there are many other ways that the legislature has concentrated power in its hands by restricting the authority of local governments.

ELIMINATING THE POSSIBILITY OF STRONGER LOCAL LABOR STANDARDS

BARRING LOCAL GOVERNMENTS FROM REQUIRING EMPLOYERS TO PROVIDE PAID SICK DAYS OR PAID LEAVE

Workers without paid sick leave have to choose between going to work sick, and staying home and risking losing their wages – or even their job. City of Milwaukee residents recognized the importance of paid leave in 2008 when they [overwhelmingly passed a binding referendum](#) to require most employers to provide workers up to nine paid sick days a year. The leave could be taken for the worker's own illness or to care for a sick child or other family member.

“ We knew this was an issue that resonated with people in the city who understand it’s so important for families to have the ability to work and care for their families. ”

- [Amy Stear, State Director of 9to5](#)

By passing the referendum, Milwaukee voters put the city on the leading edge of the effort to provide paid sick leave, demonstrating an intense interest in improving the quality of jobs in their community. At the time, only two other cities in the country required employers to provide paid sick leave.

Powerful business interests in Milwaukee that opposed paid sick leave knew they couldn’t win at the ballot box, so they tied the provision up in court to kill time. Then when the state legislature flipped from Democratic to Republican control in 2011, one of the legislature’s first priorities was to prohibit local governments from requiring employers to provide employees with paid sick leave. The will of Milwaukee voters was thwarted.

The lack of paid sick leave hits workers of color the hardest. Only 46% of Hispanic workers and 53% of Native American workers have access to paid sick leave, significantly lower than the 63% of white workers with paid sick leave, according to the [Institute for Women’s Policy Research](#).

Legislation: [2011 Act 16](#)

PROHIBITING COMMUNITIES FROM SETTING THEIR OWN MINIMUM WAGE

State lawmakers refuse to increase Wisconsin’s minimum wage, which has been stuck at \$7.25 for more than a decade, and has lost about a quarter of its purchasing power since then.

Dozens of cities, including Minneapolis and St. Paul, [have adopted local minimum wages that are higher than the rest of the state](#), but state lawmakers have specifically barred local governments from doing so in Wisconsin.

This ban has a disparate effect on people of color because historical and current discrimination in the labor market, education systems, and housing lowers their wages. In Wisconsin, Black residents are about three times as likely as white residents to live in poverty, and Latinx individuals are about twice as likely as white residents to live in poverty. Increasing Wisconsin's minimum wage to \$15 would help close racial and ethnic wage gaps, by raising earnings for half of all Black workers in Wisconsin, and just over half of Latinx workers.

Preemption is a nonpartisan issue; unlike the other examples listed above, the ban on local minimum wages was signed into law by a Democrat, Governor Doyle, after it was passed by a Republican state legislature.

Legislation: [2005 Act 12](#).

“When I lost my job due to the pandemic, I took a risk and became a low-wage healthcare worker during the evenings to support my family. I would arrive home at 6:30 am, just in time to make sure my son was online for school. I was just barely surviving, but I did it. The thing is, though, people shouldn't have to live like that.”

–Melinda Herman, Testimonial – Governor's Health Equity Public Listening Session

BANNING LOCAL REGULATIONS THAT PROHIBIT EMPLOYERS FROM ASKING FOR SALARY HISTORY

Prohibiting potential employers from asking candidates about the salary history can help reduce the cycle of racial discrimination in the workplace, in which employers can take advantage of past inequities, perpetuating race-based wage inequality. Research shows that wages [increase in the wake of salary history bans](#), particularly for people of color.

Several cities – including Kansas City and Toledo, Ohio – restrict the ability of employers to ask for or use information about a job candidate’s salary history. States such as Alabama and Nevada also restrict the degree to which an employer can access or use salary history.

In Wisconsin, the legislature prohibited local governments from regulating the use of salary history, and the state legislature has refused to set a state-level policy.

Legislation: [2017 Act 327](#).

PROHIBITING FAIR SCHEDULING MEASURES

Shifts and hours that change from day to day with little notice make it hard for workers to arrange child care and plan their budgets. Most retail workers don’t know what their schedules will be two weeks into the future, [a recent study found](#), and 15% of retail workers have less than 72 hours of notice about what hours they will need to work.

Latinx and Black workers have more [schedule instability than white workers](#), with more workers of color reporting having shifts canceled by employers, on-call shifts, back-to-back closing-then-opening shifts, and involuntary part-time work. Workers of color have more schedule instability even when compared to white workers with the same education, age, and other characteristics, who worked at the same companies.

“ See, the thing is, you really don’t know how much money you’ll be making the following week because the schedule is always changing...Even if you want to be full-time, your schedule is going to be jumping around unpredictable just like the part-timers. Even if you’re full-time, they might just throw you in three days in a week. ”

- [Gean Smart, Raise the Floor Milwaukee](#)

Some cities like Chicago and Philadelphia have passed [fair scheduling regulations](#) that require big companies to post schedules two weeks in advance, pay workers for last minute scheduling shifts, and give workers a certain amount of rest between shifts.

In Wisconsin, the state legislature prohibited local governments from regulating employee hours, including work hours or shifts, thereby barring cities from passing fair scheduling laws.

Legislation: [2017 Act 327](#).

BANNING LOCAL GOVERNMENTS FROM ENTERING PROJECT LABOR AGREEMENTS

The legislature has prohibited local governments from entering into project labor agreements (PLAs) for large public works projects. [PLAs are contracts](#) that establish wages, work rules, safety guidelines, and dispute resolutions, and may include provisions requiring contractors to hire workers through union hiring halls or otherwise establish a unionized workforce.

“ This is not just about now. This is about my children, my grandchildren, my great-grandchildren. This is about the future of Milwaukee being a city where you can make a decent wage. ”

[- Lauren Stevens, concession cashier, about the project labor agreement at Fiserv Forum](#)

PLAs can be a tool for expanding racial equity when they include community workforce provisions that require contractors to hire workers who meet certain criteria, like living locally, or being a member of a racial or ethnic group that faces discrimination in the labor market.

The Milwaukee Bucks [successfully used a PLA](#) to establish inclusive hiring practices in the \$524 million construction of Fiserv Forum. The contract included hiring goals aimed at counteracting ongoing racial discrimination and the continuing effects of past discrimination, ensuring a fair playing field for contractors, and making it a priority to hire workers from Milwaukee neighborhoods that have been stripped of resources.

Legislation: [2017 Wisconsin Act 3](#)

PROHIBITING LOCAL GOVERNMENTS FROM SETTING WAGE STANDARDS ON CONSTRUCTION PROJECTS

Communities should be able to ensure that the public money they spend on big public works projects support good jobs and don't undercut local wage standards. Setting a prevailing wage for construction projects allows local governments to provide good value to taxpayers and make sure that contractors that pay their workers family-supporting wages are able to compete for publicly-funded contracts.

Prevailing wage standards can help close racial pay gaps. The income gap between white and Black construction workers would be seven percentage points smaller if a state without a prevailing wage law implemented one, [an analysis found](#).

In Wisconsin, the state legislature has acted to prevent local governments from setting prevailing wage laws.

Legislation: [2011 Wisconsin Act 32](#)

TYING COMMUNITIES' HANDS ON RENTERS' RIGHTS

PROHIBITING A LOCAL GOVERNMENT FROM IMPOSING A MORATORIUM ON EVICTION ACTIONS

Being evicted can force people into substandard housing or homelessness, make it difficult for people to keep or get a job, and traumatize children. During the pandemic, the federal government imposed a temporary moratorium on evictions to protect people who had fallen behind on rent, but some cities, including Los Angeles and Austin, [imposed their own moratorium](#) that lasted even after the federal one ended.

In Wisconsin, the legislature passed a law that specifically prohibits local governments from establishing their own eviction moratoriums. As the pandemic started, Madison Mayor Satya Rhodes-Conway was asked about the possibility of a moratorium. She tweeted, “I would do it in a heartbeat, but we are specifically preempted by WI state law.”

Eviction moratoriums during times of economic crisis can be an important tool to protect Black and Hispanic residents, who are more

likely than white residents to rent their homes, and who are saddled with higher housing cost burdens than white residents. Going into the pandemic, [over half of Black and Hispanic renter households were burdened with housing costs](#) that took up more than 30% of their income, compared to 42 percent of white households.

Legislation: [2011 Act 143](#)



Satya Rhodes-Conway
@erc2

...

Folks have been asking about a moratorium on evictions. I would do it in a heartbeat, but we are specifically preempted by WI state law.

66.1010 Moratorium on evictions.

(1) In this section, "political subdivision" has the meaning given in s. 66.1011 (1m) (e).

(2) A political subdivision may not enact or enforce an ordinance that imposes a moratorium on a landlord from pursuing an eviction action under ch. 799 against a tenant of the landlord's residential or commercial property.

BAR LOCAL GOVERNMENTS FROM PROHIBITING LANDLORDS FROM REQUESTING A POTENTIAL TENANT'S CREDIT RECORD, AMONG OTHER INFORMATION

The Wisconsin legislature has prohibited local governments from preventing landlords from using or requesting data credit scores when considering whether to rent to a potential tenant. Some cities, like [Minneapolis](#) and [Philadelphia](#), have limited the extent to which landlords can rely on credit reports to refuse renting to someone.

Cities have an interest in prohibiting landlords from using credit scores when deciding to rent to an applicant because the scores are constructed in a way that can result in people of color having lower scores than white people with similar backgrounds. For example, having a history of successfully making mortgage payments in the past generally increases a person's credit score, while paying rent on time for years often has no effect on a person's score. Residents of color are less likely than white residents to have had a mortgage at some point, making it harder for them to build a credit record and giving an unwarranted edge to white renters. In Wisconsin, about three-quarters of white residents own their own homes, compared to just a quarter of Black residents, one of the lowest Black homeownership rates in the country, giving white residents a significant advantage over Black residents in establishing a good credit score.

It's not just that residents of color have less opportunity than whites to build a credit history. Even when a person of color does manage to build a history, their file could have more errors in it than a white person's. Families living in majority Black and Hispanic neighborhoods are far more likely to have disputes of inaccurate information appear on their credit reports, according to the [Consumer Financial Protection Bureau](#), a federal agency responsible for consumer protection in the financial sector.

Legislation: [2011 Act 108](#)

“ I WANT to pay rent, I WANT to be good on my bills every month, I take that seriously. I want my daughters to be in a safe environment. I should not have to be subject to whether a landlord is kind or cruel, or can exploit working people by charging too much, to determine if I can make a home for my family. ”

–Taylor Vessel, tenant in Milwaukee, WI

LIMITING LOCAL HEALTH REGULATIONS

ATTEMPTING TO BAR LOCAL GOVERNMENTS FROM TAKING HEALTH MEASURES DURING THE PANDEMIC TO LIMIT THE SPREAD OF DISEASE

Local health departments in Wisconsin have the ability to tailor health regulations to the specific needs of their communities. This capacity was especially important during the pandemic, when local health departments were able to limit the spread of COVID-19 by setting guidelines for individual communities, based on the community's needs and preferences.

The legislature attempted to strip away some of the ability of local health departments to take action, by passing laws that limit the authority of local health officers related to gatherings, and prohibiting health officers from requiring an individual to get a vaccine. These bills were vetoed by Governor Evers, who cited the loss of local control among the reasons for rejecting the bill. In his [veto message](#), he noted:

“ I am vetoing AB 1 in its entirety because I object to the provisions in this bill that will make it more challenging to mitigate the impact of COVID-19 in Wisconsin. Instead, AB 1 takes away existing tools available to public health officials and employers. ”

Even as they tried to tie the hands of local officials, legislative leaders did little to prevent the spread of COVID-19 themselves. In fact, the Wisconsin legislature was the least active full-time state legislative body in the nation during the pandemic, [a review found](#).

Limiting the ability of local officials to fight COVID-19 would have harmed communities of color, which had higher rates of COVID-19 cases, hospitalizations, and deaths during the pandemic. Compared to COVID-19 case rates for white residents in Wisconsin, rates for Black residents are 1.5 times higher, 1.3 times higher for Native American residents, and 1.2 times higher for Latinx residents, as of March 2022.

Legislation: [2021 Assembly Bills 1, 23, and 24](#), all of which Governor Evers vetoed.

CONCLUSION

In recent years, Wisconsin state lawmakers have hamstrung local governments, making it harder for them to respond to community-driven needs, like protecting workers and helping families. This top-down approach restricts the independence of local communities. The effects of those limitations were bad enough before the pandemic. Now the damage is intensified, with the final cost still unknown.

The damage from preemption falls especially hard on people of color, as the legislature strips away the ability of communities of color to implement important protections based on local needs.

State-level policymakers should take action to promote the well-being of residents and protect them from exploitation. It's bad enough that many Wisconsin state lawmakers are shirking their responsibility to promote the well-being of residents and ensure that everyone can contribute to their communities. State lawmakers are also standing in the way of local governments that are trying to step in where the state government has failed to act.

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The Wisconsin Budget Project— an initiative of Kids Forward—engages in analysis and education on state budget and tax issues, particularly those relating to low- and moderate-income families. The Budget Project seeks to broaden the debate on budget and tax policy through public education and by encouraging civic engagement on these issues. Learn more at wisconsinbudgetproject.org.

