An Equity-First Framework to Understand the Effects of Preemption on Health

Building Equity Into Sugary Drink Taxes

Harvard Food Law & Policy Clinic, March 2021
Healthy communities for all through better laws & policies
What is Preemption?

When the law of a higher level of government invalidates the law of a lower level of government.
The Equity Landscape
"People who live in cities and towns want control over their own destinies," said National League of Cities CEO and Executive Director Clarence E. Anthony. "When states take away the ability of local leaders to make decisions, the values and will of the people are ignored."
Birmingham, Alabama

- Minimum wage enacted
- State legislature preempted
- Lawsuit filed
Localism
Preemption & COVID-19

Photo credit: CDC/Alissa Eckert, MS; Dan Higgins MAMS
Sugary Drink Taxes
Pushing Back: Political Process
Pushing Back: Litigation
Equity-First: Conceptualizing A Normative Framework to Assess the Role of Preemption in Public Health

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Context: Due to the inequitable distribution of various social determinants of health, disparities in health and well-being are tied to where an individual lives. In the United States, a zip code often better predicts a person's health than their genetic code. As communities seek to redress these inequities, many find that, due to state preemption, they are unable to pursue more equitable laws through local government action.

Methods: This article reviews the role of law and policy in the genesis of health inequities and highlights how preemption has both created and alleviated such inequities. We demonstrate how a normative framework rooted in redressing health inequities can advance a more just approach to preemption and outline a research agenda to support future action.

Findings: Law and policy have been central to creating health inequities, and while some tools can promote health equity, some state legislatures are using preemption with increasing regularity to thwart local policies that may improve health and equity. Nevertheless, preemption is not inherently adversarial to public health, equity, or good governance. Preemptive national civil rights laws, for example, have countered government-sanctioned discrimination. However, existing frameworks for assessing preemption fail to reconcile its potential to both advance and hinder health equity.

Conclusions: Shortcomings in existing preemption frameworks demonstrate the need for new approaches to elevate equity as a central consideration in assessing preemption. We propose the development of an equity-first preemption framework to establish evidence-based criteria for assessing when preemption will enhance or inhibit equity and a research agenda for developing the evidence necessary to inform and operationalize the framework. An equity-first conceptualization of preemption can help ensure that local governments can enact policies that are likely to create or perpetuate inequities.

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Preemption isn’t universally negative or inherently partisan.
How preemption affects health equity depends on the type of preemption & how it’s used
Federalism & Police Power
Sweetened Beverage Taxes: Following the money

JIM KRIEGER, MD, MPH   KRIS MADSEN, MD, MPH

MARCH 11, 2021
Local beverage taxes
United States

- Albany, 1 cent/oz
- Berkeley, 1 cent/oz
- San Francisco, 1 cent/oz
- Oakland, 1 cent/oz
- Seattle, 1.75 cents/oz
- Boulder, 2 cents/oz
- Cook County, 1 cent/oz
- Navajo Nation, 2% tax (SSBs and unhealthy food)
- Philadelphia, 1.5 cents/oz (includes diet)

- 3.8 million people benefitting
- $137 million per year
Sugary drink tax

- Reduces consumption
- Increases awareness about adverse health effects
- Generates revenue to support community health and well-being
- Predicted to reduce disease and health care spending
- Induces product reformulation
Reformulation
UK Soft Drink Industry Levy

Soft drink sugar content (sales-weighted mean)

2015 4.4g/100 ml

2018 2.9g/100 ml
Local beverage taxes
Annual revenues ($000’s)

San Francisco $16,098
Oakland $9,234
Albany $280
Berkeley $1,606
Seattle $23,970
Boulder $5,046
Philadelphia $76,855
Navajo Nation $1,800

Most recent year available (generally 2019)

83% Invested in marginalized communities
Tax revenues are stable over time Berkeley

![Bar chart showing revenues in thousands over years FY2016 to FY2019.]
How cities allocated SSB Tax Revenues

- Reviewed budgets, reports & contracts
- Most recent fiscal year
- 190 allocations from SSB tax revenues, totaling $137M

Average annual tax revenues

<table>
<thead>
<tr>
<th>City</th>
<th>Tax Revenues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albany</td>
<td>$0.3M</td>
</tr>
<tr>
<td>Berkeley</td>
<td>$1.6M</td>
</tr>
<tr>
<td>Boulder</td>
<td>$5M</td>
</tr>
<tr>
<td>Oakland</td>
<td>$10M</td>
</tr>
<tr>
<td>SF</td>
<td>$16M</td>
</tr>
<tr>
<td>Seattle</td>
<td>$23M</td>
</tr>
<tr>
<td>Philly</td>
<td>$78M</td>
</tr>
</tbody>
</table>
Tax revenues and revenue allocations in fiscal year studied (in millions):

- Albany: $0.3M
- Berkeley: $1.6M
- Boulder: $5M
- Oakland: $10M
- SF: $16M
- Seattle: $23M
- Philly: $78M

Total tax revenues: $78M
Total revenue allocations: $77M
Coding allocations

- Example: City granted $200,000 to an after-school gardening program

- Program’s stated goals:
  - Increase healthy food awareness among youth
  - Hire and train low-income youth to lead educational workshops

$100,000
“Increasing Health & Nutrition Knowledge”

$100,000
“Youth Development”
We organized allocations into 3 major categories:

- Human & Community Capital, $90M
- Health promotion, $37M
- Tax Administration & Evaluation, $10M

($ in millions)
$90M invested in Human & Community Capital

- Human & Community Capital, $90M: 66%
- Health promotion, $37M: 27%
- Tax Administration & Evaluation, $10M: 7%

($ in millions)
$90M invested in Human & Community Capital

- Economic & Human Development, $21M
- Improve Infrastructure, $58M
- Youth Development, $4M
- Job training for formerly incarcerated & homeless
- African-American youth 6-10X more likely to drown

- High school completion
- 4-year college
- Employment
$37M invested in Health Promotion

- Health promotion, $37M
- Human & Community Capital, $90M
- Tax Administration & Evaluation, $10M

($ in millions)
$37M invested in Health Promotion

- Prevent Chronic Disease, $3M
- Health & Nutrition Knowledge, $3M
- General Health & Wellbeing, $6M
- Physical Activity, $6M
- Access to Healthy Foods & Beverages, $17M
- $37M
- $17M Physical Activity
- $6M General Health & Wellbeing
- $6M Health & Nutrition Knowledge
- $3M Prevent Chronic Disease
- $2M Reduce SSBs
Investing in Equity

- Low-income communities (78%)
- Communities of color (61%)
- Youth (58%)

Bar chart showing investments in equity across different locations.
Investments in local organizations

- San Francisco’s Healthy Communities Grants
  - $500k over 3 years
  - Build organizational capacity

↑ Capacity = ↑ Resilience
Seattle tax revenue expenditures $19.3M in 2019

- Food Access & Health Promotion: $11,177,563 (58%)
- Early Learning and Child Development: $7,288,560 (38%)
- Other: $698,595
- CAB: $144,226

HEALTHY FOOD AMERICA
Healthy food subsidies

- Increase fruit and vegetable affordability, purchases, and consumption
- Support local food systems and businesses
- Fruit and vegetable subsidies: $4.7M in 2019
- COVID grocery vouchers: $5M to 6250 families in 2020

“\You take the bad sugar in pop and turn it into good nutrition at the markets. That’s a job well done. Thank you.\”

- Fresh Bucks customer who called the program office to say thanks

Photos used with permission of the Fresh Bucks program
More healthy food access

• Fresh Bucks to Go
  o Free bags of local fruits and vegetables to preschools

• Farm to Table
  o Grants to preschool and childcare sites to increase offerings of locally-grown, healthy food

• Fresh Fruit & Vegetable Program ($467K)
  o Fruit and vegetable snack at schools with students from low-income households

• Food Banks ($2.4M)

• Meal Programs ($2.1M)
Food Access Opportunity Fund
$473,000

- Community-based projects led by and located in communities of color impacted by food disparities:
  - food justice education
  - community-led nutrition and cooking education
  - community kitchens
  - youth-led food programs
  - urban farming
  - culturally-specific food programs
  - community-based food access programs

- Up to $50,000 via 18-month contracts
- Smaller organizations (budget less than $750K)
- TA and evaluation support
Early learning and child development

- Childcare subsidies ($2.6M)
- Birth to Three support services ($3.8M)
Community schools: increased from 12 to 17 – 10,000 students

Preschool: added 1050 preschool to total of 3300 – 8000+ children

Rebuild: started 65 projects - libraries, playgrounds, rec centers

FY2021 allocations
PHLPreK:
Childcare subsidies and access
Community Schools

- **17 Community Schools** - 9,400 children enrolled
- **7,300+ students** and families receive food, school supplies, and other necessities
- Out-of-school time opportunities and internships
ReBuild

- 65 facilities with work underway
- 34.4 percent of contract dollars awarded to minority-owned businesses
- 25.5 percent to women-owned businesses
- 42.6 percent of hours worked by women and people of color
Determined use of tax revenues

Legislative language
- Dedication
- Intent and findings

Policy statements

Dedicated Revenues - (a) The revenues from this excise tax shall be designated for the administrative cost of the tax, and once that obligation has been fulfilled, used for health promotion, general wellness programs and chronic disease prevention in the City of Boulder that improve health equity, such as access to safe and clean drinking water, healthy foods, nutrition and food education, physical activity, and other health programs especially for residents with low income and those most affected by chronic disease linked to sugary drink consumption. (Boulder)

Findings - A. Based on the findings set forth above, the purpose of this Ordinance is to diminish the human and economic costs of diseases associated with the consumption of sugary drinks by discouraging their distribution and consumption in Berkeley through a tax. (Berkley)
Seattle City Council locks in fund for soda-tax revenue, overriding Mayor Durkan’s veto

Aug. 12, 2019 at 5:51 pm | Updated Aug. 12, 2019 at 9:26 pm

Researchers have found one serving daily of a sugary soft drink is associated with a higher risk of cardiovascular disease, says a study in the Journal of... (Jeff Chiu / AP, file) More ▼

By Daniel Beekman

Seattle Times staff reporter

The Seattle City Council thwarted a rare veto by Mayor Jenny Durkan on Monday by voting for a second time to create a special fund for the city’s soda-tax revenue.

Disagreement over how to allocate money from the tax on sugar-sweetened beverages has roiled City Hall, with Durkan butting up against a council majority. The new tax raised about $22 million last year, more than initially predicted.
Local beverage taxes
Community Advisory Boards

Boulder
San Francisco
Oakland
Seattle
Boulder

HEALTHY FOOD AMERICA
Community Advisory Board
Seattle

- Recommends how to allocate revenues to address education and health inequities
- Members
  - 3 healthy food access and food security
  - 2 representing populations disproportionately impacted by SSB-related diseases
  - 4 public health and nutrition
  - 2 education and early learning
- Two-thirds current members are POC
Community Engagement

Support community-led work

Prioritize healthy food access outcomes

Focus on race and social justice

COMMUNITY INPUT SURVEY

COMMUNITY FORUMS

NGO AND STAKEHOLDER WORKSHOPS

COMMUNITY-LED RESIDENT ENGAGEMENT (surveys & focus groups)
Community Forums

Activity Prioritization

The following chart shows the summary results from 12 out of 12 groups that prioritized the 2019 food access activities recommended by the CAB. Each activity received a score based on the average ranking. Scores are a weighted average. The activity with the largest average ranking (score) was the highest priority activity. For more information on weighted averages and how they were calculated, see Appendix B.
Q&A
Defining the tax base

- Volume
  - Per ounce
  - Most common approach to date
  - Easy to understand and administer

- Sugar content
  - Grams or teaspoons of sugar
  - Makes sense from public health perspective: sugar is the problem
  - Most efficient from economic perspective
  - Concerns about substitution with non-nutritive sweeteners
What to tax – volume or sugar?

| TABLE 1 | Taxing Content Is More Effective than Taxing Volume or Sales Value | Incentives created by different approaches to taxing added sugar in drinks |

<table>
<thead>
<tr>
<th>Tax Base</th>
<th>Sugar content (per gram)</th>
<th>Volume (per ounce, per liter)</th>
<th>Sales value (percent of retail price)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumers cut back on sugary drinks</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Businesses develop and promote zero-sugar drinks</td>
<td>✔</td>
<td>✔</td>
<td>✔</td>
</tr>
<tr>
<td>Consumers cannot avoid tax by buying cheaper drinks</td>
<td>✔</td>
<td>✔</td>
<td>✗</td>
</tr>
<tr>
<td>Consumers shift to lower-sugar drinks</td>
<td>✔</td>
<td>✗</td>
<td>✗</td>
</tr>
<tr>
<td>Businesses develop and promote lower-sugar drinks</td>
<td>✔</td>
<td>✗</td>
<td>✗</td>
</tr>
</tbody>
</table>
Does a volume tax make sense?

Drinks that contain more sugar per 100ml will attract a lower tax per gram of sugar.

- **Coca Cola (10.6g sugar/100ml)**
  - Tax per 1 litre: 24p
  - Tax per 100 gram of sugar: 23p

- **Sainsbury’s Orange Energy Drink (15.9g sugar/100ml)**
  - Tax per 1 litre: 24p
  - Tax per 100 gram of sugar: 15p
Extra
Boulder: Health Equity Advisory Committee

- Nine-member committee appointed by the city manager
- Review Health Equity Fund proposals from community and city agencies
- Roles:
  - Help define outcomes and key indicators to measure success
  - Recommendations on developing and expanding programs
  - Input on engaging residents most affected by health disparities and lack of access to health services

HEALTH EQUITY ADVISORY COMMITTEE (HEAC)
Berkeley SSB Panel of Experts

• Makes recommendations to City Council to fund:
  ◦ Berkeley School District's cooking and gardening programs
  ◦ Community agency programs
  ◦ Staffing positions for the Healthy Berkeley program
  ◦ Program evaluation
  ◦ Public forum and education campaigns
  ◦ Research and policy to reduce consumption of sugary beverages

• Berkeley residents with expertise in any of the following:
  ◦ Community-based food and nutrition
  ◦ School-based nutrition programs
  ◦ Early childhood nutrition education
  ◦ Public health research or evaluation
  ◦ Licensed medical practitioner
The Praxis Project is a national non-profit organization that works in partnership with national, regional, state, and local partners to achieve health equity and justice for all communities. Our mission is to build healthy communities by transforming the power relationships and structures that affect our lives and communities. Praxis supports policy advocacy and local organizing as part of a comprehensive strategy for change.
Equity:

“Everyone has a fair and just opportunity to be as healthy as possible. This requires removing obstacles such as poverty, discrimination, and their consequences, including powerlessness and lack of access to good jobs with fair pay, quality education and housing, safe environments and health care.”

https://www.rwjf.org/en/library/research/2017/05/what-is-health-equity-.html
Arthur Cecil Pigou
1877 - 1959
The Gate: California State Capitol
Centering Equity: Investments Building Power for Health

-- Invest in areas exhibiting highest rates of inequity

-- Invest in community defined priorities

-- Ensure that investments support community-led activities and programming

-- Invest to build community capacity and infrastructure that will transcend the grant period
Centering Equity: Community-Led Norms Change

--"Crear Conciencia"/ Community Education
--Programming and activities
--Counter industry’s marketing
--Make healthy options available and accessible
--Influencers
Healthy Black Families

HEALTHY BLACK FAMILIES, INC. INVITE YOU TO OUR
SHOP SMART, EAT HEALTHY LIVE COOKING CLASSES
Classes via Zoom and Facebook Live

MARCH 9, 16, 23, 2021
@ 2:30PM PST

https://tinyurl.com/shopsmarteathealthy

Healthy Black Families, Inc. invites you to join us for family fun with host Raheemah Nitoto and Chef HuNiea Bradley live. Presenting fresh and easy 30 minute meals, delicious recipes and great tips as we explore healthy eating and wellness topics with special guests.

Black Mental Health Matters Community Forum
March 30 @ 3pm Via Zoom and Facebook Live
Register Here:
https://www.thepraxisproject.org/videos/ep2
-healthy-black-families-cbph-mini-series

https://www.healthyblackfamiliesinc.org/

ROOTS community health center
FOOD MATTERS
PLANTING THE SEEDS OF FOOD EQUITY

Join host Erin Alexander and special guests as they explore the topic of how to shop, eat, and stay healthy during the COVID 19 Shelter In Place (SIP). We will be sharing nutrition education, cooking and shopping tips, recipes, and health information.

HEALTHY LIVING WEBINAR
MAR 1 & 15
3:30PM
MultiCultural Institute
https://www.thepraxisproject.org/videos/ep3-
multicultural-institute-cbph-mini-series
YMCA of the East Bay, Head Start and Early Head Start

https://www.thepraxisproject.org/videos/ep5-ymca-east-bay-cbph-mini-series
## Centering Equity: Pigou vs Huerta (et.al.)

<table>
<thead>
<tr>
<th>Perfect Strategy</th>
<th>Good Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>• 2 cents/ounce</td>
<td>• 1 cent/ounce</td>
</tr>
<tr>
<td>• Dedicated Tax—2/3rds</td>
<td>• General Fund Tax (50%+1)</td>
</tr>
<tr>
<td>• Retail Tax—Felt at the Register</td>
<td>• Excise Tax—Distributor Pays</td>
</tr>
<tr>
<td>• Focused on rising prices to curb demand/consumption</td>
<td>• Panel of Experts Overseeing Investments</td>
</tr>
<tr>
<td>• Success defined by consumption decrease as prices goes up</td>
<td>• Focus on investing in community led efforts and initiatives serving community</td>
</tr>
<tr>
<td></td>
<td>• Success defined by behavior changes resulting from investments; long term norms change</td>
</tr>
</tbody>
</table>
Evaluating the dimensions of Equity

### Year 1 of Implementation (2016-17)

<table>
<thead>
<tr>
<th>Category</th>
<th>Cost</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel</td>
<td>$1,149,979</td>
<td>69.7%</td>
</tr>
<tr>
<td>Direct Costs</td>
<td>$72,525</td>
<td>4.4%</td>
</tr>
<tr>
<td>Purchased Services</td>
<td>$261,557</td>
<td>15.9%</td>
</tr>
<tr>
<td>Indirect</td>
<td>$165,588</td>
<td>10.0%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>$1,649,649</td>
<td></td>
</tr>
</tbody>
</table>

**Berkeley: Year 1 Investments**

- Personnel: 69.7%
- Direct Costs: 4.4%
- Purchased Services: 15.9%
- Indirect: 10.0%
Thank You!

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