



# State Interference in Tennessee







# Introduction

Local governments are closest to their residents and take the lead on addressing the challenges being faced by their communities. Unfortunately, states, often driven by corporations and their lobbying groups, have been passing laws that limit or eliminate local authority to address issues. This type of state interference is called preemption. Preemption is neither “good” nor “bad.”<sup>1</sup> In the past, it has been used to set environmental standards for clean water and extend civil rights to people regardless of their background. But now, because many of these laws are driven by corporate interest groups and lobbyists, the state legislature is intervening in ways that benefit corporations but are harmful to Tennesseans.

Since 2010, states across the country have increasingly been using preemption to thwart local policies that are important for creating thriving communities.<sup>2</sup> This has resulted in local officials having less freedom to make decisions that are best for their residents. States are interfering in a broad range of policy issues such as local zoning, housing, infrastructure, and working families. When it comes to policies that directly impact working families, Tennessee ranks among the worst states in the country due to the legislature being influenced by corporate interests.<sup>3</sup>

While there are some shared challenges across the state, Tennessee is diverse. State interference makes it difficult for localities to address issues in the way that makes sense for their jurisdiction and their constituents. This report focuses on state interference related to employment, local zoning and land use regulation, housing, gig economy, municipal contracts, municipal broadband, and public health. These issues are important for all communities across the state, but some communities are more impacted by state interference than others. This report will detail existing state interference laws, the corporate actors behind them, and the impacts of these policies on Tennesseans from different communities.

1. Carr D, Adler S, Winig BD, Montez JK. Equity First: Conceptualizing a Normative Framework to Assess the Role of Preemption in Public Health. *Milbank Quarterly*. 2020;0(0):1-19.

2. Briffault R. The Challenge of the New Preemption. *Stanford Law Review*. 2018;70:1995-2027.

3. Flavin P, Shufeldt G. Explaining State Preemption of Local Laws: Political Institutional, and Demographic Factors. *Publius: The Journal of Federalism*. 2020;50(2):280-309.

# Municipal Broadband

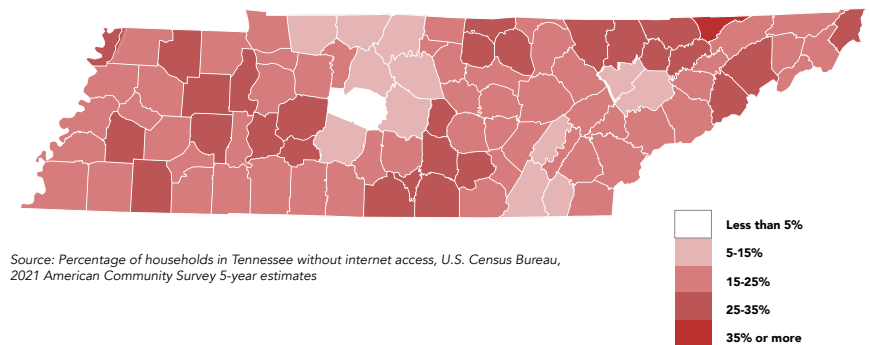
Broadband is essential infrastructure that helps people access education and employment opportunities, utilize telehealth services, connect with friends and family, and be civically engaged.<sup>4</sup> A higher share of people living in rural areas lack access to broadband (Figure 1). Lack of broadband and internet access became more important since the beginning of the COVID-19 pandemic when many K-12 schools switched to online learning, remote work increased, and people relied on the internet to connect with others.<sup>5</sup>

**In 2021, 88% of TN households had broadband,<sup>6</sup> but access to broadband is not distributed equally throughout the state.**



The city of Chattanooga operates its own high speed broadband network which has provided many economic and social benefits and created between 2,800 and 5,200 jobs.<sup>7,8</sup> Chattanooga wanted to extend these benefits to two surrounding counties, but state law does not allow expansion. In 2016, the state legislature considered a bill that would have allowed municipal broadband providers to expand beyond their electric service area.<sup>9</sup> However, AT&T publicly opposed the bill because “taxpayer money should not be used to over-build or compete with the private sector.”<sup>10</sup> In voting down the bill, the state legislature affirmed that the desires of AT&T were more important than the needs of Tennesseans.

**Figure 1: Tennessee households without internet access**



Source: Percentage of households in Tennessee without internet access, U.S. Census Bureau, 2021 American Community Survey 5-year estimates

4. Campbell S, Castro JR, Wessel D. *The benefits and costs of broadband expansion*. The Brookings Institution 2021.

5. McClain C, Vogels EA, Perrin A, Sechopoulos S, Rainie L. *The Internet and the Pandemic*. Pew Research Center 2021.

6. Bureau UC. 2021 American Community Survey 1-year estimates. In. *Table B28002 Presence And Types Of Internet Subscriptions In Household*.

7. Lobo BJ. *Ten Years of Fiber Optic and Smart Grid Infrastructure in Hamilton County, Tennessee*. The University of Tennessee at Chattanooga; 2020.

8. Wray S. Chattanooga's municipal broadband pays off with \$2.69 billion in benefits. 2021; <https://cities-today.com/chattanooga-gas-municipal-broadband-pays-off-with-2-69-billion-in-benefits/>.

9. SB 1134. 109th Tennessee General Assembly. <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=SB1134&GA=109>

10. Brodtkin J. Tennessee kills muni-broadband expansion bill after AT&T opposition. 2016; <https://arstechnica.com/tech-policy/2016/03/tennessee-kills-muni-broadband-expansion-bill-after-att-opposition/>.



# Employment

In 2021, 1.5 million Tennesseans were paid hourly wages, and 20,000 of those workers were making \$7.25/hr or less.<sup>11</sup> People who are paid hourly have less access to paid leave<sup>12</sup> and may also have unpredictable work schedules. Higher paying jobs, access to paid leave, and predictable work schedules<sup>13</sup> are associated with improvements in people's well-being, economic security, and sleep quality. Having a healthy and well-paid workforce is good not just for individuals and families but also for our state economy as a whole.<sup>14,15</sup>

**In 2021, 20,000 workers were making \$7.25/hr or less.**

Corporations and their interest groups have lobbied the state legislature to ensure that local governments are not able to implement policies that are good for working Tennesseans. The state legislature has passed legislation that prohibits local laws that would require employers to provide predictable schedules,<sup>16</sup> raise minimum wage above the federal minimum wage of \$7.25,<sup>17</sup> ensure employers provide health insurance and paid leave<sup>16</sup> and address wage theft.<sup>18</sup>



In 2013, the National Federation of Independent Business (NFIB) supported legislation that prohibited local governments from requiring businesses to provide benefits that support working families.<sup>19</sup> In 2020, the Greater Tennessee Chapter of the Associated Builders & Contractors, the Home Builders Association of Tennessee, Hospitality TN, NFIB, Tennessee Chamber of Commerce & Industry, Tennessee Fuel & Convenience Store Association, Tennessee Grocers & Convenience Store Association, and Tennessee Retail Association all opposed a bill that would have established a minimum/living wage in Tennessee.<sup>20</sup>

11. Statistics BoL. *Characteristics of minimum wage workers*, 2021. 2022.

12. Boyens C, Karpman M, Smalligan J. *Access to Paid Leave Is Lowest among Workers with the Greatest Needs*. Urban Institute 2022.

13. Harknett K, Schneider D, Irwin V. Improving health and economic security by reducing work schedule uncertainty. *PNAS*. 2021;118.

14. Heymann J, Rho HJ, Schmitt J, Earle A. *Ensuring A Healthy and Productive Workforce: Comparing the Generosity of Paid Sick Day and Sick Leave Policies in 22 Countries*. *International Journal of Health Services*. 2010;40(1).

15. Schweitzer J, Ross K. *Higher Minimum Wages Support Job Growth as the Economy Recovers From COVID-19*. Center for American Progress 2021.

16. Tenn. Code Ann. § 7-51-1802.

17. Tenn. Code Ann. § 50-2-112.

18. Tenn. Code Ann. § 50-2-113.

19. NFIB. *Lawmakers Pass Sweeping Reforms That Help Small Business*. 2013; <https://www.nfib.com/content/news/tennessee/lawmakers-pass-sweeping-reforms-that-help-small-business-62693/>. Accessed January, 2023.

20. NFIB. *Joins Other Business Groups in Opposing Harmful Wage Mandates in TN*. 2020; <https://www.nfib.com/content/news/labor/nfib-joins-other-business-groups-in-opposing-harmful-wage-mandates-in-tn/>

The combination of these harmful state interference policies means that many Tennessee workers and their families from all backgrounds (Figures 2-4) are not able to take needed time off from work to take care of themselves or other family members or pay for their basic needs like food, housing, and transportation despite working. The cost of living varies across the state as well (Figure 5).

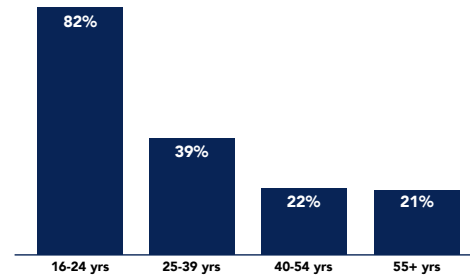
Local freedom to address the needs of the workforce is critical to ensure that all Tennesseans can thrive. Such local policies also benefit our economy because paid leave and higher wages improve productivity, reduce worker turnover and save businesses money by reducing the costs of recruiting, training, and onboarding new employees.

21,22

21. Balance AB. Paid Sick Leave Is Good for Business. 2022.

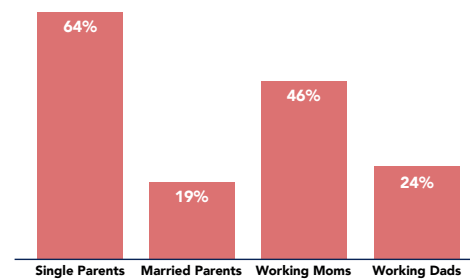
22. Emanuel N, Harrington E. The payoffs of higher pay: elasticities of productivity and labor supply with respect to wages. 2020.

**Figure 2: Workers of all ages would benefit from higher wages**



Source: Percentage of workers within each demographic group earning less than \$15/hr. The Oxfam Minimum Wage Model sources microdata from the 5-year Census American Community Survey (ACS-PUMS), and employs Current Population Survey (CPS-ORG) March 2021 data as formatted and made available by CEPR. <https://www.oxfamamerica.org/explore/countries/united-states/poverty-in-the-us/low-wage-map-2022/scorecard/?state=TN>

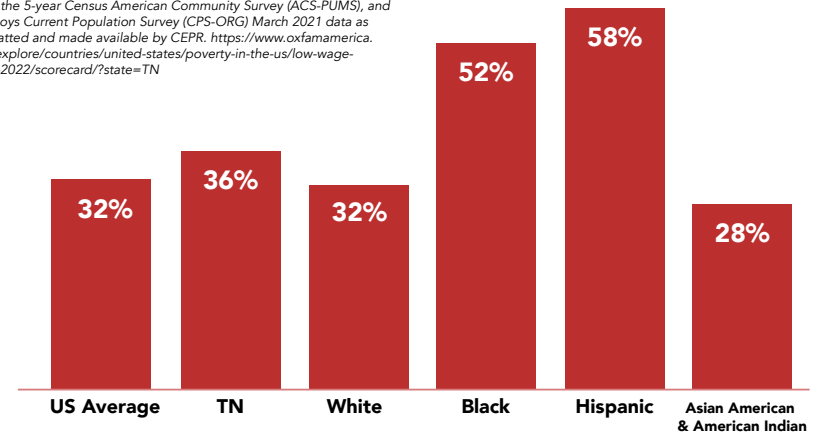
**Figure 3: Improving wages for workers would also support their families**



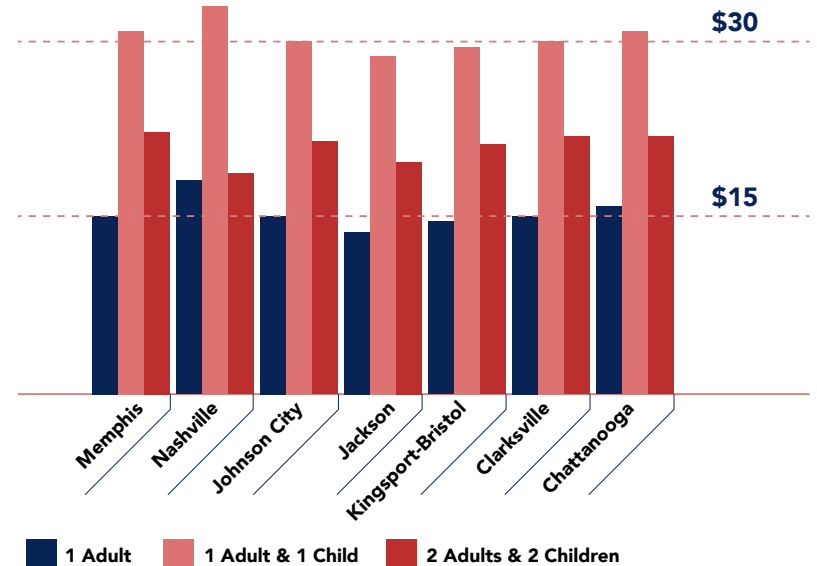
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**Figure 4: Tennessee workers earning less than \$15 an hour by race and ethnicity**

Source: Percentage of workers within each demographic group earning less than \$15/hr. The Oxfam Minimum Wage Model sources microdata from the 5-year Census American Community Survey (ACS-PUMS), and employs Current Population Survey (CPS-ORG) March 2021 data as formatted and made available by CEPR. <https://www.oxfamamerica.org/explore/countries/united-states/poverty-in-the-us/low-wage-map-2022/scorecard/?state=TN>



**Figure 5: The Living Wage Varies Across Tennessee**



Source: Living wage is the hourly rate needed to meet basic needs and be self-sufficient including food, childcare, health insurance, transportation, and other basic necessities. Massachusetts Institute of Technology, Living Wage Calculator 2021-2022. <https://livingwage.mit.edu/metros/16860>

# Local Zoning & Land Use

Local governments have typically decided where, how, and what to build in their cities and towns without state intervention and oversight. In recent years, Tennessee has departed from this norm and begun interfering in local zoning matters related to housing and energy infrastructure. State interference into local zoning means that local governments are not able to address community concerns about short-term rentals and their negative impacts,<sup>23</sup> guarantee that affordable housing units are built into new developments,<sup>24</sup> or regulate the development of new utility and energy related infrastructure.<sup>25</sup>

Airbnb pushed legislation that limited Nashville's ability to regulate short-term rentals.<sup>26</sup> As the popularity of Nashville as a tourist destination increased, the number of Airbnb's increased as well to meet that demand. Neighborhood residents complained of Airbnb's being used for loud parties in formerly quiet neighborhoods and that Airbnbs are contributing to housing affordability issues in the city. While this bill was targeted towards Nashville, there are short-term rentals across the state. This legislation has limited all local governments from regulating short-term rentals in the way that works best for their communities.

23. Tenn. Code Ann. § 13-7-603; Tenn. Code Ann. § 13-7-604.

24. Tenn. Code Ann. § 66-35-102.

25. Tenn. Code § 7-51-2202.

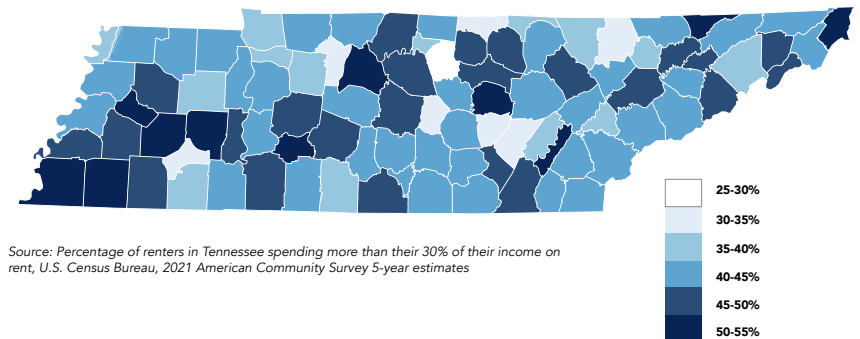
26. Williams P. REVEALED: Airbnb legislation shows how Capitol Hill culture affects Tennessee communities. <https://www.newschannel5.com/news/newschannel-5-investigates/revealed-airbnb-legislation-shows-how-capitol-hill-culture-affects-tennessee-communities>. Accessed January, 2023.

## Housing

**In 2021, 47% of renters in Tennessee were “cost-burdened” - meaning they spend more than 30% of their income on housing.<sup>27</sup>**

In addition to housing affordability issues, many renters in Tennessee face problems with the quality and safety of their rentals. The state legislature has passed multiple laws prohibiting local governments from controlling the amount of rent landlords can charge<sup>24</sup> and enforcing landlord-tenant laws that are more stringent than state law.<sup>28</sup> These laws combined with state interference in local matters around short-term rentals and inclusionary zoning means that local officials have fewer options to address housing affordability and quality issues in their communities which negatively affects Tennesseans across the state (Figure 6).

**Figure 6: Cost-burdened renters in Tennessee**



27. US Census Bureau. 2021 American Community Survey 5-year estimates. In. Table DP04 Selected Housing Characteristics 2021.

28. Tenn. Code Ann. § 66-28-102.

# Gig Economy

In 2016, the state legislature prohibited local governments from passing regulations for drivers who work for companies like Uber and Lyft.<sup>29</sup> Uber and American Legislative Exchange Council (ALEC) have worked together to pass state laws that prohibit local governments from regulating transportation network companies.<sup>30</sup> This law primarily benefits two companies, Uber and Lyft, and was written to protect their interest as companies and not the interest of the people those companies employ. ALEC has written model Transportation Network Companies (TNC) legislation that provides minimal consumer protections and tilts the balance of power towards the companies and not the drivers.



29. Tenn. Code Ann. § 65-15-302.

30. Smith R, Borkholder J, Montgomery M, Chen MS. *Uber State Interference: How Transportation Network Companies Buy, Bully, and Bamboozle Their Way To Deregulation*. National Employment Law Center, Partnership for Working Families;2018.

# Municipal Contracts

Municipal contracting is an important tool for increasing access to employment and educational opportunities for residents and growing the local economy.<sup>31</sup> It also ensures that local residents get the true best value of their public investment, not simply rewarding contractors who bid the lowest but may not be model employers. The NFIB along with other business lobbying groups supported legislation that interferes with local governments' ability to serve the public good when doing business with private entities in their communities. Local governments are unable to set minimum standards for wages and employee benefits for contractors,<sup>32</sup> ensure that contracting companies hire local residents<sup>33</sup> or set conditions for the safety, pay, and benefits of construction workers.<sup>32</sup>

As a result, local governments are severely limited in their ability to use municipal contracts as a tool for economic development or to increase opportunities for good-paying jobs with quality benefits. This creates a missed opportunity to ensure that municipal, tax-funded projects promote local economic development and improve economic opportunities and employment access for community members.

31. Center UL. *Exploring Targeted Hire: An Assessment of Best Practices in the Construction Industry*. 2014.

32. Tenn. Code Ann. § 12-4-903.

33. Tenn. Code Ann. § 12-4-117.





# Public Health Authority

Public health has always recognized the uniqueness of local communities and public health agencies have traditionally had the authority to adapt to the health needs of the communities they serve. During the COVID-19 pandemic, local public health departments and governments took steps to mitigate the spread of COVID-19. Flexibility was critical to allow localities to adapt to a constantly evolving pandemic in a timely manner. Local public health departments and governments issued mask mandates, stay-at-home orders, and offered testing and vaccinations. The state legislature disagreed with the actions taken by many local public health departments and passed multiple pieces of legislation limiting local public health authority to address the COVID-19 pandemic and potentially future pandemics, and other day-to-day activities.<sup>34</sup> The attack on local public health authority has been partially coordinated by ALEC who provided model bills related to local public health authority.<sup>35</sup>

Both localities and private businesses were concerned with the legislation. However, the state legislature was only responsive to input from the business community. Ford Motor Company and other businesses reached out to the legislature about the bills that prohibited businesses from mandating masks or requiring proof of COVID-19 vaccination. In the final pieces of the legislation, the legislature removed any language related to private businesses. There is also research showing that state interference across many local policy areas is a barrier to improving the health of Tennesseans.<sup>36</sup>

<sup>34</sup> Tenn. Code Ann. § 14-4-101 ; Tenn. Code Ann. § 14-6-101 ; Tenn. Code Ann. § 68-2-611.

<sup>35</sup> The Network for Public Health Law and NACCHO, 'Proposed Limits on Public Health Authority: Dangerous for Public Health,' May 2021, p. 9." Also the report is available online if you want to include a link: <https://www.networkforphl.org/resources/proposed-limits-on-public-health-authority-dangerous-for-public-health-2/>

<sup>36</sup> Melton-Fant C, Carr D, Montez JK. Addressing Health Equity in the New Preemption Era. 2022; <https://www.healthaffairs.org/doi/10.1377/forefront.20211216.309941>



# Anti-discrimination

In 2011, Tennessee became the first state to prohibit local governments from adopting or enforcing discrimination standards beyond those recognized by state law.<sup>16</sup> This law was passed in response to a metro Nashville ordinance expanding anti-discrimination protections to include sexual orientation and gender identity.<sup>37</sup> Initially, the Tennessee Chamber of Commerce, whose board of directors includes businesses such as AT&T, FedEx, Comcast, and Caterpillar, supported the legislation. Following public outrage, the Chamber and some of those companies later tried to distance themselves from the legislation, in some cases just prior to the governor signing the bill into law.<sup>38</sup>

37. White J. Attempt to Block Metro Non-Discrimination Measure Fails. 2011; <https://wpln.org/post/attempt-to-block-metro-non-discrimination-measure-fails/> Accessed February, 2023.

38. Ebersole RC. Facing outrage, corporations belatedly pull support for anti-gay law. 2011; <https://www.peoplesworld.org/article/facing-outrage-corporations-belatedly-pull-support-for-anti-gay-law/>

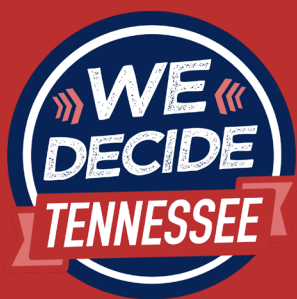
# Conclusion



Because of corporate state interference, many local elected officials do not know where their authority starts and ends to make laws for their communities. The Tennessee state legislature has been prioritizing corporate interest and profits at the expense of Tennessee communities and families. However, when community members and local officials from urban, suburban, and rural communities set our differences aside and join forces, we can achieve a future in which all of us have the freedom to make our own decisions.

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