

RALPH NADER RADIO HOUR EP 395 TRANSCRIPT

Herman Schwartz: There was a guy who was really a genius who died recently named [Thomas] Hofeller, who was the Republican's star gerrymanderer. And he took North Carolina, which has been very closely split; it's a swing state. And was told to make it a 10/3 Republican, and he did for ten years. He died recently. He was quoted at one point saying, "Gerrymandering is the only legal way that one can still steal an election."

[music begins] *Stand Up, Rise Up*

Steve Skrovan: Welcome to the *Ralph Nader Radio Hour*. My name is Steve Skrovan along with my co-host, David Feldman. Hello, David.

David Feldman: Good morning.

Steve Skrovan: And the man of the hour, Ralph Nader. Hello, Ralph.

Ralph Nader: Hello, everybody. Topics today are strip mining democracy, gerrymandering, and preemption. Take it from there, Steve.

Steve Skrovan: Well, yeah. Before we begin, I want to put in a plug for our meeting of the Congress Club on October 17th. That's a Sunday. I talked about this last week. We're having a Congress Club virtual town hall. Ralph, David, and I want to hear your stories and share strategies to keep holding Congress accountable. So, if you're a Congress Club member, look out for an invitation from us. And if you're not a member, become a member. You'll get a Zoom [Cloud Meetings] link for Sunday, October 17th, at 4:00 PM Eastern time, [3:00 PM Central time], 1:00 PM Pacific time. Go to nader.org or ralphnaderradiohour.com to sign up and join the Congress Club. We look forward to seeing you.

And as Ralph referred to before, one way to win elections in our system is to convince voters that your policy is the best. The other way to win elections in our system when your policies are not that popular is to manipulate the levers of power. One of those levers is the power of state legislatures to draw voting districts. In a true democracy, our state legislatures would apply the latest population data to divide up districts fairly. But we don't quite live in a true democracy for many reasons, one of which is partisan gerrymandering--manipulating the boundaries of electoral districts in order to favor one political party over another. That allows one party to dominate the electoral map in a state without having to win a majority of the voters. It's a situation we've talked about before where voters don't choose candidates; candidates choose their voters!

Both the Democratic and Republican parties are guilty of gerrymandering, but Republicans have dominated state governments since 2010, which means they were in the gerrymandering driver's seat after the last census. Without Republican gerrymandering, Democrats would have won up to 16 to 20 more seats in the 2018 US House elections and taken over seven GOP legislative chambers. Now it's time to draft new maps. Republicans have full control of 20 state legislatures.

So our first guest today will be Professor Herman Schwartz of American University. We'll ask him how Republican gerrymandering has reshaped the electorate, how to safeguard our voting rights and what we can expect from yet another round of Republican. mapmaking. Our second guest, we welcome back Mark Pertschuk from Grassroots Change. We've had him on the program before to talk about his work to educate and empower grassroots activists. Today he's going to tell us about one way that corporate lobbies and their allies and politics are threatening "the fundamental ability of cities to act on the unique views and needs of their communities."

And while local governments have taken the lead on issues like minimum wage, environmental regulation, and anti-discrimination measures, states have been passing bills that stop local governments from enforcing their laws or that overturn local laws entirely. We'll ask him about this troubling trend of states preempting local laws. If we have time, Ralph will answer more of your listener questions. As always, somewhere in the middle, we'll check in with our corporate crime reporter, Russell Mokhiber. But first, let's break down the mechanism that entrenches minority rule partisan gerrymandering, David?

David Feldman: Herman Schwartz is a professor of law emeritus at American University Washington College of Law. Welcome to the *Ralph Nader Radio Hour*, Professor Herman Schwartz.

Herman Schwartz: Thank you for inviting me.

Ralph Nader: Welcome indeed. First, where did this word gerrymandering come from?

Herman Schwartz: It's a combination of two things: a well-known politician in the 1800s named Elbridge Gerry, or as he pronounced it, Gary, and the comment – because gerrymandering goes back a long, long way--somebody commented, and this remains true--that there was a certain district in New England that looked like a salamander. So for reasons that escape me and escaped Elbridge Gerry, the two names were stuck together because he didn't in fact draw that district. So that's how it came; the combination of Elbridge, Gerry and salamander. [Ralph chuckles] Gerrymandering had a long history. It goes back into the early 18th century and included in that an effort by Patrick Henry to keep James Madison from being elected to the first House of Representatives.

Ralph Nader: Oh, I didn't know that. But since then, it's come a long way, especially with the computerization, making it ever more devious, ever more resulting in one party getting a minority of the votes. But with gerrymandered districts, they get a majority of the state legislators or members of the House of Representatives. Could you give an example or give several examples, such as Texas, North Carolina, where the Republicans who've been far more aggressive and control many more state legislatures, far more aggressive than the Democrats have been? Could you give some examples just so people get a firm grounding in how predictable it all is?

Herman Schwartz: Well, to start with, it's predictable because of the mountain of data that is now available about practically every single house on a block, every single street, and all of the various ways in which all of our data, our personal data, is available pretty much to anybody who

wants it. One of the most recent gerrymanders is from Wisconsin. Wisconsin used to be a state that was pretty evenly divided – still is – between Democrats and Republicans. But when there was the really tsunami of a landslide for the Republicans in 2010, in a Tea Party reaction, white supremacist reaction to Barack Obama's election, Wisconsin, the Republicans won something like 46% of the vote and got 60 out of 99 seats in one of the state houses. And as of most recent election, they still have 61. And by then had about 48%, something like that, of the statewide vote.

North Carolina – let me read to you a boast from the Republican state legislative committee in January 2013. This is a quote. “Pennsylvanians cast 83,000 more votes for Democratic US House candidates than their Republican opponents but elected a 13:5 Republican majority to represent them in Washington.”

Ralph Nader: 13 members to five members.

Herman Schwartz: That's right. “Michiganders cast over 240,000 more votes for Democratic congressional candidates than Republicans, but still like did a 9/5 delegation Republican. Nationwide Republicans won 54% of US House seats along with 58 of 99 state legislative chambers while winning only eight of 33 US Senate races”; that's of course, statewide and carrying only 47.8% of the national presidential vote.

Ralph Nader: Listeners should know that the precision here is absolutely unfathomable. The Democrats are going to do it in New York State and the prediction is that they're going to redistrict New York State in a way where five more Democrats will be sent to the [US] House of Representatives. Nancy Pelosi is relying on that. But as was earlier stated, the majority state legislatures are controlled by the Republicans. So they're going to have an edge in this kind of gerrymandering. So what have been the challenges to it? I know one is to try to get a bill through. In Michigan, there was a state initiative recently that won against the Republicans controlled legislature and they're going to have what's called a nonpartisan commission draw the maps. What do you think of the commission approach and how successful is it likely to be?

Herman Schwartz: Successful in what sense?

Ralph Nader: In the sense of reducing gerrymandering.

Herman Schwartz: Well, if the commission is truly independent, and that doesn't mean bipartisan; it means people who are really independent. And California set up one of these where ordinary members of the general public can be elected to the commission [with] very strict standards of no politicians. They do a pretty good job. There is a somewhat misleading assumption that if it's not proportional representation, it's not good. As it happens, it's very hard to district fairly because you've got to take into account a lot of neutral factors [such as] compactness, keeping jurisdictions together, making sure minorities are protected under the Voting Rights Act. And as a result, it's not really possible to come very close to make it almost exact. But gerrymandering goes in the opposite direction. There was a guy who was really a genius who died recently named Hofeller, who was the Republican's star gerrymanderer. And he took North Carolina, which has been very closely split, it's a swing state, and was told to make a

10:3 Republican. And he did for ten years. He died recently. He was quoted at one point of saying, "Gerrymandering is the only legal way that one can still steal an election." And they said to him, "Give us 10:3," the Republicans. And he later said, "If they had asked me for an 11:2 or 12:1, I could have done that too."

Ralph Nader: Well, that's what I mean about the precision. The bulk of the delegation now from North Carolina to the House of Representatives overwhelmingly is Republican, but that doesn't reflect the popular votes. Well, the other technique that's used are the courts and you cite in one of your articles, the latest US Supreme Court, 5/4, came down with a decision that's going to weaken any judicial challenge by minority groups or civic groups to further state gerrymandering even though some of these groups won at the local federal district court. Is there any wiggle room in this?

Herman Schwartz: Yes, because this referred only to partisan gerrymandering. That was bad enough

Ralph Nader: Which means Democrat-Republican?

Herman Schwartz: That's right. Right. Racial gerrymandering is still illegal and unconstitutional. And there is some wiggle room because most Republican gerrymandering targets minority districts. For example, in Michigan, it's Detroit. In Wisconsin, it's Milwaukee. It targets also young people, but the constitutional status of that is difficult to prove. But racial gerrymandering, if you can prove it, it's still unconstitutional. And so that is one of the remaining ways you can get into federal court.

But state courts in some states, particularly Democratic states, or states where Democratic governors managed to put Democrats on the Supreme Court. And there are very few. Pennsylvania and North Carolina are two of them. As a result, the Pennsylvania Supreme Court struck down the Pennsylvania gerrymander, and it went from 13:5 to 9:9. That's the last most recent Pennsylvania congressional delegation. In North Carolina, the 10:3 gerrymander was struck down, but I don't know the details here. The configuration of the state as a result of a special master coming in--a guy who was very experienced and very reliable, named Nate Persily from Stanford--wound up 8:5. States don't mend themselves for the reasons I've mentioned.

Ralph Nader: I've noticed that this issue of gerrymandering doesn't get people very angry because it tends to be technical. It's quite simple in terms of his political intent. The party in charge of the state government wants to pick their own voters rather than have the voters pick the candidates. And the Republicans control most of the state governments and state legislatures. So, they have a superior result in picking the voters rather than the reverse.

Now the citizen movement has two ways they can overcome it. One is, in spite of a gerrymandered state, they can get more votes out on their side, because half of the people or more don't vote in elections, especially by [off-year] elections. And the second is they can change 5%, 10% of the opinions by having a progressive agenda. And for example, getting some left/right support for a living wage or universal health insurance. Do you see that as a way short

of being unable to overturn these gerrymanderings because they perpetuate themselves? Some people may say, Well, let the Democrats win the election. But as you pointed out, when the Republicans control the state legislature, they can perpetuate themselves. It's very difficult to unlock an entrenched gerrymandered system, which perpetuates itself. Well, what about a more progressive agenda and getting more voters out? There's a huge pool of voters--liberal voters, minority voters--who stay home.

Herman Schwartz: There's no question about that, and I think Georgia shows that. Stacey Abrams got people out to vote and President [Joe] Biden won the state presidentially and [Raphael] Warnock and [Jon] Ossoff won in the runoff, suddenly turning Georgia into a Democratic state at those levels. The problem is Republicans plan for this. They planned what Karl Rove and Ed Gillespie did when Barack Obama won, but they have paid attention to the states for a long time. Democrats have not.

Ralph Nader: Yeah. As a matter of fact, we had an author [as a guest] of a book on the 2010 gerrymandering victory by the Republicans spent \$31 million.

Herman Schwartz: That's right.

Ralph Nader: Switched that number of pivotal seats, state legislative seats, such as in Pennsylvania, while the Democrats were asleep and basking in the Obama victory and Obama didn't pay any attention to this. And so in 2010, November, they lost the election big in the Congress and state legislatures. It's an amazing example of GOP energy compared to Democratic party smugness. But what do you think of this reform? Jeannette Rankin, bless her soul, one of the greatest women and labor rights advocate in American history, advocated running at-large. Like if the state has seven members of the House of Representatives, they would run at-large for the whole state; that would get rid of the districts. And the top seven vote getters would be elected. And she thought that was the way women and progressive people would be more likely elected. She came from Montana and she was elected precisely because the two representatives from Montana ran at-large and she came in second. What do you think of that approach?

Herman Schwartz: To be honest, I really don't know, because when we had at-large elections back in/up to about 1840 or '42, it didn't work so well. And Congress changed it to the single member districts. And if you want somebody who really knows this stuff about that particular episode, Alex Keyssar at Harvard [University] has a wonderful book on the history of voting in America and he discusses this. I've never paid much attention to that simply because from what I know, it didn't work so well, but I didn't and don't know the details of that. What *is* happening is the growth, mostly by legislative initiatives, voter initiatives, in the commission movement. Unfortunately, it tends to be concentrated among Democrats. You don't see too much of it except over the dead bodies of Republicans in states like Michigan and some others. It's part of the Democrats' bill, the Freedom to Vote Act that is now up in the Senate, and is one of the few successful things that has taken place. Some people think that the Democrats were pushing this or engaging in unilateral disarmament. And I must confess, I share some of that.

Ralph Nader: Well, it happened in California recently and you're right, the Republicans got a little leg up on it. But the state that has had the nonpartisan commission the longest for many years is Iowa. How's it worked out in Iowa?

Herman Schwartz: It's worked out well for informal reasons. It's not really a nonpartisan commission. It's a commission, as I understand it, that recommends to the state legislature. In Iowa, the tradition is for the legislature to accept it. From what I gather, that's the history of that: Iowa being somewhat peculiar in that respect.

Ralph Nader: Well, one of the hopeful factors you point out in your article is you say, "A related possibility of changing this is section two of the Voting Rights Act, which prohibits not only intentional activity, but also measures that have a disparate effect on minorities. Section two litigation is however long and costly and the recent 6:3 Supreme Court decision in *Brnovich v. Democratic National Committee* written by Justice Samuel Alito – probably the court's most Conservative member – has made it far more difficult for plaintiffs to establish what will now be a far more limited type of disparity that the courts will consider illegal." I'm quoting from your article.

So it seems to me looking at your analysis here, Professor Schwartz, that the only real way to overcome it and then change it once more progressives and small D democratically inclined legislators get into office is by getting out the vote in the minority areas, which are being discriminated against, and having a progressive agenda – reaching people who want a living wage and universal health insurance. Even though they call themselves conservatives or Republicans, they're putting their families first. Is that a fair assessment?

Herman Schwartz: Yeah, I think so. I mean, the basic problem with our side of things is that we don't vote. Turnout in off years is normally very bad, which is one reason why I'm very concerned about the outcomes in Georgia for Reverend Warnock, but have some hopes because Stacy Abrams knows how to get the vote out far better than almost any of us. And the terrible things that happened to us that set all of this up were in 2010, then, again, in 2014. Happily, 2018 because of [Donald] Trump, was not that way. But I'm worried about 2022.

If one can simply win one chamber or the governorship in the states where the governor is part of the redistricting process, which is the case in places like Wisconsin, Pennsylvania, and elsewhere, that can break up the Republican gerrymandering situation. But the gerrymandering in North Carolina, in Wisconsin, that was Scott Walker when that happened. He was the governor. Now it's a man named [Tony] Evers, maybe it will be harder in Wisconsin unless Wisconsin is one of the states where the governor is not involved, which is true in some of our states such as North Carolina.

Ralph Nader: Don't you think another approach is initiative reports like in Michigan?

Herman Schwartz: Yes.

Ralph Nader: You just have a referendum.

Herman Schwartz: That's another approach, but only about 26 states have provisioned for that.

Ralph Nader: Many of them run by Republicans, by the way, in the West. Yes. Before we conclude, Professor Schwartz, we've been talking to Professor Herman Schwartz, professor of Law Emeritus at the Washington College of Law at American University in Washington, D.C. There is a person in our audience who I have neglected for longer than his question deserved. And he wanted to ask you, his name is Don Harris. And he said, "I demand that you discuss One Demand with Professor Herman Schwartz and the effect One Demand could have on gerrymandering." And One Demand, if you're not familiar with it, is a drive that demands politicians run small donor campaigns in order to get votes from the people. So people say to candidates, If you don't restrict your fundraising to small donors, we're going to vote against you. What do you think of that?

Herman Schwartz: I don't know. The Republican machine these days does very well with small voters. I'm not sure how much that would help. It might take – I don't know if it will take big money out of the political process, but this may be a particular talent of Trump's. But Trump gets an immense amount of money from small donors.

Ralph Nader: They're getting better at it, right? I mean, Bernie Sanders sort of broke ground with a large number of small donors in 2016.

Herman Schwartz: That's right.

Ralph Nader: But the Republicans in recent months, are not only getting better at it, they're getting more deceptive. They're hooking people into supporting them automatically by the month. You know, like if you don't opt out, you're going to be charged every month.

Herman Schwartz: Right. Yeah. So I don't know whether that will help because the Republicans don't have problems with money. One way or another, they get it.

Ralph Nader: Before we close, Steve, David, anything you'd like to say?

Steve Skrovan: Almost a year ago, and I think you just touched on it a few moments ago when you talked about Michigan, we had a young activist on the show named Katie Fahey and she was able to pull together a kind of a left-right coalition, which is one of Ralph's mantras. As I recall, it was through the initiative process. But are you familiar with her work and the ability for other states to repeat that?

Herman Schwartz: I think these days that would be possible. I think the reaction to Trump and Trump's supporters might work there, but I think other people, the judgment of other people would probably be more sophisticated. I think somebody like Stacey Abrams. I think Georgia is a wonderful example of how people can be motivated to come out and vote. And I think these days can encompass left and right because of who the common enemy is – the know-nothings and basically people who would be very comfortable within a neo-fascist Republican Party.

Ralph Nader: Well, unfortunately, we're out of time. We've been talking with Professor Herman Schwartz, Professor Emeritus of Law at the Washington College of Law of American University in Washington, D.C. We look forward to your future writings and speaking on this subject because this gerrymander is going to get quite a bit worse before it gets better. Thank you, Professor Schwartz.

Herman Schwartz: Thank you.

Steve Skrovan: We've been speaking with Professor Herman Schwartz. We will link to his work at ralphnaderradiohour.com. Let's take a quick break. When we come back, we'll hear from Mark Pertschuk, who is fighting against a "layered assault on democracy". But first, let's check in with our corporate crime reporter, Russell Mokhiber.

Russell Mokhiber: From the National Press Building in Washington D.C.; this is your *Corporate Crime Reporter* "Morning Minute" for Friday, October 1st, 2021; I'm Russell Mokhiber. Prosecutors in Northern California have filed criminal charges against Pacific Gas and Electric [Company] [PG&E] in connection with the deaths of four people last year in a wildfire that was linked to the utility's equipment. That's according to a report from the *New York Times*. The Shasta County district attorney brought the charges, including manslaughter, along with other felonies and misdemeanors, in connection with the Zogg Fire, which burned more than 56,000 acres and destroyed 204 buildings near Redding, California. An investigation by the California Department of Forestry and Fire Protection determined that the fire was caused when a pine tree came into contact with electrical lines owned and operated by PG&E. For the *Corporate Crime Reporter*, I'm Russell Mokhiber

Steve Skrovan: Thank you, Russel. Welcome back to the *Ralph Nader Radio Hour*. I'm Steve Skrovan along with David Feldman and Ralph. 25 states now prohibits cities from raising their own minimum wage. Why, how, David?

David Feldman: Mark Pertschuk is the director of Grassroots Change, an organization that connects grassroots leaders with the evidence, tools, and training to advance grassroots health and safety movements. Welcome back to the *Ralph Nader Radio Hour*, Mark Pertschuk..

Mark Pertschuk: Thank you. I'm looking forward to it.

Ralph Nader: Well, listeners, in case you think preemption is kind of a vague word before Mark defines it and brings it right back home to where you live, work, and raise your families, in one of his fact sheets, he says, "Concerns about the negative impacts of preemption are nearly universal in public health, having been raised in alcohol policy, nutrition, tobacco control, chemical safety, agriculture, firearm policy, housing, fracking, paid leave, civil rights, and even fire prevention." Preemption mostly has been used by special interests and their allies for a negative effect on the rights, interests and necessities of the people. Sometimes it has positive. And to discuss this, let me start by asking you, Mark, what is preemption and at what level?

Mark Pertschuk: Sure. So preemption occurs at both the federal level and the state level. And it's with when the higher level of government, in the case of the federal government, takes away

state and local authority to do better, to pass stronger protections for workers and for the public. And it's happening most often now as a strategy at the state level by which various bad actors, mostly corporate bad actors, take away the authority of all local governments--cities, counties, and so on--to pass stronger and better laws.

Normally, what's happening with these laws is technically called void preemption, which is simply to say that the states, say, Mississippi takes away the authority of cities. Like Alabama, for example, will take away authority of local cities to increase the minimum wage or to mandate some minimum paid sick leaves. And that type of preemption is technically called ceiling preemption. And it simply means that instead of passing minimum standards as the federal government has done in past decades, the states are passing nothing and telling communities they can't pass stronger, better laws.

Ralph Nader: So it aborts local democracy, strip mines democracy. People around the country mobilize and they elect people to their local government and they think they've got some sort of control and they start improving the community such as minimum wage or they want disclosure on restaurant menus about additives or fats or what have you. And suddenly, the corporations go to the state capital, Austin or Harrisburg in Pennsylvania, and they just pull the rug from under them, right?

Mark Pertschuk: Right. Exactly. And it used to be issue-specific. It kind of started with the tobacco industry, which attempted but failed to take away local authority to pass smoke-free ordinances. And then, for example, with firearms, which is an issue I've worked on a lot. But in the last decade or so, it's really become a blanket attack on local democracy, which, in some practical ways, is a blanket attack on our democracy – period.

Ralph Nader: Well, this is what corporatism is all about. I wish more people would learn about corporatism, use the word. It's corporate power of big business not satisfied with their power over you, as consumers--deception, monopolistic practices, [and] billing frauds, they go to control governments at whatever level. So, they use the power of government against its own people to favor these big businesses [with] subsidies, handouts, giveaways, weak law enforcement against corporate crime and so forth. It just never seems to end. But your group is mobilizing a response to this. What are they?

Mark Pertschuk: Right. So first of all, we know that the democracy has been attacked to some extent at the federal level, and clearly now, at the state level; that these avenues to exercise basic democracy, especially over these public health and public safety issues, have been severely hindered. And so what that leaves is tens of thousands of local jurisdictions around the country. And, historically, those jurisdictions have taken the lead; it's an understatement to say they've taken the lead on protecting people in the community. Going back, really, for a century in terms of fire protection, for example, it was cities that took that on [and] child labor, going back a hundred years. But now that we are so limited at this moment in time and what we can do to take hold of our destiny, to take hold of our lives and our communities, the attack on local is just a broad attack on one of our last avenues at this point in time when we can take action.

Ralph Nader: But why aren't the mayors organized, the city councils? I mean, they're powerful force that members of Congress usually have to pay attention to and their authority is being overridden. Are they really mobilizing and connecting with local neighborhood groups?

Mark Pertschuk: Yes, that's a great question. And the answer is that in many cases, local city councils boards of supervisors and individual elected officials at the local level have done a fantastic job. But it raises another really important [issue], which is that within this broad kind of blanket attack on local authority, there has been an attack on local financing, revenues and budgeting. And that is as bad as some of these other examples. Minimum wage and gun control, for example. The attack on the ability of communities to raise revenues and to spend those revenues in the community has been attacked. So, understandably, a lot of the local jurisdictions and the local officials and their organizations have been forced to focus on essentially survival, financial survival of the community.

Ralph Nader: And you think that this kind of preempting can be headed off by provisions in the statutes like it's a federal statute. I remember when we were drafting the auto-safety legislation with the help of your great father, Mike Pertschuk, who was the staff director for the Senate Commerce Committee [United States Senate Committee on Commerce, Science, and Transportation] headed by Senator [Warren] Magnuson from Washington state. He let me put in a very important provision, which said that the establishment of motor vehicle safety standards by the federal government does not affect lawsuits at common law and product liability lawsuits at the state level. So they couldn't preempt them. So your idea is to put these kinds of clauses, you can say, Well, the federal government is gonna act or the state government is gonna act in the legislature, but they are not going to override even superior standards or protections of the people that are enacted at your local city council.

Mark Pertschuk: Yeah. Well, First of all, congratulations on that. And second of all, you raised another critical point, which is the clause that you inserted is technically known as a savings clause, as you know. But really in simple terms, it's an anti-preemption clause. And pretty much every public health, every safety law, every civil rights law at the federal or state level needs to have a nice short, well-drafted savings clause. And it does exactly what you said. So to get back to ~~you know~~, you mentioned early on about there's the occasional times when federal or state preemption is appropriate. Well, as a general rule, those times are when the federal government, for example, sets a minimum standard, but clearly states its intention to allow stronger state and local laws around the country. It's absolutely critical. And again, I think real people would think of these as minimum standards, and that is only guaranteed by doing what you did. So that's a wonderful example.

Ralph Nader: Well, Joan Claybrook was in the lead in blocking an effort by the drug companies to get the Food and Drug Administration [FDA] to preempt everything at the local level and the food giants. They wanted the FDA to be able to preempt them, and she and others fought in Congress to prevent that. But you mentioned – and we're gonna tell you, listeners, some great fact sheets and action sheets that Mark Pertschuk's group, Preemption Watch, is available on the website, and we'll give you that site very shortly. You say, in some instances, preemption can be good. You wanna explain that?

Mark Pertschuk: Yeah, sure. So in a technical sense, the preemption that's bad is almost always ceiling preemption, which simply means that instead of setting a minimum standard to protect communities, to protect individuals, the federal government or the state is setting a maximum ceiling. And typically, they don't pass anything good with that. Void preemption is the technical terms for it, and it's terrible. So that's right. And then there were a handful of examples. A long time ago, the airline smoking ban was an example whereby its very nature airline safety is a national and international issue where preemption is not only appropriate, but necessary. But they're very rare with the issues we're talking about. And the fight over this is real and it's now. One of the major issues that we deal with is paid sick days and minimum wage. Typically speaking, states will preempt local authority over minimum wage and all benefits at the same time or in the same statute. And right now, of course, the president would like to adopt a national minimum requirement for paid leave. And that legislation, by definition, would have a savings clause – a clear savings clause protecting against state preemption and allowing states to pass stronger laws. The Chamber of Commerce and others stated earlier this year that they would be fine with a national statute, but it has to have preemption. In other words, they would trade some sort of relatively weak paid leave requirements if they could get preemption, which would literally stop progress nationally at both the state and local levels.

Ralph Nader: Yeah. Instead of the federal standard being the floor and the states can go higher, they want the federal standard to be the ceiling and the states can't go higher. Well, most of the good federal preemption deals with something very practical. For example, in the auto industry, you can't have 50 states have 50 different braking requirements and crash protection requirements. Interstate commerce would rather be obstructed in that way.

So, when the federal government was authorized by Congress in 1966 to issue motor vehicle safety centers, they had to preempt any state efforts because the auto companies would be properly upset trying to figure out, well, they had had to meet one state higher than another. But in the pollution area, they exempted California because California was a powerhouse to control the terrible air pollution out there, where it was allowed to set a higher standard. So, it's all something which needs to be the subject of good judgment, basic facts, efficiency, and result oriented use of preemption.

Mark Pertschuk: Yeah. Absolutely. And that's a fantastic example. I mean, the example of tailpipe emissions is a great example of the federal government doing a wonderful job. And in that case, as a general proposition, the federal standards were strong enough that preemption was merited in most states except California, which were both stronger, but also were leading the way. And so, it's a great example of when the system works.

Ralph Nader: We've been talking with Mark Pertschuk. Mark, tell us what's on your website that's very useful to listeners out there so they can be alert [and] they can foresee and forestall these bills, so they have a savings clause as you described. And otherwise, they can roll back bad preemption.

Mark Pertschuk: Sure. So first and foremost, if you go to preemptionwatch.org, there's a preemption map, state preemption map. And we track preemption that has occurred on eight issues that range from gun control, firearms to paid sick leave to plastics. That's another example

of where the corporations who are profiting from plastics, which are a disaster, are going state by state and preempting the communities that are banning or taxing or regulating plastics to improve the health and the safety and the environment of the community.

So there's that – those eight issues. And you can see, you can drill down and get straight to the bills or the statutes that are troubling. And then in addition to that, we have case studies. A lot of what we're doing – and the reason the organization is called Grassroots Change is that grassroots movements, when they're successful, like the movement against the tobacco industries against smoking, when they're successful, can be incredibly powerful. They may be one of the only things that can counterbalance corporate power – true grassroots movements.

And the industry knows that by preempting local authority, they are forestalling grassroots movements at the local level. So if our national laws today, banning smoking came from local ordinances 30 years ago or 25 years ago, that can't be done... For example, in firearms and gun control, 43 states have comprehensive preemption of local authority to regulate guns and ammunition. And that has devastated the potential for a grassroots gun control movement. We desperately need to face state preemption in the gun arena and we need to do something about it, which often means repealing it.

Ralph Nader: And it's very important to get that clause in state and federal laws. It's on Mark's website, it's “nothing in this law preempts more restrictive local regulations or requirements.” So, you give the local government and citizens at the local level a chance to engage in best practices and leading the way, which will be emulated by other local governments. Before we close, give that website again and then maybe Steve and David have some comments.

Mark Pertschuk: Yeah. It's grassrootschange.net or preemptionwatch.org. They'll go more or less to the same place. And you can also reach to me at mark@grassrootschange.net, MARK. Yeah. Please join us. The issue of preemption, the word preemption is a difficult one, but the truth of the matter is we were able to turn the word preemption into a dirty word, into a third rail of politics against the tobacco industry. And I believe we can do that against the pro-gun lobby and other industry lobbies as well.

Ralph Nader: It's a corporate power grab using the government as their instrument against the people. Steve, David?

Steve Skrovan: Yeah. Mark, I wanted to ask about what's going on in Texas and how that falls into this category. Texas, obviously just passed this very restrictive abortion law and the Biden administration is looking for ways to preempt it. Is that an example of good preemption? What category does that fall into?

Mark Pertschuk: Right. So in the case of Texas and other states as well, there's a lot of reporting and a lot of interest in the fact that they're attacking democracy and choice. And what is important in this and often missed is that in the case of voting, so much of our history of clean elections has relied on clean local voting mechanisms. And what Texas is doing is a direct attack on that. And the administration, understandably, is doing whatever they can to – I'm not sure it's exactly preempting Texas' bad preemption, but what it is doing is exercising the supremacy

clause and saying, no, you cannot take away voting rights at the state level; that's not allowed in our federal system.

Ralph Nader: David?

David Feldman: I was actually gonna ask about civil rights and the use of preemption in a positive way.

Mark Pertschuk: Sure. That's a great question. And without getting into the weeds, maybe getting into weeds a tiny bit, so the civil rights measures of the last 50 years have almost exclusively been floor preemption. So in other words, when the federal government has adopted civil rights protections for certain classes of people, they have either explicitly said that states and local communities can pass stronger civil rights law. And that is so important as a practical measure. A lot of the LGBTQ/civil rights movement started with the adoption of local ordinances. A lot of people don't know this because again, it seems a little in the weeds. But it's really not. It's local communities, college towns in red states, for example, that would pass protections for LGBTQ individuals and couples. And that was a function of this good preemption. Very simply stated, almost all floor preemption, minimum standards, minimum federal standards, minimum state standards is good and almost all ceiling preemption is bad. No reason that the federal government or the state government should tell communities they can't pass a stronger zoning law or ordinance addressing corporate agriculture, for example.

Ralph Nader: Well, [in] the civil rights movement, they knew they couldn't get very far with segregationist governors, legislatures, sheriffs with dogs. They had to go to Washington for federal preemption. That was central to the success of the civil rights movement. So that distinction you made, Mark, is very important. And thank you David for raising it. Anyway, I think we're out of time. Thanks very much, Mark. To be continued. We've been talking with Mark Pertschuk who heads the group Preemption Watch among other grassroots groups and he's given you the contacts. So listeners, use them. Thank you very much, Mark.

Mark Pertschuk: Thanks, Ralph. Thanks for your team.

Steve Skrovan: We is speaking with Mark Pertschuk. We will link to his work at ralphnaderradiohour.com.

Ralph Nader: Steve, there is a terrific letter to the editor that really showed up a lot of the journalists who just say \$3.5 trillion package, \$1 trillion package without saying this over ten years. And this woman in Houston really laid it on the line. Can you read her letter to the *New York Times*?

Steve Skrovan: “Americans have trouble passing anything because they only see big numbers, not the per capita cost divided among 330 million people over ten years. This hugely beneficial bill averages \$3 a day or the cost of a cup of coffee or a McDonald's happy meal. And that is an average. The rich pay more and the middle class and poor pay less. For millions, this money would be their salary in a job with a future. And what do we get? Roads, bridges that don't fall down, electric car charging stations, the cleanest air in generations, universal preschool, [and]

expanded childcare benefits; and for those who care, a habitable world for their grandchildren. Seems like a bargain to me.” That's from Deborah Moran from Houston.

Ralph Nader: It's even better than that because the proposal engages in preventive health. And that saves a lot of money in terms of the cost of later treatment for diseases or injuries. And also, with the tax increases on the super rich and the corporations, which Deborah Moran alluded to, it would end up to be an even bigger bargain than she indicated in her letter. I'm sending this letter around to members of Congress and to the press who keep using these gigantic figures like 3.5 trillion, but they don't spread it out over ten years. They don't talk about the savings and they don't talk about the rich and the corporate finally paying more than they have been paying for their fair share.

Steve Skrovan: Ralph, this is probably a dumb question, but I constantly see Joe Manchin who is like the man of the hour now because his position as a – and I hate this word “moderate”, because there's nothing moderate about the position. As a conservative Democrat, he kind of holds the cards and he keeps saying, “I have to be able to sell this to my people in West Virginia.” Well, this may be a dumb question [but] who is he really working for?

Ralph Nader: Well, he has as big investments in the coal business. He makes hundreds of thousands of dollars. So, he's basically a coal baron masquerading as a legislator in the US Senate. He certainly doesn't reflect the interest of one of the poorest states in the nation and the people of West Virginia.

Steve Skrovan: Yeah. Because it would seem like an easy sell. You go to the people of West Virginia and say, this is what you're gonna get for all of this money. But he keeps saying, “Oh, I can't sell this.” And it's like, who are you working, pal? That's my question. So, you answered that.

Ralph Nader: Well, he keeps selling it because he uses the words 3.5 trillion without saying it's spread out over ten years, which means \$350 billion a year.

Steve Skrovan: But you don't hear any of the... shouldn't the progressives be trumpeting this in these terms?

Ralph Nader: They should be all over West Virginia. It's amazing how the Democrats, the Democratic Party in West Virginia, what's left of the unions, United Mine Workers [of America], aren't taking Manchin on because he gives them some things they need from the Congress. It's a terrible state of affairs in West Virginia.

Steve Skrovan: All right. Very good. Now, Ralph, you put out a couple tweets. You put one out on September 24th recently. And David, why don't you read this tweet and we're gonna discuss it.

David Feldman: It's important in reading this that people remember that Apple [Inc.] does not pay its fair share of taxes and needs to repatriate a lot of cash that they have sitting in accounts overseas. This is Ralph's tweet. “The scale of unproductive corporate stock buybacks is massive.

Apple announced a \$90 billion stock buyback earlier this year to add to their previous \$380 billion worth of stock buybacks. By comparison, the World Health Organization's budget is approximately \$9 billion a year. The Centers for Disease Control's [and Prevention] budget is \$8 billion; the Environmental Protection Agency's budget is \$9 billion; the Food and Drug Administration's budget \$6 billion and the auto safety administration's budget is \$1 billion. OSHA's [Occupational Safety and Health Administration] budget is about \$600 million. All these lifesaving agency budgets total about \$34 billion or less than half of what the profit glutton Apple company is misspending on useless stock buybacks.”

Ralph Nader: And I might add, David, this type of tweet is designed for word of mouth, listeners. There's nothing faster in terms of communication than word of mouth. It spreads like lightning!

David Feldman: A stock buyback, Ralph, only creates wealth on paper. It's not cash that they're giving the stockholders.

Ralph Nader: No, it's cash. It's cash. It's surplus profits they don't know what to do with. It's all that money you overpay for your iPhone. It's cash!

David Feldman: But when you buy back a stock, you're creating value in the price of the stock. But the shareholders don't get any money.

Ralph Nader: No, it's just a blip, usually. There're so many other factors that up and down a stock market. It's mostly to increase the metrics for executive compensation. In other words, it improves the ratio of the stock to the profits, and they use it for their compensation contracts with their company like Tim Cook and so on. It doesn't create jobs. It doesn't invest, doesn't raise wages, doesn't bolster pension funds, doesn't produce R&D. They don't know what to do with the money so they buy back their stock and then they issue stock options to make them richer. We've had [William] Lazonick on the phone, haven't we, Steve?

Steve Skrovan: Yes, I think so. [June 2019, Episode 276]

Ralph Nader: I think we're gonna have him again, because believe it or not, the Democrats are thinking about taxing stock buybacks to discourage them.

Steve Skrovan: All right. Very lively discussion. Thanks for the tweets, Ralph. And thanks for that letter to the editor from Houston. I wanna thank our guest again also, Professor Herman Schwartz and Mark Pertschuk. For those of you listening on the radio, that's our show. For you, podcasts listeners, stay tuned for some bonus material we call "The Wrap Up". A transcript of this show will appear on the *Ralph Nader Radio Hour* website soon after the episode is posted.

David Feldman: Subscribe to us on our *Ralph Nader Radio Hour* YouTube Channel. And for Ralph's free weekly column, go to nader.org. For more from Russell Mokhiber, go to corporatecrimereporter.com.

Steve Skrovan: For a copy of *The Day the Rats Vetoed Congress*, go to ratsreformcongress.org. And also check out *The Ralph Nader and Family Cookbook: Classic Recipes from Lebanon and Beyond*. We will link to both of those on ralphnaderradiohour.com.

David Feldman: Remember to join us on Sunday, October 17th, at 4:00 PM Eastern time, [3:00 PM Central and 1:00 PM Pacific for our virtual Congress Club meeting. Ralph wants you to join – it should go like this. Ralph wants you to join the Congress Club. We want to hear your stories and share strategies to keep holding Congress accountable. And we'll be holding our very first virtual Congress Club town hall on Sunday, October 17th, at 4:00 PM Eastern, 1:00 PM Pacific.

Steve Skrovan: So if you're a Congress Club member, look out for that invitation from us. And if you're not a member, become a member. Go to the *Ralph Nader Radio Hour* website, and at the top right margin, click on the button labeled Congress Club to get more information.

David Feldman: The producers of the *Ralph Nader Radio Hour* are Jimmy Lee Wirt and Matthew Marran. Our executive producer is Alan Minsky.

Steve Skrovan: Our theme music *Stand Up, Rise Up* was written and performed by Kemp Harris. Our proofreader is Elisabeth Solomon. Our associate producer is Hannah Feldman. Our social media manager is Steven Wendt.

David Feldman: Join us next week on the *Ralph Nader Radio Hour*. Thank you, Ralph.

Ralph Nader: Thank you, everybody. And thank you, listeners. Try to get one of the many radio stations in your area to carry the show.

Stand Up, Rise Up song