

OVERCOMING STATE PREEMPTION TO PROTECT LGBTQ+ RIGHTS IN 2023



In the 2023 legislative session, an onslaught of over 500 state measures took aim at the LGBTQ+ community, with a staggering 200+ explicitly zeroing in on transgender individuals. In June, HRC declared a state of emergency and reported on the record-setting level of anti-LGBTQ+ legislation filed and the more than 80+ bills that passed into law.

Several of these state-level measures intrude into the governing affairs of city and local governments. They dictate what local authorities can or cannot do, with a primary focus on obstructing local efforts to ban conversion therapy, establish non-discrimination ordinances, and ensure that transgender individuals have access to places of public accommodation such as bathrooms.

STATE PREEMPTION

Because the legal authority to govern municipalities flows from the state government, states have the ability to expand, limit, or erase the ability of municipalities to govern on certain issues. States will sometimes take drastic action to remove powers from municipalities, especially when a state with a conservative legislature disapproves of actions taken by liberal cities. This is known as “preemption”, where states can seize back the power they once granted to cities. Case in point: **Florida’s SB 170**, enacted earlier this year, unapologetically discourages cities from embracing non-discrimination ordinances. It not only heightens the hurdles for proposing such ordinances but also streamlines the process for individuals and businesses to legally challenge them. While the bill avoids an explicit ban on protections based on sexual orientation or gender identity, its language firmly establishes the state’s dominance over discrimination matters which cities should have the ability to govern.

In some instances, state preemption goes a step further, openly targeting non-discrimination protections on the basis of sexual orientation and gender identity. For example, **North Carolina’s HB 2** in 2016 unequivocally prohibited cities across the state from enacting LGBTQ+ non-discrimination ordinances. Arkansas and Tennessee have similarly taken a heavy-handed approach, obstructing municipalities from safeguarding LGBTQ+ individuals against discrimination. **Arkansas’s SB 202** flatly forbade municipalities from enacting non-discrimination ordinances protecting LGBTQ+ people, effectively nullifying an existing non-discrimination ordinance in Eureka Springs. **Tennessee’s HB 600** followed suit, preempting an established non-discrimination ordinance in Nashville. This trend is expected to continue as states continue to curtail the right of municipalities to self-govern.

CITIES FIGHTING BACK

An unfortunate reality is that, in 2023, many municipalities found their well-intentioned ordinances and policies crushed by overbearing state legislation. These municipalities didn't just express disappointment; they voiced their determination to explore strategies and remedies to persist in meeting the pressing needs of their communities.

Cities unfairly restrained by state legislation that stifle their capacity to enact LGBTQ-inclusive ordinances face an uphill battle in championing LGBTQ rights and equality on the local level. Notwithstanding these unjust constraints, municipalities still in fact possess an arsenal of proactive tactics and initiatives to champion LGBTQ rights and secure essential protections. This includes unyielding advocacy, robust community engagement, and the pursuit of innovative policy solutions.

The following are strategies and tactics for municipalities to consider:



PROMOTE LGBTQ+ EQUALITY BY ENGAGING WITH LGBTQ+ ALLIED ORGANIZATIONS, ADVOCACY GROUPS, AND COMMUNITY GROUPS AND ENSURING LGBTQ+ NEEDS AND PERSPECTIVES ARE UNDERSTOOD



CONSIDER PASSING CITY RESOLUTIONS OR PROCLAMATIONS CONTINUING TO AFFIRM THE NEED FOR EQUAL RIGHTS FOR THE LGBTQ+ COMMUNITY



FIND CREATIVE WAYS TO HELP LGBTQ+ PEOPLE ACCESS THE RESOURCES THEY NEED



SPEAK OUT AGAINST DISCRIMINATORY STATE LEGISLATION AND EDUCATE THE LEGISLATURE AND THE PUBLIC ABOUT THE COSTS OF DISCRIMINATION FOR THE CITY



TAKE EVERY OPPORTUNITY FOR CITY LEADERSHIP TO TAKE A PUBLIC POSITION ON LGBTQ+ EQUALITY (COMING OUT PUBLICLY IN FAVOR OF LGBTQ+ RIGHTS, SUPPORTING LGBTQ+ COMMUNITY ORGANIZATIONS PUBLICLY, ATTENDING A PRIDE PARADE, SPEAKING OUT AGAINST ANTI-LGBTQ+ LEGISLATION, PARTNERING WITH LGBTQ+ GROUPS TO CREATE SOLUTIONS TO CITY PROBLEMS, ETC.)

CONCLUSION

Local non-discrimination ordinances stand as an absolute necessity in safeguarding LGBTQ+ individuals against the abhorrent practices of conversion therapy, the blight of employment discrimination, and injustice in all other aspects of their lives, including in housing and public accommodations. Cities and municipalities must maintain their inherent right to enact these policies and ordinances undeterred by state preemption tactics.

Let it be abundantly clear that our unwavering commitment to protecting the rights of the LGBTQ+ community persists. We must explore every conceivable avenue, relentlessly pursuing opportunities to prioritize equality and inclusivity for the LGBTQ+ community moving forward.