



# Undermining Democracy

How Far-Right State Lawmakers & Corporations Are Abusing Preemption to Take Power Away from People

*2022 End-of-Session Report*

## A GROWING WAVE OF ABUSIVE PREEMPTION BILLS IN 2022

Policymaking is about power and people. When it comes to power, there are usually a few considerations - who has it, how they can grow it, and how they can translate it into real policy. Unfortunately, the intersection of policymaking and power increasingly includes another trend: How power can be centralized and used to shut others out of our democracy.

People all across the country are becoming painfully aware of how this centralization of power in the hands of the few impacts their own communities and their own lives. From abortion access to LGBTQ rights, paid leave to fair wages, public health authority to voting rights, we're seeing seismic shifts in how decisions that affect every single person in this country are made. The headlines can be hard to keep up with, but the trends are clear: **People are losing the freedom to fully participate in their own communities and democracies; and it's those most traditionally**

**shut out of decisionmaking who are bearing the brunt of this shift: BIPOC, immigrants, LGBTQ people, women, and working people.**

How is this happening? Conservative elected officials and the corporate donors to whom many of them are beholden, deploy a stunning range of tactics aimed at propping up racist power structures and squashing any policies they deem a threat to their own prosperity. Many of these tactics, like gerrymandering and voter suppression, have been used for decades.

**But these officials and corporations have been relying on another tactic with increasing frequency and success: preemption.** Preemption is a tool that can and has been used by both political parties. It isn't always a bad thing – when used correctly, it allows local communities to design tailored policies that meet their unique needs. Historically, states have used preemption

to create a “floor” – ensuring a policy baseline upon which local communities could build. Many state civil rights laws, for example, allowed cities to increase protections for marginalized people – but prohibited them from falling below what was required under state law.

That is no longer how we typically see preemption used today. Instead, many state lawmakers and their corporate donors use preemption to set a “ceiling,” meaning localities can’t go *beyond* state laws – thus banning local communities from enacting the policies that make sense for their own local needs.

At Local Solutions Support Center (LSSC), we’ve documented an enormous uptick in this abuse of preemption, particularly over the last decade. Conservative state lawmakers have worked at the behest of corporations to undermine local paid leave and fair wage policies; eradicate measures meant to protect local environments; and override policies meant to protect those often exposed to discrimination or violence, like immigrants and LGBTQ people.

LSSC – a national hub that coordinates and creates efforts to counter the abuse of preemption – tracks preemption bills in state legislatures every year. We noted that [last year](#) was a historically challenging year: Advocates confronted over 475 abusive preemption bills, with a significant number of them in Florida and Texas.

**This year, the upward trend of abusive preemption continued to skyrocket:** LSSC tracked over a thousand bills across all 50 states. These bills limited local decision-making across



*Arizona lawmakers passed 18 abusive preemption bills in 2022 alone.*

the board, from environmental regulation to gun safety to worker pay. For instance, Arizona, Florida, and Oklahoma each passed three different laws targeting the LGBTQ community, with over 40 similar bills proposed in other states. We also know that certain states continue to be the most egregious offenders of abusive preemption: Arizona lawmakers, for example, proposed over 30 preemption bills and eventually passed 18 such bills into law this year.

Policymaking is also about people. It’s real people who are harmed by these abusive preemption bills. Workers who couldn’t access paid sick leave in Texas – even at the height of the COVID-19 pandemic – because the state challenged paid sick leave policies meant to help working people in Dallas, San Antonio, and Austin. Kids in Florida who may fear talking about their families – because state lawmakers have banned discussion of LGBTQ people and history in schools. Women and families in places like St. Louis, where local efforts to ensure people can access abortion have been swiftly targeted by state officials.

## 2022 Abusive Preemption At a Glance

**1,000+**

*abusive preemption bills filed across all 50 states*

**DOZENS**

*of issue areas covered in legislation, from guns to labor to the environment*

**40+**

*proposed preemption bills targeting LGBTQ+ people*

# TOP TRENDS FROM THIS YEAR'S LEGISLATIVE SESSION

During the 2022 state legislative session, state lawmakers preempted local communities across a host of issues - but three issues in particular dominated:



**Public Health Authority**



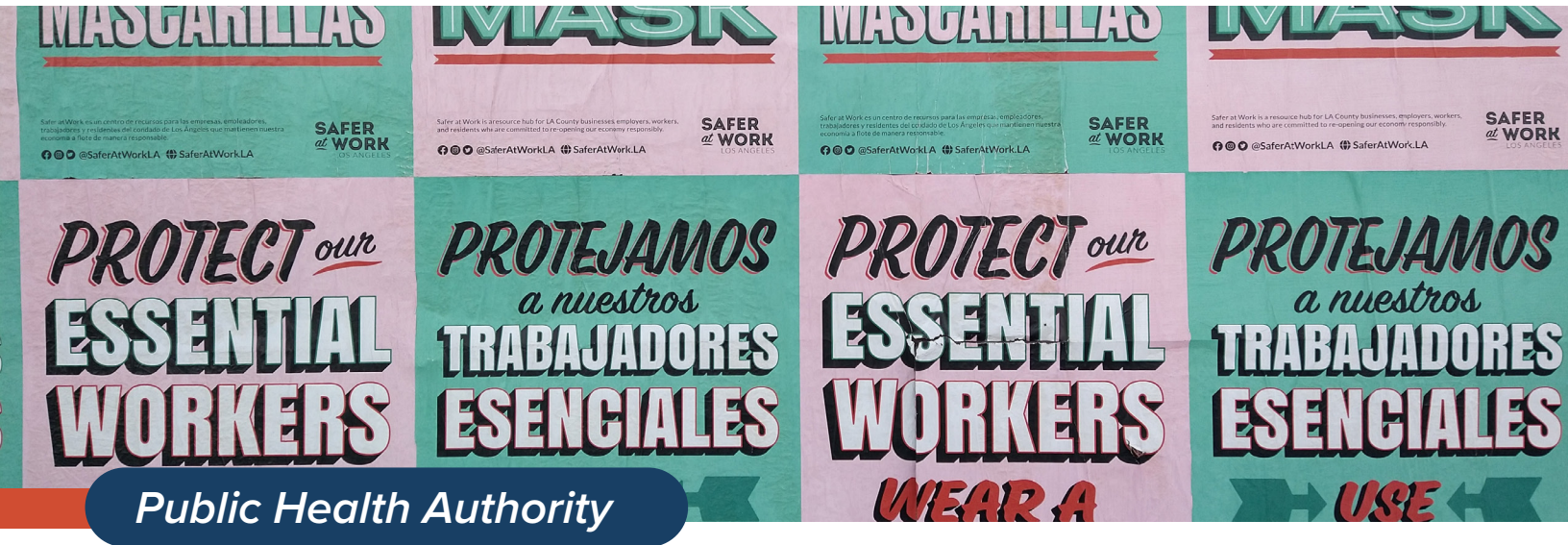
**LGBTQ Rights**



**Democracy & Voting Rights**

As the dust settles on the 2022 legislative session, the scope of these preemption efforts is becoming clearer. The bills advanced this year were especially harmful to BIPOC communities and LGBTQ youth.

Here's a look at the most egregious abusive preemption legislation that became law this year.



In **Georgia**, local boards of education are now [prohibited](#) from issuing mask mandates.



Also in **Georgia**, state and local government agencies are now [prohibited](#) from requiring that a person receive the COVID-19 vaccination before they can enter, access, or work with government services.



In **Tennessee**, governmental entities, local education agencies, schools, and private businesses are [prohibited](#) from adopting or enforcing laws, rules, or practices that fail to recognize natural immunity as providing a level of immune protection that is at least as protective as a COVID-19 vaccine.

By curtailing public health authority, these laws prevent local governments from using best public health practices to combat the ongoing COVID-19 pandemic. Additionally, the Tennessee law on “natural immunity” forces local governments to adopt a viewpoint on health that lacks a strong scientific basis or rationale. This sets a dangerous precedent for public health policy both in Tennessee and nationwide.



## LGBTQ Rights



In **Florida**, educators are now [prohibited](#) from holding classroom discussions about sexual orientation or gender identity. The same law also allows parents to sue individual school districts if they are found to have violated this policy.



In **Oklahoma**, hospitals are now [prohibited](#) from designating sex or gender as “nonbinary” on birth certificates.



In **Tennessee**, transgender women are now effectively [prohibited](#) from participating in intercollegiate and intramural sports at public institutions of higher education and at private institutions of higher education whose students compete against public institutions. The law states that institutions of higher education must rely upon the sex listed on the student’s original birth certificate issued at or near the time of birth. A separate section of the law doubles down on a [discriminatory 2021 law](#) that banned transgender kids from participating in middle and secondary school sports by adding a private right of action to the existing ban. The private right of action means that if any public charter middle or high school does not comply with the existing ban and instead allows a transgender student to play on a sports team, any other student can bring a lawsuit against the school if they can claim they were ‘deprived of an athletic opportunity’ or have suffered ‘direct or indirect harm’ from the decision.

These laws are part of a national attack on the LGBTQ community and on transgender youth specifically. These laws are particularly concerning given that LGBTQ youth - particularly transgender and nonbinary individuals - already [face greater health and suicide risks](#) than their cisgender and straight classmates.



## Democracy & Voting Rights



In **Arizona**, all political subdivisions of the state are now [prohibited](#) from registering voters on Election Day.



In **Florida**, local governments are now [prohibited](#) from adopting ranked-choice voting for any election.

Arizona’s decision to prohibit counties, municipalities, and other local governments from registering voters on Election Day will likely lower the number of Arizonans eligible to vote each election, especially in communities of color.

Ranked-choice voting is championed by voting rights activists as a system that provides more choice to voters, promotes the representation of historically underrepresented groups, and increases participation from military and overseas voters. Florida’s decision to prohibit local governments from adopting ranked-choice voting for elections will diminish the electoral impact of marginalized communities.

# STATE SNAPSHOTS

Over the last year, state advocates continued pushing back against abusive preemption and fighting on behalf of their communities. LSSC is proud to support our partners in the states with research, technical legal assistance, and campaign planning, cross-movement coalition building, and communications support. Our work is two-fold: We want to ensure advocates have the tools and resources they need to combat abusive preemption; and we seek to connect the dots between states - so that dangerous trends are better understood and addressed as early as possible.

Here are a few snapshots of the biggest preemption battles of 2022:



## Arizona

Advocates in **Arizona** succeeded in keeping SB 1581 – a dangerous bill that would force local governments to either forgo badly needed federal funding, or adopt policies that criminalize homelessness – bottled up in the House. Advocates organized and ran a public education campaign to ensure Arizonans understood why the bill was dangerous.

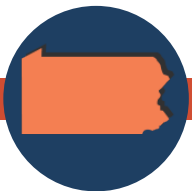
The Arizona legislation is indicative of a broader national trend LSSC is tracking around efforts to use state preemption as a means of criminalizing homelessness. The Arizona bill, and others like it, have been circulated by the Texas-based Cicero Institute, an organization funded by a tech billionaire whose company has a reputation supporting government surveillance of immigrants, Muslims, and BIPOC communities.



## Florida

The “Don’t Say Gay” legislation became law in **Florida** - a dangerous and anti-LGBTQ bill that essentially bans discussion of LGBTQ people and families in the classroom. The law is perhaps the most notorious example of the growing national trend of using preemption to ban or censor what students can learn about in their schools - from honest discussions about racism and white supremacy, to the existence of LGBTQ people.

But there also were some important victories in Florida – advocates defeated SB 280 and SB 620, bills which would have essentially transferred local power from people and their communities to corporations. The bills would’ve allowed big business to sue local communities if they thought a local measure threatened their profits.



## Pennsylvania

Advocates in **Pennsylvania** secured a big victory when Governor Tom Wolf vetoed SB 275, a bill that would’ve banned communities across the Keystone State from combating climate change by banning natural gas. Wolf’s veto represents an impressive pushback on a growing preemption trend in one of the nation’s most densely populated states: Last year, [15 states passed measures](#) banning local natural gas bans.

# WHERE DO WE GO FROM HERE?

We already have a sense of where state lawmakers and their corporate donors may look to continue advancing abusive preemption in the months ahead. The 2023 legislative session is likely to be another challenging year with abusive preemption bills across a range of issues, but the following topics are likely to see particular engagement:

## Democracy & Voting Rights

A number of preemption measures are aimed at curtailing the ability of local elected officials to safely and securely register voters and ensure voters in their communities can access the polls. This is part of a larger national strategy to suppress large segments of the vote. We saw a spike in this type of preemption in advance of this year's midterm elections, and anticipate it's a trend that will continue as we move closer to the 2024 presidential race.

## Public Health Authority

Local public health authorities and elected officials are those best positioned to work and communicate with members of their community during a public health emergency. Unfortunately, public health authority preemption escalated dramatically in 2021 and 2022 in direct response to the COVID-19 pandemic. This type of preemption has lasting consequences – it worsens existing health inequities and

damages the ability of health officials to mount effective responses to future disease outbreaks.

## Abortion

We anticipate seeing more states move to undermine policies that local communities may put in place to protect the rights of pregnant people to access abortion and exercise bodily autonomy in the wake of the *Dobbs* decision.



## LSSC Resources

LSSC is constantly developing and sharing new communication and messaging tools, legal resources, and research that can help advocates combat preemption in their states. Visit

[www.supportdemocracy.org](http://www.supportdemocracy.org) for more information about abusive preemption and additional resources.

While there's no quick fix to repairing our democracy, we do have a roadmap for how we can begin to address the damage of abusive preemption: [home rule reform](#). Home rule is the legal concept that allows for local decision making and limits how states can interfere with that decision making.

Reforming home rule would rebalance power between local and state governments, helping to ensure our elected officials fulfill their responsibility to meet the needs of their communities. Our approach to home rule hasn't been fundamentally updated in 70 years – and the broad and growing abuse of preemption illustrates why action is needed now.

LSSC is working in partnership with a number of other national and state advocacy organizations to build community-led public education campaigns to update home rule in states where abusive preemption most impacts communities. It's an effort that will bring us closer to dismantling the policies, institutions, and cultural barriers that perpetuate harm and continue to exclude BIPOC, immigrants, LGBTQ people, women, and working people. [Learn more.](#)



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