



PROTECTING LOCAL DEMOCRACY: 2023 Legislative Session Overview



Advocates committed to protecting and strengthening local democracy faced a behemoth task in 2023. They squared off against emboldened state lawmakers and corporate lobbyists who embraced increasingly sweeping ‘Death Star’ preemption bills, and who no longer attempted to hide their true animus. Many of the lawmakers devoted to undermining local power have often twisted themselves into pretzels to make the case for why their preemption bills were necessary; this year, however, there were noticeably fewer attempts to disguise these power grabs. This brazen disregard for local government is aligned with broader efforts underway to weaken the foundations of our democracy and make it harder for people to participate in it.

The biggest trend of 2023 state legislative sessions wasn’t the preemption of a particular issue – instead, the story is that lawmakers and their corporate allies are increasingly targeting the authority of local governments in order to prevent them from taking even the most fundamental steps to protect the health, safety, and well-being of those living and working within their communities.

In years past, we at Local Solutions Support Center (LSSC) have sounded the alarm on preemption of particular issues like public health authority, curriculum decisions, and LGBTQ+ policies.

This year, the trend we're most deeply concerned about is the full-throated attack on local democracy through 'Death Star 2.0' preemption bills. Historically, 'Death Star' legislation wiped out an entire set of issue-specific policies - such as worker rights. The Death Star 2.0 legislation we are seeing in Texas and elsewhere is even more alarming in scope, seeking to wipe out local government and its authority across a wide range of issues.

Another trend we're concerned about is the evolving and expanding punitive approach that many state lawmakers took against their duly elected colleagues with whom they disagreed.

We've seen this disregard for democracy play out in major battles across states including Texas, Florida, and Tennessee. In Texas, Governor Greg Abbott recently signed into law a [Death Star 2.0 preemption](#) bill that shifts power from the hands of Texans and their local elected officials to big corporations and their lawyers. The new law allows corporations and others to easily challenge many local policies – policies that protect construction workers on the job, curb predatory lending practices, allow for coordinated responses to public health crises and other disasters, and dictate speed limits within communities. Lawmakers in Florida sent a similar bill to Governor Ron DeSantis' desk, opening up local governments to [costly litigation](#).

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The 2023 session was also defined by a growing disregard for the will of voters: Just last month, Governor DeSantis [removed from office](#) Orange-Osceola State Attorney Monique Worrell, a duly elected prosecutor who won her election with two-thirds of the vote in 2020. In Tennessee, Nashville-area residents faced continual attacks from state lawmakers – from efforts to [halve](#) the size of their popularly elected Metro Council, to the [racist expulsion](#) of two of the three members of the 'Tennessee Three.' (In a sign of ongoing approval for Reps. Justin Pearson and Justin Jones, voters returned both of them to office last month.) The legislature also moved against accountability and safety statewide, [gutting](#) police oversight boards in cities including Knoxville, Memphis, and Nashville.

All of these attacks on our democracy and our freedom to participate in it have significant implications for 2024, when voters nationwide will return to the polls for federal, state, and local elections. A number of preemption bills this session were aimed at making it more difficult for people to access the polls while other bills targeted the authority of local elected officials to register voters and administer secure elections. We expect these types of bills to continue into 2024.

This report explores the trends of this year's legislative session in more detail, and tees up the issues we're keeping an eye on as legislatures reconvene next year.



Texas Unleashes Death Star 2.0 Preemption

Two-thirds of Texans believe their local elected officials should make decisions about raising wages for municipal employees, ensuring access to paid sick leave, and strengthening safety standards on construction sites. Sixty-four percent of Texans oppose state policies that would ban municipalities from regulating noise to curbing predatory lending practices. These findings from a March 2023 [RABA Research survey](#) send a clear message: **Texans believe their local governments are best equipped to solve local problems, and they don't want the state needlessly interfering.**

Texas state legislators and Governor Greg Abbott responded by enacting [House Bill 2127](#), one of the most sweeping abusive preemption laws in history.

This omnibus bill is worse than previous 'Death Star' legislation, which took aim at policies across a specific issue. The Texas Death Star 2.0 legislation is sweeping in scope, and is designed specifically to restrict the ability of local officials to pass policies that protect the health, safety, and freedom of local constituents across a huge array of issues. The new Texas law allows for costly, taxpayer-funded litigation against a universe of local policies that a corporate actor or others may not like.

The law makes it stunningly easy to effectively ban local policies that:

- Protect construction workers on the job,
- Restrict predatory lending practices,
- Allow for responses to disasters and public health crises, and
- Regulate local fire, building, zoning, and billboard regulations.

The new law [will harm Texas workers](#) and their families. It will impede the ability of local governments to protect the health, safety, and well-being of those who live and work within a given municipality – and, believe it or not, that's exactly what the Death Star proponents intended.

On August 30th, two days before H.B. 2127 was slated to take effect, a Travis County judge [ruled that the law is unconstitutional](#). Although this ruling doesn't prevent the law from taking effect, it may give cities some standing to counter lawsuits against local ordinances that get challenged under H.B. 2127.

The Texas Death Star bill, and the enactment of [similar omnibus legislation](#) in Florida, signals a new era for abusive preemption: no longer are lawmakers singling out a specific issue; they are instead brazenly working to destroy local democracy in broad daylight.

Note: The Death Star 2.0 bill wasn't the only abusive preemption bill in Texas this year – LSSC tracked more than 100 other preemption-related measures in Austin, many of which focused on weakening the ability of local elected officials to securely manage elections, and curbing oversight of local prosecutors.

Tennessee Throws Democracy Out the Window



In recent months, the nation has had a front row seat to the dismantling of democracy at the hands of state legislators in Tennessee. Lawmakers in the Volunteer State no longer try to hide their contempt for the will of the people: They've brazenly expelled popularly elected officials, ruthlessly pursued a vindictive attempt to weaken local authority in Nashville, and unleashed a slew of abusive preemption bills specifically designed to harm and marginalize transgender youth and BIPOC communities.

This year alone, Tennessee raced to become the first state in the nation to ban drag shows in public – a law that was quickly [found unconstitutional](#) by a federal judge in Memphis. Simultaneously, the state doubled down on anti-LGBTQ+ bills in schools – advancing legislation that allows school officials to use the wrong pronouns for students, bans trans youth from participating in sports, curbs gender-affirming healthcare, and even lays the groundwork to advance broad discrimination against the trans community by narrowly defining sex in state law.

The state has also [banned municipalities](#) from offering employees insurance that would provide abortion care. Lawmakers eradicated community accountability for police misconduct by [gutting community oversight boards](#). They also passed a law [making it more difficult for children to receive critical vaccines](#) during public health crises.

State elected officials in Tennessee are piloting a playbook for how to abuse preemption, along with an array of other anti-democratic tactics, to silence entire communities and entrench deeply racist and inequitable systems.

Advocates in Tennessee are putting up a fierce fight, and in the process are setting an example for how to defend democracy. When state lawmakers expelled the two Black members of the Tennessee Three, [voters promptly returned them to office](#). When petty state legislators, irked that Nashville residents didn't want to host the 2024 GOP convention, sought to halve the size of the Metro Council; the community [fought back in court](#). An injunction means the punitive law won't take effect for now.



Abortion Access

The abortion access landscape remains narrowed and volatile in the year following the *Dobbs* decision. What has become stunningly clear in state after state is the deep support for abortion rights; support that spans political ideology and geography. Voters have come down decisively in favor of abortion rights in every major abortion-related ballot measure since the dismantling of *Roe* – including in red states like [Ohio, Kentucky, Kansas, and Montana](#).

It should come as no surprise that some state lawmakers, blocked by the will of the people at every turn, are instead seeking to use preemption to strip abortion access and punish local officials who simply want to help people seeking safe and legal abortions. This is how these officials operate: If the voters overwhelmingly rebuke them at the polls, they simply change the rules of the game and override the democratic process.

Abortion preemption measures were introduced in 22 states during 2023 sessions, though most failed to advance. West Virginia lawmakers introduced the most legislation aimed at curtailing abortion rights, with 15 bills dropped in the most recent session.

A few notable bills did, unfortunately, become law: In Tennessee, it's now [illegal for local governments](#) to provide insurance to municipal employees that covers abortion, or to [create funding sources to support people](#) traveling to other states where abortion remains legal. In Wyoming, a sweeping new law [criminalizes abortion procedures](#) and makes healthcare providers who perform abortions vulnerable to litigation.

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Anti-LGBTQ+ Measures

More than [520 anti-LGBTQ+ bills](#) were introduced in state legislatures this year, and at least one-third of those bills included some form of abusive preemption. Once again, lawmakers focused their most discriminatory and hateful bills on one population: transgender youth. Many bills focused on banning gender-affirming healthcare and banning trans youth from sports.

One of the most sweeping anti-LGBTQ+ preemption bills signed into law this year was in Florida. Governor DeSantis expanded his 2022 “Don’t Say Gay or Trans” law, banning any instruction on sexual orientation and gender identity across grades – an intentional effort to erase non-binary, transgender, and LGBTQ+ people and families from the classroom. Tennessee also codified several education-related anti-trans bills this year – such as [SB 0466](#), which explicitly protects school officials who intentionally misgender students and use inaccurate pronouns, and [SB 1237](#), which bans trans students at private schools from playing school sports.

For lawmakers in some states, stripping away health care and telling kids and teens they can’t play sports doesn’t go far enough: In Kansas, Montana, and Tennessee, lawmakers have gone out of their way to [legally define sex as only ‘male’ and ‘female,’](#) in terms that are designed to deny the dignity and humanity of transgender residents, and open them up to extensive discrimination.

The number of anti-LGBTQ+ bills, and anti-trans legislation in particular, stands in stark contrast to the amount of legislation filed to undermine abortion access and prevent authentic conversations about our nation’s history with racism in classrooms. While preemption of all three issues is concerning, this year there were roughly seven times as many anti-LGBTQ+ preemption bills focused on K-12 schools as there were bills targeting critical race theory. Unfortunately, we expect this trend of potent and dangerous anti-LGBTQ+ bills to continue in the future.

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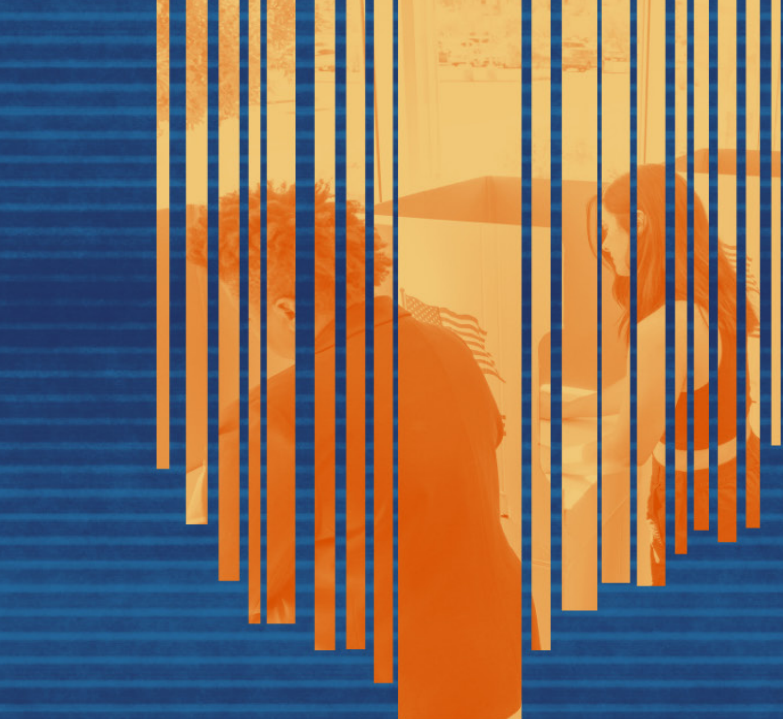
Crime & Safety

Another significant preemption trend this session involved state legislatures seeking to undermine, or even remove from office, [duly elected prosecutors](#). Nationwide, in red and blue states, voters are electing prosecutors who acknowledge crime and safety head-on, and who advance reform policies designed to deliver safety in their communities – rather than double down on failed and racist policies that worsen mass incarceration and do nothing to make their jurisdictions safer. In the second half of 2022, [nearly a dozen reform-minded prosecutors won election or reelection](#) – including in red states like Indiana, Oklahoma, Tennessee, and Texas.

Some state lawmakers are responding to the broad support for these reform-oriented prosecutors (and the policies they champion) by curtailing prosecutorial discretion or even brazenly removing them from office. We've seen this [twice in Florida](#) – in the last year, Governor DeSantis has removed Orlando-area State Attorney Monique Worrell and Tampa-area State Attorney Andrew Warren from office. In [Texas](#), conservative activists are waging a campaign to remove Nueces County district attorney Mark A. Gonzalez from his post.

Lawmakers in states like Georgia and Texas spent 2023 filing bills that will make it easier to undermine the power and discretion of prosecutors – and, in the process, disregard the will of the people who elected these attorneys. In Texas, [HB 17](#) became law and cleared the path for removing district and county attorneys from office. In Georgia, Governor Brian Kemp signed [SB 92](#) into law, which creates a special commission with the power to review the decisions of local prosecutors; as well as issue punishments against local prosecutors – including removal from office. We anticipate seeing more legislation undermining the discretion of prosecutors in 2024 and beyond.

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Eye on 2024: Election-Related Preemption & Other Anticipated Trends

The 2020 presidential election brought [record turnout](#), which was due in part to voting infrastructure changes necessitated by the pandemic, such as extended early voting periods, the increased availability of mail-in ballots, and the opening of additional polling locations. After Donald Trump lost the election, he began a campaign to sow doubt in the country's electoral process, and in turn, demonize local election administrators who had approved and implemented these changes.

In response to Trump's rhetoric, some GOP state legislators began deploying preemption to weaken the ability of local election officials to conduct secure and fair elections. We tracked major spikes in election-related preemption in 2021 and 2022, and last year Columbia Law Professor Richard Briffault described some of the most alarming trends in a [white paper for LSSC](#).

Professor Briffault noted that legislators were using preemption to:

- Deny local elected officials the authority to take actions that help make it easier for people to vote (such as the actions many took to ensure smooth and secure elections in 2020, at the height of the pandemic),

- Make it harder for these local officials to go about their jobs freely, and
- Impose penalties on local officials who are trying to ensure secure and fair elections in the face of anti-democratic state action.

Alabama, Arkansas, Florida, Mississippi, Montana, Oklahoma, and Wyoming all enacted laws this year that included measures designed to weaken local election administration. In our [mid-session report](#), we noted that a new Montana law bans double voting - a solution in a search of a problem that doesn't seem to exist, aside from Donald Trump [encouraging his supporters to vote twice](#) in the 2020 election. In Wyoming, lawmakers passed a bill that allows [concealed carry permits](#) to be used as adequate identification for voter registration.

Not to be outdone, Arizona lawmakers advanced a whopping 11 election-related preemption measures this year, with Texas pushing 10 bills. Though none of the Arizona or Texas bills became law this session, we've already seen nearly 100 election-related preemption bills introduced across 28 states – demonstrating that election-related preemption will remain a major issue to watch.

There are critical races on the ballot at the federal, state, and local levels in 2024 – and the trends of the last few years indicate that many state legislators will be inclined to push bills that make it harder and less safe for people to vote, and more difficult for local election officials to simply do their jobs. We also expect the cultural issues brought up in the 2024 primary to influence the type of preemption legislation proposed across the states.

Other preemption trends we're anticipating next year include:



Death Star 2.0:

Particularly as Texas has passed a sweeping Death Star 2.0 bill, we can expect other legislatures to follow suit, reducing the number of preemption bills that legislatures need to pass in order to undermine local authority.



Housing:

In the last legislative session, Texas and Florida each passed statutes broadly preempting local authority over issues such as tenants rights, following sessions in which local policies on homelessness were also preempted. Invigorated advocacy at the local level about eviction mitigation, rent regulation, and a range of tenant protections—as well as ongoing political polarization about the challenge of homelessness—are likely to make preemption of local equitable housing policies increasingly contentious.



Parental Control:

Many of the bills that have targeted LGBTQ+ youth as well as curricular choices around teaching about sexual health and America's history of racism have been passed under the guise of parental rights. The messaging of parental rights has galvanized some voters to support sweeping educational preemption. Given the success of this messaging, we expect this strategy to escalate.



Prosecutorial Discretion:

As reproductive rights remain under attack, so too do we expect prosecutorial discretion preemption to target prosecutors who have declared that they will not prosecute individuals for obtaining or providing an abortion.

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