

Preserving Local Legislative Immunity: How to Protect Local Legislators from Punitive State Laws

A Troubling Trend: States Are Trying to Punish Local Legislators for Supporting Policies They Disagree with

Policy disagreements between state and local legislatures are hardly a new phenomenon. But a troubling trend has emerged where state legislatures move to *punish* local legislators for supporting or voting for policies that state legislators oppose. For example:

- A Florida law passed in 2011 punishes local officials involved in “enacting or causing [firearms or ammunition regulations] to be enforced” with a civil fine of up to \$5,000, loss of public funds in defense of a claim, and removal from office.¹ In 2014, the State attempted to use these provisions to punish Tallahassee officials for failing to rescind several decades-old gun regulations.²
- In a 2017 law that was recently preliminarily enjoined, Texas passed into law S.B.4, which punished local officials who “adopt, enforce, or endorse” a sanctuary city policy with fines of up to \$25,500 per day and removal from office.³

Most States Do Not Sufficiently Protect Local Officials from this Disturbing Overreach

Forty-three state constitutions have some sort of “speech or debate” clause, which essentially provides *absolute immunity* to state legislators for their legislative acts. Federal legislators enjoy the same immunity. These constitutional provisions ensure that legislators cannot be held liable for their actual speech or debate on the legislative floor, nor for other legislative acts such as voting and participating in committee meetings.

Unfortunately, this legislative immunity generally does not explicitly extend to local legislators. As a result, states can punish local legislators for the exact kinds of actions for which state officials themselves are immune from liability.

A Proposed Solution: Extending “Speech or Debate” Immunity to Local Legislators

While preemption statutes that create civil and criminal penalties for local lawmakers might be vulnerable to legal challenges, states should also consider taking steps to prohibit such penalties in the first place.

Explicitly extending speech or debate immunity to local legislators would ensure that they cannot be held liable for supporting policies that the state legislature opposes. In addition to a clear safeguard for local lawmakers against a threat of liability, extending speech or debate protections would send a strong message that local legislators deserve the same protections that their state and federal counterparts already enjoy.

For more information or help with further research on this issue in your state, contact:

**A Better Balance at (212) 430-5989 or dlankachandra@abetterbalance.org, or
The Local Solutions Support Center at LSSC@supportdemocracy.org**

¹ 790.33, Fla. Stat. (2017).

² *Florida Carry, Inc. v. Tallahassee*, 212 So. 3d. 452 (2017).

³ Tex. Gov. Code §§ 752.051(5)(B); 752.056-752.0565 (2017) (currently under litigation).