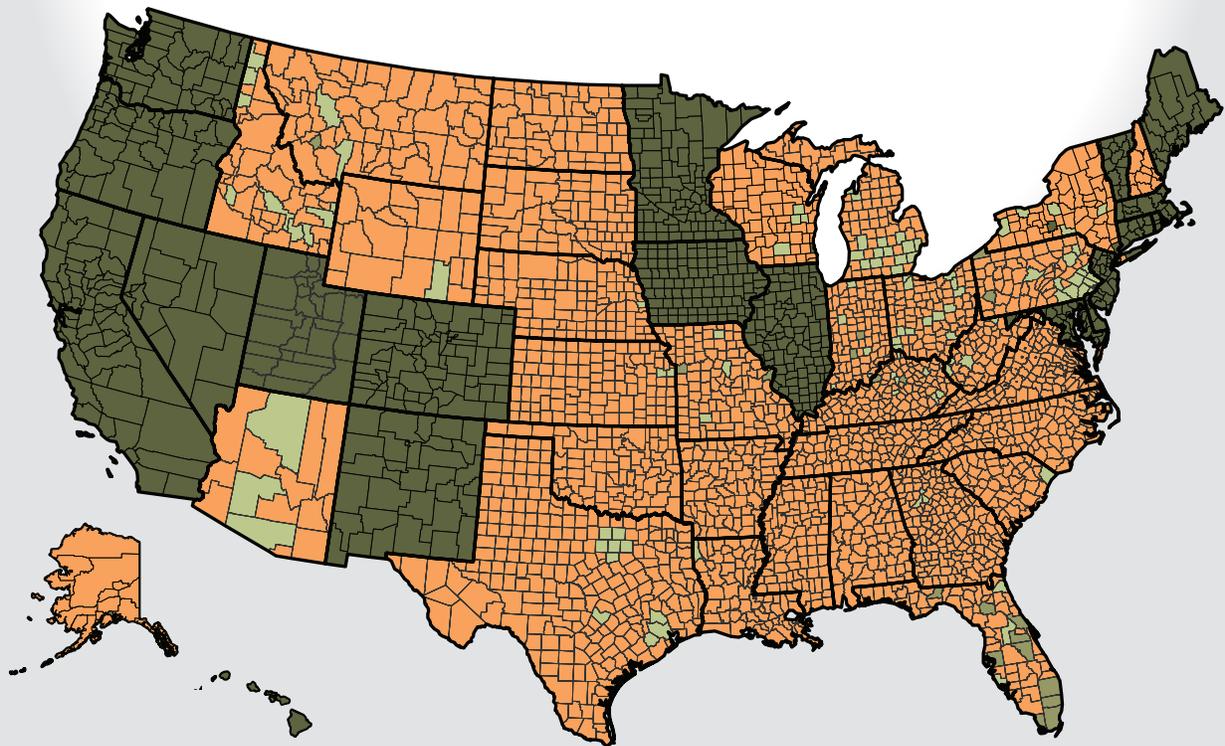


# LGBT POLICY SPOTLIGHT: LOCAL EMPLOYMENT NONDISCRIMINATION ORDINANCES



■ State level protection ■ County level protection ■ City level protection ■ None of the population is protected

**51%** of the US population is protected from employment discrimination by an **LGBT-inclusive** law at the state, county, or city level.

LGBT-inclusive laws shown in the map above.

**56%** of the US population is protected by an **LGB-inclusive** law.



movement advancement, project ▶

## OVERVIEW

Nondiscrimination ordinances that extend employment protections to LGBT persons by enumerating sexual orientation and gender identity as classes protected from discrimination can come in a number of forms. Localities can extend these protections by drafting a stand-alone nondiscrimination ordinance (NDO), but NDOs typically are put forward as amendments to existing nondiscrimination ordinances that do not provide protections based on sexual orientation and/or gender identity.

This spotlight report provides a deep examination of city and county NDOs that prohibit discrimination based on sexual orientation and gender identity in private employment.<sup>a</sup> It examines where these ordinances are geographically, their growth over time, and the gaps in coverage that remain.

**Note that new local nondiscrimination ordinances are passing on almost a weekly basis. This report is current as of October 1, 2015.**

### National Growth in NDO Coverage

The first LGB-inclusive local employment NDO was passed in 1974. That's when the city council in Minneapolis, MN, passed an amendment to add "*affectional or sexual preference*" to the list of protected classes enumerated in the city's code of Civil Rights Ordinances, thereby extending private employment protection based on sexual orientation. One year later, the ordinance was amended to include gender identity making it the first LGBT-inclusive ordinance.

Since then, hundreds of city and county councils throughout the country have passed local NDOs to extend employment protections to LGBT people living in their jurisdictions. These policies are often called Civil Rights Ordinances and Human Rights Ordinances, though we refer to them as nondiscrimination ordinances, or NDOs, within this report. Often, but not always, these ordinances include housing and public accommodation protections as well. This report focuses exclusively on local employment nondiscrimination protections.

Local NDOs currently provide important job safeguards for thousands of LGBT individuals living

in states that lack explicit statewide employment protections for LGBT people. Local ordinances also have been instrumental stepping stones toward statewide protections in many of the 19 states that currently protect LGBT people from employment discrimination.

#### The First Local LGB-inclusive Nondiscrimination Ordinance in the U.S.

Minneapolis, MN - 1974

#### AN ORDINANCE Amending Chap 945 of the Minneapolis Code of Ordinances relating to Civil Rights. (99-68) The City Council of the City of Minneapolis do ordain as follows:

(b) Declaration of Policy and Purpose. It is the public policy of the City of Minneapolis and the purpose of this Chapter:

(1) To declare as civil rights the rights of all persons to the fullest extent of their capacities, and without regard to race, color, creed, religion, ancestry, national origin, sex OR AFFECTIONAL OR SEXUAL PREFER-

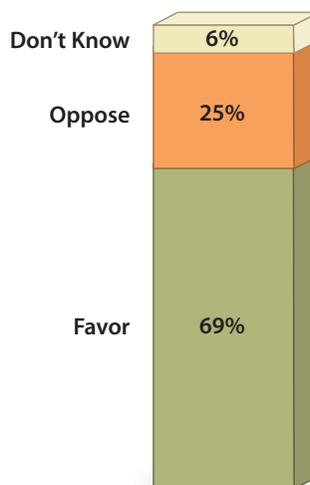
ENCE, equal opportunities with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations, and public services;

(2) To prevent and prohibit any and all discriminatory practices based on race, color, creed, religion, ancestry, national origin, sex, OR AFFECTIONAL OR SEXUAL PREFERENCE, with respect to employment, labor union membership, housing accommodations, property rights, education, public accommodations, or public services;

(3) To protect all persons from unfounded charges of discriminatory practices;

Minneapolis, MN Civil Rights Law Amd. Ord. No 99-68 3.29.1974

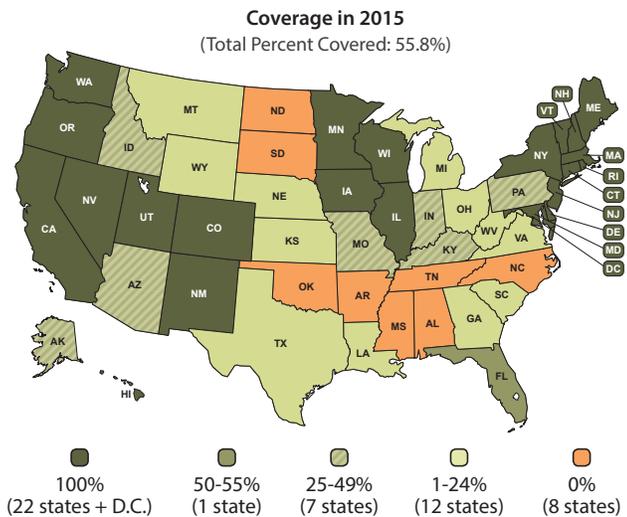
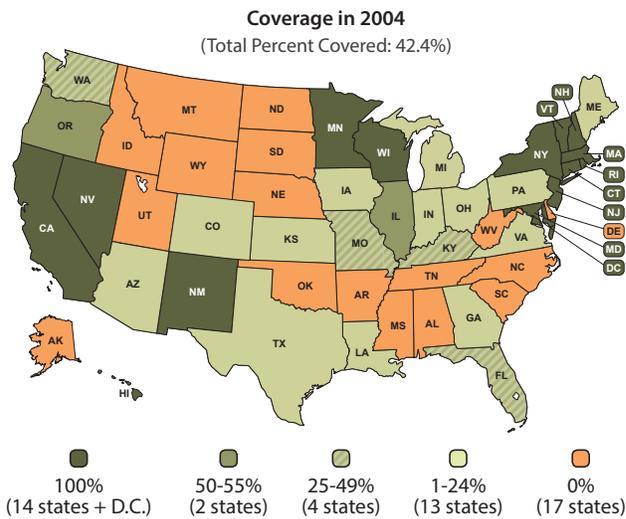
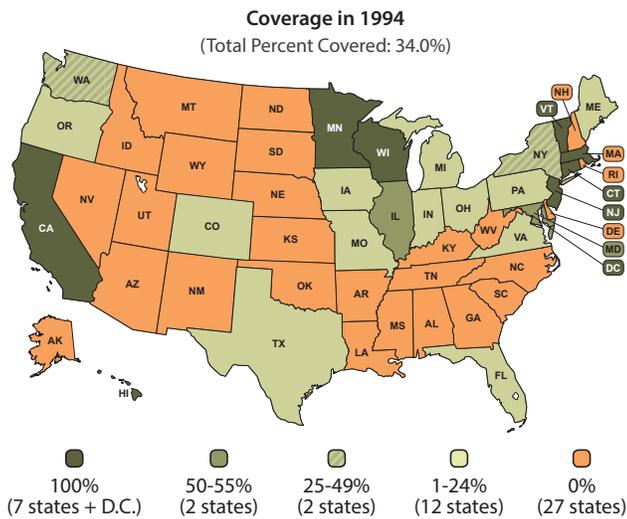
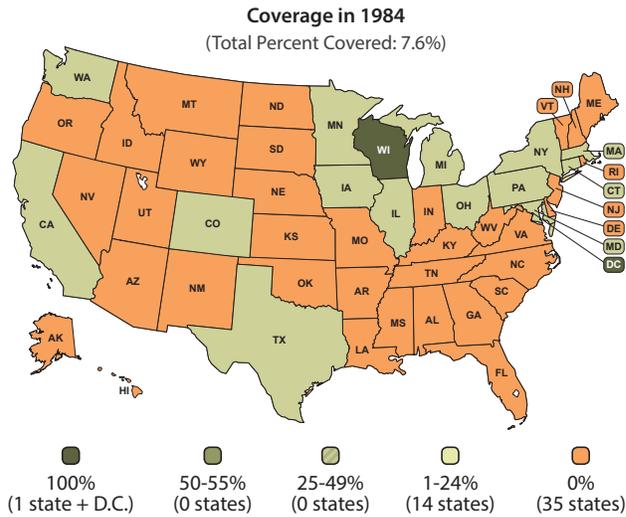
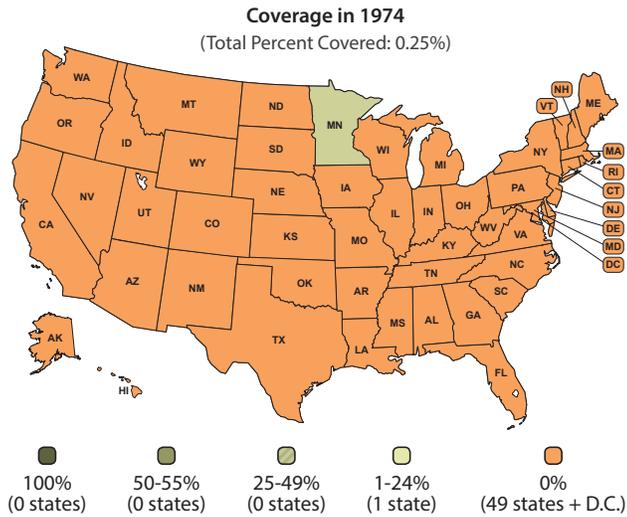
**Figure 1: Support for Laws That Would Protect Gay, Lesbian, Bisexual, and Transgender People Against Discrimination in Jobs, Public Accommodations, and Housing**



Source: PRRI, Religion & Politics Tracking Survey, June 2015. <http://publicreligion.org/site/wp-content/uploads/2015/06/PRRI-June-2015-LGBT-Topline-FINAL.pdf>.

<sup>a</sup> The report does not examine local ordinances that only protect public employees, nor does it examine local domestic partnership ordinances.

Figure 2: Sexual Orientation Nondiscrimination Coverage Over the Past 40 Years



**Full Legend for all Maps**  
Percent of state population protected from employment discrimination through local ordinances

- 100% (statewide protection)
- 50-55%
- 25-49%
- 1-24%
- 0%

Source: MAP analysis, Local Level NDOs, current as of October 1, 2015. [Click here](#) for a list of city and county ordinances by state.

Today, over 69% of the population support the creation of laws that would protect LGBT people against discrimination in jobs (*Figure 1*) and legislation has followed suit. Combining statewide and local protections, more than 170 million Americans are living in areas with laws that explicitly protect them from being fired based on their sexual orientation, and more than 158 million are explicitly protected from discrimination based on their gender identity.<sup>b</sup> The five maps in *Figure 2* on the previous page, as well as *Figure 3* below, show the dramatic increase in state and local nondiscrimination protections based on sexual orientation over the last 40 years, and especially since 1990 (we examine coverage based on gender identity next).

Amidst the dramatic growth in nondiscrimination protections, anti-LGBT advocates have mounted ballot initiatives to repeal existing NDOs in a small number of cities. Most recently, Springfield, MO, repealed their nondiscrimination ordinance by a narrow margin of only 2%, and in the coming months, Houston's Equal Rights Ordinance (known as HERO) will go to the ballot box.

The rate of nondiscrimination ordinance expansion dwarfs the number of successful repeal efforts. Today, only nine states that lack any kind of private employment protections for LGBT people.

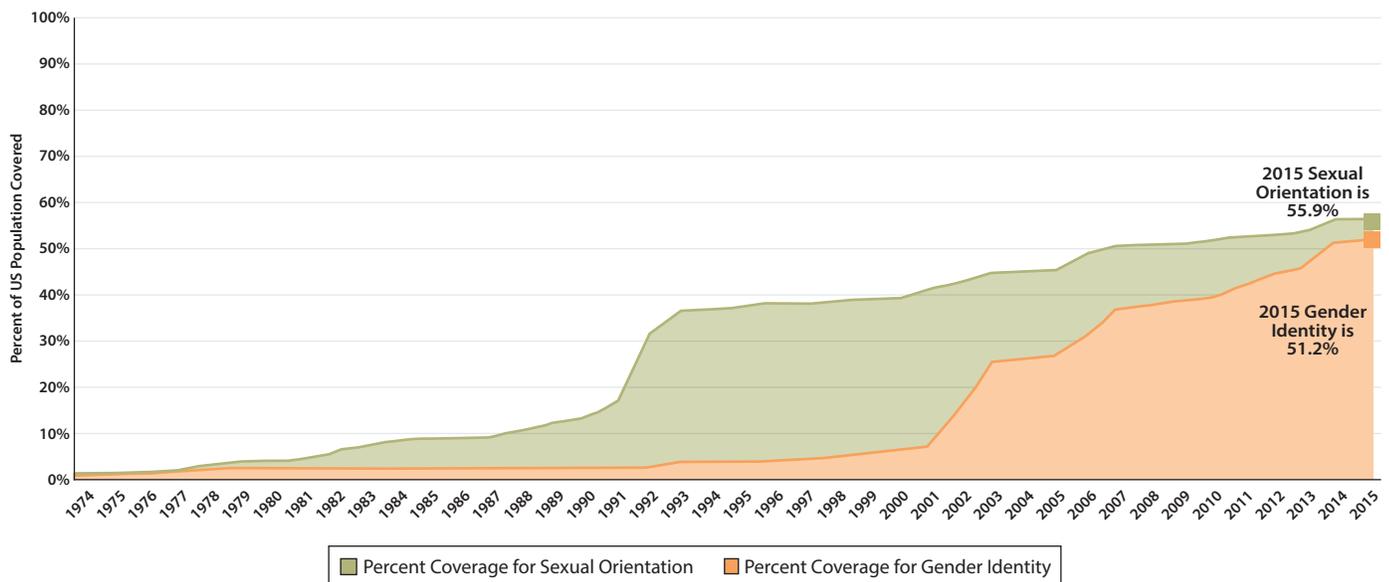
## Protections Based on Gender Identity/Expression

Despite the progress of recent years, local NDOs and state laws still are inconsistent in the protections they offer based on gender identity. At time of publication, the number of people explicitly protected from employment discrimination based on sexual orientation but not gender identity was more than 12 million.

However, the gap in state and local protections is narrowing rapidly. *Figure 4* on the next page shows the current percent of the population with state and local protections based on gender identity. Nineteen states (and the District of Columbia) offer state-wide employment protections based on gender identity. Only three states have statewide sexual orientation protections without gender identity protections (New Hampshire, New York, and Wisconsin). The majority of the remaining states have a similar percentage of local NDO coverage for both sexual orientation and gender identity. Similarly, other than Virginia, all of the states with no state or local protection for gender identity also have no protection for sexual orientation.

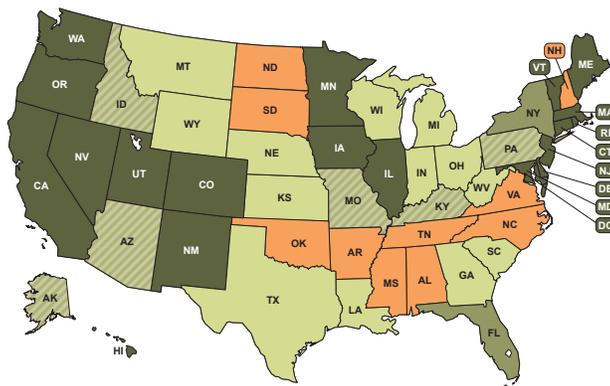
<sup>b</sup> This report only examines local and state law and therefore does not consider protections extended to LGBT people through federal court rulings, nor the protections granted to LGBT people under the Equal Employment Opportunity Commission's rulings in *Macy v. Holder* and *Baldwin v. Fox* that LGBT people are protected based on prohibitions against sex discrimination in Title VII of the Civil Rights Act.

**Figure 3: Cumulative Coverage by Employment Nondiscrimination Laws and Ordinances**  
(State, County, and Local)



Source: MAP analysis, Local Level NDOs, current as of October 1, 2015.

**Figure 4: Gender Identity Nondiscrimination Coverage 2015**  
(Total Percent Covered: 51.2%)



Percent of state population protected from employment discrimination:

- 100% (statewide protection, 19 states + D.C.)
- 50-55% (2 states)
- 25-49% (6 states)
- 1-24% (13 states)
- 0% (10 states)

Source: Movement Advancement Project, Equality Maps, current as of October 1, 2015. For updates see [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_ordinances](http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances).

The narrowing gap in protections for gender identity compared to sexual orientation is a relatively new occurrence. As shown in Figure 3 on the previous page, gender identity protections have tended to lag behind sexual orientation protections by more than a decade. While the percent of the population protected from discrimination based on sexual orientation rose dramatically in the early 1990s, very few ordinances or laws at that time extended the same protection to transgender employees. It wasn't until 2000 that gender identity inclusions made comparable gains.

Looking at the data a different way, *Figure 5* demonstrates that in the 10 years between 1990 and 2000, gender identity protections only rose from covering 2% of the population to 5% while coverage by sexual orientation protections rose from 12% to 38%. In comparison, **the 15 years from 2000 to 2015 saw a dramatic 46 percentage point gain in gender identity protections while sexual orientation protections climbed 18 points over the same period.** In other words, gender identity protections have been catching up to sexual orientation protections in the last 15 years.

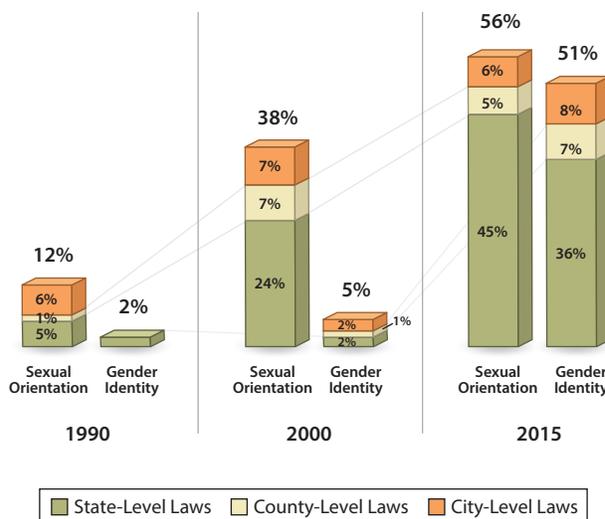
*Figure 6* on the next page illustrates the historical time lapse from when states passed employment protections based on sexual orientation compared to when states extended these protections based on gender identity.

At the state level, the average time difference is just over 15 years. At the city and county levels, the average length of time between passage of a sexual orientation-inclusive ordinance and an amendment for gender identity inclusion is just over 14 years.<sup>c</sup>

Fortunately, there is a distinct trend toward recently passed statewide legislation or local NDOs including simultaneous protections based on both sexual orientation and gender identity. Since 2000, 11 states have passed statewide nondiscrimination protection based on sexual orientation; eight of these measures were fully inclusive, two included gender identity at later dates, and only one continues to exclude transgender people (see *Table 1* on page 6).<sup>d</sup> In the years before 2000, 11 states and the District of Columbia passed legislation providing statewide employment protections based on sexual orientation but only one of those states (Minnesota) also protected transgender people at the time.<sup>e</sup>

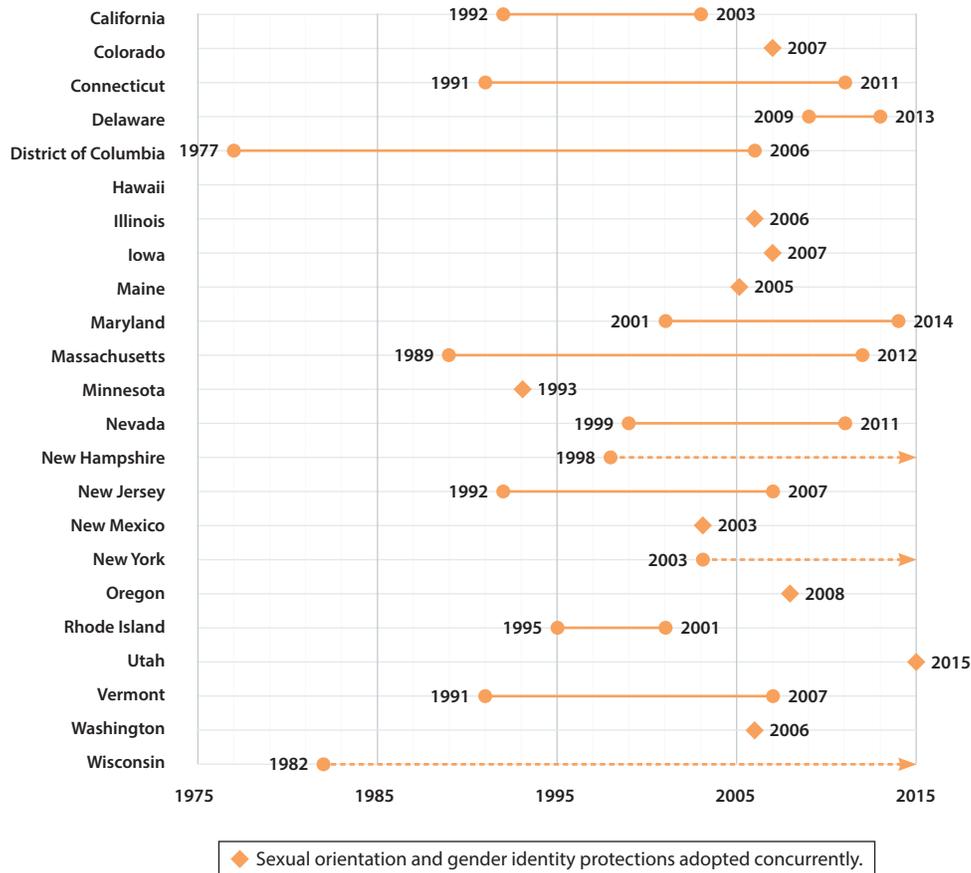
This shift toward full inclusion is even more pronounced at the municipal level. Of the 121 local NDOs passed before 2000, only 17, or 14%, passed fully inclusive ordinances. After 2000, over 90% of local ordinances passed included gender identity (see *Figure 7* on the next page).

**Figure 5: Percent of Population Covered for 1990, 2000, 2015**



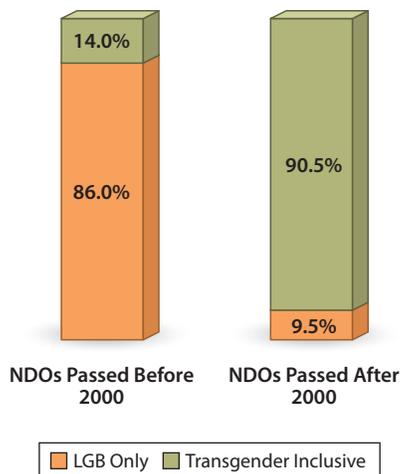
<sup>c</sup> For a partial list of cities and counties that amended their NDO to include gender identity, please refer to Appendix 1.  
<sup>d</sup> These states are Maryland, New Mexico, New York, Maine, Illinois, Washington, Colorado, Iowa, Oregon, Delaware, and Utah.  
<sup>e</sup> These states are Wisconsin, Massachusetts, Vermont, Connecticut, Hawaii, California, New Jersey, Minnesota, Rhode Island, New Hampshire, Nevada.

Figure 6: Time Lapse Between Sexual Orientation Protections and Gender Identity Protections



Source: MAP analysis, Local Level NDOs, current as of October 1, 2015.

Figure 7: Local NDOs Passed Before and After 2000



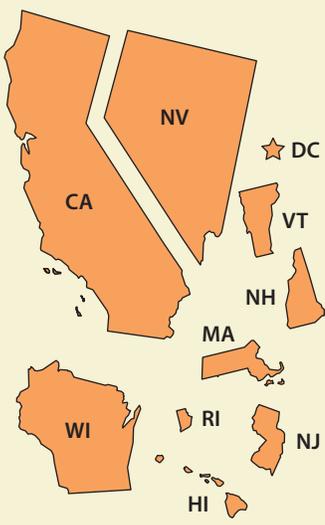
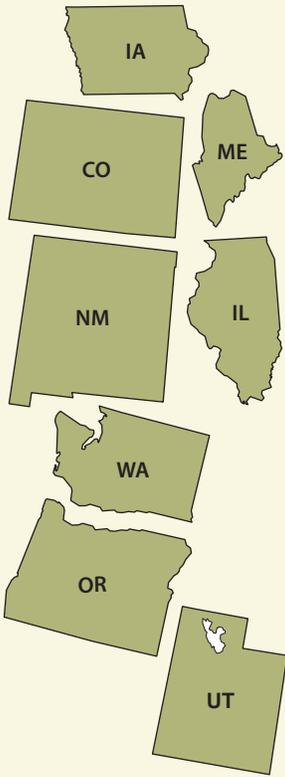
Source: MAP analysis, Local Level NDOs, current as of October 1, 2015.

One reason for this significant shift is that city and county nondiscrimination ordinances are often used to fill gaps in statewide protections for transgender individuals. In Maryland, for example, a 13-year gap between enactment of statewide protections for sexual orientation and for gender identity resulted in myriad cities and counties enacting local transgender protections.

### The Rural/Urban Divide

In addition to looking at *who* is protected by nondiscrimination laws and ordinances, it is also illuminating to look at *where* people are protected. Not surprisingly, statewide protections exist in clusters of generally more progressive states in the **West** (California, Oregon, Washington, Nevada, Colorado, New Mexico, Utah), **Midwest** (Wisconsin, Illinois, Iowa, Minnesota), and **Northeast** (Maryland, Delaware, Rhode Island, New Jersey, New York, Massachusetts, Connecticut, New Hampshire, Maine), plus Hawaii.

Table 1: Growing Inclusiveness of Statewide Nondiscrimination Protections

Passed Before 2000		Passed 2000-2015		
 <p>10 states</p>	 <p>1 state</p>	 <p>3 states</p>	 <p>8 states</p>	 <p>11 states</p>
Sexual Orientation Only	Sexual Orientation and Gender Identity/Expression	Sexual Orientation Only	Sexual Orientation and Gender Identity/Expression	Amended to include Gender Identity/Expression

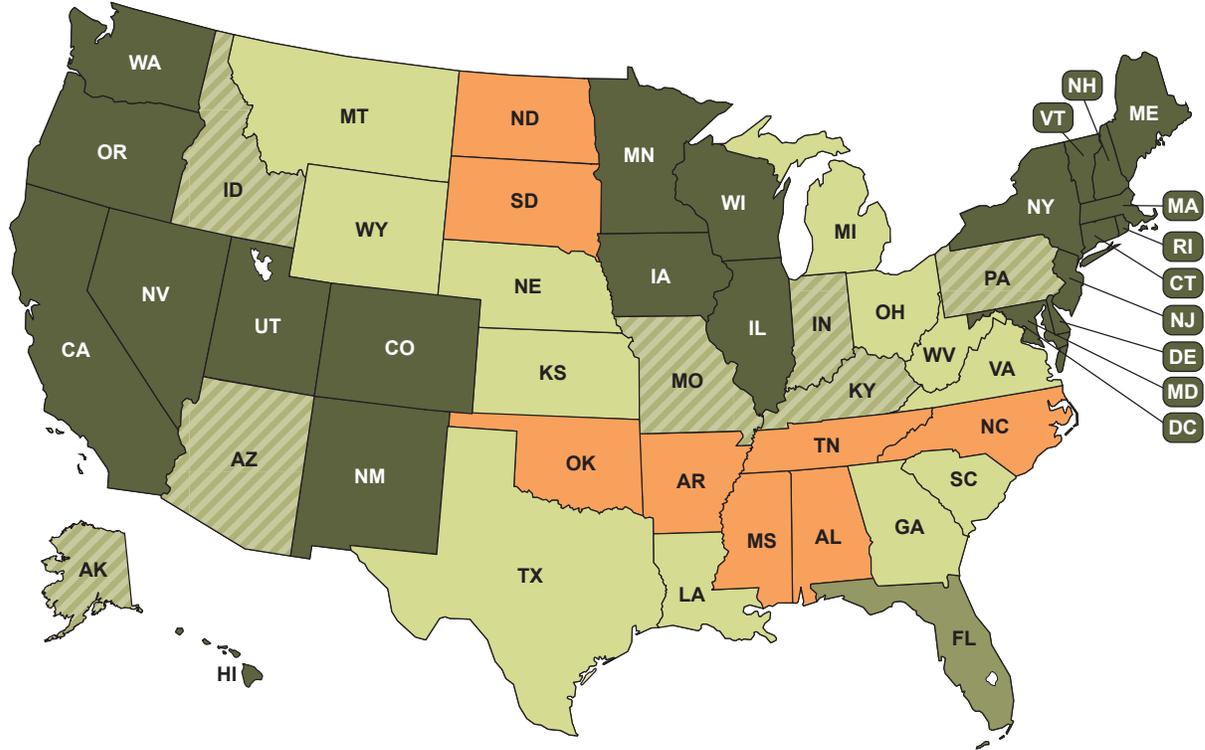
Despite the fact that statewide protections exist in all of these states, LGBT people still are not covered in most areas of the country. *Figures 8a and 8b* on the next page represent the **same data at the same point in time**: employment protections based on sexual orientation at local and state levels as of October 2015. Typical maps, such as the first map shown in Figure 8a, show the percentage of the population that is protected by state or local law in any given state. At first glance, Figure 8a would lend itself to support the belief that cumulative LGBT-inclusive nondiscrimination ordinances are pervasive and nationwide. Figure 8b, however, shows local NDO coverage by county rather than state. As shown in Figure 8b, an estimated 70% of the geographic area of the United States lack city, county, or state employment protections for LGBT people.

In other words, employment protections are concentrated in just 30% of the country geographically, and local NDOs leave far more gaps than one might imagine. These two maps reveal a deep rural/urban divide when it comes to state and local nondiscrimination laws and ordinances. For example, Florida has NDO protections covering more than 50% of the population. However, vast geographic stretches within this state (mostly across rural areas) are without LGBT-inclusive nondiscrimination laws.

To dig deeper into the Rural/Urban divide, MAP looked at states lacking statewide nondiscrimination protections and identified counties in those states according to the percentage of the population living in an urban versus a rural area, as defined by the Census. We then looked at whether or not there was a county NDO or a city NDO in these counties. The two maps are on the next page.

**Figure 8: Sexual Orientation Protections**  
by State and County

**8a: Sexual Orientation Protections based on Percent of State Population Covered**

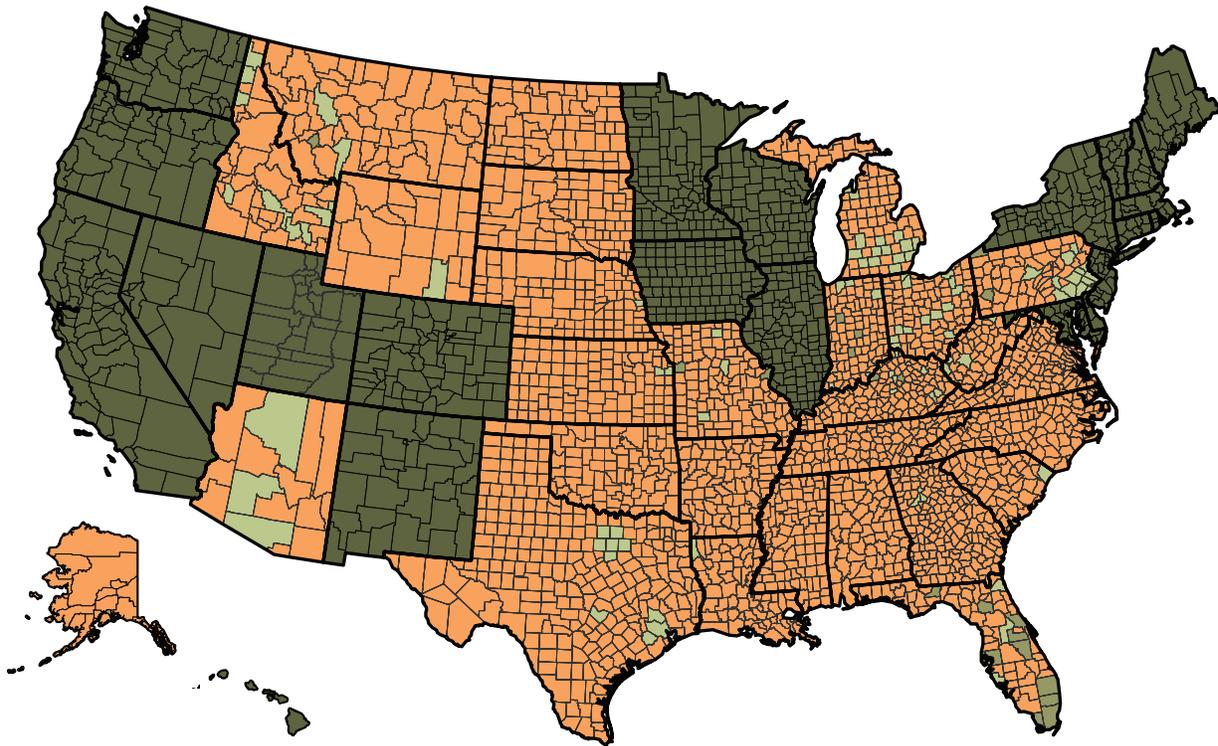


Percent of state population protected from employment discrimination:

- 100% (statewide protection, 22 states + D.C.)
- 50-55% (1 state)
- 25-49% (7 states)
- 1-24% (12 states)
- 0% (8 states)

Source: Movement Advancement Project, Equality Maps, current as of October 1, 2015. For updates see [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_ordinances](http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances).

**8b: Sexual Orientation Protections based on Existence of Protections within County Lines**



- State level protection from employment discrimination
- County level protection from employment discrimination through local ordinances
- City level protection from employment discrimination through local ordinances
- None of the county population is protected from employment discrimination through local ordinances

Source: MAP analysis, Local Level NDOs, current as of October 1, 2015; MAP analysis, US Census Bureau, 2010. 2010 Census [Shape file]. Available from: <https://www.census.gov/geo/maps-data/data/tiger-line.html>.

**Figure 9: Rural/Urban NDO Protections**

Number of LGBT People Per 100 Protected by Local NDOs in States Lacking Statewide Protections

Rural Areas, &lt;0.5 per 100



Urban Areas, 17 per 100



LGBT PEOPLE LIVING  
IN URBAN AREAS ARE  
**50x** MORE  
LIKELY  
TO BE PROTECTED

Source: MAP analysis, local-level NDOs, current as of October 1, 2015; MAP analysis, US Census Bureau, 2010. 2010 Census [Shape file]. Available from: <https://www.census.gov/geo/maps-data/data/tiger-line.html>.

*Figure 10a* on the next page shows the “all or mostly rural” counties. A county shaded in orange is a rural county without a county- or city-level ordinance, while a county shaded in green is a rural county with such an ordinance. Of the counties that are “all or mostly rural,” only two counties—or less than half of one percent (0.34%) of all 581 counties in the sample—have LGBT-inclusive NDOs.

By contrast, *Figure 10b* on the next page shows the “all or mostly urban” counties, 17% of which have city or county employment protections. Put differently, as shown in *Figure 9* above, looking just at the states lacking statewide protections, an LGBT person living in an urban county is over 50 times more likely to be protected than an LGBT person living in a rural county.

This analysis demonstrates the necessity of state-level laws ordinances. Unlike local ordinances, statewide laws bridge the Rural/Urban divide and ensure protections for the entire population, no matter where they live.

## Local Government Authority to Act

### Home Rule and Dillon’s Rule

The structure of governance is an important factor relating to the passage of local nondiscrimination ordinances.

When do local governments have the authority to act by passing laws such as local nondiscrimination ordinances? When do state governments have the power to restrict local jurisdictions from passing their own laws? The balance of power between federal, state, and local governments is quite complex, but two concepts are of particular relevance to local nondiscrimination laws: **Dillon’s Rule** and **Home Rule**.<sup>f</sup>

The 10th Amendment to the U.S. Constitution grants state governments broad powers in matters that have not been specifically outlined in the Constitution itself. This principle—federalism—is the foundation of the systems of government in the United States. If there is a conflict between federal and state law, states must adhere to federal law, as outlined by the Supremacy Clause of the Constitution.

The balance of power between states and local governments generally mirrors that of the federal government and the states (local power balanced by centralized supremacy). But over the past 250 years, states and local governments have passed laws limiting this balance of power in some jurisdictions and strengthening it in others. **Dillon’s Rule** and **Home Rule** are central to this balance of power.

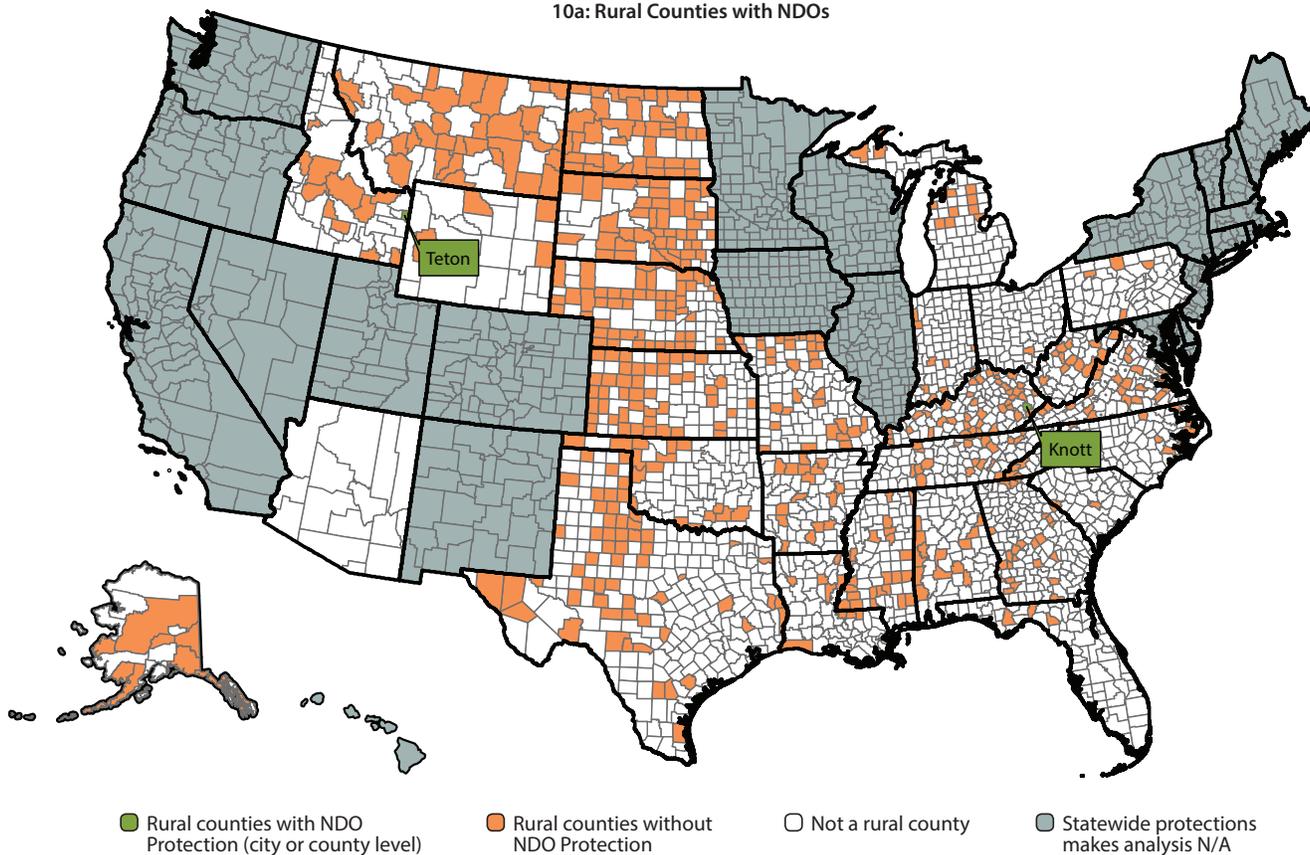
- **Home Rule** allows for a balanced relationship between state and local governments. Under this rule, local governments are granted power to conduct their own affairs, particularly in matters of *structure, function, fiscal matters, and administrative matters*. For example, local governments can determine how many city council members to have, when to have meetings, what local laws are to be passed, how to levy taxes and borrow money, and/or how to manage personnel issues. Forty-one states have Home Rule provisions recognizing the authority of local governments to exercise local decision-making power.<sup>g</sup>

<sup>f</sup> This section is not designed to be a complete history or legal analysis of local government authority, Dillon’s Rule, and Home Rule. For a more detailed and nuanced analysis, please see resources provided by the National League of Cities (<http://www.nlc.org>), the National Association of Counties (<http://www.naco.org>), and the National Conference of State Legislators (<http://www.ncsl.org>).

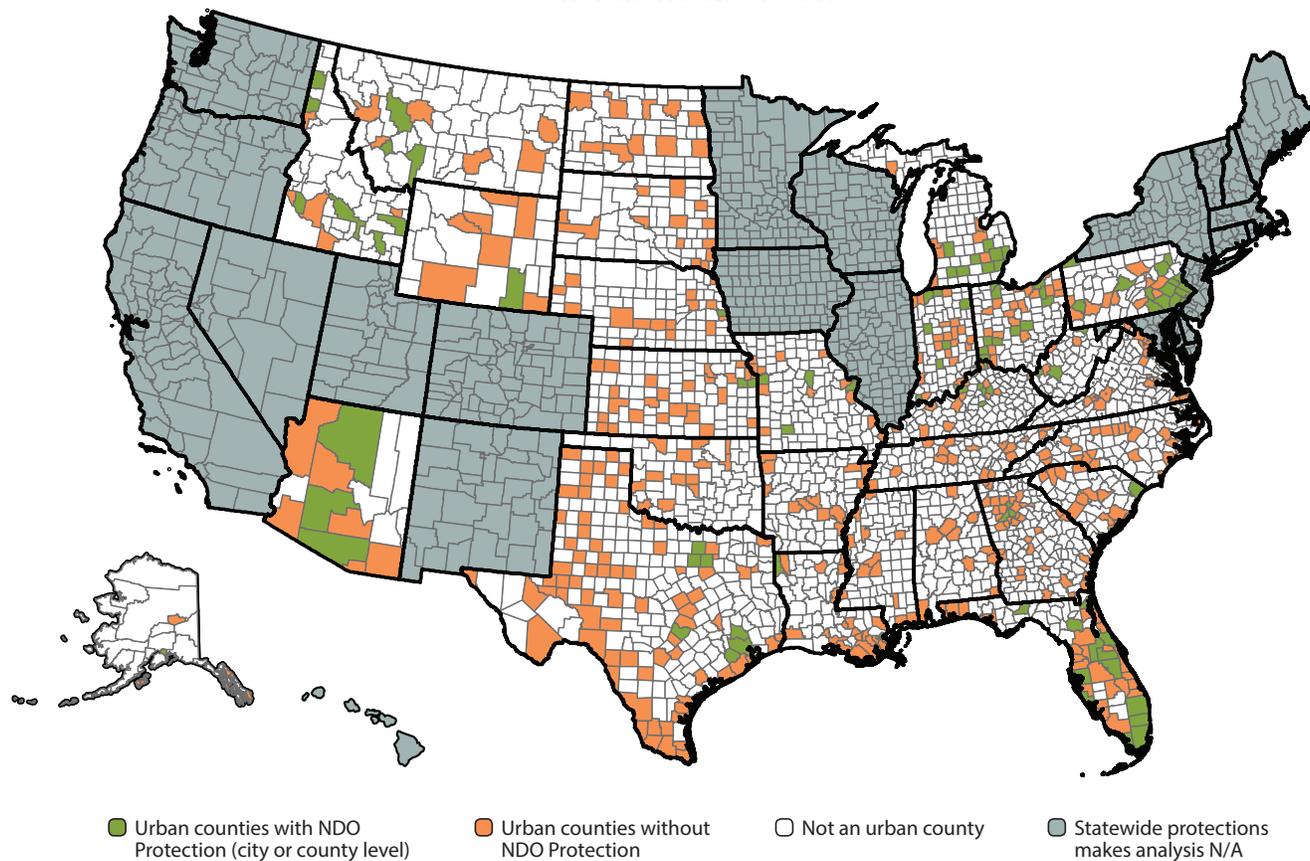
<sup>g</sup> Home Rule States: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

Figure 10: Rural/Urban Counties with City- or County-Level NDOs

10a: Rural Counties with NDOs



10b: Urban Counties with NDOs



Source: MAP analysis, Local Level NDOs, current as of October 1, 2015; MAP analysis, US Census Bureau, 2010. 2010 Census [Shape file]. Available from: <https://www.census.gov/geo/maps-data/data/tiger-line.html>.

- Under **Dillon’s Rule**, named after former Iowa Supreme Court Justice John F. Dillon, local governments face restrictions in their authority to act—and state governments and laws preempt local laws. Under such a scheme, the state passes laws saying that local governments have no power to legislate in a certain area of law. Currently, 40 states follow Dillon’s Rule and explicitly define local governments as subordinate to state government.<sup>h</sup>

What creates additional complexity is that these rules are not mutually exclusive—in fact many states employ both. No state entirely prohibits local governments from exercising any authority, and no local government is entirely immune from state authority.

States have varying applications of Home Rule and Dillon’s Rule (some states even have both rules). Of the 40 states with Dillon’s Rule, 31 apply the rule to all municipalities, and eight states use the rule for only certain municipalities. Similarly, in Home Rule states, legislative power may be extended only to certain classes of cities, counties, and towns (often depending on population size). Further, Home Rule authority is granted in varying degrees—a city or county may have structural autonomy, but limited functional powers, or vice-versa.

### So-Called Intrastate Commerce Acts

In order to prevent cities and counties from protecting their LGBT citizens, some states have passed so-called “**Intrastate Commerce Acts**,” also referred to as “preemption bills.” These state-level laws purport to “improve intrastate commerce by ensuring that businesses, organizations, and employers doing business in the state are subject to uniform nondiscrimination laws and obligations, regardless of the counties, municipalities, or other political subdivisions in which the businesses, organizations, and employers are located or engage in business or commercial activity.” Effectively these acts prohibit cities and counties from passing local nondiscrimination protections. They also render existing local nondiscrimination ordinances unenforceable if they extend protections to people not covered under the state law.

Currently, only two states have enacted these laws: Tennessee and Arkansas. Passed in 2011, Tennessee’s *Equal Access to Intrastate Commerce Act* (HB600) established the following restrictions on local authority: “(1) No local government shall by ordinance, resolution, or any other means impose on or make applicable to any person an antidiscrimination practice, standard, definition, or provision that shall deviate from, modify, supplement, add to, change, or vary in any manner from: (A) The definition of ‘discriminatory practices.’”

Arkansas passed a similar law in 2015, entitled the *Intrastate Commerce Improvement Act* (SB202). By doing so, the existing LGBT-inclusive nondiscrimination ordinance in the city of Eureka Springs was struck down. Advocates in the state are challenging the constitutionality of the law and garnering support from local communities by passing new nondiscrimination ordinances. Although they are technically unenforceable, new ordinances in five cities will be used in the legal challenge of the state law.

<sup>h</sup> Dillon’s Rule States: *Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.*

## CONCLUSION

As Congress considers the Equality Act, legislation that would provide federal nondiscrimination protections, statewide protections exist in clusters of generally more progressive states in the west, Midwest, and Northeast. LGBT people in the Plains states and South largely lack state level employment protections. Advocates across the country have done impressive work to fill the gaps in protections and, as this report details, local nondiscrimination ordinances have been instrumental in the effort to extend employment protections to LGBT people.

Local nondiscrimination ordinances currently provide important job safeguards for thousands of LGBT individuals living in states that lack explicit statewide employment protections for LGBT people. For example, Florida has local NDOs covering more than 50% of the state's population. Combining statewide and local protections, more than 170 million Americans are living in areas with laws that explicitly protect them from being fired based on their sexual orientation, and more than 157 million are explicitly protected from discrimination based on their gender identity. However, nearly half of the country's population remains unprotected from anti-LGBT employment discrimination. There remains work to be done as we move to protect all LGBT from discrimination in the workplace.

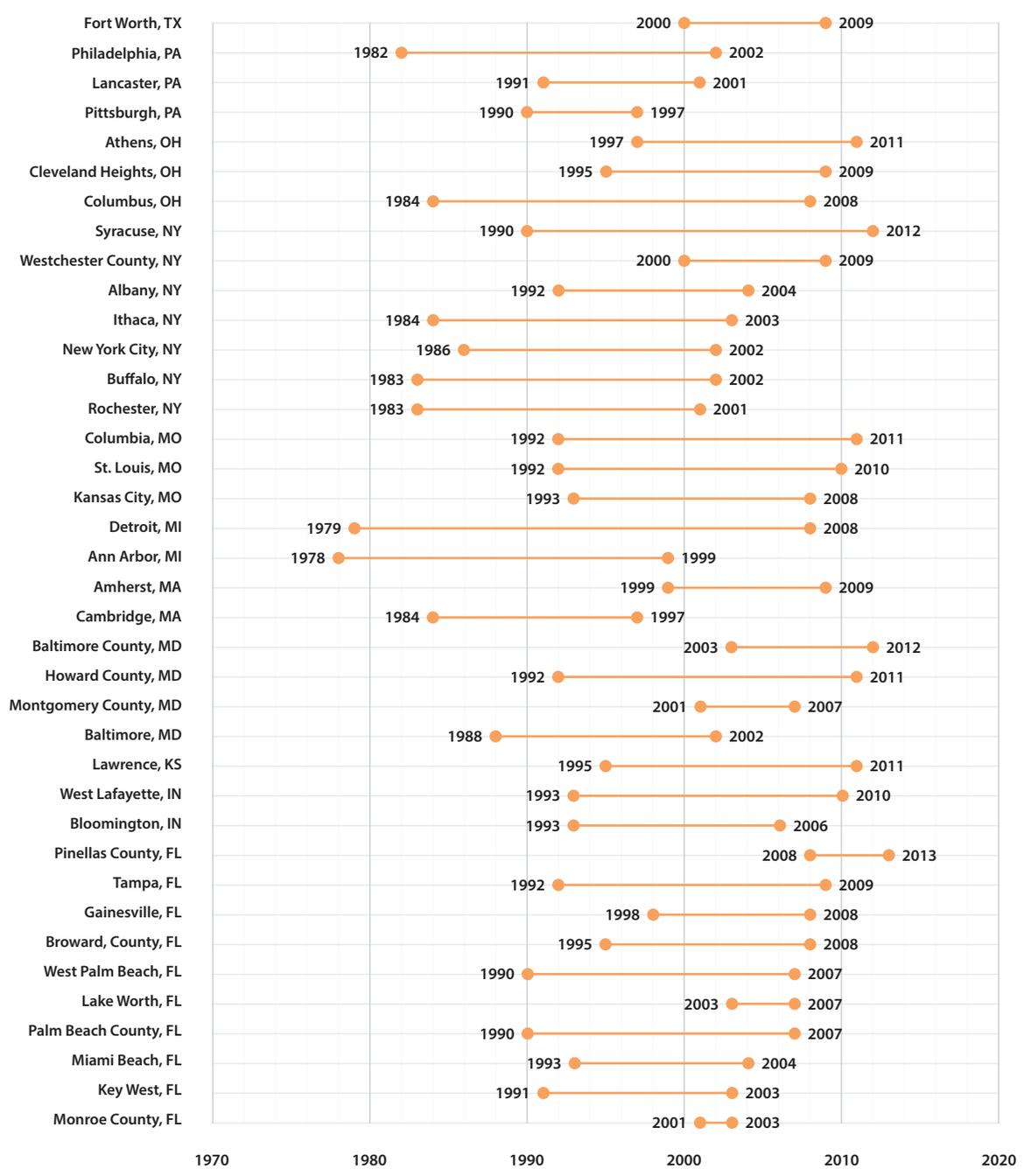
New NDOs are passing on an almost weekly basis. Local NDOs are listed on the MAP website and are updated in real time at [http://www.lgbtmap.org/equality-maps/non\\_discrimination\\_ordinances](http://www.lgbtmap.org/equality-maps/non_discrimination_ordinances).

Special thanks to the Equality Federation for their collaboration on this report.



[CLICK HERE FOR A LIST OF CITY AND COUNTY ORDINANCES BY STATE](#)

### Appendix 1: Time Lapse Between Non-Inclusive Local NDOs and GI Amendment



Source: MAP analysis, Local Level NDOs, current as of October 1, 2015.

## ABOUT THIS SPOTLIGHT

This report is part of an ongoing series that will provide in-depth analyses of laws and policies tracked at the Movement Advancement Project's "Equality Maps," found at [www.lgbtmap.org/equality-maps](http://www.lgbtmap.org/equality-maps). The information in this report is current as of the date of publication; but the [online maps](http://www.lgbtmap.org/equality-maps) are updated daily.



movement advancement project ▶

2215 Market St. • Denver, CO 80205  
[www.lgbtmap.org](http://www.lgbtmap.org)