
REMAPPING DEBATE

Asking "Why" and "Why Not"

Strategies of civil rights groups lag election results

Original Reporting | By Mike Alberti | Civil Rights, Legislation

November 16, 2010 — The Republican takeover of the House in the midterm elections has left civil rights groups with little doubt that the federal legislative environment is going to be more hostile to the initiatives these organizations have traditionally advanced. Nevertheless, few of the country's largest and most influential civil rights groups appear to have concrete plans to adapt to the new environment, except to the extent of either going on the defensive or shifting from federal legislative to federal administrative efforts.

Given the composition of the newly-elected Congress, said Korstad, "I can't imagine any kind of expansion of civil rights in any kind of meaningful way."

Specifically, most groups said that they had not planned to shift their proactive efforts to expand civil rights protections toward state and local arenas, though many acknowledge that opportunities for passing progressive legislation do exist in a variety of jurisdictions.

According to Robert Korstad, professor of Public Policy and History at Duke University's Sanford School of Public Policy, that approach might be misguided.

"I think a lot of the action in the coming years, particularly given the gridlock at the federal level, is going to be back in the states," he said.

Michael Macleod-Ball, the Washington Legislative Chief of Staff for the American Civil Liberties Union (ACLU), said, "there have been [conservative] gains starting at the local level going back a couple of decades, and I think that those on the other side of the ideological agenda have not been as efficient in making the case at the state and local level."

"If you look at the American trend from Reagan on," Macleod-Ball continued, "there's been a vigorous effort on the part of those who are opposed to a lot of our issues to empower themselves first at the local level. I think that progressives have generally been pretty good about being competitive at the federal level," but suggested that they had not been as vigilant on the state and local level.

Going on the defensive

The most widely cited reason to continue with a federal focus was the perceived need to go on the defensive.

Tanya Clay House, director of Public Policy for the Lawyer’s Committee for Civil Rights Under Law, said that the organization’s plans are still being decided, but many organizations are harking back to the Bush years in thinking about how to move forward. “There was a lot of opposition to a proactive civil rights agenda,” she said. “What we were doing was playing defense. We already have a pretty good understanding as to what we should be expecting.”

Terry O’Neill, President of the National Organization for Women (NOW), echoed that statement, saying, “It’s not rocket science, we’re going to be attacked, we need to defend.”

State and local civil rights laws sometimes provide more protection than federal enactments

From the point of view of civil rights organizations, an obvious limitation to state and local civil rights efforts is that many people live in relatively conservative jurisdictions where it would be futile to expect to go beyond federal protections. Nevertheless, there are numerous illustrations of anti-discrimination protections that are stronger at the state or local level than on the federal level.

- Many state and local civil rights laws provide protection against employment discrimination based on sexual orientation, marital status, arrest record, or criminal conviction, protections not available federally.
- Housing discrimination based on age and lawful source of income is prohibited by the laws of some states and localities, but is not prohibited by the federal Fair Housing Act.
- Emotional distress and punitive damages are limited in gender- or disability-based employment discrimination cases brought under Title VII or the ADA, both federal enactments. Some states and localities, in contrast, provide for uncapped damages of both types.
- Millions of employers with fewer than 15 employees are not covered under federal anti-discrimination law, but are covered under state and local laws.

Still hoping on the federal level

Raul Gonzalez, director of Legislative Affairs for the National Council of La Raza, said that, “Our shift isn’t going to be major. We’re going to still try to work with the new Congress just like we did with the old Congress.”

Other groups said that they, too, have not yet given up hope for advancing federal progressive legislation in the new Congress.

“I don’t think we should assume that there aren’t ways to find bipartisan majorities to move fundamental civil rights issues, although it remains to be seen what those are,” said Margery F. Baker, executive vice-president for Policy and Program for People for the American Way.

Macleod-Ball of the ACLU cited education reform and patent reform as two areas where his organization was hoping for success in the new Congress.

Lisa Jacobs, the vice-president for Government Relations at Legal Momentum, a women’s advocacy group, cited the renewal of the Violence Against Women Act as an issue where there was broad consensus across the aisle.

“In curious ways, our work is probably not going to have to change that much,” she said. “There are ways in which we are going to have to ask ourselves how we can look at our advocacy issues to sort of figure out who our usual suspect, or perhaps unusual suspect, allies are in terms of trying to get attention on Capitol Hill.”

Several organizations also said that they would pursue more administrative strategies. Baker said that she hopes to see the Obama administration be more resourceful about using the tools that it has to advance equal opportunity and civil rights.

According to House, “I also expect that we will try to do more things administratively, because there are a lot of enforcement issues that we’re going to be working on.”

Michael Cole, the Press Secretary for the Human Rights Campaign, the country’s largest LGBT advocacy group, said that HRC would also continue to advocate federally for administrative measures to increase civil rights protections for the LGBT community, including pushing the Obama Administration to institute health care access policies that do not discriminate against LGBT employees.

Not ready for state advocacy?

Several organizations agreed that an enhanced focus on state-level advocacy made sense in the current environment. According to NOW president O’Neill, “That’s what we think we have to do — increase the resources going out to the local chapters.” House of the Lawyers Committee agreed that there will probably be “more opportunities in certain areas in the states because of the log jam we expect to have at the federal level.”

Chai Feldblum, who founded the Federal Legislation and Administrative Clinic at Georgetown University Law Center and currently serves as the commissioner of the U.S. Equal Employment Opportunity Commission, pointed out that it was already difficult to advance progressive legislation before the elections, and that, in the new Congress, it’s going to be “harder to get bills through that various progressive civil rights groups would have wanted.”

“What is important to building a successful movement is making sure that we have a toolbox that is able to adapt and evolve and continue to make progress...as the environment changes,” said Cole.

Korstad agreed. “I can’t imagine any kind of expansion of civil rights in any kind of meaningful way” in the new Congress, he said.

And while Feldblum said that progressive organizations should continue to focus on federal legislative efforts, she said that that focus should not preclude organizations from looking at the states, “because the truth is that getting things done in the states can actually help things getting done at the federal [level].”

Feldblum noted that said that Democratic losses in Congress had been anticipated four to six months before the election.

Strikingly, however, little planning for state-level legislative advocacy has been executed to date.

O’Neill said that a specific strategy was not in place for how her organization was going to reallocate resources to the state and local level, but that NOW intends “to start having those conversations.” At the Lawyers Committee, House said, “It isn’t something that has been planned for yet.” She attributed the lack of planning to a lack of foreknowledge of what the legislative terrain would look like after the elections.

Ditto for Legal Momentum. According to Jacobs, “We never do ourselves any favors by trying to have too much of that discussion before we have actually figured out where we have landed after the election. Now that we have figured that out and we can see what both the federal landscape looks like and what the state landscape looks like, there are discussions happening.”

Other groups said that they had been busy focusing on getting sympathetic candidates elected.

According to Baker, People for the American Way was “focusing a lot on the election and on trying to do what we can to help ensure the best results possible for progressives.” She continued, “Now what we’re doing is regrouping.”

A spokesperson for the Leadership Conference for Civil Rights, which describes itself on its website as “the nation’s premier civil and human rights coalition,” said in an email that its member organizations were “still in the process” of developing an agenda for the next Congress, but that next year the Leadership Conference would itself still be focusing at the national level in the same “remarkably consistent” way that it has for 60 years.

A two-track policy

In other areas, such as LGBT rights, substantial gains have already been made at the state level. Michael Cole at the HRC said that focusing on the states has been, and would continue to be, part of the HRC’s overall legislative strategy.

“It’s going to be a new challenge for us,” said Hardy. “In some ways all of us are looking at our agendas and we’re scrambling to figure out entirely new ways to get these things done.”

“We’re going to have to do some more proactive work out in the states than we are at the federal level,” said Cole.

Particularly in the area of relationship recognition, Cole said that the HRC had identified several key states, such as New York, Maryland, Delaware, Rhode Island, Illinois and Hawaii, where there might be legislative possibilities to protect same-sex couples.

Though he added that some of the HRC’s resources will be focused on ensuring that anti-LGBT riders don’t get attached to federal appropriations bills, Cole emphasized the need to have a balanced strategy between federal and state agendas.

“What is important to building a successful movement is making sure that we have a toolbox that is able to adapt and evolve and continue to make progress and continue to buttress the gains that we’ve made as time goes on and as the environment changes,” he said.

And while Cole acknowledged that it is more useful to have federal protections of the LGBT community, he also said that the HRC’s continued focus on federal strategy “doesn’t diminish the fact that every state level gain we can [achieve] makes the lives of LGBT people better, and we should do as much as we can in that regard.”

Felblum said that other organizations could learn from the HRC and other LGBT advocacy groups. She explained that gay-rights organizations have been forced to build an infrastructure at the state level, in order to defend against attacks on LGBT rights in the states, and that those groups have begun to use that infrastructure to advance a proactive agenda there.

“I definitely think that the other progressive civil rights groups can learn from that, and that even without being attacked at the state level should really be out there building their infrastructure,” said Felblum.

A promise of a new direction

Chanelle Hardy, senior vice-president and Executive Director for the National Urban League Policy Institute in Washington, also said that her organization was making plans to turn more of its attention to its state and local affiliates.

“I think that because we recognize that there will be gridlock in Washington, we’re trying to figure out other ways to get things accomplished,” she said. “And obviously more of these smaller changes can occur at [the state and local] level.”

Hardy added that a large part of the National Urban League’s annual Legislative Policy Conference would focus on how the organization can move its agenda forward at the state level.

“It’s going to be a new challenge for us,” said Hardy. “In some ways all of us are looking at our agendas and we’re scrambling to figure out entirely new ways to get these things done.”

“I think that the state level obviously still has its challenges,” she continued. “But I definitely think we’re looking at any and all ways that we can continue to get a proactive agenda driven.”

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