MEMORANDUM

TO: Seattle Coalition for Family & Relationship Equity (SCFRE)
FROM: Harvard Law School LGBTQ+ Advocacy Clinic
DATE: April 17, 2025
RE: Preemption Issues of Family and Relationship Structure Nondiscrimination Ordinance in Seattle

QUESTION PRESENTED

1. Does Washington State law preempt Seattle from amending the Seattle Municipal Code to prohibit discrimination based on family and relationship structure?
2. Does Washington State law preempt Seattle from amending the definition of "family member" in its Paid Sick and Safe Time provisions to include broader family and relationship structures?

BRIEF ANSWER

1. Unlikely. Washington State law does not expressly preempt municipalities from expanding the list of protected classes in local anti-discrimination ordinances. Given the absence of direct conflict with state law and the history of Seattle enacting broader local protections, the proposed amendment to include family and relationship structure as a protected class is likely valid.
2. Also unlikely. Precedents suggest municipalities retain discretion to further expand definitions within employment-related benefits. Seattle may lawfully amend its definition to reflect broader family and relationship structure without triggering preemption. However, it is worth noting that the current definition in SMC 14.16.10 does not align with the 2025 revision of RCW 49.46.210(2)(a); therefore, it should also be revised to prevent potential preemption concerns.

FACTS

To enhance equal protection and address unfair discrimination against non-traditional families and domestic partnerships, advocates in the City of Seattle are proposing an ordinance to expand the city's nondiscrimination laws to include legal protections for non-nuclear family and relationship structures.

Seattle's existing anti-discrimination framework is established through the Seattle Municipal Code (SMC), which offers comprehensive protections across various areas. The proposed ordinance seeks to amend SMC Title 14 and other related titles to explicitly include family and relationship structure as a protected class. Currently, SMC Title 14 prohibits discrimination within the scope of employment, public accommodations, housing, contracting and bias free policing based on various protected characteristics, including race, color, creed, religion, ancestry, caste, national origin, citizenship or immigration status, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, honorably discharged veteran or military status, alternative source of income, participation in a Section 8 or other subsidy program, an individual's actual, potential, perceived, or alleged pregnancy outcomes, the presence of any disability, or the use of a service animal by a disabled person.

At the state level, Washington's anti-discrimination law is codified in Chapter 49.60 of the Revised Code of Washington (RCW), known as the "Law Against Discrimination." RCW 49.60 prohibits discrimination because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability. It applies to employment,

credit and insurance transactions, places of public resort, accommodations, amusement, and real property transactions. See WASH. REV. CODE ANN. § 49.60.010 (1995).

Regarding family and relationship structure, RCW 49.60.040 defines "marital status" as the legal status of being married, single, separated, divorced, or widowed. "Families with children status" refers to one or more individuals under the age of eighteen residing with a parent, legal guardian, or a designee authorized by the parent or guardian. This also includes individuals who are pregnant or in the process of securing legal custody of a child under eighteen. See Id. § 49.60.040.

DISCUSSION

Here we divide this analysis into two parts: (1) whether adding family and relationship structure as a protected class under non-discrimination provisions of SMC (which regulate what people should not do) is preempted by state law; and (2) whether adding family and relationship structure to the definitions applicable to paid sick and safe time provisions of SMC (which regulate what employers must do) is preempted.

I. Adding family and relationship structure as a protected class under non-discrimination provisions of SMC is more unlikely to be preempted by Washington state law

-Amending the Seattle Municipal Code to include family and relationship structure as a protected class presents a low risk of preemption under RCW because the state law does not express the intent of preempting additional protected classes. Moreover, given that RCW 49.60 already protects against discrimination based on marital status and families with children, expanding protections to a broader category of family and relationship structures aligns with the law's overarching intent to prevent discrimination. Additionally, the existing Seattle Municipal

Code has successfully extended protections beyond those in RCW 49.60, demonstrating a legal precedent for such expansions.

a. The state law does not express the intent of preempting additional protected classes

Washington's constitution grants cities with populations over 10,000 the authority to govern themselves, provided their laws remain consistent with state law. See WASH. CONST. art. XI, § 10. As a result, the city of Seattle has the authority to pass its own ordinance and municipal code as long as it does not conflict with the state law.

In the case of *State v. Kirwin,* the Washington Supreme Court ruled that an ordinance is presumed valid and will uphold it unless a challenger proves it is unconstitutional in one of two ways: (1) the ordinance directly conflicts with a state statute, or (2) the legislature has explicitly preempted the field. See State v. Kirwin, 203 P.3D 1044, 1047-1048 (2009).

i. The ordinance does not directly conflict with a state statute

An ordinance irreconcilably conflicts with a state statute where the ordinance authorizes what the legislature has forbidden or the ordinance forbids what the legislature has explicitly authorized, licensed, or required. See Id.

Moreover, in the case *City of Seattle v. Eze*, the Washington Supreme Court held that a "disorderly bus conduct ordinance did not unconstitutionally conflict with state statute prohibiting similar conduct, though ordinance prohibited wider range of activity than did state statute; neither ordinance nor statute expressly licensed, authorized or required any conduct, but rather merely differed in terms of scope of their prohibitions". See City of Seattle v. Eze, 759 P.2D 366, 371-372 (1988). This precedent supports the idea that municipalities may enact broader prohibitions than state law, provided they do not directly contradict state statutes.

RCW 49.60 states that its purpose is "for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights." See WASH. REV. CODE ANN. § 49.60.010 (1995). Adding a new protected class under SMC appears to align with this purpose. Given that RCW 49.60 already prohibits discrimination based on marital status and families with children, extending protections to family and relationship structures is a logical progression. The inclusion of this category does not conflict with existing state law but rather complements its intent to broaden the scope of the anti-discrimination prohibitions to ensure sufficient protections.

ii. The legislature has not explicitly preempted the field.

The court will not interpret a statute to deprive a municipality of its legislative power unless a clear legislative intent to do so is demonstrated. See Kirwin, 203 P.3D at 1047.

In the case *Watson v. City of Seattle*, various organizations brought action against the city, alleging that an ordinance that purported to tax firearms and ammunition sold within city limits was a regulation preempted by state law. The court, however, held that the ordinance is not preempted because the state did not impliedly preempt field of firearm and ammunition taxation by expressly preempting field of firearms regulation; preemption statute made no mention of taxation, the purpose of statute was to advance uniformity in firearms regulation, which was achievable without restricting municipal tax authority, and the legislature was typically explicit when preempting taxation. See Watson v. City of Seattle, 401 P.3D 1, 12 (2017). That is to say, RCW 9.41.290 preempts local firearm regulations, stating that "the state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state..." and prohibiting municipalities from enacting laws that are inconsistent with or exceed state law. However, the

taxation of firearms was not explicitly mentioned in the statute. Thus, it is not preempted by state law, allowing cities to enact their own legislation.

Regarding our proposed ordinance, in the entire chapter of RCW 49.60 the legislation does not mention anything about preemption and thus does not indicate an intent to exclusively occupy the field of anti-discrimination protections. From the *Watson v. City of Seattle* case, we can see that the preempted scope needs to be precisely and explicitly mentioned in the state law in order to be deemed as having the intent to preempt, which we do not see in this regard here. Therefore, a court is unlikely to interpret the proposed ordinance as preempted by state law.

b. SMC has successfully extended protections beyond those in RCW 49.60, demonstrating a legal precedent for such expansions

Additionally, the current version of SMC includes multiple protected classes that extend beyond those provided in RCW 49.60. These include protections based on religion, ancestry, caste, gender identity, political ideology, alternative sources of income, participation in a Section 8 or other subsidy program, and an individual's actual, potential, perceived, or alleged pregnancy outcomes. While these protections are not explicitly covered under RCW 49.60, the Seattle government has successfully enacted and enforced them, demonstrating its authority to expand anti-discrimination protections at the local level. As a result, passing an ordinance to further broaden the scope of protection in those provisions that have already been successfully enacted is deemed to be less risky.

II. Although adding intimate personal relationships to the definition of family members in 14.16.010 Paid Sick Time and Paid Safe Time is more likely to be allowed, the original definition in Paid Sick Time might have come across the preemption question and needs to be revised:

a. Adding intimate personal relationships to the definition of family members is more unlikely to be seen preemptive under Washington state law

In *Heinsma v. City of Vancouver*, taxpayers brought action against city for a declaratory judgment that its decision to extend health insurance benefits to city employees' domestic partners and their children was unconstitutional. The Supreme Court of Washington ruled that "the City of Vancouver has authority to provide medical benefits to its employees and their dependents. Since the legislature did not define the term "dependents," we conclude that the legislature delegated authority to the city to determine who should be eligible for benefits." See Heinsma v. City of Vancouver, 29 P.3D 709, 712-713 (2001). The court also stated that the regulation of employee benefits has traditionally been treated as a local interest. However, the court carefully distinguished this delegation from instances where municipal recognition of domestic partnerships might interfere with the state's authority to regulate familial relationships. In *Heinsma*, the court found no such conflict, reasoning that "the city's recognition of domestic partnership is limited in scope (employment benefits) and does not affect the legislature's ability to regulate familial relationships on a statewide basis." See Id. Although the definitions of "family member" for paid sick and paid safe time are expressly provided in RCW 49.46.210 and RCW 49.76.020, respectively, *Heinsma* suggests that local expansions of employment-related benefits are unlikely to be preempted. First, paid sick and safe time provisions, like medical benefits, fall within the category of employment benefits that courts generally treat as local matters. Second, the proposed changes would not confer any broader legal status or rights associated with marriage or familial relationships beyond the employment context. Finally, the relevant state statutes do not include explicit preemption language, and expanding the definition of "family member" does not conflict with existing definitions. Taken together, these factors suggest that Seattle's proposed ordinance is unlikely to be preempted under current Washington law.

Another relevant case is *Filo Foods, LLC v. City of SeaTac*, in which employers in the hospitality and transportation industries challenged Proposition 1, a municipal initiative enacted by the City of SeaTac. Proposition 1 established a $15.00 hourly minimum wage and mandated paid sick and safe time of one hour per 40 hours worked. The plaintiffs argued that the ordinance was preempted by the federal National Labor Relations Act (NLRA). The Washington Supreme Court rejected the preemption argument, holding that the NLRA did not preempt any aspect of Proposition 1. See Filo Foods, LLC v. City of SeaTac, 357 P.3D 1040, 1052 (2015). Although *Filo Foods* addressed federal preemption rather than preemption under state law, the case is instructive because the ordinance at issue included provisions regarding paid sick and safe time—directly analogous to the proposed amendments to Seattle's Municipal Code. The Court's willingness to uphold local authority in regulating employment benefits, even in the face of federal law, suggests that it would be similarly reluctant to find preemption by state law in this context. As a result, this precedent further supports the argument that Seattle's ordinance is unlikely to be preempted.

b. The definition of "family member" for paid sick time in SMC is narrower than RCW after the current amendment in 2025, which needs to be revised

According to RCW 49.46.210, an employee shall accrue at least one hour of paid sick leave for every forty hours worked. Employees may use paid sick leave to care for a "family member" with a mental or physical illness, injury, or health condition, including medical diagnosis, treatment, or preventive care. This provision aims to safeguard workers' financial security while ensuring they can attend to essential family health needs. Under RCW 49.46.210(2)(a), the term "family member" is defined as including a child, grandchild, grandparent, parent, sibling, or spouse of an employee and also including any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee cares for the person, and that individual

depends on the employee for care. However, it does not include individuals who simply share a residence without such an expectation. This expanded definition of "family member" just took effect on January 1, 2025.

Before 2025, the term "family member" included: (a) A child, including a biological, adopted, or foster child, stepchild, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status; (b) A biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child; (c) A spouse; (d) A registered domestic partner; (e) A grandparent; (f) A grandchild; or (g) A sibling. This definition reflected a more traditional view of familial relationships, whereas the 2025 revision expands recognition to a broader set of household and care-based relationships.

On the other hand, SMC 14.16.10 defines “family member” for purposes of Paid Sick Time as a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling. This definition aligns more closely with the version of RCW 49.46.210(2)(a) that existed prior to its 2025 amendment. Following the recent revision, however, the state definition has been expanded to include individuals who regularly reside in the employee’s home and depend on the employee for care, provided there is an established expectation of caregiving. In contrast, the current SMC definition is narrower, which may raise a preemption concern if the local ordinance is viewed as conflicting with the broader protections now provided by state law.

To mitigate this risk, we recommend that any revisions to SMC 14.16.10 incorporate the updated state definition of “family member” as reflected in the 2025 amendment. Doing so would not only ensure consistency with RCW 49.46.210 but also align with the broader goals of the

movement to recognize diverse caregiving relationships, while avoiding potential legal challenges based on preemption.

c. SMC has already extended the definition beyond RCW 49.60 in SMC 14.16.10 Paid Safe Time provision

Under RCW 49.76.020, "Family member" for Paid Safe Time includes a child, spouse, parent, parent-in-law, grandparent, or a person with whom the employee has a dating relationship. This definition establishes the scope of individuals for whom an employee may use paid safe time, emphasizing immediate family and intimate relationships.

In SMC 14.16.10, "family member" for paid safe time includes a child, parent, spouse, registered domestic partner, grandparent, grandchild, or sibling. Additionally, the definition extends to "household members," which, as defined in RCW 49.76.020 and the now-repealed RCW 26.50.010, includes spouses, domestic partners, former spouses, former domestic partners, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons 16 years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons 16 years of age or older with whom a person 16 years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

This expanded scope of “family member” in SMC 14.16.10 already goes beyond the limitations of state law. The Seattle government has successfully implemented and enforced these broader definitions without legal challenges, demonstrating the city’s authority to expand such protections within its local employment ordinances. Consequently, passing an ordinance that further broadens or affirms these definitions is likely to be low risk, particularly given this

track record of successful enactment and the absence of express preemption language in RCW 49.76.020.

CONCLUSION

Seattle is likely within its authority to amend the Seattle Municipal Code to include family and relationship structure as a protected class in its anti-discrimination provisions. Washington law does not expressly preempt local governments from expanding protected classes, and case law supports the City's ability to legislate beyond state minimum standards, so long as there is no direct conflict or explicit legislative intent to occupy the field.

Similarly, Seattle is unlikely to be preempted in amending its definition of "family member" for Paid Sick and Safe Time provisions. Courts have recognized municipalities' discretion in defining eligibility for employment benefits, especially when state law does not expressly prohibit broader local provisions. Notably, the current definition of "family member" for paid sick time in SMC is narrower than that in RCW 49.46.210(2)(a) after the 2025 amendment, which may raise concerns of conflict. Therefore, we recommend revising the SMC definition to align with state law both to prevent potential preemption issues and to advance the ordinance's inclusive goals.