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THIRD COURT OF APPEALS
AUSTIN, TEXAS
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No. 03-23-00531-CV

IN THE COURT OF APPEALS
FOR THE THIRD DISTRICT OF TEXAS
AUSTIN, TEXAS

STATE OF TEXAS
Appellant,

v.

THE CITY OF HOUSTON, THE CITY OF SAN ANTONIO, AND THE CITY OF EL PASO,
Appellees.

On Appeal from the
345th Judicial District Court, Travis County
Trial Court Cause No. D-1-GN-23-003474
Honorable Maya Guerra Gamble, Presiding Judge

BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AND LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF APPELLEES

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STATEMENT OF INTEREST

The International Municipal Lawyers Association ("IMLA") is a non-profit, nonpartisan professional organization consisting of more than 2,500 members. The membership is comprised of local government entities, including cities, counties and subdivisions thereof as well as state municipal leagues, as represented by their chief legal officers and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties and special districts. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the United States Supreme Court, the United States Courts of Appeals, and in state courts. IMLA periodically files amicus curiae briefs in cases, such as the one at bar, which are of interest to local governments statewide and nationally.

Amici curiae also includes the law professors listed below, all of whom who study and teach local government law and related fields and who, because of their

professional work and expertise, are interested in the proper interpretation of Texas's Home Rule Amendment. [1]

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INTRODUCTION

Amici support Appellees City of Houston, City of San Antonio, and City of El Paso in their arguments and write to provide additional context for understanding Appellant Texas's attempt to undermine the long-standing allocation of authority between the state and local governments enshrined in the Texas Constitution.

The core purpose of the 1912 Home Rule Amendment that added article XI, section 5 to the Texas Constitution was to vest home-rule jurisdictions with direct authority and primary responsibility for policymaking within their communities, subject to state preemption in cases of specific conflicts with general laws enacted by the Legislature. Prior to the Home Rule Amendment, local governments in Texas could only act by the grace of explicit state legislative delegation, and the Legislature was required to devote a considerable portion of its time and attention to the details of municipal governance by directly overseeing city charters. At a time when cities in Texas were growing rapidly and had an increasing need for local governance, the people of the state chose to amend the Texas Constitution to devolve policymaking in the first instance to home-rule jurisdictions. The Home Rule Amendment thus relieved the Legislature of the ubiquitous and unsustainable

oversight role it had been playing, while still preserving a role for the state to protect important statewide interests to the limited extent that those interests were irreconcilable with local law.

However, by seeking to require specific state legislative approval for local governments to act across a vast range of policymaking, Texas House Bill 2127 (HB 2127)[2] now threatens to overturn this fundamental constitutional structure, upsetting a general balance between broad local initiative authority and targeted state oversight that has endured for more than a century. Allowing the legislation to stand would undermine the constitutional commitments of the Texas Home Rule Amendment and the values it embodies—namely that, absent strong reasons for the state to intervene and an unmistakably clear conflict between state and local law, preserving governance closest to the governed fosters responsiveness, accountability, innovation, and democratic engagement. For these reasons, and for the reasons Appellees have argued, this court should uphold the declaration of the District Court that HB 2127 is unconstitutional.

No fee has been or will be paid for the preparation of this brief.

[2] Tex. H.B. 2127, 88th Leg., R.S. (2023).

ARGUMENT

I. Texas Adopted Constitutional Home Rule in 1912 to Directly Empower Local Governments to Act in the First Instance and to Relieve the Legislature of the Obligation to Oversee the Details of Local Governance

From the time of the Texas Republic through the first decades of Texas's history as a state, local governments operated under a regime by which the Legislature was responsible for the charters of incorporated cities, with local policymaking authority derived from state legislative delegation. In 1912, the people of Texas voted overwhelmingly to adopt constitutional home rule, rejecting unfettered legislative supremacy and establishing a calibration between broad powers of local policymaking initiative for home-rule jurisdictions with limited scope for state oversight to vindicate important state-wide concerns in cases of actual conflict between local law and state general law. This fundamental shift in constitutional structure reflected concerns about the burdens that overseeing local governance placed on the Legislature at a time when cities in Texas were rapidly growing as well as the advantages of empowering those growing cities to manage their own governance. This context is critical for understanding the constitutional challenges that HB 2127 poses.

A. Constitutional Home Rule in Texas Represented a Fundamental Rejection of the Prior Regime of State Legislative Supremacy

In the decades before adopting constitutional home rule, Texas followed a regime of local governance grounded in the principle that all local legal authority derives from the grace of state legislative delegation, with courts construing such delegations narrowly.[3] This approach of legislative supremacy, commonly known as "Dillon's Rule," in honor of Iowa judge and treatise writer John F. Dillon, was the prevailing understanding of the nature of municipal legal authority throughout much of the nineteenth century.[4] And it is still the prevailing approach that Texas takes to general-law cities, a distinction that HB 2127 would vitiate.[5]

Starting in the decade after the Civil War, however, movements began to emerge in other states across the country seeking to empower local autonomy by instituting home rule.[6] Although there were many crosscurrents in these

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[3] John P. Keith, *City and County Home Rule in Texas* 10 (Institute of Public Affairs, University of Texas 1951).

[4] *See* Paul A. Diller, *Intrastate Preemption*, 87 B.U. L. Rev. 1113, 1122-23 (2007).

[5] As the Texas Supreme Court has noted, general-law cities are "political subdivisions created by the State and, as such, possess [only] those powers and privileges that the State expressly confers upon them," a stark contrast with "home-rule municipalities" that "inherently possess the authority to adopt and enforce [ordinances], absent an express limitation on this authority." *Town of Lakewood Village v. Bizios*, 493 S.W.3d 527, 531 (Tex. 2016) (first alteration in original) (citation omitted).

[6] *See* David J. Barron, *Reclaiming Home Rule*, 116 Harv. L. Rev. 2255, 2292-2320 (2003) (tracing the history of early home-rule reform movements).

movements, one prominent theme in the advocacy for home rule at the time was a desire by urban reformers and civic organizations to foster innovations in and improve the structure of municipal administration.[7]

Echoing these efforts to ensure more responsive municipal governance, Texas throughout the late nineteenth century incrementally moved towards granting incorporated cities greater autonomy over their governance and policies. Texas, like many states in the nineteenth century,[8] began by limiting the Legislature's authority to enact special laws, which apply only to certain cities or individuals and were understood as overly meddlesome in local affairs, in favor of general ones.[9] Thus, the Texas Constitution of 1869 prohibited the Legislature from enacting special laws that sought to alter roads or plots in cities and villages.[10] The people of Texas apparently found this modest prohibition insufficient to prevent state interference in local affairs, so in 1873 voters ratified more stringent restrictions on special laws as they related to local issues.[11] The

[7] *See* Nestor M. Davidson, *Local Constitutions*, 99 Tex. L. Rev. 839, 852-53 (2021).

[8] *See* Justin R. Long, *State Constitutional Prohibitions on Special Laws*, 60 Clev. St. L. Rev. 719 (2012).

[9] Keith, *supra* note 3, at 14.

[10] *Id*.

[11] *Id*. at 14-15.

constitutional convention of 1875 went further, adopting a measure prohibiting the Legislature from enacting any special or private law regulating the affairs of local governments, changing the charters of incorporated cities, or placing county seats, except as specifically authorized by the Constitution.[12] While these constitutional prohibitions prevented some state interference with the laws and affairs of individual municipalities, the state could still regulate municipalities through general laws and retained the authority to adopt and, in some circumstances, amend city charters through special laws.[13]

State control of city charters, with cities under 10,000 subject to general laws and cities larger than that subject to special laws (a population threshold lowered to 5,000 in 1909), began to overwhelm the Legislature as cities in Texas grew rapidly.[14] As Terrell Blodgett has noted, by 1911, the legislature was finally coming to grips with the challenge that "its capacity to debate and resolve issues of

[12] *Id.* at 15-16.

[13] *Id*. at 18.

[14] Note, *To Save a City: A Localist Canon of Construction*, 136 Harv. L. Rev. 1200, 1219 (2023); *see also* Terrell Blodgett, *Texas Home Rule Charters* 2 (Tex. Mun. League ed., 2d ed. 2010) (noting that "[b]y 1910, San Antonio and Dallas were near 100,000 in population; Houston and Fort Worth were well over 50,000; and a total of 40 cities in the state each had more than 5,000 population.")

statewide importance was being usurped disproportionately by the attention it gave to city charters."[15]

Capping off decades of efforts to increase local-government autonomy, Texans adopted the Home Rule Amendment in 1912 with 74% of voters approving.[16] The 1912 Home Rule Amendment marked a new era that shifted initiative power to home rule cities while reserving an important, if circumscribed, role for the state. In relevant part, article XI, section 5(a) of the Texas Constitution provides:

> Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters… no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State.[17]

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[15] As Blodgett recounts, "[o]ne legislative official complained in 1911 that these local bills made up more than one-half of the legislative workload. A count revealed this estimate was high. Actually, about 25 percent of all bills applied to municipal charters, but the point was made." Blodgett, *supra* note 14, at 2.

[16] *H.J.R. 10, 32nd R.S. Election Details*, Legislative Reference Library of Texas (last visited Jan. 28, 2024), https://lrl.texas.gov/legis/billsearch/amendmentDetails.cfm?amendmentID=51&legSession=32-0&billTypedetail=HJR&billNumberDetail=10.

[17] Tex. Const., art. XI, § 5(a).

As the Texas Supreme Court has noted, the purpose of this amendment was to vest home-rule cities with "full power of self-government, that is, full authority to do anything the legislature could theretofore have authorized them to do."[18] In other words, rejecting the previous Dillon's Rule regime for state-delegated authority, under the constitutional authority of article XI, section 5, it became "necessary to look to the acts of the legislature not for grants of power to such cities but only for limitations on their powers."[19]

Importantly, Texas in 1912 did not just adopt the Home Rule Amendment; the voters of the state also amended the Constitution to repeal the Legislature's ability to grant and amend city charters by special act, which had formerly been in article XI, section 5. Accordingly, not only did Texans create a new mechanism for chartering cities, but they expressly restricted the legislature's authority to oversee the intricacies of local governance.

Indeed, one of the major objectives animating Texas's Home Rule Amendment was "to avoid interference in local government by the state legislature."[20] With the amendments adopted in 1912, the people of Texas

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[18] *Forwood v. City of Taylor*, 214 S.W.2d 282, 286 (Tex. 1948).

[19] *Id*.

[20] Blodgett, *supra* note 14, at 2.

constitutionally reallocated legal authority between the state and local governments: rather than look to the state for legislative delegation to enact local measures, cities were directly empowered to address their increasingly complex and localized concerns, thus freeing the Legislature of the responsibility of managing local affairs. As cities have continued to grow and develop in Texas, these local governments have been able to utilize the authority that the Home Rule Amendment provided for self-government, at least until the rise of recent state-local conflicts reflected in statutes such as HB 2127.

B. Jurisprudence Since 1912 Has Reinforced the Balance Between Broad Local Initiative Authority and Cabined State Oversight

Jurisprudential developments in Texas since the adoption of the 1912 Home Rule Amendment have confirmed the vision of the framers of article XI, section 5's vesting broad initiative authority in local governments while preserving the state's power to preempt in the rare case of actual conflict. Structurally, as noted, home-rule jurisdictions in Texas are protected by the constitutional requirement that preemption only occur through general law enacted by the Legislature.[21] Beyond that modest limitation, however, the Texas Supreme Court has developed a

[21] *See supra* Part II.A.

preemption jurisprudence that recognizes the breadth of local authority and sets conditions for state intervention.[22]

To begin, the Texas Supreme Court has repeatedly reaffirmed that "the full power of self government"[23] that home-rule cities in Texas possess is limited only by a cabined scope of state preemptive authority. The Texas Supreme Court has made clear, accordingly, that the mere "entry of the state into a field of legislation . . . does not automatically preempt that field from city regulation; local regulation, ancillary to and in harmony with the general scope and purpose of the state enactment, is acceptable."[24]

Instead, as the Texas Supreme Court has also repeatedly held, the intent to preempt a subject within a home-rule city's broad powers must be evinced with "unmistakable clarity."[25] Therefore, "a general law and a city ordinance will not

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[22] This discussion is not meant to address any individual application of the state's preemption jurisprudence, but rather to highlight the constitutional-structural features of a body of caselaw that has consistently sought to vindicate article XI, section 5's grant of local authority while preserving a clearly delineated state role.

[23] *Dall. Merch.'s & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex.1993).

[24] *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 7 (Tex. 2016) (quoting *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982)); *see also City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990) (noting that "the mere fact that the legislature has enacted a law addressing a subject does not mean that the subject matter is completely preempted").

[25] *See, e.g., City of Houston v. Hous. Pro. Fire Fighters' Ass'n,* 664 S.W.3d 790, 798–99 (Tex. 2023); *City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964) ("Although the broad

be held repugnant to each other if any reasonable construction leaving both in effect can be reached."[26] If the statute makes that legislative intent clear, then a local ordinance "is unenforceable *to the extent that it is inconsistent* with the state statute preempting that particular subject matter."[27] This rejection of general field preemption and the necessity to demonstrate actual conflict between state and local law for preemption is a far cry from the kind of plenary state control Appellant asserts.

In short, the Texas Supreme Court has, in its long-standing preemption jurisprudence, sought to reconcile two seemingly contradictory strands of constitutional authority reflected in the text of article XI, section 5: explicitly broad powers of local self-government coupled with a reservation of state authority to preempt through general law. To resolve this, the court has marked out a pragmatic

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powers granted to home rule cities by the Constitution, Article XI, Section 5 may be limited by acts of the Legislature, it seems that should the Legislature decide to exercise that authority, its intention to do so should appear with unmistakable clarity."); *see also, e.g.*, *In re Sanchez*, 81 S.W.3d 794, 796 (Tex. 2002) (per curiam).

[26] *BCCA Appeal Grp., Inc*., 496 S.W.3d at 7 (quoting *City of Beaumont v. Fall*, 291 S.W. 202, 206 (Tex. Comm'n App. 1927)).

[27] *Id.* (emphasis added); *see also City of Laredo v. Laredo Merchs. Ass'n*, 550 S.W.3d 586, 593 (Texas 2018) (If a state "general law and local regulation can coexist peacefully without stepping on each other's toes, both will be given effect or the latter will be invalid only to the extent of any inconsistency."); *City of Beaumont*, 291 S.W. at 206 ("Of course, a general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached. In other words, both will be enforced if that be possible under any reasonable construction, just as one general statute will not be held repugnant to another unless that is the only reasonable construction.").

balance, where home-rule jurisdictions are recognized to have direct power to enact laws and policies to vindicate the constitutional delegation while holding that the state can only displace that power when the Legislature speaks with unmistakable clarity and any conflicts between local and state law are irreconcilable.

II. Texas House Bill 2127 Seeks to Fundamentally Alter the Constitutional Structure of Home Rule in Texas by Legislative Fiat

House Bill 2127 seeks to fundamentally alter article XI, section 5's constitutional structure, threatening as a functional matter to recreate the very Dillon's Rule regime of unfettered legislative supremacy that the people of Texas rejected in 1912 for home-rule jurisdictions. Indeed, HB 2127 is explicit in this intent, claiming as its purpose "returning sovereign regulatory powers to the state," with only the most perfunctory nod to article XI, section 5.[28] Shifting the balance of sovereign power is a task reserved for the people of Texas through the Texas Constitution, not one open to the unilateral choice of the Legislature.

In substance, HB 2127 provides that municipalities and counties may not "adopt, enforce, or maintaining an ordinance, order, or rule regulating conduct" in a "field of regulation" "occupied by a provision" of a wide variety of state

[28] Texas Regulatory Consistency Act, 88th Leg., R.S., ch. 899, 2023 Tex. Sess. Law Serv. 2873§ 3.

statutory codes, deeming any such provision "void."[29] HB 2127 applies this blanket removal of local constitutional authority to Texas codes covering Agriculture, Business & Commerce, Finance, Insurance, Labor, Natural Resources, Occupations, and Property.[30] With no definition of "occupied" or "occupied by a provision," HB 2127 leaves entirely open-ended and ambiguous the sweep of its claim to exclusive state authority over broad fields of policy.[31]

Perhaps most ambiguously, HB 2127 adds a provision to the Texas Local Government Code mandating that "the governing body of a municipality may adopt, enforce, or maintain an ordinance or rule only if the ordinance or rule is consistent with the laws of this state."[32] As Appellants have noted, although it is hard to discern exactly what this provision would do that article XI, section 5's

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[29] *Id.* §§ 5, 6, 8, 9, 10, 13, 14, 15.

[30] *Id*. Section 12 of the Act also preempts local regulation of certain animal-related businesses. *Id.* § 12.

[31] As Appellees have noted, the author of HB 2127 indicated in hearings that it was the intent of the statute to create a "living" enactment that would ambiguously provide on-going and unspecified limitations on local authority. *See* City of Houston's Traditional Motion for Summary Judgment at 24, *City of Houston v. State*, No. D-1-GN-23-003474 (Travis Co. Ct. at Law No. 345, Tex. Aug. 30, 2023) (citing Texas Regulatory Consistency Act: Hearings on Tex. H.B. 2127 Before the House of Comm. on State Affairs, 88th Leg., R.S. (Mar. 15, 2023) (statement of Chairman Dustin Burrows), at 1:11.50, (tape available from the House Video/Audio Service Office), available at https://tlchouse.granicus.com/MediaPlayer.php?view_id=78&clip_id=24052 (last accessed 1.15.2024)).

[32] Texas Regulatory Consistency Act, *supra* note 26, § 11.

requirement that a party challenging municipal law demonstrate inconsistency with state general law does not, to avoid rendering the provision mere surplusage, one interpretation is that it would replace the long-standing presumption of the constitutionality of laws enacted by home-rule jurisdictions with a requirement that those jurisdictions bear the burden of proof to show "consistency" with some undefined body of state law.

Underscoring how much HB 2127 attempts to reconstitute the regime of state legislative supremacy Texas rejected in adopting article XI, section 5, the statute provides that constitutional home-rule municipalities may only exercise authority expressly delegated by state statute and allows those jurisdictions to regulate or provide only the services authorized for general-law municipalities.[33] This seems designed to relegate home-rule jurisdictions essentially to the legal status they had before the Home Rule Amendment, nullifying or effectively repealing its constitutional structure and collapsing the distinction between home-rule and general-law cities.

To illustrate how unclear and unworkable in practice HB 2127's purported preemption of a "field" somehow "occupied" by a referenced state code without an

[33] *E.g.*, *id*. § 5 (qualifying the provision's sweeping field preemption with the caveat that it applies "[u]nless expressly authorized by another statute"); *id.* § 4(2) ("This Act . . . may not be construed to prohibit a home-rule municipality from providing the same services and imposing the same regulations that a general-law municipality is authorized to provide or impose.").

actual conflict with local law might be, consider HB 2127's Section 15, which added a catch-all preemption provision as a new section 1.004 of the Texas Property Code. The Property Code includes provisions that at least nominally touch on an array of policy and regulatory arenas traditionally within the ambit of municipal governance but that seem to pose little if any threat of actual conflict between state and local law. There are provisions in the Property Code, for example, that address manufactured housing,[34] recording and land records,[35] even, in a handful of provisions, zoning and other land-use provisions.[36] To be clear, this is not to argue that any municipal provisions that similarly touch on these regulatory issues are necessarily preempted, and the regulatory purposes in the state code seem hardly designed to override local authority (because that was not their original function). But under HB 2127's open-ended "field" preemption, it is difficult not be left guessing at its meaning and scope—hardly the unmistakable clarity that Texas law requires.

[34] Tex. Prop. Code Ann. § 2.001 (West 2023).

[35] Tex. Prop. Code Ann. §§ 11.001–15.008 (West 2023).

[36] *See, e.g.*, Tex. Prop. Code Ann. § 12.002 (West 2023) (subdivision plats); Tex. Prop. Code Ann. § 82.006 (West 2023). *But see id.* subsection (b) (possibly reserving local authority, although the interaction between that provision and § 1.004 is unclear).

The shadow of uncertainty around preemption that HB 2127 casts across so many policy domains simply cannot be reconciled with a textual constitutional commitment to meaningful local authority and a well-settled jurisprudence that accordingly rejects sweeping field preemption in favor of a targeted analysis of actual conflict. If the state can simply declare by legislative fiat that it has called entire areas off limits for local governance absent the kind of explicit state delegation that was the hallmark of the Dillon's Rule era—as HB 2127 seeks to do—there would be very little left to the affirmative grant of constitutional home-rule authority in article XI, section 5.

III. Preserving the Structure and Balance of Home Rule in Texas is Vitally Important

Preserving the structure and balance of home rule in Texas is as vitally important today as it was 112 years ago, for all of the well-recognized values that doing so can foster in terms of responsiveness to distinctive community concerns, experimentation and effective municipal administration, as well as the accountability and democratic participation that centering governance closest to those governed facilitates. Texas is a vast state and wonderfully diverse in its communities and geography. The policies that may be most appropriate for Dalhart may not make sense for Dallas, and vice versa, and by enshrining home rule in the

Texas Constitution, the people of Texas recognized how much that mosaic is a strength.

To elaborate, by giving cities in Texas broad and permanent substantive lawmaking authority, home rule allows those cities to efficiently respond to the particular needs and preferences of their own communities.[37] At the core of home rule—no less today than in 1912—is the understanding that local governments are better situated than a single statewide government, with a part-time legislative body, to identify the needs and interests of local constituents, foster channels for communities to share their preferences, needs, and concerns, and then implement responsive policies. Even in relatively large cities, participation can bring people together to solve problems that are harder to reconcile at the much larger scale of the entire state. Cities thus have a distinctive capacity to reflect community needs, preferences, and challenges by fostering and responding to local voice, allowing policy variation that belies the lowest-common-denominator challenges of a statewide process that reduces important local differences to a single policy choice.

Municipalities with the kind of broad home rule authority long protected in Texas, moreover, have distinctive capacity to serve as classic Brandeisian

[37] *See* Diller, *Intrastate Preemption*, *supra* note 4, at 31.

laboratories of democracy.[38] Protecting the latitude of cities to experiment with solutions to persistent as well as emerging problems can foster innovation in policymaking in ways that, if successful, can be adopted by other local governments and inform state and national policymaking. (And, if they prove unsuccessful, such experiments can be limited in their reach to the local level and more easily adjusted than statewide policies.) Indeed, many structural aspects of local governance—the smaller ratio of legislators to constituents, the increased influence of local over than statewide interest groups, and the relatively streamlined process of enacting legislation—have contributed to making local governments centers of policy and governance innovation.[39] This has historically been true in Texas. Indeed, as one of the leading authorities on home rule noted more than twenty years ago, before the rise of current efforts to centralize authority at the state level, "Texas has a strong tradition of local municipal government; its home rule municipalities not only enjoy a large measure of independence but have

[38] *Cf. New State Ice Co. v. Liebmann*, 285 U.S. 262, 386-87 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.").

[39] Paul A. Diller, *Why Do Cities Innovate in Public Health? Implications of Scale and Structure*, 91 Wash. U. L. Rev. 1219, 1257-1266 (2014).

also been remarkably innovative—to the point of having had a national influence on management practices."[40]

Finally, the structure of home rule in Texas embodied in article XI, section 5 serves a critically important democratic accountability function. Constitutionally vesting policymaking and governance discretion in home-rule jurisdictions gives people and communities within those jurisdictions incentive to participate in civic life, knowing that the outcomes of the local political process actually matter. That recognition, in turn, allows constituents at the local level to hold their leaders accountable through the democratic process. The more decisions for local communities are made at the state level, the harder it is the people impacted by those decisions to change the policies they disagree with, and the less incentive they have to participate. The kind of broad constitutional home rule authority embodied in article XI, section 5 recognizes that when the policy stakes matter at the local level, people will more likely participate and when people participate, local leaders will more likely be responsive.

None of this is to deny an important, if circumscribed, role for the state in the allocation of authority contemplated by the Texas Constitution. Preemption of local law in the case of actual conflicts with general state law, when unavoidable,

[40] Charldean Newell and Victor S. DeSantis, *Texas*, *in* Home Rule in America: A Fifty-State Handbook 399, 406 (Dale Krane et al. eds. 2001).

can vindicate statewide interests while preserving the breadth of local authority embodied in article XI, section 5. However, when the Legislature tries to take power to make policy almost entirely into its own hands, without attempting to delineate or discern an actual conflict with the traditional breadth of constitutional local authority—let alone with the unmistakable clarity that the Texas Supreme Court has repeatedly recognized as a prerequisite for preemption—as the state has attempted to do with HB 2127, the state fundamentally undermines the core values of keeping governance as much as possible closest to the governed.

CONCLUSION

For the foregoing reasons, as well as for the reasons Appellees argue in their briefing, this Court should affirm the District Court's grant of a declaratory judgment in favor of Appellees and denial of Appellant Texas's jurisdictional motion.

Respectfully submitted,

/s/ Alan Bojorquez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief was served on all counsel of record through the Court's electronic filing system on February 9, 2024.

/s/ Alan Bojorquez
ALAN BOJORQUEZ

CERTIFICATION OF COMPLIANCE

I certify that the foregoing brief was prepared using Microsoft Word, and that, according to its word-count function, the sections of the foregoing brief covered by TRAP 9.4(i)(1) contain 4,881 words in a 14-point font size and footnotes in a 12-point font size.

/s/ Alan Bojorquez
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Jordan Kadjar		jkadjar@scottdoug.com	2/9/2024 11:42:35 AM	SENT

Associated Case Party: City of Houston

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Hope Avila on behalf of Alan Bojorquez
Bar No. 796224
hope@texasmunicipallawyers.com
Envelope ID: 84342123
Filing Code Description: Other Brief
Filing Description: Brief of IMLA and Law Professors as Amici Curiae in Support of Appellees
Status as of 2/12/2024 10:13 AM CST

Associated Case Party: City of Houston

Collyn Ann Peddie	15707300	Collyn.peddie@houstontx.gov	2/9/2024 11:42:35 AM	SENT
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Associated Case Party: The City of San Antonio

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Associated Case Party: Local Official Amicus Parties

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Bar No. 796224
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Associated Case Party: Local Official Amicus Parties

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