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SPEECH

THE BRENNAN LECTURE: CITIES UNDER SIEGE

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I want to start by thanking Professor Andy Spiropolous for the kind invitation to present this lecture. I would also like to thank Gilbert Magdaleno for organizing my wonderful visit. Lastly, of course, I want to thank Dean David Holt. It is quite appropriate to give this lecture here at a law school whose dean is also the mayor of Oklahoma City. As you will hear, I greatly admire mayors and cities generally. Justice William Brennan, for whom this lecture is named, was famously a champion of state constitutions.¹ In this lecture, I am going to be critical of the states but in a spirit that Justice Brennan may have appreciated. His hope was that states would fulfill the important functions of federalism, which I will argue are better fulfilled today by American cities, if we just let them govern.

I wrote the article that is the basis of my lecture today, and which I am now expanding into a book, in 2018.² At that time, and up until recently, I

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1. See William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977).

2. See Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163,

did not anticipate the literal occupation of American cities by federal troops or legions of federal agents.³ Despite the title, my lecture will not address the federalization of the state national guard, the legality of domestic troop deployments, or the Posse Comitatus Act.⁴ Instead, I will discuss the related *legal* assault on American cities. Military occupation is an extreme symptom of the persistent attack on American cities. The book I am now writing is about how cities are treated politically and legally in a system of government built on an anti-urban foundation.

American cities are increasingly politically isolated; their elected officials are increasingly under legal threat and compulsion; their laws are regularly rejected and overruled by state legislatures and governors; and their citizens are being assaulted, arrested, and, in some cases, killed. How did this happen? And why now? During the second half of the twentieth century, American cities were beset by fiscal crises, population exodus, and deindustrialization. Over the last few decades, many American cities have seen their fortunes rise or at least stabilize.⁵ Based on this reversal of fortune, the current rhetoric disparaging cities and their residents seems detached from reality.

But it turns out that whether rich or poor, flourishing or in decline, cities in the United States have historically been treated with skepticism, taken advantage of, or simply dismissed. I will try to explain why and catalog some of the most egregious present-day examples.

My lecture is divided into three parts, corresponding roughly to the sections in my forthcoming book. These sections support three main claims.

My first claim is that fear of cities is deeply embedded in the country's political and constitutional fabric. I will begin by describing the long

1163 (2018).

3. Joseph Nunn & Spencer Reynolds, *One Week of Trump's DC Takeover Attempt*, BRENNAN CTR. FOR JUST. (Aug. 19, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/one-week-trumps-dc-takeover-attempt>. [https://perma.cc/BSG5-NQAY].

4. 18 U.S.C. § 1385.

5. See Tracy Hadden Loh & Hanna Love, *Breaking the 'Urban Doom Loop': The Future of Downtowns Is Shared Prosperity*, BROOKINGS (Mar. 23, 2023), <https://www.brookings.edu/articles/breaking-the-urban-doom-loop-the-future-of-downtowns-is-shared-prosperity/> (on file with the Oklahoma City University Law Review); ALAN MALLACH, *THE DIVIDED CITY: POVERTY AND PROSPERITY IN URBAN AMERICA* 18-19 (2018).

tradition of American intellectual and popular anti-urbanism. Then, I will describe how this anti-urbanism has been instantiated into state and federal constitutional law.

My second claim is that we have entered a new era involving multiple legal and political attacks on American cities. I will explore the growing phenomenon of state-law preemption of local laws. I start with a general discussion of how states are restricting the power of cities to adopt a range of local laws, before moving to a more specific example of how states are overriding cities' land use and zoning authority.

My third claim is that these attacks on city power are a threat to democratic self-government. First, I explain why cities should be empowered instead of denigrated, and why they are more relevant units for self-government than are states or the nation. Then, I present a call for a more robust municipal "home rule." The concept of home rule was embraced by Progressive Era state constitution makers in the mid- to late-nineteenth century but has never quite delivered what it promised: genuine municipal autonomy.⁶ I hope to show that the attack on American cities is deeply anti-democratic, that it has distorted our state institutions and national politics, and that it is something we must name and address directly.

American Anti-Urbanism

I begin with the following assertion: Americans do not like cities very much. In fact, they have historically feared them. There is a long tradition of intellectual and popular anti-urbanism.⁷ Indeed, American anti-urbanism begins with the Founding generation and continues to the present day. This anti-urban tradition comes in four flavors: 1) anti-democratic anti-urbanism, 2) anti-city anti-urbanism, 3) anti-government anti-urbanism, and 4) populist or reactionary anti-urbanism.

Let's start with Thomas Jefferson and anti-democratic anti-urbanism. Jefferson is famous for his view that large European-style cities were

6. David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2278 (2003); see, e.g., Yunji Kim, *Limits of Fiscal Federalism: How Narratives of Local Government Inefficiency Facilitate Scalar Dumping in New York State*, 51 ENV'T. AND PLAN. A 636, 640 (2018).

7. See STEVEN CONN, AMERICANS AGAINST THE CITY: ANTI-URBANISM IN THE TWENTIETH CENTURY 11 (2014); see also Thomas Jefferson, *Letter to William Stephens Smith* (Nov. 13, 1787), in THE PAPERS OF THOMAS JEFFERSON 356-57 (Julian P. Boyd ed., Princeton Univ. Press 1955); KATHERINE J. CRAMER, THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER 50-52 (2016).

incompatible with a constitutional republic.⁸ He wrote in his *Notes on Virginia*, that “[t]he mobs of great cities add just so much to the support of pure government, as sores do to the strength of the human body.”⁹ Jefferson believed that political virtue resided outside the city, in small towns and rural places.¹⁰ He was the champion of the yeoman farmer and thought that cities were dens of corruption and that urban dwellers could not be trusted to govern.¹¹ Jefferson’s views are still the views of many who equate cities with avarice, vice, and corruption, and who are mistrustful of the democratic capacities of the urban “mobs.”

Another form of American anti-urbanism is what I call anti-city anti-urbanism. This form of anti-urbanism asserts that the city itself is too dense, too overcrowded, too disorderly, and too unhealthful for the populace. The city must therefore be deconcentrated, depopulated, and generally redesigned. Anti-city anti-urbanism is represented by figures like architect Frank Lloyd Wright, who considered cities ugly and overcrowded, like a “fibrous tumor.”¹² Wright was not the only public intellectual to think so. In their 1962 book, *The Intellectual Versus the City: From Thomas Jefferson to Frank Lloyd Wright*, Morton and Lucia White observed a long tradition of intellectual anti-urbanism running through the likes of Emerson, Thoreau, Hawthorne, and architects and planners such as Louis Sullivan, Lewis Mumford, and Wright.¹³

Indeed, entire schools of architecture advocated decentralizing the city in favor of creating smaller towns. Urban renewal was inspired in many cases by an aversion to city life; government investments in central cities’ “renewal” were animated by a suburban planning ethos and a distrust of existing urban neighborhoods.¹⁴ Jane Jacobs, the most influential urbanist

8. MORTON WHITE & LUCIA WHITE, *THE INTELLECTUALS VERSUS THE CITY: FROM THOMAS JEFFERSON TO FRANK LLOYD WRIGHT* 14, 17 (1962). Jefferson was worried by the possibility that that our cities might imitate the great cities of Europe, where “want of food and clothing necessary to sustain life has begotten a depravity of morals, a dependence of corruption, which renders them an undesirable accession to a country whose morals are sound,” *id.* at 14.

9. THOMAS JEFFERSON, *NOTES ON THE STATE OF VIRGINIA* 165 (William Peden ed., Univ of N.C. Press ed. 1982) (1784) (ebook).

10. *Id.*

11. CONN, *supra* note 7, at 11.

12. *Id.* at 87-89.

13. WHITE & WHITE, *supra* note 8, at 17.

14. See CONN, *supra* note 7, at 166 (“[City planners held] a flawed set of assumptions about what should be destroyed and what should be built in its place, a misconception that the urban should be made more suburban . . .”); Wendell E. Pritchett, *The “Public Menace of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL’Y

of the 20th century, famously decried this form of anti-city anti-urbanism in her monumental *Death and Life of Great American Cities*.¹⁵ She argued that planners' obsession with pastoral environments was destroying cities, not improving them.¹⁶ In reviewing a generation of urban renewal in American cities, Jacobs concluded that: "This is not the rebuilding of cities. This is the sacking of cities."¹⁷

A third form of anti-urbanism coincides with opposition to government, hence *anti-government anti-urbanism*. Cities require large administrations, police forces, and lots of infrastructure. Urban places also require a certain tolerance for regulation, taxation, and government intervention. In contrast, smaller places, rural places, and suburbs need less government and often appeal to those who have a jaundiced view of "city hall." Big cities are associated with big government, and both have traditionally been viewed as oppressive by Americans of all stripes.

A good example is the response to New York City's fiscal crisis in the early 1970s, as described in Kim Phillips-Fine's book, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics*.¹⁸ Recall Gerald Ford's famous message to New York City, captured by the New York Daily News in 1975: "Ford to City: Drop Dead."¹⁹ Ford considered New York City, and perhaps cities of all kinds, to be wasteful, profligate, and poorly managed.²⁰ He certainly took the view that New York was not deserving of federal assistance in the form of a financial bailout, which he believed would only encourage more wasteful tax and spending practices.²¹ That view was shared by large numbers of Americans, many of whom decamped for the suburbs in the second half of the 20th century.

The suspicion that big cities and big government go hand in hand and that both are contrary to American small-government values is a form of

REV. 1, 29-30 (examining the interplay between urban renewal and the expansion of public and private eminent domain powers). For a discussion of urban renewal with specific reference to New Haven, Connecticut, see DOUGLAS W. RAE, CITY: URBANISM AND ITS END 312-60 (2003).

15. See JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 110-11 (1961).

16. *Id.* at 20. ("[G]ood city planning must aim for at least an illusion of isolation and suburbany privacy.").

17. *Id.* at 4.

18. KIM PHILLIPS-FINE, FEAR CITY: NEW YORK'S FISCAL CRISIS AND THE RISE OF AUSTERITY POLITICS 8 (2017).

19. Frank Van Riper, *Ford to City: Drop Dead*, N.Y. DAILY NEWS (Oct. 30, 1975), <https://www.nydailynews.com/2015/10/29/ford-to-city-drop-dead-in-1975/> [<https://perma.cc/7GGW-TSSV>].

20. See *id.*

21. *Id.*

anti-government anti-urbanism. This suspicion has also been shared across the political spectrum throughout American history. Progressive reformers, states' righters, libertarians, commune dwellers, environmentalists, small-is-beautiful decentralists, and present-day "tech bro" utopians have all arrayed against the city.²² Anti-government anti-urbanism draws a direct connection between bigness and the loss of liberty; urban centralization and the absence of self-government; and density and the threat to American values.²³

The fourth and final form of anti-urbanism is what I call populist or reactionary anti-urbanism. Reactionary anti-urbanism associates cities with criminality and poverty, and further associates criminality with immigrants or ethnic and racial minorities. The Trump Administration's rhetoric sounds in this register. The President has described certain cities as "worse than Afghanistan," as "rotting," or as "cesspools of blood."²⁴ Trump has also warned that "illegal alien crime, conflict, and chaos" and "mass destruction migration . . . ha[ve] turned once idyllic towns into scenes of Third world Dystopia."²⁵ The attack on so-called "sanctuary cities" is reactionary anti-urbanism on steroids.²⁶

This kind of rhetoric is not new. In the late 1800s, nativists attacked cities for being un-American, populated by ethnic and religious groups who did not share American values. In historian Steve Conn's 2014 book, *Americans Against the City: Anti-Urbanism in the Twentieth Century*, Conn quotes popular writers of the late 1800s railing against cities for being havens of immigrants, socialists, and Romanists.²⁷ In the 1920s and 1930s, southern and western Agrarians celebrated rural life, contrasting it

22. See Max D. Woodworth, "Freedom Cities": *Trump and an American Global New City*, 45 URB. GEOGRAPHY 1, 45-52 (2023).

23. See CONN, *supra* note 7, at 62.

24. William B. Davis et al., 'Cesspools,' 'Hellholes' and 'Beautiful Places': How Trump Describes the U.S., N.Y. TIMES (Nov. 1, 2024), <https://www.nytimes.com/interactive/2024/11/02/us/politics/trump-places-quotes.html> (on file with the Oklahoma City University Law Review).

25. Statement on Immigration Enforcement Actions, 2025 DAILY COMP. PRES. DOC. 695 (June 15, 2025), <https://www.govinfo.gov/content/pkg/DCPD-202500695/html/DCPD-202500695.htm> [<https://perma.cc/2YTG-EQWH>].

26. See Mitchell Armentrout, *Chicago Braces for Trump's Latest Threat to Cut 'All Federal Funding' to Sanctuary Cities*, CHI. SUN-TIMES (Apr. 10, 2025), <https://chicago.suntimes.com/city-hall/2025/04/10/trump-chicago-federal-funding-threat-sanctuary-cities> [<https://perma.cc/MV4L-E3ZT>]; Statement on Immigration Enforcement Actions, *supra* note 25; Exec. Order No. 14,159, 90 Fed. Reg. 8443 (Jan. 20, 2025).

27. CONN, *supra* note 7, at 15 (citing REV. JOSIAH STRONG, OUR COUNTRY: ITS POSSIBLE FUTURE AND ITS PRESENT CRISIS 128-29, 140 (1885)).

with the corruption of East Coast cities and bemoaning the vulnerability of small-town residents to the predations of the big banks in the big cities.²⁸ Henry Ford, in his reactionary newspaper, *The Dearborn Independent*, argued that cities could not be saved; they had to be abandoned.²⁹

On this view, American cities are irredeemable—threats to themselves, their residents, and to the country. Virulent anti-urbanism is the dominant mode in Washington, D.C., today; it is representative of the rise of a broader political anti-urbanism characteristic of the early 21st century. But it partakes of an American anti-urban tradition that is much more long-standing.

The Constitutional Foundations of City Fear

The anti-urban tradition is not just rhetorical; it has been embedded in American constitutional law and practice. Americans generally do not like cities, not only as a matter of politics or urban design. They have also historically put into place constitutional structures that disfavor cities and are meant to reduce city power, especially in the states. Some of those constitutional structures have been revised over time, but the constitutional foundations of city fear continue to be influential.

Malapportioned State Constitutions

Consider first state constitutions, which until the mid-1960s regularly included provisions meant to limit the voting power of urban constituencies. The generally accepted view was that cities were too large and too powerful to be permitted to enjoy full representation in the state legislature.³⁰ And so, state constitutions put ceilings on how many

28. See Edward S. Shapiro, *Decentralist Intellectuals and the New Deal*, 58 J. AM. HIST. 938, 943 (1972).

29. HENRY FORD, FORD IDEALS 156-57 (1922). (“[T]he ultimate solution will be the abolition of the City, its abandonment as a blunder.”) (compiling all editorials written by Henry Ford for his wholly-owned newspaper, *The Dearborn Independent*).

30. STEPHEN ANSOLABEHRE & JAMES M. SNYDER JR., THE END OF INEQUALITY 58-59 (Aaron Javiskas ed., 1st ed. 2008) (“In almost every State which has had to deal with the problem of a great city within its border, and the relations of that city to an agricultural community . . . that the small and widely scattered communities, with their feeble power comparatively, because of their division, shall, by the distribution of representation, be put upon an even footing, so far as may be, with the concentrated power of the great cities. Otherwise we never can have a truly representative and a truly republican government.”); see also Arthur L. Goldberg, *The Statistics of Malapportionment*, 72 YALE L.J. 90, 92 n.11 (1962); Lashley G. Harvey, *Reapportionments of State Legislatures – Legal Requirements*,

representatives could come from any one county, no matter the populations, or states adopted county-based voting systems, giving equal voting weight to rural, less populated counties.³¹ As late as 1950, Nevada adopted constitutional restrictions that limited the number of representatives who could be elected from the growing cities of Reno and Las Vegas.³² The purpose was to dilute urban voting strength and protect rural interests.³³

Malapportioned state legislatures that underrepresented urban residents remained a problem until the U.S. Supreme Court decided its “one person, one vote” cases in the early 1960s.³⁴ After that, gerrymandering started to do the work that malapportionment did previously. This is evident in the U.S. House where, despite outpolling Republicans nationally and in many states, Democrats still tend to fall well short of legislative majorities. Democrats are heavily represented in urban areas, and those areas are relatively easy to isolate, either by chopping them up and absorbing them into larger Republican-controlled districts, or by concentrating them into a few, safe Democratic districts.³⁵

Ripper Legislation

Next, consider “ripper legislation.” In the late nineteenth and early part of the twentieth centuries, state legislatures regularly adopted legislation that targeted cities and their leaders. Rippers were special state legislative acts that applied to specific cities or a class of cities. Through ripper bills, state legislatures forced cities to spend money, impose taxes, and build unnecessary infrastructure. Or state legislatures would simply take over

17 L. & CONTEMP. PROBS. 364, 368-70 (1952); Robert C. Brooks, *Metropolitan Free Cities*, 30 POL. SCI. Q. 222, 227-28 (1915). For a thorough discussion of moiety in Michigan, see Elizabeth Durfee, *Apportionment of Representation in the Legislature: A Study of State Constitutions*, 43 MICH. L. REV. 1091, 1098-99, (1945).

31. ANSOLABEHERE & SNYDER, *supra* note 30, at 46-47. For a list of state constitutional provisions, see Elizabeth Durfee, *supra* note 30, 1104-12.

32. ANSOLABEHERE & SNYDER, *supra* note 30, at 59.

33. *Id.* at 58-59.

34. Gray v. Sanders, 372 U.S. 368, 381 (1963) (“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote.”); Reynolds v. Sims, 377 U.S. 533, 588 (1964) (Clark, J. concurring) (applying “one person, one vote” to state legislatures).

35. David A. Lieb, *Analysis Indicates Partisan Gerrymandering Has Benefitted GOP*, U.S. NEWS (June 25, 2017), <https://www.usnews.com/news/best-states/virginia/articles/2017-06-25/ap-analysis-shows-how-gerrymandering-benefitted-gop-in-2016> [https://perma.cc/9PEN-9SWZ].

traditional municipal functions, replacing locally elected officials with state appointed ones.³⁶ The famous Pittsburgh Ripper essentially abolished the office of the mayor of that city and replaced him with a state appointee.³⁷

Ripper bills allowed state legislatures to take over cities or govern those cities through legislative fiat. Industrializing cities were ripe pickings for state political machines, for they were filled with voters, required lots of new infrastructure, and were dispensing franchises to railroads, utilities, and other entities to provide services to a growing population. The cities invited corruption, locally and statewide. Late nineteenth century rippers varied in their severity, though many were aimed at eliminating municipally run departments and replacing them with state appointed ones. They were also motivated by political party competition or by competition between state and municipal political machines vying for control over city offices, monies, and affairs.³⁸ And they effectively cut off local autonomy at its knees.

Hunter v. Pittsburgh and Dillon's Rule

Rippers arrived when state supremacy was being established as a constitutional rule. In *Hunter v. Pittsburgh*, decided in 1907, the U.S. Supreme Court declared that cities had no constitutional right to resist state impositions and interventions.³⁹ “Municipal corporations are political subdivisions of the State,” wrote Justice William Moody, in the opinion’s most well-known passage, “created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them.”⁴⁰ Moreover “[t]he number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State.”⁴¹ The state legislature could do anything it wished to cities, including abolish them altogether, and constitutional law provided no restraint.

36. *Ripper Act*, BLACK’S LAW DICTIONARY (12th ed. 2024).

37. See Clinton Rogers Woodruff, *The Pennsylvania Rippers*, 6 MUN. AFF. 212, 214-15 (1902); J.R. Schultz, *Ripper Bills*, 12 AM. SPEECH 319, 319 (1937).

38. See DAVID R. BERMAN, *LOCAL GOVERNMENT AND THE STATES: AUTONOMY, POLITICS, AND POLICY* 46 (2nd ed. 2020); Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island As a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775, 805 (1992).

39. *Hunter v. Pittsburgh*, 207 U.S. 161, 179 (1907).

40. *Id.* at 178.

41. *Id.* at 178-79.

Also in this period, most states adopted what is known as Dillon's Rule, named for judge, legal scholar, and treatise writer John Dillon. Dillon's Rule holds that cities only exercise the powers specifically allocated to them by the state legislature.⁴² *Hunter v. Pittsburgh* and Dillon's Rule together established the principle of state legislative supremacy over cities and rejected any countervailing legal theory asserting that urban citizens might enjoy a right of local self-government. That remains the case to this day, despite some modifications.

Why Cities Lose

The legacy attacks on city power—malapportionment, rippers, Dillon's Rule—have been modified to some degree in some states. Yet the basic theory of state legislative supremacy has not. Malapportioned state legislatures are no longer constitutional under the Supreme Court's "one-person, one-vote" precedents, but gerrymandering has replaced limits on city representation as a way to dilute the urban vote.⁴³ Dillon's Rule has been replaced with "home rule" in many states. Home rule permits cities to exercise some powers even if not specifically authorized by the state. But current "home rule" doctrines in the states are generally weak: they do not usually prevent states from overruling local laws.⁴⁴ State legislative supremacy is still the rule—state legislatures exercise almost unlimited power over their cities. For instance, most states sharply limit cities' revenue raising capacity, placing caps on local taxes or requiring permission from the legislature to raise taxes or impose new taxes.⁴⁵ City

42. *City of Clinton v. Cedar Rapids & Mo. River R.R.*, 24 Iowa 455, 475 (1868).

43. See Paul A. Diller, *Reorienting Home Rule: Part 1—The Urban Disadvantage in National and State Lawmaking*, 77 LA. L. REV. 287, 326–27 (2016); see also ANSOLABEHERE & SNYDER, *supra* note 30, at 217; Nate Cohn, *Debate Is Over: Gerrymandering Is Crucial to G.O.P.'s Hold on House*, N.Y. TIMES (Aug. 2, 2017), <https://www.nytimes.com/2017/08/02/upshot/its-time-to-end-the-old-debate-over-gerrymandering.html> (on file with Oklahoma City University Law Review) (noting that gerrymandering likely cost the Democrats seven to twelve congressional seats in 2012); Brief of Int'l Mun. Laws. Ass'n et al. as Amici Curiae in Support of Appellees, *Gill v. Whitford*, 585 U.S. 48 (2017) (No. 16-1161).

44. See Richard Briffault, *Foreword: The Disfavored Constitution: State Fiscal Limits and State Constitutional Law*, 34 RUTGERS L.J. 907, 927-32, 950-52 (2003); Richard C. Schragger, *Democracy and Debt*, 121 YALE L.J. 860, 866 (2012). For a discussion of the revival of federalism as a force on Supreme Court jurisprudence, see Lynn A. Baker & Ernest A. Young, *Federalism and the Double Standard of Judicial Review*, 51 DUKE L.J. 75, 86 (2001).

45. Bert Waisanen, *State Tax and Expenditure Limits—2008*, NAT'L CONF. OF STATE LEGISLATURES (2008),

powerlessness is intentional, made effective by state and federal institutions that continue to be rooted in city fear.

There are also structural reasons for why cities tend to lose in the political process. As political scientist Jonathan Rodden has argued, cities lose in our system of government because Democratic voters tend to be concentrated in cities, while Republican voters are more widely distributed.⁴⁶ This means that Democratic votes are often “wasted”; Republicans waste fewer votes because their base is more evenly distributed across the state. Gerrymandering simply exacerbates the problem; it is used to enhance non-city representation in state legislatures. Indeed, in many states, one political party can ignore the cities altogether so long as they obtain the votes of the suburbs.⁴⁷ Moreover, it is commonly understood that the urban underrepresentation is exacerbated by the design of the U.S. Congress, which favors rural states. The Senate provides rural states with the same representation as urban ones.⁴⁸

The states’ primacy in the U.S. constitutional order invariably undercuts municipal power. State legislators compete with local officials for credit and to avoid blame. That means states often intervene to block cities from acting but do not necessarily assume baseline municipal responsibilities. Cities thus may have significant responsibilities but insufficient resources to meet them. At the same time, cities exercise little influence over state and national officials, who are responsive to somewhat different local electorates. The result is often a mismatch between regulatory demands and regulatory scale.

More importantly, the general rule of state supremacy (anchored by the decision in *Hunter v. Pittsburgh*) still dominates. In our constitutional system, cities are understood as administrative units of their states—not as polities in their own right. And that means state legislatures can determine if cities can exist, what powers they exercise, and dictate the limits of their authority, overriding almost anything that cities do that is not the

<https://web.archive.org/web/20090615004456/https://www.ncsl.org/Default.aspx?Tabid=12633> (on file with the Oklahoma City University Law Review); RICHARD BRIFFAULT & LAURIE REYNOLDS, *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW* 699–700 (7th ed. 2009).

46. See JONATHAN RODDEN, *WHY CITIES LOSE: THE ROOTS OF THE URBAN-RURAL POLITICAL DIVIDE* 3 (2019); see also Miriam Seifter, *Counter-majoritarian Legislatures*, 121 COLUM. L. REV. 1733, 1762–63 (2021).

47. See Paul Diller, *The Political Process of Preemption*, 54 U. RICH. L. REV. 343, 381 (2020) (arguing that extreme gerrymandering results in state legislatures that are anti-majoritarian).

48. Paul A. Diller, *supra* note 43, at 291, 322.

legislatures' liking.⁴⁹

Preempting Cities

This state hostility to municipal laws—a crisis of preemption—has become an avalanche in recent years. Over the last decade or so, there has been an explosion in state overrides of city laws. One could call this the “return of the Rippers.” As noted, state supremacy is a political and legal fact in the United States, despite some efforts in the last one hundred years to protect a sphere of city authority under “home rule” grants. But as I have mentioned, in most cases home rule grants do not prevent state legislatures (and sometimes governors) from “preempting” local laws. In this context, preemption describes when state law overrides a municipal law. Preemption is at the core of the current legal attack on American cities.

There are many different forms of preemption. The most common form is specific to a particular industry. For example, preemptive state laws might prevent the local regulation of firearms, tobacco, municipal broadband, ride-sharing services, plastic bags, single-use plastics or Styrofoam, pesticides, oil and gas, soft drinks, or predatory lending.⁵⁰ The Oklahoma legislature, for example, has prohibited local governments from imposing fees on single-use plastics;⁵¹ has preempted cities from amending local building codes to reduce the use of natural gas or certain refrigerants;⁵² and preempted localities from implementing certain energy-saving measures in government buildings.⁵³

Some preemptive laws are more general. For example, when cities attempted to adopt minimum wage laws, numerous states stepped in to disallow local wage regulation.⁵⁴ Local labor laws are often a target of

49. For evidence of increasing state–city conflict, see Katherine Levine Einstein & David M. Glick, *Cities in American Federalism: Evidence on State–Local Government Conflict from a Survey of Mayors*, 47 PUBLIUS 599 (2017).

50. See Schragger, *supra* note 2, 1170-74; Cal. Assemb. B. 1838, 2018 Gen. Assemb., Reg. Sess. (Cal. 2018) (preempting all local taxes on a range of grocery items until 2031 in response to the City of Berkeley’s attempt to tax sugary soft drinks as a public health measure); Jonathan L. Entin & Shadya Y. Yazback, *City Government and Predatory Lending*, 34 FORDHAM URB. L. J. 115-123 (2007) (discussing state preemption of local predatory lending laws in New York, California, and Ohio).

51. S.B. 1001, 57th Leg., 1st Reg. Sess. (Okla. 2019).

52. H.B. 3619, 57th Leg., 2d Reg. Sess. (Okla. 2020).

53. H.B. 2037, 60th Leg., 1st Reg. Sess. (Okla. 2025).

54. See *Local Minimum Wage Laws*, LAW ATLAS (Jan. 16, 2026), <https://lawatlas.org/datasets/local-minimum-wage-laws> [https://perma.cc/6QM6-NRRA] (showing that 19 of the 40 largest cities in the United States are in states that preempt

state preemption. Efforts by cities to adopt family medical leave, paid sick leave, local wage theft ordinances, or local hiring ordinances, have all been met by preemptive state overrides.⁵⁵ Equitable housing policies are also regularly preempted: tenant protections; eviction moratoria; regulation of short-term rentals; rent regulations; and inclusionary zoning are some of the examples.⁵⁶ The COVID-19 pandemic prompted a wave of public health-related general preemption laws at the state level, including preempting local masking and stay-at-home orders.⁵⁷ Another example is public safety. States have barred cities from adopting citizen review boards or from lowering police budgets.⁵⁸ In Oklahoma, the legislature adopted a statute that requires a public vote before a city can reduce its police budget, to the extent that funding was derived from tax levies specifically targeted to funding law enforcement activities.⁵⁹

State preemption efforts have also become punitive. States have threatened city leaders with removal if they advocate for certain measures or fail to excise or amend local ordinances. If cities adopt gun control measures, refuse to cooperate with federal immigration authorities, or if they reduce or modify the budgets for local police, they may face punitive action. A number of states have included penalty provisions in their firearm preemption statutes, in some cases authorizing private parties to bring civil actions against local officials for violations.⁶⁰ Relying on a Florida statute with such a provision, two firearms-rights groups sued Tallahassee, its mayor, and three city commissioners in their individual

localities from regulating minimum wage).

55. *Id.*; see also *State Preemption Laws*, LAW ATLAS (June 24, 2025), <https://lawatlas.org/datasets/preemption-project> [<https://perma.cc/U4YE-T77A>] (showing that as of December 31, 2024, 28 states expressly preempt local mandatory paid leave).

56. *State Preemption of Local Equitable Housing Policies*, LSSC (June 5, 2025), <https://www.supportdemocracy.org/equitablehousing/> [<https://perma.cc/RP8L-GHUC>].

57. Kim Haddow et al., *Preemption, Public Health, and Equity in the Time of COVID-19*, in ASSESSING LEGAL RESPONSES TO COVID-19 71, 73 (2020), https://static1.squarespace.com/static/5956e16e6b8f5b8c45f1c216/t/5f36c0702e9042616f13505c/1597423914220/COVID19PolicyPlaybook_Aug2020.pdf?blm_aid=2077754.

58. *Abusive Preemption in 2025 State Legislative Sessions: Laws Erode Local Authority on Immigration, Higher Education, Public Health, and More*, LSSC (June 5, 2025), <https://www.supportdemocracy.org/the-latest/abusive-preemption-in-2025-state-legislative-sessions-laws-erode-local-authority-on-immigration-higher-education-public-health-and-more> [<https://perma.cc/CA3M-QVJM>].

59. S.B. 825, 58th Leg., 1st Reg. Sess. (Okla. 2021) (codified as amended at OKLA. STAT. tit. 68, § 2701).

60. *State Preemption Laws*, *supra* note 55 (showing that as of December 31, 2024, 45 states expressly preempt local firearm regulation, and of that group, only Virginia allows private parties to bring civil actions to enforce preemption of local firearm law).

capacities regarding two preempted ordinances—passed in 1957 and 1984, respectively—that prohibited the discharge of firearms in certain areas or on city properties.⁶¹ The city had not enforced either provision for years.

Consider also Orange County, Florida, Mayor Jerry Demings. In August 2025, Demings announced that he was signing a cooperation agreement with U.S. Immigration and Customs Enforcement authorities under “protest and extreme duress” because he and the six Orange County commissioners were threatened with removal from office by Florida’s attorney general if they did not do so.⁶² The mayor and the commissioners were opposed to allowing county jail officials to assist ICE in the transfer of detainees to federal facilities; under federal law, they were not required to do so.⁶³ But Florida law gives the state’s attorney general the power to remove local officials that fail to cooperate with immigration authorities.⁶⁴ The coerced “agreement,” sought by federal immigration authorities and supported by aligned state executive officials, is an extreme but not unrepresentative example of current attacks on American city government.

More states are seeking to preempt not just specific municipal regulations but whole areas of regulation too. Some commentators have called this “death star” preemption.⁶⁵ Texas has introduced preemptive legislation that eliminates local authority along almost every dimension, essentially eviscerating local governments’ regulatory authority in agriculture, business and commerce, finance, insurance, labor, natural resources, occupations, or property, unless specifically authorized.⁶⁶ In

61. Kriston Capps, *A Florida Mayor Beat the Gun Lobby but Battle With the State Still Looms*, BLOOMBERG (Feb. 7, 2017), <https://www.bloomberg.com/news/articles/2017-02-07/tallahassee-mayor-wins-appeal-against-florida-gun-lobby> (on file with the Oklahoma University Law Review).

62. Mitch Perry, *Under Duress, Orange County Mayor Signs ICE Addendum to Ward Off Threat of Removal From Office*, FLA. PHOENIX (Aug. 1, 2025), <https://floridaphoenix.com/2025/08/01/under-duress-orange-county-mayor-signs-ice-addendum-to-ward-off-threat-of-removal-from-office/> (on file with the Oklahoma City University Law Review).

63. *Id.*

64. For the provision requiring local governments to enter into agreements with federal immigration enforcement, see FLA. STAT. tit. XLVII, § 908.11 (2025). For the enforcement and removal provision, see FLA. STAT. tit. XLVII, § 908.107 (2025).

65. RICHARD BRIFFAULT ET AL., THE STATE STRIKES BACK: DEATH STAR 2.0 PREEMPTION 1 (2023), <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/6551bf1bbd4f391e4e22f513/1699856159185/LSSC-WhitePaper-DeathStar20.pdf> [https://perma.cc/HQU2-64X2].

66. H.B. 2127, 88th Leg., Reg. Sess. (Tex. 2023).

Tennessee, House Bill 1097 allows any state legislator to challenge a local provision by filing a complaint with the attorney general.⁶⁷ If the attorney general finds that a local law is preempted, the local government must remove it or face the loss of state funding.⁶⁸ This is modeled on an Arizona law that threatens the loss of shared state money if a local ordinance is found to be in conflict with state law or the Arizona constitution.⁶⁹

Blanket preemption laws are not intended to replace local regulation with state regulation, which might be desirable in certain circumstances. Instead, blanket preemptive laws are simply adopted to block any regulation, whatever it is. So-called “deregulatory preemption,”⁷⁰ operates by blocking local regulations for no particular reason at all.⁷¹ The Florida legislature, for example, has adopted statutes that disallow the local regulation of “smoking, fire sprinklers, nutrition and food policy, the sale or use of polystyrene products, hoisting equipment, beekeeping, fuel terminals, wireless alarm systems, paid sick leave and other employment benefits, moving companies, biomedical waste in city landfills, plastic bags, and milk and frozen desserts.”⁷² Some states have also adopted blanket preemption laws that bar localities from regulating any “business, profession, and occupation unless the regulation is expressly authorized by general law,”⁷³ or preempting all matters relating to “commerce, trade, and labor.”⁷⁴ These statutes do not advance specific state regulatory interests, but merely deny localities certain regulatory powers.

States are the leaders in preempting local laws; preemptive laws have become an avalanche in the last decade. The Local Solutions Support Center, which tracks “abusive preemption,” reports that over 800 preemptive bills across forty-eight states were filed in the 2025 legislative session alone.⁷⁵ Cities now employ lobbyists during each legislative

67. See H.B. 1097, 114th Gen. Assemb., Reg. Sess. (Tenn. 2025).

68. *Id.* § 1.

69. *Id.* (citing S.B. 1487, 52nd Leg., Second Reg. Sess. (Ariz. 2016), *invalidated by*, City of Phoenix v. State, No. CV2021-012955, 2021 WL 7279673, at *2-3 (Ariz. Super. Ct. Nov. 3, 2021)).

70. Schragger, *supra* note 2, at 1182. See Richard Briffault, *Preemption: The Continuing Challenge*, 36 J. LAND USE & ENV'T. L. 251, 260 (2021).

71. Schragger, *supra* note 2, at 1182.

72. *Id.* at 1182-83.

73. *Id.* at 1183 (citing H.B. 17, 25th Leg., Commerce Comm. (Fla. 2017) (bill rejected)).

74. *Id.* (citing S.B. 1158, 25th Leg., Comm. On Commerce & Tourism (Fla. 2017) (bill rejected)). For more information on the bill, see FLA. SENATE, <https://www.flsenate.gov/Session/Bill/2017/01158> [https://perma.cc/UFK6-6EDC].

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session simply to prevent preemptive laws from being adopted. But they have been slow to realize the threat.

The federal government has also targeted cities for punitive action, as recent events have shown. The president's executive orders threaten cities with withdrawal of federal funds if they pursue immigrant protective policies—this is the attack on “sanctuary cities.”⁷⁶ A more dramatic example has been the deployment of national guard troops in American cities, in Washington, D.C.; Los Angeles; Memphis; and Portland, with threats for more deployments, ostensibly to quell a public safety crisis and enforce immigration laws. The Trump administration flooded Minneapolis with border patrol and ICE agents; in the span of a few weeks, two protestors were shot to death in altercations with federal agents. Video evidence suggests that the killings were unwarranted. The targeting of American cities reflects a reactionary anti-urbanism that has become hysterical.

Federal intervention and state preemption, coupled with threats to cut funding for cities, do not represent some considered division of labor between the federal, state, and local governments. Instead, these attacks on American cities are simply a raw exercise of power, which purposefully ignores the will of the residents of local places. Cities are being squeezed by state officials, contrary to the theory that democracy operates best when it is closest to the people. In this way, preemption represents what commentators have argued is an anti-democratic turn in state political institutions. Professor Jacob Grumbach, for instance, has observed that states are becoming “laboratories of democratic backsliding.”⁷⁷ By all accounts, the executive branch of the federal government is also rapidly moving in an authoritarian direction.

Cities' underlying structural weakness makes them vulnerable. Through sorting and gerrymandering, cities remain underrepresented in state legislatures. State legislatures are dominated by anti-urban interests even when statewide majorities are not so skewed. Indeed, the rhetoric of states' rights is being used not to protect and defend local control but instead to assert the states' power over cities.⁷⁸ So, too, corporate and

Preemption is Fueling Destructive & Discriminatory Policy Trends, LSSC (Aug. 13, 2025), <https://www.supportdemocracy.org/the-latest/2025-legislative-session-overview-blueprint-for-autocracy-how-state-preemption-is-fueling-destructive-amp-discriminatory-policy-trends> [https://perma.cc/GQV6-ST2L].

76. Erica Bryant, *What Is a Sanctuary City*, VERA (Apr. 22, 2025), <https://www.vera.org/news/what-is-a-sanctuary-city> [https://perma.cc/54ZG-WBRH].

77. JACOB GRUMBACH, *LABORATORIES AGAINST DEMOCRACY* 151 (2022).

78. *Id.* at 152-54.

industry interests are exercising increased, and some would say undue, influence in state legislatures. Many state legislatures are part-time, and legislators welcome off-the-shelf model statutes written by interest groups. Non-profits and public protecting interest groups are less well established at the state level. And because of declining state and local media coverage, state legislation is often less visible and more opaque to the general public. This allows well-organized corporate interests to exercise significant influence in the state legislature.⁷⁹

Finally, states are getting good at voter suppression, especially of the urban vote. Not all states, for sure, but many states have adopted rules that limit voter access, including tightening voter ID and mail-in ballot requirements and purging voter rolls.⁸⁰ The notion that states are more democratically responsive than local governments is hard to square with this emerging reality. Instead of presuming that local lawmaking is a departure from the baseline of state legislative accountability, courts should adopt the reverse presumption and treat local-invading state legislative acts as presumptively anti-democratic unless justified.

Deregulating Development

Preemption is sometimes considered to be a red state-blue city phenomenon: often involving Republican-dominated state legislatures overruling Democratic-dominated cities. As I have noted, because of political sorting, cities tend to lean blue in the United States even when legislatures might be solidly red. State preemption of progressive municipal regulation is a result.

79. ALEXANDER HERTEL-FERNANDEZ, *STATE CAPTURE: HOW CONSERVATIVE ACTIVISTS, BIG BUSINESSES, AND WEALTHY DONORS RESHAPED THE AMERICAN STATES – AND THE NATION* 2-5 (2019).

80. See *Voting Laws Roundup: May 2022*, BRENNAN CTR. FOR JUST., (May 26, 2022), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2022> (“As of May 4, at least 34 bills with restrictive provisions are moving through 11 state legislatures. Overall, lawmakers in 39 states have considered at least 393 restrictive bills for the 2022 legislative session. Since the beginning of 2021, 18 states have passed 34 restrictive voting laws”); *Bill Search*, VOTING RTS. LAB, <https://tracker.votingrightslab.org/pending/search/?number=6879548724614927> [<https://perma.cc/7V33-DAFE>] (last visited Mar. 24, 2026); *Bill Search*, VOTING RTS. LAB, <https://tracker.votingrightslab.org/pending/search/?number=8606303947907962> [<https://perma.cc/2UC2-49AN>] (last visited Mar. 24, 2026); see also Alice Clapman, *Attacks on Voter Rolls and How to Protect Them*, BRENNAN CTR. FOR JUST. (Mar. 11, 2024), <https://www.brennancenter.org/our-work/research-reports/attacks-voter-rolls-and-how-protect-them> [<https://perma.cc/S9D2-KL6C>].

But preemption is not exclusive to red states. For example, New York City's Democratic mayor is often undercut by, or in conflict with, New York's Democratic governor or with New York's Democratic legislature. Blue state preemption is also a phenomenon. Here, I want to talk about a very prominent area in which preemption is rampant: state land use reform.

Generally, local governments in the United States exercise substantial control over their land development processes, through zoning mainly, but also through other land use ordinances; land use regulation and zoning have long been traditional powers of local governments.⁸¹ In response to the housing affordability crisis in the United States, however, numerous states are pursuing state level land use reform.⁸² California is the largest and most important state to do so; it has adopted over 100 bills that override local zoning and environmental laws.⁸³ These laws represent a success of the YIMBY movement ("Yes In My Backyard"), which advocates deregulating local land use to more easily permit land owners and developers to build housing—especially apartments and multi-family housing. The YIMBY movement has determined that cities cannot be trusted to apply their land use regulations appropriately. Their claim is that city residents will act as NIMBYs ("Not in My Backyard"), disfavoring development that is badly needed.

State level land use preemption is justified for all the usual reasons: cities will not do the right thing; local residents are selfish; or land use is a regional or statewide problem. We have seen these arguments before. And, for many reasons, we should be wary of applying them in this context.

First, cities are acting to address the affordable housing crisis. Pro-housing forces exercise power in cities and the list of local governments

81. See, e.g., Richard C. Schragger, *Federalism, Metropolitanism, and the Problem of States*, 105 VA. L. REV. 1537, 1545-47 (2019); ALAN EHRENHALT, *THE GREAT INVERSION AND THE FUTURE OF THE AMERICAN CITY* 3-4 (2013).

82. Richard Florida & Benjamin Schneider, *The Global Housing Crisis*, BLOOMBERG CITYLAB (Apr. 11, 2018), <https://www.bloomberg.com/news/articles/2018-04-11/the-housing-crisis-extends-far-beyond-superstar-cities> [<https://perma.cc/RAG2-MBR2>].

83. BILL FULTON ET. AL., *NEW PATHWAYS TO ENCOURAGE HOUSING PRODUCTION: A REVIEW OF CALIFORNIA'S RECENT HOUSING LEGISLATION* 5 (2023). On the efficacy of California's efforts to upzone and increase housing density, see David Garcia & Bill Fulton, *California Has Passed More Than 100 New Housing Laws Since 2016. Are They Working?*, L.A. TIMES (May 5, 2023), <https://www.latimes.com/opinion/story/2023-05-05/california-housing-shortage-crisis-laws-reforms-rents-homes-homeless> [<https://perma.cc/6QK5-RC65>].

that have reformed their zoning laws is long and growing.⁸⁴ Second, the centralization of land use in the states or the federal government does not have a great track record. The state and federal governments have historically pushed projects that encourage displacement, like highway building or urban renewal.⁸⁵ Political forces in the state legislature tend to favor large-scale developers and underrepresent the interests of vulnerable (and low-income) communities. Moreover, state and national politics are equally, if not more, afflicted by an imbalance between those who have the means to exercise influence and those who do not.⁸⁶ It is a mistake to view state legislatures as majoritarian correctives to local parochialism; when in fact, state legislatures are in many ways, as Professor Miriam Seifter observes, the “least majoritarian branch.”⁸⁷

Third, deregulation is not the most effective solution to housing affordability. In very desirable and expensive cities, the housing market mostly fails to provide affordable housing (and never provides actual low-income housing). There is mixed evidence on whether local zoning restrictions are a barrier to building—other factors, like construction costs and interest rates, may be more important.⁸⁸ Additionally, evidence

84. See, e.g., Lydia Lo, Annie Rosenow, & Yonah Freemark, *Advancing Pro-Housing Land-Use Policy at the State Level*, URB. INST. (July 25, 2025), <https://www.urban.org/research/publication/advancing-pro-housing-land-use-policy-statelevel#:~:text=Why%20This%20Matters,ultimately%20pass%20pro%2Dhousing%20bills> (on file with the Oklahoma City University Law Review); Philip Kiefer, *Here Comes the Neighborhood*, GRIST (May 21, 2019), <https://grist.org/article/seattle-zoning-density-minneapolis-2040/> [<https://perma.cc/7RM6-6N7J>] (describing recent efforts to loosen single-family zoning in Seattle and Minneapolis).

85. See Wendell E. Pritchett, *Beyond Kelo: Thinking About Urban Development in the 21st Century*, 22 GA. ST. U.L. REV. 895, 916-17 (2016); Pritchett, *supra* note 14, at 13-19 (2003); Michelle D. Layser, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and a Path Toward Community Oriented Reform*, 2019 WISC. L. REV. 745, 771-75, 781-84 (2019) (highlighting the role of place-based incentives in gentrification).

86. On plutocratic governance in states, see Hertel-Fernandez, *supra* note 79, at 10-15. See generally RODDEN, *supra* note 46, at 2-3. For a recent treatment, see Seifter, *supra* note 46, at 1756. (“[M]any state legislatures either are under minority party control or afford bare majority parties significant (even supermajority) cushions. Both of these distortions are on prominent display in many states today, where patterns of geographic settlement and deliberate gerrymandering exacerbate the inherent skews of districted elections.”).

87. Seifter, *supra* note 46, at 1755-56, 1762.

88. Andrés Rodríguez-Pose & Michael Storper, *Housing, Urban Growth and Inequalities: The Limits to Deregulation and Upzoning in Reducing Economic and Spatial Inequality*, 57 URB. STUDS. 223, 240 (2020); see Jared Brey, *Housing in Brief: Rents Rise for the Poor, Drop for the Rich*, NEXT CITY (Mar. 26, 2021), <https://nextcity.org/urbanist-news/housing-in-brief-rents-rise-for-the-poor-drop-for-the-rich> [<https://perma.cc/9VGR-8LEU>]. For evidence, see Elliot Anenberg & Edward Kung, *Can More Housing Supply*

suggests that increasing market-rate housing in high-demand locations will not appreciably reduce rents except for already high-end earners.⁸⁹ Scholars and policymakers are currently arguing over whether zoning reform will lead to more building, and thus more supply, which will then lead to lower housing prices in high-demand locations.⁹⁰ But the jury is still very much out.

Finally, when states remove land use authority from local governments, they remove an important form of leverage that city residents can use when faced with displacement pressure. Land use is the way that cities control the flow of development dollars into their jurisdiction. Cities can place conditions on development that can be used to assist their communities and neighborhoods. Without leverage over land use, however, cities lose an important tool for controlling neighborhood change. Certainly, some residents of exclusive suburbs and exclusive city neighborhoods can, and do, use zoning to prevent the construction of affordable housing.⁹¹ But land use is also one of the last remaining tools

Solve the Affordability Crisis? Evidence from a Neighborhood Choice Model, 80 REG'L SCI. & URB. ECON. 1, 1-2, 4 (2020); Christina Plerhoples Stacy et al., *Land-use Reforms and Housing Costs: Does Allowing for Increased Density Lead to Greater Affordability?*, 60 URB. STUDS. 2919 (2023); and Raven Molloy et al., *Housing Supply and Affordability: Evidence from Rents, Housing Consumption, and Household Location*, 129 J. URB. ECON. 1 (2023).

89. Rodríguez-Pose & Storper, *supra* note 88; see Richard Schragger, *The Perils of Land Use Deregulation*, 170 U. PA. L. REV. 125, 163-64, 170-71 (2021); MIRIAM ZUK & KAREN CHAPPLE, HOUSING PRODUCTION, FILTERING AND DISPLACEMENT: UNTANGLING THE RELATIONSHIPS 4 (2016), https://www.urbandisplacement.org/wp-content/uploads/2021/08/udp_research_brief_052316.pdf [https://perma.cc/VU7E-GTEF].

90. See, e.g., Yonah Freemark, *Zoning Change: Upzonings, Downzonings, and Their Impacts on Residential Construction, Housing Costs, and Neighborhood Demographics*, 38 J. PLAN. LIT. 548, 551 (2023); Cameron Murray & Tim Helm, *The Auckland Myth: There is No Evidence that Upzoning Increased Housing Construction*, FRESH ECON. THINKING (June 4, 2023), <https://www.fresheconomicthinking.com/p/the-auckland-myth-there-is-no-evidence>; cf. Jacob Krimmel & Betty Wang, *Upzoning with Strings Attached: Evidence from Seattle's Affordable Housing Mandate*, 25 CITYSCAPE 257, 270 (2021) (evaluating the mixed impacts of local regulation that simultaneously "upzones" to allow for more development and requires developers to meet affordable housing requirements).

91. For critiques predating *Mount Laurel*, see Robert L. Lineberry, *Mandating Urban Equality: The Distribution of Municipal Public Services*, 53 TEX. L. REV. 26, 30 (1974); Lawrence Gene Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767, 781-82, 798-99 (1969); and Editors, *Regional Impact of Zoning: A Suggested Approach*, 114 U. PA. L. REV. 1251, 1256-57 (1966). For critiques after *Mount Laurel*, see Richard Briffault, *Our Localism: Part II – Localism and Legal Theory*, 90 COLUM. L. REV. 346, 419 (1990); and Peter Byrne, *Are the Suburbs Unconstitutional?*, 85 GEO. L.J. 2265, 2270 (1997).

that cities have to control the influx of capital that can cause gentrification.

It is important to note that some of the main tropes of anti-urbanism are being rehearsed by the YIMBY movement: cities are bad at governing; states must override their selfish practices; deregulation will unleash the market. Another common trope, now heard in some YIMBY circles, is that people should be encouraged to move away from unproductive cities and to more productive ones—that’s where housing needs to be built. But this suggests that there is little reason to invest in declining cities. YIMBYism is mostly about high-demand locations. State land use reform has nothing helpful to say to struggling cities and suburbs—the goal is simply to move more people out of them by making housing elsewhere cheaper. The result is preemptive laws that undermine local land use authority, and, maybe more importantly, a rhetoric and political movement that denigrates cities, which then encourages preemption across the entire range of municipal activities.

Land use is a specific instance of preemption. But it should be understood in the context of the wider use of preemption—which is often implemented to *prevent* affordable housing initiatives, like rent control, inclusionary zoning, or eviction moratoria. States are taking power away from cities across the country in multiple domains, both from the left and the right. But what cities need is the opposite: more power, not less.

Reasserting City Power

All this talk about preemption raises the question: Why *should* cities exercise power? Why give cities decision-making authority at all? Why not just govern mostly through the states or the federal government?

At the outset, there is an easy answer: the centralization of power is too easily abused. In 1835 Alexis de Tocqueville wrote in *Democracy in America*: “Town meetings are to liberty what primary schools are to science . . . They bring it within the people’s reach, they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty. There are more prosaic ways to put this point: democratic self-government requires an engaged citizenry; participation has to be both accessible and meaningful; local knowledge is not always expert but will better reflect local needs and preferences; divided power is better than concentrated power; centralization leads to despotism.

Limiting or eliminating a city’s decision-making authority over a range of policies defeats municipal self-government. It undermines the

city's ability to act as a democratic backstop and political counterweight to autocracy. The attack on American cities is not the only threat to democratic self-government in our age, but it is a central one, indicative of a rising anti-democratic movement in the states and in the nation as a whole.⁹² Our federalist system, premised on states, is supposed to protect against these threats. But our current federal system is out of whack. It favors states but cities are the drivers of the country's economic prosperity and the appropriate sites for decentralized collective action.

As to the former, cities are the economic engines of their regions, states, and of the nation. Even declining cities are often more economically productive than rural and exurban areas. They anchor metropolitan regions and produce the bulk of the U.S. GDP. Our metropolitan areas are more productive than many states.⁹³ But cities' political power has not tracked their economic heft. State governments and the federal government have not ceded regulatory authority to cities and metropolitan regions.

Moreover, cities have enjoyed an urban resurgence over the last decades, coming back from the disinvestment that characterized the second half of the 20th century—not all cities, of course, but many. And yet states are still treating them as if their fiscal problems are of their own making and that they cannot be responsible stewards of their own tax dollars. As in the Progressive Era, state legislators are taking advantage of cities as they become more prosperous, even as they provide limited help when those cities are in decline.

Finally, it has become evident that our current federal system is not tracking the main political cleavage of our time: the urban/rural divide. One of the reasons for having states at all is to provide for a variety of policies; federalism is based on the idea that in a large country not everyone can or should agree. The idea is that states can try out different policies and that people who lose in one state can win in another state.

92. For an analysis of anti-democratic behavior at the state administrative level, see Miriam Seifter, *Further from the People? The Puzzle of State Administration*, 93 N.Y.U. L. REV. 107, 110-11 (2018). See also Seifter, *supra* note 46, at 1735-37.

93. See Jeff Desjardins, *This Stunning 3D Map Shows U.S. Economic Contribution by City*, VISUAL CAPITALIST (Nov. 5, 2015), <http://www.visualcapitalist.com/this-stunning-3d-map-shows-u-s-economic-contribution-by-city/> (on file with the Oklahoma City University Law Review); Jeff Desjardins, *Map: Economic Might by U.S. Metro Area*, VISUAL CAPITALIST (Sept. 26, 2017), <http://www.visualcapitalist.com/map-economic-might-u-s-metro-area/> (on file with the Oklahoma City University Law Review); RICHARD FLORIDA, CHARLOTTA MELLANDER & TIM GULDEN, GLOBAL METROPOLIS: THE ROLE OF CITIES AND METROPOLITAN AREAS IN THE GLOBAL ECONOMY 6 (2009), <https://www.creativeclass.com/rfcgdb/articles/Global%20metropolis.pdf> [<https://perma.cc/W6VC-KU3U>].

Also, federalism is meant to lower the temperature of political disputes. Political losers can win in another jurisdiction thereby ensuring that more citizens' political preferences can be met. Federalism is supposed to be a way to reduce the stakes that would otherwise be high in a winner-take-all political system.

The problem, political scientists are telling us, is that state politics has become nationalized.⁹⁴ State political fights tend to reflect the preoccupations of the two major political parties, with people voting their national interests—not their state or local interests. Nationwide interest groups are using states to forward their interests, not state-specific or local ones.⁹⁵ All politics used to be local; now, all politics is national.

But more importantly, states are not appropriately scaled to the geographical differences that matter to our politics. The urban/rural divide is the primary political cleavage in the U.S. today (even if that's a little simplified).⁹⁶ That divide, however, does not happen between states, rather inside them. Across the country, mainly blue cities are in seas of red rural and red exurban areas. Political difference occurs at the metropolitan scale.⁹⁷

If the most consequential political divide in the country is urban-rural, state-based federalism does not really do the job of ensuring or advancing political diversity. When state legislatures privilege rural, suburban, and exurban areas at the expense of cities, that politics simply exacerbates the rural/urban divide. So for a system of government to provide for an actual

94. DANIEL J. HOPKINS, *THE INCREASINGLY UNITED STATES* 121-23 (2018).

95. PEW RSCH. CTR., *POLITICAL POLARIZATION IN THE AMERICAN PUBLIC* 6 (2014), <http://www.people-press.org/2014/06/12/political-polarization-in-the-american-public/>; see Heather Gerken, *Federalism as the New Nationalism*, 123 YALE L. J. 1889, 1898 (2014); DANIEL J. HOPKINS, *THE INCREASINGLY UNITED STATES* 121-23 (2018); David Schleicher, *Federalism and State Democracy*, 95 TEX. L. REV. 763, 793-94 (2017); Hertel-Fernandez, *supra* note 79 (analyzing the role of conservative organizations in shaping state policy).

96. For analyses of this divide, see RODDEN, *supra* note 46, at 87-91; CRAMER, *supra* note 7, at 5-6, 32-33 (2016); and Lazaro Gamio, *Urban and Rural America are Becoming Increasingly Polarized*, WASH. POST (Nov. 17, 2016), <https://www.washingtonpost.com/graphics/politics/2016-election/urban-rural-vote-swing/?noredirect=on> [<https://perma.cc/M3T7-W8UG>].

97. For discussions on how the flow of capital into cities has shaped our modern political landscape, see *Left in the Lurch: Globalization has Marginalized Many Regions in the Rich World*, ECONOMIST (Oct. 21, 2017), <https://www.economist.com/briefing/2017/10/21/globalisation-has-marginalised-many-regions-in-the-rich-world> (on file with the Oklahoma City University Law Review). See also Michael Cox, *The Rise of Populism and the Crisis of Globalisation: Brexit, Trump, and Beyond*, 28 IRISH STUD. INT'L AFFS. 9, 9-17 (2017).

diversity of views and policies, cities need to exercise their own autonomy. We need a federalism of cities—in other words, a division of authority *internal* to states.

The opposite is occurring now. The centralization of power by states undercuts many of the justifications for having a federal system of government: experimentation, local control, democratic accountability, and minimizing political violence. We are instead experiencing the opposite in many of our states and in the nation as a whole.

In Praise of Home Rule

If one believes that self-government requires limiting the power of the states and the federal government to interfere with municipal government, what can be done about the attack on American cities? The truth is that when federal and state power is deployed against the cities, the cities are going to lose. We see this in earnest with the deployment of the state national guard and other federal agents in our cities, though this is an extreme case. The response to these military occupations and the wider legal attack on American cities is to reassert principles of local democracy.

One small step in that direction is a renewed home rule movement. As I have noted, at the turn of the twentieth century, during a period of rapid urbanization, officials regularly governed cities through the state legislatures. In response, reformers sought to limit state overreaching with various constitutional reforms, one of which was, and is, “home rule.” Home rule constitutional provisions were designed to undercut state political machines by limiting the imposition of “special legislation” that targeted cities.⁹⁸ Further, home rule provided cities with the power to adopt municipal legislation and some limited immunity from contrary state laws.

More recently, home rule has had a bad reputation. “Local control” in the second half of the twentieth century and now into the twenty-first has become associated with suburban parochialism, exclusionary land use policies, and opposition to racial and socio-economic integration. But I believe we need a revival of home rule as a constitutional and political concept. One proposal has recently been adopted by the National League of Cities (“NLC”).⁹⁹ The NLC commissioned a model constitutional home

98. RICHARD C. SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN THE GLOBAL AGE 62-63 (2016).

99. See NAT'L. LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY 29-33 (2020), <https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf> [<https://perma.cc/D3RV-3ZNA>].

rule provision that places limits on preemption and reaffirms municipal prerogatives.¹⁰⁰ The NLC model has four principles:

Local Authority: State law should give local governments the full range of authority to act in their territorial jurisdiction.¹⁰¹

Local Fiscal Authority: Local governments should have the ability to raise and spend revenue, and states should provide adequate intergovernmental aid to permit cities to fulfill their social welfare functions.¹⁰²

A Presumption Against State Preemption: State law should permit preemption only when it is expressly provided for and states are acting according to general principles of law, not used to target particular laws or particular cities.¹⁰³

Local Democratic Self-Governance: Cities should be permitted to manage their own democratic process and choose their own structure of government.¹⁰⁴

Basic home rule provisions exist in many states already. But they are not very robust. And the concept of home rule is often used to narrow city authority, by limiting cities to an ill-defined category of home rule powers that only apply to local matters.¹⁰⁵ Moreover, states have not adopted a strong presumption against preemption.¹⁰⁶ And in most states, local fiscal authority is still tightly constrained. Home rule also tends not to protect

100. *Id.* at 34-37.

101. *Id.* at 24.

102. *Id.* at 25.

103. *Id.* at 26.

104. *Id.* at 27.

105. The basic structure, and purpose, of the AMA Model was to eliminate uncertainty over what constituted “local” or “municipal” matters that formed the basis for local authority in earlier *imperio* models; in exchange for broadening the power of local governments to act in the first instance, however, the AMA Model empowered states to preempt or structure local power with few constraints. For this reason, the model is sometimes described as “legislative” home rule for the way it resides the power to resolve the allocation of state-local power in the state legislature. See Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1125-27 (2007).

106. The NLC Model adopts such a presumption that consists of a requirement that the state provide a clear statement of its intent to preempt and can do so “only if necessary to serve a substantial state interest, only if narrowly tailored to that interest, and only by general law.” NAT’L LEAGUE OF CITIES, *supra* note 99, at 32.

cities against states that seek to alter the cities' democratic institutions.

Those who are wary of home rule worry about the same things that have animated American anti-urbanism from the beginning: local corruption, inefficiency, the lack of statewide uniformity—all the usual objections to decentralized municipal government. Corporations and industry favor uniform laws and find more success pursuing their objectives in state legislatures. YIMBY advocates argue that state legislatures are more development friendly. Advocates of all kinds prefer to win at the state level rather than try to win city-by-city. A city-by-city strategy is time-consuming and costly.

Mostly, however, interest groups of any kind are eager to get their policy preferences adopted at whatever level of government is willing. The opposition to home rule is driven by policy preferences. When an advocate does not like something that is being done by a city, they reach for the preemptive solution. But that is short-sighted, whichever side of an issue one is on.

Consider police reform. On the one hand, critics of local police departments worry about abusive and discriminatory policing or a lack of professionalism in local police departments; they argue for more state or federal oversight. At the same time, states have preempted and threatened cities that have experimented with policies that seek to address over-policing. For example, local officials have in many cases advocated reallocating police budgets away from criminalization. But states have stepped in quickly to deny local leaders that option.¹⁰⁷

Moreover, recent events have illustrated the real dangers of a national police force not answerable to local residents. Certainly, local police abuse is a real problem; there are many cases of the need for reform of local police departments.¹⁰⁸ But as ICE agents and federal troops flood American cities, many are realizing that having a state or national police force engaging in local criminal enforcement raises the real threat of

107. Karl Etters, *Tallahassee and 8 Other Cities File Lawsuit Challenging HB 1 'Anti-Riot' Bill*, TALLAHASSEE DEMOCRAT (Nov. 16, 2021, 05:10 ET), <https://www.tallahassee.com/story/news/2021/11/16/tallahassee-8-other-cities-suing-state-over-hb-1-anti-riot-bill/8636987002/> [<https://perma.cc/PY9J-P4N9>] (discussing a recently filed lawsuit against a Florida statute that provides for removal of local budget authority if cities seek to reduce police funding).

108. See, e.g., *Floyd v. City of New York*, 959 F. Supp. 2d 540, 561-62 (S.D.N.Y. 2013) (holding New York City's "stop and frisk" policies unconstitutional); CIV. RTS. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2-4, 9-15 (2015), https://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/03/04/ferguson_police_department_report.pdf [<https://perma.cc/E5PL-V6GS>].

tyranny. Local police are not perfect, by any means. But having thousands of decentralized municipal police departments may be better than having one very powerful state or national police force. In other words, decentralized policing, as flawed as it is, protects against authoritarianism.

To better illustrate the value of home rule, consider a state that has never adopted it: Virginia. In 1971, the Virginia Constitution was being revised; the old Virginia Constitution was a holdover from the Jim Crow era.¹⁰⁹ The drafters of the new constitution included a constitutional provision establishing home rule for Virginia's local governments.¹¹⁰ But the provision that established home rule fell out during the process of refinement and review by the state legislature.¹¹¹ It never got to the voters, who eventually approved the new constitution. It is unclear why the home rule provision fell out, but the rise of majority Black cities in Virginia is a possible answer. In the early 1970s, Richmond, Virginia, the capital city, was losing white population and becoming a majority-Black city—and it seems possible that the majority-white legislature was not keen on providing such a city with home rule.¹¹²

It is not a surprise that Virginia was riven by racial divisions into the 1970s—like many places were and continue to be. The Virginia example is intended to make a more general point, however. Home rule is not just some intergovernmental technicality—it goes to the heart of how we govern and, more importantly, who gets to govern. In Virginia, city power is inextricable from the state's racial politics. That is the case around the country as well. The cities being preempted around the country are usually diverse places, often with significant minority populations, if not majority-minority. Their residents' preferences are being undermined on a regular basis. One's views of city power are often a proxy for one's views on other policy issues. This country's inability to get beyond the racial divide is one

109. Richard Schragger & C. Alex Retzliff, *The Failure of Home Rule Reform in Virginia: Race, Localism, and the Constitution of 1971*, 37 J.L. & Pol. 183, 205-07 (2022).

110. VA. COMM'N ON CONST. REVISION, *THE CONSTITUTION OF VIRGINIA: REPORT OF THE COMMISSION ON CONSTITUTIONAL REVISION TO THIS EXCELLENCY*, MILLS E. GODWIN, JR., GOVERNOR OF VIRGINIA, THE GENERAL ASSEMBLY OF VIRGINIA, AND THE PEOPLE OF VIRGINIA 228 (1969).

111. Schragger & Retzliff, *supra* note 109, at 203-04.

112. For data on Richmond's demographic changes by 1970, see Jonathan Schroeder et al., *IPUMS National Historical Geographic Information System: Version 20.0*, NHGIS, <https://data2.nhgis.org/main> [<https://perma.cc/N9F3-2NTD>] (last visited Mar. 24, 2026) (1950 Census: Population, Housing & Agriculture Data; 1960 Census: Population Data; Richmond's population decreased by 10,352 people to 219,958 between 1950 and 1960). See also JOHN V. MOESER & RUTLEDGE M. DENNIS, *THE POLITICS OF ANNEXATION: OLIGARCHIC POWER IN A SOUTHERN CITY* 76 (1982).

such issue; so, too, the urban-rural divide reflects the country's particular racial politics and history.

Home rule is not just about protecting suburban prerogatives, as it was understood in the 1970s. Today, it is about protecting the ability for diverse, energetic, and economically important cities to govern. That being said, of course, home rule reform on its own will not ensure municipal democracy or prevent the state and federal governments from overreaching. But it is a place to start. We should be revisiting the promises and failures of our past home rule efforts.

Conclusion

Home rule is one route to protecting city power, but it is likely to be a non-starter without a political movement behind it. America's anti-urban politics is powerful and becoming more virulent. To counter the attack on the cities will require a political movement. Such a movement begins with the realization that city fear is deeply embedded in our constitutional institutions traditions and continues to shape the ways we govern in profound ways.

When we talk about the issues that divide us, we should be clear about naming this one. The attack on American cities is real, and it is not just a technical concern. "Home rule" or "local self-government" as a slogan should therefore be understood as advocating for democratic self-rule when power is becoming increasingly centralized.

Cities are the economic engines of the country and the sources of the country's innovation and experimentation. Cities are where Americans confront the promises and pitfalls of a multi-racial, multi-ethnic, and socio-economically diverse society. The right for city dwellers to govern in their sphere is essential to maintaining a robust democracy. Without city power as a counterweight to centralized control, the authoritarian impulses always present in our constitutional democracy may just overwhelm us. Our constitutional system has long been hostile to cities and to the exercise of city power. That needs to change.

