

LOCAL GOVERNMENT LAW — HOME RULE — PENNSYLVANIA  
SUPREME COURT UPHOLDS PAID SICK LEAVE ACT AND STRIKES  
EMERGENCY PREPAREDNESS ACT UNDER HOME RULE LAW. —  
*Pennsylvania Restaurant & Lodging Ass’n v. City of Pittsburgh*, 211 A.3d  
810 (Pa. 2019).

American cities have increasingly taken on crucial policymaking roles in issue areas like immigration, climate change, gun control, and labor.<sup>1</sup> Though having to negotiate state preemption more and more often,<sup>2</sup> cities can still enact ambitious ordinances via their home rule power.<sup>3</sup> Home rule provisions displace the prevailing assumption that municipalities have only those powers specifically delegated to them by states.<sup>4</sup> Given the sometimes conflicting and ambiguous directives baked into a typical home rule scheme,<sup>5</sup> the true bounds of municipal authority are often determined by state courts.<sup>6</sup> Recently, in *Pennsylvania Restaurant & Lodging Ass’n v. City of Pittsburgh*,<sup>7</sup> the Pennsylvania Supreme Court held that Pittsburgh had the power to pass a paid sick leave ordinance, but did not have the power to pass an emergency preparedness ordinance.<sup>8</sup> In reaching this conclusion, the court read the requirements for statutory authorization of municipal authority too strictly, unnecessarily limiting local power. While the court’s reasoning with respect to statutory authorization was not dispositive in this particular case, it may limit how cities can engage with important policy questions in the future.

In 2015, Pittsburgh’s City Council passed the Paid Sick Days Act<sup>9</sup> (PSDA), which required employers to provide paid sick leave,<sup>10</sup> and the Safe and Secure Building Act<sup>11</sup> (SSBA), which imposed emergency-training requirements for service employees in certain city buildings.<sup>12</sup> Business organizations challenged the two ordinances in the Pennsylvania

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<sup>1</sup> See, e.g., Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469, 1471, 1482–83 (2018).

<sup>2</sup> *Id.* at 1471–73.

<sup>3</sup> See Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 644–46 (1964).

<sup>4</sup> See *id.* at 646–47.

<sup>5</sup> See David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2263 (2003) (describing local governments as “operat[ing] within a legal structure that seems committed to securing their right to home rule, but that . . . [also] subjects them to a variety of legal limitations — some clear, others less so”).

<sup>6</sup> Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule and Judicial Scrutiny*, 86 DENV. U. L. REV. 1337, 1338 (2009).

<sup>7</sup> 211 A.3d 810 (Pa. 2019).

<sup>8</sup> *Id.* at 815–16.

<sup>9</sup> PITTSBURGH, PA., CODE OF ORDINANCES §§ 626.01–.13 (2019).

<sup>10</sup> *Id.* § 626.03.

<sup>11</sup> *Id.* §§ 410.01–.09.

<sup>12</sup> *Id.* § 410.04.

Court of Common Pleas of Allegheny County, arguing that Pittsburgh had exceeded its home rule authority in regulating businesses through the ordinances.<sup>13</sup> Pennsylvania had previously adopted home rule via a constitutional amendment<sup>14</sup> and statute<sup>15</sup> allowing municipalities the option of a home rule charter<sup>16</sup> (which Pittsburgh had taken up), but with various carve-outs limiting home rule authority.<sup>17</sup> One such limitation is the business exclusion, which prevents home rule municipalities from “determin[ing] duties, responsibilities[,] or requirements placed upon businesses, occupations[,] and employers” except where “expressly provided by statutes which are applicable in every part of [Pennsylvania’s] Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities.”<sup>18</sup> Home rule municipalities, then, can only regulate businesses if they have statutory authority to do so.

The Court of Common Pleas invalidated both Acts. In one opinion, it addressed the SSBA.<sup>19</sup> After noting that Pittsburgh operates under home rule, the court found that the Act’s training requirements ran afoul of the business exclusion.<sup>20</sup> In a separate opinion, the court invalidated the PSDA on similar grounds.<sup>21</sup> Finding that requiring paid leave imposed duties on employers,<sup>22</sup> the court considered the business exclusion’s exception — when municipalities have express authority to legislate — but found no express authorization for the ordinance.<sup>23</sup>

Pittsburgh appealed both cases to the Commonwealth Court of Pennsylvania, which affirmed.<sup>24</sup> Though both decisions considered the business exclusion’s exception, they did not find any adequate statutory

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<sup>13</sup> Pa. Rest. & Lodging Ass’n v. City of Pittsburgh, No. GD 15-016442, 2015 Pa. Dist. & Cty. Dec. LEXIS 21271, at \*1–2 (Pa. Ct. Com. Pl. Dec. 21, 2015); Bldg. Owners & Managers Ass’n of Pittsburgh v. City of Pittsburgh, No. GD 15-013329, 2014 BL 482998, at \*5 (Pa. Ct. Com. Pl. Dec. 17, 2015).

<sup>14</sup> PA. CONST. art. IX, § 2.

<sup>15</sup> 53 PA. CONS. STAT. §§ 2961–2962 (2016).

<sup>16</sup> A home rule charter is the mechanism through which municipalities adopt home rule. As with other municipal charters, it is a governing document. See Baker & Rodriguez, *supra* note 6, at 1340–41.

<sup>17</sup> See tit. 53, §§ 2961–2962.

<sup>18</sup> *Id.* § 2962(f).

<sup>19</sup> Bldg. Owners & Managers Ass’n of Pittsburgh v. City of Pittsburgh, No. GD 15-013329, 2014 BL 482998, at \*6 (Pa. Ct. Com. Pl. Dec. 17, 2015). Judge James wrote the opinion for the court.

<sup>20</sup> See *id.* at \*5–6.

<sup>21</sup> Pa. Rest. & Lodging Ass’n v. City of Pittsburgh, No. GD 15-016442, 2015 Pa. Dist. & Cty. Dec. LEXIS 21271, at \*4–6 (Pa. Ct. Com. Pl. Dec. 21, 2015). Judge James wrote the opinion for the court.

<sup>22</sup> *Id.* at \*6.

<sup>23</sup> *Id.*

<sup>24</sup> Bldg. Owners & Managers Ass’n of Pittsburgh v. City of Pittsburgh, No. 100 C.D. 2016, No. 102 C.D. 2016, 2017 Pa. Commw. Unpub. LEXIS 340, at \*10–11 (Pa. Commw. Ct. May 17, 2017); Pa. Rest. & Lodging Ass’n v. City of Pittsburgh, 167 A.3d 307, 2017 Pa. Commw. Unpub. LEXIS 356, at \*10 (Pa. Commw. Ct. May 17, 2017) (unpublished table decision). Judge Wojcik wrote both opinions and was joined in both cases by Judges Leavitt, Jubelirer, Simpson, Brobson, and McCullough.

authority, ruling that potential authorizing statutes were inapplicable.<sup>25</sup> Judge Cosgrove dissented in both decisions.<sup>26</sup> He emphasized that home rule municipalities possess police powers to legislate on public health, safety, and welfare even under the business exclusion, presumably to a greater extent than do non-home rule cities.<sup>27</sup> And ordinances (like the ones at issue) that are aimed primarily at public health, with only incidental effects on business, are not regulations of business per se.<sup>28</sup> Thus, according to Judge Cosgrove, they should pass scrutiny under the business exclusion.<sup>29</sup>

The Pennsylvania Supreme Court affirmed in part and reversed in part, upholding the PSDA and invalidating the SSBA in a consolidated decision.<sup>30</sup> Noting its aim to “balance carefully the time-honored prerogatives of local governance with the countervailing state interest in providing a hospitable environment for commercial activity,”<sup>31</sup> the court reviewed Pennsylvania’s home rule scheme, which calls for a liberal approach to municipal authority.<sup>32</sup> With this groundwork set, the court handled several threshold issues<sup>33</sup> before addressing the central question before it: whether any statutory grant of power expressly authorized the ordinances.

Regarding paid sick leave, the court rejected the idea that “express” authority must mean “the General Assembly . . . anticipated, described, and explicitly authorized municipalities to burden businesses in [a] particular way.”<sup>34</sup> This definition would too seriously undermine home rule

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<sup>25</sup> See *Bldg. Owners*, 2017 Pa. Commw. Unpub. LEXIS 340, at \*6–11; *Pa. Rest. & Lodging*, 2017 Pa. Commw. Unpub. LEXIS 356, at \*7–9.

<sup>26</sup> *Bldg. Owners*, 2017 Pa. Commw. Unpub. LEXIS 340, at \*11 (Cosgrove, J., dissenting); *Pa. Rest. & Lodging*, 2017 Pa. Commw. Unpub. LEXIS 356, at \*10 (Cosgrove, J., dissenting).

<sup>27</sup> *Pa. Rest. & Lodging*, 2017 Pa. Commw. Unpub. LEXIS 356, at \*10–11 (Cosgrove, J., dissenting). Given the codification of police powers in the Second Class Cities Code (a governing statute passed by the state applicable to municipalities of a certain population), if home rule cities’ police powers are restricted via a broad reading of the business exclusion, Second Class Cities may be able to exercise broader police powers than can home rule cities. See 53 PA. CONS. STAT. § 23145 (2016).

<sup>28</sup> See *Pa. Rest. & Lodging*, 2017 Pa. Commw. Unpub. LEXIS 356, at \*11–12 (Cosgrove, J., dissenting).

<sup>29</sup> *Id.* at \*12.

<sup>30</sup> *Pa. Rest. & Lodging*, 211 A.3d at 816. Justice Wecht authored the opinion, joined in full by Justices Todd and Donohue and in part by Chief Justice Saylor and Justices Baer, Dougherty, and Mundy. *Id.* at 838.

<sup>31</sup> *Id.* at 815.

<sup>32</sup> See *id.* at 816–17.

<sup>33</sup> Specifically, the opinion asserted that although Pittsburgh was not governed by the Second Class Cities Code, it could draw on the Code as express authority, as it applies to “a class . . . of municipalities,” making it one type of authority explicitly contemplated by the business exclusion itself. *Id.* at 824 (quoting 53 PA. CONS. STAT. § 2062(f) (2016)). The court also held that the Disease Prevention and Control Law (DPCL), 35 PA. STAT. AND CONS. STAT. ANN. §§ 521.1–.21 (West 2019), could also serve as statutory authorization for the PSDA, despite the fact that one interpretation of the DPCL is that it grants no authority to cities like Pittsburgh that do not have their own health boards. *Pa. Rest. & Lodging*, 211 A.3d at 825–28.

<sup>34</sup> *Pa. Rest. & Lodging*, 211 A.3d at 829; see *id.* at 829–32.

authority.<sup>35</sup> Rather, the court interpreted broad grants of authority like the Disease Prevention and Control Law<sup>36</sup> (DPCL) to necessarily entail execution in specific ways that may burden business.<sup>37</sup> Because the PSDA “lies squarely within . . . the ambit of the DPCL,” the court held the disease prevention statute expressly authorized the ordinance.<sup>38</sup> Though willing to allow some level of generality in “express” authority, the court found its stopping point with the SSBA.<sup>39</sup> First, the court dispensed with particular building regulations whose provisions it considered too specific to authorize the broad ordinance.<sup>40</sup> Then, the court rejected the City’s claim that a “broad account of traditional police powers” codified in the Second Class Cities Code expressly authorized the act.<sup>41</sup> The court worried that interpreting police powers as express authority would allow the “exception [to the business exclusion to] devour the rule quite completely.”<sup>42</sup> The majority concluded by reiterating its desire to “find a middle ground” between municipal power and burden to business.<sup>43</sup>

Chief Justice Saylor concurred in part and dissented in part, joined by Justices Baer and Mundy.<sup>44</sup> Chief Justice Saylor would have struck down the PSDA.<sup>45</sup> Although he conceded that the meaning of “express authority” is not self-evident, he interpreted it along similar lines as did the challengers, writing that express authority to regulate business involves “authorization which specifically enables some form of business regulation as such.”<sup>46</sup> Writing separately, Justice Baer echoed the Chief Justice, noting that the lengthy, “circuitous” reasoning needed to establish that the PSDA had express authorization was evidence itself of a lack thereof.<sup>47</sup>

Justice Dougherty, also concurring in part and dissenting in part, believed the majority should have upheld both ordinances.<sup>48</sup> He reemphasized that the business exclusion, interpreted too strictly,

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<sup>35</sup> *See id.* at 832.

<sup>36</sup> tit. 35, § 521.

<sup>37</sup> *Pa. Rest. & Lodging*, 211 A.3d at 832.

<sup>38</sup> *Id.*

<sup>39</sup> *See id.* at 834–37.

<sup>40</sup> *See id.* at 834–35.

<sup>41</sup> *Id.* at 835.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 837. The court also considered and rejected the City’s arguments that statutory authority lay with certain provisions of the State’s Home Rule Charter or with the State’s Emergency Code. *See id.* at 835–37.

<sup>44</sup> *Id.* at 838 (Saylor, C.J., concurring in part and dissenting in part).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 840.

<sup>47</sup> *Id.* at 841 (Baer, J., concurring in part and dissenting in part). Judge Baer was joined by Chief Justice Saylor and Justice Mundy.

<sup>48</sup> *Id.* at 842 (Dougherty, J., concurring in part and dissenting in part).

undermines legislative intent to make home rule authority far-reaching, allowing non-home rule municipalities operating under municipal codes to have greater ability to regulate business.<sup>49</sup> Justice Dougherty asserted that the majority only resolved ambiguity in favor of home rule authority when evaluating the PSDA, but took a harder line with the SSBA.<sup>50</sup> Per the Justice, this position created “an incongruous analysis of the two ordinances” that would “undoubtedly result in continuing disparate application and subjective judicial interpretation” on the question of home rule authority.<sup>51</sup>

When viewed in light of historic interpretation of the scope of municipal power before home rule, the court in *Pennsylvania Restaurant & Lodging* took an unnecessarily narrow view of what could constitute express authorization for a municipal law under the business exclusion. Indeed, the court’s reading may produce more restrictive results than those that would follow under non-home rule regimes. While the court’s reasoning with respect to statutory authorization was not dispositive in this particular case, it may limit how cities can engage with important policy questions in the future. Given the trend of hyperpreemption already undermining local regulation of business, a judicially imposed limit on home rule only further restricts local power in this realm.

Models of state-local relationships have evolved over the last century. At the end of the nineteenth century, “Dillon’s Rule” was the prevailing legal theory of state-local relationships.<sup>52</sup> Popularized by jurist John Dillon, the theory states that “[m]unicipal corporations have no inherent powers and may do only those things which the Legislature has expressly or by necessary implication placed within their power to do.”<sup>53</sup> But today, many states, including Pennsylvania, have departed from Dillon’s Rule by allowing the option of a home rule charter.<sup>54</sup> As the Pennsylvania Supreme Court noted here, adoption of home rule “turn[s] the Dillon’s Rule] principle on its head.”<sup>55</sup> Municipalities go from having only powers specifically delegated to having all powers not specifically withheld.<sup>56</sup> Given the court’s understanding that home rule

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<sup>49</sup> See *id.* at 843.

<sup>50</sup> *Id.* at 843–44.

<sup>51</sup> *Id.* at 844.

<sup>52</sup> See Barron, *supra* note 5, at 2285–86. See generally 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS (5th ed. 1911) (laying out treatise on local government law).

<sup>53</sup> *Pa. Rest. & Lodging*, 211 A.3d at 816 (quoting *Denbow v. Borough of Leetsdale*, 729 A.2d 1113, 1118 (Pa. 1999)); see Sandalow, *supra* note 3, at 646–47 (describing how, in theory, the state legislature has plenary power over municipal corporations).

<sup>54</sup> See, e.g., 53 PA. CONS. STAT. § 2961 (2016); see also Baker & Rodriguez, *supra* note 6, at 1374–424 (listing home rule provisions by state).

<sup>55</sup> *Pa. Rest. & Lodging*, 211 A.3d at 816.

<sup>56</sup> See tit. 53, § 2961; see also Barron, *supra* note 5, at 2260.

displaced Dillon's Rule,<sup>57</sup> where home rule authority is mooted, Dillon's Rule should govern state-local disputes.<sup>58</sup>

Even operating under Dillon's Rule, Pennsylvania courts had held that codified police powers are enough to constitute express authorization for a number of municipal ordinances.<sup>59</sup> For example, in *Taylor v. Harmony Township Board of Commissioners*,<sup>60</sup> the court dealt with an ordinance regulating logging.<sup>61</sup> In deciding whether the municipality was authorized to enact this ordinance, the court employed a two-step analysis. First, it looked to possible sources of authorization, landing on codified police powers as a likely candidate.<sup>62</sup> Then, it assessed the relationship between the logging ordinance, which sought to "prevent harm . . . caused by landslides and storm water runoff," and the police powers.<sup>63</sup> Finding that the ordinance's ends fell "squarely within the general police power provisions of the Code cited," the court held the ordinance valid.<sup>64</sup> In this way, the logging ordinance is similar to the PSDA: both are specific though natural extensions of a broad police power.<sup>65</sup> Thus, although Pennsylvania courts have emphasized that municipalities do not enjoy unlimited police powers,<sup>66</sup> and that police powers are not a blanket authorization for *any* municipal ordinance,<sup>67</sup> they have been willing to concede that police powers *can* act as legislative authorization for more specific municipal action.<sup>68</sup>

There are several reasons why the court should have applied the business exclusion similarly to how Pennsylvania courts have applied Dillon's Rule in the past. First, the business exclusion prohibits home rule cities from regulating business except where "expressly provided by

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<sup>57</sup> *Pa. Rest. & Lodging*, 211 A.3d at 816.

<sup>58</sup> See Paul A. Diller, *The City and the Private Right of Action*, 64 STAN. L. REV. 1109, 1134 (2012).

<sup>59</sup> See *Adams v. City of New Kensington*, 55 A.2d 392, 394-96 (Pa. 1947); *City of Duquesne v. Fincke*, 112 A. 130, 133-34 (Pa. 1920); *Taylor v. Harmony Twp. Bd. of Comm'rs*, 851 A.2d 1020, 1024-25 (Pa. Commw. Ct. 2004); *Simco Sales Serv., Inc. v. Twp. of Lower Merion Bd. of Comm'rs*, 394 A.2d 642, 643 (Pa. Commw. Ct. 1978); *In re Ordinance No. 384*, 382 A.2d 145, 148 (Pa. Commw. Ct. 1978); see also Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, 84 N.C. L. REV. 1983, 2004-05 (2006) (noting that in North Carolina, a Dillon's Rule state, broad police powers can serve as authorizing grants). But see *Knauer v. Commonwealth*, 332 A.2d 589, 591 (Pa. Commw. Ct. 1975).

<sup>60</sup> 851 A.2d 1020.

<sup>61</sup> *Id.* at 1022.

<sup>62</sup> See *id.* at 1024-25.

<sup>63</sup> *Id.* at 1025.

<sup>64</sup> *Id.*

<sup>65</sup> Cf. *Pa. Rest. & Lodging*, 211 A.3d at 832.

<sup>66</sup> See *Knauer v. Commonwealth*, 332 A.2d 589, 591 (Pa. Commw. Ct. 1975).

<sup>67</sup> See *id.*; see also *Simco Sales Serv., Inc. v. Twp. of Lower Merion Bd. of Comm'rs*, 394 A.2d 642, 643-44 (Pa. Commw. Ct. 1978).

<sup>68</sup> See, e.g., *Commonwealth v. Harrar*, 12 Pa. D. & C.2d 341, 347-48 (Bucks Cty. Ct. Quarter Sessions 1957).

statutes.”<sup>69</sup> The idea that municipalities cannot act except with delegated authority mirrors Dillon’s Rule. Second, Dillon’s Rule allows courts to infer that municipalities have the power to do things necessary to effectuate expressly granted authority.<sup>70</sup> Similarly, the court here asserted that the legislature, when it grants broad authority, necessarily contemplates more concrete, detailed acts taken to carry out that authority.<sup>71</sup> Indeed, the business exclusion should be applied more favorably to municipalities than Dillon’s Rule is, given that the latter requires ambiguity to be construed against a municipality,<sup>72</sup> and the former in favor of municipal power.<sup>73</sup> At bottom, then, the business exclusion should establish a regime at least very similar to Dillon’s Rule.

Finding that codified police powers expressly authorized the PSDA would have comported with state precedents interpreting the scope of municipal power in the absence of home rule. In *Pennsylvania Restaurant & Lodging*, the court deemed police powers inherently too broad to expressly authorize anything.<sup>74</sup> This maneuver stopped the analysis too soon. Instead, the court could have accepted police powers as a possible source of authorization and then asked whether the ordinances in question were reasonable extensions of this authority. Under this scheme, the court might have held that the SSBA’s specialized training requirements were not squarely within the police powers in the Second Class Cities Code.<sup>75</sup> The court made a similar move in its analysis of the PSDA, noting that it fell “squarely within . . . the City’s traditional police powers.”<sup>76</sup> Though the court ultimately upheld the ordinance under the disease prevention statute, it still acknowledged how closely tied paid sick leave was to police powers.<sup>77</sup> It could, then, have chosen to uphold the ordinance on those grounds, and to invalidate the SSBA based on its less substantial relationship to police powers. But this is not the reasoning the court adopted. Instead, it conditioned authority on the breadth of the potential authorizing statute.

Though the court’s restrictive assumptions did not make a dispositive difference in this case, this line of reasoning may limit cities’ ability to pass legislation like paid sick leave in the future. Pittsburgh is not alone in its move to provide paid sick leave.<sup>78</sup> And it is not just paid

<sup>69</sup> 53 PA. CONS. STAT. § 2921(f) (2016).

<sup>70</sup> See, e.g., *In re Ordinance No. 384*, 382 A.2d 145, 148 (Pa. Commw. Ct. 1978).

<sup>71</sup> See *Pa. Rest. & Lodging*, 211 A.3d at 832.

<sup>72</sup> See *Knauer v. Commonwealth*, 332 A.2d 589, 591 (Pa. Commw. Ct. 1975).

<sup>73</sup> See tit. 53, § 2961.

<sup>74</sup> *Pa. Rest. & Lodging*, 211 A.3d at 835.

<sup>75</sup> See tit. 53, § 23145 (defining the police power with regard to public health).

<sup>76</sup> *Pa. Rest. & Lodging*, 211 A.3d at 832.

<sup>77</sup> See *id.*

<sup>78</sup> See Alayna Alvarez, *As More Cities Push for Paid Sick Leave, States Push Back*, PEW TRUSTS (Sept. 24, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/>

sick leave that cities are concerned with. Municipalities have also tried to pass laws on rent control and minimum wage.<sup>79</sup> Although it salvaged paid sick leave, the court's ruling leaves these other types of legislation in jeopardy. Such is evinced by case law from other states, wherein statutes stood or fell based on whether police powers counted as authorization. For example, a New Mexico decision upheld a minimum wage ordinance, challenged under a "private law" exception<sup>80</sup> to home rule, in part because the court interpreted the ordinance as incident to the city's police powers.<sup>81</sup> This decision repudiated a Massachusetts ruling striking down a rent-control ordinance, in which the court held a narrower view of police powers as adequate authorization.<sup>82</sup> In this way, whether police powers count as authority can determine the fate of regulation, especially where states have limited regulation of business. Thus, that paid sick leave passed scrutiny in *Pennsylvania Restaurant & Lodging* may be an unreliable indicator of the future of similar ordinances in Pennsylvania or jurisdictions like it.

This limitation is especially relevant given the current trend among state legislatures toward hyperpreemption.<sup>83</sup> Although extensive local authority has no necessary political valence, local regulation of business is often progressive.<sup>84</sup> Along the same lines, though limitations on home rule authority can be passed by red or blue states, the most recent activity has assumed the dynamic of red states explicitly limiting action by blue cities.<sup>85</sup> In fact, some trace the rise of hyperpreemption to efforts by conservative interest groups to make states more business friendly.<sup>86</sup> In this context, the Pennsylvania Supreme Court's ruling represents yet another obstacle to progressive municipal policymaking in particular.

09/24/as-more-cities-push-for-paid-sick-leave-states-push-back [https://perma.cc/W4JT-P76N]; see also *Preemption Watch*, GRASSROOTS CHANGE, https://grassrootschange.net/preemption-watch/#/category/paid-sick-days [https://perma.cc/X9N2-DK8K].

<sup>79</sup> See Darin M. Dalmat, Note, *Bringing Economic Justice Closer to Home: The Legal Viability of Local Minimum Wage Laws Under Home Rule*, 39 COLUM. J.L. & SOC. PROBS. 93, 94–95, 123 & n.130 (2005).

<sup>80</sup> Eight states have adopted a modified version of the private law exception, which prevents home rule municipalities from regulating matters considered as private law (for example, contracts). Diller, *supra* note 58, at 1113–14, 1119. Although this exception differs from Pennsylvania's business exclusion, it shares similarities in that (1) it will often preclude regulation of business, and (2) there is an "exception to the exception" when municipalities legislate via an independent power. *Id.* at 1126.

<sup>81</sup> See *New Mexicans for Free Enter. v. City of Santa Fe*, 126 P.3d 1149, 1162–63 (N.M. Ct. App. 2005).

<sup>82</sup> *Id.* at 1161 (citing *Marshal House, Inc. v. Rent Review & Grievance Bd.*, 260 N.E.2d 200 (Mass. 1970)).

<sup>83</sup> See Scharff, *supra* note 1, at 1471.

<sup>84</sup> See Richard Briffault et al., *The Troubling Turn in State Preemption: The Assault on Progressive Cities and How Cities Can Respond*, 11 ADVANCE 3, 7 (2017).

<sup>85</sup> See *id.*; Lori Riverstone-Newell, *The Rise of State Preemption Laws in Response to Local Policy Innovation*, 47 PUBLIUS 403, 405–06 (2017); Madeleine Davies, *The Republicans Are Coming for Your Liberal Bubble*, JEZEBEL (Jan. 6, 2017, 1:00 PM), https://theslot.jezebel.com/the-republicans-are-coming-for-your-liberal-bubble-1790873529 [https://perma.cc/QF83-62V5].

<sup>86</sup> See Riverstone-Newell, *supra* note 85, at 405.