CHAPTER FOUR

HOME RULE REINFORCEMENT: CONSTITUTIONAL LOCAL AUTONOMY GUARANTEES

The Federal Constitution has much to say about the relationship between the federal government and the states,[1] but it is silent as to the distribution of power between state governments and their municipalities.[2] Today, however, conflicts between state governments and municipalities have become a defining feature in American politics. State-local clashes play out on nearly every front — public health,[3] immigration,[4] policing,[5] housing,[6] labor,[7] gun control,[8] energy and environmental policy,[9] and civil rights,[10] among others. Courts and commentators have understood the silence in the Federal Constitution to mean that there is no affirmative right to local self-governance, leaving the question of the existence of municipalities — and the scope of their powers — to the states.[11]

The vast majority of states have allocated powers to municipalities and established rules for resolving conflicts between state and local governments in constitutional or statutory home rule provisions.[12] Home rule provisions arose throughout the twentieth century in response to a

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[1] *See, e.g.*, U.S. CONST. art. VI, cl. 2; *id.* amend. X; *id.* amend. XIV, § 1.

[2] *See* David M. Walsh, Note, *Toward a Democratic Theory of Home Rule*, 60 HARV. J. ON LEGIS. 383, 385 (2023); JEFFREY S. SUTTON, WHO DECIDES? STATES AS LABORATORIES OF CONSTITUTIONAL EXPERIMENTATION 304 (2021).

[3] *See* SPENCER WAGNER, BROOKS RAINWATER & KATHERINE CARTER, NAT'L LEAGUE OF CITIES, PREEMPTION AND THE COVID-19 PANDEMIC: EXPLORING STATE INTERFERENCE BEFORE, DURING, & AFTER THE CRISIS 14–15 (2020).

[4] *See* Mark A. Hall, Lilli Mann-Jackson & Scott D. Rhodes, *State Preemption of Local Immigration "Sanctuary" Policies: Legal Considerations*, 111 AM. J. PUB. HEALTH 259, 259–60 (2021).

[5] *See* Rick Su, Marissa Roy & Nestor Davidson, Essay, *Preemption of Police Reform: A Roadblock to Racial Justice*, 94 TEMP. L. REV. 663, 665, 668, 670–71 (2022).

[6] *See* John Infranca, *The New State Zoning: Land Use Preemption Amid a Housing Crisis*, 60 B.C. L. REV. 823, 828 (2019).

[7] *See Fighting Preemption of Local Workplace Laws*, NAT'L EMP. L. PROJECT, https://www.nelp.org/explore-the-issues/minimum-living-wage/preemption [https://perma.cc/RND7-P4HF].

[8] *See* Rachel Simon, *The Firearm Preemption Phenomenon*, 43 CARDOZO L. REV. 1441, 1445–46 (2022).

[9] *See* Benjamin L. McCready, Note, *Like It or Not, You're Fracked: Why State Preemption of Municipal Bans Are Unjustified in the Fracking Context*, 9 DREXEL L. REV. ONLINE 61, 76, 89 (2017).

[10] *See* Julia Bauer & Amy Cook, *States Increasingly Preempting Local Laws Governing Transgender Rights*, NAT'L LEAGUE OF CITIES (June 27, 2025), https://www.nlc.org/article/2025/06/27/states-increasingly-preempting-local-laws-governing-transgender-rights [https://perma.cc/SW2Q-PYUE].

[11] *See, e.g.*, Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1062 (1980); Hunter v. City of Pittsburgh, 207 U.S. 161, 178–79 (1907).

[12] *See* NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY 7 (2020), https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf [https://perma.cc/KS4A-AYMG]; Walsh, *supra* note 2, at 386, 391.

default principle — Dillon's Rule — that sharply confined municipal authority and entrenched a presumption of state supremacy.[13] However, the frequency and significance of state-local conflicts in modern America has led some to conclude that home rule has failed to live up to its promise of greater local autonomy.[14] And advocates for local control have proposed that, instead of presuming state supremacy and resolving ambiguities against the municipality, judges should revitalize local control by applying novel interpretive canons.[15]

However, some state constitutions already have provisions that bolster local autonomy: what this Chapter terms local autonomy guarantees (LAGs).[16] This Chapter classifies and analyzes these forgotten constitutional provisions to evaluate their impact on the preservation of local control in theory and practice. Unlike home rule provisions, LAGs do not substantively alter the allocation of power between state and local governments; instead, they largely instruct courts on how to construe local authority.[17] Although they have remained underutilized and understudied,[18] LAGs have formed the basis for state court rulings resolving state-local power disputes.

This Chapter focuses on constitutional LAGs, even though several states have *statutory* guarantees.[19] By placing interpretive rules for the construction of local powers above the reach of the legislature, *constitutional* LAGs represent the strongest endorsement of local autonomy and have the highest potential for efficacy. Moreover, courts' failure to abide by such provisions evinces a failure of fidelity not merely to legislative policy but to the people's constitutional design.

This Chapter argues that although LAGs have had moderate success in restricting Dillon's Rule, they are imperfect tools for fortifying local control. First, success varies across state lines and typologies, and even the strongest interpretations are incapable of overthrowing Dillon's Rule entirely. Second, judicial implementation of these provisions reveals a pervasive practice of judicial underreach: Courts have swung from early twentieth-century overextension of Dillon's presumption against municipalities to modern underenforcement of constitutionally enshrined interpretative rules. Finally, these provisions are ill-suited to address express preemption, the tool state legislatures and even executives are increasingly using to override local policy.

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[13] *See* Walsh, *supra* note 2, at 391; Richard Briffault, *Our Localism: Part 1 — The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 10 (1990).

[14] *See, e.g.*, NAT'L LEAGUE OF CITIES, *supra* note 12, at 14, 16–19.

[15] *See, e.g.*, *id.* at 26, 54–55; Note, *To Save a City: A Localist Canon of Construction*, 136 HARV. L. REV. 1200, 1201 (2023).

[16] *See, e.g.*, ALASKA CONST. art X, § 1.

[17] *See, e.g.*, *id.* ("A liberal construction shall be given to the powers of local government units.").

[18] Some scholars have briefly commented on one category of LAGs: liberal construction clauses. *See, e.g.*, Note, *supra* note 15, at 1210 (quoting N.M. CONST. art. X, § 6(E)); Nestor M. Davidson, *Home Rulings*, 2023 WIS. L. REV. 1735, 1748 (quoting N.Y. CONST. art. IX, § 3(c)).

[19] *See, e.g.*, ME. STAT. tit. 30-A, § 2109 (2025).

This Chapter proceeds in four sections. Section A traces the history of state-local relationships — from Dillon's Rule to the two main forms of home rule, *imperium in imperio* (*imperio*) and legislative home rule (LHR). Although this evolution made considerable progress for local control, it also entrenched Dillon's underlying presumptions that subordinate local power. Section B introduces LAGs and examines their text and history to evaluate their potential to dislodge the vestiges of Dillon's Rule. Section C then surveys existing case law, interpreting these provisions to determine their effect in practice. Finally, section D synthesizes the historical background and jurisprudence of home rule, arguing that LAGs have moderately succeeded in increasing local autonomy, but concluding that their impact is limited by background home rule structures, judicial interpretation, and the rise of express legislative preemption.

A. Dillon's Rule, Home Rule, and the Persistence of State Supremacy

This section traces the historical development of the state-municipality relationship from the late nineteenth century to the mid-twentieth century, starting with the rise of Dillon's Rule and proceeding to home rule. Concerned about corrupt city governments, states adopted Iowa Supreme Court Chief Justice John F. Dillon's strong presumption against local authority. Home rule reforms emerged from dissatisfaction with Dillon's Rule and expanded municipal power, but Dillon's Rule persisted as a background framework that limited local authority and maintained state hegemony.

1. Dillon's Rule: An Interpretative Default. — In the late nineteenth century, Chief Justice Dillon articulated the framework that would come to define the state-local relationship in America. Dillon's Rule is derived from an absolutist view of state supremacy over municipalities.[20] Chief Justice Dillon, along with other nineteenth-century thinkers, was concerned that city leadership "was 'too often both *unwise* and *extravagant*'"[21] and engaged in "economic favoritism . . . to promote private gain."[22] Dillon's Rule thus sought to prevent and rectify corrupt city governments.[23]

Dillon's Rule consists of three related propositions: a foundational assumption about the nature of municipalities and two operative premises. The foundational assumption — what this Chapter terms Premise Zero — establishes the inherent subordination of municipalities to the

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[20] *See* Frug, *supra* note 11, at 1111–12 (quoting JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 30, at 72 (1872)); City of Clinton v. Cedar Rapids & Mo. River R.R. Co., 24 Iowa 455, 475 (1868) (per curiam) (Dillon, C.J.).

[21] Frug, *supra* note 11, at 1111 (quoting DILLON, *supra* note 20, § 9, at 22).

[22] Richard C. Schragger, *The Political Economy of City Power*, 44 FORDHAM URB. L.J. 91, 116 (2017).

[23] *See id.* at 116–17.

state. As then–Chief Justice Dillon explained: "Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature."[24] Consistent with this fundamental principle, Chief Justice Dillon derived the two operative premises of his rule. Premise One substantively allocates powers between the state and local governments, asserting that municipalities enjoy only these powers: "[f]irst, those granted in *express words;* second, those *necessarily or fairly implied* in, or *incident* to, the powers expressly granted; third, those *essential* to the declared objects and purposes of the corporation — not simply convenient, but indispensable."[25] Premise Two provides an interpretive canon of construction against local autonomy, requiring that any ambiguity "concerning the existence of a power [be] resolved by the courts *against* the corporation."[26]

Although a few early commentators and judges argued that municipalities did have an inherent right to self-government,[27] contra Premise Zero, Dillon's Rule was widely accepted by the beginning of the twentieth century,[28] becoming "so well recognized that it [was] not . . . open to question."[29] State courts regularly relied upon the three grants of authority outlined in Premise One when determining whether a municipality had authority to take a particular action.[30] However, state legislatures seldom granted broad powers to municipalities expressly,[31] meaning that local governments would need to justify their authority as either "necessarily . . . implied" by an express grant or "essential" to their "objects and purposes."[32] And judges, following Premise Two,

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[24] *Clinton,* 24 Iowa at 475.

[25] DILLON, *supra* note 20, § 55, at 101–02.

[26] *Id.* § 55, at 102 (emphasis added); *accord* Briffault, *supra* note 13, at 8.

[27] *See, e.g.*, People *ex rel.* Le Roy v. Hurlbut, 24 Mich. 44, 108 (1871) (Cooley, J.) ("[L]ocal government is a matter of absolute right . . . ."); 1 EUGENE MCQUILLIN, A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 167, at 385 (1911). For recent scholarship arguing for an inherent right of local government, see generally Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 HARV. C.R.-C.L. L. REV. 1 (2012).

[28] *See* Walsh, *supra* note 2, at 390. In 1907, the Supreme Court implicitly endorsed state supremacy over municipalities when it found that "[t]he State . . . at its pleasure may modify or withdraw all such powers [of a municipality]." Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907).

[29] Frug, *supra* note 11, at 1115 (quoting WILLIAM BENNETT MUNRO, THE GOVERNMENT OF AMERICAN CITIES 53 (3d ed. 1924)).

[30] *See, e.g.*, City of Brenham v. Brenham Water Co., 4 S.W. 143, 148, 152 (Tex. 1887) (quoting 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 89, at 115 (3d ed. 1881)); City of Crawfordsville v. Braden, 28 N.E. 849, 849–51 (Ind. 1891) (quoting 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 89, at 145 (4th ed. 1890)); City of Winchester v. Redmond, 25 S.E. 1001, 1003 (Va. 1896).

[31] *See* Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1123 (2007).

[32] *See* DILLON, *supra* note 20, § 55, at 101–02 (emphasis omitted).

would interpret those implied powers narrowly.[33] These practices laid the groundwork for the home rule movement.[34]

2. Home Rule: An Imperfect Solution. — Throughout the late nineteenth and early twentieth centuries, advocates of local government pushed for state constitutional provisions designed to expand municipal authority.[35] These grants, collectively known as home rule provisions, blunted the impact of Premise One of Dillon's Rule by markedly expanding the power of municipalities, thus redistributing power to localities.[36] While Dillon's Rule arose in response to city corruption, home rule grants sought to prevent "*state-wide* corruption" and the "exploitation of the city by state officials" during "an era of tremendous urban growth."[37] Further, unlike Dillon's Rule, a judge-made doctrine, home rule grants were expressly codified.[38] Home rule models conceptualize local power on two axes: initiative and immunity.[39] Initiative refers to the municipality's authority to act, whereas immunity refers to the protection of local laws from state law preemption.[40] This subsection tracks the development of home rule, examining its two principal forms: *imperium in imperio*[41] and legislative home rule.[42]

(a) Imperium in imperio. — The *imperio* model — the earliest model of home rule[43] — sought not to "repudiate" Dillon's Rule but rather to "adjust" it.[44] This adjustment altered Premise One of Dillon's Rule by granting municipal initiative power over "'local' or 'municipal' affairs" and immunity from state override in those local affairs.[45] Otherwise, Dillon's Rule persisted: It governed matters clearly beyond the sphere of local affairs and continued to supply the interpretive

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[33] *See, e.g.*, Merriam v. Moody's Ex'rs, 25 Iowa 163, 174–75, 177 (1868) (finding no implied grant of power); *Brenham*, 4 S.W. at 149, 152 (same). For a more recent discussion of Dillon's interpretive presumption, see *S. Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706, 712–13 (Tenn. 2001).

[34] *See* Briffault, *supra* note 13, at 8, 10.

[35] *Id.* Some states have since adopted statutory home rule provisions. *See, e.g.*, IND. CODE § 36-1-3-1 to -8 (2025).

[36] *See* Terrance Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 645–46, 648 (1964).

[37] Schragger, *supra* note 22, at 104 (emphasis added).

[38] *See, e.g.*, COLO. CONST. art. XX, § 6 (constitutional); IND. CODE § 36-1-3-4 (statutory).

[39] *See* Note, *supra* note 15, at 1205–06.

[40] *See id.*; Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1220 (2018).

[41] *Imperium in imperio*, the full Latin phrase, translates to "a government within a government." NAT'L LEAGUE OF CITIES, *supra* note 12, at 11.

[42] This reference to "legislative" can be misleading; it does *not* refer to a *statutory basis* of authority but rather indicates that "the state legislature retains nearly plenary power to modify home rule." *Id.* at 12.

[43] *Id.* at 11.

[44] Walsh, *supra* note 2, at 391 (describing the home rule movement as seeking to "adjust" Dillon's Rule).

[45] NAT'L LEAGUE OF CITIES, *supra* note 12, at 11; *see, e.g.*, CAL. CONST. art. XI, § 5(a).

presumption against the locality in ambiguous cases.[46] In 1875, Missouri became the first state to adopt a home rule constitutional amendment,[47] and by 1912, twelve states had enacted *imperio* home rule provisions.[48]

In theory, this arrangement would shield localities from state involvement in core municipal functions. In practice, *imperio* home rule offered far less protection than intended. While these constitutional provisions gave municipalities defined spheres of authority, courts determined what constituted a municipal affair.[49] This approach reflected the prevailing belief that municipalities "had more to fear from legislative incursion" than from judicial interpretation.[50] But, relying on Premise Two of Dillon's Rule, courts often interpreted "local" and "municipal affairs" narrowly.[51] Premise Two thus sharply limited the impact of *imperio* home rule.

(b) Legislative Home Rule. — By the mid-twentieth century, local government advocates shifted their approach in order to remove "political questions [from] the laps of the courts" and avoid entirely the state-local distinction that was "not based on a firm, clear line."[52] In its 1953 Model State Constitution, the American Municipal Association introduced LHR, an approach to home rule that expands municipalities' initiative power to be coextensive with the state legislature's but, in doing so, contracts municipal immunity by permitting the state to preempt any local law.[53] LHR refines Premise One of Dillon's Rule by focusing on the substantive allocation of power. However, unlike *imperio* — where judges were gatekeepers — in LHR, the legislature is the "judge of where flexibility is needed" through its broad preemption power.[54] Today, LHR represents the majority approach among states that have adopted home rule.[55]

Unfortunately, LHR is not the paragon of municipal power that advocates had hoped. Legislatures often preempt municipal actions both

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[46] *See* Schragger, *supra* note 40, at 1192–93; Note, *supra* note 15, at 1207 (quoting COMM. ON STATE-LOCAL RELS., COUNCIL OF STATE GOV'TS, STATE-LOCAL RELATIONS 142 (1946)).

[47] Note, *supra* note 15, at 1205.

[48] NAT'L LEAGUE OF CITIES, *supra* note 12, at 11.

[49] *See* Diller, *supra* note 31, at 1125.

[50] F.J. Macchiarola, *Local Government Home Rule and the Judiciary*, 48 J. URB. L. 335, 338 (1971).

[51] *See* NAT'L LEAGUE OF CITIES, *supra* note 12, at 11–12; Diller, *supra* note 31, at 1125. Courts sometimes considered actions "mixed," involving both state and local interests, and held for the state. NAT'L LEAGUE OF CITIES, *supra* note 12, at 11–12; *see, e.g.*, Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30, 33, 37–39 (Colo. 2000).

[52] Macchiarola, *supra* note 50, at 338 (quoting Jefferson B. Fordham, *Home Rule — AMA Model*, 44 NAT'L MUN. REV. 137, 139 (1955)).

[53] *See id.* at 338–39.

[54] *Id.* at 339.

[55] Diller, *supra* note 31, at 1126.

expressly[56] and impliedly.[57] And judges still play a substantial gatekeeping role, as implied preemption's vague and malleable doctrines leave substantial discretion to courts.[58] Moreover, Premise Two of Dillon's Rule continues to supply a background presumption against the municipality.[59] LHR thus may have swapped one indeterminate test for another, allowing judges to retain discretion whenever the state has not spoken clearly.

Both approaches to home rule — while improvements over Dillon's Rule — did not conclusively expand municipal power. Although home rule provisions substantively altered the allocation of power between state and local governments, they did not displace Premises Zero or Two of Dillon's Rule. Both *imperio* and LHR foster substantial ambiguity, inviting courts to use Dillon's interpretive default against localities to undercut local autonomy. And both models left untouched the underlying assumption of the subservience of the municipal; in fact, home rule operates within that assumption, as municipalities exercise only those powers the state chooses to delegate.

B. The Promise of Local Autonomy Guarantees: An End to Dillon's Rule?

Recognizing the enduring sway of Dillon's Premise Two in inhibiting municipal power, Professor Rodney Mott in 1949 argued that "[a]s a minimum[,] the courts should be instructed to interpret the home rule provision liberally to secure maximum . . . powers to the cities and they should be enjoined to view any specific grants of powers as examples rather than as the complete list of powers given the cities."[60] Some states did just that. Between 1933 and 1982, seventeen states[61] added LAGs

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[56] *See, e.g.*, Nestor M. Davidson & Richard C. Schragger, *Do Local Governments Really Have Too Much Power? Understanding the National League of Cities'* Principles of Home Rule for the 21st Century, 100 N.C. L. REV. 1385, 1388 (2022) (referring to a "preemption explosion"). A recent trend, "punitive preemption," has emerged, which not only expressly preempts "inconsistent local rules" but also "impose[s] harsh penalties on local officials or governments simply for having such measures on their books." Richard Briffault, Essay, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997 (2018) (emphasis omitted).

[57] Diller, *supra* note 31, at 1127.

[58] *Id.* at 1126; *see id.* at 1142, 1145–46, 1152. The prevailing tests are "ambiguity laden," *id.* at 1150, and can sometimes yield opposite results on the same facts "relative to the subjects or persons regulated," *id.* at 1152. For a case that illustrates the indeterminacy of these tests, compare *Miller v. Fabius Twp. Bd.*, 114 N.W.2d 205, 208–09 (Mich. 1962), with *id.* at 209–10 (Souris, J., for reversal).

[59] Note, *supra* note 15, at 1207 (quoting COMM. ON STATE-LOCAL RELS., *supra* note 46, at 142).

[60] RODNEY L. MOTT, AM. MUN. ASS'N, HOME RULE FOR AMERICA'S CITIES 18 (1949).

[61] ALASKA CONST. art. X, § 1; COLO. CONST. art. XX, § 6; ILL. CONST. art. VII, § 6; IOWA CONST. art. III, §§ 38A, 39A; KAN. CONST. art. 12, § 5(d); MASS. CONST. amend. art. LXXXIX; MICH. CONST. art. VII, §§ 22, 34; MONT. CONST. art. XI, § 4; N.J. CONST. art. IV, § VII(11); N.M. CONST. art. X, § 6(E); N.Y. CONST. art. IX, § 3(c); N.D. CONST. art. VII, § 1; R.I. CONST. art. XIII, § 1; S.C. CONST. art. VIII, § 17; S.D. CONST. art. IX, § 2; UTAH CONST. art. XI, § 5; WYO. CONST. art. 13, § 1(d).

to state constitutions through conventions or ballot initiatives.[62] Rather than reallocate substantive authority, like the home rule enactments of yore, these provisions provide interpretive instructions for judges and establish foundational protections for local control.

Examination of convention records and contemporaneous sources indicates that numerous states adopted such provisions to abrogate Dillon's Rule — particularly Premise Two, the judge-made antilocal interpretive principle in cases regarding municipal authority. For example, one of the delegates to New Jersey's 1947 constitutional convention, who had been on the committee to draft the LAG, asserted that "[t]he purpose of this amendment — and I think it is in line with the overwhelming weight of public opinion in this State . . . — is that [Dillon's R]ule of construction should be reversed."[63] The histories of the constitutional conventions in Alaska,[64] Illinois,[65] Michigan,[66] and Montana[67] all reflect similar intentions. And courts and contemporaneous scholars

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[62] *See, e.g.*, *Section 5. Municipal Charters*, 50 CONSTS., https://50constitutions.org/ut/constitution/compare?compareOne=78556&compareTwo=77541 [https://perma.cc/26RC-B2KJ] (showing that in 1933, a LAG was added to the Utah Constitution); Constitutional Amendments, Approved, ch. 718, 1983 N.D. Laws 2218, 2218 (codified at N.D. CONST. art. VII). In some cases, these guarantees supplemented already existing home rule. *See, e.g.*, WHAT THE PROPOSED NEW STATE CONSTITUTION MEANS TO YOU 72 (1962), *reprinted in* FRED I. CHASE, STATE OF MICHIGAN CONSTITUTIONAL CONVENTION 1961 OFFICIAL RECORD 3393 (Austin C. Knapp ed., 1962). In other states, these provisions were adopted simultaneously with home rule. *See, e.g.*, 1 STATE OF NEW JERSEY CONSTITUTIONAL CONVENTION OF 1947, at 142 (1949) [hereinafter NEW JERSEY 1947 CONVENTION] (statement of Sen. Edward Jack O'Mara).

[63] NEW JERSEY 1947 CONVENTION, *supra* note 62, at 401 (statement of Sen. Edward Jack O'Mara).

[64] NOTES FROM THE MINUTES OF THE CONSTITUTIONAL CONVENTION: LOCAL GOVERNMENT 4 (1956), https://www.akleg.gov/pdf/billfiles/ConstitutionalConvention/Folder%20212.pdf [https://perma.cc/2WYL-5WHH] (reporting that the liberal construction clause "was placed in the Article in order to get the courts to ignore Dillon's Rule in determining the powers of local governments" (statement of Del. Vic Fischer)).

[65] DAVID R. MILLER, 1970 ILLINOIS CONSTITUTION: ANNOTATED FOR LEGISLATORS 74 (4th ed. 2005) ("This provision was intended to prevent courts from reinstating 'Dillon's Rule' indirectly by strictly construing home-rule powers.").

[66] WHAT THE PROPOSED NEW STATE CONSTITUTION MEANS TO YOU, *supra* note 62, at 3395 ("This is a new section intended to direct the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments."); STATE OF MICHIGAN CONSTITUTIONAL CONVENTION 1961 OFFICIAL RECORD, *supra* note 62, at 1049–50 (noting "that this is merely a rule of construction to guide the court," *id.* at 1049 (statement of Del. William David Ford), and that "[t]his would reverse [Dillon's Rule]," *id.* at 1050 (statement of Del. Eugene Gilkison Wanger)).

[67] 2 MONTANA CONSTITUTIONAL CONVENTION 1971–1972, at 793 (1972) ("What it does intend to do is direct the court, when possible, to give the benefit of the doubt to the city or town." (emphasis omitted)).

in Kansas,[68] Iowa,[69] and New York[70] confirm that the LAGs in these states were also understood as mechanisms to guide judicial interpretation toward consistent rulings more favorable to municipalities.

The focus on Premise Two of Dillon's Rule represented a break with the past by directing reform at the judiciary. As prior experiences with home rule demonstrated, judges played a decisive role in determining the scope of local autonomy, and often interpreted that scope narrowly.[71] The concern was not necessarily that the judges themselves were corrupt — unlike the prior reforms which had assumed corruption in cities or state governments[72] — but that judicial interpretative practices, such as Dillon's interpretive guidance, tended to reinforce state hegemony. Like home rule, LAGs sought to disrupt the structural bias in favor of state power but with a clear focus on judicial interpretation, which had become a mechanism that stabilized and reproduced state supremacy.

However, LAGs, like the prior approaches to home rule, reaffirmed Premise Zero of Dillon's Rule by operating within the framework wherein localities exist at the behest of and derive power from the state.[73] Some states were even more explicit: During the 1971 Montana constitutional convention, the Committee on Local Government endorsed Premise Zero in the comments to its proposal, stating that "section 4 does not attempt to upset the present established power relationship between the state and cities and towns."[74] Overall, LAGs explicitly rebuke Premise Two of Dillon's Rule and can undermine Premise One by bolstering home rule. But LAGs have a limited ability to protect municipalities because they do not undo the ultimate assertion that localities are creatures of the state.

C. Local Autonomy Guarantees in Practice

Despite broadly shared objectives, seventeen states implemented these corrective measures using a variety of articulations. The guarantees fall

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[68] JAMES W. DRURY, HOME RULE IN KANSAS 40 (1965) (explaining that the purpose of the amendment was to "[a]dvise the courts that the constitutional home rule provision and subsequent acts of the legislature are to be broadly construed in favor of home rule" (quoting KAN. LEGIS. COUNCIL, PROPOSAL NO. 16, UNPUBLISHED CONFERENCE REPORT OF THE RESEARCH DEPARTMENT (1958))).

[69] Polk Cnty. Bd. of Supervisors v. Polk Commonwealth Charter Comm'n, 522 N.W.2d 783, 791 (Iowa 1994) (explaining that the amendment "removed the Dillon doctrine from Iowa law").

[70] Carmin R. Putrino, Comment, *Home Rule: A Fresh Start*, 14 BUFF. L. REV. 484, 490 (1965) ("The amendment explicitly repudiates the Dillon rule . . . .").

[71] *See supra* notes 49–51, 57–59 and accompanying text.

[72] *See supra* notes 21–23, 37 and accompanying text.

[73] For example, both LAGs and home rule provisions are delegations of authority from the state: They authorize municipal action only to the extent that state constitutional or statutory law affirmatively grants it. *See supra* section A.2, pp. 1453–55.

[74] 2 MONTANA CONSTITUTIONAL CONVENTION 1971–1972, *supra* note 67, at 793.

into four categories, with six states having adopted multiple.[75] The first, and most common, are liberal construction clauses, which generally provide that the powers of local governments "shall be liberally construed."[76] Eleven state constitutions contain a liberal construction clause.[77] Second, six constitutions contain a maximum local self-government clause, which declares an intent to provide municipalities with the fullest degree of autonomy.[78] Third, two states' constitutions contain an affirmative right to self-government.[79] Fourth, four state constitutions contain no enumeration clauses, which explain that the express enumeration of local powers shall not be understood to deny municipalities additional authority.[80]

This section examines these provisions category by category along two dimensions: (1) the theoretical reach of each provision framed against the baseline of Dillon's Rule and (2) how that potential reach has been realized — or constrained — in practice by judicial interpretation. This section examines the divergence in interpretation of the same (or similar) language across states, the points of consistency and variance across provision types, and the extent to which courts have heeded, ignored, or reinterpreted these provisions as constraints on judicial interpretation.

1. Liberal Construction Clauses. — Liberal construction clauses, the most common of the LAGs, explicitly instruct judges to err on the side of localities when facing ambiguity as to the extent of municipal power.[81] They thereby explicitly overrule Premise Two of Dillon's Rule by constitutionally imposing the opposite canon, reorienting the baseline in favor of municipalities. Reversing Premise Two bolsters local autonomy by expanding initiative and immunity power, thus reinforcing home

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[75] *See* ALASKA CONST. art. X, § 1 (multiple); COLO. CONST. art. XX, § 6 (multiple); KAN. CONST. art. 12, § 5(d) (multiple); MICH. CONST. art. VII, §§ 22, 34 (multiple); N.M. CONST. art. X, § 6(E) (multiple); WYO. CONST. art. 13, § 1(d) (multiple).

[76] KAN. CONST. art. 12, § 5(d).

[77] ALASKA CONST. art. X, § 1; ILL. CONST. art. VII, § 6(m); KAN. CONST. art. 12, § 6(d); MICH. CONST. art. VII, § 34; MONT. CONST. art. XI, § 4(2); N.J. CONST. art. IV, § VII(11); N.M. CONST. art. X, § 6(E); N.Y. CONST. art. IX, § 3(c); S.C. CONST. art. VIII, § 17; S.D. CONST. art. IX, § 2; WYO. CONST. art. 13, § 1(d).

[78] ALASKA CONST. art. X, § 1 ("maximum local self-government"); COLO. CONST. art. XX, § 6(h) ("full right of self-government"); KAN. CONST. art. 12, § 6(d) ("largest measure of self-government"); N.D. CONST. art. VII, § 1 ("maximum local self-government"); N.M. CONST. art. X, § 6(E) ("maximum local self-government"); WYO. CONST. art. 13, § 1(d) ("largest measure of self-government").

[79] MASS. CONST. amend. art. LXXXIX; R.I. CONST. art. XIII, § 1.

[80] COLO. CONST. art. XX, § 6(h); IOWA CONST. art. III, §§ 38A, 39A; MICH. CONST. art. VII, § 22; UTAH CONST. art. XI, § 5.

[81] *See, e.g.*, Am. Tel. & Tel. Co. v. Vill. of Arlington Heights, 620 N.E.2d 1040, 1050 (Ill. 1993) (Bilandic, J., dissenting); THE NEED FOR HOME RULE PROVISIONS IN THE NEW JERSEY CONSTITUTION, *in* 3 STATE OF NEW JERSEY CONSTITUTIONAL CONVENTION OF 1947, at 866, 867–68 (1952) ("The draft is intended . . . to provide a rule of construction designed to minimize the danger manifest in this and other states of frittering away home rule powers by excessively technical or narrow judicial construction.").

rule's realignment of substantive powers. Most state courts seem conscious of the capabilities of liberal construction clauses and of the state framers' intent to restrain the judiciary's interpretative discretion.[82]

Despite their nearly identical language and motivations, liberal construction clauses have vastly different meanings in different states and often apply to *either* the initiative *or* the immunity prong of home rule. These disparate meanings result in part from different background home rule structures and in part from judicial interpretation. In *imperio* states, liberal construction clauses facially expand the initiative power because they resolve ambiguity about what constitutes a municipal affair in favor of the locality. In LHR states, these clauses expand immunity power because they resolve questions over implied preemption for the municipality. Even accounting for differences in home rule structures, judges' interpretations also create divergence, especially in states where courts have essentially ignored the clauses entirely.

(a) As Expansions of the Initiative Power. — In six states,[83] the liberal construction clauses affect only localities' initiative power: These provisions replace Dillon's Premise Two with an interpretive canon that favors the locality when there is ambiguity as to the extent of the powers delegated by the state. If the legislature or constitution grants a municipality the authority to act, that authority should be interpreted broadly in favor of the locality.[84]

Four of these six states are pure *imperio* states[85] — where municipalities' initiative power is limited to local affairs, and those affairs are immune from state preemption.[86] In pure *imperio* states, local autonomy often turns on courts' analyses of municipal initiative power: If an issue is deemed local, it is immune from state preemption. But a municipality has no authority to act on a statewide issue, and the legislature

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[82] *See* Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978); *Am. Tel. & Tel. Co.*, 620 N.E.2d at 1050 (Bilandic, J., dissenting); Associated Builders & Contractors v. City of Lansing, 880 N.W.2d 765, 769–70 (Mich. 2016); Cottonwood Env't L. Ctr. v. State, 560 P.3d 1227, 1229–30 (Mont. 2024); Moreau v. Flanders, 15 A.3d 565, 580 (R.I. 2011); Hosp. Ass'n of S.C. v. County of Charleston, 464 S.E.2d 113, 117 n.4 (S.C. 1995).

[83] These states are Michigan, Montana, New Jersey, New Mexico, New York, and South Carolina.

[84] *See* Associated Students of the Univ. of Mont. v. City of Missoula, 862 P.2d 380, 382 (Mont. 1993); Fraternal Ord. of Police, Newark Lodge No. 12 v. City of Newark, 236 A.3d 965, 975 (N.J. 2020); New Mexicans for Free Enter. v. City of Santa Fe, 126 P.3d 1149, 1158 (N.M. Ct. App. 2005); S.C. State Ports Auth. v. Jasper County, 629 S.E.2d 624, 631 (S.C. 2006); *Associated Builders*, 880 N.W.2d at 770; *cf.* Ass'n of Home Appliance Mfrs. v. City of New York, 36 F. Supp. 3d 366, 372 (S.D.N.Y 2014) (applying state law).

[85] *See* MICH. CONST. art. VII, § 22; N.Y. CONST. art. IX, § 3(c); S.C. CODE ANN. § 5-7-30 (2025). Although the New Mexico Constitution provides a broad initiative power — extending to "all legislative powers and . . . all functions not expressly denied by general law or charter," N.M. CONST. art. X, § 6(D) — that broad delegation is confined to a narrower subset of "powers" and "functions" through a list of exceptions, *see id.* These limitations on the initiative power make the regime functionally an *imperio* one as opposed to the plenary initiative under LHR.

[86] *See supra* note 45 and accompanying text.

may preempt freely.[87] Liberal construction clauses expand the initiative power by expanding what is local. For example, the Michigan Supreme Court recently held that, under the liberal construction clause, an issue can "be a 'municipal concern' [even] if the state might also have an interest in it."[88]

Montana and New Jersey serve as two notable exceptions; although neither has pure *imperio* home rule, courts have applied the liberal construction clauses exclusively to the initiative power. New Jersey combines *imperio*-style limited initiative with broad LHR-style immunity, which allows the state to preempt *any* municipal act.[89] On its face, the liberal construction clause could expand both the initiative power, by broadening the limited areas of municipal authority, and the immunity power, by resolving ambiguous questions of implied preemption in favor of the municipality. However, courts have interpreted this clause to apply only to the initiative power[90] — a judicial choice that was not inevitable and may run counter to expectations. Montana's liberal construction clause applies only to those municipalities *not* granted home rule.[91] Dillon's Premise One operates unchanged in those municipalities, so the liberal construction clause can only instruct courts to understand broadly those powers expressly granted, necessarily implied, or essential to the existence of the locality.[92]

(b) As Shields of Immunity Power. — In three states, Alaska, Illinois, and Kansas, courts have interpreted the liberal construction clauses to expand municipal immunity, thus restricting the state's implied preemption power. Each of these states has some form of LHR;[93] because municipal initiative is already coextensive with state-level authority, there is no room to expand initiative. Instead, courts obey the

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87 However, courts consider some issues a mix of local and statewide concern. Where the local and statewide policies cannot be reconciled, "the state statute supersedes the home rule authority." Town of Telluride v. Lot Thirty-Four Venture, L.L.C., 3 P.3d 30, 37 (Colo. 2000). Thus, even in *imperio* states, liberal construction LAGs can increase immunity by reversing the presumption in favor of preemption in the case of conflict.

88 *Associated Builders*, 880 N.W.2d at 770; *see id.* at 770–71.

89 N.J. CONST. art. VII, §§ 9, 11.

90 *See, e.g.*, Inganamort v. Borough of Fort Lee, 303 A.2d 298, 304 (N.J. 1973) (using the liberal construction clause to answer "whether [a] power could constitutionally be invested in local government").

91 MONT. CONST. art. XI, § 4; Cottonwood Env't L. Ctr. v. State, 560 P.3d 1227, 1229–30 (Mont. 2024) ("Local government units without self-government powers have similar powers to those prior to the 1972 Constitution — generally only those provided or implied by law — yet the Framers instructed that their powers should be liberally construed instead of construing reasonable doubt against the government unit as before.").

92 DILLON, *supra* note 20, § 55, at 101–02.

93 *See* ALASKA CONST. art. X, § 11; ILL. CONST. art. VII, § 6(i); KAN. CONST. art. 12, § 5(b) (allowing preemption where there are "enactments of the legislature applicable uniformly to all cities"). Kansas has *imperio* initiative power, which allows municipalities to act only on "their local affairs." KAN. CONST. art. 12, § 5(b).

command to construe local power liberally by expanding immunity power, broadly protecting municipal action from implied preemption.

Thus, in practice, the liberal construction clauses in these states operate as an anti–implied preemption canon. The Kansas Supreme Court recently held that "[l]egislative silence is no longer sufficient to imply state preemption," due in large part to the liberal construction clause.[94] The Alaska Supreme Court, relying on its liberal construction clause, held that, absent a "direct conflict" with state law, a state can impliedly preempt a municipal ordinance "*only* where an ordinance *substantially interferes* with the effective functioning of a state statute or regulation or its underlying purpose."[95] Illinois, by contrast, is unique as it explicitly forbids implied preemption by statute.[96] Despite this statutory basis, the Illinois Supreme Court nevertheless cited the liberal construction clause to affirm this rule.[97] Although the express preemption requirement is already guaranteed by statute (and constitutionally implied elsewhere[98]), the invocation of the liberal construction clause demonstrates that the clause still plays a role in reinforcing municipal autonomy and may insulate that autonomy from doctrinal retrenchment. The liberal construction clauses in these states constrain both the judiciary and the legislature by requiring that preemption be done expressly or by direct or substantial conflict.

(c) As a Symbol Rather than Substance. — The courts in the remaining two states with liberal construction clauses, Wyoming and South Dakota, have all but rendered these clauses inoperative. For example, the Wyoming Supreme Court has held that in interpreting the initiative power, "we apply a rule of strict construction, resolving any doubt against the existence of the municipal power,"[99] — language that is extremely similar to Dillon's Premise Two. Once the initiative power is established, courts will "liberally construe the method invoked to

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[94] Dwagfys Mfg., Inc. v. City of Topeka, 443 P.3d 1052, 1057, 1059 (Kan. 2019) ("[C]onsideration of whether there is a conflict must be informed with the constitutional command to 'liberally construe[ ]' the home rule power so as to give 'to cities the largest measure of self-government.'" *Id.* at 1059 (second alteration in original) (quoting KAN. CONST. art. 12, § 5(d))). Interestingly, the Kansas Supreme Court has limited its application of this clause to the preemption power only, even though Kansas has *imperio* initiative power, meaning that the court could use this clause to expand the meaning of "local affairs." KAN. CONST. art. 12, § 5(b) ("Cities are hereby empowered to determine their local affairs . . . .").

[95] Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1122 (Alaska 1978) (emphases added); *see also* Kotzebue Lions Club v. City of Kotzebue, 955 P.2d 921, 923 (Alaska 1998) ("Preemption of local laws therefore requires more than the existence of state statutes concerning an activity."); Griswold v. Homer Advisory Plan. Comm'n, 484 P.3d 120, 126–27 (Alaska 2021) (explaining that the court would not "imply limitations on the City's powers where none exist," *id.* at 127).

[96] 5 ILL. COMP. STAT. ANN. 70 / 7 (West 2025); *see* Cammacho v. City of Joliet, 240 N.E.3d 1137, 1144 (Ill. 2024).

[97] *See, e.g.*, *Cammacho*, 240 N.E.3d at 1144; Lintzeris v. City of Chicago, 216 N.E.3d 151, 161 (Ill. 2023).

[98] *See* ILL. CONST. art. VII, § 6(g).

[99] K N Energy, Inc. v. City of Casper, 755 P.2d 207, 211 (Wyo. 1988).

exercise th[at] conferred power, asking only if it is reasonable."[100] And, perhaps even more strikingly, the South Dakota Supreme Court has analyzed its liberal construction clause only once, merely reproducing its text before noting that the powers of home rule municipalities are "not absolute."[101] In these two states, then, the liberal construction clauses have done little to preserve localities' autonomy and seem to serve a mere symbolic function.

2. Maximum Local Self-Government Clauses. — Maximum local self-government clauses, although they do not explicitly override Dillon's Premise Two, necessarily guide judicial interpretation of local power by underscoring the purpose of enhancing local self-governance and thus emphasizing that interpretation of municipal authority should prioritize local autonomy where possible. In doing so, these clauses reaffirm the pro-local reallocation of power codified in traditional home rule. Just as with liberal construction clauses, the wording of maximum local self-government clauses differs only slightly between states, with three providing for "*maximum* local self-government,"[102] two mandating "the *largest measure* of self-government,"[103] and one calling for "the *full* right of self-government in both local and municipal matters."[104]

Importantly, however, five of these six clauses appear in state constitutions with other LAGs. Four of those state constitutions — Alaska, Kansas, New Mexico, and Wyoming — directly connect the maximum local self-government clause to the liberal construction clause by indicating that the "purpose" of the liberal construction clauses is to achieve "the largest measure of self-government."[105] Similarly, Colorado couples its express "intention" to confer upon municipalities "the full right of self-government in both local and municipal matters," with its no enumeration clause.[106] Only North Dakota's maximum local self-government clause appears alone without any other LAG, stating starkly: "The purpose of this article is to provide for maximum local self-government by all political subdivisions with a minimum duplication of functions."[107]

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[100] *Id.* In an earlier case, the Wyoming Supreme Court ruled against a party's interpretation of a statute in part because it was not "consistent with a liberal interpretation of the powers and authority granted to cities and towns." Police Protective Ass'n v. City of Rock Springs, 631 P.2d 433, 435 (Wyo. 1981). However, the Wyoming Supreme Court has not recently given this clause attention except for in a 2011 case where a dissenting justice cited the liberal construction clause. *See* Baessler v. Freier, 258 P.3d 720, 729 (Wyo. 2011) (Kite, C.J., dissenting) (quoting WYO. CONST. art. 13, § 1(d)).

[101] Bozied v. City of Brookings, 638 N.W.2d 264, 269 (S.D. 2001).

[102] ALASKA CONST. art. X, § 1 (emphasis added); N.M. CONST. art. X, § 6(E) (emphasis added); N.D. CONST. art. VII, § 1 (emphasis added).

[103] KAN. CONST. art. 12, § 5(d) (emphasis added); WYO. CONST. art. 13, § 1(d) (emphasis added).

[104] COLO. CONST. art. XX, § 6 (emphasis added).

[105] KAN. CONST. art. 12, § 5(d); WYO. CONST. art. 13, § 1(d); *see* ALASKA CONST. art. X, § 1; N.M. CONST. art. X, § 6(E).

[106] COLO. CONST. art. XX, § 6(h).

[107] N.D. CONST. art. VII, § 1.

Once again, the independent work done by maximum local self-government clauses to uphold local autonomy varies by state. Three state high courts have imbued the maximum local self-government clause with at least some independent weight, while three others have pushed the language to the side.

(a) Meaningful Doctrinal Significance. — The state supreme courts of Colorado, Alaska, and New Mexico have each indicated that the maximum local self-government clause serves at least some distinct function in the states' constitutional schemes.

New Mexico and Colorado are the most directly protective of local autonomy but limit the application of the clause to local and municipal affairs. The New Mexico Supreme Court held that "the purpose of the home rule amendment . . . — to provide for maximum local self-government — would be frustrated by" enforcing a state law whose "subject . . . is a matter of local concern" against a municipality.[108] Thus, the court implemented the maximum local self-government clause by expanding municipalities' immunity from implied preemption on local issues. Interestingly, the extension of protection to only local matters comes directly from the local autonomy guarantee, as New Mexico is an LHR state in which the initiative power is not limited to local issues.[109]

The Colorado Supreme Court, however, has applied its maximum local self-government clause primarily to the initiative power. In a 1980 case, the court relied on its maximum local self-government clause — which "confers upon a home rule city a legally protected interest in its local concerns" — to hold that a locality had standing to challenge a state statute because it "[was] not inferior to the General Assembly concerning its local and municipal affairs."[110] However, the court subsequently clarified that the clause's power extends *only* to "local and municipal matters."[111] And, in the analysis of whether an issue is purely local or of statewide concern, the deck is stacked for the state.[112]

Alaska's maximum local self-government clause is unique in that it is qualified by two specific purposes: "to provide for maximum local self-government *with a minimum of local government units*, and to *prevent duplication of tax-levying jurisdictions*."[113] Thus, the state's jurisprudence on this clause focuses on the "policy" of a "fiscally sound

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[108] State *ex rel.* Haynes v. Bonem, 845 P.2d 150, 158 (N.M. 1992). Prior jurisprudence tended to emphasize the liberal construction clause instead of the maximum local self-government clause. *See* Chapman v. Luna, 678 P.2d 687, 692 (N.M. 1984) ("The purpose of this section is to provide for maximum local self-government. *A liberal construction shall be given* to the powers of municipalities." (quoting N.M. CONST. art. X, § 6(E))); City of Albuquerque v. N.M. State Corp. Comm'n, 605 P.2d 227, 229 (N.M. 1979).

[109] *See* N.M. CONST. art. X, § 6(D).

[110] Denver Urb. Renewal Auth. v. Byrne, 618 P.2d 1374, 1381 (Colo. 1980).

[111] Voss v. Lundvall Bros., 830 P.2d 1061, 1064 (Colo. 1992).

[112] *See id.* at 1066.

[113] ALASKA CONST. art. X, § 1 (emphases added).

system of local government" contained therein.[114] Alaska thus mirrors Colorado and New Mexico in maintaining independent maximum local self-government and liberal construction clauses, but, unlike those states, Alaska's maximum local self-government clause does different work in kind by identifying *specific* areas that must be protected from state preemption.

(b) Little or No Doctrinal Significance. — In contrast, the state supreme courts of Kansas, Wyoming, and North Dakota have afforded the maximum local self-government clauses little analytical significance.

In Kansas and Wyoming, while the state supreme courts occasionally cite the maximum local self-government provision, they have given the clause little analytical weight and focus almost exclusively on the liberal construction mandates. For example, the Kansas Supreme Court regularly quotes the Kansas Constitution's intention to provide cities "the largest measure of self-government,"[115] but the liberal construction clause consistently does the interpretive work and emerges as the driving force for pro-local decisions.[116] Similarly, the Wyoming Supreme Court, in one of its few references to the maximum local self-government clause, upheld municipal authority, reasoning that to do otherwise "would not be consistent with a *liberal interpretation* of the powers and authority granted to cities and towns."[117] This trend may be explained by the constitutional text itself: Kansas and Wyoming expressly define the goal of "the largest measure of self-government" as the purpose behind the liberal construction clauses;[118] courts in those states may view the maximum local self-government language as explanatory rather than analytically independent. However, where states have chosen to include both a liberal construction clause *and* maximum local

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[114] Liberati v. Bristol Bay Borough, 584 P.2d 1115, 1120 (Alaska 1978). For example, in a case about a city's statutory authority to impose a tax on motel rents, the court held that Article X's call for uniformity in taxation guided the analysis. *See* City of Homer v. Gangl, 650 P.2d 396, 401 (Alaska 1982). Reading the statute to bar the city's tax "reconcile[d] the goals of maximum local government and minimum overlapping of local government units articulated in Article X, section 1." *Id.* And the court accepted a similar argument thirteen years later. *See* Keane v. Loc. Boundary Comm'n, 893 P.2d 1239, 1243 (Alaska 1995).

[115] KAN. CONST. art. 12, § 5(d).

[116] *See* Dwagfys Mfg., Inc. v. City of Topeka, 443 P.3d 1052, 1059 (Kan. 2019); Farha v. City of Wichita, 161 P.3d 717, 726, 730 (Kan. 2007).

[117] Police Protective Ass'n v. City of Rock Springs, 631 P.2d 433, 435 (Wyo. 1981) (emphasis added). Notably, this case was decided before the Wyoming Supreme Court gutted the liberal construction clause of any meaning. *See supra* notes 99–100 and accompanying text.

[118] *See* KAN. CONST. art. 12, § 5(d) ("Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government."); WYO. CONST. art. 13, § 1(d) ("The powers and authority granted to cities and towns, pursuant to this section, shall be liberally construed for the purpose of giving the largest measure of self-government to cities and towns.").

self-government language,[119] the presumption against superfluity[120] suggests that the maximum local self-government clause should have some independent force.

By contrast, North Dakota's maximum local self-government clause is its only LAG.[121] Yet it too has been afforded minimal interpretive weight. The North Dakota Supreme Court flirted with empowering its maximum local self-government clause in 2004 when it upheld a local ordinance, reasoning that to hold otherwise would "defy the directive of the people" for "maximum local self-government by all political subdivisions."[122] However, in 2024, the court clarified that the clause "does not identify any specific powers provided to home rule cities" but merely "establishes the legislature's constitutional role in creating and defining the powers of home rule cities."[123] Accordingly, the court invalidated a local firearm ordinance because the maximum local self-government clause neither confers specific powers on a locality nor substantively limits the state's preemptive power.[124]

3. Right of Local Self-Government Clauses. — Massachusetts and Rhode Island "grant and confirm to the people of every city and town the right of self-government in local matters."[125] Right to self-government clauses share many of the characteristics of maximum local self-government clauses: They recast Premises One and Two of Dillon's Rule by orienting judicial interpretation around local autonomy. But these clauses seemingly go one step further by questioning Premise Zero; the plain language of the clauses frame local self-government as a constitutional *right*, a right placed beyond the reach of the popularly elected legislature.[126] Yet by framing the guarantee as a "right to self government *in local matters*," the clause retains the vestiges of Dillon's Premise Zero, leaving municipalities as creatures of the state with limited powers rather than governments of general jurisdiction with broad, inherent powers.

Despite the distinct language, the high courts in Massachusetts and Rhode Island have treated the "*right*" to local self-government as largely symbolic: Both states have preserved broad preemption authority for

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119 *See* ALASKA CONST. art. X, § 1.

120 The presumption against superfluity, also called the "surplusage canon," is a semantic canon that counsels courts against interpretations that would render portions of text redundant or meaningless. *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 174 (2012).

121 *See* N.D. CONST. art. VII, § 1.

122 State v. Brown, 771 N.W.2d 267, 272–73 (N.D. 2009) (quoting N.D. CONST. art. VII, § 1).

123 City of Fargo v. State, 14 N.W.3d 902, 910 (N.D. 2024).

124 *Id.*

125 MASS. CONST. amend. art. LXXXIX, § 1; *see* R.I. CONST. art. XIII, § 1.

126 *Cf.* Amasa M. Eaton, *The Right to Local Self-Government*, 13 HARV. L. REV. 441, 452 (1900) (arguing for a right to local self-government independent from the state based on colonial town councils and judiciaries that "did not derive their powers and jurisdiction from the General Assembly, nor from any authority across the sea"); Frug, *supra* note 11, at 1113–14.

the state.[127] The Massachusetts Supreme Judicial Court relied on the language limiting "the right of municipalities to self-government" to "*local matters*" in choosing to "narrowly construe[]" that provision in its preemption analysis.[128] The LAG adds immunity for "local matters"[129] to Massachusetts's LHR baseline, "but preserves the Commonwealth's right to legislate with respect to State, regional, and general matters."[130] And in determining what is local, the court continues to allow implied preemption, asking merely "whether the Legislature intended to deny [a municipality] the right to legislate on the subject [in question]."[131] Thus, by refusing to restrict the legislature's implied preemption power, the court only nominally upheld the "right of self-government."

In Rhode Island, the right to self-government clause has the potential to impact initiative authority under its *imperio* framework,[132] but the supreme court in 2020 confirmed that localities may "legislate on matters of purely local concern," and "not . . . matters of statewide concern."[133] Yet again, the court largely ignored the LAG — this test is identical to the one that would apply under an *imperio* system without a right to self-government clause.

4. No Enumeration Clauses. — Four states, Colorado, Iowa, Michigan, and Utah, include "no enumeration" clauses in their state constitutions that generally provide that the enumeration of specific local powers should not be taken to preclude the exercise of other powers granted by the constitution.[134] These provisions directly affect both Premises One and Two of Dillon's Rule. They reverse Premise One more directly than any other LAG by rejecting the assumption that localities enjoy only authority derived from expressly granted or truly indispensable powers. And, by implication, they modify Premise Two by

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[127] *See* Doe v. City of Lynn, 36 N.E.3d 18, 23 (Mass. 2015); Town of East Greenwich v. O'Neil, 617 A.2d 104, 110 (R.I. 1992). *But see* State *ex rel.* City of Providence v. Auger, 44 A.3d 1218, 1231 (R.I. 2012). Both Massachusetts and Rhode Island have LHR-style immunity. *See* MASS. CONST. amend. art. LXXXIX, § 6 ("Any city or town may . . . exercise any power . . . not inconsistent with the constitution or laws enacted by the general court . . . ."); R.I. CONST. art. XIII, § 2 ("Every city and town shall have the power at any time to . . . enact and amend local laws . . . not inconsistent with this Constitution and laws enacted by the general assembly . . . .").

[128] *See* Gordon v. Sheriff of Suffolk Cnty., 580 N.E.2d 1039, 1043 (Mass. 1991) (emphasis added).

[129] Clean Harbors of Braintree, Inc. v. Bd. of Health, 616 N.E.2d 78, 82 (Mass. 1993) (quoting *Gordon*, 580 N.E.2d at 1043).

[130] *Id.*

[131] *Doe*, 36 N.E.3d at 23 (alterations in original) (quoting Town of Wendell v. Att'y Gen., 476 N.E.2d 585, 589 (Mass. 1985)).

[132] *See* R.I. CONST. art. XIII, § 2 (limiting the powers of cities and towns to "local laws relating to its property, affairs and government"). Massachusetts has LHR-style initiative power. *See* MASS. CONST. amend. art. LXXXIX, § 6 (giving municipalities "any power or function which the general court has power to confer upon it").

[133] K & W Auto., LLC v. Town of Barrington, 224 A.3d 833, 837 (R.I. 2020) (omission in original) (quoting Town of East Greenwich v. O'Neil, 617 A.2d 104, 111 (R.I. 1992)); *see* State *ex rel.* City of Providence v. Auger, 44 A.3d 1218, 1231 (R.I. 2012).

[134] *See* COLO. CONST. art. XX, § 6; IOWA CONST. art. III, §§ 38A, 39A; MICH. CONST. art. VII, § 22; UTAH CONST. art. XI, § 5.

preventing judges from using the *expressio unius* canon to infer that unenumerated powers are excluded.

In practice, courts have interpreted these clauses to apply principally to the initiative power,[135] with the exception of Utah, which has not interpreted the clause in any substantive detail and treats it instead as a part of the general home rule grant.[136] Textually, by providing that enumerating certain powers does not deny others, these clauses define only what the municipality may do — their capacity to act — without addressing immunity and the broader state-local relationship. Thus, it is unsurprising that the no enumeration clauses have influenced these states' understanding of the initiative power but have not led to restrictions on the state's preemption authority. They thereby offer only a limited protection of local autonomy.

Of the three states that have given their no enumeration clause any weight, the Michigan Supreme Court has settled on the strongest application to local initiative power, using it to cast off the limited understanding of municipal power under Dillon's Premise One. Relying on both the no enumeration clause and the liberal construction clause, the court held that "home rule cities . . . may . . . exercise all powers not expressly denied."[137] The court cited to the "general grant of authority conferred by" section 22 in holding that "[h]ome rule cities are empowered to form for themselves a plan of government suited to their unique needs and, upon local matters, exercise the treasured right of self-governance."[138] Although the court has not read the no enumeration clause to restrict the state's preemption power, it has expanded localities' authority to act on issues of local concern by recognizing that state and local issues may overlap.[139]

Like Michigan, Colorado's no enumeration clause expands the initiative power of municipalities but does not necessarily protect such power from state preemption. The Colorado Supreme Court has read its no enumeration clause, as part of its home rule amendment, "to grant to [municipalities] 'every power possessed by the General Assembly as to local and municipal matters, unless restricted by the terms of the city's charter'"[140] and has similarly held that the legislature cannot "enact a law that denies a right specifically granted by the constitution."[141] In another line of cases, the court has held that the constitution

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135 *See infra* notes 137–148 and accompanying text.

136 Provo City v. Ivie, 94 P.3d 206, 208 (Utah 2004). However, the powers conferred under Utah's home rule provision, which exist in theory, are not self-executing. *Id.*; *see* Wadsworth v. Santaquin City, 28 P.2d 161, 166–69 (Utah 1933).

137 City of Detroit v. Walker, 520 N.W.2d 135, 138 (Mich. 1994).

138 *Id.* at 138–39 (quoting MICH. CONST. art. VII, § 22).

139 *See* Associated Builders & Contractors v. City of Lansing, 880 N.W.2d 765, 769–71, 770–71 nn.26–27 (Mich. 2016).

140 Voss v. Lundvall Bros., 830 P.2d 1061, 1064 (Colo. 1992) (quoting Veterans of Foreign Wars, Post 4264 v. City of Steamboat Springs, 575 P.2d 835, 840 (Colo. 1978)).

141 Town of Telluride v. San Miguel Valley Corp., 185 P.3d 161, 164 (Colo. 2008).

designating a matter as local is "significant" but "not dispositive"[142] in the preemption analysis, thus allowing the legislature to preempt local actions on questions "of mixed state and local concern."[143]

Although the language of Iowa's clause differs significantly from that of the other three states,[144] the Iowa Supreme Court has understood its provision similarly, finding it only fortifies municipalities' initiative power. Thus, "as long as an exercise of police power over local affairs is not 'inconsistent with the laws of the general assembly,' municipalities may act without express legislative approval or authorization."[145] However, like Michigan and Colorado, Iowa's preemption doctrine remains robust; "municipalities cannot act if the legislature has directed otherwise."[146] The legislature may "trump[] the power of local authorities"[147] through "express preemption, implied-conflict preemption, and implied-field preemption."[148]

D. A Promise (Un)Fulfilled: Modest Gains and Enduring Constraints

As evidenced by the divergent jurisprudence interpreting similarly worded provisions, states have had varying levels of success in using LAGs to rebalance state-local relations. This section synthesizes the case law to evaluate where LAGs have been successful (or not) and whether they are equipped to address modern threats to local autonomy. Broadly, these provisions have had moderate success reversing Dillon's Premise Two, and their power is at its peak when state courts apply them in a way that limits a state's preemption power. Despite the capability of some clauses to restrain legislatures' preemption power, state high courts have not always interpreted them as such. Thus, in many states, citizens' efforts to constitutionally entrench greater local control are undermined by background home rule doctrines and judicial interpretation. Moreover, the future utility of LAGs is uncertain as state legislatures, rather than courts, now pose the primary threat to municipal power through express preemption that is largely beyond the reach of LAGs.

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142 City of Commerce City v. State, 40 P.3d 1273, 1284 (Colo. 2002) (quoting Fraternal Ord. of Police, Colo. Lodge No. 27 v. City & County of Denver, 926 P.2d 582, 588 (Colo. 1996)); *see* Webb v. City of Black Hawk, 295 P.3d 480, 486 (Colo. 2013).

143 City of Commerce City v. State, 40 P.3d at 1284.

144 The text of Iowa's provision is particularly stark, as it explicitly states that Dillon's Premise One "is not a part of the law of this state." *See* IOWA CONST. art. III, § 38A. This is especially interesting given that Dillon's Rule was created by an Iowan judge in Iowan state court. *See supra* notes 20–26 and accompanying text.

145 City of Davenport v. Seymour, 755 N.W.2d 533, 538 (Iowa 2008) (quoting IOWA CONST. art. III, § 38A).

146 *Id.*

147 *Id.*

148 Lime Lounge, LLC v. City of Des Moines, 4 N.W.3d 642, 653 (Iowa 2024).

1. An Incomplete Overthrow of Dillon's Rule. — As evidenced by the case law examined above, LAGs have at least partially succeeded in reversing the presumption that any doubt as to the scope of a local power should be resolved against the locality. In doing so, these guarantees have also fortified the substantive reallocation of legislative power between the states and municipalities, further modifying Dillon's Premise One. At their strongest, LAGs have been read to eliminate all forms of implied preemption.[149] And, at their weakest, these clauses have effectively been rendered null or completely ignored by the judiciary.[150] But, for the most part, state courts across the country appear to be giving these provisions at least some substantive weight.

Despite the moderate success of LAGs, there is a pronounced disparity in the impact of these provisions amongst states. This disparity may be due at least in part to each state's background home rule structure. In the *imperio* model, the locality's protected sphere is restricted to local matters.[151] For these states, reversing Dillon's Premise Two has a limited effect, because there will always be some concerns that are statewide.[152] In the LHR model, however, localities may legislate on any subject that the state has not preempted,[153] and so any expansion of local authority necessarily requires a diminution of the state's preemption power. States with a pure LHR framework, then, may be able to use their LAGs to do more for local independence than *imperio* states since protection is not limited to *municipal* affairs. This potential has played out in Alaska and Kansas, where the combination of an LHR approach toward immunity and a liberal construction clause has substantially restricted the state's preemption power.[154]

But background structure remains only a partial explanation. Even within states with the same form of home rule, the interpretive weight of that clause still varies. Some of that variation may be due to differences in the typology of the guarantee: Liberal construction clauses appear to produce the strongest enforcement of municipal authority and also the most complete judicial disregard,[155] while other formulations — such as the right to self-government and no enumeration clauses — by their nature limit the range of judicial interpretations to the initiative power.[156] But even the same textual guarantee with almost

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149 *See supra* section C.1(b), pp. 1460–61.

150 *See, e.g.*, *supra* section C.1(c), pp. 1461–62; *supra* section C.2(b), pp. 1464–65.

151 *See* NAT'L LEAGUE OF CITIES, *supra* note 12, at 11.

152 For an example of such capacious interpretation, see *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000).

153 *See* Schragger, *supra* note 40, at 1193.

154 *See supra* section C.1(b), pp. 1460–61.

155 *Compare* Dwagfys Mfg., Inc. v. City of Topeka, 443 P.3d 1052, 1059 (Kan. 2019) (relying on the liberal construction clause to require express preemption), *with* K N Energy, Inc. v. City of Casper, 755 P.2d 207, 211 (Wyo. 1988) (upholding strict presumption against municipal power notwithstanding the liberal construction clause).

156 *See supra* sections C.3–4, pp. 1465–68.

identical language can constitute a flourishing interpretive canon in one state and an empty formality in another.[157] Thus, there is something context specific causing these variations in near-identical provisions; in this respect, the uneven impact of these guarantees may reveal less about the clauses themselves and more about the broader indeterminacy of the promises of home rule and the proper role for local governments.

Although the exact reasons for this variation are not clear, the state courts' interpretive practices may be to blame. Professor Richard Schragger's research offers some insight as to why state judges may favor state power over local power. First, in an interconnected world, it's difficult to locate a regulation whose effect is *only* local — "most local regulations," even those that apply only within municipal boundaries, "have some spillover effects."[158] Second, "[l]egislative actions are driven by political need and fiscal expediency" rather than a principled idea of "intergovernmental relations."[159] As Schragger documents, both Dillon's Rule and the home rule movement were driven by efforts to limit corruption based on the perceived institutional risks at the time.[160] In this way, "conflicts over state-municipal authority are proxies for political fights that have nothing to do with the pros and cons of decentralization."[161] Moreover, the view of cities as more corrupt and less capable than statewide governments pervaded both Dillon's Rule and the home rule movement in different ways.[162] This view may persist among the state judiciary. For these reasons, Schragger suggests that state courts "tend to defer to legislatures in large part because of the judges' inability to settle on nonpolitical principles for dividing up authority."[163]

Yet, even if these explanations reflect state judges' actual attitudes, two difficulties remain. First, some of the LAGs were enacted *after* home rule reforms precisely to correct judicial refusal to implement increased local control.[164] Second, excessive deference to the legislature suggests that state judges may misunderstand not only their own roles, but also the constitutional nature of LAGs. Judges may legitimately be concerned about engaging in the same sort of overreach that Dillon's

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[157] For example, compare Wyoming, an *imperio* state, *see* WYO. CONST. art. 13, §§ 1(b), 1(d), which has an essentially inoperative liberal construction clause, *see K N Energy, Inc.*, 755 P.2d at 211, with Michigan, also an *imperio* state, *see* MICH. CONST. art. VII, §§ 22, 34, but with a liberal construction clause that impacts the initiative analysis, *see* Associated Builders & Contractors v. City of Lansing, 880 N.W.2d 765, 769–70 (Mich. 2016).

[158] Schragger, *supra* note 22, at 105.

[159] RICHARD SCHRAGGER, CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE 70 (2016).

[160] *Id.* at 61–65.

[161] *Id.* at 70.

[162] *Id.* at 61–65.

[163] *Id.* at 70; *see also* Schragger, *supra* note 22, at 105 (arguing that drawing lines between local and statewide concerns may thus veer too close to implementing "the substantive policy preferences of the judge").

[164] *See supra* note 62 and accompanying text.

Rule produced, necessitating home rule and LAGs in the first place. But Dillon's Rule was a *judge-created* principle. LAGs are mandates that citizens have seen fit to record in their most foundational governing document. By enacting direct instructions into constitutional text, the citizens of these states placed interpretive principles above the whims of the three branches. State courts' refusal to enforce LAGs to their fullest extent aggrandizes the judiciary not over its coequal branch, the legislature, but over the people themselves.

2. The Persistence of Premise Zero: Express Legislative Overrides. — In addition to the difficulty LAGs face due to background home rule principles and judicial interpretation, they also entrench Premise Zero of Dillon's Rule. Municipalities remain "creatures of the state" and subject to direct legislative override.[165] Notably, for many of the LAG framers, this fact is not so much a bug of the system as it is a feature.[166] With legislative supremacy lurking in the background, municipalities will always be, on some level, subservient to legislatures notwithstanding any LAG, and remain vulnerable to preemption.

Robust judicial interpretations of constitutional LAGs have protected localities from some state-level preemption.[167] However, over the last ten to fifteen years, use of express preemption, often in the unprecedented forms of punitive or even "nuclear" preemption,[168] has accelerated.[169] Local autonomy guarantees are ill-suited to protect municipalities from the rise of this extreme, and often politically motivated,[170] preemption. Even the strongest liberal construction clause, for example, restricts only the legislature's implied preemption power and cannot overcome an express override of local authority.[171] And, in *imperio* states — where the immunity power protects municipalities from express preemption on local issues — LAGs can only expand immunity so far, as there are always some issues that are truly statewide.[172] Additionally, state courts have not always applied relevant LAGs to expand the definition of a local affair.[173]

Thus, the vindication of local autonomy in the age of the "new preemption"[174] will likely require another adjustment. Local autonomy guarantees arose largely as a response to the threat posed to localities by state courts. Today, however, the threat to local autonomy comes

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165 *See* Frug, *supra* note 11, at 1063.

166 *See supra* notes 73–74 and accompanying text.

167 *See, e.g.*, *supra* section C.1(b), pp. 1460–61.

168 Briffault, *supra* note 56, at 1997.

169 *See* Nestor M. Davidson & Laurie Reynolds, *The New State Preemption, The Future of Home Rule, and the Illinois Experience*, 4 ILL. MUN. POL'Y J. 19, 20 (2019).

170 *See* Briffault, *supra* note 56, at 1997–98.

171 *See, e.g.*, *supra* section C.1(b), pp. 1460–61.

172 For an example of how courts define statewide concern broadly, see *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000).

173 *See, e.g.*, *supra* section C.1(a), pp. 1459–60.

174 Briffault, *supra* note 56, at 1997.

primarily from state legislatures, and any solution must therefore be directed at them. Reformers have proposed the adoption of judicial canons to combat preemption directly;[175] but such canons should be explicitly codified since judicially imposed canons depend on judicial willingness to apply them. The Illinois Constitution provides such a model, requiring a three-fifths legislative majority to preempt local regulation in areas the state has not previously regulated.[176] Its effectiveness in preserving local autonomy stems in part from judicial restraint: "[T]he Illinois courts have generally respected the constitution's unenforceable directive to exercise restraint in their use of preemption doctrines to invalidate local laws."[177] States adopting this model must ensure courts similarly exercise restraint and avoid interpreting away any such constitutional measure. To preserve real local control today, state constitutional reforms should roll back the legislature's preemption power and continue to push judges to interpret LAGs to their fullest extents.

Conclusion

The story of LAGs is one of success with serious limitations. In many states, they have blunted and even reversed the effects of Dillon's Premise Two; in others, Premise Two continues to thrive despite plain language to the contrary. And, even in states whose guarantees did recalibrate judicial attitudes toward municipal governments, the recent actions of state legislatures in maximizing their preemption power tip the scales back toward the state. LAGs are unequipped to combat this development since they do not seek to undermine Premise Zero of Dillon's Rule and localities remain creatures of the state.

The result is a partial and fragile recalibration of state-local relations — a recalibration that underscores the promise and limitations of constitutional design. State court judges should rethink the decisions that have resulted in the erosion of these provisions, and advocates for local control must rise to meet the challenges posed by states' strategic moves toward express overrides. Text can redirect doctrine, but it cannot, on its own, transform enduring beliefs about government or anticipate the next site of contestation. If nothing else, the arc of LAGs exposes a tension at the heart of constitutionalism: Even explicit popular commitments to redistribute power struggle to overcome institutional and interpretive inertia.

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175 *See supra* note 15 and accompanying text.

176 *See* ILL. CONST. art. VII, § 6(g); *see also id.* §§ 6(h)–(l) (providing other limits on the legislature's preemption power). For a scholar who has proposed similar measures to limit the legislature's preemption powers, see, for example, David J. Toscano, *State Preemption and the Fracturing of America*, HARV. ADVANCED LEADERSHIP INITIATIVE: SOC. IMPACT REV. (Nov. 8, 2022), https://www.sir.advancedleadership.harvard.edu/articles/state-preemption-and-the-fracturing-of-america [https://perma.cc/LLR9-XBFC].

177 Davidson & Reynolds, *supra* note 169, at 28.