

ESSAY

Post-Emption and the Mayoral Toolbox: Levers and Limits of City Resistance to State Preemption

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States increasingly deploy aggressive preemption measures against disfavored localities. Scholars have raised the alarm, but cities' subordinate legal status leaves them disempowered. To push back, municipal advocates need to thoroughly understand the complex bilateral relationship between cities and their states.

That is where I come in. As mayor of a progressive city in a conservative state, I swim in the hostile symbiosis that characterizes city-state relations. By drawing on real-life examples, closed-door conversations, and previously private documents, my coauthor and I demonstrate the potency of multipronged city power. We synthesize our stories into a thicker account of state motivation and then showcase the city's "toolbox" for limiting state preemption.

That process unearths preemption's next frontier. Postenactment state preemption, or "post-emption," occurs when a state retroactively nullifies a specific, already-passed municipal law. It has been widely acknowledged but not individually distinguished. Analyzing it independently reveals that it is already ubiquitous and likely to proliferate. Post-emption thus warrants individualized normative assessment, and this Essay begins that surprisingly nuanced discussion.

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^{††} General Counsel to the Mayor. Several individuals provided support and insight without which this Essay would not have been possible. Morgan Said's administrative and political genius deserves credit for many of Kansas City's successes, and this Essay is no exception. Others in the mayor's office contributed time and critical thought, including Reid Day and Melesa Johnson. Nicholas Hine's strategic assistance helped get this piece across the finish line, and Jack Wolverton's diligent research assistance was fundamental in compiling data and references. Discussions with the exceptional students and faculty at the University of Kansas School of Law helped us refine our local government experiences for an academic context. Lastly, heartfelt thanks to the editors of the *University of Chicago Law Review*—particularly Aleena Tariq, Adrian Ivashkiv, and Helen Zhao—for their meticulous substantive and technical edits.

INTRODUCTION

As the world's first stadium dedicated to professional women's sports opened its doors and the crowd streamed in, it seemed Kansas City¹ and Missouri had perfected the cooperative spirit between state and city. The stadium sat on a former landfill abutting the Missouri River, team ownership worked with local and state leaders to support the stadium's financing and construction, and the full-capacity crowd of girls, women, and families signified an unmitigated success for the brands of both the city and the state. Indeed, city-state cooperation played a crucial role in constructing CPKC Stadium, home of the National Women's Soccer League's Kansas City Current. As the project came together, Missouri Governor Mike Parson and state leaders had extolled the virtues of their state's largest city and praised its leaders, including me as the mayor. My staff returned the favor, lauding the Governor's and statewide leaders' histories of championing projects that catalyzed Kansas City and benefited the state as a whole. The cooperative spirit was real—we had worked hand in glove on this initiative and others.

At the same time, public discord brewed.

What the ABC-TV television cameras missed on the national telecast, viewers in the stands could see clearly: banners supporting the rights of lesbian and transgender Missourians and their families, others calling for the protection of women's reproductive rights. Issues, persons, and putative rights for which Kansas City officials had legislated support and protection—and which Missouri state leaders had foreclosed as they limited cities' ability to protect their female, minority, and disadvantaged residents.

This two-track relationship was nothing new for me and my coauthor, whose duties as general counsel require both negotiation with and litigation against state officials. Leading a progressive city in a conservative state demands simultaneously resisting and cooperating with state officials.² To adapt a phrase from Professor Duncan Kennedy, maintaining a relationship

¹ Unless otherwise noted, "Kansas City" refers to Kansas City, Missouri.

² Though this short Essay contains insufficient space to consider city-federal relations, that dynamic, too, is both important and complex. See Andrew O'Reilly, *Kansas City Mayor Welcomes Federal Help in Solving Murders, but Worries About Trump's Motives*, FOX NEWS (July 26, 2020), <https://perma.cc/6BWR-T9RF>.

with our state is “both necessary to and incompatible with” our city’s flourishing.³

If the stadium builders would have been surprised to learn of city-state friction, legal scholars might be surprised by our camaraderie. As antagonistic, anti-urban preemption laws exploded from statehouses over the past decade, insightful scholars raised the alarm. Such laws, scholars noted, differed from preemption laws of past eras.⁴ New preemption laws were deregulatory,⁵ expansive,⁶ and punitive.⁷ And they worked.⁸ Cities could complain to the courts⁹ or hunt for loopholes,¹⁰ but courts often shut them down and loopholes quickly closed.¹¹ U.S. cities were under attack—they had no choice but to brawl it out in the political arena.

Having followed this scholarship as a law professor, I embarked upon my first mayoral term ready to fight hard and fail often. Surprisingly, success rolled in. We barred minors from possessing guns,¹² launched a \$75 million affordable-housing trust fund,¹³ built a \$1.5 billion airport terminal,¹⁴ introduced free

³ Duncan Kennedy, *The Structure of Blackstone’s Commentaries*, 28 BUFF. L. REV. 205, 213 (1979) (identifying a “fundamental contradiction”: “relations with others . . . are both necessary to and incompatible with our freedom”).

⁴ See, e.g., Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997–98 (2018) [hereinafter Briffault, *New Preemption*]; Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469, 1504–07 (2018) [hereinafter Scharff, *Hyper Preemption*].

⁵ Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163, 1182 (2018) [hereinafter Schragger, *Attack*].

⁶ See Scharff, *Hyper Preemption*, *supra* note 4, at 1502–03.

⁷ Briffault, *New Preemption*, *supra* note 4, at 2002.

⁸ See Richard Briffault, Nestor M. Davidson, Paul A. Diller, Olatunde Johnson & Richard C. Schragger, *The Troubling Turn in State Preemption: The Assault on Progressive Cities and How Cities Can Respond*, 11 ADVANCE 3, 3 (2017) (“[T]he legal structure of intrastate preemption does not favor cities.”).

⁹ See Schragger, *Attack*, *supra* note 5, at 1216–26.

¹⁰ See, e.g., *Flores v. Las Vegas-Clark Cnty. Libr. Dist.*, 432 P.3d 173, 173 (Nev. 2018) (holding that a library district was exempt from a law that applied to “countries, cities, or towns”).

¹¹ See Joseph Blocher, *Cities, Preemption, and the Statutory Second Amendment*, 89 U. CHI. L. REV. 557, 564–65 (2022).

¹² Tod Palmer, *KCMO Passes Ban on Automatic Weapons, Providing Firearms to Juveniles*, KSHB (Aug. 10, 2023), <https://perma.cc/TJ2P-WQ8J>; KAN. CITY, MO., CODE OF ORDINANCES § 50-272 (2024).

¹³ Lisa Rodriguez, *The First ‘Big Deal’ in Solving Kansas City’s Affordable Housing Problem? A Trust Fund*, KCUR (Dec. 20, 2018), <https://perma.cc/R2X9-CWZF>.

¹⁴ Carlos Moreno, *Kansas City’s New Airport Terminal Is Opening in Less than a Month. Now We Know the Official Date*, KCUR (Jan. 30, 2023), <https://perma.cc/R54G-P4EB>.

citywide public transit,¹⁵ created a commission on reparations,¹⁶ and won a bid to host the 2026 FIFA World Cup.¹⁷ The looming threat of state preemption challenged and scared us, but it neither incapacitated nor deterred us.

We learned through experience that city power is potent and pervasive. States—though they hold a trump card—are less dominant than a plain-text reading of positive law might suggest. By prodding here and pushing there, cities and their leaders can effectively advance their interests even in the face of aggressive state preemption. I think of these multipronged tactics as my mayoral toolbox.

This Essay exhibits that toolbox for scholars and practitioners. Drawing on real-life examples, describing closed-door meetings, and unveiling previously private documents, we ground preemption literature in the experience of one representative U.S. city.

Stitching theory to practice (and practice to theory) makes two contributions. First, it creates a thicker account of vertical power allocation in our federal system. This is hardly surprising: we know that “intergovernmental relations in any given historical period generally reflect[] substantive political commitments.”¹⁸ A deep dive into current political commitments predictably sheds light on current intergovernmental relations.

The details matter, though. Cataloging state susceptibility to city power projection provides new answers to recurring preemption questions: Why has there been so much aggressive preemption in the past few years? Why hasn’t there been more? How can cities respond? And how will the battle evolve?

Second, it breathes life into scholarly admonitions that cities turn to politics.¹⁹ It shows what entering the political arena really

¹⁵ Sandy Smith, *Kansas City’s Zero Fare Transit Program Shows Major Success—And What Still Needs to Be Done*, NEXT CITY (July 27, 2022), <https://perma.cc/TF7Z-77CU>.

¹⁶ Lawrence Brooks, IV, *Kansas City Officially Begins a ‘Transformative’ Effort to Study Reparations for Black Residents*, KCUR (May 24, 2023), <https://perma.cc/SF8G-B7D4>.

¹⁷ *Kansas City Named FIFA World Cup 2026 Host City*, KAN. CITY, <https://www.kcmo.gov/Home/Components/News/News/1898/1746>.

¹⁸ Schragger, *Attack*, *supra* note 5, at 1168; *see also* David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1513–15 [hereinafter Schleicher, *The City*] (arguing that both Dillon’s Rule and home rule provisions responded to changes in the economic sources of urban advantage).

¹⁹ *See, e.g.*, Rachel Simon, *The Firearm Preemption Phenomenon*, 43 CARDOZO L. REV. 1441, 1509 (2022) (“Activists and officials must set their sights on pressuring state legislators to reconsider, revise, and repeal expansive preemption laws, a goal that will

means, when it might succeed, and when cities are better off litigating or just leaving the fight. Because we anchor our theoretical contributions in real-life stories, we are forced to face—and explain—the nuance and texture that characterizes reality. We have repeatedly fallen short of our goals. We have bunches of bittersweet half-wins. We have learned, grown, regrouped, and reengaged. In describing it all, this Essay puts meat on the bone of local government legal theory.

Our exploration unearths the next frontier of preemption. “Post-emption,” the emerging phenomenon we identify and name, is *retroactive* and *targeted*. It occurs when a state wields its preemptive power to strike down specific, already-enacted municipal laws. These state acts receive scholarly acknowledgment but find themselves lumped together with other types of preemption.²⁰

Post-emption deserves independent analysis for three reasons. First, its ubiquity. States use it for everything from minimum wage laws²¹ to transgender bathroom bills²² to COVID-19 measures.²³ Second, its appeal. From the state perspective, post-emption retains most benefits of prospective preemption while incurring fewer political and economic harms. Finally, its distinctiveness. Most strands of aggressive modern preemption are unequivocally bad for local governance.²⁴ Post-emption might not be. Though potentially destructive, post-emption also retains and even amplifies some benefits traditionally associated with local government. At the least, the dangers it represents are different in kind than traditional preemption’s. Two notable examples of post-emption in Kansas City illuminate post-emption’s unique features and need for individualized attention. This Essay starts that conversation.

require cultivating broader popular support and taking advantage of democratic processes.”); Schragger, *Attack*, *supra* note 5, at 1226.

²⁰ See, e.g., Schragger, *Attack*, *supra* note 5, at 1183 (defining “retaliatory preemption” as instances where the state “preempts more local authority than is necessary to achieve the state’s specific policy goals, when the state threatens to withhold funds in response to the adoption of local legislation, or when the state threatens all cities with preemptive legislation in response to one city’s adoption of a particular policy”).

²¹ 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, 1395 (2022).

²² See Schragger, *Attack*, *supra* note 5, at 1165.

²³ *Arkansas Governor Signs Bill Banning Vaccine Requirements*, ASSOCIATED PRESS (Apr. 28, 2021), <https://perma.cc/8W7X-UGX9>.

²⁴ See generally LYDIA BEAN & MARESA STRANO, PUNCHING DOWN: HOW STATES ARE SUPPRESSING LOCAL DEMOCRACY (2019).

I. PESSIMISM AND PREEMPTION—MUNICIPAL IMPOTENCE, STATE SUPREMACY

Anti-urbanism is baked into our system of government.²⁵ Cities are legally impotent, structurally feeble, and arrayed against adversarial states incentivized to perpetuate urban disempowerment.²⁶

States have exploited city vulnerability with a spate of aggressive new preemption laws. Called hyper preemption²⁷ or new preemption,²⁸ these laws are “the leading challenge in today’s state and local government law.”²⁹ They come in a few forms: Nuclear preemption, also called deregulatory preemption, walls off entire realms from local governance.³⁰ Vindictive preemption intentionally reaches more broadly than necessary to achieve state policy goals.³¹ Structural preemption prevents local governments from designing their own governmental institutions.³² And punitive preemption threatens crippling sanctions—including criminal penalties—against cities and officials that challenge state law.³³ State preemption of local governance is a five-alarm fire. As one scholar put it in 2017, the phenomenon “has reached nearly epidemic proportions.”³⁴ It has only worsened since.

Aggressive new preemption builds upon a tradition of disempowering cities relative to their states. State domination traces back to John F. Dillon, the Iowa Supreme Court Chief Justice whose 1872 *Treatise on The Law of Municipal Corporations* developed “the foundation of the law of municipal corporations.”³⁵ Chief Justice Dillon announced “a general and undisputed

²⁵ See Schragger, *Attack*, *supra* note 5, at 1167–68; see also Paul A. Diller, *Reorienting Home Rule: Part 1—The Urban Disadvantage in National and State Lawmaking*, 77 *LA. L. REV.* 287, 290 (2016).

²⁶ See Schragger, *Attack*, *supra* note 5, at 1167–68.

²⁷ See generally Scharff, *Hyper Preemption*, *supra* note 4.

²⁸ See generally Briffault, *New Preemption*, *supra* note 4.

²⁹ RICHARD BRIFFAULT, NESTOR DAVIDSON & LAURIE REYNOLDS, *THE NEW PREEMPTION READER: LEGISLATION, CASES, AND COMMENTARY ON THE LEADING CHALLENGE IN TODAY’S STATE AND LOCAL GOVERNMENT LAW*, at tit. (2019).

³⁰ Briffault, *New Preemption*, *supra* note 4, at 2007; Schragger, *Attack*, *supra* note 5, at 1182.

³¹ See *supra* note 20.

³² See Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 *STAN. L. REV.* 1361, 1363 (2020).

³³ See Briffault, *New Preemption*, *supra* note 4, at 2002–07.

³⁴ Kenneth A. Stahl, *Preemption, Federalism, and Local Democracy*, 44 *FORDHAM URB. L.J.* 133, 134 (2017).

³⁵ JOHN F. DILLON, *TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS* 102 (Chicago, James Cockerfoot & Co. 1872).

proposition”—now called Dillon’s Rule—that local governments could exercise only two narrow powers: those *expressly granted* by a statute and those *indispensable* to the city’s purposes of incorporation.³⁶ In Chief Justice Dillon’s telling, local governments were “administrative conveniences of the state” with little claim to democratic legitimacy, large concerns about corruptibility, and no good reason to exercise lawmaking authority.³⁷

Chief Justice Dillon’s disempowering rule sparked a reaction from those who believed local governments are uniquely responsive to popular will and thus worthy of political power. Localism’s proponents agitated for “home rule,” a restructuring of state-local relationships that empowered municipal governments and insulated them from undue state interference.³⁸

The home rule movement advanced two distinct governance models.³⁹ The first model, *imperio i imperium*, carved out a limited, wholly autonomous sphere for “‘local’ or ‘municipal’ affairs.”⁴⁰ The second model, exemplified by the American Municipal Association’s (AMA) Model Constitutional Provisions, recognized the overlap between municipal and state priorities.⁴¹ Rather than sharply dividing state and municipal authority, this second model expanded the legitimate scope of local interest but permitted occasional state interference. This AMA model allowed states to delegate any authority to local governments but also preempt

³⁶ *Id.* at 101–02. *But see* Nikolas Bowie, *The Constitutional Right of Self-Government*, 130 YALE L.J. 1652, 1742 n.596 (2021) (explaining that “Dillon’s assumptions were challenged from their inception”).

³⁷ NAT’L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY, as reprinted in 100 N.C. L. REV. 1329, 1333 (2022); *see also* Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1119 (1980).

Modern scholarship views Dillon’s Rule as prophylactic, intended to prevent cities from spinning out of control. Professor David Schleicher has argued that Chief Justice Dillon’s theory arose from concerns about excessive local power leading to undesirable policy results. *See, e.g.*, Schleicher, *The City*, *supra* note 18, at 1513–15; *accord* Frug, *supra* note 37, at 1119. Professor Felipe Ford Cole saw the rule as an attempt to empower municipal debt-makers, rather than state governments, to reign in spendthrift cities. *See* Felipe Ford Cole, *Unshackling Cities*, 90 U. CHI. L. REV. 1365, 1408–10 (2023). As both Professor Schleicher’s and Professor Cole’s insightful historical analyses show, understanding the state-local power balance of Chief Justice Dillon’s time requires deep appreciation for the political battles that shaped it. The same holds true today.

³⁸ *See* David Schleicher, *Constitutional Law for NIMBYs: A Review of “Principles of Home Rule for the 21st Century” by the National League of Cities*, 81 OHIO ST. L.J. 883, 887 (2020) [hereinafter Schleicher, *Constitutional Law for NIMBYs*].

³⁹ *See id.* at 890.

⁴⁰ NAT’L LEAGUE OF CITIES, *supra* note 37, at 1334.

⁴¹ *See id.* at 1334–35 (citing AM. MUN. ASS’N, MODEL CONSTITUTIONAL PROVISIONS FOR MUNICIPAL HOME RULE 6 (1953)).

localities as they saw fit.⁴² The model was widely adopted and forms the basis for most states' home rule provisions today.

City power remains limited by states. Even though Dillon's Rule is formally abandoned by many states, its shadow still restricts local authority.⁴³ The Rule's narrow, inflexible conception of municipal power remains "the major judicial model of local government powers and dominates American debates of the proper role of localities with respect to state governments."⁴⁴ In practice, "[l]ocal governments do not—indeed, cannot—possess anything like local legal autonomy."⁴⁵

The lack of autonomy hurts. States have incentives to pick preemption fights,⁴⁶ and they almost always win.⁴⁷ State lawmakers who represent city dwellers have a democratic claim to meddle in city affairs.⁴⁸ Lawmakers representing rural areas feel justified interfering with cities because those cities contain a critical mass of the state's wealth and civic institutions.⁴⁹

Cities' internal politics also contribute to state intrusion. The diversity of interests and identities in a city increases the likelihood of nonunanimous policies. The losing side of a local political fight can turn to the statehouse for a second bite at the apple, requesting state preemption to overturn the municipal decision.⁵⁰ Put together, our system is structurally tilted against municipal governments, which encourages and exacerbates the militant wave of intrastate preemption threatening today's cities.

Cities might look for judicial relief, but courts are an "uncertain line of defense against preemption."⁵¹ Occasionally, state laws leave such clear loopholes that local governments can secure

⁴² *Id.* at 1335.

⁴³ Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 8 (1990) [hereinafter Briffault, *Our Localism Part I*].

⁴⁴ GORDON L. CLARK, JUDGES AND THE CITIES: INTERPRETING LOCAL AUTONOMY 77 (1985); see also Frug, *supra* note 37, at 1112–13.

⁴⁵ David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2257, 2263 (2003); see also Briffault, *Our Localism Part I*, *supra* note 43, at 9 ("Dillon's Rule and the notion of plenary state power are the formal background norms for state-local relationships.").

⁴⁶ See Schragger, *Attack*, *supra* note 5, at 1186–87 (describing state incentives to preempt local laws).

⁴⁷ See Richard Briffault, *Preemption: The Continuing Challenge*, 36 J. LAND USE & ENVTL. L. 251, 259 (2021) [hereinafter Briffault, *Continuing Challenge*]; see also Miriam Seifter, *Countermajoritarian Legislatures*, 121 COLUM. L. REV. 1733, 1750 (2021) ("[In] an era of aggressive state preemption of local decisions . . . the state legislatures typically win.").

⁴⁸ Seifter, *supra* note 47, at 1751.

⁴⁹ Schragger, *Attack*, *supra* note 5, at 1186–87.

⁵⁰ *Id.*

⁵¹ Briffault, *Continuing Challenge*, *supra* note 47, at 264.

temporary wins. A Nevada library district, for example, banned firearms on its premises despite a state law preempting local firearm regulation.⁵² The state preemption law, however, suffered from imprecise drafting. Its “plain language expressly pertain[ed] to only *counties, cities, or towns* with respect to firearm regulation,” so the Nevada Supreme Court held that library *districts* could regulate firearms unencumbered by that specific law.⁵³

The City of Gary, Indiana, also found friendly reception in Indiana courts. For twenty-five years and counting, the city has sought recovery in tort for gun manufacturers’ improper marketing and manufacturing practices.⁵⁴ The Indiana Supreme Court, rejecting the manufacturers’ claim that the suit constituted a “regulation,” allowed the suit to proceed.⁵⁵ Two decades later, after both the state and federal governments had tightened preemption law to prevent such lawsuits,⁵⁶ an Indiana appeals court permitted Gary’s claims to proceed on narrower grounds, only “to the extent that they implicate *unlawful* conduct by the Manufacturers.”⁵⁷

These rare successes are the exceptions that prove the rule. Gary’s lawsuit was filed alongside similar suits from over forty cities.⁵⁸ It was the only one to survive.⁵⁹ More often than not, courts implicitly harken back to Dillon’s Rule, assume plenary state power, and read preemption laws expansively to limit local authority.⁶⁰

⁵² Flores v. Las Vegas-Clark Cnty. Libr. Dist., 432 P.3d 173, 174 (Nev. 2018).

⁵³ *Id.* (emphasis in original). Compare the Nevada law to Missouri’s much more comprehensive firearm preemption law: “No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance or regulation concerning in any way the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permit, registration, taxation . . . or other controls on firearms, components, ammunition, and supplies.” MO. ANN. STAT § 21.750.2 (West 2024) (emphasis added).

⁵⁴ See City of Gary v. Smith & Wesson Corp., 126 N.E.3d 813, 819 (Ind. Ct. App. 2019).

⁵⁵ City of Gary *ex rel.* King v. Smith & Wesson Corp., 801 N.E.2d 1222, 1239 (Ind. 2003) (“[T]he City seeks redress against certain techniques that are alleged to generate a nuisance. Its lawsuit is no more regulation of firearms than a suit to enjoin any form of nuisance is a regulation of the activity.”).

⁵⁶ Sarah L. Swan, *Preempting Plaintiff Cities*, 45 FORDHAM URB. L.J. 1241, 1255 (2018) [hereinafter Swan, *Preempting Plaintiff Cities*].

⁵⁷ *Smith & Wesson*, 126 N.E.3d at 830 (emphasis added).

⁵⁸ See Champe Barton, *A Guide to the Gun Industry’s Unique Legal Protections*, THE TRACE (Jan. 27, 2020), <https://perma.cc/LQ8T-WAZA>.

⁵⁹ See *id.*

⁶⁰ See Swan, *Preempting Plaintiff Cities*, *supra* note 56, at 1253, 1255–56; Briffault, *Our Localism Part 1*, *supra* note 43, at 8–9.

Judicial presuppositions about state supremacy play a crucial role in courts' analysis of city-state disputes, as the City of Fayetteville, Arkansas, discovered in 2017.⁶¹ The State of Arkansas preempted its municipalities from "creat[ing] a protected classification or prohibit[ing] discrimination," but exempted municipal antidiscrimination classifications already "contained in state law."⁶² Fayetteville dug through the Arkansas Code and found that state law provided protections against sexual orientation–based harms in an antibullying statute,⁶³ a domestic violence–prevention statute,⁶⁴ and a medical records–reporting statute.⁶⁵ Reasoning that "state law" already prevented abuses based on an individual's sexual orientation, Fayetteville proposed an ordinance applying workplace antidiscrimination laws to sexual orientation based discrimination. The Fayetteville voters approved the ordinance in a special election.⁶⁶

The Arkansas Supreme Court rejected this effort.⁶⁷ In a terse opinion, it concluded that, because the ordinance's "purposes" section used the word "extend," the ordinance created a new classification and caused "direct inconsistency between state and municipal law."⁶⁸ The state wanted uniformity, said the court, and Fayetteville's textually rooted ordinances had to yield to the state's expressed policy goal.⁶⁹ It dismissed Fayetteville's arguments in two sentences.⁷⁰

Short shrifting the ordinance was only possible on a playing field tilted heavily towards the state.⁷¹ The court barely grappled with Fayetteville's reasonable claims that Arkansas law already protected individuals covered by the ordinance.⁷² It instead relied heavily on the state's intention to impose "uniform" nondiscrimination obligations and assumed that anything even questionably

⁶¹ See *Protect Fayetteville v. City of Fayetteville*, 510 S.W.3d 258, 260 (Ark. 2017).

⁶² ARK. CODE ANN. § 14-1-403 (2024).

⁶³ See *id.* § 6-18-514(b)(1).

⁶⁴ See *id.* § 9-4-106(1).

⁶⁵ See *id.* § 20-18-307(d); see also *Protect Fayetteville*, 510 S.W.3d at 259–60.

⁶⁶ *Protect Fayetteville*, 510 S.W.3d at 260.

⁶⁷ *Id.* at 263.

⁶⁸ *Id.*

⁶⁹ *Id.* at 262–63.

⁷⁰ *Id.* at 263.

⁷¹ For a more inclusive perspective on whether an even less explicit existing law prohibits sexual orientation–based discrimination, see *Bostock v. Clayton County*, 140 S. Ct. 1731, 1835 (2020) (holding that prohibiting discrimination "on the basis of sex" also prohibits discrimination on the bases of sexual orientation and gender identity).

⁷² See *Protect Fayetteville*, 501 S.W.3d at 263.

undermining that purpose needed to go.⁷³ The unstated assumptions—pervasive in this space—were that state power is absolute and must be expansively construed when the state intends to exercise it.

Facing an unfavorable status quo, some modern localists seek structural change. The National League of Cities, collaborating with leading local government scholars, recently proposed reinvigorating and modernizing the home rule movement that empowered cities a century ago.⁷⁴ In its *Principles of Home Rule for the 21st Century*, the League grapples with structural urban disadvantage, proposes principles for local governance in the modern age, and provides a Model Article for states to incorporate into their constitutions.⁷⁵ Its goal is “to put local governments in a position that almost none play now—full partnership in state and local governance.”⁷⁶ The Model Article’s centerpiece is a four-part acid test for preemptive state laws. Purported state preemption laws should be invalid, the Article suggests, unless they are (a) expressly preemptive, (b) necessary for a substantial state interest, (c) narrowly tailored to that interest, and (d) enacted by “general law.”⁷⁷ The first requirement eliminates implied preemption. The second and third impose a proportionality test, which requires states to articulate relevant state interests sufficiently weighty to displace local democracy.⁷⁸ The fourth requirement, generality, limits preemption to instances where a state wishes to enact uniform, comprehensive regulatory schemes.⁷⁹

There is much to like in the *Principles*, but their path to adoption is vanishingly thin.⁸⁰ States will balk at the prospect of relinquishing power, and coalition building will be difficult. Those on the right will cast the *Principles* as another attempt to empower “lawless” cities at the expense of rural voters.⁸¹ Left-wing critics

⁷³ *Id.*

⁷⁴ See generally NAT’L LEAGUE OF CITIES, *supra* note 37.

⁷⁵ See generally *id.*

⁷⁶ Davidson & Schragger, *supra* note 21, at 1396.

⁷⁷ See NAT’L LEAGUE OF CITIES, *supra* note 37, at 1351–52.

⁷⁸ See Davidson & Schragger, *supra* note 21, at 1398.

⁷⁹ *Id.* This requirement adapts the approach taken by the Supreme Court of Ohio in *Canton v. State*. See 766 N.E.2d 963, 968 (Ohio 2002).

⁸⁰ The *Principles* might nonetheless lay the theoretical groundwork for the next evolution in local democracy, just as the AMA’s *Model Constitutional Provisions* did in 1953. See Barron, *supra* note 45, at 2326 (“The American Municipal Association’s 1953 model home rule provision, which became the template for home rule provisions adopted by several states in this period, exemplified the new approach.”).

⁸¹ Schragger, *Attack*, *supra* note 5, at 1232.

will question the wisdom of empowering city governments—which they view as responsible for municipal problems—without meaningful checks.⁸² If cities bear responsibility for housing shortages, police brutality, poverty, and financial mismanagement, critics say, we should constrain—not empower—them.

Where does this leave cities? Legally subordinate and structurally enfeebled. Scholars encourage cities to contest hostile state preemption by litigating creatively⁸³ or identifying themselves as “independent juridical units.”⁸⁴ At base, though, cities’ best hope lies in traditional political contestation.⁸⁵ Cities need to build allies, apply pressure, and convince states to buck the trend of aggressive preemption.⁸⁶ The stakes are high—America needs her cities.⁸⁷

II. INSIDE CITY-STATE PREEMPTION FIGHTS

Because state supremacy is our law, the rash of hostile preemption raises an obvious question: What are states thinking? States do not *need* hyper preemption to assert their policy prerogatives—ordinary preemption works just fine. But aggressive preemption “suggests [that] state lawmakers no longer find preemption a sufficiently powerful tool.”⁸⁸ The question cuts the other way, too. States do not preempt everything they can reach. Why the self-restraint in certain areas?

⁸² See generally Schleicher, *The City*, *supra* note 18.

⁸³ See Briffault et al., *supra* note 8, at 3.

⁸⁴ Sarah L. Swan, *Constitutional Off-Loading at the City Limits*, 135 HARV. L. REV. 831, 886 (2022).

⁸⁵ See Simon, *supra* note 19, at 1509.

⁸⁶ Course correction is possible. States like Colorado have recently reversed preemption laws. See An Act Concerning the Repeal of the Prohibitions on a Local Government Establishing Minimum Wage Laws Within its Jurisdiction, 2019 Colo. Sess. Laws 2970 (codified as amended at titles 8, 25.5, and 29 of COLO. REV. STAT.). Statewide officials in Arizona are rethinking preemption policies, too. See Howard Fischer, *Arizona Must Roll Back Ban on Regulating Short-Term Rentals, Hobbs Says*, TUCSON.COM (Aug. 6, 2023), <https://perma.cc/XVN9-4TEC>. Despite promising progress, it remains “[f]ar too soon to determine whether this is a counter-trend or a temporary blip.” Briffault, *Continuing Challenge*, *supra* note 47, at 253.

⁸⁷ This Essay assumes without comprehensively defending the view that local governance is generally valuable. Others have provided such defenses. See, e.g., Heather K. Gerken, *The Supreme Court, 2009 Term—Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 23 (2010) (“[L]ocalities represent better sites for pursuing federalism’s values because they are closer to the people, offer more realistic options for voting with one’s feet, and map more closely onto communities of interest.”); RICHARD SCHRAGGER, *CITY POWER: URBAN GOVERNANCE IN A GLOBAL AGE* 18–42 (2016); David J. Barron, *The Promise of Cooley’s City: Traces of Local Constitutionalism*, 147 U. PA. L. REV. 487, 490 (1999); Richard Briffault, *Home Rule for the Twenty-First Century*, 36 URB. LAW 253, 256 (2004).

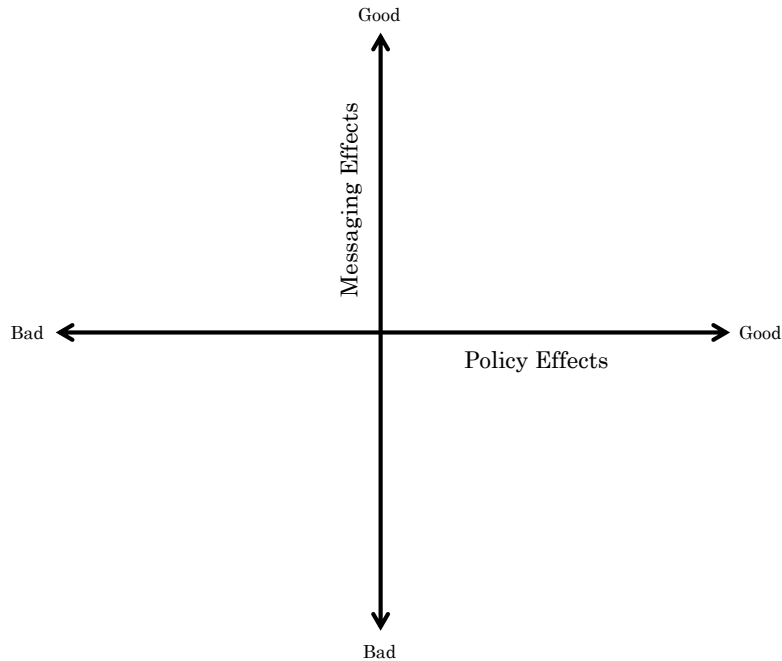
⁸⁸ Scharff, *Hyper Preemption*, *supra* note 4, at 1505.

Our experience suggests that the answer to both questions requires recognizing that cities and states coexist in a complex, bilateral relationship. Whether a state’s collaborative or combative impulses predominate in any given preemption fight depends on issue-specific factors that are sometimes susceptible to city influence. This Part sketches a framework for understanding states’ preemption calculus and demonstrates the “toolbox” that cities can use to impact state decisions.

A. “Coordinating” City Strategy

To understand state actors’ decision calculus when considering a preemptive or otherwise anti-urban action, it is helpful to imagine costs and benefits arrayed on a coordinate grid. The x -axis measures what we call the policy effects of state action, and the y -axis measures what we call the messaging effects. Each possible preemptive policy can be plotted as a point on the coordinate grid; the further towards the top right (net benefits from both policy and messaging standpoints), the more attractive the policy is from state actors’ perspectives.

FIGURE 1



The state’s cost-benefit framework of a possible preemptive action.

Policy effects, as we use the term here, are the tangible outcomes and impacts of a policy or action on the public, economy, governmental processes, service delivery, environment, or any other sector targeted by the policy. These benefits are concrete changes with direct, often measurable, impacts on the target population. Policy effects include economic growth or contraction, expansion or restriction of individual liberties, and government's ability or inability to enforce certain laws.

Messaging effects, as used here, concern the way in which a given action facilitates strategic communications to shape public perceptions, build political support, and convey particular narratives about a politician's actions, opponents, and worldview. A political action with positive messaging effects will find its way into a fundraising email. An action with negative effects will find its way into an opponent's attack ad.

Any political action will have both policy and messaging effects. When both are positive, a politician can improve lives and brag about it on the campaign trail, too. Many policies require trade-offs. Popular but ill-advised policies have stronger messaging benefits, while responsible, eat-your-vegetables type policies have policy benefits but messaging costs.

Policy and messaging effects are not, of course, wholly independent, particularly on longer time horizons. An action's positive impacts can help make it popular, and an action's popularity can build the support necessary to make it succeed. For present purposes, however, the simplified framework lends itself to a visualization that helps explain state actors' thinking in preemption debates.⁸⁹

Crucially, state officials deal in probabilities and ranges of possibilities—though every prospective government action has, in theory, a fixed point on the policy/messaging coordinate grid, the action's precise position cannot be known *ex ante*. Plotted on the grid, a prospective policy might look like an ellipse encircling the range of possible costs and benefits (see Figure 2). What officials do depends on the *likelihood* of political and economic benefits outweighing costs and, to some extent, on the official's risk tolerance.

A governmental action's policy benefits are somewhat, though not entirely, predictable. Expert projection and the

⁸⁹ For a more thorough discussion of state reasons for preempting their cities, see Christopher B. Goodman & Megan E. Hatch, *Why States Preempt City Ordinances: The Case of Workers' Rights Laws*, 54 *PUBLIUS* 121, 124–26 (2024).

experience of other jurisdictions can hone predictions. Some actions have highly certain policy effects. Establishing a new specialty license plate design, for example, should not lead to any surprises. For most actions, however, uncertainty is inescapable. The complex social systems with which a policy interacts might introduce confounding variables, changing conditions might alter a policy's effectiveness across time and contexts, unforeseen events might intervene, and variability in implementation might significantly influence an action's success.

Messaging effects are even less certain. Politicians have a strong sense of the *current* politics of passing a law. But politics changes unpredictably, and preemptive laws come with opportunity costs. To understand changing politics, consider abortion laws in Missouri. The state's abortion ban⁹⁰—one of the nation's strongest, which contains no exceptions for rape and incest—was celebrated by the state's Republican party when it passed in 2019.⁹¹ Five years later, some speculate that antiabortion politics could torpedo Republicans' reelection chances.⁹²

The opportunity costs of passing a preemption law are even less predictable. Missouri gun laws make this point. The state proactively prevented its cities from enacting any and all firearm legislation.⁹³ In doing so, it may have missed out on messaging wins that other states enjoyed from loosening gun restrictions whenever firearm debates garner national attention.⁹⁴

⁹⁰ MO. ANN. STAT. § 188.017 (West 2023).

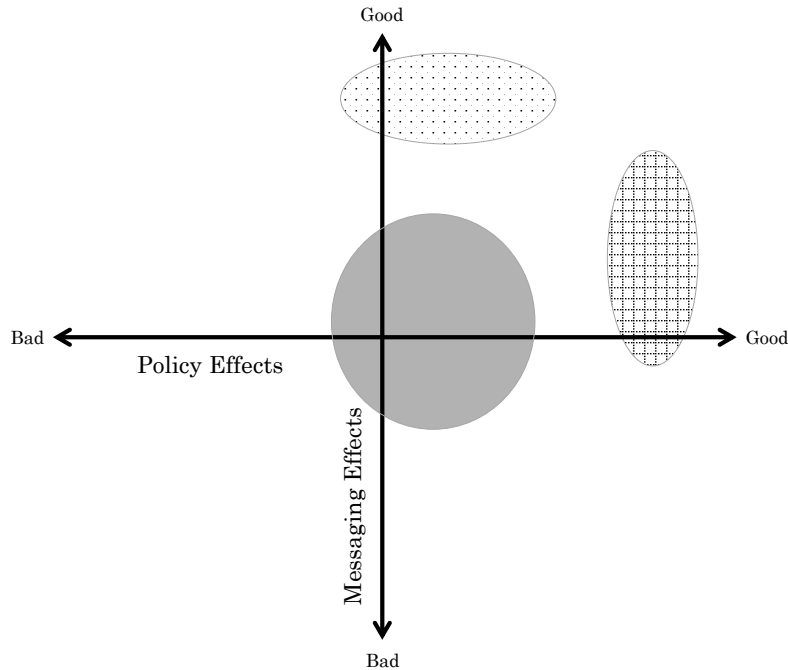
⁹¹ Sabrina Tavernise & Adeel Hassan, *Missouri Lawmakers Pass Bill Criminalizing Abortion at About 8 Weeks of Pregnancy*, N.Y. TIMES (May 17, 2019), <https://www.nytimes.com/2019/05/17/us/missouri-abortion-law.html>.

⁹² Daniel Desrochers, *Hawley Said the End of Roe Would Bring Political Change. Will It Hurt Him in November?*, KAN. CITY STAR (Feb. 26, 2024), <https://www.kansascity.com/news/politics-government/article285837411.html>.

⁹³ MO. ANN. STAT § 21.750.2 (West 2023) (“No county, city, town, village, municipality, or other political subdivision of this state shall adopt any order, ordinance or regulation concerning in any way the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permit, registration, taxation . . . or other controls on firearms, components, ammunition, and supplies.”).

⁹⁴ See Ranjani Chakraborty, *Why U.S. Gun Laws Get Looser After Mass Shootings*, VOX (July 28, 2022), <https://www.vox.com/23283057/gun-laws-loosen-mass-shootings-texas>.

FIGURE 2



Zones of uncertainty for three policies. The dotted ellipse represents a policy that will message well but may or may not have a positive impact. The checkered policy will improve facts on the ground but may be unpopular. The grey policy is uncertain on all dimensions, though it is more likely to both have a positive impact and enjoy a positive reception.

The coordinate-grid framework helps suggest answers to three questions posed in this Essay: Why so much preemption? Why not more? And what can cities do about it?

First, why the increase in state preemption? The model identifies three possibilities: state actors either (1) predict increased policy benefits from preempting local laws, (2) predict increased messaging benefits from such preemption, or (3) have become more tolerant of the risk that preemption will be net costly.⁹⁵

We believe the last two factors account for the new preemption wave. The second factor, increasing messaging benefits from

⁹⁵ Alternatively, increased awareness of states' preemptive powers might be driving states' increasing use of that power. See Charles R. Shipan & Craig Volden, *The Mechanisms of Policy Diffusion*, 52 AM. J. POL. SCI. 840, 840–41 (2008) (explaining how similar policies spread across jurisdictions by governments' learning of such policies from earlier adopters). While educational effects of policy passage can help build momentum for any particular policy or tool, the long history of state preemption suggests that states have not newly discovered this power—they have newly decided to use it. See *supra* notes 31–44 (discussing history of state preemption).

picking fights with cities, is probably the most important. Other scholars have thoughtfully explained the evolving politics of preemption.⁹⁶ They have focused especially on special-interest influence and the way in which partisan polarization now tracks the urban-rural divide.⁹⁷ In our experience (and from speaking with mayors from across the country), that analysis is spot on. We also note that, as anti-urbanism's political salience increases, impeding policies that lead to urban flourishing—and losing out on the policy benefits—helps state officials from a messaging standpoint. Hollowing out city institutions exacerbates urban problems, which validates Republican criticisms of those institutions.⁹⁸

An empirical observation supports our claim that increased messaging benefits, not policy ones, drive the new preemption. The harshest preemption laws tend to target cities considered less economically and culturally central to their states. Arizona's SB 1487,⁹⁹ the “most punitive fiscal measure” taken by a state against municipalities that pass preempted legislation,¹⁰⁰ has mostly targeted Tucson,¹⁰¹ which is one-third the size of Phoenix and accounts for less than one-tenth of the state's population.¹⁰² Texas's proposed “Death Star” law,¹⁰³ a monstrosity of maximalist preemption, comes from state dissatisfaction with its fourth-largest city, Austin,¹⁰⁴ that prides itself on being “weird” by Texan standards. Florida, a punitive preemption regular, is an interesting case. On the one hand, the Miami metro area houses a

⁹⁶ See, e.g., Lori Riverstone-Newell, *The Rise of State Preemption Laws in Response to Local Policy Innovation*, 47 PUBLIUS 403, 404 (2017) (“[S]tate officials have sponsored and supported preemption legislation with the intent . . . to thwart local progressive policies.”).

⁹⁷ See *id.*; Schragger, *Attack*, *supra* note 5, at 1191 (“[P]olitical bias [] emerges because rural and suburban voters tend to vote Republican, while urban dwellers tend to vote Democratic.”).

⁹⁸ See, e.g., David Klepper & Gary Fields, *Nashville, Nationwide Crime Up: GOP Blames Democrats, but It's More Complicated Than That*, TENNESSEAN (June 11, 2021), <https://perma.cc/7TRA-ZQ6Y>.

⁹⁹ Act of Mar. 17, 2016, ch. 35, 2016 Ariz. Sess. Laws 161 (codified as amended in scattered sections of 41, 42, and 43 ARIZ. REV. STAT.).

¹⁰⁰ Briffault, *New Preemption*, *supra* note 4, at 2005.

¹⁰¹ See *id.* at 2006.

¹⁰² See *Tucson City, Arizona*, U.S. CENSUS BUREAU, <https://perma.cc/9VL5-X6GU>; *Arizona*, U.S. CENSUS BUREAU, <https://perma.cc/B8Q6-JSPD>; *Phoenix City, Arizona*, U.S. CENSUS BUREAU, <https://perma.cc/P28B-BZF4>.

¹⁰³ See Gus Bova, *The “Death Star” Bill Is About Kneecapping Democracy in Texas*, TEX. OBSERVER (July 31, 2023), <https://perma.cc/V9SQ-3BC4>.

¹⁰⁴ Kristen Carney, *Texas Cities by Population (2024)*, TEX. DEMOGRAPHICS (June 20, 2024), <https://perma.cc/H26P-4VC8>.

substantial portion of the state's population¹⁰⁵ and economy.¹⁰⁶ On the other, Miami's culture differs drastically from other parts of the state, which might facilitate statehouse hostility.¹⁰⁷ The most accurate account of Florida's aggression, however, shows how governance theories must incorporate political reality: Florida's harshest preemption laws came as its governor prepared a presidential run.¹⁰⁸ Governor Ron DeSantis used his state position to maximize national attention. Policy benefits would have accrued only to his state, but messaging benefits to him personally could be spread nationwide. Because preemption fights promised uniquely outsized messaging benefits for its governor, Florida was at the forefront of aggressive preemption.

The coordinate-grid framework points to a second explanation—wholly undertheorized—for the increase in preemption: legislative risk tolerance has gone up. To start, we notice the marked increase in political statements and actions that, until recently, would have been out of bounds.¹⁰⁹ From there, we speculate that the Republican Party has, for whatever reason,¹¹⁰ begun electing leaders with higher tolerance for economic and political risk.¹¹¹

¹⁰⁵ See *Population of the Miami-Fort Lauderdale-Pompano Beach Metro Area in the United States from 2010 to 2022*, STATISTA (June 2023), <https://perma.cc/F7BT-WFQV>.

¹⁰⁶ See *Total Real Gross Domestic Product for Miami-Fort Lauderdale-West Palm Beach, FL (MSA)*, FED. RSRV. BANK OF ST. LOUIS (last updated Dec. 18, 2023), <https://perma.cc/SVY5-N8AQ>; *Gross Domestic Product: All Industry Total in Florida*, FED. RSRV. BANK OF ST. LOUIS (last updated Sept. 27, 2024), <https://perma.cc/D3UT-84M2>.

¹⁰⁷ See Schragger, *Attack*, *supra* note 5, at 1215 (explaining how “corporate headquarters, large-scale global finance, and free-trade cosmopolitanism” foster anti-urban sentiment).

¹⁰⁸ See *How Florida Is Pushing Abusive Preemption in the 2024 Legislative Session*, LOC. SOLS. SUPPORT CTR. (Mar. 1, 2024), <https://perma.cc/AKZ2-QFHF>.

¹⁰⁹ See, for example, Representative Marjorie Taylor Greene's opining that a mass shooting was “designed” to push a gun control agenda, Republican congresspeople's willingness to let the United States default on its debt, President Donald Trump's invitation for Russia to invade Europe, and, on the other end of the political spectrum, Representative Rashida Tlaib's refusal to support an otherwise-unanimous resolution condemning Hamas's use of rape and sexual violence against Israeli civilians. See Ryan Bort, *Marjorie Taylor Greene Suggests 4th of July Shooting Was Orchestrated by Democrats*, ROLLING STONE (July 6, 2022), <https://perma.cc/UJV8-5M5D>; James D. Zirin, *Only Republicans Want to Push Us Into Default*, THE NATION (May 17, 2023), <https://www.thenation.com/article/politics/debt-ceiling-maga-congress-spending/>; James FitzGerald, *Trump Says He Would “Encourage” Russia to Attack NATO Allies Who Do Not Pay Their Bills*, BBC (Feb. 11, 2024), <https://perma.cc/EX7E-MRR3>; Jacob Magid & Toi Staff, *US Congress Condemns Hamas Sexual Violence in Bipartisan Resolution; Tlaib Abstains*, TIMES OF ISR. (Feb. 15, 2024), <https://perma.cc/L2LM-4WXZ>.

¹¹⁰ Possible reasons include gerrymandered districts incentivizing extremism, President Trump's personality inspiring copycats, and our fractured information environment.

¹¹¹ See David M. Konisky & Paul Nolette, *The State of American Federalism 2021–2022: Federal Courts, State Legislatures, and the Conservative Turn in the Law*, 52

Higher risk tolerance means increased willingness to pass preemptive policies that might backfire, which leads to more policies—and more aggressive policies—being passed overall. This argument contains both empirical and theoretical claims that deserve substantially more attention than this Essay can provide. But increased risk tolerance could have explanatory power and should be further examined.

With a theoretical account of preemption's increase in hand, we can answer the next questions. Why has there not been *more* preemption, and what role do cities play? On the former question, policy and messaging costs—and the risk of such costs—can limit state preemption. On the latter, city tactics can affect whether, from the state's perspective, preemption is “worth it.” Sometimes, it is not.

Cities have two main strategies for raising preemption's expected costs and lowering the chances of aggressive state action: deterrence and resistance. Both involve altering the anticipated costs and benefits *to the state* of interfering with a city.

Deterring preemption requires a city to position itself in such a way that states feel disinclined to even explore preemptive actions. By increasing its share of a state's economic output—and being responsible for a higher share of state tax revenue—a city increases the political and economic costs *to the state* of harsh preemption. A city's “brand” with nonurban state residents can deter preemption, too. The more that statewide stakeholders have positive associations with a city, the less popular fighting with that city will be.

Cities also deter preemption by intertwining themselves with businesses and aligning themselves with lawmakers, broadening the blast radius of any preemptive action a state might take. In Kansas City, we built connections with businesses across the state by compiling (and winning) a bid to host the 2026 FIFA World Cup.¹¹² This success reoriented business plans of many Missouri firms toward 2026 in Kansas City. From the state's perspective, supporting the city's efforts to successfully host the tournament also supports businesses across the state, and frustrating city efforts interferes with statewide businesses, too. Partnership with lawmakers works in a similar way. By collaborating on

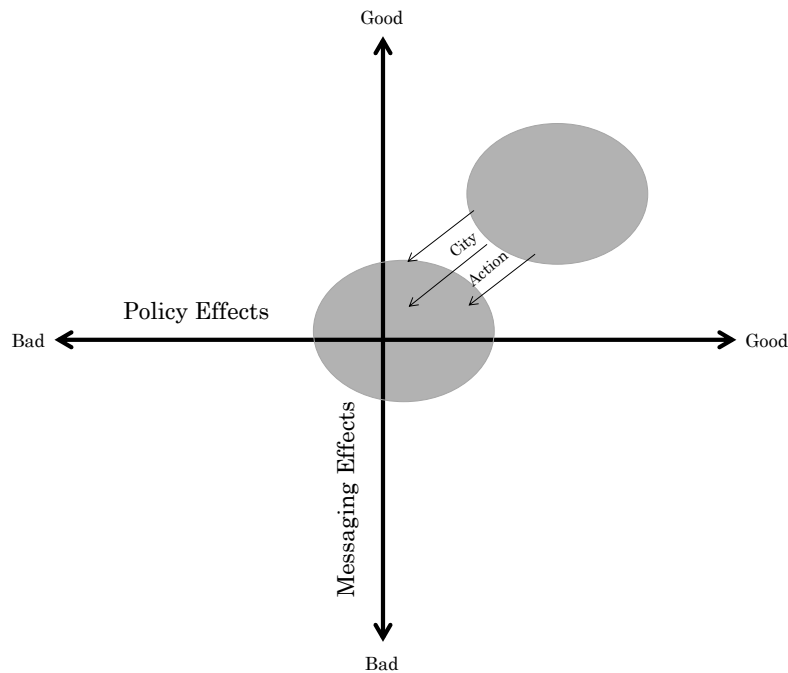
PUBLIUS 353, 371–72 (2022) (noting that Republican legislatures are more likely to preempt Democratic-leaning cities).

¹¹² See Dave Caldwell, *How Kansas City Became The 2026 World Cup's Most Unlikely Host City*, THE GUARDIAN (June 30, 2022), <https://perma.cc/J282-QR3J>.

mutually beneficial projects like our new world-renowned airport,¹¹³ for example, we aligned the incentives of state lawmakers with city ones. Both groups expended political capital to complete the project and stand to gain politically from its success.

Resisting preemption, cities' second strategy, targets specific instances of preemption already put in motion. When a state lawmaker introduces a bill, cities deploy the familiar playbook: public appeals, lobbying, and political power building. By entering the debate about proposed state actions, cities can inform and alter state decision-makers' predictions about the messaging and policy benefits of that particular action. Figure 3 shows city action altering a state's decision-making calculus.

FIGURE 3



A city's efforts introduce uncertainty and risk into what otherwise would have been, from the state's perspective, a slam dunk.

Deterrence and resistance advance city interests in the context of preemption fights. Cities' third strategy, avoidance, circumvents preemption fights altogether. This strategy maximizes

¹¹³ See Laura Ray, *16 Best Airports Worldwide*, TRAVEL AWAITS (June 16, 2023), <https://perma.cc/Q8XW-TFGC>.

opportunities to grow and improve without state help and in ways that are immune to state interference. That often involves securing private funding for initiatives¹¹⁴ or innovating in areas wholly controlled by the city.¹¹⁵ Municipal litigation also falls in this bucket. Plaintiff cities can, in limited circumstances,¹¹⁶ directly sue wrongdoers. City lawsuits often avoid state pushback,¹¹⁷ and they can be launched easily and tailored to the community's needs.¹¹⁸ Avoiding preemption fights empowers cities to direct their own growth and tailor municipal policies to municipal problems.

B. The City's Toolbox

Amidst the current wave of preemption, cities can adopt deterrence, resistance, and avoidance strategies. Cities can deploy at least four tools to execute these strategies and limit state interference: they can flex their economic muscle, leverage their institutional expertise, capitalize on their cultural centrality, and mobilize their allies. These efforts are not without costs—asserting city power engenders resentment and generates backlash. Nor are these tools always effective—states remain legally supreme. Advancing city priorities requires understanding and navigating the complex, bilateral city-state relationship. The following stories describe some of our successes and failures using these levers of city power.

1. Economic.

Cities are economic powerhouses. Look at the data. Cities and metro areas produce a whopping 90% of the country's gross domestic product (GDP).¹¹⁹ They house four of every five

¹¹⁴ By turning to bond markets, we created a \$75 million fund to construct and promote affordable housing. *\$11.2 Million for Affordable Housing Projects*, KAN. CITY (Feb. 2, 2023), <https://www.kcmo.gov/Home/Components/News/News/2007/>.

¹¹⁵ For example, Kansas City became the country's first large city to make public transportation free citywide. See Sandy Smith, *Kansas City's Zero Fare Transit Program Shows Major Success—And What Still Needs to Be Done*, NEXT CITY (July 27, 2022), <https://perma.cc/NUP2-ZDVK>.

¹¹⁶ See Swan, *Preempting Plaintiff Cities*, *supra* note 56, at 1247–57 (describing ways that states can preempt municipal litigation).

¹¹⁷ *Id.* at 1257 (“[S]tates have generally been relatively restrained in their approach to plaintiff city litigation.”).

¹¹⁸ See Sarah L. Swan, *Plaintiff Cities*, 71 VAND. L. REV. 1227, 1284–85 (2018).

¹¹⁹ *The Top 25 Metro Areas Make Up Half of U.S. GDP*, STATISTA (July 12, 2019), <https://perma.cc/DL6B-Y9V2>.

Americans,¹²⁰ consolidate government and cultural institutions, and promise to keep growing.¹²¹ Kansas City is no exception. It produces a quarter of Missouri's GDP.¹²² Its metro area, which spans both Missouri and Kansas, has a GDP almost half that of the entire state.¹²³ Add St. Louis's numbers, and Missouri's big cities account for nearly 70% of the state's economic output.¹²⁴

In city hall, we recognize that the city's economic clout provides opportunities to secure unique statewide benefits that would be inaccessible through statewide policies or initiatives. For example, the U.S. Department of Transportation's Build America Bureau facilitates transportation and infrastructure projects through a variety of low-cost and creative financing.¹²⁵ To assist governments in navigating the application processes, the Bureau occasionally signs Emerging Projects Agreements that unlock large tranches of low-interest, ultraflexible federal dollars.¹²⁶ Kansas City recently became the second city¹²⁷ to sign such an agreement, paving the way for \$15 billion of federal investment in local transportation and infrastructure projects.¹²⁸ Such a financial commitment required state support, but would have been unattainable without the proactive leadership of a municipal government. In that respect, it parallels more obvious city-centered initiatives, like major league sports teams and large concerts,¹²⁹ whose benefits accrue to a state only through municipal initiative and municipal infrastructure.

¹²⁰ *Nation's Urban and Rural Populations Shift Following 2020 Census*, U.S. CENSUS BUREAU (Dec. 29, 2022), <https://perma.cc/8G9G-R6B2>.

¹²¹ Hannah Ritchie, Veronika Samborska & Max Roser, *Urbanization*, OUR WORLD IN DATA (last updated Feb. 2024), <https://perma.cc/9KHZ-8QFK>.

¹²² Mark White, *Gross Domestic Product Trends in Missouri*, UNIV. OF MO. EXTENSION (June 2020), <https://perma.cc/7BLJ-JFWN>.

¹²³ *Metropolitan Statistical Areas GDP*, MO. ECON. RSCH. & INFO. CNTR., <https://perma.cc/8SJY-6DRE> (stating Missouri's 2022 Real GDP as \$336.63 billion and the Kansas City metro area's as \$145.95 billion).

¹²⁴ See White, *supra* note 122.

¹²⁵ See Patrick DeCorla-Souza, *Facilitating U.S. Transportation Infrastructure Investment and Innovation*, 84 PUB. ROADS, no. 4, 2021, at 2, 2.

¹²⁶ *Emerging Projects Agreements*, U.S. DEP'T OF TRANSP. (last updated Dec. 7, 2023), <https://perma.cc/ZQ3H-7CDG>.

¹²⁷ After Austin, Texas. See *id.*

¹²⁸ Addi Weakley, *KCMO, US DOT, Build America Bureau Partner on More than \$15B of Infrastructure Improvements to Region*, KSHB (Oct. 24, 2023), <https://perma.cc/L37X-X93H>.

¹²⁹ Just four concerts in a single summer—Taylor Swift, Beyoncé, Ed Sheeran, and Billy Joel & Stevie Nicks—brought \$80 million to Kansas City. JoBeth Davis & Jackson Kurtz, *Swiftonomics? Kansas City Saw Major Economic Impacts from Four Concert Tours, but One Reigns Supreme*, KMBC 9 NEWS (Oct. 5, 2023), <https://perma.cc/ZHX6-LPEW>.

A city's economic flourishing discourages state intervention by raising the anticipated costs to the state of economically harming the city. The policy costs of harming a municipal economy increase as a city makes itself an irreplaceable pillar of the state's economy, either through unique initiatives or sheer economic output. Justifying a preemptive action with high policy costs requires higher messaging benefits. But because messaging benefits are not wholly independent of policy ones—it is hard to positively message a self-created recession¹³⁰—preemptive actions that damage a large municipal economy are less likely to become law.

A city's economic vitality also serves as a bulwark against state actions that might otherwise harm it. Recently, Kansas City's police and fire departments needed new radios to replace their aging stock. When the federal American Rescue Plan Act¹³¹ earmarked funds for law enforcement technological improvements, the stars seemed to align. Procedurally, our money had to pass through the state. We formally requested \$9 million from Missouri for the radios,¹³² and state actors promised that the funds would be approved in short order. It was a done deal—we even thanked the Administration from the White House briefing room.¹³³ But then, state officials denied us the money. The denial was inexplicable coming from a state political apparatus that purported to support law enforcement, but the harms of an extended fight for the cash would fall squarely on Kansas City. We could not afford the risk, and our officers and firefighters could not afford the delay. Our taxpayers footed the bill, and we were fortunate that they could.

¹³⁰ See William G. Gale, *The Kansas Tax Cut Experiment*, BROOKINGS INST. (July 11, 2017), <https://perma.cc/7R6D-TXAJ> (explaining that Republican Governor Sam Brownback's tax cuts were "such a failure that a Republican controlled legislature not only voted to raise taxes, but did so over the veto of the governor").

¹³¹ Pub. L. No. 117-2, 135 Stat. 4 (2021) (codified in scattered sections of 15, 26, 29, and 41 U.S.C.).

¹³² See Letter from Quinton D. Lucas, Mayor, Kan. City, to Michael D. Parson, Governor, Mo. (Jan. 27, 2021) (on file with author).

¹³³ See KMBC 9, *Live: KCMO Mayor Speaking During White House Press Briefing*, YOUTUBE (May 13, 2022), <https://www.youtube.com/watch?v=yOVCKgaaT6E> ("Communications technology in Kansas City of \$10 million from the American Rescue Plan allows us to invest in so many deferred technology areas so we can continue to be smart about how we solve crime.").

2. Institutional.

States delegate a lot of governance to their cities.¹³⁴ Such delegation provides cities institutional tools that, like economic ones, can be deployed to either benefit a state or advance a city's unique interests. This suite of tools, labeled "the power of the servant" by Professor Jessica Bulman-Pozen and Dean Heather Gerken in the context of federal-state relations, comes from state dependence on cities, integration with city governance, and unfamiliarity with the daily experience of city residents.¹³⁵ Thoughtful cities can selectively deploy the machinery of governance to advance their interests.

Development tools are a prime example. Just like other locales, Kansas City controls economic development agencies with specialized financing instruments to spur new construction and redevelopment. The city's control of these agencies¹³⁶ creates exclusive opportunities. One such opportunity arose early on in my administration, when I helped convene a cross-border coalition of state leaders to solve Kansas City's longstanding "border war." Because our metro area straddles the Missouri-Kansas line, localities in each state compete for corporate investment. In the years before I took office, this friendly competition spiraled into hostility. Municipalities lavished tax incentives, public money, and government benefits on companies to lure them across the state line. Companies jumped back and forth, playing one state against the other and winning larger and larger public subsidies. This state hopping generated few new jobs and no sustained increases in the regional tax base. Taxpayers in both states just footed the bills. Recognizing that it was time to end the race to the bottom, Governor Parson, Kansas Governor Laura Kelly, and local government leaders reached a truce.¹³⁷

¹³⁴ See Heather K. Gerken, *Our Federalism(s)*, 53 WM. & MARY L. REV. 1549, 1557 (2012) (describing cities, states, and national governments collectively implementing policies).

¹³⁵ Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1264, 1266–71 (2009).

¹³⁶ The Mayor of Kansas City appoints the board of the Economic Development Corporation, the Tax Increment Financing Commission, the Kansas City Port Authority, and the Planned Industrial Expansion Authority, to name just a few of our major development entities. See, e.g., *Mayor Lucas Announces Wave of Economic Development Boards and Commissions Appointees*, KAN. CITY, <https://www.kcmo.gov/city-hall/city-officials/mayor-quinton-lucas/mayor-lucas-press/press-releases/mayor-lucas-announces-wave-of-economic-development-boards-and-commissions-appointees>.

¹³⁷ Marcia Brown, *Kansas and Missouri Call a Truce in Corporate-Welfare Border War*, THE AM. PROSPECT (Aug. 6, 2019), <https://perma.cc/9LNV-UVWX>.

Kansas City had one loose end. Waddell & Reed, a \$50 billion asset management company, had stuck its hand in the cookie jar just before the truce slammed it shut. It planned to build a new headquarters on the Missouri side with public incentives already promised, but not yet formalized, by city incentive agencies. The border-war truce technically grandfathered in the Waddell & Reed project, but many thought we should relinquish the project in a show of good faith.¹³⁸ Even Governor Parson, who had expended significant political capital building trust with his Kansas counterparts, could not publicly advocate for this final heist before the border-war détente.¹³⁹

Fortunately for us, the decision was solely in Kansas City's hands—nobody but us controlled our development agencies. We wanted the headquarters and the economic benefits it would bring, so we approved the project.¹⁴⁰ In doing so, we secured a Missouri project that would not have otherwise come to our side of the state line.

Fully leveraging a city's institutional strength requires some discernment about when to deploy and when to reserve city capabilities. In 2021, we withheld our governing expertise to prevent the Republican National Convention from coming to Missouri. The saga began when, one crisp fall morning, I entered my office to find an enormous three-ring binder on my desk. Inside was a comprehensive pitch for Kansas City to host the 2024 Republican National Convention compiled by the Republican National Committee (RNC) itself. Without our even lifting a finger, we had become a finalist for a nationally significant event, one that could raise our national profile, inject money into local businesses, and build goodwill with our Republican partners in the state capitol. After traveling to Washington, D.C., to meet RNC officials, we strongly considered submitting a formal bid.¹⁴¹ We returned home, discussed with local stakeholders, and reflected on the brand we wanted our city to build. Ultimately, we withdrew from

¹³⁸ See Allison Kite, *This Was a Tough One: Kansas City Council Approves Tax Incentive for Waddell & Reed*, KAN. CITY STAR (Dec. 20, 2019), <https://perma.cc/PU83-ZG6X>.

¹³⁹ *Border War Between Kansas, Missouri Isn't Quite Over Yet*, ASSOCIATED PRESS (Sept. 16, 2019), <https://perma.cc/AX3R-BY52>.

¹⁴⁰ Kite, *supra* note 138.

¹⁴¹ Sean Hirshberg, *Kansas City Plans to Bid for 2024 Republican National Convention*, KSHB (Oct. 25, 2021), <https://perma.cc/JZN6-86KJ>.

consideration.¹⁴² Missouri Republicans were disappointed but accepted the outcome.

Interestingly, everyone assumed that Kansas City municipal leadership needed to lead the charge—or at least be on board—for the Convention. Technically, the state could have submitted a bid itself. It could have compiled data about the city’s hotel capacity, designed security and transportation plans, and secured state or private funding. To the extent city employees were needed, the state could have conscripted them through the normal legislative process with a simple bill.

Practically, however, the state could not force us to host a convention we did not want. Only the city had the expertise and ability to meet the operational and logistical challenges that come with hosting a big event. Even if the state’s legal supremacy could technically have forced our hand, the city’s institutional expertise created a zone of autonomy in which we could decide which events we wanted to invite to Kansas City and which we wanted to exclude.

Unfortunately for us, the city cannot always play the lead—institutional power projection cuts both ways. Our reliance on state institutions can leave us vulnerable. We felt this in early 2021 as COVID-19 vaccines became available to the public. Governor Parson announced mass vaccination sites staffed by the Missouri National Guard.¹⁴³ This would have been great news for Kansas City’s 500,000 residents, except that the Governor put only one vaccination site in each of Missouri’s nine highway patrol regions.¹⁴⁴ Kansas City’s nearest vaccination site was placed in Clinton, Missouri, a full hour and a half drive from downtown.¹⁴⁵ Many in our city could not travel that distance and had to delay vaccination and the freedom that came with it. Because we were reliant upon state institutions for the public health response, Kansas Citians suffered.¹⁴⁶

States can also stymie disfavored city initiatives with unstated threats of retaliation, as we learned when launching our

¹⁴² Sean Hirshberg, *Kansas City Withdraws from 2024 RNC Selection Process*, KSHB (Dec. 23, 2021), <https://perma.cc/VD7W-AMZ2>; see also Editorial Board, *Kansas City Hosting the GOP Convention Isn’t Worth the Money or Headache. Here’s Why*, KAN. CITY STAR (Oct. 29, 2021), <https://perma.cc/84VT-P3R2>.

¹⁴³ *Governor Parson Announces Mass Vaccination, Targeted Vaccination Sites Across the State*, MO. GOVERNOR MICHAEL L. PARSON (Jan. 20, 2021), <https://perma.cc/76DB-JYKN>.

¹⁴⁴ *Id.*

¹⁴⁵ See Ashley Aune (@Ashley4MO), X (Feb. 2, 2021), <https://perma.cc/863W-EMEV>.

¹⁴⁶ Tessa Weinberg, *Missouri Data Show Expanding ‘Vaccine Deserts’ in Kansas City and St. Louis Metros*, KAN. CITY STAR (Feb. 6, 2021), <https://perma.cc/PJR7-JWXA>.

historic committee to study reparations for our Black community.¹⁴⁷ The city hall–based initiative has been transformative and continues to receive national attention,¹⁴⁸ but it was nearly snuffed out before it began. We initially imagined that the commission, because of the historical research required, would be housed in our leading local university. We approached the University of Missouri–Kansas City (UMKC) about hosting. Privately, UMKC officials supported the project. But they balked at the prospect of public entanglement. As a state institution, they feared backlash if they supported something likely to be unpopular in Jefferson City. Without even lifting a finger, the state had stymied our effort.

3. Cultural.

Governor Parson recently shared a story with me: “The first time I came to Kansas City,” he recalled, “it was a ghost town. Downtown was hollow and empty. I stayed a night in a cheap motel and signed up for the U.S. Army in the morning.” An hour earlier he had signed a bill allocating an additional \$20 million for a downtown park in Kansas City.¹⁴⁹ His two previous visits? The NFL Draft and a Super Bowl parade.

The Governor genuinely likes Kansas City. In my experience, he is not alone. People across the state identify with Kansas City in major and minor ways. They work downtown, vacation here, or proudly wear the city name on their jerseys. They visit for championship celebrations,¹⁵⁰ record-breaking concert tours,¹⁵¹ and

¹⁴⁷ See Lawrence Brooks, IV, *Kansas City Officially Begins a ‘Transformative’ Effort to Study Reparations for Black Residents*, KCUR, (May 24, 2023), <https://perma.cc/6B8S-5XXA>; Kan. City, Mo., Ordinance No. 220966 (Jan. 12, 2023).

¹⁴⁸ See Mark Lieberman, *Meet the High School Student Helping Her City Study Reparations for Black Residents*, EDUCATIONWEEK (June 14, 2023), <https://perma.cc/8WYJ-WKQZ>; Aubrie Spady, *Kansas City Becomes Latest Dem-Run City to Form Reparations Commission, Seek Payments For Black Residents*, FOX NEWS (May 3, 2023), <https://www.foxnews.com/politics/kansas-city-latest-dem-run-city-form-reparations-commission-seek-payments-black-residents>.

¹⁴⁹ Sam Hartle, *Gov. Parson Signs Bill Allocating Additional Funding for Kansas City’s South Loop Project*, KSHB (July 28, 2023), <https://perma.cc/X7Y5-S2CS>.

¹⁵⁰ Celisa Calacal, *Here’s Everything We Know About the Chiefs’ Super Bowl Victory Parade in Kansas City*, KCUR (Feb. 11, 2024), <https://perma.cc/6CG3-U5MC>.

¹⁵¹ See Sanj Atwal, *Taylor Swift’s Eras Tour Breaks Record as Highest-Grossing Music Tour Ever*, GUINNESS WORLD RECS. (Dec. 12, 2023), <https://www.guinnessworldrecords.com/news/2023/12/taylor-swifts-eras-tour-breaks-record-as-highest-grossing-music-tour-ever-762285>.

other once-in-a-lifetime¹⁵² experiences. Positive associations with the city make it easier for state officials to support us and harder for them to demonize or tear us down. When a city outperforms the rest of the country, its officials enjoy strong support.¹⁵³ When city wins put a state on the map, support extends statewide.¹⁵⁴

Mayors find themselves uniquely well positioned to advance city priorities through cultural cache.¹⁵⁵ I did that in 2022 when the son of former Missouri Governor and U.S. Attorney General John Ashcroft visited Kansas City for a photo opportunity. John the younger, who goes by “Jay,” served as Missouri Secretary of State at the time of the planned visit. Hoping to distract from his library-censorship crusade,¹⁵⁶ he arranged to speak at Literacy KC, a wonderful organization that improves adult learners’ literacy skills.¹⁵⁷ I was invited to join, and my initial instinct was to go. Not only would I support a great organization, but this was an opportunity for positive, nonpolitical face time with a state official. Allies are important. But I changed my mind with a bit more thought. In his rhetoric, Jay is a neo-Orwellian who wants our children intellectually isolated. His plan to ban books by threatening to defund public libraries was an intentional assault on gay, lesbian, and transgender youth, their families, and allies.¹⁵⁸ I wanted to steer clear of anything that bolstered his bona fides as a leader who cared about our children.

I rejected the invitation, explaining that Jay’s “recent work to undermine Missouri’s public library systems will harm literacy programs, learning, and the independence of libraries throughout

¹⁵² *But see* Dave Skretta, *The Chiefs Have Achieved Dynasty Status with Their Third Super Bowl Title in Five Years*, ASSOCIATED PRESS (Feb. 12, 2024), <https://perma.cc/E3U3-K3NW>.

¹⁵³ *See generally* Daniel J. Hopkins & Lindsay M. Pettingill, *Economic Voting in Big-City U.S. Mayoral Elections* (Feb. 19, 2015) (unpublished manuscript) (available on SSRN).

¹⁵⁴ *But see* Schragger, *Attack*, *supra* note 5, at 1215 (“Ironically then, the recent success of American cities has inaugurated heightened conflict between cities and states and between cities and the nation.”).

¹⁵⁵ *See* Christopher S. Elmendorf & David Schleicher, *Informing Consent: Voter Ignorance, Political Parties, and Election Law*, 2013 U. ILL. L. REV. 363, 418 (describing how and why mayors can become “brand names”).

¹⁵⁶ *See* Steve Zalusky, *Proposed Missouri Rule Creates Wedge Between Libraries, Secretary of State*, LIBR. J. (Jan. 9, 2023), <https://perma.cc/68PX-Z7AS>; Hannah Claywell, *New Rule Doubles Down on Censorship in Libraries*, NW. MISSOURIAN (Nov. 1, 2022), <https://perma.cc/MX87-NB4R>.

¹⁵⁷ *See Our Approach*, LITERACY KC, <https://perma.cc/S6B4-LXY8>.

¹⁵⁸ *See* Editorial Board, *Ashcroft’s Library-Censorship Rules Are Putting a Wall Between Teens and Books*, ST. LOUIS POST-DISPATCH (July 20, 2023), <https://perma.cc/MH53-4XTP>; Nomin Ujyiedin, *As New Missouri Library Rule Takes Effect, Librarians Say Kids’ Access to Books Will Be Limited*, KCUR (May 30, 2023), <https://perma.cc/Y6G8-L28V>.

our state, particularly in communities smaller than our own where the library is often the only resource for adult learners.”¹⁵⁹ By explicitly tying Jay’s visit to his antilibRARY policies and staking out my opposition, my message put a damper on the event. The prospect of public approbation from me, Kansas City’s mayor, turned what could have been a public relations success into an understated and underreported morning.

Cities’ positions as cultural epicenters can also inspire their states towards concrete policy changes. Take, for instance, Kansas City’s proactive response to the expiration of statewide film incentives in 2013.¹⁶⁰ Rather than accept that Kansas City’s film industry would decay without state-level financial incentives, we reorganized the local film office and recommitted to our local film incentive. This was trailblazing—we were the only municipality in the country to offer a local film incentive without a state-sponsored one.¹⁶¹ The dedication paid off. After Kansas City attracted shows like Netflix’s *Queer Eye* and HBO’s *The Last of Us*,¹⁶² the state passed a brand-new film incentive to build upon our city’s success and spread the wealth statewide.¹⁶³ Our film-incentive innovation, though initially aimed at avoiding the harms of less-than-ideal state policies, ended up reorienting our state’s outlook towards the film and television sector and solidifying economic ties between the city and the film industry statewide.

4. Coalitional.

A city maximizes the effectiveness of its toolbox by using it in concert with partners and allies. A state that fails to respond to a city’s individual actions might nonetheless be compelled to act, or refrain from acting, if pressured on multiple fronts.

The easiest opportunities arise when municipalities across the state all want the same thing at the same time, like Missouri’s recent marijuana-tax vote. Missouri legalized recreational marijuana and permitted cities to levy a 3% tax, but only if voters

¹⁵⁹ Email from Quinton Lucas, Mayor, Kan. City, to Gillian Helm, Exec. Dir., Literacy KC (June 22, 2023) (on file with author).

¹⁶⁰ See Eleanor Sheahan, *Tax Credit Incentives for the Film Industry Is One Step Closer to Returning to Missouri*, KOMU (May 12, 2023), <https://perma.cc/K6TH-TFGF>.

¹⁶¹ Robert Butler, *Back to Life*, FLATLAND (Nov. 21, 2016), <https://perma.cc/HUJ2-3Y66>.

¹⁶² *Filmography*, KC FILM, <https://perma.cc/V3DR-SAL6>.

¹⁶³ Sharon Chen, *Roll the Credits: Show MO Act Renews Filmmaking Push in Missouri*, KCTV5 (Mar. 4, 2024), <https://perma.cc/2NRL-QGRB>.

approved it.¹⁶⁴ The extra revenue was, for Kansas City, an opportunity to address homelessness, clean up trash, and fund violence-prevention programs.¹⁶⁵ Over thirty other cities wanted the revenue, too.¹⁶⁶ I used my pulpit to advocate statewide passage, even though the vote was locality by locality. I like to think that my advocacy helped secure approval across the state. Most importantly, I built connections with local leaders and practiced fighting on the same team.

The highest-value opportunities seem to be those where a city can reach across the aisle, as I did when we sought to increase the chief of police's salary. State statute had capped the chief's salary at a number far below the then-market rate, which hampered our ability to attract and retain top national talent.¹⁶⁷ When state legislators introduced a bill to remove the salary cap, I trekked down to Jefferson City to testify in support.¹⁶⁸

In many ways, my trip felt like *déjà vu*. A year earlier I had made the same drive to the Capitol, squeezed into the same comically small testimony table, and bumped elbows with the same Republican Senator, Tony Luetkemeyer. Then, however, I was fervently opposing Senator Luetkemeyer's attempt to compulsorily defund other city services in favor of increasing discretionary, unallocated cash infusions to the police department.¹⁶⁹ This time the Senator and I preached the same gospel: end state interference, provide fair wages to law enforcement.¹⁷⁰ Our joint advocacy facilitated the bill's swift passage—a testament to the power of strategic collaboration.¹⁷¹

¹⁶⁴ Anna Spoerre, *Kansas City Mayor Proposes 3% Marijuana Sales Tax. Here's What It Would Fund*, KAN. CITY STAR (Jan. 10, 2023), <https://perma.cc/9995-DBKZ>.

¹⁶⁵ *Id.*

¹⁶⁶ Makenzie Koch, *These Kansas City-Area Cities Are Putting Local Marijuana Tax on the Ballot*, FOX 4 KC (Jan. 13, 2023), <https://perma.cc/9YD2-9QZ5>.

¹⁶⁷ See Glenn E. Rice, Jonathan Shorman & Kacen Bayless, *Missouri Controls How Much Kansas City Pays Its Police. Legislation Would Change That*, KAN. CITY STAR (June 3, 2023), <https://perma.cc/3V6R-EGU4>.

¹⁶⁸ *Id.*

¹⁶⁹ I confess, it was a touch awkward literally rubbing shoulders with the man whose bill I hoped to kill. See Kaitlyn Schallhorn, *Legislature Considers Changing How Much Kansas City Must Allocate to Police*, MO. TIMES (Jan. 11, 2022), <https://perma.cc/2G8K-99YJ>.

¹⁷⁰ See Senator Tony Luetkemeyer's *KCPD Pay Bill Passes Senate*, MO. SENATE (Feb. 23, 2023), <https://perma.cc/M98D-NLZ4>.

¹⁷¹ I took advantage of our newfound financial freedom to propose a 30% raise for rank-and-file officers as well. Good policing requires good people. See Jonathan Ketz, *Mayor Proposes 30% Starting Salary Increase for Kansas City Police Officers*, FOX 4 KC (Feb. 7, 2024), <https://perma.cc/KH3Y-BQHZ>.

Cross-ideological coalitions pack the biggest punch precisely because building them is difficult. Ineffective attempts at collective action drain time, resources, and momentum, as an experience early in my first term demonstrated. Seeking to forge a broad consensus on commonsense community safety measures—including very limited gun-safety measures—I took part in a meeting with the mayors of Missouri’s four largest cities. Springfield Mayor Ken McClure, the most conservative of the group, hosted the meeting, and his presence cemented the bipartisan nature of our efforts. Once Mayor McClure was aboard, high-ranking Republican state officials agreed to join, too.

We agreed on a five-point agenda: cooperative advocacy, enhanced witness protection, increased substance-abuse funding, faster incarceration for violent offenders, and stronger laws to prevent children and domestic abusers from acquiring guns.¹⁷² These proposals were far less aggressive than I would have preferred, but watering down the agenda was, we thought, a condition of the Missouri Republicans’ support. Committed to collectivism, I acquiesced. State Republicans agreed to support our agenda,¹⁷³ and I left the meeting feeling I had secured a limited win.

Not two hours later, it was ripped away. We were told that the National Rifle Association (NRA) was pressuring state Republicans to abandon the deal. They did, reversing course and rejecting the agenda they had just promised to support. We mayors felt betrayed and disempowered. The collective power of Missouri’s largest cities, it seemed, remained less potent than that of special interests. This moment taught me that, while partnerships can be instrumental, they may not always be feasible in our polarized political landscape.

III. POST-EMPTION: TOMORROW’S BATTLEGROUND

One underexplored type of preemption is already ubiquitous and promises to expand. Postenactment state preemption, or “post-emption,” occurs when a state passes a preemptive law after and in direct response to a specific municipal action. Post-emption has two defining elements: timing and targeting. A post-emptive

¹⁷² See *Mayors of Missouri’s 4 Largest Cities Commit to Common Agenda to Make Communities Safer*, SPRINGFIELD POLICE (Oct. 18, 2019), <https://perma.cc/3ERC-UCSD>.

¹⁷³ See Pat Pratt, *Gov. Parson, City Mayors Outline Plans on Gun Violence*, SPRINGFIELD NEWS-LEADER (Nov. 26, 2019), <https://perma.cc/SG7M-SMZF>.

law targets an existing, specific municipal action or ordinance that the post-emptive action undermines or nullifies.

States can and do post-empt their cities using the entire arsenal of hyper preemption. They wall off entire realms from local governance,¹⁷⁴ intentionally reach more broadly than necessary,¹⁷⁵ undermine locally constructed governmental institutions,¹⁷⁶ or threaten crippling sanctions—including individual liability—for challenging state law.¹⁷⁷

Abundant scholarship acknowledges post-emption,¹⁷⁸ but its unique promises and perils have not received sustained attention. This Part begins a more comprehensive inquiry.

A. Post-Emption's Prevalence

To practitioners like us, post-emption is so common that it barely registers. For example, nearby Lawrence, Kansas, recently banned single-use plastic bags. When the State of Kansas tried to prohibit local plastic-bag regulations in response, some lawmakers decried state “overreach[],” but the story made few waves.¹⁷⁹ We are just accustomed to post-emption.

Two experiences of post-emption nonetheless stand out. In the first, state lawmakers punished Kansas City for attempting police reform after 2020’s racial justice protests. Kansas City’s public safety apparatus is distinctively flawed—we are the only major city without control of our police department.¹⁸⁰ We *pay* for the police, but all departmental policy decisions belong exclusively to a Board of Police Commissioners appointed by the

¹⁷⁴ See Briffault, *New Preemption*, *supra* note 4, at 2007 (discussing “nuclear preemption”); see also Schragger, *Attack*, *supra* note 5, at 1182 (labeling the same phenomenon “deregulatory preemption”).

¹⁷⁵ Schragger, *Attack*, *supra* note 5, at 1183 (discussing “vindictive preemption”).

¹⁷⁶ See Sellers & Scharff, *supra* note 32, at 1361 (discussing “structural preemption”).

¹⁷⁷ See Briffault, *New Preemption*, *supra* note 4, at 2002–07 (discussing “punitive preemption”).

¹⁷⁸ See, e.g., Davidson & Schragger, *supra* note 21, at 1395 (“It is notable that state minimum wage preemption laws were adopted . . . in *direct response* to minimum wage efforts in majority minority cities.” (emphasis in original)); Schragger, *Attack*, *supra* note 5, at 1165–66 (observing that, “in almost all cases,” state legislatures “have been motivated by hostility to . . . regulations adopted by specific cities).

¹⁷⁹ Jenna Barackman, *After Lawrence Bans Single-Use Plastic Bags, Kansas Lawmakers Want to Block Restrictions*, KAN. CITY STAR (Feb. 3, 2024), <https://www.kansascity.com/news/politics-government/article284876017.html>.

¹⁸⁰ Josh Merchant, *When Did Kansas City Police Come Under State Control? The Answer Dates Back to the Civil War*, KCUR (Jan. 3, 2023), <https://perma.cc/5K73-N6LG>.

Missouri governor.¹⁸¹ As of 2019, the state constitution required Kansas City to contribute at least 20% of our general fund to the Kansas City Police Department (KCPD).¹⁸² In practice, KCPD needed a higher share, and despite our gripes about lack of local control, we generally provided it.

Summer 2020 underscored the need for the city council to assert whatever authority it could to ensure that law enforcement prioritized community well-being. We found a creative solution. The city would continue to give the police 20% of our general fund, no strings attached. Anything above 20%, though, would require negotiation with the city to ensure the money was used effectively.¹⁸³ So nobody could question our genuine commitment to fully funding law enforcement, we *increased* the total city expenditures earmarked for the police and put \$44 million in a new Community Service and Prevention Fund, which would be released to the department when they submitted a plan to spend the money on community engagement and prevention.¹⁸⁴

State Republicans were irate. They falsely claimed that we had “defunded” the police and dismantled the department.¹⁸⁵ As punishment, they passed a constitutional amendment and a bill increasing the city’s mandatory funding from 20% to 25% of our general funds.¹⁸⁶ The punitive backlash threatened the city’s ability to fulfill its other goals and obligations.

¹⁸¹ The governor fills four seats, and the local mayor occupies the fifth. See MO. REV. STAT. §§ 84.350, 84.360 (West 2023).

¹⁸² See Summer Ballentine, *Missouri Voters Pass Constitutional Amendment Requiring Increased Kansas City Police Funding*, ASSOCIATED PRESS (Aug. 8, 2024), <https://apnews.com/article/kansas-city-police-funding-c01155615ff1caeca2bd88b920369eab>.

¹⁸³ See Margaret Stafford & Summer Ballentine, *Kansas City Struggles with Missouri over Police Funding*, ASSOCIATED PRESS (July 15, 2022), <https://perma.cc/MNV4-UFDT>.

¹⁸⁴ Margaret Stafford, *Kansas City Adopts New Funding Formula for Police Department*, ASSOCIATED PRESS (May 20, 2021), <https://perma.cc/9FWV-E53M>.

¹⁸⁵ Jason Hancock, *Kansas City Mayor Says Missouri GOP “Spewing Lies” About Local Control of Police*, KAN. CITY STAR (July 1, 2020), <https://www.kansascity.com/news/politics-government/article243929722.html>.

¹⁸⁶ See Stafford & Ballentine, *supra* note 183. State officials needed voter approval for the funding increase, which they appeared to secure in November 2022. But the Missouri Supreme Court required a redo of the election because Republicans had put before the voters ballot language that “so materially misstated [facts] and misled the voters . . . that it constituted an irregularity of sufficient magnitude to cast doubt on the fairness of the election and the validity of the results.” *Lucas v. Ashcroft*, 688 S.W.3d 204, 212 (Mo. 2024). Before the vote, they illegally tilted the election’s balance by incorrectly telling voters that the increase would not cost our city a cent. See Kacen Bayless, *KC Mayor Says Police Funding Ballot Question Misled Voters. Could Lawsuit Overturn the Results?*, KAN. CITY STAR (June 3, 2023), <https://www.kansascity.com/news/politics-government/article275826346.html>.

The second notable post-emption fight is ongoing. After years of trying, the city council recently passed an ordinance banning housing discrimination on the basis of a renter's lawful and verifiable source of income.¹⁸⁷ In joining sister cities across the country to ban source-of-income discrimination, Kansas City helped ensure that nobody would be homeless solely because they used a housing voucher or had a bad credit score. Our ordinance promises to expand housing access for our most vulnerable residents.¹⁸⁸

Not everyone cheered the measure, though. Landlords mobilized in opposition, claiming that the discrimination ban would eat into their bottom line and force them to abandon Kansas City.¹⁸⁹ During the months of debate, they met with councilmembers, sent us redlines, and organized email campaigns. We accepted some redlines, compromised, and secured a supermajority of the council to pass an amended ordinance that addressed many landlord concerns.

Nonetheless, some landlords took the fight to the state capitol. As our city ordinance neared final passage, state lawmakers introduced a bill to rip the rug out from under us by prohibiting municipal regulation of income-based housing discrimination.¹⁹⁰ That bill passed the House and awaits Senate consideration.¹⁹¹

Similar instances of post-emption are everywhere.¹⁹² North Carolina's "bathroom bill," one of the first hyper preemption fights receiving national attention, struck down a transgender rights ordinance out of Charlotte.¹⁹³ During COVID-19, states like Arkansas and Florida took aim at local public health measures by prohibiting vaccine requirements and undermining mask

¹⁸⁷ Celisa Calacal, *Kansas City Renters Who Use Housing Vouchers Now Have More Protection Against Discrimination*, KCUR (Jan. 26, 2024), <https://perma.cc/FFZA-34NU>.

¹⁸⁸ Kathy Feist, *What Landlords Should Know About KC's Discrimination Ban*, MARTIN CITY & S. KAN. CITY TEL. (Feb. 22, 2024), <https://perma.cc/6LR3-8CYA>.

¹⁸⁹ See Mike Hendricks, *'Common Sense' or Blow to Landlords? Kansas City Fight Brews over Tenant Discrimination*, KAN. CITY STAR (Dec. 11, 2023), <https://www.kansascity.com/news/politics-government/article282717393.html>.

¹⁹⁰ See H.B. 2385, 102d Gen. Assemb., 2d Reg. Sess. (Mo. 2024) (prohibiting local governments from "enact[ing], maintain[ing], or enforc[ing] any ordinance or resolution that prohibits landlords from refusing to lease or rent . . . to a person because the person's lawful source of income to pay rent includes funding from a federal housing assistance program").

¹⁹¹ *HB 2385*, FASTDEMOCRACY, <https://perma.cc/9GDF-NX4Z>.

¹⁹² For a comprehensive look at pending preemption bills, many of which involve post-emption, see generally LOCAL SOLS. SUPPORT CTR., 2023 MID-SESSION OVERVIEW (2023).

¹⁹³ See Jo Yurcaba, *Five Years After Infamous 'Bathroom Bill,' Charlotte Passes LGBTQ Protections*, NBC NEWS (Aug. 10, 2021), <https://perma.cc/SM2F-E7YC>.

mandates.¹⁹⁴ States responded en masse to local minimum wage increases, preempting efforts in Atlanta, Birmingham, Cleveland, New Orleans, Memphis, and St. Louis.¹⁹⁵ Ohio is poised to reverse a flavored tobacco ban in Columbus.¹⁹⁶ Perhaps spooked by Eugene, Oregon's short-lived ban on natural gas in new buildings,¹⁹⁷ nearly half of U.S. states have passed legislation preempting similar bans in their states.¹⁹⁸ Tennessee forbade local governments from financially assisting employees seeking out-of-state abortion care when Nashville explored the idea.¹⁹⁹ States even post-empt cities' private litigation efforts.²⁰⁰

Mississippi's egregious attack on its capital city of Jackson might be post-emption at its worst. Incensed by a mayoral proclamation banning chokeholds and mandating police de-escalation,²⁰¹ the state brought down the hammer. It created parallel police, prosecutor, and court systems to oversee majority-Black Jackson.²⁰² Such brazen autonomy stripping harkens back to the archaic "ripper bills," state laws forcibly taking over entire municipal departments, that prompted the home rule movement.²⁰³ Litigation is ongoing.²⁰⁴

B. Post-Emption's Appeal

Post-emption will proliferate. Recall that risk tolerance plays a role in a state official's decision whether to preempt municipal law. Because determining costs and benefits is a predictive

¹⁹⁴ See *Arkansas Governor Signs Bill Banning Vaccine Requirements*, *supra* note 23; Jim Saunders, *Revamped COVID-19 School Rules Give Parents More Flexibility with Quarantines and Masks*, WUSF (Sept. 22, 2021), <https://perma.cc/GM2N-BRZ9>.

¹⁹⁵ See Davidson & Schragger, *supra* note 21, at 1395.

¹⁹⁶ Kiona Dyches, *This Directly Affects Tax Revenue: Ohio Could Roll Back Flavored Tobacco Ban in Columbus*, WBNS (June 28, 2023), <https://perma.cc/VNJ2-S6G8>.

¹⁹⁷ Kale Williams, *Eugene Reverses Natural Gas Ban After Ruling by Federal Appeals Court*, KGW 8 (July 12, 2023), <https://perma.cc/HP7Z-82LD>.

¹⁹⁸ Tom DiChristopher, *Half of US States Are on Pace to Prohibit Local Gas Bans*, S&P GLOBAL (June 21, 2023), <https://perma.cc/S474-WMDF>.

¹⁹⁹ See TENN. CODE. ANN. § 5-9-115 (West 2024) ("A county shall not expend funds for the purposes of assisting a person in obtaining a criminal abortion.").

²⁰⁰ See Swan, *Preempting Plaintiff Cities*, *supra* note 56, at 1247–57 (cataloguing state mechanisms for "preempting plaintiff cities"); see also Scharff, *Hyper Preemption*, *supra* note 4, at 1253–55.

²⁰¹ CHOKWE A. LUMUMBA, CITY OF JACKSON, MAYORAL EXECUTIVE ORDER AMENDING THE CITY OF JACKSON POLICE DEPARTMENT'S USE OF FORCE POLICY (2020).

²⁰² Jon Schuppe, *NAACP Sues After Mississippi Expands Control over Law Enforcement in Jackson*, NBC NEWS (Apr. 22, 2023), <https://perma.cc/A2M6-9PDZ>.

²⁰³ See Schragger, *Attack*, *supra* note 5, at 1192.

²⁰⁴ Schuppe, *supra* note 202.

exercise, uncertainty permeates state officials' decision-making process. The less certain that an act's political and economic benefits will outweigh the costs, the higher the risk tolerance required to do that act. This indeterminacy benefits cities, who can ward off preemption by raising the specter of *possible* economic or political backlash.

Post-emption minimizes uncertainty, enabling risk-averse state officials to support post-emptive measures. When a city has passed a specific policy, the cards are on the table. Calculating the policy effects of post-emption becomes easier—legislators can see the policy's practical effect. Missouri's attempt to post-empt Kansas City's source-of-income discrimination ban, for example, had a well-developed record from the get-go. Experts and interested citizens who compiled reports and testified before the city council regurgitated their arguments before the state. The record might become more comprehensive still. If the Missouri legislature holds the bill until after our municipal ordinance's effective date, it will have hard data about the policy's effects to guide its decision.

Messaging projections also become easier in the context of post-emption. Once a municipal policy passes, its popularity gets reflected in media coverage, constituent communication, and polling. As a legislature debates a *specific* state bill overturning the *specific* city policy, the popularity of state pushback becomes apparent as well. All this means that state officials who might hesitate to preempt local laws in the abstract will find themselves more enthusiastic in the concrete.²⁰⁵

In addition to providing increased certainty to state lawmakers, post-emption allows state officials to maximize the political impact of anti-urban policies in at least three ways. First, it allows them to plug into the hottest culture war topic of the day. In Kansas City's fight over police funding, state lawmakers jumped at the chance to decry "defunding the police."²⁰⁶ While some lawmakers no doubt held longstanding policy preferences for increasing KCPD's funding allocation, tying that funding to a hot-button

²⁰⁵ Will limiting a locality's ability to build shelters, for example, be popular statewide? That could be a difficult question that risk-averse legislators want to avoid. A much easier question to assess: Will it be popular for the state to prevent a city from building a low-barrier, hundred-bed shelter in a specific suburban neighborhood?

²⁰⁶ See, e.g., *Kansas City Mayor Quinton Lucas Slams GOP Depiction of 'Defund Police'*, ASSOCIATED PRESS (July 2, 2020), <https://perma.cc/4P5U-568Z>; Jason Hancock, *Republican Lawmakers Call for Special Session over Kansas City Police Budget*, MO. INDEP. (May 26, 2021), <https://perma.cc/C9MW-NF7T>.

catchphrase increased the overall desirability, from their perspective, of post-empting Kansas City.

Second, post-emption exploits the structural disadvantage of cities with diverse interests. Because so many different types of people live in a city, municipal policy almost always leaves some subgroup dissatisfied.²⁰⁷ Unhappy city dwellers who had organized against municipal policies can take their advocacy straight to the states, as Kansas City landlords did in the wake of our antidiscrimination ordinance.

Finally, post-emption prevents states from leaving messaging benefits on the table. A blanket prohibition on municipal gun regulation, for example, might capture a few news cycles.²⁰⁸ Smacking down repeated gun control efforts by a progressive city, however, could mean dozens of news cycles and many years' worth of opportunities to decry Democrats for "trying to take away our guns."

Post-emption promises benefits that are larger, likelier, and less speculative than prospective preemption.²⁰⁹ It is no surprise that states use it often. Nor should it be a surprise when the trend continues.

C. Post-Emption's Valence

Post-emption's rise is predictable, but its normative impact requires investigation. Both cities and states have a hand in promoting local autonomy, an established goal of our federalist system.²¹⁰ Scholars dispute the ideal city-state power distribution but agree that extreme preemption destroys the balance.²¹¹

²⁰⁷ Schragger, *Attack*, *supra* note 5, at 1186–87.

²⁰⁸ If the preemption threatens sanctions on cities that try to circumvent it, it can all but guarantee that the issue will be out of the papers for good. See Davidson & Schragger, *supra* note 21, at 1413 ("The NLC has engaged in extensive study of [punitive preemption] and has found that local governments are being strangled by state law across literally dozens of policy areas.").

²⁰⁹ One possible impediment to post-emption could be state constitutional bans on "special legislation," or acts that target specific cities. Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 358 (1990). However, states know how to circumvent this restriction: they ban *all* cities from enacting certain ordinances, even if the real target is one particular city law.

²¹⁰ For excellent analysis, see Gerken, *supra* note 87, at 21, and see generally Richard Briffault, "What About the 'Ism'?" *Normative and Formal Concerns in Contemporary Federalism*, 47 VAND. L. REV. 1303 (1994). For a contemporary critique of state-based federalism emanating from state legislatures, see Seifter, *supra* note 47, discussing democratic deficits of modern state legislatures.

²¹¹ See, e.g., Davidson & Schragger, *supra* note 21, at 1388; Schleicher, *Constitutional Law for NIMBYs*, *supra* note 38, at 890.

Post-emption might be the exception. Even though it seems to increase preemption laws, it might result in healthier interactions between states and their cities. By tolerating city policy-making and focusing debate on specific municipal acts, post-emption might better capture procedural, expressive, and substantive benefits of local democracy.

Procedurally, post-emption narrows debate to two specific policies: the city's objectionable one and the state's proposed preemptive one. This enhances the truth-seeking function of policy debates and empowers important democratic voices. In considering an already-enacted municipal policy, a state legislature can grapple with something akin to a factual record. The city government will have already detailed, discussed, and, in most cases, implemented its ordinance. States can see how the policy has played out in considering whether to undermine it.

The legislative debate might also benefit from a wider array of advocates. The city-level fights will have created or solidified constituencies both for and against the policy. Those groups can build on municipal-level organizing efforts and present their viewpoints to the state legislature. If policy implementation has already begun, impacted individuals can share their experiences. Equally important, the city will have the rare opportunity to advocate *as a city* for its enacted ordinance, cementing its status as a democratic polity with distinct preferences.²¹²

Better facts and better debate could lead to better state policy. Even preemption's critics acknowledge its occasional benefits.²¹³ Relative to prospective preemption, post-emption might result in state preemption laws that better filter the bad municipal policies while retaining the good ones.

Even if post-emption provides no special protection for substantively desirable municipal policies, a city's having passed and lost those policies is better than never having passed them at all. Some citizens will have benefitted from the policies' short lifespans. Constituencies can rally around the flag. And because the policy's details will have been hammered out in city hall, it can

²¹² See Schragger, *Attack*, *supra* note 5, at 1167 ("Cities *qua* cities are not represented in national or state legislatures."); cf. Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 HARV. C.R.-C.L. L. REV. 1, 36 (2012) ("[I]ncluding local public entities in constitutional debates may serve to strengthen those debates, along with the efficacy of local governments and local public law offices.").

²¹³ See, e.g., Simon, *supra* note 19, at 1448 ("If applied with precision and care, preemption might serve as a valuable tool . . . to finetune a policy framework that more effectively synchronizes state and local regulation.").

become a template for other municipalities, making the city a true laboratory of democracy.²¹⁴ At the very least, post-emption permits municipal expression that prospective preemption shuts off.²¹⁵

These democratic-deliberation benefits are already panning out. When Tempe, Arizona, banned anonymous political donations, “the state’s effort to preempt the ordinance [] bolstered an effort to enact a statewide ban on dark money via Arizona’s initiative process.”²¹⁶ When a Nevada library district banned guns, the state legislature debated extending the firearm ban to libraries statewide.²¹⁷ Better debate, better policies, and better politics might make post-emption palatable.

Post-emption might, however, bring out the worst in state preemption. Focusing attention on a specific municipal policy raises the temperature of political contestation. Prospective preemption responds to generalized concerns like “liberals want to take your guns.” Post-emption concretizes those concerns and gives the “villain” a name and a face. Jackson, Mississippi, illustrates.²¹⁸ During the tumult of 2020’s racial justice protests, Jackson’s activist-turned-mayor, Chokwe Antar Lumumba, issued an executive order mandating police de-escalation and intervention in abuses by other officers. Had a preexisting state law prohibited such an order, there would have been nothing to see. But no law existed, Mayor Lumumba issued the order, and state Republicans were infuriated. The rancor of that moment engendered an outsized response: Mississippi functionally ripped away control of Jackson’s criminal justice system.²¹⁹

Post-emption could produce more extreme outcomes by concentrating preemption battles on the most contentious issues. The characteristics that make post-emption appealing to state lawmakers—certainty about political benefits and opportunity to pick and choose winning battles—make it perilous for cities. States will arrive armed with certitude that their coalition wants

²¹⁴ Richard Briffault, *Home Rule and Local Political Innovation*, 22 J.L. & POL. 1, 31 (2006) (“[I]f the fifty states are laboratories for public policy formation, then surely the 3,000 counties and 15,000 municipalities provide logarithmically more opportunities for innovation, experimentation and reform.”).

²¹⁵ See Yishai Blank, *City Speech*, 54 HARV. C.R.-C.L. L. REV. 365, 369 (2019) (noting the benefits of city expression).

²¹⁶ Sellers & Scharff, *supra* note 32, at 1368.

²¹⁷ See *Democrats Push Bill to Expand Weapon Ban to Nevada Libraries*, CAP. RADIO (Mar. 17, 2017), <https://perma.cc/9PLC-PLHU>.

²¹⁸ See *supra* text accompanying notes 201–04.

²¹⁹ See Schuppe, *supra* note 202; see also Davidson & Schragger, *supra* note 21, at 1410 (explaining that “ripper” bills are now “seen as wildly inappropriate”).

them to crush the opposition. As city leaders, this dynamic is the stuff of nightmares. State constraints on city action are one thing—we can work within and around them. But provoking retaliation can only lead to harm.

The harms of post-emption might worsen the more it is used. Hyper and deregulatory preemption wall off more and more areas from local control, leaving a shrinking area in which cities can operate. Post-emption squeezes us further. Kansas City's police-funding fight is a perfect example. If the state had not already stripped us of our right to control the police department, we might have used traditional tools to change KCPD policies. Even had that caused a fight, it would have been over narrow policy disagreements. Instead, the city's only possible response was to impose high-level financial controls, and the state's only possible post-emptive response was to impose high-level financial penalties. In our case, the state legislature attempted to commandeer an additional 5% of the city's budget and handed it to KCPD. As we move towards a city-state balance in which post-emption expands but the realm of city power contracts, states might increasingly look to undermine core pillars of municipal governance.

CONCLUSION

In recent years, the longstanding specter of state preemption grew teeth. Kansas City was not immune from hostile preemption, but neither were we powerless to stop it. Cities and states exist in a hostile symbiosis, simultaneously combative and codependent.

As local government practitioners, we use our entire toolbox to build a brighter future for our community. Our wins gave us strength, and the losses taught us lessons. The details, we hope, help clarify the avenues through which cities can assert their autonomy. Cities must be creative, strategic, and assertive. They must also be humble, nimble, and attentive to local and state political realities. Changing landscapes, including the rise of post-emption, change the ways in which cities must use their toolbox to build the future of their choice.

Successful local governance requires embracing both sides of the city-state relationship. We have done our best in Kansas City. By working with the state, we financed and built a soccer stadium. By legislating to protect our female, minority, and disadvantaged residents, we cultivated a city that delighted in women's sports. Celebrating the KC Current's opening-day win meant celebrating the full spectrum of city power.