No. 03-21-00144-CV

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

STATE OF TEXAS

Appellant,

v.

CITY OF AUSTIN, TEXAS; COUNTY OF TRAVIS, TEXAS; STEVE ADLER, in his Official Capacity as Mayor, City of Austin, Texas; ANDY BROWN, in his Official Capacity as County Judge, County of Travis, Texas; and MARK E. ESCOTT, in his Official Capacity as Interim Medical Director and Health Authority for the City of Austin and County of Travis,

Appellees.

On Appeal from the
98th Judicial District Court, Travis County

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

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CASES

BCCA Appeal Grp., Inc. v. City of Houston,
496 S.W.3d 1, 8 (Tex. 2016) 34

City of Fort Worth v. George,
108 S.W.2d 929 (Tex. App.—Fort Worth 1937).....20

City of Galveston v. Giles,
902 S.W.2d 167 (Tex. App.—Houston [1st Dist.] 1995, *no writ*).....34

City of Wichita Falls v. Robison,
121 Tex. 133, 136, 46 S.W.2d 965 (1932).....20

Ex parte Ernest,
138 Tex. Crim. 441, 445, 136 S.W.2d 595, 597 (1939) 20

Ex parte Woodall,
154 S.W.3d 698 (Tex. App.—El Paso 2004).....16

Forwood v. City of Taylor,
214 S.W.2d 282 (Tex. 1948) 33

Hanzal v. City of San Antonio,
221 S.W. 237 (1920)..... 20, 21

New State Ice Co. v. Liebmann,
285 U.S. 262 (1932).....29

Town of Ascarate v. Villalobos,
223 S.W.2d 945 (Tex. 1949) 34

Vill. of Euclid v. Ambler Realty Co.,
272 U.S. 365 (1926)..... 16

White v. City of San Antonio,
60 S.W. 426 (Tex. 1901)..... 19, 20

STATUTES

Tex. Const. Art. XI, § 5..... 28, 32

Tex. Gov't Code § 418.016(a) 35

Tex. Gov't Code § 418.016(b) 34

Tex. Gov't Code § 418.016(e) 35

Tex. Health & Safety Code § 121.003 ..... 17, 22

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Tex. Health & Safety Code Ann. § 121.003 21

Tex. Health & Safety Code Ann. § 121.021 23

Tex. Health & Safety Code Ann. § 121.024 17

Tex. Health & Safety Code ch. 121..... *passim*

Tex. Rev. Civ. Stat. Ann. art. 4430 (1925)..... 21

Tex. Rev. Civ. Stat. Ann. art. 4437a (1945).....19

Tex. Rev. Civ. Stat. Ann. art. 4445 (1918)..... 19

Tex. Rev. Civ. Stat. Ann. art. 4477 (1911)..... 19

Tex. Rev. Civ. Stat. Ann. art. 4477 (1925)..... 19

Tex. Rev. Civ. Stat. art. 4427 (1925) 21

Tex. Rev. Stat. art. 4090j (1879) 18

Tex. Rev. Stat. art. 4098 (1879) 19

Relating to proposing an amendment to Section 5, of Article 11,
providing for cities of more than five thousand (5000) inhabitants
to adopt their charters by a vote of the people, 32nd Leg., R.S.,
1912 Tex. H.J.R. 10 ..... 28, 32

OTHER AUTHORITIES

"School District Responses to COVID-19 Closures",
Centre on Reinventing Public Education (March 2021),

https://www.crpe.org/current-research/covid-19-school-closures 30

An Act Relating to the Powers and Duties of Cities and Counties and the Texas Board of Health in Public Health Matters, 68th Leg., R.S., 1983 Tex. Gen. and Special Laws 1983, House Bill Analysis 23

Austin Public Health, About, http://www.austintexas.gov/department/health/about.....14

City of Dallas, Order Rescinding the July 16, 2020, Order of the Local Health Authority For Public and Private Schools (August 10, 2020).....26

City of Garland, Order of the Local Health Authority Closing Certain Businesses (July 24, 2020) 26

City of Irving, Order of the Local Health Authority Closing Certain Businesses (July 24, 2020) 26

City of Laredo, Amended Emergency Ordinance Instituting Emergency Measures Due To the Covid-19 Public Health Emergency (Mar. 31, 2020).....26

City of Laredo, Order By the Local Health Authority For Local Covid-19 Vaccine Providers (Jan. 5, 2021).....26

Galveston County United Board of Health, Galveston County Health District Animal Services Local Regulations and Rabies Control – Draft, 2019, https://www.gchd.org/home/showpublisheddocument?id=2448.....25

Harris County and City of Houston, Joint Control Order of the Local Health Authorities For Harris County and the City of Houston Regarding Public and Non-religious Private Schools (July 24, 2020) 26

Hunt County, Hunt County Health Authority Order Regarding Returning to Work for COVID-19 Patents and Close Contacts (July 31, 2020), http://www.huntcounty.net/upload/page/9857/docs/Hunt%20County%20Health%20Authority%20Order%20Regarding%20Return%20to%20Work%20with%20Exhibits.pdf 26

Jennifer L. Pomeranz & Mark Pertschuk, *State Preemption: A Significant and Quiet Threat to Public Health in the United States*, 107 AM. J. PUB. HEALTH (2017) 17

John P. Keith, *City and County Home Rule in Texas* (Institute of Public Affairs, University of Texas 1951).....31

MCQUILLIN MUNICIPAL CORPS. § 24:232 (2021) 16

National Association of County & City Health Officials, National Profile of Local Health Departments (2019), https://www.naccho.org/uploads/downloadable-resources/Programs/Public-Health-Infrastructure/NACCHO_2019_Profile_final.pdf..... 13, 14, 15

Order, Commissioners Court of Smith County, Texas, Oct. 12, 2010, https://www.smith-county.com/home/showpublisheddocument?id=52.....25

Paul A. Diller, *Intrastate Preemption*, 87 Boston U. L. Rev. 1113 (2007)..... 28, 29

Paul A. Diller, *Why Do Cities Innovate in Public Health? Implications of Scale and Structure*, 91 WASH. U. L. REV. 1219 (2014)..... 15, 30

Terrell Blodgett, *Texas Home Rule Charters* (Tex. Mun. League, 2d ed. 2010) 28

Tex. Att'y Gen. Op. DM-183 (1992) 24

Tex. Att'y Gen. Op. JM-1052 (1989).....24

Tex. Att'y Gen. Op. MW-113 (1979) 22

Texas Department of State Health Services, "The Texas Public Health Action Plan 2017 – 2021" (Nov. 2016), https://www.dshs.texas.gov/legislative/2016-Reports/Rider81TexasPublicHealthActionPlan.pdf.....25

Travis County Health and Human Services Department, About (2021), https://www.traviscountytx.gov/health-human-services/about-us.....15

University of Houston Law Center, Health Law and Policy Institute, Control Measures and Public Health Emergencies A Texas Bench Book (2020), https://www.law.uh.edu/healthlaw/HLPIBenchBook.pdf.....25

STATEMENT OF INTEREST

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

IMLA periodically files *amicus curiae* briefs in cases, such as the one at bar, which are of importance to local governments statewide and nationally. IMLA and its members have a significant interest in this action because local governments in Texas and throughout the country are on the frontlines of promoting public health and combating disease. In general, local governments provide a broad array of disease prevention and health care services to their populations, and also promulgate and enforce regulations intended to promote general welfare and public

health. The usurpation of well-established local public health authority through the Governor's Executive Order—especially amidst a pandemic—has the potential to diminish the powers of self-government of municipalities, as expressly granted by the Texas law.

ChangeLab Solutions works across the nation to advance equitable laws and policies that ensure healthy lives for all. With more than two decades of experience in enacting policy, systems, and environmental changes at local and state levels, ChangeLab Solutions collaborates with local and state governments to create healthy thriving communities. ChangeLab Solutions is located in Oakland, California.

The Network for Public Health Law ("Network") provides non-partisan legal technical assistance and resources to build the capacity of local, state, tribal, and national public health agencies and organizations around the country to effectively develop, implement, and enforce evidence-based, equitable laws and policies. The views expressed in this brief are solely those of Network staff and may not represent those of any affiliated individuals or institutions, including funders and constituents. Network is located in Edina, Minnesota.

The Public Health Law Center ("PHLC") collaborates with the nation's leading public health experts to find strategic solutions to pressing health problems. Among its work, PHLC defends groundbreaking new policies by

assisting government attorneys and by writing expert *amicus curiae* briefs in important legal cases, such as this one. PHLC is located at the Mitchell Hamline School of Law in St. Paul, Minnesota.

Public Health Law Watch ("PHLW") is a nationwide network of over sixty public health law scholars, academics, experts, and practitioners who are dedicated to advancing public health through law. PHLW's goal is to increase visibility and understanding of public health law issues and changes, including by providing legal analysis and commentary. The statements expressed in this brief do not necessarily represent the views of any individuals or institutions affiliated with PHLW. PHLW is located at the Northeastern University School of Law in Boston, Massachusetts.

Amici also include a group of distinguished Law Professors who study and teach at law schools around the country in the subject of local government law and related fields.[1] Because of their professional work and expertise regarding issues of local government, the Law Professors are interested in the proper interpretation of Texas law and in the integrity of local regulatory authority. In particular, they

[1] A complete list of all the public health organizations and Law Professors who have joined as *amici* is attached at Appendix A. Pursuant to Texas Rule of Appellate Practice 11, Public Rights Project, a project of the Tides Center, discloses that it provided funding to Professor Paul Diller for his collaboration in drafting the brief. Professor Diller also has joined the brief as an *amicus*.

submit this brief to ensure that the Texas Home Rule Amendment's broad scope and application are granted appropriate deference and dignity.

INTRODUCTION

COVID-19 has wrought incalculable damage to our nation. Nearly 600,000 Americans have died, while almost 33 million have tested positive for the virus. Workers have lost more than 8 million jobs, and millions more have lost their homes or have become housing unstable. During this unprecedented and ongoing crisis, local governments have been on the frontlines responding to the grave public health and economic impacts of the COVID-19 pandemic. And that is exactly as it should be. For more than a century—essentially as long as there has been a meaningful public health apparatus in this country—local governments have played an especially crucial role in identification and monitoring, testing and tracing, imposing quarantines, and vaccination.

Texas is no exception. There is a long history of local public health authority in Texas. Since at least the late 19th century, state law has authorized, and at times, obligated, local governments to advance public health and curb the spread of communicable disease. Such tradition is reinforced by the adoption of the Home Rule Amendment to the Texas Constitution in 1912. Under the Home Rule Amendment, cities were empowered to address the challenges of an increasingly complex economy and society (including public health matters),

without awaiting specific authorization by the Legislature. The Local Public Health Reorganization Act of 1983 (the "Public Health Act") further solidified this central role for local governments in Texas.

Pursuant to that well-established authority, Appellees the City of Austin and Travis County have issued hygiene-related rules to combat the spread of COVID-19. Texas's long-standing tradition of local public health response, the Home Rule Amendment, and the Public Health Act all stand in solid support of these rules. This legal framework exists for many good reasons. Local governments can respond quickly to public health threats in their communities, develop innovative solutions to address those threats, and tailor solutions that reflect the preferences of local communities (particularly when they rise above the floor set by the state). By contrast, the Governor seeks to abrogate well-established local public health action without authority. The Texas Disaster Act, which the Appellant relies upon, does not give the Governor authority to preempt well-founded local public health regulations promulgated under independent statutory authorization granted by the Public Health Act. Because state law clearly permits the type of life-saving orders implemented by the City of Austin and Travis County, and because the Governor lacks the power to override them, the Court should affirm the district court's denial of the State's temporary injunction.

ARGUMENT

I. Local Governments Like the City of Austin and Travis County Play a Crucial Role in Protecting Public Health Nationwide

The delivery of public health services in the United States is primarily a local matter.[2] In Texas, like most states, local public health authorities, whether health departments or individual appointed officials, are arms of either county or city government.[3] Local health authorities are able to deliver immediate care to their constituents, enact regulations and undertake enforcement actions to protect public health, and develop innovative solutions to public health problems.

Local health departments and officials throughout the nation "provide many different types of clinical programs and services directly, including adult and child immunizations, screening and treatment for chronic and communicable diseases or conditions, and maternal and child health services."[4] In Texas, for instance, Austin Public Health provides many of these services and more, including "shelter, food, clothing, and job assistance."[5] The Travis County Health and Human Services

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[2] *See* Nat'l Ass'n of Cnty. & City Health Officials, Nat'l Profile of Local Health Departments 3 (2019), https://www.naccho.org/uploads/downloadable-resources/Programs/Public-Health-Infrastructure/NACCHO_2019_Profile_final.pdf [hereinafter, "NACCHO Profile"] ("[Local health departments] are the backbone of the nation's public health system as the 'boots on the ground' for delivery of public health services").

[3] *Id.* at 24 (chart demonstrating that in most states all LHD's are units of local government).

[4] *Id.* at 76.

[5] Austin Public Health, About, http://www.austintexas.gov/department/health/about (last visited May 24, 2021).

Department provides a similarly broad array of programs to further public health and well-being.[6]

In addition to providing direct health services to their populace, local governments play another essential role in the realm of public health: they both develop and enforce regulations that protect and promote public health. In many places, local health departments and authorities enforce state laws governing matters such as restaurant hygiene and child care delivery.[7] As part of their regulatory and licensing function, local health officials also *promulgate* rules using administrative authority delegated by state law or the local government of which they are a component.[8] As discussed below, state law authorizes local health authorities the power to promulgate rules to protect public health, including during a declared emergency.

Of course, the local role in protecting public health goes well beyond the authority specifically vested in local health agencies and officials. Cities and counties generally exercise delegated police power that allows them to regulate for

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[6] Travis County Health and Human Services Department, About (2021), https://www.traviscountytx.gov/health-human-services/about-us.

[7] *See* NACCHO Profile, *supra* note 2, at 77 (noting that 78% of local health authorities regulate, inspect, and/or license "food service establishments" and 72% do the same for "schools/childcare").

[8] *See id.* at 133; Paul A. Diller, *Why Do Cities Innovate in Public Health? Implications of Scale and Structure*, 91 WASH. U. L. REV. 1219, 1278–79 (2014) (discussing the role of local health authorities in promulgating rules to combat tobacco use and obesity).

the societal health, safety, and welfare. With health a key component of this authority, cities and counties have played an essential role in health regulation for decades, whether through administrative regulation or ordinances adopted by the city council or county commissioners' court or by regulations promulgated by local agencies. Local government has generally been one of the primary protectors of their residents' public health through provisions such as zoning ordinances, which historically prevented nuisances like pollution, dust, dirt, and noise from interfering with residents' health and well-being. *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 391 (1926) (upholding a municipality's zoning ordinance that "promot[ed]" and "aid[ed]" the "health and safety of the community"). Local governments have also for decades regulated many other matters related to health, like tobacco products and their consumption, *e.g.*, *Ex parte Woodall*, 154 S.W.3d 698 (Tex. App.—El Paso 2004, *discretionary review refused*) (upholding El Paso ordinance prohibiting smoking in all enclosed public places within the city, including food establishments, nightclubs, and bars), and have long-established powers to enact ordinances and regulations to prevent the introduction and spread of contagious and infectious diseases.[9]

Whether by ordinance or by regulation, counties and cities are often on the cutting edge of public health innovation, enacting and enforcing rules that go

[9] *See* MCQUILLIN MUNICIPAL CORPS. § 24:232 (2021).

beyond the minimum standards required by federal and state law.[10] Many of these advances are eventually adopted by other local governments as well as by state and federal actors.[11] Th innovative value of local health regulation is dampened by state preemption. When states remove the policy options available to local actors, they limit the range of policies that might inform health policy on a much broader scale.[12]

II. The Local Public Health Reorganization Act and Its Antecedents Authorize the City of Austin and Travis County's Hygiene-Related Rules to Prevent the Spread of COVID-19 Independent of the Governor's Executive Order

As explained in their Amended Joint Response, Appellees did not issue the challenged Rules pursuant to their authority under the Texas Disaster Act. Instead, Appellees issued the challenged Rules under the Public Health Act's separate legislative grants of authority. Sections 121.003 and 121.024 of the Public Health Act authorize local health authorities to "perform each duty that is necessary to implement and enforce a law to protect the public health," Tex. Health & Safety Code Ann. § 121.024, and to "enforce any law that is reasonably necessary to protect the public health." *Id.* § 121.003. This broad grant of authority

[10] *See* Diller, *supra* note 8, at 1224–43 (reviewing municipal health innovations in the fields of tobacco use and obesity).

[11] *See id.* at 1223.

[12] *See generally* Jennifer L. Pomeranz & Mark Pertschuk, *State Preemption: A Significant and Quiet Threat to Public Health in the United States*, 107 AM. J. PUB. HEALTH 900 (2017).

independently empowers the City of Austin and Travis County to issue the hygiene-related rules at issue here. The Public Health Act's grant of authority to local authorities like Appellees builds on over a century of state law that has long recognized and supported the important role of local governments in promoting public health and combating disease. Permitting the Appellant to supersede statutory authority recognizing and empowering local public health authority would run counter to decades of precedent and drastically limit localities' ability to act to further public health.

A. Texas Law Has Authorized Local Governments to Protect Public Health Since the Late 19th Century

Since at least the late 19th century, state law has recognized the important role of local governments in promoting public health and combating disease. In the 1879 Revised Statutes, the first official codification of Texas civil statutes, the Legislature authorized local governments to declare quarantine, establish quarantine stations, and detain individuals "for such a length of time as, in the discretion of the quarantine officers, is demanded by public safety." Tex. Rev. Stat. art. 4090j (1879). The law, which also delegated authority to the Governor to establish quarantines, made clear that such statewide authority did not preempt local efforts to establish quarantine which a local government may think is "necessary for the preservation of the health of said town, city or county not

inconsistent with the provisions of [the Quarantine] title." Tex. Rev. Stat. art. 4098 (1879).

Subsequent revisions of state statutes have continued to recognize the frontline role of local governments in establishing quarantines,[13] to combat infectious diseases,[14] and state courts have upheld such quarantines. In *White v. City of San Antonio*, for example, the Texas Supreme Court overturned a jury verdict in favor of the plaintiff hotel owner seeking damages resulting from a city quarantine of an out-of-town theatrical company in the hotel. 60 S.W. 426, 427 (Tex. 1901). Citing the Charter of the City of San Antonio and Texas Revised Statutes Articles 4328 (1876) and 4330 (1899), the Supreme Court noted that "the enforcement of quarantine regulations and the establishment and maintenance of pest houses are matters of vital interest to the public in general, and are peculiarly a public function and therefore, when devolved upon a city, are most generally held

[13] For example, Texas has authorized local health authorities to "establish local quarantine, hold in detention, maintain isolation and practice disinfection" of "persons, vehicles or premises which are infected or are suspected of being infected with" specified diseases." Tex. Rev. Civ. Stat. Ann. art. 4477 (1925).

[14] State statutes have long authorized local governments to, for example, address specific threats presented by tuberculosis, "cholera, bubonic plague, typhus fever, yellow fever, leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue typhoid fever, epidemic dysentery, trachoma, tuberculosis, and anthrax" and sexually transmitted infections. *See* Tex. Rev. Civ. Stat. Ann. art. 4437a (1945); Tex. Rev. Civ. Stat. Ann. art. 4445 (1918); Tex. Rev. Civ. Stat. Ann. art. 4477 (1911).

to belong to that class of duties for which a city is not answerable." 60 S.W. at 427.

State courts have also long recognized local public health powers beyond quarantine, including the ability to issue rules and regulations and to engage in enforcement activity to promote public health. *See e.g.*, *City of Wichita Falls v. Robison*, 121 Tex. 133, 136, 46 S.W.2d 965, 966 (1932)

("It is well settled by the decisions of this court, as well as by those in other jurisdictions, that sanitation for the public health of a city is a governmental function, and that . . . a city [may] exercis[e] such power").[15] In *Hanzal v. City of San Antonio*, the San Antonio Court of Civil Appeals upheld an ordinance that regulated barber shops, required periodical physical examination of all persons engaged in the trade of a barber to ascertain if they were "free from any infectious, contagious, or communicable disease and any venereal disease in a communicable form," and required the payment of license fees. 221 S.W. 237, 238 (Tex. App.—San Antonio 1920, *writ refused*). Crucially, the court recognized the need for local governments to "prescribe rules for the prevention of disease and the preservation

[15] *See also City of Fort Worth v. George*, 108 S.W.2d 929, 931 (Tex. App.—Fort Worth 1937, *writ refused*) (identifying several state statutes discussing the roles of local governments in responding to diseases and protecting sanitation); *Ex parte Ernest*, 138 Tex. Crim. 441, 445, 136 S.W.2d 595, 597 (1939) ("Each municipality . . . stands upon the same footing and has the same legal authority and all have the same legal right to make necessary rules and regulations relative to health, sanitary conditions, etc.").

of health," because "[t]he state cannot, by reason of the vastness of demands made upon it, and the complexities of local situations and exigencies constantly arising, supervise and superintend on all occasions." *Id*. at 239. Indeed, the court went so far as to state that precautionary measures taken by local governments to prevent the spread of communicable disease "are sustained in every civilized community." *Id*.

Furthermore, the 1925 Texas Revised Civil Statutes expressly expanded the authority and duties of local governments to protect the public health beyond quarantine. The 1925 law obligated—and, therefore, necessarily authorized—"city health officer[s]" to "perform such duties as may be required of him by general law and city ordinances with regard to the general health and sanitation of towns and cities." Tex. Rev. Civ. Stat. Ann. art. 4430 (1925). Similarly, it required county health officers to perform such duties as may be required by "the commissioners court and other officers of the county." Tex. Rev. Civ. Stat. art. 4427 (1925).

In 1979, the State Attorney General summed up that "the control of infectious and contagious diseases, such as tuberculosis and venereal disease, is a topic about which the Legislature has been specific . . . To combat such maladies, it has given extraordinary power to various officials [listing local government

examples]."[16] Accordingly, prior to the passage of the Public Health Act in 1983, it was well recognized that state statutory authority explicitly considered, endorsed, and relied upon local public health authorities to promote public health, develop public sanitation, and combat infectious disease.

B. The Local Public Health Reorganization Act Cemented the Important Role of Local Governments in Protecting Public Health

When the Local Public Health Reorganization Act was enacted in 1983, the Legislature was building upon more than a century of local public health involvement and authority. That law's statutory delegation of public health responsibilities and obligations to local governments clarified and cemented the important role of local governments in protecting state residents from disease and public health emergencies. Such a purpose is clear from a plain reading of the Public Health Act.

The first substantive provision of the Public Health Act establishes that Texas cities and counties have broad authority to protect public health, stating that "[t]he governing body of a municipality or the commissioners court of a county may enforce *any law* that is *reasonably necessary* to protect the public health." Tex. Health & Safety Code Ann. § 121.003 (emphasis added). The Public Health Act then authorizes local governments to appoint a physician to serve as a health

[16] Tex. Att'y Gen. Op. MW-113 (1979).

authority "to administer state *and local* laws relating to public health within the appointing body's jurisdiction." *Id.* § 121.021 (emphasis added). This local health authority is required, through the mandatory term "shall," "to perform each *duty* that is . . . necessary to implement and enforce a law to protect the public health." *Id* § 121.024. (emphasis added). Notably, the Public Health Act specifies that the local health authority has a duty to "establish[ ], maintain[ ], and enforc[e] quarantine" and aid in the enforcement of the locality's "proper rules, requirements, and ordinances," "sanitation laws," and "quarantine rules." *Id.*

Citing to Texas statutes enacted in 1879, 1939, and 1949, the House Committee on Public Health's bill analysis explained the purpose of the Public Health Act as follows:

> The bill repeals sixteen existing statutes relating to city and county health officers and the establishment of inter-governmental health departments and presents one comprehensive law to do the following:
>
> 1. Allow cities and counties to jointly establish public health districts by agreement which may be governed by a public health board.
>
> 2. Allows a single unit of county or city government to establish a local health department . . .[17]

Recognizing the "range of public health services" provided by local governments but also that many local health departments "are inadequately staffed and poorly

[17] An Act Relating to the Powers and Duties of Cities and Counties and the Texas Board of Health in Public Health Matters, 68th Leg., R.S., 1983 Tex. Gen. and Special Laws 1983, House Bill Analysis at 1.

funded," the Public Health Act encouraged local governments to organize themselves for the "effective delivery of public health services."[18] This purpose recognizes the autonomy of local governments and their centrality in promoting public health.

C. Both State and Local Actors Have Recognized the Broad Grant of Authority to Local Governments under the Act to Protect Public Health

Following the Public Health Act's passage in 1983, state officers and local governments have recognized that the Public Health Act permits local public health authorities to "perform each duty that is necessary to implement and enforce a law to protect the public health" and to "enforce any law that is reasonably necessary to protect the public health." For example, the Attorney General has issued numerous opinions confirming local governments' statutory authority—and obligation—to promote public health and combat infectious disease under the Public Health Act.[19] The Department of State Health Services ("DSHS") has

[18] *Id.*

[19] *See e.g.*, Tex. Att'y Gen. Op. DM-183 (1992) ("Counties of this state have general authority to provide for the health and welfare of persons within the county . . . State law authorizes a county commissioners court to exercise control over health and sanitation matters concerning the county and its residents."); Tex. Att'y Gen. Op. JM-1052 (1989) ("In short, once a county joins a health district or establishes a local health department, it has a duty to provide certain public health services.").

expressly noted that local public health entities "are independent entities organizationally and politically autonomous from DSHS."[20]

Moreover, localities frequently rely on the Public Health Act to combat public health risks. For example, the Galveston County Health District relied expressly on the authority delegated to local governments pursuant to Section 121.024 in the promulgation of local regulations and policy for animal services and rabies control.[21] The Smith County Commissioners Court also cited Section 121.003 as granting authority to the county to regulate public health and safety in a 2010 ordinance concerning certain activity within a central plaza.[22]

Following the beginning of the COVID-19 pandemic, several cities and counties utilized their authority under the Public Health Act to enact a variety of public health measures. These jurisdictions often specifically cited Section 121.024 of the Public Health Act, including when *lifting* emergency health

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[20] Texas Department of State Health Services, "The Texas Public Health Action Plan 2017 – 2021" 2 (Nov. 2016), https://www.dshs.texas.gov/legislative/2016-Reports/Rider81TexasPublicHealthActionPlan.pdf. *See also* The University of Houston Law Center's Health Law and Policy Institute's Texas Bench Book, which serves as a guide for judges who evaluate public health control measures, explains that local public health authorities have "supervisory authority and control over the administration of communicable disease control measures within their jurisdiction." University of Houston Law Center, Health Law and Policy Institute, Control Measures and Public Health Emergencies A Texas Bench Book 12 (2020), https://www.law.uh.edu/healthlaw/HLPIBenchBook.pdf.

[21] Galveston County United Board of Health, Galveston County Health District Animal Services Local Regulations and Rabies Control – Draft, 2019, 22, https://www.gchd.org/home/showpublisheddocument?id=2448.

[22] Order, Commissioners Court of Smith County, Texas, Oct. 12, 2010, https://www.smith-county.com/home/showpublisheddocument?id=52.

measures as the severity of the pandemic lessened. The City of Laredo,[23] the City of Irving,[24] the City of Garland,[25] and Hunt County[26] all issued business closures and space restrictions under the authority provided by Section 121. Similarly, the City of Laredo,[27] the City of Dallas,[28] and Harris County and the City of Houston[29] each invoked Section 121.024 of the Public Health Act to direct re-openings of public and private schools. The City of Laredo also relied on Section 121 to guide its vaccine roll-out.[30]

As described above, the Public Health Act draws directly from decades of state statutes and court precedent empowering local public health authorities to

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[23] City of Laredo, Amended Emergency Ordinance Instituting Emergency Measures Due To the Covid-19 Public Health Emergency (Mar. 31, 2020) https://www.cityoflaredo.com/Coronavirus/assets/Emergency_Orders/03-31-20_Amended_Emergency_Ordinance_1.pdf.

[24] City of Irving, Order of the Local Health Authority Closing Certain Businesses (July 24, 2020), 2020 WL 4516953, at *1 (adopting a Dallas County departmental order).

[25] City of Garland, Order of the Local Health Authority Closing Certain Businesses (July 24, 2020), 2020 WL 4516952, at *1 (adopting a Dallas County departmental order).

[26] Hunt County, Hunt County Health Authority Order Regarding Returning to Work for COVID-19 Patents and Close Contacts (July 31, 2020), http://www.huntcounty.net/upload/page/9857/docs/Hunt%20County%20Health%20Authority%20Order%20Regarding%20Return%20to%20Work%20with%20Exhibits.pdf.

[27] City of Laredo, Order By the Local Health Authority For Public and Private Schools (July 9, 2020), 2020 WL 4045591, at *1.

[28] City of Dallas, Order Rescinding the July 16, 2020, Order of the Local Health Authority For Public and Private Schools (August 10, 2020), 2020 WL 4811607, at *1.

[29] Harris County and City of Houston, Joint Control Order of the Local Health Authorities For Harris County and the City of Houston Regarding Public and Non-religious Private Schools (July 24, 2020), 2020 WL 4611917, at *2.

[30] City of Laredo, Order By the Local Health Authority For Local Covid-19 Vaccine Providers (Jan. 5, 2021), 2021 WL 330570, at *1.

protect public health and combat disease. From yellow fever to COVID-19, Texas cities and counties, including Appellees, have relied on the Public Health Act and its antecedents to enact community-driven responses to public health threats, including pandemics and other emergencies. The challenged Rules are thus only one example in a long tradition of statute-authorized, local-level public health action. The Governor's efforts to interfere with the City of Austin's and Travis County's longstanding authority and obligation to promote public health is not only unavailing, but may result in unintended consequences. By curtailing well-established local government authority here in favor of statewide emergency power, localities will face additional hurdles to responding to public health threats expeditiously and adequately in the future.

III. The Governor's Order Contravenes Well-Established Principles of Home Rule in Texas

Beyond the clear authority provided to local governments through the Public Health Act, the Texas Constitution guarantees home rule municipalities the authority to manage their own affairs, a power that has long been used to protect public health. Any attempt to abrogate local governments' plenary legislative authority must stem from a clear and unmistakable legislative intent to do so—a burden that is not met here.

A. Municipal Home Rule Gives Texas Cities Broad Authority and Significant Flexibility

Texas is one of many states that enshrine the concept of home rule in their constitutions. The concept of home rule emerged in Texas, as in other parts of the United States, as a response to the previous "Dillon's Rule" regime, under which municipalities only possessed as much lawmaking authority as the Legislature explicitly granted to them. Starting in the late nineteenth century, a movement emerged to enable local autonomy by instituting home rule, which most states have done in some form.[31]

In 1912, Texas voters overwhelmingly approved a state constitutional amendment that granted to municipalities with over 5,000 residents authority to "adopt or amend their charters" and enact ordinances not "inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of [the] State." Tex. Const. Art. XI, § 5.[32] One of the major objectives animating Texas's Home Rule Amendment was "to avoid interference in local government by the state legislature."[33]

Moreover, this amendment—and home rule generally—allows municipalities to efficiently address the particular needs and preferences of their

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[31] *See* Paul A. Diller, *Intrastate Preemption*, 87 Boston U. L. Rev. 1113, 1126-27 (2007) [hereinafter Diller, *Intrastate Preemption*].

[32] Relating to proposing an amendment to Section 5, of Article 11, providing for cities of more than five thousand (5000) inhabitants to adopt their charters by a vote of the people, 32nd Leg., R.S., 1912 Tex. H.J.R. 10.

[33] Terrell Blodgett, *Texas Home Rule Charters* 2 (Tex. Mun. League, 2d ed. 2010).

own communities by giving them permanent and substantive lawmaking authority.[34] Local government, being closest to those governed, is often the best situated to identify the needs and interests of their constituents and implement responsive policies. This is especially true when it comes to responses to the COVID-19 pandemic, which requires not only timely action, but different policy responses depending on population density, infection rates, and other local factors. Local governments may also be more responsive to rapidly developing scientific evidence or changing safety guidance and be able to quickly implement changes on the ground, especially when local needs persist.

Municipalities with broad home rule authority can also serve as Brandeisian laboratories of democracy. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."). Allowing localities similar latitude to experiment with solutions to persistent problems can foster even greater innovation in policymaking. Indeed,

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

cities can foster substantial innovation in policymaking as localities work to respond to local needs in ways that, if successful, can be adopted elsewhere.[35]

Indeed, many structural aspects of local authority—the smaller ratio of legislators to constituents, the increased influence of local rather than state or national interest groups, and the relatively streamlined process of enacting legislation at the local level—have contributed to making localities centers of innovation in public health matters.[36] For all of these reasons, localities are uniquely situated to respond quickly to public health concerns in a way that reflects the needs and values of their community.

B. Texas's Home Rule Amendment, the Culmination of a Long-Term Trend in the State Towards Granting Cities Greater Local Authority Over Their Own Affairs, Provides a Broad Grant of Power to Municipalities, Especially in Local Issues

For decades before it formally adopted the constitutional Home Rule Amendment in 1912, Texas had been moving towards granting incorporated cities greater control over their own affairs. Texas's first steps towards home rule came

[35] As overseers and operators of school districts, local governments also served as laboratories of democracy regarding school re-openings during the pandemic. Local governments and their affiliated school districts across the United States made different decisions throughout the school year. The school districts that did reopen ended up providing valuable data to other jurisdictions around the country that in-person learning was possible, especially when certain conditions within the schools were met. This data eventually convinced other local governments and school districts on when and how to re-open. *See e.g.,* "School District Responses to COVID-19 Closures", Centre on Reinventing Public Education (March 2021), https://www.crpe.org/current-research/covid-19-school-closures.

[36] Diller, *Why Do Cities Innovate in Public Health?* at 1257-1266.

in the form of limiting the Legislature's authority to enact special laws—those that apply only to certain cities or individuals and were generally seen as overly meddlesome in local affairs—in favor of general ones.[37] To this end, the Reconstruction Constitution of 1869 prohibited the Legislature from enacting special laws that sought to alter roads or plots in cities and villages.[38] Voters apparently found this fairly modest prohibition on special laws not sufficient to prevent state interference in local affairs, so in 1873 they ratified more stringent restrictions on special laws as they related to local issues.[39] Members of the constitutional convention of 1875 went even further, prohibiting the Legislature from enacting any special or private law that would regulate the affairs of local governments, change their charters, or place county seats, except as specifically authorized by the constitution.[40] With these prohibitions on special laws, voters were able to prevent some state interference with the laws and affairs of individual municipalities. The state, however, could still regulate the actions of municipalities through general laws and retained the authority to adopt and, in some circumstances, amend a city's charter through special laws.[41]

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[37] John P. Keith, *City and County Home Rule in Texas* 14 (Institute of Public Affairs, University of Texas 1951).

[38] *Id*.

[39] *Id*. at 15.

[40] *Id* at 15-16.

[41] *Id*. at 18.

In relevant part, the 1912 Home Rule Amendment granted cities with populations over 5,000 the power to adopt and amend their own charters, and to adopt charter provisions and ordinances not "inconsistent with the Constitution of the State or of the general laws enacted by the Legislature of th[e] State." Tex. Const. Art. XI, § 5. The amendment effectively reallocated power between the state and local governments: rather than look to the state for authority to enact local measures, cities could address the increasingly complex and localized problems they encountered by themselves and free the Legislature of the responsibility of managing local affairs. Capping off decades of efforts to increase local government autonomy, Texans adopted the Home Rule Amendment with 74% of voters approving. Tex. Const. Art. XI, § 5.[42]

The authority granted to cities under the Home Rule Amendment is substantial. Analyzing the provision, the Texas Supreme Court summarized the state's home rule doctrine as follows:

> It was the purpose of the Home-Rule Amendment . . . to bestow upon accepting cities and towns of more than 5,000 population full power of self-government, that is, full authority to do anything the Legislature could theretofore have authorized them to do. The result is that now it is necessary to look to the acts of the Legislature not for grants of power to such cities but only for limitations on their powers.

[42] Relating to proposing an amendment to Section 5, of Article 11, providing for cities of more than five thousand (5000) inhabitants to adopt their charters by a vote of the people, 32nd Leg., R.S., 1912 Tex. H.J.R. 10.

Forwood v. City of Taylor, 214 S.W.2d 282, 286 (Tex. 1948). Put another way, "[a] home-rule city is not dependent on the Legislature for a grant of authority." *Quick v. City of Austin*, 7 S.W.3d 109, 123 (Tex. 1998). Given its constitutional placement and the benefits of home rule that Texas voters sought to achieve, this authority should not be abridged lightly.

The police powers granted to Texas municipalities through the adoption of home rule have long been used to promote public health. As discussed in Part I, *supra*, local governments have generally been one of the primary protectors of their residents' health through regulations like zoning ordinances and quarantine ordinances.

Texas's consistent movement towards constitutional home rule has had one major goal: to give municipalities greater control over local matters. And the issue at stake here presents local challenges. The COVID-19 pandemic by its nature requires timely and targeted responses, of which the City of Austin's and Travis County's mask mandates are a prime example, since they are limited to each local government's jurisdictional borders and can be adjusted at the local level to account for changing conditions. By limiting the policy responses that local governments can choose from to address COVID-19 outbreaks and hot-spots, the Governor's order attempts to undermine a decades-long trend in Texas towards

greater local autonomy that recognizes the important role that local governments play in promoting the health and welfare of their residents.

C. The Legislature Has Not Granted the Governor Authority to Preempt Local Public Health Measures, Let Alone By "Clear and Unmistakable Language"

The home rule authority which Texas municipalities enjoy gives them plenary legislative power, subject only to limitations imposed by the city's charter, state law, and the state constitution. *City of Galveston v. Giles*, 902 S.W.2d 167, 170 (Tex. App.—Houston [1st Dist.] 1995, *no writ*). A local ordinance is only considered preempted when "the Legislature expresse[s] its preemptive intent through clear and unmistakable language." *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 8 (Tex. 2016). There is a presumption that a city ordinance is valid and the burden of showing its invalidity rests on the party attacking it. *Town of Ascarate v. Villalobos*, 223 S.W.2d 945, 950 (Tex. 1949). Thus, in order for the Governor to invalidate an ordinance enacted by a home rule municipality, the Legislature must grant him that power in clear and unmistakable terms.

As Appellees rightly note in their brief, which *amici* incorporate by reference, the Texas Disaster Act does not empower the Governor to abrogate home rule in clear and unmistakable terms. The Disaster Act authorizes the Governor in a state-declared emergency to "suspend the provisions of any

regulatory statute prescribing the procedures for conduct of *state* business" or "the orders or rules of a *state* agency," neither of which is at issue here. Tex. Gov't Code § 418.016(a) (emphasis added). By contrast, where the Legislature contemplated gubernatorial authority over local governments in the Disaster Act, it clearly specified that authority.[43]

Moreover, even if the suspension language in Section 418.016(a) could somehow be construed to apply to local public health measures, the Governor may only exercise this suspension authority, as Appellees further note, "if strict compliance with the provisions, orders, or rules [to be suspended] would in any way prevent, hinder, or delay necessary action in coping with a disaster." Tex. Gov't Code § 418.016(a). The Governor is attempting to do the exact opposite—suspend laws that themselves respond to concerns arising from a public health disaster facing local governments.

The Disaster Act's carefully crafted and limited delegation of preemptive authority from the Legislature to the Governor advances an important structural principle that should not lightly be discarded. Inherent in the kind of targeted delegation of authority in the Disaster Act is a reasoned judgment by the

[43] *See* Tex. Gov't Code § 418.016(b) (during a state-declared emergency, suspending the enforcement by certain municipalities of the regulation of on-premise outdoor signs under Subchapter A, Chapter 216, Local Government Code); Tex. Gov't Code § 418.016(e) (authorizing the governor to waive or suspend deadlines imposed by statute or by a state agency on a political subdivision on the "request of a political subdivision").

Legislature that settled allocations of authority between the state and local governments to advance public health and manage disasters must follow clear lines. Most notably, the power of local governments to advance public health and respond to localized public health considerations serves a vital function, especially in moments of crisis. The power to override local-government public-health policymaking requires some indication of legislative intent, and the only provision the Governor invokes for his purportedly sweeping authority he claims is insufficient. The Disaster Act can only be read to grant the Governor limited, state-focused, power to respond to disasters. Texas's longstanding constitutional and statutory commitment sets the balance of state and local powers with respect to public health by giving local governments a major role in protecting and promoting public health. Only the Legislature—not the Governor acting alone through limited delegation—can reset that balance.

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's denial of the State's temporary injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing brief was served on all counsel of record through the Court's electronic filing system on May 27, 2021.

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CERTIFICATION OF COMPLIANCE

I certify that the foregoing brief was prepared using Microsoft Word 2016, and that, according to its word-count function, the sections of the foregoing brief, covered by TRAP 9.4(i)(1) contain 7,859 words in a 14-point font size and footnotes in a 12-point font size.

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APPENDIX A

Public Health Organizations

ChangeLab Solutions

ChangeLab Solutions works across the nation to advance equitable laws and policies that ensure healthy lives for all. With more than two decades of experience in enacting policy, systems, and environmental changes at local and state levels, we focus on eliminating health disparities by addressing the social determinants of health. ChangeLab Solutions is an interdisciplinary team of lawyers, planners, policy analysts, public health practitioners, and other professionals who collaborate with community-based organizations, local and state governments, and anchor institutions to create thriving, just communities. Our technical assistance supports localities throughout the country that are seeking to advance health equity by countering the harmful use of preemption.

The Network for Public Health Law

The Network for Public Health Law ("Network") provides visionary leadership in the use of law to protect, promote and improve health and health equity. We provide non-partisan legal technical assistance and resources, collaborating with a broad set of partners across sectors to expand and enhance the use of practical legal and policy solutions. For more than ten years, the Network has helped build the capacity of local, state, tribal, and national public health agencies and

organizations around the country to effectively develop, implement, and enforce evidence-based, equitable laws and policies. The Network is committed to using public health law and policy to improve the conditions, as well as strengthen the services and systems, that make our communities safer, healthier, stronger and more equitable. The views expressed in this brief are solely those of Network staff and may not represent those of any affiliated individuals or institutions, including funders and constituents.

The Public Health Law Center

The Public Health Law Center is a public interest legal resource center dedicated to improving health through the power of law and policy, grounded in the belief that everyone deserves to be healthy. Located at the Mitchell Hamline School of Law in Saint Paul, Minnesota, the Center helps local, state, Tribal, and national leaders promote health by strengthening public policies. For twenty years, the Center has worked with community leaders to develop, implement, and defend effective public health laws, including those designed to protect the nation's public health infrastructure and promote health equity. The Center has written or participated in more than sixty briefs as *amicus curiae* in the highest courts in the United States.

Public Health Law Watch

Public Health Law Watch ("PHLW") is a project of the George Consortium, a nationwide network of over sixty public health law scholars, academics, experts,

and practitioners who are dedicated to advancing public health through law. PHLW's goal is to increase visibility and understanding of public health law issues and changes, identify ways to engage on these issues, and provide legal analysis and commentary. The statements expressed in this brief do not necessarily represent the views of any individuals or institutions affiliated with PHLW.

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