



THE STATE STRIKES BACK: Death Star 2.0 Preemption

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Jackson is Mississippi’s capital and its largest Black-majority city. Since 2016, Mississippi has taken control of the city’s airport, moved to remove ownership of its water system, and, most recently, carved out largely white neighborhoods in the city into a state-controlled police and criminal-justice district. This year the Texas state legislature passed HB 2127, a statute that would sweepingly prohibit local governments from passing laws covered by the state’s codes on agriculture, business and commerce, finance, insurance, labor, local government, natural resources, occupations, or property, unless specifically authorized by state law. This statute essentially seeks to eliminate constitutional home rule in the state. Additionally, a growing number of states are curbing the power of—and even removing from office—locally elected prosecutors.

These examples underscore that the “new preemption” is moving in a dangerous new direction, which this White Paper is naming “Death Star 2.0.” States are not just targeting specific local policy decisions (preempting minimum wage, for example) or even punishing local governments and officials in preemption conflicts. Rather, states have begun to impair or eradicate whole realms of local authority entirely, specifically targeting policies that protect communities of color, immigrants, workers in low-wage industries, and other vulnerable residents. This White Paper explains the historical underpinnings of this rapidly emerging trend, the forms this preemption is taking, and the reasons why structural change to bolster local authority in the face of this new preemption is ever-more critical.

PREEMPTION AWAKENS: The Origins of the New Death Star Preemption

The nearly decade and a half since the 2010 elections—and the redistricting that followed that year’s Census—has been marked by the rise of a new, abusive form of state preemption.¹ States have intervened in local policymaking across a wide variety of areas, including public health, labor and employment, immigration, antidiscrimination, equitable housing, environmental protection, and sustainability, among many other examples. As these state-local conflicts have become more pitched and polarized, states have also turned to penalizing local governments and local officials, threatening funding, opening up new avenues of liability, and even subjecting local officials to potential criminal liability.

Death Star 2.0 preemption takes these trends one step further by targeting the core foundations of local authority.² To understand what this disturbing new phase in state preemption means, it is important to look backward to a long history of states usurping local government power. That foundational experience is inextricably intertwined with America’s history of racism, xenophobia, and anti-worker sentiments: Whenever marginalized voices have gained power at the local level, state preemption has been wielded in response.

A. Ripper Bills: the 19th-century Parallel to Today’s Death Star 2.0 Preemption

Current omnibus state attacks on local government strongly resemble the notorious “ripper bills” of the mid-nineteenth century. The ripper bills were a widely condemned form of abuse in which states took control of critical local functions from elected city officials or imposed unwanted costs on municipal treasuries. In 1857, for example, the New York state legislature took control of the New York City police force from the city’s government and vested it in a state-created and state-controlled Metropolitan Police District—“an act which was vigorously protested and so violently resisted that

its enforcement led to bloodshed in the city.”³ Following this takeover, the New York “legislature extended its control” beyond the police to fire and public health departments, public parks, and other municipal functions—even state commissions “to improve city streets.”⁴

Nor was New York unique. “State legislators in Michigan, Massachusetts, Maryland, and Missouri followed suit and assumed control of police departments in Detroit, Boston, Baltimore, St. Louis, and Kansas City.”⁵ Indeed, “in practically every state with at least one important city, the same conditions of legislative interference with city functions prevailed.”⁶ These actions were often driven by partisan concerns. As one scholar observed at the turn of the last century, “legislators are prompted to interfere with local self-government whenever the dominant political machine of whatever party” feels threatened.⁷

In the years immediately after the Civil War, Philadelphia “suffered especially under the tyranny of the legislature in the matter of such commissions.”⁸ These commissions “in some instances were endowed with legal power to make almost limitless drafts upon the municipal treasury.”⁹ The state legislature passed laws taking away local funds and created special commissions to construct a local bridge, a courthouse, and a municipal building to be funded by municipal tax dollars, without municipal consent or municipal participation in the commissions’ decision-making.¹⁰ The Pennsylvania Supreme Court at the time found that as a result of the legislature’s action, “a body not chosen by [Philadelphia] taxpayers, nor removable by them, nor accountable to them, are here authorized to levy upon them any sum of money they may at their discretion require.”¹¹ The court explained that the legislature’s act “tried to the uttermost the law-abiding character of our citizens... This feeling, with other subjects of discontent, found vent...in the demand for a new constitution.”¹²

1. See generally Richard Briffault, *The Challenge of the New Preemption*, 70 *Stan. L. Rev.* 1995 (2018).

2. Some early examples of the new preemption covered multiple areas of local authority, sparking the monicker “Death Star.” See, e.g., Emily Lawler, *Gov. Rick Snyder signs ‘Death Star’ bill prohibiting local wage, benefits ordinances*, MLive, June 30, 2015. The state preemption highlighted in this White Paper goes much further in limiting local authority, hence the description “Death Star 2.0.”

3. Howard Lee McBain, *The Law and Practice of Municipal Home Rule* 7 (1916).

4. David O. Porter, *The Ripper Clause in State Constitutional Law: An Early Urban Experiment*, Part I, 1969 *Utah L. Rev.* 289, 301.

5. Jon Teaford, *City Versus State: The Struggle for Legal Ascendancy*, 17 *Am. J. Leg. Hist.* 51, 65 (1973).

6. Porter, *supra* note 4, at 302.

7. Amasa M. Eaton, *Ripper Cases*, 15 *Harv. L. Rev.* 468, 471 (1902); accord, Porter, *supra* note 4, at 299–300 (noting the role of patronage in motivating the creation of special commissions).

8. McBain, *supra* note 3, at 45.

9. *Id.* at 46.

10. See *City of Philadelphia v. Field*, 58 Pa. 320 (Pa. 1868) (bridge construction); *Baird v. Rice*, 63 Pa. 489 (Pa. 1869) (courthouse and municipal building); *City of Philadelphia v. Fox*, 64 Pa. 169 (Pa. 1870) (diversion of trust funds).

11. *Perkins v. Slack*, 86 Pa. 270, 272 (Pa. 1878).

12. *Id.*

The abusive use of “ripper bills” by states eventually led to popular backlash. Pennsylvania, for example, amended its constitution in 1874 by adding a number of restrictions on the legislature, including the prohibition of the creation of special commissions that could “make, supervise or interfere with any municipal improvement, money, or property, or effects . . . to levy taxes, . . . or to perform any municipal function”—the first state constitutional Ripper Clause.¹³ Over the next two decades, seven other states followed suit with language close to and often virtually identical to Pennsylvania’s.¹⁴ Courts and commentators agree that the driving force behind these Ripper Clauses and comparable late nineteenth and early twentieth century state constitutional provisions was the desire to protect local taxpayers from having their funds diverted to special commissions over which they have no control and more generally, to assure that the operations of local government are subject to the control of locally elected officials.

B. Reconstruction Origins of State Takeovers of Local Governments

Paralleling the nineteenth century anti-urbanism of ripper bills in the north is a history of southern disenfranchisement of multi-racial local governments, with present-day efforts to disenfranchise Black and Brown communities echoing states’ historical attempts to create barriers to Black and Brown communities’ ability to control local governments. During Reconstruction, newly freed Black Americans gained political representation and unprecedented political power.¹⁵ However, there was immediate backlash to Black Americans’ political gains.¹⁶ Although Black peoples’ engagement in the political process initially benefited from federal enforcement of the Reconstruction Acts,¹⁷ the federal government eventually abandoned efforts to protect newly freed Black people from racial discrimination. After Union troops departed the South, white Americans employed multiple unscrupulous tactics to deprive Black Americans of access to the electoral franchise. These

13. Porter, *supra* note 4, at 306–10.

14. Utah was the last state to incorporate a Ripper Clause in its statehood constitution. Noting that Utah’s Ripper Clause was modeled on Pennsylvania’s, the Utah Supreme Court explained that the “motivation for the Pennsylvania Clause was to protect local government councils from having their particularly local functions usurped by special boards or commissions that were unrepresentative and were often created by the state legislature at the behest of special interests.” *City of West Jordan v. Utah State Retirement Board*, 767 P.2d 530, 533 (Utah 1988).

15. See generally Eric Foner, *Rights and the Constitution in Black Life During the Civil War and Reconstruction*, 74 *J. of Amer. Hist.* 863 (1987).

16. *Id.*

17. Trevon D. Logan, *Do Black Politicians Matter? Evidence from Reconstruction*, 80 *J. Econ. Hist.* 1, 5 (2020).

18. See Herbert Shapiro, *The Ku Klux Klan During Reconstruction: The South Carolina Episode*, 49 *J. Negro Hist.* 34 (1964) (examining the various ways the Klan acted and enacted policies/practices to uphold whiteness).

19. Foner, *supra* note 15, at 882.

20. *Id.* (citing Justice Harlan, noting that the nation denied Black Americans the very protections it afforded slavery and slave masters).

21. Daniel Farbman, *Redemption Localism*, 100 *N.C. L. Rev.* 1527, 1529 (2022) (defining “Redemption Localism” as an approach to localism that seeks to mute and suppress unwanted voices from marginalized communities by ensuring that those voices do not have a local platform).

22. See generally Lani Guinier, *The Representation of Minority Interests: The Question of Single Member Districts*, 14 *Cardozo L. Rev.* 1135 (1993) (defining “influence districts” and discussing the potential for influence districts to result in a more equitable and fair electoral process).

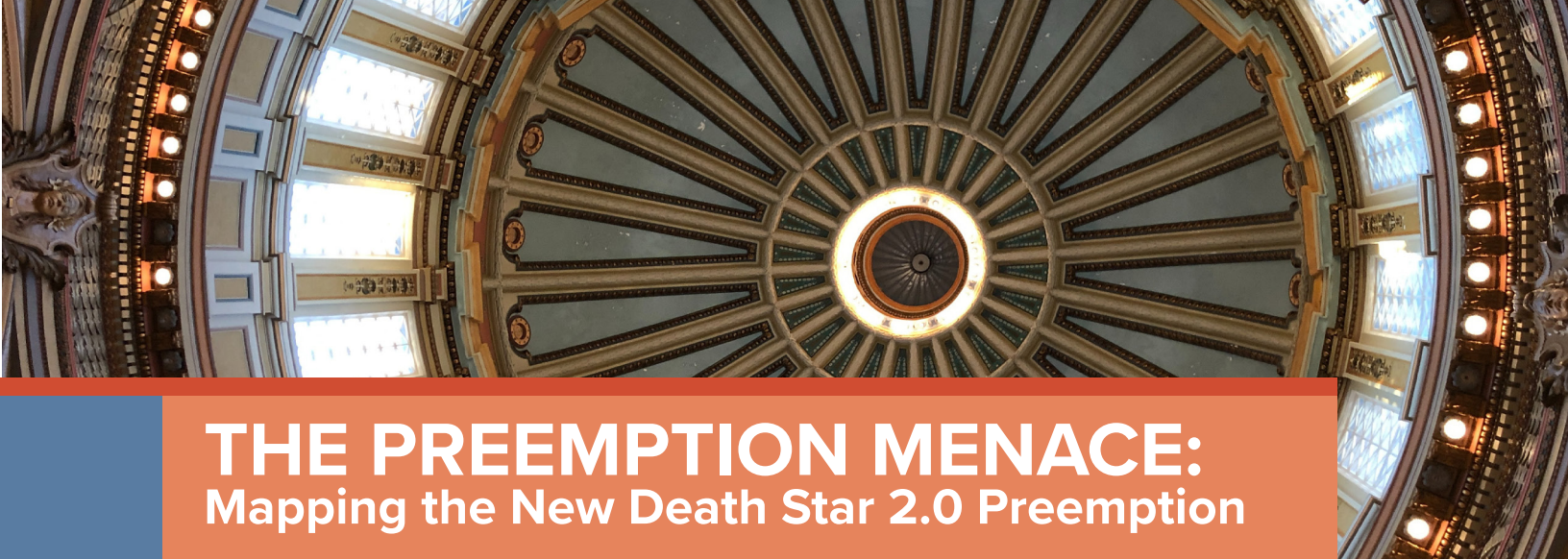
23. Farbman, *supra* note 21, at 1541 (noting that white supremacists in the North Carolina state legislature stripped locally elected Black politicians of power while centralizing the power to appoint their replacements in the disproportionately white state legislature).

24. Farbman’s work highlights the role of white supremacists in disrupting a multi-racial coalition that governed Wilmington, North Carolina. *Id.* at 1553-54.

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included threats of physical attacks, actual physical attacks, poll tests, taxes, and other policies aimed to ensure that only white Americans could enjoy the right to engage in the political process.¹⁸ These efforts were not simply about the right to vote: They were designed to maintain white Americans’ political power and enshrine white supremacy.¹⁹ By not protecting Black people, the federal government sanctioned white people’s efforts to remove Black people from power, resulting in a dilution (and sometimes a dissipation) of voting power.²⁰

This era can be described as a period of what Dan Farbman has called redemption localism.²¹ As Farbman recounts, white citizens after Reconstruction leveraged state powers to seize control of municipal powers when Black and Brown citizens obtained majority (or even an influential minority²²) share of the voting bloc.²³ Farbman highlights local efforts in North Carolina in the late nineteenth century by showcasing how white people favored local control when they were in the majority but preferred state intervention when Black and Brown citizens gained political power or influence.²⁴ Black and Brown communities continue to face similar challenges in our current moment.



THE PREEMPTION MENACE: Mapping the New Death Star 2.0 Preemption

Echoing the historical and often racialized origins of states weakening local authority, contemporary Death Star 2.0 preemption aims to eliminate local authority altogether. The impetus behind this preemption remains the same: to maintain structural systems of oppression when marginalized communities are gaining more power, representation, and voice at the local level. Death Star 2.0 preemption takes a variety of forms, but across the board, it takes aim at core elements of local authority.

A. State Takeovers of Local Government Institutions

One of the most alarming trends in recent years is the growth of takeover efforts by the state. Echoing ripper bills, states are advancing laws to seize control of local departments, municipal services, city neighborhoods, and even whole cities. These takeover efforts increasingly track racial and partisan divisions between city residents and state legislatures, especially on controversial issues like policing and criminal justice. In addition, specific cities are targeted again and again, each law steadily carving away different parts of the city from local democratic control.

Take, for example, the city of Jackson. As Mississippi's capital and largest Black-majority city, Jackson has long been the target of the state's conservative white legislature. In 2016, the state legislature passed a law seizing control of Jackson's municipal airport.²⁵ In 2017, the Jackson School District narrowly avoided a state takeover.²⁶ More recently, after the federal government appropriated \$800 million to fix Jackson's water system, the state introduced a bill to take ownership of the system away from the city.²⁷

These takeover efforts escalated in 2023 with the signing of two bills that took control of the city's criminal justice system. HB 1020, signed in April, created a "city within a city" by carving out predominantly white neighborhoods into a separate judicial district where state appointees replaced locally elected judges and prosecutors.²⁸ Its companion bill, SB 2343, expanded the jurisdiction of the state-run Capitol police to the entire city of Jackson, which created a parallel police force that operates alongside the Jackson Police Department but is unaccountable to city residents.²⁹ As a result, in a large part of Jackson, it is now possible for a city resident to "be arrested by a police department led by a State-appointed official, be charged by a State-appointed prosecutor, be tried before a State-appointed judge, and be sentenced to imprisonment in a State penitentiary."³⁰

25. SB 2162 (2016). Commissioners of the local airport authority have challenged the state takeover as racially motivated and, so, unconstitutional. The U.S. Court of Appeals for the Fifth Circuit recently held that the commissioners have standing to pursue their challenge and affirmed a district court order requiring the legislators who participated in the drafting and passage of the law to produce a "privilege log" as part of the discovery process. See *Jackson Municipal Airport Authority v. Harkins*, 67 F.4th 678 (5th Cir. 2023).

26. Bracey Harris, *JPS Avoids State Takeover, Again*, *The Clarion-Ledger*, Dec. 14, 2017, <https://www.clarionledger.com/story/news/2017/12/14/jps-takeover-proposal-reject-ed/951578001/>.

27. Michael Goldberg, *Federal Money Driving Jackson Water Bill, DOJ Appointee Says*, *AP News*, Jan. 25, 2023, <https://apnews.com/article/politics-health-us-department-of-justice-mississippi-jackson-09ce15c2f03c6893ca85d755bd176376>. The bill died in the House without a vote. See Geoff Pender, *Bill to Put Jackson Water under Regional Authority Dies Without a Vote in House*, *Mississippi Today*, Mar. 8, 2023, <https://mississippitoday.org/2023/03/08/jackson-water-regional-commission-bill-dead/>.

28. See Casey Tolan, *A Proposed 'Takeover' has Sparked a Battle for Power in One of America's Blackest Big Cities*, Feb. 27, 2023, <https://www.cnn.com/2023/02/27/us/jackson-mississippi-capitol-criminal-justice-invs/index.html>.

29. See *id.*

30. See Emily Wagster Pettus, *NAACP Sues Mississippi Over 'Separate and Unequal Policing'*, *AP News*, Oct. 5, 2023, <https://apnews.com/article/police-naACP-lawsuit-jackson-mississippi-c8252e43dd4ba5292f7b4d0235b69d9c>. In September 2023, the Mississippi Supreme Court held that the provision of HB 1020 authorizing the appointment of judges to the new court violates the state constitution's requirement that circuit court judges be elected. *Saunders v. State of Mississippi*, 2023 WL 6154416 (Sept. 21, 2023). However, the court also noted that another, pre-existing provision of Mississippi law allows the chief justice to make "temporary" appointments to state circuit courts under "exigent circumstances" such as dealing with a crime wave. *Id.* The NAACP and six residents of Jackson have filed suit in federal court against both HB 1020 and SB 2343 claiming they both constitute intentional racial discrimination in violation of the federal Equal Protection Clause. In July 2023, the United States Department of Justice moved to intervene to challenge HB 1020 as unconstitutional racial discrimination.

State takeovers of local criminal justice systems are advancing in other states. More than 150 years after Missouri seized control of the police departments in Kansas City and St. Louis in the years surrounding the Civil War,³¹ in 2013, St. Louis regained control of its police department through a state-wide ballot initiative. But even while Kansas City continues to lobby for local control,³² the state attempted to take over the St. Louis Police Department a second time. In March of 2023, the Missouri House passed HB 702, which would transfer control of the police department to a five-member board composed of the mayor and four members appointed by the governor.³³ The state sponsors claim that the bill is needed to address the rising crime rate in the city. Critics point out, however, that the increase in crime rate in St. Louis is statistically equivalent to that in Kansas City, where the state continues to control the police department.³⁴

Indeed, it seems clear that race and politics are driving state takeovers. When Nashville angered state lawmakers by blocking the 2024 Republican National Convention, the Tennessee legislature introduced a package of laws cutting the size of the city council in half³⁵ and granting the state control over the city's airport³⁶ and sports stadiums.³⁷ Partisan divisions between Texas and its big cities led the legislature and the governor to propose a constitutional amendment dissolving the city of Austin and replacing it with a district governed and managed directly by the state legislature.³⁸ In the meantime, pursuant to a state law passed in 2015, the Texas Education Agency took over the Houston Independent School District in 2023 and replaced the elected board members with an appointed board of managers.³⁹ As Florida wrestles with the fallout of the state takeover of the special district serving Walt Disney World,⁴⁰ the state legislature passed a bill to assume control of the municipal utilities owned by the city of Gainesville, which has faced scrutiny from state lawmakers for its ambitious plan to promote renewable energy.⁴¹ From this perspective, the racial, ethnic, and partisan divisions that propelled the wave of state

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takeovers in the late nineteenth century appear to be driving the same trend again today.

State takeovers are not only being pursued against local governments. Increasingly, states are also seeking direct control over locally elected officials, like prosecutors. Since 2017, Florida has removed three prosecutors for pursuing policies favored by local constituents rather than the governor. The Pennsylvania legislature passed a law undermining the authority of the Philadelphia District Attorney after his election in 2017, and the state House of Representatives impeached the DA after he won reelection in 2021. However, the state's Commonwealth Court found that none of the articles of impeachment alleged “any misbehavior in office” within the meaning of the applicable provision of the state constitution,⁴² and the trial has been indefinitely postponed. States are also passing laws that dictate exactly how local prosecutors prosecute, undermining the long tradition of prosecutorial discretion and local accountability. Utah now prohibits prosecutors from filing misdemeanor offenses if a felony charge is available.⁴³ Iowa denies state funding to local prosecutor's offices that “discourage” the enforcement of state laws.⁴⁴ Tennessee allows the state to replace local prosecutors who refuse to prosecute a criminal offense.⁴⁵ For more than a century, prosecutors have been elected at the local level in nearly every state. Yet state takeover efforts are now threatening this longstanding democratic tradition.

31. See Josh Merchant, State Control of Kansas City's Police Has Roots in the Civil War, Kansas City Beacon, Dec. 20, 2022, <https://kcbeacon.org/stories/2022/12/20/kcpd-state-local-control-history-police-board/>.

32. See id.

33. See David A. Lieb & Jim Salter, GOP Lawmakers Push for State Control of St. Louis Police, AP News, Apr. 23, 2023, <https://apnews.com/article/st-louis-police-crime-state-control-a93b6cb6aeaa112aebe535d67f08412e>.

34. See id. The bill eventually died in the state senate, although its sponsors vow to raise it again in 2024. See Gregg Palermo, St. Louis Mayor, Missouri Lawmakers Ready for New 2024 Fight over Police Control, Spectrum News, Sept. 21, 2023, <https://spectrumlocalnews.com/mo/st-louis/news/2023/09/20/st-louis-police-control>.

35. See Melissa Brown & Cassandra Stephenson, Gov. Lee Signs Bill to Slash Nashville Council in Half, The Tennessean, Mar. 9, 2023, <https://www.tennessean.com/story/news/politics/2023/03/09/tennessee-general-assembly-passes-bill-to-slash-nashville-council/69986567007/>.

36. HB 1176 (2023).

37. HB 1197 (2023).

38. HB 714 & HJR 50 (2023).

39. See Juan A. Lozano & Paul J. Weber, Texas Announces Takeover of Houston Schools, Stirring Anger, AP News, Mar. 16, 2023, <https://apnews.com/article/houston-schools-texas-takeover-eae680bec5fbd3b419c2583fb850d42e>.

40. See Jesus Jiménez & Brooks Barnes, What We Know About the DeSantis-Disney Dispute, NY Times, May 19, 2023, <https://www.nytimes.com/article/disney-florida-desantis.html>.

41. See Andrew Caplan, Florida House Passes GRU Takeover Bill with Majority Vote. What Happens Now?, The Gainesville Sun, Apr. 27, 2023, <https://www.gainesville.com/story/news/local/2023/04/27/florida-house-passes-gru-takeover-bill-with-majority-vote/70158863007>.

42. Krasner v. Ward, 2023 WL 164777 (Comm. Ct. Pa. Jan. 12, 2023)

43. HB 257 (2022)

44. SF 342 (2021).

45. HB 9071 (2021).

B. Expansive Field Preemption

While state takeover of local governance is certainly an extreme form of preemption, the state of Texas passed a preemption law that has a similar effect by taking away so much authority from local governments that they are in effect left with no legislative power except to implement state law. Texas passed HB 2127 this year, which prohibits local governments from passing laws even nominally covered by the state's codes on agriculture, business and commerce, finance, insurance, labor, local government, natural resources, occupations, or property, unless those laws are consistent with state law. Prior to HB 2127, local governments had home rule authority to pass local laws so long as they were not in direct conflict with state law; under the new law, local governments cannot act unless specifically authorized by state law. This means that local governments can not pass laws on issues that the state has not addressed, for example, or that go further than state law has already authorized. HB 2127 targets the independent authority of local governments.

On August 30, 2023, a Travis County district court declared HB 2127 unconstitutional. The state immediately filed a notice of appeal, and the case is working its way up the Texas court system. If HB 2127 is not similarly found unconstitutional by the Texas Supreme Court, other states could pass similarly destructive Death Star bills.⁴⁶

C. Novel Liability Preemption

A third variety of Death Star 2.0 preemption does not per se invalidate local authority, but burdens the exercise of local authority with such threats of liability that local governments will be meaningfully deterred from acting. Florida specifically has pioneered attempts to saddle local governments with liability if they exercise their authority in a way that threatens business interests. In the 2023 session the Florida state legislature passed SB 170, creating a cause of action for businesses to challenge municipal ordinances, with limited exceptions. The cause of action would allow businesses to seek an injunction of a local law that is either expressly preempted by the state constitution or state law, or deemed "arbitrary or unreasonable."⁴⁷ Once a lawsuit is commenced under SB 170, the ordinance will be automatically suspended through the pendency of the action so long as the plaintiff requests that suspension in the complaint or petition. SB 170 directs courts to give lawsuits where a local ordinance has been suspended "priority over other pending cases." SB 170 authorizes business litigants to collect attorney's fees up to \$50,000 if successful, but it does not authorize such fees for municipalities that prevail. Thus, municipalities have no protection against frivolous lawsuits. The bill, signed into law by Governor DeSantis in July 2023 went into effect October 1, 2023. This liability preemption strategy could expand to other states as a way of setting up preemption by deputizing businesses to attack local authority.



46. Indeed, Florida passed a similar statute in 2023, HB 1417, that, while focused on residential tenancies, takes a similar approach of gesturing to a broad field of state interest and then barring any local policies on the same general topic, seemingly designed to generate confusion and chill local innovation.
47. SB 170 does not define the terms "arbitrary or unreasonable."



PREEMPTION WARS: The Impacts of Death Star 2.0 Preemption

Sponsors of Death Star 2.0 preemption laws have cast themselves as part of a vanguard protecting the public from local officials whose policies, they assert, undermine public safety and endanger public order. For example, the sponsor of Mississippi HB 1020—which established the Capitol Complex Improvement District and effectively eliminated local administration of criminal justice within much of the state’s capital city—defended the bill from the vociferous opposition of a core of local and state officials by stressing that his “focus [was] on the regular people of Jackson” and not on the officials who, he accused, were unconcerned with “doing the right thing” for the city’s residents.⁴⁸

In Texas, the sponsor of HB 714 and HJR 50, which would have similarly established a new capital district and severely constrained localized governance of the state’s capital city, defended his proposal by alleging that “[e]lected officials in Austin have failed their city.”⁴⁹ In proposing to strip Austin of much of its territory and autonomy, it was his intent, he claimed, to “give the elected representatives of the State of Texas an opportunity to better manage a Capitol District, reduce taxes, enforce our laws, and defend Texas values.”⁵⁰

However, closer inspection of the politics of Death Star 2.0 preemption uncovers troubling patterns that indicate far less altruistic motivations for these proposals, leading to far more harmful results. Most concerning, battles over this type of preemption are often suffused with racial politics. As seen in the national campaign against reform prosecutors,⁵¹ preemption has been wielded as a political weapon primarily by white Republican state officials reacting to the progressive public safety policies of primarily Democratic, non-white municipalities.

These trends persist in broader preemption campaigns against local governance. Austin and Jackson both have majority non-white populations—approximately 53%⁵² and 79%⁵³ non-white, respectively—and are represented by primarily Democratic local officials. However, proposals to strip those cities of local authority and institute state control are being championed by officials representing constituencies outside of the targeted local areas. The sponsor of Mississippi HB 1020, for example, represents a majority white, suburban, and Republican constituency in the state’s northern region, far from the boundaries of the state’s capital in Jackson, which has been recognized as “the Blackest large city in the nation” and whose constituency stands as the state’s progressive anchor.⁵⁴

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48. See Wicker Perlis, Mississippi House passes controversial House Bill 1020, sends to Gov. as session nears end, Mississippi Clarion Ledger (March 31, 2023), available at <https://www.clarionledger.com/story/news/politics/2023/03/31/mississippi-legislature-passes-controversial-hb-1020-jackson-ms-courts-bill/70063431007>.

49. Sam Stark, Texas lawmakers file state bills targeting Austin, KXAN (Nov. 17, 2022), available at <https://www.kxan.com/news/texas-politics/supplanting-local-austin-leaders-and-other-texas-bills-filed-with-a-target-on-austin/>.

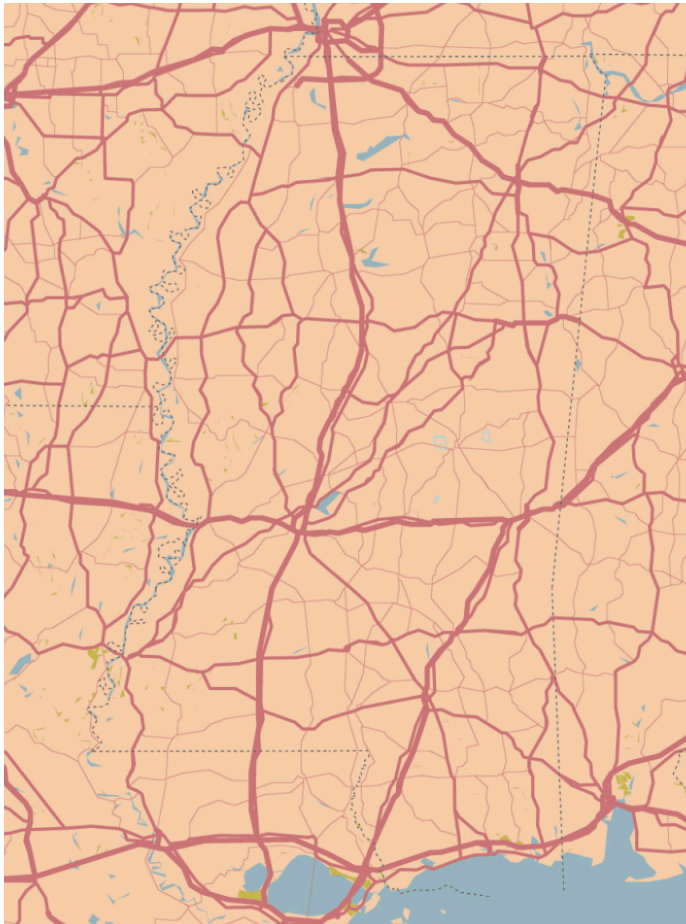
50. Id.

51. See Jorge Camacho, Nicholas Goldrosen, Rick Su, and Marissa Roy, Preempting Progress: States Take Aim at Local Prosecutors, Local Solutions Support Center (Jan. 2023).

52. See 2020: DEC Redistricting Data (PL 94-171) (Austin, TX), U.S. Census Bureau, available at [https://data.census.gov/table?g=160XX00US4805000&y=2020&d=DEC+Redistricting+Data+\(PL+94-171\)&tid=DECENNIALPL2020.P2](https://data.census.gov/table?g=160XX00US4805000&y=2020&d=DEC+Redistricting+Data+(PL+94-171)&tid=DECENNIALPL2020.P2).

53. See 2020: DEC Redistricting Data (PL 94-171) (Jackson, MS), U.S. Census Bureau, available at <https://data.census.gov/table?g=160XX00US2836000&tid=DECENNIALPL2020.P2>.

54. See Bobby Harrison, Mississippi’s racial divides were on full display as HB 1020 got its final debate and passing vote, Mississippi Today (March 31, 2023), available at <https://mississippitoday.org/2023/03/31/mississippi-racial-divides-house-bill-1020/>.



The bill is so problematic—and its motivations so plainly racialized—that the U.S. Department of Justice filed a complaint against it, alleging that the bill intentionally discriminates against Jackson’s Black residents, shifts “authority away from local officials elected by Black voters,” and does so for the purpose of shifting control of Jackson’s “criminal legal and judicial system to statewide actors more accountable to White voters.”⁵⁶ The complaint further alleges that the bill marks another chapter in the state’s “long history of discrimination against Black residents” of Jackson.⁵⁷

Mississippi’s HB 1020 stands out both for what it seeks to do and for the strong political backing it enjoys within the state legislature. However, the disturbing and toxic politics surrounding the bill are common among other recent examples. Texas HB 2127, for example, is seen by its opponents as a direct and intentional attack on local policies intended to protect vulnerable populations, including Texas’s Black and Brown communities, from abusive or neglectful workplace practices.⁵⁸ And in Florida, Governor DeSantis’s removal from office of two locally elected prosecutors for alleged dereliction of duty due to their adherence to progressive public safety policies echoed the same anti-democratic themes seen in Mississippi and Texas. Both officials had been independently elected by majority-minority constituencies in their respective judicial districts, and both were replaced by unelected gubernatorial appointees.⁵⁹ These acts of political fiat bypassed the will of local voters, leaving them with no reason to expect that their future votes will matter if elected officials can simply be removed from office by state officials for mere political disagreements.

The politics of Death Star 2.0 preemption threaten the realization of a culturally pluralistic and representative democratic society predicated on access to and accountability from, local and state officials. When local self-government is curtailed or eliminated, community-level constituencies are forced to seek redress from state-controlled officials who are neither exclusively beholden to those constituencies nor incentivized to be responsive to them. In democratic politics, where the power to govern is rooted in the will of the people, the consequences for digging up those roots and connecting them to other, non-local constituencies will be predictable and lamentable.

Tellingly, the residents of Jackson and their state and local representatives have consistently clamored against the very proposal that HB 1020’s sponsor says is being pursued in their direct interest.⁵⁵ The modified capital district that HB 1020 created comprises a much higher proportion of white residents than is currently represented citywide. Under the district’s new borders, Black residents would comprise 55% of residents, down substantially from the approximately 79% representation within Jackson, while white representation would be inversely increased. Additionally, as noted, district residents would be stripped of the authority to elect their judges and local prosecutor. Instead these officials would be appointed, respectively, by the chief justice of the state’s Supreme Court and the state’s Attorney General, positions held by white officials when HB 1020 was introduced and passed in the state House of Representatives.

55. See Justin Gamble & Jalen Brown, Mississippi House votes to create an unelected, state-appointed court system within majority-Black Jackson, CNN (February 14, 2023), available at <https://www.cnn.com/2023/02/14/us/mississippi-jackson-unelected-court-system-vote-reaj/index.html>.

56. Complaint in Intervention of the United States, NAACP et al vs. Fitch, Case No. 3:23-cv-272-HTW-LGI at 3 (S.D. Miss. 2023), available at https://www.justice.gov/d9/2023-07/069-2_united_states_complaint_in_intervention.pdf.

57/ *Id.* at 7.

58. See Monique Lopez, HB 2127 opponents say it would decimate legislative powers of local governments, CBS Austin (March 15, 2023), available at <https://cbsaustin.com/news/local/officials-leaders-and-community-organizations-gather-to-oppose-hb-2127-house-bill-texas-regulatory-consistency-act-austin-representative-burrows>.

59. The first state attorney, Andrew Warren, had been elected in 2016 to represent the 13th Judicial Circuit, covering Hillsborough County, an area with a nearly 55% non-white population. The other attorney, Monique Worrell, had been elected in 2020 to represent the 9th Judicial Circuit, comprising Orange and Osceola Counties, which, at the time of her election, were approximately 63% and 70% non-white. See 2020 Census data for Hillsborough, Orange, and Osceola Counties, available at <https://data.census.gov/table?q=050XX-00US12057&tid=DECENNIALPL2020.P2>, <https://data.census.gov/table?q=P2&g=050XX00US12095&tid=DECENNIALPL2020.P2>, and <https://data.census.gov/table?q=050XX00US-12097&tid=DECENNIALPL2020.P2>.

A NEW HOPE: Structural Reform

This latest preemption wave underscores the imperative for fundamentally rebalancing the structural-legal relationship between states and local governments. In the middle of the nineteenth century, courts and commentators generally understood local governments to be entirely creatures of the state, vulnerable to the whims of state legislatures that were often dominated by rural interests hostile to a rising, increasingly diverse urban population. Outrage over nineteenth century ripper bills, however, helped fuel a wave of popular reform efforts to enshrine protection for the authority of local governments in state constitutions.⁶⁰ These hard-fought reforms eventually established the foundations for what is now called “home rule,” which for nearly a century and a half has provided some state constitutional space for local power.

The emergence of ever-more intrusive Death Star 2.0 preemption, however, highlights the limits of earlier conceptions of home rule, underscoring the importance of fundamentally reimagining the structure of the state-local legal relationship for a new era of polarized state abuse. Waves of home rule reform have done much to show the promise of structural reform, but a new era of abusive state preemption demands a new era of home rule. Structural change is both possible and vitally necessary to ensure the continuation of thriving local democracy.

60. See Richard Briffault, Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination, 92 Colum. L. Rev. 775, 805-06 (1992).

