

No. 03-23-00531-CV

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

STATE OF TEXAS

Appellant,

v.

THE CITY OF HOUSTON, THE CITY OF SAN ANTONIO, AND THE CITY OF EL PASO,
Appellees.

On Appeal from the
345th Judicial District Court, Travis County
No. D-1-GN-23-003474

**MOTION OF LOCAL ELECTED OFFICIALS TO FILE BRIEF
AS *AMICI CURIAE* IN SUPPORT OF APPELLEES**

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Public Rights Project, on behalf of local elected officials, moves this Court for leave to file the enclosed brief as *amici curiae* in support of Plaintiff's motion for summary judgment.

This proposed brief offers important perspective to aid the Court's analysis in this case. The proposed brief describes the impact that HB 2127 would have on local governments across the state. As explained in detail, both the breadth and vagueness of HB 2127 effectively eliminate the ability of local governments to respond to their communities' needs and interests. To demonstrate this reach, the proposed brief reviews the large swath of local ordinances that will be impacted by HB 2127's creation of "field[s] of regulation" in eight different state codes covering over 1,100 chapters. The brief also reviews how the law would create uncertainty and significantly high compliance costs, which could stress local government budgets even before the law goes into effect. Such information is useful to the Court's analysis of the issues raised in Plaintiff's motion.

Amici have notified all parties to the filing of this brief.

For all of the foregoing reasons, *amici* local elected officials respectfully request that this Court grants *amici* leave to file the enclosed brief in support of Plaintiff.

Respectfully submitted,

/s/ Brian McGiverin

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Dated: February 7, 2024

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STATEMENT OF INTEREST

*Amici curiae*¹ are local elected officials from across Texas with experience drafting, implementing, and enforcing the range of local regulatory activity impacted by HB 2127. They are deeply engaged with issues of local governance and knowledgeable about the impact that HB 2127's vague and overbroad terms will have on localities' ability to function. Local officials are often the first government officials Texans turn to for assistance, including on matters of health and safety. They are aware of the need for flexibility to respond to constituents' needs and the damage that an effective repeal of the Home Rule amendment would have on local governments. Although the officials represent localities with different needs and different views about how to address matters of policy, they share a common concern that HB 2127 is an unconstitutional overreach by the Legislature. The trial court's conclusion that the law is invalid is correct and this Court should uphold the declaration of the District Court that HB 2127 is unconstitutional.

Amici curiae are concerned by the destructive impact of HB 2127 on local governance across the state, including HB 2127's restriction on the abilities of localities to pass and implement ordinances responsive to local needs and interests. The negative impact of HB 2127, due to its breadth and vagueness, on local governments' ability to function cannot be overstated. The law effectively eliminates

¹ A complete list of all *amici* can be found in Appendix A.

state constitutional protections for localities. These protections were established to give localities the necessary flexibility to respond to emerging local needs without requiring affirmative grants of authority from the State in every instance. If HB 2127 is allowed to stand, the role and function of local governments in Texas will be fundamentally altered and severely diminished. The bill enshrines power in the Legislature and undercuts the work of local communities. If the statute is allowed to stand, local elected officials will not be able to adequately represent their constituents. Such a change contravenes the Texas Constitution and is harmful to the vibrance of our democracy.²

² No party or counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici* or *amici's* counsel made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

House Bill 2127 (“HB 2127”) is an unprecedented attack on local governments’ ability to respond to their residents’ needs. Under HB 2127’s new restrictive regime, any time localities attempt to act in one of the many broad areas referenced by eight different Codes, they would first need express authorization from the State to do so. As the trial court correctly found, this is both unworkable and unlawful.

Given HB 2127’s vague wording and unclear boundaries, local governments across the State face uncertainty about their authority to pass ordinances, enforce existing policies, issue administrative orders—in short, to govern altogether. This uncertainty has immediate costs to local governments that now must rewrite local ordinance codes, and update policies. It also has substantial implications for local officials’ ability to respond to constituents’ needs, reducing the effectiveness of the government officials closest and most democratically responsive to residents.

This type of interference into local control by the Legislature is inconsistent with Texas’s governmental structure, as exemplified by constitutional Home Rule. For these reasons, and for the reasons Appellees have argued, this Court should uphold the declaration of the District Court that HB 2127 is unconstitutional.

ARGUMENT

I. HB 2127 Violates Constitutional Home Rule in Texas by Broadly Stripping Local Governments of Their Powers of Self-Government

In enacting HB 2127, the Legislature seeks to effectively repeal Texas cities' constitutionally protected Home Rule authority and eviscerate localities' ability to govern on behalf of their constituents. The Legislature does not have the authority to override the will of the people and effectively repeal a constitutional amendment enshrining local authority.

A. HB 2127 Strips Local Governments of Their Ability to Respond to Their Residents' Needs and Values

HB 2127 drastically reduces the ability of Texas' democratically elected local officials to respond to their residents' needs. The law amends eight separate portions of the Texas Code to provide that, without express authorization from the State, "a municipality or county *may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision of this Code.*" HB 2127 Sections 5 [Tex. Agric. Code § 1.004], 6 [Tex. Bus. & Com. Code § 1.109], 8 [Tex. Fin. Code § 1.004(a)], 9 [Tex. Ins. Code § 30.005], 10 [Tex. Lab. Code § 1.005], 13 [Tex. Nat. Res. Code § 1.003], 14 [Tex. Occ. Code § 1.004(a)], and 15 [Tex. Prop. Code § 1.004] (emphasis added).

Each of the eight Codes that the law references are complex and cover a wide range of issues. The Agriculture Code, for instance, includes nine titles with

94 separate chapters. *See infra*, Section II.A. Each of these chapters cover a variety of policy areas, such as Soil and Water Conservation³; Liens on Animal Products⁴; Land-Use Regulation⁵; Cooperative Credit Associations⁶ and many more. The Agricultural Code is not unique in its wide-ranging scope. The Business & Commerce Code, Finance Code, Insurance Code, Labor Code, Occupations Code, Natural Resources Code, and Property Code together contain a total of over 90 separate titles and 1,100 separate chapters, most of which contain dozens of separate sections. HB 2127 transforms *every single provision* of the identified Codes to create “field[s] of regulation” forbidding local governments from acting without express authorization from the State. *See e.g.*, HB 2127, Section 5.

Section 7 of HB 2127 also includes a broad private enforcement provision, allowing any “person,” or “trade association representing the person,” who experiences any “actual or threatened” injury from a “municipal or county ordinance, order, or rule adopted or enforced by a municipality or county” to have standing to seek declaratory and injunctive relief that the challenged local activity is in violation of HB 2127. Under this provision, the individual seeking to invalidate local action may obtain relief including attorneys’ fees, which the

³ Tex. Agric. Code Title 7.

⁴ *Id.*, Title 6, Subtitle E.

⁵ *Id.*, Title 7, Chapter 201, Subchapter F.

⁶ *Id.*, Title 4, Chapter 55.

municipality may not recover in defending its actions unless the action is deemed “frivolous.” *Id.* This creates a shadow of litigation over every local government action touching HB 2127’s purview, which impairs the ability of local governments to function.⁷

As the City of Houston notes in its appellee brief, in addition to being overbroad, the law is also extraordinarily vague (City of Houston Appellee Brief, Section II.A). The law provides almost no guidance to allow localities to determine whether it is acting in “a field of regulation that is occupied by a provision of” each Code. It also does not provide guidance as to which local government actions could be encompassed by its broad prohibition on local actions to “adopt, enforce, or maintain an ordinance, order, or rule” in these areas. Worse still, there is little indication that the Legislature fully considered HB 2127’s broad impact on local governments prior to its passage. The Legislature refused to define the now-drastically limited boundaries of local authority, leaving localities to only guess at the law’s ultimate impact under threat of costly litigation.

This uncertainty creates dangerous threats to localities’ ability to effectively govern. As just one example, a locality’s attempt to cordon off certain areas, direct traffic, or stem the impact of natural disasters could implicate provisions in the

⁷ Because “person” includes state government agencies and entities, the Texas Attorney General and other state officials may sue, thus allowing the State to attempt to restrict almost any local government action.

Agriculture, Property, or Natural Resources Codes. *See infra*, Section III.B (reviewing HB 2127’s impact on local emergency response). These policy questions are decisions that local governments and government agencies such as fire departments are uniquely qualified to address but that now may be challenged by a single disgruntled party. The law’s vague wording combined with the unpredictability of local needs in an emergency could very easily expose a locality to significant future liability risk for its efforts to immediately respond to a local emergency.

Counter to its proponents’ arguments, HB 2127 does not attempt merely to unify a “patchwork” of local government regulations.⁸ Instead, it strips the authority of localities and then places the burden on them to prove they have authority to govern in certain areas in the first place. Some “patchworks” moreover are not problems that need to be solved—for instance, individual localities may direct traffic in different ways across the state depending on their local needs. State uniformity must not always override local decision making. Nonetheless, whenever local action is necessary, localities must now review hundreds of state statutes to determine whether the planned local action is blocked, and, if it is, then seek express authorization from the State to act.⁹ This statutorily-imposed burden

⁸ HB 2127, Section 2(3).

⁹ Complicating the uncertainty caused by HB 2127 is the vagueness of its language in Section 4, which states that the law “may not be construed to prohibit a home-rule municipality from providing the same services and imposing the same regulations that a general-law municipality is

seriously undermines localities ability to function, an unworkable result that hampers all localities¹⁰ and that Home Rule is explicitly designed to prevent in Home Rule cities.¹¹

B. HB 2127 Unconstitutionally Decimates Home Rule Protections and Restricts Localities’ Authority to Regulate on Behalf of Constituents.

In 1912, the People of Texas amended the State Constitution to give cities with a population of 5,000 or more residents the power to adopt charters allowing them to self-govern. Tex. Const. art. XI, § 5.¹² Home Rule caught on quickly in the State,¹³ and today, there are 387 Home Rule cities¹⁴ with the vast majority of cities

authorized to provide or impose.” HB 2127, Section 4(2). However, there is nothing in the law explaining what state grant of authority would satisfy this express authorization requirement.

¹⁰ Beyond its entrenched vagueness, the law’s grant to Home Rule cities the powers of general-law cities does little to ameliorate the impacts of HB 2127. While the Local Government Code includes explicit authorization to general-law and Home Rule cities to regulate in certain areas, *see, e.g.*, Tex. Loc. Gov’t. Code Chapter 215, Subpart B (Mun. Reg. of Bus. and Occ.), Home Rule cities’ regulations typically developed under the authority granted directly by the Home Rule Amendment, not state statutory authorization. HB 2127 largely removes this source of legal authority for Home Rule cities’ regulations and instead places Home Rule cities on the same footing as general-law cities, despite the two operating under different legal regimes since 1912.

¹¹ *See* Terrell Blodgett, Texas Home Rule Charters 2–3 (Kelly McBride & Scott Houston eds., 2d ed. 2010) (reviewing the primary objectives of the Home Rule Amendment) (hereinafter, “Blodgett”).

¹² *See also* *Alphabet Soup: Types of Texas Cities*, Texas Municipal League Legal Department 3–4, <https://www.tml.org/DocumentCenter/View/244/Types-of-Texas-Cities-PDF>.

¹³ Blodgett, *supra* n. 11.

¹⁴ Texas Municipal League, Directory of Cities by Government Type: Home Rule, <https://directory.tml.org/results?search%5Bgovernment%5D%5B%5D=GTHR&search%5Bsubmit%5D=&search%5Btype%5D=government> (last accessed on July 29, 2023).

with over 5,000 constituents choosing to adopt a Home Rule charter.¹⁵ The Home Rule amendment’s major objective was to establish a general standard of city autonomy so as “to avoid interference in local government by the State Legislature.”¹⁶ It empowered local jurisdictions to address the every-day issues of local governance, such as road maintenance and pest control, without seeking input and approval from the Legislature. To that end, courts have required the Legislature to speak with “unmistakable clarity” to remove a field of regulation from a Home Rule city’s authority. *Dallas Merch. ’s & Concessionaire’s Ass’n v. City of Dallas*, 852 S.W.2d 489, 490–491 (Tex. 1993).

While the State maintains its authority under the Home Rule amendment to enact laws that preempt conflicting local laws, it may not pass a law that essentially invalidates state constitutional protections for localities.¹⁷ The Legislature’s attempt to invalidate these protections by declaring (almost) everything preempted via HB 2127 flies in the face of Texans’ inherent power to protect local governance.¹⁸

¹⁵ Blodgett, *supra* n. 11.

¹⁶ *Id.*

¹⁷ *Cooke v. City of Alice*, 333 S.W.3d 318, 322 (Tex. App. 2010).

¹⁸ “All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit.” Tex. Const. art. I, § 2.

II. HB 2127 Would Have an Immediate, Devastating Impact on Localities Across the State

HB 2127 is an unprecedented attempt to limit the ability of local governments to govern. Municipal and county officials across the State pass ordinances, enforce laws, and carry out essential administrative functions in response to their local constituencies' unique needs, respective demographics, geography, climate, industries, and values. HB 2127 invalidates countless local ordinances and subjects localities to virtually limitless liability, decimating the abilities of *all* Texas localities to respond to their constituents' needs.

The Codes referenced by the law include hundreds of provisions that, under HB 2127, suddenly create “field[s] of regulation”¹⁹ with which localities must contend. Many of these provisions address policy questions that local governments address differently across the State, including questions related to basic infrastructure needs, education, worker safety, and morals-based legislation. The State may have strong views concerning some of these policy questions and may pass laws regulating activity in these areas, but the State may not, via HB 2127, suddenly declare that these Code provisions now occupy undefined “field[s]” that

¹⁹ Because HB 2127 notes that cities “may not adopt, enforce, or maintain an ordinance, order, or rule regulating conduct in a field of regulation that is occupied by a provision” of each Code without further guidance, localities may assume that any reference to an area of law under each Code could create a potential “field” of preemption that cities must navigate. As the City of Houston notes in its appellee brief, however, the State Legislature may not engage in field preemption. *See* The City of Houston’s Appellee Brief, at 33 (citing *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 376 (2015); *BCCA Appeal Grp., Inc. v. City of Houston*, 496 S.W.3d 1, 25 (Tex. 2016)).

completely block local government action. Doing so eradicates the essential power of Texas localities to respond to and regulate for their constituents. This Section reviews just a fraction of the many policy areas of local governance that are dramatically limited under HB 2127, proceeding Code by Code: Agriculture Code, Business & Commerce Code, Finance Code, Insurance Code, Natural Resources Code, Occupations Code, and the Property Code.

A. Agriculture Code

The Agriculture Code includes 94 separate chapters that cover policy areas as disparate as: Farmers' Cooperative Societies (Title 4, Chapter 51); Seed and Plant Certification (Title 5, Chapter 62); Mexican Fruit Fly Control (Title 5, Chapter 72); Citrus Fruit Maturity Standards (Title 5, Chapter 94); Bees and Honey (Title 6, Chapter 131); Eggs (Title 6, Chapter 132); Slaughtering of Livestock (Title 6, Chapter 148); Prevention and Investigation of Horse Theft (Title 6, Chapter 152); and Soil and Water Conservation (Title 7, Chapter 201).

The impact of HB 2127 in this area is substantial. Many cities, for example, maintain ordinances relating to drought conditions.²⁰ The City of San Antonio, with a population of approximately 1.45 million, maintains ordinances to protect

²⁰ See, e.g., City of Portland, Code of Ord. Chapter 23, Art. III (Water Conservation); City of Addison, Code of Ord. Chapter 34, Art. V (Drought Contingency Plan); see also City of Portland, Drought Management Plan, <https://www.portlandtx.com/399/Drought-Management-Plan> (last accessed on July 29, 2023).

its Edwards Aquifer and ensure proper drinking water for the City.²¹ The City of Portland, with a population of approximately 20,000, maintains its own set of regulations to ensure the “orderly and efficient management of limited water supplies.”²² HB 2127 could invalidate these ordinances through its application to Title 7 of the State Agriculture Code, which includes provisions regulating “Soil and Water Conservation” under Texas Agriculture Code Title 7 § 201.001(c). The purpose of Section 201.001 is to protect against soil and water erosion across Texas, *id.*, but HB 2127 transforms it into a “field of regulation” to prevent local action. Other local regulations that may be impacted under the expanded Agriculture Code include those relating to: overgrown vegetation (to prevent unsightly vegetation that may “harbor rodents and other wildlife harmful to public health and safety”);²³ beekeeping (to ensure sound practices in populated areas);²⁴ raising animals, including notice and confinement requirements when animals contract rabies;²⁵ and other grass and tree ordinances.

²¹ John Courage and Manny Pelaez, Opinion: *Cities will see Death Star Bill’s Authors in Court*, San Antonio Express News (July 14, 2023), <https://www.expressnews.com/opinion/commentary/article/courage-and-pel-ez-cities-will-see-death-star-18200805.php>

²² City of Portland, Ord. No. 2262, adopted July 19, 2022.

²³ See City of Grand Prairie, Ord. No. 10576-2018 (reviewing the purpose for the ordinance); City of Grand Prairie, Mun. Ord. § 29-114.

²⁴ See, e.g., City of Portland, Code of Ord. § 3-72.

²⁵ See, e.g., City of Portland, Code of Ord. § 3-51, 3-54. Section 4 of the law states that HB 2127 “does not, except as expressly provided by this Act, affect the authority of a municipality to adopt, enforce, or maintain an ordinance or rule that relates to the control, care, management, welfare, or health and safety of animals.” However, the law is unclear as to what would qualify

Local officials have a responsibility to their constituents to ensure proper utilization of resources within their communities. Wholesale elimination of local power to act in broad areas connected to agriculture would eradicate localities' ability to live up to this responsibility.

B. Business & Commerce Code

The Business & Commerce Code includes 116 separate chapters that cover topics including: Commercial Building Construction Projects (Title 5, Chapter 116), Private Schools (Title 5, Chapter 111), Valet Parking Services (Title 5, Chapter 107), Contests and Gift Giveaways (Title 13, Chapter 621), Advertising and Marketing (Title 16), Sales (Title 1, Chapter 2); Sale of Items at Flea Markets (Title 6, Chapter 201); and Leases (Title 1, Chapter 2A).

HB 2127 again repurposes these statutes to occupy “fields” that invalidate related local ordinances, rules, or practices. For instance, HB 2127 could eliminate localities' ability to regulate door-to-door sales practices to promote constituent safety or quality of life. *See, e.g.,* City of College Station, Code of Ord. Chapter 8, Art. V, Div. 2 (Home Solicitor Registration); City of Amarillo Code of Ord. § 14-6-55; City of Irving, Code of Ord. § 27-11. It could also invalidate ordinances restricting the use of certain lighting to create safer and more attractive outdoor areas, *see, e.g.,* City of Alpine, Code of Ord. § 18-231 and City of Kyle, Code of

as “expressly provided by this Act” and whether references in the Agriculture Code to animals and animal facilities would restrict local action in these areas.

Ord. § 53-1001, or certain types of advertising such as the distribution of handbills, including within private premises, *see, e.g.*, City of Abilene, Code of Ord. § 3-2.²⁶ Localities are well positioned to provide important protections to constituents while balancing local business interests.²⁷ HB 2127 tramples on this local expertise.

C. Finance Code

The Finance Code includes 99 separate chapters that cover such topics as: Savings Accounts (Title 3, Chapter 65), Consumer Loans (Title 4, Chapter 343), Retail Installment Sales (Title 4, Chapter 345), Consumer Credit Protections (Title 4, Chapter 308), Pawnshops (Title 4, Chapter 371), and Debt Collection (Title 5, Chapter 392).

HB 2127 immediately invalidates local protections against harmful financial practices. As one illustrative example, HB 2127 restricts local regulation of pawnshops, even though the relevant state chapter's stated goal is to "assist local governments in the exercise of their police power." *See* Tex. Fin. Code Title 4, Chapter 371. Because this chapter now occupies a "field of regulation" and does

²⁶ The Local Government Code only grants municipalities the ability to regulate some forms of advertising such as "signs", Tex. Loc. Gov't. Code Chapter 216. Under HB 2127, all other types of regulation will suddenly become a "field of regulation" barring additional measures to regulate ads in local communities.

²⁷ Such ordinances are generally enacted following extensive public meetings and feedback from local constituents. *See, e.g.*, City of Alpine, Ord. No. 2021-05-01 (noting the series of local workshops regarding the ordinance between October 2020 and April 2021).

not include an explicit grant of local authority,²⁸ local governments' police power in this area, *which this law was originally meant to assist*, is severely limited. Overnight, local laws in this area will be invalid, such as those meant to track potentially stolen merchandise sold in pawnshops, *see, e.g.,* City of College Station, Code of Ord. § 8-323–4 (defining “secondhand dealer” to include pawnbrokers and setting reporting requirements on secondhand dealers); City of Corpus Christi, Code of Ord. § 37-2(b). HB 2127 would also prevent localities from requiring that financial institutions with which the locality contracts engage in community lending. *See, e.g.,* City of Desoto, Code of Ord. § 1.200, *et seq.* (requiring the city to only invest in financial institutions after factoring in a bank's performance meeting community needs).

While the Legislature amended the initial draft of HB 2127 to carve out existing regulations relating to certain predatory lending businesses, it prevents changes to these ordinances and other localities from adopting similar ordinances that would “reduce abusive and predatory lending practices.” *See, e.g.,* City of Euless, Code of Ord. § 18-161. This substantially limits the ability of localities across the State to protect citizens beyond the extremely limited protections

²⁸ The Finance Code does not note restrictions or grants of authority to local governments and the Local Government Code includes a reference only to restrictions on the use of zoning power by localities on certified pawnshops, *see* Tex. Loc. Gov't. Code § 211.0035, but otherwise does not restrict their regulation.

provided by the State Legislature,²⁹ even when neighboring localities provide these protections under existing laws.³⁰

D. Insurance Code

The Insurance Code includes 375 separate chapters that cover a range of areas relating to insurance, including: Consumer Information and Complaints (Title 5, Chapter 521), HIV Testing (Title 5, Chapter 545), Privacy of Health Information (Title 5, Chapter 602), and Health Benefits for Children (Title 8, Chapter 1502). It also includes substantial regulations touching on specific types of insurance, including Health Insurance (Title 8, Chapters 1201, *et seq.*), Property and Casualty Insurance (Title 10, Chapters 1802, *et seq.*) and Title Insurance (Title 11, Chapters 2501, *et seq.*).

HB 2127's novel limitations now impair localities' ability to manage liability risks in a broad range of areas. For instance, local ordinances may require insurance coverage with certain minimum terms for special events located on city

²⁹ See *Issue Brief: Payday Loans Cost 4 Times More in States with Few Consumer Protections*, Pew Charitable Trusts (June 3, 2022), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/04/payday-loans-cost-4-times-more-in-states-with-few-consumer-protections>; Jeremy Rogalski, *How can a 767% interest rate loan be legal? It is in Texas*, KHOU (Sept. 1, 2022), <https://www.khou.com/article/news/investigations/high-interest-loans-legal-texas/285-39fd51eb-131a-4506-bdc5-6809f3ddd8d9>.

³⁰ For instance, “[m]ore than 45 Texas cities have passed local ordinances to rein in payday and auto title lender abuses.” See Arya Sundaram, *Payday and Car Title Lenders in Texas Won More Than \$45 Million in Pandemic Aid*, Tex. Obs. (Feb. 2, 2021), <https://www.texasobserver.org/payday-and-car-title-lenders-in-texas-won-more-than-45-million-in-pandemic-aid/>.

Localities not currently regulating in this area will now be blocked from doing so under HB 2127.

property. *See e.g.*, City of Irving, Code of Ord. § 33B-8. HB 2127 may restrict localities' ability to set such requirements through its reference to the State Insurance Code and the Code's separate provisions governing minimum insurance standards. *Compare* City of Dallas, Code of Ord. Chapter 42A, § 42A-37 (requiring a 30-day cancellation provision for certain policies) *with* Tex. Ins. Code § 551.052 (reviewing cancellation of certain liability and commercial property insurance policies). Special events are not an isolated example—localities set insurance requirements across a range of areas such as: electricity contracting, *see e.g.*, City of Galveston, Code of Ord. § 12-100; garbage and trash collection, *id.* at 15-108; storage facilities, *id.* at 37-43; vehicles for hire such as limousines, *id.* at 35-55; carnivals, *id.* at § 6-30, and more. Each localities' insurance requirements could now be subject to legal challenge if found to be in a “field of regulation” occupied by one of the 375 chapters in the State Insurance Code. HB 2127, Section 9.

In addition to limiting municipal action to manage risk, the Insurance Code also includes provisions that could block city action in areas connected to: protecting consumers and specific classes of individuals, *see, e.g.*, Tex. Ins. Code Title 5 (Regulation of Consumer Interests); Title 8, Chapter 1502 (Health Benefits for Children); Title 5, Chapter 544 (prohibiting discrimination); and Title 5, Chapter 545 (ensuring proper procedures and disclosure requirements for certain

medical procedures tests). HB 2127 broadly converts statutes designed to set standards for insurance providers and protect consumers into provisions that bar localities from preventing harms to their constituents.

E. Labor Code

The Labor Code includes 83 separate chapters that cover such disparate topics as: Employment of Children (Title 2, Chapter 51), Work and Family Policies (Title 2, Chapter 62), Disclosure By Employers of Information Regarding Certain Employees or Former Employees (Title 2, Chapter 103), Counseling for Displaced Homemakers or Workers (Title 4, Chapter 304), Adult Education and Literacy Programs (Title 4, Chapter 315), Vocational Rehabilitation Services (Title 4, Chapter 352), Workers' Compensation Benefits (Title 5, Chapter 408), Workers' Health and Safety (Title 5, Chapter 411) and Discrimination (Title 5, Chapter 451).³¹

HB 2127 broadly restricts local actions designed to assist workers, unemployed constituents, and those in workforce training programs. This includes limiting protections essential to protecting workers in localities with hot climates—for instance, regulations mandating water breaks for construction workers, *see, e.g.*, City of Dallas, Admin. Pro. for the Constr. Codes Chapter 52, §

³¹ HB 2127 further specifies that it explicitly prohibits local actions related to: “employment leave, hiring practices, breaks, employment benefits, scheduling practices, and any other terms of employment that exceed or conflict with federal or state law for employers other than a municipality or county.” HB 2127 Section 10(b).

610; City of Austin, Code of Ord. Chapters 4–5.³² HB 2127 also invalidates anti-discrimination ordinances that protect individuals from discrimination based on sexual orientation or gender identity, *see, e.g.*, City of Plano, Code of Ord. § 211(f); City of Denton, Code of Ord. § 14-203-5; City of Dallas, Code of Ord. Chapter 46, and regulations preventing employment discrimination against individuals with criminal records that are designed to support reintegration back into society, *see, e.g.*, City of Desoto, Code of Ord. Art. 4.2100. Local governments play an important role in assisting individuals find and maintain employment, and preventing harm from undue risks that arise in the workplace, especially when local conditions create dangers for constituents.³³

F. Natural Resources Code

The Natural Resources Code includes 59 separate chapters that address, among others: Oil & Gas (Title 2, Chapter 52), Minerals (Title 2, Chapter 53), Beaches and Dunes (Title 2, Chapter 63), Abandoned Wells (Title 3, Chapter 89), Oil Tanker Vehicles (Title 3, Chapter 114), Timber (Title 6), Forest Pest Control (Title 6, Chapter 152), and Prescribed Burning (Title 6, Chapter 153).

³² *See also*, Francisco Uranga & Erin Douglas, *As Texas Swelters, Local Rules Requiring Water Breaks for Construction Workers Will Soon Be Nullified*, The Texas Tribune (June 16, 2023), <https://www.texastribune.org/2023/06/16/texas-heat-wave-water-break-construction-workers/>.

³³ *See, e.g.*, J. David Goodman, *In a Texas City, Heat Proved Deadly Even for Those Long Used to It*, N.Y. Times (July 13, 2023) (reviewing local services to address the impact of heat to constituents, including by creating cooling centers and tracking the impact of heat-related deaths), <https://www.nytimes.com/2023/07/13/us/texas-heat-deaths-webb-county.html>.

By referencing this Code, HB 2127 eliminates existing local ordinances and regulations designed to respond to the unique environmental and resource needs of local communities. This impairs local regulations designed to protect constituents' safety and health, such as ordinances governing controlled burning, *see, e.g.*, City of Amarillo, Code of Ord. § 10-2-57, or waste storage to control a city's rat population, *see, e.g.*, City of Corpus Christi, Code of Ord. § 40-48. Other local regulations restricted by HB 2127 include those that attempt to balance economic growth with local quality of life issues, such as local regulations that govern transportation by heavy trucks. Localities often have ordinances designating carefully crafted "truck routes" to manage the noise and environmental pollution from heavy trucks. *See, e.g.*, City of Galveston, Code of Ord. § 34-72; City of Laredo, Code of Ord. Art. XI, Division 1; City of Abilene, Code of Ord. § 18-265. Localities may also restrict truck traffic in residential areas at night. *See, e.g.*, City of Laredo, Code of Ord. Art. XI, Division 1. The efficacy of these ordinances is potentially restricted by HB 2127's reference to state laws governing the transport of certain resources via truck, which now occupy "field[s] of regulation" barring local action. *See, e.g.*, Tex. Nat. Res. Code § 113.131 (governing motor vehicles carrying liquified petroleum gas); Title 3, Chapter 114 (oil tanker vehicles); Title 3, Chapter 115 (regulation of certain transporters of oil or petroleum products).

G. Occupations Code

The Occupations Code includes 209 separate chapters that cover such disparate occupations and services as those relating to: Health Professions (Title 3); Midwives (Title 3, Chapter 203); Nurses (Title 3, Chapter 301); Hearing Instrument Fitters and Dispensers (Title 3, Chapter 402); Physical Therapists (Title 3, Chapter 453); Chemical Dependency Counselors (Title 3, Chapter 504); Dog or Cat Breeders (Title 3, Chapter 802); Geoscientists (Title 6, Chapter 1002); Landscape Architects (Title 6, Chapter 1052); Plumbers (Title 8, Chapter 1301); Electricians (Title 8, Chapter 1305); Private Security (Title 10, Chapter 1702); Sanitarians (Title 12, Chapter 1953); Lead-Based Abatement (Title 12, Chapter 1955); Mold Assessors and Remediators (Title 12, Chapter 1958); Bingo (Title 13, Chapter 2001); Regulation of Outdoor Music Festivals (Title 13, Chapter 2104); Regulation of Fireworks and Fireworks Displays (Title 13, Chapter 2154); Vehicle Towing and Booting (Title 14, Chapter 2308); and Stevedores (Title 14, Chapter 2351). HB 2127 creates “field[s]” out of all of these many occupations and policy areas, excepting only that the Occupations Code “may not be construed to affect municipal or county authority to regulate a massage establishment in accordance with Section 455.005.” § 14(b).

HB 2127’s “field of regulation” language appears to impair localities’ ability to regulate in areas far beyond licensing of the many occupations covered by this

Code. For instance, the law could invalidate local ordinances that may implicate each of these occupations or services, including those that: regulate outdoor festivals and events, *see, e.g.*, City of Plano, Code of Ord. § 11-303 (requiring approval of special events which may include placing “reasonable conditions” on the event to improve safety); require city registration of essential contractor services such as plumbing, electrical, or irrigation, *see, e.g.*, City of Euless, Code of Ord. § 14-3; regulate the towing of disabled vehicles, *see, e.g.*, City of Corpus Christi, Code of Ord. § 57-239; and regulate gaming or amusement centers, *see, e.g.*, City of Irving, Code of Ord. Chapter 44. Such local regulations are now blocked absent express state authorization because they may be within the “field[s]” of regulation that are created by provisions of HB 2127’s alterations to the Occupations Code.

H. Property Code

The Property Code includes 92 separate chapters that cover topics ranging from Eminent Domain (Title 4, Chapter 21); Residential Construction Liability (Title 4, Chapter 27); Liens (Title 5, Subtitle B); Abandonment of Personal Property (Title 6, Chapter 72); Landlord and Tenant (Title 8); Powers of Property Owners Associations’ Relating to Restrictive Covenants in Certain Subdivisions (Title 11, Chapter 204); Timeshares (Title 12, Chapter 221); Camping Resorts (Title 12, Chapter 222); and Fair Housing (Title 15, Chapter 301).

HB 2127's transformation of the Property Code therefore significantly limits the ability of localities to govern property or property relationships. For instance, the City of Irving regulates short-term rentals under a carefully constructed regulatory framework. City of Irving, Code of Ord. Chapter 8, Art. XI. The City established these regulations after years of complaints from local constituents as well as studies and debates on the impact of short-term rentals on the local community. City of Irving, Ord. No. ORD-2022-10550. Ultimately, the City passed an ordinance that attempts to balance the rights of all stakeholders, permitting short-term rentals but under a regulatory framework to ensure they do not become a nuisance. *Id.* at 2. HB 2127's reference to the Property Code would restrict the ability of localities to engage in such careful balancing.

HB 2127 would also prevent extending housing protections to individuals discriminated based on their sexual orientation or gender identity, *see, e.g.* City of Galveston, Code of Ord. § 12.5-3 (specifying that discrimination on the basis of gender identity or sexual orientation are unlawful); City of Corpus Christi, Code of Ord. § 13-20(2); *compare* Tex. Prop. Code Title 15, Chapter 301, Subchapter B (noting discrimination on the basis of sex is prohibited but not specifying whether this covers sexual orientation and gender identity). It may also prevent localities from requiring landlords to provide notice to tenants before initiating eviction proceedings, *see, e.g.*, City of Austin, Code of Ord. § 4-14-2, and from prohibiting

retaliation against tenants who file a housing complaint with the locality due to unsafe or hazardous living conditions, *see, e.g.*, City of Dallas, Code of Ord. § 27-5.2. HB 2127’s reference to the Property Code would even restrict more basic services localities provide such as those relating to management and return of property abandoned in local parks, *see, e.g.*, City of Dallas, Code of Ord. Chapter 32.

* * *

A HB 2127-style law that expanded *just one* of the Texas Codes would significantly impair the ability of many local governments to meet the basic needs of their constituents by creating dozens or hundreds of new “field[s]” of regulation that would instantly eradicate carefully constructed local laws and practices. HB 2127, however, sweeps in *eight* state Codes, which each respectively contain hundreds of different titles, chapters, and provisions. The law effectively eliminates local autonomy and constitutional Home Rule. Additionally, HB 2127 turns hundreds of wildly different state laws into minefields threatening localities with untold civil liability.

III. HB 2127 Eliminates Localities’ Flexibility to Respond to Local Changes and Emergencies

The law not only invalidates existing ordinances, regulations, and policies. It also hobbles the ability of localities to effectively respond to changing local needs, regulate in the face of new developments, and react to local emergencies. Local

leaders are closest to their residents. They are often the first officials contacted to address their constituents' needs and must have flexibility to respond as new policy questions and challenges emerge. The State of Texas relies on localities to perform this work, and localities in turn rely on governing flexibility to work effectively.

HB 2127 restricts localities' governing power to adopt, as well as "enforce, or maintain," "an ordinance, order, or rule" in the areas reviewed in Part II. *See, e.g.,* HB 2127 Sections 5 [Tex. Agric. Code § 1.004]. This will impact localities' ability to respond to an untold number of future questions, including those related to: (1) population growth or business development; (2) emergencies and climate and weather changes; and (3) changing labor and market practices.

A. HB 2127 Imposes Severe Restrictions on Localities' Ability to Respond to Economic Development and Its Impact on the Population

The Legislature cannot issue uniform state-wide laws that are fully responsive to each localities' fluctuations in economic and population growth or decline. Local officials, however, can and have regularly done so. Localities know the range of policy areas that may be implicated by population or economic changes, including water usage, drought management, road maintenance, infrastructure needs to support new business development, management of housing stock and short-term rentals, traffic maintenance for commercial vehicles and trucks, and local quality of life and community-building activities such as ensuring

safety and proper management at local outdoor festivals or fireworks shows. Local officials debate potential new regulations by engaging in careful balancing of a wide variety of goals for their community, such as improving and promoting economic development. The numerous policy questions impacted by economic and demographic changes in a community require this balancing, community feedback, and tailored regulatory response.

B. HB 2127 Imposes Severe Restrictions on Localities' Ability to Respond to Emergencies and Local Changes to Climate and Weather

HB 2127 would also hamper localities' ability to act in response to emergencies and local changes in climate and weather. Different geographic regions experience local emergencies differently. Some localities must respond to increased severity of storms, others must respond to more significant droughts, and still others may need to respond to air quality concerns. The State is not equipped to address each of these local changes under an unwieldy one-size-fits-all approach. By converting the provisions included in Codes such as the Occupations Code, Property Code, and Natural Resources Code into broad "field[s] of regulation" blocking local action, the State irresponsibly forecloses wide swaths of activities that allow localities to effectively respond to changes in local climate that impact constituents' health and safety.

HB 2127's dramatic limitations may be most starkly felt in localities' ability

to coordinate future emergency response to localized natural disasters. HB 2127's breadth and vagueness could call localities' standard coordination of public health officials or first responders into question. For instance, the City of Eagle Pass specifies in its Code of Ordinances that the mayor holds the role of "emergency management director" responsible for comprehensive emergency management in the City of Eagle Pass, Code of Ord. Chapter 9, § 9-1. In this role, the mayor may declare a local emergency, allowing the mayor to comprehensively survey potential hazards and implement measures to reduce threats to life and property, including issuing proclamations and regulations. Under HB 2127, the extent of the mayor's necessarily broad authority to act in times of emergency is now uncertain. While state law may arguably grant some express authority to local governments in times of emergency, the scope of this express grant is undefined.³⁴ And under HB 2127, any actions outside of this unclear express authorization may subject the locality to substantial liability. Therefore, local governments responding to emergencies must now review generalized state authority against the new "field[s]" created by HB 2127, such as those in the Occupations Code. *See, e.g.*, Tex. Occ. Code Title 3

³⁴ While the State Code reviews requirements on local governments to establish and maintain emergency preparedness plans, *see* Tex. Gov't. Code § 418.106, it is unclear how this provision would impact powers that conflict with provisions preventing local regulation under HB 2127. For instance, Tex. Gov't. Code § 418.106 includes only two express requirements for local governments' emergency response. While this includes some express grants of authority in the form of a directive (*e.g.*, ability to implement "wage, price, and rent controls"), it is unclear how far a locality may act under its plan in other areas (*e.g.*, directing traffic or directing businesses to close to promote community safety).

(Health Professions), Title 6 (Regulation of Engineering, Architecture, Land Surveying, and Related Practices), and Title 7 (Practices and Trades Related to Water, Health and Safety). Only after this complicated analysis may local emergency plans, such as Eagle Pass's, be implemented.

This hurdle to local government action highlights that even when there are express grants of statutory authority to localities, the breadth of restrictions from HB 2127 may still stifle and delay local action in ways that may harm public health or safety. Localities *preparing* for emergencies must maintain flexibility in the face of uncertain dangers. Localities *responding* to emergencies do not have the time or resources in times of emergency to dive into legal debates concerning the scope of their power and what is a “field of regulation” or qualifies as “expressly authorized” under HB 2127.

C. HB 2127 Imposes Severe Restrictions on Localities' Ability to Respond to Local Changes to Labor and Other Market Practices

Localities across the state also experience changes to labor and employment practices differently. Larger localities may encounter different challenges caused by worker automation or the growth of “gig” work than smaller localities and will balance different considerations in tailoring new regulations. Technology continues to change employee-employer models in ways that have an unpredictable impact on services and businesses important to local life, and localities should have the

flexibility to address these changes.³⁵ In addition, tailored local regulations are necessary to respond to local, geographic-specific concerns regarding employee safety, but HB 2127 limits basic worker safety protections via its expansion of state statutes into “field[s]”, such as Tex. Lab. Code Title 5, Chapter 411 (“Workers’ Health and Safety”). The law thus limits the ability of localities to implement basic local protections, including those requiring water breaks for construction workers laboring in extreme heat.³⁶

HB 2127 also hampers localities from passing new regulations in this area and restricts localities’ ability to respond to new forms of predatory transactions. As with new employment or labor practices, local officials’ proximity to their constituents allows them to observe and react to new potentially threatening market practices in their communities in ways that the Legislature simply is not. This is perhaps why more than 45 localities across the State have passed ordinances

³⁵ The State, of course, has at times stepped in to directly regulate companies operating based on new technology or employment models. For instance, the State passed a law in 2017 regulating Transportation Network Companies such as Uber and Lyft after 20 cities had passed ordinances regulating these entities. *See* Texas A&M Transportation Institute, Transportation Network Company (TNC) Legislation, <https://policy.tti.tamu.edu/technology/tnc-legislation/> (accessed July 24, 2023). This illustrates that if the State has an issue with localities acting to address new technology based on its own analysis of the particular issue, they can respond directly. Broadly limiting the ability to regulate in these areas before the fact is neither responsible nor realistic.

³⁶ Steven Monacelli, *Texans Die from Heat after Governor Bans Mandatory Water Breaks*, Texas Observer (July 6, 2023) <https://www.texasobserver.org/texans-die-from-heat-exhaustion-after-governor-bans-water-breaks/>.

protecting constituents from predatory and devastating loans.³⁷ Threats from new financial practices will continue to arise. In the past decade, for instance, consumers have faced increased threat from growing “buy now pay later,”³⁸ and other predatory lending schemes. Local authority and ability to respond to these potentially predatory developments, or to investigate entities engaged in such activities, therefore plays an important part in protecting Texans. HB 2127 instead impairs such local innovation.

* * *

In sum, HB 2127 eliminates the ability of localities to act decisively to respond to the changing policy needs of their communities and, in turn, prevents Texans from receiving the benefits of local engagement and policymaking.

³⁷ See Arya Sundaram, Payday and Car Title Lenders in Texas Won More Than \$45 Million in Pandemic Aid, *Tex. Obs.* (Feb. 2, 2021), <https://www.texasobserver.org/payday-and-car-title-lenders-in-texas-won-more-than-45-million-in-pandemic-aid/>.

³⁸ Paulina Cachero, *‘It Ruined Everything’: Buy Now, Pay Later Drives Gen Z Into Debt*, *Bloomberg* (Oct. 28, 2022), <https://www.bloomberg.com/news/articles/2022-10-28/buy-now-pay-later-loans-drive-gen-z-into-debt-hurting-credit-scores#xj4y7vzkg>.

CONCLUSION

For the foregoing reasons, and for the reasons provided by Appellees, *amici curiae* request that this court should uphold the declaration of the District Court that HB 2127 is unconstitutional.

Respectfully submitted,

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Dated: February 7, 2024

APPENDIX A

(List of Amici Local Elected Officials)

Joshua Acevedo

Councilmember
El Paso, Texas

Alexsandra Anello

Former Councilmember
El Paso, Texas

Juan Miguel Arredondo

Former School Board Member
San Marcos Independent School
District

Deborah Armintor

Former Councilmember
Denton, Texas

Ryan Adler

Councilmember
Austin, Texas

Adam Bazaldua

Councilmember
Dallas, Texas

Ruben Becerra

County Judge
Hays County, Texas

Brian Beck

Councilmember
Denton, Texas

Andy Brown

County Judge
Travis County, Texas

Chris Canales

Councilmember
El Paso, Texas

Teri Castillo

Councilmember
San Antonio, Texas

Crystal Chism

Councilmember
DeSoto, Texas

Alyssa Cigarroa

Councilmember
Laredo, Texas

Dr. Michelle Cohen

County Commissioner
Hays County, Texas

Crystal Davila

School Board Member
Pasadena Independent School District

Elias Diaz

Councilmember
Eagle Pass, Texas

Lauren Doherty

Former Councilmember
Austin, Texas

Rodney Ellis

County Commissioner
Harris County, Texas

Jonathan Estrada
Councilmember
Pasadena, Texas

Junior Ezeonu
Councilmember
Grand Prairie, Texas

Vanessa Fuentes
Councilmember
Austin, Texas

Adrian Garcia
Commissioner
Harris County, Texas

Alyssa Garza
Councilmember
San Marcos, Texas

Stephanie Gharakhanian
Board Trustee
Austin Community College

Andrew Gonzales
School Board Member
Austin Independent School District

Debbie Gonzales-Ingalsbe
County Commissioner
Hays County, Texas

Marquette Greene-Scott
Councilmember
Iowa County, Texas

Bear Heiser
Councilmember
Kyle, Texas

Lina Hidalgo
County Judge
Harris County, Texas

Tartisha Hill
Former Councilmember
Balch Springs, Texas

Iliana Holguin
County Commissioner
El Paso County, Texas

Candace Hunter
School Board Member
Austin Independent School District

Tarsha Jackson
Councilmember
Houston, Texas

Abbie Kamin
Councilmember
Houston, Texas

Joaquin Martinez
Councilmember
Houston, Texas

Dexter McCoy
County Commissioner
Ft. Bend County, Texas

Brandon Chase McGee
Councilmember
Denton, Texas

Jalen McKee-Rodriguez
Councilmember
San Antonio, Texas

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County Attorney
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Arnetta Murray
Councilmember
Iowa Colony, Texas

Omar Narvaez
Councilmember
Dallas, Texas

Julie Ann Nitsch
Board Trustee
Austin Community College

Lettitia Plummer
Councilmember
Houston, Texas

Stephanie O'Banion
Councilmember
Belton, Texas

Zo Qadri
Councilmember
Austin, Texas

Jaime Resendez
Councilmember
Dallas, Texas

Brian Rowland
Former Mayor
Prairie View, Texas

Jaynie Schultz
Councilmember
Dallas, Texas

Brigid Shea
County Commissioner
Travis County, Texas

David Stout
County Commissioner
El Paso County, Texas

Kathie Tovo
Former Councilmember
Austin, Texas

Jose "Chito" Vela
Councilmember
Austin, Texas

José Velásquez
Councilmember
Austin, Texas

Chad West
Councilmember
Dallas, Texas

Ornaldo Ybarra
Councilmember
Pasadena, Texas

Chuy Zarate
School Board Member
Round Rock Independent School
District

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically with the Court's electronic filing system on February 7, 2024. Service will be effectuated by the Court's electronic notification system upon all parties and counsel of record.

/s/ Brian McGiverin
BRIAN MCGIVERIN

Dated: February 7, 2024

CERTIFICATE OF COMPLIANCE

In accordance with Texas Rule of Appellate Procedure 9.4, the total number of words in this brief, exclusive of the sections excluded under Rule 9.4(i)(1), is 8,572. This word count is based on the word processing software used to prepare this brief.

/s/ Brian McGiverin
BRIAN MCGIVERIN

Dated: February 7, 2024