Superintending the City: An Administrative Law for Home Rule

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The tension between state constitutional provisions promising municipal self-governance and the reality of state legislative supremacy creates a fundamental paradox at the heart of home rule doctrine. Cities across America face unprecedented governance challenges—from economic transformation to climate adaptation—while remaining constrained by a legal framework that forces them to navigate either unpredictable judicial interpretation or the political minefield of legislative preemption. As municipalities attempt to address pressing local needs through home rule authority, they frequently encounter institutional obstacles that undermine their constitutional promise of local autonomy. This Note argues that state administrative agencies should superintend home rule disputes between municipalities and state legislatures. By establishing administrative processes as venues for structured negotiation between competing authorities, states could provide municipalities with greater procedural predictability while ensuring policy consistency at the state level. Administrative superintendence would preserve meaningful local autonomy while ensuring municipalities exercise their powers within coherent statewide frameworks suited for twenty-first century challenges.

Part I traces the parallel evolution of home rule doctrine and state administrative authority, revealing how both systems represent legislative delegations that have developed along markedly different paths of institutional power. Part II examines Massachusetts's rigid hierarchical control over home rule, demonstrating how formalistic approaches fail to address the complex intergovernmental relationships characteristic of

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modern governance. Part III proposes a theory of administrative superintendence that would integrate agencies into home rule frameworks, leveraging their hybrid judicial-legislative functions, specialized expertise, and capacity for ongoing supervision.

CONTENTS

INTRODUCTION: EMPTY TOWERS, EMPTY PROMISES

The gleaming towers of downtown Boston tell a story of transformation. Once bustling with office workers, these commercial properties now stand partially empty—casualties of a

post-pandemic revolution in work culture.[1] In January 2024, Mayor Michelle Wu stood at her office window in City Hall, confronting an unprecedented challenge born of this transformation.[2] As commercial property values declined, the tax revenue these spaces generated plummeted accordingly.[3] To maintain the city's budget and essential services, Boston would need to make up the shortfall somewhere—and that somewhere was residential property owners.[4] The initial projected ten percent increase in residential property taxes threatened to strain already stretched family budgets.[5] Wu, known for her innovative approach to governance,[6] proposed a temporary reallocation of the city's tax burden between commercial and residential properties.[7] But what

1. *See* Jeff Saperstone, *Downtown Dilemma: How Can Boston Revive Its Empty Office Buildings?*, NBC 10 BOS. (July 1, 2024), https:// www.nbcboston.com/news/local/downtown-dilemma-how-can-boston-revive-its-empty-office-buildings/3415772/ [https://perma.cc/6DNL-ZLSW] ("In a post-COVID world, remote or hybrid work has become the norm, leaving many downtown office buildings empty.").

2. *See* Janelle Nanos, *Downtown Boston Is Trying To Find Its Post-Pandemic Identity. It's Fighting An Uphill Battle*, BOS. GLOBE (Mar. 19, 2025), https://www.bostonglobe.com/2025/03/19/business/covid-downtown-boston-changed/ [https://perma.cc/T6XR-RTJM] (explaining how changes emerging from the COVID-19 pandemic left Boston "unrecognizable").

3. *See* THE FISCAL FALLOUT OF BOSTON'S EMPTY OFFICES, BOS. POL'Y INST. 1 (2024), https://bostonpolicyinstitute.org/fiscal-fallout [https://perma.cc/54Y5-JBW7] (explaining that more than one-third of Boston tax revenue comes from commercial property taxes, which is the highest proportion among major U.S. cities).

4. *See* Anjali Huynh & Catherine Carlock, '*A Disappointing Outcome': With Property Tax Bill, Mayor Wu Took On The Real Estate Industry And Lost—Again*, BOS. GLOBE (Dec. 10, 2024), https://www.bostonglobe.com/2024/12/10/metro/michelle-wu-boston-massachusetts-legislature-tax-proposal/ [https://perma.cc/YMT3-77SP] ("[A]ggrieved residents . . . will likely see their property taxes go up, and may see rents rise as well if landlords pass tax hikes on to tenants.").

5. *See* Nik DeCosta-Klipa, *Spilka Says Mass. Senate Won't Vote On Boston Property Tax Plan*, WBUR (Dec. 10, 2024), https://www.wbur.org/news/2024/12/10/boston-michelle-wu-property-tax-plan-senate-spilka-newsletter [https://perma.cc/G686-NPQ2] (explaining that the "10.4% tax hike next year for Boston homeowners" forced the State Senate president to declare the measure dead).

6. *See* Naomi Bethune, *Michelle Wu, The Boston Beacon of Progress*, AM. PROSP. (Sep. 25, 2025), https://prospect.org/2025/09/25/2025-09-25-michelle-wu-boston-beacon-of-progress/ [https://perma.cc/A5US-TWTY] (examining Wu's transformation of Boston's governance model from a developer-driven approach to one emphasizing community input, equity audits, and strategic partnerships that align with affordability goals).

7. *See* Catherine Carlock & Niki Griswold, *After Long-Simmering Dispute, Wu And Business Leaders Strike Deal On Property Tax Plan*, BOS. GLOBE (Oct. 23, 2024), https://www.bostonglobe.com/2024/10/23/metro/boston-mayor-michelle-wu-business-property-tax-deal/ [https://perma.cc/469V-FLQ5] ("Under the compromise, residential tax rates would increase by around 9 percent—in line with previous increases. The new commercial tax rate was not yet available but would be capped at 181.5 percent of the residential rate, up from the current 175 percent ceiling, and step down incrementally over the following two years before returning to current levels.").

seemed like a straightforward implementation would soon reveal the complex web of constraints binding one of America's oldest cites.

The story that unfolded over the following months reads like a political thriller. Wu's team engaged in marathon negotiating sessions with Boston's powerful business community,[8] achieving what many considered impossible: a compromise that satisfied both the Boston Municipal Research Bureau and the Greater Boston Chamber of Commerce.[9] Wu's home rule petition sought to prevent the city from shifting the tax burden from commercial properties to residential properties—a modest technical adjustment that would protect Boston families from tax increases.[10] As the proposal moved through the Boston City Council and then to the Massachusetts House of Representatives, success seemed within reach.[11] Then came the Senate. In the marbled halls of the Massachusetts State House, vocal critics halted the carefully crafted compromise.[12] Despite the broad coalition of support Wu had built, including unlikely allies from

8. *See* Huynh & Carlock, *supra* note 4 ("Wu negotiated with major business leaders for months at the behest of the Senate president.").

9. *See id.* ("In October, the mayor and four prominent business groups—the Boston Municipal Research Bureau, the Greater Boston Chamber of Commerce, the Massachusetts Taxpayers Foundation, and commercial real estate group NAIOP Massachusetts—reached a compromise on a revised version of the tax plan that was subsequently approved by the House.").

10. *See* Mayor's Office, *Mayor Wu Proposes Legislation to Protect Residential Property Owners from Increase in Taxes Caused by Others' Development*, CITY OF BOS. (Apr. 23, 2024), https://www.boston.gov/news/mayor-wu-proposes-legislation-protect-residential-property-owners-increase-taxes-caused [https://perma.cc/XQY6-B9XW] ("The proposal would allow the City to lessen increases in residential property tax bills caused by declining commercial values by temporarily shifting more of the property tax levy onto owners of commercial and industrial properties.").

11. *See* Huynh & Carlock, *supra* note 4 ("[T]he tax plan . . . was subsequently approved by the House."); Amory Sivertson et al., *Boston Mayor Michelle Wu On Why Her Tax Proposal Died On Beacon Hill*, WBUR (Dec. 13, 2024) https://www.wbur.org/radioboston/2024/12/13/boston-mayor-michelle-wu-tax-proposal-beacon-hill [https://perma.cc/HV8W-97EJ] (offering an account of the deliberative process to modify and approve the home rule petition).

12. *See* Nick Collins, Opinion, *Why I Opposed Mayor Wu's Tax Proposal*, BOS. GLOBE (Dec. 23, 2024) https://www.bostonglobe.com/2024/12/23/opinion/boston-tax-relief-michelle-wu-nick-collins-response/ [https://perma.cc/8MQJ-N4CS] (justifying some state senators' opposition to the petition); Huynh & Carlock, *supra* note 4 ("[W]hen the deal they struck finally reached the Senate, her fragile coalition crumbled after new city projections showed homeowners would face lower increases than Wu's administration initially projected.").

the business community,[13] the proposal languished in the Senate, never even receiving a vote.[14]

Even as Boston enjoys nominal autonomy over its affairs, the city remains tethered to Beacon Hill[15] by a web of state legislative requirements that can transform the city's routine fiscal adjustments into protracted political battles.[16] This failed initiative illuminates far more than a simple legislative defeat—it exposes the fundamental paradox at the heart of home rule doctrine.[17] As a general matter, home rule grants municipalities the authority to govern their own local affairs without requiring state legislative approval for each decision, yet, in practice, it

13. Boston has long endured a fractious relationship between City Hall and the business community, with disputes over development, taxation, and housing policy creating deep institutional distrust. *See* Jon Keller, *Has Boston Business Lost Its Juice?*, BOS. MAGAZINE (June 10, 2025), https://www.bostonmagazine.com/news/2025/06/10/boston-business-future/ [https://perma.cc/4MS5-ZNKU] (examining the history of the Greater Boston business community over the last thirty years). Wu's ability to bridge this divide represented a significant political achievement, one that required months of careful coalition-building and relationship management. *See id.*

14. Once Senator Nick Collins expressed skepticism, many senators followed. *See* Huynh & Carlock, *supra* note 4 (noting that eventually, "leaders in the Senate declared the proposal dead"); Emma Platoff, *State Power Limits Boston's Vision*, BOS. GLOBE (Apr. 16, 2022), https://www.bostonglobe.com/2022/04/16/metro/state-power-limits-bostons-vision/ [https://perma.cc/QE7M-ZYJH] (explaining how home rule leaves the city with "limited financial flexibility for addressing its residents' most urgent concerns, such as the skyrocketing cost of housing"). By January 2025, Wu found herself back at square one, filing a new tax relief package while Boston's homeowners faced property tax increases of up to 33% quarter-to-quarter—the tangible consequence of legislative gridlock that her original petition had sought to prevent. *See* Sam Drysdale, *Mayor Wu Renewing Boston Tax Debate With New Tax Debate With New Bill*, WBUR (Jan. 13, 2025), https://www.wbur.org/news/2025/01/13/wu-renewing-boston-taxes-property-debate-property [https://perma.cc/N6X5-D664]. A year later, the Senate's response proved equally predictable: lawmakers advanced alternative bills authored by the same senators who had opposed Wu's plan, setting the stage for "another round of finger-pointing and political elbowing." Chris Lisinski, *Boston Tax Relief Response, Ballot Question Reform Emerge for Senate Action*, COMMONWEALTH BEACON (Jan. 7, 2026), https://commonwealthbeacon.org/government/boston-tax-relief-response-ballot-question-reform-emerge-for-senate-action/ [https://perma.cc/7U4K-J8Q8]. The cycle continues unabated, with no institutional mechanism to break it.

15. Beacon Hill refers to the neighborhood in Boston that houses the Massachusetts State House, home to the state legislature and the governor's office. *See Getting to Know Your Neighborhood: Beacon Hill*, BU TODAY (Apr. 2, 2025), https://www.bu.edu/articles/2025/getting-to-know-your-neighborhood-beacon-hill/ [https://perma.cc/MYX9-RPD5].

16. *See* Platoff, *supra* note 14 ("The state law [on home rule] that inhibits local decision-making with regard to things like taxing and borrowing and land-use decisions puts Boston at a competitive disadvantage.").

17. For example, the Massachusetts Home Rule Amendment, intended to grant municipalities greater control over local matters, has instead created a complex dance between city and state, where even broadly supported local initiatives can falter in the maze of state politics. For an overview of the Massachusetts Home Rule Amendment, *see infra* Part II.A.

operates within a framework of protracted, excessive state oversight.[18]

The fate of Wu's tax initiative raises profound questions about the practical limitations of home rule authority: When does state oversight cross the line from prudent supervision to procedural obstruction? And perhaps most critically, can the current framework of state-municipal relations evolve to meet the demands of twenty-first century urban governance?

The solution to this institutional gridlock may lie not in the legislative process, but in the often-overlooked realm of state administrative law.[19] State administrative agencies regularly make complex, technical decisions with relative efficiency.[20] States could delegate specific oversight authority to such bodies to evaluate municipal governance proposals systematically.[21] This approach would leverage administrative agencies' unique institutional features—their hybrid judicial-legislative functions, specialized expertise, and capacity for ongoing supervision—to

18. *See infra* Part I.A for an in-depth examination of home rule generally. The current framework for resolving home rule disputes offers only two unsatisfying options: courts interpreting constitutional or statutory boundaries, or legislatures preempting local action through superior lawmaking authority. *See id.* This binary choice overlooks administrative agencies as a third institutional actor capable of mediating between state and local governments while bringing specialized expertise and deliberative processes to bear on these conflicts. *See id.*

19. *See* Jeffrey S. Sutton, *Administrative Law in the States: An Introduction to the Symposium*, 46 HARV. J.L. & PUB. POL'Y 307, 320 (2023) ("To the extent some of today's quandaries about administrative law do not submit to one winning answer, it would be foolish not to pay attention to all 51 American approaches to administrative law—and to learn from each of them."); Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564, 569 n.6, 570 n.11 (2017) [hereinafter Davidson, *Localist Administrative Law*] (surveying the limited but notable body of state and local administrative law scholarship); Miriam Seifter, *Understanding State Agency Independence*, 117 MICH. L. REV. 1537, 1541 (2019) (calling for greater study of state agencies and noting the vast federal administrative law literature); Jeffrey S. Sutton & John L. Rockenbach, *Response: Respect and Deference in American Administrative Law*, 102 B.U. L. REV. 1937, 1938–39 (2022) (describing the dearth of scholarship about state administrative law).

20. *See* Davidson, *Localist Administrative Law*, *supra* note 19, at 569 (explaining the various domains within which state and local administrative agencies operate); *see also infra* Part I.B.2 (exploring some of the general procedures state administrative agencies follow). For brief examples of home rule disputes across multiple states, *see* William D. Hicks et. al., *Home Rule Be Damned: Exploring Policy Conflicts between the Statehouse and City Hall*, 51 AM. POL. SCI. ASS'N 26, 26 (2018) (examining conflicts in New York, New York; Munroe Falls, Ohio; Longmont, Colorado; and Denton, Texas, among other examples).

21. *See* William Funk, *Rationality Review of State Administrative Rulemaking*, 43 ADMIN. L. REV. 147, 172 (1991) (disputing the claim that state agencies are "characterized by somewhat less professionalism" than federal agencies).

mediate the tension between local autonomy and state oversight.[22] By reimagining state-municipal relationships through an administrative law lens, states could preserve meaningful supervision while creating more responsive mechanisms for addressing local challenges.

This Note argues that administrative superintendence offers a promising third path beyond the binary choice between judicial interpretation and legislative preemption that currently dominates home rule disputes. Part I traces the historical evolution of home rule doctrine alongside the development of state administrative law, revealing parallel systems of delegated authority with markedly different institutional frameworks. Part II examines Massachusetts's emphasis on strict legislative control over home rule, demonstrating how this formalistic approach fails to address the complex intergovernmental relationships that characterize modern municipal governance. Part III proposes a theory of administrative superintendence that would integrate agencies into home rule frameworks, allowing them to apply their procedural expertise and subject-matter knowledge to resolve conflicts between state and local governments. By leveraging administrative processes as venues for structured negotiation between competing authorities, this approach would provide municipalities with greater procedural certainty and substantive guidance while ensuring they exercise their powers within coherent statewide policy frameworks suited for twenty-first century challenges.

22. Consider Boston's tax relief petition. The proposal involved technical questions about property tax classification ratios, commercial versus residential tax burdens, and revenue projections—precisely the type of specialized, data-driven analysis that administrative agencies routinely perform. *See* Mayor's Office, *supra* note 10 (detailing Mayor Wu's proposal). An administrative body with expertise in municipal finance could have evaluated the proposal's fiscal soundness, assessed its impact on various stakeholder groups, and issued a timely decision based on established criteria. *See, e.g.*, 53 PA. STAT. ANN. § 12720.103(14) (2022) (creation of Pennsylvania's Intergovernmental Cooperation Authority addressed need for cities to receive advice on certain "finance and management" issues). Instead, the matter became entangled in legislative politics, where concerns about small business impacts and broader policy considerations overshadowed the technical merits of Wu's carefully negotiated compromise. *See supra* notes 12–14 for further discussion of Wu's legislative defeat.

I. CONVERGING PATHS: THE EVOLUTION OF HOME RULE AND STATE ADMINISTRATIVE POWER

The history of state and local government law chronicles two parallel transformations: municipalities evolved from administrative conveniences into constitutionally protected entities, while state agencies developed from narrow commissions into sophisticated regulators capable of coordinating complex governance relationships. Home rule's arc runs from the Dillon's Rule era, through its constitutional entrenchment, and across subsequent waves of reform. This Part analyzes this evolution—revealing how changing conceptions of local authority have consistently responded to concrete governance challenges rather than abstract commitments to local autonomy. The analysis then shifts to the parallel development of state administrative law, examining how agencies have transformed from limited commissions into sophisticated regulatory bodies capable of managing complex intergovernmental relationships.

A. FROM CREATURES TO SOVEREIGNS: THE TRANSFORMATION OF MUNICIPAL POWER

Home rule represents American law's most sustained attempt to balance local autonomy with state authority. More than a century of constitutional and statutory innovation has produced varied models of municipal power in the form of home rule, each reflecting distinct assumptions about the proper scope of local self-governance. Dillon's Rule provided the doctrinal foundation against which home rule advocates defined their constitutional project—rejecting the premise that municipalities existed as mere creatures of state legislatures and asserting instead that cities possessed inherent authority over local affairs.[23]

23. For a discussion of Dillon's Rule's influence on home rule, *see generally* Richard Briffault, *Home Rule, Majority Rule, and Dillon's Rule*, 67 CHI.-KENT L. REV. 1011 (1991) (discussing Dillon's Rule's role in constraining municipal authority and shaping the scope of home rule).

1. *Dillon's Rule and the Origins of Municipal Subordination*

The relationship between states and local governments has radically transformed since the Civil War,[24] moving from near-total state legislative control toward constitutional recognition of municipal autonomy.[25] In 1872, Eighth Circuit Judge John Dillon (a former Chief Justice of the Iowa Supreme Court) canonized the idea that cities are "political subdivisions" of the states in an influential treatise on local government law.[26] Dillon's terms favored centralized state control and viewed cities as mere administrative conveniences of the state with no inherent lawmaking authority.[27] A municipality, accordingly, possessed

24. *See* Nestor M. Davidson, *Home Rulings*, 2023 WIS. L. REV. 1735, 1735 (2023) [hereinafter Davidson, *Home Rulings*] ("Although the fundamental balance of legal power between states and the federal government has not seen significant change through formal constitutional amendment since the aftermath of the Civil War, the same can hardly be said of the relationship between states and local governments.").

25. *See id.* at 1736 (explaining the historical shift from a regime of plenary state legislative control over municipal affairs to one recognizing constitutionally protected spheres of local autonomy).

26. *See* JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS, § 21, at 55 (1872). Dillon's framework synthesized rather than invented the notion of municipal subordination. Antebellum courts had already described cities as "creatures" or "arms" of the state, but Dillon gave that intuition doctrinal precision and theoretical force. *See* Richard Briffault, *Our Localism, Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 9 (1990) [hereinafter Briffault, *Our Localism*] (tracing how states responded to Dillon's Rule through constitutional amendments prohibiting special commissions and special legislation, thereby protecting municipal structural integrity against legislative interference despite the formal doctrine of plenary state power). What had been a set of scattered holdings became, through his treatise, a unified rule of construction that disciplined judicial review of municipal powers. *See id.* at 10–11. In that sense, Dillon did not create a new idea so much as crystallize and canonize an existing one, transforming local government law from a body of ad hoc precedent into a coherent theory of state supremacy. *See id.*; *see also* Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1080–1120 (1980) (recounting the early American development of the conception of local governments in state law); DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK 10–13 (2001) (offering a separate account of the historical development of local government in relation to state governments).

27. *See* City of Clinton v. Cedar Rapids & M.R.R. Co., 24 Iowa 455, 475 (1868) (Dillon, C.J.) ("Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy.").

only those powers which the state had clearly bestowed upon it,[28] and judges should construe those powers narrowly.[29]

Beginning in 1875,[30] home rule advocates in most states shepherded the adoption of constitutional provisions embodying municipal independence. In the nearly 150 years since, home rule provisions typically grant municipalities broad authority to regulate local affairs and modify their own governance structures without seeking specific state legislative approval.[31] Despite these efforts, state courts undermined municipal autonomy, interpreting home rule provisions narrowly or even ignoring these provisions altogether to quell political agitation over cities' redistributive potential.[32] Though home rule has largely displaced "Dillon's Rule" as a formal legal doctrine, the "political subdivision" concept

28. Paul Diller, *Intrastate Preemption*, 87 B.U. L. REV. 1113, 1122 (2007) [hereinafter Diller, *Intrastate Preemption*] ("[T]he eponymous [Dillon's Rule] held that local units of government were mere administrative conveniences of the state with no inherent lawmaking authority."). Under Dillon's Rule, cities only possess lawmaking power that is (1) expressly granted to them by the state; (2) necessarily and fairly implied from that grant of power; or (3) crucial to the existence of local government. *See* DILLON, *supra* note 26, § 9, at 28–29.

29. *See* DILLON, *supra* note 26, § 55, at 173; Briffault, *Our Localism*, *supra* note 26, at 7–8 ("The local government is an agent of the state, exercising limited powers at the local level on behalf of the state."); Diller, *Intrastate Preemption*, *supra* note 28, at 1122–23 ("Under Dillon's Rule, municipalities possessed only those powers indispensable to the purposes of their incorporation as well as any others expressly bestowed upon them by the state."). Dillon's formulation embodied a laissez-faire constitutionalist vision favoring centralized state control by those "men best fitted by their intelligence" to govern responsibly. DILLON, *supra* note 26, § 9, at 21–22. *See also* Kenneth A. Stahl, *The Suburb as a Legal Concept: The Problem of Organization and the Fate of Municipalities in American Law*, 29 CARDOZO L. REV. 1193, 1206–07 (2008) ("Dillon lamented that cities were not administered by those 'best fitted by their intelligence, business experience, capacity, and moral character' and that their management was 'too often unwise and extravagant.'").

30. Missouri adopted the nation's first home rule constitutional provision in 1875. *See* MO. CONST. of 1875, art. IX, §§ 16, 20 (authorizing cities with populations of more than 100,000 to frame a charter and providing protection from inconsistent state special laws). The year after Missouri adopted its constitutional home rule article, St. Louis became the first city to enact a home rule charter. *See* Henry J. Schmandt, *Municipal Home Rule in Missouri*, 1953 WASH. U. L. Q. 385, 388.

31. *See* Briffault, *Our Localism*, *supra* note 26, at 10–11.

32. *See generally* David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255 (2003) [hereinafter Barron, *Reclaiming Home Rule*] (exploring the history of home rule through the nineteenth and twentieth centuries). This judicial resistance sparked the first significant doctrinal effort to subordinate cities to the states. *See id.* at 2284. The idea that preserving a "traditional" conception of local governmental power required checking efforts to expand it in "novel" ways underlaid an important and widely accepted late-nineteenth-century rule of judicial interpretation. *Id.* at 2285.

persists as the fundamental understanding of the city-state relationship today.[33]

2. *Home Rule's Constitutional Revolution*

As the Industrial Revolution took hold at the end of the nineteenth century, populations in American cities grew rapidly.[34] And yet, cities failed to adapt.[35] Corruption and poor fiscal management defined city governments, and their inhabitants faced unsanitary and dangerous living conditions.[36] Home rule emerged as a pragmatic tool to address urban crises.[37] This instrumental origin shaped home rule's trajectory through two waves of reform, each responding to specific governance failures rather than embracing local autonomy as an end in itself.

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33. *See* David J. Barron, *The Promise of Cooley's City: Traces of Local Constitutionalism*, 147 U. PA. L. REV. 487, 509 (1999) [hereinafter Barron, *The Promise of Cooley's City*] ("Dillon's work has become such an established part of modern legal culture that, if there is one rule concerning local governments about which most persons are aware, it is his assertion that state law alone defines the scope of local governmental independence."). Dillon's subordination principle proved so compelling that the Supreme Court constitutionalized it in *Hunter v. City of Pittsburgh*. *See* 207 U.S. 161, 179 (1907) (holding that there is no constitutional right to local self-government). *Hunter*'s embrace of the Dillon framework reverberates through subsequent Supreme Court decisions and scholarship, establishing the principle that states may eliminate cities whenever they choose. *See, e.g.*, Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 71 (1978) ("[*Hunter*] continues to have substantial constitutional significance in emphasizing the extraordinarily wide latitude that States have in creating various types of political subdivisions and conferring authority upon them."); Barron, *The Promise of Cooley's City*, *supra*, at 509.

34. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2289 ("Population growth doubled in many large cities decade after decade as the twentieth century approached and turned.").

35. *See id.*

36. *See id.* ("Their housing conditions were deplorable. Their sanitary conditions were thought scandalous."). Municipal governance thus became a focal point of legal scholarship. *See id.* ("More articles were written on municipal government between 1882 and 1892 than had been written in the rest of that century.").

37. The home rule movement sought to adjust, rather than repudiate, Dillon's Rule. The political subdivision idea had fully taken hold—it was taken for granted in the late nineteenth century that "state law alone define[d] the scope of local governmental independence." Barron, *The Promise of Cooley's City*, *supra* note 33, at 509. Home rule powers were understood as a grant from a state to its cities, rather than a codified guarantee of substantive self-governance. *See, e.g.*, Barron, *Reclaiming Home Rule*, *supra* note 32, at 2295 ("That limit on [city charters'] scope was rooted in state constitutional provisions that granted home rule only over matters of traditionally 'local' concern."). Nonetheless, the movement signaled a meaningful shift: if Dillon's Rule was founded on overt skepticism of municipal power, home rule suggested renewed faith. *See* Diller, *Intrastate Preemption*, *supra* note 28, at 1127.

The first home rule grant came as an amendment to the Missouri Constitution in 1875.[38] The grant, soon replicated across the country, gave cities "home rule immunity"—exclusive jurisdiction over matters of "local" concern[39]—creating a system of quasi-dual sovereignty within the states.[40] Courts labeled this model "home rule immunity" because the constitutional provisions immunized municipal enactments from state legislative interference within the protected sphere of local affairs. Urban reformers championed this constitutional shift as a means of addressing the "urban crisis," though they disagreed sharply about whether home rule should preserve limited government or enable expanded municipal services.[41]

Home rule immunity failed to deliver on its reformist promise, instead enabling judicial constriction of municipal authority and suburban fragmentation that entrenched metropolitan inequality. State court judges tasked with identifying which matters qualified as distinctly "local" usually defined that category narrowly, limiting municipal policymaking authority.[42] By the mid-century,

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38. *See supra* note 30 and accompany text addressing Missouri's home rule grant.

39. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2290 ("After home rule, many local governments, particularly large ones, could adopt charters that set forth their own powers and enabled them to appoint their own officers. They were no longer governed by the precise terms of express and specific state legislation. What once had been mere creatures of state legislatures were no longer so.").

40. *See* Diller, *Intrastate Preemption*, *supra* note 28, at 1124–25 ("[M]any early home-rule regimes established essentially separate—and exclusive—sovereigns whose areas of authority did not overlap, thereby creating little potential for preemption."). Whereas early home-rule regimes sought to avoid conflict by assigning exclusive spheres of authority, contemporary state-local governance is defined by deliberate overlap, with administrative institutions tasked with managing—rather than eliminating—intergovernmental friction. *See, e.g.*, *infra* Part II.A (identifying Massachusetts as an example of a home-rule regime that deliberately embraces overlapping state and local authority).

41. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2291 ("The home rule idea proved popular among urban reformers precisely because it served as a placeholder for an array of conflicting concrete proposals."). These urban reformers differed in their visions ranging from preserving "the idealized small-scale, low-tax, low-debt, highly privatized . . . ideal of local government" to those who desired more "collective action" and "the municipalization of formerly private activities." *Id.* at 2294, 2309.

42. *See* Diller, *Intrastate Preemption*, *supra* note 28, at 1125. The cities that boomed in the early twentieth century did so through influence at the state level and expansion by annexation, not home rule immunity. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2323–24 ("Substantive disagreements over the content of home rule, therefore, did not detract from the shared conviction that the urban crisis could not be solved by making Dillon's Rule even stricter or state legislative control more complete."). *Contrast id.*, *with* Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 538 (1985) (in which the Supreme Court abandoned a similar doctrine established in National League of Cities v. Usery, 426 U.S. 833 (1976)). The *Usery* Court held that the commerce clause forbade Congress from interfering with "traditional government functions" at the state and local level. *Usery*, 426

home rule immunity's "local" limitation began to threaten cities' very existence.[43] As white flight afflicted urban centers, newly incorporated suburbs gained home rule immunity of their own, preventing cities from annexing them.[44] The increase in incorporated suburbs dried up urban tax bases and entrenched racial and economic division in metropolitan areas.[45] Residents of upper and middle-class Philadelphia suburbs, for instance, ranked maintaining their community's social character above both public services and low tax rates, defining that goal explicitly as keeping out "undesirables."[46] Home rule immunity "increasingly seemed a means through which the privileged insulated themselves in suburbia"[47]—antithetical to the redistributive potential reformers once saw in city government.[48]

The American Municipal Association (now the National League of Cities) began the "second wave" of home rule when it drafted the "Model Constitutional Provisions for Municipal Home Rule" in

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U.S. at 852. The *Garcia* Court, by a 5–4 vote, rejected that test, arguing lower courts had difficulty identifying which state and local functions were "traditional." *Garcia*, 469 U.S. at 538–39.

43. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2326 ("If the scope of local home rule initiative also determined the scope of local home rule immunity from state preemption . . . both aspects of home rule would shrink to nothing.").

44. *See generally id.* at 2323–25 (detailing the shift from consensual suburban consolidation with cities to home rule-protected suburban resistance, as territorial integrity principles originally meant to empower urban centers instead enabled wealthy suburbs to separate from increasingly segregated central cities).

45. *See generally id.* (detailing how suburban invocation of territorial integrity principles prevented central-city annexation, fragmenting metropolitan areas fiscally while creating spatial divisions along racial and economic lines). For a more detailed examination of the social and economic impacts of suburban incorporation, *see* Sheryll D. Cashin, *Localism, Self-Interest and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2016–21, 2026–27 (2000).

46. *See* MICHAEL N. DANIELSON, THE POLITICS OF EXCLUSION 28 (1976) ("Residents of upper- and middle-
class suburbs in the Philadelphia area ranked maintenance of their community's social characteristics—defined in terms of keeping out 'undesirables' and maintaining the 'quality' of residents—as a more important objective for local government than either the provision of public services or maintenance of low tax rates.").

47. Barron, *Reclaiming Home Rule*, *supra* note 32, at 2325.

48. *See generally id.* at 2323–37 (noting how suburban home rule immunity inverted early reformers' vision of empowered urban centers pursuing redistributive social agendas, instead enabling privileged suburbs to insulate themselves from both taxation and the urban poor).

1953,[49] which became widely adopted.[50] This initiative suggested that municipalities could have unlimited legislative authority, subject to total preemption authority by the states.[51] The model balanced local power with state control. Cities gained broad authority to tax suburban commuters, enter interlocal agreements,[52] and regulate beyond their boundaries, but state legislatures retained unrestricted power to override any local measure.[53] This arrangement offered a solution to metropolitan fragmentation that judicial home rule immunity had failed to provide.[54] Unlike courts, which cabined city authority within rigid spheres, legislatures could fashion flexible rules for incorporating new municipalities or altering local boundaries through annexation, consolidation, or dissolution.[55] Legislative home rule thus vindicated Dillon's "political subdivision" idea as

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49. *See* AM. MUN. ASS'N, MODEL CONSTITUTIONAL PROVISIONS FOR MUNICIPAL HOME RULE 6 (1953) (proposing model where state legislatures retain nearly plenary power to modify home rule, subject to other constitutional constraints). The "second wave" of Home Rule looked to inject more flexibility into urban cities' legislative authority. *See* Diller, *Intrastate Preemption*, *supra* note 28, at 1125–26 ("Not having to worry about confining their policymaking to some ambiguous 'local' sphere, cities would thus have greatly expanded opportunities to make policy.").

50. *See* Nestor M. Davidson, *Principles of Home Rule for the 21st Century*, 100 N.C. L. REV. 1329, 1330 (2022) [hereinafter Davidson, *Principles of Home Rule*] (highlighting the wave of constitutional change in the years that followed the model home rule provisions).

51. *See* AM. MUN. ASS'N, *supra* note 49, at 6; *see also* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2326–27.

52. Local governments routinely contract with each other to deliver services, administer grant money, coordinate emergency responses, and manage infrastructure projects. *See* Daniel B. Rosenbaum, *The Local Lawmaking Loophole*, 133 YALE L.J. 2613, 2625–26 (2024); Barron, *Reclaiming Home Rule*, *supra* note 32, at 2371 (tracing how mid-twentieth-century annexation law shaped interlocal cooperation by examining Charlottesville's expansion efforts, which pressured surrounding Albemarle County to negotiate revenue-sharing arrangements with vulnerable unincorporated suburbs rather than risk their annexation by the city). Local officials have embraced these interlocal agreements as mechanisms for forging administrative efficiencies amid limited resources. *See* Rosenbaum, *supra*, at 2627. By contracting with neighboring and overlapping governments, a local entity can draw upon funding and technical skills that it does not otherwise possess alone, benefiting residents across the region. *See id.* at 2624.

53. *See* AM. MUN. ASS'N, *supra* note 49, at 10–11; *see also* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2328 ("Significantly, this new emphasis on overcoming the boundary problem made a focus on the *substance* of local power much less relevant than it had been to the first wave of home rulers") (emphasis in original).

54. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2328 ("[T]o make a charter unit indestructible would be to permit a primary city to be ringed by insulated suburban cities without hope of genuine metropolitan integration being achieved.").

55. *See id.* (explaining that, unlike courts applying rigid "local versus state" distinctions, legislatures could adopt flexible, generally applicable rules governing municipal incorporation and boundary changes, including annexation, consolidation, and dissolution).

constitutional fact by the mid-1950s.[56] The resulting overlap in state and local authority created potential for preemption disputes, but proponents understood that overlap as a virtue of legislative home rule, not a constitutional problem.[57]

The home rule movement appeared to advance local democracy,[58] yet its evolution demonstrates that institutional reforms responded to specific governance crises rather than any principled commitment to municipal autonomy.[59] Each wave of home rule innovation, from constitutional immunity to legislative grants, redistributed authority between state and local actors to address particular problems, with that redistribution subject to revision when circumstances changed.[60] This pattern established the framework within which contemporary home rule disputes arise: municipalities possess broad formal powers but operate within a flexible hierarchy where state authority remains supreme, creating persistent uncertainty about the boundaries of local policymaking.

3. *The Modern Home Rule Landscape*

The historical evolution of home rule produced two dominant models that structure contemporary state-local relations:

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56. *See* Hunter v. City of Pittsburgh, 207 U.S. 161, 178–79 (1907) (holding that there is no constitutional right to local self-government) (citing DILLON, *supra* note 26, at §§ 66, 66(a)).

57. *See* Diller, *Intrastate Preemption*, *supra* note 28, at 1124 ("That is, even if the state legislature wanted to preempt a city ordinance that regulated a matter of 'local' concern, it was prohibited from doing so, particularly if the state's home rule system was enshrined in the state's constitution."); *see also* RICHARD BRIFFAULT ET AL., CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 409–13 (9th ed. 2022) [hereinafter Briffault, *Cases and Materials*] (explaining that legislative home rule deliberately permits overlapping state and local authority, with conflicts resolved through ordinary legislative preemption rather than constitutional limits, and that the resulting preemption disputes were understood as a feature—not a flaw—of the home rule system).

58. *See* Diller, *Intrastate Preemption*, *supra* note 28, at 1124 ("The home-rule movement of the late nineteenth and early twentieth centuries has most commonly been described as a pro-democratic effort to increase local autonomy.").

59. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2281 (explaining that early home rule reforms arose from perceived failures of existing state-local arrangements to address urban governance crises, and that the appeal to home rule reflected a pragmatic effort to mobilize local power rather than a principled commitment to municipal autonomy).

60. *See id.* at 2281, 2326–27 (explaining that successive waves of home rule reform emerged in response to distinct governance challenges, such as rapid urbanization and suburbanization, and reallocated authority between state and local actors through varying combinations of local initiative and state preemption, with those allocations understood as flexible and subject to revision rather than as permanent settlements of municipal autonomy).

"*imperio*" and "legislative" home rule, though many states combine elements of both approaches.[61] The legislative model has become the prevailing framework,[62] but understanding both models clarifies how different state constitutional structures allocate power between states and municipalities. The *imperio* model—short for *imperium in imperio* or "empire within an empire"—constitutionalizes spheres of exclusive local authority over core municipal affairs, insulating those domains from legislative interference.[63] Courts nonetheless retain power to demarcate those spheres' boundaries, replicating the interpretive challenges that plagued early home rule immunity.[64]

The legislative approach grants local governments broad default authority to initiate policy[65] but provides minimal immunity from state legislative override.[66] This model prioritizes flexibility over constitutional protection: legislatures may expand or contract local authority as circumstances demand.[67] Yet, as Professor Paul Diller has observed, legislative home rule merely substituted one adjudicative forum for another—courts applying preemption doctrine replaced courts applying the local-statewide distinction. This leaves interpretation of contested boundaries to judges despite reformers' efforts to vest that authority in legislatures.[68]

Modern home rule provisions reflect considerable doctrinal complexity beyond these basic models. Some provisions broadly

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61. *See* Briffault, *Cases and Materials*, *supra* note 57, at 409–13.
62. *See id.* at 411.
63. *See id.* at 408–11.
64. *See id.* at 411–12.
65. *See id.* at 410–11. "Legislative" home rule provisions tend to derive from the 1953 model constitutional article crafted by Professor Jefferson B. Fordham and promulgated by the American Municipal Association, which later became the National League of Cities. *See generally* AM. MUN. ASS'N, *supra* note 49.
66. Briffault, *Cases and Materials*, *supra* note 57, at 409–11.
67. *See id.* at 411.
68. *See* Diller, *Intrastate Preemption*, *supra* note 28, at 1126. This persistent judicial role in policing state-local boundaries suggests that neither model has solved the fundamental problem of determining who prevails when state and local authority conflict—a problem that administrative agencies, with their technical expertise and political accountability, may be better positioned to address. To be sure, administrative superintendence would not eliminate judicial review entirely: courts would retain authority to review agency determinations under established administrative law standards. But judicial review of agency action differs meaningfully from direct judicial construction of constitutional home rule provisions. For further discussion, *see infra* Part III.A (explaining that judicial review of agency action channels courts into deferential, record-based review of reasoned decision-making under statutory standards, rather than forcing courts to engage in de novo constitutional line-drawing over the scope of municipal authority).

empower local governments while carving out specific policy domains from local authority, such as felony crimes or private law subjects.[69] Others enumerate specific areas where localities may legislate rather than establishing general grants with exceptions.[70] Procedural requirements add further variation: legislative home rule provisions often require that state preemption occur only through general laws and may also condition preemption on supermajority votes or express statutory statements.[71] Despite their doctrinal differences, both models perpetuate home rule's pragmatic character—each allocates state power to address governance problems rather than vindicating local self-

69. *See* Paul A. Diller, *The City and the Private Right of Action*, 64 STAN. L. REV. 1109, 1118–21 (2012) (recounting the historical development and interpretation of the "private law" exception to home rule initiative authority); Gary T. Schwartz, *The Logic of Home Rule and the Private Law Exception*, 20 UCLA L. REV. 671, 685 n.65 (1973) ("[A] felony exception . . . could well be thought to set forth a strong constitutional policy not reversible by the legislature.").

70. Constitutional text and state court interpretation often distinguish between domains of local legal autonomy, which the National League of Cities has categorized into structural, personnel, functional, and fiscal home rule. *See* Paul A. Diller, *Reorienting Home Rule: Part 2—Remedying the Urban Disadvantage Through Federalism and Localism*, 77 LA. L. REV. 1045, 1066 (2017) [hereinafter Diller, *Reorienting Home Rule*]. Structural home rule refers to the forms of governance; personnel home rule refers to employment policies; functional home rule refers to regulation; and fiscal home rule refers to revenue and spending policies. *Id.* at 1066–67; *see also id.* at 1105–14 (cataloging the variable protection states provide across these domains). Courts also gesture at times towards a fifth category, when local governments act in their "proprietary," or private property owning, capacity. *See, e.g.*, Hunter v. City of Pittsburgh, 207 U.S. 161, 179–80 (1907) (distinguishing municipal property held in a governmental capacity, subject to plenary legislative control, from property held in a private or proprietary capacity; and suggesting that legislative authority over the latter may be limited, particularly as to uncompensated takings).

71. *See generally* Anthony Schutz, *State Constitutional Restrictions on Special Legislation as Structural Restraints*, 40 J. LEGIS. 39 (2014) (discussing state constitutional restrictions on special legislation as structural constraints on state preemption and explaining how general-law requirements and related procedural devices developed to limit ad hoc legislative interference with local governance); Justin Long, *State Constitutional Prohibitions on Special Law*, 60 CLEV. ST. L. REV. 719 (2012) (tracing the adoption of state constitutional prohibitions on special laws and showing how general-law requirements functioned as procedural limits on state preemption of local authority, often reinforced through supermajority and express-statement rules designed to restrain targeted legislative overrides). For example, Illinois does not recognize "implied preemption"—judicial displacement of local authority inferred from legislative intent rather than statutory text—and instead requires preemption to appear expressly. *See* ILL. CONST. art. VII, § 6(i). Illinois, like other states, imposes additional procedural hurdles to preemption such as supermajority votes or the requirement that any preemption bill be enacted in successive legislative sessions. *See, e.g.*, *id.* §§ 6(g), (l) (requiring three-fifths legislative vote for special laws and passage in two successive sessions for certain local government restructuring); N.Y. CONST. art. IX, § 2(a)(1) (requiring special acts affecting local governments to be approved by the affected locality or passed by supermajority vote).

determination as a constitutional principle.[72] These varied constitutional arrangements depend entirely on courts and legislatures to resolve boundary disputes, institutions that lack the technical expertise and institutional capacity to manage the ongoing coordination challenges inherent in overlapping state and local regulatory authority—a gap that state administrative agencies possess the tools to fill.

B. THE ADMINISTRATIVE STATE ASCENDANT: THE DEVELOPMENT OF AGENCY AUTHORITY

State administrative agencies have evolved dramatically over the past century—from specialized Progressive Era commissions into sprawling regulatory bodies that now touch nearly every aspect of governance.[73] Unlike federal administrative law, which operates under the uniform Administrative Procedure Act (APA),[74] state administrative systems developed in piecemeal fashion, shaped by local political cultures and specific governance crises.[75] This diversity makes state agencies both more adaptable to particular intergovernmental conflicts and more difficult to analyze through a single doctrinal lens. Understanding this

72. Dillon's Rule persists in a small number of states but is widely regarded as incompatible with modern home rule regimes. *See* Diller, *Reorienting Home Rule*, *supra* note 70, at 1065. Even in states that have adopted home rule, Dillon's Rule often continues to govern certain local governments. Home rule commonly applies only to jurisdictions that satisfy population thresholds and affirmatively opt in, typically through adoption of a home rule charter, and many eligible local governments do not do so. *See id.* at 1169. Moreover, some states extend home rule to cities but not counties, and home rule generally attaches only to local governments of general jurisdiction. Although these entities perform the core democratic functions of local governance, they are outnumbered by special districts and other limited-purpose entities, which typically lack home rule authority. *See id.* at 1163–64.

73. *See* Miriam Seifter, *Understanding State Agency Independence*, 117 MICH. L. REV. 1537, 1559 (2019) ("The sprawling state bureaucracies that accumulated fed the movement for gubernatorial control. Commentators and public officials alike came to view state administration as 'unwieldy, wasteful, and thoroughly unbusinesslike . . . .'") (quoting JAMES QUAYLE DEALEY, GROWTH OF AMERICAN STATE CONSTITUTIONS 165 (1915)).

74. *See* 5 U.S.C. §§ 551–559.

75. *See generally* Arthur Earl Bonfield, *The Federal APA and State Administrative Law*, 72 VA. L. REV. 297 (1986) (outlining how the federal APA influenced the enactment of state administrative procedure acts in different ways, depending on local interests and other factors). *Cf.* Gillian Metzger, *The Administrative Procedure Act: An Introduction*, POVERTY & RACE RESEARCH ACTION COUNCIL (Apr. 2017), https://www.prrac.org/pdf/APA.summary.ProfMetzger.pdf [https://perma.cc/37TD-V2MV] ("[The Federal APA] sets out the default rules that govern how federal agencies act and how they can be challenged, and embodies important administrative law norms, such as procedural regularity and reasoned decision-making.").

institutional evolution illuminates what advantages agencies might offer over traditional judicial and legislative approaches to local governance—advantages that Part III explores in detail.

1. *The Rise and Rise of State Agencies*

The administrative state's expansion fundamentally reshaped the separation of powers within state government. State administrative agencies evolved through the same period as home rule, transforming from narrow regulatory commissions into sophisticated institutions capable of managing complex governance relationships.[76] The Progressive Era laid the groundwork for modern state administrative systems.[77] Reformers established regulatory commissions to compensate for legislatures' limitations in addressing the complexities of industrialization.[78] These agencies exercised quasi-legislative and quasi-judicial powers,[79] which courts largely upheld provided that agencies operated within statutory limits.[80] The New Deal further entrenched state agencies as key instruments of governance as states assumed responsibility for implementing federal economic

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76. *See supra* Part I.A and accompanying discussion (tracing the historical emergence of modern home rule alongside the expansion of state governance mechanisms beyond direct legislative control); *see also* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2290–2304 (situating home rule within the broader development of state governance institutions and arguing that changes in local autonomy reflected shifting state strategies for managing complex regulatory and political relationships rather than fixed commitments to municipal independence).

77. *See* Edward L. Glaeser & Andrei Shleifer, *The Rise of the Regulatory State* 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 8650, 2001) ("During the Progressive Era, regulatory agencies at both the state and the federal level began to replace courts in anti-trust policy, railroad pricing, food and drug safety, and many other areas.").

78. *See* Jon C. Teaford, *State Administrative Agencies and the Cities 1890–1920*, 25 AM. J. LEGAL HIST. 225, 225 (1981) ("It is commonplace to describe the years 1890 to 1920 as an era in which cities successfully sought greater freedom from the state.").

79. *See id.* ("Instead, they sought to limit the legislative authority of elected amateurs in the state house of representatives and senate while expanding the professional and expert dictation of administrators in state agencies."); Jack M. Beermann, *The Never-Ending Assault on the Administrative State*, 93 NOTRE DAME L. REV. 1599, 1602 (2018) (describing the administrative state as defined by delegated discretion, partial institutional independence, the combination of rulemaking, enforcement, and adjudicatory functions, robust investigatory authority, and deferential judicial review).

80. *See* Jim Rossi, *Institutional Design and the Lingering Legacy of Antifederalist Separation of Powers Ideals in the States*, 52 VAND. L. REV. 1167, 1172 (1999) ("In many states, courts impose substantive limits on delegation. Legislatures are not allowed to delegate to agencies unless they have articulated reviewable standards to guide agency discretion, even where procedural safeguards are in place. At the same time, many states accept a legislative oversight role for agency rulemaking not allowed Congress.").

and social programs.[81] The rapid expansion of state bureaucracies raised concerns regarding procedural fairness, agency discretion, and judicial review, and soon, standardization efforts gained momentum.[82]

Governors consolidated control over state agencies.[83] Historically constrained by plural executive structures, governors gained greater authority over agency appointments, budgeting, and rulemaking.[84] Legislatures, seeking to maintain oversight, established administrative rules committees and, in some cases, reserved the power to reject agency regulations.[85] Courts refined their approach to agency decisions, generally adopting deferential review standards that allowed agencies discretion in interpreting statutes and resolving technical issues.[86] The 1970s brought dual pressures for transparency and constraint: states enacted sunshine laws requiring public meetings and record disclosure,[87]

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81. *See* Jessica Bulman-Pozen, *Federalism as a Safeguard of the Separation of Powers*, 112 COLUM. L. REV. 459, 473 n.57 (2012) ("The New Deal provided a role for states in fiscal programs such as Aid to Families with Dependent Children, but regulatory cooperative federalism began in earnest in the 1960s.").

82. In 1946, the Model State Administrative Procedure Act (MSAPA) was drafted in response to the enactment of the federal APA to guide state legislatures in codifying agency procedures. *See* Casey Adams, Note, *Home Rules: The Case for Local Administrative Procedure*, 87 FORDHAM L. REV. 629, 634 (2018) ("The drafters of the MSAPA, recognizing that the details of administrative and agency procedure and jurisdiction vary greatly between states, focused on crafting a statute that captured 'essential features' of administrative procedure so that it could be adapted and applied broadly."). Over the following decades, nearly every state enacted an APA, imposing uniform requirements for notice-and-comment rulemaking, adjudication, and judicial oversight. *See id.* ("Today, forty states and the District of Columbia have administrative procedure acts that were adopted in whole or in part from a version of the MSAPA."). Some states adopted comprehensive frameworks while others exempted specific agencies or functions. *See id.* at 644 (explaining that although nearly every state adopted some form of administrative procedure act modeled on the MSAPA, states diverged substantially in implementation, with some enacting comprehensive, generally applicable regimes and others exempting particular agencies, proceedings, or governmental functions).

83. *See generally* Miriam Seifter, *Gubernatorial Administration*, 131 HARV. L. REV. 483, 491 (2017) [hereinafter Seifter, *Gubernatorial Administration*] ("[G]overnors may work to displace or enhance local authority as a means of increasing the governor's own policy agenda.").

84. *See id.* at 497 ("In the postwar era, centralization of state executive branches—and the rise of gubernatorial administration—really took hold.").

85. *See id.* ("Several states formed reorganization commissions or committees, enacted reorganization legislation, and proposed constitutional changes that would extend the reorganization effort.").

86. *See, e.g.*, Op. of the Justs. to the House of Representatives, 333 N.E.2d 388, 392 (Mass. 1975) ("[S]pecific standards need not be set out in the statute where the agency can find general guidance in the purposes and overall scheme of the statute.").

87. *See* Mark Fenster, *Seeing the State: Transparency as Metaphor*, 62 ADMIN. L. REV. 617, 622 (2010) ("The transparency movement, which came of age as part of what Richard

while deregulatory reforms introduced gubernatorial vetoes over regulations and sunset provisions to limit agency authority.[88]

2. *The Modern State Administrative State*

The last thirty years have witnessed renewed scrutiny of agency authority.[89] Several states have rejected state judicial deference to agency interpretations in anticipation of and following *Loper Bright Enterprises v. Raimondo*, requiring courts to independently determine statutory meaning.[90] Others have adopted central panels of administrative law judges to separate adjudication from policymaking.[91] Meanwhile, the federal government's retreat from certain regulatory areas has prompted state agencies to assert greater authority over environmental

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Stewart called the 'reformation' of American administrative law in the 1970s and after, suggests that the state must and can be made visible.").

88. *See* Seifter, *Gubernatorial Administration*, *supra* note 83, at 503 ("Whereas Presidents and their legal counselors have hesitated to claim veto power over agency action, a recent wave of centralized review programs in the states has given governors greater and more explicit review power.").

89. *See infra* note 246 and accompanying text for an overview of the forceful anti-administrative critique that has emerged in the last two decades.

90. 603 U.S. 369 (2024). Although *Chevron* addressed federal administrative law, courts in thirty-eight states give at least some deference to state agency interpretations of ambiguous statutes. *See, e.g.*, Ctr. for Biological Diversity, Inc. v. Pub. Utilities Com., 573 P.3d 28, 35 (Cal. 2025) (distinguishing between quasi-legislative regulations that bind courts when authorized and agency interpretations of statutory meaning that receive respectful but nonbinding consideration akin to *Chevron*–style deference, with courts retaining independent judgment over statutory interpretation). States fall into three categories: those applying strong *Chevron*–like deference (e.g., Massachusetts, Illinois, Idaho), those rejecting deference entirely through judicial precedent, statute, or constitutional amendment (e.g., Ohio, Idaho, Florida, Arkansas, Delaware, Wisconsin), and those occupying middle ground by applying *Skidmore* deference calibrated to the agency's reasoning and expertise (e.g., Colorado, New York, North Carolina, Virginia). *See, e.g.*, TWISM Enters., L.L.C. v. State Bd. of Registration for Pro. Eng'rs & Surveyors, 223 N.E.3d 371, 381 (Ohio 2022) ("Ohio's statutory scheme supports the view that any judicial deference to administrative agencies is permissive rather than mandatory and may occur only when a statutory term is ambiguous."); Nieto v. Clark's Mkt., Inc., 488 P.3d 1140, 1149 (Colo. 2021) ("Indeed, just as we decline to follow *Brand X*, we are unwilling to adopt a rigid approach to agency deference that would require courts to defer to a reasonable agency interpretation of an ambiguous statute even if a better interpretation is available.") (citation omitted).

91. *See* ARTHUR E. BONFIELD, STATE ADMINISTRATIVE RULE MAKING § 8.3 (1986) (explaining that a number of states created central panels of administrative law judges to promote decisional independence and to separate adjudication from agency policymaking); Seifter, *Gubernatorial Administration*, *supra* note 83, at 520 (noting that state oversight takes both strong and weaker forms depending on the level of interest by the state government).

protection, labor standards, and consumer rights.[92] This evolution demonstrates that state administrative agencies developed the institutional capacity, procedural sophistication, and technical expertise necessary to manage overlapping regulatory jurisdictions—capabilities that courts and legislatures lack when resolving home rule disputes.

Despite ongoing changes to state administrative schemes, several principles remain constant. State agencies must derive authority from legislative enactments, adhere to due process in rulemaking and adjudication, and remain subject to judicial, legislative, and executive oversight. Once created, state administrative agencies are "creature[s] of statute" possessing "only those authorities conferred upon [them]," in the same vein as their federal counterparts.[93]

State administrative agencies' basic functions do not differ significantly from their federal counterparts: they issue regulations, adjudicate disputes, conduct inspections, and determine benefits.[94] Most states have APAs based on the 1961 Model State Administrative Procedure Act or subsequent

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92. *See, e.g.*, Uma Outka, *Federal-State Conflicts Over Environmental Justice—Parts I and II*, CTR. FOR PROGRESSIVE REFORM (Nov. 13, 2023), https://progressivereform.org/cpr-blog/federal-state-conflicts-over-environmental-justice/ [https://perma.cc/6K8Z-8Q4P] (illustrating how states make consequential environmental decisions when federal statutes delegate permitting authority to them under cooperative federalism frameworks, using Louisiana and Alabama as examples).

93. *See, e.g.*, Mountaineer Disposal Serv., Inc. v. Dyer, 197 S.E.2d 111, 115 (W.Va. 1973) ("[A]dministrative agencies and their executive officers are creatures of statute and delegates of the Legislature."); *cf.* Michigan v. Env't Prot. Agency, 268 F.3d 1075, 1081 (D.C. Cir. 2001) ("[The] EPA is a federal agency—a creature of statute. It has no constitutional or common law existence or authority, but only those authorities conferred upon it by Congress.").

94. *See* C. Douglas Floyd, *Plain Ambiguities in the Clear Articulation Requirement for State Action Antitrust Immunity: The Case of State Action*, 41 B.C. L. REV. 1059, 1064–65 (2000) (discussing state administrative agencies' adjudication and rulemaking functions); Arthur E. Bonfield, *The Federal APA and State Administrative Law*, 72 VA. L. REV. 297, 336 (1986) [hereinafter Bonfield, *The Federal APA and State Administrative Law*] (explaining that despite variations in institutional detail, state administrative law largely tracks the federal APA in structure and core concepts, reflecting substantial convergence rather than sharp divergence). For discussions of the role and function of administrative agencies in particular states, *see* William L. Corbett, *Montana Administrative Law Practice: 41 Years After the Enactment of the Montana Administrative Procedure Act*, 73 MONT. L. REV. 339 (2012); Nancy D. Freudenthal & Roger C. Fransen, *Administrative Law: Rulemaking and Contested Case Practice in Wyoming*, 31 LAND & WATER L. REV. 685 (1996) (stating that in addition to executing the law, "the executive branch of state government also functions as its own legislature and judiciary").

iterations.[95] But substantial variety exists within and between states on questions of structure, practice, and authority.[96]

A century of home rule reform has redistributed power between states and cities, but it has never seriously questioned whether courts should police those boundaries in the first place. Meanwhile, state administrative agencies have evolved into sophisticated governance institutions with precisely the capabilities that home rule disputes demand: technical expertise to evaluate complex policy questions, political accountability to balance competing interests, and institutional design for ongoing calibration rather than episodic intervention. The mismatch is striking. Home rule's unresolved tensions persist because courts—institutions that resolve conflicts case by case and judgment by judgment, even when issuing forward-looking relief—remain tasked with managing state—local boundaries that call for ongoing supervision, adjustment, and policy calibration of the sort administrative agencies are designed to provide. The question is not whether administrative superintendence would improve on the current system, but whether existing legal frameworks can accommodate that shift. Massachusetts demonstrates this mismatch as its constitutional home rule provisions create persistent friction that state agencies could resolve more effectively than courts.

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95. *See* Michael Asimow, *Guidance Documents in the States: Toward A Safe Harbor*, 54 ADMIN. L. REV. 631, 633 (2002) (outlining the development of state APAs).

96. *See* Bonfield, *The Federal APA and State Administrative Law*, *supra* note 94, at 302 (explaining that many states rejected various provisions within the Model State Administrative Procedure Act). In general terms, when it comes to the role and function of state agencies within state constitutional structures, states are both sufficiently similar to, and sufficiently distinct from, the federal system to make a kind of comparative state/federal constitutionalism a worthwhile endeavor in this context. *Cf.* Rachel E. Barkow, *Federalism and Criminal Law: What the Feds Can Learn from the States*, 109 MICH. L. REV. 519, 521 (2011) (illustrating how state systems can diverge meaningfully from federal arrangements while remaining structurally comparable, thereby supporting cross-level institutional comparison rather than categorical separation); Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1761, 1766 (2010) (examining state courts as sites of methodological experimentation in statutory interpretation and showing substantial convergence around textualist approaches that nonetheless diverge in context-sensitive ways from federal practice).

II. MAKING THEIR OWN BAY: HOME RULE AND ADMINISTRATIVE AUTHORITY IN MASSACHUSETTS

Massachusetts presents a striking paradox in its approach to home rule that exposes the fundamental inadequacy of relying on courts and legislatures to manage state-local relations.[97] The Commonwealth has developed sophisticated administrative frameworks to superintend state agency authority while leaving municipalities—which exercise analogous delegated powers—without institutional support to navigate their concurrent jurisdiction with the state. Massachusetts grants municipalities substantial charter-making powers while simultaneously imposing constraints that render those powers largely symbolic.[98] The 1966 Home Rule Amendment ostensibly established local self-governance, yet municipalities remain subject to rigid legislative supremacy with no effective recourse when the state overrides local decisions.[99] Massachusetts administrative agencies operate differently.[100] The Department of Public Utilities, the Department of Environmental Management, and the Division of Insurance each develop specialized expertise, issue binding regulations, and

97. Massachusetts offers an ideal case study for examining home rule dysfunction and potential administrative solutions. The Commonwealth's constitutional tradition has profoundly shaped American federalism—its 1780 Constitution, drafted by John Adams when he had become "undoubtedly the greatest expert on constitutions in America, if not in the world," served as a principal model for other state constitutions and the federal Constitution itself. Samuel E. Morison, *The Formation of the Massachusetts Constitution*, 40 MASS. L.Q. 1 (No. 4, Dec. 1955); Charles H. Baron, *The Supreme Judicial Court in Its Fourth Century: Meeting the Challenge of the "New Constitutional Revolution,"* 77 MASS. L. REV. 35, 37 (1992) (noting that the Massachusetts Constitution is "older than the U.S. Constitution by nine years—and perhaps 'the oldest written working constitution in the world'—[and] served as a principal model for the U.S. Constitution"). Massachusetts's 1966 Home Rule Amendment promised substantial municipal self-governance while preserving legislative supremacy, creating precisely the institutional tension this Note addresses. *See infra* Part 0.A. The Commonwealth also maintains sophisticated administrative agencies with well-developed regulatory frameworks, providing direct comparison for how the state structures different forms of delegated authority. *See infra* Part 0.B.

98. *See infra* Part 0.A and accompanying notes (tracing Massachusetts's constitutional grant of municipal charter-making authority under Article 89 while detailing the statutory and procedural constraints, including general-law preemption and required legislative involvement, that substantially limit the practical effect of that authority).

99. *See infra* Part 0.A and accompanying notes (demonstrating the gap between Massachusetts's formal grant of municipal self-governance and the practical reality of rigid legislative supremacy).

100. *See infra* Part 0.B and accompanying notes (explaining that Massachusetts administrative agencies operate within a distinctive statutory and constitutional framework that assigns them supervisory, advisory, and gatekeeping roles in state-local governance, rather than confining them to narrow regulatory or adjudicatory functions).

resolve disputes through formal adjudication.[101] Municipalities exercise comparable delegated authority but without any supervising agency to provide guidance, resolve boundary questions, or develop expertise in municipal governance. The problem is not that municipalities lack procedural protections—it is that they lack institutional power to secure authoritative resolutions of jurisdictional disputes before crises force costly litigation or legislative intervention.

A. POWERS WITHOUT IMMUNITY: THE LIMITS OF MASSACHUSETTS HOME RULE

Massachusetts established its formal home rule framework nearly sixty years ago[102] through two provisions: Article 89 of the State Constitution (the "Massachusetts Home Rule Amendment") and the Home Rule Procedures Act.[103] Voters approved the Home Rule Amendment in 1966, and it took effect the following year with an explicit purpose: to "grant and confirm to the people of every city and town the right of self-governance in local matters."[104] The legislature simultaneously enacted the Home Rule Procedures Act, setting uniform standards for municipalities to adopt home rule charters.[105]

Massachusetts home rule operates through a tripartite structure that defies simple categorization. The Home Rule Amendment creates three distinct types of municipal authority, and municipalities must decide which type of authority they will claim: Home Rule Charter Authority, General Home Rule Authority, and Home Rule Petition Authority.[106] Yet these three

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101. *See* MASS. GEN. LAWS ch. 25, § 5(b) (2025) (Department of Public Utilities); Mass. Gen. LAWS ch. 21, § 8(d) (2025) (Department of Environmental Management); Mass. GEN. LAWS ch. 175 (2025) (Division of Insurance).

102. *See* MASS. GEN. LAWS ch. 43B, § 2 (2025) ("Every city and town shall have the power to adopt or revise its charter or to amend its existing charter in accordance with procedures prescribed by this chapter.").

103. *See generally* MASS. CONST. art. LXXXIX, *amended by*, MASS. CONST. amend. art. II, § 2 (1966); MASS. GEN. LAWS ch. 43B (2025) (establishing the procedures governing municipal home rule charters and charter amendments under Massachusetts law).

104. *See* MASS. CONST. art. LXXXIX, *amended by*, MASS. CONST. amend. art. II, § 2 (1966).

105. *See* John W. Lemega, *State and Municipal Government: Home Rule*, in 1967 ANNUAL SURVEY OF MASS. LAW, § 16.2, at 264 (quoting the signing statement of Governor John A. Volpe).

106. DAVID J. BARRON ET AL., DISPELLING THE MYTH OF HOME RULE: LOCAL POWER IN GREATER BOSTON 1 (2004) [hereinafter Barron, *Dispelling the Myth of Home Rule*] ("The

forms of authority differ substantially in their scope and practical application, shaping both day-to-day municipal governance and local officials' perceptions of their own power.[107] Understanding these distinctions proves essential for grasping how home rule actually functions in Massachusetts—not just as a legal framework but as a practical reality for the commonwealth's 351 cities and towns.[108]

The Home Rule Amendment's apparent sweeping constitutional grant of authority faces two significant structural constraints. The first emerges from section 7 of the Amendment, which explicitly prohibits municipalities from exercising home rule authority in six critical areas: election regulation, taxation, municipal borrowing and credit pledges, park land disposition, private civil law governance (except when incidental to municipal powers), and criminal law matters involving felonies or imprisonment.[109] Beyond these explicit limitations, the Massachusetts Supreme Judicial Court has further restricted home rule authority by identifying areas it deems insufficiently local in nature,[110] such as cases involving extra-territorial impacts.[111] For instance, the court invalidated a town bylaw prohibiting gravel removal within its borders, reasoning that the regulation's effect on Commonwealth-wide road construction

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actual power granted by the Amendment can be classified in three ways: Home Rule Charter Authority, General Home Rule Authority, and Home Rule Petition Authority."). Massachusetts officials and scholars use the term "home rule" to encompass all three of these powers, despite their significant differences. *See id.*

107. *Id.* at 2 ("Even though these elements of home rule invoke the same term, they play dramatically different roles in shaping both the practice of municipal governance and the perceptions of the degree of local power held by those charged with exercising it.").

108. *See City and Town Governments*, SEC'Y OF THE COMMONWEALTH OF MASS., https://www.sec.state.ma.us/divisions/cis/government/gov-city.htm [https://perma.cc/FT6P-REFL] ("There are 50 cities and 301 towns in Massachusetts[.]").

109. MASS. CONST. art. LXXXIX, § 7; *see also* MASS. GEN. LAWS ch. 43B, § 13 (2025) (implementing the constitutional limitations on municipal home rule powers); Barron, *Dispelling the Myth of Home Rule*, *supra* note 106, at 7.

110. *See* Beard v. Town of Salisbury, 392 N.E.2d 832, 836 (Mass. 1979) ("Although the Home Rule Amendment confers broad powers on municipal governments . . . it does not appear to be so expansive as to permit local ordinances or by-laws that, as here, regulate areas outside a municipality's geographical limits.") (citing Bd. of Appeals of Hanover v. Hous. Appeals Comm. in the Dep't of Affairs, Cmty. Affs., 294 N.E.2d 393, 408 (Mass. 1973)).

111. *See, e.g.*, *id.*; Toda v. Bd. of Appeals of Manchester, 465 N.E.2d 277, 278 (Mass. App. Ct. 1984), *further appellate review denied*, 469 N.E.2d 830 (Table) (Mass. 1984) (quarrying operations in question extend beyond earth removal and into an area within the jurisdiction of the board); Jaworski v. Earth Removal Bd. of Millville, 626 N.E.2d 19, 19 (Mass. App. Ct. 1994), *further appellate review denied*, 631 N.E.2d 57 (Table) (Mass. 1994) (proposed earth removal operations were governed exclusively by earth removal bylaw).

exceeded the scope of purely local concerns permitted under home rule authority.[112] Together, these constitutional prohibitions and judicial limitations substantially narrow the field of municipal regulatory action, leaving many areas of governance, even those with direct local impact, beyond the reach of home rule authority.

Second, Section 6 establishes a fundamental limitation on home rule power: municipalities may act only in ways "not inconsistent with the [state] constitution or [the] laws" enacted by the state legislature.[113] This constraint effectively grants the state legislature plenary authority to override any local decision at any time, on any matter. The Supreme Judicial Court has emphasized the sweeping nature of this state supremacy, holding that home rule does not even guarantee municipalities the right to elect their own governments.[114] As the court explicitly stated, there is no state "constitutional right to an elective form of municipal government" in Massachusetts, and the state legislature's "authority includes the power to choose to provide an appointive, rather than elective, form of municipal government."[115] Thus, true local autonomy—defined as the ability to determine local policy free from state control[116]—does not exist in Massachusetts.[117]

The state's paramount authority to override local action critically shapes how municipalities exercise their Home Rule Amendment powers. Before implementing any policy under home rule authority, municipalities must first determine whether the state legislature has enacted conflicting legislation—a threshold

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112. See *Beard*, 392 N.E.2d at 836 ("[W]e believe that the Salisbury by-law fails because it lacks a basis in either the earth removal statute or in the Home Rule Amendment. It is the view of a majority of this court that nothing in G.L. ch. 40, § 21(17), or the Home Rule Amendment can be construed to allow a municipality, by adopting an earth removal ordinance or by-law, to regulate or prohibit intermunicipal Traffic and thereby bar the movement of persons, vehicles, or property beyond its boundaries.").

113. MASS. CONST. art. LXXXIX, § 6.

114. *See* Powers v. Sec'y of Admin., 587 N.E.2d 744, 750 (Mass. 1992) ("The plaintiffs have not referred us to any State or Federal constitutional provision to support their claim that they have a constitutional right to elective municipal officials, nor can we find one.").

115. *Id.* at 750 ("This authority includes the power to choose to provide an appointive, rather than elective, form of municipal government.") (citing Op. of the Justs. to the House of Representatives, 332 N.E.2d 896, 899 (Mass. 1975)).

116. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2362.

117. *See* Barron, *Dispelling the Myth of Home Rule*, *supra* note 106, at xi ("The state's limitations on home rule significantly impact the day-to-day activities of the region's municipal officials, structuring their choices and affecting the kind of policies they can pursue.").

preemption inquiry that often forecloses local action.[118] This hierarchical relationship prompted one Medfield, MA official to observe that "the legislature, by taking action, can preclude the local community from using the Home Rule Amendment to accomplish anything."[119] The official's stark conclusion that "local governments are creatures of the Commonwealth of Massachusetts" and "have not been able to exercise independent authority" reflects the practical limitations of home rule power in Massachusetts.[120]

The distinction between cities and towns in Massachusetts also carries significant legal consequences that extend far beyond nomenclature. Whether a municipality qualifies as a city or town determines which home rule models it may adopt and how home rule might operate.[121] A municipality's charter establishes the framework for its government by defining the municipality's organization, the responsibilities of its officials, many of its powers, and its relationship to its constituents.[122] Among the things a charter typically determines is whether a municipality is a city or a town. This classification affects the organization of local governance and the relationship between the municipality and the state.[123] This difference in classification is important in

118. *See* Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997 (2018) [hereinafter Briffault, *The New Preemption*] ("New preemption measures frequently displace local action without replacing it with substantive state requirements.").

119. *See* Barron, *Dispelling the Myth of Home Rule*, *supra* note 106, at 8 ("[The] legislature, by taking action, can preclude the local community from using the Home Rule Amendment to accomplish anything . . . . Local governments are creatures of the Commonwealth of Massachusetts. They have not been able to exercise independent authority beyond the rope that the legislature will allow them to extend themselves on.") (citing to conversations between the authors and city officials).

120. *Id.*

121. *See supra* note 106 and associated text for discussion of the various home rule models in Massachusetts.

122. *See* MASS. GEN. LAWS ch. 4, § 7, cl. 5 (2025) ("'Charter', when used in connection with the operation of city and town government shall include a written instrument adopted, amended or revised pursuant to the provisions of chapter forty-three B [sic] which establishes and defines the structure of city and town government for a particular community and which may create local offices, and distribute powers, duties and responsibilities among local offices and which may establish and define certain procedures to be followed by the city or town government.").

123. *See* John Ouellette, *Local Government 101*, MASS. MUN. ASS'N (Sep. 19, 2023), https://www.mma.org/local-government-101/ [https://perma.cc/27E8-NQJM]. Cities are managed by a city council and an executive official (a mayor or a city manager). *See id.* ("City Councils act as the legislative branch in communities with a city form of government, as well as the policymaking body. Whereas Town Meeting is a form of direct democracy, the City Council is a representative body, somewhat like a local version of Congress."). Towns, by contrast, preserve the open town meeting or the representative town meeting as

Massachusetts. The impact of state statutes and procedural regulations may differ depending on the municipality's classification as a city or town.[124]

The advent of home rule fundamentally altered municipal governance by empowering municipalities to independently adopt their own charters, but this innovation did not displace older charter forms.[125] However, despite this new autonomy, many Massachusetts municipalities continue to operate under alternative charter structures, a pattern that reveals how home rule's promise of autonomy remains largely theoretical rather than transformative in practice.[126] Some operate under "special act charters"—typically pre-dating the Home Rule Amendment—which were individually crafted by the state legislature at the municipality's request, with Boston's charter being a notable example.[127] Others function under charters adopted pursuant to Chapter 43 of the Massachusetts General Laws, which offers municipalities a menu of model government plans.[128] But this

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their governing body. State law prohibits any municipality with less than 12,000 residents from classifying itself as a city. MASS. CONST. art. LXXXIX, § 2. It also prohibits any municipality with less than 6,000 residents from using the representative town meeting form of local government, in which the town meeting acts through representatives elected by town residents. *See id.*

124. Town by-laws, for example, require the approval of the state Attorney General, whereas city ordinances do not. This approval is not entirely free of complication. Although Massachusetts law only states that "by-laws" require the approval of the Attorney General, MASS. GEN. LAWS ch. 40, § 32 (2025), the Supreme Judicial Court explained that this statute was equally applicable to city ordinances. *See* Forbes v. Woburn, 27 N.E.2d 733, 734 (Mass. 1940) (noting that "towns" and "by-laws" are to be treated synonymously with "city" and "ordinances" respectively "unless such construction would be repugnant to the provision of any act, especially relating to such cities or districts"); *see also* MASS. GEN. LAWS ch. 40, § 1 (2025) ("Except as otherwise expressly provided . . . all laws relative to towns shall apply to cities."); MASS. GEN. LAWS ch. 4, § 7(22) (2025) ("'Ordinance', as applied to cities, shall be synonymous with by-law.").

125. Barron, *Dispelling the Myth of Home Rule*, *supra* note 106, at 2 ("The home rule grant changed this situation by authorizing municipalities to adopt new charters on their own.").

126. *Id.* ("Notwithstanding this new option, many municipalities continue to rely on non-home rule charters.").

127. *See* D. Paul Koch, Jr, *Introduction* to THE CHARTER OF THE CITY OF BOSTON (2007 ed.) ("The Boston City Charter is not contained within a single document. It is 'a series of State statutes and not a single code.' It has also been referred to as 'a patchwork of special acts whose application requires consideration of their evolution [and scrutiny of the legislative history].'") (alteration in original) (quoting City Council of Bos. v. Mayor of Bos., 421 N.E.2d 1202, 1204 (Mass. 1981), and City Council of Bos. v. Mayor of Bos., 512 N.E.2d 510, 510 (Mass. App. Ct. 1987), *further appellate review denied*, 517 N.E.2d 1289 (Table) (Mass. 1987)).

128. *See* MASS. GEN. LAWS ch. 43 (2025). The sections in this chapter describe six model city governments that can be adopted—labeled "A" through "F." The Home Rule Procedures Act places an effective "freeze" on the adoption of these model governments according to the

option remains available only to municipalities seeking city status, not town governance.[129] Thus, while home rule charters represent a significant shift toward local autonomy, they exist alongside these older and more traditional forms of municipal organization.

The Massachusetts Constitution's grant of home rule charter-making power represents a significant shift in municipal autonomy. Unlike their historical counterparts, home rule charters in the Commonwealth derive their authority purely from local action, requiring no state legislative approval.[130] The process is entirely localized: a charter commission, elected by municipal voters, drafts the charter, which then becomes law upon approval by local referendum.[131] Massachusetts municipalities have leveraged this autonomy to strengthen and streamline their governments.[132] Notably, more than half of municipalities with home rule charters have also incorporated recall provisions, creating a democratic check on both elected and appointed officials.[133]

Many local officials view Massachusetts home rule as fundamentally weak, however, because the constitutional grant of home rule charter-making power provides no substantive protection for municipal regulatory authority beyond what

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procedures outlined in chapter 43 after 1966. *See* Home Rule Procedures Act, MASS. GEN. LAWS ch. 43B, § 18 (2025) ("Except as may be permitted by any general or special law enacted after November eighth, nineteen hundred and sixty-six, no city or town shall adopt or change charters . . . .").

129. *See* MASS. GEN. LAWS ch. 43, §§ 1–6 (2025) (limiting the availability of model charter plans to municipalities organized as cities); *see also* MASS. GEN. LAWS ch. 43B (2025) (governing home rule charters for both cities and towns and preserving the distinction between city and town forms of government).

130. The Home Rule Charter does not eliminate a locality's ability to petition the state legislature for a special act to accomplish the same ends. In *Bd. of Selectmen of Braintree v. Town Clerk of Braintree*, the Supreme Judicial Court ruled that there was no evidence to indicate that section 4 of the Home Rule Amendment, which outlines the charter amendment procedure, is a limitation on, or exception to, a municipality's power to petition the general court for the same result through the state legislature as outlined in section 8. 345 N.E.2d 699, 701 (Mass. 1976). Indeed, the Home Rule Amendment reserves for the state the power to pass acts "for the incorporation or dissolution of cities and towns as corporate entities." MASS. CONST. art. LXXXIX, § 8.

131. *Cf.* Barron, *Dispelling the Myth of Home Rule*, *supra* note 106, at 2–3 ("Notwithstanding this new option, many municipalities continue to rely on non-home rule charters.").

132. *See id.* at 3 ("According to the Department of Housing and Community Development, the trend of home rule charters has been to consolidate the power of municipal governments."). Common reforms include reducing representative town meeting sizes, converting traditionally elected positions to appointed ones, establishing or reinforcing management roles, and combining related departments. *See id.*

133. *See id.*

municipalities could otherwise obtain.[134] All Massachusetts municipalities, regardless of their charter status, can exercise the general grant of home rule authority and utilize the home rule petition process established by the Home Rule Amendment.[135] A Home Rule Petition operates as a formal request through which a municipality asks the state legislature for new authority—authority that the Home Rule Amendment does not independently grant.[136] Paradoxically, a municipality operating under a home rule charter thus enjoys no greater regulatory power than one governed by a state legislative special act—and may even face more constraints depending on the charter's procedural requirements.[137] As one Millis, MA official succinctly observed, "[h]ome rule is good in terms of town organization, but in terms of regulation, it's all driven by the state."[138]

Having examined how home rule operates in Massachusetts, the analysis now turns to another system of delegated power within the Commonwealth. Like municipalities, state administrative agencies exercise significant authority subject to legislative supremacy.[139] But agencies operate within a far more sophisticated institutional structure for managing that delegation.

B. BOUNDED DISCRETION: ADMINISTRATIVE AUTHORITY IN MASSACHUSETTS

Massachusetts administrative agencies operate within a sophisticated framework established by enabling statutes and the

134. *See* Barron, *Dispelling the Myth of Home Rule*, *supra* note 106, at 3 ("The adoption of a home rule charter does not give a municipality any authority that it would not otherwise be able to obtain.").

135. MASS. GEN. LAWS ch. 43, § 2 (2025).

136. Municipalities file these petitions when they need powers the Massachusetts Constitution withholds: the ability to impose a novel tax, adopt regulations in state-reserved areas, or secure exemptions from generally applicable statutes. *See* MASS. CONST. art. LXXXIX, §§ 6–8 (authorizing municipal home rule subject to constitutional and statutory limits and providing for home rule petitions to the General Court). The petition process reveals a fundamental limitation: despite constitutional home rule, municipalities cannot expand their own powers. They must ask the legislature for permission. *See* MASS. GEN. LAWS ch. 43B, § 3 (2025) (authorizing municipalities to submit home rule petitions to the General Court for special legislation).

137. *See* Barron, *Dispelling the Myth of Home Rule*, *supra* note 106, at 3 ("Indeed, a city with a home rule charter can end up being just as constrained in its actual authority—even more constrained—than a city that traced its charter to a special act from the state legislature.").

138. *Id.* at 3.

139. *See infra* Part II.B.

Massachusetts Administrative Procedure Act.[140] The Supreme Judicial Court's flexible separation of powers doctrine permits this administrative structure to function through considerable blending of governmental powers, so long as agencies do not intrude on the core functions of the legislative, executive, or judicial branches.[141] This constitutional flexibility has enabled Massachusetts to develop robust procedural and substantive guardrails for agency action—creating the institutional structure that municipalities conspicuously lack.

While Article 30 of the Massachusetts Declaration of Rights appears to enunciate the doctrine of separation of powers in rigid, absolutist, and unyielding terms,[142] the Massachusetts Supreme Judicial Court has applied the doctrine with increasing flexibility over time.[143] Prior to the rise of administrative agencies and

140. In 1954, Governor Herter signed into law the Massachusetts Administrative Procedure Act (MAPA). While some state administrative agencies are expressly exempted by statute, MAPA sought to establish minimum standards of fair procedure below which no agency would be permitted to fall, while providing ample room for the development of differing practices and procedures above those statutory minimums. *See* Albert Sacks & William Curran, *Administrative Law*, 1 B.C. ANN. SURV. MASS. L. 126, 127 (1955) ("The act seeks to establish minimum standards of fair administrative procedure and thereby to achieve a certain degree of uniformity, particularly in standards for judicial review."); *see also* Grady v. Comm'r of Corr., 981 N.E.2d 730, 735 (Mass. App. Ct. 2013) ("General Laws ch. 30A, the State Administrative Procedure Act, 'was enacted in part to establish minimum procedural standards for the conduct of adjudicatory proceedings as defined in the statute, while permitting those State administrative agencies covered by the act to develop and adopt additional procedural requirements.'") (quoting Rinaldi v. State Bldg. Code Appeals Bd., 779 N.E.2d 688, 691 (Mass. App. Ct. 2002)). The Act also sought to achieve uniformity in administrative procedure, particularly with regard to judicial review. MAPA thus endeavored to create realistic uniformity in agency procedures without placing agencies in a procedural straitjacket. *See* William J. Curran & Albert M. Sacks, *The Massachusetts Administrative Procedure Act*, 37 B.U. L. REV. 70, 76 (1957) [hereinafter Curran & Sacks, *The Massachusetts Administrative Procedure Act*] ("The fundamental aim of the Act is to establish a set of minimum standards of fair procedure below which no agency should be allowed to fall, but leaving room for diversity of practice above the minimum.").

141. *See infra* notes 147–154 and relevant discussion.

142. *See* MASS. CONST art. XXX ("In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."); *see also* Jonathan L. Marshfield, *America's Other Separation of Powers Tradition*, 73 DUKE L. J. 545, 602 (2023) ("All early state bills of rights were dominated by strong declarations of popular sovereignty and a constellation of related provisions designed to facilitate popular control over government.").

143. *See, e.g.*, Gray v. Comm'r of Revenue, 665 N.E.2d 17, 21 (Mass. 1996) (finding some overlap of executive, judicial, and legislative functions is inevitable); Chief Admin. Just. of the Trial Ct. v. Lab. Rels. Comm'n, 533 N.E.2d 1313, 1316 (Mass. 1989) (explaining that absolute division of the executive, legislative, and judicial functions is neither possible nor always desirable).

administrative law in the last half-century, the Supreme Judicial Court read Article 30 quite literally as imposing a "sharp and strict separation of the legislative, executive and the judicial departments" of the Massachusetts government.[144] The growth of administrative agencies, however, with their inherent blending, merging, and overlapping of all three kinds of governmental power, has made it increasingly difficult for the Supreme Judicial Court to maintain complete fealty to Article 30's express terms.[145]

In 1974, in an Opinion of the Justices to the House of Representatives,[146] the Supreme Judicial Court articulated its modern approach to Article 30.[147] The court acknowledged the need for flexibility while identifying a "core principle" that remains inviolate: no branch of government may interfere with another branch's essential functions.[148] This formulation permits considerable blending of governmental powers while preserving boundaries that cannot be crossed.[149] The Court thus employs a functional analysis that generally accommodates administrative governance—asking whether an agency arrangement impermissibly intrudes on a branch's core functions rather than whether it involves any mixing of powers at all.[150] But Article 30's

144. Sheehan v. Supt. of Concord Reformatory, 150 N.E. 231, 233 (Mass. 1926).

145. *See* Ops. of the Justs. to the Senate, 363 N.E.2d 652, 659 (Mass. 1977) ("While Article 30 demands separation, it does not prevent one branch from assuming those functions that would aid in its internal operations without unduly restricting endeavors of another coordinate branch.").

146. The Massachusetts Constitution authorizes the Supreme Judicial Court to render advisory opinions to the other branches of Government. *See* MASS. CONST. art. 2, ch. 3; Cynthia R. Farina, *Supreme Judicial Court Advisory Opinions: Two Centuries of Interbranch Dialogue*, *in* THE HISTORY OF THE LAW IN MASSACHUSETTS: THE SUPREME JUDICIAL COURT 1692–1992, 353, at 389 (Russell K. Osgood ed., 1992).

147. *See* Op. of the Justs., 309 N.E.2d 476, 481 (Mass. 1974).

148. *See id.* at 479–80; *see also* All. AFSCME/SEIU, AFL-CIO v. Commonwealth, 694 N.E.2d 837, 838 (Mass. 1998) ("Respect for the separation of powers has led this court . . . to be extremely wary of entering into controversies where we would find ourselves telling a coequal branch of government how to conduct its business.").

149. Jonathan Marshfield has developed a theory explaining how state constitutions at the founding embraced a separation of powers doctrine fundamentally different from the federal Madisonian model, which relies on ambition checking ambition within government to constrain popular majorities. *See* Marshfield, *supra* note 142, at 550. State constitutions instead separated powers primarily to enhance popular accountability—the public's ability to monitor government from outside by isolating responsibility across discrete departments and offices. *See id.* at 551. This formulation permits considerable blending of governmental powers while preserving certain boundaries, prioritizing transparent lines of accountability over rigid tripartite divisions or vigorous judicial policing of internal checks and balances. *See id.*

150. A 1974 Opinion of the Justices to the Senate illustrates this duality: while acknowledging the need for flexibility, the Court invoked Article 30's rigid terms to

absolutist text remains enforceable.[151] When the court concludes that the legislature has crossed constitutional lines, it invokes Article 30's rigid language to invalidate the enactment.[152] Massachusetts separation of powers doctrine therefore operates on two levels simultaneously: a flexible, functional approach governs most cases, while a strict, formalist prohibition stands ready to check legislative overreach.[153] This dual framework produces jurisprudence that defies easy categorization but maintains separation of powers as a meaningful constraint on administrative action.[154]

Administrative agencies in Massachusetts are created by statute, usually referred to as an enabling act.[155] The enabling act serves as the fundamental source of an administrative agency's authority.[156] While the enabling act defines and determines the appropriate scope of the agency's authority, it can also

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invalidate a proposed bill creating an Electronic Data Processing and Telecommunications Commission within the Executive Branch. *See Op. of the Justs.*, 309 N.E.2d at 478.

151. *Id.* ("We have stated that [t]hese limitations, though sometimes difficult of application, must be scrupulously observed.") (quoting Op. of the Justs., 19 N.E.2d 807, 818 (Mass. 1939)).

152. *See, e.g.*, Commonwealth v. Cole, 10 N.E.3d 1081, 1091 (Mass. 2014) (holding that the Community Parole Supervision for Life statute violated Article 30 by improperly delegating judicial sentencing powers to the executive branch).

153. *See* First Just. of Bristol Div. of Juv. Ct. Dep't v. Clerk-Magistrate of Bristol Div. of Juv. Ct. Dep't, 780 N.E.2d 908, 915 (Mass. 2003) (explaining that Massachusetts separation-of-powers doctrine accommodates legislative flexibility in structuring and reforming government institutions but draws a firm constitutional line against statutes that intrude upon or diminish the core functions essential to another branch).

154. *See Cole*, 10 N.E.3d at 1088–89 (framing Massachusetts separation-of-powers doctrine as flexible in application yet firm in principle, rejecting rigid categorical lines while enforcing Article 30 as a substantive limit that prevents administrative or legislative action from intruding on powers essential to another branch).

155. An enabling act is an act by which an agency is created, organized, and empowered. It is the basic legislative enactment establishing an agency and defining its powers. *See* Matter of Elec. Mut. Liab. Ins. Co., Ltd. (No. 1), 688 N.E.2d 947, 950 (Mass. 1998) ("An administrative agency has only the powers and duties expressly or impliedly conferred on it by statute.") (citing Globe Newspaper Co. v. Beacon Hill Architectural Comm'n, 659 N.E.2d 710, 719 (Mass. 1996)). It "enables" public officers to exercise governmental power and to do that which they had no authority to do prior to its enactment. *See id.*

156. *See, e.g.*, Gillette Co. v. Comm'r of Revenue, 683 N.E.2d 270, 276 (Mass. 1997) (finding the commissioner's authority to assess taxes derives from express or implied statutory authority—the commissioner has no inherent or common law authority to do anything) (quoting Comm'r of Revenue v. Marr Scaffolding Co., 608 N.E.2d 1041, 1045 (Mass. 1993)). Massachusetts decisional authority sometimes refers to this statute as an "organic" act, but the terms are interchangeable. *See* City of Brockton v. Energy Facilities Siting Bd., 14 N.E.3d 167, 181 (Mass. 2014) ("organic statute"); J.M. Hollister, LLC. v. Architectural Access Bd., 12 N.E.3d 337, 342 (Mass. 2014) (2014) ("enabling statute"); Pinecrest Village, Inc. v. MacMillan, 679 N.E.2d 216, 221 n.1 (Mass. 1997) (Lynch, J., dissenting) ("enabling or organic acts").

circumscribe and limit the extent of that authority.[157] When an administrative agency exercises its delegated legislative power, its rules and regulations can extend no further than the authority conferred upon that agency expressly or implicitly by the enabling act.[158] An agency's powers, however, are shaped by its enabling statute taken as a whole, and need not necessarily be traced to specific words.[159] "Where an administrative agency is vested with broad authority to effectuate the purposes of an act, the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.'"[160]

Conversely, the Supreme Judicial Court has allowed Massachusetts administrative agencies to imply standards even when express statutory guidance is absent. The court has demonstrated willingness to derive standards by examining the purposes and detailed provisions of delegation statutes.[161] Specific standards need not appear explicitly in statutory text if the administrative agency can find general guidance for exercising its discretion through analysis of the statute's purposes and overall scheme.[162] The Supreme Judicial Court has permitted agencies to locate standards for action through the "necessary implications" of declared legislative policy.[163] This approach reflects the Court's

157. *See, e.g.*, *Matter of Elec. Mut. Liab. Ins. Co., Ltd. (No. 1)*, 688 N.E.2d at 950 ("An administrative agency has only the powers and duties expressly or impliedly conferred on it by statute."); Morey v. Martha's Vineyard Comm'n, 569 N.E.2d 826, 829 (Mass. 1991) ("[Agencies] ha[ve] no authority to promulgate a regulation which exceeds the authority conferred upon it by the enabling statute."); Comm'r of Revenue v. Marr Scaffolding Co., Inc., 608 N.E.2d 1041, 1042 (Mass. 1993) (stating an appellate tax board may grant tax abatements only if authorized by statute).

158. *See* Telles v. Comm'r of Ins., 574 N.E.2d 359, 362 (Mass. 1991) ("It is settled that a 'an administrative board or officer has no authority to promulgate rules and regulations which are in conflict with the statutes or exceed the authority conferred by the statutes by which such board or office was created.'") (quoting Bureau of Old Age Assistance of Natick v. Comm'r of Pub. Welfare, 93 N.E.2d 267, 269 (Mass. 1950)).

159. Levy v. Bd. of Registration & Discipline in Med., 392 N.E.2d 1036, 1039 (Mass. 1979).

160. *Id.* (quoting Consol. Cigar Corp. v. Dep't of Pub. Health, 364 N.E.2d 1202, 1210 (Mass. 1977)).

161. *See* Town of Warren v. Hazardous Waste Facility Site Safety Council, 466 N.E.2d 102, 105, 108 (Mass. 1984).

162. *See* Op. of the Justs. to the House of Representatives, 333 N.E.2d 388, 392 (Mass. 1975).

163. *See* Massachusetts Bay Transp. Authy. v. Bos. Safe Deposit & Trust Co., 205 N.E.2d 346, 351 (Mass. 1965) ("The standards for action to carry out a declared legislative policy may be found not only in the express provisions of a statute but also in its necessary implications. The purpose, to a substantial degree, sets the standards. A detailed specification of standards is not required. The Legislature may delegate to a board or officer

pragmatic recognition that legislative delegations often convey standards implicitly rather than through precise textual commands.[164]

Massachusetts thus presents a troubling paradox: the Commonwealth possesses sophisticated constitutional and statutory frameworks for managing delegated authority to administrative agencies, yet maintains a rigid, formalistic approach to municipal home rule that renders its constitutional home rule provisions largely symbolic. State agencies operate within nuanced institutional structures—enabling statutes that define authority, the Administrative Procedure Act that ensures fair procedures, and a flexible separation of powers doctrine that permits functional governance. Municipalities, by contrast, navigate an unforgiving hierarchy where legislative supremacy trumps local autonomy at every turn. This asymmetry reveals more than doctrinal inconsistency; it exposes a viable path forward. If Massachusetts can construct robust frameworks for agencies exercising delegated power, it can extend that same institutional sophistication to home rule.

III. MONITORING THE GAP: STATE ADMINISTRATIVE AGENCIES AS SUPERINTENDENTS FOR HOME RULE REFORM

Part III develops the case for administrative superintendence of home rule disputes. This section seeks to show that agencies offer what current systems demonstrably lack—a process that takes home rule seriously as a governance structure requiring continuous management rather than treating it as an obstacle to eliminate or an abstraction to celebrate. It begins by explaining the basic theory of administrative superintendence, describing how agencies can provide regulatory certainty through advance review, coherent frameworks through ongoing guidance, and expert-driven dispute resolution when conflicts arise.[165] The analysis then defends this model against failures of current institutions, demonstrating why courts and legislatures have

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the working out of the details of a policy adopted by the Legislature.") (citing Commonwealth v. Sisson, 75 N.E. 619, 621 (Mass. 1905)).

164. *See* Commonwealth v. Cole, 10 N.E.3d 1081, 1088 (Mass. 2014) ("This line between the branches 'has never been delineated with absolute precision,' and we recognize that a rigid separation 'is neither possible nor always desirable.'") (quoting Lachapelle v. United Shoe Mach. Corp., 61 N.E.2d 8, 11 (Mass. 1945)).

165. *See infra* Part III.0.

struggled to manage the tension between state authority and local autonomy while agencies offer superior institutional capacity.[166] Finally, it addresses potential objections concerning democratic accountability, municipal autonomy, and constitutional structure, showing that administrative oversight enhances rather than diminishes democratic governance by combining procedural regularity with technical expertise.[167]

States could implement administrative superintendence through existing agencies or newly created bodies dedicated to state-local relations, depending on their particular governance structures and regulatory domains. The legal foundation already exists.[168] Just as legislatures have delegated regulatory authority to agencies overseeing environmental protection and public utilities, they could authorize agencies to superintend specified domains of municipal action without amending constitutional home rule provisions.[169] Statutory frameworks would define the scope of agency authority, establish procedural requirements for advance review and ongoing guidance, and articulate standards for agency determinations.[170] Judicial review would remain available to ensure agencies operate within their delegated authority.

A. THE BASIC THEORY OF SUPERINTENDING HOME RULE EXPLAINED

The administrative superintendence model delivers three core guarantees that current systems fail to provide: regulatory certainty before municipalities invest resources,[171] coherent

166. *See infra* Part III.B.

167. *See infra* Part III.0.

168. *See* Jessica Bulman-Pozen, *Administrative States: Beyond Presidential Administration*, 98 TEX. L. REV. 265, 303–04 (2019) (explaining how the federal government has utilized state administrative agencies to implement federal policy as a matter of cooperative federalism).

169. *See* Rossi, *supra* note 80, at 1172 ("In many states, courts impose substantive limits on delegation. Legislatures are not allowed to delegate to agencies unless they have articulated reviewable standards to guide agency discretion, even where procedural safeguards are in place. At the same time, many states accept a legislative oversight role for agency rulemaking not allowed in Congress.").

170. *See, e.g.*, MASS. GEN. LAWS ch. 30A (2025) (Massachusetts Administrative Procedure Act).

171. *See* Aaron L. Nielson, *Sticky Regulations*, 85 U. CHI. L. REV. 85, 87 (2018) (arguing that regulatory stability functions as a credible commitment that enables reliance and long-horizon investment; regulated actors invest less when they lack confidence that the legal regime will remain stable long enough to recoup capital-intensive expenditures).

frameworks that evolve with governance challenges,[172] and expert-driven resolution when conflicts arise.[173] These guarantees address the fundamental deficiencies plaguing home rule practice—the uncertainty that paralyzes municipal innovation,[174] the vacuum where guidance should exist,[175] and the crude tools courts and legislatures deploy to resolve disputes.[176]

This Note's proposed model works through advance review and ongoing supervision. Municipalities seeking to exercise home rule authority in designated regulatory domains submit proposed measures to the relevant state agency before implementation.[177] The agency evaluates whether the proposal conflicts with state law, implicates significant state interests, or raises concerns about statewide uniformity.[178] It then issues a determination within a specified timeframe: approving the measure, suggesting modifications, or identifying conflicts that require legislative

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172. *See, e.g.*, Todd Phillips, *A Change of Policy: Promoting Agency Policymaking by Adjudication*, 73 ADMIN. L. REV. 497, 517 (2021) [hereinafter Phillips, *A Change of Policy*] (contending that agencies can use adjudication as an institutional mechanism for developing and updating policy over time—often more quickly and flexibly than notice-and-comment rulemaking—while still operating within administrable safeguards).

173. *See* Katie R. Eyer, *Administrative Adjudication and the Rule of Law*, 60 ADMIN. L. REV. 647, 653–56 (2008) (arguing that agency adjudication can promote predictability and consistency through rule creation and can discipline otherwise unchecked discretion, thereby supplying a rule-of-law rationale for expert administrative resolution of recurring disputes).

174. *See supra* notes 1–14 and accompanying text for an example of this uncertainty in Boston.

175. *See* Briffault, *The New Preemption*, *supra* note 118, at 2024.

176. *See supra* Part I.A (discussing how courts applying home rule immunity produced inconsistent doctrine that constrained municipal innovation and how legislatures wielding preemption power responded to interest group pressure rather than principled analysis); *see also infra* Part III.B (examining in detail why courts proved too rigid and legislatures too political in managing state-local tensions).

177. *See, e.g.*, MASS. GEN. LAWS ch. 40, § 32 (2025) (subjecting all municipal bylaws and ordinances to mandatory Attorney General review before they may take effect); MASS. GEN. LAWS ch. 40A, § 5 (2025) (imposing the same ex ante approval requirement for zoning enactments).

178. *See, e.g.*, MASS. GEN. LAWS ch. 40, § 5. In exercising this review authority, the Massachusetts Attorney General assesses whether a proposed local enactment exceeds municipal authority or conflicts with state law, including by intruding upon areas governed by comprehensive statewide regulatory schemes or implicating interests the Legislature has sought to regulate uniformly. *See* Town of Amherst v. Att'y Gen., 502 N.E.2d 128, 129 (Mass. 1986) (describing Attorney General review as determining whether a bylaw is within the town's authority and consistent with state law); Fafard v. Conservation Comm'n of Barnstable, 733 N.E.2d 66, 72 (Mass. 2000) (explaining that local regulation is impermissible where it interferes with comprehensive statutory schemes reflecting statewide interests).

resolution.[179] Agencies maintain continuous oversight through periodic reporting and ongoing consultation, monitoring how municipal measures operate in practice and issuing guidance to refine local approaches.[180] When disputes arise—whether through agency review or third-party challenges—agencies conduct formal proceedings under state APA procedures, producing reasoned decisions subject to judicial review.[181] This framework ensures that preemption rests on articulated statutory criteria rather than political pressure, treating municipalities as partners in governance rather than subordinates awaiting legislative override.[182]

1. *Administrative Superintendence Provides Regulatory Certainty*

Advance review eliminates the uncertainty that forces municipalities to choose between regulatory paralysis and expensive litigation.[183] Under existing systems, municipal officials

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179. *See, e.g.*, Massachusetts Attorney General, Municipal Law Unit Decision *re Milton Special Town Meeting of June 16, 2025*, Case No. 11988 (Nov. 21, 2025) (on file with the *Columbia Journal of Law & Social Problems*) (approving zoning amendments while simultaneously monitoring their interaction with state regulatory regimes, addressing resident objections, coordinating with other state agencies, and issuing detailed interpretive guidance regarding implementation, including advising the Town to consult further with Town Counsel and relevant state agencies and to consider future amendments to ensure continued compliance with evolving statewide requirements). *See also* Att'y Gen. v. Town of Milton, 248 N.E.3d 635, 644 (Mass. 2025) (recognizing the Attorney General's supervisory role in enforcing statutory zoning obligations applicable to municipalities).

180. *See* Massachusetts Attorney General, *supra* note 179, at 1–2, 5–8 (approving municipal zoning amendments while continuing to monitor their operation in practice, addressing post-enactment objections, coordinating with other state agencies, and issuing detailed guidance regarding implementation, compliance with evolving regulatory standards, and potential future amendments).

181. *See, e.g.*, MASS. GEN. LAWS ch. 30A, §§ 1–14 (2025) (establishing procedures for formal agency adjudication, including notice, opportunity to be heard, findings, and reasoned decisions, and providing for judicial review of final agency action); Bos. Edison Co. v. Dep't of Pub. Utilities, 375 N.E.2d 305, 313 (Mass. 1978) (explaining that agencies acting under ch. 30A must issue reasoned decisions supported by findings and conclusions, subject to judicial review); Kobrin v. Bd. of Registration in Med., 832 N.E.2d 628, 638–39 (Mass. 2005) (describing judicial review under ch. 30A as ensuring that agency adjudications follow required procedures and rest on a reasoned explanation supported by the record).

182. *See* NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY 21 (2020) ("[A] revitalized home rule is not only important for local democracy but is also a foundation for states and local governments to form a more constructive partnership in governance.").

183. *See* Richard Briffault et al., *The Troubling Turn in State Preemption: The Assault on Progressive Cities and How Cities Can Respond*, SEPTEMBER J. ACS ISSUE BRIEFS, at 3 (2017) ("States have left almost no area of local policy free from preemption—increasingly expressing political differences through a legal tool originally designed to protect legitimate state interests in uniformity and to police against truly recalcitrant localities.").

contemplating novel exercises of home rule authority face a binary choice: abandon initiatives for fear of preemption or proceed and gamble on judicial validation.[184] Administrative review breaks this impasse. Under the model proposed by this Note, municipalities submit proposed measures to agencies with relevant expertise—environmental departments for climate ordinances, labor agencies for employment standards, revenue departments for tax innovations.[185] The agency evaluates whether the proposal conflicts with state law, implicates significant state interests, or raises uniformity concerns, then issues a binding determination that validates the measure, identifies necessary modifications, or flags conflicts requiring legislative resolution.[186]

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184. *See id.* at 3 (explaining, for example, how some states have even implemented both civil and criminal liability on local officials who defy state legislation).

185. States must identify which regulatory domains trigger advance review requirements. Environmental protection, labor standards, taxation, and land use—areas where state and local authority frequently collide—are some of the best candidates. *See generally* Heidi Gorovitz Robertson, *When States' Legislation and Constitutions Collide with Angry Locals: Shale Oil and Gas Development and its Many Masters*, 41 WM. & MARY ENVTL L. & POL'Y REV. 55 (2016) (outlining tension between states and municipalities over shale oil and gas production); Margaret H. Lemos, *State-Local Litigation Conflicts*, 2021 WISC. L. REV. 971 (2021) (offering other examples where state and local interests tend to conflict in affirmative litigation strategies). The trigger might operate through bright-line rules (e.g., any municipal ordinance regulating air quality requires review) or threshold criteria (e.g., ordinances imposing compliance costs above a specified amount require review). Municipalities would file applications containing the ordinance text, policy justification, supporting data, analysis of the measure's relationship to state law, and assessment of potential statewide impacts. *See, e.g.*, *supra* notes 178–179 (explaining that Massachusetts Attorney General review requires municipalities to submit the text of proposed enactments together with explanatory materials sufficient to permit evaluation of legality, interaction with state regulatory frameworks, and potential statewide implications).

186. Under this model, agency staff with subject-matter expertise review municipal submissions—environmental scientists for pollution ordinances, economists for tax measures, labor specialists for employment regulations—drawing on expertise vested in agencies charged with administering specialized statutory schemes. *Cf.* MASS. GEN. LAWS ch. 21A, §§ 2–2A (2025) (assigning environmental protection to agencies staffed with technical and scientific expertise); MASS. GEN. LAWS ch. 23A, §§ 2–3 (2025) (vesting economic and fiscal analysis in agencies with specialized competence); MASS. GEN. LAWS ch. 151A, § 2 (2025) (delegating administration of employment statutes to expert state bodies). Staff identify potential conflicts with state law, request additional information where necessary, and consult other state agencies whose statutory mandates the proposal may affect. The agency issues a written determination within a fixed review period, explaining whether the proposal may take effect and on what grounds. *Cf.* MASS. GEN. LAWS ch. 40, § 32 (2025) (establishing a mandatory review period and conditioning the effectiveness of municipal enactments on state approval). That determination articulates the agency's reasoning and cites the statutory provisions or regulatory standards supporting its conclusion. *Cf.* MASS. GEN. LAWS ch. 30A, § 11(8) (2025) (requiring agency decisions to include findings and reasons). Municipalities may accept suggested modifications identified through the review process or pursue further administrative and judicial review. *Cf.* MASS.

This process transforms home rule authority from an abstract promise into a concrete guarantee. Municipal officials know whether they possess the power they claim before they deploy it.

Administrative superintendence also balances statewide policy consistency with local experimentation.[187] The traditional justification for preemption emphasizes uniform standards, particularly for regulations affecting interstate commerce or fundamental rights.[188] Yet categorical preemption often stifles valuable local innovation that might ultimately inform state policy.[189] "If the fifty states are laboratories for public policy formation, then surely the 3,000 counties and 15,000 municipalities provide logarithmically more opportunities for innovation, experimentation and reform."[190] Administrative frameworks can facilitate this supervised experimentation, allowing municipalities to implement variations on state policy provided they meet baseline requirements and participate in rigorous evaluation.[191]

GEN. LAWS ch. 30A, §§ 10–14 (2025) (providing mechanisms for administrative reconsideration and judicial review of final agency action).

187. *See* Richard Briffault, *Home Rule and Local Political Innovation*, 22 J. L. & POL. 1, 31 (2006) [hereinafter Briffault, *Home Rule and Innovation*] (contending that municipalities offer far more opportunities for policy innovation than the fifty states, providing thousands of arenas for experimentation and testing reforms).

188. *See, e.g.*, Curran & Sacks, *The Massachusetts Administrative Procedure Act*, *supra* note 140, at 76–77 ("The Act seeks to bring about almost complete uniformity in standards for judicial review of agency decisions in adjudicatory proceedings.").

189. *See* Owen Lipsett, Comment, *The Failure of Federalism: Does Competitive Federalism Actually Protect Individual Rights?*, 10 U. PA. J. CONST. L. 643, 643 (2008) (observing the widely held view that federalism's structural value lies in fostering innovation and diversity in governance through decentralized experimentation). That logic applies with equal force to state-local relations, where municipalities often function as first movers in identifying regulatory responses to emerging problems. *See id.* Categorical preemption disrupts this process by foreclosing local experimentation before states can observe, evaluate, and incorporate successful local approaches into statewide policy.

190. Briffault, *Home Rule and Innovation*, *supra* note 187, at 31.

191. *See* Hannah J. Wiseman, *Rethinking Municipal Corporate Rights*, 61 B.C. L. REV. 591, 598 (2020) ("[M]unicipalities' important status as corporations that provide essential public services—particularly to people who otherwise would struggle to obtain those services—and project their citizens' views on an increasingly national and international platform needs explicit recognition."); Briffault, *Home Rule and Innovation*, *supra* note 187, at 31.

2. *Administrative Superintendence Builds Coherent, Adaptable Regulatory Frameworks*

Ongoing guidance creates the coherent regulatory frameworks that home rule doctrine desperately needs but never generates.[192] Agencies synthesize their advance review decisions and dispute resolutions into interpretive documents that clarify permissible municipal action across policy domains.[193] These frameworks establish flexible standards that accommodate local variation while protecting state interests. A state environmental agency might specify which climate adaptation strategies municipalities may pursue independently, which require agency approval, and which exceed local authority.[194] Municipalities operating within these frameworks exercise home rule confidently. They know the rules. When novel questions arise, municipalities can request advisory opinions that secure authoritative guidance before committing resources.[195] Courts produce guidance sporadically,

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192. *Cf.* Phillips, *A Change of Policy*, *supra* note 172, at 520 (explaining that adjudication provides agencies frequent policymaking opportunities compared to resource-intensive rulemaking, allowing agencies to experiment with limited adverse consequences, develop policy incrementally through repeated exposure to issues in varied contexts, and swiftly adjust approaches based on observed results).

193. Guidance takes multiple forms. State and federal agencies commonly issue policy statements and interpretive documents that synthesize prior decisions and recurring questions, creating a body of administrative guidance that regulated actors consult when designing new measures. *See, e.g.*, Admin. Conf. of the U.S., Recommendation 2017-5, *Agency Guidance Through Policy Statements*, 82 Fed. Reg. 61734, at 28–35 (Dec. 29, 2017) (describing the ubiquity of guidance and its role in promoting predictability and consistency across repeated applications). Agencies also supplement written guidance through ongoing consultation with affected stakeholders, using meetings and informal engagement to identify emerging issues and refine existing approaches. *See id.* at 140–42 (documenting agencies' use of public meetings, roundtables, webinars, and advisory committees in developing and revising guidance). To ensure accessibility and continuity, agencies are further encouraged to maintain online portals that publish guidance, archive prior determinations, and facilitate informal inquiries. *See id.* at 114–16 (explaining the importance of recording, disseminating, and making guidance accessible to support consistent administration).

194. *See, e.g.*, MASS. GEN. LAWS ch. 131, § 40 (2025) (authorizing the Department of Environmental Protection to define by regulation the scope of permissible activity in protected resource areas and limiting municipal authority to actions consistent with those standards); 310 MASS. CODE REGS. § 10.02(2)(b) (2025) (allowing municipalities to regulate independently only where local conditions are consistent with and more protective than state law); *see also id.* §§ 10.21–10.37 (specifying which activities may proceed subject to conditions, which require satisfaction of state-defined approval criteria, and which are prohibited).

195. *Cf.* MASS. GEN. LAWS ch. 12, § 3 (2025) (authorizing the Attorney General to provide legal opinions and advice to public officials). In response, the agency would research the question, consult relevant staff, and issue a formal opinion binding the agency in

only when litigation presents the question.[196] Legislatures produce it rarely, if ever.[197] Agencies generate the sustained attention home rule requires.

Agencies also maintain continuous relationships with municipalities rather than intervening once and disappearing.[198] This dynamic capacity proves especially valuable for emerging issues—from remote work's impact on commercial property to climate adaptation strategies—where rigid jurisdictional boundaries prove counterproductive.[199] Consider Boston's tax classification adjustment.[200] Rather than requiring legislative approval for each adjustment responding to evolving market conditions, an administrative framework could establish parameters within which the city makes routine adjustments while reserving significant changes for agency review.[201] This approach provides cities greater flexibility to address dynamic economic conditions while maintaining appropriate state oversight.

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subsequent enforcement. *Cf. id.* This process allows municipalities to secure certainty before investing resources in potentially vulnerable initiatives.

196. *See* Sec. & Exch. Comm'n v. Chenery Corp., 332 U.S. 194, 202–03 (1947) (recognizing that courts resolve issues only as they arise in concrete disputes, whereas agencies may develop policy prospectively through administrative mechanisms).

197. *See id.* (recognizing that statutory enactment leaves gaps to be filled through ongoing administrative processes).

198. *See* Miriam Seifter, *States, Agencies, and Legitimacy*, 67 VAND. L. REV. 443, 478–85 (2014) (explaining that state agencies maintain ongoing supervisory and coordinative relationships with local governments through continuous guidance and oversight). One might object that smaller states could process municipal proposals through legislative action without the delay associated with more complex governments. But even in small states, legislatures operate episodically and under significant agenda constraints, making sustained attention to municipal governance difficult. *See id.* at 470–76 (describing state legislatures as structurally ill-suited to ongoing regulatory supervision and noting their reliance on agencies to manage day-to-day governance). More fundamentally, the comparative advantage of administrative supervision lies not in speed alone but in the capacity for continuous oversight, learning, and adjustment as conditions evolve. Once a legislature approves a municipal measure, it lacks practical mechanisms to monitor implementation or recalibrate policy short of reenacting legislation, whereas administrative institutions are designed to elaborate and revise policy incrementally over time. *Cf. Chenery Corp.*, 332 U.S. at 202–03.

199. *See* Jody Freeman & Jim Rossi, *Agency Coordination in Shared Regulatory Space*, 125 HARV. L. REV. 1131, 1136–44 (2012) (explaining that emerging regulatory problems frequently span overlapping jurisdictions and that rigid allocations of authority can frustrate effective governance).

200. *See supra* notes 1–14 and accompanying text.

201. *Cf.* United States v. Mead Corp., 533 U.S. 218, 229–31 (2001) (explaining that statutory and administrative frameworks commonly distinguish between routine implementation and decisions warranting more formal review).

3. *Administrative Superintendence Offers Expert-Driven Problem-Solving*

When conflicts arise despite advance review and guidance, agencies provide a forum designed for the questions at issue. Agency proceedings generate factual records that illuminate technical and policy dimensions courts strain to address.[202] Expert testimony replaces judicial speculation about regulatory impacts.[203] Economic analysis displaces formalistic reasoning about statutory categories.[204] Agencies apply standards refined through repeated application rather than announcing rules for the first time in high-stakes litigation,[205] and their determinations receive judicial review under established administrative law principles.[206] This process improves on both judicial and legislative alternatives. Courts resolve home rule disputes

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202. *See* MASS. GEN. LAWS ch. 30A, § 11(5)–(8) (2025) (requiring agencies to receive evidence and issue decisions supported by findings of fact and reasons); *id.* § 14(7) (confining judicial review to the administrative record); N.Y. A.P.A. LAW §§ 301(1), 302(1), 306(1) (McKinney 2025) (requiring adjudicatory hearings, notice of factual and legal issues, and final determinations supported by findings of fact and conclusions of law based on the record). Under this proposal, intergovernmental disputes proceed under state APA procedures adapted to the state-local context. *Cf.* MASS. GEN. LAWS ch. 30A, §§ 10, 11(1)–(3) (2025) (authorizing agencies to conduct informal or formal adjudicatory proceedings and to tailor procedures consistent with notice and opportunity to be heard). State agencies, affected private parties, or municipalities petition for review by identifying the challenged measure, the alleged conflict, and the basis for agency resolution. *Cf. id.* (permitting adjudicatory proceedings to commence upon petition or agency initiation identifying the matters in controversy). The agency provides notice, sets a schedule for submissions and hearings, and permits streamlined discovery focused on documents and expert evidence. *Cf. id.* § 11(1)–(2) (requiring reasonable notice and authorizing agencies to regulate the course of proceedings and receipt of evidence). A hearing before an administrative law judge or expert panel follows, at which parties present evidence and legal argument on municipal authority and statutory interpretation. *Cf. id.* § 11(3), (5) (providing for hearings before presiding officers or designated examiners and for the presentation of evidence and argument). The resulting record includes technical material—economic data, scientific studies, and regulatory impact analyses—that courts are institutionally ill-equipped to develop or assess in the first instance. *Cf. id.* § 11(6)–(7); *id.* § 14(7) (requiring findings based on the record and confining judicial review to that record).

203. *Cf. id.* § 11(5) (providing for the receipt of evidence, including expert testimony, in agency adjudications).

204. *See id.* § 11 (structuring adjudicatory proceedings around record-based factfinding and expert evidence, which permits agencies to ground statutory interpretation in economic and technical realities rather than purely formal classifications).

205. *Cf.* NLRB v. Bell Aerospace Co., 416 U.S. 267, 294 (1974) (recognizing that agencies may choose adjudication to apply and refine standards over time, drawing on accumulated expertise rather than promulgating rules in advance).

206. *See supra* note 90 (discussing the extent to which state courts afford deference to state administrative agencies, and the variation across jurisdictions in whether and how such deference is granted).

through constitutional interpretation that offers no future guidance and statutory construction that ignores policy consequences.[207] Legislatures resolve them through preemption statutes that bulldoze local authority to eliminate discrete conflicts.[208] Agencies resolve them through decisions that calibrate state and local interests with precision neither courts nor legislatures can muster.

These mechanisms reconceptualize home rule supervision as an ongoing administrative function rather than episodic crisis management. Current systems treat state-local conflicts as exceptional events demanding authoritative pronouncements—court decisions announcing categorical rules or statutes eliminating entire classes of municipal authority.[209] Administrative superintendence treats these conflicts as predictable features of overlapping regulatory systems requiring continuous management.[210] Agencies do not eliminate tension between state and local authority; they manage it through infrastructure that lets municipalities exercise home rule responsibly while protecting legitimate state interests. Courts and legislatures cannot perform this function because their institutional structures force them to treat home rule disputes as problems to solve rather than relationships to manage.[211]

Administrative superintendence thus preserves meaningful local autonomy while ensuring municipalities exercise authority within coherent statewide policy frameworks. As cities confront

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207. *See* Bloom v. City of Worcester, 293 N.E.2d 268, 275–85 (Mass. 1973) (resolving a home rule dispute through constitutional interpretation of art. 89 by categorizing municipal authority and declining to engage with policy consequences or provide forward-looking regulatory guidance); *cf.* Sec. & Exch. Comm'n v. Chenery Corp., 332 U.S. 194, 196, (1947) ("A reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency.").

208. *See* Lauren E. Phillips, Note, *Impeding Innovation: State Preemption of Progressive Local Regulations*, 117 COLUM. L. REV. 2225, 2226–27 (2017) [hereinafter Phillips, *Impeding Innovation*] (explaining that recent waves of state preemption legislation arise as reactions to particular municipal enactments and strip cities of regulatory power in those domains, substituting uniform state rules for locally tailored solutions).

209. *See* Briffault, *The New Preemption*, *supra* note 118, at 2001–08 (describing state-local conflicts as resolved through exceptional legislative interventions that preempt entire categories of local authority to eliminate discrete disputes).

210. *See infra* Part III.0 (addressing how, rather than treating conflicts as problems to eliminate, administrative superintendence manages ongoing state-local relationships).

211. *See* Briffault, *Our Localism*, *supra* note 26, at 22–30 (1990) (describing home rule adjudication as resolving discrete disputes over authority rather than managing ongoing state-local relationships).

increasingly complex challenges—from economic transformation to climate resilience[212]—the model's three core mechanisms provide the procedural certainty, technical expertise, and dynamic oversight that contemporary governance demands. The model succeeds if it transforms home rule from a source of chronic conflict into a functioning governance framework, replacing episodic legislative override with continuous institutional oversight.

B. IN DEFENSE OF STATE AGENCIES AS SUPERINTENDENTS

Home rule sits uncomfortably between two competing principles: local democratic control and state legislative supremacy.[213] The current institutional framework resolves this tension primarily through a false dichotomy—either courts interpret constitutional home rule provisions to demarcate spheres of local authority, or legislatures exercise their preemption powers to displace municipal regulation.[214] Neither approach provides municipalities with the procedural certainty, substantive expertise, or ongoing supervision necessary to address complex governance challenges in the twenty-first century.[215]

Courts and legislatures have failed to manage the tension between state authority and local autonomy. Courts applying home rule immunity produced inconsistent doctrine that constrained municipal innovation.[216] Legislatures wielding

212. *See* Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 STAN. L. REV. 1361, 1401 (2020) (emphasizing the heterogeneity of local governments across institutional design, political authority, and functional capacity, and thereby underscoring the limits of one-size-fits-all legal solutions to contemporary governance problems).

213. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2261–64 (arguing that home rule doctrine reflects a persistent tension between aspirations for meaningful local self-government and the state legislature's retained authority to define, limit, and override municipal power, leaving courts to police boundaries rather than manage governance).

214. *See* Davidson, *Home Rulings*, *supra* note 24, at 1742 (explaining that state home rule regimes are dense, heterogeneous, and procedurally elaborate—combining broad grants of power with domain-specific exclusions and constraints on preemption—yet are administered through doctrines that lack mechanisms for ongoing interpretation, coordination, or adaptation).

215. *See generally* Davidson, *Principles of Home Rule*, *supra* note 50 (arguing that traditional state preemption and judicial interpretations often fail to offer municipalities the procedural clarity and specialized knowledge required to effectively tackle modern governance issues).

216. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2269–78 (arguing that judicial application of home rule immunity generated uneven and unpredictable doctrine, as courts resolved disputes through ad hoc constitutional boundary-drawing that constrained municipal experimentation and innovation).

preemption power responded to interest group pressure rather than principled analysis.[217] Administrative agencies offer a better alternative because their distinctive features address the failures that plague judicial and legislative approaches.

Start with courts. State courts failed to create judicially enforceable spheres of local authority that could meaningfully protect municipal regulatory power.[218] They instead construed home rule grants narrowly, regularly finding that matters with any conceivable statewide dimension exceeded municipal competence.[219] Massachusetts courts illustrate this pattern, invalidating municipal regulations when their effects extend beyond town borders—even when the regulated activity occurs entirely within the municipality.[220] The Supreme Judicial Court has reinforced this restrictive approach by holding that home rule does not even guarantee municipalities the right to elect their own governments, demonstrating how deeply legislative supremacy penetrates the structural core of municipal governance.[221] Nearly any municipal regulation implicates statewide interests: pollution disregards municipal boundaries, labor markets operate across jurisdictions, and housing policies in one city shape affordability throughout the region.[222] Courts offered no principled way to cabin these observations, leaving municipalities vulnerable to after-the-fact invalidation.[223] Even when courts sustained municipal authority, their rulings resolved only the immediate dispute, offering little direction on the permissible scope of regulation, the

217. *See* Briffault, *The New Preemption*, *supra* note 118, at 2004–12 (2018) (documenting how modern preemption legislation often reflects reactive political dynamics and interest-group mobilization, operating to displace local authority in specific regulatory domains).

218. *See* Barron, *Reclaiming Home Rule*, *supra* note 32, at 2269–80 (explaining that judicial efforts to define protected spheres of municipal authority under home rule doctrine yielded unstable and weakly enforceable standards that did not secure sustained regulatory autonomy for cities).

219. *See id.*

220. *See supra* Part II.B (discussing the failure of judicially administered home rule immunity to generate stable, enforceable spheres of municipal regulatory authority).

221. *See id.*

222. *See, e.g.*, Appeal of Girsh, 263 A.2d 395, 399 n.4 (Pa. 1970). The Pennsylvania Supreme Court recognized that when municipalities exercise zoning authority in isolation, they externalize the costs of exclusionary decisions onto neighboring communities and urban centers. *See id.* Individual localities cannot legitimately "close [their] doors" without regard to regional or statewide housing needs. *Id.* Municipal land-use decisions thus necessarily implicate interests beyond local borders. *See id.*

223. *See, e.g.*, Barron, *Reclaiming Home Rule*, *supra* note 32, at 2334–37 (arguing that the "statewide concern" doctrine allows judicial observations of regional interconnectedness to erode municipal autonomy).

procedures cities must follow, or the relationship between local initiatives and state policy.

State legislatures proved too responsive to political pressure from concentrated interests.[224] The pattern repeated itself: a municipality would adopt an innovative policy, business groups would lobby for preemption, and the legislature would comply.[225] Legislative preemption responded not to careful analysis of whether statewide uniformity served genuine regulatory purposes, but to raw political power.[226] Industries with statewide lobbying capacity secured preemption even when local policies affected only a handful of jurisdictions or addressed problems the state itself had declined to regulate.[227] Massachusetts exemplifies this dynamic: Mayor Wu's proposed tax relief initiative for working families fell victim to legislative opposition despite the city's unique fiscal pressures and demonstrated local support.[228] Diffuse local interests could not match the political influence of organized business groups.[229] Any municipal policy generating sufficient opposition faced preemption, but successful local experiments rarely prompted statewide adoption.[230] This dynamic systematically narrowed municipal authority far more than formal home rule provisions suggested.[231] Legislatures also lacked institutional capacity to evaluate preemption on the merits.[232] The legislative process privileged immediate political imperatives over long-term institutional design.[233]

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224. *See* Briffault, *The New Preemption*, *supra* note 118, at 1997–2002 (describing the surge in industry-led lobbying to preempt local regulatory "experiments").

225. *See, e.g.*, *id.* at 1997 (noting that the new wave of preemption is a direct "industry-sponsored" reaction to cities becoming engines of policy innovation on issues like the minimum wage and paid sick leave).

226. *See id.* at 2008, 2017 (arguing that preemption often lacks a principled basis in the state-local division of labor and is instead driven by policy-based hostility toward the local regulation).

227. *See id.* at 2002–03 (observing that industry-backed preemption frequently occurs in regulatory vacuums where the state legislature has declined to enact its own standards but acts solely to prevent local governments from filling the gap).

228. *See supra* notes 8–14 and accompanying text.

229. *See* Briffault, *The New Preemption*, *supra* note 118, at 1997.

230. *See id.* at 1997, 2003 (describing vacuum preemption where states nullify local innovations without adopting statewide alternatives).

231. *See id.* at 2010–11 (arguing that the aggressive use of preemption and a broad statewide concern doctrine effectively vitiate home rule despite constitutional text that suggests a significant grant of local power).

232. *See id.* at 2017–18 (noting that modern preemption often lacks a principled assessment of the respective state and local interests and is frequently characterized by "open hostility" rather than a coordination of state and local regulation).

233. *See id.*

Administrative agencies address both sets of failures. Unlike courts bound by conceptual categories and standards, agencies can evaluate specific municipal actions against statutory criteria that balance competing interests.[234] An environmental agency reviewing a local pollution ordinance need not decide whether environmental protection is inherently "local" or "statewide."[235] It can assess whether the ordinance conflicts with state standards, undermines regional coordination, or serves legitimate local purposes that state policy does not address. This functional approach escapes the trap that ensnared judicial doctrine.

And unlike legislatures susceptible to interest group pressure, agencies operate under procedural constraints that discipline their decision-making. State APAs require agencies to provide notice, accept public comments, explain their reasoning, consider relevant factors, and justify departures from past practice.[236] Courts reinforce these constraints through judicial review.[237] When an agency preempts a municipal ordinance, affected cities can challenge the decision, arguing that the agency exceeded its statutory authority or provided insufficient justification.[238] This review creates a procedural hurdle that filters out purely political

234. *See* Jerry L. Mashaw, *Prodelegation: Why Administrators Should Make Political Decisions*, 1 J.L. ECON. & ORG. 81, 92–94 (1985) (arguing that administrative processes are better suited to value balancing than judicial review because agencies can employ specialized techniques like cost-benefit analysis to achieve a level of regulatory specificity often unavailable to legislatures or courts); Dave Owen, *Cooperative Subfederalism*, 9 U.C. IRVINE L. REV. 177, 181 (2018) (contending that cooperation between states and local municipalities is more effective than judicial line-drawing because it facilitates continuous state-local interaction and allows for the collaborative refinement of local plans before they are finalized).

235. *See* Owen, *supra* note 234, at 209–11 (illustrating, through California's implementation of environmental programs, how agencies apply statutory standards to particular regulatory actions within overlapping authority structures without resolving abstract questions regarding whether environmental protection is local or statewide).

236. *See, e.g.*, MASS. GEN. LAWS ch. 30A, §§ 2–3 (2025) (requiring agencies to provide notice of proposed rulemaking, afford interested persons an opportunity to submit written data or argument, and issue a concise statement of the basis and purpose of adopted rules); *id.* § 14(7) (authorizing judicial review to ensure that agency action is not arbitrary or capricious, rests on consideration of relevant factors, and is supported by reasoned explanation, including when an agency departs from prior policy or practice).

237. *See supra* note 90 (discussing the extent to which state courts afford deference to state administrative agencies, and the variation across jurisdictions in whether and how such deference is granted).

238. *See, e.g.*, MASS. GEN. LAWS ch. 30A, § 14(7) (2025) (authorizing judicial review of agency action by any person aggrieved and permitting courts to set aside agency decisions that exceed statutory authority, are unsupported by substantial evidence, or are arbitrary or capricious).

preemption and can facilitate reasoned negotiation and resolution between state and municipal interests.

Agencies also bring technical expertise that both courts and legislatures lack. Home rule disputes increasingly turn on empirical questions about regulatory design, economic effects, and administrative feasibility.[239] When municipalities sought to regulate short-term rentals, the dispute required understanding housing markets, neighborhood impacts, enforcement mechanisms, and tourism economics.[240] When cities proposed local labor standards, the analyses demanded knowledge of wage structures, employment patterns, compliance costs, and regional economic conditions.[241] Neither judges applying doctrinal tests nor legislators responding to constituent pressure could evaluate these questions with the sophistication that subject-matter experts provide.

Finally, agencies can establish ongoing relationships with municipalities rather than intervening episodically.[242] Courts

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239. *See generally* Briffault, *The New Preemption*, *supra* note 118 (describing preemption disputes as turning on substantive regulatory design and economic effects). The argument for administrative superintendence does not extend to all municipal policy choices, only those raising technical questions within established domains of agency expertise. Purely political decisions about local priorities remain inappropriate for administrative review because they involve value judgments rather than technical assessments. The model applies where disputes implicate complex empirical questions that benefit from specialized knowledge: for example, whether proposed environmental regulations conflict with state air quality standards, whether a municipal tax measure creates unintended market distortions, or whether a local licensing scheme interferes with statewide professional regulation. These questions demand the sustained technical analysis that agencies routinely provide in other regulatory contexts. Administrative review makes sense where expertise matters, not where democratic judgment about community values should control.

240. *See* Nestor M. Davidson & John J. Infranca, *The Sharing Economy as an Urban Phenomenon*, 34 YALE L. & POL'Y REV. 215, 241–47 (2016) (explaining that municipal regulation of short-term rentals implicates localized housing supply and affordability, neighborhood-level externalities such as congestion and noise, administrative and enforcement capacity, and the economic role of tourism, and describing how cities adopted iterative regulatory and enforcement strategies in response to market behavior and compliance challenges).

241. *See, e.g.*, Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153, 1158 (2011) (illustrating that disputes over local labor standards turn on negotiated assessments of wages, employment relationships, employer compliance costs, and broader economic conditions, rather than abstract questions of legal authority).

242. *See* Owen, *supra* note 234, at 190–91 (describing cooperative subfederal regimes as governance structures built on ongoing intergovernmental relationships, information exchange, and iterative supervision, as opposed to episodic intervention through litigation or one-time statutory override).

decide cases when parties sue.[243] Legislatures preempt when political pressure demands action.[244] Neither institution maintains continuous engagement with municipal governance.[245] Agencies can create frameworks for advance consultation, regular reporting, periodic review, and adjustment based on experience. This dynamic capacity proves essential for addressing the complex, evolving challenges of contemporary urban governance.

The case for administrative superintendence rests on comparative institutional competence. Courts proved too rigid. Legislatures proved too political. Agencies offer a middle path—more flexible than courts, more disciplined than legislatures, and better equipped to evaluate technical questions.

C. SOME INITIAL RESPONSES TO POTENTIAL CRITICS

Critics might raise several compelling objections to administrative superintendence that warrant serious consideration. Traditional concerns focus on democratic legitimacy and municipal autonomy: why should unelected administrators resolve fundamental questions about allocating democratic authority between state and local governments, and would not constant state scrutiny diminish the very local control home rule promises? But the past decade has introduced a more forceful anti-administrative critique.[246] Driven by several

243. *Cf.* Chicago & Grand Trunk R. Co. v. Wellman, 143 U.S. 339, 345 (1892) (explaining that federal courts may exercise their authority "only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals").

244. *See* Briffault, *The New Preemption*, *supra* note 118, at 2004 (documenting that contemporary state preemption statutes are frequently enacted in response to organized political and economic pressure generated by specific local regulations, with legislatures intervening to resolve discrete controversies rather than as part of sustained policy planning).

245. *See* Owen, *supra* note 234, at 218–19 (contending that effective state-local relations demand ongoing administrative supervision rather than the sporadic interventions characteristic of courts and legislatures).

246. *See, e.g.*, Gillian Metzger, *The Supreme Court, 2016 Term—Foreword: 1930s Redux: The Administrative State Under Siege*, 131 HARV. L. REV. 1, 3 (2017) [hereinafter Metzger, *1930s Redux*] (explaining the attacks that the administrative state has faced over the last several decades); PHILIP HAMBURGER, IS ADMINISTRATIVE LAW UNLAWFUL? (2014) (attacking the administrative state); Steven G. Calabresi & Gary Lawson, *The Depravity of the 1930s and the Modern Administrative State*, 94 NOTRE DAME L. REV. 821, 824 (2019) ("We think it is liberty and republicanism that are under siege today from a bloated, arbitrary and capricious, dictatorial, elitist, electorally unaccountable, and largely unconstitutional administrative state."); Blake Emerson, *The Existential Challenge to the Administrative State*, 113 GEO. L.J. 1263, 1273 (2025) (describing a set of constitutional challenges grounded in an anti-administrative ideology that, while formally targeted at

scholars, and embraced by several Supreme Court justices, this movement portrays administrative power as constitutionally suspect—an end-run around democratic processes that substitutes expert judgment for popular will.[247] Though focused primarily on federal administration,[248] these critics view agencies not as vehicles for good governance but as threats to constitutional structure, combining legislative, executive, and judicial functions in ways that bypass traditional checks and balances.[249] These critics could apply these same arguments to state agencies supervising home rule disputes. While these objections highlight important considerations for institutional design, they misunderstand both administrative practice and the current system's failures.

Start with the democratic deficit argument. State legislatures derive their authority directly from voters statewide.[250] Municipal officials answer to local constituencies.[251] Administrative agencies, by contrast, lack this direct democratic pedigree.[252]

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discrete features of agency authority, collectively seek to invalidate agencies' independence, adjudicatory capacity, and rulemaking power—changes that would, if adopted wholesale, dismantle the administrative state's core functions).

247. *See* HAMBURGER, *supra* note 246, at 5 ("Although only Congress and the courts have the power to bind and thereby confine liberty, this is exactly what executive and other administrative bodies claim to do through administrative law."); Gutierrez-Brizuela v. Lynch, 834 F.3d 1142, 1158 (10th Cir. 2016) (Gorsuch, J., concurring) ("We managed to live with the administrative state before *Chevron*. We could do it again."); Baldwin v. United States, 589 U.S. 1231, 1238 (2020) (Thomas, J., dissenting in denial of certiorari) ("Regrettably, *Brand X* has taken this Court to the precipice of administrative absolutism. Under its rule of deference, agencies are free to invent new (purported) interpretations of statutes and then require courts to reject their own prior interpretations . . . it poignantly lays bare the flaws of our entire executive-deference jurisprudence.").

248. *See* Metzger, *1930s Redux*, *supra* note 246, at 3 ("This resistance to administrative government reflects antigovernment themes that have been a consistent presence in national politics since President Reagan's election in 1980.").

249. *See, e.g.*, HAMBURGER, *supra* note 246, at 4 ("Nowadays, however, the executive enjoys binding legislative and judicial power.").

250. *See* Reynolds v. Sims, 377 U.S. 533, 562 (1964) ("Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.").

251. *See* Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 77 (1978) (Stevens, J., concurring) (underscoring that municipal officials remain politically accountable to the residents of the municipality itself, not to extraterritorial populations subject to incidental municipal regulation, because nonresidents retain representation only through state and county officials rather than an "equally effective" voice in municipal governance).

252. *See generally* Emily S. Bremer, *The Undemocratic Roots of Agency Rulemaking*, 108 CORN. L. REV. 69 (2022) (examining how administrative agencies operate without the direct

Administrative skeptics would go further, arguing that agencies standing between elected legislatures and elected municipal governments compound the democratic problem rather than solving it.[253]

But this democratic deficit argument misunderstands both administrative practice and democratic theory. State agencies do not stand apart from democratic processes; they stand within them.[254] Governors—elected officials accountable to statewide constituencies—appoint and remove agency heads.[255] Legislatures, also democratically chosen, craft the enabling statutes that define agency jurisdiction and provide policy direction.[256] And agencies themselves typically follow notice-and-comment procedures that create structured opportunities for municipal officials, interest groups, and ordinary citizens to participate in ways that rushed legislative sessions rarely permit.[257] This is democracy in action, not its absence.[258]

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political accountability that elected officials possess, underscoring their lack of direct democratic legitimacy).

253. *Cf. id.* at 72–76 (describing the democratic-deficit critique of administration, which charges that agencies lack direct electoral accountability and thereby interpose bureaucratic decision-making between voters and their elected representatives).

254. *See generally* Katharine Jackson, *The Public Trust: Administrative Legitimacy and Democratic Lawmaking*, 56 CONN. L. REV. 1 (2023) (arguing that sufficient autonomy to carry out agencies' authorized mandates diligently, loyally, and in good faith will restore democratic faith in the administrative state).

255. *See* Seifter, *Gubernatorial Administration*, *supra* note 83, at 512 ("[G]overnors can exert control over state agencies by removing state agency heads. Governors can remove some set of agency heads at will, and this affords governors influence paralleling that of Presidents over 'executive' agencies.").

256. *See, e.g.*, *In re* Abbott, 645 S.W.3d 276, 280 (Tex. 2022) ("Unlike the federal constitution, the Texas Constitution does not vest the executive power solely in one chief executive. Instead, the executive power is spread across several distinct elected offices, and the Legislature has over the years created a wide variety of state agencies—including DFPS—whose animating statutes do not subject their decisions to the Governor's direct control.").

257. *See, e.g.*, *Rulemaking in New York*, N.Y. DEP'T OF STATE (May 2012), https://dos.ny.gov/system/files/documents/2021/08/rulemakingmanual_08-21.pdf [https://perma.cc/4PP8-RMWZ] ("To adopt a new rule, or to amend or repeal an existing rule, [an agency] must: (1) propose it through publication of a notice in the *State Register*; (2) receive and consider public comment; and (3) adopt the rule by filing the full text with us for incorporation into the [State Record].") (emphasis in original).

258. *See* Gillian Metzger, *Democracy Needs the Administrative State*, NYU LAW DEMOCRACY PROJECT (Oct. 10, 2025), https://democracyproject.org/posts/democracy-needs-the-administrative-state [https://perma.cc/SD8M-URXK] ("[T]he administrative state is essential for ensuring effective government."); Metzger, *1930s Redux*, *supra* note 246, at 7–10 (rejecting the premise that democratic legitimacy depends exclusively on direct electoral control and emphasizing the administrative state's role within democratically enacted institutional frameworks); Daniel E. Walters, *The Administrative Agon: A Democratic Theory for a Conflictual Regulatory State*, 132 YALE L.J. 1, 14–15 (2022) (arguing that

The choice, then, is not between democracy and bureaucracy but between different institutional arrangements for democratic decision-making. Administrative superintendence of home rule disputes offers several democratic advantages over purely legislative resolution: agencies operate at some remove from immediate political pressures while remaining within democratic structures, positioning them to uphold constitutional commitments to municipal autonomy.[259] Constitutional home rule provisions, after all, represent one of the profound democratic expressions—the people's will, through constitutional processes, to protect local self-government against temporary legislative majorities.[260]

Even more telling, critics misunderstand what state agencies would actually do in this context.[261] These agencies would not create new procedural rules and regulatory obligations out of

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administrative processes can enhance democratic legitimacy by structuring and sustaining political contestation rather than suppressing it). Administrative superintendence thus supplements, rather than displaces, local democratic decision-making. *Cf. id.* at 18–21 (rejecting accounts that treat administration as antithetical to democracy and arguing that administrative institutions can reinforce democratic legitimacy when they channel, rather than replace, political contestation). Municipal voters and their elected officials continue to determine whether to pursue particular policies through local democratic institutions; agency review enters only after those choices have been made. *Cf. id.* at 31–34 (explaining minimalist and electoral theories of administrative legitimacy that locate democratic authorization upstream in political decision-making, with administrative action operating downstream to implement those choices). In that role, administrative oversight clarifies and operationalizes locally chosen initiatives, providing structured pathways for implementation that avoid forcing municipal policies into statewide legislative arenas dominated by unrelated priorities. *Cf. id.* at 54–58 (arguing that administrative processes translate contested political decisions into implementable policy through institutionalized procedures rather than reopening them in generalized political forums). Properly understood, agency supervision strengthens democratic governance by pairing technical expertise with democratically authorized local choices, without supplanting those choices themselves. *Cf. id.* at 85–88 (contending that administrative institutions can enhance democratic governance by combining expertise with ongoing responsiveness to politically authorized decisions).

259. *See* Jessica Bulman-Pozen & Miriam Seifter, *State Constitutional Rights and Democratic Proportionality*, 123 COLUM. L. REV. 1855, 1875 (2023) ("So too, [do state constitutions] constrain the exercise of government power in the service of popular accountability.").

260. *See* David M. Walsh, Note, *Toward a Democratic Theory of Home Rule*, 60 HARV. J. ON LEGIS. 383, 387 (2023) (describing constitutional home rule as a democratically entrenched choice, adopted through state constitutional processes, to secure local self-government and local democratic decision-making against displacement by ordinary legislative majorities).

261. *See* Alan B. Morrison, *Administrative Agencies Are Just Like Legislatures and Courts—Except When They're Not*, 59 ADMIN. L. REV. 79, 82 (2007) (highlighting common misconceptions about agencies' functions and emphasizing their unique position within the federal government structure).

whole cloth.[262] They would resolve jurisdictional disputes between existing governmental entities, determining which democratically accountable body—the municipality or the legislature—properly exercises authority.[263] That represents an essentially judicial function, just performed with greater expertise about the practical consequences of boundary-drawing decisions.[264] After all, this approach does not expand government power; it simply ensures that power finds exercise at the level where democratic accountability functions best. And that goal unites both administrative skeptics and home rule defenders.

Second, administrative oversight could theoretically diminish municipal autonomy by subjecting local decisions to constant state scrutiny. But the current system often provides even less autonomy. Traditional federalism theory values competition among jurisdictions, both as a check on government power and as a source of policy innovation.[265] The notion of the states as

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262. *See* Rodney A. Smolla, *The Erosion of the Principle that the Government Must Follow Self-Imposed Rules*, 52 FORDHAM L. REV. 472, 473 (1984) (arguing that "mainstream principles of constitutional and administrative law have required courts to reinvigorate the precept that an agency must follow its own rules."); Thomas W. Merrill, *The* Accardi *Principle*, 74 GEO. WASH. L. REV. 569, 569 (2006) ("Agencies must comply with their own regulations.").

263. *See* Charles S. Rhyme, *Statutory Construction in Resolving Conflicts between State and Local Legislation*, 3 VAND. L. REV. 509, 512 (1950) (exploring how administrative agencies and courts interpret statutes to resolve conflicts between state and municipal authorities, emphasizing their role in delineating jurisdictional boundaries).

264. Even the strongest administrative skeptics concede that expert bodies may legitimately resolve jurisdictional boundary questions once Congress or the courts have supplied the governing legal standard. Justices who have championed reinvigorated nondelegation constraints consistently distinguish between impermissible delegations of legislative authority and permissible agency application of statutory criteria to particular cases. *See* Sackett v. Env't Prot. Agency, 598 U.S. 651, 696–98 (2023) (Thomas, J., concurring) (emphasizing that Congress must define the scope of federal regulatory authority but recognizing that agencies may apply those limits in concrete cases once properly established). If such boundary-applying authority remains constitutionally permissible even under the most demanding separation-of-powers theories, then permitting state agencies to referee disputes between municipalities and state legislatures by applying legislatively supplied criteria comfortably falls within constitutional bounds. *See generally* Clay Phillips, Note, *Slaying "Leviathan" (or Not): The Practical Impact (or Lack Thereof) of a Return to a "Traditional" Nondelegation Doctrine*, 107 VA. L. REV. 919, 922–23 (2021) (arguing that even with a stricter nondelegation doctrine, agencies would retain authority to resolve specific jurisdictional disputes).

265. *See* Lipsett, *supra* note 189, at 643 ("It is axiomatic among legal scholars and jurists that, as a structural value, federalism promotes innovation and diversity in government. A broadly held corollary to this view is the concept of 'competitive federalism,' whereby states compete with one another to lure citizens and businesses."); Heather K. Gerken, *The Supreme Court, 2009 Term—Foreword: Federalism All the Way Down*, 124 HARV. L. REV. 4, 6 (2010) ("[F]ederalism promotes choice, competition, participation, experimentation, and the diffusion of power.").

laboratories of democracy applies with equal force to municipalities experimenting with different approaches to shared problems.[266] Administrative oversight, critics might argue, threatens to dampen this beneficial competition and experimentation by imposing uniform state-level standards that reduce local policy variation. Administrative skeptics would frame this concern in constitutional terms: just as federal agencies should not crush state experimentation, state agencies should not smother municipal laboratories of democracy.[267]

But this federalism critique fundamentally misunderstands both the nature and effects of administrative superintendence. Unpredictable judicial interpretation leaves municipalities guessing about the boundaries of their authority.[268] Categorical legislative preemption eliminates local control entirely.[269] Rather than asking the binary question of who decides, administrative superintendence asks how municipalities can exercise authority while accommodating legitimate state interests.[270] This shift from

266. *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("A single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."); Arizona v. Evans, 514 U.S. 1, 8 (1995) (stating that states "are free to serve as experimental laboratories"); William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491–92 (1977) (urging state courts to act as independent "guardians of our liberties" and emphasizing that state constitutional protections may extend beyond federal constitutional minima); Gluck, *supra* note 96, at 1771–1811 (noting how several state courts have articulated governing interpretive regimes for all statutory questions presented before them).

267. *See generally* Briffault, *Home Rule and Innovation*, *supra* note 187, at 2 (describing a broader pattern of local political innovation, in which cities and counties experiment with significant reforms to electoral structures and governance—such as alternative voting systems, campaign finance rules, term limits, and ethics regulation—reflecting active local engagement in democratic self-government notwithstanding ongoing debates over the scope of local autonomy).

268. *See, e.g.*, Joseph S. Diedrich, *Judicial Deference to Municipal Interpretation*, 49 FORDHAM URB. L.J. 807, 816–21 (2022) (documenting the instability of judicial treatment of municipal authority in Wisconsin, where state courts have alternated between narrow and expansive constructions of local power without providing consistent doctrinal guidance, leaving municipalities uncertain ex ante about the scope of their regulatory authority).

269. *See* Sellers & Scharff, *supra* note 212, at 1364–65 (analyzing how state preemption of local structural authority—the power to design government institutions and determine the terms of political participation—forecloses municipalities from pursuing policy objectives by eliminating their regulatory capacity in entire subject areas).

270. *See* James Broughel & Dustin Chambers, *Learning from State Regulatory Streamlining Efforts*, NAT'L GOVERNORS ASS'N (July 1, 2022), https://www.nga.org/publications/learning-from-stateregulatory-streamlining-efforts/ [https://perma.cc/EC7X-D8G5] ("[R]egulatory streamlining efforts can assist with the swift and effective delivery of policies from government to businesses and citizens, thereby ensuring rules and regulations are easier to follow and less burdensome to comply with.").

jurisdictional combat to collaborative governance better serves both state and local officials and strengthens municipal authority overall.

State agencies would not simply impose top-down uniformity on municipalities.[271] Instead, they would develop principled frameworks to distinguish legitimate local innovation from impermissible interference with statewide interests. This institutional role mirrors how federal agencies often mediate between state and national interests—consider how the EPA sets baseline environmental standards while allowing states to experiment with implementation strategies.[272] Similarly, state administrative oversight could actually enhance beneficial local experimentation by providing clearer guidelines about which forms of municipal innovation remain compatible with state interests. The current system, where state legislatures haphazardly preempt local initiatives, creates far more uncertainty and does more to chill local policy experimentation than would a well-structured administrative framework.[273] Properly understood, administrative superintendence serves not to suppress local laboratories of democracy but to ensure they operate within reasonable bounds that respect both local autonomy and legitimate state concerns.

Critics raise important concerns about democratic legitimacy, institutional capacity, and constitutional structure. But their objections reinforce rather than undermine the case for agency oversight of home rule disputes. State agencies—democratically accountable, procedurally rigorous, and institutionally equipped for careful analysis—offer precisely what the current system lacks: a principled framework for distinguishing legitimate state interests from unwarranted intrusions on local autonomy.

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271. See *supra* Part III.A.2 for a discussion of this practice. In essence, the advance review and guidance mechanisms identify specific domains where state law demands uniformity and other domains where it tolerates variation, replacing the current system's crude assumption that local action either falls entirely within home rule authority or impermissibly intrudes on state power. *See id.* Agencies thus enable local experimentation by clarifying where municipalities retain discretion rather than imposing blanket prohibitions that treat all local initiatives as threats to state control. *See id.*

272. *See, e.g.*, 40 C.F.R. § 233.1 (2025) ("Nothing in this part precludes a State from adopting or enforcing requirements which are more stringent or from operating a program with greater scope, than required under this part.").

273. *See generally* Phillips, *Impeding Innovation*, *supra* note 208, at 2253 ("Preemption legislation [today] ha[s] a chilling effect on local regulation and will significantly reduce local governments' abilities to explore innovative goals.").

Administrative review thus represents not a threat to democratic governance but its fulfillment, respecting both municipal initiative and legislative authority while providing the analytical depth and procedural consistency these complex jurisdictional questions demand.

CONCLUSION

The constraints facing home rule municipalities demand institutional innovation. When Boston's mayor sought a modest adjustment to property tax classifications to shield residents from post-pandemic economic turbulence, her proposal—despite broad stakeholder support—floundered in the legislative process. This Note has argued that state administrative agencies, with their procedural frameworks, technical expertise, and experience mediating between competing interests, offer a promising alternative to the traditional binary choice between local autonomy and state preemption. Administrative superintendence would provide municipalities with greater certainty, more substantive expertise, and ongoing regulatory relationships better suited to addressing complex twenty-first century governance challenges. By redirecting home rule disputes from political and judicial forums to administrative processes specifically designed for intergovernmental coordination, states could preserve meaningful local autonomy while ensuring municipalities exercise their authority within coherent statewide policy frameworks.

The paradox of home rule—constitutional provisions promising self-governance while simultaneously subjecting municipalities to legislative supremacy—cannot be resolved cleanly through abstract doctrinal adjustments alone. Instead, as this Note has demonstrated, practical institutional arrangements that facilitate effective intergovernmental relations offer the most promising path forward. Administrative agencies, with their hybrid character, technical expertise, and capacity for ongoing supervision, possess precisely the institutional features needed to superintend the complex relationship between state and local authority. Administrative processes provide venues for structured negotiation that reconcile local democratic governance with the need for coordinated statewide policy. Thus, administrative superintendence offers what a century of home rule litigation and legislation has failed to provide: institutions capable of managing

the ongoing relationship between state authority and local democracy that modern governance demands.