

2019-20

LEGISLATOR'S GUIDE to the Issues

Local Control

The Issue

For years, local governments have been able to forestall state efforts to protect liberty with misleading arguments about local control. Local control is used to justify the position that local government policies should never be limited or checked by the state government—despite the fact that local governments have been created by the state for the purpose of securing liberty.

Further, opponents of state-led reform argue that conservatives are being hypocritical when they preempt local control. Conservatives do not like federal overreach in state affairs, critics charge, so why are conservatives advocating for state meddling in the affairs of political subdivisions?

This argument misunderstands federalism. The federal government was created by the states, with certain enumerated powers delegated to it, for the purpose of better securing liberty for the people of the states. This is why the Tenth Amendment to the U.S. Constitution clearly articulates that those powers not granted to the federal government are reserved for the states and the people within those states. Where the federal government overreaches its delegated powers, the states and the people have an obligation to resist and protect their rights.

Just as the states delegated powers to the federal government to better secure liberty, so the state of Texas has delegated certain powers to local governments to better secure liberty for Texans. It is within this framework of securing liberty that local control must be understood. Local control is a policy tool allowing a greater degree of autonomy to some local governments—such as home rule cities—so that in areas of law where the state is silent, the local government may act under its own authority and initiative.

However, this grant of greater autonomy does not mean the state has abdicated final authority over local governments. As creatures of the state, all local governments are checked and limited by the state. In fact, political thinkers like James Madison have long recognized that smaller governments have a peculiar vulnerability to charismatic leaders and factions, which requires greater vigilance on the part of the larger government. As Madison explained in *Federalist No. 10*:

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that

source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

Following Madison's logic, local governments are particularly susceptible to factionalism and majoritarian abuses of power. So when local governments abuse their authority and infringe on the people's liberties, the state government has an obligation to step in and safeguard those liberties.

Accordingly, local control must be understood as a policy tool that only makes sense as part of an overriding commitment to liberty. The fact that local governments are closer to the people does not give them permission to invade Texans' constitutional and fundamental rights. Policymakers must insist that like all governmental power, local control must be restrained within constitutional bounds.

The Facts

- The states delegated authority to the federal government in order to better secure liberty for the people of the states. The Tenth Amendment of the U.S. Constitution makes clear that those powers not delegated are reserved for the states and for the people.
- Similarly, the states delegated authority to local governments to better secure liberty. Part of that delegation is local control—a grant of greater autonomy to some local governments, like home-rule cities.
- Just like the state and the people have a right and duty to resist overreach by the federal government, the state and the people have a right and duty to resist overreach by the local government.
- Local governments are particularly susceptible to factions and majority-led abuses of individual liberty.

Recommendation

Allow liberty, not local control, to be the overriding principle that informs and directs Texas' public policymakers.

Resources

[Laredo Merchants Association v. City of Laredo, Texas Amicus Brief](#) by Robert Henneke, Texas Public Policy Foundation (June 2017).

[“State Regulation of Cities Does Not Illegitimately Infringe on ‘Local Control’”](#) by Thomas Lindsay, *Forbes* (July 24, 2017).