

LOCAL GOVERNMENT STANDING AS STATE STANDING

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It is increasingly common, and controversial, for local governments to bring lawsuits as plaintiffs in federal court. Many questions about this practice raise matters that sound in policy. But some, including the issue of standing to sue, also raise issues of constitutional law. How local governments fit into standing rules should reflect how they fit into the U.S. constitutional system more broadly. As the Supreme Court put it in the famous (and infamous) 1907 case *Hunter v. City of Pittsburgh*, “[m]unicipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them.” Local governments are arms of the state in our constitutional structure.

The *Hunter* paradigm remains foundational in theory, but it oversimplifies matters in practice. Since the late nineteenth century, state law has granted localities increasing autonomy. Federal law, in turn, often treats localities as independent entities—with sometimes disparate results, including that while local governments are generally subject to the same constitutional burdens as states, they do not always enjoy the same benefits. Standing law provides local governments the worst of both worlds. As arms of the state, they are required by state law to conform their litigation conduct to state control. But as independent entities, they are prohibited by federal law from suing for harms beyond the limited set of injuries that private parties can suffer. So while there are good reasons to view municipalities as well situated to litigate both for themselves and on their citizens’ behalf, standing law places a substantial barrier at the proverbial courthouse doors.

This Essay argues that standing law should take the foundational understanding of local governments as arms of the state seriously—not just to municipalities’ detriment, but also to their advantage. The law should view local government standing *as* state standing, such that states can, and

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frequently do, accord interests analogous to the state's own and delegate authority to sue in the state's place. This shift would allow localities to sue in more situations than current doctrine permits. But it would also respect the principle of ultimate state control.

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INTRODUCTION

It is increasingly common, and increasingly controversial, for local governments to sue as plaintiffs in federal court. Localities have possessed power to sue since the city first emerged in English law in the Middle Ages.¹ The current wave, however, reaches back to the campaign against tobacco manufacturers in the 1980s and 1990s²—and has crescendoed with lawsuits against a broad array of parties, including drug manufacturers for precipitating the opioid epidemic, companies for failing to secure user data, corporations for contributing to climate change, workplaces for underpaying wages and maintaining unsafe premises, and landlords for providing unsuitable housing.³ Business-oriented interest groups oppose this trend and advocate for “interpos[ing]

1. Zachary D. Clopton & Nadav Shoked, *The City Suit*, 72 EMORY L.J. 1351, 1357, 1366–69 (2023).

2. See Sarah L. Swan, *Plaintiff Cities*, 71 VAND. L. REV. 1227, 1230 (2018).

3. See U.S. CHAMBER OF COM. INST. FOR LEGAL REFORM, MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS 4–5 (Rob McKenna, Elbert Lin & Drew Ketterer eds., 2019) [hereinafter MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS], <https://instituteoflegalreform.com/wp-content/uploads/2020/10/Mitigating-Municipality-Litigation-2019-Research.pdf> [<https://perma.cc/G5HJ-LQ2Y>]; Eli Savit, *States Empowering Plaintiff Cities*, 52 U. MICH. J.L. REFORM 581, 583 nn.9–11, 586 (2019) (first citing *People v. Wells Fargo & Co.*, No. 15-4181, 2015 WL 4886391, at *1 (C.D. Cal. Aug. 13, 2015); then citing *People v. ConAgra Grocery Prods. Co.*, 227 Cal. Rptr. 3d 499 (Ct. App. 2017); then citing *City of New York v. Keene Corp.*, 505 N.Y.S.2d 782 (Sup. Ct. 1986), *aff'd*, 513 N.Y.S.2d 1004 (App. Div. 1987); and then citing *Bank of Am. Corp. v. City of Miami*, 137 S. Ct. 1296 (2017)).

a state-level check on municipal litigation,”⁴ while supporters of local government suits lament the lost opportunities to advance the public interest that stringent limitations could entail.⁵

Some questions about the extent to which local governments should be able to act as plaintiffs in federal court raise matters that sound in policy. But others—including the issue of standing to sue, which forms this Essay’s focus—also raise issues of constitutional law. And to understand how local governments should fit into standing rules, one must understand how they fit into the U.S. constitutional system more generally.

“Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them.”⁶ That statement, from the Supreme Court’s 1907 decision in *Hunter v. City of Pittsburgh*,⁷ articulated the most famous, and infamous, principle in all of state and local government law.⁸ At bottom, cities (“municipal corporations”) and other local governments are arms of the state in the federalist structure of American constitutional law.⁹

The *Hunter* paradigm remains foundational in theory, but it vastly oversimplifies matters in practice. Since the late nineteenth century, state law has granted localities increasing autonomy via various forms of “home rule,” thus moving local governance further and further from the strict constructionist “Dillon’s Rule” that predominated in *Hunter*’s day.¹⁰ Federal law, in turn, often treats localities as independent entities distinct from their surrounding state, with sometimes disparate results. Municipalities themselves must respect federal constitutional rights, for instance,¹¹ and equal protection doctrine imposes the “one-person, one-

4. See MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS, *supra* note 3, at 27.

5. See, e.g., Savit, *supra* note 3, at 602–06.

6. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907).

7. 207 U.S. 161 (1907).

8. *Id.* at 178; see RICHARD BRIFFAULT, LAURIE REYNOLDS, NESTOR M. DAVIDSON, ERIN ADELE SCHARFF & RICK SU, CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW 143–44 (9th ed. 2022) (describing how *Hunter*’s “state-centered approach is the dominant conception of local government under our federal constitution system, but . . . has been challenged by an alternative, more locally oriented vision”).

9. See BRIFFAULT, REYNOLDS, DAVIDSON, SCHARFF & SU, *supra* note 8, at 143–44.

10. See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 10 (1990).

11. See, e.g., *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 690–91 (1978) (holding that “local governments . . . may be sued for constitutional deprivations”).

vote” standard on cities even if the surrounding state already satisfies it.¹² But while local governments are thus subject to the same constitutional burdens as states, they do not always enjoy the same benefits. The form of sovereign immunity the Supreme Court has held inherent in the U.S. Constitution, for example, does not shield local governments from unwanted litigation but does protect other arms of the state.¹³

Standing law navigates this tension by according local governments the worst of both worlds. As arms of the state, “[t]he number, nature and duration of the powers conferred upon” localities—including with respect to proceeding as plaintiffs in federal court—essentially lie in states’ “absolute discretion.”¹⁴ But as independent entities, even where state law does not stand in the way, localities cannot sue as plaintiffs on the same terms that other governments can because they are not considered sovereign.¹⁵ Consequently, while there are good reasons to view municipalities as well situated to pursue litigation both for themselves and on their citizens’ behalf, standing law places a substantial barrier at the proverbial courthouse doors.¹⁶

This Essay argues that standing law should take the foundational conception of local governments as arms of the state seriously—not just to municipalities’ detriment, but also to their advantage. In particular, this Essay contends that we should view local government standing *as* state standing, such that states can, and frequently do, accord interests analogous to the state’s own and delegate authority to sue in the state’s

12. See *Avery v. Midland County*, 390 U.S. 474, 480–81 (1968) (“That the state legislature may itself be properly apportioned does not exempt subdivisions from the Fourteenth Amendment. While state legislatures exercise extensive power over their constituents and over the various units of local government, the States universally leave much policy and decisionmaking to their governmental subdivisions.”).

13. See *Lincoln County v. Luning*, 133 U.S. 529, 530 (1890) (“[I]t is claimed that because the county is an integral part of the State it could not, under the Eleventh Amendment of the Federal Constitution be sued in the Circuit Court But . . . the jurisdiction of the Circuit courts is beyond question. The Eleventh Amendment limits the jurisdiction only as to suits against a State.”); see also, e.g., *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 66–67, 71 (1989) (granting sovereign immunity to a state agency).

14. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907).

15. See, e.g., *Colo. River Indian Tribes v. Town of Parker*, 776 F.2d 846, 848 (9th Cir. 1985) (stating that local governments cannot sue to the same extent that states can “because their power is derivative and not sovereign”).

16. See Kathleen S. Morris, *Cities Seeking Justice: Local Government Litigation in the Public Interest*, in *HOW CITIES WILL SAVE THE WORLD: URBAN INNOVATION IN THE FACE OF POPULATION FLOWS, CLIMATE CHANGE AND ECONOMIC INEQUALITY* 189, 190–91 (Ray Brescia & John Travis Marshall eds., 2016) (contending “that our nation should bolster civil law enforcement by inviting and encouraging city law offices to enter the fray” and observing that “[t]he primary legal barrier is that cities that seek to sue on behalf of the public may not meet mandatory legal requirements known as ‘standing’ and ‘causation’”).

place. That would allow localities to sue in situations significantly broader than the limitation of current doctrine to property-related disputes permits. But it would also emphasize the ultimate control that states can exercise over local litigation decisions.

This Essay includes three parts. Part I sketches the legal landscape, first focusing on the doctrinal basics of state and local authority to act and standing to sue and then focusing on the normative debate over municipal litigation. Drawing on the *Hunter* paradigm, Part II reframes questions about the standing of local governments as questions about the standing of “political subdivisions of the State”—while honoring the practical independence states have granted localities since *Hunter*’s day. With reference to each basis for state standing in federal court (proprietary, sovereign, and quasi-sovereign interests), this Part explains how treating local governments as arms of the state could expand their capacity to act as plaintiffs while preserving states’ plenary authority. Part III offers a brief postscript on an alternative, but less promising, theory for expanding local governments’ capacity to litigate in federal court: organizational standing.

Before proceeding, a brief terminological note may be helpful. Throughout this Essay, we use the words “local governments,” “localities,” and “municipalities” (and variations thereof) as umbrella terms for all kinds of local governments—cities, counties, towns, etc. And we generally give the word “cities” its common meaning of incorporated municipalities.

I. THE LEGAL LANDSCAPE

The legal landscape surrounding local government standing includes both positive doctrine and normative debate. It is helpful to start with an overview of state and local government authority to act within the U.S. constitutional system before proceeding to the nuts and bolts of standing law. A summary of the controversy over municipal litigation, which follows, looks at the business interests, justice concerns, and federalism dimensions driving the conversation.

A. Doctrinal Basics

Two areas of constitutional doctrine are pertinent to the proper scope of local government standing: the law of local governments and the law of standing.

As for the law of local governments, the *Hunter* principle that municipalities are arms of the state dominates the federal constitutional

framework.¹⁷ *Hunter*'s state supremacy principle dovetails with "Dillon's Rule," a strict constructionist rubric for interpreting delegations to localities narrowly to preserve plenary state control as a matter of state law.¹⁸ Dillon's Rule provides that a local government "possesses, and can exercise," only those powers that are (1) "granted in *express words*"; (2) "*necessarily or fairly implied* in, or *incident* to, the powers expressly granted"; or (3) "*essential* to the declared objects and purposes of the [locality]."¹⁹ Dillon's Rule also provides that "[a]ny fair, reasonable doubt concerning the existence of power is resolved . . . against the [locality], and the power is denied."²⁰ Dillon's Rule governed the construction of local government power throughout most of the country for much of the twentieth century.²¹ And it remains the law of the land in some places (like Virginia), while continuing to provide a default template in other states for municipalities that have not been accorded increased independence.²²

Both before and after *Hunter*, however, other understandings of the place of local governments within the U.S. constitutional system have competed for primacy.²³ Conceptions of municipal power that emphasize local autonomy over state supremacy dovetail with "home rule," an alternative to Dillon's Rule for structuring the association between states and local governments. Municipalities with home rule—which appeared in St. Louis circa 1875 and "became a significant factor in shaping state-local relations over the course of the twentieth century"—have "broad powers to act even in the absence of specific state authorization," and the relevant state constitutional or statutory provisions "often state that local powers are to be 'liberally construed.'"²⁴ By 1990, "forty-eight states provided a measure of home rule for at least some of their cities," and "thirty-seven states provided for home rule for at least some of their counties."²⁵

Historically, local governments have also played dual public-private roles, with the latter rooted in the background of cities as incorporated

17. BRIFFAULT, REYNOLDS, DAVIDSON, SCHARFF & SU, *supra* note 8, at 143–44.

18. *See id.* at 148–49, 390–91.

19. JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS § 55 (1872).

20. *Id.*

21. BRIFFAULT, REYNOLDS, DAVIDSON, SCHARFF & SU, *supra* note 8, at 391–93.

22. *Id.* at 393, 399.

23. *See id.* at 144, 148–49, 393.

24. *Id.* at 393.

25. *Id.*

entities, like business organizations.²⁶ Over time, localities have emerged more as public bodies (in line with the *Hunter* arm-of-the-state model) than as private parties.²⁷ But some traces of cities' private status remain—including when it comes to local governments' rights to sue.²⁸

As for the law of standing, the Constitution gives federal courts jurisdiction over certain categories of “[c]ases” and “[c]ontroversies.”²⁹ The Supreme Court has interpreted that condition to require that plaintiffs have standing to sue—meaning a sufficient stake in the underlying dispute.³⁰ To meet “the irreducible constitutional minimum of standing,” a party must have suffered (1) an “injury in fact” that is (2) causally connected to the conduct of which they complain and (3) likely to be redressed by the relief they request.³¹ Not all harms meet the first element: Among other requirements, the plaintiff must have suffered an injury to an interest that courts consider judicially “cognizable.”³²

Plaintiffs can generally premise standing on injuries—often called “wallet” or “pocketbook” injuries—to monetary or other property-based interests.³³ The Supreme Court has repeatedly made clear that “a loss of even a small amount of money is ordinarily an ‘injury.’”³⁴ But various non-financial and intangible harms can qualify too, from emotional

26. See Clopton & Shoked, *supra* note 1, at 1366 (“The close association between cities and corporations might strike many contemporary lawyers as surprising. But originally the common law did not distinguish local governments from those entities that today would have been deemed private corporations. Thus, in his influential commentary about the laws of England, Blackstone grouped together as ‘lay corporations’ towns, the ‘trading companies of London,’ and colleges. All of these entitles [sic] were ‘called a *corporation*, or *body corporate*, because the persons are made into a body, and are of capacity to take, grant, &c., by a particular name.’” (footnotes omitted) (first quoting 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 470–71 (1902); and then quoting 1 JOHN F. DILLON, THE LAW OF MUNICIPAL CORPORATIONS 92 n.3 (2d ed. 1873))).

27. See BRIFFAULT, REYNOLDS, DAVIDSON, SCHARFF & SU, *supra* note 8, at 149–50 (“After the American Revolution and, especially, in the first half of the nineteenth century, courts increasingly emphasized the public aspect of local governments and de-emphasized their quasi-private side.”).

28. See *id.* at 150–51; Clopton & Shoked, *supra* note 1, at 1366, 1372–73.

29. U.S. CONST. art. III, § 2, cl. 1.

30. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). This Essay focuses on standing to sue in federal court, but states often pattern rules for standing to sue in their own courts after the federal requirements. See Savit, *supra* note 3, at 600.

31. *Lujan*, 504 U.S. at 560–61.

32. *Id.* at 563 (quoting *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972)).

33. *E.g.*, *Tyler v. Hennepin County*, 143 S. Ct. 1369, 1374 (2023) (stating that a \$25,000 loss represented “a classic pocketbook injury sufficient to give [the plaintiff] standing”).

34. *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017); see also, *e.g.*, *McGowan v. Maryland*, 366 U.S. 420, 424, 430–31 (1961) (granting standing to parties who suffered a five-dollar “economic injury”).

injuries for tort claimants to aesthetic injuries for environmental plaintiffs.³⁵

This Essay concerns the contours of standing doctrine for states and, especially, for local governments. To proceed as plaintiffs in federal court, state plaintiffs can rely on injuries to three main types of interests. First are classic property-based or “proprietary interests,” like “own[ing] land or participat[ing] in a business venture.”³⁶ Second are “sovereign interests,” which relate to the “exercise of sovereign power . . . within the relevant jurisdiction” and comprise at least two categories, one involving “the maintenance and recognition of borders” and the other involving “the power to create and enforce a legal code.”³⁷ Third are “quasi-sovereign interests” “in the well-being of [a state’s] populace.”³⁸ Courts divide this class into two categories as well. One involves “the health and well-being—both physical and economic—of [a state’s] residents,” and the other involves a state’s stake in maintaining “its rightful status within the federal system.”³⁹ When states sue as *parens patriae*, which is Latin for “parent of the country,” they bring suit on behalf of their citizens.⁴⁰ That can occur by virtue of states relying on quasi-sovereign interests in a representative capacity.⁴¹

Like states and other plaintiffs, local governments can base standing on injuries to proprietary interests.⁴² But courts generally hold that unlike states, localities cannot ground standing in sovereignty-related injuries, whether from sovereign or quasi-sovereign interests.⁴³ As entities whose powers rest in states’ “absolute discretion,”⁴⁴ local governments are not

35. For an argument that “identifies and challenges the role of certain characteristics,” including “commensurability with money,” in standing doctrine, see Rachel Bayefsky, *Constitutional Injury and Tangibility*, 59 WM. & MARY L. REV. 2285, 2290–94 (2018). And for a project that “provides an in-depth analysis of the role of psychological harm” in such doctrine, see Rachel Bayefsky, *Psychological Harm and Constitutional Standing*, 81 BROOK. L. REV. 1555, 1559–60 (2016).

36. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982).

37. *Id.*

38. *Id.* at 602.

39. *Id.* at 607.

40. *Id.* at 600–01 (quoting *Parens Patriae*, BLACK’S LAW DICTIONARY (5th ed. 1979)).

41. *See id.*

42. *See, e.g., City of Sausalito v. O’Neill*, 386 F.3d 1186, 1197 (9th Cir. 2004) (explaining that the City of Sausalito could “sue to protect its own ‘proprietary interests’” (quoting *Colo. River Indian Tribes v. Town of Parker*, 776 F.2d 846, 848 (9th Cir. 1985))).

43. *See, e.g., New Mexico v. McAleenan*, 450 F. Supp. 3d 1130, 1188–89 n.15 (D.N.M. 2020) (*inter alia*, discussing differences between the kinds of standing available to Albuquerque and New Mexico).

44. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907).

considered sovereign entities within our constitutional structure—and thus have no sovereignty-related interests to assert.⁴⁵

State and local governments are subject to both federal and state law. So when it comes to assessing their ability to sue in federal court, federal standing doctrine makes up only part of the puzzle. State law makes up the other part by delineating what state and local entities can and cannot do, including to what extent they may sue (and be sued). State law sets such rules of engagement through a patchwork of processes, including legislation, administrative action, and citizen initiation. State authorizations may be express (as in a statutory provision stating that municipalities “may sue and be sued . . . in any court or other place”⁴⁶) or implied (as in judicial interpretations of broad home-rule powers⁴⁷).

In sum, standing law allows states to sue in federal court on three bases (injuries to proprietary, sovereign, and quasi-sovereign interests) but allows local governments to sue on only one basis (injuries to proprietary interests). And in addition to federal standing doctrine, state and local governments’ ability to sue in federal court depends on the delineation of their powers under state law.

B. Normative Controversy

State standing has become both prominent and provocative in recent years. State suits against federal defendants have ballooned since the middle of President Barack Obama’s time in office.⁴⁸ Judges have debated the doctrine across the pages of federal reporters, and professors have disputed its details from the *Harvard Law Review* to *The New York Times*, among other places.⁴⁹ Local government standing has not attained

45. See *Colo. River Indian Tribes*, 776 F.2d at 848 (“[P]olitical subdivisions . . . cannot sue as *parens patriae* because their power is derivative and not sovereign.”).

46. TEX. LOC. GOV’T CODE ANN. § 51.013 (West 2025).

47. E.g., *Walesch v. City of New Orleans*, 195 So. 2d 302, 304 (La. Ct. App. 1967) (holding that while New Orleans had adopted a home-rule charter that did “not in specific language set forth that the City may sue or be sued,” the charter granted broad “rights, powers, privileges and authority” that included the ability to sue and be sued (cleaned up)).

48. See *Statistics and Visualizations—Multistate Litigation vs. the Federal Government*, STATE LITIG. & AG ACTIVITY DATABASE, <https://attorneysgeneral.org/multistate-lawsuits-vs-the-federal-government/statistics-and-visualizations-multistate-litigation-vs-the-federal-government> [https://perma.cc/2HDJ-HL8H] (last visited Sep. 21, 2025).

49. See, e.g., *United States v. Texas*, 143 S. Ct. 1964, 1976–77 (2023) (Gorsuch, J., concurring in the judgment); William Baude & Samuel L. Bray, *Proper Parties, Proper Relief*, 137 HARV. L. REV. 153, 165–68 (2023); Adam Liptak, *Student Loan Case Before Supreme Court Poses Pressing Question: Who Can Sue?*, N.Y. TIMES

the same public salience, but controversy over broader questions about to what extent localities make appropriate plaintiffs in public interest cases has bubbled up.⁵⁰ In particular, the U.S. Chamber of Commerce has mounted an attack on municipal litigation, including by working with former state solicitors general to write reports on the topic, which argue that local government suits offend federalism values.⁵¹

Supporters of municipal litigation point to multiple potential benefits for the participating localities' populations. They argue that local governments enjoy close relationships with their constituents, which provides them a useful position to advance their residents' interests. As Professor Kaitlin Ainsworth Caruso has put it:

The myriad ways in which municipal governments interact with their residents each day give them an excellent vantage point for recognizing patterns of harm affecting their communities. Simply by performing their ordinary functions—running a hospital or identifying blighted properties—cities become potent information aggregators. Moreover, because a city's welfare is intimately intertwined with that of its residents, we might expect it to take remedial action, including suing to protect its residents from things like fraud, public nuisance, and infringement of their rights.⁵²

(Feb. 26, 2023), <https://www.nytimes.com/2023/02/26/us/politics/biden-student-loans-supreme-court.html>.

50. See, e.g., U.S. CHAMBER OF COM. INST. FOR LEGAL REFORM, *ILR BRIEFLY: MUNICIPALITY LITIGATION: A CONTINUING THREAT* 12 (Trevor S. Cox & Elbert Lin eds., 2021) [hereinafter *MUNICIPALITY LITIGATION: A CONTINUING THREAT*], <https://institutelegalreform.com/research/ilr-briefly-municipality-litigation-a-continuing-threat/> [https://perma.cc/9ZDG-H9VM].

51. See *MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS*, *supra* note 3 (noting that all three editors are former state solicitors general); *id.* at 14–16 (arguing that the “[c]onsequences of [s]piraling [m]unicipal [l]itigation” include “[u]surpation of [s]tate [p]ower”); *MUNICIPALITY LITIGATION: A CONTINUING THREAT*, *supra* note 50, at 13 n.† (2021) (noting that “[t]his edition of *ILR Briefly* was prepared by Trevor S. Cox and Elbert Lin”); *id.* at 4 (arguing that the “[p]roblems [w]ith [m]unicipality [l]itigation” include “[d]isplacement of [s]tate [a]uthority”). Trevor Cox and Elbert Lin are former state solicitors general. See Trevor S. Cox, HUNTON ANDREWS KURTH LLP, <https://www.hunton.com/people/trevor-cox> [https://perma.cc/LMH2-FKEF] (last visited Oct. 2, 2025); Elbert Lin, HUNTON ANDREWS KURTH LLP, <https://www.hunton.com/people/elbert-lin> [https://perma.cc/HB5S-G447] (last visited Oct. 2, 2025).

52. Kaitlin Ainsworth Caruso, *Associational Standing for Cities*, 47 CONN. L. REV. 59, 61 (2014).

Indeed, polling indicates that people trust city governments more than they trust their state and federal counterparts.⁵³

Supporters thus contend that municipal suits can spur change by calling the public's attention to underrecognized social issues, by shining a light on "secretive industry practices" that would otherwise remain hidden, and by motivating defendants to alter problematic conduct—benefits that can accrue even in the event of settlement or summary dismissal.⁵⁴ Professor Sarah Swan identifies municipal litigation as a form of state building through which cities can reify their role as political bodies "responsible for and capable of achieving justice for their populations."⁵⁵ Local government suits may also "help to reduce the 'legal estrangement' that some minority groups" can experience from the legal system, Swan argues.⁵⁶ Much municipal litigation seeks to protect "often marginalized" populations, including racial minorities and people with disabilities.⁵⁷

Supporters argue that the benefits of local government suits can also spread beyond the plaintiff localities—including to the states that surround them. To start, Eli Savit, now prosecuting attorney of Washtenaw County, Michigan,⁵⁸ argues that localities may attain the political consensus needed to bring suit relatively easily, which can serve as a model for state litigation.⁵⁹ The City of Chicago filed the first action against opioid manufacturers, for example, with numerous states following suit.⁶⁰ Savit also points out that local litigators may step in where state lawyers lack time, manpower, or other resources—and that municipal litigation can encourage defendants to change their behavior beyond municipal limits.⁶¹ When twelve California localities sued firearms sellers, for example, the defendants agreed not to supply guns

53. See Swan, *supra* note 2, at 1277; Jeffrey M. Jones, *Americans Trust Local Governments Most, Congress Least*, GALLUP (Oct. 13, 2023), <https://news.gallup.com/poll/512651/americans-trust-local-government-congress-least.aspx> [https://perma.cc/XX69-Z977].

54. Nino C. Monea, *Cities v. Big Pharma: Municipal Affirmative Litigation and the Opioid Crisis*, 50 URB. LAW. 87, 99, 122 (2019).

55. Swan, *supra* note 2, at 1285.

56. *Id.* at 1287 (quoting Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2066 (2017)).

57. *Id.* at 1246, 1287.

58. *Prosecutor Eli Savit*, PROSECUTOR'S OFF.: WASHTENAW CNTY., <https://www.washtenaw.org/3284/Prosecutor-Eli-Savit> [https://perma.cc/4FWC-387D] (last visited Oct. 2, 2025).

59. Savit, *supra* note 3, at 598.

60. Richard C. Ausness, *The Current State of Opioid Litigation*, 70 S.C. L. REV. 565, 566 & n.2 (2019).

61. Savit, *supra* note 3, at 597–98.

to “kitchen table dealers” throughout California and across other nearby states.⁶²

Supporters note, finally, that municipal litigation may increase the efficacy of state and federal laws.⁶³ In one case, for instance, New York City (later joined by New York State) sued FedEx “for knowingly shipping massive quantities of untaxed cigarettes on behalf of unauthorized cigarette dealers.”⁶⁴ The city asserted claims not only for public nuisance, but also for violating the federal Racketeer Influenced and Corrupt Organizations Act, federal cigarette trafficking legislation, and a state public health statute.⁶⁵

Critics, for their part, assert multiple arguments against the rising tide of local government suits. Some sound in complaints that oppressive regulation and litigation encumber business activity to an unacceptable degree.⁶⁶ Others—often likewise advanced by business actors who see the possibility of state-led litigation as a lesser evil—rest on the structure of state and local governments and their relationships with the people. This Essay remains agnostic about the appropriate level of litigation against the business community and thus focuses on the second kind of argument. It bears noting, however, that local governments often act alongside or as alternatives to states, private organizations, and individual plaintiffs who would pursue similar claims even if municipalities did not.⁶⁷ Whether local governments can pursue affirmative litigation, therefore, may make less of a difference to the quantity of suits against business interests than it might initially appear.

Critics contend that local government suits risk “upending the balance of state and local power and . . . usurping the states’ role in representing their residents’ interests in litigation.”⁶⁸ Related to that objection, critics see municipal litigation as an end-run around limitations on local government regulation.⁶⁹ Critics suggest, moreover, that

62. Jean Guccione, *Dealers, Firms Accept Curbs, Settle Gun Suit*, L.A. TIMES (Aug. 22, 2003, at 00:00 PT), <https://www.latimes.com/archives/la-xpm-2003-aug-22-me-guns22-story.html> [<https://perma.cc/3GQ7-QG2R>].

63. See Morris, *supra* note 16, at 189; Jill E. Habig & Joanna Pearl, *Cities as Engines of Justice*, 45 FORDHAM URB. L.J. 1159, 1194 (2019).

64. *City of New York v. FedEx Ground Package Sys., Inc.*, 351 F. Supp. 3d 456, 464–65, 471 (S.D.N.Y. 2018).

65. *Id.* at 464, 471.

66. See, e.g., MUNICIPALITY LITIGATION: A CONTINUING THREAT, *supra* note 50, at 2.

67. See, e.g., *FedEx Ground Package Sys., Inc.*, 351 F. Supp. 3d at 471 (noting that the city acted alongside the state).

68. MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS, *supra* note 3, at 1.

69. Swan, *supra* note 2, at 1269–70; Margaret H. Lemos, *State-Local Litigation Conflicts*, 2021 WIS. L. REV. 971, 979.

compared to municipal litigation, state litigation is more responsive to citizen preferences. In most states, they argue, voters elect state attorneys general for the purpose of protecting the public wholesale, while local litigators are chosen by smaller populations for a variety of reasons—and may not be popularly elected at all.⁷⁰

Moving from political theory to more practical matters, critics find fault with local governments for relying on private sector contingency fee counsel in some cases.⁷¹ They argue that collaborating with the plaintiff's bar creates tensions between municipal duties to maximize public welfare and private lawyers' drive to maximize personal profits.⁷² Critics also contend that local governments misuse litigation to fill budgetary shortfalls and that states can more appropriately allocate monetary recoveries and implement comprehensive solutions.⁷³ And critics highlight how the multiplicity of municipalities can present coordination challenges for public interest litigation.⁷⁴ The sheer sum of local governments can make attaining agreement on litigation strategy among a meaningful coalition difficult.⁷⁵ Plus, defendants may balk at resolving a dispute with some local governments while the possibility of suit by others remains open.⁷⁶

Commentators who defend municipal litigation raise rejoinders. Supporters emphasize that state and local governments can share the collective mission to litigate in the public interest and thereby enhance the resources and results that either could bring to the table.⁷⁷ Supporters note that states pursue “regulation-by-litigation”⁷⁸—and ask why local governments with wide-ranging policy authority should not have the same ability.⁷⁹ Relatedly, supporters point out that while critics oppose

70. MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS, *supra* note 3, at 15.

71. *See* Monea, *supra* note 54, at 97.

72. *Id.*

73. *See* MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS, *supra* note 3, at 5–8, 14–16; Lemos, *supra* note 69, at 992–95.

74. *See* Lemos, *supra* note 69, at 997–98.

75. MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS, *supra* note 3, at 14.

76. *See* Morgan A. McCollum, Note, *Local Government Plaintiffs and the Opioid Multi-District Litigation*, 94 N.Y.U. L. REV. 938, 942–43 (2019).

77. *See* Kaitlin Ainsworth Caruso, *Who and What Is a City “For”? Municipal Associational Standing Reexamined*, 62 WM. & MARY L. REV. ONLINE 105, 130 (2021), <https://wmlawreview.org/essay-who-and-what-city-%E2%80%9C%E2%80%9D-municipal-associational-standing-reexamined> [<https://perma.cc/84N8-DHNF>].

78. *See* ANDREW P. MORRIS, BRUCE YANDLE & ANDREW DORCHAK, REGULATION BY LITIGATION 1 (2009) (laying out a theoretical framework to explain regulation-by-litigation).

79. *See* Lemos, *supra* note 69, at 983.

municipal litigation for attempting to impose local values statewide (and would thus prefer state litigation as an alternative), state litigation itself commonly seeks to impose regional preferences nationwide (and is thus susceptible to an analogous argument).⁸⁰

Supporters also contend that issues of advocacy and accountability are more complex than a simple connection between publicly elected attorneys general and popular preferences suggests. Supporters point out that, in practice, citizens may have more opportunity to play a direct role in deciding whether and how municipal litigation proceeds, enhancing democratic participation at the retail level.⁸¹ A Texas city council, for instance, recently considered citizen input before voting to authorize the city attorney to join a lawsuit to stop a controversial development project.⁸² Supporters of municipal litigation also contend that state-level political hegemony and urban–rural divides make it easier for state governments to ignore certain stakeholder interests.⁸³ Local governments, then, can represent constituent communities that state leaders may neglect.⁸⁴ And commentators argue that “states may be more subject to industry capture,”⁸⁵ placing local governments in a better position to protect the proverbial little guy’s legitimate interests.

With respect to practical concerns, supporters contend that contingency fee litigation financing is necessary to allow localities to challenge well-heeled defendants without risking the loss of taxpayer resources on righteous but unsuccessful suits.⁸⁶ And commentators point out that state plaintiffs regularly rely on the same arrangements,⁸⁷ as a

80. See *id.* at 979–80.

81. *Id.* at 976–78.

82. See Sarah Al-Shaikh, *Two Central Texas Cities File Lawsuit to Stop Development Near Residential Neighborhood*, KXAN (Aug. 22, 2024, at 10:04 CT), <https://www.kxan.com/news/two-central-texas-cities-file-lawsuit-to-stop-development-near-residential-neighborhood/> [<https://perma.cc/S7CJ-W85M>].

83. Katherine Levine Einstein & David M. Glick, *Cities in American Federalism: Evidence on State–Local Government Conflict from a Survey of Mayors*, 47 *PUBLIUS: J. FEDERALISM* 599, 601–02 (2017).

84. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 *J. POL. ECON.* 416, 418 (1956) (“The consumer-voter may be viewed as picking that community which best satisfies his preference pattern for public goods.”); BRIFFAULT, REYNOLDS, DAVIDSON, SCHARFF & SU, *supra* note 8, at 17, 51 (explaining that Tiebout’s article provides “the foundation of economic analysis of local power,” according to which “larger units are likely to be more heterogeneous,” meaning that “more people are likely to have divergent preferences, while in smaller, more homogeneous units, there may be less internal disagreement”—such that local governments may be able to recognize and respond to residents’ interests better than states can).

85. Swan, *supra* note 2, at 1274.

86. *Id.* at 1279–81; Savit, *supra* note 3, at 596.

87. Lemos, *supra* note 69, at 980–81; Savit, *supra* note 3, at 596.

recent report on Texas practices demonstrates.⁸⁸ They also argue that localities can ethically partner with for-profit attorneys by stipulating that the government will maintain close involvement and ultimate authority over the litigation.⁸⁹ And while coordination challenges do present a potential downside of municipal suits,⁹⁰ supporters assert that the profusion of local governments can also produce opportunities for public interest litigation. Localities, they argue, can leverage their multiplicity in settlement negotiations, including by channeling claims into multidistrict litigation.⁹¹ Supporters also contend that compared to states, municipalities can more closely tailor theories of liability and requests for relief to the experiences of injured parties.⁹² On the flipside, they point out that states have repeatedly failed to direct money judgments toward curing or preventing relevant problems.⁹³ States that settled in the tobacco litigation, for instance, used funds they received for a variety of unrelated purposes, from infrastructure projects to balancing their budgets.⁹⁴

This Essay does not purport to resolve this long-running debate. But by reconsidering local government standing with due regard for both state supremacy and local autonomy, the ensuing discussion offers lessons that, we hope, can help move the conversation forward.

II. THE STANDING OF “POLITICAL SUBDIVISIONS OF THE STATE”

Just as the *Hunter* paradigm views local governments as “political subdivisions” of their parent states,⁹⁵ courts should view local government standing as a doctrinal offshoot of state standing. A sharp distinction between the standing of states and the standing of their

88. See Zach Despart, *Texas Attorney General Ken Paxton Is Handing More of His Office’s Work to Costly Private Lawyers*, TEX. TRIB. (July 24, 2025, at 05:00 CT), <https://www.texastribune.org/2025/07/24/ken-paxton-private-lawyers-texas-cases/> [https://perma.cc/2TWE-U8N3].

89. Monea, *supra* note 54, at 97–98.

90. See Lemos, *supra* note 69, at 997; McCollum, *supra* note 76, at 943.

91. See Lemos, *supra* note 69, at 995–96; McCollum, *supra* note 76, at 965–66.

92. See Savit, *supra* note 3, at 597 (discussing how cities “often sue to remediate quintessentially local harms”); see, e.g., *City of Spokane v. Monsanto Co.*, No. 2:15-CV-00201-SMJ, 2016 WL 6275164, at *1–2 (E.D. Wash. Oct. 26, 2016) (discussing how Spokane sued Monsanto over health effects caused by polychlorinated-biphenyl (PCB) contamination in the Spokane River and sought “equitable indemnity for Spokane’s costs to remove PCBs from wastewater and stormwater”).

93. Lemos, *supra* note 69, at 992.

94. *Id.* at 992–93; U.S. GEN. ACCT. OFF., GAO-01-851, TOBACCO SETTLEMENT: STATES’ USE OF MASTER SETTLEMENT AGREEMENT PAYMENTS 6–7 (2001).

95. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907).

political subdivisions makes little sense. This Part delineates this assertion with respect to proprietary, sovereign, and quasi-sovereign interests, respectively.

Two points bear noting up front. First, there are different ways to expound the shorthand notion of viewing local government standing as state standing. In some contexts, states could accord interests analogous to the state's own so that localities can act like states in suing for themselves. In other contexts, states could delegate authority so that localities can sue in the place of states. As explained subsequently, we rely on each: the analogy framework in the context of proprietary and especially sovereign interests as well as the delegation framework in the context of quasi-sovereign interests. Second, viewing local government standing as state standing would empower municipal litigation in some ways and disempower it in others. Our argument is thus apt to please and displease both sides of the normative debate about the appropriateness of municipal suits in federal court.

A. An Elaboration on Proprietary Interests

Current law is clear that local governments, like states and other litigants, can premise suits on their own proprietary harms.⁹⁶ “From their earliest days, cities have owned property,” and “[t]hroughout American history,” they have sued to protect such interests.⁹⁷ Nevertheless, proprietary injuries provide a platform to introduce several relevant issues and to gain additional clarity on some contested matters.

At least two doctrinal nuances have encouraged states—successfully—to fit suits into proprietary theories of standing in recent years. First is the specter of so-called special solicitude. In 2007, the Supreme Court considered whether Massachusetts could sue the U.S. Environmental Protection Agency (EPA) in an attempt to compel new greenhouse gas regulations.⁹⁸ Massachusetts’ claim of injury turned on climate change causing sea levels to creep up and swallow its coastline—which additional greenhouse gas regulations could assertedly alleviate.⁹⁹ In granting state standing, the Court uttered a now notorious line: “Given th[e] procedural right [to challenge the rejection of its rulemaking petition] and Massachusetts’ stake in protecting its quasi-sovereign interests, the Commonwealth is entitled to special solicitude in our standing analysis.”¹⁰⁰

96. See *supra* Section I.A.

97. Clopton & Shoked, *supra* note 1, at 1396–97.

98. See *Massachusetts v. EPA*, 549 U.S. 497, 505 (2007).

99. See *id.* at 521–26.

100. *Id.* at 520–21.

No one knows what “special solicitude” was supposed to mean.¹⁰¹ But while lower courts have struggled to translate the Supreme Court’s cryptic statement into workable doctrine,¹⁰² the Justices have essentially ignored it.¹⁰³ Instead of approving state plaintiffs’ assertions of quasi-sovereign injuries (to which the relevant sentence in *Massachusetts v. EPA*¹⁰⁴ refers¹⁰⁵) or sovereign injuries (at which the pertinent paragraph also gestures¹⁰⁶), the Court in years since has repeatedly credited proffers of more or less attenuated proprietary harms.¹⁰⁷ Consider the 2016 case *United States v. Texas*,¹⁰⁸ where the Court affirmed by an equally divided vote a Fifth Circuit decision recognizing standing for Texas to sue the Obama administration primarily on the ground that the challenged immigration program would have had the effect of allowing participants to seek state-subsidized driver’s licenses.¹⁰⁹

States have responded by trying to shoehorn all manner of harms into proprietary injury theories. For instance, in the 2021 case *California v. Texas*,¹¹⁰ Texas asserted standing to challenge the latest iteration of the Affordable Care Act on the theory that the (penalty-free) individual mandate pushed people to enroll in state-supported insurance programs.¹¹¹ That increased caseload, Texas argued, required the state to bear additional administrative costs like keeping enrollees informed about

101. See Katherine Mims Crocker, *Not-So-Special Solicitude*, 109 MINN. L. REV. 815, 831 & n.70 (2024) [hereinafter Crocker, *Not-So-Special Solicitude*] (collecting citations for the proposition that “[s]pecial solicitude is an infamously mysterious concept,” with “academic interpretations rang[ing] far and wide”).

102. See *id.* at 861 (“[S]ince *Massachusetts v. EPA*, the federal courts of appeals have wrestled with what special solicitude means. Different circuits, different panels, and different judges have offered different formulations without reaching any meaningful consensus.”).

103. See *United States v. Texas*, 143 S. Ct. 1964, 1977 (2023) (Gorsuch, J., concurring in the judgment) (“Before *Massachusetts v. EPA*, the notion that States enjoy relaxed standing rules ‘ha[d] no basis in our jurisprudence.’ Nor has ‘special solicitude’ played a meaningful role in this Court’s decisions in the years since.” (alteration in original) (quoting *Massachusetts*, 549 U.S. at 536 (Roberts, C.J., dissenting))).

104. 549 U.S. 497 (2007).

105. See *id.* at 520–21.

106. See *id.* at 519–20 (justifying special solicitude in part because *Massachusetts* had “lodged” certain “sovereign prerogatives . . . in the Federal Government”).

107. Crocker, *Not-So-Special Solicitude*, *supra* note 101, at 843 (“The state-standing cases the Court has decided since *Massachusetts v. EPA* have been all over the map, but a close analysis reveals . . . an emphasis on proprietary injuries to the near exclusion of others . . .”).

108. 579 U.S. 547 (2016) (per curiam).

109. See *Texas v. United States*, 809 F.3d 134, 155 (5th Cir. 2015), *aff’d by an equally divided Court*, 579 U.S. 547.

110. 141 S. Ct. 2104 (2021).

111. See *id.* at 2117–20.

benefits and submitting information to the Internal Revenue Service.¹¹² The attempt failed, but on causation and redressability rather than injury grounds.¹¹³

The second doctrinal factor that has prompted states to focus their standing efforts on proprietary injuries is the so-called *Mellon* bar. This rule comes from the 1923 case *Massachusetts v. Mellon*.¹¹⁴ There, the Supreme Court stated that “[w]hile the State, under some circumstances, may sue [as *parens patriae*] for the protection of its citizens, it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government.”¹¹⁵ For “[i]n that field it is the United States, and not the State, which represents them as *parens patriae*.”¹¹⁶ In this context, the idea of states acting as *parens patriae* is best understood as synonymous with quasi-sovereign standing.¹¹⁷ The *Mellon* bar should therefore mean only that states cannot sue the federal government when relying on quasi-sovereign injuries.¹¹⁸ But without carefully distinguishing between the two, courts and commentators have suggested that states act as *parens patriae* not just when they bring suits premised on quasi-sovereign standing, but also when they bring suits premised on sovereign standing¹¹⁹—which implies that the *Mellon* bar blocks both. That leaves proprietary standing as the last kind of state standing, well, standing.

Again, states have responded by shoehorning all manner of harms into proprietary injury theories. And the Supreme Court has effectively endorsed that maneuver—much to the consternation of academic critics of broad state standing.¹²⁰ In the 2023 case challenging President Biden’s

112. *Id.* at 2119.

113. *See id.* at 2115–20.

114. 262 U.S. 447 (1923).

115. *Id.* at 485–86 (citation omitted).

116. *Id.* at 486.

117. *See* Katherine Mims Crocker, Note, *Securing Sovereign State Standing*, 97 VA. L. REV. 2051, 2074–79 (2011).

118. *See id.*

119. *See, e.g., Pennsylvania v. New Jersey*, 426 U.S. 660, 666 (1976) (per curiam) (denying the ability to proceed *parens patriae* because “[n]o sovereign or quasi-sovereign interests of [the State] are implicated”); Robert A. Weinstock, Note, *The Lorax State: Parens Patriae and the Provision of Public Goods*, 109 COLUM. L. REV. 798, 799 (2009) (asserting that “parens patriae standing serves to permit the state-led litigation of injuries to what judges label ‘sovereign’ or ‘quasi-sovereign’ interests” (footnote omitted)).

120. *See, e.g.,* Amanda Frost, *Symposium: Second Thoughts on Standing*, SCOTUSBLOG (June 24, 2016), <https://www.scotusblog.com/2016/06/symposium-second-thoughts-on-standing/> [<https://perma.cc/C7TE-JQNH>] (arguing that “tangential, indirect harm is the kind of generalized grievance that does not create standing” and that “[b]y keeping the door open to lawsuits [based on this theory], the Court has made itself

program for forgiving student loans, *Biden v. Nebraska*,¹²¹ Justice Kagan’s dissent saw Missouri’s assertion of standing in that light.¹²² Kagan observed that, because of the *Mellon* bar, “[a] State may never sue the Federal Government based on its citizens’ rights and interests.”¹²³ Accordingly, “Missouri need[ed] to show that the harm to [a state-affiliated student loan servicer] produce[d] harm to the State itself.”¹²⁴ Missouri alleged that the loan forgiveness program would cause the servicer to suffer financial harm from a loss of administrative fees for closed accounts.¹²⁵ Kagan recognized that “[f]inancial harm is a classic injury in fact” and that the servicer could “plausibly allege[]” such harm.¹²⁶ But she disagreed with the majority’s conclusion that the servicer’s injury was actually attributable to Missouri.¹²⁷

By allowing local governments to pursue only proprietary interests as plaintiffs in federal court, the law likewise encourages them to frame standing in proprietary terms—even if doing so may be disingenuous. As Prosecuting Attorney Savit has explained, while the “legal theories” underlying municipal suits “vary widely,” “[a]t their core, [they] share a common characteristic: local governments are suing not just to protect their proprietary interests, but to further the well-being of their residents.”¹²⁸ It is not unusual, then, to see localities presenting litigation efforts in the media as safeguarding citizens’ interests but casting them differently in court. New York City sued oil companies after Hurricane Sandy, for instance, alleging that the companies’ contributions to climate change amplified damage from the storm.¹²⁹ To the press, the Mayor’s office promised that the city would “keep fighting for New Yorkers who will bear the brunt of climate change.”¹³⁰ In the litigation, however, the city characterized its injury as bearing the monetary expenses of a climate resiliency program.¹³¹

the focal point of disputes between state attorneys general and the federal government,” which could “end up harming the Court as well as the country”).

121. 143 S. Ct. 2355 (2023).

122. *See id.* at 2390–91 (Kagan, J., dissenting).

123. *Id.* at 2390 (Kagan, J., dissenting).

124. *Id.* at 2391 (Kagan, J., dissenting).

125. *Id.* at 2386 (Kagan, J., dissenting).

126. *Id.* (Kagan, J., dissenting).

127. *Id.* at 2391 (Kagan, J., dissenting).

128. Savit, *supra* note 3, at 583.

129. *See City of New York v. Chevron Corp.*, 993 F.3d 81, 85–87 (2d Cir. 2021).

130. Bob Van Voris & Kevin Crowley, *New York’s Global Warming Suit Against Oil Companies Tossed*, BLOOMBERG (July 19, 2018, at 16:21 CT), <https://www.bloomberg.com/news/articles/2018-07-19/new-york-s-global-warming-suit-against-oil-companies-thrown-out>.

131. *See Chevron*, 993 F.3d at 86.

On one hand, courts sometimes stretch what look like quasi-sovereign injuries into proprietary frames. In one case, for instance, Cleveland and its mayor filed suit against firearms-industry defendants, alleging unreasonably dangerous product design and various kinds of nuisance.¹³² The defendants challenged the plaintiffs' ability to bring suit on the ground that "a plaintiff who complain[s] of harm flowing merely from the misfortunes visited upon a third person"—here, city residents—"by the defendant's acts [is] generally said to stand at too remote a distance to recover."¹³³ But the court granted standing on the ground that "as a result of Defendants' unreasonably dangerous and negligently designed handguns," Cleveland allegedly "suffered harm; lost substantial tax revenue due to lower productivity; and, ha[d] been obligated to pay millions of dollars in enhanced police protection, emergency services, police pension benefits, court and jail costs, and medical care."¹³⁴

On the other hand, courts sometimes refuse to adapt the standing analysis enough to allow local governments to proceed on proprietary grounds. In one case, for example, El Paso County, Texas, challenged the Trump administration's decision to divert construction funding from a military base within its territory to building a wall along the Mexican border.¹³⁵ The county argued that "[d]ue to the importance of the military base," the loss of funds would "inflict harm to the county's economy."¹³⁶ The Fifth Circuit rejected that argument, explaining that, to attain standing, El Paso County needed to assert an injury to "the county itself"—which it had not done.¹³⁷ "[A]s a political subdivision of the state," the court declared, "El Paso County may not assert the economic injuries of its citizens on their behalf as *parens patriae*."¹³⁸

While state and local governments have thus taken different paths for different reasons, they have arrived at the same place. It is doctrinally advantageous for both to characterize their asserted injuries as proprietary in nature: for states, because skepticism about special solicitude and uncertainty about the *Mellon* bar make relying on sovereignty-related interests risky, and for localities, because they have no sovereignty-related interests to assert in the first place.

What does this mean for local government standing? If courts accept rather attenuated proprietary injuries to allow states to sue as plaintiffs in

132. See *White v. Smith & Wesson Corp.*, 97 F. Supp. 2d 816, 819 (N.D. Ohio 2000).

133. *Id.* at 824 (alterations in original) (quoting *Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 495 (6th Cir. 1999)).

134. *Id.* (cleaned up).

135. *El Paso County v. Trump*, 982 F.3d 332, 335, 337 (5th Cir. 2020).

136. *Id.* at 338.

137. *Id.*

138. *Id.*

federal court, there is no obvious legal reason why they should not accept rather attenuated proprietary injuries to provide municipalities standing too—especially when viewing local governments as arms of the state.

One could counter that only states, not localities, are entitled to special solicitude¹³⁹—and (contrary to common assumptions) that special solicitude should include states’ proprietary interests. But even where courts purport to apply special solicitude, the doctrine seems to make little difference in case outcomes.¹⁴⁰ Nor has it ever been justified as a historical or normative matter.¹⁴¹ And to the extent that special solicitude should apply to states at all, one could argue that the doctrine should apply to local governments as arms of the state as well.

Of course, even if states and localities can fit many claims into proprietary interest patterns, that does not mean they should. When legal doctrines encourage governments to take excessively strategic litigation positions, the court system and broader community suffer from a lack of the candor and accountability one should be able to expect from public officials.¹⁴² Plus, in recent cases, the Supreme Court appears, tacitly, to be tightening the reins on state assertions of proprietary standing—by way of both a more searching causation analysis and closer attention to the foreseeability of indirect injuries.¹⁴³ For these reasons, and because of the inherent differences in types of state standing, municipalities could still benefit from being able to assert non-proprietary theories of injury. It is thus worth exploring to what extent local governments should be able to proceed as plaintiffs in federal court on premises related to sovereign and quasi-sovereign standing.

139. See *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 882 (N.D. Cal. 2009) (“The special solitude [sic] recognized by the Court is predicated on the rights a State relinquishes to the federal government when it ‘enters the Union.’ This rationale does not apply to [the plaintiff city], which did not surrender its sovereignty as the price for acceding to the Union.” (quoting *Massachusetts v. EPA*, 549 U.S. 497, 519 (2007))), *aff’d*, 696 F.3d 849 (9th Cir. 2012).

140. See Crocker, *Not-So-Special Solicitude*, *supra* note 101, at 863–85.

141. See *id.* at 833–41 (discussing the doctrine’s lack of foundation in pre-*Massachusetts v. EPA* caselaw); *id.* at 897–98 (making a normative argument).

142. See Katherine Mims Crocker, *Qualified Immunity, Sovereign Immunity, and Systemic Reform*, 71 DUKE L.J. 1701, 1741–49 (2022) (making a related point in the context of qualified immunity and sovereign immunity).

143. Regarding causation, see, for example, *California v. Texas*, 141 S. Ct. 2104, 2117–20 (2021); *Haaland v. Brackeen*, 143 S. Ct. 1609, 1640–41 (2023). Regarding indirect injuries, see, for example, *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2565–66 (2019); *Murthy v. Missouri*, 144 S. Ct. 1972, 1986, 1994–95 (2024).

B. An Analogy to Sovereign Interests

The American constitutional system is one of dual sovereigns: the federal government and the states. Local governments are not themselves sovereign. From this precept flows the general proposition that local governments are mere arms of the state—and the specific proposition that they possess neither sovereign nor quasi-sovereign interests for purposes of standing to sue in federal court.¹⁴⁴

There are good reasons, however, to see the latter proposition as overly formalistic.¹⁴⁵ States have sovereign interests in “the maintenance and recognition of borders” and “the power to create and enforce a legal code”—in short, in the “exercise of sovereign power . . . within the relevant jurisdiction.”¹⁴⁶ Local governments, too, cultivate borders and litigate ensuing disputes¹⁴⁷—often more actively than states do. Local governments also make and implement legal codes. Local governments, thus, have the same general kinds of jurisdictional interests as states. What is more, localities’ jurisdictional interests flow from states and are thus subject to the negative constitutional principles that disable state action.¹⁴⁸ Why, then, should localities not benefit from the affirmative constitutional principles that enable state action, like standing to sue in federal court? The point is not that local governments are themselves sovereign or that they exercise states’ sovereign power. The point is instead that states grant local governments jurisdictional interests that bear a strong resemblance to states’ own jurisdictional interests—and that (just as in the context of proprietary interests) such interests could, by analogy, support municipal standing as well.

The case for this kind of municipal standing becomes more complex when one contemplates against whom such cases could proceed. States asserting sovereign standing often sue sister states or federal defendants. That is because competing governments are particularly likely to threaten states’ interests in preserving their borders and effectuating their laws—as in the context of boundary disputes between neighboring states and

144. See *supra* Section I.A.

145. See RAN HIRSCHL, CITY, STATE: CONSTITUTIONALISM AND THE MEGACITY 32–33, 49 (2020) (arguing that affirmative litigation provides an important means for cities to make their voices heard in light of their exclusion from contemporary American federalism).

146. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982).

147. See BRIFFAULT, REYNOLDS, DAVIDSON, SCHARFF & SU, *supra* note 8, at 259–353 (discussing the law surrounding local government creation and boundary change, often via court decisions arising from disputes).

148. See *supra* notes 6–13 and accompanying text.

anti-commandeering challenges to federal law, respectively.¹⁴⁹ Local governments asserting standing based on jurisdictional interests would surely seek to sue other governments too. Indeed, “the original reason for the common law’s recognition of cities as bodies back in the Middle Ages” was to “accord[] townspeople a separate status in the court system” so that they could resist the reach of the manorial law that characterized the feudal system.¹⁵⁰ As Dean Zachary Clopton and Professor Nadav Shoked have explained, “by the time the chartering process was fully formalized in the fifteenth century,” the city’s “right to sue and be sued” was well recognized¹⁵¹—such that they find it unsurprising that cities have long sought to avoid regulatory interference by other governments through litigation.¹⁵²

Consider suits against other localities—like a case where a Missouri county sued multiple municipalities that had moved to annex its land.¹⁵³ The theory was that state law violated the Equal Protection Clause by denying county residents who did not live in an area to be annexed the ability to vote in annexation elections.¹⁵⁴ The defendants argued that the county lacked standing because it sought to vindicate the voting rights of residents.¹⁵⁵ The county argued that annexations caused it to lose significant tax revenue, but the court (in its merits discussion) reasoned that the elections at issue had “only a limited purpose: changing boundaries,” with “[t]he broad range of other governmental policy decisions . . . made by officials chosen in other elections or . . . determined by the results of other referenda.”¹⁵⁶ That statement suggests that, in the eyes of the court, maintaining jurisdiction over existing territory constituted at least part of the county’s stake in prosecuting the case. The court ultimately deemed it “unnecessary to decide” the standing question because individual plaintiffs could sue and because the case was being dismissed for other reasons.¹⁵⁷ But

149. See, e.g., *Haaland v. Brackeen*, 143 S. Ct. 1609, 1632 n.5 (2023) (treating it as self-evident that “Texas ha[d] standing to raise . . . claims” that various federal provisions “violate[d] the anticommandeering principle”); *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657, 720 (1838) (holding a state-versus-state border dispute adjudicable).

150. Clopton & Shoked, *supra* note 1, at 1366–67.

151. *Id.* at 1368.

152. See *id.* at 1407–08 (citing *Cheesebrew v. Town of Point Pleasant*, 76 S.E. 424, 424–26 (W. Va. 1912)).

153. See *St. Louis County v. City of Town & Country*, 590 F. Supp. 731, 733 (E.D. Mo. 1984).

154. *Id.* at 733–34.

155. See *id.* at 734.

156. *Id.* at 736–37.

157. *Id.* at 734.

recognizing standing would have provided the county, the very party at risk of losing its territory, a proper seat at the plaintiffs' table.

One objection could be that focusing on local governments as arms of the state would render locality-versus-locality suits within a single state nonsensical or offensive to federalism values. How, that is, could one arm of a state sue another arm of the same state in federal court? The Supreme Court puzzled through that conundrum in *Virginia Office for Protection & Advocacy v. Stewart*,¹⁵⁸ holding that such a suit was permissible.¹⁵⁹ There, a state agency that was designated to protect and advocate for people with intellectual disabilities sued officials in charge of state-run mental hospitals, alleging that federal law entitled the agency to records the hospitals were withholding.¹⁶⁰ The decisions featured dramatic language at the circuit and Supreme Court levels. The Fourth Circuit reasoned that "federal court adjudication of an 'intramural contest' between a state agency and state officials encroaches . . . on the dignity and sovereignty of the states,"¹⁶¹ and Chief Justice Roberts's dissent characterized the case as tantamount to "cannibalism" and "patricide."¹⁶² But the six-Justice majority, led by Justice Scalia, was unbothered. Where state law authorizes one arm of a state to sue another, the Court reasoned, there is not necessarily a federal constitutional problem.¹⁶³

To be sure, the question in *Stewart* was whether a suit of this sort violated state sovereign immunity,¹⁶⁴ not whether a state plaintiff could have sovereign standing to sue an own-state defendant. But the case presents no reason to think the Court would have reached a different

158. 563 U.S. 247 (2011).

159. *See id.* at 255.

160. *Id.* at 250–52.

161. *Virginia v. Reinhard*, 568 F.3d 110, 119–20 (4th Cir. 2009) (quoting *Va. Off. for Prot. & Advoc. v. Reinhard*, 405 F.3d 185, 191 (4th Cir. 2005) (Wilson, J., concurring)), *rev'd and remanded sub nom.*, *Stewart*, 563 U.S. 247.

162. *Stewart*, 563 U.S. at 274 (Roberts, C.J., dissenting) ("[T]here is indeed a real difference between a suit against the State brought by a private party and one brought by a state agency. It is the difference between eating and cannibalism; between murder and patricide. While the ultimate results may be the same—a full stomach and a dead body—it is the means of getting there that attracts notice.").

163. *See id.* at 257–61, 258 n.5 (majority opinion) (noting that "VOPA's power to sue state officials is a consequence of Virginia's own decision to establish a public [protection and advocacy] system"; that the agency would be "admitted to federal court as a plaintiff" "by operation of [Virginia's] own laws"; that "Virginia has only itself to blame for the position in which it finds itself"; that Virginia granted the plaintiff "authority to sue other state officials . . . free from any internal veto wielded by the state government"; that the conditions of this case "cannot exist without the consent of the State that created the agency and defined its powers"; and that "[i]t was Virginia law that created VOPA and gave it the power to sue state officials").

164. *See id.* at 255.

conclusion in the latter context. The majority opinion leaned heavily on the fact that state law controlled whether, which parties, and under what circumstances arms of the state could sue.¹⁶⁵ That line of reasoning should apply equally to standing, for state law plays the same role there.

Local government plaintiffs would surely seek to sue higher-level governments to vindicate jurisdictional interests as well. Could municipalities sue the United States—say, on a theory that a federal law affecting their ability to enforce their own policies was unconstitutional? We have seen cases of localities suing the federal government in the sanctuary-city context and in multiple other suits protesting maneuvers made by the second Trump administration, for instance.¹⁶⁶

The *Mellon* bar might block the way. But even if—as the better understanding of *Mellon* entails¹⁶⁷—states can bring actions based on sovereign standing (as opposed to quasi-sovereign standing) against federal defendants, viewing local governments as arms of the state need not produce the same result for municipal litigation. The principle that federal courts must have jurisdiction over suits between and among states and the federal government rests in large part on the functionalist fear that failing to provide a judicial forum for such disputes could lead to their resolution on the literal battlefield.¹⁶⁸ That concern should not allow for city claims against the United States. As of 2022, there were nearly 40,000 general-purpose local governments across the country and

165. See *supra* note 163 and accompanying text.

166. See, e.g., Larry Neumeister, *6 States & NYC Sue US over Immigration-Related Policy*, AP (July 18, 2018, at 16:20 CT), <https://apnews.com/d14d85979c254c2f95bcf6d730045f72> (“Six states and New York City sued the federal government Wednesday, joining other cities and states who say the government is trying to unlawfully force ‘sanctuary’ communities to engage in federal immigration enforcement if they want anti-crime funds.”); Alli Vugrincic, *City of Columbus Suing Trump Administration for Conditions on Homelessness Funds*, WOSU 89.7 NPR NEWS (May 6, 2025, at 11:51 ET), <https://www.wosu.org/politics-government/2025-05-06/city-of-columbus-suing-trump-administration-for-conditions-on-homelessness-funds> [<https://perma.cc/6QHH-ARW2>]; Chris Marr, *Seattle Sues to Block Trump’s Anti-DEI, ‘Two Sexes’ Orders (I)*, BLOOMBERG L. (July 31, 2025, at 15:43 CT), <https://news.bloomberglaw.com/daily-labor-report/seattle-sues-to-block-trumps-anti-dei-two-sexes-orders>.

167. See *supra* notes 114–118 and accompanying text.

168. See *United States v. Texas*, 143 U.S. 621, 644–45 (1892) (“[The framers] could not have overlooked the possibility that controversies, capable of judicial solution, might arise between the United States and some of the States, and that the permanence of the Union might be endangered if to some tribunal was not entrusted the power to determine them according to the recognized principles of law.”); *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 406–07 (1821) (stating that “there was reason to retain the jurisdiction of the Court in [state] cases” brought by sister states “because it might be essential to the preservation of peace”).

upwards of 50,000 special-purpose local governments.¹⁶⁹ While the possibility may seem more real now than at most times in the nation's history,¹⁷⁰ it remains implausible to imagine war breaking out over a jurisdictional clash between even the largest city and the federal government. And it would be insensible to expand municipal standing so drastically because of such a remote risk.¹⁷¹

Finally, could localities sue their own states to, say, challenge a top-down municipal border change or a state-law provision purporting to preempt a local code section? The classic answer, derived from *Hunter*, is no—at least for challenges resting on the U.S. Constitution. As the Supreme Court stated in 1933, “[a] municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator.”¹⁷² But more recent Supreme Court practice has muddied the waters,¹⁷³ leading to complex circuit disagreements over the extent to which local governments can sue their home states under supremacy-related theories—and over whether this issue sounds in standing doctrine or in substantive constitutional

169. See Amy Smaldone & Mark L.J. Wright, *Local Governments in the U.S.: A Breakdown by Number and Type*, FED. RSRV. BANK OF ST. LOUIS (Mar. 14, 2024), <https://www.stlouisfed.org/publications/regional-economist/2024/march/local-governments-us-number-type> [<https://perma.cc/PC4U-FBJ4>] (reporting on results of the U.S. Census Bureau's Census of Governments).

170. See, e.g., Julie Bosman & Jamie Keller Davis, *ICE Is Cracking Down on Chicago. Some Chicagoans Are Fighting Back.*, N.Y. TIMES (Oct. 14, 2025), <https://www.nytimes.com/2025/10/14/us/chicago-ice-trump.html>.

171. One could also argue that it would be impractical as a matter of judicial resource stewardship to recognize standing for all local governments to sue federal defendants whenever national regulations would displace municipal policies.

172. *Williams v. Mayor of Baltimore*, 289 U.S. 36, 40 (1933); see also *City of Trenton v. New Jersey*, 262 U.S. 182, 185–92 (1923) (refusing to allow a city to bring federal constitutional claims against its parent state).

173. See Kathleen S. Morris, *The Case for Local Constitutional Enforcement*, 47 HARV. C.R.-C.L. L. REV. 1, 16 (2012) (“*Williams* represents the *Hunter* doctrine’s high-water mark in the Supreme Court. After that case, the Court abruptly, and without explanation, returned to its pre-*Hunter* practice of considering local constitutional claims on the merits.”).

structure.¹⁷⁴ Supreme Court Justices have acknowledged lower-court division in this area but have proven unwilling to address it.¹⁷⁵

Viewed as arms of the state, however, local governments simply cannot sue their parent states against the latter's will. The U.S. Chamber of Commerce correctly points out that states can "abolish[] or circumscrib[e] localities' authority to bring suit" because, "[a]s creatures of the state, municipalities enjoy only the powers conferred on them" and because "[t]he ability to sue is a power that could be removed, either generally or only in connection with specific types of claims."¹⁷⁶ Indeed, this relative omnipotence helps show why states should welcome the reorientation of municipal standing as state standing: Just as states can prohibit or terminate local government suits that run counter to state interests, they can benefit from local government suits that advance their goals.

In short, because states' interests in managing borders and developing legal codes provide them sovereign standing to proceed as plaintiffs in federal court, local governments' interests in the same jurisdictional prerogatives could and in some circumstances should provide them an analogous ability to sue. Some potential problems could arise from suing other governments, but current doctrine and state control suggest ready solutions.

174. See, e.g., *id.* at 18–19 (stating that the Ninth and Tenth Circuits "interpret the *Hunter* doctrine as a standing doctrine," while the Second, Fifth, and Sixth Circuits, along with the Arizona and California Supreme Courts, "interpret the *Hunter* doctrine as a substantive constitutional law doctrine"); *id.* at 19 (noting that those courts that treat the doctrine as a substantive issue "do not agree on its scope," with the Second Circuit treating it "as barring only Fourteenth Amendment claims," the Fifth Circuit and California Supreme Court treating it "as prohibiting all of the substantive constitutional claims the [Supreme] Court has barred," and the Sixth Circuit and Arizona Supreme Court applying it "much more narrowly, as barring only intra-state political boundary disputes").

175. See *City of South Lake Tahoe v. Cal. Tahoe Reg'l Plan. Agency*, 449 U.S. 1039, 1039, 1041–42 (1980) (White, J., dissenting) (arguing that the Court should have granted certiorari because, *inter alia*, "there is a conflict in the Circuits over the validity of [a per se] rule" that "a political subdivision of a State may not raise constitutional objections to the validity of a state statute"). The matter seems better conceptualized as a substantive problem, for while cities' supremacy-related injuries hold constant, under current lower-court law, their claims' cognizability often depends on case-by-case considerations like which constitutional provision the challenged state law allegedly violates.

176. MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS, *supra* note 3, at 20.

C. The Delegation of Quasi-Sovereign Interests

State power over municipal litigation is especially important when it comes to quasi-sovereign standing. The argument for recognizing something akin to sovereign standing based on local governments' jurisdictional interests turned on the analogous relationship of those interests to states' own. One could make a similar argument in support of a local government version of quasi-sovereign state standing. But something even stronger seems on offer: a direct delegation of authority from states to localities to sue in the state's place. A delegation theory makes sense given the representational nature of quasi-sovereign standing and the fact that the citizens of any locality are likewise citizens of that locality's parent state.

Even if local governments have no quasi-sovereign interests of their own, that is, states can delegate authority for them to pursue *the state's* quasi-sovereign interests through litigation. A state can choose which of its agents may represent its interests in court, and *Hunter*, again, holds that municipalities constitute "convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them."¹⁷⁷ Accordingly, with their parent states' blessing, local governments should be able to further their residents' wellbeing by asserting injury to states' quasi-sovereign interests in federal court.

Prosecuting Attorney Savit has advanced this argument. He posits that state legislatures may imbue cities with the state's litigation powers.¹⁷⁸ And beyond express legislative authorizations, Savit points out that state attorneys general may also be able to delegate their offices' authority to sue.¹⁷⁹ The procedure varies by state, but attorneys general assign such authority to various assistant attorneys general who are sometimes organized into regional offices.¹⁸⁰ State attorneys general may also authorize delegates to address specific issues. In Colorado, for example, the attorney general issued a memorandum of understanding delegating litigation authority to the University of Colorado's counsel—but only in cases involving the school.¹⁸¹ Local governments could rely on the same model to show state authorization to bring cases sufficiently connected to their citizens' interests.

Indeed, there is reason to believe that states have already delegated much litigation authority to local governments. Little law exists to guide federal courts in determining which parties have standing to assert state

177. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907).

178. Savit, *supra* note 3, at 611–12.

179. *Id.* at 612–13.

180. *Id.* at 610, 613.

181. *Id.* at 613.

interests, with Professor Seth Davis calling the doctrine “perplexing.”¹⁸² But we know from *Hollingsworth v. Perry*¹⁸³—the 2013 case where the Supreme Court rejected the standing of state-sanctioned individuals to defend California’s same-sex marriage ban after government officials declined¹⁸⁴—that state authorization is necessary but not sufficient. For while states “must be able to designate agents to represent [them],” “standing in federal court is a question of federal law, not state law.”¹⁸⁵

Start with the state-law (delegation) side of the issue. Various statutes authorize local government attorneys to sue for the state and its people when faced with specific harms.¹⁸⁶ Some state consumer protection and public nuisance laws allow local government attorneys to seek relief “in the name of the state or its citizens,” for instance.¹⁸⁷ Others, like the Virginia Consumer Protection Act, provide local government attorneys the same power to sue in the name of their localities as the state attorney general has to sue in the name of the state.¹⁸⁸ And while municipalities subject to Dillon’s Rule would need more explicit authorization,¹⁸⁹ home-rule provisions often include general welfare clauses that implicitly track quasi-sovereign interests in local citizens’ economic and physical well-being. The Illinois Constitution, for instance, provides that “[e]xcept as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare.”¹⁹⁰

Home-rule systems may also empower municipalities more broadly. For one example, the City of Wilmington, Delaware, sued New Castle County in state court over the structure of funding for public schools.¹⁹¹ The Delaware Court of Chancery explained that the power to sue as *parens patriae* belonged to the state in the first instance.¹⁹² In the Home

182. Seth Davis, *Standing Doctrine’s State Action Problem*, 91 NOTRE DAME L. REV. 585, 596 & n.52 (2015).

183. 570 U.S. 693 (2013).

184. *See id.* at 702–05, 715.

185. *Id.* at 710, 715.

186. Lemos, *supra* note 69, at 983.

187. *Id.* at 982–84, 984 n.72 (cleaned up).

188. VA. CODE ANN. § 59.1-203.A. (2025).

189. *See Bd. of Zoning Appeals of Fairfax Cnty. v. Bd. of Supervisors of Fairfax Cnty.*, 666 S.E.2d 315, 317 (Va. 2008) (holding “that boards of zoning appeals have only those powers expressly granted” and that “the Virginia Code contains no express grant of authority allowing [such a board] to institute litigation on its own behalf”).

190. ILL. CONST. art. VII, § 6(a).

191. *In re Del. Pub. Schs. Litig.*, 239 A.3d 451, 520–21 (Del. Ch. 2020).

192. *Id.* at 521.

Rule Act, however, the General Assembly allowed municipalities to assume all powers it could grant and did not deny them.¹⁹³ This, the court concluded, “logically includes the power to sue as *parens patriae*.”¹⁹⁴

On the federal-law (standing) side of the issue, *Hollingsworth* looked to the common law of agency.¹⁹⁵ Because California did not have a right to control the actions of the initiative’s proponents, there was too great a risk that they could abuse the litigation delegation, the Court reasoned.¹⁹⁶ The lack of a fiduciary relationship thus doomed standing to sue in federal court for the representatives designated by state law.¹⁹⁷

A fiduciary relationship arises when two parties agree that the agent will act on the principal’s behalf and be subject to the principal’s control.¹⁹⁸ That is basically how the *Hunter* paradigm characterizes the relationship between local governments and states.¹⁹⁹ When a state establishes a municipality (or establishes processes for citizens to create a municipality), the premise is that the municipality (the agent) will act on behalf of the state (the principal). As the Supreme Court has explained, “[a] city is only a political subdivision of the State, made for the convenient administration of the government.”²⁰⁰ A city, like other local governments, is also subject to the state’s control. “It is,” the Court continued, “an instrumentality, with powers more or less enlarged, according to the requirements of the public, and which may be increased or repealed at the will of the legislature.”²⁰¹

Recognizing local government standing by state delegation would align with the history of local government litigation authority in the American constitutional system. As Dean Clopton and Professor Shoked have explained, when “the realm of state legislation began expanding in the late nineteenth century, enforcement of new state laws was often bestowed on cities.”²⁰² As examples, they cite how “the New York state legislature delegated the power to enforce labor laws and building codes to various city departments around the time it first introduced such laws in the Progressive Era,” how “[c]ity attorneys in California could always

193. *Id.* at 521–22.

194. *Id.* at 521.

195. *Hollingsworth v. Perry*, 570 U.S. 693, 713 (2013).

196. *Id.* at 713–14.

197. *See id.* at 714–15.

198. RESTATEMENT (THIRD) OF AGENCY § 1.01 (A.L.I. 2006).

199. *See Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907); *see also City of Trenton v. New Jersey*, 262 U.S. 182, 187 (1923) (“[A municipality] remains the creature of the State exercising and holding powers and privileges subject to the sovereign will.”).

200. *New Orleans v. Clark*, 95 U.S. 644, 654 (1877).

201. *Id.*

202. Clopton & Shoked, *supra* note 1, at 1405.

sue on behalf of the state and seek compensation from it for their services,” and how “[t]he Texas legislature empowered Houston through its original city charter to represent the state in court.”²⁰³

Courts should be able to keep this sort of standing within reasonable bounds by limiting local governments’ assertion of quasi-sovereign standing to harms that affect their own citizens—whether as a constitutional matter or as an interpretive presumption. That limitation could raise the question whether harm confined to one or some plaintiff localities is too narrow to implicate the *state’s* quasi-sovereign interests. The Supreme Court has specified that to attain quasi-sovereign standing, “more must be alleged than injury to an identifiable group of individual residents.”²⁰⁴ But the Court has also explained that “the indirect effects of the injury must be considered as well,”²⁰⁵ and commentary often assumes that fairly local harms can qualify.²⁰⁶

Biden v. Nebraska, the Supreme Court’s recent student loan case, is also instructive about the relationship between states and their subsidiaries in the standing inquiry.²⁰⁷ Six states challenged the federal government’s loan forgiveness program.²⁰⁸ Standing assertions focused on the Missouri Higher Education Loan Authority (MOHELA), a loan servicer established under Missouri law that would have suffered monetary injury under the program.²⁰⁹ Because state law imparted MOHELA a legal personality separate from the State of Missouri, including the power to sue and be sued, the Biden administration argued that the injury to MOHELA was not an injury to Missouri.²¹⁰ But that argument proved unpersuasive. “Where a State has been harmed in carrying out its responsibilities,” the Court reasoned, “the fact that it chose to exercise its authority through a public corporation it created and controls does not bar the State from suing to remedy that harm itself.”²¹¹

Local governments are public entities much like MOHELA is. States carry out their responsibilities to provide for their citizens’ needs in part by creating and controlling municipalities. To protect what amounts to

203. *Id.*

204. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982).

205. *Id.*

206. *See, e.g.,* Savit, *supra* note 3, at 610 (“Nothing in the doctrine of *parens patriae* requires a state to demonstrate that the complained-about harm affects a geographically diverse cross-section of state residents. Indeed, federal courts already entertain hyper-local *parens patriae* suits.”).

207. *See* 143 S. Ct. 2355, 2365–68 (2023).

208. *Id.* at 2365.

209. *Id.* at 2365–66.

210. *Id.* at 2367.

211. *Id.* at 2368.

quasi-sovereign interests, states vest considerable powers in local governments.²¹² *Biden v. Nebraska* should mean that even though these powers often include the ability to sue and be sued in localities' own names, injuries to municipalities and their citizens can simultaneously constitute injuries to their parent states.²¹³ States, then, should be able to deputize local governments to vindicate state interests—including quasi-sovereign interests—in federal court.

Dean Clopton and Professor Shoked argue that a municipal standing theory founded on a *parens patriae* relationship with the public conflicts with the city's corporate identity.²¹⁴ They argue that cities should be permitted to sue only to protect their own interests in a corporate capacity, not to support citizens' interests in a representative role.²¹⁵ Unlike states, Clopton and Shoked contend, cities are not responsible for the public's general welfare.²¹⁶ But that argument discounts both the possibility of delegation and how states and localities share the police power, with many states' laws indeed providing municipalities some amount of responsibility over the general welfare.²¹⁷ Clopton and Shoked concede, moreover, that the city is not solely a corporate body, having become "an entity of a dual nature, one public and one private."²¹⁸ And they include maintaining powers and enforcing laws among cities' corporate interests.²¹⁹ Their argument, therefore, accords with broader local government standing than the law now allows.

D. State Control over Local Suits

By advocating for allowing municipal litigation premised on states' sovereignty-related interests, the previous analysis would expand local government standing to sue in federal court. That shift comports with both the legal paradigm of viewing local governments as arms of the state and the practical trend toward permitting greater local autonomy. The flipside of the state supremacy coin, however, is state control over local suits. The preceding discussion has emphasized that state law sets the initial terms for local governments' engagement (or not) as plaintiffs in federal court—with federal doctrine erecting an additional set of standing

212. See Fred Smith, *Local Sovereign Immunity*, 116 COLUM. L. REV. 409, 458 (2016).

213. See *Biden*, 143 S. Ct. at 2368.

214. Clopton & Shoked, *supra* note 1, at 1413.

215. *Id.* at 1385.

216. *Id.* at 1406.

217. See *supra* note 190 and accompanying text.

218. Clopton & Shoked, *supra* note 1, at 1371.

219. *Id.* at 1402, 1407.

hurdles for local suits to clear. But a closer examination of the mechanisms and strategies through which states can limit and direct localities' litigation efforts should help respond to some of the normative controversy surrounding municipal suits.

States will sometimes disagree with local governments' decisions about whether and how to pursue cases, as Professor Margaret Lemos has detailed.²²⁰ Under the arm-of-the-state model endorsed here, states can exercise near complete control over municipal litigation choices—which should alleviate much of the concern that critics have expressed regarding the balance of powers between states and local governments. General preemption principles would play an important role. When Cleveland brought a public nuisance suit against subprime lenders, for example, the district court dismissed it on the ground that state law barred the city from regulating mortgages by any means.²²¹

If a state opposes a specific case or class of litigation, moreover, the legislature can target municipal suits *ex ante* or *in medias res*. When New Orleans sought to sue a gun manufacturer, the Louisiana legislature passed a law forbidding any locality from challenging firearms-industry defendants in court.²²² The Michigan and Georgia legislatures passed similar laws reserving the authority to sue under the relevant code sections “exclusively to the state.”²²³ Alternatively, if a state agrees that litigation is appropriate but disfavors a locality's strategy, the state—through the attorney general or otherwise—can pursue the matter itself. When Dover and Portsmouth sued gasoline-additive suppliers and distributors shortly after New Hampshire did, the court dismissed the cities' suit on the ground that it had to “yield” to the state's suit.²²⁴

Less restrictive measures could prove useful too. As the U.S. Chamber of Commerce Institute for Legal Reform points out, there are “a variety of ways” that states could “interpose a state-level check on

220. See generally Lemos, *supra* note 69 (explaining how state and local governments' litigation strategies can conflict even when targeting the same goals).

221. *City of Cleveland v. Ameritrust Mortg. Sec.*, 621 F. Supp. 2d 513, 515–16, 519–20 (N.D. Ohio 2009).

222. Savit, *supra* note 3, at 590.

223. MICH. COMP. LAWS. § 28.435(9) (2024) (“[A] political subdivision shall not bring a civil action against any person who produces a firearm or ammunition. The authority to bring a civil action under this section is reserved exclusively to the state”); GA. CODE ANN. § 16-11-173(b)(2) (2019) (“The authority to bring suit and right to recover against any weapons, firearms, or ammunition manufacturer, trade association, or dealer by or on behalf of any governmental unit . . . for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of weapons, firearms, or ammunition to the public shall be reserved exclusively to the state.”).

224. *State v. City of Dover*, 891 A.2d 524, 527, 532 (N.H. 2006).

municipal litigation.”²²⁵ To name just a few, these could include “requir[ing] the permission of a state official—most likely the AG—before certain suits could be filed”; “requir[ing] that municipal suits raising specified claims be dismissed unless the state joins”; limiting monetary recoveries in assorted ways; and instituting ongoing oversight mechanisms.²²⁶ Such measures can help prevent municipalities from arrogating the authority of states—or municipalities’ lawyers from arrogating the prerogatives of state attorneys general.

In addition, preclusion should not be a significant problem. A suit by one part of a government may have preclusive effects on suits by other parts of the same government, but “[t]he crucial point is whether or not in the earlier litigation the representative of the [government] had authority to represent its interests in a final adjudication of the issue in controversy.”²²⁷ Accordingly, “courts have recognized in the preclusion context the folly of treating the government as a single entity in which representation by one government agent is necessarily representation for all segments of the government.”²²⁸ Where state law does not authorize a locality to represent the entire government, where a state and a locality assert different interests, or where a state and a locality seek different relief, preclusion should not necessarily lie.²²⁹ In separate suits, for instance, Texas and its General Land Office (GLO) challenged the Biden administration’s decision to divert funds from constructing a wall along the Mexican border.²³⁰ The GLO said the decision harmed its interests as a property owner, while Texas said the decision harmed its fiscal interests by increasing the number of undocumented individuals entering and remaining in the state.²³¹ The Fifth Circuit held that claim preclusion was inappropriate because these interests were “plainly distinct,” because Texas’s “broader interests would justify broader relief in a final injunction,” and because state law gave the GLO “no legal authority to represent the interests” the state asserted in court.²³²

To be sure, the will of the state—as memorialized in state law, which includes not just legislative and executive decrees but also constitutional provisions and popular-sovereignty pronouncements—may not always

225. MITIGATING MUNICIPALITY LITIGATION: SCOPE AND SOLUTIONS, *supra* note 3, at 27.

226. *Id.* at 28–33; *see also* Lemos, *supra* note 69, at 983–86 (explaining that “the distribution of power depends on state law” and discussing ways in which state law can limit local litigation authority).

227. *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 403 (1940).

228. *United States v. Ledee*, 772 F.3d 21, 30 (1st Cir. 2014).

229. *See Gen. Land Off. v. Biden*, 71 F.4th 264, 270–71 (5th Cir. 2023).

230. *Id.* at 269.

231. *Id.* at 270–71.

232. *Id.* at 271.

match the will of the state's sitting government leaders. But just like their national counterpart, the states are "government[s] of laws and not of men."²³³

To recap, federal standing law should recognize local governments' ability to litigate not just proprietary interests, but also jurisdictional interests analogous to sovereign interests, as well as quasi-sovereign interests delegated by states. Notwithstanding their subservient status under *Hunter*, local governments are important institutional and representative entities that should be accorded not only the costs, but also the benefits of their place as arms of the state in our constitutional structure.

III. A POSTSCRIPT ON ORGANIZATIONAL STANDING

Local governments are arms of the state. This Essay has applied that foundational principle to justiciability law to argue that one can productively view local government standing as state standing. It is worth acknowledging, however, that other standing theories may provide additional paths for local governments to advance the public interest through litigation. Organizational standing may seem especially promising—at least in some ways.

Supreme Court precedent provides that organizations, both public and private, can base standing to sue as plaintiffs in federal court on three kinds of injuries: (1) economic harms, like those for which any plaintiff can sue;²³⁴ (2) missional harms, meaning "concrete and demonstrable injury to the organization's activities," with a "consequent drain on the organization's resources";²³⁵ and (3) representational harms, by which an organization sues "on behalf of its members."²³⁶ Representational standing—sometimes called "associational standing"—in turn requires an

233. MASS. CONST. pt. I, art. XXX; see also *Va. Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 258 n.5 (2011) ("We say that Virginia has only itself to blame for the position in which it finds itself, not because it consented to suit, but because it created a state entity to sue, instead of leaving the task to a private entity. It did not have to *know* that this would allow suit in federal court.").

234. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 262–63 (1977).

235. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982).

236. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). For a more detailed overview of these categories and the cases they came from, see Katherine Mims Crocker, *An Organizational Account of State Standing*, 94 NOTRE DAME L. REV. 2057, 2067–69 (2019) [hereinafter Crocker, *An Organizational Account*]. For the inspiration behind the term "missional" standing, see Ryan Baasch, *Reorganizing Organizational Standing*, 103 VA. L. REV. ONLINE 18, 19 (2017), <https://virginialawreview.org/articles/reorganizing-organizational-standing/> [<https://perma.cc/RXB6-CWZY>].

organization to satisfy a three-part test: that “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”²³⁷

Scholars and some courts have suggested that local governments can claim organizational standing.²³⁸ The Seventh Circuit declared in 1976, for instance, that “[i]n any case where a municipal corporation seeks to vindicate the rights of its residents, there is no reason why the general rule on organizational standing should not be followed.”²³⁹ That logic is compelling—not only based on a straightforward application of organizational standing doctrine, but also because one can see local government standing as a variant of state standing and “state standing as a variant of organizational standing” (as argued in previous scholarship).²⁴⁰ In particular, proprietary state standing matches economic organizational standing; sovereign state standing approximates missional organizational standing; and quasi-sovereign state standing parallels representational organizational standing.²⁴¹

Other legal authorities, by contrast, contend that local governments should not be able to benefit from organizational standing.²⁴² And the Supreme Court appears skeptical of organizational standing in general these days.²⁴³ Fortunately, one need not accept any particular argument about organizational standing to accept the main argument advanced here—that the law should see the standing of local government plaintiffs through the standing doctrine applicable to their parent states. We thus mention the possibility of an organizational standing alternative merely as a postscript.

237. *Hunt*, 432 U.S. at 343.

238. *See, e.g.*, Caruso, *supra* note 52, at 63; *Village of Riverdale v. 138th Street Joint Venture*, 527 F. Supp. 2d 760, 765–67 (N.D. Ill. 2007); *Cook County v. McAleenan*, 417 F. Supp. 3d 1008, 1018 (N.D. Ill. 2019); *City of Stamps v. Alcoa, Inc.*, No. 05-1049, 2006 WL 2254406, at *5–6 (W.D. Ark. Aug. 7, 2006).

239. *City of Milwaukee v. Saxbe*, 546 F.2d 693, 698 (7th Cir. 1976).

240. Crocker, *An Organizational Account*, *supra* note 236, at 2070.

241. *Id.* at 2070, 2072, 2074; *see also id.* at 2084–88 (further explaining the individual-participation prong of representational organizational standing and analyzing how it might apply to state plaintiffs, including with respect to types of relief sought, conflicts of interest, and adequacy of representation).

242. *See, e.g.*, *Prince George’s County v. Levi*, 79 F.R.D. 1, 5 (D. Md. 1977).

243. *See, e.g.*, *FDA v. All. for Hippocratic Med.*, 144 S. Ct. 1540, 1563–64 (2024); *id.* at 1566–70 (Thomas, J., concurring); *June Med. Servs. L.L.C. v. Russo*, 143 S. Ct. 2103, 2142–53 (2020) (Thomas, J., dissenting); *id.* at 2153–54 (Alito, J., dissenting); *id.* at 2173–74 (Gorsuch, J., dissenting).

CONCLUSION

Current law says that the standing of states to sue in federal court is “special,” while the standing of local governments is anything but. Indeed, justiciability doctrine treats municipalities as nothing more than private parties. But the principle that localities *are* more than private parties forms the constitutional core of state and local government law. Localities are instead “political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them.”²⁴⁴ This Essay takes that principle seriously by arguing that courts should view local government standing as state standing insofar as states accord localities jurisdictional interests analogous to their own and delegate authority to localities to litigate citizen harms. And this Essay contends, further, that such grants can and do happen more often than previous analyses have credited.

244. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907).

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