

Local Action, National Impact: Standing Up for Sanctuary Cities

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ABSTRACT. During his campaign, Donald Trump vowed that he would end sanctuary cities if elected President. Yet, because of dedicated local resistance, he has not been able to keep this promise. Cities have emerged as crucial members of the resistance and sites of dissent to President Trump's policies—protecting their unique community ideals against federal intrusion. While the Tenth Amendment does not explicitly recognize cities, it safeguards their rights, just as it protects states and the “People.” Because of cities' unique position between states and the People, cities can and should take advantage of the Constitution's federalism protections. The city of San Francisco, and the sanctuary city litigation more broadly, has provided the template for successfully resisting federal intrusion onto local autonomy. From this example, we can learn why local dissent is particularly potent and how cities can best resist on behalf of their residents.

INTRODUCTION

“We will end the sanctuary cities that have resulted in so many needless deaths,” then-candidate Donald Trump proclaimed to an Arizona audience.¹ Just five days after his inauguration, President Trump followed through on his

1. Philip Bump, *Here's What Donald Trump Said in His Big Immigration Speech, Annotated*, WASH. POST (Aug. 31, 2016), <http://www.washingtonpost.com/news/the-fix/wp/2016/08/31/heres-what-donald-trump-said-in-his-big-immigration-speech-annotated> [http://perma.cc/L79E-S63P]; see also Office of the Press Sec'y, *President Donald J. Trump Taking Action Against Illegal Immigration*, WHITE HOUSE (June 28, 2017), <http://www.whitehouse.gov/the-press-office/2017/06/28/president-donald-j-trump-taking-action-against-illegal-immigration> [http://perma.cc/YXB9-4VTS] (quoting the President's August 31, 2016, remarks).

promise and issued Executive Order 13,768, “Enhancing Public Safety in the Interior of the United States.”² The Order sought to withhold all federal funding from “sanctuary jurisdictions” that did not affirmatively help enforce federal immigration law.³

On January 31, 2017, San Francisco filed suit challenging the constitutionality of the Executive Order.⁴ Other localities quickly followed.⁵ The city and county of San Francisco argued that the federal decree constituted a gross abuse of federal power and sought declaratory and injunctive relief.⁶ Less than three months later, siding with San Francisco on nearly every point, the district court issued a sweeping nationwide preliminary injunction made permanent this fall.⁷

Cities have led the charge against the federal government to stand up for sanctuary jurisdictions—successfully leveraging the constitutional protections of federalism to dissent against national policy. Though the Constitution does not contemplate cities within the scheme of federalism, the norms that justify states’ rights apply just as well—if not better—to cities. Especially as the Trump Administration seeks to compel their obedience to national norms, cities can act in concert with and independent of their home states to check federal overreach. Local victories on the sanctuary cities issue show that cities, just like

2. 82 Fed. Reg. 8799 (Jan. 25, 2017).

3. “Sanctuary jurisdictions” are those cities, counties, and states whose police forces maintain separation from federal immigration enforcement. It is important to note that sanctuary jurisdictions do not thwart or interfere with federal immigration enforcement; these jurisdictions exercise their discretion and do not opt to aid federal immigration enforcement. For more background on sanctuary cities, see Tal Kopan, *What Are Sanctuary Cities, and How Can They Be Defunded?*, CNN (Jan. 25, 2017, 5:09 PM), <http://www.cnn.com/2017/01/25/politics/sanctuary-cities-explained/index.html> [<http://perma.cc/3MP5-R3HL>] and *infra* notes 26-28 and accompanying text.

4. Complaint for Declaratory and Injunctive Relief, *City & Cty. of San Francisco v. Trump*, No. 3:17-cv-00485-WHO (N.D. Cal. Jan. 31, 2017).

5. Other localities that filed after San Francisco and Santa Clara include Seattle, Richmond, California, and two cities in Massachusetts. See Vivian Yee, *Judge Blocks Trump Effort To Withhold Money from Sanctuary Cities*, N.Y. TIMES (Apr. 25, 2017), <http://www.nytimes.com/2017/04/25/us/judge-blocks-trump-sanctuary-cities.html> [<http://perma.cc/6BQE-NWUR>].

6. On February 27, 2017, San Francisco filed an amended complaint. First Amended Complaint for Declaratory and Injunctive Relief, *City & Cty. of San Francisco v. Trump*, No. 3:17-cv-00485-WHO (N.D. Cal. Feb. 27, 2017) [hereinafter FAC]. Unless otherwise noted, references to San Francisco’s complaint refer to the amended complaint.

7. *City & Cty. of San Francisco v. Trump*, No. 17-cv-00485-WHO, 2017 WL 5569835 (N.D. Cal. Nov. 20, 2017) [hereinafter Permanent Injunction Order]; *City & Cty. of San Francisco v. Trump*, No. 17-cv-00485-WHO, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017) [hereinafter PI Order].

states, can stop the federal government from exceeding its constitutional authority.⁸

Part I of this Essay discusses cities' potential for dissent, comparing it with the power traditionally wielded by states. Part II illustrates how cities can dissent against federal policies by focusing on San Francisco's role in curtailing overreach by the Trump Administration. Finally, Part III recommends how local actors, guided by their fundamental responsibility to local community needs, can exercise their power as dissenters. Cities are the closest proxies for the voice of the People, and by asserting the interests of their local populations, cities can avail the People of the Tenth Amendment's protection.

I. CITIES AS DISSENTERS

Technically speaking, cities are “constitutional nonentities.”⁹ Cities receive no mention in any part of the Constitution. The Tenth Amendment—the basis of American federalism doctrine—reserves broad police powers (the states' power to protect public health, safety, and welfare) only for the “States” and “the People,” leaving the status of localities ambiguous.¹⁰ Cities' authority has waxed and waned throughout American history. In the late nineteenth-century, cities were thought of as “political subdivisions of the state,” with no inherent powers but those that states explicitly granted them.¹¹ Increasingly, however, states added home-rule provisions¹² to their constitutions, protecting cities' absolute right to govern municipal affairs.¹³ Yet today, despite the fact that over eighty percent of Americans live in urban areas,¹⁴ the Supreme Court has not explicitly recognized that cities are entitled to the same Tenth Amendment pro-

8. Camila Domonoske, *Judge Blocks Trump Administration from Punishing 'Sanctuary Cities,'* NPR (Nov. 21, 2017), <http://www.npr.org/sections/thetwo-way/2017/11/21/565678707/enter-title> [<http://perma.cc/LH3V-37BZ>].

9. Daniel Weinstock, *Cities and Federalism*, in *FEDERALISM AND SUBSIDIARITY* 259, 259 (James E. Fleming & Jacob T. Levy eds., 2014).

10. U.S. CONST. amend. X; *see also* *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 25 (1905) (upholding states' authority to enforce compulsory vaccination laws).

11. *Hunter v. Pittsburgh*, 207 U.S. 161, 178-79 (1907).

12. Under traditional home rule, local ordinances governing municipal affairs supersede conflicting state laws. *See, e.g.*, CAL. CONST. art. XI § 5. Thus, the city will have the final authority on matters within the locality.

13. *See, e.g., id.*

14. Lisa Lambert, *More Americans Move to Cities in Past Decade-Census*, REUTERS (Mar. 26, 2012), <http://www.reuters.com/article/usa-cities-population/more-americans-move-to-cities-in-past-decade-census-idUSL2E8EQ5AJ20120326> [<http://perma.cc/K57L-6Q4C>].

tections as states. Instead, the Court has recognized that cities can only derive their power from the states.

In light of this history and precedent, it might be tempting to understand cities as simply subordinates of the state—as weak or as powerful as the state decides to make them. But since states can decide to vest broad police powers in cities, cities can also assert Tenth Amendment rights by virtue of being creatures of the state.¹⁵ In this way, cities can claim the protections of federalism. Further, while states do have great power to define cities' authority, the Supreme Court has recognized that municipal entities also possess sovereign qualities in spite of states—for example, cities can assert injury and standing against a state in a court.¹⁶ This is because cities can have separate—even opposing—interests to states. And these interests, imbued with sovereignty, merit protection because they are aligned with the other group protected by the Tenth Amendment: the People.

The normative theories underlying the Tenth Amendment apply just as well to cities as to states because cities are manifestations both of state authority *and* the People's will.¹⁷ Traditionally, federalism has valued decentralization. State sovereignty has been viewed as important because states are closer to their citizens than the federal government and can enact policies that more adequately realize their citizens' needs.¹⁸ Additionally, decentralization breeds experimentation: sovereign states can act as “laboratories of democracy” and “try novel social and economic experiments without risk to the rest of the country.”¹⁹

Like states, cities are also close to their citizenry. Local governments make the decisions that directly affect their citizens' day-to-day lives: where they send their children to school, where they can park, whether a particular store will be built down the street. Citizens interact with arms of the local government—schools, police forces, utilities—much more frequently than they interact with state entities.

Furthermore, cities, especially home-rule cities, have great leeway to experiment with policy, especially regarding “municipal issues.” For example, in 2009, San Francisco began issuing city ID cards to undocumented immigrants,

15. *Jacobson*, 197 U.S. at 25 (“[T]he state may invest local bodies called into existence for the purposes of local administration with the authority in some appropriate way to safeguard the public health and the public safety.”).

16. *See, e.g., Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457 (1982).

17. *See infra* note 24 & accompanying text.

18. David L. Shapiro, *FEDERALISM: A DIALOGUE* 107-40 (1995); Steven G. Calabresi, “A Government of Limited and Enumerated Power”: *In Defense of United States v. Lopez*, 94 MICH. L. REV. 752, 774-84 (1995).

19. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

though these were not available at the state level.²⁰ These municipal ID cards allow holders to satisfy proof-of-identification requirements to open bank accounts, pick their children up at school, and interact with law enforcement.²¹ San Francisco's program was so successful that it spread to other major cities like Los Angeles and New York City.²² Though Congress has absolute power to decide who is admitted or expelled from the United States,²³ cities still can administer their local programs, decide how to run their police forces, and provide education for all residents. That these local programs and initiatives affect the lives of immigrants does not transform them into statements on immigration, as cities must account for all their residents when making local decisions.

In some respects, the norms that justify federalism may apply with even greater strength to cities than to states. Cities are even closer to the "People," so they can adopt policy approaches that more accurately reflect their microcosms' interests.²⁴ Furthermore, since there are many cities within states, just as there are many states within the nation, cities add another level of policy experimentation and diversification within states. If the ideals of decentralization, proximity, and experimentation inform federalism, then cities are just as vital (if not more) to federalism as states are.

Cities' central importance to America's system of federalism gives them a platform to resist states and the federal government alike, and justifies their arguments for sovereign authority. Cities can draw on their residents' unique identities and idiosyncratic needs to assert their rights against the federal government. In 2004, when Mayor Gavin Newsom began marrying gay couples for the first time in American history, San Francisco reflected the will of a thriving LGBTQ community, fueling a statewide and nationwide dialogue on marriage equality.²⁵ Today, in litigation defending its status as a sanctuary city, San Francisco again reflects the will of its residents. As examined in the next Part, this time, the city seeks to treat all of its residents fairly, regardless of their fed-

20. Wyatt Buchanan, *S.F. Supervisors Approve ID Cards for Residents*, SFGATE (Nov. 14, 2007, 4:00 AM), <http://www.sfgate.com/bayarea/article/S-F-supervisors-approve-ID-cards-for-residents-3236637.php> [<http://perma.cc/E46C-3LQM>].

21. *Id.*

22. *Municipal ID Cards Help Undocumented Residents, Boost Local Economies*, POLICYLINK (July 14, 2014), <http://www.policylink.org/blog/municipal-id-cards> [<http://perma.cc/K6KX-6UAC>].

23. See *Fiallo v. Bell*, 430 U.S. 787, 792 (1977).

24. See Richard Briffault, "What about the 'Isn'?" *Normative and Formal Concerns in Contemporary Federalism*, 47 VAND. L. REV. 1303, 1305 (1994).

25. See Heather K. Gerken, *A New Progressive Federalism*, DEMOCRACY J., Spring 2012, at 27, <http://democracyjournal.org/magazine/24/a-new-progressive-federalism> [<http://perma.cc/U5WD-EERS>].

eral immigration status. Through its home-rule powers, San Francisco has availed itself of the Tenth Amendment's legal protection of the state and the people.

II. A CITY IN DISSENT: SAN FRANCISCO V. TRUMP

San Francisco proudly calls itself a sanctuary city.²⁶ It strives to

respect[], uphold[], and value[] equal protection and equal treatment for all of [its] residents, regardless of immigration status. Fostering a relationship of trust, respect, and open communication between City employees and City residents is essential to the City's core mission of ensuring public health, safety, and welfare, and serving the needs of everyone in the community, including immigrants.²⁷

To this end, unless specifically required by state or federal law, San Francisco law prevents city representatives from assisting with the enforcement of federal immigration law and from gathering or disseminating the release of individuals' status and other confidential information.²⁸ The law also forbids local law enforcement, in most instances, from honoring civil immigration detainer requests once an individual is eligible for release from detention.²⁹

This policy not only underscores the city's commitments to its stated ideals but also highlights the means by which it seeks to meet key municipal responsibilities. "To solve crimes and protect the public," San Francisco's laws aim to build trust and cooperation between community residents and local law enforcement.³⁰ Moreover, San Francisco's laws restricting dissemination of residents' confidential information further public health aims. "To carry out public health programs, the City must be able to reliably collect confidential information from all residents . . . Information gathering and cooperation may be jeopardized if release of personal information results in a person being taken into immigration custody."³¹

President Trump's Executive Order roundly condemned the policies of sanctuary cities such as San Francisco: "Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from

26. FAC, *supra* note 6, ¶ 2.

27. S.F. ADMIN. CODE §12I.1 (2017).

28. *Id.* §12H.

29. *Id.* §12I.3.

30. *Id.* § 12I.1.

31. *Id.*

removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our republic.”³² The Order threatened to strip federal funding from such jurisdictions if they do not share “citizenship or immigration status” information with the federal government. The Order directs the Attorney General to take appropriate enforcement action against violators, which could permit punishment of all jurisdictions that do not actively cooperate with federal government.³³ Under the terms of the Order, however, even a jurisdiction in compliance with the federal statute 8 U.S.C. § 1373 could be targeted if the Attorney General exercised his jurisdiction to decide that the jurisdiction’s policies hinder the enforcement of federal law.

In short, the Order presented cities with an impossible choice: either compromise municipal ideals and risk residents’ safety, or lose a significant portion of municipal funds and face further retribution from the federal government. It struck at the heart of San Francisco’s interests and its mission to serve the public health, safety, and welfare of its residents. By undermining San Francisco’s fundamental responsibilities as a city, the Order sowed the seeds for municipal dissent against federal action.

Some localities, like Miami-Dade County, capitulated immediately to President Trump’s demands.³⁴ But San Francisco resisted. Reflecting its particular position and interests as a city, San Francisco filed suit: “This lawsuit is about . . . a local government’s autonomy to devote resources to local priorities and to control the exercise of its own police powers, rather than being forced to carry out the agenda of the Federal government.”³⁵ The Trump Administration’s Order, the city asserted, endangered the ability of local law enforcement from carrying out duties mandated by *state* law.³⁶ The city alleged that the Executive Order caused significant constitutional, budgetary, and community harms.³⁷ The city additionally argued the Order violated the separation of

32. 82 Fed. Reg. 8799, 8799 (Jan. 25, 2017).

33. See, e.g., *id.* § 9(a), at 8801.

34. See, e.g., Alex Gomez, *Miami-Dade Commission Votes To End County’s ‘Sanctuary’ Status*, USA TODAY (Feb. 17, 2017), <http://www.usatoday.com/story/news/nation/2017/02/17/Miami-dade-county-grapples-sanctuary-city-president-trump-threat/98050976> [http://perma.cc/ND5V-9LM6].

35. *Id.* ¶ 9.

36. See S.F. ADMIN. CODE § 12I.1 (“Local law enforcement agencies’ responsibilities, duties, and powers are regulated by state law.”); cf. *Reno v. Condon*, 528 U.S. 141, 151 (2000).

37. FAC, *supra* note 6, ¶¶ 76-83, 97-101, 173. The Order, the city alleged, amounted to fiscal coercion that violates the Tenth Amendment, separation of powers, and the Spending Clause: it impermissibly commandeered local jurisdictions, violating the Tenth Amendment by re-

powers by threatening to assert legislative power that the Constitution vests exclusively in Congress.³⁸ Moreover, the Order exercised the spending power in ways that even Congress may not.³⁹

As the putative targets of Executive Order 13,768, cities such as San Francisco have the legal right to challenge this federal action in court. Indeed, as described in Part I, cities are instrumentalities of states and representations of “the People;” as such, they merit Tenth Amendment protection.⁴⁰ Thus, San Francisco argued that the Executive Order’s funding restriction violated the Tenth Amendment by requiring San Francisco to share municipal data with the federal government.⁴¹

Crucially, as a plaintiff *city*, San Francisco could go beyond just enforcing the constitutional principles of federalism as between states and the federal government. Sanctuary city ordinances across jurisdictions reflect the idea that “[l]ocalities, not Washington bureaucrats, are best suited to determine local law enforcement”⁴² In enacting San Francisco’s sanctuary city ordinances, the Board of Supervisors, the city’s legislative body, found that public safety is “founded on trust and cooperation of community residents and local law enforcement,” and that local law enforcement’s cooperation with federal civil immigration enforcement “undermines community policing strategies.”⁴³ Quantitative data analysis in a recent study demonstrates that crime is significantly

quiring San Francisco to share municipal data with the federal government and threatening legal action if jurisdictions fail to help enforce federal law.

38. *Id.* ¶¶ 84-89.

39. *Id.* ¶¶ 90-96.

40. U.S. CONST. amend. X; Letter from Annie Lai, Assistant Clinical Professor of Law, UC Irvine School of Law, et al., to Donald J. Trump, President of the United States, Re: Proposed Termination of Funding “Sanctuary” Jurisdictions Under EO 13768 Is Unconstitutional 1 (Mar. 13, 2017), http://www.ilrc.org/sites/default/files/resources/2017-03-13_law_professor_letter_re_eo_13768_sanctuary_jurisdictions_finalv2.pdf [<http://perma.cc/V675-WWG2>] (citing *Sligh v. Kirkwood*, 237 U.S. 52 (1915); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976)).

41. FAC, *supra* note 6, ¶¶ 76-83.

42. Cesar Vargas, *Sanctuary Cities Have a Legal Right To Defy the Federal Government*, N.Y. TIMES (Dec. 1, 2016), <http://www.nytimes.com/roomfordebate/2016/12/01/do-sanctuary-cities-have-a-right-to-defy-trump/sanctuary-cities-have-a-legal-right-to-defy-the-federal-government> [<http://perma.cc/AG7Z-BZ4S>] (citing *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)).

43. S.F., ADMIN. CODE §12I.1 (2017) (citing Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, UNIVERSITY OF ILLINOIS AT CHICAGO 8 (2013) (finding that at least 40% of Latinos surveyed were less likely to give information to police for fear of exposing themselves, their families, or their friends to risk of deportation)).

lower in counties with sanctuary policies compared to nonsanctuary counties.⁴⁴ Moreover, sanctuary policies yield both social and economic gains. They safeguard family unity, and with more family stability, help ensure individual family members can contribute to their local economies.⁴⁵

San Francisco’s sanctuary city ordinance limits the use of finite local resources to execute and enforce federal immigration laws, leaving more resources for the city to secure the public safety and welfare of its residents.⁴⁶ The ordinance ensures San Francisco can meet “essential municipal function[s]” to protect the health, safety, and welfare of those who live and work within its boundaries.⁴⁷ Against this backdrop, the city argued that the Executive Order struck at San Francisco’s core commitments to protect family well-being, community engagement, and public health and safety. The Order’s threats generated a chaotic atmosphere of fear and distrust not only within San Francisco, but also across jurisdictions in the United States.⁴⁸ San Francisco also argued that by heightening fears of immigration enforcement, the Order would make undocumented individuals less likely to report crimes, seek health services, and participate in other city programs and services. This would in turn undermine the health and well-being of all residents, and paradoxically “cause[] the very harms San Francisco’s Sanctuary City laws were designed to prevent.”⁴⁹

San Francisco further alleged that even had the Executive Order been promulgated properly, it would still violate the Tenth Amendment.⁵⁰ The city argued that the Order imposed a new condition on federal appropriations—compliance with § 1373—not germane to the purpose of those funds, thus violating constitutional requirements.⁵¹ The new funding condition would additionally require the city to act unconstitutionally to the extent it requires cities to comply with immigration detainers, which can violate the Fourth Amend-

44. See Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017), <http://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy> [<http://perma.cc/8AML-UYW6>].

45. *Id.*

46. FAC, *supra* note 6, ¶ 33.

47. PI Order, *supra* note 7, at *24-*25.

48. FAC, *supra* note 6, ¶ 102.

49. *Id.* ¶ 108.

50. *Id.* ¶ 81.

51. *Id.* ¶¶ 91-92 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)); see also *South Dakota v. Dole*, 483 U.S. 203, 208-10 (1987) (ruling that the Constitution requires that federal conditions on spending grants be: (1) promulgated to further the general welfare, (2) disclosed unambiguously before a state accepts federal funds, (3) germane to the federal interest behind the grant, (4) constitutional in itself, and (5) not coercive).

ment.⁵² And the Order's threat to cut all funding to cities was highly coercive, threatening critical funding streams in San Francisco's annual operating budget.⁵³ San Francisco called the Order's threat a "gun to the head," citing Justice Roberts's analysis in *National Federation of Independent Business v. Sebelius*.⁵⁴

San Francisco bolstered its constitutional arguments by appealing to the discrete budgetary harms that the Executive Order would cause. The city uses almost all of the \$1.2 billion in federal funds San Francisco receives for its annual operating budget to deliver substantial public services: approximately eighty percent goes to entitlement programs such as Medicare, Medicaid, Temporary Assistance for Needy Families, and the Supplemental Nutrition Assistance Program.⁵⁵ It receives an additional \$800 million in multiyear grants, the vast majority of which fund capital projects.⁵⁶ Because losing these federal funds would be so catastrophic for the city, the Executive Order presented the mayor with a Hobson's choice of either budgeting for the continued receipt of funds, with the knowledge that sudden cuts would be disastrous, or placing the funds into a reserve. The latter option would deprive residents of the use of these resources for critical services.⁵⁷

The specific responsibilities of cities—serving local needs—magnify the federal constitutional protections of the Tenth Amendment. Cities face unique community harms if federal action frustrates their core purpose to provide services and safeguards to advance local interests. The city's allegations of budgetary harm, in particular, spoke to fundamental municipal responsibilities.

In response to San Francisco's request for injunctive and declaratory relief, the federal government declined to rebut the city's allegations of substantial constitutional, budgetary, and community harm in both its complaint and subsequent motion for preliminary injunction.⁵⁸ Conflicting sharply with public statements made by President Trump and Attorney General Sessions, the federal government argued for a narrow construction of the Order, asserting that

52. FAC, *supra* note 6, ¶ 94.

53. *Id.* ¶ 93.

54. *Id.* (citing *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2604 (Roberts, C.J.)).

55. *Id.* ¶ 134.

56. *Id.* ¶ 115.

57. *Id.* ¶¶ 152-54; *see also* PI Order, *supra* note 7, at 21-22.

58. Instead, the federal government rested its case on justiciability, arguing that the City lacked ripeness and standing. Defendants' Opposition to Plaintiff's Motion for Preliminary Injunction at 12-13, 17, *City & Cty. of San Francisco, v. Trump*, No. 17-cv-00485-WHO (N.D. Cal. Mar. 22, 2017).

the Order did not change existing law, such that the city could not show even the threat of irreparable harm.⁵⁹

The district court soundly rejected this defense. Construing the Order as written, the district court found not only that San Francisco's claims were ripe for adjudication, but also that the city faced risk of irreparable harm from devastating budgetary cuts and to its constitutional rights.⁶⁰ Ultimately, the district court granted a nationwide injunction permanently blocking the Order's threats.⁶¹

III. WAYS FORWARD FOR LOCAL LEADERS

While the *San Francisco v. Trump* injunction was a notable victory for cities, the fight to protect residents from intrusions of local autonomy will not end. Not only has the federal government continued to oppose sanctuary cities⁶²—though in muted terms—but states have also sought to use their power over cities as leverage.⁶³ In May 2017, the Texas state legislature passed Senate Bill 4, mandating that local law enforcement agencies honor detainer requests by federal immigration enforcement.⁶⁴ The Supreme Court must ultimately address cities' place under the Constitution, and when it does, cities will have strong arguments for their authority and their role in American federalism.

San Francisco v. Trump powerfully demonstrates how localities can stand on equal footing with the federal government to challenge federal action. It represents dissent grounded in protecting San Francisco's local community. And finally, it shows that even local dissent can generate national impact, with other cities following suit.⁶⁵ From San Francisco's example, cities can take important

59. *Id.* at 11.

60. Permanent Injunction Order, *supra* note 7, at *7-*14.

61. *Id.* at *17.

62. Press Release, U.S. Dep't Just., Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Program (July 25, 2017), <http://www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial> [<http://perma.cc/7MD2-MDUU>].

63. Julian Aguilar, *Appeals Court Allows More of Texas "Sanctuary Cities" Law To Go into Effect*, TEX. TRIB. (Sept. 25, 2017, 6:00 PM), <http://www.texastribune.org/2017/09/25/appeals-court-allows-more-texas-sanctuary-cities-law-go-effect> [<http://perma.cc/ZZ6B-Z4U6>].

64. *City of El Cenizo v. Texas*, No. SA-17-CV-404-OLG, 2017 WL 3763098, at *28 (W.D. Tex. Aug. 30, 2017).

65. See Heather Gerken, *Federalism All the Way Down*, 124 HARV. L. REV. 4, 10 (2009) ("While resistance surely has its costs, minority rule at the local level generates a dynamic form of contestation, the democratic churn necessary for an ossified national system to move forward.")

lessons going forward to protect their community as well as their own autonomy.

First, cities should take advantage of the federalism arguments currently available to states, in recognition that federalism is about autonomy, not partisanship. We should be skeptical of federal encroachment that removes a city's ability to create the community that is best for its residents. Cities, no matter the national political climate, should aim to protect their right to govern on behalf of their residents. Especially when residents are in the political minority, cities should guard their residents' interests and magnify their voices. No government entity is closer to their residents and can better understand the needs of the community.

Second, when cities do resist the national government, they should lean on their connections to residents to demonstrate standing. In *San Francisco v. Trump*, the court found that San Francisco and the County of Santa Clara demonstrated Article III standing to challenge President Trump's Executive Order in part because "enforcement under the Order would deprive them of federal grants that they use to provide critical services to their residents."⁶⁶ Although San Francisco and Santa Clara had yet to lose funds or suffer other enforcement action, these local jurisdictions successfully articulated how the Order sought to "undermine" "their local judgment of what policies and practices are most effective for maintaining public safety and community health."⁶⁷ Cities can show how national policy will contradict their residents' ideals, as localities are small enough to have unifying values. Given the close proximity to their residents, cities can more concretely illustrate the harm caused by national policy to meet standing requirements.

Overall, the guiding principle for local resistance is this: let the residents' ideals and best interests ground local dissent and resistance. While the federal government and states retain great potential to pressure or constrain cities, localities can best avail themselves of the Tenth Amendment by appealing to their unique proximity to their residents, the People. San Francisco was able to successfully pursue its litigation against the Trump Administration because sanctuary city status was in the best interests of the city's residents.⁶⁸ Even when a city is in the national political minority, if it represents the perspective of its residents, it can vindicate federalism and make national impact.

66. PI Order, *supra* note 7, at *19.

67. *Id.* at *28.

68. John Harkinson, *Actually Sanctuary Cities Are Safer*, MOTHER JONES (July 10, 2015), <http://www.motherjones.com/politics/2015/07/sanctuary-cities-public-safety-kate-steinle-san-francisco> [<http://perma.cc/65W5-F445>].

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