IS HOME RULE THE ANSWER? CLARIFYING THE INFLUENCE OF DILLON'S RULE ON GROWTH MANAGEMENT

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A Discussion Paper Prepared for
The Brookings Institution Center on Urban and Metropolitan Policy

January 2003

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ACKNOWLEDGMENTS

The Brookings Institution Center on Urban and Metropolitan Policy would like to thank the Fannie Mae Foundation, the George Gund Foundation, the Joyce Foundation, the John D. and Catherine T. MacArthur Foundation, and the Charles Stewart Mott Foundation for their support of our work on metropolitan growth dynamics. The center's Metropolitan Initiative aims to better understand the mix of market, demographic, and policy trends that contribute to the growth and development patterns we see in metropolitan areas nationwide and to identify where possible, options for reform.

The authors gratefully acknowledge additional support for this project received from Virginia Polytechnic Institute and State University (Virginia Tech):

Department of Urban Affairs and Planning
The Metropolitan Institute
Department of Agricultural and Applied Economics Program for Community Vitality
McNair Scholars Program

The authors also thank Joshua Schwartz, graduate research assistant in the Department of Urban Affairs and Planning and Crystal Lamb, McNair Scholar, Virginia Tech for their research and other contributions to this work.

The authors further acknowledge the helpful comments and review from:

Diane Zahm, associate professor, Department of Urban Affairs and Planning, Virginia Tech
R. Michael Chandler, professor and extension specialist, Department and Applied Economics, Virginia Tech
Theodore Feitshans, extension specialist, Department of Agricultural and Applied conomics, North Carolina State University
Elizabeth Humphrey, executive director, Growth Management Leadership Alliance
David J. Kovacs, AICP, Director for Policy and Legislation, Virginia Chapter of the American Planning Association (VAPA).

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Is Home Rule the Answer?
Clarifying the Influence of Dillon's Rule on Growth Management

Executive Summary

Does “Dillon’s Rule,” a little-known judicial doctrine named for a 19th-century Iowa Supreme Court justice, preclude robust local action to curb sprawl?

Local leaders in numerous states say it does, and often they look to their state governments for relief. These leaders contend they are handcuffed by Dillon’s Rule, a strict interpretation of state laws that allows localities to possess only such powers as are specifically delegated to them by state law. They often yearn for greater "home rule" authority, which they feel would expand their authority to respond to the myriad challenges posed by suburban growth.

Are they right? This discussion paper takes a close look at the important debate surrounding Dillon’s Rule and home rule, particularly as it pertains to ongoing debates about growth management. In doing so, the paper observes that rampant confusion persists among many local and state government officials, constituency groups, and interested voters about the true nature of Dillon’s Rule, which states are actually governed by it, and what it means. At the same time, the paper notes that this confusion has led to exaggerated depictions of home rule as the antidote to Dillon’s Rule, and the key to better growth management.

Drawing from the best available legal literature and case law, the study examines the definition and use of both Dillon's Rule and home rule and, for the first time, categorizes all 50 states by their overall interpretation of the state and local relationship. After that, the discussion probes common misperceptions about the two rules, and seeks to dispel them. To that end, the paper finds that:

1. **Thirty-nine states employ Dillon's Rule to define the power of local governments.** Of those 39 states, 31 apply the rule to all municipalities and eight (such as California, Illinois, and Tennessee) appear to use the rule for only certain municipalities. Ten states do not adhere to the Dillon Rule at all. And yet, Dillon's Rule and home rule states are not polar opposites. No state reserves all power to itself, and none devolves all of its authority to localities. Virtually every local government possesses some degree of local autonomy and every state legislature retains some degree of control over local governments.

2. **Dillon's Rule neither prohibits nor hinders growth management**. In fact, contrary to conventional wisdom, many Dillon Rule states maintain model growth management systems. Maryland, Washington, and Wisconsin, for example, have all implemented strong programs that give local and county governments the tools and incentives to manage or channel growth—even though Dillon’s Rule prevails in each state. At the same time, Oregon—a non-Dillon state with one of the nation’s strongest home rule traditions—sustains the nation’s strongest state-mandated growth management regime. In short, a state’s adherence to

Dillon's Rule in no way precludes strong action to deal with growth-related challenges. In such states, legislatures retain the power to grant localities broad freedom to engage in growth management. Conversely, legislatures in home rule states can pass laws that restrict municipalities from engaging in exclusionary practices or other activities that appear to undermine important state objectives.

3. **However, strong local autonomy can complicate regional collaboration.** In practice, the contention that states should afford local governments more autonomy in order to enable them to manage growth conflicts with the notion that local governments acting independently may actually hinder, rather than further, effective growth management. Regional approaches lie at the heart of successful growth management. Effective growth management almost always requires adherence to a set of broad principles designed to accommodate growth and fundamentally affect region-scale metropolitan growth dynamics. By contrast, local governments generally act in a parochial manner, or lack the geographic breadth or ability to manage growth on a meaningful scale. To that extent, additional home rule probably offers no panacea for growth management challenges. And to the extent it contributes to greater fragmentation and localism it probably hinders problem solving.

4. **In sum, localities—rather than blaming Dillon's Rule for the shortcomings of growth management—need to reexamine their own regulations (which set the rules of the development game) and urge states to take a leadership role.** Local rules—such as zoning, comprehensive plans, subdivision regulations, and infrastructure investments—play a powerful role in addressing metropolitan growth challenges. For their part, states should take the lead in promoting and implementing progressive growth management efforts—through infrastructure, land use, tax, and other investment policies—that give localities the tools and incentives they need to grow in ways that are healthy at both the regional and statewide levels.

In the end, neither local leaders nor state legislators should be deluded. Dillon's Rule in no way lets them off the hook. The creation of thoughtful, effective strategies for managing growth depends largely on local and state will to do that—*not* on the presence or absence of Dillon's Rule.

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IS HOME RULE THE ANSWER?
CLARIFYING THE INFLUENCE OF DILLON'S RULE ON GROWTH MANAGEMENT

I. INTRODUCTION

Debates about local governments' ability to manage growth in and around their jurisdictions vary from state to state and inevitably involve mention of "home rule" and Dillon's Rule. Most states grant some type of authority to local governments to rule themselves. Dillon's Rule (named for a 19th-century Iowa Supreme Court judge) guides courts in interpreting the states' grants of authority. Under Dillon's Rule, local governments possess only those powers specifically delegated to them by state law, or fairly implied from expressly granted powers.

Dillon's Rule relates to the *ultra vires*[1] doctrine. This doctrine states that "political subdivisions hold only those powers expressly conferred by charter or law and no other powers" (Zimmerman 1995). If a court finds that an act of a local government is *ultra vires*, the local government lacks authority to engage in the act. This ancient doctrine still applies today.

Indeed, most writers, government officials and laypersons classify a state as either a Dillon Rule state or a home rule state. Under this categorization, prevailing sentiment assumes that Dillon's Rule entails weak local governments and strong state government oversight, while home rule connotes great freedom for local governments with little interference from the state.

This supposed divide looms especially large in growth management debates because the most important of local powers is arguably land use authority (Briffault 1990) and many approaches to managing growth assume local control of land use. In this vein, local governments frequently blame Dillon's Rule for sprawling development patterns, claiming they lack the necessary authority to stop it. Meanwhile, many efforts to advance "growth management" advocate expanding local government autonomy. For example, Elazar (1998) notes a recent upsurge in the interest in home rule that Krane, Rigos, and Hill (2001) attribute, in part, to the increasingly intense policy debates surrounding urban sprawl and metropolitan decentralization.

And yet, it turns out that substantial confusion runs through these discussions. To be blunt, substantial confusion persists about Dillon's Rule, home rule, and the relevant laws and court rulings that shape local government. Indeed, it turns out that the seemingly fundamental opposition of Dillon's Rule and home rule incorrectly describes the structure and substance of the relationship between state and local governments.

It is these common misperceptions that the present assessment of Dillon's Rule, home rule, and growth management seek to dispel. To that end, the discussion that follows begins with a summary of the history and definition of Dillon's Rule and home rule. The paper then briefly

[1] Literally, "beyond the power". Refers to an action that transcends authority, usually used in connection with corporations or corporate officers' actions in excess of the corporate charter.

examines the advantages and disadvantages of Dillon's Rule on a general level. Next, the paper assesses the use of Dillon's Rule in state courts across the country. This unprecedented survey fills a void by conclusively categorizing each state with respect to Dillon's Rule and providing supporting citations for each state. Finally, the paper examines the controversy surrounding the use of Dillon's Rule and its impact on local government autonomy and growth management. A brief conclusion and recommendations follow at the end.

II. BACKGROUND: THE GENESIS OF DILLON'S RULE AND HOME RULE

The United States Constitution sets out the powers of the federal government, as well as those of the states. The Tenth Amendment provides that, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This provision at once greatly limits the powers of the federal government and vests much power with the states. All told, nearly 40,000 local governments exist in the U.S. [2] However, the Constitution makes no mention of the power, if any, they should assume.

In view of this, settled law deems local governments mere creatures of state legislatures and state constitutions, under their control. The U.S. Supreme Court twice upheld this notion against attacks on its constitutionality (*Atkins v. Kansas* in 1903; and *City of Trenton v. New Jersey* in 1923). In the *Atkins* case, the Court opined that:

> [Local governments] are the creatures—mere political subdivisions—of the state, for the purpose of exercising a part of its powers. They may exert only such powers as are expressly granted to them, or such as may be necessarily implied from those granted. What they lawfully do of a public character is done under the sanction of the state. They may be created, or, having been created, their powers may be restricted or enlarged, or altogether withdrawn at the will of the legislature; the authority of the legislature, when restricting or withdrawing such powers, being subject only to the fundamental condition that the collective and individual rights of the people of the municipality shall not thereby be destroyed.

The U.S. Supreme Court also commented on the power of local governments in *Community Communication Co. v. Boulder* (1982). The court in that case declared that:

> all sovereign authority within the geographic limits of the United States resides either with the government of the United States, or [with] the states of the Union. *There exist within the broad domain of sovereignty but these two*. There may be cities, counties, and other[s]…but they are all derived from, or exist in, subordination to one or the other of these. (Citations omitted; emphasis in original.)

In other words, in broad terms, states exercise complete dominion over local governments (Briffault 1990). While this general legal principle remains unchallenged, individual states may, and do, alter the state-local government relationship. Relationships between states and localities thus vary widely and evolve.

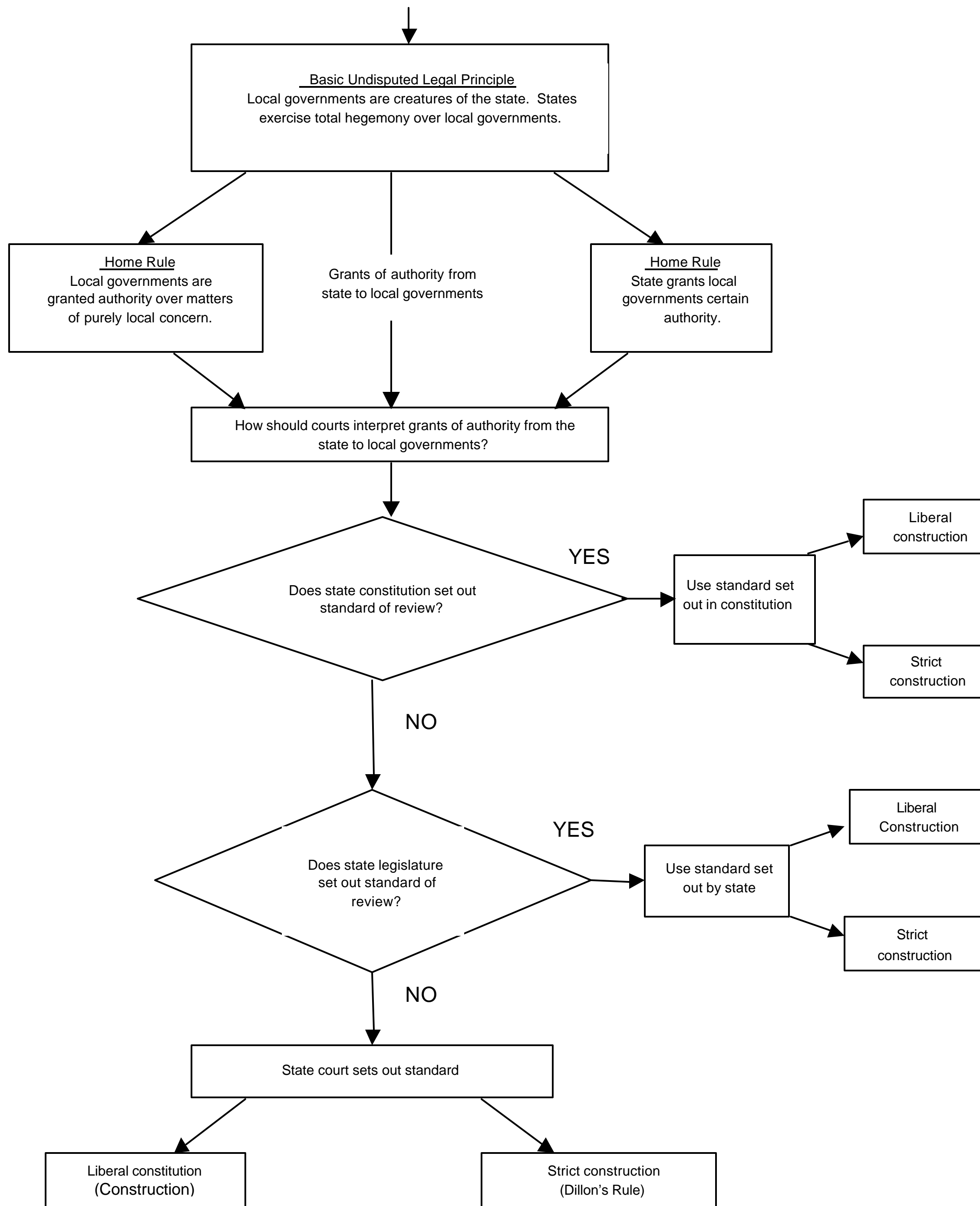
Within this relationship, local governments derive their powers from either the state constitution, their local charter or, most commonly, state legislation. When a state grants authority to a local government, regardless of source, the scope of the authority must be ascertained. If the

[2] According to the U.S. Census Bureau, 87,453 local governments exist in the U.S., including 39,044 general purpose governments (3,043 counties; 19,372 municipalities; and 16,629 towns or townships); 13,726 school districts; and 34,683 special districts that provide specialized services either not offered or not performed by existing governments.

source of the power fails to clearly delineate the scope then courts must resort to rules of interpretation to guide their decisions.

In these cases, the state constitution provides the most authoritative source of the rule of interpretation, representing the "will of the people." If the state constitution fails to address the issue, the task falls to the state legislature. If neither the state constitution nor state law sets the standard, as is most commonly the case, state courts themselves determine how the courts will interpret grants of authority. If the courts formulate the rule, the highest state court holds the ultimate authority in the matter. However, an amendment to the state constitution or an act by the state legislature may always overrule the courts with respect to interpreting grants of authority. (See Figure 1.)

Figure 1: Diagram of State / Local Relationship



Two basic choices for the rule of interpretation exist: (1) Strictly read such grants of authority, assuming that the local government does not have the power unless clearly granted; or (2) liberally translate such grants, assuming that the local government holds the power unless clearly denied.

The first option, strict construction, came to be known as "Dillon's Rule" because Judge John Dillon of Iowa first articulated the principle in a state court case in 1865. (A fuller discussion of Dillon's Rule follows.) By contrast, in states given to more liberal rules of interpretation, state constitutional provisions or state law mandate that courts interpret grants of authority from states to local governments expansively.[3]

It is important to note that a particular state may apply different rules to different types of municipalities. In addition, the different rules in a particular state may derive from different sources. For example, the state constitution may mandate liberal construction for grants of authority to cities, while remaining silent on counties. The legislature may pass a statute requiring use of a liberal rule of interpretation for counties, even as the courts hold Dillon's Rule appropriate with respect to towns.

Further, although the concept of home rule arose as a direct response to the perceived shortcomings of Dillon's Rule, the two doctrines often coexist within the same state. Although one form of home rule may reverse Dillon's Rule by mandating liberal interpretation of state grants of authority to local government, other forms address the fundamental legal relationships between state and local governments. These latter forms of home rule attempt to carve out areas of autonomy for local governments, with mixed results at best.

Although Dillon's Rule builds upon the clearly established and irrefutable legal principle of local government subordination to the state, widespread political and academic controversy continues to surround the rules. This controversy, we contend, stems largely from the uncontroverted legal principle that municipalities exist as creatures of the state under the unfettered control of the state.[4]

Critics of Dillon's Rule describe its presumptions as a "yoke" under which local governments must "struggle" (Albuquerque 1998), and advocate a move toward greater autonomy for local governments in the United States. Gere (1982) conveys his disdain in a particularly vivid fashion, portraying Dillon's Rule as a "straitjacket" on local governments and calling the doctrine "rigid and

[3] Some forms of home rule attempt to give local governments greater autonomy through direct grants of authority as opposed to addressing the issue of interpretation.

[4] It should be noted that Dillon’s Rule originally applied only to municipal corporations, and even then, only to cities, since the term “municipal corporation" suggests a legal arrangement resulting from a charter granted by the state legislature. (Counties and other local governments often lack charters and therefore legally exist as arms of the state government.) Although the distinction between municipal corporations and other forms of local government often carries with it important legal ramifications, the distinction generally makes no difference with respect to the application of Dillon’s Rule. Therefore, this paper uses “local government," “municipality," “municipal corporation," and “locality" interchangeably to refer to cities, towns, counties, townships, boroughs and any other form of local government in the United States.

inflexible." According to Gere, the doctrine has affected "a widespread impact upon the American community and urban landscape and has permanently colored the nature of state-local relations in each of the fifty states." He further describes the principle as "overwhelmingly weighted in favor of supreme state authority and control." Gere's passionate critiques paint Dillon's Rule as Dracula-like, sucking all autonomy from local governments.[5]

As an alternative to Dillon's Rule, meanwhile, critics promote "home rule," citing economic efficiency, democratic principles, and the virtues of localism. Home rule essentially refers to the ability of a local government to manage local affairs without oversight from the state legislature. In this respect, virtually every local government possesses some degree of home rule authority. However, the term "home rule" has acquired an almost talismanic aura over the years and often, inaccurately, connotes almost total freedom of local governments from state control.

In view of these nuances, a full understanding of either Dillon's Rule or home rule requires a complete explanation of both. This paper therefore begins by defining and briefly tracing the history of each doctrine.

A. Dillon's Rule

The history of Dillon's Rule begins in the 19th century when state constitutions gave local governments representation in state legislatures. These local government representatives ensured that municipality interests were promoted andpermitted a wide range of pursuits that resembled private activity. For example, some local governments aggressively pursued railroad companies to ensure that the railroad would pass through their town.

In the mid-19th century, debate over the degree of local government autonomy emerged following widespread corruption in municipalities. This corruption manifested itself in two forms: (1) the patronage-based awarding of utility franchises; and, (2) the deliberate creation and extinguishment of municipalities to avoid accumulated debt. These actions prompted litigation in various state courts over the role played by local governments in economic activities.

Judge John F. Dillon of Iowa was the nation's premier authority on municipal law during this period of widespread municipal corruption. Descriptions of Dillon convey a man deeply troubled by not only the corruption, but more fundamentally by local government involvement in private economic activity—especially promotion of the railroad industry.

Local governments often trampled private property rights when they pursued railroad facilities, stations, and lines in an early display of competition for economic development. This conflict between private property rights and local government pursuit of revenue also troubled Dillon.

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[5] In 2001, Jay Fisette, the former chair of the Arlington County (VA) Board summed up this frustration when he complained, "We have to go to the General Assembly for pretty much everything except to brush our teeth in the morning" (*Washington Business Journal* 2001).

He summarized the undisputed view of the relationship between the state government and local governments in *City of Clinton v. Cedar Rapids and Missouri River Railroad* in 1868.

> Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. If it may destroy, it may abridge and control…We know of no limitation on this right so far as the corporations themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.

Dillon's decision in *Clark v. City of Des Moines* (*1865*) first set forth the rule of statutory construction that would later be named for him.[6]

> It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of the power is resolved by the courts against the corporation, and the power is denied.

The Clark case involved the issuance of bonds or promissory notes by the City of Des Moines that were not authorized by the state legislature. The receiving party sold the bonds to a bona fide purchaser and the city refused to honor them. Judge Dillon relied on his rule of statutory construction to hold that the city lacked authority to issue the bonds in the first place. Therefore, the holder of the bonds could not compel payment by the city.[7]

In 1873, Judge Dillon included this rule in his seminal treatise, *Commentaries on the Law of Municipal Corporations*. Most state courts quickly adopted the rule.

Many courts still use Dillon's Rule to assist in interpreting laws passed by the legislature, charters or state constitutional provisions that give local governments authority. The judicial branch carries out the important task of interpreting legislative intent with respect to all laws. If the legislature clearly expresses its intent, the courts need not interpret it at all. However, as is often the case, if the legislature leaves unclear issues or unanswered questions in its formulation of law, the courts must unravel the intent of the lawmakers. Courts may neither legislate nor formulate policy. In this role, courts merely ascertain and implement legislative intent.

To achieve this task, courts employ a number of "rules of statutory construction." A rule of statutory construction provides guiding principles to assist the courts in correctly interpreting legislative intent. Generally, these tenets take form in court decisions that judges adopt and carry

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[6] Dillon's Rule actually traces its roots to a much earlier time. In *Stetson v. Kemp*, 13 Mass. 272 (1816), the Massachusetts Supreme Court held that towns are "creatures of the legislature" and may exercise "only the powers expressly granted to them."

[7] The irony in this case is that the use of Dillon's Rule benefited the city by allowing it to avoid the bond obligation. However, the long term effect was to put local governments (and potential purchasers of their bonds) on notice of the fact that they could not engage in any activities without the authorization of the state legislature.

forward to future cases. Less frequently, rules of statutory construction originate in state constitutions or state laws. Dillon's Rule is just one of the many rules of statutory construction employed by courts. In particular, some state courts use Dillon's Rule as a guide when interpreting grants of authority from the state legislature to local governments.

Most characterize Dillon's Rule as a rule of "strict" construction that gives as little power as can be reasonably intimated by the state legislature's grant of authority (e.g. Owens 2000). Others argue that the history of Dillon's Rule dictates "fair and reasonable" construction of grants of power to local governments (U.S. Advisory Commission on Intergovernmental Relations 1993). However, regardless of one's view of Dillon's Rule, the state legislature, absent a state constitutional provision, holds the authority to eliminate the use and effect of Dillon's Rule. Dillon's Rule becomes confused where the state legislature either passes a law dictating the standard of interpretation or avoids interpretation issues by stating a clear intent in the enabling legislation. Courts apply Dillon's Rule only where the legislature fails to clearly articulate legislative intent (*Southern Contractors, Inc. v. Loudon County Board of Education).*

In all of this, it is important to understand that Dillon's Rule does not counsel the legislature relative to the powers of local governments. The state legislature may act as it wishes and be as restrictive or liberal as it chooses. For example, if a state legislature wishes for courts to liberally construe a certain grant of authority, the legislature may mandate liberal construction within the grant of the authority. In addition, if the state legislature desires to grant local governments broad authority, the legislators may draft the statute to clearly convey broad authority. Such actions take any discretion away from the state courts.

B. Home Rule

At the same moment Judge Dillon was laying out his rule of statutory construction, udge Thomas M. Cooley of the Michigan Supreme Court presented a diametrically opposed view of state delegations of authority to local governments in his concurring opinion in *People v. Hurlburt* (1871). The court in that case invalidated a state law that purported to appoint members of the newly created board of public works for the City of Detroit. The court found that a provision in the state constitution only allowed the state legislature to decide whether the members would be elected by the local citizens or appointed by the local government.

In his concurring opinion, Cooley asserted the belief that local governments hold the inherent right of local self-governance. Cooley conceded that judicial decisions and law writers of the time "generally assert[ed]" that the state created and held total control over local governments. However, in his view, "[s]uch maxims of government are seldom true in any more than a general sense; they never are and never can be literally accepted in practice" (*People v. Hurlburt*). Cooley felt that citizens contemplated certain limitations on state authority over local governments and that these generally accepted limitations formed implied limits that should be given legal protection.[8]

[8] The Supreme Courts of Indiana, Iowa, Kentucky, and Texas adopted Cooley's view at various times during

Ten years after setting out the Cooley doctrine Cooley seemed to retreat from his earlier position when he stated "[t]here is a principle of law that municipal powers are to be strictly interpreted and it is a just and wise rule" (City of *Port Huron v. McCall*). Even so, however, Cooley did attempt to limit Dillon's Rule, writing, "[b]ut when a power is conferred which in its exercise concerns only the municipality, and can wrong or injure no one, there is not the slightest reason for any strict or literal interpretation with a view of narrowing its construction."

In response to the effects of Dillon's Rule, and energized by the Cooley Doctrine, states began enacting constitutional amendments to protect the autonomy of local governments. Early efforts commonly prohibited the state legislature from passing special legislation giving a specific power to a particular locality. This provision sought to promote local autonomy by forcing the legislature to grant powers to all local governments, instead of just a select few. Today, state legislatures commonly circumvent the prohibition on special legislation through a myriad of state statutes. For example, these laws may enable "cities with a population of between 21,000 and 23,000 lying in a county with a population of between 45,000 and 48,000" to engage in certain activity when, in fact, only one specific or intended city fits such a statutory definition.

The home rule movement began in earnest when Missouri adopted a constitutional home rule provision in 1875. Several states—California (1879), Washington (1889), Minnesota (1896), Colorado (1902), Virginia (1902), Oregon (1906), Oklahoma (1907), Michigan (1908), Arizona (1912), Ohio (1912), Nebraska (1912), and Texas (1912)—followed suit by establishing constitutional authority for use of a locally drafted charter to be ratified by local voters or the city council (Krane, Rigos, and Hill 2001). In this fashion, the movement originally responded to the limitations on local government authority imposed by the undisputed constitutional principal of total state control of local governments, and not Dillon's Rule. These provisions attempted to give local governments broad authority to legislate and allow local governments to control local matters unimpeded by the state legislature (Briffault 1990). A later form of home rule attempts to address the perceived limitations on local government powers posed by Dillon's Rule by mandating liberal interpretations of state grants of authority to local governments.

1. Definitions of Home Rule

The Chicago Home Rule Commission once commented that "there is perhaps no term in the literature of political science or law which is more susceptible to misconception and variety of meaning than 'home rule'" (Chicago Home Rule Commission 1954). Confusion arises, at least in part, from the term's dual role as both a political motto and a legal doctrine (Sandalow 1964). Most generally, "home rule" refers to a state constitutional provision or legislative action that provides a city or county government with a greater measure of self-government (Black 1990). Home rule

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the 19th century (U.S. Advisory Commission on Intergovernmental Relations 1981). However, more than a century later, it seems that "[c]ontrary to general opinion and to practice largely …the doctrine of an existence of an inherent right of local self-government or home rule does not at present exist, and according to some authorities never did exist in this country" (McQuillen 1966).

involves two components: (1) the power of local government to manage "local" affairs; and, (2) the ability of local government to avoid interference from the state (Timmons 1993).

Krane, Rigos, and Hill (2001) present a definition of the "ideal" of home rule as "the ability of a local government to act and make policy in all areas that have not been designated to be of statewide interest through general law, state constitutional provisions, or initiatives and referenda." They add that home rule must include more than just a degree of autonomy, local discretion, or authority. The local government must possess the capacity to perform. Local elected officials must also be accountable to their own citizens and not merely state officials with respect to matters of statewide concern.

Three basic classification systems exist with respect to home rule. The first classifies types of home rule by the way the grant of authority operates ("operational categorization"). This results in two types of home rule. One involves the granting of authority to local governments to act in certain areas without legislative authority. The other reflects limitations on the state legislature's authority to regulate particular enumerated municipal affairs (Welch 1999).

A second classification system distinguishes among different types of home rule according to structure of the grant ("structural categorization") (Mead 1997; Krane, Rigos, and Hill 2001). The first type, *imperium in imperio* (a sovereign state within a sovereign state) attempts to emulate the relationship between state governments and the federal government under the U.S. Constitution. Under this model, local governments hold exclusive authority to legislate with respect to local concerns. The second type of structure, called "legislative" home rule (sometimes referred to as a "devolution of powers" model) merely transposes the presumption of Dillon's Rule. Legislative home rule grants local governments all authority that the state legislature may delegate, unless the state legislature restricts or denies certain powers or functions.[9] Like Dillon's Rule, however, local governments operating under legislative home rule remain subject to the ultimate authority of the state legislature.

The third type of classification bases the distinction on the source of the authority (Welch 1999). Legal scholars often classify home rule based upon its source. If derived from a provision in the state constitution, home rule is deemed "constitutional." If the home rule authority arises from legislative provisions, it is deemed "legislative." Constitutional home rule stands at a higher level than legislative home rule, because the state legislature may not revoke or amend the authority granted by a constitutional provision (McQuillin 1966). In contrast, the state legislature holds the power to alter, amend, or abrogate legislative home rule at any time.

The authors propose another, more relevant, classification. Grants of home rule authority may be distinguished based upon whether the provision addresses the legal principle of state hegemony over local governments or the judicial interpretation of state grants of authority to local

[9] Operational categorization and structural categorization may merely be different labels for the same distinctions. The literature fails to clearly describe and distinguish the two.

governments. Regardless of the classification or type of home rule, no grants of authority rise to the level of the Cooley doctrine. They either set limits on the authority of the local governments or define those areas where the state legislature may not intrude upon local authority (Novak 2000). Within the great variety of home rule provisions, one principle consistently emerges: State legislatures retain control over local governments.

2. Judicial Limitations on Home Rule

If a state constitution or state statute grants home rule authority, local governments next encounter judicial hurdles. Local governments and citizens often turn to the courts to interpret the scope of home rule grants. Traditionally, courts review home rule provisions skeptically and seem to make efforts to limit the scope of the provisions. This treatment likely results from the courts' acceptance of, and desire to adhere to, the accepted legal superiority of states. Courts typically overturn municipal ordinances if: (1) the ordinance relates to a "statewide" matter, as opposed to a matter of local concern; (2) the ordinance conflicts with a state statute; (3) state legislation expressly preempts the local ordinance; or, (4) state legislation impliedly preempts the local ordinance (See, e.g., *State of Utah v. Hutchinson* (1980); *Goodall v. Humboldt County* (1998); and Abdalla and Becker 1998). In addition, Dillon's Rule may be employed to limit grants of home rule authority.

Courts struggle to demarcate the line between matters of "purely local concern," which form the exclusive province of local legislation under home rule, and matters of statewide concern, which fall under the control of the state legislature (McQuillin 1966). As Briffault (1990) observes, "the difficulties state courts experience in defining exclusive areas of local interest erode the legal protection of autonomy."

The line between purely local matters and those of statewide concern also vexes state legislatures when they attempt to ascertain the areas of legislation over which they retain control. A "troubling diversity of opinion" exists as to whether land-use regulations, planning, and zoning qualify as purely local matters (Vaubel 1991). For example, Krane, Rigos, and Hill (2001) reference a table showing "zoning" as a function where the "local interest is paramount," while classifying "city and regional planning" as an area where "concurrent jurisdiction [is] necessary." Indeed, planning and zoning issues prove particularly difficult to classify.

When a municipal ordinance permits that which a state statute prohibits or if a local ordinance prohibits that which a state statute requires, then the local ordinance conflictswith the state statute (Welch 1999; Sebree 1989). In that case, the state statute prevails and the local ordinance is invalid.

Express preemption occurs when the state legislature directly declares its intent to preclude local control to achieve broader state interests in a particular area (Sebree 1989; Nolon 1993). Where state regulation so thoroughly and pervasively covers a subject as to completely occupy the field and where the subject requires uniform statewide treatment, the state legislature implicitly preempts local regulation of that subject.

Courts use another method to rein in home rule. Contrary to popular belief and even some scholarly writings (Weeks and Hardy 1984; Albuquerque 1998), Dillon's Rule often coexists coextensively with home rule. Many state courts use Dillon's Rule to interpret state delegation of home rule authority to local governments. Consequently, some view Dillon's Rule as "largely responsible for erosion of home rule" (U.S. Advisory Commission on Intergovernmental Relations 1962).

These judicial restraints lead many commentators to lament the often deceptive notion that home rule translates to greater local government autonomy.[10] Frug (1980) concludes that local government autonomy has not been affected significantly by home rule efforts. However, home rule doctrines were never intended to completely free local governments from state legislative control. The true purpose of home rule authority is to allow local governments to operate more efficiently (Nolon 1993).

C. Arguments For and Against Dillon's Rule and Home Rule

Numerous arguments have been propounded about the virtues and problems of both Dillon's Rule and home rule. What follows lays out those virtues and debits, as outlined by others. In brief, strong arguments exist on both sides of each doctrine.

At the same time, a measure of caution is called for in reviewing these contentions. In general, the literature treats Dillon's Rule and home rule as polar opposites with respect to local government autonomy and assumes that either one or the other exists in a state. But both of these assumptions are incorrect. The two doctrines often coexist with one another and neither implies any particular degree of local government autonomy.

For that reason, the format of the following comparison seeks not to reinforce the false dichotomy between the two rules, but to merely provide a convenient review of the issues.

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[10] For instance, Sebree (1989) deems home rule in Washington state "illusory". Likewise, Smith (1996) contends that the courts have "emasculated" home rule in Wyoming, while Kirshnitz fears home rule in New York may be reduced to "a form of words and little else" (2000). Equally concerned was the concurring opinion in *Jacobberger v. Terry* (211 Neb. 878, 320 N.W.2d 903 [1982]), which held that home rule provisions in Nebraska "have slowly been dying as the judicial hatchet has chopped away the life support system." See also, *Goodell v. Humboldt County* and the legal scholarship the decision prompted.

Table 1. Arguments For Dillon's Rule and Home Rule

Arguments for Dillon's Rule	**Arguments for Home Rule** (Krane, Rigos, and Hill, 2001).
Legislators often prefer to award new powers to only a few local governments at first, so as to "test" the new powers. If the grant of power proves successful, then the legislature may grant the power to all local governments.	Local citizens can select the form of government they prefer. If citizens want to consolidate or reorganize their public institutions, they can do so without obtaining permission from state officials.
State-level control ensures greater uniformity, which facilitates economic growth by assuring companies that requirements such as business licenses and methods of taxation will be consistent throughout the state.	Local communities are diverse, and home rule allows local citizens to solve their problems in their own fashion. In this fashion, decentralization fosters local experimentation, flexibility, innovation, and responsiveness.
State legislators often feel that Dillon's Rule results in efficient and fair governance.	Home rule reduces the amount of time that a state legislature devotes to "local affairs." Scholars have estimated that in some states, local bills constitute as much as 20 to 25 percent of the legislature's workload.
Some believe Dillon's Rule benefits local government officials by allowing them to use the rule as an excuse to not do things that the public wants (which may also raise taxes, which the public does not want).	Home rule units with control of their finances place the responsibility for public expenditures and taxation where it belongs—on the elected officials of the local jurisdiction, and not on distant state officials.
States possess more technical expertise and often operate at a more appropriate level for policymaking than local governments. Local actions often result in regional or statewide impacts. State oversight may prevent exclusionary and provincial actions by local governments.	Under home rule, local officials exercise greater autonomy on a daily basis in running the locality. This frees decisions from the need for pre-approval by the state legislature before implementation. State officials do not "second guess" local officials.
Dillon's Rule provides certainty to local governments. If power is denied whenever doubtful, litigation will be kept at a minimum in legislative affairs.	"Liberal construction" of home rule provisions reduces court interference in local policymaking and administration.

Table 2. Arguments Against Dillon's Rule and Home Rule

Arguments against Dillon's Rule	**Arguments against Home Rule** (Krane, Rigos, and Hill (2001).
Dillon's Rule shackles local officials and prevents them from quickly reacting to unique local problems with specially tailored local responses.	Home rule allows local officials to act in an arbitrary and capricious fashion. Local officials can favor political friends and disfavor political enemies. Violations of due process and equal treatment would likely increase.
Dillon's Rule prevents progressive local governments from going beyond the status quo in delivering services in an efficient and high quality manner, and forces uniform mediocrity.	Home rule leads to a lack of uniformity among units of government: services, structures, and actions that are available or permitted in one locality may be absent in another. Without statewide regulations, inequities in the provision and delivery of public services will grow more common.
Dillon's Rule forces local government officials or their hired lobbyists to periodically trek to state capitals to beseech state legislators to grant more authority. This process appears to be wasteful and inefficient. "This rule sends local governments to state legislatures seeking grants of additional powers; it causes local officials to doubt their power; and it stops local government programs from developing fully." (U.S. Advisory Commission on Intergovernmental Relations 1962).	Local citizens whose preferences are not met or served by the local government will increasingly appeal to the state legislature, and prevail on legislatures to spend more time on local affairs.
State legislatures often impose unfunded mandates on local governments. These mandates force local governments to provide certain services but fail to provide a revenue source to offset the costs of the services.	Home rule units with control over their finances undercut the revenue base of the state government. If each locality is responsible for its own finances, income inequalities among local jurisdictions will leave some communities unable to solve their own problems.
State government units and legislatures lack knowledge of unique local conditions. States' "one size fits all" solutions may serve no local governments well.	Home rule units with the authority to make and administer their own public policies complicate state governments' ability to address problems that cut across jurisdictional boundaries or require the action of multiple jurisdictions. Units that make their own policy might be deprived of the greater expertise and technical resources available at the state level and might lose the cost savings associated with centralization of administrative activities at the state level.
Many commentators assail the lack of certainty involved in Dillon's Rule (Gillette 1991; Virginia Law Review Association 1982). Local governments must speculate as to whether the courts will strike down a particular ordinance as a violation or infringement of Dillon's Rule.	No legal wording is immune from challenge, and any "liberal construction" language is certain to provoke lawsuits and concomitant uncertainty among local government officials.

An interesting aspect of this literature is the frequent contention that Dillon's Rule produces a lot of uncertainty among local government officials. A minority of scholars correctly disputes this claim. In fact, Dillon's Rule actually introduces certainty into an often-murky home rule situation.

One indication of this results from a Westlaw search of state court cases from 1944 to June 2002 that used the phrase "Dillon's Rule" or the "Dillon Rule." Only 194 cases contained one of these terms during this time period. In sharp contrast, 7,498 state court cases used the term "home rule" over the same time period. Granted, many courts recite Dillon’s Rule verbatim or in a closely parallel form without explicitly labeling it. Nevertheless, this search indicates a remarkably low number of cases considering the application of Dillon's Rule, and a far larger relative number addressing home rule. The implication: The multitude and difficulty of issues raised by home rule lead to many more cases in state courts interpreting home rule than Dillon's Rule.

III. FIFTY-STATE REVIEW OF DILLON'S RULE

At least one commentator believes it is impossible to classify each of the 50 states based upon Dillon's Rule or the various forms of home rule because the legal system of many states blends the various systems and state high courts often issue conflicting or confusing decisions on this point (Zimmerman 1991). What follows does not attempt to classify each state based upon the type of home rule authority, if any, local governments possess. However, it does identify each state that employs Dillon's Rule and, where possible, describes how the rule is used. Court case citations and references to other sources verify the assertions.

To date, the literature provides wildly varying estimates of the number of states that adhere to Dillon's Rule. However, none of the literature provides citations to verify the information. In 1962, the U.S. Advisory Commission on Intergovernmental Relations (USACIR) baldly asserted that every state but Alaska and Texas uses Dillon's Rule. In 1981, however, USACIR classified only eight states as Dillon's Rule states. Appendix A1 in Krane, Rigos, and Hill (2001) also shows eight Dillon's Rule states. An examination of the text, however, uncovers references to nine more state court systems purportedly using Dillon's Rule. Much of the disparity results from confusion between Dillon's Rule and the constitutional principle that states exercise total control over their local governments. This paper provides the first reliable data on the number of Dillon's Rule states.

In this paper, we classify a state as using Dillon's Rule if the courts within that state employ a rule of statutory construction that reads identically or very close to the rule originally set forth by Judge Dillon. A judgment had to be made in certain cases where the rule set out closely mirrored Dillon's Rule but did not identify Judge Dillon's concept.

Several methods were employed to determine the status of Dillon's Rule application in each state. First, all state court cases mentioning the term "Dillon's Rule" or "Dillon Rule" from January 1, 1944 to June 15, 2002 were examined. This review resolved the question for approximately 30 states. With respect to the other states, the determination involved examination of legal treatises, law review articles, state legal research resources, and/or computer searches involving pertinent Westlaw key numbers and concepts within the cases in those state courts. In addition, the authors examined state constitutional provisions and statutes and consulted with local government attorneys across the country.

However, in many cases, the legal treatises and foremost state authorities contain outdated, incomplete, or incorrect information. In some cases, state appellate court decisions suggest confusion on the part of state court justices on Dillon's Rule. The conclusions contained in this paper, therefore, represent the best data yet made available on Dillon's Rule. In some cases, legal judgment was exercised to classify particular states in which the resolution of this issue was less than clear. This paper also explains the lack of clarity and reasoning for classification in these cases.

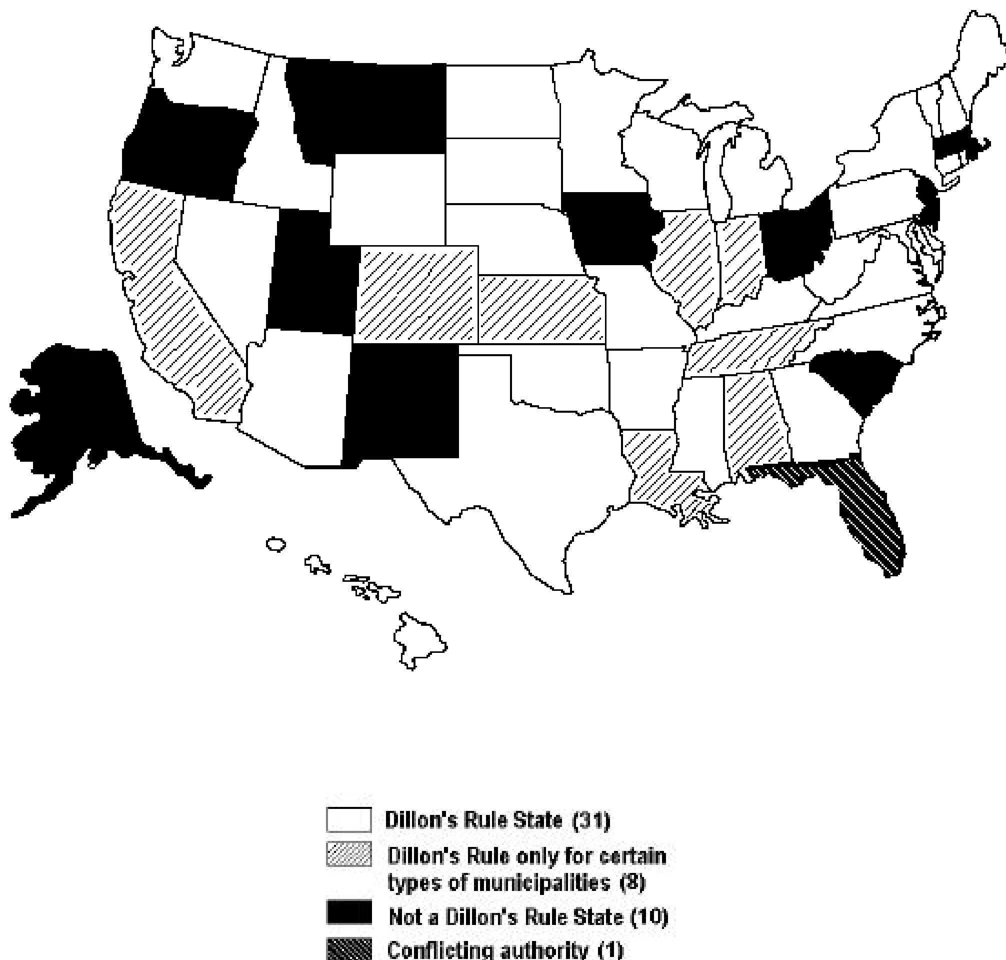
As shown in Appendix A and Figure 2, 39 states use Dillon's Rule with respect to at least some municipalities. Of those 39 states, 31 apply the rule to all municipalities while 8 appear to use

the rule for only certain municipalities (Alabama, California, Colorado, Illinois, Indiana, Kansas, Louisiana, and Tennessee). Ten states shun the use of Dillon's Rule completely (Alaska, Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina and Utah). Conflicting authority makes the issue uncertain in Florida.

A review of the data reveals no clear geographic or regional trends with respect to the use of Dillon's Rule. States using Dillon's Rule are found scattered throughout the Northeast, Midwest, South, and West, as are states using more liberal rules of construction. The states using Dillon's Rule for only certain types of municipalities appear to be generally clustered in the Midwest and South-central states. However, in general, judicial attitudes as well as constitutional and legislative priorities, not regional trends, influence adoption of Dillon's Rule.

A cursory review of the case law also reveals no other clear trends except maintenance of the status quo. A state supreme court last rejected Dillon's Rule in 1980 when the Supreme Court of Utah abolished Dillon's Rule in *State of Utah v. Hutchinson*. The court called Dillon's Rule "archaic, unrealistic, and unresponsive to the current needs of both state and local governments." The court further opined that "[a]dequate protection against abuse of power or interference with legitimate statewide interests is provided by the electorate, state supervisory control, and judicial review."

Figure 2: Map of Local Government Authority



However, on May 6, 2002, the Tennessee Supreme Court reaffirmed Dillon's Rule in a case where the defendant urged its elimination. While acknowledging criticism of the rule from "many legal commentators and some courts," the Tennessee Supreme Court found that Dillon's Rule was "[f]ar from being an irrational interpretive canon, [instead] the doctrine of strict, but reasonable, construction of delegations of state legislative power seeks only to give effect to the practical nature of local governmental authority in Tennessee" (*Southern Contractors, Inc. v. Loudon County Board of Education*).

A recent Iowa Supreme Court decision in *Goodell v. Humboldt County* illustrates the difficulties of classifying states with respect to use of Dillon's Rule and caused much debate in the legal community.[11] The 1998 decision involved the challenge by livestock producers of four local ordinances regulating confined livestock operations. The livestock producers claimed that the state legislature preempted the ordinances and that regulation of confined livestock operations form a matter of statewide concern. Humboldt County argued that the ordinances fell within its home rule authority.

Article III, section 38A of the Iowa Constitution grants counties the power "to determine their local affairs and government," but only to the extent those determinations are not "inconsistent with the laws of the general assembly." Local governments and state governments may regulate the same subject matter under this provision. However, the local ordinance may be more stringent, but not less stringent, than the state provision.

The Iowa Supreme Court found that the regulation of livestock operations within a certain county constitutes a matter of local concern. Further, the Iowa legislature had not expressly preempted the ordinances and the state regulation was not so extensive as to preempt local regulation. However, the Humboldt County ordinances "do far more than merely set more stringent standards to regulate confinement operations. These ordinances revise the state regulatory scheme and, by doing so, become irreconcilable with state law" (*Goodell*). Thus, the court struck down the local ordinances as inconsistent with state law.

Justice Harris and Justice Snell both filed dissenting opinions in the Iowa case. Both opinions decried the evisceration of home rule and apparent resurrection of Dillon's Rule. Justice Snell wrote: "Whether the Dillon rule has been excavated from the grave or preemption has re-emerged under the new name of inconsistency, or inconsistency has swallowed the law permitting higher and more stringent standards, the majority has drained the vitality from home rule. Little is left to local government that could withstand the avarice of an inconsistency meaning so pervasive." He went on to write: "Land contours, soil types, drainage efficiencies, population centers, rain levels, even air currents, vary from locale to locale. Characterizing a subject as having statewide importance does

[11] The case also generated a large number of scholarly legal journal articles (Abdalla and Becker 1998; Bower 2000; Laufenburg 1998; Welch 1999). All but one of these articles (Novak 2000), lament the resurrection of Dillon’s Rule in Iowa.

not lessen the impact of problems encountered locally. That is the message embraced by the citizens of Iowa in adopting the home rule amendment." (*Goodell,* Justice Snell, dissenting).

Regardless of whether the Iowa Supreme Court decided *Goodell* correctly, the case illustrates the basic principle that the state legislature ultimately controls the actions taken by local governments in its domain. Exceptions exist to this rule, particularly with respect to constitutional grants of home rule authority. However, courts strain to draw fine lines between, for example, matters of statewide concern and local concern, or inconsistent or consistent state statutes and local ordinances. The resulting legal doctrines often blur the line between Dillon's Rule and judicial interpretations of the contours of home rule, thus further complicating classification of each state based on its use of Dillon's Rule.

The jurisprudence of North Carolina also presents a stark example of the difficulties in ascertaining the status of Dillon's Rule in a particular state. North Carolina Statutes sections 153A-4[12] and 160A-4[13], adopted in 1973 and 1971, respectively, clearly abolish Dillon's Rule and mandate a more liberal interpretation of grants of authority to local governments in North Carolina, at least with respect to certain grants of power. However, the North Carolina Appellate Court,[14] in *Carteret County v. United Contractors of Kinston* (1995) applied "[t]he well-settled rule in [North Carolina] governing the permissible scope of municipal or county actions," in a case involving a grant of authority clearly encompassed by the statutory abolition of Dillon's Rule.

A year earlier, in *Homebuilders Association of Charlotte, Inc. v. City of Charlotte,* the North Carolina Supreme Court rejected application of Dillon's Rule and stated that it is clear that statutory provisions "*shall* be broadly construed and that grants of power *shall* be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect." The Court regarded the statutes as "… as a 'legislative mandate…to construe in a broad fashion the provisions and grants of power….' "

Most recently, in *Smith Chapel Baptist Church v. City of Durham,* the North Carolina Supreme Court arguably reversed field and reverted to Dillon's Rule. In this case, Justice Frye, who wrote the majority opinion in the *Homebuilders Ass'n* case, filed a dissenting opinion. In the dissent, Justice Frye described Dillon's Rule as "now defunct" in North Carolina and accused the majority of reviving the doctrine. The majority opinion in *Smith Chapel Baptist Church* relies on the plain

[12] "It is the policy of the General Assembly that the counties of this state should have adequate authority to exercise the powers, rights, duties, functions, privileges, and immunities conferred upon them by law. To this end, the provisions of this chapter and of local acts shall be broadly construed and grants of power shall be construed to include any powers that are reasonably expedient to the exercise of the power."

[13] "It is the policy of the General Assembly that the cities of this state should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect: Provided, that the exercise of such additional or supplementary powers shall not be contrary to state or federal law or to the public policy of this state"

[14] Note that the North Carolina Appellate Court is the intermediate court of appeals in that state. The North Carolina Supreme Court is the state's high court and, thus, superior to the Appellate Court.

language of the statute. Therefore, the majority did not have to resort to any rules of interpretation. The majority may, however, have couched the opinion in that manner to evade the application of the more liberal rule of construction. The authors draw only one clear conclusion from the North Carolina jurisprudence: Dillon's Rule and home rule perplex even North Carolina appellate court justices.

A similar situation exists in West Virginia. The West Virginia legislature passed a law in 1969 abolishing Dillon's Rule, at least as it pertained to certain grants of power. However, the courts virtually ignored the provision until 1991, when the West Virginia Supreme Court recognized the statute and applied a liberal rule of construction (*McAllister v. Nelson*). Since 1991, the West Virginia Supreme Court has alternated between applying Dillon's Rule and the statutory rule, seemingly at random (Lorensen).

IV. DILLON'S RULE AND GROWTH MANAGEMENT

> This country is in the midst of a revolution in the way we regulate the use of our land…The ancient regime being overthrown is the feudal system under which the entire pattern of land development has been controlled by thousands of local governments, each seeking to maximize its tax base and minimize its social problems, and caring less for what happens to all others. The tools of the revolution are new laws taking a wide variety of forms but each sharing a common theme—the need to provide some degree of state or regional participation in the major decisions that affect the use of our increasingly limited supply of land (Bosselman and Callies 1971).

One may dispute whether the revolution foreseen by Bosselman and Callies over 30 years ago ever occurred. However, the fact remains that the most prominent growth management efforts in the United States focus on regional or statewide growth management. Even if a state legislature fails to exercise regulatory authority or a regional entity lacks sufficient regulatory authority, effective growth management efforts hinge on leadership and coordination at the state level. Whether a state uses Dillon's Rule or not has no bearing.

Both theory and practice strongly underscore that that effective growth management depends on regional or statewide approaches. In recent years, numerous urban scholars and practitioners—including David Rusk, Myron Orfield, Anthony Downs, Peter Calthorpe, and Robert Yaro—have advocated such an approach.

At the same time, political rhetoric and political science literature addressing Dillon's Rule promote local government autonomy as the cure for the pressures of metropolitan growth. Further, this literature equates Dillon's Rule with low levels of local government autonomy and home rule with high levels of local government autonomy. This reasoning contradicts the logic of current growth management practices, and leads to the conclusion that the elimination of Dillon's Rule and the expansion of home rule would foster effective growth management.

However, three significant fallacies undermine this seemingly sound theory. First, Dillon's Rule exerts little or no influence on the amount of local government autonomy. Second, Dillon's Rule presents no roadblocks to intergovernmental cooperation, a special area of concern for the critics of Dillon's Rule, and a critical component of effective growth management. Third, the expansion of local government autonomy actually hinders rather than furthers effective growth management efforts. After all, the causes and consequences of growth are ultimately regional issues and only regional or statewide approaches adequately address these causes and consequences. So to the extent Dillon’s Rule restrains local government discretion it may well *advance* the cause of effective growth management.

A. Effective Growth Management: Basic Principles

Although no universally accepted definition of growth management exists, Nelson and others (2002) have recently defined it as the deliberate and integrated use of the planning, regulatory, and

fiscal authority of state and local governments to influence the pattern of growth and development in order to meet projected needs. Growth management strategies are sometimes mischaracterized as those used by localities to *prevent* growth in an area. However, growth management more accurately accommodates current development and anticipates future development requirements while maintaining community qualities and interests.

An important distinction exists between anticipating growth, and "crisis management" in response to growth (Porter 1997). Ideally growth management planning should prepare for growth and development rather than react to it. Accordingly, the implementation of growth management plans should occur well in advance of the emergence of problems associated with growth. As such, growth management can be described as a deliberate effort on the part of different levels of government and multiple governments at the same level to achieve a balance between development and its potential social, economic, and physical effects.

At any rate, the most significant growth management efforts in the United States have generally been implemented at the regional or statewide level. Within the past few decades, several states have enacted statutes that call for comprehensive regional or statewide planning for growth management, including Hawaii, Vermont, Florida, Oregon, New Jersey, Maine, Pennsylvania, Rhode Island, Georgia, Washington, Wisconsin, Tennessee, and Maryland.

From these existing state statutes, the authors distill eight basic principles of growth management: *comprehensive planning, consistency, coordination, concurrency, cooperation, containment, collaboration,* and *carrots*. Although strategies may differ between various regional and statewide planning procedures, these eight fundamental principles undergird the success of regional or state-level growth management efforts.[15]

- The *comprehensive plan* represents the foundation of every growth management strategy. A public document adopted locally and/or statewide, it acts as the tool that drives orderly development, usually within a twenty-year time frame. The comprehensive plan forms the foundation of the effort to anticipate and manage many factors of growth, including the rate, timing, type and location of development, as well as elements such as land use, housing, transportation and, with increasing frequency, economic development, parks and recreation and neighborhood plans. All states with a growth management statute require a local comprehensive plan. Many state statutes also include a state comprehensive plan that forms the centerpiece of growth management efforts within the state.
- Effective growth management requires that local comprehensive plans and statewide plans are *consistent* across localities and among different levels of government. Internal consistency connotes uniformity among the different components of the comprehensive plan, in order to avoid discrepancies or contradictions in the plan. External consistency refers to compatibility between the local comprehensive plan and its implementation strategy. Ideally, this concept links land-use planning with zoning and/or subdivision ordinances, as well as

[15] For selected specific state statute citations for these growth management principles, see Appendix B.

the multitude of other implementation tools. For example, Wisconsin's consistency doctrine requires that *any* land use decision be consistent with the local government comprehensive plan.[16] Horizontal consistency calls for agreement between adjacent local government land-use plans as a way to avoid negative impacts from neighboring jurisdictions. Vertical consistency results from synchronization between local, regional, and state land-use planning (DeGrove and Metzger 1993).

- Growth management efforts also ideally seek to promote intergovernmental *coordination* among the different local, regional, and state governments. Coordination occurs among local governments as a way to efficiently integrate the planning efforts of each. In addition, efforts at the regional and state level must be coordinated with local government actions, as well as other actions of other regional and state agencies to achieve regional goals. Coordination on all levels addresses potential issues with incompatible land-use planning. Pennsylvania's Growing Smarter Initiative amends the state's Municipal Planning Code to permit and encourage more coordinated planning at the local level.
- Related is the issue of *cooperation.* Cooperation promotes participation and interaction among local governments and between local, regional and statewide agencies. This tool seeks to incorporate consideration of local decisions in a regional or statewide framework. Involvement of all levels of government concerning planning goals and objectives helps build effective and efficient growth management strategies.
- *Concurrency* demands that adequate public facilities and services be available before or soon after development occurs to accommodate or absorb the additional development impacts. This tool channels development to areas that have the capacity to provide sufficient infrastructure and helps avoid development stresses on inadequate infrastructure such as roads and highways. Florida's concurrency requirements warrant special consideration because the provisions apply not only to larger regional projects, but to every development project reviewed by a local government.
- *Containment* attempts to restrict the spatial pattern of development to certain areas. Geographically, containment supports development within a certain boundary, and essentially discourages development beyond the boundary (Nelson and Duncan 1995). Containment is not limited to land-use regulations but includes a wide variety of tools such as public ownership of land and policies regarding the timing and sequencing of public infrastructure. In 1973, Oregon established a Land Conservation and Development Commission to adopt state development goals, to which the local government must adhere. The most prominent aspect of Oregon's program is creation of "urban growth boundaries" around the urbanized city. The urban growth boundary "contains" land suitable for urban development for a twenty year time period (Pendall 2002).
- *Collaboration* involves public participation and input into the planning process. This approach encourages active participation by a broad constituency of interests, including local, regional, and statewide agencies as well as conservationists, landowners, and various

[16] No state mandate exists, however, so localities can avoid having a comprehensive plan.

other stakeholders. Collaboration and shared ownership ideally mends fragmented decisions and builds common growth management goals (McKinney and Harmon 2002).

- Carrots, or incentives, provide rewards (usually monetary) to communities that comply with state plans or ideals. Carrots include motivation in the form of financial and technical assistance earned by complying localities. On the other hand, disincentives may include loss of local eligibility for state infrastructure grants and loans, or loss of sales, liquor, and gas tax revenues. These negative consequences fall upon local governments that decline to further state objectives.

Some states, such as Vermont, combine comprehensive planning, coordination, and carrots in one provision.[17] Under the Vermont provisions, if local governments coordinate their comprehensive plans, then state agencies must adhere to the local plans. Without the state requirement to do so, state agency actions need not comply with local plans. Such incentives effectively prod local governments to coordinate and, consequently, plan more comprehensively.

B. Dillon's Rule and Local Autonomy

The commonly held assumption that states should afford local governments more autonomy in order to enable them to manage growth conflicts with the notion that local governments acting independently may actually hinder, rather than further, effective growth management. Many commentators maintain that effective management of rapid population growth requires the increased level of local government autonomy that presumably results from home rule (Sebree 1989; Mckenzie 2000; Allen 2002). Relaxation or elimination of Dillon's Rule, some assert, advances the goal of effective growth management by giving local governments more autonomy (Sebree 1989).

But this in large part misses the point. As we have seen, the extent of local government autonomy depends not upon whether a state court employs Dillon's Rule but rather on the propensity of the state legislature to endow local governments with autonomy. If the state legislature expresses clear intent to grant broad discretion to local governments, Dillon's Rule poses no roadblock. In some home rule states, the legislature has passed a multitude of laws prohibiting municipalities from engaging a wide variety of practices. That approach hampers municipalities more than Dillon's Rule. The legislature holds the power to expand or contract local government autonomy and to repeal Dillon's Rule.

Existing literature supports this concept. In 1982, USACIR conducted the most comprehensive study of local government autonomy. This study ranks states on overall degree of local discretionary authority from an examination of state constitutions and statutes, court decisions, law review and journal articles and reports on state-local relations. In addition, the study relied on surveys of selected individuals in each state, including governors, attorneys general, and municipal league representatives.

[17] Vermont Growth Management Act (Act 200 of 1988) Title 24 Vermont Statutes Annotated, Chapter 117.

A composite index, (see Table 3) constructed from indices that measured local government autonomy in specified areas, sought to measure the relative standing of local government autonomy in the fifty states. The specific indices measured structural, functional, fiscal, and personnel authority of local government units. The study segregated data for counties, cities, towns and townships within each state.

Based on the composite index, some very interesting findings emerge that clash with conventional wisdom. For example, Virginia ranked 8th in the degree of discretionary authority enjoyed by its localities despite the fact that Virginia courts arguably apply Dillon's Rule more stringently than any in the country. In fact, of the top 10 states, ranked in descending order of local discretionary authority, seven use Dillon's Rule in all circumstances. Only Oregon and Alaska fail to apply Dillon's Rule. (Louisiana uses Dillon's Rule only with respect to certain localities.)

Table 3: States Ranked by Degree of Local Discretionary Authority, 1980

Rank	A. Composite (all types of local units)	B. Cities Only	c. Counties Only
1	**Oregon**	Texas	**Oregon**
2	Maine	Maine	**Alaska**
3	North Carolina	Michigan	North Carolina
4	Connecticut	Connecticut	Pennsylvania
5	**Alaska**	North Carolina	Delaware
6	Maryland	**Oregon**	Arkansas
7	Pennsylvania	Maryland	**South Carolina**
8	Virginia	Missouri	Louisiana
9	Delaware	Virginia	Maryland
10	Louisiana	Illinois	**Utah**
11	Texas	**Ohio**	Kansas
12	Illinois	Oklahoma	Minnesota
13	Oklahoma	**Alaska**	Virginia
14	Kansas	Arizona	Florida
15	**South Carolina**	Kansas	Wisconsin
16	Michigan	Louisiana	Kentucky
17	Minnesota	California	California
18	California	Georgia	**Montana**
19	Missouri	Minnesota	Illinois
20	**Utah**	Pennsylvania	Maine
21	Arkansas	**South Carolina**	North Dakota
22	New Hampshire	Wisconsin	Hawaii
23	Wisconsin	Alabama	**New Mexico**
24	North Dakota	Nebraska	Indiana
25	Arizona	North Dakota	New York
26	Florida	Delaware	Wyoming
27	**Ohio**	New Hampshire	Oklahoma
28	Alabama	**Utah**	Michigan
29	Kentucky	Wyoming	Washington
30	Georgia	Florida	**Iowa**
31	**Montana**	Mississippi	**New Jersey**
32	Washington	Tennessee	Georgia
33	Wyoming	Washington	Nevada
34	Tennessee	Arkansas	Tennessee
35	New York	**New Jersey**	Mississippi
36	**New Jersey**	Kentucky	New Hampshire
37	Indiana	Colorado	Alabama
38	Rhode Island	**Montana**	Arizona
39	Vermont	**Iowa**	South Dakota
40	Hawaii	Indiana	West Virginia
41	Nebraska	**Massachusetts**	Nebraska
42	Colorado	Rhode Island	**Ohio**
43	**Massachusetts**	South Dakota	Texas
44	**Iowa**	New York	Idaho
45	Mississippi	Nevada	Colorado
46	Nevada	West Virginia	Vermont
47	South Dakota	Idaho	Missouri
48	**New Mexico**	Vermont	**Massachusetts**
49	West Virginia	**New Mexico**	----
50	Idaho	----	----

States in **bold** are not Dillon's Rule states. Source: U.S. Advisory Commission on Intergovernmental Relations. 1981. "Measuring Local Discretionary Authority." USAICR, M-131. Washington.

The table shows that Dillon's Rule states rank quite randomly across the table in terms of local discretionary authority and suggests the rule does not necessarily result in less local control. Indeed, two strongholds of growth management activity can be found in Dillon's Rule states on either side of the Washington, D.C. metropolitan area:

On one side of the Potomac River, Arlington County, VA has taken advantage of the enormous public investment in rail transit and implemented one of the most successful transit-oriented development plans in the nation. Through comprehensive planning and zoning, cooperation with the regional transit agency, and collaboration throughout the planning process, Arlington devised a strategy to concentrate development around the rail transit stations, which now house 95 percent of the county's office space (about 30 million square feet). Arlington has also used carrots to incentivize affordable housing production in these areas. These efforts have been credited with helping to mitigate growth pressures throughout the region.[18]

On the other side of the river, Montgomery County, MD adheres to growth management principles in order to preserve agricultural land by offering density bonuses elsewhere in the county (carrots) and to shape the pace of growth through an adequate public facilities ordinance (concurrency). Montgomery County has also developed more than 10,000 affordable housing units through a 30-year old inclusionary housing program and provides a series of incentives to support their goal of high-density development around transit stations (consistency). (Porter 1997).

Together, the much-praised efforts of Arlington and Montgomery counties furnish two prominent examples of strong local action to manage growth in states that employ Dillon's Rule. To be sure, one reason these localities are so successful is that they are large jurisdictions that, in some respects, act as quasi-regional governments. Montgomery County has about 900,000 people and is about 500 square miles in land size. Smaller jurisdictions with comparable attitudes towards growth management may not be able to implement effective policies simply because they do not have the geographic or population size to contend with region-scale forces. Nevertheless, the fact remains that successful action to manage growth remain eminently possible even where Dillon's Rule prevails.

C. Dillon's Rule and Intergovernmental Cooperation

Intergovernmental cooperation forms a special point of concern with respect to Dillon's Rule and growth management and provides a vital component to any successful growth management effort. Some commentators opine that Dillon's Rule prevents local governments from cooperating with each other because states fail to authorize cooperation (Frug 1999). Others lament that the lack of true local home rule prevents regional approaches to sprawl and other regional issues, and further place the blame on this failure to cooperate on state legislatures not providing the local governments authority to address regional issues cooperatively (Krane, Rigos, and Hill 2001).

[18] University of Virginia, "Growth Management Toolbox." (1999). Available at http://www.vapreservation.org/growth/.

However, as Gillette (2001) notes, this criticism rings hollow. Most states grant local governments home rule authority. In these jurisdictions, courts generally sustain interlocal agreements challenged as not purely of local concern. Broad legislative authorization for intergovernmental cooperation exists in forty-two states (USACIR 1993). For example, Virginia's Commission on Local Government (2001) lists numerous ways in which local governments in that state may cooperate with each other specifically to address growth and development issues. Among these are:

1. Economic growth sharing agreements
2. Sharing of constitutional officers
3. Sharing of ministerial and executive officers
4. Joint exercise of powers
    - Economic development
5. Specific authority for joint functional activities
    - Libraries
    - Social services
6. Joint planning commissions
7. Joint authorities
    - Redevelopment and housing authority
    - Transportation district
    - Local transportation improvement district
    - Industrial development authority
    - Public recreational facilities authority
    - Park authority
8. Joint enterprise zones
9. Regional transportation program
10. Special legislation for authorities and districts
    - Construction and operation of toll roads and parking facilities
    - Northern Virginia Transportation Commission
    - Virginia Coalfield Economic Development Authority
11. Joint schools, school facilities, and superintendents
    - Joint and regional schools
12. Provision of services by planning district commission
13. Consolidation of local governments
14. Partial consolidation
15. Reversion to town status
16. Regional governments

Also in Virginia, in 1992 the Governor's Advisory Commission on the Dillon Rule and Local Government noted that incentives from the state, particularly fiscal incentives, could encourage cooperation among local governments. The Commission advised that the cost savings from regional solutions would offset the cost of the fiscal incentives. Presently, local governments, whether located in Dillon's Rule jurisdictions or otherwise, generally do lack incentives to cooperate

regionally. It is this lack of incentives that explains the paucity of intergovernmental cooperation, not the presence of Dillon's Rule.

D. Local Government Autonomy and Growth Management

Two major factors support the assertion that local governments generally lack the ability to manage growth effectively. First, growth and its stresses tend to occur at a regional scale that exceeds that of local governments. Second, institutional factors prompt local governments to pursue insular goals that often defeat statewide or regional aims. These local goals often undercut or directly conflict with the overall welfare of the state and region.

A recent Brookings Institution report examined over 500 state and local ballot initiatives dealing with growth and land use in 2000. Of the 94 initiatives dealing directly with methods to regulate development, 89 (95 percent) involved "local unilateral growth management" (Myers and Puentes 2002). However, the report finds that these efforts often miss the mark. The reason: Regional growth patterns are determined by broad forces generally well beyond the purview of local governments.

Local land preservation efforts are similarly misdirected. Without a regional land-use plan, development prevented in one area simply relocates to other jurisdictions or into unincorporated areas (Orfield 2002). When that happens, the area receiving the growth likely gains residents with less political power and possesses less fiscal capacity to handle the growth than the community that avoided the development. At the most basic level, then, local governments rarely possess adequate land to manage growth on a "meaningful scale" (Kelly 1993). By contrast, larger regions or entire states possess broader areas of control, so they can effectively address growth issues.

What is more, the attempt of one locality to "manage" growth frequently entails the imposition of negative “externalities” on adjacent localities. In this respect. the imposition (directly or indirectly) of growth "controls" to slow or stop the influx of new residents to one community frequently keeps only local benefits in mind and ignores the possible costs that other communities might bear as a consequence (Nelson and others 2002). Such “spillover” impacts on nearby localities and the region can include economic stresses resulting from the demand for additional infrastructure, social costs, and continuous sprawling patterns of development.

Ironically, these types of externalities often spur adjacent jurisdictions to implement a growth limiting programs that continue the cycle. Such shifting of the burden of growth to nearby communities is a hallmark of ineffective growth control and poor planning from a regional perspective.

Over the past few decades, uncoordinated local approaches to growth management have consistently failed to adequately respond to changes in development patterns within regions. For example, local zoning ordinances imposing size and density restrictions on development often significantly impact regional housing markets (*Virginia Law Review* 1982). Local governments have

incentives to seek to preserve community character, often a code phrase for expensive homes inhabited by the wealthy, regardless of cost to other communities (Briffault 1990). Localities still use land use and zoning policies to segregate minorities and low-income residents—or exclude them altogether (Pendall 2000). Lastly, local governments also hold the power to impose local taxes and therefore seek land uses that maximize revenues (high value property, retail businesses or high income housing) and minimize expenditures for public services. (Orfield 2002).

Frequently growth management strategies that only consider the local effects do not solve the local problems and further contribute to regional problems. Local growth moratoriums such as those implemented in Petaluma, California and Boulder County, Colorado illustrate the difficulty.

Petaluma faced rapid suburbanization from nearby San Francisco. By attempting to restrict growth through a limitation on allotted building permits, the city essentially created housing demand and thus a housing shortage in Santa Rosa, a town located on the outskirts of the area. Growth limits used in Petaluma placed pressure on Santa Rosa to accommodate a drastic population increase. As expected, the growth burden stressed the existing infrastructure in Santa Rosa (Downs 1994).

Boulder County, CO, for its part, attempts to manage growth using a combination of growth management principles. This combination of tools that prevent growth on the edge of Boulder has pushed development burdens to satellite cities. Consequently, these localities have endured high growth rates that have been directly attributed to Boulder's attempt to severely restrict growth. This effect is common, especially when the jurisdiction of one locality overlaps the jurisdictions of another locality (Kelly 1993). The fragmented, locally driven system of land use planning in and around Boulder has ensured that while one city pursued aggressive growth policies regional cooperation remained lacking (Pendall 2002).[19]

In sum, the literature concludes that effective growth management occurs at the regional level and involves state oversight and initiative. Since Dillon's Rule neither expands nor limits local government autonomy, much concern about the rule appears misdirected. Dillon's Rule probably does not influence growth management efforts. And to the extent it does the consistency and certainty it engenders likely benefit such efforts.

State Examples: Maryland, Oregon, and Virginia

As we have seen, Dillon’s Rule bears far less on the likelihood that a particular region or state will implement effective growth management than such critical factors as timing, political outlook, and socioeconomic issues. The experience of two pairs of states illustrates this point.

[19] These two examples should be contrasted with Arlington and Montgomery Counties which sought to accommodate, rather than repel, growth by channeling it into high density areas.

The first pairing compares Oregon and Maryland. Oregon maintains one of the nation's first growth management systems—one regarded by many as the most effective in the country. Although Oregon courts reject Dillon's Rule and interpret state grants of local authority liberally, Oregon's growth management plan ranks second only to Hawaii's with respect to the degree of state regulatory control. Top-down administration exemplifies Oregon's plan. However, academic studies assert that local governments in Oregon possess more autonomy than any other in the United States (U. S. Advisory Commission on Intergovernmental Relations 1982).

Courts in Maryland, on the other hand, consistently employ Dillon's Rule to strictly construe grants of governmental authority. Like Oregon, however, Maryland administers a widely renowned growth management plan. Maryland's plan represents one of the newest growth management strategies—a bottom-up process, focusing on local governmental control. Although the plan is too recent to assess, many state and local governments now seek to emulate elements of Maryland's plan.

Clearly, the timing of the different plans (1973 for Oregon and 1998 for Maryland), the political philosophies of the two states, and the states' respective traditions of local government control over land use explain the stark contrasts between the two states' approaches. Looking only at the absence or presence of Dillon's Rule, after all, an inexperienced observor would predict that Maryland would have employed a more regulatory approach, while Oregon would have relied more on incentives to local governments. However, the chosen paths are exactly opposite expectation. Which is to say: The states' stances on Dillon's Rule and home rule have exerted little or no influence on their styles of growth management.

A comparison of Maryland and Virginia yields similar conclusions. Like Maryland, Virginia courts use Dillon's Rule. In fact, Virginia may adhere to Dillon's Rule more rigorously than any other state. And yet, Virginia spurns any state exposition or oversight of growth management and the legislature consistently refuses to grant local governments more autonomy to pursue local growth restrictions.

What explains the differing approaches of Maryland and Virginia to growth issues? Political and philosophical differences explain much of the contrast. Former Virginia Governor James Gilmore went so far as to ridicule Maryland's smart growth program in the 1990s, maintaining that Virginia would continue to pursue "economic growth." Maryland, meanwhile, had began to address growth issues with a transfer of development rights program and other means as far back as the 1970s. Growth management is now a tradition and way of life in that state. Virginia, by contrast, hues to a traditional emphasis on property rights. This proclivity remains to this day.

Another difference is that the Maryland state government provides substantially more direct infrastructure and public facilities funds to localities than does Virginia. As a result, Maryland has more influence over where such funding goes, making an important impact on growth policies. Virginia provides some funding (for example, for transportation and higher education facilities) but

much less to localities, which must often rely upon general obligation bonds to finance infrastructure needs.

Finally, Maryland consists of just 24 separate land use authority jurisdictions (23 counties and the City of Baltimore). Each municipality controls, on average, approximately 512 square miles. Virginia, by comparison, encompasses 40 cities, 94 counties, and 196 towns (or a total of 320 local governments), each with the ability to control land use. Each locality contains, on average, approximately 132 square miles (although towns and cities are generally much smaller than counties), meaning that Virginia's far more numerous local governments each control a far smaller land area than do Maryland governments. Although both states employ Dillon's Rule, fundamentally different structures in each state mandate radically different approaches to growth.

In summary, Oregon and Maryland each boast successful growth management plans, but employ different rules and use radically different approaches. Maryland and Virginia, meanwhile, each embrace Dillon's Rule, yet maintain diametrically opposed stances. Virginia generally favors property rights and uses Dillon's Rule. Maryland also uses the rule but stresses managed growth.

V. CONCLUSION

In conclusion, a careful review of the evidence suggests that attributions of growth management failure to Dillon's Rule (or a lack of home rule) reflect an overly simplistic understanding of Dillon's Rule, home rule, and growth management. Such a view relies on the faulty assumption that more local government autonomy leads to more effective growth management. Both theory and practice suggest the opposite. Ultimately, each state legislature bears responsibility for the allocation of authority between state and local governments—and in large part determines land-use outcomes.

More importantly, effective growth management requires adherence to a set of broad principles designed to accommodate growth rather than limit or ration it—as is often the case in the name of growth management on the local level. Dillon's Rule neither prohibits nor hinders adherence to each of these growth management principles.

Dillon's Rule, in a word, probably has almost no affect on growth management activity. However, if Dillon's Rule does have an impact, it (at least theoretically) appears to be positive. By providing some certainty that local governments may engage only in the actions clearly allowed to them by the state legislature, Dillon's Rule may promote consistency, which advances sound regional and statewide growth management. On the other hand, increased local autonomy, which does not necessarily follow from abolishing or relaxating Dillon's Rule, promotes fragmented and uncoordinated growth management. Such a regime results in sprawl.

This paper leaves many issues unaddressed. One involves whether different state courts employ Dillon's Rule in different ways. This variable may influence the effect of Dillon's Rule on growth management and other issues. In addition, opponents of Dillon's Rule and opponents of home rule each allege that the other imposes more uncertainty[20] Detailed examination of Dillon's Rule and home rule jurisprudence may shed light on that debate, as well as uncover differences in applications of the two doctrines to particular local governmental powers, such as land use and zoning. An in depth examination of the interplay between Dillon's Rule and home rule in states that employ both doctrines may also yield interesting insights. Additionally, detailed study of different types of home rule authority and the impacts of each on local government and growth management could aid in understanding differences between states and regions. Finally, the interplay of state growth management statutes and local government autonomy needs further examination.

If repeal of Dillon's rules fails to cure the nation's sprawl ills, what steps may be taken to improve growth management? First, state legislatures must take a leadership role. Although state boundaries provide arbitrary lines, state legislatures control how and at what level growth management will occur. Legislatures also provide the forum to reform state and local tax systems and other incentives and disincentives that promote sprawl.

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[20] Recall that home rule and Dillon’s Rule are not mutually exclusive. The form of this debate is, therefore, incorrect. The issue does not entail either Dillon’s Rule or home rule.

Which is not to say local governments' decisions do not matter. While the state government has authority over legally subordinate local governments, the latter do play a key role in any growth management iniatiative. Growth management occurs along a continuum and does not have to be a top-down state effort. Indeed, many states are moving along the path of growth management incrementally by providing appropriate incentives and disincentives at the state level. Local governments know local conditions and should hold a certain level of self-governance. However, local governments must recognize that even actions that appear to be strictly of a local concern impact people and jurisdictions beyond their borders.

In view of all this, localities—rather than looking to the state capital for more autonomy—need to re-examine their own regulations, many of which play an important role in setting the rules of the development game. States, for their part, should take the lead role in encouraging progressive, creative growth management efforts, rather than resisting them.

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The State of Utah v. William L. Hutchison, 624 P.2d 1116, Dec. 1980.

Stetson v. Kemp, 13 Mass. 272 1816.
Trust No. 1105 v. People ex rel. Little, 2002 WL 539120, Ill. 2002.

APPENDIX A. FIFTY-STATE SUMMARY OF LOCAL AUTHORITY AND SUPPORTING NOTES

State	Dillon's Rule?	Notes	Statewide Growth Management?
Alabama	Yes:Counties only	J. Michael Allen, "Alabama Constitutional Reform", 53 *Alabama Law Review* 1	No
Alaska	No	Article X, Section 1 of the Alaska Constitution abrogates Dillon's Rule for all municipalities. *Liberati v. Bristol Bay Borough*, 584 P.2d 1115 (Alaska, 1978).	No
Arizona	Yes	*City of Scottsdale v. Superior Court*, 103 Ariz. 204, 439 P.2d 290 (1968).	No
Arkansas	Yes	*Stilley v. Henson*, 28 S.W.3d 274 (Ark., 2000); *Cosgrove v. City of West Memphis*, 938 S.W.2d 827 (Ark.,1997). In 1971 the state passed a Home Rule Act that purportedly freed Arkansas cities from the rigors of the so-called Dillon Rule, which was said to severelcircumscribe municipal power. Dictum in *Paragould Cablevision Inc. v. City of Paragould*, 305 Ark. 476, 809 S.W.2d 688, Util. L. Rep. P 26,093 (1991) states that Arkansas' home rule statute amounts to "limited home rule" (referring to the fact that the provision is not contained in the state constitution) and does not address *ultra vires* acts by municipalities. The dictum suggests that the Arkansas Supreme Court will continue to use Dillon's Rule to construe grants of authority under home rule provisions. The earlier case of *Tompos v. City of Fayetteville*, 280 Ark. 435, 658 S.W.2d 404 (1983) suggests that home rule abrogates Dillon's Rule.	No
California	Yes:Except charter cities	Charter cities enjoy broad home rule powers with no Dillon's Rule limitations. However, California courts employ Dillon's Rule to interpret the authority of counties and general law cities (Albuquerque; *Mezzetta v. City of American Canyon,* 78 Cal.App.4th 1087, 93 Cal.Rptr.2d 292 (2000); *Irwin v. City of Manhattan Beach*, 415 P.2d 769 (Cal. 1966).	No
Colorado	Yes: For statutory cities and towns, all counties.	Colorado courts use Dillon's Rule with respect to statutory cities and towns, and all counties. Board of County Commissioners v. Love, 470 P.2d 861 (Colo. 1970). City of Sheridan v. City of Englewood, 609 P.2d 108 (Colo. 1980). Article XX, Section 6 of the Colorado Constitution (giving charter home rule authority to cities and towns) altered the relationship created by Dillon's Rule in Colorado (for charter cities and towns). *Fraternal Order of Police, Lodge No. 27 v. City and County of Denver,* 926 P.2d 582 (Colo., 1996).	No
Connecticut	Yes	*Taxpayers Ass'n v. Board of Selectmen of Town of Windham*, 662 A.2d 1281 (Conn., 1995)	No
Delaware	Yes	*State ex rel. Dept. of Transp. v. Penn Central Corp*., 445 A.2d 939 (Del.Super.,1982).	No
Florida	UNCLEAR: Yes No	*Barry v. Garcia*, 573 So.2d 932 (Fla.App. 3 Dist.,1991). Article VIII, Section 2(b) of the Florida Constitution rejects Dillon's Rule. City of Boca Raton v. State, 595 So.2d 25, 17 Fla. L. Weekly S142 Fla., Feb 27, 1992	*YES*
Georgia	Yes	*City of Atlanta v. McKinney*, 454 S.E.2d 517 (1995) used Dillon's Rule almost verbatim to construe	*YES*

State	Dillon's Rule?	Notes	Statewide Growth Management?
		municipal home rule authority.	
Hawaii	Yes	*In re Pacific Oil Transp. Co.*, 17 Haw. 575 (Haw.Terr., 1906)	*YES*
Idaho	Yes	*Sun Valley Co. v. City of Sun Valley*, 109 Idaho 424, 708 P.2d 147 (1985), *O'Bryant v. City of Idaho Falls,* 78 Idaho 313, 303 P.2d 672 (1956).	No
Illinois	Yes non-home rule municipalities only	Illinois used Dillon's Rule to construe grants of authority to non-home rule municipalities, but Dillon's Rule is abrogated for home rule municipalities. *Northern Illinois Home Builders Association, Inc. v. City of St. Charles*, 297 Ill. App. 3d 730, 697 N.E. 2d 442, 231 Ill.Dec. 888 (2d District 1988). *Village of Wauconda v. Hutton*, 291 Ill.App.3d 1058, 684 N.E.2d 1364, 226 Ill.Dec. 161 (2d Dist. 1997). "Dillon's Rule of strictly construing legislative grants of authority to local governmental units has been abrogated by section 10 of Article VII of the 1970 Constitution [of Illinois] when local governments voluntarily cooperate to share services on a partnership or joint venture basis." County of *Wabash v. Partee*, 241 Ill.App.3d 59, 181 Ill.Dec. 601, 608 N.E.2d 674 (Ill. App. 5 Dist., 1993). About 10 percent of municipalities and only one county have home rule. The remainder are subject to Dillon's Rule (Krane, Rigos, and Hill, 128).	No
Indiana	Yes townships only	*Osborne v. State,* 439 N.E.2d 677 (Ind.App. 1 Dist., 1982). Dillon's Rule does not apply to other municipalities (Ind.Code §§ 36-1-3-2, 36-1-3-3, 36-1-3-4 and 36-1-3-5).	No
Iowa	No	An article of the Iowa Constitution rejected Dillon's Rule. *City of Clinton v. Sheridan*, 530 N.E.2d 690 (1995). However, the Iowa Supreme Court's opinion in *Goodall v. Humboldt County,* 575 N.W.2d 486 (Iowa, 1998) raises doubt in some minds as to whether Dillon's Rule has been resurrected in Iowa.	No
Kansas	Yes Not for cities and counties	Applies only to the 304 school districts, 1360 townships, and 1369 special districts (Mckenzie, 2000). The 627 cities and 105 counties in Kansas enjoy home rule power (Mckenzie, 2000). "Home rule abolished the 'Dillon Rule' under which cities were considered creatures of the legislature and could only exercise that authority conferred by statute" (*Bigs v. City of Wichita*, 23 P.2d 855, 863 (Kan. 2001))	No
Kentucky	Yes	Krane, Rigos and Hill, 166. *City of Bowling Green v. T & E Elec. Contractors, Inc.,* 602 S.W.2d 434 (Ky., 1980). *Hardin County v. Jost*, 897 S.W. 592 (Ky. App. 1995) appears to use Dillon's Rule.	No
Louisiana	Yes For pre-1974 charter municipalities	Powers of pre-1974 charter municipalities are apparently still interpreted under Dillon's Rule. *Polk v. Edwards*, 626 So.2d 1128 (La. 1993). Charters of post-1974 charter municipalities are liberally construed.	No
Maine	Yes	*State v. Fin and Feather Club*, 316 A.2d 351 (Me., 1974).	*YES*
Maryland	Yes	*Tidewater/Havre de Grace, Inc. v. Mayor and City Council of Havre de Grace*, 98 Md. App.218, 632 A.2d 509 (1993).	*YES*

State	Dillon's Rule?	Notes	Statewide Growth Management?
Massachusetts	No	Home Rule Amendments of 1966. However, Dillon's Rule is used when construing powers granted to quasi-municipalities. *Cohen v. Board of Water Com'rs, Fire Dist. No. 1, South Hadley*, 411 Mass. 744, 585 N.E.2d 737 (1992) (construing powers granted to a board of water commissioners).	No
Michigan	Yes	*Cornerstone Investments, Inc. v. Cannon Tp.*, 585 N.W.2d 41 (Mich.App., 1998).	No
Minnesota	Yes	Municipal corporations are created by state law. See, e.g., Minn.St. § 410.04. Legislative authority is conferred upon them by the constitution and the laws of the state and, "as to matters of municipal concern they have all the legislative power possessed by the Legislature of the state, save as such power is expressly or impliedly withheld." *Northern States Power Co. v. City of Oakdale*, 588 N.W.2d 534 (Minn.App., 1999); citing *Park v. City of Duluth*, 134 Minn. 296, 298, 159 N.W. 627, 628 (1916). *City of St. Paul v. Whidby,* 295 Minn. 129, 203 N.W.2d 823 (Minn., 1972)	No
Mississippi	Yes	*Hemphill Const. Company, Inc. v. City of Laurel*, 760 So.2d 720 (Miss., 2000)	No
Missouri	Yes	The majority in *State ex rel. St. Louis Housing Authority v. Gaertner*, 695 S.W.2d 460 (Mo.,1985) applies Dillon's Rule. The dissenting opinion argues that Missouri Constitution Article VI, Section 19(a) repeals Dillon's Rule.	No
Montana	No	Not applied to cities, towns or counties. Article XI, Section 4 of the Montana Constitution repeals Dillon's Rule. *Granite County v. Komberec*, 245 Mont. 252, 800 P.2d 166 (1990) (rejecting an argument that Dillon's Rule should apply to counties, even though the state constitution's language referencing counties sounds suspiciously like Dillon's Rule).	No
Nebraska	Yes	*Fitzke v. City of Hastings*, 582 N.W.2d 301 (Neb., 1998).	No
Nevada	Yes	*City of Reno v. Saibini*, 429 P.2d 559 (Nev., 1967).	No
New Hampshire	Yes	*Simonsen v. Town of Derry*, 765 A.2d 1033 (N.H., 2000) Municipalities have only powers that are expressly granted to them by legislature and such as are necessarily implied or incidental thereto.	No
New Jersey	No	Municipalities possess not only the powers granted them in express terms but also those incidental to those powers expressly conferred so long as they are not prohibited by the Constitution or by law. N.J.S.A. Const. Art. 4, § 7, par. 11. Legislative Home Rule essentially overrules Dillon's Rule. *Gross v. Ocean Tp.*, 445 A.2d 435 (N.J. Super. A.D., 1982).	YES
New Mexico	No	Under Article X, Section 6(D) of the New Mexico Constitution, "[a] municipality ... may exercise all legislative powers and perform all functions not expressly denied by general law or charter." This Court has held that "any New Mexico law that clearly intends to preempt a governmental area should be sufficient without necessarily stating that affected municipalities must comply and cannot operate to the contrary." *American Civil Liberties Union of New Mexico v. City of Albuquerque*, 128 N.M. 315, 992 P.2d	No

State	Dillon's Rule?	Notes	Statewide Growth Management?
		866, 1999-NMSC-044 (1999)	
New York	Yes	*Village of Webster v. Town of Webster*, 705 N.Y.S.2d 774 (N.Y.A.D. 4 Dept., 2000). N.Y. Const., Art. IX, § 3[c] expressly repudiates the prevailing rule (Dillon's rule) mandating strict judicial construction, but only for powers granted under Article IX of the N.Y. Const. Article IX includes a Bill of Rights for Local Governments. However, "[L]awmaking authority of a municipal corporation, which is a political subdivision of the State, can be exercised only to the extent it has been delegated by the State." *Albany Area Builders Association v. Town of Guilderland*, 74 N.Y.2d 372, 547 N.Y.S.2d 627, 546 N.E.2d 920 (1989) (Kaye, J.); see also, *City of New York v. State of New York*, 76 N.Y.2d 479, 561 N.Y.S.2d 154, 562 N.E.2d 118 (1990).	No
North Carolina	Yes	Case law is confused, to say the least. However, the authors interpret North Carolina Statutes sections 153A-4and 160A-4 as dictating liberal construction of powers granted under Chapters 153A and 160A of the North Carolina Statutes. Other grants of authority are apparently still subject to Dillon's Rule. See, e.g., *Carteret County v. United Contractors of Kinston*, 120 N.C. App. 336, 462 S.E.2d 816 (1995) *Homebuilders Ass'n of Charlotte, Inc. v. City of Charlotte,* 336 N.C. 37, 442 S.E.2d 45 (1994).	No
North Dakota	Yes	*City of Bismarck v. Fettig*, 601 N.W.2d 247 (N.D., 1999)	No
Ohio	No	*Northern Ohio Patrolmen's Benev. Assn v. City of Parma*, 61 Ohio St.2d 375, 402 N.E.2d 519, 15 O.O.3d 450 (1980).	No
Oklahoma	Yes	*Morland Development Co., Inc. v. City of Tulsa*, 596 P.2d 1255, 1979 OK 96 (1979).	No
Oregon	No	*Rorick v. Dalles City*, 12 P.2d 762 (Or., 1932) When power is given to municipality by statute, everything necessary to make it effectual is given by implication.	*YES*
Pennsylvania	Yes	*Naylor v. Township of Hellam*, 773 A.2d 770 (Pa.,2001); *McHenry v. Clark*, 87 Pa. D. & C. 348, 1954 WL 4408 (Pa.Com.Pl. 1954).	*YES*
Rhode Island	Yes	*Dancliff Realty Corp. v. Miller*, 225 A.2d 52 (R.I., 1966) Municipal corporation does not have power by implication which would be contrary to express grant.	*YES*
South Carolina	No	Article VIII, section 17 of the South Carolina Constitution provides that "all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution." The provision seeks to abrogate restrictions on the exercise of local	No

State	Dillon's Rule?	Notes	Statewide Growth Management?
		autonomy such as Dillon's Rule and effectively abolished Dillon's Rule. *D.W. Flowe & Sons, Inc. v. Christopher Constr. Co.,* 326 S.C. 17, 482 S.E.2d 558 (1997).	
South Dakota	Yes: Strict construction, but no specific reference to the language of Dillon's Rule.	*Pennington County v. State, ex rel.Unified Judicial System*, 641 N.W.2d 127 (S.D., 2002). "[A municipality] has only such powers as are expressly conferred upon it by statute and such as may be reasonably implied from those expressly granted."	No
Tennessee	Yes: Only non-home rule municipalities	*Southern Contractors, Inc. v. Loudon County Board of Education*, 58 S.W.3d 706 (Tenn. 2001). "As in many jurisdictions throughout the nation, Dillon's Rule has been applied in this state for more than a century to determine the scope of local government authority." (Ibid, at page 710). "…the Rule has been consistently applied to all forms of local government, including those of cities, counties, and special districts." (Ibid, at page 711). However, Dillon's Rule not applied to home rule municipalities (*Southern Contractors).* See Tenn. Const. Article XI, Section 9.	*YES*
Texas	Yes	*Texas River Barges v. City of San Antonio*, 21 S.W.3d 347 (Tex. App. San Antonio, 2000).	No
Utah	No	The Utah Supreme Court emphatically abandoned Dillon's Rule in *State of Utah v. Hutchinson*, 624 P.2d 1116 (Utah, 1980).	No
Vermont	Yes	Vermont has "consistently adhered to the so-called Dillon's rule that a municipality has only those powers and functions specifically authorized by the legislature, and such additional functions as may be incident, subordinate or necessary to the exercise thereof." *Petition of Ball Mountain Dam Hydroelectric Project,* 154 Vt. 189, 576 A.2d 124, 119 P.U.R.4th 575 (1990). *Brennan Woods Ltd. Partnership v. Town of Williston*, 2001 WL 1173475 (Vt., 2001)	YES
Virginia	Yes	*Winchester v. Redmond*, 93 Va. 711 (1896), Virginia is a stalwart Dillon's Rule State.	No
Washington	Yes	Washington State Courts use Dillon's Rule to construe Home Rule grants of authority. *Tacoma v. Taxpayers of the City of Tacoma,* 108 Wash. 2d 679, 743 P.2d 793 (1987). *Sundquist Homes, Inc. v. Snohomish County Public Utility Dist. No. 1*, 997 P.2d 915 (Wash., 2000) Municipal authorities cannot exercise powers except those expressly granted, or those necessarily implied from granted powers.	YES
West Virginia	Yes	*Calabrese v. City of Charleston*, 515 S.E.2d 814 (W.Va.,1999). The West Virginia Supreme Court has continued to apply Dillon's Rule despite language in West Virginia Code Section 8-1-7 that directs liberal construction of at least certain grants of authority.	No

State	Dillon's Rule?	Notes	Statewide Growth Management?
Wisconsin	Yes	*Willow Creek Ranch, L.L.C. v. Town of Shelby*, 611 N.W.2d 693 (Wis.,2000). Municipal bodies have only such powers as are expressly conferred upon them by the legislature or are necessarily implied from the powers conferred. However, Wisc. St.. section 62.04 provides that powers granted under the general charter law are liberally construed.	*YES*
Wyoming	Yes	*Coulter v. City of Rawlins*, 662 P.2d 888 (Wyo.,1983) A municipality is not necessarily limited to those powers expressly conferred, but may also exercise powers fairly and necessarily implied from grant contained in statute or constitutional provision. (Citing McQuillen).	No

APPENDIX B: STATE STATUTES FOR STATE LEVEL GROWTH MANAGEMENT EFFORTS

Comprehensive plan:
Wisconsin Statutes section 66.0295; Vermont Statutes Chapter 117 Section 4345 (11); Washington Statutes Section 36.70A.040; Florida Statutes Section 163.3177; Maryland Code Ann. Section 5-7B-03(f)(I); New Jersey Statutes Ann. Section 52:18A-199; General Laws of Rhode Island Ann. Section 45-22.2-5(2); Oregon Statutes Section 197.175(2); Tennessee Code Ann. Sections 13-3-301, 13-4-201; Maine Revised Statutes Ann. Chapter 187 Section 4326(1); Code of Georgia 50-8-32(a)(4)

Consistency
Wisconsin Statutes Section 66.0295(6); Vermont Statutes Chapter 117 Section 4345a(5); Washington Statutes Section 36.70A.800, 2b; Florida Statutes Section 163.3194 (1)(b); Maryland Code Ann. Sections 5-7B-03(g)(2), 15-9A-05(c)(5)(ii); New Jersey Statutes Ann. Sections 52:18A-201(b)(1), 52:18A-202(b); General Laws of Rhode Island Ann. Section 45-22.2-5(4)(b); Oregon Statutes Section 197.195(1); Tennessee Code Ann. Section 6-58-107; Maine Revised Statutes Ann. Section 4326(4)).

Coordination
Wisconsin Statutes section 66.0295(3); Vermont Statutes Chapter 117 Section: 4347; Washington Statutes Section 36.70A.800 (a); Florida Statutes 163.3177 (4)(a); Maryland Code Ann. 5-9A-05(c)(5)(iii); New Jersey Statutes Ann. Section 52:18A-199 (c); General Laws of Rhode Island Ann. Section 45-22.2-7(d); Oregon Statutes Section 197.180(3)(b); Tennessee Code Ann. Section 6-58-104(a)(1); Maine Revised Statutes Ann. Chapter 187 Section 4326(4); Code of Georgia Section 50-8-32(a)(4),

Cooperation
Wisconsin Statutes Section 66.0295(7)(g); Vermont Statutes Chapter 117 Section 4345a (1); Washington Statutes Section 36.70A.210; Florida Statutes Section 163.3204; Maryland Code Ann. Section 5-9A-05(c)(6); New Jersey Statutes Ann. Section 52:18A-199 (c); General Laws of Rhode Island Ann. Section 45-22.2-7; Oregon Statutes Section 197.180(3)(d); Tennessee Code Ann. Section 6-58-113; Code of Georgia Section 50-8-35 (a)(8)

Concurrency
Vermont Statutes Chapter 117 Section: 4384 (c); Washington Statutes Section 36.70A.070 (6); Florida Statutes §§ 163.3177(10)(h), 163.3180 (2000); Maryland Code Ann. Section 5-7B-04(b); Oregon Statutes Section 197.752(1); Tennessee Code Ann. Section 6-58-104(2))

Containment
Washington Statutes Section 36.70A.800, 2b; Oregon Statutes Section 197.296(2)

Collaboration

Wisconsin Statutes Section 66.0295(4); Vermont Statutes Chapter 117 Section 4384 (a); Washington Statutes Section 36.70A.035; Florida Statutes Sections 163.3181(1), 163.3181(2); Maryland Code Ann. Section 5-9A-05(e)(1); New Jersey Statutes Ann. Sections 52:18A-202(a), 52:18A-202(b); General Laws of Rhode Island Ann. Section 45-22.2-8(3)(b); Oregon Statutes Section 197.160(a); Tennessee Code Ann. 6-58-114(a); Code of Georgia Section 50-8-35 (a)(7)

Carrots

Wisconsin Statutes Section 16.965, Vermont Statutes Chapter 117 Sections 4346(a), 4346(b);Washington Statutes Section 36.70A.340; Florida Statutes Sections 163.3167(3), 163.3167(6); Maryland Code Ann. Section 5-7B-03(d)(2)(ii); New Jersey Statutes Ann. Section 52:18A-204; General Laws of Rhode Island Ann. Sections 45-22.2-11, 45-22.2-13; Oregon Statutes Section 197.335; Tennessee Code Ann. Sections 6-58-109(a), 6-58-109(b), 6-58-109(c)