The UNIVERSITY of VERMONT

THE OFFICE OF COMMUNITY-UNIVERSITY PARTNERSHIPS AND SERVICE-LEARNING

Home Rule

February 6, 2005

Steve Jeffrey
Executive Director
VT League of Cities and Towns
89 Main St., Suite 4
Montpelier, VT 05602-2948

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FEB 08 2005
RECEIVED

Dear Mr. Jeffrey,

Enclosed is a policy brief and accompanying appendices written by a team of students from my course *Introduction to Public Policy,* a core course within the University of Vermont Master of Public Administration Program. These graduate students spent the semester researching various aspects of the "home rule" and its implications for here in Vermont. I understand that they had contacted you about this project. I want to thank you for taking the time to speak with them.

The purpose of this project was twofold: to provide various stakeholders interested in the home rule as a public policy issue with information regarding the topic; and, to provide the students themselves with a valuable learning experience dealing with issues that have real world implications. By our accounts the students achieved the second objective. It is up to you and the other stakeholders to whom their work has been sent to determine its usefulness.

We hope that you might find all or portions of this policy brief and accompanying appendices useful to you and your constituencies. We would be happy to provide you with electronic versions of these documents.

Thank you again for supporting our students' efforts.

Sincerely,

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# ***Home Rule***

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# HOME RULE IN VERMONT:
## A MISSING INGREDIENT FOR EFFICIENCY AND EQUITY OR AN UNCONSTITUTIONAL ATTEMPT FOR GREATER POWER?

UNIVERSITY OF VERMONT
MASTERS OF PUBLIC ADMINISTRATION
PA 306: INTRODUCTION TO PUBLIC POLICY
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# Executive Summary

Home Rule is a policy debate because it does not exist in Vermont. Public opinion in the state may claim that Vermont is a very locally driven state when in reality it has one of the most centralized governments in the country.

Supporters of home rule span many levels of government; but primarily they are municipal officials (particularly in larger communities) and their state representatives. Support is generated here for four main reasons: taxation, efficiency, autonomy and representation.

Some forms of home rule allow municipalities to levy their own taxes thus making them capable of addressing their own problems with their money. This would allow for creative solutions to local concerns. As it stands now communities are forced to propose legislation that they deem feasible for approval in the General Assembly instead of policies that might better serve their residents. This would of course increase efficiency and autonomy. These goals would also be achieved by allowing municipalities to change their charters to resolve the situation at hand, instead of waiting for legislative approval. State legislators would also be relieved from the burden of approving charters. It would allow for a more timely response to voters.

Proponents argue that citizens are not represented fairly when the state does not take action on locally approved initiatives. Additionally the legislature can alter the voter approved charter in any manner without local consent. Thus leaving the voters disenfranchised. Is this representative democracy?

Opposition to home rule lies with many different constituencies; but manifests primarily with some state legislators, officials of some municipalities (often those neighboring larger communities), attorneys, and interest groups. Their concerns include control, equity, liability and responsible governance. Some argue that home rule might lead to municipal governance that expands the role of local control beyond permissible bounds. This opens the door for a liberal interpretation of a municipality's power and function. Legislators fear sharing power with communities might diminish the authority of the state, especially with regards to taxation. Some municipalities take issue with home rule because of its potential ripple effects throughout the state. For example a resident of

one community may be negatively affected by the choices made in neighboring municipalities without a say in the decision making process.

Attorneys who are against home rule argue that smaller municipalities might not be able to cover the expenses associated with the possible increase of litigation. They also believe that due to the language of the Vermont constitution it is impermissible to achieve home rule without a constitutional amendment. The home rule debate is often overshadowed by the specific topic proposed by a municipality. Interest groups often come out in favor or in opposition to charter amendments not because of the merits of home rule but because they are protecting their beliefs affected by the proposal. Practically speaking, it is much easier for interest groups to influence a centralized government, therefore they oppose home rule.

The intent of this report is not to recommend one course of action, but instead to provide a historical framework, legal rationale, examination of specific cases, and proposed alternatives in regard to this policy. Its purpose is to initiate discussion within the state legislature and the public at large. This subject will keep evolving as state and local power struggles continue.

## Introduction

The history and evolution of home rule follows the ever changing dynamic of state and local government relations. Home rule is, simply, the ability for municipalities to have broad and flexible control over their own government functions. The word "municipal" actually dates to Roman times and comes from the word *municipium* meaning a free city capable of ruling its local affairs but still reporting to the greater Roman Empire.[1]

## Home Rule Activities

There are three areas of home rule activity: structural, functional and fiscal. Structural home rule is the ability for people to create municipal corporations.[2] This allows for a municipality to set up their own charter and thus establish their own form of government. The most common form of municipal government is city council-mayor. Functional home rule refers to the ability of municipalities to operate and exercise local choice in policy matters.[3] For example, this would allow municipalities to control issues such as zoning and road improvement. However, most functional home rule states prohibit any form of tax implementation at the local level. In contrast, fiscal home rule, the local government is granted some authority over its taxes: property, sales, and income. Additionally, limitations on the debt a municipality can incur relates directly to the amount of autonomy the local government can exercise. In effect, state government can grant some local autonomy by allowing tax control or by increasing debt limitations.

## Historical Perspective

History suggests that there has always been a struggle between local, state and national control. Within the United States these control issues date back to the pre-Civil War era. When individual charters for towns were set up following the Revolutionary War, these towns were given state-mandated charters that amended or presupposed those currently in existence. Local government was granted some authority but had no real use for it considering most communities at that time were still rural. The influence of big business and corrupt politics had yet to become a major problem to the government.[4]

However, after the Civil War, the Industrial Revolution shifted the country from an agrarian to an industrial economy. With the massive migration of the population into the cities, power struggles became more common. From this situation emerged political corruption and underhanded business dealings. With new roads, zoning, and trash removal, cities were not capable of keeping up with all these new responsibilities. As a result, issues such as the "spoils system" emerged which, allowed city officials to appoint party loyalists to positions of authority. Consequently, federal and state government stepped in and increased checks and balances to monitor and control municipal behavior.

## Dillon's Rule Limits Municipal Government

Limitations on municipal government date back to 1886 and a ruling by Judge John F. Dillon:

> *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 accomplishment of the declared objects and purposes of the corporation – not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.*[5]

Dillon's distrust of local government stemmed from municipality's susceptibility to corruption. In his ruling, he laid down the framework concerning how municipalities can govern. That is, they only have control over what the state allows; everything else must be approved by the state. This concept became known as "Dillon's Rule," which was widely adopted by the states and was eventually upheld by the United States Supreme Court in the early twentieth century.[6] Attachment A contains a listing of states governing with Dillon's Rule.

Eventually, states began taking advantage of the municipalities. "Local privilege" legislation allowed for state legislatures to write statutes that permitted them to manipulate municipal activity.[7] This legislation caused local discontent where municipalities were subject to patronage. Specifically, the "Ripper Laws" sought to turn municipally controlled functions over to state appointed officials.[8] This situation ultimately pushed the home rule issue to the national forefront as both populists and progressives sought to break the alliance between big business and government officials.[9] After the U.S. Supreme Court upheld Judge Dillon's ruling in 1903 and again in 1923, only 21 states had adopted some form of home rule charter authority. [10] Two forms of home rule emerged during the era following these decisions: *Imperium in Imperio* and the legislative model.

## *Imerpium in Imperio* - State Within a State

The first, spawned by New York State's constitutional amendment in 1923, listed the items that are essentially local and, thus, placed under local control.[11] This strategy became known as *Imperium in Imperio*, a state within a state. This was due to the "dual federalism" approach suggesting that national and state government should have separate spheres of authority.[12] This idea translates into local government by defining a separation from state authority. By listing exactly what local government had control over, the intention of this strategy was to limit litigation concerning the areas of state and local authority. This model is also known as the enumeration strategy.

## Legislative Model

The second form of home rule emerged in the early 1950s. A study conducted by Jefferson B. Fordham (known as the Fordham plan) suggested a "devolution of powers" which, effectively, reversed the logic behind Dillon's Rule.[13] While Dillon's Rule prohibited anything not expressly granted, the Fordham Plan permitted municipalities to act unless expressly forbidden by the state.

## Liberal Construction Model

In 1970, the State of Illinois rewrote their constitution in an attempt to adapt to these changes in local government. Illinois established what is known as the liberal construction model.

> Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or declare the state's exercise to be exclusive.[14]

This model has subsequently been followed by other states such as Alaska and New Jersey. Its intention is to clarify the issue of when a state government can preempt local government. Since the breadth and scope of local government has been constantly evolving, nearly every state has addressed some form of home rule legislation.

## Vermont History – Charters

The incorporation of villages began as early as 1819 in the State of Vermont. These villages had very limited authority because increased control could not be granted by general law. This promoted the development of chartered villages; a charter was necessary to accomplish the most basic municipal functions. Consequently, these charters and their changes had to be approved by the State Legislature. At the time, the State Legislature was spending half of its session dealing with municipal charters as well as those of private corporations. To alleviate this problem they added Section 69 to the Vermont Constitution[15] (Attachment B). Section 69 eliminated the need for the legislature to review public and private corporation's charters. Currently, this is done through the Secretary of State's office. However, due to the language of the constitution, the legislature could not relieve themselves of the oversight of municipal charters.

In 1963, a passive review process was adopted by the state to ease the burden of approving all charter amendments and adoptions. (Attachment C) In this passive process, charter changes were voted on by the municipality and then sent to Montpelier for review by the General Assembly, the Attorney General, and the Secretary of State. If no one saw a need to oppose or discuss the proposal, there was no action taken and it would be approved 30 days after submission.[16] This process changed in Vermont with the passage of Act 161 in 1984 due to the U.S. Supreme Court decision: Community Communications Co. v. Boulder.[17]

## Community Communications Co. v. Boulder (1982)

This Supreme Court case proved to be detrimental to home rule. The City of Boulder was operating as a home rule municipality as granted by the Colorado Constitution. Community Communications brought the suit against Boulder alleging the city was engaging in anti-competitive behavior. The cable company had been providing services to a limited area of the city. However, with the development of new technology they had the opportunity to expand their services into other areas. The City Council of Boulder enacted an emergency ordinance prohibiting Community Communications from expanding for three months to allow for other potential customers to enter the market. The cable company claimed the city's ordinance was in violation of the Sherman Anti-Trust Act. The city responded claiming they were exempt from anti-trust liability under the "state action" doctrine of Parker v. Brown. (Attachment D) This decision allowed activities regarded as "state action" anti-trust immunity.[18] Nonetheless, the Supreme Court decided in favor of Community Cable Co. The Colorado Constitution only provided their municipalities with broad powers. The City of Boulder was not engaging in explicit "state action" as addressed in the constitution and could therefore be held liable for their anti-competitive behavior.[19] (Attachment E)

This decision jeopardized home rule. It demonstrated the limits of a municipality's authority. Most importantly, it found that cities and towns could be liable for their specific actions. Many states around the country began removing home rule provisions from their constitutions, or adding language that prohibited it. This prompted Vermont to change to its current process.

## Town of Hallie et al v. City of Eau Claire (1985)

This Supreme Court case effectively watered down the decision made in Community Communication v. Boulder. Unincorporated townships in Wisconsin adjacent to the City of Eau Claire filed suit alleging they were potential competitors of the city in the collection and transportation of sewage. These townships stated Eau Claire was violating the Sherman Anti-Trust Act. Eau Claire refused to provide service to the unincorporated townships, but would supply services to individual communities if enough people in that area voted by referendum to have their homes annexed. The Supreme Court sided with Eau Claire, stating that Wisconsin State Statute pertaining to municipalities allowed for their provision of sewage services. There was a clear articulation of state policy to replace competition with regulation. Because of this, the state did not have to directly supervise the municipality in their execution of state policy. The court found that Eau Claire's anti-competitive actions fell within the "state action" exemption to federal anti-trust laws.[20] (Attachment F)

This was an enormous victory for home rule. It provided the legal ground for states to clearly articulate powers to their municipalities and that they would be upheld in court. Once the state had established such

provisions for their municipalities, they did not need to closely regulate them in how they carried out that policy. Many states began putting home rule provisions back into their constitutions or statutes; Vermont did not.

## The State of Vermont – Charters

Vermont is a Dillon's Rule state. The state dictates what a municipality can and cannot do. Any municipal action not clearly articulated in the State Statute must be written in a charter and approved by the General Assembly. A charter is a document that expands a municipality's authority and subsequent activities to meet the community's needs. In Vermont, each charter is different; currently, there is no template available to use as a guide. There are rules in the Vermont Statute (Titles 1, 17, 24, and 32) that govern charters. Simply, charters cannot give one town an exemption or advantage that is otherwise not available to other towns. They also limit the activities and authority of a town to within its boundaries. All nine Vermont cities have charters. There are charters for 22 of the 255 towns and 16 of the 58 incorporated villages, as well as eight solid waste districts and three fire districts. (Attachment G) All other municipalities function under the Vermont General Statute.

The process for adopting or amending a charter generally follows the same sequence. First, registered voters in a municipality vote on the charter language. If that passes, the charter is introduced to the General Assembly for approval. It is then referred to either the House Local Government Committee or to the Senate Government Affairs Committee where the charter is reviewed and, potentially, amended. Then, the charter is re-read in the General Assembly and must pass both the House and Senate before it is approved as a Municipal Act. It must then be signed by the Governor. There are statutory rules for this process. (Attachment H) Municipalities are guided through this via an article from the Vermont Institute for Government. (Attachment I)

## Charter Changes Case Studies: Burlington, Montpelier and Essex Junction

The following case studies were chosen to exemplify Vermont's charter approval and amendment process. Clearly, there are enumerable historical examples. (Attachment J) These were chosen largely because of their immediate relevance and because a significant amount of data was available at the time of this analysis. Further analysis is needed to determine if geographic diversity or the size of a municipality's population is a factor the charter approval process.

### *City of Burlington*

Over the past decade, 18 charter changes have been passed by voters and introduced to the legislature, 14 of these passed and 4 were defeated through no action in the House. (Attachment K) During the 2003-2004 biennium, home rule received substantial media attention because of Burlington's proposal to change its landlord-tenant rules around notification for rent increases and no-cause evictions. This conflict emerged from the fact that Burlington voters approved the charter change but the House resisted voting on it because some felt it was an inappropriate expansion of Burlington's governance. By allowing Burlington this ability opens the door for other municipalities to follow suit in governing in a role traditionally held by the state. This charter change eventually passed after a full year of no action by the House Committee and media attention. (Attachment L)

### *City of Montpelier*

The City of Montpelier's historical passage of charter changes is less favorable than Burlington's. Over the past 10 years, six charter amendments passed at the municipal level and were introduced to the legislature. Two of these passed, while four died with no action. These four charter amendment defeats dealt with two proposed charter changes that were each introduced twice. (Attachment M) Montpelier's most recent defeat was an attempt to allow the city to have an ordinance outlawing the carrying of loaded firearms within the city. (Attachment N) This was a city ordinance until it was suggested that the city might not have the authority to regulate firearms because of a district court decision. The city repealed the ordinance and attempted to include the identical language in its charter. Montpelier voters passed this overwhelmingly; however, it died in the House Committee in both the 1999-2000 and 2001-2002 legislative sessions after considerable lobbying by gun rights organizations. Montpelier officials were frustrated that lobbying efforts, many of whom were from out of state, overruled voters on a local issue.[21]

**Table 1 – Charter Amendment History Snapshot:**

1999-2000 biennium:
- 17 charter amendments passed by voters and introduced
  - 12 passed into law
    - 3 unchanged

2001-2002 biennium:
- 13 charter amendments passed by voters and introduced
  - 9 passed into law
    - 1 unchanged

2003-2004 biennium:
- 16 charter amendments passed by voters and introduced
  - 14 passed into law
    - 3 unchanged

### *Village of Essex Junction*

Essex Junction's voters have passed seven charter changes since 1993 that were introduced to the legislature. Three of these passed, while four were defeated with no action in the House. (Attachment O) One of

the most well known recent charter amendments attempted to change the Village of Essex Junction into a city. (Attachment P) This issue was hotly contested by the Town of Essex because a separation of the Village would mean a drastic loss of tax revenue. Although the village was following the exact same process as the City of Winooski when it changed from a village within Colchester to an independent city, it was viewed as negatively impacting the Town of Essex. This proposal was introduced in both the 1999-2000 and 2001-2002 sessions but the General Assembly sent the issue back to the village and the town for mediation, without voting on the issue.

A historical analysis of the past six legislative sessions demonstrates that occasionally charter amendments, after passing at the municipal level, are not immediately acted upon by the House as a way of defeating it. (Table 1) Frequently, charters are passed by the legislature in a different form than what was approved by the municipal voters.[22] Local voters do not approve these alterations after they pass the legislature and must accept the changes. Our review of these three case studies found that alterations were not uncommon, but they were rarely substantive and were often issues of minor legal formality.

## Achieving Home Rule in Vermont – Constitutional Amendment

The provision of legislative power over municipalities is delegated in the Vermont Constitution.[23] (Attachments B) The process of amending the constitution is very difficult in the State of Vermont.[24] (Attachment Q) As a result, many people argue that the only way to achieve home rule in Vermont is to amend the state's constitution.

Two constitutional amendment proposals have been drafted in Vermont since the Supreme Court decision Town of Hallie v. City of Eau Claire was made. The first was proposed in 1988 by Senator George Edward Little of Chittenden County.[25] (Attachment R) Prior to this proposal the Vermont League of Cities and Towns (VLCT) had run a small public awareness campaign to encourage the public to engage in this issue. In 1987, VLCT prepared a statement proposing an amendment to the constitution allowing for home rule and asked voters on Town Meeting Day to vote on it. As a result, 60 towns voted yes, 33 voted no, and 13 tabled it. (Attachment S) This statement did provide meaningful debate regarding the issue. (Attachment T) Many news articles appeared in papers statewide, mostly editorials. (Attachment T) Opponents argued home rule was simply about municipalities being able to levy their own taxes; creating inequalities within the state as well as reducing the state's ability to accrue tax revenue. Proponents argued the issue was about representation and autonomy; stating the current process of charter approval places local decisions in the hands of a few in Montpelier.

Even though home rule was brought to the public that year, Senator Little's proposal was not discussed or voted on by the General Assembly. The second amendment proposal was in 2004 by Senator Jim Condos of

Chittenden County.[26] (Attachment U) To date, this proposal has received informal discussion and has not been voted on in the General Assembly.

## Alternatives to Achieve Home Rule in Vermont

The alternatives available to authorize home rule in the State of Vermont are grounded in administrative law. Short of amending the Vermont Constitution viable options effectively modify current legislative methods. Clearly, the authorization of home rule needs to be constitutionally valid and changing the state statute allowing for passive charter approval has a historical precedent in Vermont although its legality is challenged by some municipal attorneys.[27] Because of the Eau Claire decision, Senator Condos has proposed a passive charter approval bill would effectively allow municipalities to create, repeal or amend their own charters without active legislative approval.[28] (Attachment V) Charter changes are still required to be submitted to the legislature, however, they would be automatically approved unless action is taken. Any issues that may inhibit passage would have to be initiated by the Attorney General, six Senators or 30 Representatives.

Other alternatives include statutory changes. Particularly, these changes include extending the list of permissible activities for municipalities without legislative approval under statutory law. For example, currently municipalities are permitted to create police and fire departments, establish sewage systems, create housing authorities and housing codes, etc. By increasing the items on this list of permissible activities, municipalities could increase their autonomy and improve their efficiency. Opponents argue that it is unlikely the State could stay ahead of technological and social changes; as the current list of permissible activity is considered outdated.

Statutory changes could increase local control of income, sales, property or service taxes. At the municipal level, changes could include allowances for cities and towns to retain locally generated fees and fines from state law violations. Additionally, by prohibiting state-mandated local costs and tax exemptions, municipalities would gain more control and authority over local revenue sources. Historically, the legislature has been resistant to sharing taxation authority with municipalities because it might limit state revenue or create inequalities between neighboring towns.

Finally, another approach to home rule is changing state law via a constitutional amendment that would strengthen the capacity for statewide citizen initiative and referenda.[29] An initiative is a democratic procedure that allows laws or amendments to be initiated by the voters.[30] A referendum is a direct democratic procedure through which proposed legislation is submitted to the electorate for approval.[31] Vermont has a referendum mechanism, however it has very limited power and is typically used during Town Meeting Day to set enactment dates and gauge public opinion. (Attachment W) For example, "Using a couple different mechanisms, 29 questions have been put to a popular vote in 17 referenda since the 1700s."[32] Under current law only the legislature has the

authority to enact legislation. By changing the State Constitution to allow for statewide initiatives and referenda capable of enacting legislation, the citizenry could have a greater voice and direct accountability to state legislation, including home rule.

This approach could empower citizens to either change the Vermont Constitution or the State Statue to permit home rule. It could certainly influence other legislative issues not addressed here. Nevertheless, it would clearly give citizens the capacity to govern themselves through direct control over legislative action. There are currently 24 states that permit citizens to propose constitutional amendments or develop legislation through initiatives and referenda.[33] The danger of initiatives and referenda is that the whims of the populous could be enacted into state law without a thorough examination of the implications. Vermont's Constitution is currently designed to protect against this situation.

## Public Awareness

There are other factors influencing home rule in Vermont. First, creating a model charter template would ease the challenges in creating a charter. As a result, more charter municipalities could emerge potentially increasing the desirability of home rule authority. Second, by increasing awareness of the current centralized power in which Vermont operates, citizens may be inclined to debate the advantages and disadvantages of increased municipal control. Other options include rallying input from already chartered communities to increase dialogue regarding the potential benefits of home rule.

The problem, however, is a pervasive lack of interest in government because of the public's limited understanding and exposure to governmental procedures. Improving this awareness could be accomplished through an extensive media campaign. The goal would be to educate the public on how the government functions and what they can do to get involved. Historically, a charter amendment brings home rule to the forefront of public debate; often the issue addressed in the charter steals the limelight as seen in the Montpelier case example with handgun control as well as in Burlington regarding landlord-tenant rights. Therefore, any public information addressing home rule must delineate the fundamental differences between home rule and the instigating issue. Increased public input beyond the systems that already exist (e.g. town meetings) does not mean voters will necessarily support or oppose home rule. But, a greater understanding of government function would lead to a more informed opinion. These issues are indicative of the inherent complications of any legislative action not exclusive to home rule.

## Discourse in Vermont – For and Against Home Rule

Vermont's history of home rule, as examined in this paper, contains arguments on both sides of the issue. The following matrix displays the most obvious examples of the current discourse in the communities studied.

| Arguments For | Arguments Against |
|---|---|
| • Allow municipalities to exercise their preferred form of local government (Essex Jct)<br>• Would allow for municipalities to act in an expeditious fashion for issues that pertain solely to the locality (Burlington, Montpelier)<br>• Eliminate the political nature of the State Legislature in issues pertaining to municipalities (anti-Burlington sentiment) | • Many layers of local structure, (i.e., school districts, sanitation districts, counties, cities, towns and villages) a low in one municipality would have effects on others<br>• Liability: Others affected would be able to file lawsuits. |

By allowing home rule, municipalities would have the ability to exercise control over their preferred form of local government. For example, in the issue of Essex Junction the village has voted to become a city, separate from the Town of Essex but no action was taken by the state. If the municipality could act on its own behalf it would be able to institute its favored method of rule.

Home rule would also allow municipalities to act expediently regarding issues that have no bearing on the rest of the state. In the Burlington landlord/tenant example the city would have been able to expand its existing law immediately instead of having to wait for it to pass by the legislature. As previously mentioned, the Montpelier charter decision on loaded fire arms was held up largely because of lobbyists.

By instituting home rule a municipality would be able to limit the political nature of the state legislature for issues pertaining solely to the locality. This has become increasingly apparent in other parts of the state where there is, generally, negative sentiments towards Chittenden County. As a result, the issues voted on by residents of Burlington, and the surrounding towns, are simply held up because of this political mindset.

There are also clear examples within the three afore mentioned municipalities arguing against home rule. Since there are so many layers of structure within the state, (e.g. sanitation districts, school districts, etc...) that a law in one area would have a ripple effect on the surrounding municipalities and possibly in other parts of the state. Regarding the issue of Essex Junction, a village within a town, the ripple effect argument can be seen clearly. If Essex Junction were to leave the Town of Essex, they would pull the Champlain Valley Exposition,

many businesses along Route 15 and IBM directly from the Town of Essex. This might limit the ability of the Town of Essex to maintain their current tax revenue, thus restricting its ability to provide services for its residents.

Another argument against home rule is that once a municipality has home rule they can be found liable for their actions. Most municipalities in Vermont are small and do not have enough revenue or human resources to defend and oversee the legality of their actions. If they were found liable, many municipalities could be financially ruined. Consequently, it is possible that they would require state assistance to alleviate this situation.

The arguments for and against home rule have been implied in the preceding analysis and historical context. A more general and extensive list is available. (Attachment X) The discourse surrounding home rule is constantly evolving. As national and global perspectives on government continue to evolve so will state and local relations. It is important to stay one step ahead by not only educating the public but also the government to the issues that define these relations.

## Other States

The issue of home rule is prominent in almost every state. This extensive analysis in available in: Krane, Dale, Platon Rigos and Melvin Hill. *Home Rule in America: A Fifty-State Handbook*. (Washington: CQ Press, 2001).

## Policy Analysis

By analyzing all of the policy aspects pertaining to home rule, a better understanding of this issue can be obtained, thus improving meaningful dialogue and encouraging informed opinions. An in-depth analysis is available. (Attachment Y)

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## Endnotes

[1] Lang, Dianne. *Dillon's Rule...And the Birth of Home Rule*. The Municipal Reporter, December, 1991. [www.nmml.org/Dillon.pdf] accessed September 24, 2004. p. 1
[2] Krane, Dale, Platon Rigos and Melvin Hill. *Introduction*. Home Rule in America: A Fifty-State Handbook. (Washington: CQ Press, 2001), 472.
[3] Krane, 473.
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[5] Coester, Adam. *Dillon's Rule or Not?* National Association of Counties. v.2, n.1. January, 2004. [www.naco.org/Content/ContentGroups/Publications1/Research_Briefs1/research_brief1forpdf.pdf] accessed September 17, 2004.
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[7] Krane, 11.
[8] Krane, 11.
[9] Krane, 11.
[10] Krane, 10.
[11] Krane, 12.
[12] Krane, 12
[13] Krane, 12.
[14] Krane, 14.
[15] Gillies, Paul S. *Villages.* Vermont Secretary of State. Vermont State Archives. [http://vermont-archives.org/governance/Villages/gillies.htm] accessed November 15, 2004
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[20] Hallie v. Eau Claire 471 U.S. 34 (1985)
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# HOME RULE

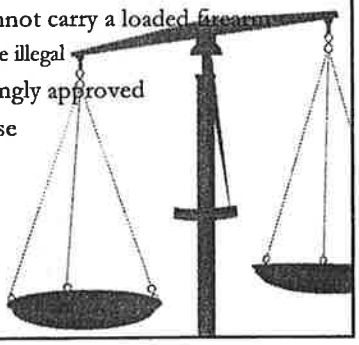
An Informational Overview of State and Local Relations

Compiled and Presented by:

Jesse Bridges
Emily Kilburn
Matthew Probasco
Mary [illegible]

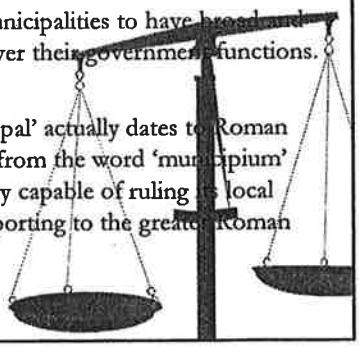
## Carrying A Loaded Firearm

- Civil ordinance: cannot carry a loaded firearm
  - Ordinance might be illegal
- Voters overwhelmingly approved
- Introduced in House
  - No action taken
- Why it died
  - Lobbying efforts



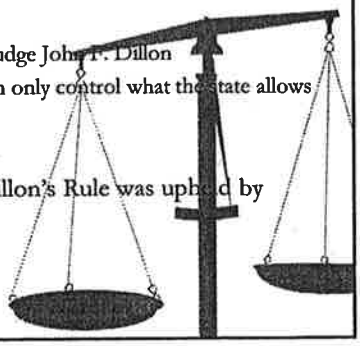
## Basic Definition

- The ability for municipalities to have broad and flexible control over their governmental functions.
- The word 'municipal' actually dates to Roman times and comes from the word 'municipium' meaning a free city capable of ruling its local affairs but still reporting to the greater Roman Empire.



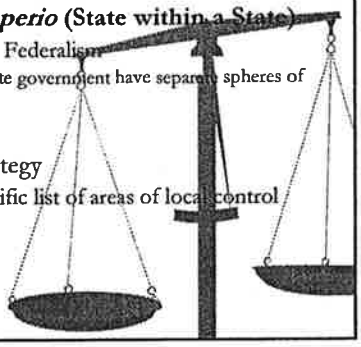
## Methods of Home Rule

- Dillon's Rule
  - 1886 Ruling by Judge John F. Dillon
  - Municipalities can only control what the state allows them to control
- 1903 and 1923 Dillon's Rule was upheld by Supreme Court



## Methods of Home Rule

- ***Imperium in Imperio*** **(State within a State)**
  - Stems from Dual Federalism
    - National and State government have separate spheres of authority
- Enumeration Strategy
  - Lays out the specific list of areas of local control

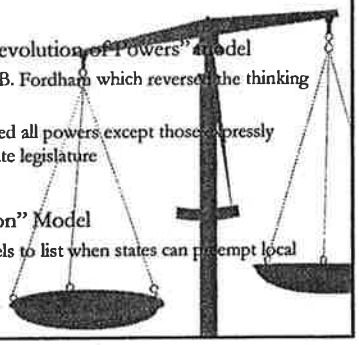


## Methods of Home Rule

- Legislative Model

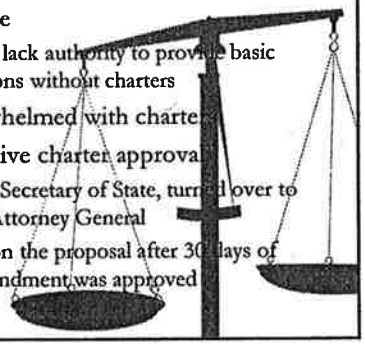
Also known as the "Devolution of Powers" model

- Set up by Jefferson B. Fordham which reverses the thinking of Dillon's Rule
- Municipalities granted all powers except those expressly forbidden by the state legislature
- "Liberal Construction" Model
  - Combines the models to list when states can preempt local control



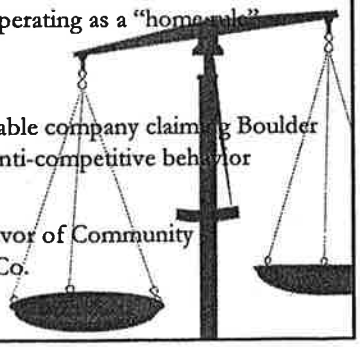
## Vermont's Historical Context

- Dillon's Rule State
  - Vermont villages lack authority to provide basic municipal functions without charters
- Legislature overwhelmed with charters
- Established "passive charter approval"
  - Sent proposal to Secretary of State, turned over to Legislature and Attorney General
  - If no one acted on the proposal after 30 days of notification, amendment was approved



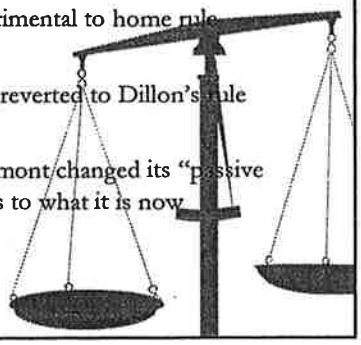
## Community Communication Co. v. Boulder

- City of Boulder operating as a "home rule" municipality
- Suit brought by cable company claiming Boulder was engaging in anti-competitive behavior
- Court found in favor of Community Communication Co.



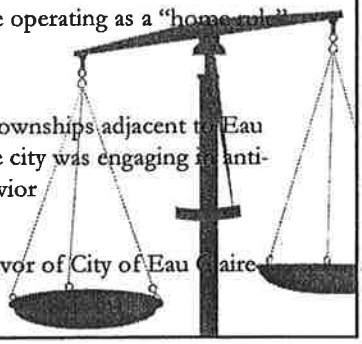
## What did this mean for home rule?

- Decision was detrimental to home rule
- Home rule states reverted to Dillon's rule
- This is when Vermont changed its "passive approval" process to what it is now



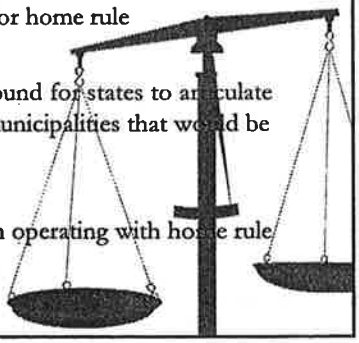
## Town of Hallie et al. v. City of Eau Claire

- City of Eau Claire operating as a "home rule" municipality
- Unincorporated townships adjacent to Eau Claire claimed the city was engaging in anti-competitive behavior
- Court found in favor of City of Eau Claire



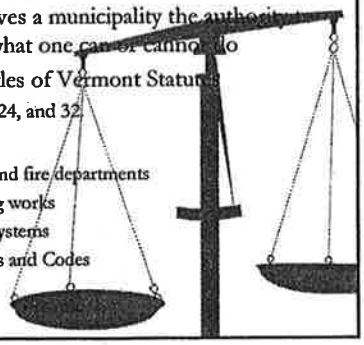
## What did this mean for home rule?

- Decisive victory for home rule
- Provided legal ground for states to articulate powers to their municipalities that would be held up in court
- Many states began operating with home rule
  - Vermont did not



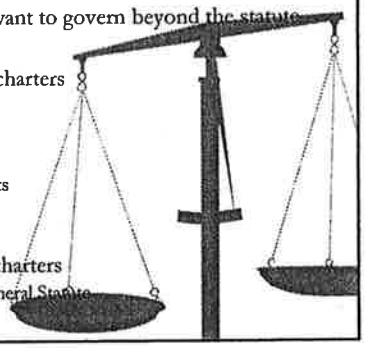
## Governance of Municipalities

- Vermont Statute gives a municipality the authority to exist and governs what one can or cannot do
- Located in many titles of Vermont Statutes
  - Mainly titles 1, 17, 24, and 32
- For example:
  - Creation of police and fire departments
  - How Town Meeting works
  - Sewer and sewage systems
  - Housing Authorities and Codes
  - Bond bank



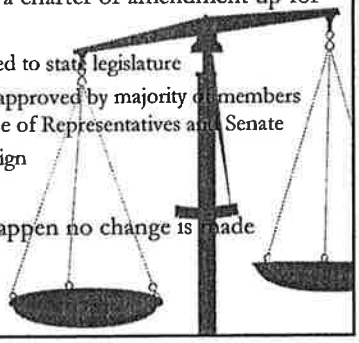
## Who Has a Charter?

- Municipalities that want to govern beyond the statute
- Municipalities with charters
  - All 9 cities
  - 22 of 255 towns
  - 16 of 58 villages
  - 8 solid waste districts
  - 3 fire districts
- All others have no charters
  - They run under General Statute



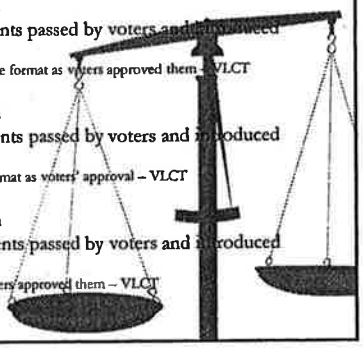
## Charter Amendment Process

- Municipality puts a charter or amendment up for vote, if approved:
  - Charter introduced to state legislature
  - Charter must be approved by majority of members in both VT House of Representatives and Senate
  - Governor must sign
- If this does not happen no change is made



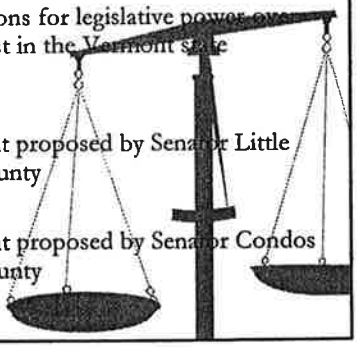
## Short History

- 1999-2000 biennium
  - 17 charter amendments passed by voters and introduced
    - 12 passed into law
      - 3 were in the same format as voters approved them – VLCT
- 2001-2002 biennium
  - 13 charter amendments passed by voters and introduced
    - 9 passed into law
      - 1 was in same format as voters' approval – VLCT
- 2003-2004 biennium
  - 16 charter amendments passed by voters and introduced
    - 14 passed into law
      - 3 were as the voters approved them – VLCT



## Attempts to Achieve Home Rule by Constitutional Amendment

- Currently, provisions for legislative power over municipalities exist in the Vermont state constitution
- 1988- Amendment proposed by Senator Little of Chittenden County
- 2004- Amendment proposed by Senator Condos of Chittenden County



## Alternatives: Change Statute

**Proposed Method: Passive Approval**

Senate Bill 90

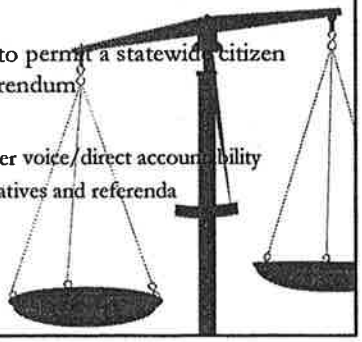
- Municipalities can create, repeal or amend own charter
- 30 days after submission to General Assembly the charter passes
- Unless action is taken by:
  - Attorney General
  - 6 Senators
  - 30 Representatives

## Alternatives: Change Statute

- Changing list of permissible activity
- Tax Law
  - Allowing for alternatives for local taxation: income, sales, property and service tax
  - Prohibiting state-mandated local costs and tax exemptions
  - Retaining locally generated fees and fines

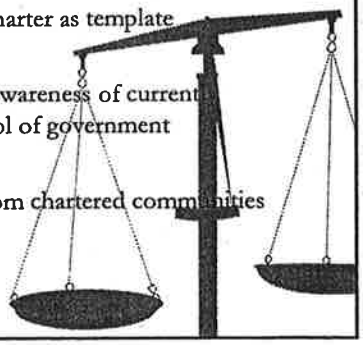
## Alternatives: Statewide Referendum

- Change state law to permit a statewide citizen initiative and referendum
  - Give voters greater voice/direct accountability
  - 24 states use initiatives and referenda



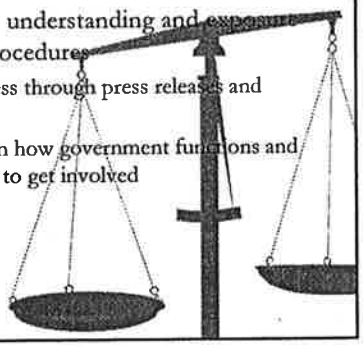
## Options Available?

- Create a model charter as template
- Improve citizen awareness of current centralized control of government
- Increase input from chartered communities



## Engaging the Public

- Public has limited understanding and exposure to government procedures
  - Improve awareness through press releases and conferences
  - Educate public on how government functions and what they can do to get involved



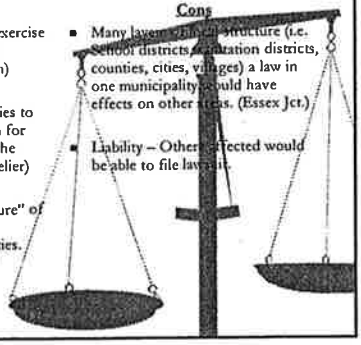
## Pros and Cons of Home Rule: Discourse in VT

**Pros**

- Allow for municipalities to exercise their preferred form of local government. (Essex Junction)
- Would allow for municipalities to act in an expeditious fashion for issues that pertain solely to the locality. (Burlington, Montpelier)
- Eliminate the "Political Nature" of State Legislature in issues pertaining to the municipalities. (anti-Burlington sentiment)

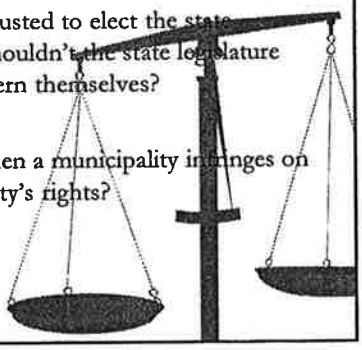
**Cons**

- Many layers of municipal structure (i.e. School districts, taxation districts, counties, cities, villages) a law in one municipality could have effects on other areas. (Essex Jct.)
- Liability – Others affected would be able to file lawsuits



## Policy Paradox

- If voters can be trusted to elect the state legislature, why shouldn't the state legislature trust them to govern themselves?
- What happens when a municipality infringes on another community's rights?



# ATTACHMENT A

RESEARCH BRIEF

NACO National Association of Counties

January 2004 vol. 2 no.1

Updated by Adam Coester, Research Intern

# Dillon's Rule or Not?

The United States' system of governance has many different levels. These levels—federal, state and local—all have a specific role to play in providing public services for the citizenry. At times, these levels of governance can overlap, or create gaps in the provision of services, leaving uncertainty about who has what type of authority. In the modern era, while the problems of jurisdiction are at times still evident, a defining ruling was made in two Iowa Supreme Court decisions. The relationship between local autonomy and state supremacy was more clearly defined by these rulings, which have become known as "Dillon's Rule."

Judge John F. Dillon's 1886 ruling limited county governmental powers. Judge Dillon, a prolific writer on the subject of local governmental operations, severely distrusted local government due to the power and corruption of political "machines," who often controlled municipal and regional decision makers. At the same time others called for the increased constitutional rights of local government even though many states' constitutions gave no such rights. As a response to both arguments, Judge Dillon rendered his opinion in which he wrote:

*"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 accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied."*

This ruling silenced those who championed far reaching local autonomy. His ruling gave local government only those powers that were specifically given to them by the state constitution or legislative statute. If there were any uncertainty of who had power or jurisdiction, it would be given to the state government and resolved in the judiciary. Within Dillon's era, states would use his ruling to limit the actions of local government, attempting to keep corrupted officials from wielding excessive power.

Today Dillon's Rule is in effect in many states, according to one survey, 40 states are currently considered "Dillon's Rule" states. Not all of these states enforce the rule in the same manner. For example, Alabama's enforcement of the rule only applies to county government; California's version does not include charter cities; and Louisiana's interpretation of the rule only affects pre-1974 municipalities. The spectrum of enforcement ranges from aggressive to somewhat lax, with a diminishing presence of the rule over time.

Judge Dillon's distrust for local politics in the Midwest would not be shared in California around the turn of the twentieth century. The state government was seen as being controlled by special interests (specifically the railroad industry) and the political "machine," and thus, was seen as not being responsive to the needs of municipalities or small business. In this atmosphere the Populist and Progressive movements began to gain a hold on state and regional politics. Ideas such as the recall, referendum and initiative came from these movements. More importantly for local government, the idea of home rule, or local self-government was also created during this era. Citizens believed they had a "moral" right to self-government, using the argument that they had the best understanding of local needs, not the state legislature.

From 1913, with California's enactment of home rule, to today, 37 states have approved some form of home rule, either a home rule charter or the "optional" form of home rule. Most states with home rule offer their counties and municipalities one of the two, but a few states—Idaho, Iowa and Minnesota—offer both.

The home rule charter serves as a local "constitution" that is created and ratified locally. Of the two forms available, a charter provides the greater degree of home rule, with it local governments exercise greater power over fiscal, functional and structural aspects of its system.

The optional form of home rule allows a county to select—from presubscribed structures—which type of governmental structure it will utilize. These types often include the council-manager, council-executive, or county administrator forms of county government. Although these are fundamentally structural differences, not financial ones, each can provide increased control to county and municipal government.

Regardless of type, home rule gives local government the capability to shape the way it serves the needs of its constituency. Different counties have different needs. The service delivery demands of a rural county and an urban county may differ. Therefore, in states that do not provide the flexibility of home rule, counties may provide services that do not suit the needs of their residents. Home rule gives local government the ability to shape its services to fit its need, providing timely, fiscally-responsible services.

Home rule is not all encompassing, or absolute since it too has its limitations. Counties are a unit of the state government, deriving their powers from the state constitution and legislative statutes—they will always be subject to, and affected by, state law.

Home rule and Dillon's Rule are not always dichotomous. A state can be considered a Dillon's Rule state and also have home rule. These hybrid states, such as Virginia, have eased their constructionist view on local government, giving local government more autonomy with which to govern.

Dillon's Rule or Not?
Updated by Adam Coester,
Research Intern
January 2004

**Sources:**

Duncombe, Herbert Sidney, Modern County Government (Washington D.C.: National Association of Counties, 1977), chapter 3.

DeSantis, Victor S., "County Government: A Century of Change." The Municipal Yearbook 1989 (Washington D.C. : International City Management Association, 1989).

Cowan, Dawn and Tanis Janes Salant, County Charter Government in the West (Washington D.C.: National Association of Counties, 1999).

Richardson Jr., Jesse J. and Meghan Zimmerman Gough, Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management (Washington D.C.: The Brookings Institution, Center on Urban and Metropolitan Policy, 2003).

**For additional Information, please contact:**

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Washington, DC 20001
(202) 942-4285
jbyers@naco.org

## HOME RULE STATES

| State | Charter | Home Rule/ Optional Forms |
|---|---|---|
| Alabama | | |
| Alaska | X | |
| Arizona | X | |
| Arkansas | | X |
| California | X | |
| Colorado | X | |
| Delaware | | |
| Florida | X | |
| Georgia | | X |
| Hawaii | X | |
| Idaho | X | X |
| Illinois | | X |
| Indiana | | X |
| Iowa | X | X |
| Kansas | | X |
| Kentucky | | X |
| Louisiana | X | |
| Maine | X | |
| Maryland | X | |
| Massachusetts | X | |
| Michigan | X | |
| Minnesota | X | X |
| Mississippi | | |
| Missouri | X | |
| Montana | X | |
| Nebraska | | |
| Nevada | | |
| New Hampshire | X | |
| New Jersey | X | |
| New Mexico | | |
| New York | X | |
| North Carolina | | X |
| North Dakota | X | |
| Ohio | X | |
| Oklahoma | | |
| Oregon | X | |
| Pennsylvania | X | |
| South Carolina | | X |
| South Dakota | X | |
| Tennessee | X | |
| Texas | | |
| Utah | | X |
| Vermont | | |
| Virginia | X | |
| Washington | X | |
| West Virginia | | |
| Wisconsin | | X |
| Wyoming | | |

## DILLON'S RULE STATES

| State | Dillon's Rule State | Comments |
|---|---|---|
| Alabama | YES | Counties Only |
| Alaska | NO | |
| Arizona | YES | |
| Arkansas | YES | |
| California | YES | Except Charter Cities |
| Colorado | YES | |
| Connecticut | YES | |
| Delaware | YES | |
| Florida | UNCLEAR | Conflicting statutes |
| Georgia | YES | |
| Hawaii | YES | |
| Idaho | YES | |
| Illinois | YES | Non-home rule municipalities only |
| Indiana | YES | Townships only |
| Iowa | NO | |
| Kansas | YES | Not for cities and counties |
| Kentucky | YES | |
| Louisiana | YES | For pre-1974 charter municipalities |
| Maine | YES | |
| Maryland | YES | |
| Massachusetts | NO | |
| Michigan | YES | |
| Minnesota | YES | |
| Mississippi | YES | |
| Missouri | YES | |
| Montana | NO | |
| Nebraska | YES | |
| Nevada | YES | |
| New Hampshire | YES | |
| New Jersey | NO | |
| New Mexico | NO | |
| New York | YES | |
| North Carolina | YES | |
| North Dakota | YES | |
| Ohio | NO | |
| Oklahoma | YES | |
| Oregon | NO | |
| Pennsylvania | YES | |
| Rhode Island | YES | |
| South Carolina | NO | |
| South Dakota | YES | Strict construction, but no specific reference to the language of Dillon's Rule. |
| Tennessee | YES | Only non-home rule municipalities |
| Texas | YES | |
| Utah | NO | |
| Vermont | YES | |
| Virginia | YES | |
| Washington | YES | |
| West Virginia | YES | |
| Wisconsin | YES | |
| Wyoming | YES | |

# ATTACHMENT B

## RELEVANT CURRENT VERMONT CONSTITUTIONAL SECTIONS

69. Charters, limit on right to grant

No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are to be and remain under the patronage or control of the State; but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created. All general laws passed pursuant to this section may be altered from time to time or repealed. [Emphasis Added]

6. Legislative powers

The Senate and the House of Representatives shall be styled, The General Assembly of the State of Vermont. Each shall have and exercise the like powers in all acts of legislation; and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared to be, a law, without the concurrence of the other. Provided, that all revenue bills shall originate in the House of Representatives; but the Senate may propose or concur in amendments, as on other bills. Neither House during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting; and in case of disagreement between the two Houses with respect to adjournment, the Governor may adjourn them to such time as he shall think proper. They may prepare bills and enact them into laws, redress grievances, grant charters of incorporation, subject to the provisions of section 69, constitute towns, boroughs, cities and counties; and they shall have all other powers necessary for the Legislature of a free and sovereign State; but they shall have no power to add to, alter, abolish, or infringe any part of this Constitution. [Emphasis added]

# ATTACHMENT C

*Office of the Vermont Secretary of State*

# Vermont State Archives

Villages and Cities

From: *Opinions: A Monthly Publication of Information and Advice on Elections and Other Public Matters*; Office of the Secretary of State James H. Douglas; Vol. 7, Number 10; May 1, 1988

## Villages by Paul S. Gillies

In a recent advertisement for a condominium at Killington, the seller finished off his description of the property by highlighting the proximity of a "full amenity center" within walking distance to the condo. Vermonters use the more traditional name of "village," but the description in the advertisement may be more appropriate. That settled area you passed through on your way to the slopes, the place where you can rent video tapes, pick up the Sunday New York Times, and get a good deli sandwich, used to be a municipality, with its own officers, budget and checklist. But now, like so many other Vermont villages, it's all gone. The town took it over some years ago.

Vermont once had as many as 76 villages. Today there are 42 left, and many of these are in the process of assessing how to go out of business. Vermont's passion for centralizing former village, fire district and other functions into the town is almost as vigorous as its passion for creating multi-town districts to solve the problems of development, solid waste and others beyond the capacity of the town.

To understand the decline of sub-town districts in Vermont, we need to review how the process began.

Villages in Vermont were not mandated by the state; they were purely a local phenomenon. Before the first general village incorporation law was adopted, settled areas found common solutions to their problems by volunteerism and through private companies for water and fire services. Inhabitants thought of themselves as village residents, well before the village as a legal institution was created.

The first legislative grant of authority to organize as a village was a special charter, adopted in 1816, creating Middlebury Borough. (816, pp. 108-114). In 1818, Montpelier Village was also the subject of a bill; but in both cases the bills were contingent on the acceptance of those charters by the electorate. For the lack of a vote to accept the charters, the villages didn't begin municipal life until the mid-1830's, after bills to "revive" the charters were adopted by the General Assembly. (See 1832, p. 111; 1835, pp. 96-97).

General authority to incorporate as a village, without the need for legislative sanction, arrived in 1819. Seven freeholders could petition selectmen, who would lay out the boundaries of a village. (1819, pp. 33-35). The new village had limited authority, however. The 1819 law authorized only the regulation of the running of animals at large throughout an incorporated village between November 20 and May 20 of the year.

The running of animals at large was apparently a serious problem for Vermont towns and villages in the early years. The laws authorizing those who find stray animals to impound them and charge for the cost of their shelter and food or to sell them if owners are not found originate in Vermont as early as 1787. Still, it's difficult to imagine how the regulation of strays alone could justify the incorporation of a village.

The first serious municipal squabbles in early Massachusetts town life were battles over the use of the town commons. New villages came into being when the town outgrew the common, which was principally used in early days to fence in the livestock. Farmers left out of the commons had to move on to establish new communities with new commons. Several generations later, however, in Vermont, the village was the one place in the town where animals would not be allowed to run at large. An 1850 law went even further in authorizing selectmen in towns with unincorporated villages to fence in the town commons, plant trees and shrubbery for "shade or ornament," and prohibit "turn[ing] any cattle thereon." (R.S. Chapter 16, S 19).

Whatever the relative merit of laws authorizing the running of animals at large, the value of general incorporation laws to the Legislature cannot be understated. The amount of precious legislative time spent on municipal and other corporate charters equaled the time spent on all other legislation, if the size of the annual laws compilations is any measure. The General Assembly hoped that the system of incorporation could be self-sustaining, but in many respects this was a false promise, because of the Legislature's own unwillingness to free municipalities from close state oversight. Even with special charters, the charter usually insisted that villages so formed remain under the control of any future Legislature, to alter, amend, or repeal.

The failure to grant broad powers to villages by general law effectively promoted the development of incorporated (i.e., chartered) villages in Vermont. Especially in the early years, a special charter was necessary to accomplish the most basic municipal purposes.

A special charter also offered a municipality clearer authority to act than general legislation did, based on a constitutional theory of municipal life. Vermonters read Chapter II, Section 6 of the Vermont Constitution (" The General Assembly ... may ... grant charters of incorporation ..., constitute towns, boroughs, cities and counties ....") to mean that all power and authority springs from the Legislature, as derived from the freemen of Vermont, and that only explicit, direct legislatively-approved authority for villages or other political subdivisions of the state was legal and reliable.

The Vermont General Assembly had from its first year assumed that the legislative branch was the supreme governmental authority. The judiciary was not treated as an equal branch of government in the early years, and the Governor was regarded as a ceremonial officer. The Legislature even adopted the Vermont Constitution of 1786 as a special act, believing that only that body had the authority to make laws, including constitutions. (State Papers XII, 101).

The issue was confidence. While we had a general law authorizing village incorporation without the direct involvement of the General Assembly, historically only one village -- Albany -- relied on the general law alone for authority. Each of the remaining 75 villages created in Vermont has sought special legislative authority for its actions. Many were first incorporated under general law, but later turned to the Legislature for validation of their existence or for special charters or acts which would allow them to do what they needed to do, in spite of the limitations of the general law.

When the inhabitants of Benson wanted to form a village in 1869, they came to the General Assembly for special authority to allow five freeholders, instead of the seven the general law required, the right to petition selectmen to lay out the boundaries of the village. (1869, No. 127). (Our records show that even this was not enough, and that Benson Village never came into being, even under these more generous terms.) Benson wanted a variance from the general law, and the General Assembly was willing to grant it. This

willingness some call acquiescence to local control. While the Legislature remained paramount, it listened to the pleas of municipalities, and granted them special privileges.

As liberal as the General Assembly may have been in specific cases, granting charters to municipalities on request, its record in offering all municipalities the rights and privileges granted to specific communities was much more reserved. The general village law did not authorize villages to raise taxes until 1863. (G.S. Chapter 16, § 4). Even general municipal authority to issue bonds was not granted until 1917. (1917, No. 106).

A village that wanted to operate a fire department, for instance, needed special authority to do so before 1863. (G.S. Chapter 16, § 7). The general authority to establish a police department was withheld from villages, except by special charter, until 1865. (1865, No. 47). Without special charter authority, a Vermont village was not authorized to provide water prior to 1945 or sewer services to its residents prior to 1947. (1945, No. 49.; 1947, No. 51. 24 V.S.A. § 1310).

The conservatism of the General Assembly in granting general powers to municipalities, however, does not entirely explain the phenomenon of special village charters. The last Vermont village -- Essex Center Village -- was chartered in 1947, and this was done by special act. (1947, No. 302). A close reading of the charter reveals that the authority requested by the village was for the most part already available through general state law.

It seems clear that municipalities and their legal advisers traditionally favored specific legislative authority to the general, as a defense against a legal challenge based on the constitutional problems associated with general municipal law as it is applied to villages. The problem is the improper delegation of legislative authority to villages and other political subdivisions.

A Legislature that assumes to itself the full powers of government is a strong, but very busy branch. Originally, the adoption of general statutes delineating the powers of villages was intended to avoid the need for special charters for every village (and to relieve the Legislature of the busy work that goes with charter reviews), but this experiment, to be fair, was a failure. By 1910, the General Assembly was tired of reviewing charters and charter amendments. Twenty new villages had been created between 1901 and 1910 alone.

The General Assembly decided in 1910 that the Public Service Commission (now the Board) ought to review and ratify all city and village charters and their amendments. (1910, No. 115). But shortly thereafter the Vermont Supreme Court concluded, in an advisory opinion, that the act was unconstitutional: the Legislature had improperly delegated its authority to a state agency. In re: Municipal Charters , 86 Vt. 562 (1912). The power to "constitute towns, boroughs, cities, and counties" is) according to the court, "a trust, and requires the exercise of judgment and discretion in its execution, and no authority is given to delegate it."

In the interim between the passage of the act and the Court's decision, the P.S.C. incorporated the fledgling village of Peacham, but given the hard judgment on the enabling law, Peacham seems to have emerged stillborn, and never saw life as a municipality.

As a reaction to the frustrations of the General Assembly in failing to relieve itself of the charter burden, Section 69 of the Vermont Constitution was adopted in 1913. "No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal or reformatory corporations as are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general law for the organization of corporations hereafter to be created. All general laws passed pursuant to this section may be altered from time to time or repealed."

The adoption of this amendment signaled the end of the General Assembly's workload in approving charters and amendments of private corporations. Today this is done administratively, through the Secretary of State's Office. The basis for that change is the sentence, "but the General Assembly shall provide by general law for the organization of corporations hereafter to be created." In that light, perhaps this section of our Constitution could be read to be a now forgotten home rule amendment. Must "patronage and control" mean specific charter review by the Legislature? Perhaps a general law would be sufficient, as long as there was general state authority for municipalities to adopt charters and amendments on specific subjects.

More than 50 years later, the General Assembly adopted a suggestion made in the comprehensive revision of the charter of South Burlington (at that time, a town), and established a "passive" charter review process. (1963, No. 120; see 24 V.S.A. S 703, now repealed). This process required proper notice, a hearing and a vote on charters and amendments in the municipality; the mailing of copies of the proposal to the Secretary of State, who turned them over to the Legislature and to the Attorney General; the opportunity for a petition objecting to the proposal by the Attorney General or five percent of the legal voters of the municipality; and the adoption of the charter or amendment either by vote of the General Assembly, if petitioned, or by inaction after the passage of 30 days. In 1984, for reasons of antitrust liability and the constitutional delegation issue, the passive review method was abandoned and replaced with explicit requirements for legislative ratification or validation of all charters and amendments. (1984, No. 161).

We have come full circle, and the Legislature is back again in the business of reviewing municipal charters. This time, however, the process seems a little different. The old matter of acquiescence, for instance, seems to be gone now. The Legislature has had a difficult time keeping its hands off charter proposals that are presented for review. Because these bills have no greater status than any other legislative proposal, the committees that review charters have not hesitated to change the proposals and at times even parts of charters that are unrelated to the amendment.

Where every charter and amendment that was adopted by the Legislature throughout the 19th Century and well into the 20th included a requirement that the act not take effect until it had been accepted by the voters of the village, no charter or amendment since 1984, with one exception, has provided for public referendum on the proposal, even when the proposal has been changed by the Legislature. Nearly every proposed charter amendment has been the subject of a vote by the electorate before the proposal comes to Montpelier, but the General Assembly's interest in a ratification vote back home after a charter has been changed legislatively appears to have waned in recent years.

This was to be the year of municipal home rule. The Senate Government Operations Committee never voted the idea out of committee, but the proposal was to allow municipalities to adopt charter amendments on their own, without legislative review or ratification. The senators saw this as a dive for independent municipal taxing authority, but many of its supporters felt that a home rule amendment to the Vermont

Constitution would free municipalities from the hegemony of legislative review of charters and amendments -- a freedom municipalities such as villages enjoyed prior to 1984, through the adoption and amendment of special charters.

So what happened to all the villages? Six (Barre, Montpelier, Newport, Rutland, St. Albans, and Winooski) became cities, by special acts of the General Assembly. Twenty-one (Brattleboro (1927), Chester (1967), Concord (1967), Essex Center (1947), Fair Haven (1955), Glover (1973), Hardwick (1988), Middlebury (1966), Newport Center (1931), Pittsford (1988), Plainfield (1985), Proctor (1967), Proctorsville (1987), Randolph (1984), Readsboro (1986), St. Johnsbury (1965), Springfield (1947), West Glover (1973), Wilmington (1959) and Windsor (1967) merged into their respective towns. Two (Groton and Townshend) simply voted to abandon the village, without any formal ratification of the dissolutions or mergers by the General Assembly. Two (Lyndon, 1951; West Barnet, 1961) were converted into fire districts. The other "lost" villages -- villages not active today, but once chartered -- remain a mystery, which we will continue to try to resolve.

Vermont's experience with the village as a unit of governance has had mixed success. Some villages work well; some are still trying to dissolve; many gave up municipal existence (as a village), for reasons as diverse as the cost of liability insurance for officials, notorious confrontations between town and village interests, or even the end of revenue sharing.

For the future, we suspect there may come a time when the village comes back into its own in Vermont. The growth legislation being reviewed this year in the Senate includes as legislative goals, the following:

(i) Strip development along highways and scattered residential development not related to community centers cause increased cost of government, congestion of highways, the loss of prime agricultural lands, overtaxing of town roads and services and economic or social decline in the traditional community center,

(ii) Provision should be made for the renovation of village and town centers for commercial and industrial development, where feasible, and location of residential and other development off the main highways near the main village center on land which is other than primary agricultural.

If public policy, and the machinations of the regulatory process, succeed in forcing new inhabitants of the state into existing population centers, and in discouraging residential or other development elsewhere, the high concentration of people in village areas will create an inevitable demand for additional water, sewer and highway capacities. Deciding who will bear these additional costs will inevitably lead to renewed interest in some form of political subdivision that will allow those served by these systems to vote on the budget and make other critical decisions.

Note: The best source for locating what villages are still active is Vermont Municipalities: An Index to Their Charters and Special Acts , edited by D. Gregory Sanford, which is found in the 1985-86 Legislative Directory or is available as a separate publication from the Secretary of State's Office.

Last updated September, 2001

# ATTACHMENT D

# U.S. Supreme Court

## PARKER v. BROWN, 317 U.S. 341 (1943)

**317 U.S. 341**

**PARKER, Director of Agriculture, et al.**
**v.**
**BROWN.**
**No. 46.**

**Reargued Oct. 12, 13, 1942.**
**Decided Jan. 4, 1943.**

[317 U.S. 341, 343] Messrs. Walter L. Bowers, of Los Angeles, Cal., and Strother P. Walton, of Fresno, Cal., for appellants.

Mr. G. Levin Aynesworth, of Fresno, Cal., for appellees.

Mr. Robert L. Stern, of Washington, D.C., for the United States as amicus curiae by special leave of Court.
[317 U.S. 341, 344]

Mr. Chief Justice STONE delivered the opinion of the Court.

The questions for our consideration are whether the marketing program adopted for the 1940 raisin crop under the California Agricultural Prorate Act1 is rendered invalid (1) by the Sherman Act, 15 U.S.C.A. 1-7, 15 note, or (2) by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601 et seq., 7 U.S.C.A. 601 et seq., or (3) by the Commerce Clause of the Constitution, art. 1, 8, cl. 3.

Appellee, a producer and packer of raisins in California, brought this suit in the district court to enjoin appellants-the State Director of Agriculture, Raisin Proration Zone No. 1, the members of the State Agricultural Prorate Advisory Commission and of the Program Committee for Zone No. 1, and others charged by the statute with the administration of the Prorate Act-from enforcing, as to appellee, a program for marketing the 1940 crop of raisins produced in 'Raisin Proration Zone No. 1'. After a trial upon oral testimony, a stipulation of facts and certain exhibits, the district court held that the 1940 raisin marketing program was an illegal interference with and undue burden upon interstate commerce and gave judgment for appellee granting the injunction prayed for. D.C., 39 F. Supp. 895. The case was tried by a district court of three judges [317 U.S. 341, 345] and comes here on appeal under 266 and 238 of the Judicial Code as amended, 28 U.S.C. 380, 345, 28 U.S.C.A. 380, 345.

As appears from the evidence and from the findings of the district court, almost all the raisins consumed in the United States, and nearly one-half of the world crop, are produced in Raisin Proration Zone No. 1. Between 90 and 95 per cent of the raisins grown in California are ultimately shipped in interstate or foreign commerce.

The harvesting and marketing of the crop in California follows a uniform procedure. The grower of raisins picks the bunches of grapes and places them for drying on trays laid between the rows of vines. When the grapes have been sufficiently dried he places them in 'sweat boxes' where their moisture content is equalized. At this point the curing process is complete. The growers sell the raisins and deliver them in the 'sweat boxes' to handlers or packers whose plants are all located within the Zone. The packers process them at their plants and then ship them in interstate commerce. Those raisins which are to be marketed in clusters are sometimes merely packed, unstemmed, in suitable containers, but are more often cleaned, fumigated, and, when necessary, steamed to make the stems pliable. Most of the raisins are not sold in clusters; such raisins are stemmed before packing, and most packers also clean, grade and sort them. One variety is also seeded before packing.

The packers sell their raisins through agents, brokers, jobbers and other middlemen, principally located in other states or foreign countries. Until he is ready to ship the raisins the packer stores them in the form in which they have been received from producers. The length of time that the raisins remain at the packing plants before processing and shipping varies from a few days up to two years, depending upon the packer's current supply of raisins and the market demand. The packers frequently place orders with producers for fall delivery, before the [317 U.S. 341, 346] crop is harvested, and at the same time enter into contracts for the sale of raisins to their customers. In recent years most packers have had a substantial 'carry over' of stored raisins at the end of each crop season, which are usually marketed before the raisins of the next year's crop are marketed.

The California Agricultural Prorate Act authorizes the establishment, through action of state officials, of programs for the marketing of agricultural commodities produced in the state, so as to restrict competition among the growers and maintain prices in the distribution of their commodities to packers. The declared purpose of the Act is to 'conserve the agricultural wealth of the State' and to 'prevent economic waste in the marketing of agricultural crops' of the state. It authorizes , 3, the creation of an Agricultural Prorate Advisory Commission of nine members, of which a state official, the Director of Agriculture, is ex- officio a member. The other eight members are appointed for terms of four years by the Governor and confirmed by the Senate, and are required to take an oath of office. 4.

Upon the petition of ten producers for the establishment of a prorate marketing plan for any commodity within a defined production zone, 8, and after a public hearing, 9, and after making prescribed economic findings, 10, showing that the institution of a program for the proposed zone will prevent agricultural waste and conserve agricultural wealth of the state without permitting unreasonable profits to producers, the Commission is authorized to grant the petition. The Director, with the approval of the commission, is then required to select a program committee from among nominees chosen by the qualified producers within the zone, to which he may add not more than two handlers or packers who receive the regulated commodity from producers for marketing. 11, 14, 15. [317 U.S. 341, 347] The program committee is required, 15, to formulate a proration marketing program for the commodity produced in the zone, which the Commission is authorized to approve after a public hearing and a finding that 'the program is reasonably calculated to carry out the objectives of this act.' The Commission may, if so advised, modify the program and approve it as modified. If the proposed program, as approved by the Commission, is consented to by 65 per cent in number of producers in the zone owning 51 per cent of the acreage devoted to production of the regulated crop, the Director is required to declare the program instituted . 16.

Authority to administer the program, subject to the approval of the Director of Agriculture, is conferred on the program committee. 6, 18, 22. Section 22.5 declares that it shall be a misdemeanor, which is punishable by fine and imprisonment (Penal Code 19), for any producer to sell or any handler to receive or possess without proper authority any commodity for which a proration program has been instituted. Like penalty is imposed upon any person who aids or abets in the commission of any of the acts specified in the section, and it is declared that each 'infraction shall constitute a separate and distinct offense'. Section 25 imposes a civil liability of $500 'for each and every violation' of any provision of a proration program.

The seasonal proration marketing program for raisins, with which we are now concerned, became effective on September 7, 1940. This provided that the program committee should classify raisins as 'standard', 'substandard', and 'inferior'; 'inferior' raisins are those which are unfit for human consumption, as defined in the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 301 et seq., 21 U.S.C.A. 301 et seq. The committee is required to establish receiving stations within the zone to which every producer must deliver all raisins which he desires to market. The raisins are graded at these stations. All inferior raisins are to be placed in the [317 U.S. 341, 348] 'inferior raisin pool', to be disposed of by the committee 'only for assured by-product and other diversion purposes'. All substandard raisins, and at least 20 per cent of the total standard and substandard raisins produced, must be placed in a 'surplus pool'. Raisins in this pool may also be disposed of only for 'assured by-product and other diversion purposes', except that under certain circumstances the program committee may transfer standard raisins from the surplus pool to the stabilization pool. Fifty per cent of the crop must be placed in a 'stabilization pool'.

Under the program the producer is permitted to sell the remaining 30 per cent of his standard raisins, denominated 'free tonnage', through ordinary commercial channels, subject to the requirement that he obtain a 'secondary certificate' authorizing such marketing and pay a certificate fee of $2.50 for each ton covered by the certificate. Certification is stated to be a device for controlling 'the time and volume of movement' of free tonnage into such ordinary commercial channels. Raisins in the stabilization pool are to be disposed of by the committee 'in such manner as to obtain stability in the market and to dispose of such raisins', but no raisins, (other than those subject to special lending or pooling arrangements of the Federal Government) can be sold by the committee at less than the prevailing market price for raisins of the same variety and grade on the date of sale. Under the program the committee is to make advances to producers of from $25 to $27.50 a ton, depending upon the variety of raisins, for deliveries into the surplus pool, and from $50 to $ 55 a ton for deliveries into the stabilization pool. The committee is authorized to pledge the raisins held in those pools in order to secure funds to finance pool operations and make advances to growers.

Appellee's bill of complaint challenges the validity of the proration program as in violation of the Commerce [317 U.S. 341, 349] Clause and the Sherman Act; in support of the decree of the district court he also urges that it conflicts with and is superseded by the Federal Agricultural Marketing Agreement Act of 1937. The complaint alleges that he is engaged within the marketing zone both in producing and in purchasing and packing raisins for sale and shipment interstate; that before the adoption of the program he had entered into contracts for the sale of 1940 crop raisins; that unless enjoined appellants will enforce the program against respondent by criminal prosecutions and will prevent him from marketing his 1940 crop, from fulfilling his sales contracts, and from purchasing for sale and selling in interstate commerce raisins of that crop.

Appellee's allegations of irreparable injury are in general terms, but it appears from the evidence that he had produced 200 tons of 1940 crop raisins; that he had contracted to sell 762 1/2 tons of the 1940 crop; that he had dealt in 2,000 tons of raisins of the 1939 crop, and expected to sell, if the challenged program were not in force, 3,000 tons of the 1940 crop at $60 a ton; that the pre-season price to growers of raisins of the 1940 crop, before the program became effective, was $45 per ton, and that immediately afterward it rose to $55 per ton or higher. It also appears that the district court having awarded the final injunction prayed, appellee has proceeded with the marketing of his 1940 crop and has disposed of all except twelve tons, which remain on hand. Although the district court found that the amount in controversy exceeds $3,000, we are of opinion that as the complaint assails the validity of the program under the anti-trust laws, 15 U.S.C. 1-33, 15 U.S.C.A. 1-33, the suit is one 'arising under' a 'law regulating commerce' and allegation and proof of the jurisdictional amount are not required. 28 U.S.C. 41(1), (8), 28 U.S.C.A. 41(1, 8); Peyton v. Railway Express Agency, 316 U.S. 350, 62 S. Ct. 1171. The majority of the Court is also of opinion that the suit is within the equity jurisdiction of the court since the com- [317 U.S. 341, 350] plaint alleges and the evidence shows threatened irreparable injury to respondent's business and threatened prosecutions by reason of his having marketed his crop under the protection of the district court's decree.

Validity of the Prorate Program under the Sherman Act

Section 1 of the Sherman Act, 15 U.S.C. 1, 15 U.S.C.A. 1, makes unlawful 'every contract, combination ... or conspiracy, in restraint of trade or commerce among the several States'. And 2, 15 U.S.C. 2, 15 U. S.C.A. 2, makes it unlawful to 'monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States'. We may assume for present purposes that the California prorate program would violate the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons, individual or corporate. We may assume also, without deciding, that Congress could, in the exercise of its commerce power, prohibit a state from maintaining a stabilization program like the present because of its effect on interstate commerce. Occupation of a legislative 'field' by Congress in the exercise of a granted power is a familiar example of its constitutional power to suspend state laws. See Adams Express Co. v. Croninger, 226 U.S. 491, 505, 33 S.Ct. 148, 151, 44 L.R.A.,N.S., 257; Napier v. Atlantic Coast Line, 272 U.S. 605, 607, 47 S.Ct. 207; Missouri Pacific R. Co. v. Porter, 273 U.S. 341, 47 S.Ct. 383; Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U.S. 498, 510, 62 S.Ct. 384, 389.

But it is plain that the prorate program here was never intended to operate by force of individual agreement or combination. It derived its authority and its efficacy from the legislative command of the state and was not intended to operate or become effective without that command. We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its [317 U.S. 341, 351] legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress.

The Sherman Act makes no mention of the state as such, and gives no hint that it was intended to restrain state action or official action directed by a state. The Act is applicable to 'persons' including corporations, 7, 15 U.S.C.A., and it authorizes suits under it by persons and corporations. 15. A state may maintain a suit for damages under it, State of Georgia v. Evans, 316 U.S. 159, 62 S.Ct. 972, but the United States may not, United States v. Cooper Corp., 312 U.S. 600, 61 S.Ct. 742-conclusions derived not from the literal

meaning of the words 'person' and 'corporation' but from the purpose, the subject matter, the context and the legislative history of the statute.

There is no suggestion of a purpose to restrain state action in the Act's legislative history. The sponsor of the bill which was ultimately enacted as the Sherman Act declared that it prevented only 'business combinations'. 21 Cong.Rec. 2562, 2457; see also at 2459, 2461. That its purpose was to suppress combinations to restrain competition and attempts to monopolize by individuals and corporations, abundantly appears from its legislative history. See Apex Hosiery Co. v. Leader, 310 U.S. 469, 492 , 493 S., 60 S.Ct. 982, 992, 128 A.L.R. 1044, and note 15; United States v. Addyston Pipe & Steel Co., 6 Cir., 85 F. 271, 46 L.R.A. 122, affirmed 175 U.S. 211 , 20 S.Ct. 96; Standard Oil Co. v. United States, 221 U.S. 1 , 54-58, 31 S.Ct. 502, 513, 515, 34 L.R.A.,N.S., 834, Ann.Cas.1912D, 734.

True, a state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful, Northern Securities Co. v. United States, 193 U.S. 197, 332 , 344 S.-347, 24 S.Ct. 436, 454, 459-461; and we have no question of the state or its municipality becoming a participant in a private agreement or combina- [317 U.S. 341, 352] tion by others for restraint of trade, cf. Union Pacific R. Co. v. United States, 313 U.S. 450 , 61 S.Ct. 1064. Here the state command to the Commission and to the program committee of the California Prorate Act is not rendered unlawful by the Sherman Act since, in view of the latter's words and history, it must be taken to be a prohibition of individual and not state action. It is the state which has created the machinery for establishing the prorate program. Although the organization of a prorate zone is proposed by producers, and a prorate program, approved by the Commission, must also be approved by referendum of producers, it is the state, acting through the Commission, which adopts the program and which enforces it with penal sanctions, in the execution of a governmental policy. The prerequisite approval of the program upon referendum by a prescribed number of producers is not the imposition by them of their will upon the minority by force of agreement or combination which the Sherman Act prohibits. The state itself exercises its legislative authority in making the regulation and in prescribing the conditions of its application. The required vote on the referendum is one of these conditions. Compare Currin v. Wallace, 306 U.S. 1, 16 , 59 S.Ct. 379, 387; Hampton, Jr., & Co. v. United States, 276 U.S. 394, 407 , 48 S.Ct. 348, 351; Wickard v. Filburn, 317 U.S. 111 , 63 S.Ct. 82, 87 L.Ed. --.

The state in adopting and enforcing the prorate program made no contract or agreement and entered into no conspiracy in restraint of trade or to establish monopoly but, as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit. Olsen v. Smith, 195 U.S. 332, 344 , 345 S., 25 S.Ct. 52, 54, 55; cf. Lowenstein v. Evans, C.C., 69

F. 908, 910. Validity of the Program Under the Agricultural Marketing Agreement Act

The Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U.S. C. 601 et seq., 7 U.S.C.A. 601 et seq., authorizes the Secre- [317 U.S. 341, 353] tary of Agriculture to issue orders limiting the quantity of specified agricultural products, including fruits, which may be marketed 'in the current of ... or so as directly to burden, obstruct, or affect interstate or foreign commerce'. Such orders may allot the amounts which handlers may purchase from any producer by means which equalize the amount marketed among producers; may provide for the control and elimination of surpluses and for the establishment of reserve pools of the regulated produce. 8c(6), 7 U.S.C.A. 608c(6). The federal statute differs from the California Prorate Act in that its sanction falls upon handlers alone while the state act, 22.5(3), applies to growers and

extends also to handlers so far as they may unlawfully receive or have in their possession within the state any commodity subject to a prorate program.

We may assume that the powers conferred upon the Secretary would extend to the control of surpluses in the raisin industry through a pooling arrangement such as was promulgated under the California Prorate Act in the present case. See United States v. Rock Royal Co-op., 307 U.S. 533 , 59 S.Ct. 993; Currin v. Wallace, supra. We may assume also that a stabilization program adopted under the Agricultural Marketing Agreement Act would supersede the state act. But the federal act becomes effective only if a program is ordered by the Secretary. Section 8c(3) provides that whenever the Secretary of Agriculture 'has reason to believe' that the issuance of an order will tend to effectuate the declared policy of the Act with respect to any commodity he shall give due notice of an opportunity for a hearing upon a proposed order, and 8c(4) provides that after the hearing he shall issue an order if he finds and sets forth in the order that its issuance will tend to effectuate the declared policy of the Act with respect to the commodity in question. Since the Secretary has not given notice of hearing and has not proposed or promulgated any order regulating raisins it must be [317 U.S. 341, 354] taken that he has no reason to believe that issuance of an order will tend to effectuate the policy of the Act.

The Secretary, by 10[i], 7 U.S.C.A. 610(i), is authorized 'in order to effectuate the declared policy' of the Act, and 'in order to obtain uniformity in the formulation, administration, and enforcement of Federal and State programs relating to the regulation of the handling of agricultural commodities,' to confer and cooperate with duly constituted authorities of any state. From this and the whole structure of the Act, it would seem that it contemplates that its policy may be effectuated by a state program either with or without the promulgation of a federal program by order of the Secretary. Cf. United States v. Rock Royal Co-op., Inc., supra. It follows that the adoption of an adequate program by the state may be deemed by the Secretary a sufficient ground for believing that the policies of the federal act will be effectuated without the promulgation of an order.

It is evident, therefore, that the Marketing Act contemplates the existence of state programs at least until such time as the Secretary shall establish a federal marketing program, unless the state program in some way conflicts with the policy of the federal act. The Act contemplates that each sovereign shall operate 'in its own sphere but can exert its authority in conformity rather than in conflict with that of the other'. H.Rep.No.1241, 74th Cong., 1st Sess. pp. 22-23; S.Rep. 1011, 74th Cong., 1st Sess. p. 15.2 The only suggested possibility of conflict is between the declared purposes of the two acts. The object of the federal statutes is stated to be the establishment, by exercise [317 U.S. 341, 355] of the power conferred on the Secretary, of 'orderly marketing conditions for agricultural commodities in interstate commerce' such as will tend to establish 'parity prices' for farm products,3 but with the further purpose that, in the interest of consumers, current consumptive demand is to be considered and that no action shall be taken for the purpose of maintaining prices above the parity level. 2, 7 U.S.C.A. 602.

The declared objective of the California Act is to prevent excessive supplies of agricultural commodities from 'adversely affecting' the market, and although the statute speaks in terms of 'economic stability' and 'agricultural waste' rather than of price, the evident purpose and effect of the regulation is to 'conserve the agricultural wealth of the State' by raising and maintaining prices, but 'without permitting unreasonable profits to the producers'. 10. The only possibility of conflict would seem to be if a State program were to raise prices beyond the parity price prescribed by the Federal Act, a condition which has not occurred. 4 [317 U.S. 341, 356] That the Secretary has reason to believe that the state act will tend to effectuate the

policies of the federal act so as not to require the issuance of an order under the latter is evidenced by the approval given by the Department of Agriculture to the state program by the loan agreement between the state and the Commodity Credit Corporation. 5 By 302(a) of the Agricultural Adjustment Act of 1938, 52 Stat. 43, 7 U.S.C. 1302(a), 7 U.S.C.A. 1302(a) the Commodity Credit Corporation is authorized 'upon recommendation of the Secretary and with the approval of the President, to make available loans on agricultural commodities ...'. The 'amount, terms, and conditions' of such loans are to be 'fixed by the Secretary, subject to the approval of the Corporation and the President'. Under this authority the Commodity Credit Corporation made loans of $5,146, 000 to Zone No. 1, secured by a [317 U.S. 341, 357] pledge of 109,000 tons of 1940 crop raisins in the surplus and stabilization pools. These loans were ultimately liquidated by sales of 76, 000 tons to packers and 33,000 tons to the Federal Surplus Marketing Administration, an agency of the Department of Agriculture,6 for relief distribution and for export under the Lend-Lease program. 7 The loans were conditional upon the adoption by the state of the present seasonal marketing program. We are informed by the Government, which at our request filed a brief amicus curiae, that under the loan agreement prices and sales policies as to the pledged raisins were to be controlled by a committee appointed by the Secretary, and that officials of the Department of Agriculture collaborated in drafting the 1940 state raisin program. [317 U.S. 341, 358] Section 302 of the Agricultural Adjustment Act of 1938 requires the Commodity Credit Corporation to make non-recourse loans to producers of certain agricultural products at specified percentages of the parity price, and authorizes loans on any agricultural commodity. The Government informs us that in making loans under the latter authority, 302 has been construed by the Department of Agriculture as requiring the loans to be made only in order to effectuate the policy of federal agricultural legislation. 8 Section 2 of the Agricultural Adjustment Act of 1938, 7 U.S. C.A. 1282, declares it to be the policy of Congress to achieve the statutory objective through loans. The Agricultural Adjustment Act of 1938 and the Agricultural Marketing Agreement Act of 1937 were both derived from the Agricultural Adjustment Act of 1933, 48 Stat. 31, 7 U.S.C.A. 601 et seq., and are coordinate parts of a single plan for raising farm prices to parity levels. The conditions imposed by the Secretary of Agriculture in the loan agreement with the State of California, and the collaboration of federal officials in the drafting of the program, must be taken as an expression of opinion by the Department of Agriculture that the state program thus aided by the loan is consistent with the policies of the Agricultural Adjustment and Agricultural Marketing Agreement Acts. We find no conflict between the two acts and no such occupation of the legislative field by the mere adoption of the Agricultural Marketing Agreement Act, without the issuance of any order by the Secretary putting it into effect, as would preclude the effective operation of the state act.

We have no occasion to decide whether the same conclusion would follow if the state program had not been adopted with the collaboration of officials of the Department of Agriculture and aided by loans from the Com- [317 U.S. 341, 359] modity Credit Corporation recommended by the Secretary of Agriculture.

Validity of the Program under the Commerce Clause

The court below found that approximately 95 per cent of the California raisin crop finds its way into interstate or foreign commerce. It is not denied that the proration program is so devised as to compel the delivery by each producer, including appellee, of over two-thirds of his 1940 raisin crop to the program committee, and to subject it to the marketing control of the committee. The program, adopted through the exercise of the legislative power delegated to state officials, has the force of law. It clothes the committee with power and imposes on it the duty to control marketing of the crop so as to enhance the price or at least to maintain prices by restraints on competition of producers in the sale of their crop. The program operates to eliminate competition of the producers in the terms of sale of the crop, including price. And since 95 per

cent of the crop is marketed in interstate commerce the program may be taken to have a substantial effect on the commerce, in placing restrictions on the sale and marketing of a product to buyers who eventually sell and ship it in interstate commerce.

The question is thus presented whether in the absence of congressional legislation prohibiting or regulating the transactions affected by the state program, the restrictions which it imposes upon the sale within the state of a commodity by its producer to a processor who contemplates doing, and in fact does work upon the commodity before packing and shipping it in interstate commerce, violate the Commerce Clause.

The governments of the states are sovereign within their territory save only as they are subject to the prohibitions of the Constitution or as their action in some measure conflicts with powers delegated to the National Govern- [317 U.S. 341, 360] ment, or with Congressional legislation enacted in the exercise of those powers. This Court has repeatedly held that the grant of power to Congress by the Commerce Clause did not wholly withdraw from the states the authority to regulate the commerce with respect to matters of local concern, on which Congress has not spoken. Minnesota Rate Cases (Simpson v. Shepard), 230 U.S. 352, 399, 400 S., 33 S.Ct. 729, 739, 740, 48 L.R.A.,N.S., 1151, Ann.Cas.1916A, 18; South Carolina State Highway Dept. v. Barnwell Bros., 303 U.S. 177, 187 et seq., 625, 58 S.Ct. 510, 514 et seq.; People of State of California v. Thompson, 313 U.S. 109, 113, 114 S., 61 S.Ct. 930, 932, 933, and cases cited; Duckworth v. Arkansas, 314 U.S. 390, 62 S.Ct. 311, 138 A.L.R. 1144. A fortiori there are many subjects and transactions of local concern not themselves interstate commerce or a part of its operations which are within the regulatory and taxing power of the states, so long as state action serves local ends and does not discriminate against the commerce, even though the exercise of those powers may materially affect it. Whether we resort to the mechanical test sometimes applied by this Court in determining when interstate commerce begins with respect to a commodity grown or manufactured within a state and then sold and shipped out of it- or whether we consider only the power of the state in the absence of Congressional action to regulate matters of local concern, even though the regulation affects or in some measure restricts the commerce-we think the present regulation is within state power.

In applying the mechanical test to determine when interstate commerce begins and ends (see Federal Compress & Warehouse Co. v. McLean, 291 U.S. 17, 21, 54 S.Ct. 267, 268, 269, and cases cited; State of Minnesota v. Blasius, 290 U.S. 1, 54 S.Ct. 34, and cases cited) this Court has frequently held that for purposes of local taxation or regulation 'manufacture' is not interstate commerce even though the manufacturing process is of slight extent. Crescent Cotton Oil Co. v. Mississippi, 257 U.S. 129, 42 S.Ct. 42; Oliver Iron Mining Co. v. Lord, 262 U.S. 172, 43 S.Ct. 526; Utah Power & Light Co. v. Pfost, 286 U.S. 165, 52 S.Ct. 548; Hope Natural Gas Co. v. Hall, 274 U.S. 284, 47 S.Ct. 639; Heisler v. Thomas Colliery Co., 260 U.S. 245, 43 S.Ct. 83; Champlin Refining [317 U.S. 341, 361] Co. v. Corporation Commission 286 U.S. 210, 52 S.Ct. 559, 86 A.L.R. 403; Bayside Fish Flour Co. v. Gentry, 297 U.S. 422, 56 S.Ct. 513. And such regulations of manufacture have been sustained where, aimed at matters of local concern, they had the effect of preventing commerce in the regulated article. Kidd v. Pearson, 128 U.S. 1, 9 S.Ct. 6; Champlin Refining Co. v. Corporation Commission, supra; Sligh v. Kirkwood, 237 U.S. 52, 35 S.Ct. 501; see Capital City Dairy Co. v. Ohio, 183 U.S. 238, 245, 22 S.Ct. 120, 123; Thompson v. Consolidated Gas Utilities Corp., 300 U.S. 55, 77, 57 S.Ct. 364, 374, 375; cf. Bayside Fish Flour Co. v. Gentry, supra. A state is also free to license and tax intrastate buying where the purchaser expects in the usual course of business to resell in interstate commerce. Chassaniol v. Greenwood, 291 U.S. 584, 54 S.Ct. 541. And no case has gone so far as to hold that a state could not license or otherwise regulate the sale of articles within the state because the buyer, after processing and packing them, will, in the normal course of business, sell and ship them in interstate commerce.

All of these cases proceed on the ground that the taxation or regulation involved, however drastically it may affect interstate commerce, is nevertheless not prohibited by the Commerce Clause where the regulation is imposed before any operation of interstate commerce occurs. Applying that test, the regulation here controls the disposition, including the sale and purchase, of raisins before they are processed and packed preparatory to interstate sale and shipment. The regulation is thus applied to transactions wholly intrastate before the raisins are ready for shipment in interstate commerce.

It is for this reason that the present case is to be distinguished from Lemke v. Farmers' Grain Co., 258 U.S. 50, 42 S.Ct. 244, and Shafer v. Farmers' Grain Co., 268 U.S. 189, 45 S.Ct. 481, on which appellee relies. There the state regulation held invalid was of the business of those who purchased grain within the state for immediate shipment out of it. The Court was of opinion that the purchase of the wheat for shipment out of the state without resale or processing was a [317 U.S. 341, 362] part of the interstate commerce. Compare Chassaniol v. Greenwood, supra.

This distinction between local regulation of those who are not engaged in commerce, although the commodity which they produce and sell to local buyers is ultimately destined for interstate commerce, and the regulation of those who engage in the commerce by selling the product interstate, has in general served, and serves here, as a ready means of distinguishing those local activities which, under the Commerce Clause, are the appropriate subject of state regulation despite their effect on interstate commerce. But courts are not confined to so mechanical a test. When Congress has not exerted its power under the Commerce Clause, and state regulation of matters of local concern is so related to interstate commerce that it also operates as a regulation of that commerce, the reconciliation of the power thus granted with that reserved to the state is to be attained by the accommodation of the competing demands of the state and national interests involved. See Di Santo v. Pennsylvania, 273 U.S. 34, 44, 47 S.Ct. 267, 271 (with which compare People of State of California v. Thompson, supra); South Carolina State Highway Dept. v. Barnwell Bros., supra; Milk Control Board v. Eisenberg Farm Products, 306 U.S. 346, 59 S.Ct. 528; Ilinois Natural Gas Co. v. Central Illinois Public Service Comm., 314 U.S. 498, 504, 505 S., 62 S.Ct. 384, 386, 387.

Such regulations by the state are to be sustained, not because they are 'indirect' rather than 'direct', see Di Santo v. Pennsylvania, supra; cf. Wickard v. Filburn, supra, not because they control interstate activities in such a manner as only to affect the commerce rather than to command its operations. But they are to be upheld because upon a consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character and the practical difficulties involved, may never be adequately dealt with [317 U.S. 341, 363] by Congress. Because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause. See Minnesota Rate Cases ( Simpson v. Shepard), supra, 230 U.S. 398 -412, 33 S.Ct. 739, 745, 48 L.R.A.,N.S., 1151, Ann.Cas.1916A, 18; People of State of California v. Thompson, supra, 313 U.S. 113, 61 S.Ct. 932. There may also be, as in the present case, local regulations whose effect upon the national commerce is such as not to conflict but to coincide with a policy which Congress has established with respect to it.

Examination of the evidence in this case and of available data of the raisin industry in California, of which we may take judicial notice, leaves no doubt that the evils attending the production and marketing of raisins

in that state present a problem local in character and urgently demanding state action for the economic protection of those engaged in one of its important industries. 9 Between 1914 and 1920 there was a spectacular rise in price of all types of California grapes, including raisin grapes. The price of raisins reached its peak, $235 per ton, in 1921, and was followed by large increase in acreage with accompanying reduction in price. The price of raisins in most [317 U.S. 341, 364] years since 1922 has ranged from $40 to $60 per ton but acreage continued to increase until 1926 and production reached its peak, 1,433,000 tons of raisin grapes and 290,000 tons of raisins, in 1938. Since 1920 there has been a substantial carry over of 30 to 50% of each year's crop. The result has been that at least since 1934 the industry, with a large increase in acreage and the attendant fall in price, has been unable to market its product and has been compelled to sell at less than parity prices and in some years at prices regarded by students of the industry as less than the cost of production. 10

The history of the industry at least since 1929 is a record of a continuous search for expedients which would stabilize the marketing of the raisin crop and maintain a price standard which would bring fair return to the producers. 11 It is significant of the relation of the local interest in maintaining this program to the national interest in interstate commerce, that throughout the period from 1929 until the adoption of the prorate program for [317 U.S. 341, 365] the 1940 raisin crop, the national government has contributed to these efforts either by its establishment of marketing programs pursuant to Act of Congress or by aiding programs sponsored by the state. Local cooperative market stabilization programs for raisins in 1929 and 1930 were approved by the Federal Farm Board which supported them with large loans. 12 In 1934 a marketing agreement for California raisins was put into effect under 8(2) of the Agricultural Adjustment Act of 1933, as amended, 48 Stat. 528, which authorized the Secretary of Agriculture, in order to effectuate the Act's declared policy of achieving parity prices, to enter into marketing agreements with processors, producers and others engaged in handling agricultural commodities 'in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce'.13 [317 U.S. 341, 366] Raisin Proration Zone No. 1 was organized in the latter part of 1937. No proration program was adopted for the 1937 crop but loans of $1,244,000 were made on raisins of that crop by the Commodity Credit Corporation. 14 In aid of a proration program adopted under the California Act for the 1938 crop, a substantial part of that crop was pledged to the Commodity Credit Corporation as security for a loan of $2,688,000, and was ultimately sold to the Federal Surplus Commodities Corporation for relief distribution. 15 Substantial purchases of raisins of the 1939 crop were also made by Federal Surplus Commodities Corporation, although no proration program was adopted for that year. 16 In aid of the 1940 program, as we have already noted, the Commodity Credit Corporation made loans in excess of $5,000,000, and 33,000 tons of the raisins pledged to it were sold to the Federal Surplus Marketing Administration. 17 [317 U.S. 341, 367] This history shows clearly enough that the adoption of legislative measures to prevent the demoralization of the industry by stabilizing the marketing of the raisin crop is a matter of state as well as national concern and, in the absence of inconsistent Congressional action, is a problem whose solution is peculiarly within the province of the state. In the exercise of its power the state has adopted a measure appropriate to the end sought. The program was not aimed at nor did it discriminate against interstate commerce, although it undoubtedly affected the commerce by increasing the interstate price of raisins and curtailing interstate shipments to some undetermined extent. The effect on the commerce is not greater, and in some instances was far less, than that which this Court has held not to afford a basis for denying to the states the right to pursue a legitimate state end. Cf. Kidd v. Pearson, supra; Sligh v. Kirkwood, supra; Champlain Refining Co. v. Corporation Commission, supra; South Carolina State Highway Department v. Barnwell Bros., supra, and cases cited at page 189, of 303 U.S., at page 516 of 58 S.Ct. 82 L.Ed. 734, and notes 4 and 5; People of State of California v. Thompson, supra, 313 U.S. 113, 115, 61 S.Ct. 932, 933, and cases cited.

In comparing the relative weights of the conflicting local and national interests involved it is significant that Congress, by its agricultural legislation, has recognized the distressed condition of much of the agricultural production of the United States, and has authorized marketing procedures, substantially like the California prorate program, for stabilizing the marketing of agricultural products. Acting under this legislation the Secretary of Agriculture has established a large number of market stabilization programs for agricultural commodities moving in interstate commerce in various parts of the country, including seven affecting California crops. 18 All involved at- [317 U.S. 341, 368] tempts in one way or another to prevent over-production of agricultural products and excessive competition in marketing them, with price stabilization as the ultimate objective. Most if not all had a like effect in restricting shipments and raising or maintaining prices of agricultural commodities moving in interstate commerce.

It thus appears that whatever effect the operation of the California program may have on interstate commerce, it is one which it has been the policy of Congress to aid and encourage through federal agencies in conformity to the Agricultural Marketing Agreement Act, and 302 of the Agricultural Adjustment Act. Nor is the effect on the commerce greater than or substantially different in kind from that contemplated by the stabilization programs authorized by federal statutes. As we have seen, the Agricultural Marketing Agreement Act is applicable to raisins only on the direction of the Secretary of Agriculture who, instead of establishing a federal program has, as the statute authorizes, cooperated in promoting the state program and aided it by substantial federal loans. Hence we cannot say that the effect of the state program on interstate commerce is one which conflicts with Congressional policy or is such as to preclude the state from this exercise of its reserved power to regulate domestic agricultural production.

We conclude that the California prorate program for the 1940 raisin crop is a regulation of state industry of local concern which, in all the circumstances of this case which we have detailed, does not impair national control over the commerce in a manner or to a degree forbidden by the Constitution.

Reversed.

## Footnotes

[ Footnote 1 ] Act of June 5, 1933, ch. 754, p. 1969, Statutes of California of 1933, as amended by chs. 471 and 743, pp. 1526, 2087, Statutes of 1935; ch. 6, p. 39, Extra Session, 1938; chs. 363, 548 and 894, pp. 1702, 1947, 2485, Statutes of 1939; and chs. 603, 1150 and 1186, pp. 2050, 2858, 2943, Statutes of 1941. Its constitutionality under both Federal and State Constitutions was sustained by the California Supreme Court in Agricultural Prorate Commission v. Superior Court, 5 Cal.2d 550, 55 P.2d 495.

[ Footnote 2 ] See also 79 Cong.Rec. 9470, 11149-50, 11153; Hearings Before the Senate Committee on Agriculture and Forestry on S. 1807, (March, 1935) 29, 73; Hearings Before the House Committee on Agriculture (Feb.-March, 1935) 53, 178-9. The Agricultural Marketing Agreement Act of 1937 was for the most part a reenactment of certain provisions of the Agricultural Adjustment Act of 1933, 48 Stat. 31, as amended in 1935, 49 Stat. 753. 10(i) was first introduced in 1935, and reenacted without change in 1937.

[ Footnote 3 ] A 'parity' price is one which will 'give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period'. 7 U. S.C. 602(1), 7 U.S.C.A. 602(1). The parity price is computed by multiplying an index of prices paid by farmers for goods used in farm production, and for family living expenses, together with real

estate taxes and interest on farm indebtedness, by the average price during the base period of the commodity in question. See Dept. of Agriculture, Parity Prices, What They Are and How They Are Calculated (1942). The base period for commodities other than tobacco and potatoes is August 1909-July 1914. However, by 7 U.S.C. 608e, 7 U.S.C.A. 608e, the period of August 1919- July 1929 or a part thereof may be used for any commodity as to which the Secretary finds and proclaims that adequate statistics for the 1909-14 period are not available. By proclamation dated June 26, 1942, the Secretary designated the period 1919-1929 as the base period for raisins. 7 Red.Reg. 4867.

[ Footnote 4 ] The parity price for raisins on June 15, 1942, as published by the Department of Agriculture was $100.51 per ton. Preliminary figures show the average price for the 1941-42 crop to be $80.60. Parity Prices, What They Are and How They are Computed, supra, vii. Parity prices for raisins for previous years are not published. However they may be computed from the base period price of $105.80 and the indices of prices paid by farmers published by the Department of Agriculture in the statistical publications cited infra, note 9. Such computations for 1933 and subsequent years, supplied by the Department of Agriculture, indicate that while the price received by the farmer for the 1940 crop was $57.60 the parity price for 1940 was $80.41 and for 1941 was $86.76. They further indicate that raisin prices have not since 1933 equalled parity and that the field prices for all crops prior to that of 1941 have been from $15 to $40 per ton below parity.

[ Footnote 5 ] The Commodity Credit Corporation was created by Executive Order No. 6340, October 16, 1933. It has been continued in existence by Acts of Congress, 49 Stat. 4; 50 Stat. 5; 53 Stat. 510. By Reorganization Plan No. I, 53 Stat. 1429, approved by Act of Congress, 53 Stat. 813, and effective July 1, 1939, 5 U.S.C.A. following section 133t, the Corporation was transferred to the Department of Agriculture, to be 'administered in such department under the general direction and supervision of the Secretary of Agriculture.' By Executive Order No. 8219, Aug. 7, 1939, 4 Fed.Reg. 3565, exclusive voting rights in its capital stock were vested in the Secretary.

[ Footnote 6 ] The Surplus Marketing Administration was created by Reorganization Plan No. III, 45 Stat. 1232, approved 54 Stat. 231, effective June 30, 1940, 5 U.S.C.A. following section 133t, as a consolidation of the Division of Marketing and Marketing Agreements of the Agricultural Adjustment Administration, and the Federal Surplus Commodities Corporation. The Surplus Commodities Corporation was incorporated on October 4, 1933, under the name of the Federal Surplus Relief Corporation. Its existence as 'an agency of the United States under the direction of the Secretary of Agriculture' was continued by Acts of Congress, 50 Stat. 323; 52 Stat. 38. The members of the Corporation are the Secretary of Agriculture, the Administrator of the Agricultural Adjustment Administration, and the Governor of the Farm Credit Administration.

As successor to the Corporation the Surplus Marketing Administration exercises the authority given by 32 of the Agricultural Adjustment Act of 1935, 7 U.S.C. 612c, 7 U.S.C.A. 612c, to use 30% of annual gross customs receipts to encourage the exportation, and the domestic consumption by persons in low income groups, of agricultural commodities, and to reestablish farmers' purchasing power. As successor to the Division of Markets and Marketing Agreements, the Administration is charged with the enforcement of the Agricultural Marketing Agreement Act of 1937.

[ Footnote 7 ] Report of the President of the Commodity Credit Corporation (1941) 14, 21; Wm. J. Cecil (Zone Agent, Raisin Proration Zone No. 1), The 1940 Raisin Program, 30 Calif. Dept. of Agriculture Bulletin 46.

[ Footnote 8 ] See also Report of the President of the Commodity Credit Corporation (1940) 4, 6.

[ Footnote 9 ] The principal statistical sources are U.S. Tariff Commission, Grapes, Raisins and Wines, Report No. 134, Second Series, issued pursuant to 19 U.S.C. 1332, 19 U.S.C.A. 1332 and the following publications of the U.S. Department of Agriculture: Yearbook of Agriculture (published annually until 1936); Agricultural Statistics (published annually since 1936); Crops and Markets (published quarterly); Season Average Prices and Value of Production, Principal Crops, 1940 and 1941 (Dec. 18, 1941). For general discussions of the economic status of the raisin industry see Grapes, Raisins and Wines, supra; Shear and Gould, Economic Status of the Grape Industry, University of California, Agricultural Experiment Station Bulletin No. 429 (1927); Shear and Howe, Factors Affecting California Raisin Sales and Prices, 1922-29, Giannini Foundation of Agricultural Economics, Paper No. 20 (1931).

[ Footnote 10 ] Studies made under the auspices of the University of California indicate that the cost of production of Thompson Seedless raisins, including the growers' labor, a management charge, depreciation, and interest on investment, is $49.58 per ton on a farm yielding two tons per acre, and $72.07 per ton on a farm yielding 1 ton per acre. A two-ton yield is described as 'good'; a one-ton yield as 'usual'. Adams, Farm Management Crop Manual, University of California Syllabus Series No. 278 ( 1941) 142-5. Another student has computed the cost of production at $53.96 for a two-ton per acre yield, about $65 for a 1.5 ton yield, and $90 for a one-ton yield. Shultis, Standards of Production, Labor, Material and other Costs for Selected Crops and Livestock Enterprises, University of California Extension Service (1938) 13. Field prices for Thompson Seedless raisins were below $49.50 in 1923, 1928, 1932, and 1938; since 1922 they have been at $65.00 or higher in only 5 years, and have only once been as high as $72.00. Grapes, Raisins and Wines, supra, 149.

For parity prices for raisins, see supra, note 4.

[ Footnote 11 ] For discussion of private efforts within the industry prior to 1929 to regulate the marketing of raisins, see Grapes, Raisins and Wines, supra, 153-5.

[ Footnote 12 ] See Annual Report of the Federal Farm Board (1930) 18, 73; id. ( 1931) 59-61, 91; Grapes, Raisins and Wines, supra, 62-64; S. W. Shear, The California Grape Control Plan, Giannini Foundation of Agricultural Economics, Paper No. 22 (1931); Stokdyk and West, The Farm Board (1930) 135-9. Loans of $4,500,000 in 1929 and $6,755,000 in 1930 were made by the Federal Farm Board. Shear, supra, states that the 1930 program, which provided for the formation of a single marketing agency, and the destruction or diversion to by-product use of surplus raisins, 'was designed by the Federal Farm Board'.

The Federal Farm Board was created by 2 of the Agricultural Marketing Act of 1929, 46 Stat. 11, 12 U.S.C.A. 1141a, which authorized the Board to make loans to cooperative associations to aid in 'the effective merchandising of agricultural commodities ...' 7, 12 U.S.C.A . 1141e, so as to achieve the statutory objective of placing agriculture on a 'basis of economic equality with other industries' 1, 12 U.S.C.A. 1141.

[ Footnote 13 ] See U.S. Dept. of Agriculture, Agricultural Adjustment in 1934, 202. The marketing program adopted is published by the Agricultural Adjustment Administration, Department of Agriculture, as Marketing Agreement Series-Agreement No. 44, License Series-License No. 55. It was in effect from May 29, 1934 to Sept. 14, 1935. The agreement provided for the creation of a control board on which representatives of packers and growers should have an equal voice. Subject to the approval of the

Secretary of Agriculture the control board could fix minimum prices to be paid growers and require a percentage of the crop to be delivered to the control board. 15% of the 1934 crop was required to be delivered to the board, and prices for that crop were fixed at $60, $65 and $70 per ton for Muscat, Sultana, and Thompson Seedless raisins respectively.

[ Footnote 14 ] Report of the President of the Commodity Credit Corporation (1940) 16. These raisins were ultimately sold to the Federal Surplus Commodities Corporation for relief distribution. Ibid.; Report of the Federal Surplus Commodities Corporation (1938) 16.

[ Footnote 15 ] Report of the President of the Commodity Credit Corporation (1940) 16; Report of the Associate Administrator of the Agricultural Adjustment Administration in Charge of the Division of Marketing and Marketing Agreements, and the President of the Federal Surplus Commodities Corporation (1939) 52. The federal loan was conditioned upon the adoption of a state proration program by which 20% of the crop was delivered into a stabilization pool.

[ Footnote 16 ] Cecil, the 1940 Raisin Proration Program, supra, 48; Report of the Federal Surplus Commodities Corporation (1940) 6.

[ Footnote 17 ] The Commodity Credit Corporation similarly made loans on the 1937, 1938, and 1940 crops of dried prunes, the loans on the 1938 and 1940 crops being in aid of proration programs which were very similar to those adopted for raisins. Report of the President of the Commodity Credit Corporation (1940) 15, 21, id. (1941) 13-14, 21; Report of the Surplus Mar keting Administration (1941) 33-4.

[ Footnote 18 ] Twenty-eight such programs affect-milk, and nineteen affecting other agricultural commodities, were in effect during the fiscal year ending June 30, 1941. Report of the Surplus Marketing Administration (1941) pp. 7, 12. For discussions of the nature and purpose of these programs see the annual reports of the Agricultural Adjustment Administration; Nourse, Marketing Agreements under the A.A.A. (1935).

# ATTACHMENT E

# U.S. Supreme Court

## COMMUNITY COMMUNICATIONS CO., v. BOULDER, 455 U.S. 40 (1982)

**455 U.S. 40**

**COMMUNITY COMMUNICATIONS CO., INC. v. CITY OF BOULDER, COLORADO, ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT**

**No. 80-1350.**

**Argued October 13, 1981
Decided January 13, 1982**

Respondent city of Boulder is a "home rule" municipality, granted by the Colorado Constitution extensive powers of self-government in local and municipal matters. Petitioner is the assignee of a permit granted by a city ordinance to conduct a cable television business within the city limits. Originally, only limited service within a certain area of the city could be provided by petitioner, but improved technology offered petitioner an opportunity to expand its business into other areas, and also offered opportunities to potential competitors, one of whom expressed interest in obtaining a permit to provide competing service. The City Council then enacted an "emergency" ordinance prohibiting petitioner from expanding its business for three months, during which time the Council was to draft a model cable television ordinance and to invite new businesses to enter the market under the terms of that ordinance. Petitioner filed suit in Federal District Court, alleging that such a restriction would violate 1 of the Sherman Act, and seeking a preliminary injunction to prevent the city from restricting petitioner's proposed expansion. The city responded that its moratorium ordinance could not be violative of the antitrust laws because, inter alia, the city enjoyed antitrust immunity under the "state action" doctrine of Parker v. Brown, 317 U.S. 341 . The District Court held that the Parker exemption was inapplicable and that the city was therefore subject to antitrust liability. Accordingly, the District Court issued a preliminary injunction. The Court of Appeals reversed, holding that the city's action satisfied the criteria for a Parker exemption.

*Held:*

Boulder's moratorium ordinance is not exempt from antitrust scrutiny under the Parker doctrine. Pp. 48-57.

(a) The ordinance cannot be exempt from such scrutiny unless it constitutes either the action of the State itself in its sovereign capacity or municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy. Pp. 48-51.

(b) The Parker "state action" exemption reflects Congress' intention to embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under the Federal Constitution. But this principle is inherently limited: Ours is a [455 U.S. 40, 41] "dual system of government," Parker, supra, at 351, which has no place for sovereign cities. Here, the direct delegation of powers to the city through the Home Rule Amendment to the Colorado Constitution does not render the cable television moratorium ordinance an "act of government" performed by the city acting as the State in local matters so as to meet Parker's "state action" criterion. Pp. 52-54.

(c) Nor is the requirement of "clear articulation and affirmative expression" of a state policy fulfilled here by the Home Rule Amendment's "guarantee of local autonomy," since the State's position is one of mere neutrality respecting the challenged moratorium ordinance. This case involves city action in the absence of any regulation by the State, and such action cannot be said to further or implement any clearly articulated or affirmatively expressed state policy. Pp. 54-56.

(d) Respondents' argument that denial of the Parker exemption in this case will have serious adverse consequences for cities and will unduly burden the federal courts is simply an attack upon the wisdom of the longstanding congressional commitment to the policy of free markets and open competition embodied in the antitrust laws, which laws apply to municipalities not acting in furtherance of clearly articulated and affirmatively expressed state policy. Pp. 56-57.

630 F.2d 704, reversed and remanded.

BRENNAN, J., delivered the opinion of the Court, in which MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined. STEVENS, J., filed a concurring opinion, post, p. 58. REHNQUIST, J., filed a dissenting opinion, in which BURGER, C. J., and O'CONNOR, J., joined, post, p. 60. WHITE, J., took no part in the consideration or decision of the case.

Harold R. Farrow argued the cause for petitioner. With him on the briefs were Thomas A. Seaton and Robert E. Youle.

Jeffrey H. Howard argued the cause for respondents. With him on the brief were Kathleen A. McGinn, Dale R. Harris, Bruce T. Reese, Joseph N. de Raismes, and Alan E. Boles, Jr.

Thomas P. McMahon, Assistant Attorney General of Colorado, argued the cause for the State of Colorado et al. as amici curiae urging reversal. With him on the brief were J. D. MacFarlane, Attorney General of Colorado, Mary J. Mullarkey, Solicitor General, and B. Lawrence Theis, First Assistant Attorney General; Wilson L. Condon, Attorney [455 U.S. 40, 42] General of Alaska, and Louise E. Ma and Mark E. Ashburn, Assistant Attorneys General; Steve Clark, Attorney General of Arkansas, and David L. Williams, Deputy Attorney General; Richard S. Gebelein, Attorney General of Delaware, and Robert P. Lobue, Deputy Attorney General; Tany S. Hong, Attorney General of Hawaii, and Shelton G. W. Jim On, Deputy Attorney General; Tyrone C. Fahner, Attorney General of Illinois, and Thomas M. Genovese, Assistant Attorney General; Thomas J. Miller, Attorney General of Iowa, and John R. Perkins, Assistant Attorney General; Robert T. Stephan, Attorney General of Kansas, and Wayne E. Hundley, Deputy Attorney General; Richard S. Cohen, Attorney General of Maine; Stephen H. Sachs, Attorney General of Maryland, and Charles O. Monk II, Assistant Attorney General; Warren R. Spannaus, Attorney General of Minnesota, and Stephen P. Kilgriff, Special Assistant Attorney General; John Ashcroft, Attorney General of Missouri, and William Newcomb, Assistant Attorney General; Mike Greely, Attorney General of Montana, and Jerome J. Cate; Paul L. Douglas, Attorney General of Nebraska, and Dale A. Comer, Assistant Attorney General; Jeff Bingaman, Attorney General of New Mexico, and James A. Wechsler and Richard H. Levin, Assistant Attorneys General; Robert Abrams, Attorney General of New York, and Lloyd Constantine, Assistant Attorney General; William J. Brown, Attorney General of Ohio, and Eugene F. McShane, Assistant Attorney General; LeRoy S. Zimmerman, Attorney General of Pennsylvania, and Eugene F. Waye and John L. Shearburn, Deputy Attorneys General; Dennis J. Roberts II, Attorney General of Rhode Island, and Patrick J. Quinlan, Special Assistant Attorney General; Mark White, Attorney General of Texas, and Linda A. Aaker, Assistant Attorney General; John J. Easton, Jr., Attorney General of Vermont, and Jay I. Ashman and Glenn A. Jarrett, Assistant Attorneys General; Chauncey H. Browning, Attorney General of West

Virginia, [455 U.S. 40, 43] and Charles G. Brown, Deputy Attorney General; and Bronson C. La Follette, Attorney General of Wisconsin, and Michael L. Zaleski, Assistant Attorney General. *

[ Footnote * ] J. D. MacFarlane, Attorney General of Colorado, Richard F. Hennessey, Deputy Attorney General, Mary J. Mullarkey, Solicitor General, B. Lawrence Theis, First Assistant Attorney General, and Thomas P. McMahon, Assistant Attorney General, filed a brief for the State of Colorado as amicus curiae urging reversal. Briefs of amici curiae urging affirmance were filed by Bingham Kennedy and Howard J. Gan for the Cable Television Information Center; by Robert D. Pritt, John D. Cummins, and Glenn M. Young for the City of Akron, Ohio, et al.; by Burt Pines, James A. Doherty, and John F. Haggerty for the City of Los Angeles; by Susan K. Griffiths for the Colorado Municipal League; by Roger F. Cutler, John Dekker, James B. Brennan, Henry W. Underhill, Jr., and Benjamin L. Brown for the National Institute of Municipal Law Officers; and by Ross D. Davis, Howard W. Fogt, Jr., Jay N. Varon, and Catherine B. Klarfeld for the National League of Cities.

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented in this case, in which the District Court for the District of Colorado granted preliminary injunctive relief, is whether a "home rule" municipality, granted by the state constitution extensive powers of self-government in local and municipal matters, enjoys the "state action" exemption from Sherman Act liability announced in Parker v. Brown, 317 U.S. 341 (1943).

## I

Respondent city of Boulder is organized as a "home rule" municipality under the Constitution of the State of Colorado. 1 The city is thus entitled to exercise "the full right of self-government in both local and municipal matters," and with respect to such matters the City Charter and ordinances [455 U.S. 40, 44] supersede the laws of the State. Under that Charter, all municipal legislative powers are exercised by an elected City Council. 2 In 1964 the City Council enacted an ordinance granting to Colorado Televents, Inc., a 20-year, revocable, nonexclusive permit to conduct a cable television business within the city limits. This permit was assigned to petitioner in 1966, and since that time petitioner has provided cable television service to the University Hill area of Boulder, an area where some 20% of the city's population lives, and where, for geographical reasons, broadcast television signals cannot be received.

From 1966 until February 1980, due to the limited service that could be provided with the technology then available, petitioner's service consisted essentially of retransmissions of programming broadcast from Denver and Cheyenne, Wyo. Petitioner's market was therefore confined to the University Hill area. However, markedly improved technology became available in the late 1970's, enabling petitioner to offer many more channels of entertainment than could be provided by local broadcast television. 3 Thus presented with an opportunity [455 U.S. 40, 45] to expand its business into other areas of the city, petitioner in May 1979 informed the City Council that it planned such an expansion. But the new technology offered opportunities to potential competitors, as well, and in July 1979 one of them, the newly formed Boulder Communications Co. (BCC), 4 also wrote to the City Council, expressing its interest in obtaining a permit to provide competing cable television service throughout the city. 5

The City Council's response, after reviewing its cable television policy, 6 was the enactment of an "emergency" ordinance [455 U.S. 40, 46] prohibiting petitioner from expanding its business into other areas

of the city for a period of three months. 7 The City Council announced that during this moratorium it planned to draft a model cable television ordinance and to invite new businesses to enter the Boulder market under its terms, but that the moratorium was necessary because petitioner's continued expansion during the drafting of the model ordinance would discourage potential competitors from entering the market. 8

Petitioner filed this suit in the United States District Court for the District of Colorado, and sought, inter alia, a preliminary injunction to prevent the city from restricting petitioner's [455 U.S. 40, 47] proposed business expansion, alleging that such a restriction would violate 1 of the Sherman Act. 9 The city responded that its moratorium ordinance could not be violative of the antitrust laws, either because that ordinance constituted an exercise of the city's police powers, or because Boulder enjoyed antitrust immunity under the Parker doctrine. The District Court considered the city's status as a home rule municipality, but determined that that status gave autonomy to the city only in matters of local concern, and that the operations of cable television embrace "wider concerns, including interstate commerce . . . [and] the First Amendment rights of communicators." 485 F. Supp. 1035, 1038-1039 (1980). Then, assuming, arguendo, that the ordinance was within the city's authority as a home rule municipality, the District Court considered City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 (1978), and concluded that the Parker exemption was "wholly inapplicable," and that the city was therefore subject to antitrust liability. 485 F. Supp., at 1039. 10 Petitioner's motion for a preliminary injunction was accordingly granted.

On appeal, a divided panel of the United States Court of Appeals for the Tenth Circuit reversed. 630 F.2d 704 (1980). The majority, after examining Colorado law, rejected the District Court's conclusion that regulation of the cable television business was beyond the home rule authority [455 U.S. 40, 48] of the city. Id., at 707. The majority then addressed the question of the city's claimed Parker exemption. It distinguished the present case from City of Lafayette on the ground that, in contrast to the municipally operated revenueproducing utility companies at issue there, "no proprietary interest of the City is here involved." 630 F.2d, at 708. After noting that the city's regulation "was the only control or active supervision exercised by state or local government, and . . . represented the only expression of policy as to the subject matter," id., at 707, the majority held that the city's actions therefore satisfied the criteria for a Parker exemption, 630 F.2d, at 708. 11 We granted certiorari, 450 U.S. 1039 (1981). We reverse.

## II

## A

Parker v. Brown, 317 U.S. 341 (1943), addressed the question whether the federal antitrust laws prohibited a State, in the exercise of its sovereign powers, from imposing certain anticompetitive restraints. These took the form of a "marketing program" adopted by the State of California for the 1940 raisin crop; that program prevented appellee from freely marketing his crop in interstate commerce. Parker noted that California's program "derived its authority . . . [455 U.S. 40, 49] from the legislative command of the state," id., at 350, and went on to hold that the program was therefore exempt, by virtue of the Sherman Act's own limitations, from antitrust attack:

> "We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government in which, under the Constitution, the states are sovereign, save only

as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." Id., at 350-351.

The availability of this exemption to a State's municipalities was the question presented in City of Lafayette, supra. In that case, petitioners were Louisiana cities empowered to own and operate electric utility systems both within and beyond their municipal limits. Respondent brought suit against petitioners under the Sherman Act, alleging that they had committed various antitrust offenses in the conduct of their utility systems, to the injury of respondent. Petitioners invoked the Parker doctrine as entitling them to dismissal of the suit. The District Court accepted this argument and dismissed. But the Court of Appeals for the Fifth Circuit reversed, holding that a "subordinate state governmental body is not ipso facto exempt from the operation of the antitrust laws," City of Lafayette v. Louisiana Power & Light Co., 532 F.2d 431, 434 (1976) (footnote omitted), and directing the District Court on remand to examine "whether the state legislature contemplated a certain type of anticompetitive restraint," ibid. 12 [455 U.S. 40, 50]

This Court affirmed. In doing so, a majority rejected at the outset petitioners' claim that, quite apart from Parker, "Congress never intended to subject local governments to the antitrust laws." 435 U.S., at 394. A plurality opinion for four Justices then addressed petitioners' argument that Parker, properly construed, extended to "all governmental entities, whether state agencies or subdivisions of a State, . . . simply by reason of their status as such." 435 U.S., at 408. The plurality opinion rejected this argument, after a discussion of Parker, Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975), and Bates v. State Bar of Arizona, 433 U.S. 350 (1977). 13 These precedents were construed as holding that the Parker exemption reflects the federalism principle that we are a Nation of States, a principle that makes no accommodation for sovereign subdivisions of States. The plurality opinion said:

> "Cities are not themselves sovereign; they do not receive all the federal deference of the States that create them. Parker's limitation of the exemption to 'official action directed by a state,' is consistent with the fact that the States' subdivisions generally have not been treated as [455 U.S. 40, 51] equivalents of the States themselves. In light of the serious economic dislocation which could result if cities were free to place their own parochial interests above the Nation's economic goals reflected in the antitrust laws, we are especially unwilling to presume that Congress intended to exclude anticompetitive municipal action from their reach." 435 U.S., at 412-413 (footnote and citations omitted).

The opinion emphasized, however, that the State as sovereign might sanction anticompetitive municipal activities and thereby immunize municipalities from antitrust liability. Under the plurality's standard, the Parker doctrine would shield from antitrust liability municipal conduct engaged in "pursuant to state policy to displace competition with regulation or monopoly public service." 435 U.S., at 413. This was simply a recognition that a State may frequently choose to effect its policies through the instrumentality of its cities and towns. It was stressed, however, that the "state policy" relied upon would have to be "clearly articulated and affirmatively expressed." Id., at 410. This standard has since been adopted by a majority of the Court. New Motor Vehicle Board of California v. Orrin W. Fox Co., 439 U.S. 96, 109 (1978); California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 105 (1980). 14 [455 U.S. 40, 52]

## B

Our precedents thus reveal that Boulder's moratorium ordinance cannot be exempt from antitrust scrutiny unless it constitutes the action of the State of Colorado itself in its sovereign capacity, see Parker, or unless

it constitutes municipal action in furtherance or implementation of clearly articulated and affirmatively expressed state policy, see City of Lafayette, Orrin W. Fox Co., and Midcal. Boulder argues that these criteria are met by the direct delegation of powers to municipalities through the Home Rule Amendment to the Colorado Constitution. It contends that this delegation satisfies both the Parker and the City of Lafayette standards. We take up these arguments in turn.

**(1)**

Respondent city's Parker argument emphasizes that through the Home Rule Amendment the people of the State of Colorado have vested in the city of Boulder "'every power theretofore possessed by the legislature . . . in local and municipal affairs.'" 15 The power thus possessed by Boulder's [455 U.S. 40, 53] City Council assertedly embraces the regulation of cable television, which is claimed to pose essentially local problems. 16 Thus, it is suggested, the city's cable television moratorium ordinance is an "act of government" performed by the city acting as the State in local matters, which meets the "state action" criterion of Parker. 17

We reject this argument: it both misstates the letter of the law and misunderstands its spirit. The Parker state-action exemption reflects Congress' intention to embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution. But this principle contains its own limitation: Ours is a "dual system of government," Parker, 317 U.S., at 351 (emphasis added), which has no place for sovereign cities. As this Court stated long ago, all sovereign authority "within the geographical 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 organized bodies with limited legislative [455 U.S. 40, 54] functions, but they are all derived from, or exist in, subordination to one or the other of these." United States v. Kagama, 118 U.S. 375, 379 (1886) (emphasis added).

The dissent in the Court of Appeals correctly discerned this limitation upon the federalism principle: "We are a nation not of 'city-states' but of States." 630 F.2d, at 717. Parker itself took this view. When Parker examined Congress' intentions in enacting the antitrust laws, the opinion, as previously indicated, noted: "[N]othing in the language of the Sherman Act or in its history . . . suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. . . . [And] an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." 317 U.S., at 350 -351 (emphasis added). Thus Parker recognized Congress' intention to limit the state-action exemption based upon the federalism principle of limited state sovereignty. City of Lafayette, Orrin W. Fox Co., and Midcal reaffirmed both the vitality and the intrinsic limits of the Parker state-action doctrine. It was expressly recognized by the plurality opinion in City of Lafayette that municipalities "are not themselves sovereign," 435 U.S., at 412 , and that accordingly they could partake of the Parker exemption only to the extent that they acted pursuant to a clearly articulated and affirmatively expressed state policy, 435 U.S., at 413 . The Court adopted this view in Orrin W. Fox Co., 439 U.S., at 109 , and Midcal, 445 U.S., at 105 . We turn then to Boulder's contention that its actions were undertaken pursuant to a clearly articulated and affirmatively expressed state policy.

**(2)**

Boulder first argues that the requirement of "clear articulation and affirmative expression" is fulfilled by the Colorado Home Rule Amendment's "guarantee of local autonomy." It contends, quoting from City of Lafayette, 435 U.S., at 394 , [455 U.S. 40, 55] 415, that by this means Colorado has "comprehended within the powers granted" to Boulder the power to enact the challenged ordinance, and that Colorado has thereby "contemplated" Boulder's enactment of an anticompetitive regulatory program. Further, Boulder contends that it may be inferred, "from the authority given" to Boulder "to operate in a particular area" - here, the asserted home rule authority to regulate cable television - "that the legislature contemplated the kind of action complained of." (Emphasis supplied.) Boulder therefore concludes that the "adequate state mandate" required by City of Lafayette, supra, at 415, is present here. 18

But plainly the requirement of "clear articulation and affirmative expression" is not satisfied when the State's position is one of mere neutrality respecting the municipal actions challenged as anticompetitive. A State that allows its municipalities to do as they please can hardly be said to have "contemplated" the specific anticompetitive actions for which municipal liability is sought. Nor can those actions be truly described as "comprehended within the powers granted," since the term, "granted," necessarily implies an affirmative addressing of the subject by the State. The State did not do so here: The relationship of the State of Colorado to Boulder's moratorium ordinance is one of precise neutrality. As the majority in the Court of Appeals below acknowledged: "[W]e are here concerned with City action in the absence of any regulation whatever by the State of Colorado. Under these circumstances there is no interaction of state and local regulation. We have only the action or exercise of authority by the City." 630 F.2d, at 707. Indeed, Boulder argues that [455 U.S. 40, 56] as to local matters regulated by a home rule city, the Colorado General Assembly is without power to act. Cf. City of Lafayette, supra, at 414, and n. 44. Thus in Boulder's view, it can pursue its course of regulating cable television competition, while another home rule city can choose to prescribe monopoly service, while still another can elect free-market competition: and all of these policies are equally "contemplated," and "comprehended within the powers granted." Acceptance of such a proposition - that the general grant of power to enact ordinances necessarily implies state authorization to enact specific anticompetitive ordinances - would wholly eviscerate the concepts of "clear articulation and affirmative expression" that our precedents require.

## III

Respondents argue that denial of the Parker exemption in the present case will have serious adverse consequences for cities, and will unduly burden the federal courts. But this argument is simply an attack upon the wisdom of the longstanding congressional commitment to the policy of free markets and open competition embodied in the antitrust laws. 19 Those laws, like other federal laws imposing civil or criminal sanctions upon "persons," of course apply to municipalities as well as to other corporate entities. 20 Moreover, judicial enforcement [455 U.S. 40, 57] of Congress' will regarding the state-action exemption renders a State "no less able to allocate governmental power between itself and its political subdivisions. It means only that when the State itself has not directed or authorized an anticompetitive practice, the State's subdivisions in exercising their delegated power must obey the antitrust laws." City of Lafayette, 435 U.S., at 416 . As was observed in that case:

> "Today's decision does not threaten the legitimate exercise of governmental power, nor does it preclude municipal government from providing services on a monopoly basis. Parker and its progeny make clear that a State properly may . . . direct or authorize its instrumentalities to act in a way which, if it did not reflect state policy, would be inconsistent with the antitrust laws. . . .

[A]ssuming that the municipality is authorized to provide a service on a monopoly basis, these limitations on municipal action will not hobble the execution of legitimate governmental programs." Id., at 416-417 (footnote omitted).

The judgment of the Court of Appeals is reversed, and the action is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE WHITE took no part in the consideration or decision of this case.

## Footnotes

[ Footnote 1 ] The Colorado Home Rule Amendment, Colo. Const., Art. XX, 6, provides in pertinent part: "The people of each city or town of this state, having a population of two thousand inhabitants . . ., are hereby vested with, and they shall always have, power to make, amend, add to or replace the charter of said city or [455 U.S. 40, 44] town, which shall be its organic law and extend to all its local and municipal matters. "Such charter and the ordinances made pursuant thereto in such matters shall supersede within the territorial limits and other jurisdiction of said city or town any law of the state in conflict therewith. . . . . "It is the intention of this article to grant and confirm to the people of all municipalities coming within its provisions the full right of self-government in both local and municipal matters. . . . "The statutes of the state of Colorado, so far as applicable, shall continue to apply to such cities and towns, except insofar as superseded by the charters of such cities and towns or by ordinance passed pursuant to such charters."

[ Footnote 2 ] Boulder, Colo., Charter 11 (1965 rev. ed.).

[ Footnote 3 ] The District Court below noted: "Up to late 1975, cable television throughout the country was concerned primarily with retransmission of television signals to areas which did not have normal reception, with some special local weather and news services [455 U.S. 40, 45] originated by the cable operators. During the late 1970's however, satellite technology impacted the industry and prompted a rapid, almost geometric rise in its growth. As earth stations became less expensive, and 'Home Box Office' companies developed, the public response to cable television greatly increased the market demand for such expanded services. "The 'state of the art' presently allows for more than 35 channels, including movies, sports, FM radio, and educational, children's, and religious programming. The institutional uses for cable television are fast increasing, with technology for two-way service capability. Future potential for cable television is referred to as 'blue sky', indicating that virtually unlimited technological improvements are still expected." 485 F. Supp. 1035, 1036-1037 (1980).

[ Footnote 4 ] BCC was a defendant below, and is a respondent here.

[ Footnote 5 ] Regarding this letter, the District Court noted that "BCC outlined a proposal for a new system, acknowledging the presence of [petitioner] in Boulder but stating that '(w)hatever action the City takes in regard to [petitioner], it is the plan of BCC to begin building its system as soon as feasible after the City grants BCC its permit.'" Id., at 1037.

[ Footnote 6 ] "The . . . City Council . . . initiat[ed] a review and reconsideration of cable television in view of the many changes in the industry since . . . 1964 . . . . Accordingly, they hired a consultant, . . . and held a number of study meetings to develop a governmental response to these changes. The primary thrust of [the consultant's] advice was that the City should be concerned about the tendency of a cable system to

become a natural monopoly. Much discussion in the City Council centered around a supposed unfair advantage that [petitioner] had because it was already operating in Boulder. Members of the Council, and the City Manager, expressed fears that [petitioner might] not be the best cable operator for Boulder, but would nonetheless be the only operator because of its head start in the area. The Council wanted to create a situation in which other cable [455 U.S. 40, 46] companies could make offers and not be hampered by the possibility that [petitioner] would build out the whole area before they even arrived." Ibid.

[ Footnote 7 ] The preamble to this ordinance offered the following declarations as justification for its enactment: "[C]able television companies have within recent months displayed interest in serving the community and have requested the City Council to grant [them] permission to use the public right-of-way in providing that service; and ". . . the present permittee, [petitioner], has indicated that it intends to extend its services in the near future . . .; and ". . . the City Council finds that such an extension . . . would result in hindering the ability of other companies to compete in the Boulder market; and ". . . the City Council intends to adopt a model cable television permit ordinance, solicit applications from interested cable television companies, evaluate such applications, and determine whether or not to grant additional permits . . . [within] 3 months, and finds that an extension of service by [petitioner] would result in a disruption of this application and evaluation process; and ". . . the City Council finds that placing temporary geographical limitations upon the operations of [petitioner] would not impair the present services offered by [it] to City of Boulder residents, and would not impair [its] ability . . . to improve those services within the area presently served by it." Boulder, Colo., Ordinance No. 4473 (1979).

[ Footnote 8 ] The Council reached this conclusion despite BCC's statement to the contrary, see n. 5, supra.

[ Footnote 9 ] 26 Stat. 209, as amended, 15 U.S.C. 1. Section 1 of the Sherman Act provides in pertinent part that "[e]very contract, combination . . ., or conspiracy, in restraint of trade or commerce among the several States . . ., is declared to be illegal." Petitioner also alleged, inter alia, that the city and BCC were engaged in a conspiracy to restrict competition by substituting BCC for petitioner. The District Court noted that although petitioner had gathered some circumstantial evidence that might indicate such a conspiracy, the evidence was insufficient to establish a probability that petitioner would prevail on this claim. 485 F. Supp., at 1038.

[ Footnote 10 ] The District Court also held that no per se antitrust violation appeared on the record before it, and that petitioner was not protected by the First Amendment from all regulation attempted by the city. Id., at 1039-1040.

[ Footnote 11 ] The majority cited California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), as support for its reading of City of Lafayette, and concluded "that City of Lafayette is not applicable to a situation wherein the governmental entity is asserting a governmental rather than proprietary interest, and that instead the Parker-Midcal doctrine is applicable to exempt the City from antitrust liability." 630 F.2d, at 708. The dissent urged affirmance, agreeing with the District Court's analysis of the antitrust exemption issue. Id., at 715-718 (Markey, C. J., United States Court of Customs and Patent Appeals, sitting by designation, dissenting). The dissent also considered the city's actions to violate "[c]ommon principles of contract law and equity," id., at 715, as well as the First Amendment rights of petitioner and its customers, both actual and potential, id., at 710-714. The petition for certiorari did not present the First Amendment question, and we do not address it in this opinion.

[ Footnote 12 ] The Court of Appeals described the applicable standard as follows: "[I]t is not necessary to point to an express statutory mandate for each act which is alleged to violate the antitrust laws. It will suffice if the [455 U.S. 40, 50] challenged activity was clearly within the legislative intent. Thus, a trial judge may ascertain, from the authority given a governmental entity to operate in a particular area, that the legislature contemplated the kind of action complained of. On the other hand, the connection between a legislative grant of power and the subordinate entity's asserted use of that power may be too tenuous to permit the conclusion that the entity's intended scope of activity encompassed such conduct. . . . A district judge's inquiry on this point should be broad enough to include all evidence which might show the scope of legislative intent." 532 F.2d, at 434-435 (footnote and citation omitted).

[ Footnote 13 ] THE CHIEF JUSTICE, in a concurring opinion, focused on the nature of the challenged activity rather than the identity of the parties to the suit. 435 U.S., at 420 . He distinguished between "the proprietary enterprises of municipalities," id., at 422 (footnote omitted), and their "traditional government functions," id., at 424, and viewed the Parker exemption as extending to municipalities only when they engaged in the latter.

[ Footnote 14 ] In Midcal we held that a California resale price maintenance system, affecting all wine producers and wholesalers within the State, was not entitled to exemption from the antitrust laws. In so holding, we explicitly adopted the principle, expressed in the plurality opinion in City of Lafayette, that anticompetitive restraints engaged in by state municipalities or subdivisions must be "clearly articulated and affirmatively expressed as state policy" in order to gain an antitrust exemption. Midcal, 445 U.S., at 105 . The price maintenance system at issue in Midcal was denied such an exemption because it failed to satisfy the "active state supervision" criterion described in City of Lafayette, 435 U.S., at 410 , as underlying our decision in Bates v. State Bar of Arizona, 433 U.S. 350 (1977). Because we conclude in the present case that Boulder's moratorium ordinance does [455 U.S. 40, 52] not satisfy the "clear articulation and affirmative expression" criterion, we do not reach the question whether that ordinance must or could satisfy the "active state supervision" test focused upon in Midcal.

[ Footnote 15 ] Denver Urban Renewal Authority v. Byrne, 618 P.2d 1374, 1381 (1980), quoting Four-County Metropolitan Capital Improvement District v. Board of County Comm'rs, 149 Colo. 284, 294, 369 P.2d 67, 72 (1962) (emphasis in original). The Byrne court went on to state that "by virtue of Article XX, a home rule city is not inferior to the General Assembly concerning its local and municipal affairs." 618 P.2d, at 1381. Petitioner strongly disputes respondent city's premise and its construction of Byrne, citing City and County of Denver v. Sweet, 138 Colo. 41, 48, 329 P.2d 441, 445 (1958), City and County of Denver v. Tihen, 77 Colo. 212, 219-220, 235 P. 777, 780-781 (1925), and 2 E. McQuillin, Municipal Corporations 9.08a, p. 638 (1979), as contrary authority. But it is not for us to determine the correct view on this issue as a matter of state law. Parker affords an exemption from federal antitrust laws, based upon Congress' intentions respecting the scope of those laws. Thus the availability of the Parker exemption is and must be a matter of federal law.

[ Footnote 16 ] Boulder cites the decision of the Colorado Supreme Court in Manor Vail Condominium Assn. v. Vail, 199 Colo. 62, 66-67, 604 P.2d 1168, 1171-1172 (1980), as authority for the proposition that the regulation of cable television is a local matter. Petitioner disputes this proposition and Boulder's reading of Manor Vail, citing in rebuttal United States v. Southwestern Cable Co., 392 U.S. 157, 168 -169 (1968), holding that cable television systems are engaged in interstate communication. In this contention, petitioner is joined by the State of Colorado, which filed an amicus brief in support of petitioner. For the purposes of

this decision we will assume, without deciding, that respondent city's enactment of the moratorium ordinance under challenge here did fall within the scope of the power delegated to the city by virtue of the Colorado Home Rule Amendment.

[ Footnote 17 ] Respondent city urges that the only distinction between the present case and Parker is that here the "act of government" is imposed by a home rule city rather than by the state legislature. Under Parker and Colorado law, the argument continues, this is a distinction without a difference, since in the sphere of local affairs home rule cities in Colorado possess every power once held by the state legislature.

[ Footnote 18 ] Boulder also contends that its moratorium ordinance qualifies for antitrust immunity under the test set forth by THE CHIEF JUSTICE in his City of Lafayette concurrence, see n. 13, supra, because the challenged activity is clearly a "traditional government function," rather than a "proprietary enterprise."

[ Footnote 19 ] "Antitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms. And the freedom guaranteed each and every business, no matter how small, is the freedom to compete - to assert with vigor, imagination, devotion, and ingenuity whatever economic muscle it can muster." United States v. Topco Associates, Inc., 405 U.S. 596, 610 (1972).

[ Footnote 20 ] See City of Lafayette, 435 U.S., at 394 -397. We hold today only that the Parker v. Brown exemption was no bar to the District Court's grant of injunctive relief. This case's preliminary posture makes it unnecessary for us to consider other issues regarding the applicability of the antitrust laws in the context of suits by private litigants [455 U.S. 40, 57] against government defendants. As we said in City of Lafayette, "[i]t may be that certain activities which might appear anticompetitive when engaged in by private parties, take on a different complexion when adopted by a local government." 435 U.S., at 417 , n. 48. Compare, e. g., National Society of Professional Engineers v. United States, 435 U.S. 679, 687 -692 (1978) (considering the validity of anticompetitive restraint imposed by private agreement), with Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 133 (1978) (holding that anticompetitive effect is an insufficient basis for invalidating a state law). Moreover, as in City of Lafayette, supra, at 401-402, we do not confront the issue of remedies appropriate against municipal officials. [455 U.S. 40, 58]

JUSTICE STEVENS, concurring.

The Court's opinion, which I have joined, explains why the city of Boulder is not entitled to an exemption from the antitrust laws. The dissenting opinion seems to assume that the Court's analysis of the exemption issue is tantamount to a holding that the antitrust laws have been violated. The assumption is not valid. The dissent's dire predictions about the consequences of the Court's holding should therefore be viewed with skepticism. 1

In City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 , we held that municipalities' activities as providers of services are not exempt from the Sherman Act. The reasons for denying an exemption to the city of Lafayette are equally applicable to the city of Boulder, even though Colorado is a home-rule State. We did not hold in City of Lafayette that the city had violated the antitrust laws. Moreover, that question is quite different from the question whether the city of Boulder violated the Sherman Act because the

character of their respective activities differs. In both cases, the violation issue is separate and distinct from the exemption issue.

A brief reference to our decision in Cantor v. Detroit Edison Co., 428 U.S. 579 , will identify the invalidity of the dissent's assumption. In that case, the Michigan Public Utility Commission had approved a tariff that required the Detroit Edison Co. to provide its customers free light bulbs. The company contended that its light bulb distribution program was therefore exempt from the antitrust laws on the authority of Parker v. Brown, 317 U.S. 341 . See 428 U.S., at [455 U.S. 40, 59] 592. The Court rejected the company's interpretation of Parker and held that the plaintiff could proceed with his antitrust attack against the company's program. We surely did not suggest that the members of the Michigan Public Utility Commission who had authorized the program under attack had thereby become parties to a violation of the Sherman Act. On the contrary, the plurality opinion reviewed the Parker case in great detail to emphasize the obvious difference between a charge that public officials have violated the Sherman Act and a charge that private parties have done so. 2

It would be premature at this stage of the litigation to comment on the question whether petitioner will be able to establish that respondents have violated the antitrust laws. The [455 U.S. 40, 60] answer to that question may depend on factual and legal issues that must and should be resolved in the first instance by the District Court. In accordance with my belief that "the Court should adhere to its settled policy of giving concrete meaning to the general language of the Sherman Act by a process of case-by-case adjudication of specific controversies," 428 U.S., at 603 (opinion of STEVENS, J.), I offer no gratuitous advice about the questions I think might be relevant. My only observation is that the violation issue is not nearly as simple as the dissenting opinion implies.

[ Footnote 1 ] Cf. Cantor v. Detroit Edison Co., 428 U.S. 579, 615 (Stewart, J., dissenting) (the Court's holding "will surely result in disruption of the operation of every state-regulated public utility company in the Nation and in the creation of 'the prospect of massive treble damage liabilities'") (quoting Posner, The Proper Relationship Between State Regulation and the Federal Antitrust Laws, 49 N. Y. U. L. Rev. 693, 728 (1974)). See also United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166, 176 , n. 10.

[ Footnote 2 ] See 428 U.S., at 585 -592 (opinion of STEVENS, J.). The point was made explicit in two passages of the plurality opinion. In a footnote, the plurality stated: "The cumulative effect of these carefully drafted references unequivocally differentiates between official action, on the one hand, and individual action (even when commanded by the State), on the other hand." Id., at 591, n. 24. The point was repeated in the text: "The federal statute proscribes the conduct of persons, not programs, and the narrow holding in Parker concerned only the legality of the conduct of the state officials charged by law with the responsibility for administering California's program. What sort of charge might have been made against the various private persons who engaged in a variety of different activities implementing that program is unknown and unknowable because no such charges were made." Id., at 601 (footnote omitted). The footnote omitted in the above quotation stated: "Indeed, it did not even occur to the plaintiff that the state officials might have violated the Sherman Act; that question was first raised by this Court." Id., at 601, n. 42. See Bates v. State Bar of Arizona, 433 U.S. 350, 361 ("[O]bviously, Cantor would have been an entirely different case if the claim had been directed against a public official or public agency, rather than against a private party").

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and JUSTICE O'CONNOR join, dissenting.

The Court's decision in this case is flawed in two serious respects, and will thereby impede, if not paralyze, local governments' efforts to enact ordinances and regulations aimed at protecting public health, safety, and welfare, for fear of subjecting the local government to liability under the Sherman Act, 15 U.S.C. 1 et seq. First, the Court treats the issue in this case as whether a municipality is "exempt" from the Sherman Act under our decision in Parker v. Brown, 317 U.S. 341 (1943). The question addressed in Parker and in this case is not whether state and local governments are exempt from the Sherman Act, but whether statutes, ordinances, and regulations enacted as an act of government are pre-empted by the Sherman Act under the operation of the Supremacy Clause. Second, in holding that a municipality's ordinances can be "exempt" from antitrust scrutiny only if the enactment furthers or implements a "clearly articulated and affirmatively expressed state policy," ante, at 52, the Court treats a political subdivision of a State as an entity indistinguishable from any privately owned business. As I read the Court's opinion, a municipality may be said to violate the antitrust laws by enacting legislation in conflict with the Sherman Act, unless the legislation is enacted pursuant to an affirmative state policy to supplant competitive market forces in the area of the economy to be regulated. [455 U.S. 40, 61]

I

Pre-emption and exemption are fundamentally distinct concepts. Pre-emption, because it involves the Supremacy Clause, implicates our basic notions of federalism. Preemption analysis is invoked whenever the Court is called upon to examine "the interplay between the enactments of two different sovereigns - one federal and the other state." Handler, Antitrust - 1978, 78 Colum. L. Rev. 1363, 1379 (1978). We are confronted with questions under the Supremacy Clause when we are called upon to resolve a purported conflict between the enactments of the Federal Government and those of a state or local government, or where it is claimed that the Federal Government has occupied a particular field exclusively, so as to foreclose any state regulation. Where pre-emption is found, the state enactment must fall without any effort to accommodate the State's purposes or interests. Because pre-emption treads on the very sensitive area of federal-state relations, this Court is "reluctant to infer pre-emption," Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 132 (1978), and the presumption is that preemption is not to be found absent the clear and manifest intention of Congress that the federal Act should supersede the police powers of the States. Ray v. Atlantic Richfield Co., 435 U.S. 151, 157 (1978).

In contrast, exemption involves the interplay between the enactments of a single sovereign - whether one enactment was intended by Congress to relieve a party from the necessity of complying with a prior enactment. See, e. g., National Broiler Marketing Assn. v. United States, 436 U.S. 816 (1978) (Sherman Act and Capper-Volstead Act); United States v. Philadelphia National Bank, 374 U.S. 321, 350 -355 (1963) (Clayton Act and Bank Merger Act of 1960); Silver v. New York Stock Exchange, 373 U.S. 341, 357 -361 (1963) (Sherman Act and Securities Exchange Act). Since the enactments of only one sovereign are involved, no problems of federalism are present. The court interpreting the [455 U.S. 40, 62] statute must simply attempt to ascertain congressional intent, whether the exemption is claimed to be express or implied. The presumptions utilized in exemption analysis are quite distinct from those applied in the pre-emption context. In examining exemption questions, "the proper approach . . . is an analysis which reconciles the operation of both statutory schemes with one another rather than holding one completely ousted." Silver v. New York Stock Exchange, supra, at 357.

With this distinction in mind, I think it quite clear that questions involving the so-called "state action" doctrine are more properly framed as being ones of pre-emption rather than exemption. Issues under the doctrine inevitably involve state and local regulation which, it is contended, are in conflict with the Sherman Act.

Our decision in Parker v. Brown, supra, was the genesis of the "state action" doctrine. That case involved a challenge to a program established pursuant to the California Agricultural Prorate Act, which sought to restrict competition in the State's raisin industry by limiting the producer's ability to distribute raisins through private channels. The program thus sought to maintain prices at a level higher than those maintained in an unregulated market. This Court assumed that the program would violate the Sherman Act were it "organized and made effective solely by virtue of a contract, combination or conspiracy of private persons, individual or corporate," and that "Congress could, in the exercise of its commerce power, prohibit a state from maintaining a stabilization program like the present because of its effect on interstate commerce." 317 U.S., at 350 . In this regard, we noted that "[o]ccupation of a legislative field by Congress in the exercise of a granted power is a familiar example of its constitutional power to suspend state laws." Ibid. We then held, however, that "[w]e find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature. In a dual system of government [455 U.S. 40, 63] in which, under the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." Id., at 350-351.

This is clearly the language of federal pre-emption under the Supremacy Clause. This Court decided in Parker that Congress did not intend the Sherman Act to override state legislation designed to regulate the economy. There was no language of "exemption," either express or implied, nor the usual incantation that "repeals by implication are disfavored." Instead, the Court held that state regulation of the economy is not necessarily pre-empted by the antitrust laws even if the same acts by purely private parties would constitute a violation of the Sherman Act. The Court recognized, however, that some state regulation is pre-empted by the Sherman Act, explaining that "a state does got give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful . . . ." Id., at 351.

Our two most recent Parker doctrine cases reveal most clearly that the "state action" doctrine is not an exemption at all, but instead a matter of federal pre-emption.

In New Motor Vehicle Bd. of California v. Orrin W. Fox Co., 439 U.S. 96 (1978), we examined the contention that the California Automobile Franchise Act conflicted with the Sherman Act. That Act required a motor vehicle manufacturer to secure the approval of the California New Motor Vehicle Board before it could open a dealership within an existing franchisee's market area, if the competing franchisee objected. By so delaying the opening of a new dealership whenever a competing dealership protested, the Act arguably gave effect to privately initiated restraints of trade, and thus was invalid under Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384 (1951). We held that the Act was outside the purview of the Sherman Act because it contemplated [455 U.S. 40, 64] "a system of regulation, clearly articulated and affirmatively expressed, designed to displace unfettered business freedom in the matter of the establishment and relocation of automobile dealerships." 439 U.S., at 109 . We also held that a state statute is not invalid under the Sherman Act merely because the statute will have an anticompetitive effect. Otherwise, if an adverse effect upon competition were enough to render a statute invalid under the Sherman Act, "'the States' power to engage in economic regulation would be effectively destroyed.'" Id., at

111 (quoting Exxon Corp. v. Governor of Maryland, 437 U.S., at 133 ). In New Motor Vehicle Bd., we held that a state statute could stand in the face of a purported conflict with the Sherman Act.

In California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), we invalidated California's wine-pricing system in the face of a challenge under the Sherman Act. We first held that the price-setting program constituted resale price maintenance, which this Court has consistently held to be a "per se" violation of the Sherman Act. Id., at 102-103. We then concluded that the program could not fit within the Parker doctrine. Although the restraint was imposed pursuant to a clearly articulated and affirmatively expressed state policy, the program was not actively supervised by the State itself. The State merely authorized and enforced price fixing established by private parties, instead of establishing the prices itself or reviewing their reasonableness. In the absence of sufficient state supervision, we held that the pricing system was invalid under the Sherman Act. 445 U.S., at 105 -106.

Unlike the instant case, Parker, Midcal, and New Motor Vehicle Bd. involved challenges to a state statute. There was no suggestion that a State violates the Sherman Act when it enacts legislation not saved by the Parker doctrine from invalidation under the Sherman Act. Instead, the statute is simply unenforceable because it has been pre-empted by the Sherman Act. By contrast, the gist of the Court's [455 U.S. 40, 65] opinion is that a municipality may actually violate the antitrust laws when it merely enacts an ordinance invalid under the Sherman Act, unless the ordinance implements an affirmatively expressed state policy. 1 According to the majority, a municipality may be liable under the Sherman Act for enacting anticompetitive legislation, unless it can show that it is acting simply as the "instrumentality" of the State.

Viewing the Parker doctrine in this manner will have troubling consequences for this Court and the lower courts who must now adapt antitrust principles to adjudicate Sherman Act challenges to local regulation of the economy. The majority suggests as much in footnote 20. Among the many problems to be encountered will be whether the "per se" rules of illegality apply to municipal defendants in the same manner as they are applied to private defendants. Another is the question of remedies. The Court understandably leaves open the question whether municipalities may be liable for treble damages for enacting anticompetitive ordinances which are not protected by the Parker doctrine. 2

Most troubling, however, will be questions regarding the factors which may be examined by the Court pursuant to the Rule of Reason. In National Society of Professional Engineers [455 U.S. 40, 66] v. United States, 435 U.S. 679, 695 (1978), we held that an anticompetitive restraint could not be defended on the basis of a private party's conclusion that competition posed a potential threat to public safety and the ethics of a particular profession. "[T]he Rule of Reason does not support a defense based on the assumption that competition itself is unreasonable." Id., at 696. Professional Engineers holds that the decision to replace competition with regulation is not within the competence of private entities. Instead, private entities may defend restraints only on the basis that the restraint is not unreasonable in its effect on competition or because its procompetitive effects outweigh its anticompetitive effects. See Continental T. V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977).

Applying Professional Engineers to municipalities would mean that an ordinance could not be defended on the basis that its benefits to the community, in terms of traditional health, safety, and public welfare concerns, outweigh its anticompetitive effects. A local government would be disabled from displacing competition with regulation. Thus, a municipality would violate the Sherman Act by enacting restrictive zoning ordinances, by requiring business and occupational licenses, and by granting exclusive franchises

to utility services, even if the city determined that it would be in the best interests of its inhabitants to displace competition with regulation. Competition simply does not and cannot further the interests that lie behind most social welfare legislation. Although state or local enactments are not invalidated by the Sherman Act merely because they may have anticompetitive effects, Exxon Corp. v. Governor of Maryland, supra, at 133, this Court has not hesitated to invalidate such statutes on the basis that such a program would violate the antitrust laws if engaged in by private parties. See California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., supra, at 102-103 (resale price maintenance); Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384 (1951) (same). Cf. Parker v. Brown, 317 U.S., at 350 [455 U.S. 40, 67] (Court assumed the stabilization program would violate the Sherman Act if organized and effected by private persons). Unless the municipality could point to an affirmatively expressed state policy to displace competition in the given area sought to be regulated, the municipality would be held to violate the Sherman Act and the regulatory scheme would be rendered invalid. Surely, the Court does not seek to require a municipality to justify every ordinance it enacts in terms of its procompetitive effects. If municipalities are permitted only to enact ordinances that are consistent with the procompetitive policies of the Sherman Act, a municipality's power to regulate the economy would be all but destroyed. See Exxon Corp. v. Governor of Maryland, 437 U.S., at 133. This country's municipalities will be unable to experiment with innovative social programs. See New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

On the other hand, rejecting the rationale of Professional Engineers to accommodate the municipal defendant opens up a different sort of Pandora's Box. If the Rule of Reason were "modified" to permit a municipality to defend its regulation on the basis that its benefits to the community outweigh its anticompetitive effects, the courts will be called upon to review social legislation in a manner reminiscent of the Lochner (Lochner v. New York, 198 U.S. 45 (1905)) era. Once again, the federal courts will be called upon to engage in the same wide-ranging, essentially standardless inquiry into the reasonableness of local regulation that this Court has properly rejected. Instead of "liberty of contract" and "substantive due process," the procompetitive principles of the Sherman Act will be the governing standard by which the reasonableness of all local regulation will be determined. 3 Neither the Due Process Clause nor the Sherman Act authorizes federal courts to invalidate [455 U.S. 40, 68] local regulation of the economy simply upon opining that the municipality has acted unwisely. The Sherman Act should not be deemed to authorize federal courts to "substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." Ferguson v. Skrupa, 372 U.S. 726, 730 (1963). The federal courts have not been appointed by the Sherman Act to sit as a "superlegislature to weigh the wisdom of legislation." Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525, 535 (1949).

Before this Court leaps into the abyss and holds that municipalities may violate the Sherman Act by enacting economic and social legislation, it ought to think about the consequences of such a decision in terms of its effect both upon the very antitrust principles the Court desires to apply to local governments and upon the role of the federal courts in examining the validity of local regulation of the economy.

Analyzing this problem as one of federal pre-emption rather than exemption will avoid these problems. We will not be confronted with the anomaly of holding a municipality liable for enacting anticompetitive ordinances. 4 The federal courts will not be required to engage in a standardless review of the reasonableness of local legislation. Rather, the question simply will be whether the ordinance enacted is pre-empted by the Sherman Act. I see no reason why a different rule of pre-emption should be applied to testing the validity of municipal ordinances than the standard we presently apply in assessing state statutes. I see no reason why a municipal ordinance should not be upheld if it satisfies the [455 U.S. 40, 69] Midcal criteria: the ordinance survives if it is enacted pursuant to an affirmative policy on the part of the city

to restrain competition and if the city actively supervises and implements this policy. 5 As with the case of the State, I agree that a city may not simply authorize private parties to engage in activity that would violate the Sherman Act. See Parker v. Brown, 317 U.S., at 351 . As in the case of a State, a municipality may not become "a participant in a private agreement or combination by others for restraint of trade." Id., at 351-352.

Apart from misconstruing the Parker doctrine as a matter of "exemption" rather than pre-emption, the majority comes to the startling conclusion that our federalism is in no way implicated when a municipal ordinance is invalidated by the Sherman Act. I see no principled basis to conclude, as does the Court, that municipal ordinances are more susceptible to invalidation under the Sherman Act than are state statutes. The majority concludes that since municipalities are not States, and hence are not "sovereigns," our notions of federalism are not implicated when federal law is applied to invalidate otherwise constitutionally valid municipal legislation. I find this reasoning remarkable indeed. Our notions of federalism are implicated when it is contended that a municipal ordinance is pre-empted by a federal statute. This Court has made no such distinction between States and their subdivisions with regard to the pre-emptive effects of federal law. [455 U.S. 40, 70] The standards applied by this Court are the same regardless of whether the challenged enactment is that of a State or one of its political subdivisions. See, e. g., City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973); Huron Portland Cement Co. v. Detroit, 362 U.S. 440 (1960). I suspect that the Court has not intended to so dramatically alter established principles of Supremacy Clause analysis. Yet, this is precisely what it appears to have done by holding that a municipality may invoke the Parker doctrine only to the same extent as can a private litigant. Since the Parker doctrine is a matter of federal pre-emption under the Supremacy Clause, it should apply in challenges to municipal regulation in similar fashion as it applies in a challenge to a state regulatory enactment. The distinction between cities and States created by the majority has no principled basis to support it if the issue is properly framed in terms of pre-emption rather than exemption.

As with the States, the Parker doctrine should be employed to determine whether local legislation has been pre-empted by the Sherman Act. Like the State, a municipality should not be haled into federal court in order to justify its decision that competition should be replaced with regulation. The Parker doctrine correctly holds that the federal interest in protecting and fostering competition is not infringed so long as the state or local regulation is so structured to ensure that it is truly the government, and not the regulated private entities, which is replacing competition with regulation.

## II

By treating the municipal defendant as no different from the private litigant attempting to invoke the Parker doctrine, the Court's decision today will radically alter the relationship between the States and their political subdivisions. Municipalities will no longer be able to regulate the local economy without the imprimatur of a clearly expressed state policy [455 U.S. 40, 71] to displace competition. 6 The decision today effectively destroys the "home rule" movement in this country, through which local governments have obtained, not without persistent state opposition, a limited autonomy over matters of local concern. 7 The municipalities that stand most to lose by the decision today are those with the most autonomy. Where the State is totally disabled from enacting legislation dealing with matters of local concern, the municipality will be defenseless from challenges to its regulation of the local economy. In such a case, the State is disabled from articulating a policy to displace competition with regulation. Nothing short of altering the relationship between the municipality and the State will enable the local government to legislate on matters important to its

inhabitants. In order to defend itself from Sherman Act attacks, the home rule municipality will have to cede its authority back to the State. It is unfortunate enough that the Court today holds that our federalism is not implicated when municipal legislation is invalidated by a federal statute. It is nothing less than a novel and egregious error when this Court uses the Sherman Act to regulate the relationship between the States and their political subdivisions.

[ Footnote 1 ] Most challenges to municipal ordinances undoubtedly will be made pursuant to 1. One of the elements of a 1 violation is proof of a contract, combination, or conspiracy. It may be argued that municipalities will not face liability under 1, because it will be difficult to allege that the enactment of an ordinance was the product of such a contract, combination, or conspiracy. The ease with which the ordinance in the instant case has been labeled a "contract" will hardly give municipalities solace in this regard.

[ Footnote 2 ] It will take a considerable feat of judicial gymnastics to conclude that municipalities are not subject to treble damages to compensate any person "injured in his business or property." Section 4 of the Clayton Act, 15 U.S.C. 15, is mandatory: "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws . . . shall recover threefold the damages by him sustained." See City of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 442 -443 (1978) (BLACKMUN, J., dissenting).

[ Footnote 3 ] During the Lochner era, this Court's interpretation of the Due Process Clause complemented its antitrust policies. This Court sought to compel competitive behavior on the part of private enterprise and generally forbade [455 U.S. 40, 68] government interference with competitive forces in the marketplace. See Strong, The Economic Philosophy of Lochner: Emergence, Embrasure and Emasculation, 15 Ariz. L. Rev. 419, 435 (1973).

[ Footnote 4 ] Since a municipality does not violate the antitrust laws when it enacts legislation pre-empted by the Sherman Act, there will be no problems with the remedy. Pre-empted state or local legislation is simply invalid and unenforceable.

[ Footnote 5 ] The Midcal standards are not applied until it is either determined or assumed that the regulatory program would violate the Sherman Act if it were conceived and operated by private persons. See Parker v. Brown, 317 U.S., at 350 ; California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 102 -103 (1980). A statute is not pre-empted simply because some conduct contemplated by the statute might violate the antitrust laws. See Joseph E. Seagram & Sons, Inc. v. Hostetter, 384 U.S. 35, 45 -46 (1966). Conversely, reliance on a state statute does not insulate a private party from liability under the antitrust laws unless the statute satisfies the Midcal criteria.

[ Footnote 6 ] The Court understandably avoids determining whether local ordinances must satisfy the "active state supervision" prong of the Midcal test. It would seem rather odd to require municipal ordinances to be enforced by the State rather than the city itself.

[ Footnote 7 ] Seeing this opportunity to recapture the power it has lost over local affairs, the State of Colorado, joined by 22 other States, has supported petitioner as amicus curiae. It is curious, indeed, that these States now seek to use the Supremacy Clause as a sword, when they so often must defend their own enactments from its invalidating effects. [455 U.S. 40, 72]

# ATTACHMENT F

# U.S. Supreme Court

## HALLIE v. EAU CLAIRE, 471 U.S. 34 (1985)

**471 U.S. 34**

**TOWN OF HALLIE ET AL. v. CITY OF EAU CLAIRE**
**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

**No. 82-1832.**

**Argued November 26, 1984**
**Decided March 27, 1985**

Petitioners, unincorporated townships located in Wisconsin adjacent to respondent city, filed suit against respondent in Federal District Court, alleging that petitioners were potential competitors of respondent in the collection and transportation of sewage, and that respondent had violated the Sherman Act by acquiring a monopoly over the provision of sewage treatment services in the area and by tying the provision of such services to the provision of sewage collection and transportation services. Respondent refused to supply sewage treatment services to petitioners, but supplied the services to individual landowners in petitioners' areas if a majority of the individuals in the area voted by referendum election to have their homes annexed by respondent and to use its sewage collection and transportation services. The District Court dismissed the complaint, finding, inter alia, that Wisconsin statutes regulating the municipal provision of sewage services expressed a clear state policy to replace competition with regulation. The court concluded that respondent's allegedly anticompetitive conduct fell within the "state action" exemption to the federal antitrust laws established by Parker v. Brown, 317 U.S. 341 . The Court of Appeals affirmed.

*Held:*

Respondent's anticompetitive activities are protected by the state action exemption to the federal antitrust laws. Pp. 38-47.

(a) Before a municipality may claim the protection of the state action exemption, it must demonstrate that it is engaging in the challenged activity pursuant to a "clearly articulated" state policy. Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 . Pp. 38-40.

(b) Wisconsin statutes grant authority to cities to construct and maintain sewage systems, to describe the district to be served, and to refuse to serve unannexed areas. The statutes are not merely neutral on state policy but, instead, clearly contemplate that a city may engage in anticompetitive conduct. To pass the "clear articulation" test, the legislature need not expressly state in a statute or the legislative history that it intends for the delegated action to have anticompetitive effects. The Wisconsin statutes evidence a clearly articulated state policy to displace competition with regulation in the area of municipal provision of sewage services. Pp. 40-44. [471 U.S. 34, 35]

(c) The "clear articulation" requirement of the state action test does not require that respondent show that the State "compelled" it to act. Although compulsion affirmatively expressed may be the best evidence of state policy, it is by no means a prerequisite to a finding that a municipality acted

pursuant to clearly articulated state policy. Cantor v. Detroit Edison Co., 428 U.S. 579, and Goldfarb v. Virginia State Bar, 421 U.S. 773, distinguished. Pp. 45-46.

(d) Active state supervision of anticompetitive conduct is not a prerequisite to exemption from the antitrust laws where the actor is a municipality rather than a private party. The requirement of active state supervision serves essentially the evidentiary function of ensuring that the actor is engaging in the challenged conduct pursuant to state policy. Where the actor is a municipality rather than a private party, there is little or no danger that it is involved in a private price-fixing arrangement. The danger that a municipality will seek to further purely parochial public interests at the expense of more overriding state goals is minimal, because of the requirement that the municipality act pursuant to a clearly articulated state policy. Pp. 46-47.

700 F.2d 376, affirmed.

POWELL, J., delivered the opinion for a unanimous Court.

John J. Covelli argued the cause for petitioners. With him on the briefs was Michael P. May.

Frederick W. Fischer argued the cause and filed a brief for respondent. *

[Footnote *] Ronald A. Zumbrun and Robert K. Best filed a brief for the Pacific Legal Foundation as amicus curiae urging reversal.

Briefs of amici curiae urging affirmance were filed for the United States by Solicitor General Lee, Assistant Attorney General McGrath, Deputy Solicitor General Wallace, Deputy Assistant Attorney General Rule, Carter G. Phillips, Catherine G. O'Sullivan, and Nancy C. Garrison; for the State of Illinois et al. by Neil F. Hartigan, Attorney General of Illinois, Robert E. Davy, Thomas J. DeMay, Linley E. Pearson, Attorney General of Indiana, Frank A. Baldwin, Deputy Attorney General, Bronson C. La Follette, Attorney General of Wisconsin, and Michael L. Zaleski, Assistant Attorney General; for the Commonwealth of Virginia et al. by Gerald L. Baliles, Attorney General of Virginia, Elizabeth B. Lacy, Deputy Attorney General, Craig Thomas Merritt, Assistant Attorney General, Joseph I. Lieberman, Attorney General of Connecticut, Robert M. Langer, Assistant [471 U.S. 34, 36] Attorney General, Hubert H. Humphrey III, Attorney General of Minnesota, Stephen P. Kilgriff, Assistant Attorney General, LeRoy S. Zimmerman, Attorney General of Pennsylvania, Eugene F. Waye, Deputy Attorney General, Brian McKay, Attorney General of Nevada, David L. Wilkenson, Attorney General of Utah, and Suzanne M. Dallimore, Assistant Attorney General; for the U.S. Conference of Mayors et al. by Stephen Chapple, Frederic Lee Ruck, and Ross D. Davis; for the American Public Power Association et al. by Carlos C. Smith, Frederick L. Hitchcock, Edward D. Meyer, Stanley P. Hebert, John W. Pestle, John D. Maddox, June W. Wiener, Clifford D. Pierce, Jr., Donald W. Jones, Eugene N. Collins, and Randall L. Nelson; and for the National Institute of Municipal Law Officers by Roger F. Cutler, Roy D. Bates, George Agnost, Benjamin L. Brown, J. Lamar Shelley, John W. Witt, Robert J. Alfton, James K. Baker, Clifford D. Pierce, Jr., William H. Taube, William I. Thornton, Jr., Henry W. Underhill, Jr., and Charles S. Rhyne.

David Epstein filed a brief for the American Ambulance Association et al. as amici curiae. [471 U.S. 34, 36]

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a municipality's anticompetitive activities are protected by the state action exemption to the federal antitrust laws established by Parker v. Brown, 317 U.S. 341 (1943), when the activities are authorized, but not compelled, by the State, and the State does not actively supervise the anticompetitive conduct.

I

Petitioners - Town of Hallie, Town of Seymour, Town of Union, and Town of Washington (the Towns) - are four Wisconsin unincorporated townships located adjacent to respondent, the City of Eau Claire (the City). Town of Hallie is located in Chippewa County, and the other three towns are located in Eau Claire County. 1 The Towns filed suit against the City in United States District Court for the Western District of Wisconsin seeking injunctive relief and alleging that the City violated the Sherman Act, 15 U.S.C. 1 et seq., by acquiring a monopoly over the provision of sewage treatment services in Eau Claire and Chippewa Counties, and by tying [471 U.S. 34, 37] the provision of such services to the provision of sewage collection and transportation services. 2 Under the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the City had obtained federal funds to help build a sewage treatment facility within the Eau Claire Service Area, that included the Towns; the facility is the only one in the market available to the Towns. The City has refused to supply sewage treatment services to the Towns. It does supply the services to individual landowners in areas of the Towns if a majority of the individuals in the area vote by referendum election to have their homes annexed by the City, see Wis. Stat. 66.024(4), 144.07(1) (1982), and to use the City's sewage collection and transportation services.

Alleging that they are potential competitors of the City in the collection and transportation of sewage, the Towns contended in the District Court that the City used its monopoly over sewage treatment to gain an unlawful monopoly over the provision of sewage collection and transportation services, in violation of the Sherman Act. They also contended that the City's actions constituted an illegal tying arrangement and an unlawful refusal to deal with the Towns.

The District Court ruled for the City. It found that Wisconsin's statutes regulating the municipal provision of sewage service expressed a clear state policy to replace competition with regulation. The court also found that the State adequately supervised the municipality's conduct through the State's Department of Natural Resources, that was authorized to review municipal decisions concerning provision of sewage services and corresponding annexations of land. The court concluded that the City's allegedly anticompetitive conduct fell within the state action exemption to the federal antitrust laws, as set forth in Community Communications [471 U.S. 34, 38] Co. v. Boulder, 455 U.S. 40 (1982), and Parker v. Brown, supra. Accordingly, it dismissed the complaint.

The United States Court of Appeals for the Seventh Circuit affirmed. 700 F.2d 376 (1983). It ruled that the Wisconsin statutes authorized the City to provide sewage services and to refuse to provide such services to unincorporated areas. The court therefore assumed that the State had contemplated that anticompetitive effects might result, and concluded that the City's conduct was thus taken pursuant to state authorization within the meaning of Parker v. Brown, supra. The court also concluded that in a case such as this involving "a local government performing a traditional municipal function," 700 F.2d, at 384, active state supervision was unnecessary for Parker immunity to apply. Requiring such supervision as a prerequisite to immunity would also be unwise in this situation, the court believed, because it would erode traditional concepts of local autonomy and home rule that were clearly expressed in the State's statutes.

We granted certiorari, 467 U.S. 1240 (1984), and now affirm.

## II

The starting point in any analysis involving the state action doctrine is the reasoning of Parker v. Brown. In Parker, relying on principles of federalism and state sovereignty, the Court refused to construe the Sherman Act as applying to the anticompetitive conduct of a State acting through its legislature. 317 U.S., at 350 -351. Rather, it ruled that the Sherman Act was intended to prohibit private restraints on trade, and it refused to infer an intent to "nullify a state's control over its officers and agents" in activities directed by the legislature. Id., at 351.

Municipalities, on the other hand, are not beyond the reach of the antitrust laws by virtue of their status because they are not themselves sovereign. Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 412 (1978) (opinion of BRENNAN, J.). Rather, to obtain exemption, municipalities [471 U.S. 34, 39] must demonstrate that their anticompetitive activities were authorized by the State "pursuant to state policy to displace competition with regulation or monopoly public service." Id., at 413.

The determination that a municipality's activities constitute state action is not a purely formalistic inquiry; the State may not validate a municipality's anticompetitive conduct simply by declaring it to be lawful. Parker v. Brown, 317 U.S., at 351 . On the other hand, in proving that a state policy to displace competition exists, the municipality need not "be able to point to a specific, detailed legislative authorization" in order to assert a successful Parker defense to an antitrust suit. 435 U.S., at 415 . Rather, Lafayette suggested, without deciding the issue, that it would be sufficient to obtain Parker immunity for a municipality to show that it acted pursuant to a "clearly articulated and affirmatively expressed . . . state policy" that was "actively supervised" by the State. 435 U.S., at 410 . The plurality viewed this approach as desirable because it "preserv[ed] to the States their freedom . . . to administer state regulatory policies free of the inhibitions of the federal antitrust laws without at the same time permitting purely parochial interests to disrupt the Nation's free-market goals." Id., at 415-416.

In California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), a unanimous Court applied the Lafayette two-pronged test to a case in which the state action exemption was claimed by a private party. 3 In [471 U.S. 34, 40] that case, we found no antitrust immunity for California's wine-pricing system. Even though there was a clear legislative policy to permit resale liquor price maintenance, there was no state supervision of the anticompetitive activity. Thus, the private wine producers who set resale prices were not entitled to the state action exemption. When we again addressed the issue of a municipality's exemption from the antitrust laws in Boulder, supra, we declined to accept Lafayette's suggestion that a municipality must show more than that a state policy to displace competition exists. We held that Colorado's Home Rule Amendment to its Constitution, conferring on municipal governments general authority to govern local affairs, did not constitute a "clear articulation" of a state policy to authorize anticompetitive conduct with respect to the regulation of cable television in the locale. Because the city could not meet this requirement of the state action test, we declined to decide whether governmental action by a municipality must also be actively supervised by the State. 455 U.S., at 51 -52, n. 14.

It is therefore clear from our cases that before a municipality will be entitled to the protection of the state action exemption from the antitrust laws, it must demonstrate that it is engaging in the challenged activity pursuant to a clearly expressed state policy. We have never fully considered, however, how clearly a state

policy must be articulated for a municipality to be able to establish that its anticompetitive activity constitutes state action. Moreover, we have expressly left open the question whether action by a municipality - like action by a private party - must satisfy the "active state supervision" requirement. Boulder, supra, at 51-52, n. 14. We consider both of those issues below.

## III

The City cites several provisions of the Wisconsin code to support its claim that its allegedly anticompetitive activity [471 U.S. 34, 41] constitutes state action. We therefore examine the statutory structure in some detail.

### A

Wisconsin Stat. 62.18(1) (1981-1982) grants authority to cities to construct, add to, alter, and repair sewage systems. The authority includes the power to "describe with reasonable particularity the district to be [served]." Ibid. This grant of authority is supplemented by Wis. Stat. 66.069(2)(c) (1981-1982), providing that a city operating a public utility

> "may by ordinance fix the limits of such service in unincorporated areas. Such ordinance shall delineate the area within which service will be provided and the municipal utility shall have no obligation to serve beyond the area so delineated."

With respect to joint sewage systems, Wis. Stat. 144.07(1) (1981-1982) provides that the State's Department of Natural Resources may require a city's sewage system to be constructed so that other cities, towns, or areas may connect to the system, and the Department may order that such connections be made. Subsection (1m) provides, however, that an order by the Department of Natural Resources for the connection of unincorporated territory to a city system shall be void if that territory refuses to become annexed to the city. 4

### B

The Towns contend that these statutory provisions do not evidence a state policy to displace competition in the provision of sewage services because they make no express mention [471 U.S. 34, 42] of anticompetitive conduct. 5 As discussed above, the statutes clearly contemplate that a city may engage in anticompetitive conduct. Such conduct is a foreseeable result of empowering the City to refuse to serve unannexed areas. It is not necessary, as the Towns contend, for the state legislature to have stated explicitly that it expected the City to engage in conduct that would have anticompetitive effects. Applying the analysis of Lafayette v. Louisiana Power & Light Co., 435 U.S. 389 (1978), it is sufficient that the statutes authorized the City to provide sewage services and also to determine the areas to be served. We think it is clear that anticompetitive effects logically would result from this broad authority to regulate. See New Motor Vehicle Board v. Orrin W. Fox Co., 439 U.S. 96, 109 (1978) (no express intent to displace the antitrust laws, but statute provided regulatory structure that inherently "displace[d] unfettered business freedom"). Accord, 1 P. Areeda & D. Turner, Antitrust Law –212.3, p. 54 (Supp. 1982). [471 U.S. 34, 43]

Nor do we agree with the Towns' contention that the statutes at issue here are neutral on state policy. The Towns attempt to liken the Wisconsin statutes to the Home Rule Amendment involved in Boulder, arguing that the Wisconsin statutes are neutral because they leave the City free to pursue either anticompetitive conduct or free-market competition in the field of sewage services. The analogy to the Home Rule

Amendment involved in Boulder is inapposite. That Amendment to the Colorado Constitution allocated only the most general authority to municipalities to govern local affairs. We held that it was neutral and did not satisfy the "clear articulation" component of the state action test. The Amendment simply did not address the regulation of cable television. Under home rule the municipality was to be free to decide every aspect of policy relating to cable television, as well as policy relating to any other field of regulation of local concern. Here, in contrast, the State has specifically authorized Wisconsin cities to provide sewage services and has delegated to the cities the express authority to take action that foreseeably will result in anticompetitive effects. No reasonable argument can be made that these statutes are neutral in the same way that Colorado's Home Rule Amendment was. 6

The Towns' argument amounts to a contention that to pass the "clear articulation" test, a legislature must expressly state in a statute or its legislative history that the legislature intends for the delegated action to have anticompetitive effects. This contention embodies an unrealistic view of how legislatures work and of how statutes are written. No legislature can be expected to catalog all of the anticipated effects of a statute of this kind. [471 U.S. 34, 44]

Furthermore, requiring such explicit authorization by the State might have deleterious and unnecessary consequences. Justice Stewart's dissent in Lafayette was concerned that the plurality's opinion would impose this kind of requirement on legislatures, with detrimental side effects upon municipalities' local autonomy and authority to govern themselves. 435 U.S., at 434 -435. In fact, this Court has never required the degree of specificity that the Towns insist is necessary. 7

In sum, we conclude that the Wisconsin statutes evidence a "clearly articulated and affirmatively expressed" state policy to displace competition with regulation in the area of municipal provision of sewage services. These statutory provisions plainly show that "'the legislature contemplated the kind of action complained of.'" Lafayette, supra, at 415 (quoting the decision of the Court of Appeals, 532 F.2d 431, 434 (CA5 1976)). 8 This is sufficient to satisfy the "clear articulation" requirement of the state action test. [471 U.S. 34, 45]

## C

The Towns further argue that the "clear articulation" requirement of the state action test requires at least that the City show that the State "compelled" it to act. In so doing, they rely on language in Cantor v. Detroit Edison Co., 428 U.S. 579 (1976), and Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). We disagree with this contention for several reasons. Cantor and Goldfarb concerned private parties - not municipalities - claiming the state action exemption. This fact distinguishes those cases because a municipality is an arm of the State. We may presume, absent a showing to the contrary, that the municipality acts in the public interest. 9 A private party, on the other hand, may be presumed to be acting primarily on his or its own behalf.

None of our cases involving the application of the state action exemption to a municipality has required that compulsion be shown. Both Boulder, 455 U.S., at 56 -57, and Lafayette, 435 U.S., at 416 -417, spoke in terms of the State's direction or authorization of the anticompetitive practice at issue. This is so because where the actor is a municipality, acting pursuant to a clearly articulated state policy, compulsion is simply unnecessary as an evidentiary matter to prove that the challenged practice constitutes state action. In short, although compulsion affirmatively [471 U.S. 34, 46] expressed may be the best evidence of state

policy, it is by no means a prerequisite to a finding that a municipality acted pursuant to clearly articulated state policy.

## IV

Finally, the Towns argue that as there was no active state supervision, the City may not depend on the state action exemption. The Towns rely primarily on language in Lafayette. It is fair to say that our cases have not been entirely clear. The plurality opinion in Lafayette did suggest, without elaboration and without deciding the issue, that a city claiming the exemption must show that its anticompetitive conduct was actively supervised by the State. 435 U.S., at 410 . In California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97 (1980), a unanimous Court held that supervision is required where the anticompetitive conduct is by private parties. In Boulder, however, the most recent relevant case, we expressly left this issue open as to municipalities. 455 U.S., at 51 -52, n. 14. We now conclude that the active state supervision requirement should not be imposed in cases in which the actor is a municipality. 10

As with respect to the compulsion argument discussed above, the requirement of active state supervision serves essentially an evidentiary function: it is one way of ensuring that the actor is engaging in the challenged conduct pursuant to state policy. In Midcal, we stated that the active state supervision requirement was necessary to prevent a State from circumventing the Sherman Act's proscriptions "by casting . . . a gauzy cloak of state involvement over what is [471 U.S. 34, 47] essentially a private price-fixing arrangement." 445 U.S., at 106 . Where a private party is engaging in the anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State. Where the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the expense of more overriding state goals. This danger is minimal, however, because of the requirement that the municipality act pursuant to a clearly articulated state policy. Once it is clear that state authorization exists, there is no need to require the State to supervise actively the municipality's execution of what is a properly delegated function.

## V

We conclude that the actions of the City of Eau Claire in this case are exempt from the Sherman Act. They were taken pursuant to a clearly articulated state policy to replace competition in the provision of sewage services with regulation. We further hold that active state supervision is not a prerequisite to exemption from the antitrust laws where the actor is a municipality rather than a private party. We accordingly affirm the judgment of the Court of Appeals for the Seventh Circuit.

It is so ordered.

## Footnotes

[ Footnote 1 ] The City is located in both Eau Claire and Chippewa Counties.

[ Footnote 2 ] The complaint also alleged violations of the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., and of a common-law duty of a utility to serve. The District Court dismissed these claims, and they are not at issue in this Court.

[ Footnote 3 ] Midcal was originally brought as a mandamus action seeking an injunction against a state agency, the California Department of Alcoholic Beverage Control. The State played no role, however, in setting prices or reviewing their reasonableness, activities carried out by the private wine dealers. 445 U.S., at 100 -101. The mere fact that the state agency was a named defendant was not sufficient to alter the state action analysis from that appropriate to a case involving the state regulation of private anticompetitive acts. See Southern Motor Carriers Rate Conference, Inc. v. United States, post, at 56-57.

[ Footnote 4 ] There is no such order of the Department of Natural Resources at issue in this case.

[ Footnote 5 ] The Towns also rely on Wis. Stat. Ann. 66.076(1) and 66.30 (1965 and Supp. 1984) to argue that the State's policy on the provision of sewage services is actually procompetitive. This claim must fail because, aside from the fact that it was not raised below, the provisions relied upon do not support the contention. First, it is true that 66.076(1) permits certain municipalities, including towns, to operate sewage systems. The provision is simply a general enabling statute, however, not a mandatory prescription. In addition, subsection (8) of 66.076 incorporates into the enabling statute all of the limitations of 66.069, including the power to limit the area of service. Thus, 66.076(1) does not express a procompetitive state attitude.

Nor does 66.30 aid the Towns. It is a general provision concerning all utilities - not just sewage systems - that permits municipalities to enter into cooperative agreements. The statute is not mandatory, but merely permissive. Moreover, even assuming two municipalities agreed pursuant to this section to cooperate in providing sewage services, the result would not necessarily be greater competition. Rather, the two combined might well be more effective than either alone in keeping other municipalities out of the market.

[ Footnote 6 ] Nor does it help the Towns' claim that the statutes leave to the City the discretion whether to provide sewage services. States must always be free to delegate such authority to their political subdivisions.

[ Footnote 7 ] Requiring such a close examination of a state legislature's intent to determine whether the federal antitrust laws apply would be undesirable also because it would embroil the federal courts in the unnecessary interpretation of state statutes. Besides burdening the courts, it would undercut the fundamental policy of Parker and the state action doctrine of immunizing state action from federal antitrust scrutiny. See 1 P. Areeda & D. Turner, Antitrust Law –212.3(b) (Supp. 1982).

[ Footnote 8 ] Our view of the legislature's intent is supported by Town of Hallie v. City of Chippewa Falls, 105 Wis. 2d 533, 314 N. W. 2d 321 (1982), in which the Supreme Court of Wisconsin rejected the Town of Hallie's challenge under state antitrust laws against the City of Chippewa Falls in a case quite similar to the one at bar. There, the Town of Hallie argued that the City's refusal to provide it with sewage treatment services, the requirement of annexation, and the City's conditioning of the provision of treatment services on the acceptance also of sewage collection and other city services, violated the state antitrust laws. The State Supreme Court disagreed, concluding that the legislature intended the City to undertake the challenged actions. Those actions therefore were exempt from the State's antitrust laws. Analyzing

66.069(2)(c) and 144.07(1m), the court concluded that the legislature had "viewed annexation by the city of a surrounding unincorporated area as a reasonable quid pro quo that a city could [471 U.S. 34, 45] require before extending sewer services to the area." Id., at 540-541, 314 N. W. 2d, at 325.

Although the Wisconsin Supreme Court's opinion does not, of course, decide the question presented here of the City's immunity under the federal antitrust laws, it is instructive on the question of the state legislature's intent in enacting the statutes relating to the municipal provision of sewage services.

[ Footnote 9 ] Among other things, municipal conduct is invariably more likely to be exposed to public scrutiny than is private conduct. Municipalities in some States are subject to "sunshine" laws or other mandatory disclosure regulations, and municipal officers, unlike corporate heads, are checked to some degree through the electoral process. Such a position in the public eye may provide some greater protection against antitrust abuses than exists for private parties.

[ Footnote 10 ] In cases in which the actor is a state agency, it is likely that active state supervision would also not be required, although we do not here decide that issue. Where state or municipal regulation by a private party is involved, however, active state supervision must be shown, even where a clearly articulated state policy exists. See Southern Motor Carriers Rate Conference, Inc. v. United States, post, at 62. [471 U.S. 34, 48]

# ATTACHMENT G

# VERMONT MUNICIPALITIES WITH CHARTERS

City of Barre
City of Burlington
City of Montpelier
City of Newport
City of Rutland
City of St. Albans
City of South Burlington
City of Vergennes
City of Winooski
Town of Barre
Town of Bennington
Town of Berlin
Town of Bradford
Town of Brattleboro
Town of Chester
Town of Colchester
Town of Essex
Town of Hardwick
Town of Middlebury
Town of Milton
Town of Plainfield
Town of Poultney
Town of Readsboro
Town of Richford
Town of Richmond
Town of Shelburne
Town of Springfield
Town of St. Johnsbury
Town of Stowe
Town of Williston
Town of Windsor
Village of Alburg
Village of Bellows Falls
Village of Derby Center
Village of Derby Line
Village of Essex Junction
Village of Hyde Park
Village of Ludlow
Village of Lyndonville
Village of Morrisville
Village of Newbury
Village of Newfane
Village of North Bennington
Village of North Troy
Village of Northfield
Village of Poultney
Village of Waterbury
Addison County Solid Waste Management District
Central Vermont Solid Waste Management District
Chittenden Regional Solid Waste Management District
Lamoille Regional Solid Waste Management District
Windham Solid Waste Management District
Milton Fire District No. 1
St. George Fire District No. 1
Bolton Fire District No. 1

**In summary, there are 9 Cities, 22 Towns, 16 Villages, 5 Solid Waste Districts, and 3 Fire Districts with Charters.**

# ATTACHMENT H

**§ 2645. Charters, amendment, procedure.**

(a) A municipality may propose to the general assembly to amend its charter by majority vote of the legal voters of the municipality present and voting at any annual or special meeting warned for that purpose in accordance with the following procedure:

(1) A proposal to adopt, repeal or amend a municipal charter may be made by the legislative body of the municipality or by petition of five percent of the voters of the municipality.

(2) An official copy of the proposed charter amendments shall be filed as a public record in the office of the clerk of the municipality at least ten days before the first public hearing and copies thereof shall be made available to members of the public upon request.

(3) The legislative body of the municipality shall hold at least two public hearings prior to the vote on the proposed charter amendments. The first public hearing shall be held at least 30 days before the annual or special meeting.

(4) If the proposals to amend the charter are made by the legislative body, the legislative body may revise the amendments as a result of suggestions and recommendations made at a public hearing, but in no event shall such revisions be made less than 20 days before the date of the meeting. If revisions are made, the legislative body shall post a notice of these revisions in the same places as the warning for the meeting not less than 20 days before the date of the meeting and shall attach such revisions to the official copy kept on file for public inspection in the office of the clerk of the municipality.

(5) If the proposals to amend the charter are made by petition, the second public hearing shall be held no later than ten days after the first public hearing. The legislative body shall not have the authority to revise proposals to amend the charter made by petition. After the warning and hearing requirements of this section are satisfied, proposals by petition shall be submitted to the voters at the next annual meeting, primary or general election in the form in which they were filed, except that the legislative body may make technical corrections.

(6) Notice of the public hearings and of the annual or special meeting shall be given in the same way and time as for annual meetings of the municipality. Such notice shall specify the sections to be amended, setting out sections to be amended in the amended form, with deleted matter in brackets and new matter underlined or in italics. If the legislative body of the municipality determines that the proposed charter amendments are too long or unwieldy to set out in amended form, the notice shall include a concise summary of the proposed charter amendments and shall state that an official copy of the proposed charter amendments is on file for public inspection in the office of the clerk of the municipality and that copies thereof shall be made available to members of the public upon request.

(7) Voting on charter amendments shall be by Australian ballot. The ballot shall show each section to be amended in the amended form, with deleted matter in brackets and new matter underlined or in italics and shall permit the voter to vote on each proposal of amendment separately. If the legislative body determines that the proposed charter amendments are too long or unwieldy to be shown in the amended form, an official copy of the proposed charter amendments shall be maintained conspicuously in each ballot booth for inspection by the voters during the balloting and voters shall be permitted to vote upon the charter amendments in their entirety in the form of a yes or no proposition.

(b) The clerk of the municipality, under the direction of the legislative body, shall announce and post the results of the vote immediately after the vote is counted. The clerk, within 10 days after the day of the election, shall certify to the secretary of state each proposal of amendment showing the facts as to its origin and the procedure followed.

(c) The secretary of state shall file the certificate and deliver copies of it to the attorney general and clerk of the house of representatives, the secretary of the senate and the chairman of the committees concerned with municipal charters of both houses of the general assembly.

(d) The amendment shall become effective upon affirmative enactment of the proposal, either as proposed or as amended by the general assembly. A proposal for a charter amendment may be enacted by reference to the amendment as approved by the voters of the municipality.

Added 1977, No. 269 (Adj. Sess.), § 1; amended 1979, No. 200 (Adj. Sess.), § 100; 1981, No. 239 (Adj. Sess.), § 22, eff. May 4, 1982; 1983, No. 161 (Adj. Sess.); 1987, No. 63.

Prev Doc Next Doc

# ATTACHMENT
# I

The Vermont Institute for Government

# Reforming Local Government By Charter

*Compiled by Paul Gillies*

### Who is in charge?

Local government belongs to the voters. We decide the budget. We fill offices by election. Although representative town and school officers do much of the footwork, they work for us.

Sometimes we lose track of our powers and responsibilities. We forget there is a fundamental difference between the governance of a Vermont town and any other form of government in the world. We let the selectboard rule and we fall into that old habit of complaining about the way things are run, when it's really our fault all along for not getting involved.

But what can we do, people ask. It's the legislature that makes the law. Local government is just another agency to do the state's bidding. This is true, but there are options. Towns do not have to abide by general state law. Any town in Vermont has the authority to adopt a charter that can change the general state law for that community, provided it is ratified by the legislature. The good news is that the legislature is usually very willing to accommodate towns with new ideas on how government should work at the local level.

This pamphlet is designed as an introduction to the process of reforming government by local charter. It is only a seed. The hard work of developing a charter belongs to you.

Process is our subject. Here we give you an idea of how creative you can be with a charter. We describe how to draft the basic document, how to prepare a proper petition, what to expect at

*continued on page 2*

### What Can a Charter Do?

One town wants a conflict of interest rule that will prevent elective and appointive officers from self-dealing. Another wants to guarantee that any decision the selectboard makes could be put to a confirming vote of the electorate if petitioned by a percentage of the checklist. Another wants a three year term for delinquent tax collector or to abolish the office of road commissioner, centralizing the power in the selectboard's hands. Another would like to charge penalties for late payments of installment taxes. Another wants an express vote at an annual meeting before any further paving of highways is done.

Most towns are governed by general state law. Bits and pieces of this are found throughout the various titles of the Vermont Statutes Annotated, but principally in Titles 1, 17, 24 and 32. These laws change incrementally each year, usually for the better. But substantive reform of local government doesn't come by the annual amendment of general state law. When a community wants to address its own, immediate needs, the best way for this to happen is to adopt a charter.

Some people think a charter is something only a city can have, but more than two dozen Vermont towns have them as well. In Brattleboro, the charter and other special legislation has created Vermont's only representative town meeting system, where each geographic area of the town is represented in a town meeting assembly by an elected member. Other towns have provided by charter for public recall of elected officers, where a certain percentage of voters can petition for a vote to recall an officer who is not performing satisfactorily. Another has reserved powers of voters to propose ordinances directly to the vote at town meeting.

### How Far Can You Go?

There are limits to the legislature's willingness to share power and allow a municipality to do things other towns can't by special charter. You must not expect, for instance, that by charter you could relinquish your town's responsibilities to the state to pay taxes, but you

**Warning:** This is a subversive document. It contains instructions on how to change your government. In the wrong hands, it can be a dangerous weapon. Used properly, it can bring many years of productive life to town government.

**How Far Can You Go?** ***(continued)***

could, like Burlington and Rutland, have special authority to charge businesses 120% of fair market value on property while residents pay at the usual 100%. You couldn't make the speed limit 80 mph in your town, for obvious reasons.

In other words, be reasonable. The effect of your charter cannot grant your residents an exemption or advantage not enjoyed by other residents of Vermont. It cannot invade any of the rights and responsibilities of citizenship.

Above all, the proposed change must be local in scope. Ideally, it is designed to respond to an actual problem that general law doesn't address. Consider, for example, the business of defining conflict of interest. General state law is very poor on this subject. Some towns, seeing how conflicts destroy the fragile sense of trust between elected officials and the voters, have written very severe rules to guard against even the appearance of a conflict, and the legislature has been very willing to accommodate the towns by enacting these provisions.

Another town wanted to set term limits on its select board several years ago, and duly adopted it as part of the formal adoption process. When the proposal arrived at the legislature, it was immediately questioned. The Attorney General confirmed that term limits were unconstitutional, and the provision was struck from the proposed charter.

That is the risk of anyone coming to the legislature with a hope of having new ideas made into law--that the legislature will balk, and either refuse to enact it or change it in a way that no longer suits the purposes of the petitioners. To avoid this, ask for prereview by the Legislative Council, through our representative or senator, and by the Attorney General if you can persuade that office to get involved, before something is presented to the voters. The more advice you get, the more precedent you can cite, the more you can name the need that creates the problem--the more likely your proposal will find acceptance at the legislature.

### The Process of Drafting a Charter.

First you need an idea, and then you will want to put it into writing. This is best done by committee, with one articulate member serving as scribe or drafter. The best way to start is to review the problem succinctly. Then look at other charters for model provisions. Look at city charters or those of the larger towns. You can find copies of all charters at the Secretary of State's Office. They may soon be published in Vermont Statutes Annotated--check the index.

Deciding what you want to change is a good place to start. In starting out, dare to dream about a town government that is just to your liking. Try to imagine how you could improve the way things are. Talk to town officers, current and former, about what they think ought to be changed.

Don't expect everything you propose will be zealously ratified by the voters of the town. Voters are inherently conservative bodies, but reasonable proposals clearly drafted are usually given a fair hearing and serious consideration.

Pitch the idea to the selectboard, and see if you can obtain the members' support. Perhaps the effort to draft a charter starts with the selectboard for that matter. In that case the board appoints the committee, and the committee reports back to the board with the draft.

Don't be reluctant to hold a special hearing on the issues either, while it's in the planning stages. Try to engage as many people as possible in your cause. Write up an ex-

*continued from page 1*

public hearings--both those at home and in Montpelier--and describe in detail each of the steps you must take to make your charter the law of your community.

Democracy--the principle that the people rule--is a radical idea. Of course, it's not so radical if we sleep on our rights and let representative government control us. That's why it's so important to stay involved. Too often we become frustrated and alienated and we just give up. The good news is that the process is in place for us to reassume control of local government, through a proper charter. All we need to do is organize.

When Charters Are Voted. A charter or a charter amendment is voted at the annual town meeting, or at the next primary or general election, whichever election comes first. It cannot be voted at a special meeting of the town. The idea is to guarantee as large a turnout as possible for an important question like a charter.

**The Process of Drafting a Charter.** ***(continued)***

planation in everyday language. Publish an article or letter to the editor to the local paper. Make what you want to do widely known, and then start the petitioning process.

**Petitioning.**

There are two ways of getting the question on the ballot. The select board decides it likes the idea and agrees to put it on a warning for the election or petitioners force a vote by a petition. If the board is unwilling to put it on a warning, then the petition is the solution. It requires five percent of the checklist to sign it, and the board cannot prevent it from being submitted to the electorate.

A petition ought to have a heading. Call it "Charter Petition." Then explain your purpose. "We, the undersigned voters of the Town of _____, hereby petition the select board to add this article to the warning of the annual meeting [primary or general election] for the purpose of voting on the proposed charter." Include a copy of the proposal with the petition (printed on the back of the petition, for instance), underlying all new words.

Make the petition with three columns, plainly marked--one each for signature, printed name, and address. Collect more than you need to avoid the embarrassment of a short list because some don't remember whether they are registered to vote or not or whether they even reside in your town. It happens. Of course, if you don't have enough signatures on the first submission, you can always supplement.

Try to keep track of deadlines. For a petitioned article such as a charter question to be added to the warning for the election, it must be submitted early enough to be properly warned. Because of the time required to schedule public hearings, eight weeks before the vote isn't too early.

You can't do this all yourself, of course. You need help circulating petitions and making the rest of the community aware of what you are trying to do. It takes hard work and many hours of preparation to do it right.

**Where to Find the Law on Charters.** Find the Vermont Statutes Annotated. There is a set in every Town Clerk's office. Find Title 17. Look for section 2645, starting in the little pocket book at the back of the volume. Make sure you have the most current pocket part. Look up the number, and read and photocopy what is written there. Enlarge it so everyone can see it. Study it. Know it. You will be tested on this.

**A Model Schedule for Warnings.**

1. Charter is submitted to select board.
2. Warning posted.
3. First public hearing (no less than 30 days after warning).
4. Second public hearing (no less than 30 days after warning, and not more than ten days before election day).
5. The Election (no less than 30 days after warning). Post the warning forty days before the election. Call the first hearing, on the Monday evening, a week and a day before the election. Hold the second hearing on the Monday which is the night before town meeting. Calling all public hearings and the election on the same page makes sense, and include a copy of the proposed charter with the warning or clear instructions where a copy can be obtained.

**Once the Petition is Submitted.**

Now the petition is submitted or the select board has agreed to warn the proposed charter or amendment on its own motion. Now what?

The next move belongs to the board. It must warn the public hearings and the vote. The process is different from any other type of question, because the law provides special rules for the process.

Every charter proposal requires two public hearings. Each hearing must be warned at least 30 days in advance, by posted and published notice. The election vote also requires similar warning of at least thirty days.

Votes on charter proposals or amendments can only be taken at the annual town meeting, at a state primary or a general election.

**The Election Process.**

The vote is by Australian ballot, which means you can vote by absentee ballot. The law recently changed and now allows anyone to vote absentee for any reason, so if you are interested in ensuring that as many of your supporters actually vote you will need to ensure that everybody knows

**The Election Process.** *(continued)*

how to order one. All it takes is the voter's consent to request a ballot.

You can also have supporters standing outside the polling place, greeting voters and encouraging them to vote for the charter. Signs, bumper stickers, letters to the editor, all of these things help in getting the word out. The status quo is seriously impacted, and change is hard. People fear things they don't understand. Help them by giving them clear explanations. Be ready with answers to basic questions.

Remain respectful of the voter who doesn't want to talk or reacts poorly to your presentation. Don't try to force anyone to stop or take literature from you.

You cannot enter the polling place except to vote yourself, until the polls close. Then you may observe the counting process. Try to get good figures on turnout (ask for the checklist totals) and the vote. If you've won, celebrate. If you've lost, leave quietly and regroup. If it's a close vote, you might consider a petition to reconsider, which must be filed within 30 days signed by five percent of the checklist.

Let's remain optimistic. Say your proposal passed. Now what can you expect?

### How A Charter Reaches the Legislature.

Once a vote is taken and a proposed charter or amendment passes, the town clerk is required to prepare a packet for the Secretary of State. This includes a copy of the minutes of the selectboard approving the warning, the warning itself, a copy of the ballot, and a certified return of votes of the election.

Since the charter has to come before the legislature as a bill, it will need a sponsor, usually one of the representatives or senators for your district. Don't expect this will happen by itself. Stay involved, and make sure the bill is submitted. Then keep asking its progress. Once introduced, it will be referred to a committee, usually the House Local Government Committee, if it's a house bill, or the Senate Government Operations Committee in the other chamber. Call the committee and leave your name and number, so you can be called whenever the bill is going to be discussed. Attend the hearing, and ask to be heard. You don't need to hire a lobbyist, but you won't waste your time by following the charter through the legislative process. After all, all your hard work is for nothing if it isn't ratified by the legislature.

### A Final Word on the Process.

Democracy rewards dedication. If you are persistent, you can change the way your town is governed. There are few monuments in the town square that will outweigh that contribution to your community.

## A Word about The Vermont Institute for Government

The Vermont Institute for Government (VIG) is a nonprofit corporation dedicated to improving educational opportunities for local officials and the public on how government works. It consists of representatives from each of the major groups in Vermont that offer such training.

The VIG has published other pamphlets that may be of use or interest to you. They include:

- ***The Meeting Will Come to Order***, covering town meeting procedures.
- ***Changing the World***, about how to increase your effectiveness in meetings of local and state boards and commissions.
- ***Are You Appealing?***, which covers the tax grievance and appeal processes at the local level.
- ***Isn't This My Land?***, relating to local planning and zoning.
- ***The Vermont Citizenship Comprehensive Examination***, a fun test of basic information a citizen ought to know about Vermont government.
- ***The Public Right of Way and You***, covering town highways.
- ***How and Why to Read a Town Report,*** it can tell you a great deal about your town.
- ***It's Your Turn: A Call to Local Office,*** how to get involved in your local government.

Contact the VIG office for free copies of any of these pamphlets or to learn more about VIG.

**Vermont Institute for Government**
R.R. 4, Box 2298
Montpelier, Vermont 05602
223-2389

1/97

# ATTACHMENT J

# CATALOGUE OF CHARTER CHANGES APPROVED BY THE VERMONT STATE LEGISLATURE OVER THE PAST 6 LEGISLATIVE SESSIONS COVERING 1993-2004

2003-2004: http://www.leg.state.vt.us/docs/acts.cfm#MUNIS

| Act No. | Title | Bill |
|---|---|---|
| M001 | THE CITY OF ST. ALBANS CHARTER | H.0025 |
| M002 | THE MERGER OF EAST BARRE FIRE DISTRICT NO. 1 INTO THE TOWN OF BARRE | H.0127 |
| M003 | CREATING AN OFFICE OF VILLAGE CONSTABLE IN THE VILLAGE OF NORTH TROY | H.0210 |
| M004 | MERGING THE VILLAGE OF MILTON INTO THE TOWN OF MILTON | H.0138 |
| M005 | THE INCORPORATION OF MILTON FIRE DISTRICT NO. 1 | H.0300 |
| M006 | THE CHARTER OF THE TOWN OF BRATTLEBORO | H.0433 |
| M007 | THE CHARTER OF THE TOWN OF BENNINGTON | H.0463 |
| M008 | THE VILLAGE OF WATERBURY CHARTER | H.0474 |
| M009 | THE INCORPORATION OF ST. GEORGE FIRE DISTRICT NO. 1 | H.0301 |
| M010 | THE VILLAGE OF BRADFORD AND THE TOWN OF BRADFORD | H.0593 |
| M011 | APPROVAL OF THE TOWN OF WILLISTON CHARTER<br>*A full charter, not just a change* | H.0570 |
| M012 | THE CHARTER OF THE CITY OF ST. ALBANS | H.0771 |
| M013 | THE CHARTER OF THE TOWN OF STOWE | H.0773 |
| M014 | THE CHARTER OF THE CITY OF BURLINGTON | H.0775 |
| M015 | AMENDMENT OF THE NORTHEAST KINGDOM WASTE MANAGEMENT DISTRICT CHARTER | H.0364 |
| M016 | THE CHARTER OF THE CITY OF RUTLAND | H.0774 |
| M017 | APPROVAL OF AMENDMENT TO THE BENNINGTON SCHOOL DISTRICT CHARTER | H.0769 |
| M018 | BOLTON FIRE DISTRICT NO. 1 | H.0782 |
| M019 | THE BALTIMORE, CAVENDISH, AND WEATHERSFILED TOWN LINES | H.0776 |
| M020 | THE CHARTER OF THE CITY OF WINOOSKI | H.0779 |
| M021 | THE BRATTLEBORO TOWN CHARTER | H.0783 |

2001-2002: http://www.leg.state.vt.us/docs/acts.cfm?Session=2002#MUNIS

| Act No. | Title | Bill |
|---|---|---|
| M001 | THE CHARTER OF THE TOWN OF MILTON | H.0050 |
| M002 | THE CHARTER OF THE TOWN OF BERLIN | H.0100 |
| M003 | THE GRAND ISLE CONSOLIDATED WATER DISTRICT | H.0327 |
| M004 | APPROVAL OF AMENDMENTS TO THE CHARTER OF THE CITY OF BARRE | H.0069 |
| M005 | VILLAGE OF MORRISVILLE CHARTER | H.0032 |
| M006 | APPROVAL OF AMENDMENTS TO THE CHARTER OF THE CITY OF BURLINGTON<br>City treasurer changed to Chief Admin Officer and a few other small things. | H.0273 |
| M007 | APPROVAL OF AMENDMENTS TO THE CHARTER OF THE TOWN OF STOWE | H.0487 |
| M008 | APPROVAL OF AMENDMENTS TO THE TOWN OF BARRE SCHOOL DISTRICT | H.0317 |

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|---|---|---|
| | CHARTER | |
| M009 | RUTLAND CITY AND RUTLAND TOWN BOUNDARY | H.0497 |
| M010 | THE ALBURG VILLAGE CHARTER | H.0507 |
| M011 | THE CHARTER OF THE CITY OF BURLINGTON | H.0770 |

1999-2000: http://www.leg.state.vt.us/docs/docs2.cfm?Session=2000

| Act No. | Title | Bill |
|---|---|---|
| M001 | TOWN OF ESSEX CHARTER | H.0020 |
| M002 | CHARTER OF THE TOWN OF BARRE | H.0047 |
| M003 | CHANGING NAME OF TOWN OF SHERBURNE TO KILLINGTON | H.0550 |
| M004 | THE CITY OF SOUTH BURLINGTON CHARTER | H.0233 |
| M005 | BARRE CITY CHARTER AMENDMENT | H.0555 |
| M006 | AMENDMENT TO WINOOSKI CHARTER | H.0562 |
| M007 | CITY OF BURLINGTON CHARTER AMENDMENT | H.0551 |
| M008 | MERGER OF THE TOWN & VILLAGE OF NORTHFIELD | H.0563 |
| M009 | CHARTER AMENDMENT FOR CITY OF BURLINGTON | H.0048 |
| M010 | MERGER OF THE TOWN OF WEST RUTLAND & WEST RUTLAND FIRE DISTRICT #1 | H.0646 |
| M011 | THE VILLAGE OF HYDE PARK CHARTER | H.0584 |
| M012 | CHARTER AMENDMENT TO TOWN OF WINDSOR | H.0857 |
| M013 | CHARTER OF THE ESSEX JUNCTION SCHOOL DISTRICT | H.0860 |
| M014 | CHARTER OF THE CITY OF BURLINGTON | H.0856 |

1997-1998: http://www.leg.state.vt.us/docs/acts.cfm?Session=1998#MUNIS

| Act No. | Title | Bill |
|---|---|---|
| M001 | ESSEX JUNCTION SCHOOL DISTRICT CHARTER | H.0193 |
| M002 | NORTHFIELD VILLAGE CHARTER | H.0072 |
| M003 | TOWN OF BARRE CHARTER | H.0249 |
| M004 | CHARTER OF THE CITY OF BURLINGTON | H.0310 |
| M005 | SOUTH BURLINGTON CHARTER | H.0321 |
| M006 | BARRE CITY CHARTER | H.0397 |
| M007 | CHARTER OF THE TOWN OF ST. JOHNSBURY | H.0531 |
| M008 | CHARTER AMENDMENT/COLCHESTER | H.0532 |
| M009 | CITY OF MONTPELIER CHARTER | H.0533 |
| M010 | CV SOLID WASTE CHARTER | S.0190 |
| M011 | TOWN/VILLAGE OF RICHFORD CHARTER MERGER | H.0568 |
| M012 | WINOOSKI INCORPORATED SCHOOL DISTRICT | H.0711 |
| M013 | BARRE TOWN CHARTER | H.0547 |
| M014 | CHARTER OF THE TOWN OF BARRE | H.0773 |
| M015 | CHARTER CHANGE FOR SOUTH BURLINGTON | H.0762 |
| M016 | BENNINGTON GRADED SCHOOL DISTRICT CHARTER | H.0776 |

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|---|---|---|
| M017 | RUTLAND CITY CHARTER | H.0769 |
| M018 | BURLINGTON CITY CHARTER | H.0766 |

1995-1996: http://www.leg.state.vt.us/docs/acts.cfm?Session=1996#MUNIS

| Act No. | Title | Bill |
|---|---|---|
| M001 | WINOOSKI SCHOOL DISTRICT CHARTER | H.0102 |
| M002 | THE CHARTER OF THE TOWN OF BARRE SCHOOL DISTRICT | H.0025 |
| M003 | CHARTER AMENDMENT OF TOWN OF MIDDLEBURY | H.0095 |
| M004 | THE VILLAGE OF WATERBURY CHARTER | H.0500 |
| M005 | WINHALL-STRATTON FIRE DISTRICT NO. 1 | H.0512 |
| M006 | CITY OF BARRE CHARTER AMENDMENT | H.0516 |
| M007 | CHARTER OF THE CITY OF BURLINGTON | H.0518 |
| M008 | CHARTER FOR VILLAGE OF ESSEX JUNCTION | H.0532 |
| M009 | VILLAGE OF STOWE AND TOWN OF STOWE | H.0702 |
| M010 | CHARTER OF THE TOWN OF BERLIN | H.0748 |
| M011 | BARRE CITY CHARTER AMENDMENT | H.0779 |
| M012 | BELLOWS FALLS CHARTER AMENDMENT | H.0790 |
| M013 | CHARTER OF THE TOWN OF ESSEX AND SCHOOL DISTRICT | H.0812 |
| M014 | WINDSOR CHARTER AMENDMENT | H.0815 |
| M015 | SOUTH BURLINGTON CHARTER CHANGE | H.0781 |
| M016 | AMEND WINDHAM SOLID WASTE DISTRICT CHARTER | H.0625 |
| M017 | BURLINGTON CHARTER AMENDMENT | H.0809 |
| M018 | TOWN OF SPRINGFIELD CHARTER | H.0811 |

1993-1994: http://www.leg.state.vt.us/docs/acts.cfm?Session=1994#MUNIS

| Act No. | Title | Bill |
|---|---|---|
| M001 | CHARTER OF THE VILLAGE OF NORTHFIELD | H.0011 |
| M002 | CHARTER OF THE TOWN OF RICHMOND | H.0049 |
| M003 | CHARTER OF THE TOWN OF MILTON | H.0275 |
| M004 | CHARTER OF THE NORTHEAST KINGDOM WASTE MANAGEMENT DISTRICT | S.0238 |
| M005 | BURLINGTON CHARTER AMENDMENTS | H.0185 |
| M006 | BENNINGTON CHARTER | H.0334 |
| M007 | MODIFYING THE CENTRAL VERMONT SOLID WASTE MANAGEMENT DISTRIC | H.0517 |
| M008 | BARRE CITY CHARTER AMENDMENT | H.0526 |
| M009 | ADDISON COUNTY SOLID WASTE MANAGEMENT DISTRICT CHARTER | H.0505 |
| M010 | RATIFYING AMENDMENT TO THE CHARTER OF THE CITY OF RUTLAND | H.0089 |
| M011 | CHARTER OF THE VILLAGE OF ESSEX JUNCTION | H.0538 |
| M012 | CHARTER OF THE VILLAGE OF NORTHFIELD | H.0585 |
| M013 | CHARTER OF CITY OF BURLINGTON | H.0699 |
| M014 | AMENDMENTS TO THE CHARTER OF THE VILLAGE OF STOWE | H.0546 |

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|---|---|---|
| M015 | AMENDING THE ESSEX JUNCTION SCHOOL DISTRICT CHARTER | H.0548 |
| M016 | CHARTER OF THE CITY OF WINOOSKI | H.0854 |
| M017 | CHARTER OF THE VILLAGE OF POULTNEY | H.0872 |
| M018 | FIRE DISTRICT NO. 1 OF WILLISTON | H.0691 |
| M019 | CHARTER OF CITY OF BURLINGTON | H.0852 |
| M020 | MERGER OF TOWN OF BRISTOL AND THE VILLAGE OF BRISTOL | H.0862 |
| M021 | AMEND THE CHARTER OF THE CITY OF BARRE | H.0878 |
| M022 | AN AMENDMENT TO THE CHARTER OF THE TOWN OF BENNINGTON | H.0545 |
| M023 | ESSEX TOWN SCHOOL DISTRICT | H.0876 |
| M024 | CHARTER OF THE CITY OF BURLINGTON | H.0879 |
| M025 | AMEND NO. M-3 OF THE OF 1989/LAMOILLE COUNTY SOLID WASTE DIS | S.0343 |
| M026 | CHARTER OF THE VILLAGE OF ESSEX JUNCTION | H.0884 |
| M027 | CHARTER OF THE CITY OF MONTPELIER | H.0886 |

# ATTACHMENT K

# Summary of Burlington's Recent Approved Charter Changes

## 1993-1994

**H.185**

- Voters approved 11/3/92
- Added 7th ward. Meant a redistricting redraw of most existing wards.
- Therefore city councilors from 7th ward had to be elected.
- Allowed councilors to serve on regional boards (CCRPC or CSW Management District)
- Added a school commissioner (13 -> 14) for Ward 7.
- Approved 4/21/93

**H.699**

- Voters approved? No date given
- All wards elected 1 city councilor but now wards 4 and 7 can elect 2. Same with school commissioners.
- Approved 1/26/94

**H.852**

- Voters approved 3/2/93
- Courts established city ordinance violation penalties up to $200, now city council does and it goes up to $500.
- The city gets the money from the violations.
- Judges can join in the process but can't usurp authority.
- Created: CEDO, Burlington City Arts, and Personnel Department.
- Added 2 people (5 -> 7) to the Church Street Marketplace Commission
- Approved 4/6/94

**H.879**

- Voters approved 3/1/94
- Added 2 (7 -> 9) to Board of Registered Voters
- Mayor must be a city resident, councilors must be a resident of their ward, and Commissioner Director must be a city resident.
- Approved 5/5/94

## 1995-1996

**H.518**

- Voters approved 3/7/95
- Allowed for absentee ballots
- Allow council to tax .50 of grand list for library
- Approved 4/17/95

**H.809**

- Voters approved 3/5/96
- Changed language "he" to "Mayor"

- Altered reappraisal process and appeals
- Board of Tax Appeals created
- Approved 5/6/96

## 1997-1998

**H.310**

- Voters approved 11/5/96 and 3/4/97
- Increased the authority of the treasurer ($250,000 to $750,000)
- Retirement fund changes made and changes to retirement board.
- Edits to the police force rules
- Approved 5/5/97

**H.766**

- Voters approved 3/3/98
- Mayor appoints city assessor and HR director
- City treasurer is now called the "Clerk/treasurer"
- Personnel department is now called the Human Resources department
- Approved 4/23/98

## 1999-2000

**H.48**

- Voters approved 11/3/98
- For educational grand list purposes non-residential properties are valued at 100% of Fair Market Value.
- Created a Downtown Improvement District and Church Street Marketplace District.
- Church Street Marketplace Commission added 2 people (7 -> 9)
- Free parking for 2 hours
- Tax no more than .12 for non-residential property in Church Street Marketplace District.
- Approved 6/1/99

**H.551**

- Voters approved 3/2/99
- Ward clerk's terms defined
- Board of Commissioners shall provide the list of individuals for appointed positions to the Mayor who much pick from the 2 choices (for each position).
- Approved 5/19/99

**H.856**

- Voters approved 3/7/00
- Deleted references to local educational spending and replaced it with the state act.
- Budget process was detailed out.
- Dual positions by City employees clarified
- Electric customers and city taxpayers shouldn't pay for new cable or telecommunications infrastructure.
- Authorizes joint venture of City and telecommunications group.

- Approved 5/29/00

## 2001-2002

**H.273**

- Voters approved 11/7/00 and 3/6/01
- Clerk/treasurer changed to Chief Administrative Officer
- Mayor gets a 3 year term instead of 2.
- Expand Mayor's role, he now serves as a voting member of local control commissioners, justice of the peace, he can appoint all city department heads and they're confirmed by a majority of the council. (Changes H.551 above). The Council can still remove someone with a 2/3 vote.
- Council's compensation changed from $20/meeting to $3,000/year.
- City council takes over ultimate responsibilities for the workings of the following agencies/commissions and can delegate the work back to the commissions if it wants:
    - Board of Parks and Recreations Commission
    - Board of Public Cemeteries Commission
    - Board of Public Works Commission
    - Board of Light Commission
    - Board of Airport Commission
    - Church Street Marketplace Commission
    - Board of Libraries Commission
    - Board of Police Commission
    - Board of Fire Commission.
- Approved 4/26/01

**H.770**

- Voters approved 3/5/02
- Increase tax maximum from .235 to .742
- Dual positions clarified (again)
- Approved 5/12/02

## 2003-2004

**H.775**

- Voters approved 3/4/03 and 3/2/04
- Landlords can't evict with no cause with less than 90 days notice if the tenant was there less than two years. It takes 120 days notice with 2 years or more. Rent increases need 90 days notice.
- Mayor's untimely leave is filled by President of City Council until a new one is elected. (Instead of them serving until the end of the Mayor's elected term). But the election must happen within 90 days.
- Manner for dismissing the Chief of Police changed.
- UVM can enforce Burlington municipal ordinances and issue citations.
- Approved 5/19/04

# Summary of Burlington's Recently Failed Charter Changes

The City of Burlington proposed four charter changes that were never voted on by the General Assembly. The first two were in the 1993-1994 biennium; H.887 called for a homestead exemption from property taxes, up to the first $20,000 value of the appraised value if the home is a primary residence on less than two acres. H.888 changed another section of the charter, to allow for a primary residential property homestead exemption not to exceed $25,000.

In the 1995-1996 legislative session, two more charter changes were proposed by Burlington. H.343 lowered the non-residential grand list rate from 120 to 100 percent of the assessed value, while listing residential properties between 75 and 85 percent of the fair market value. Also, it allowed the City Council to exempt primary residences from property taxes up to $40,000 in value. The other proposal during the legislature, H.488, changed the Mayor's veto power from a maximum of two weeks to one.

All four of these charter amendments were not approved by the state.

# ATTACHMENT L

H.775

AN ACT RELATING TO THE CHARTER OF THE CITY OF BURLINGTON

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. APPROVAL OF CHARTER AMENDMENT

The charter of the City of Burlington is amended as provided in this act. Proposals of amendment were approved by the voters on March 4, 2003 and March 2, 2004.

Sec. 1a. 24 V.S.A. App. chapter 3, § 48 is amended to read:

§ 48. ENUMERATED

The city council shall have power:

* * *

(64)(A) Where there is no written rental agreement and notwithstanding subsection 4467(c) of Title 9, to prohibit, by ordinance, a landlord from terminating a tenancy of rental housing within the city for no cause unless the landlord provides to the tenant written notice of at least 90 days when the tenancy has been less than two years and of at least 120 days when the tenancy has been two years or more.

(B) Unless inconsistent with a written rental agreement or otherwise provided by law, and notwithstanding the provisions of subsection 4456(d) of Title 9, to require, by ordinance, tenants who wish to terminate a residential

tenancy to give actual notice to the landlord at least two rental periods prior to the termination date specified in the notice.

(65) To prohibit increases in rent for rental housing within the city without advance written notice of at least 90 days.

Sec. 2. 24 App. V.S.A. chapter 3, § 128 is amended to read:

§ 128. MANNER OF FILLING

In case of a vacancy in the office of mayor, occasioned by death, resignation, removal from said city, permanent inability to serve, failure to elect or disqualification of the person chosen, ~~such vacancy shall be filled at the first annual city meeting which occurs thereafter, by the election of a successor for the remainder of the mayor's official term, provided such vacancy occurs at least three months before such annual meeting, and~~ the president of the city council shall act as mayor until such successor is elected and has qualified; ~~otherwise, the president of the city council shall act as mayor for the remainder of the mayor's official term;~~ and in case of any vacancy in the city council from any of the above mentioned causes, the same shall be filled by a new election in the proper ward; and if any city councilor shall remove out of the ward for which he or she may have been elected or no longer reside in such ward as a result of reapportionment, his or her office shall thereupon become vacant and the same shall be filled by a new election in the proper ward; and in case there shall arise an occasion for any such new

election~~,~~ as a result of a vacancy in the office of mayor or city councilor for any of the above mentioned causes, the same shall be held within ~~ninety~~ 90 days of the date of such vacancy, provided such vacancy shall occur before the first day in October in any year, unless a citywide election has been prescheduled to occur between the 90th and the 120th day of the date of such vacancy, in which case the same shall be held on such prescheduled election date; otherwise it shall be filled at the next annual city election. In every case, the person so elected shall serve for the remainder of the official term. In the case of reapportionment, such election shall be held at the next ensuing annual city meeting and the term of the city councilor who no longer resides in the ward as a result of reapportionment shall continue until the newly elected city councilor assumes office on the first Monday in April.

Sec. 3. 24 App. V.S.A. chapter 3, § 168 is amended to read:

§ 168. ADOPTION OF BUDGET

* * *

(b)(1) Annually, immediately following the formal adoption of its budget, the board shall pass a resolution placing before the voters at the annual city meeting the question of whether the ~~Local~~ Education Spending portion of the board-adopted budget will be approved. The city's chief administrative officer shall place such budget approval question upon the ballot of the annual city meeting.

(2) Should a majority of the voters present and voting approve the presented ~~Local~~ Education Spending portion of the budget, it shall be considered approved. If such portion of the board-adopted budget is not approved at the annual city meeting, the board may make alterations thereto which it deems appropriate, if any, and thereafter resubmit such portion of the budget to the voters at a special city meeting to be arranged for such purpose by the chief administrative officer. This sequence may be repeated until the voters approve the ~~Local~~ Education Spending portion of the budget presented to them or until July 1 of any year, whichever sooner occurs. Should such portion of the budget not be approved by the voters by July 1 of any year, the board shall amend its budget and may permit ~~Local~~ Education Spending for that fiscal year in an amount which does not exceed the ~~amount~~ Education Spending last duly approved by the legal voters adjusted by the total dollar amount change in the base education payment for the budget year multiplied by the equalized pupil count for the budget year. No question which is submitted to the voters on or after May 20 of any year shall be subject to a petition for reconsideration or rescission under any provision of this charter or under chapter 55 of Title 17.

(c) The maximum tax rate for school purposes shall at all times be the rate necessary to raise sufficient revenues to fund the ~~Local~~ Education Spending portion of the budget most recently approved by the voters. This rate may

increase or decrease from year to year, depending upon the level of the state of Vermont's financial contribution to the ~~Local~~ Education Spending portion of the budget.

Sec. 4. 24 App. V.S.A. chapter 3, § 186 is amended to read:

§ 186. MANNER OF FILLING VACANCIES

Whenever a vacancy occurs in any other position, the chief may appoint a successor ~~with the consent of a majority of the board of commissioners~~.

Sec. 5. 24 App. V.S.A. chapter 3, § 187 is amended to read:

§ 187. FORCE TO BE MAINTAINED; SELECTION OF MEMBERS

A regular police force for said city shall be maintained in the city. No applicant shall be deemed qualified for employment on said force until he or she has been ~~recommended~~ approved by the chief of police ~~and approved by the board of police commissioners~~. The process for determining the qualifications of and employing police officers shall fully comply with the city's comprehensive personnel policy manual as the same may be amended from time to time.

Sec. 6. 24 App. V.S.A. chapter 3, § 188 is amended to read:

§ 188. MANNER OF APPOINTMENT

The chief shall, from time to time, as the needs of the city may require, appoint from the approved applicants ~~whose names have been approved by said board~~ a sufficient number of regular police officers ~~and each appointment~~

~~must be approved by a majority of said board~~. If the name of the applicant has been on the approved list for more than six months, the applicant shall take and pass a new examination by the board of medical examiners before being appointed.

Sec. 7. 24 App. V.S.A. chapter 3, § 190 is amended to read:

§ 190. CHIEF MAY REMOVE MEMBER FOR CAUSE; HEARING

(a) Whenever it shall appear to the chief that any member of said force has become incompetent, inefficient or incapable from any cause, or is or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the chief by a responsible person against such member, the chief may ~~suspend such member from duty pending a hearing thereon by the board of police commissioners. The chief shall forthwith notify such board of the charges preferred by the chief, or of the complaints or charges presented by such responsible person in writing, and such board shall thereupon proceed to consider and investigate the same. The clerk of said board shall appoint a time and place for the hearing of such complaints and charges so made, shall give the accused reasonable notice of the same, not less than forty-eight hours, and any member of said board~~ investigate and, after appropriate notice and hearing, dismiss such member from the force, order a demotion in rank, or suspend the member without pay

for a specified time period in excess of 14 days. In connection with any possible dismissal, demotion, or suspension for more than 14 days, the chief's notice to the member shall be given at least 48 hours prior to any hearing and shall include a description of the charges being considered. In connection therewith, the chief shall have the power to subpoena witnesses and to administer the oath to such witnesses. The board of police commissioners shall hear any appeal filed in a timely manner with respect to such actions of the police chief. The time of filing an appeal and the nature of the appellate process shall be as determined by such board of regulation. Following its consideration of any such appeal, the board may affirm, modify, or vacate the decision made by the chief of police.

~~(b) If, upon such hearing, said board shall find such complaints or charges to be well-founded, it may dismiss such member from the force, demote the chief in rank, or suspend the chief without pay for a period not to exceed sixty days.~~

~~(c)~~(b) Whenever it shall appear to the mayor that the chief has become incompetent, inefficient, or incapable from any cause, or has been negligent or derelict in his or her official duty, or is guilty of any misconduct in his or her private or official life, or whenever any well-grounded complaints or charges to such effect are made in writing to the mayor by a responsible person, the mayor may suspend the chief from duty pending a hearing thereon by the city

council. The city council shall forthwith notify the chief of the charges preferred by them, or of the complaints or charges presented by such responsible person in writing, and shall thereupon proceed to consider and investigate the same. It shall appoint a time and place for the hearing of such complaints and charges so made, shall give the chief reasonable notice of the same, not less than ~~forty-eight~~ 48 hours, and the city council shall have the power to subpoena witnesses and to administer the oath to such witnesses.

~~(d)~~(c) If, upon hearing, the city council shall find such complaints or charges to be well founded, it may dismiss the chief from the force, demote him or her in rank, or suspend him or her without pay for a period not to exceed ~~sixty~~ 60 days. The procedures outlined in this section shall control in the event of any conflict with section 129 of this charter as pertains to the removal of the chief.

~~(e)~~(d) The chief may, without notice or hearing for any infraction, violation, or disobedience of any of the rules and regulations of the police department that may seem to the chief sufficient, suspend from duty without pay any member of the police force for a period not to exceed ~~fourteen~~ 14 days.

Sec. 8. 24 App. V.S.A. chapter 3, § 195a is added to read:

§ 195a. AUTHORITY OF UNIVERSITY OF VERMONT POLICE OFFICERS

University of Vermont police officers are hereby empowered to enforce City of Burlington municipal ordinances and to issue citations for the violation thereof.

Sec. 9. REPEAL

24 App. V.S.A. chapter 3, § 168(c) (maximum tax rate for school purposes) is repealed.

# ATTACHMENT M

# Summary of Montpelier's Recently Approved Charter Changes

## 1993-1994

**H.886**

- Voters approved 3/1/94
- Changed the rules the City Council has to follow to change the voting district boundaries.
- Changed "aldermen" to "council members"
- City Council can appoint a city attorney and representative to the Central Vermont Regional Planning Commission. This was the City Manager's job previously.
- Changed language to say the position instead of "he/him"
- Existing Cemetery and Park Commissioners fill vacancies until otherwise filled
- Added 2 alternate members to the Board of Adjustment.
- Approved 6/20/94

## 1997-1998

**H. 533**

- Voters approved 3/4/97
- Changed that City Council will appropriate as much money *as needed* to support schools to that it will appropriate as much *needed for school budget.*
- Tax appropriation voting is now just for general fund and recreation. School budget was separated out and now is a separate vote.
- Approved 5/15/97

# Summary of Montpelier's Recently Failed Charter Changes

In the City of Montpelier, there have been four introduced charter change bills that were never acted upon by the General Assembly. These four bills were two changes that were introduced twice. The first was to make it against civil ordinance to carry a loaded firearm. This was approved by the voters March 7, 2000 and proposed in the 1999-2000 session as H855 and again in the 2001-2002 session as H.54. This effort is discussed more in the body of this report.

The other charter change was proposing to create a one percent tax for taxable meals and alcoholic beverages sold within the City. This was approved by voters on March 2, 1993 and introduced in the 1995-1996 biennium as H.210 and again in the 1997-1998 session as H.363. This was an attempt to raise revenue for the City from the many workers who are not residents. This died in the legislature with no action.

# ATTACHMENT N

H.54

Introduced by Representatives Brooks of Montpelier, Jordan of Middlesex and Kitzmiller of Montpelier

Referred to Committee on

Date:

Subject: Municipal government; charter amendment; City of Montpelier

Statement of purpose: This bill proposes to amend the charter of the City of Montpelier as it relates to civil ordinances.

AN ACT RELATING TO THE CHARTER OF THE CITY OF MONTPELIER

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. CHARTER AMENDMENT

The proposal of amendment of the charter of the City of Montpelier, as approved by the voters on March 7, 2000, is amended as it appears in this act.

Sec. 2. 24 App. V.S.A. chapter 5, subchapter 7, § 701 is amended to read:

§ 701. COUNCIL AUTHORITY

The city council may make, alter, amend, or repeal any resolution, bylaw, regulation, or ordinance which it may deem necessary and proper for carrying into execution the powers granted by this charter or for the well being of said city, provided such resolution, bylaw, regulation, or ordinance shall not

conflict with the federal or Vermont constitutions or federal laws or laws of this state or this charter. Notwithstanding any contrary provision of law, the city council may enact civil ordinances regulating the carrying of loaded firearms.

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.

# ATTACHMENT O

# Summary of Essex Junction's Recent Approved Charter Changes

## 1993-1994

**H.884**

- Voters approved 4/7/94
- Allows for contingency funds not budgeted but they can't exceed 3% of the budget
- Late property taxes can be charged the amount state law allows
- Approved 6/3/94

**H.538**

- Voters approved 4/8/93
- Changed fiscal year from January – December to match state's which is July – June.
- Clarified that property taxes postmarked after the due date are delinquent.
- Approved 6/10/93

## 1995-1996

**H.532**

- Voters approved 4/6/95
- Trustee terms extended from two to three years. Expanded trustees to the President and 4 other members.
- Approved 1/24/96

# Summary of Essex Junction's Recently Failed Charter Changes

In both the 1999-2000 and 2001-2002 biennium the Village of Essex Junction submitted their entire charter for change so it could adjust from a village to a city. This was voted on by the residents of Essex Junction on November 3, 1998 and March 16, 1999 and introduced as H.556 and H.168, respectively. The legislature decided that the Village could not take this action without the consent of the Town of Essex, because of the effect on the Town, and therefore sent the matter back to the localities for mediation.

In the 2001-2002 session Essex Junction introduced a charter change (H.622) to prevent the Town of Essex from levying a tax on Village residents for the activities already provided by the Village. These include fire protection, highway, public library, parks and recreation, and planning and zoning. According to Village Manager Charles Safford, this was a result of the mediation efforts between the Town and Village, attempting to rectify village concerns. This was never voted on by the General Assembly.

In the 1999-2000 session Essex Junction also introduced a charter change (H.120) to force the forfeiture of office if running for Village president; provide a process for recalling elected village officers; and making the language gender neutral. This proposal, H.120, was passed by the voters on November 3, 1998. This was not passed by the legislature.

# ATTACHMENT P

H.168

Introduced by Representatives Kirker of Essex and Stevens of Essex

Referred to Committee on

Date:

Subject: Municipal government; charter amendment; Village of Essex Junction

Statement of purpose: This bill proposes to amend the Village of Essex Junction charter to reconstitute the Village as an independent municipal corporation, the City of Essex Junction.

AN ACT RELATING TO THE CHARTER OF THE VILLAGE OF ESSEX JUNCTION

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. APPROVAL OF CHARTER AMENDMENT

The charter of the Village of Essex Junction is amended as provided in this act. Proposals of amendment were approved by the voters on November 3, 1998, and on March 16, 1999.

Sec. 2. 24 App. V.S.A. chapter 221 is amended to read:

CHAPTER 221. ~~VILLAGE~~ CITY OF ESSEX JUNCTION

Subchapter 1. Powers of the ~~Village~~ City

§ 1.01. CORPORATE EXISTENCE

The inhabitants of the ~~Village~~ City of Essex Junction, within the corporate limits as now established as the Village of Essex Junction, shall continue to be a municipal corporation by the name of the ~~Village~~ City of Essex Junction. Essex Junction Incorporated School District shall continue to be a municipal corporation coterminous with the City of Essex Junction.

§ 1.02. ~~VILLAGE~~ CITY BOUNDARIES

The boundaries of the ~~Village~~ City shall continue to be the present Village corporate boundaries ~~as presently established~~, except as may hereafter be altered in accordance with the requirements of applicable law.

§ 1.03. GENERAL POWERS

The ~~Village~~ City shall have all powers ~~possible for~~ of a municipality ~~to have~~ under the Constitution and laws of this State as fully and completely as though they were specifically enumerated in this Charter. Except when changed, enlarged or modified by the provisions of this Charter, all provisions of the statutes of this State relating to municipalities shall apply to the ~~Village~~ City of Essex Junction.

§ 1.04. CONSTRUCTION

The powers of the ~~Village~~ City under this Charter shall be construed liberally in favor of the ~~Village~~ City, and the specific mention of particular powers in the Charter shall not be construed as limiting in any way the general power stated in this subchapter.

§ 1.05. INTERGOVERNMENTAL RELATIONS

The ~~Village~~ City may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with other Vermont municipalities, the State of Vermont, any one or more subdivisions or agencies of the State, or the United States or any agency thereof.

§ 1.06. PROPERTY

By action of the ~~Trustees~~ City Council, the ~~Village~~ City may acquire property within or without its corporate limits for any ~~Village~~ City purpose, in fee simple or any lesser interest or estate, by purchase, condemnation, gift, devise or lease, it may sell, lease, mortgage, hold, manage and control such property as its interest may require. ~~The Village may further acquire property within its corporate limits by condemnation where such authority is granted by the statutes of the State of Vermont.~~

§ 1.07. ADDITIONAL POWERS

In addition to powers otherwise conferred upon it by law, the ~~Village~~ City is authorized:

~~(a)~~(1) To adopt and enforce ordinances relating to making and installation of local improvements including curbs, sidewalks, sewers, drainage systems, water systems, and streets; requiring the installation of any or all of such improvements in a manner specified by the ~~Village~~ City as a condition precedent to the issuance of a zoning permit; apportioning part or all of the expenses of such improvements against property owners benefited thereby; providing for the collection of such assessments and penalties for nonpayment.

~~(b)~~(2) To adopt and enforce ordinances regulating or prohibiting the use of firearms, air rifles and devices having a capacity to inflict personal injury to the extent such ordinances are consistent with State law.

~~(c)~~(3) To adopt and enforce ordinances relating to the use, protection, care and management of all public facilities and systems of the ~~Village~~ City.

~~(d)~~(4) To adopt and enforce ordinances relating to marathons, bicycle races, fund raising activities and other organized events in or upon public streets and sidewalks.

~~(e)~~(5) To adopt and enforce ordinances relating to the prevention of riots, noises, nuisances, disturbances, and disorderly assembly; to provide for

the enforcement of penalties for violation and non-performance; and to require permits for use of public lands and highways.

Subchapter 2. ~~Village Trustees~~ City Council

§ 2.01. COMPOSITION, ELIGIBILITY, ELECTION AND TERMS

(a) Composition. There shall be a ~~Board of Trustees~~ City Council of five members elected by the qualified voters of the ~~Village~~ City at large. ~~One of the Trustees shall be elected by the voters to the office of President of the Village of Essex Junction. The President shall be the chairperson of the Board of Trustees and shall have all of the rights and responsibilities of a Trustee.~~

(b) Eligibility. Only qualified voters of the ~~Village~~ City shall be eligible to hold the office of ~~Trustee~~ Councilor.

(c) Election and Terms. The regular election of ~~Trustees~~ Councilors shall be held at the annual ~~Village~~ City meeting in the manner provided in ~~Article VIII~~ subchapter 10 of this chapter. The President and four ~~Trustees~~ Councilors shall be elected for three year terms. No more than two ~~Trustees~~ Councilors shall be elected annually. The terms of ~~Trustees~~ Councilors shall begin on the Tuesday following their election.

~~(d) When an incumbent Trustee runs for the position of President at the end of the first year of his term, that Trustee will automatically forfeit his position as a Trustee, effective the day of the election, irrespective of whether or not he is elected President. This vacancy on the Board of Trustees shall be filled at~~

~~that same election. In order to allow other people sufficient time to file for this vacancy, an incumbent Trustee, who wishes to run for the office of President during the first year of his term, must file the required nominating petitions at least fifteen (15) days before the deadline.~~

§ 2.02. ORGANIZATION

(a) Forthwith after their election and qualification, the Council shall organize and elect a chair and a vice chair by a majority vote of the entire Council, and file a certificate of such election for record in the office of the City Clerk.

(b) The chair of the Council or, in his or her absence, the vice chair shall preside at all meetings of the Council and shall be recognized as the head of the City government for all ceremonial purposes.

§ ~~2.02~~ 2.03. COMPENSATION; EXPENSES

The annual salary paid to the ~~Trustees~~ Councilors can be increased from its present level only by the voters at a ~~Village~~ City meeting.

§ ~~2.03~~ 2.04. GENERAL POWERS AND DUTIES

All legislative powers of the ~~Village~~ City shall be vested in the ~~Trustees~~ City Councilors, except as otherwise provided by law or this Charter, and the ~~Trustees~~ City Councilors shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the ~~Village~~ City by law.

§ ~~2.04~~ 2.05. PROHIBITIONS

(a) Holding Other Office. Except where authorized by law, no ~~Trustee~~ Councilor shall hold any other ~~Village~~ City office or employment during the term for which he or she was elected to the ~~Trustees~~ City Council, and no former ~~Trustee~~ Councilor shall hold any compensated appointive ~~Village~~ City office or employment until one year after the expiration of the term for which he or she was elected to the ~~Trustees~~ City Council. This prohibition shall not preclude a former ~~Trustee~~ Councilor from accepting appointment to the ~~Village~~ City Planning Commission or Zoning Board of Adjustment immediately following expiration of his or her elected term.

(b) Appointments and Removals. Neither the ~~Trustees~~ City Council nor any of its members shall in any manner dictate the appointment or removal of any ~~Village~~ City administrative officers or employees whom the manager or any of his subordinates are empowered to appoint, but the ~~Board of Trustees~~ City Council may express its views and fully and freely discuss with the manager anything pertaining to appointment and removal of such officers and employees.

(c) Interference with Administration. Except for the purpose of inquiries and investigations under section ~~2.06~~ 2.07, the ~~Trustees or its members~~ City Council shall deal with ~~Village~~ City officers and employees who are subject to the direction and supervision of the manager solely through the manager, and

neither the ~~Trustees~~ City Council nor its members shall give orders to any such officer or employee, either publicly or privately.

§ ~~2.05~~ 2.06. VACANCIES; FILLING OF VACANCIES

(a) Vacancies. The office of a ~~Trustee~~ Councilor shall become vacant upon his death, resignation, or removal from office in any manner authorized by law.

(b) Filling of Vacancies. A vacancy in the ~~Board of Trustees~~ City Council shall be filled until the next regular election by a majority vote of the remaining members. Notwithstanding the requirement in section ~~2.08~~ 2.09 that a quorum of the ~~Board of Trustees~~ City Council consists of three members, if at any time the membership of the ~~Trustees~~ City Council is reduced to less than three, the remaining members may by majority action appoint additional members to raise the membership to three.

§ ~~2.06~~ 2.07. INVESTIGATIONS

The ~~Board of Trustees~~ City Council may make investigations into the affairs of the ~~Village~~ City and the conduct of any ~~Village~~ City department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the ~~Board of Trustees~~ City Council shall be guilty of a misdemeanor and

punishable by a fine of not more than $100.00, or by imprisonment for not more than 1 day, or both.

§ ~~2.07~~ 2.08. INDEPENDENT AUDIT

The ~~Board of Trustees~~ City Council shall provide for an independent annual audit of all ~~Village~~ City accounts and may provide for such more frequent audits as it deems necessary. Such audits shall be made by a certified public accountant or firm of such accountants who have no personal interest, direct or indirect, in the fiscal affairs of the ~~Village~~ City government or any of its officers. The ~~Board of Trustees~~ City Council may designate such accountant or firm annually or for a period not exceeding three years, provided that the designation for any particular fiscal year shall be made no later than 30 days after the beginning of such fiscal year. If the state makes such an audit, the ~~Trustees~~ City Council may accept it as satisfying the requirements of this section.

§ ~~2.08~~ 2.09. PROCEDURE

(a) Meetings. The ~~Trustees~~ City Council shall meet regularly at least once in every month at such times and places as the ~~Trustees~~ City Council may prescribe by rule. Special meetings may be held on the call of the ~~president~~ chair or vice chair and two other members and, whenever practicable, upon no less than 48 hours' notice to each member. All meetings shall be public,

however, in accordance with Vermont law the ~~Trustees~~ City Councilors may vote to have a portion of a meeting in executive session.

(b) Rules and Journal. The ~~Board of Trustees~~ City Council shall determine its own rules and order of business and shall in accordance with Vermont law keep minutes of its proceedings. This journal shall be a public record.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Three members of the ~~Board of Trustees~~ City Council shall constitute a quorum. No action of the ~~Trustees~~ Councilors except as otherwise provided in section ~~2.05~~ 2.06, shall be valid or binding unless adopted by the affirmative vote of three (3) or more members of the ~~Trustees~~ City Council.

§ ~~2.09~~ 2.10. APPOINTMENTS

(a) The ~~Trustees~~ City Councilors shall appoint the Planning Commission, the Zoning Board of Adjustment and other appointments required by law and this Charter;

(b) The ~~Trustees'~~ City Councilors' approval shall be required for the manager's appointments of a ~~Village~~ City treasurer/Tax Collector, ~~Village~~ City clerk, ~~Village~~ City attorney and ~~Village~~ City engineering consultant.

§ ~~2.10~~ 2.11. ADOPTION OF ORDINANCES

Ordinances shall be adopted, designated criminal or civil, and enforced in accordance with state law.

Subchapter 3. Other Elected Officers

§ 3.01. FIRE DEPARTMENT

There shall be a Chief Engineer, and a 1st and a 2nd Assistant Engineer of the Fire Department elected to two year terms by the voters at the Annual Meeting. Residents of the ~~Village~~ City or a member of the Fire Department who resides in the Town of Essex shall be eligible to hold the office of Engineer. These engineers shall establish policy for the operation of the Fire Department, except that they shall be required to follow all financial and personnel polices adopted by the ~~Village Trustees~~ City Council.

§ 3.02. LIBRARY TRUSTEES

There shall be a five member Board of Library Trustees who shall be elected to ~~five year~~ five-year terms by the voters at the Annual Meeting. Only qualified voters of the ~~Village~~ City shall be eligible to hold the office of Library Trustee. The Trustees who are now in office shall serve until their terms are completed. The Library Trustees shall establish policy for the operation of the Library and shall otherwise act in conformance with the Vermont statutes. The five permanent, self-perpetuating Library Trustees shall function in accordance with the terms of the Brownell Trust agreement dated May 25, 1925. The Library shall be required to follow all financial and personnel policies adopted by the ~~Village Trustees~~ City Council.

§ 3.03. MODERATOR

The voters at the annual ~~Village~~ City meeting shall elect a moderator who shall preside at each ~~Village~~ City meeting. Only qualified voters of the ~~Village~~ City shall be eligible to hold the office of Moderator.

Subchapter 4. Recall

§ 4.01. REMOVAL

Any elected Village Officer (City Official) may be removed from office as follows:

(1) A recall petition, signed by at least twenty-five (25) percent of the registered voters of the Village (City) and bearing their address and the date on which they signed the petition, shall be filed with the Village (City) Clerk on or before the 15th calendar day following the date of the earliest signature on the petition. Upon receipt of a valid petition, the Village Trustees (City Councilors) shall call a special Village (City) meeting within forty-five (45) days of receiving the petition to vote on whether the elected Village Officer (City Official) who is subject to the petition should be removed. The vote shall be by Australian ballot.

(2) If recall is approved by two-thirds of the valid ballots cast at the election, the officer (official) named in the petition shall thereupon cease to hold his or her office.

(3) If an elected officer (official) is removed through recall, the office shall be considered vacant until filled by a special election to be held within sixty (60) days.

(4) A recall petition shall not be brought against the same elected official more than once within twelve (12) months.

SUBCHAPTER 4 5. ~~VILLAGE~~ CITY MANAGER

§ ~~4.01~~ 5.01. APPOINTMENT; QUALIFICATIONS; COMPENSATION

The ~~Trustees~~ City Councilors shall appoint a ~~Village~~ City manager for an indefinite term and fix his or her compensation. The manager shall be appointed solely on the basis of his or her executive and administrative qualifications in accordance with the Vermont statutes.

§ ~~4.02~~ 5.02. POWERS AND DUTIES OF THE ~~VILLAGE~~ CITY MANAGER

The ~~Village~~ City manager shall be the chief administrative and personnel officer of the ~~Village~~ City. He or she shall be responsible to the ~~Trustees~~ City Council for the administration of all ~~Village~~ City affairs placed in his or her charge by or under this Charter. He or she shall have the following powers and duties in addition to those powers and duties delegated to municipal managers under the Vermont statutes.

(1) The manager shall appoint and, when he or she deems it necessary for the good of the service, suspend or remove all ~~Village~~ City employees, and

other employees provided for by or under this Charter for cause, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. He or she may authorize any employee who is subject to his or her direction and supervision to exercise these powers with respect to subordinates in that employee's department, office or agency.

(2) The manager shall direct and supervise the administration of all departments, offices and agencies of the ~~Village~~ City, except as otherwise provided by this Charter or by law.

(3) The manager shall attend all ~~Trustees~~ City Council meetings and shall have the right to take part in discussion and make recommendations but may not vote.

(4) The manager shall see that all laws, provisions of this Charter and acts of the ~~Trustees~~ Councilors, subject to enforcement by him or her or by officers subject to his or her direction and supervision, are faithfully executed.

(5) The manager shall prepare and submit the annual budget and capital program to the ~~Trustees~~ City Council.

(6) The manager shall submit to the ~~Trustees~~ City Council and make available to the public a complete report on the finances and administrative activities of the ~~Village~~ City as of the end of each fiscal year.

(7) The manager shall make such other reports as the ~~Trustees~~ Councilors may require concerning the operations of ~~Village~~ City departments, offices and agencies subject to his direction and supervision.

(8) The manager shall keep the ~~Trustees~~ Councilors fully advised as to the financial condition and future needs of the ~~Village~~ City and make such recommendations to the ~~Trustees~~ Councilors concerning the affairs of the ~~Village~~ City as he or she deems desirable.

(9) The manager or his or her designee shall perform the duties of zoning administrative officer.

(10) The manager shall be responsible for the enforcement of all ~~Village~~ City ordinances and laws, and hereby is designated the City ordinance enforcement officer.

~~(12)~~(11) The manager may when advisable or proper delegate to subordinate officers and employees of the ~~Village~~ City any duties conferred upon him or her by this Charter, the Vermont statutes or the ~~Trustees~~ City Council.

~~(13)~~(12) The manager shall annually appoint, subject to the ~~Trustees~~ City Council's approval, the ~~Village~~ City treasurer/Tax collector, ~~Village~~ City clerk, ~~Village~~ City attorney, City chief assessor and ~~Village~~ City engineering consultant.

~~(14)~~(13) The manager shall perform such other duties as are specified in this Charter, state law, or as may be required by the ~~Trustee~~ City Council.

§ ~~4.03~~ 5.03. REMOVAL.

The ~~Trustees~~ City Council may remove the manager from office for cause in accordance with the following procedures:

(1) The ~~Trustees~~ City Council shall adopt by affirmative vote of a majority of all its members a preliminary resolution which must state the reasons for removal and may suspend the manager from duty for a period not to exceed 45 days. A copy of the resolution shall be delivered within three (3) days to the manager.

(2) Within five days after a copy of the resolution is delivered to the manager, he or she may file with the ~~Trustees~~ City Council a written request for a hearing. Said hearing to be in a public or executive session by choice of the manager. This hearing shall be held at a special ~~Trustees~~ City Council meeting not earlier than ~~fifteen~~ 15 days nor later than ~~thirty~~ 30 days after the request is filed. The manager may file with the ~~Trustees~~ City Council a written reply not later than five days before the hearing.

(3) The ~~Trustees~~ City Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority of all its members at any time after five days from the date when a copy of the preliminary resolution was delivered to the manager, if he or she has not

requested a public hearing, or at any time after the public hearing if he or she has requested one.

The manager shall continue to receive his or her salary until the effective date of a final resolution of removal.

Subchapter 6. Assessment

§ 6.01. DEPARTMENT OF ASSESSMENT

There shall be a Department of Assessment, which shall consist of a chief assessor and such assistants as are deemed to be necessary by the City manager with the approval of the Council. The chief assessor and assistants shall be appointed, and may be removed by the City manager in accordance with Section 5.02 of this Charter.

§ 6.02. POWERS AND DUTIES

(a) The Department of Assessment shall have the same powers, discharge the same duties, proceed in the discharge thereof in the same manner, and be subject to the same liabilities as are prescribed for listers or the board of listers under the laws of this state, except as herein otherwise provided. The elective office of lister shall be abolished.

(b) At least every five years, the department shall review, or cause to be reviewed, its appraisals of all real property in the city which is subject to taxation, and conduct a reappraisal of all such properties when necessary to

conform their appraisals to the standards for appraising established by the laws of the state.

Subchapter ~~5~~ 7. Administrative Departments

§ ~~5.01~~ 7.01. GENERAL PROVISIONS

(a) Creation of Departments. The ~~Trustees~~ City Council may establish ~~Village~~ City departments, offices or agencies in addition to those created by this Charter and may prescribe the functions of all departments, offices, and agencies, except that no function assigned by this Charter to a particular department, office or agency may be discontinued or unless this Charter specifically so provides, assigned to any other.

(b) Direction by Manager. All departments, offices and agencies under the direction and supervision of the manager shall be administered by an officer appointed by and subject to the direction and supervision of the manager. With the consent of the ~~Trustees~~ City Council, the manager may serve as the head of one or more such departments, offices or agencies or may appoint one person as the head of one or more of them.

Subchapter ~~6~~ 8. Financial Procedures

§ ~~6.01~~ 8.01. FISCAL YEAR

The fiscal year of the ~~Village~~ City shall begin on the first day of July and end on the last day of June.

§ ~~6.02~~ 8.02. SUBMISSION OF BUDGET AND BUDGET MESSAGE

On or before the 1st day of December of each year, the manager shall submit to the ~~Trustees~~ City Council a recommended budget for the ensuing fiscal year and an accompanying message.

§ ~~6.03~~ 8.03. BUDGET MESSAGE

The manager's message shall explain the budget both in fiscal terms and in terms of the work programs. It shall outline the proposed financial policies of the ~~Village~~ City for the ensuing fiscal year, describe the important features of the budget, indicate any major changes from the current year in financial policies, expenditures, and revenues together with the reasons for such changes, summarize the ~~Village's~~ City's debt position and include such other material as the manager deems desirable.

§ ~~6.04~~ 8.04. BUDGET

The budget shall provide a complete financial plan of all ~~Village~~ City funds and activities for the ensuing fiscal year and, except as required by law or this Charter, shall be in such form as the manager deems desirable or the ~~Trustees~~ City Council may require. In organizing the budget the manager shall utilize the most feasible combination of expenditure classification by fund, organization unit, program, purpose or activity. It shall begin with a clear general summary of its contents; shall show in detail all estimated income,

indicating the proposed property tax levy, and all proposed expenditures, including debt service, for the ensuing fiscal year; and shall be so arranged as to show comparative figures for actual and estimated income and expenditures of the current fiscal year and actual income and expenditures of the preceding fiscal year. It shall indicate in separate sections:

(1) Proposed expenditures for current operation during the ensuing fiscal year, detailed by offices, departments and agencies in terms of their respective work programs, and the method of financing such expenditures;

(2) Proposed capital expenditures during the ensuing fiscal year, detailed by offices, departments and agencies when practicable, and the proposed method of financing each such capital expenditure; and

(3) Anticipated net surplus or deficit for the ensuing fiscal year of each utility owned or operated by the ~~Village~~ City and the proposed method of its disposition; subsidiary budgets for each such utility giving detailed income and expenditure information shall be attached as appendices to the budget. The total of proposed expenditures shall not exceed the total of estimated income.

§ ~~6.05~~ 8.05. CAPITAL PROGRAM

(a) Submission to ~~Trustees~~ City Council. The manager shall prepare and submit to the ~~Trustees~~ City Council a five-year capital program at least three months prior to the final date for submission of the budget.

(b) Contents. The capital program shall include:

(1) A clear general summary of its contents;

(2) A list of all capital improvements which are proposed to be undertaken during the five fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;

(3) Cost estimates, method of financing and recommended time schedules for each such improvement; and

(4) The estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

The above information may be revised and extended each year with regard to capital improvements still pending or in process of construction or acquisition.

§ ~~6.06~~ 8.06. ~~TRUSTEES~~ CITY COUNCIL ACTION ON BUDGET

The ~~Trustees~~ City Council shall adopt the budget with or without amendments on or before the 15th day of February. If it fails to adopt the budget by this date, the amounts appropriate for current operation for the previous fiscal year shall be deemed adopted for the ensuing fiscal year on a month-to-month basis with all items in it prorated accordingly, until such time as the ~~Board of Trustees~~ City Council adopts a budget for the ensuing fiscal year or until the ~~Village~~ City meeting adopts a budget.

§ ~~6.07~~ 8.07. ~~TRUSTEES~~ CITY COUNCIL ACTION ON CAPITAL PROGRAM

The ~~Trustees~~ City Council by resolution shall adopt the capital program with or without amendment and on or before the 15th day of February.

§ ~~6.08~~ 8.08. DISTRIBUTION

The proposed budget as approved by the ~~Trustees~~ City Council shall be distributed to the legal voters of the ~~Village~~ City at least ten (10) days prior to the annual ~~Village~~ City meeting.

§ ~~6.09~~ 8.09. ~~VILLAGE~~ CITY MEETING ACTION ON BUDGET

The annual ~~Village~~ City meeting shall be held on the first Wednesday of April at a time and place specified by the ~~Trustees~~ City Council, and in accordance with Vermont statutes.

The ~~Village~~ City meeting shall discuss and adopt the budget presented by the ~~Trustees~~ City Council with or without amendment. Initiative petitions must be signed by qualified voters of the ~~Village~~ City equal in number to at least five ~~per cent~~ percent (5%) (10% for a bond issue) of the total number of qualified voters registered to vote at the last regular ~~Village~~ City election.

§ ~~6.10~~ 8.10. PUBLIC RECORDS

Copies of the budget and the capital program as adopted shall be public records and shall be made available to the public at suitable places in the ~~Village~~ City.

§ ~~6.11~~ 8.11. APPROPRIATIONS.

From the effective date of the budget, the several amounts therein stated, as approved at the annual ~~Village~~ City meeting, become appropriated to the several agencies and purposes therein named. Upon passage of the budget by the annual ~~Village~~ City meeting, the amount stated therein as the amount to be raised by property taxes shall constitute a determination of the amount of the levy for the purposes of the ~~Village~~ City in the corresponding tax year and the ~~Trustees~~ City Council shall levy such taxes on the grand list.

§ ~~6.12~~ 8.12. TRANSFER OF APPROPRIATIONS

The manager may at any time transfer an unencumbered appropriation, balance, or portion thereof between general classifications of expenditures within an office, department, or agency. At the request of the manager and within the last three (3) months of the budget year, the ~~Trustees~~ City Council may by resolution transfer any unencumbered appropriation balance, or portion thereof within the ~~Trustees~~' City Council's budget from one department, agency, or office, to another. Notwithstanding the above, no unexpended balance in any appropriation not included in the ~~Trustees~~' City Council's budget shall be transferred or used for any other purpose.

§ ~~6.13~~ 8.13. ADMINISTRATION OF BUDGET

(a) Work Programs and Allotments. At such time as the manager shall specify, each department, office or agency shall submit work programs for the

ensuing fiscal year showing the requested allotments of its appropriation by periods within the year. The manager shall review and authorize such allotments with or without revision as early as possible in the fiscal year. He or she may revise such allotments during the year if he or she deems it desirable and shall revise them to accord with any supplemental, emergency, reduced or transferred appropriations made pursuant to section ~~6.12~~ 8.12.

(b) Payments and Obligations prohibited. No payment shall be made or obligation incurred against any allotment of appropriation except in accordance with appropriations duly made and unless the manager or his or her designee first certifies that there is a sufficient unencumbered balance in such allotment or appropriation and that sufficient funds therefrom are or will be available to cover the claim or meet the obligation when it becomes due and payable. Any authorization of payment or incurring of obligation in violation of the provisions of this Charter shall be void and any payment so made illegal; such action shall be cause for removal of any officer who knowingly authorized or made such payment or incurred such obligations, and he or she shall also be liable to the ~~Village~~ City for any amount so paid. However, except where prohibited by law, nothing in this Charter shall be construed to prevent the making or authorizing of payment or making of contracts for capital improvements to be financed wholly or partly by the issuance of bonds or to prevent the making of any contract or lease providing for payments beyond the

end of the fiscal year, provided that such action is made or approved by ordinance.

(c) The provisions of subsection (b) ~~above~~ of this section notwithstanding, the ~~Trustees~~ City Council may authorize an expenditure of funds not provided for in the approved ~~Village~~ City budget upon determination, at a properly warned meeting of the ~~Board of Trustees~~ City Council, that:

(1) The need for such expenditure could not have been anticipated at the time of approval of the ~~Village~~ City budget; and

(2) Such expenditure is necessary to protect ~~Village~~ City property from suffering loss or damage or to continue to provide services which the ~~Village~~ City is obligated to provide under law; and

(3) The contingency funds available in the approved ~~Village~~ City budget are insufficient to cover the expenditure; and

(4) The aggregate amount of all expenditures authorized under this section during a single budget year does not exceed three percent (3%) of the approved ~~Village~~ City budget for the year. Approval of such expenditure shall require the affirmative vote of the entire ~~Board of Trustees~~ City Council sitting in attendance at a regularly scheduled or special meeting and shall be set forth in a written resolution which shall be attached to the minutes of the meeting at which approval is granted.

§ ~~6.14~~ 8.14. PROPERTY TAXES

(a) Property tax payments may be payable in two installments, if so voted by the ~~Village~~ City in accordance with state law. If the due date of any installment falls on a Saturday, Sunday, or holiday, the property tax due date shall be the following business day.

(b) Property tax payments received after the due date or postmarked later than the due date, shall be considered delinquent and shall be subject to collection fees and interest charges in the amount established by state law. If the ~~Village~~ City votes to make property tax payments payable in installments, any installment received after the due date or postmarked later than the due date shall be considered delinquent and shall be subject to collection fees and interest charges in the amount established by state law.

§ ~~6.15~~ 8.15. APPRAISAL OF BUSINESS PERSONAL PROPERTY FOR TAX PURPOSES

Appraisal of business personal property shall be in accordance with the provisions of ~~Vermont Statutes Annotated Title 32, Section~~ section 3618 of Title 32, as the same may from time to time be amended, provided that all business personal property acquired by a taxpayer after September 30, 1995 shall be exempt from tax.

§ ~~6.16~~ 8.16. ASSESSMENT AND TAXATION AGREEMENT

Notwithstanding Section 6.15 of this Charter and the requirements of the general laws of the State of Vermont, the ~~Trustees~~ Councilors of the ~~Village~~ City of Essex Junction are hereby authorized and empowered to negotiate and execute assessment and taxation agreements between the ~~Village~~ City of Essex Junction and a taxpayer or taxpayers within the ~~Village~~ City of Essex Junction consistent with applicable requirements of the Vermont Constitution.

Subchapter ~~7~~ 9. Planning And Zoning

§ ~~7.01~~ 9.01. ~~VILLAGE~~ CITY PLANNING COMMISSION

There shall be a ~~Village~~ City Planning Commission appointed by the ~~Trustees~~ City Council for terms of three years from among the qualified voters of the ~~Village~~ City. Members of the commission shall hold no other ~~Village~~ City office. The planning commission shall;

(1) make recommendations to the ~~Village Trustees~~ City Council on all matters affecting the physical development of the ~~Village Trustees~~ City Council,

(2) review subdivision applications,

(3) review site plan applications,

(4) recommend master plan amendments to the ~~Trustees~~ City Council,

(5) recommend zoning ordinance amendments to the ~~Trustees~~ City Council, and

(6) exercise all other responsibilities as may be provided by law.

§ ~~7.02~~ 9.02. ZONING BOARD OF ADJUSTMENT

The ~~Trustees~~ City Council shall appoint a Board of Adjustment to three year terms from among the qualified voters of the ~~Village~~ City and shall provide standards and procedures for such board to hear and determine appeals from administrative decisions, petitions for conditional uses and variances as may be required by law.

Subchapter ~~8~~ 10. ~~Village~~ City Elections

§ ~~8.01~~ 10.01. ~~VILLAGE~~ CITY ELECTIONS

(a) The voters shall at each annual ~~Village~~ City meeting vote to set the date of the next annual ~~Village~~ City meeting which shall be a date in the month of April.

(b) Qualified Voters. All citizens qualified by the constitution and laws of the state of Vermont to vote in the ~~Village~~ City and who satisfy the requirements for registration prescribed by law shall be qualified voters of the ~~Village~~ City within the meaning of this Charter.

(c) Conduct of Elections. Except as otherwise provided by this Charter, the provisions of the general election laws of the state of Vermont shall apply to all elections held under this Charter.

(d) Checklist. The checklist of the Village of Essex Junction in effect upon the effective date of this charter shall be used in all City elections until modified in the manner provided by law.

Subchapter ~~9~~ 11. Initiative

§ ~~9.01~~ 11.01. GENERAL AUTHORITY

The qualified voters of the ~~Village~~ City shall have power to propose ordinances to the ~~Trustees~~ City Council and, if the ~~Board of Trustees~~ City Council fails to adopt an ordinance so proposed without any change in substance, to adopt or reject it at a ~~Village~~ City meeting, provided that such power shall not extend to the budget or capital program or any ordinance relating to appropriation of money, levy of taxes or salaries of ~~Village~~ City officers or employees, or any matter solely within the responsibility of the City Council.

§ ~~9.02~~ 11.02. PETITIONS

(a) Number of Signatures. Initiative petitions, other than those involving a proposition of incurring bonded indebtedness, must be signed by qualified voters of the ~~Village~~ City equal in number to at least five ~~per cent~~ percent (5%) of the total number of qualified voters registered to vote at the last regular ~~Village~~ City election.

(b) Form and Content. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall

be executed in ink and shall be followed by the address of the person signing. Petitions shall contain or have attached thereto throughout their circulation the full text of the ordinance proposed.

(c) Affidavit of Circulator. Each paper of a petition shall have attached to it when filed an affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in his presence, that he or she believes them to be the genuine signatures of the persons whose names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed.

Subchapter ~~10~~ 12. General Provisions

§ ~~10.01~~ 12.01. CONFLICT OF INTEREST

Any ~~Village~~ City officer or employee who has a substantial financial interest or business relationship, direct or indirect or by reason of ownership of stock in any corporation, in any contract with the ~~Village~~ City or in the sale of any land, supplies or services to the ~~Village~~ City, to a contractor supplying the ~~Village~~ City or to an applicant or other party who appears before the board or commission of which the officer is a member, shall make known that interest or relationship and shall refrain from voting upon or otherwise participating in his capacity as a ~~Village~~ City officer or employee in the making of such sale, decision, or in the making or performance of such contract. Any ~~Village~~ City

officer or employee who willfully conceals such a substantial financial interest or business relationship or willfully violates the requirements of this section shall be guilty of malfeasance in office or position and shall forfeit his or her office or position. Violation of this section shall render the involved contract, sale or decision of a Board or Commission voidable by the ~~Village Trustees~~ City Council.

§ ~~10.02~~ 12.02. PROHIBITIONS

No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any ~~Village~~ City position or appointive ~~Village~~ City administrative office because of race, sex, political or religious opinions or affiliations.

§ ~~10.03~~ 12.03. SEPARABILITY

If any provision of this Charter is held invalid, the other provisions of the Charter shall not be affected thereby. If the application of the Charter or any of its provisions to any person or circumstance is held invalid, the application of the Charter and its provisions to other persons or circumstances shall not be affected thereby.

Subchapter ~~11~~ 13. Transitional Provisions

§ ~~11.01~~ 13.01. OFFICERS AND EMPLOYEES

~~(a)~~ Rights and Privileges Preserved. Nothing in this Charter except as otherwise specifically provided shall affect or impair the rights or privileges of

persons who are ~~Village~~ City officers or employees at the time of its adoption.

§ ~~11.02~~ 13.02. PENDING MATTERS

All rights, claims, actions, orders, contracts and legal or administrative proceedings shall continue except as modified pursuant to the provisions of this Charter and in each case shall be maintained, carried on or dealt with by the ~~Village~~ City department, office or agency appropriate under this Charter.

§ ~~11.03~~ 13.03. EFFECT OF LAWS

The ordinances, by-laws, and regulations of the Village of Essex Junction shall continue in full force and effect as enactments of the City of Essex Junction until repealed or amended.

§ ~~11.04~~ 13.04. SCHEDULE

At the time of its adoption, this Charter shall be in effect to the extent necessary in order that the first election of members of the ~~Board of Trustees~~ City Council may be conducted in accordance with the provisions of this Charter. ~~The first election shall be held on the first Thursday of April 1986~~ Until April 1 next following the effective date of this Charter, the grand list of the Town of Essex, to the extent it includes real and personal property located within the Village of Essex Junction, shall be the grand list of the City of Essex Junction.

Sec. 3. REDESIGNATION

Chapter 221 of 24 App. V.S.A. is redesignated as:

CHAPTER 221. ~~VILLAGE~~ CITY OF ESSEX JUNCTION.

# ATTACHMENT Q

## AMENDMENT OF THE CONSTITUTION

### § 72. [Amending constitution]

At the biennial session of the General Assembly of this State which convenes in A.D. 1975, and at the biennial session convening every fourth year thereafter, the Senate by a vote of two-thirds of its members, may propose amendments to this Constitution, with the concurrence of a majority of the members of the House of Representatives with the amendment as proposed by the Senate. A proposed amendment so adopted by the Senate and concurred in by the House of Representatives shall be referred to the next biennial session of the General Assembly; and if at that last session a majority of the members of the Senate and a majority of the House of Representatives concur in the proposed amendment, it shall be the duty of the General Assembly to submit the proposal directly to the voters of the state. Any proposed amendment submitted to the voters of the state in accordance with this section which is approved by a majority of the voters voting thereon shall become part of the Constitution of this State.

Prior to the submission of a proposed amendment to a vote in accordance with this section, public notice of the proposed amendment shall be given by proclamation of the Governor.

The General Assembly shall provide for the manner of voting on amendments proposed under this section, and shall enact legislation to carry the provisions of this section into effect.

# ATTACHMENT R

SENATE CHAMBER

PROPOSED AMENDMENT TO THE CONSTITUTION

OF THE STATE OF VERMONT

Offered by Senator Little of Chittenden County

Subject: Providing for Municipal Home Rule

PROPOSAL 3

That Section 69, of Chapter II of the Vermont Constitution be amended to read:

[§ 69. CHARTERS, LIMIT ON RIGHT TO GRANT OR AMEND]

SECTION 69. No charter of incorporation shall be granted, extended, changed or amended by special law, except for such *[municipal]* , charitable, educational, penal or reformatory corporations as are to be and remain under the patronage or control of the State; but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created. Municipal charters shall be granted by the general assembly. Amendments to municipal charter shall be the sole province of the municipality through secret ballot. However, the general assembly may repeal any and all amendments to municipal charters. All general laws passed pursuant to this section may be altered from time to time or repealed.

# ATTACHMENT S

# 1988 Town Meeting Article on Municipal Home Rule For Vermont Proposed By The Vermont League Of Cities and Towns

Shall the town instruct (advise) our legislators to vote to amend the Vermont Constitution by adding a municipal "home rule" amendment worded as follows:

> To reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government and to grant and confirm to the people the right of self-government in local matters, the voters of any organized city, town or village shall have the power to adopt, alter and amend a charter on all matters, not specifically prohibited by the Constitution or general law, which are local and municipal in character. If a charter adoption alteration or amendment is approved by a majority of the voters voting thereon, it shall become effective on the first day of the next succeeding municipal fiscal year unless otherwise specified in the charter. This power shall be in addition to the powers specifically granted cities, towns, and villages through legislation. This section shall liberally construed in favor of municipalities.

## Municipalities that voted yes to above measure:

Arlington
Athens
Bradford
Brandon
Brighton
Burke
Burlington
Castleton
Clarendon
Colchester
Dorset
Dover
East Haven
Eden
Elmore
Enosburg
Grand Isle
Hancock
Ira
Kirby
Lunenburg
Manchester
Marshfield
Middlebury
Middletown
Springs
Montpelier
Newport City
North Hero
Pittsfield
Pittsford
Panton
Plymouth
Proctor
Rutland City
Rutland Town
St. Albans City
Searsburg
Shaftsbury
Sharon
Sheffield
Sherburne
Springfield
Starksboro
Sutton
Tinmouth
Townshend
Tunbridge
Wallingford
Wardsboro
Waterford
Weathersfield
Westmore
Weston
West Rutland
Wheelock
Wilmington
Windsor
Winhall
Winooski

## Municipalities that voted no to above measure:

Baltimore
Barre City
Bennington
Berkshire
Berlin
Calais
Cavendish
Charlotte
Craftsbury
Derby
Franklin
Granville
Jericho
Montgomery
Northfield
Peru
Reading
Richford
Rockingham
St. George
Sandgate
Shelburne
Shoreham
Stamford
Strafford
Sunderland
Underhill
Vernon
Warren
Washington
West Fairlee
Williston
Woodbury

## Municipalities that tabled the above measure:

Bethel
Canaan
Chelsea
Concord
Cornwall
East Montpelier
Hartford
Newark
Roxbury
Stockbridge
Stratton
Williamstown
Woodford

# ATTACHMENT T

48

# Vermonters Fear Local Power

valley voice 5/29/88

*By Sherry Russell*

The Homerule Amendment was voted favorably in 63 towns and turned down by 42 towns across the state at town meetings. Executive Director of the Vermont League of Cities and Towns Steven Jeffrey said those towns that defeated the amendment were largely the towns that did not understand the amendment and its purpose.

Jeffrey said his group has proposed an amendment to the Vermont constitution that will replace power to cities and towns, which has been given away to the state. But, he said, "We've been unsuccessful in getting any movement, and are doubtful we'll see anything come out of this legislature."

He continued, "There is no support in the legislature for giving voters any more authority." To compound the problem, he said, "Voters don't understand we're trying to give more power to them, so that voters can gain authority and responsibility. It is a lot easier to let the state do everything, and then grumble afterwards."

The amendment is worded as follows:

"To reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government and to grant and confirm to the people the right of self-government in local matters the voters of any organized city, town or village shall have the power to adopt, alter and amend a charter on all matters, not specifically prohibited by the Constitution of general law, which are local and municipal in character. If a charter adoption, alteration or amendment is approved by a majority of the voters voting thereon, it shall become effective on the first day of the next succeeding municipal fiscal year unless otherwise specified in the charter. This power shall be in addition to powers specifically granted cities, towns, and villages through legislation. This section shall be liberally construed in favor of municipalities."

A key reason for the amendment, Jeffrey said, would be to allow cities and towns to adopt alternatives to property taxes. He said, "You could draw a circle around those towns that defeated the amendment. They are the suburban towns around Burlington and Montpelier; that is where the majority of the opposition lies."

Jeffrey said, "It will be another four years before the amendment can be considered by the legislature again." In the meantime, he hopes the issue will be debated during elections, so that both voters and candidates can learn more about homerule and what its effects might be.

Jeffrey said a Pittsford representative, Mary Crahan, described the purpose of homerule this way: "Voters need more authority to deal with their problems. We are hamstrung by the legislature, which is telling us when to blow our noses."

The need for a homerule amendment stems back 200 years, when Vermont was not an official state government. Jeffrey said a group of delegates meeting in Windsor, representing 160 towns in the New Hampshire Grants, drafted a state constitution with "strong language of what a state should do."

At that time, it was important for these town representatives to "put an inordinate amount of power in the state, to protect this fragile creature" that would become Vermont, Jeffrey said. The constitution was never put to a popular vote, he noted.

The state has gradually adopted laws that "use the muscles they always had," Jeffrey said. Suddenly, he said, "We wake up in the eighties and realize we gave all our local power away."

# Editorials

## Yes on home rule

When voters go to town meeting this year, they will face substantial increases in school and local budgets.

Middlebury residents will pay 11 percent more this year if the town and school budgets pass. That is not bad until you consider that by and large this increase merely covers existing expenses. With the exception of the Ilsley Library addition, there are no building projects and no new programs in the 1988 budgets.

Residents of other towns face a similar prospect. In Bristol, the tax rate is estimated at $2.75 this year. The elementary school budget is way up to pay for the Mountain Street School addition, but much of the rest of the increase will go for maintaining local programs at current levels.

National statistics show the cost of government is rising. In an era of 2-5 percent inflation, local budget increases of 10-15 percent are frightening.

But even more disturbing is the fact that this money must come from the property tax — the sole source of local revenue.

Most local officials agree the property tax is overloaded. Increased costs of the local government and skyrocketing property values have pushed many middle-income families to the edge.

Little can be done to cap the growth in local spending. The increases are due mostly to decreases in federal support and greater requirements. On top of this come the good ideas like libraries, land trusts and town sheds that communities should not have to forego.

The state has cushioned the blow with increased aid to education, low-interest loans and the like. But with this money comes regulation and the threat of withdrawal.

What is needed, then, is another source of income.

We have in the past suggested some sort of local sales tax. Gov. Kunin opposes this and other local taxes, saying they will increase the disparity between rich and poor towns.

Perhaps no one tax is the answer, but we believe local initiative is. The idea of a special assessment district for Middlebury is one example of local initiative that can ease reliance on property taxes.

These ideas require approval from the Legislature, however, to amend the town charter.

Local taxing power should be expanded. This puts the responsibility for taxing closest to the people — citizens would be free within their towns to accept or reject new taxes for local projects.

The key to this is home rule. Home rule would let towns change their charters, as long as they remain consistent with state law, without the cumbersome legislative review.

Along with the increased budgets, many Addison County voters will find on their ballots a call for home rule powers. This referendum does nothing other than urge the Legislature to amend the state Constitution to allow greater local autonomy. We believe this is the necessary first step to easing the property tax crunch. We urge voters to favor home rule on local ballots.

12/26/87 Banner Opposite Editorial Page

# Home rule for Vermont

## *Questions and answers on the issue*

*The debate over home rule promises to be one of the more vociferous discussions the next legislative session has to offer. Proponents, such as the Vermont League of Cities and Towns, seeks to challenge Vermont's status quo, which has been in effect for about 200 years. Here is one viewpoint on the subject. The Banner will broaden the discussion and present other points of view in the future.*

By STEVEN JEFFREY
*Special to the Banner*

**Q. What is municipal "home rule?"**

A. Very simply, home rule will allow the voters in Vermont's cities, towns and villages to govern themselves in all matters local and municipal in character, and not specifically prohibited by the Constitution or state law.

**Q. This is Vermont, don't we already have home rule?**

A. Although Vermont has a strong tradition of local control as a philosophical tenet and in actual practice, the written words of our Constitution vest all power over local government in the Legislature. It actually says that municipal corporations "... are to be and remain under the patronage or control of the state.."

**Q. So what's the problem with the status quo? If it ain't broke, don't fix it.**

A. The dramatic changes Vermont has been experiencing, particularly in the past 20 years, have shown that local governments with their current authority and resources have been progressively less able to deal effectively with the issues challenging them. The federal government's withdrawal from domestic issues has created what one Washington pundit has coined "fend-for-yourself Federalism." A vibrant economy has put growth pressures on communities never envisioned when current planning and zoning laws were enacted. Greater demands on local services by voters and state and federal mandates have stretched the property tax — our only local source of revenue — to the limit. To survive and serve our citizens, local governments must be able to adapt quickly and innovatively. Under the current process, the Legislature has not responded adequately to allow this adaptation.

**Q. In practice, what does this mean?**

A. Under our current system, local voters and elected officials can only do those things specifically authorized by statute or by charter approved by the Legislature, and then only in the way the Legislature approves. It means that unless the Legislature amends the laws or approves a charter that (some of the following examples may be hypothetical):

— Manchester cannot improve its effectiveness in prosecuting repeat zoning regulation violators.

— Groton cannot elect its road commissioner for a three-year term.

— Wallingford cannot elect its planning commissioners.

— Cornwall cannot restructure its property tax system to relieve the pressures on its elderly inhabitants.

— Hartford cannot enact rent control to address its critical affordable housing problems.

— Burlington cannot enact an "anti-speculation" tax to protect its housing stock.

— It is questionable whether towns can assess impact fees on developers to pay for increased town and school services.

— Grand Isle cannot levy a 1 percent property transfer tax as its voters have approved.

— Essex cannot require amusement ride operators at the Champlain Valley Fair to certify their rides are safe.

All these examples are currently in the form of bills in the State House, have been rejected by the Legislature or VLCT has been asked how such an activity could be provided by the town.

**Q. What sort of things would Vermont towns do with home rule?**

A. The list about outlining special legislative requests and questions is illustrative of what communities in other states allowing home rule have undertaken. The power is utilized in three major areas: 1) government operations, e.g. increasing the numbers of members on boards and commissions, creating new commissions, deciding whether officials should be appointed or elected, adopting rules for the purchase or sale of property, setting conflict of interest regulations, and recalling local officials; 2) licensing and regulation, e.g. innovative zoning and land use protection, regulation of bingo and massage parlors are just some of the uses of home rule in other states; and 3) financing; e.g. reforming local property tax assessment and collection, differentiated taxation for special service areas, and new taxes adopted at local option.

**Q. What are other states doing about municipal home rule?**

A. Forty-two states now have some form of home rule. Only seven states, mostly in the South (Alabama, Idaho, Indiana, Kentucky, Mississippi, North Carolina and Virginia) plus Vermont still do not allow home rule. All the other New England states and states large and small have given some measure of self-governance back to their local voters.

**Q. Is this just a city proposal to get alternative taxing authority?**

A. As the list above indicates, towns of all sizes have been frustrated in their attempts to deal effectively with the new demands being placed on them. Alternative revenue sources for all sizes of communities will also remain a high priority of towns seeking home rule.

**Q. Won't a home rule amendment limit the power of the state Legislature?**

A. Home rule compliments a strong legislature by: 1) eliminating a substantial amount of legislative workload now spent reviewing hundreds of pages of municipal charters and dozens of bills designed to cure parochial problems; 2) making local government a partner in governmental problem solving, particularly by allowing individual communities to "experiment" with solutions which can later be adopted on a statewide level; 3) allowing problem solving to be tailored to the individual needs of a community; and 4) still allowing the Legislature to prohibit certain municipal actions it finds unacceptable by enactment of a general statute. Also, if the Legislature is truly responsive to the needs of the voters in enacting statewide legislation, there will be little use of home rule by municipalities in those areas.

**Q. Why do we have to amend our Constitution? Can't the Legislature give municipalities the powers necessary?**

A. They could, but for several reasons a Constitutional amendment as part of an overall strategy is better. First, the Legislature cannot respond quickly or fairly to the individual needs of all 246 cities and towns and 60 or so villages. An amendment to the Constitution granting broad powers can allow these governments the ability to do so on an individual basis. Secondly, the amendment would set the philosophical tone for the revived partnership between local governments and its state government. Thirdly, VLCT feels this issue is so important that the voters must have a say in deciding this debate and amending the constitution is the only state process the voters can participate directly. Fourthly, the existing language requiring municipalities to "remain under the patronage or control of the state" may endanger any general grants of authority the Legislature tries to give towns as they may be ruled unconstitutional delegations of authority. Lastly, what the Legislature can give, it can also take away. Without a constitutional amendment, powers granted to cities and towns by one session of the Legislature may be repealed by a succeeding one. The constitutional amendment would have some permanence and would require another vote of the people to change the relationship.

**Q. How is our Constitution amended?**

A. Article 72 of the Constitution allows constitutional amendments to be proposed by the Senate once every four years. The Senate must approve by a two-thirds vote and the House by a simple majority. The next biennial session of the Legislature must then approve the proposal again and then the question is put to the Vermont voters at a general election. Only when they approve it does it become effective. In the case of the home rule proposal, if the Legislature approves it this year, it must be approved by the Legislature again in 1989 or 1990 and then approved by the voters at the 1990 general election.

**Q. What if the Legislature does not act on this proposal this session?**

A. Then it cannot be introduced until the 1991 legislative session and could not become effective until 1994.

**Q. What does the U.S. Supreme Court say about home rule?**

A. With the exception of issues covered by the federal Sherman Anti-Trust laws, the U.S. Supreme Court has, for the most part, let the municipalities and their state governments work out their own relationships. In the areas covered by anti-trust laws, the Court has required the communities regulating private enterprise — through zoning, licensing, franchising or other control — to have a "clearly articulated state policy." This policy would provide municipalities authority to engage in "anti-competitive" activities and be protected from the federal anti-trust laws. The Court has also said that once communities had this clearly articulated state policy, "there is no need to require the state to supervise actively the municipality's execution of what is a properly delegated function."

**Q. Then to fully implement home rule for Vermont, do we need something more than the constitutional amendment?**

A. Yes. Actually three pieces of legislation will be required. First, we need the amendment itself. Secondly, we need to amend 17 V.S.A. 2645. This is the section controlling the municipal charter amendment process. This must be amended by removing the requirement that the Legislature approve all charter changes approved by the voters before they become effective. Thirdly, because of the U.S. Supreme Court cases, we need specific enabling legislation, clearly articulating a state policy allowing municipalities to engage in regulatory activities which might otherwise result in anti-trust litigation.

**Q. Once we get home rule, how will towns exercise these powers?**

A. Home rule will allow voters in their municipalities to exercise governance through the adoption and amendment of their municipal charters. To date only 27 communities have enacted charters, each giving them different powers or procedures from those used by communities acting under general law.

**Q. Will home rule allow towns to be autonomous and to act to the detriment of their neighbors?**

A. Home rule will allow towns to solve problems which are "local and municipal in nature" only. Problems that transcend town boundaries such as pollution control will still be subject to state and federal laws. Home rule exists in 42 states and it does not give anyone license to pollute. If anything, home rule will permit towns to enact more stringent controls on sources of pollution.

**Q. Instead of home rule giving towns more authority to solve problems, wouldn't it be easier if local governments just threw in the towel and let the state do everything?**

A. It might be easier, but it certainly wouldn't be better. Nobody said democracy is easy. Local government in Vermont is still on a scale that one person can make a difference. Local government is closest to the people and should be able to be the most response to their needs and their solutions. We have the structure in place to govern ourselves. Home rule will give us the authority to do an even better job of it.

**Steven Jeffrey is Executive Director of the Vermont League of Cities and Towns, which supports a change to home rule.**

The Burlington Free Press

# Opinion



People at the League of Cities and Towns should think a bit longer before they claim that Town Meeting Day voters called clearly for a home rule amendment to Vermont's Constitution.

Here's an alternate analysis of the results: Voters like home rule for their own town; they hate the idea of home rule for the town next door.

The League and its cohorts of selectmen asked more than 100 communities to endorse the amendment, which would give cities and towns power to change their charters without ratification by the Vermont Legislature. Of the 100 towns reporting results so far, 64 like the idea, 36 did not.

Home rule would let towns unilaterally enlarge the planning commission, say, an innocent enough endeavor. But "home rule" isn't really about adding two more selectmen to the town board. Home rule is really about taxes.

Under home rule, town voters could impose new taxes at will, hypothetically turning Vermont into a patchwork of fiscal fiefdoms and sapping the state's ability to tap those same tax sources.

So it's no surprise voters in Burlington and Montpelier endorsed home rule. City leaders in Montpelier have been talking about imposing a commuter tax, an idea the Legislature is not likely to approve. Lawmakers already have rebuffed Burlington's attempts to impose its property speculation, property transfer and rooms and meals taxes.

Home rule also got enthusiastic endorsement in the Northeast Kingdom and in the Rutland area. Alternative taxes haven't been a big issue in either place, and neither area has a great love for a distant state government.

In fact, it's probably right to read home rule votes in the hinterland as a general message to Montpelier to butt out, rather than an impassioned defense of local democracy. ("In Mont-Peculiar it's getting so that pretty soon you'll need state approval to wipe your nose," is how Pittsford Selectman Mary Crahan put it.)

Who didn't like home rule? Nearly every suburban town near Burlington and Montpelier.

There, voters who commute to Montpelier or do business in Burlington sensed that home rule could add up to taxation without representation. Voters in Williston, Shelburne, Underhill and Jericho, it seems, aren't near as worried about being able to enlarge their planning commission as they are about paying some kind of new tax when they visit Burlington.

Vermont's Constitution sews the state's 251 towns into a single fabric. Montpelier and its suburbs can't start a tax war because any charter change must withstand the disinterested scrutiny of 180 state lawmakers.

No constitutional amendment is required to enlarge community power over purely local decisions. The Legislature could, for example, pass a law saying towns are free to structure local commissions as they wish.

Vermont's towns are not independent, they're interdependent. If a "home rule" clause didn't make sense when the state Constitution was written 200 years ago, it makes even less sense now.

/point

FREY WENNBERG

# utland Mayor Favors 'Home Rule' Ballot Item

ıont's Constitution is one of the owerful blueprints for centralized au- in the nation. Vermonters elect repre- ves and senators, and they in turn set licy and create the law by which we nce elected, these officials cannot be d. The laws they pass cannot be over- by popular vote, or referendum.

popular laws which the Legislature to enact cannot be passed by popular ır initiative. Even the Constitution – the very document which vests such l authority in the Legislature — cannot nended without the Legislature's ral.

the cities and towns of Vermont hold :ercise only that authority which the ature grants.

orically, this centralization of authori- egislative representatives has not pre- a particular problem for the towns or of Vermont. The Legislature has been onservative in its use of this power and tful of the apparent will of the elector- l the autonomy of municipalities.

is changing. In recent years, local ive and authority have been eroded. onservative view of the relationship ən state and municipal governments ifted, to the point that where there was espect for local democratic determina- ıere is now disdain, at least on the part ain legislators.

voters of the city of Burlington recent- ɔroved a proposal which would have a tax on the speculation of rental rties. The measure was designed to ɜs a problem which was unique to ıgton, but to institute it, a change in the harter was required. The voters duly ved the amendment, but were stymied Legislature.

alities can enact ordinances which are ıtutional and within the authority grant- ım by their charters, but their charters anted them by the Legislature. In other , local authority exists only to the t that it is allowed by the Legislature. effect of this, in this instance, is the franchisement of the electorate at the level. The wishes of the people of ıgton, lawfully expressed through ref- um, were ignored, indeed overruled, by ɜgislature.

ıer examples abound, including a pro- for a municipal co a proposal for a rooms and meals proposal for a local property transfer tax, a proposal for the recall of local elected officials and a proposal to provide local property tax relief.

Such instances have not only frustrated municipalities in their efforts to solve local problems, they have initiated a movement toward "home rule." The term "home rule" does not mean every man for himself. Home rule simply grants municipalities, through the state Constitution, the authority to frame and adopt their own charters and enact their own laws. It is self-determination for municipalities.

Home rule is not an anachronism. It is a recent political phenomenon: Here in the Northeast, home rule was approved in New York in 1923, in Rhode Island in 1951, in Connecticut in 1965, in New Hampshire and Massachusetts in 1966, in Pennsylvania in 1969, and in Maine in 1970. Vermont is the only New England state without home rule guarantees.

In all, 42 states guarantee some form of home rule for local governments, the vast majority being adopted since 1912.

What does a home rule amendment look like? The Vermont League of Cities and Towns has suggested the following:

"To reaffirm the customary and traditional liberties of the people with respect to their local government and to grant and confirm to the people the right of self-government in local matters, the voters of any organized city, town or village shall have the power to adopt, alter and amend a charter on all matters, not specifically prohibited by the Constitution or general law, which are local and municipal in character. If a charter adoption, alteration of amendment is approved by a majority of the voters voting thereon, it shall beocme effective on the first day of the next succeeding municipal fiscal year unless otherwise specified in the charter.

"This power shall be in addition to powers specifically granted cities, towns and villages through legisla n. This section shall be liberally construed in favor of municipalities."

If home rule is subject to the state Constitution and state law, where is the power?

The point is this — towns and cities would have the ability to enact laws and charter changes without the approval of the Legislature. If the Legislature wanted to it could deny such laws, but they would not be required to approve them The differecne is subtle, but powerful.

It represents a realignment of the traditional local-state relationship — it respects local authority and autonomy without superceding state authority.

The October, 1987, issue of the Center for Rural Studies "Databrief" suggests stongly that such a realignment is needed. In that issue, the responses from 117 participating Vermont communities are analyzed regarding local impressions of the impact of federal land state mandates:

"In Vermont, the combination of allowing communities very little latitude in raising revenues while not adequately reimbursing local goverment for the cost of mandates appears to be causing great concern and resentment on the part of local officials."

Among the recommendations is found the following:

"Alternative revenue raising mechanisms for local government should be explored. These include establishing home rule, introducing user fees and local licensing capabilities, developing impact fees, and creating local option taxes."

Local governments have the greatest potential to solve local problems. But they have the least capacity due to their enslavement to the property tax and lack of creative local initiative, which is a direct result of the lack of home rule.

Opponents of home rule frequently use the argument that there is no real local autonomy left, so why try to regain it? The truth is that there is a good deal of local autonomy left. Communities can still declare rollerskating on sidewalks a misdemeanor without legislative approval. Towns can still set the wages paid to local officials. They can still decide to buy capital equipment on their own or choose the color of the town fire truck without lobbying in Montpelier.

Do these examples sound ridiculous? Each one is a true case in point for a state which lacked home rule, but due to such insanity, adopted it.

I submit that as the rest of the nation recognizes the need for greater local autonomy and capacity, Vermont is moving in reverse. But the best answer to the question is simply this: Perhaps the reason the state grapples with these issues and proposes to get deeper in local affairs is not because local govern are unable to solve problems, but because they are not empowered to solve problems.

The state of Vermont is not homogeneous, like its milk. Within 10 miles of my home lie a variety of communities that would astound the casual observer. Sherburne is no more like West Rutland than Vermont is like Nevada. And Rutland City is substantially different from both. The communities in the banana belt are quite different from the Northeast Kingdom, and Chittenden County is different from everywhere else.

The challenges, needs and opportunities vary tremendously from town to town. Taken state-wide, the complexity of local planning issues, for example, is awesome. But like any complicated system, when broken down into its component parts it becomes more manageable, more comprehensible.

Many critics of home rule have tried to paint the proposal simply as a back-door to local option taxes. This is not true, since even with home rule the state could pass a law preventing the adoption of local option taxes. What the Legislature could not do under home rule is to defeat locally adopted initiatives through inaction.

On March 1 the voters of the City of Rutland will consider several charter changes, including one which would eliminate the lifetime tenure of our police and fire chiefs. If the people of Rutland decide in favor of this change, is it fair tha tthe Legistlrue could defeat it by simply not acting?

This state is currently consumed with a debate centering on growth. But the issue is not growth, the issue is the preservation of the character of Vermont.

Vermont is more than mountains and farms, more than quaint villages and hard winters. Vermont is the tradition of open government and accessible leaders, of citizen participation in the management of our towns and our schools, of profound respect for individual rights and tolerance of opinions different from our own.

The erosion of the state's respect for municipal autonomy represents a far more serious and insidious threat to the character of Vermont than any land developer.

I urge the readers of this opinion to support the home rule question on the town meeting ballot.

*Jeffrey Wennberg is Rutland City Mayor.*


I'd never interfere with "Local Control". It's my favorite excuse for doing nothing...
DANRIGER
Legislature

12/26/87

Bennington Banner

# Battle lines drawn for home rule amendment

By COLE G. LIBBY
*Banner staff writer*

In the first skirmish of what may become a major political battle by March, several people on local and state levels have disputed the necessity of home rule.

Proponents of the constitutional amendment say it will lead to innovation and diversity while giving local governments the tools to solve local problems that have been ignored by the state.

Opponents say it will lead to more taxes, unbalanced services and, in some cases, chaos across the state.

Home rule pits the flavor and charm of local control against 200 years of constitutional history. Most say it pits towns against the state. Some say it pits big towns against little towns. Everybody says it will shape the way decisions are made in Vermont in coming years.

In concept, home rule is simple — if the amendment is passed, towns would be able to shape their governments separately from and without review of the state.

Currently, towns can only do what the state approves. Charters that define local government have to be approved by the state.

It is an attractive concept to people in a state which prides itself on

Continued from Page 1

town meeting, the ultimate democracy and epitome of local control.

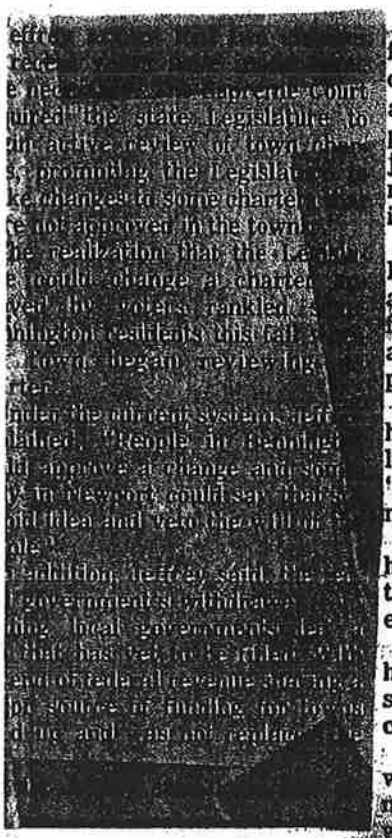
"Who wouldn't be in favor if it?" asked Timothy Corcoran, a Bennington selectman and state representative. But Corcoran is opposed to it because he believes it is more complex than its simple name.

The Vermont League of Cities and Towns, a private informational and lobbying group representing town governments, has emerged as the main proponent. Steven Jeffrey, the League's executive director, has called for voters to address the issue at the March town meeting.

Several local selectmen have also said they favored the initiative and said it should be placed on the ballot; most of the town's seven selectmen are in favor of it.

Jeffrey said several towns have been prevented from organizing their government as they would like. An information sheet published by VLCT claims that under the current system Groton cannot elect its road commissioner for three years, Wallingford cannot elect planning commissioners and Hartford cannot enact rent control.

Corcoran said that several of those merely required routine approval for the necessary charter changes.



fers a range of possibilities, Corcoran argues that it is mainly aimed at giving broader taxing power to cities. The Legislature rejected such taxes when Burlington requested a rooms and meals tax in its charter.

Speaker of the Vermont House Ralph Wright, D-Bennington, characterized home rule as "a war cry for new taxes on local level. There are enough taxes being levied on the people."

Wright charged proponents with hypocrisy, comparing them to college students calling their parents: "Stay out of my affairs but send me money."

To Jeffrey's claim that the state has been unresponsive, Wright notes the Legislature doubled state aid to education in the past year.

Corcoran said that while that may help the larger towns and cities, smaller towns will be left out in the cold.

"That's fine for Burlington, but what is Woodford going to do? It may be good for Bennington, but what is Pownal going to do?" said Corcoran, noting that commercial and business centers would make out but other towns would not benefit.

Corcoran instead argues that taxes should be raised on the state level and be distributed to localities based on population, similar to distribution equations for state aid to education.

"You can give people more money but it's got to come from someone," said Corcoran. There's only so much tax revenue to go around, he said.

Jeffrey argues that philosophically, things are better accomplished on a local level.

"This is the age of decentralization. We've gone though the period of centralization and bigger is better. Small businesses are really the incubators of ideas. The whole society is going through a revolution," he said.

**Too big to handle?**

Others argue that many technical problems towns face are too big for them to handle without help. Wright cites a $53 million sewer treatment plant planned for Burlington. The state recently contributed $17 million to it, and the federal government threw in $20 million.

"Burlington could never raise $17 million," Wright said.

The issue has split locals in Bennington. The town manager and his assistant are opposed even though the move could give Bennington more money to accomplish its goals. Both argued that there should be consistency in the way towns address problems, and that each town should have the same tools.

Assistant Town Manager Stuart Hurd said he was strongly opposed to home rule.

"Home rule would be a mistake. Within the state (there) should be consistency in the way municipal governments are operated," said Town Manager Kevin Ryan.

Ryan said the state should be responsible for exploring new funding and governments which then "should be available equally to towns to adopt."

Selectman Norman Lariviere criticized the power structure of the government, saying that the Legislature's actions were "self serving" when it declined to give towns power.

Selectman's Chairman Edward Lamb, a former town manager, said the property tax is not enough to cover local expenses and towns need to increase their ability to raise money.

"With the type of services pe
seem to expect it's not enough.
being the case the
should have more funds.
time we're talked down by
state," said Lamb.

Robert Matteson, also a for
town manager and chairman of
2010 Project is the most vocal
proponent of Home Rule. Matte
however, distanced himself tha
cal taxes would not be a good i
Matteson instead said he favor
state revenue sharing program
nanced by an additional percen
the sales tax and distributed
population.

But local governments should
able to form themselves as
chose without direction from
state, Matteson said.

"I don't think it's sensible for
land Pond to operate in the s
way Bennington operates,"
teson said. The state may set
formance standards for such thi
as landfills and fire departme
Matteson said, but the town sh
decide how to meet them.

"I think it's the key thing in
quarter of century, the capacit
communities to have wide
cretion in setting their
action."

# Home Rule' — Biggest Issue, Or Biggest Flop, Of 1988

By NANCY WRIGHT
Vermont Press Bureau

MONTPELIER — An old idea — :ting the power back into local /ernment — has been resurrected s fall and holds the potential to be : of the major political issues of 8.

, so-called "home rule" amend- nt to the Vermont Constitution uld redefine the roles of local and te government in a number of :as, including taxation, the en- onment and education.

, preliminary draft will be presented on Oct. 8 at the annual meeting of the Vermont League of Cities and Towns, the lobbying and service arm of municipal government in the state.

Under the proposed amendment, communities would have the power to change the structure of the property tax by classifying various properties and adjusting tax rates accordingly.

They would also be given authority to develop alternate local tax sources, and would be given more of a say in the way their schools are run, to name just a few provisions.

More local power would diffuse the growing tension between municipal and the state government on these issues, said Steven Jeffrey of the Vermont League of Cities and Towns.

"The reason for this amendment would be to give communities more opportunity to do the things they can't do now," Jeffrey said. "The other thing is that there is the feeling that the state is encroaching on what have traditionally been local issues."

Sen. Douglas A. Racine, a Richmond Democrat who sits on both the Senate Appropriations Committee and the Natural Resources Committee, said in an interview that the concept of home rule "doesn't mean anything until you define it," at which point a big political battle would ensue.

Racine criticized the league for what he called its long-standing belief that Vermont is a federation of cities and towns.

"You can't look at Vermont as a collection of cities and towns," he said. "Vermont is a community. What happens in one town effects all the other towns in the area."

If towns had the power to impc their own sales tax, for instance, wouldn't only effect the residents that town, but every person who we there to shop," Racine said.

Rep. Martin L. Harrington, member of the House Ways a Means Committee, said if the amen ment made it to the Legislature ne year it could be of the bigge political debates of the session.

"If it comes to the House it'll w

(See Home Rule, Page 8)

# ATTACHMENT U

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SENATE CHAMBER

PROPOSED AMENDMENT TO THE CONSTITUTION

OF THE STATE OF VERMONT

Offered by Senator Condos of Chittenden County

Subject: Municipal government; home rule authority

PROPOSAL 7

Sec. 1. PURPOSE

This proposal would amend the Vermont Constitution to provide for the adoption, alteration, or amendment of municipal charters by a city, town, or village by approval of a majority of the municipality's voters.

Sec. 2. Section 6 of Chapter II of the Vermont Constitution is amended to read:

§ 6. [Legislative powers]

The Senate and the House of Representatives shall be styled, The General Assembly of the State of Vermont. Each shall have and exercise the like powers in all acts of legislation; and no bill, resolution, or other thing, which shall have been passed by the one, shall have the effect of, or be declared to be, a law, without the concurrence of the other. Provided, That all Revenue bills shall originate in the House of Representatives; but the Senate may propose or concur in amendments, as on other bills. Neither House during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting; and in case of disagreement between the two Houses with respect to adjournment, the Governor may adjourn them to such time as the Governor shall think proper. They may prepare bills and enact them into laws, redress grievances, grant charters of incorporation, subject to the provisions of section 69~~, constitute towns, boroughs, cities and counties~~; and they shall have all other powers necessary for the Legislature of a free and sovereign State; but they shall have no power to add to, alter, abolish, or infringe any part of this Constitution.

Sec. 3. Section 69 of Chapter II of the Vermont Constitution is amended to read:

§ 69. [Charters, limit on right to grant]

No charter of incorporation shall be granted, extended, changed, or amended by special law, except for such ~~municipal,~~ charitable, educational, penal, or reformatory corporations as are to be and remain under the patronage or control of the State; but the General Assembly shall provide by general laws for the organization of all corporations hereafter to be created. A municipality shall have the power, through approval by a majority of its voters voting thereon, to adopt, alter, and amend a charter of incorporation. Such charter may authorize the municipality to exercise any legislative power or perform any function not specifically prohibited by the Constitution or general law. The powers and functions granted to municipalities under this section shall be liberally construed. All general laws passed pursuant to this section may be altered from time to time or repealed.

Sec. 4. EFFECTIVE DATE

Once ratified and adopted by the people of this state in accordance with the provisions of chapter 32 of Title 17, the provisions of this amendment shall become a part of the Vermont Constitution as of the first Tuesday next after the first Monday of November of 2006.

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Published by:

**The Vermont General Assembly**
**115 State Street**
**Montpelier, Vermont**

*www.leg.state.vt.us*

# ATTACHMENT V

S.90

Introduced by Senator Condos of Chittenden County, Senator Collins of Franklin County, Senator Cummings of Washington County, Senator Gossens of Addison County, Senator Mullin of Rutland County, Senator Shepard of Bennington County and Senator White of Windham County

Referred to Committee on

Date:

Subject: Municipal government; charters; amendments; legislative approval

Statement of purpose: This bill proposes to allow municipalities to amend their charters, adopt new charters, or repeal their charters without the approval of the general assembly, unless the attorney general, six senators, or 30 representatives of the house petition for legislative approval.

AN ACT RELATING TO LEGISLATIVE APPROVAL OF MUNICIPAL CHARTER AMENDMENTS

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 17 V.S.A. § 2645 is amended to read:

§ 2645. CHARTERS, AMENDMENT, PROCEDURE

(a) In the exercise of its subsisting patronage and control of municipal corporations under Article II, §§ 6 and 69 of the Vermont Constitution, the

general assembly hereby establishes a procedure whereby cities, towns, and villages may exercise such powers and perform such functions relating to their respective governance and affairs which are not expressly prohibited by the Vermont Constitution, the general law of the state, or common law.

(b) A municipality may ~~propose to the general assembly to~~ amend or repeal its charter or adopt a new charter by majority vote of the legal voters of the municipality present and voting at any annual or special meeting warned for that purpose in accordance with the following procedure:

(1) A proposal to adopt, repeal, or amend a municipal charter may be made by the legislative body of the municipality or by petition of five percent of the voters of the municipality.

(2) An official copy of the proposed charter amendments shall be filed as a public record in the office of the clerk of the municipality at least ten days before the first public hearing and copies thereof shall be made available to members of the public upon request.

(3) The legislative body of the municipality shall hold at least two public hearings prior to the vote on the proposed charter amendments. The first public hearing shall be held at least 30 days before the annual or special meeting.

(4) If the charter proposals ~~to amend the charter~~ are made by the legislative body, the legislative body may revise the amendments as a result of

suggestions and recommendations made at a public hearing, but in no event shall such revisions be made less than 20 days before the date of the meeting. If revisions are made, the legislative body shall post a notice of these revisions in the same places as the warning for the meeting not less than 20 days before the date of the meeting and shall attach such revisions to the official copy kept on file for public inspection in the office of the clerk of the municipality.

(5) If the charter proposals ~~to amend the charter~~ are made by petition, the second public hearing shall be held no later than ten days after the first public hearing. The legislative body shall not have the authority to revise charter proposals ~~to amend the charter~~ made by petition. After the warning and hearing requirements of this section are satisfied, proposals by petition shall be submitted to the voters at the next annual meeting, primary, or general election in the form in which they were filed, except that the legislative body may make technical corrections.

(6) Notice of the public hearings and of the annual or special meeting shall be given in the same way and time as for annual meetings of the municipality. Such notice shall specify the sections to be adopted, repealed, or amended, setting out sections ~~to be amended in the amended~~ in the proposed form, with deleted matter in brackets and new matter underlined or in italics. If the legislative body of the municipality determines that the ~~proposed charter amendments~~ charter proposals are too long or unwieldy to set out in ~~amended~~

the proposed form, the notice shall include a concise summary of the ~~proposed charter amendments~~ charter proposals and shall state that an official copy of the ~~proposed charter amendments~~ charter proposals is on file for public inspection in the office of the clerk of the municipality and that copies thereof shall be made available to members of the public upon request.

(7) Voting on charter ~~amendments~~ proposals shall be by Australian ballot. The ballot shall show each section to be adopted, repealed, or amended in the ~~amended~~ proposed form, with deleted matter in brackets and new matter underlined or in italics and shall permit the voter to vote on each proposal of adoption, repeal, or amendment separately. If the legislative body determines that the ~~proposed charter amendments~~ charter proposals are too long or unwieldy to be shown in the ~~amended~~ proposed form, an official copy of the ~~proposed charter amendments~~ charter proposals shall be maintained conspicuously in each ballot booth for inspection by the voters during the balloting, and voters shall be permitted to vote upon the charter ~~amendments~~ proposals in their entirety in the form of a yes or no proposition.

~~(b)~~(c) The clerk of the municipality, under the direction of the legislative body, shall announce and post the results of the vote immediately after the vote is counted. The clerk, within 10 days after the day of the election, shall certify to the secretary of state each proposal ~~of amendment~~ showing the facts as to its origin and the procedure followed.

~~(c)~~(d) The secretary of state shall file the certificate and deliver copies of it to the attorney general and clerk of the house of representatives, the secretary of the senate and the chairman of the committees concerned with municipal charters of both houses of the general assembly, immediately if it is then in biennial session and, if not in session, within 10 days of its organization at the biennial session.

(e) The secretary of the senate and the clerk of the house shall each publish a notice of each charter proposal that has been submitted to them in the calendars of their respective chambers within five days of their receipt. The notices shall be published in the calendars for 15 successive legislative days.

~~(d)~~(f) The amendment, new charter, or repeal of the charter of a municipality shall become effective ~~upon affirmative enactment of the proposal, either as proposed or as amended by the general assembly. A proposal for a charter amendment may be enacted by reference to the amendment as approved by the voters of the municipality~~ at the expiration of 30 days after the first day that the notice required under subsection (e) of this section is published in the calendars, provided no petition is filed under subsection (g) of this section.

(g) The attorney general or not fewer than six senators or not fewer than 30 members of the house of representatives may file a petition for legislative approval of an amendment to, the adoption of, or the repeal of a charter of a

municipality. A petition submitted by the attorney general must include a statement indicating that the attorney general believes that the charter proposal violates the Vermont Constitution. A petition submitted by the appropriate number of senators or representatives must include a statement indicating that the signers believe that the charter proposal has significant statewide ramifications. The petition shall be filed with the clerk of the municipality and with the clerk of the house of representatives or the secretary of the senate within 30 days after the first day that the notice required under subsection (e) of this section is published in the calendars.

(h) If a petition is submitted pursuant to subsection (g), the charter proposal shall only take effect upon its approval by enactment into law by the general assembly.

(i) If the general assembly adjourns less than 30 days after the first day that the notice required under subsection (e) of this section is published in the calendars, the charter proposal shall become effective 30 days after the date of convening the next regular or adjourned session, unless a petition is submitted pursuant to subsection (g) of this section within 30 days of convening. The general assembly may specifically approve a charter proposal at any time after its receipt and regardless of when it is received. Any proposal specifically approved shall become effective on the date of approval.

# ATTACHMENT W

VERMONT STATE ARCHIVES
OFFICE OF THE SECRETARY OF STATE
STATEWIDE REFERENDUM

The debate over civil unions (Act No. 91, 2000) touched on whether the proposed legislation should be submitted to a popular vote. Under Sections 2 and 6, Chapter II of the Vermont Constitution only the General Assembly has the authority to enact legislation. To transfer this authority to a direct vote of the people would therefore be unconstitutional.

The only referendum mechanism provided under the Constitution is in Section 72, Chapter II, which provides for submitting proposed constitutional amendments to a vote of the people, adoption requiring a majority vote (language adopted in 1870).

The 1999-2000 General Assembly was not the first to debate whether, and how, to seek popular expression on closely divided and divisive issues. Using a couple different mechanisms, twenty-nine questions have been put to a popular vote in seventeen referenda since the 1700s.

The scope of this presentation is limited to statewide referendum exclusive of ratification votes on proposed constitutional amendments. It does not include town or county level referenda that have been used to address everything from town versus district schools; the use of oleomargarine; whether a town should allow the sale and use of alcohol; or whether to have a municipal forest.

## STATEWIDE REFERENDUM, AN OVERVIEW

Vermont has resorted to referenda throughout its history. Different referenda mechanisms are described elsewhere on this page.

Prior to reapportionment of the Vermont house in 1965, referenda were occasionally used to bridge the disparity among municipal populations that resulted in minority control of the legislative. For example, in the 1890s representatives from towns with populations under 935 represented 20% of Vermont's population but wielded a legislative majority.

Under sufficient political pressure the legislature would call for a referendum to address issues whose popular support ran counter to town opposition. The temperance referenda of 1853 and 1903 are examples, though the clearest case is provided by the 1914-1916 debate over adopting a primary system.

In terms of demographics, referenda reveal regional, as well as town, splits within Vermont. See, for example, the 1936 Green Mountain Parkway and the 1969 constitutional convention referenda. The demographics of referenda needs further study.

Though the referendum is celebrated as the embodiment of direct democracy, referenda are fashioned and responded to within political contexts. The very first referendum (1785) demonstrated support for full reimbursement to early settlers alienated from their land through faulty titles; despite the vote the legislature subsequently rejected full reimbursement, opting instead for lesser payments. The second referendum (1787) was designed to derail passage of fiscal policies a legislative minority could not block; a design it freely acknowledged. Forced to bow to demands for a primary system, the 1912 legislators designed the referendum question to fragment primary support. They then claimed that no primary system received majority approval of the voters. The 1914 rejection of a new state building was immediately followed by another law for the building, albeit at a lower appropriation. A 1976 advisory referendum was used to avoid a gubernatorial veto of a state lottery.

Referenda were also resorted to on moral issues. There were repeated, and often closely divided, referenda on temperance in 1847-50, 1853, 1903, and 1916. There were referenda on gambling in 1960 and 1976. Moral issues, which elude easy political compromise, can also make for difficult referenda. The repeated 19th century referenda on temperance, produced changing results (temperance lost by a fourteen vote margin in 1848 and won in 1853 by 521 votes out of 44,109 cast), divided and exhausted the electorate, and contributed to the collapse of the Whig Party, the century long minority status of the Democratic Party and the emergence of the Republican Party. Popular support for gambling overrode church and executive opposition to state-sponsored gambling.

The use of referendum also touches upon basic questions about our democratic society, particularly whether popular majorities are sufficient safeguards for minority rights. The legislative debate over a referendum on women jury service included discussions on whether the referendum should be restricted to women voters.

The referendum deserves more study and we hope these pages will encourage such research.

## REFERENDUM MECHANISMS

The constitutional prohibition against delegating the legislative authority was primarily addressed through two mechanisms.

The first, advisory referenda, gauged public support for, or opposition to, specific measures prior to formal legislative action. The 1976 referendum on a state lottery simply asked, "Shall the General Assembly consider enactment of a Vermont lottery to supplement state revenue?" The 127,001 to 49,447 favorable vote paved the way for introduction and passage of a lottery bill in the 1977 session.

The second mechanism was to pass a law, complete in itself, that allowed voters to choose between two effective dates (dates when the law would take effect). The understanding was that selection of the later date would cause an intervening legislature to repeal the act before it went into effect.

To illustrate, in 1936 voters were asked whether an act to establish the Green Mountain Parkway should take effect on April 1, 1936 or April 1, 1941. The voters chose the second date and the 1937 legislature repealed the act (Act No. 243 of 1937).

## REFERENDA AND THE COURT

The constitutionality of referenda giving voters a choice between effective dates was repeatedly upheld by the Supreme Court; see, for example, *Bancroft & Riker v. Dumas*, 21 Vt. 456 (1849); *State v. Parker*, 26 Vt. 357 (1854); and *State v. Scampini* 77 Vt. 92 (1904). Challenges centered on whether a choice between effective dates left an act incomplete and were thus an unconstitutional delegation of the legislative power; as unsuccessfully argued in *State v. Parker*, a choice between enactment dates meant "[t]he law was incomplete of itself, when it left the hands of the legislature..."

In *Bancroft*, the first judicial challenge to this mechanism, the challenge stated that "[n]o power, but the legislative body, can enact laws; and the legislature are bound to exercise the power, thus conferred on them, in the mode prescribed by the constitution; and any law, made in any other mode, is unconstitutional and void. The people have no more constitutional right to decide, by ballot, that an act of the legislature shall go into operation as a law, than they have to decide by ballot, that an act of the legislature shall be suspended and become inoperative. The

representative cannot transfer his duty, even to the whole people; much less can he to a portion of the people."

The Court responded that, "Was not our statute a law in itself, when passed by the legislature? Had it not the force and authority of law, independent of any action of the people?...The law was complete in itself, when passed by the legislature, and did not require the creative power of the people, or of any body; to give it vitality, or force."

The Court went on to find that "[l]aws are often passed, and, by the terms of the statute, made to take effect upon the happening of some event, which is expected to occur;...So it has not been unusual for the legislature to pass laws altering the lines of towns, with a proviso, that the same should not take effect, until the several towns in interest should by vote signify their assent to the same."

On a different issue, in Martin v. Fullam, 90 Vt. 163 (1916) the Court clarified that referendum held on town meeting day were state, not town, elections.

1785 "Quieting Ancient Settlers" and the Betterment Acts

Background: Competing jurisdictions, uncertain surveys, and overlapping deeds clouded land titles held by Vermont's early settlers. After the laborious work of converting wilderness to farms, some of these "ancient" settlers faced eviction because their titles proved invalid.

Issue: Revolutionary leaders such as Thomas Chittenden believed that ancient settlers with invalid titles should receive full compensation for the value added by their work and enacted a Betterment Act to that effect in 1781. Opponents, associated with Nathaniel Chipman, argued that compensation violated common law tenets on trespass by requiring the legal owner to pay the settlers for their trespass. Their opposition blocked enactment of a new Betterment Act in 1784.

Referendum: To break the deadlock the 1784 General Assembly sought an advisory referendum, to be held at 1785 town meeting. The freemen were asked whether they supported the 1784 bill's call for full compensation.

At the June 1785 session of the General Assembly it was reported that the betterment bill was supported by a 756 to 508 margin (some towns did not comply with the

requirement to certify the actual vote and simply noted how the town voted).

Result: Despite the vote the betterment bill was defeated by a 29-31 legislative vote. On June 16, 1785 a compromise bill, limiting compensation to half the assessed value of the improvements, was approved by a 33 to 29 vote.

1787 Fiscal Policy

Background: The end of the Revolution brought peace, but not prosperity. Lack of specie, land speculation, and war related delays in establishing productive farms left debtors in difficult straits as their notes came due. Many settlers were threatened with the loss of their farms to creditors.

Issue: A rematch of the 1785 split, old revolutionary leaders sought to protect the settlers by extending the periods of contracted debt, enacting "tender acts" allowing payment of debts in livestock, grain and other goods, and creating a state bank to increase circulating currency by issuing paper money. Again Nathaniel Chipman led opponents who argued that such measures violated the sanctity of contracts and undermined creditors. Threats of eviction led debtor mobs to attempt closing the county courts to halt evictions (see The Rutland Court Riots of 1787).

Referendum: Recognizing that popular support was against them, Chipman's allies proposed delaying action until an advisory referendum could be held and "the passions of the people should have a time to cool." By capturing "the democratic side of the question," Chipman stymied efforts to quickly enact the revolutionaries' fiscal policies and the referendum measure passed October 31, 1786 (see Daniel Chipman's Life of Nathaniel Chipman)

Four questions were put to the voters at a town meeting to be held on the first Tuesday of January, 1787: Shall there be established a bank for the issue of paper money on loan to the people? Is it expedient to pass a general tender act? Shall the present act making articles a tender on the execution be continued? Shall the act for the fulfillment of contracts in kind after the specified time of payment is elapsed, passed in October 1786, be continued?

The first three measures were defeated by, respectively, votes of 456 to 2197, 128 to 781, and 419 to

591. The fourth measure passed 835 to 229 (see Vermont State Papers, Vol. III. pp.284-285)

Result: An act to compel fulfillment of contracts according to the intent of the parties was passed March 9, 1787, thus continuing the October 31, 1786 act. The general tender acts were repealed on March 10, 1787. A state bank was created in 1806.

1847 Relating to Licensing Innkeepers and Retailers

Background: "Ardent spirits" and drunkenness were linked to a host of social, moral, and economic ills. In 1828 a Vermont Temperance Society was organized and sustained drives for statewide prohibition were under way by 1837. To achieve prohibition, temperance advocates looked to regulating the distribution and sale of alcohol through licensing retailers and innkeepers and limiting the amounts and uses of any alcohol they received.

Issue: The population was closely divided over temperance, with splits along regional lines and between larger population centers (pro) and rural towns (anti). At the January, 1844 meeting of the Vermont Temperance Society the likely legislative opposition to prohibition was acknowledged and the Society called for the use of referendum, adopting the slogan "Let the people decide the great questions that concern the people" (the house was controlled by the rural towns).

David Ludlum, in Social Ferment in Vermont, reported county level referenda in January, 1845; citing newspaper reports he calculated that a statewide margin of eighty-three votes out of 30,000 cast favored licensing retailers and innkeepers as opposed to restricting licenses to the sale of alcohol for medicinal, chemical or mechanical purposes (Ludlum, p. 81; see also Act 15 of 1844).

Referendum: On November 3, 1846 the General Assembly passed Act 24, "An Act Relating to Licensing Innkeepers and Retailers." The act included a statewide referendum at March town meeting, 1847, "and each year thereafter," with voters being asked to cast ballots for either "license" or "no license." If a majority voted for license, county assistant judges could license innkeepers and retailers to sell "distilled spirituous liquors, wine, ale, or beer (excepting small beer)" for beverage purposes. If a majority voted no license, the assistant judges "shall have

the power to grant licenses only for medicinal, chemical or mechanical purposes" of alcohol.

The "no license" forces won by a 21,798 to 13,707 vote, with only Essex County voting for "license."

Result: No licenses were issued for the sale of alcohol for beverage purposes. The law was not stringently enforced and was evaded in communities opposing the measure.

1848 Second Referendum under 1846 Act Relating to Licensing Innkeepers and Retailers

Background: See 1847 referendum.

Issue: Lax enforcement and general disregard of prohibition left both sides of the issue unsatisfied.

Referendum: At town meeting in March, 1848 the 1847 vote was reversed by a fourteen vote margin, with 17,278 voting for "license" and 17,264 voting "no license."

Result: Temperance forces, led by the Sons of Temperance, the Green Mountain Tribe of Rechabites, and the United Brothers of Temperance, renewed efforts to organize opposition in preparation of the 1849 vote.

1849 Third Referendum under 1846 Act Relating to Licensing Innkeepers and Retailers

Background/Issue: See 1847 and 1848 referenda.

Referendum: At town meeting in March, 1849 the "no license" forces recovered from their 1848 defeat, carrying the day with a 23,816 to 11,331 vote.

Result: Prohibition again returned (though, as before, small beer and cider were exempted). First judicial challenge to use of referendum emerged in Bancroft & Riker v. Dumas 21 Vt. 456 (1849). Vermont Supreme Court upheld referendum, ruling that it was not an unconstitutional delegation of the General Assembly's exclusive legislative authority.

1850 Fourth Referendum under 1846 Act Relating to Licensing Innkeepers and Retailers

Background/Issue: See 1847, 1848, and 1848 referenda.

Referendum: The Archives does not have a record of the 1850 town meeting vote. Ludlum reports that the "no license" forces again won a "smashing" victory. The referendum vote is reported in the temperance paper, the Vermont Chronicle, February 22, 1853.

Result: Temperance forces, having won three of four referenda, moved to eliminate the annual referenda and establish a permanent ban on licensing alcohol for beverage purposes. They did so through Act 30, passed November 13, 1850.

1853 Preventing Traffic in Intoxicating Liquors for the Purpose of Drinking

Background: See referenda of 1847-50. In 1851 Maine passed a law outlawing the manufacture of intoxicating liquor. Vermont's temperance supporters quickly moved to enact a similar law. Sustained agitation over temperance created splits within the State's political parties (notably the Whigs) at the same time anti-slavery sentiment was weakening ties to the national party organizations.

Issue: The Maine law moved the debate from the sale of spirits for beverage use to prohibition against its manufacture. Vermont's population, already divided over whether to license the sale of alcohol, further fragmented over the question of banning its manufacture. After surviving a 91-90 house vote, on November 23, 1852 Vermont enacted the Maine-style Act 24, "An Act Preventing Traffic in Intoxicating Liquors for the Purpose of Drinking."

Referendum: Act 24 called for a referendum to be held on the second Tuesday of February, 1853, with voters asked to choose between two effective dates. If a majority of voters voted "yes," Act 24 would go into effect on the second Tuesday of March 1853. If they voted "no," the act would go into effect the first Monday in December 1853. Since a new legislature would convene in October 1853, the understanding was a no vote would lead to repeal of Act 24 before its December effective date. This was the first use of the mechanism allowing voters to choose between effective dates.

The vote was extremely close, the early effective date being approved by a 521 vote margin, 22,315 to 21,794. There was a clear geographic split, with all counties west of the Green Mountains supporting the early date; of the eastern counties, only Caledonia approved (and that by only 28 votes). The margin of victory was supplied by the state's larger population centers.

Result: Despite the vote there was an effort in the 1853 legislature to repeal the act. That effort failed and Vermont became a predominately dry state for the next fifty years (an act passed in 1853 clarified that one could give alcohol in one's own home as long as it did not lead to drunkenness). The Journal of the House of Representatives of 1853 contains competing committee reports on whether to repeal the law (see pages 534-554).

The new mechanism of providing a choice between enactment dates was unsuccessfully challenged in State v. Parker 26 Vt. 357 (1854).

The close vote had continuing political ramifications. Incumbent Governor Erastus Fairbanks, a "dry" Whig from Caledonia County, did not receive a majority in the 1854 elections and the general assembly elected the Democratic candidate who finished second in the general election (see Failure to Attain A Majority). In 1854 the Republican Party was formed, the Whig Party dissolved, and the Democrats were reduced to minority status for over a hundred years.

1903 Regulating the Traffic in Intoxicating Liquor

Background: The statewide prohibition on the manufacture of liquor, adopted in 1853, was laxly enforced; Governor Urban Woodbury, proprietor of Burlington's Van Ness house, openly served alcohol, for example. As Vermont began to promote itself as a tourist destination, prohibition was perceived as a competitive disadvantage (why vacation in "dry" Vermont when you could enjoy "wet" Saratoga?). Vermont's larger population centers, once the source of temperance strength, now chaffed under prohibition. Beginning in the 1890s Percival Clement, publisher of the Rutland Herald, promoted replacing statewide prohibition with local option, allowing each municipality to decide whether to be wet or dry.

Issue: In 1902 Percival Clement sought the Republican gubernatorial nomination. A main plank of his candidacy was

local option. When he failed to gain the nomination, Clement bolted the Republican state convention and ran as a local option candidate, creating a three-way race. His presence denied the Republican candidate a majority for the first time since the creation of the party in 1854.

Referendum: To blunt renewed factionalism from Clement's local option forces, the 1902 legislature enacted on December 11, 1902, Act 90, "An Act to Regulate the Traffic in Intoxicating Liquor." The act established local option through which towns annually voted at town meeting whether to be wet or dry and, if wet, what kinds of licenses they would issue for the sale and use of alcohol.

Act 90 called for a referendum to be held February 3, 1903 to allow voters the choice between enactment dates. A yes vote would mean the act would go into effect on the first Tuesday in March 1903. A no vote delayed the effective date until the first Monday in December 1906. Again, the understanding was that a no vote would allow an intervening legislature to repeal the act.

The voters approved the early date by 729 votes, 29,711 to 28,982.

Result: Vermont's fifty year experiment with statewide prohibition ended. The majority for local option was provided by the larger population centers, a reverse of the 1853 voting patterns, while the seven eastern counties voted no (only Grand Isle voted no among the western counties).

Clement ran again in 1906, as a Democrat, and lost. He finally won the governorship in 1919, just as national prohibition emerged.

1914 Construction of a Building for the Supreme Court, State Library and other State purposes.

Background: As government grew, and the workload and services increased, it no longer comfortably fit within the state house. In 1912 the state house held the general assembly, the supreme court, the executive branch officers, the state library, the state archives and the Vermont Historical Society.

Issue: To relieve the space crunch a $300,000 new building, to house the supreme court and library, was proposed. The reasons why a referendum was resorted to are

unclear, though may be related to the cost of the structure in a fiscally conservative environment.

Referendum: On February 21, 1913 the legislature enacted Act 13, "An Act to Provide for the Erection of a Building for the use of the State Library and Supreme Court, and for other State Purposes." It called for the appropriation of $300,000 to locate, design and construct the building no later than September 1916. The referendum was set for town meeting in March 1914 and again voters were to choose between two effective dates for the act, July 1, 1914 or July 1, 1915.

The voters chose the latter date by a 19,284 to 16,820 margin.

Result: In accordance with the informal understanding that selection of the second date expressed voter rejection of the legislation, Act 8 of 1915, passed on March 31st, repealed Act 13 of 1912. The legislature, however, formed a study committee to revisit the need for a building. The committee re-affirmed that need (see Journal of the Vermont House, 1915, pages 802-806). A new bill was proposed, identical to the 1912 law, except reducing the amount from $300,000 to $200,000. After the house reduced the amount further to $150,000 and rejected a senate measure to delay action, a new construction bill (Act 9) was enacted on April 2, 1915.

The new building, at 111 State St., was begun in May 1916 and completed in 1918.

1914 Primary Elections

Background: Candidates were selected through a caucus and state convention system. Abuses, most evident in the 1902 Republican gubernatorial nomination battle, led to calls for a primary system. Primary bills were routinely introduced starting in 1902, often dying in their house of origin. In 1908 a primary bill passed the senate, only to fail a third reading in the house. In 1912 a Progressive faction of the Republican Party (associated with Teddy Roosevelt's Bull Moose campaign) denied the Republican gubernatorial candidate a majority, captured several legislative seats, and numbered the direct primary among its key issues. To recapture Progressive strays the 1912 Republican platform included a pledge to find "some practical system" for nominating candidates.

Issue: The strength of the Republican Party lay in its town organization. The towns controlled the caucus nominating system and, through town representation, also controlled the Vermont house. Since a primary would advantage the larger population centers, representatives of the smaller towns used their significant legislative majorities to defend the caucus system. Facing a Progressive revolt and committed to some action by their party's platform, the 1912 legislators could not simply continue to defeat primary bills; instead they asked for voter opinion on a preferential or direct primary.

Referendum: To postpone action, while showing compliance with their platform, the legislators fashioned a joint resolution calling for an advisory referendum (No. 491, Joint Resolution to Provide for the People to Express their Views Respecting a Preferential Primary and a Direct primary, approved February 22, 1913). Voters were asked to vote yes or no on two questions: "Do you favor a preferential primary system whereby the voters may instruct their delegates to political conventions as to their preference for candidates for office?" and "Do you favor a direct primary law whereby the voters are to vote directly for the candidates for state, congressional and county offices?"

The vote was at March town meeting, 1914 and the results were 11,312 yes to 8,021 on the preferential primary and 22,645 yes to 5,697 no (145 defective ballots) on the direct primary.

Result: The confusing ballot may have been engineered to fragment primary supporters, leaving the door open for retaining the caucus system. Failing that, the non-binding preferential primary would still allow the towns to retain some control over nominations. Whatever the hoped for results, voter preference was clearly for a primary system and for a direct primary, with 71% of the voters favoring either a non-binding or direct primary. The ballot questions, however, split the vote so that neither primary system received a majority of the total votes cast. The preferential primary received 24% of the total votes; the direct primary, 47%.

Due to an amendment to the Vermont Constitution, the General Assembly did not meet until January 1915. On March 18th the house defeated a direct primary bill on a 103 to 115 roll call. Only the Progressive representatives delivered a majority in favor; a majority of Republicans

and Democrats voted against the measure. Perhaps more significantly eighty-four of the negative votes, regardless of party, came from representatives of towns with populations below 1,000.

Governor Charles Gates sent a message to the house referring to the referendum and noting that the legislature should be "honor bound to pass a direct primary bill." As a compromise he suggested that the legislature pass a direct primary bill that included a referendum provision. Gates' compromise was approved by a 147 to 25 vote, with 74 abstentions.

1916 The Direct Primary

Background/Issue: See 1914 referendum on primary elections and the Direct Primary http://vermont-archives.org/governance/Primary/direct.htm.

Referendum: Act 4 of 1916, An Act to Provide for Primary Elections was approved April 1, 1915. It created a direct primary system. A referendum provided voters a choice between effective dates; a yes vote meant that the law would take effect on March 20, 1916, while a no vote delayed the effective date to March 20, 1927. The vote was to be on town meeting day (March 7), 1916.

The early effective date passed by a 2,602 vote margin, 25,418 to 22,816. Essex, Orange, Rutland, Windham and Windsor Counties voted no, as did a majority of the towns.

Result: Vermont held its first primaries in 1916. Thomas Martin of Brookfield was denied a vote in the referendum because he owed the town delinquent taxes. In *Martin v. Fulham*, 90 Vt. 163 (1916) the Vermont Supreme Court ruled Martin should have been allowed to vote since the referendum was a state, not town, election.

An effort to repeal the primary in the 1923 legislature failed.

The primary allowed nomination by a plurality of the vote, rather than a majority. This advantaged the larger communities. One early sign was that the larger municipalities began to dominate the election of state senators where previously senate seats had been passed around among the towns of a county (the county's population center being accorded one, but not all, of the seats). The plurality provision also opened state nomination to mavericks who could never have been nominated under the

caucus system. A prime example was Percival Clement who had bolted the party in 1902 and 1906; in 1918 he captured the Republican gubernatorial nomination with 37% of the primary vote.

1916 Prohibiting the Sale of Intoxicating Liquor

Background/Issue: See referenda of 1847-53 and 1903. Though Vermont voted for local option in 1903, thus ending statewide prohibition, temperance supporters remained active. In 1915 they passed an act restoring statewide prohibition.

Referendum: Act 171 of 1915, enacted March 12th, called for the prohibition of the sale or furnishing of intoxicating liquors in Vermont. The act provided two effective dates to be decided by referendum held at town meeting, 1916 (the same day as the direct primary referendum). A yes vote would mean the act would take effect on May 1, 1916; a no vote would delay effect until May 1, 1927.

On March 7, 1916 the no vote prevailed by 13,489 votes, 18,653 to 32,142. Only Orleans County voted for the early enactment date.

Result: The temperance law was repealed on January 23, 1917 by Act 234. On January 19, 1919 national prohibition was ratified through the 18th amendment without Vermont's vote.

1936 The Green Mountain Parkway

Background: The Green Mountain Parkway was a proposed 260 mile scenic highway, nestled in a 50,000 acre national park stretching along the ridge of the Green Mountains. Modeled after the Blue Ridge Parkway, it offered employment to Vermont's enumerated 16,000 unemployed as well as a boost to the State's efforts to promote tourism and recreation. The State would have to provide $500,000 in bonding to purchase rights of way.

Issue: While the project would be an employment boon to Depression era Vermont, the required state bonding would be added to the flood relief bonds issued following the 1927 flood. Some southern Vermont entrepreneurs feared that the parkway would drain business northward, passing their own nascent ski and tourist businesses. Perhaps most importantly, the thought of a wide national park dividing

the state along the Green Mountains was anathema to a wide range of Vermonters.

Referendum: On December 14, 1935 Act 17 of the 1935 Special Session approved a national park known as the Green Mountain Parkway, established jurisdiction over the park and appropriated money to begin the project. Voters were asked to choose between effective dates of April 1, 1936 (a yes vote) or April 1, 1941 (a no vote).

After a particularly emotional public debate, on town meeting day (March 3), 1936 the voters, by an 11,421 margin, voted no, 42,318 to 30,897. Yes votes carried Chittenden, Franklin, Grand Isle, Lamoille, and Washington counties.

Result: Since the voters had selected the later effective date, the 1937 legislature, through Act 243 (passed February 5, 1937), repealed the Green Mountain Parkway Act. In the 1950s the national interstate system began construction; no referendum was called to approve the measure.

1942 Jury Service for Women

Background: While Vermont women could vote following passage of the 19th Amendment in 1920, they did not acquire the full rights and obligations of citizenship. One obligation they did not receive was jury service.

Issue: Beginning in 1923 women fought for jury service, understanding that acquiring the obligations of citizenship bolstered demands for the rights. Opponents argued that the constitution did not contemplate women jurors and that jury service would harm women and their families. Some opponents argued that if jury service was allowed, then women should have an easy opt out if they chose not to serve.

Referendum: Whether to hold a referendum, and who should participate in it, was a crucial part of the debate over jury service. Opponents, believing a majority of women opposed jury service, sought to restrict the referendum to women voters. That effort was defeated and Act 31 of 1941, approved March 11th, established jury service for women, without the easy opt out provision. Act 31 called for a referendum on the day of the 1942 general election, with

voters asked to choose whether the law would go into effect on February 1, 1943 or February 1, 1947.

On November 3, 1942 voters chose the early effective date by a 15,082 margin, 35,388 to 20,306. The measure carried every county.

Result: The law went into effect on February 1, 1943. For more, see From Ballot Box to Jury Box

1960 Pari-mutuel betting

Background: In 1779 gambling on horses races was prohibited, though enforcement was various. By 1892 trotting for a purse was allowed at agricultural fairs.

Issue: The 1959 General Assembly debated allowing pari-mutuel betting. Supporters argued pari-mutuel races would aid agricultural fairs, bring revenue to the state, and add recreational facilities for tourism. Opponents thought that the state should not promote gambling; worried that gambling would attract organized crime; and argued it would undermine families and morals (churches were among the leading opponents).

Act 259 of 1959 tried to address some of the opponents concerns, establishing pari-mutuel betting "for the protection of the public welfare and good order of the people of the state, the support and encouragement of agricultural fairs and the improvement of the breed of horses in Vermont."

Referendum: Act 259, approved June 11, 1959, included a referendum provision. It broke from precedent and perhaps violated constitutional strictures against delegating legislative authority, by simply asking the voters to "ratify" the act (there was no choice of enactment dates). The vote was to be held in conjunction with the November, 1960 general election.

On November 8, 1960 the voters ratified the act by 9,131 votes, 81,830 to 72,699.

Result: The act went into effect though the monetary benefits were never as great as promised. Succeeding legislatures kept returning to the law for adjustments. This appears to be the one referendum that may have violated the Vermont Constitution; earlier court challenges to referenda had made clear that the legislature cannot make a law conditional on the approval of voters (Bancroft

& Riker v. Dumas (1849)). Lacking the usual mechanism of two effective dates, Act 259 probably became effective upon passage and was not contingent on voter "ratification."

1969 Constitutional Convention Referenda

Background: Since 1870 amendments to the Vermont Constitution had been under a ten year time lock; that is they could only be proposed by the general assembly every ten years. In the 1960s the emergence of a competitive Democratic Party (marked by Philip Hoff's election as governor in 1962) and pressure to reapportion the legislature brought demands for a quicker amending process.

Issue: When, under federal court order, the house was reapportioned in 1965, it was in technical violation of the Vermont Constitution, which still called for town representation. The constitution, however, could not be amended under the time lock process any sooner than 1974.

In 1966 Governor Hoff asked Attorney General Charles Gibson for an opinion on whether the legislature could call a constitutional convention rather than follow the amending process set out in Chapter II, Sec. 72 (Hoff was specifically interested in changing from town to population based apportionment of the house). Gibson, citing Article 7th's enumeration of the people's right to "reform or alter" government, opined a convention could be called.

In addition the newly victorious Democrats saw the constitution as a barrier to modernizing Vermont government and sought a host of changes besides reapportionment. In response to further inquiries, in 1968 Assistant Attorney General Frank Mahady reaffirmed Gibson's opinion. Republicans disagreed, believing the proposed convention was unconstitutional; several formed a committee to defend the Vermont Constitution. By Act 298 of 1968 the legislature created a Constitutional Commission to the Study of the Vermont Constitution. Though the commission was not unanimous, it recommended calling a convention and listed items to be addressed.

Referendum: Act 74 of 1969, An Act to Convene a Constitutional Convention and Provide for a Referendum for Revision of the Constitution, called for two referenda.

The first was advisory, asking: "Shall a Vermont Constitutional Convention be convened at the state house in Montpelier on October 6, 1969 to considering the following topics which shall receive a majority of the votes cast

upon it in this election, and no others?" It included on the ballot seven issues: method of amending the constitution; apportionment of the house; the judicial system, four year terms, method of selection the lieutenant governor and appointing rather than electing, the treasurer, secretary of state and auditor; the voting age and residential requirements; and annual sessions of the legislature.

If a convention was approved, a second referendum was called for ratification votes on each proposed revision agreed to by the convention.

On June 3, 1969 the constitutional convention was disapproved by an 8,969 margin. 14,861 to 23,830. All seven topics were similarly rejected.

Result: There were regional splits over the convention, southern Vermont being generally in favor with northern towns opposed. Economic health of communities also shaped local votes, municipalities with growing economies supporting the convention. See Robert V. Daniels and Robert H. Daniels, "The Vermont Constitutional Referendum of 1969: An Analysis" in Vermont History, Spring 1970.

The loss of the convention vote ended challenges to the constitutionality of the process and left other questions unanswered as well. Could, for example, the convention been restricted to any of the seven topics that passed or, since it was an advisory referendum, could other topics have been introduced from the convention floor (some opponents, for example, feared an effort to add gun control to the topics)?

In 1970 the time lock opened with many of the seven topics defeated in 1969 now proposed by the senate. In 1974 the voters ratified amendments bringing the constitution into conformity with the new apportionment scheme; reforming the judiciary; changing the age of voting to 18 and the residency requirements, and changing the amending process (reducing the time lock on proposals of amendment from ten to four years).

1976 State Lottery

Background: In February 1779 the state prohibited lotteries without "special liberty from the general assembly." Such special liberties were frequently granted in response to petitions from citizens seeking to raise funds for everything from bridges to breweries. By 1804

this practice ended. In 1826 the legislature also prohibited the sale of lottery tickets from other states.

Issue: As the range and costs of government services expanded, new funding sources were sought. The early 1970s brought declining state revenues, gas shortages, and other economic disruptions. State lotteries were becoming an attractive revenue source since they did not generate the same negative reaction associated with new or increased taxes (see also the 1960 referendum on pari-mutuel betting).

Referendum: Act 252 of 1976, approved April 7th, called for an advisory referendum on the question, "Shall the General Assembly consider enactment of a Vermont lottery to supplement state revenues?"

On November 2, 1976 the question passed by a 77,554 vote margin, 127,001 to 49,447.

Result: On April 27, 1977 the General Assembly approved a statewide lottery "to produce the maximum amount of net revenue consonant with the dignity of the state and the general welfare of the people." The margin of victory made the measure veto proof, an important consideration given that the new governor, Richard Snelling, had long opposed state sponsored gambling (he had been an opponent of the pari-mutuel betting bill). The promised revenue was not as high as anticipated and in 1985 the tri-state lottery was approved.

# ATTACHMENT X

**Table 1. The Case for and against Home Rule**

| *The case for home rule* | *The case against home rule* |
|---|---|
| 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. | Home rule would allow local officials to act in an arbitrary and capricious fashion. Local officials could favor political friends and disfavor political enemies. Violations of due process and equal treatment would likely increase. |
| Local communities are diverse, and home rule allows local citizens to solve their problems in their own fashion, thus decentralization fosters local experimentation, flexibility, innovation, and responsiveness. | Home rule will result in a lack of uniformity among units of government; services, structures, and actions that are available or permitted in one locality will be absent in another. Without statewide regulations, inequities in the provision and delivery of public services would be more common. |
| Home rule reduces the 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. | Local citizens whose preferences are not met or served by the local government will increase their appeals to the state legislature, and thus the state legislature will spend more time on local affairs. |
| 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. | Home rule units with control over their finances may undercut the revenue base of the state government. If each locality is responsible for its own finances, income inequalities among local jurisdictions would leave some communities unable to solve their own problems. |
| With home rule, local officials can exercise greater discretion in the daily operations of the locality. Any change or new activity does not require preapproval by the state legislature before it is initiated or implemented. State officials do not "second guess" local officials. | Home rule units with the authority to make and administer their own public policies would make it very difficult for the state government 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. |
| "Liberal construction" of home rule provisions reduces court interference in local policy making and administration. | No legal wording is immune from challenge, and any "liberal construction" language is certain to provoke lawsuits. |

*Source:* Adapted from David L. Martin, *Running City Hall: Municipal Administration in America,* 2d ed. (Tuscaloosa: University of Alabama Press, 1990), 22–25.

# ATTACHMENT Y

# HOME RULE
## POLICY ANALYSIS

### Introduction

Policy analysis of home rule requires identifying policy goals, actors and their roles in determining the decision-making process, examining how the problem is framed and evaluating the policy tools used. By analyzing all these aspects a better understanding of the issue is reached, allowing for a more in-depth discussion and hopefully leading to an informed opinion.

### Policy Goals

Home rule as a policy issue has a main goal of efficiency in "getting the most output for a given input."[1] With respect to home rule this would amount to government being able to operate expediently. Clearly, both sides of this debate can be argued around the goal of efficiency. In a state without home rule, all decisions from local government go through the state legislature. Specifically in Vermont, this slows down the process such that if a charter change were approved by the voters in March the state legislature might not approve it until the next April, more than a year later. This timeline assumes that the charter change is approved with no obstacles. If problems are found, then the bill could take an additional year to get approved. Worse yet, there might be any action taken at all. For example, in Burlington charter amendment (H.775), the voters approved the change. Yet, once it reached the State Legislature, the House Local Government Committee simply did not bring the issue up for discussion the first year.

It is not just the locality that would benefit from a more efficient process. By enacting home rule the state legislature would greatly reduce the burden of local problems on the state docket. This would allow for changes to be made in a much more efficient time frame. The whole concept of proving that a certain policy can lead to efficiency is predicated on the idea that efficiency is objectively determinable.[2] To some, the idea of home rule is expedient but to others it is burdensome.

Those who oppose home rule can argue the same goal of efficiency. As home rule is instituted and municipalities begin to govern themselves, they could become more exposed to the threat of litigation. The counter argument suggests that this litigation would have the same effect in slowing down the system. Home rule could be even more disastrous if municipal laws were debated, if not repealed, in the courts. Clearly this process would not only cost time but money as well as demonstrated in the Supreme Court decision made in Community Communications Co. v. Boulder and in Town Hallie v. City of Eau Claire.

The idea of efficiency is comparative; it is a way of judging the merits of different ways of accomplishing a task.[3] By looking at both sides of the home rule issue, one can see that all the actors have similar goals but

has a very strong locally driven form of government. As a result, there is an assumption made that Vermont already has home rule despite the fact that it does not. Also, whenever a charter amendment brings home rule to the forefront of public debate, often the issue addressed in the charter steals the limelight as seen in the Montpelier case example with handgun control as well as in Burlington regarding landlord-tenant rights.

For voters to become stronger policy actors there would need to be increased education regarding Vermont's system of government and the reasoning behind it. This was attempted in 1987 when the Vermont League of Cities and Towns (VLCT) drafted home rule language for a vote during Town Meeting Day, but the public discourse at that time was not enough to garner support. Also, voters rarely have an incentive to track an issue after they vote on it. As a result, many citizens are unaware when their town charter amendment fails or if the language was changed by the legislature.

VLCT is an organization that represents municipal officials. Consequently, they are a leader among these actors. Their board is made up of city council and town select board members all across Vermont. They are effectively a special interest group representing the municipal interests. VLCT has a long history of supporting home rule and any form of government that is locally based. It can be considered a policy entrepreneur. It has long championed municipality's right to govern with more freedom and flexibility. It is concerned about this problem because its constituency would benefit from greater authority.

All in all, there is no current conclusive data to know whether voters in Vermont would be for or against home rule. Steve Jeffery, the executive director of VLCT, suggested that larger communities may support it because it increases efficiency and allows their municipality to govern in the most locally appropriate way; while voters in neighboring towns may want more state oversight to ensure that they are not negatively impacted by the larger communities.[7] This speculation could be clarified by a poll or survey.

Yet, many municipal leaders are frustrated by the centralized nature of the current system and feel that policy solutions should be locally driven. Concurrently, some municipal lawyers and local officials are aware of the liability risks and are hesitant for fear of litigation. Some smaller communities do not have the necessary resources to mitigate this potential increase in liability.

The state legislature has a split of proponents and opponents of home rule. Some legislators are in favor of home rule as a means of decreasing their workload and shifting the responsibility and liability to the local leaders. They feel that municipal decisions should not be made by Montpelier but instead by the locally elected officials who are ultimately closest to the voters of that community. Coincidentally, many of these legislators are currently active in their own local government.

Other members of the state legislature would not want to see Vermont change to home rule because it would decentralize the state's authority. They are also concerned the limited tax base would shrink because localities might start levying more local taxes, reducing the already finite resources available. Also,

[policy] wasn't selected because it was a good choice policy-wise, but we picked it because it had the best chance of passing." He continued saying, "Better, more local ideas don't go through [to charter amendments] because they'll never pass. Sometimes there's no chance for an issue because we can read the tea leaves. Many times those that don't get there will have a greater impact."[9] Senator Jim Condos from Chittenden County is a leader among the state legislator actors in this policy issue and he has taken two approaches to achieve home rule. First, he proposed a constitutional amendment. Second, he introduced Senate Bill 90 which would change the state statute. This dual approach is an example of how "democracies change their policies almost entirely through incremental adjustments. Policy does not move in leaps and bounds."[10] Advocates for home rule have had little luck in moving this issue in part because the coupling of its problem, policy and politics is weak. What the municipalities have defined as the problem has, as of yet, not seen a receptive political climate. Senator Condos is hoping that as the actors within the State House change so will the political climate.

## Framing the Issue

Opponents to home rule frame the problem by using a "slippery slope" metaphor by acknowledging that a law, proposal or rule is not unto itself wrong, bad or dangerous. By permitting it, however, would inevitably lead to situations that are wrong, bad or dangerous.[11] Again, the recent Burlington and Montpelier cases illustrate this. The Burlington City Council wanted to expand one aspect of the tenant/landlord law, essentially giving the tenant more rights. This charter change would have been effective only in the City of Burlington. The counter-argument is that once tenants have more rights in Burlington, they would want them in other communities such as Winooski, Williston, or Rutland thus leading to the Burlington policy spreading throughout the state. If Vermont had home rule, Burlington could have passed the charter change without consent from the state legislature, thus starting this slippery slope. The rule has passed and this slippery slope phenomenon has yet to be observed. This same argument is used in the Montpelier case and its hand gun ordinance. The gun, sporting, and hunting groups felt that if Montpelier proceeded with this ordinance, other cities would begin to pass loaded firearm bans as well or even tighter laws for gun control all across the state. They argue that with home rule Montpelier could have started this slippery slope. The gun lobbyists were able to stop the charter from passing at the state level.

Opponents of home rule also use a horror story to plead their case especially after the Boulder decision. Politicians choose one case to represent a universe of cases and use that example to change a policy or law.[12] In this case the municipality of Boulder was found liable for their actions and the city was held financially responsible to the cable company for their anti-competitive conduct. Although this was a very important case proving that there were limits to home rule, opponents still use it to exemplify the horrors of home rule. In Vermont, municipal attorney Paul Giuliani repeated the idea that municipalities could create casinos if home rule were implemented. He also explained that California has home rule and there large cities are annexing small neighboring towns –

If home rule were adopted in Vermont, it would increase efficiency by increasing the immediacy of local government action. These benefits largely revolve around a municipality's ability to address local issues more promptly. It also grants them the capacity to adjust their funding resources to address issues accordingly. In the current political environment the public views efficiency and accountability in government as paramount; an improvement in these areas seems, at the very least, reasonable to expect.

However, these potential improvements could come at a substantial cost. If municipalities were granted the freedom to take actions more autonomously, then they may also be required to take the brunt of the financing. These increased costs could be the legal expenses in defending themselves without state immunity or, they could be in maintaining a competitive edge against neighboring communities since the state's objective role in maintaining this balance would be mitigated. The current procedure focuses these risks at the state level where resources have been pooled and focused to directly contend with them, thus broadening the capacity of the state to react. The state's capability consequently needs to draw on a broad base of resources through central control and requisite taxation. Generally, as a result, the state benefits from this centralized tax revenue and its absolute authority.

There are hidden opportunity costs to be examined. These costs involve the potential loss of an opportunity for a community to act not only promptly but also, perhaps, uniquely to a situation because it has been forbidden by the state. The opportunity costs associated with home rule are innumerable. A survey of municipal officials asking about the policy arenas they have not put forth because of fear of state rejection would elucidate these issues. Also, researchers could examine the types of charter amendments passed in Vermont when the state had a passive approval system and compare if they are similar to charter amendments passed after it changed its process. This might highlight types of charter changes that are no longer feasible under the General Assembly. On the other hand, the passive system changed in the 1980s and one can expect that the types of amendments (especially those regarding technology) would change with the times and this may not be an accurate measure. One could quantify the costs of home rule to municipalities by analyzing the municipalities in states with home rule who have been sued. This also will not lead to a truly accurate estimate since Vermont would need to rely on data from other states where many other factors would contribute to the costs of litigation. Nevertheless, analyzing the balance of these costs and benefits is imperative in making an accurate decision regarding home rule in Vermont.

The current process, where the state dictates what municipalities can do, is in essence coercion via state statutory law. The degree of this coercion is measured by the extent to which it restricts a group's (e.g. municipalities) behavior as opposed to merely encouraging or discouraging it.[18] This coercion has taken a very high form through state regulatory enforcement such that municipalities must follow state law. Home rule is an attempt to reduce the coerciveness of the state.

[6] Stone, p. 61.
[7] Jeffery, Steve. Executive Director, Vermont League of Cities and Towns. Personal interview. October 27, 2004.
[8] Heclo, Hugh. **Issue Networks and the Executive Establishment.** As printed in Theodoulou, S.Z. and Cahn, M.A. (Eds.) **Public Policy : The Essential Readings**. (Saddle River, NJ:Prentice Hall, 1995) p..47.
[9] Fraser, Bill. Montpelier City Manager. Telephone interview. November 12, 2004.
[10] Lindbloom, Charles E. **The Science of "Muddling Through."** (Washington D.C.: American Society for Public Administration, 1959) p. 203.
[11] Stone, p. 151.
[12] Stone, p. 146.
[13] Stone, p. 165.
[14] Stone, p. 176.
[15] Birkland, Thomas A. An **Introduction to the Policy Process: Theories, Concepts, and Models of Public Policy Making.** (New York: M.E. Sharpe., 2001) p. 139.
[16] Stone, p. 284.
[17] Stone, p. 287.
[18] Salamon, Lester, M. **The New Governance and the Tools of Public Action**. p. 25.
[19] Stone, p. 355.
[20] Salamon, p. 34.
[21] Salamon, p. 35.