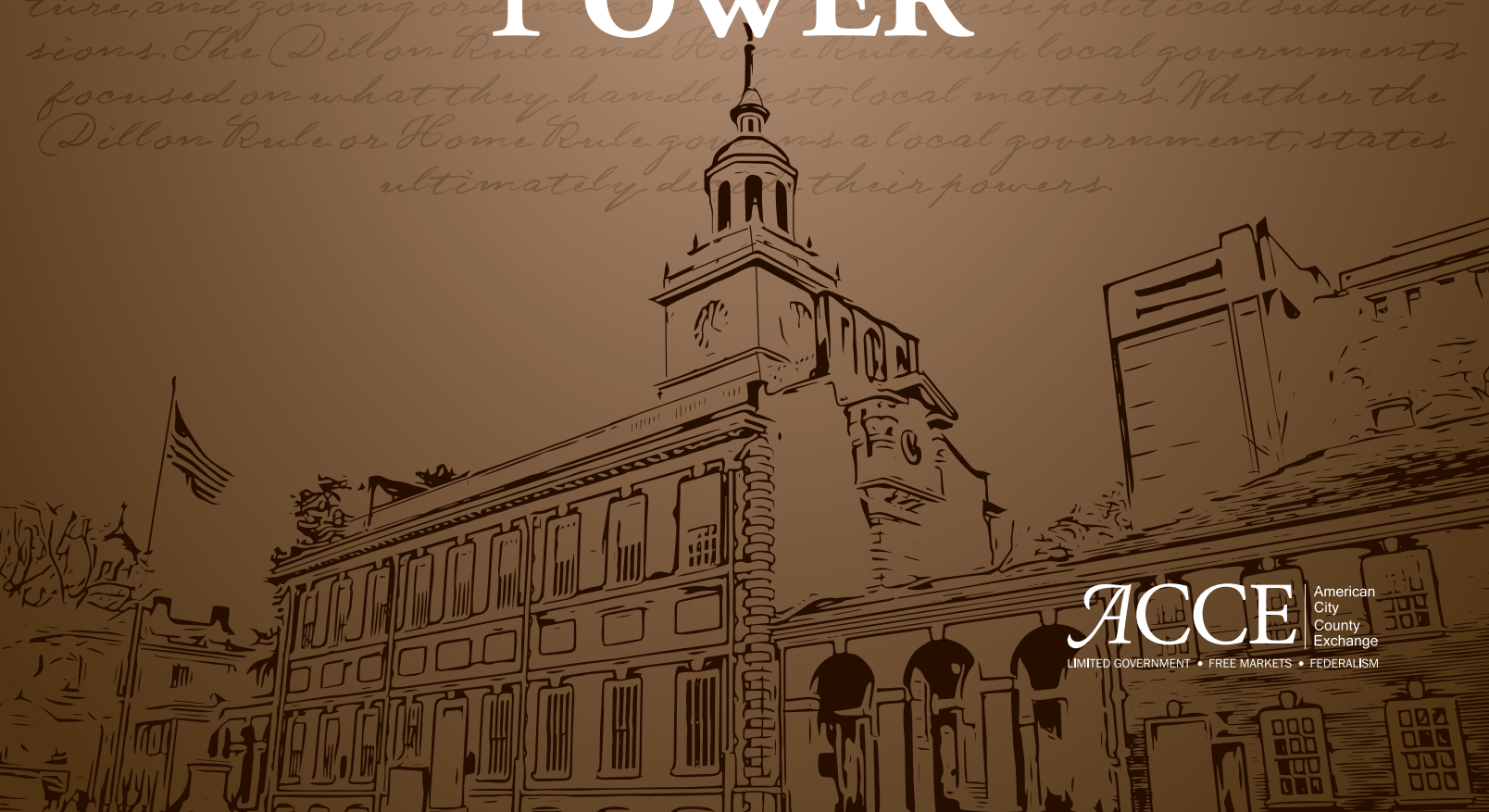


Dillon Rule & Home Rule

BALANCING STATE & LOCAL POWER

The United States Founding Fathers outlined their vision of how the government should be structured in the Federalist Papers and later when they signed the Constitution, hoping their design allowed each level of government to function properly and provide stability to the country. Since the Founders made no mention of local government in the Constitution, this necessarily implies that local governments are creations of state government under their authority. Within this context exist two types of local government, Home Rule and the Dillon Rule. The former explicitly bestows the authority to make broad legislative decisions, not necessarily decreed, whereas they can only legislate what the state government has decreed with the latter. State governments created both authorities to help administer the states; it would be virtually impossible for state governments to take on the safety, infrastructure, and zoning ordinances of these political subdivisions. The Dillon Rule and Home Rule keep local governments focused on what they handle best, local matters. Whether the Dillon Rule or Home Rule governs a local government, states ultimately decide their powers.



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BALANCING
*S*TATE & *L*OCAL
POWER

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Balancing State and Local Power

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The American City County Exchange (ACCE) is America's only nonpartisan forum for local government officials who believe taxpayers should come first in every decision. Always putting their neighbors and constituents first, ACCE members learn from other local decision makers and industry experts about issues, processes and problem-solving strategies for the key issues in their communities. Provided with important policy education, local decision makers become more informed and better equipped to serve the needs of their communities.

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INTRODUCTION

Our Founding Fathers outlined their vision of how the government should be structured in the Federalist Papers and later enshrined it in the U.S. Constitution, hoping their design allowed each level of government to function properly and provide stability to the country. Since the Founders made no mention of local government in the Constitution, this necessarily implies that local governments are creations of state governments under their authority.

Within this context exist two types of governing authorities, Home Rule and the Dillon Rule. Home Rule gives local governments the authority to make broad legislative decisions not addressed by the state; Dillon Rule allows for local governments to only legislate what the state government has decreed. State governments created both authorities to help administer the functions of government, as it would be virtually impossible for state governments to administer public safety, infrastructure, and zoning ordinances without these political subdivisions. The Dillon Rule and Home Rule keep local governments focused on what they handle best: local matters. Whether the Dillon Rule or Home Rule governs a local government, states ultimately decide their powers.



The Dillon Rule and Home Rule keep local governments focused on what they handle best: local matters.



James Madison explained, “Each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence.”
—Tenth Amendment of the Constitution

SECTION 2: A LOOK AT DILLON RULE AND HOME RULE THROUGHOUT THE STATES FEDERALISM PROPERLY UNDERSTOOD

The United States Founding Fathers’ outlined their vision of Since the county’s founding, however, federal, and local governments have been usurping power from the states. Originally, the Founding Fathers designed the federal government to be dependent on the states, while the states could stand on their own. James Madison explained, “Each of the principal branches of the federal government will owe its existence more or less to the favor of the State governments, and must consequently feel a dependence.”¹

That being said, the states understood the need for a federal government to link them together following the American Revolution. The Union, designed by the Founders, allowed

the federal government to help states come together and endure difficult times in addition to preventing division among them. As James Madison wrote, “Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction.”²

The Founders understood it was in the United States’ interest, both domestically and internationally, to have more cohesion between states’ resources and militaries, so the Federal government was created to regulate interstate commerce and provide for the common defense. Yet, for all the importance of the federal government, it is the states that provide the unique counterbalance enabling the system of federalism to work.

Just as the federal government is needed to unify the states, the states are necessary to prevent the tyranny of the federal government over the people. In theory, the states were to keep the federal government in check by limiting it to its expressed powers confining the three branches of the federal government as laid out in the Constitution. This is juxtaposed with the power retained in all areas by the states not explicitly given to the federal government. The Tenth Amendment of the Constitution reads, “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”³ While the federal government’s powers consist of an enumerated few, state powers are both numerous and indefinite.

Since the federal government’s responsibilities are limited to their enumerated powers, which make no mention of municipal or county government, local government must belong to the states and the people inside them. James Madison touches upon this in Federalist Paper 45: “The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”⁴

By dispersing power across the states, the Founders hoped to prevent the abuse of federal power. Founding Father Alexander Hamilton opined on the issue: “It would tend



“The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

to render the government of the Union too powerful, and enable it to absorb those residuary authorities, which it might be judged proper to leave with the States for local purposes.”⁵ Local governments are simply extensions of the state, created to deal with issues on the local level. Aside from preventing the tyranny of the federal government, the Founders also understood that a government closest to the people would best serve the people.

Alexander Hamilton further explained, “It is a known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object. Upon the same principle that a man is more attached to his family than to his neighborhood, to his neighborhood than to the community at large, the people of each State are apt to feel a stronger bias towards their local governments than towards the government of the Union.”⁶

In other words, state leaders and citizens are more closely connected to their state and local governments (and possess more knowledge on local issues) compared to the federal government. In this way, the Founders envisioned that competent and invested leaders would more efficiently run

their respective states and jurisdictions than the federal government would. From this context arose The Dillon Rule and Home Rule.



“The people of each State are apt to feel a stronger bias towards their local governments than towards the government of the Union.” – Alexander Hamilton

THE DILLON RULE EXPLAINED

The Dillon Rule originated in the Iowa Supreme Court, of which Justice John Dillon was a member from 1869 to 1879. In the opinion of *City of Clinton v. Cedar Rapids and the Missouri River Railroad Company*, Justice Dillon spelled out the terms of his municipal philosophy: “A municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words (from the state); second, those necessarily implied or necessarily incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation.”⁷

Justice Dillon did not regard local government as equal or separate from state government, but rather as a political subdivision of the state. The Dillon Rule was later echoed by the United States Supreme Court in *Hunter v. Pittsburgh*, 207 U.S. 161, (1907), “Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which it cannot exist.”⁸





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In summary, local governments are created by the state to perform the tasks of the state at the local level. Typically, the state issues an enabling statute, which entrusts the local government with state power within a defined scope to achieve local objectives. Since the local government's power is derived from the state, the local government is strictly limited to what the state delegates to it. If local government supersedes the authority it is given, the state has the power to modify or revoke its powers. Under the Dillon Rule, local governments are ultimately tenants of the state.

BENEFITS OF THE DILLON RULE

Although the relationship between state and local governments is a hierarchical one, it is not in the interest of the state to tie the hands of local governments if those governments are promoting free markets and limited government. State governments want to bring economic growth and prosperity to the entire state; therefore, it is rational for the state to allocate the proper amount of authority to local governments that will enable them to operate most effectively. States that observe the Dillon Rule delegate power to local governments to oversee zoning, planning, parts of taxation, and other areas where government closest to the people is most effective.

If local governments wish to exercise authority outside what has been delegated, they may approach the state and make their case. Dillon Rule states do not necessarily deny their local governments authority. Many Dillon Rule states issue broad enabling statutes that offer flexibility to local governments where it is deemed necessary. For example, one such statute in Virginia delegates the authority needed to “secure and promote the general welfare” and promote “safety, health, peace, good order, comfort, convenience, morals, trade, commerce, and industry.”⁹



States that observe the Dillon Rule delegate power to local governments to oversee zoning, planning, parts of taxation, and other areas where government closest to the people is most effective.

In a study conducted by the United States Advisory Commission on Intergovernmental Relations in 1982, eight of the top 10 states with the most local discretionary authority applied the Dillon Rule. Virginia, perhaps the state that applies the Dillon Rule most strictly, was ranked eighth.¹⁰ Conversely, in a 2008 study done by Wolman, only one of nine states rejecting the Dillon Rule registered in the top 10 for greatest “local government autonomy,” while six of the remaining eight found themselves outside the top 20.¹¹ As the data show, there is no substantial link between the Dillon Rule and less local authority.

THE DILLON RULE GUARDS AGAINST RUNAWAY LOCAL GOVERNMENTS

The Dillon Rule grants state governments the power to rein in irresponsible or uncooperative local governments. Justice Dillon created the rule at a time when local government corruption ran rampant. Industrial titans and political machines interfered with local government, furthering its corruption and waste. Grafting, the unscrupulous use of political authority for personal gain, was a common practice in utility franchising and public works projects; moreover, local governments occasionally borrowed outrageous sums of money to attract big businesses and railroad companies, and when unable to pay businesses back, local officials dissolved their cities and left the debt to the state.

Lord Bryce of England observed in 1888, “There is no denying that the government of cities is one conspicuous failure of the United States.”¹² Dillon realized that those in local politics easily succumb to using their power for private gain, or the gain of their city at the expense of those around it. To halt such abuses of power, it was necessary to grant the states authority to prevent local governments from becoming too powerful or corrupt.



“To halt such abuses of power, it was necessary to grant the states authority to prevent local governments from becoming too powerful or corrupt.”

– Lord Bryce of England, 1888

The Dillon Rule also guarantees a certain level of uniformity throughout the state. If the state is a body, the local governments are the limbs. Detached from the body, the limbs are useless. In the same way, local governments must remain attached to the state to be effective in good governance. Rather than having vastly different policies and codes in each local jurisdiction, the state can create uniform tax bases and licensing policies, creating a business-friendly environment. Without commonality between local governments on these issues, businesses find more red tape than opportunity, making it difficult for the state and businesses to prosper. Lastly, consistency throughout the state prevents local jurisdictions from taking ill-advised risks. In this way, local governments cannot implement policies that lead to the detriment of neighboring local jurisdictions.

THE DILLON RULE UPHOLDS FEDERALISM ON THE LOCAL LEVEL

As previously stated, the Founders were clear in both the Ninth and Tenth Amendments that all authority outside of what was enumerated to the federal government belonged to the states and the people residing in them. The Dillon Rule, which holds that local governments are extensions of the state, is therefore consistent with the Constitution. The referendum that would have to take place to implement the Dillon Rule is also constitutional, as the state and its residents decide on how to distribute power within the state.

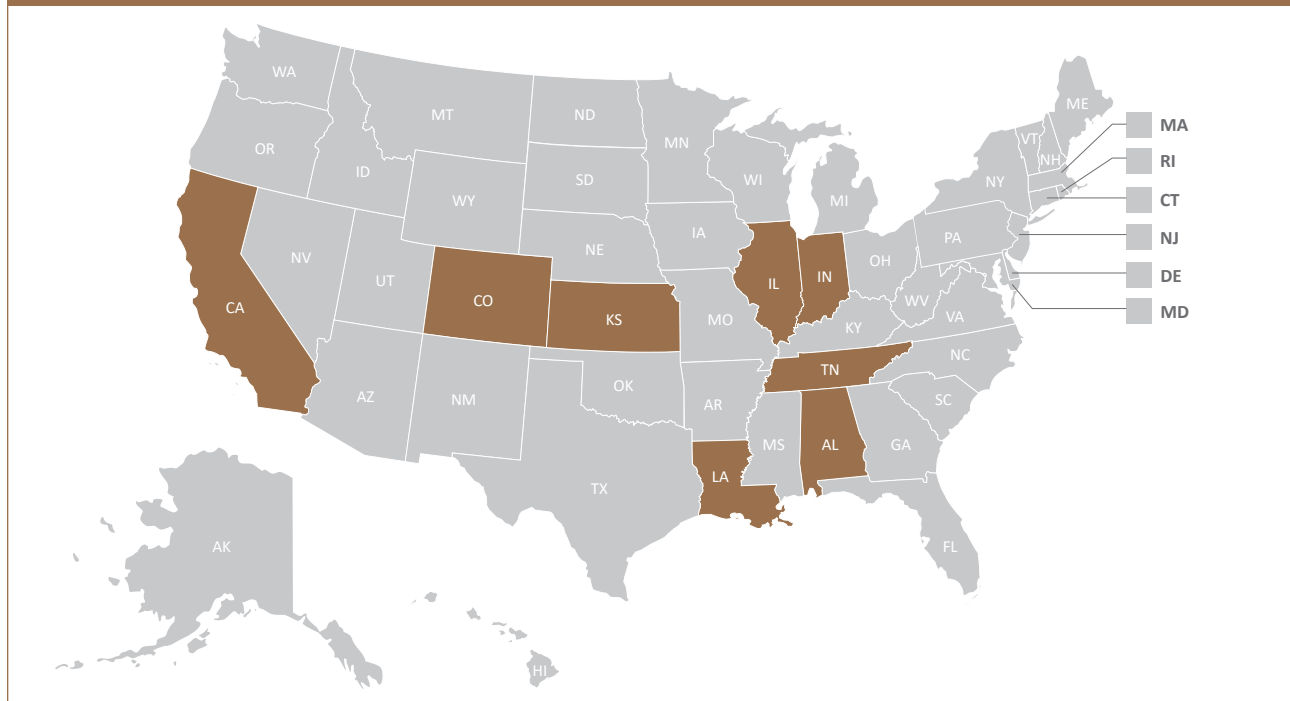
HOME RULE EXPLAINED

In 1871, Judge Thomas Cooley challenged the Dillon Rule by holding that local governments possess some inherent rights. Following this in 1875, Missouri became the first state to pass a Home Rule charter. California, Minnesota, and Washington followed suit shortly after. Then during the Progressive Era, the number of Home Rule charters increased dramatically due to a focus on municipal reform. Under Home Rule, local communities can exercise some authority with local autonomy without state interference.

The following eight states apply the Dillon Rule to certain local jurisdictions:

- Alabama – Counties only
- California – Except charter cities
- Colorado – Many cities and towns
- Illinois – Municipalities only
- Indiana – Townships only
- Kansas – Not for cities and counties
- Louisiana – For pre-1974 charter municipalities
- Tennessee – Only non-home rule municipalities

States that Apply the Dillon Rule to Certain Local Jurisdictions



Forty-four states have adopted Home Rule charters in at least some capacity presently; however, many of these states only apply Home Rule to certain municipalities. For example, Home Rule in Arizona only applies to cities with a population of at least 3,500 people. In cities with populations fewer than 3,500, or any county or township, the Dillon Rule applies.

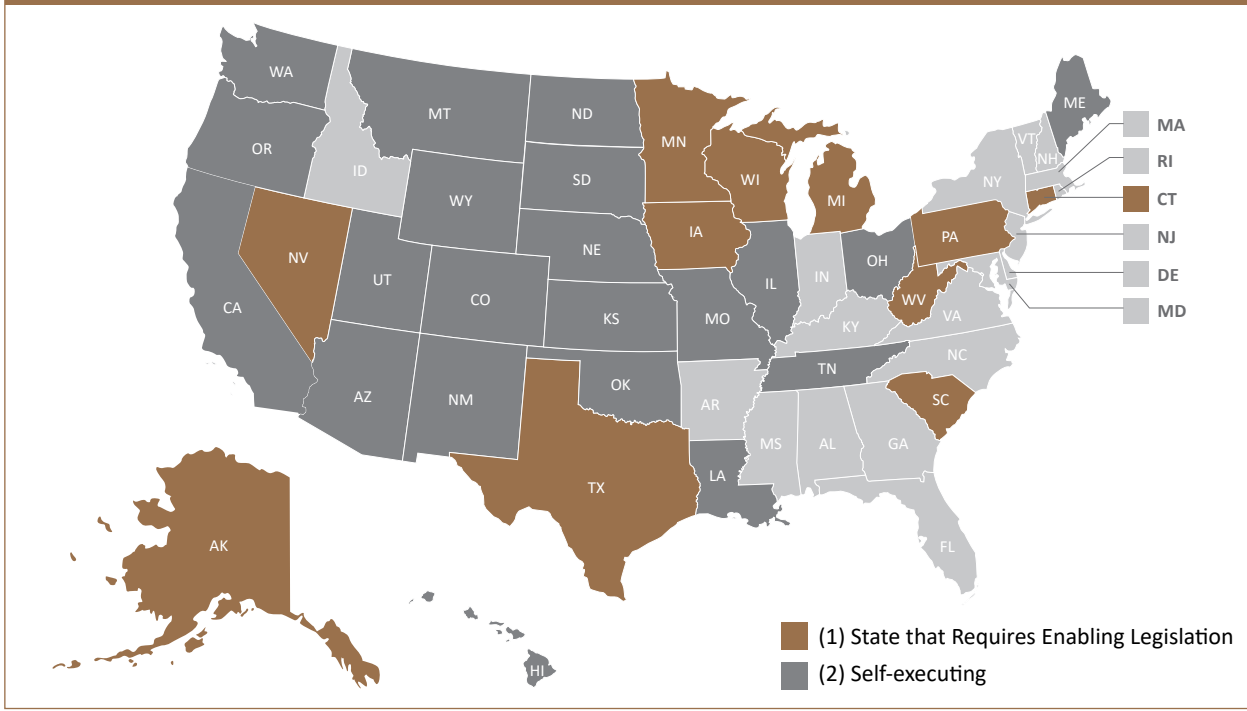
Home Rule, rather than viewing local authority as a tenant of the state, argues that each level of government has a separate realm of authority with respective jurisdictions and responsibilities attached. Consequently, Home Rule advocates generally disapprove of state preemption as they believe there are areas where state power should not infringe on that of local government. Instances of Home Rule action include the attempts of the local governments

of Denton, Texas, and Tempe, Arizona to ban hydraulic fracturing and plastic bags. In 2020, the City of Chicago exceeded state mandates, exercising home rule by setting up police checkpoints across the city to warn people of COVID-19 restrictions and taking their licenses as an act of intimidation.¹³

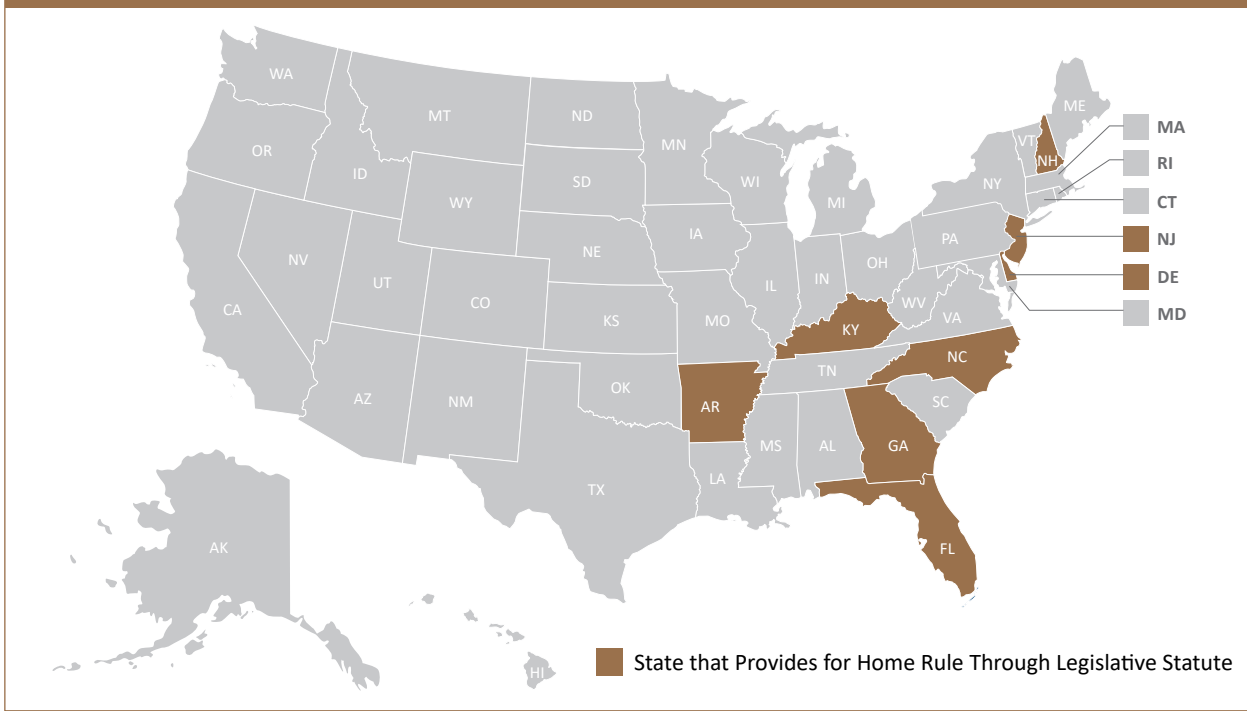
HOME RULE & DILLON RULE V. SELF-GOVERNMENT

An often-neglected tenet of Federalism is self-governance, control or rule of oneself. Neither Home Rule nor Dillon Rule adequately address the importance of this as they are both legal frameworks designed to further the interests

States that Provide for Home Rule in Their State Constitution



States that Provide for Home Rule Through Legislative Statute

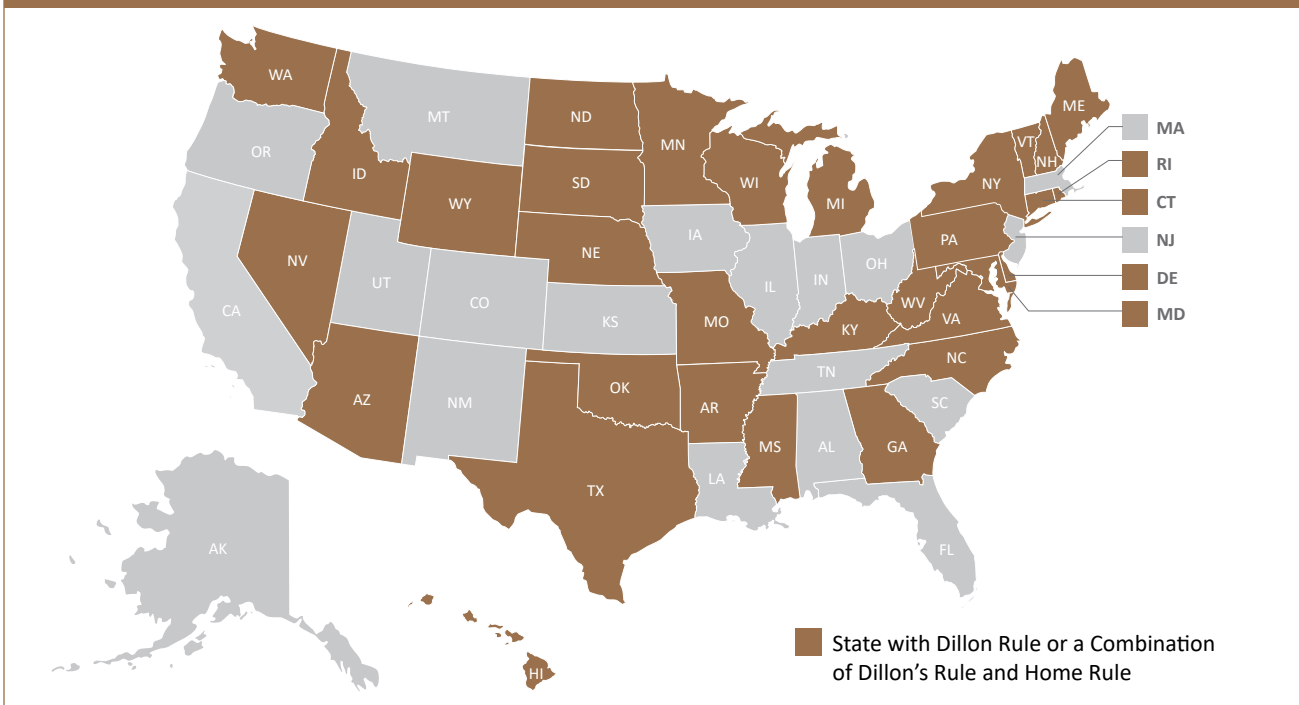


of government. For instance, the government regulations handed down by states to their local governments during the COVID-19 pandemic forced businesses to shutter, individuals to wear face coverings, and restrictions on the freedom to assemble. Most egregious of these offenders were Home Rule cities and counties, restricting their populations substantially more than their state governments did, forcing an honest discussion about the role of states in preempting local government and how much power local governments should have in limiting their citizens' freedoms. This conversation extended to states themselves as many of them restricted their citizens beyond what their Constitutions allowed, resulting in some legislation to restrict executive emergency powers and reining in the powers of Home Rule jurisdictions.



Regulations handed down by states to their local governments during the COVID-19 pandemic forced businesses to shutter, individuals to wear face coverings, and restrictions on the freedom to assemble.

States with Dillon Rule or a Combination of Dillon's Rule and Home Rule



STATES WITH BOTH DILLON RULE AND HOME RULE

Although Home Rule is presented as an alternative to the Dillon Rule, the two are not mutually exclusive. A state can be both a Home Rule state and a Dillon Rule state simultaneously, applying the Dillon Rule to matters or governmental units not accounted for in the constitutional amendment or statute which grants Home Rule. Moreover, local governments in Home Rule states still derive their powers from the state; just as a state passes a Home Rule charter, a state can also revoke it if they so choose, so in this way, Home Rule operates similarly to the Dillon Rule. The difference being flexibility in the two legal definitions.

Thirty-one states apply the Dillon Rule or a combination of Dillon's Rule and Home Rule to local jurisdictions: Arizona, Arkansas, Connecticut, Delaware, Georgia, Hawaii, Idaho, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

CONCLUSION

The Founders put much thought into creating a system of federalism. When each layer of government operates within its designated powers and limitations, the country runs effectively. Within federalism, state sovereignty is of the highest importance in contrast to the federal or local governments. Whether Home Rule or the Dillon rule governs a local government, the ultimate authority rests with the states. Local governments should appreciate the state's role and develop a relationship with it conducive to good local governance across the state. The states depend on local governments to dispense local services distributed through their budgets for public safety and infrastructure, and rightfully so they commend local governments to focus on what they do best. By establishing a healthy relationship, the state will be more likely to entrust local governments with greater authority with which to serve their respective jurisdictions.



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