



THE VOICE OF ALABAMA

ALABAMA CITIZENS FOR
CONSTITUTIONAL REFORM

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SPECIAL EVENT AUGUST 11

Revision Commission sets Samford public forum

In an historic move, the new Constitutional Revision Commission is for the first time bringing its message of reform to the public.

Come learn what the Commission has done and plans to do!

- **When:** Saturday, August 11, 1-4 p.m.
- **Where:** Samford University in Birmingham. Moot Court Room in the Cumberland School of Law in Robinson Hall. Map at:

http://www.samford.edu/uploadedFiles/home_content/BW_Campus_Map_Alphabetical.pdf

- **Why:** To share, inform and get feedback from the public on reforms for Alabama's 1901 Constitution.

This event is sponsored by ACCR and the Cumberland School of Law. Speakers will include:

- **Wayne Flynt**, historian, author, professor at Auburn University and editor of the online Alabama Encyclopedia
- **John Carroll**, professor, former federal judge and Dean of the Cumberland School of Law
- **Albert Brewer**, professor, former Governor, President of PARCA and Chair of the Constitutional Revision Commission
- **Bob McCurley**, Commission Coordinator, retired Executive Director of the Alabama Law Institute that is guiding the Commission
- **Patricia Todd**, Representative, Alabama House and member of the sub committee revising Article IV of the Constitution dealing with local laws
- **Craig Baab**, Senior Fellow at Applesseed

No need to register—just come! **Free** and open to the public. We need your input!

IN THIS ISSUE:

<i>28 more amendments in November</i>	2
<i>Third party response</i>	3
<i>Home rule study looks at other states</i>	4
<i>Revision Commission gets home rule primer</i>	7



Count 'em: 28 amendments on November ballot

Alabama already has the world's longest constitution. Following is a list of **MORE** proposed amendments set for the November ballot:

Statewide Amendment 1

Proposing an amendment to the Constitution of Alabama of 1901, relating to the forever Wild Land trust, to reauthorize the trust for a 20-year period.

Statewide Amendment 2

Proposing an amendment to the Constitution of Alabama of 1901, as amended, to allow issuance by the State from time to time of general obligation bonds under the authority of Section 219.04 and Section 219.041 to the Constitution of Alabama of 1901, as amended, so long as the aggregate principal amount of all such general obligation bonds at any time outstanding is not in excess of \$750 million. This amendment would replace the maximum aggregate principal limitations currently contained in said Sections 219.04 and 219.041. The proposed amendment would also allow issuance by the State of general obligation refunding bonds under the authority of Sections 219.04 and 219.041 to the Constitution of Alabama of 1901, as amended, subject to certain minimum savings thresholds and limitations of maximum average maturity.

Statewide Amendment 3

Relating to Baldwin County, proposing an amendment to the Constitution of Alabama of 1901, to define the Stockton landmark District within the county and to prohibit the annexation by local law of any

property within the district into any municipality.

Statewide Amendment 4

Proposing an amendment to the Constitution of Alabama of 1901, to repeal portions of Amendment 111, now appearing as Section 256 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, relating to separation of schools by race and to repeal Section 259, amendment 90, and Amendment 109, relating to the poll tax.

Statewide Amendment 5

Proposing an amendment to the Constitution of Alabama of 1901, to provide for the transfer of the assets and liabilities of the Water Works and Sewer Board of the City of Pritchard to the Board of Water and Sewer Commissioners of the City of Mobile, presently known as the Mobile Area Water and Sewer System.

Statewide Amendment 6

Proposing an amendment to the Constitution of Alabama of 1901, to prohibit any person, employer or health care provider from being compelled to participate in any health care system.

Statewide Amendment 7

Proposing an amendment to the Constitution of Alabama of 1901, to amend Amendment 576 to the Constitution of Alabama of 1901, now appearing as Section 177 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, to provide that the right of individuals to vote for public office, public votes on referenda, or votes of employee representation by secret ballot is fundamental.

Statewide Amendment 8

Proposing an amendment to the Constitution of Alabama of 1901, to repeal the existing provisions for legislative compensation and expenses and establish the basic compensation of the Legislature at the median household income in Alabama; to require legislators to submit signed vouchers for reimbursement for expenses, and to prohibit the Legislature from increasing the compensation or expenses payable to its members.

'YES' to 4, 9, 10

As we approach the November election with 10 statewide constitutional amendments and 18 local amendments, we want to make voters are aware of **three** statewide amendments that are actual revisions of the Constitution and need a "yes" vote. Those three are:

- Amendment 4 to remove racist language
- Amendment 9 to reform the Corporations Article
- Amendment 10 to reform the Banking Article

So here are some **limericks** to get voters' attention. Which one do you like best? Or give us your own ideas. You can respond to nanekberg@aol.com

1. Fix the Constitution, now's the time,
Vote yes on amendments 4,10 and 9
2. Bring our state to the fore,
Approve amendments 9, 10 and 4
3. The past is past, it's time for progress,
Amendments 4, 9 and 10 need a yes
4. Changes can be good, especially these,
Say yes to amendments 4, 9 and 10,
please!
5. Learn all you can, tell all your friends,
Vote yes on amendments 4, 9 and 10



Statewide Amendment 9

Proposing an amendment to the private corporation provisions of Article 12 of the Constitution of Alabama of 1901, to become effective January 1, 2014, to continue the authority of the Legislature to pass general laws pertaining to corporations and other entities; to continue the authority of the Legislature to regulate and impose a business privilege tax on corporations and other entities; and to repeal various provisions concerning private corporations, railroads, and canals.

Statewide Amendment 10

Proposing an amendment to the Constitution of Alabama of 1901, effective January 1, 2014, to amend Section 247 relating to the authority of the Legislature concerning banks and banking, to repeal various other provisions of Article XIII concerning banks and banking;

and to repeal Amendment 154 to the Constitution of Alabama of 1901, now appearing as Section 255.01 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, subject to the contingency that a new Article XII of the state constitution is adopted that repeals existing Section 232 of the state constitution, and subject to the contingency that Sections 10A-2-15.01 and 10A-2-15.02, Code of Alabama 1975, are repealed.

And there are **18 local constitutional amendments**, concerning the following counties: **Baldwin, Baldwin, Bullock, Calhoun, Covington, Cullman, Etowah, Etowah, Jackson, Lawrence, Madison, Marengo, Marion, Marshall, Montgomery, Morgan, Perry, Tuscaloosa, Winston**



Four for Amendment 4

On June 30, Leading Edge representatives campaigned in Marion shopping centers to build support for Amendment 4 to erase racist language from the constitution. From left, Tavi Juarez, Vivian Williams, Hope Lloyd and Amber Voss.

Reader responds to third party idea

Editor's note: In our April issue we invited responses to the idea of organizing a new Constitutional Reform party to push for a constitutional convention. We received one response. JN

Formation of an Alabama State Constitutional Reform Party makes sense to me. As someone who has remained independent of the usual political parties, I would be quick to sign up. The present attempt by the Legislature at constitutional reform is ill-conceived and will be ineffective. The problem at the moment is the folk who say they are "fixing" the problem. Our mock convention of a few years ago demonstrated that a citizens' group is better at such a job. We must keep in sight the fundamental principles of representative democracy: citizens are sovereign; that sovereign selects key members of government and pays for their salaries and expenses of their staffs. Those folk work for us of the unwashed herd. We cannot have legislators preparing their own job descriptions, which inevitably lead to perpetual incumbency. Legislators cheerfully placed term limits on the Governor, why not themselves? That branch of government requires refreshment with new personalities on a regular basis. Were that the case, our citizens would take far more interest in elections and in running for office. If we want effective and unsullied government, we MUST ensure that the power of each

person's vote means something significant to both the individual and the state. The plutocracy that controls our state today lies far from the standard we as sovereigns deserve.

Many years ago, while I was employed in Cincinnati, I was recruited to the board of the Charter Party, which was formed in the 1920s to break the stranglehold of bosses on city government. Our board maintained one central goal: elect to city council the most qualified candidates of high integrity that we could find who would pledge to abide by and support the city charter. We were of all political stripes, otherwise, and pursued county, state, and federal politics according to our own personal inclinations. But we came together on the subject of clean, effective city government, and were able to achieve that goal for many decades. Eventually, the national parties drew away support for this enterprise, and it lost its force. But its long-term effect was to create lasting traditions in Cincinnati about what to expect from the city government. An Alabama Constitutional Reform Party would do well to follow that model, and could disappear into the shadows of history once its goal was accomplished.

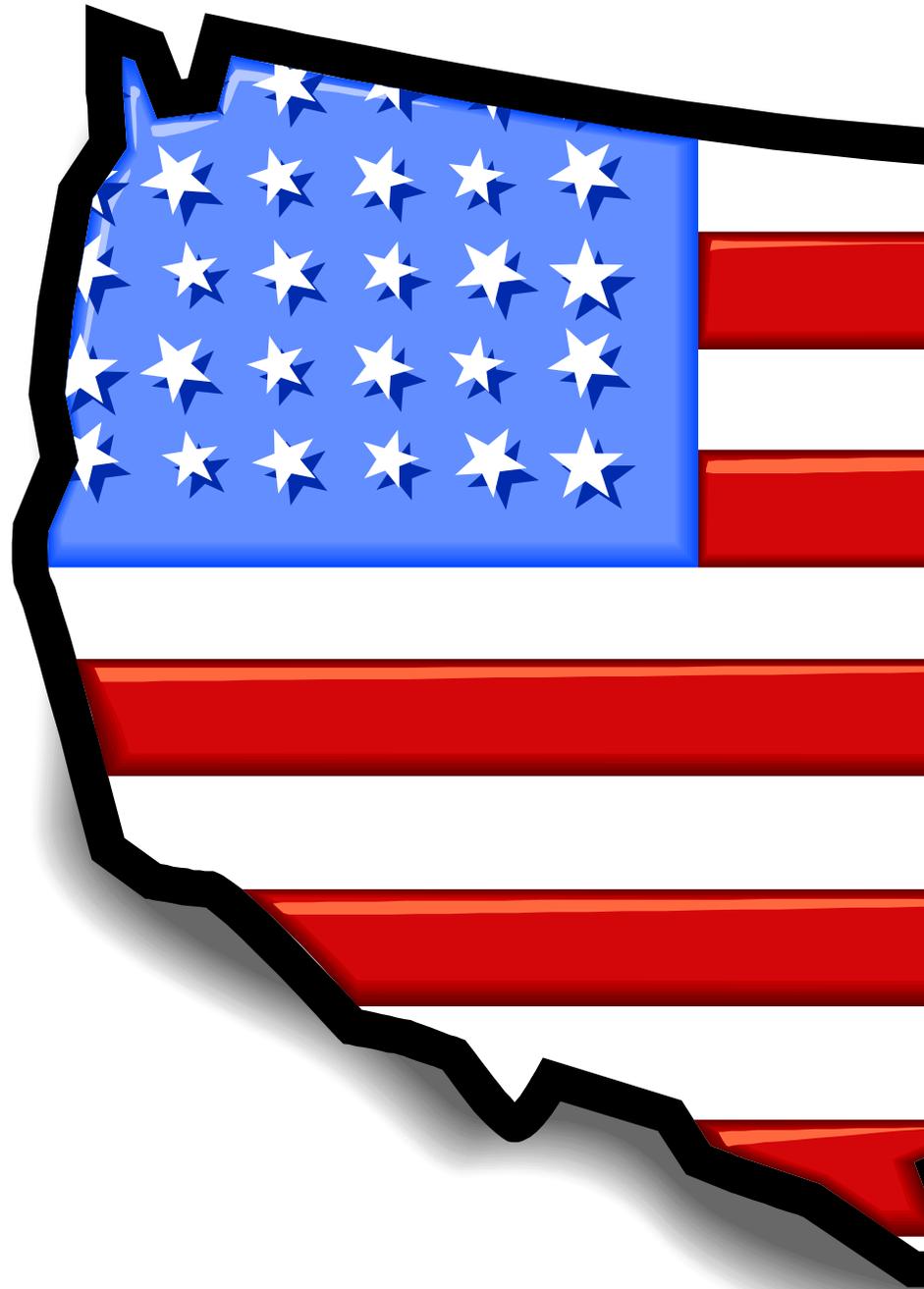
Go for it!

Stan Virden
vivahaus@gulftel.com



HOME RULE

Alabama's constitution greatly limits county home rule to specific powers approved via constitutional amendments, each requiring statewide referendum. Few other state constitutions are as restrictive. ACCR volunteer KATHERINE MAZZARA recently performed a study of home rule in other states. Her report appears here through page 25.



HOW DO WE



IN AMERICA



E COMPARE?

SUMMARY OF FINDINGS

In general, I found that the majority of states allow some flexibility for county governments, whether through constitutional home rule for all counties, statutory home rule for all counties, or a process that allows for the creation of charter counties that possess home rule powers. That being said, within these three categories, the levels of autonomy counties have vary widely by state.

Some states like Alaska and Indiana grant broad home rule authority to all counties, while other states like Minnesota have only one charter county (which was authorized by special legislation).

There is a wide range of powers granted to counties across the country, but I have learned that there are a few states that give their counties basically no options in terms of home rule or alternative government. A breakdown of states into four rough categories follows (note: some states with constitutional or statutory home rule for all counties also have charter counties, so there is some overlap):

- **No Home Rule** (no statutory or constitutional provisions allowing home rule authority and no alternative forms of county government such as charter counties) 10 states: Alabama, Arizona, Delaware, Idaho, Nebraska, Nevada, Oklahoma, Texas, West Virginia, Wyoming
- **Authorized Charter Counties** (with varying degrees of autonomy and home rule powers) 26 states: Alaska, California, Colorado, Florida, Hawaii, Illinois, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington



THE VOICE OF ALABAMA

ALABAMA CITIZENS FOR
CONSTITUTIONAL REFORM

- **Statutory Home Rule** (the state legislature has granted home rule authority to all counties in state, with degrees of strength across the country) 13 states: Alaska, Florida, Indiana, Kentucky, Maine, Mississippi, New York, North Carolina, Oregon, South Carolina, Utah, Vermont (somewhat of an exception because statutes do grant home rule powers to towns, see below), Wisconsin
- **Constitutional Home Rule** (home rule for all counties is in the state constitution, whether when adopted or through amendment, again, with varying degrees of strength) 10 states: Arkansas, Connecticut (an exception in that there are no counties, but townships are granted home rule powers in the constitution), Georgia, Hawaii, Iowa, Kansas, Massachusetts (also an exception, as constitutional home rule authority lies with towns rather than counties), New Hampshire, Oregon, Rhode Island (also has no counties, but towns are granted constitutional home rule authority)

In terms of the issue of constitutional amendments being necessary for a county to govern its citizens, ACCR is basically correct when it states that Alabama is the only place where this is necessary. In almost all of the states that I talked to, people were surprised and confused when I explained this process, and were quick to say that their state did not operate this way. The only potential exception would be Texas. Constitutional amendments are required in Texas for a county to abolish a constitutionally mandated office, e.g.,

county treasurer. Other than this, ACCR can be confident in saying that Alabama has a uniquely bad way of managing county affairs.

However, I have found that it is not uncommon at all for a state to require counties to seek legislative approval for actions that are not expressly permitted in state law. Of course, the issues that require approval and the amount of wrangling required varies greatly from state to state. In some states that do allow for charter counties only a few counties have opted for it, and the others are still required to seek legislative approval to pass some county laws. Few states seem to be as restrictive as Alabama, though Nebraska, Nevada, Texas, and Oklahoma are all interesting examples of states that have a process that sounds similar to Alabama's.

I find it especially interesting that the states that surround Alabama tend to have enacted at least some level of county home rule. Mississippi passed a statutory home rule law in 1989, and Georgia granted home rule through its constitution in 1965. All Florida counties have been granted powers of self-government through statute, and all South Carolina counties began to operate under home rule after the Home Rule Act was passed in 1975. In Louisiana, parishes have the option of adopting a Home Rule Charter, and the same is true for Tennessee. I think that comparisons to these other Southern states could be a particularly useful tool for ACCR.

Below are summaries of my findings for every state. I have tried in every case to include the name and position of the person I talked to over the phone. Most people were

very willing to help and I am grateful to everyone that helped me find this information. I am especially grateful to Jackie Byers from the National Association of Counties for allowing me to access a document (normally only available to paying members) that was the single most useful resource for this project. This document is "County Government Structure: A State by State Report.." It is a publication of the Research Division of NACo's County Services Department, and was updated in March 2009 by Kathryn Murphy. I have included a selection from this document in each state summary, even though in a few cases it was slightly contradictory to what I was told over the phone. I decided to err on the side of more information rather than less, and included it anyway. I suppose that is something you could say for this entire project.

Sources:

- *Phone/email correspondence with various state officials, county commissioners, and employees of county and municipal associations – names and titles noted in report*
- "County Government Structure: A State by State Report" – A publication of the Research Division of the National Association of Counties' County Services Department, Updated by Kathryn Murphy, Research Associate, March 2009. Accessed through the kindness and cooperation of Ms. Jackie Byers of NACo. Referred to throughout report as NACo.
- "Home Rule in America: A Fifty-State Handbook" – By Dale Krane, Platon N. Riggos, and Melvin B. Hill Jr., Published by Congressional Quarterly Press, 2001.



ALASKA – According to Kathie Wasserman, Alaska Municipal League, both cities and counties (called boroughs in Alaska) have statutory home rule powers that were passed in 1959 when Alaska became a state. Ms. Wasserman stated that the state “doesn’t have much say” in county affairs, and that as long as counties or cities

don’t violate state law, they can largely govern themselves. All taxing authority lies with the cities and counties, rather than the state. There are no constitutional amendments related to a single county, and very little state legislation that relates to local matters either. According to Ms. Wasserman the Alaska constitution is intentionally

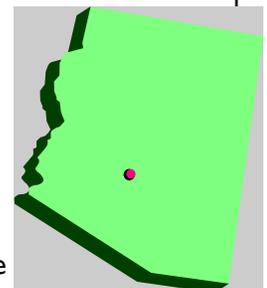
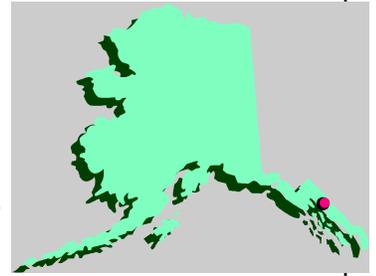
written in a way to give preference to local government. Ms.

Wasserman also stated that there was not much of a difference in power between counties that have adopted charters and those that have not.

From NACo, “The adoption of a home rule charter provides the local government with all legislative powers not prohibited by law or charter (Article X, Sect. 11, Alaska Constitution). The charter authorizes the governing structure, functions, services, and restrictions on municipal powers in accordance with the community’s situation.”

ARIZONA – According to David Thomas, Deputy Director of Legislative Counsel, there is a constitutional provision allowing counties home rule. County authority comes from the state legislature, and counties may have to get legislative approval for some actions. Constitutional amendments only deal with statewide issues.

According to “Home Rule in America: A Fifty-State Handbook,” “There is a considerable gap between the potential power of the state and the actual amount of control it exercises over local governments. State intervention in local affairs is mitigated by constitutional, cultural, and political constraints that work against the exer-



Commission hears home rule primer, continues work Aug. 22

Alabama’s **Constitution Revision Commission** is considering revisions to Article IV, the Legislature. This Article provides the opportunity to bring some form of governance to counties.

In speaking to the Commission on June 20, Professor Howard Walthall outlined some ways in which the Commission might consider bringing some form of home rule to Alabama counties. Following are some of his recommendations as the Commission begins to discuss Article IV.

These statements are taken from the transcript of the Commission meeting on June 20, available on the Alabama Law Institute’s web (<http://www.ali.state.al.us/constitutional-revision.html>).

Walthall recommended dividing the Commission’s study of governance into seven parts:

1. Local government as a separate article or sub-article. “Part one deals with general and local laws,” said Walthall. “And that is extremely important from the point of view of how we govern political subdivisions.”
2. Governmental powers of counties.
3. Provisions that deal with economic development.
4. Present constitutional provisions that mandate that counties provide for the maintenance of the poor.
5. Various purpose districts and entities that are currently provided for at a constitutional level.
6. Compensation provisions that currently limit county and municipality actions with respect to compensation of employees.
7. Miscellaneous aspects of governance.

Following Walthall’s presentation—which also included a lesson in constitutional law (see the transcript)—acting Chair Rep. Paul DeMarco appointed Commissioner Greg Butrus to chair the study of the items Walthall outlined and report recommendations to the full Commission. Butrus’ sub-committee consists of Rep. Patricia Todd, Rep. Randy Davis, lawyer Jim Pratt and Butrus.

The Commission meets again on **August 22 at 9:30 a.m.** in room 617 of the State House. The public is welcome.



THE VOICE OF ALABAMA

ALABAMA CITIZENS FOR
CONSTITUTIONAL REFORM

cise of state authority...Constitutional provisions help explain the relatively high level of discretionary authority and low level of state interference.”

From NACo, “Arizona’s counties derive their powers from four provisions of the state constitution that provide for the creation of counties and their officers, while empowering the legislature to choose the mission of counties...Arizona counties are directed by the state to both fund and administer the typical host of services. Since counties are the administrative arm of the state government, they do not have the right to provide services other than those mandated or authorized by the state. The 13 smaller Arizona counties do not have available to them charter or home rule authority, but do have substantial authority for establishing departments and inter-governmental agreements to meet efficiently the modern-day needs of county constituencies. In 1992, a voter-approved change to the state constitution provided for a county charter process for Maricopa and Pima counties. The voters in the two counties did not approve either charter.”

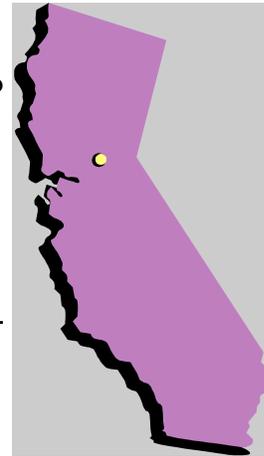
ARKANSAS – Spoke with Rob Hammons, Assistant Director of Elections. According to Mr. Hammons, things are “quite different” in Arkansas as compared to Alabama. Mr. Hammons stated that constitutional amendments dealt with statewide issues, and were not frequently put on the ballot because of the cost of holding a statewide election. Mr. Hammons also

stated that Arkansas uses Quorum Courts and justices of the peace to govern jurisdictions.

According to “Home Rule in America: A Fifty-State Handbook,” “Functional home rule in Arkansas is, in its most general sense, a grant of power from the state legislature that determines the corporate functions of counties and municipalities...The 1974 amendment to the constitution (Amendment 55) provided counties with broad functional home rule. The constitution states that counties are entitled to exercise local legislative authority not denied by the Constitution or by law...Despite the limited grants of power to local governments, Arkansas cities and counties possess considerable latitude in how they fund – and especially administer – their own affairs.”

From NACo, “Counties in Arkansas derive their powers from the state’s constitution as amended in 1974 by Amendment 55 and its implementing legislation Act 742 of 1977, which is often referred to as the County Government Code...As provided by Amendment 55, Section 1 (a), county government acting through its Quorum Court may exercise local legislative authority not denied by the state constitution or by law. These self-government powers are synonymous to home rule authority.”

CALIFORNIA – Spoke with Steven Dehrer, Legislative Counsel Bureau. According to Mr. Dehrer, California localities have the authority to govern themselves, though the state does enact some policies that affect counties. Mr. Dehrer confirmed there are some local issues of statewide concern that are dealt with by the state legislature. Mr. Dehrer also

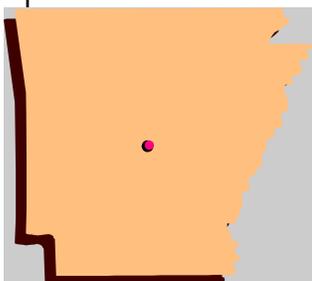
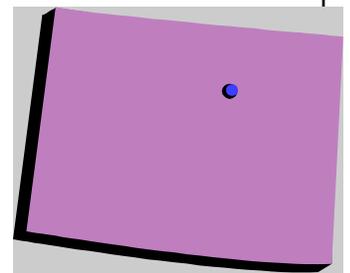


stated that constitutional amendments would deal with statewide issues.

From NACo, “The California constitution historically provided counties with two options,

Charter or General Law status. Presently 44 of the state’s 58 counties function under the General Law form of government, while 14 have adopted charters...California has given its charter and general law counties considerable latitude by offering three legislatively approved forms of government to choose from: Commission, Appointed County Administrator, or Elected Executive (county mayor).”

COLORADO – Spoke with Raegan Robb, Legislative Counsel. Mr. Robb stated that regulations regarding county powers are dealt with through statute, not constitutional amendment. According to Mr. Robb, the state legislature spends most of its time on statewide issues, and any local issues that arise are handled through a local government committee. Statewide voter approval is required for some local issues, such as creating a new city or county. Mr. Robb stated that cities and counties can adopt charters, as provided for in the state’s constitu-



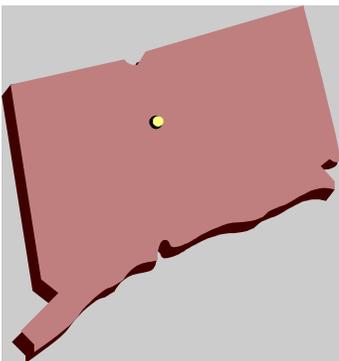


tion, and that home rule cities have broader self-governing authority.

From NACo, “Colorado counties derive their powers from three principal sources: the Colorado constitution, the Colorado revised statutes, and case law developed by Colorado and federal courts. Article XIV of the Colorado constitution lists the major provisions concerning county government activities and its organization...As an administrative branch of government, counties do not have a court system of their own. They possess no inherent legislative powers and may exercise only those powers delegated to them by the general assembly...Home rule counties are required to provide all state-mandated programs, services, and facilities and may provide permissible programs, services and functions as authorized by state law. In reality, Colorado’s home rule counties enjoy only a few more prerogatives than statutory counties.”

CONNECTICUT - Spoke with Peggy Reeves, Elections Division, Secretary of State office. Ms. Reeves explained that Connecticut has no county government, rather only 169 towns and municipalities that have self-government charters.

Their rights are enumerated in the constitution, and towns and municipalities can make their own laws as long as they do not conflict with existing state statute. Ms. Reeves stated that there are no constitu-



tional amendments related to a single municipality. Article 10 of the Connecticut constitution deals with political subdivisions and delegates power to the towns and municipalities. According to Ms. Reeves, there is no special legislation dealing with any single town or municipality.

Connecticut is not discussed in the NACo report, as it has no county government.

DELAWARE – Spoke with Richard Cecil, Executive Director, Delaware Association of Counties. Mr. Cecil stated that Delaware’s three counties do not have home rule powers, and power is granted by the state. He explained that since the state is so small (only 800,000 total population) the state provides many of the services that counties typically provide in other states. According to Mr. Cecil, roads, jails, and police (except in one county) are all run by the state, and counties have no authority in these areas. Mr. Cecil stated that Delaware uses statute rather than constitutional amendment to issue rules for the counties. Mr. Cecil also stated that in such a small state it is more efficient for control to lie with the state rather than the counties. Mr. Cecil also expressed a belief that there is a “somewhat friendly” relationship between the counties and the legislature, with many former county officials serving as state representatives.

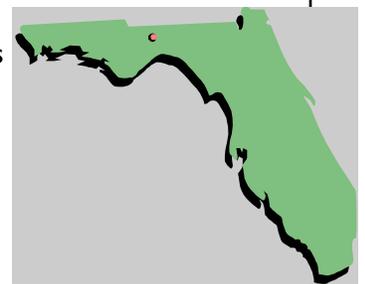
From NACo, “Delaware’s three counties derive their powers from



the state constitution. It establishes the legal framework for county government and lists the powers and duties of county governing bodies...Delaware counties are directed by the state to provide the typical range of services. Additionally, Delaware counties do not have charter authority, home rule authority, or any other substantial provisions for altering the structure of county government.”

FLORIDA – Spoke with Gary Holland, Assistant General Counsel, Department of State. According to Mr. Holland, Florida has chartered counties with home rule, and 20 of 67 counties have created charters through the petition process. Article 3, Section II of the Florida constitution stipulates that there shall be no laws of local application. Mr. Holland stated that constitutional amendments can address local issues, since anything can be a potential constitutional amendment through the initiative process; however, constitutional amendments are not required to grant counties authority. Legislative approval is still needed for some local laws, e.g., election law.

From NACo, “County government power is derived from Florida’s constitution and statutes. Florida allows two basic forms of county government, charter and non-charter status...All Florida counties have the powers of self-government, as provided by general law or special law, and may enact



ordinances consistent with them. Any county that adopts a charter may change the structure and manner of selection for the governing body and county officers.”

GEORGIA – Spoke with Ward Lamb, policy analyst for the House Committee on Intergovernmental Relations. Mr. Lamb stated that counties in Georgia have powers granted to them in the constitution, and that the state establishes broad procedures for county government. According to Mr. Lamb, Georgia did employ local constitutional amendments and local bills before the constitution was rewritten and



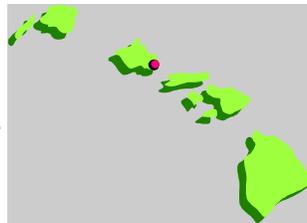
approved in 1982. Mr. Lamb stated that there are no longer any constitutional amendments that deal only with a single county issue, and grants of power to counties are handled through statute.

From NACo, “Georgia’s counties derive their power from Article IX of the Georgia constitution and state statute. They establish the legal framework for county government, and list the powers and duties of the county governing bodies...Georgia counties can only exercise powers conferred on them by law or implied from grants of other powers. In 1965, however, home rule authority was granted directly to counties by the state constitution. The governing body of each county has the legislative power to adopt ordinances, resolutions, or regulations relating to county property, and any aspect of local government for which no provision has been made by general law and which will be consistent

with the constitution or any applicable state law. The authorization of home rule to counties contains eight specific exceptions to its use, and it places a limitation on the state’s power to enact laws related to certain matter falling within the grant of home rule.”

HAWAII – Spoke with Karen Mau, Reference Librarian, Legislative Reference Library. Ms. Mau stated that the Hawaii legislature does spend some time on local issues, e.g., in the area of tourism. According to Ms. Mau, the state legislature can require counties to use taxes collected from tourism to fill gaps in the state budget. However, Ms. Mau also gave examples of counties having discretion to make their own laws. One example Ms. Mau provided involved the issue of fireworks (banning or allowing them), which had been discussed by the state legislature, but was ultimately left to the counties to decide. Ms. Mau stated that generally counties have a good amount of discretion in determining county affairs. According to Ms. Mau, constitutional amendments in Hawaii deal with statewide issues, and not local or county ones.

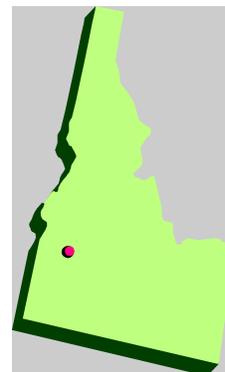
From NACo, “Hawaii’s four counties derive their powers from the state Constitution. It establishes the creation and powers of counties and provides for home rule charters. Article VIII, Section 2, of the Hawaii constitution states that each county shall have the power to frame and adopt a charter for its own self-government



within such limits and under such procedures as may be provided by general law. These procedures do not require the approval of a charter by a legislative body. All county powers shall be used to serve and advance the general welfare, health, happiness, safety, and aspirations of its inhabitants.”

IDAHO – Spoke with Kristin Ford, Secretary of State office. Ms. Ford stated that the state legislature is “not involved” with counties, and the only way it becomes involved is if a county law conflicts with existing state law. According to Ms. Ford, special legislation is outlawed in Idaho, though there is an exception for cities that were chartered before statehood. While some amendments do relate to local issues, there are no constitutional amendments which deal with a single county.

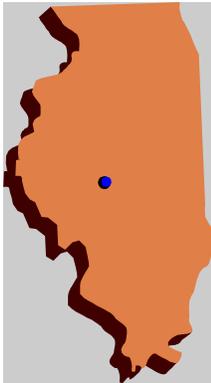
From NACo, “Counties derive their powers from the Idaho constitution...The board of county commissioners has the power to adopt a budget, levy county taxes, enact ordinances, and oversee county administration...The commissioners are granted not only those specific executive powers stipulated in law, but also implied powers necessary for governing...They also act as a unit of local government in meeting the needs of its own citizens by providing the standard services ranging from public works to welfare...Idaho does not have a county home rule provision in its constitution.”



government in meeting the needs of its own citizens by providing the standard services ranging from public works to welfare...Idaho does not have a county home rule provision in its constitution.”



ILLINOIS – Spoke with Nat Rice, Legislative Counsel. Mr. Rice stated that there is only one Illinois county with home rule (Cook County), and that county powers are granted by the legislature. Mr. Rice also explained that municipalities are automatically granted home rule authority. According to Mr. Rice, county affairs are handled mostly within county, as long as those actions are allowed by state statute. Constitutional amendments are not necessary to delegate county powers.

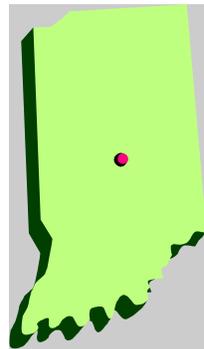


From NACo, “Illinois counties derive their powers from the state constitution and statutes, which establish the legal framework for county government and list the powers and duties of the governing bodies...Counties attain home rule status through adoption of the legislatively designed County Executive Form of government that contains the home rule powers...According to Article VII of the Illinois constitution, a home rule county may exercise any power and perform any function pertaining to government affairs, although the general assembly may deny or limit almost any local power under a constitutional pre-emption provision.”

INDIANA – Spoke with John Rowing, Legislative Services. Mr. Rowing stated that Indiana has statutory home rule, granted in Title 36, Article I. According to Mr. Rowing, there is a constitutional prohibition

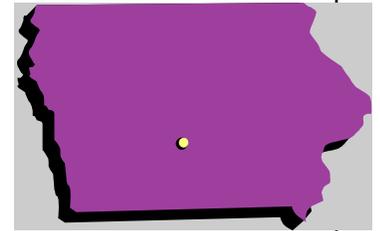
on special legislation, though there is case law that pertains to single counties. The Indiana constitution specifies that laws should be of general application, and Mr. Rowing stated that it has not been frequently amended.

From NACo, “Indiana counties derive their powers from Article 6 of the state constitution and Title 36 of the Indiana code. They establish the existence of counties and specify county officers’ duties, powers, and terms of office. The Home Rule Chapter of Title 36 grants counties all of the powers granted by statute plus any other power(s) necessary or desirable to conduct county affairs. The Home Rule Chapter declares that if there is any doubt as to the existence of a county power, the matter will be resolved in favor of the power’s existence.”



IOWA – Spoke with Bill Peterson, Iowa Association of Counties. Mr. Peterson stated that in 1978 there was a constitutional Home Rule amendment, and that counties can do “anything” to govern their own activities, as limited by Iowa statute. According to Mr. Peterson, in 1978 things were “turned on their head” and that before then counties often needed statutory approval to act. Mr. Peterson stated that statute can still be limiting in some areas, e.g. financial matters. Mr. Peterson also stated that there is “quite a bit” of flexibility, though the state’s tendency is to be overly directive and his organization tries to make

sure the state does not “chip away” at home rule authority. Mr. Peterson stated that there are no specific constitutional provisions that apply to a single county, and few constitutional amendments at all.



From NACo, “Iowa’s counties derive their powers from the state constitution and from legislation passed by the general assembly...Since 1979, Iowa counties have had constitutional home rule. Essentially this provision reversed Dillon’s Rule [see end note 1], since counties may now pass legislation without permission from the state. The County Home Rule Amendment contained in Article III, Section 39A of the Iowa Constitution grants counties or city-county consolidation governments home rule power and authority not inconsistent with state law. It allows these jurisdictions to determine their local affairs and government, but they do not have power to levy and tax, unless expressly authorized by the general assembly.”

KANSAS – Email from Kim Harp, legislative reference librarian. Ms. Harp sent the statutes that address county home rule, which can be found at <http://www.kslegislature.org/li/statute>. Relevant statutes are KSA19-101 through 19-101d. Statute 19-101 states, “That each organized county within this state shall be a body corporate and politic, and as such shall be empowered for the following purposes...*fifth*, to exer-



THE VOICE OF ALABAMA

ALABAMA CITIZENS FOR
CONSTITUTIONAL REFORM

cise the powers of home rule to determine their local affairs and government authorized under the provisions of K.S.A. 19-101a; sixth, to exercise such other and further powers as may be especially conferred by law.”

From NACo, “Kansas counties derive their power from the state constitution, which establishes

the legal framework for county government and lists the powers and duties of the county governing bodies...Kansas counties may exercise their home rule authority in two ways, through ordinary resolution or by charter resolution. If there is no legislative enactment relating to a subject, and there is no statutory limitation or prohibition on counties enacting law on the subject, a county may make a local law by enacting an ordinary resolution on the subject. However, if there is legislation on a subject that is applicable to a county, but not uniformly applicable to all counties in the state, the county may exempt itself from the statute and provide additional legislation by means of a charter resolution.”

KENTUCKY – Spoke with Mark Mitchell, Director, Legislative Research Commission. According to Mr. Mitchell, home rule is specified in Section 156B of the Kentucky constitution. Mr. Mitchell stated that cities and counties have authority to pass laws with public purpose that are not in conflict with state law and not already covered by state

law. Mr. Mitchell explained that the state legislature has a local government committee and that special laws are prohibited.

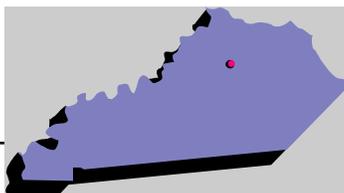
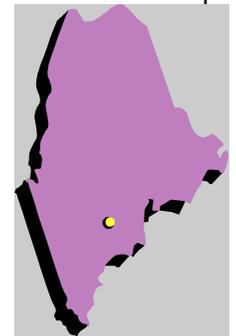
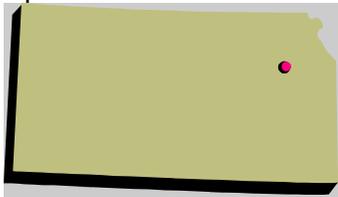
From NACo, “Kentucky’s counties derive their power from the state constitution and statutes, which establish the legal framework for county government and list the powers and duties of the governing bodies ... Counties may enact ordinances, issue regulations, levy taxes, issue bonds, and appropriate funds for a variety of government functions specified in the statute. The result is that generally, county governments can function without seeking additional specific grants of authority from the general assembly, although there are still fiscal limitations.”

LOUISIANA – Spoke with Tina Righteous, Legislative Counsel, Government Affairs division. Ms. Righteous stated that there is a home rule provision in the Louisiana constitution, and that parishes and cities can have home rule charters. According to Ms. Righteous, county (parish) issues are generally dealt with by statute, and handled by a local government committee in the legislature.

From NACo, “Louisiana’s parishes, county equivalents, derive their powers from the state constitution and statutes, which establish the legal framework for county government and list the powers and duties of the governing bodies...Parishes are units of local government and are limited by the state constitu-

tion to the exercise of powers specifically authorized by law. The constitution, however, provides that the governing authority of parishes may be broadened to include any functional power necessary for the management of its affairs and not denied by charter or general law. The list of parish functions and services is quite diverse and can include airports, bridges and ferries, fire protections, and recreation.”

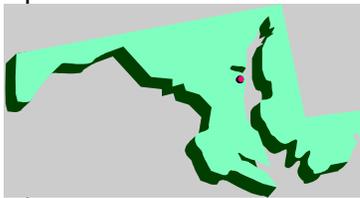
MAINE – Email from Nicole Dyszlewski, Reference Librarian for the Maine State Law and Legislative Reference Library. Ms. Dyszlewski sent links to relevant home rule statutes, can be found at <http://www.mainelegislature.org/legis/statutes/30-A/title30-Ach141sec0.html> and <http://www.mainelegislature.org/legis/statutes/30-A/title30-Ach111sec0.html>. Ms. Dyszlewski also sent section of Maine Municipal Association’s Municipal Officer’s Manual, which contained the following section on home rule: “Since the adoption of ‘home rule’ by Maine in 1969, Maine’s municipalities have had power over all matters of a local or municipal character unless denied expressly or by clear implication (“preempted”) (see Me. Const., Art. VIII, Pt. 2, § 1). This includes the power to adopt or amend municipal charters by local referendum election without the involvement of the Legislature (30-A M.R.S.A. §§ 2101-2109) as well as the power to enact ordinances on most subjects without the necessity of State enabling laws (30-A M.R.S.A. § 3001).”





From NACo, “Maine’s counties derive their powers from statutes enacted by the state legislature...Although Maine does not authorize home rule, county commissioners may determine that the adoption of a county charter should be considered, or that an existing charter should be revised...County power is somewhat limited. Primary functions include law enforcement, jail maintenance, registration of deeds, and probate court matters...Although Maine counties do not operate schools, hospitals, welfare programs, or fire departments as in some other states, counties have been mandated to provide local emergency planning commissions and they serve general local needs as required.”

MARYLAND - Spoke with Andrea Mansfield, Maryland Association of Counties. Ms. Mansfield explained there are code home rule and charter counties in Maryland, as well as some counties that use the Commission form. According to Ms. Mansfield, code home rule and commission counties can determine the structure of county government, as well as enact their



own laws, subject to limits that can be placed by

the General Assembly, e.g. tax caps. The General Assembly must grant taxing authority to code home rule and Commission counties, but not charter counties. Ms. Mansfield stated that in her opinion Maryland is a hybrid of Dillon’s Rule (see *end note 1*) and Cooley

Doctrine (see *end note 2*). Ms. Mansfield also stated that commission counties often have to go to the General Assembly for clarification of statute or for authority to pass certain county laws, while charter counties have greater powers. Ms. Mansfield also mentioned that the counties that have adopted charters tend to be more populated and more suburban, while commission counties are generally more rural. Stated that constitutional amendments are not needed for local issues, and generally apply statewide.

From NACo, “Maryland’s 23 counties (and Baltimore City) have three options for governing: commissioner, charter, or code county...[In commission counties] Commissioners do not have constitutional home-rule powers. They cannot legislate in areas where the General Assembly has not given them authority; and in those areas where they do not have authority it is narrowly construed...In 1915 voters approved Article XI-A of the Constitution of Maryland. This section of the constitution provides for charter home rule...Article XI-A provides that: the General Assembly shall, by public general law, grant “express powers” to charter counties...In 1966 the voters approved Article XI-F of the Constitution of Maryland. This article provides for code home rule...The General Assembly must enact laws applicable to the code counties as a class. It may not enact laws applicable to a single county.”

MASSACHUSETTS – Spoke with Dan Matthews, Executive Secretary for the County Commissioner of Norfolk. Mr. Matthews stated that

the principal units of government in Massachusetts below the state are incorporated municipalities. Services like police, fire protection, and roads are all handled by towns, while counties are mainly regional service areas.

Cities and towns may petition



the state legislature for home rule. If a towns’ home rule petition is approved by the state legislature it goes to voter referendum in the town. According to Mr. Matthews, the Massachusetts constitution has a home rule amendment that establishes the petition and approval process for town home rule. Mr. Matthews stated that the state legislature does spend time working on local issues, but that the process sounded more “streamlined” than it is in Alabama. Mr. Matthews also stated that many local and private acts do come through the state legislature, but amending the constitution is rare and would not be required for delegating town or county powers.

From NACo, “After abolishing eight county governments from 1997 to 2000, there are only six functioning county governments remaining in Massachusetts. Four of these...use the commission form of government. Barnstable utilizes the charter form while Nantucket is a city-county consolidation with the city of Nantucket...Generally counties in Massachusetts oversee the administration of jails and houses of corrections, county court houses, registries of deeds, agricultural high

THE VOICE OF ALABAMA
 ALABAMA CITIZENS FOR
 CONSTITUTIONAL REFORM

schools, recreational facilities, and solid waste management. Counties can also oversee such functions as road maintenance, economic development, recycling programs, and natural resource conservation.”

MICHIGAN – Spoke with Joseph Baumann, Michigan House of Representatives. MR. Baumann stated that there are statutory protections for home rule, and that Article 7 of the Michigan constitution lays out the structure of local governments. Mr. Baumann also stated that the legislature “expressly” deals only with statewide issues, though there are some mechanisms (supermajorities, local votes) that allow the state legislature to pass laws relating to local



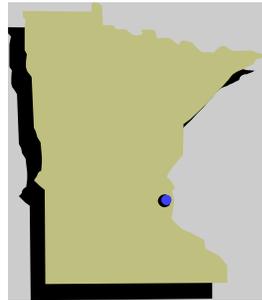
issues. According to Mr. Baumann, counties derive their powers from statute rather than the constitution. Mr. Baumann stated that

constitutional amendments deal with statewide issues, and that in Michigan they “don’t need” to go through any kind of constitutional amendment process analogous to what goes on in Alabama.

From NACo, “Michigan’s 83 counties derive their powers from three sources of authority: the Michigan constitution, state statutes, and court decisions. Michigan affords its counties three governmental structures: Commission, Charter, or United... Charter Home Rule, is based in the state constitution and provides for the Elected County Executive form. Presently, Wayne is the only home rule county

in the state... The United Structure allows less local discretion than the County Home Rule form, but more than the Commission form... Michigan counties perform functions for the state and also act as local service providers.”

MINNESOTA – Spoke with Jeff Spartz, Executive Director, Association of Minnesota Counties. Mr. Spartz stated that Minnesota counties have optional forms of county government, and can establish study commissions to determine what form to put before voters. Mr. Spartz characterized Minnesota as a state that uses Dillon’s Rule (see end note 1). Mr. Spartz also mentioned that there is a bill pending in the state legislature that would grant more authority to counties and convert Minnesota to more of a Cooley Doctrine (see end note 2) state. This is the Minnesota Accountable Government Innovation and Collaboration (MAGIC) Act, and all Minnesota counties have passed resolutions supporting it. According to Mr. Spartz, constitutional amendments are not needed to deal with local issues, and are almost invariably applicable statewide, though some may deal with regional issues. Local government issues are dealt with through statute and channeled through a local government committee in the state legislature.



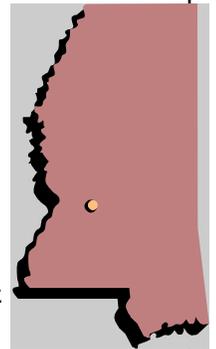
From NACo, “Minnesota’s 87 counties derive their power from the state constitution and statutes which establish the legal framework for county government and list the

powers and duties of the county governing bodies. County government is based upon the Commission form and utilizes a five-member board... Any county may adopt one or more of the five optional forms of government provided for in Section 375 A.01 to 375 A.13 of the state statutes... Ramsey County is the only home rule charter county...”

MISSISSIPPI – Spoke with Sumner Davis, Center for Governmental Training and Technology, Mississippi State University Extension Service.

Mr. Davis stated that after an audit of county supervisors and investigations of corruption and fraud by the FBI in the late 1980s, Mississippi allowed counties to vote to change the structure of county government. Home Rule statutes were adopted in 1989, and the board of supervisors in a

county became more like a legislative body. However, Mr. Sumner also stated that it was not “true” home rule, and that the statute was limited. According to Mr. Sumner, the statute prescribes what county government is prohibited from doing, and counties still operate under a grant of power from the state legislature. Mr. Sumner stated that counties are allowed to enact laws of legitimate public function as long as they are not prohibited by state statute. Counties can petition the state legislature for local and private pieces of legislation, e.g., allowing police in the county to use radar guns (not allowed in general in the state). Instead of amending the state





constitution, as in Alabama, legislation is used to address county issues.

From NACo, “Counties derive their power from the state constitution and the Mississippi code. These establish the powers and duties of the county governing bodies...Mississippi implemented Home Rule through statutes in January of 1989. The law grants authority for all 82 counties to do anything not prohibited by law. The exceptions to this law include levying new taxes, issuing bonds, donating to private groups, changing practices or procedures of county elections, or altering rental rates of private property with no county interest.”

MISSOURI – Spoke with Jay Shipman, Missouri Association of Counties. Mr. Shipman explained about charter counties in Missouri, stating that currently there are only 4 of 114. Mr. Shipman stated that charter counties generally have wider discretion in governing own affairs as compared with non-charter counties. According to Mr. Shipman, non-charter counties can act as needed as long as it is allowed by state statute. Mr. Shipman also stated that there are no county specific constitutional amendments, and that any constitutional amendments deal with statewide issues. Any county issues that arise in the state legislature are dealt with through statute.

From NACo, “Missouri’s 114 counties (and the independent city of St. Louis) derive their powers

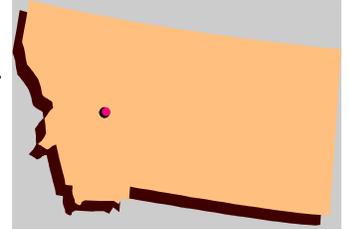


from the state constitution and statutes...Most counties have a similarly structured government using a non-charter form...According to Article VI, Section 18 of the state constitution, Charter Counties, [...], are permitted by any county with more than 85,000 inhabitants...Also, under Article VI, Section 18, any county of the first class may adopt a county constitution, which is essentially a charter. The county charter may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except for imposing taxes, which must be imposed by constitution or law, and for conducting elections.”

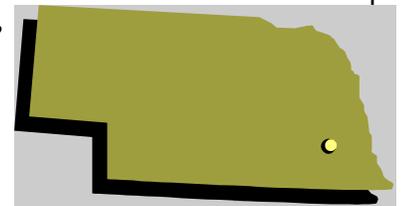
MONTANA – Spoke with Allan Miller, Department of Elections. Mr. Miller stated that counties can initiate changes in their government through the ballot, and that they in general have “latitude” in determining their own affairs. The only time a county would need legislative approval for an action was if it was in conflict with existing state law. According to Mr. Miller, constitutional amendments are all related to statewide issues, and that only 31 have passed.

From NACo, “Montana’s counties derive their powers from the state constitution and the Montana statutes, which establish the legal framework for county government and list the powers and duties of the county governing bodies. The 1972 state constitution authorizes local governments to adopt general government powers or self-government powers. Counties with general government powers pos-

sess only those powers granted by the legislature...Charter self-government powers in Montana are granted by Article XI of the state constitution and Title 7 of the Montana Code...These powers allow counties to perform the same services that general law counties perform, but there are no limitations on how services are to be performed unless the law specifically provides exceptions. Generally, charter provisions establishing executive and legislative structure and organization are more flexible than statutory provisions.”



NEBRASKA – Spoke with Elaine Menzel, Nebraska Association of Counties. Ms. Menzel stated that Nebraska does not have a constitutional or statutory provision for home rule, and there has not been much of a push for it in the state. Ms. Menzel also stated that there have been court cases that established counties were “creatures” of state statute, and though they might have general or inherent authority, clarification of county powers is sometimes needed. According to Ms. Menzel, counties generally have to act within the authority given to them by the legislature, e.g. some counties are given zoning authority and some are not. According to Ms.





THE VOICE OF ALABAMA

ALABAMA CITIZENS FOR
CONSTITUTIONAL REFORM

Menzel, of the 450 bills before the state legislature last year about 60-100 dealt with county rather than statewide issues. Issues surrounding county powers are dealt with through statute rather than constitutional amendment. Ms. Menzel stated that there was a Home Rule amendment proposed last year, but the Nebraska Association of Counties chose not to take a position on it. Constitutional amendments are not needed to clarify county powers—that is dealt with either through statutes or in the courts.

From NACo, “Nebraska’s counties derive their powers from the state constitution and legislative action...A county in Nebraska is a political subdivision of the state having subordinate powers of sovereignty conferred by the Legislature. As such an entity, the county has only that power delegated to it by the Legislature...Since all counties operate solely under authority delegated by the state, no county has home rule authority.”

NEVADA – Email from Susan Scholley, Chief Principal Research Analyst, Nevada Legislative Counsel Bureau. Ms. Scholley wrote that in 2011, the Legislature considered but did not pass a bill on home rule, Senate Bill 385. Wrote that

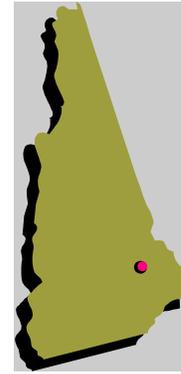
“the legislature has generally been loath to give up its control of the counties and cities.” Wrote, “Yes, counties may adopt ordinances within the bounds of the authority granted to them by the Legislature. If the Legislature has adopted certain

standards relating to an issue, a

county ordinance must comply with that standard...However, if the counties have not been authorized to adopt ordinances on a subject, then the counties must seek legislation giving them such authority before they can adopt ordinances. Because the Nevada Legislature only meets in odd-numbered years, the counties sometimes must wait a year or more for the Legislature to convene and pass legislation.” The Nevada Constitution does prohibit local or special laws that single out specific counties; however, they “do enact laws that are specific to certain population ranges, which seems to be a fairly effective way of getting around the prohibition.” Wrote that, “Under Dillon’s Rule [see end note 1], the counties may act if the authority is granted in express words or if the proposed action is necessarily implied to the powers expressly granted. The scope of ‘necessarily implied or necessarily incident’ is very difficult to discern and the counties typically err on the side of caution and wait for legislative clarification.” Also wrote that, “The primary mechanism for giving authority to the counties is the enactment of bills by the legislature.” Said that she did not know of any amendments affected a single county or city.

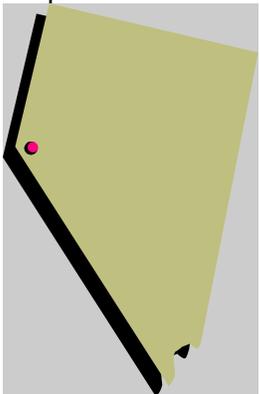
From NACo, “Counties derive their powers from three principal sources: the Nevada constitution, the Nevada Revised Statutes, and case law developed by Nevada and federal courts...A county and its board of commissioners only possess such powers and authority granted by statute and do not have home rule provisions.”

NEW HAMPSHIRE – According to “Home Rule in America: A Fifty-State Handbook,” “the state legisla-



ture historically has had absolute power over municipalities...In fact, the New Hampshire Municipal Association cautions local officials to find the specific state statute authorizing a

local action before taking it rather than assume that the municipality has the power to take the action. Therefore, towns, cities, and village districts have limited and restricted powers. New Hampshire is not legally a home rule state; although the tradition of home rule has generally been recognized by the legislature, in reality municipalities have little leeway to perform functions not specified by the state legislature...Despite the tradition of strict limitations on local governmental authority, the state has begun to loosen the reins in the past decade...There are ten counties in New Hampshire, but their governing role is dwarfed by the towns and cities, which provide most local services...Local governments do have a large degree of control over their personnel management decisions and their administrative procedures...Municipalities also have fairly broad powers to make contracts and are limited only by a general ‘necessary and convenient’ clause...Local governments have been given broad discretion over planning, zoning, and land use by a standard state zoning-enabling act...Despite New Hampshire’s long tradition of ‘direct democracy’ at the local level, home rule simply does not exist...The New Hampshire Supreme Court has consistently ruled that state legislation supersedes most types of local





autonomy. Conflicts between the state government and its localities generally have been decided in favor of the state.”

From NACo, “New Hampshire’s counties derive their powers from the state constitution and statutes, which establish the legal framework for county government and list the powers and duties of the county governing bodies...Although New Hampshire authorizes home rule, no counties operate as home rule units. Voters may also petition for a charter commission to study the county’s situation and ultimately recommend a charter to meet the structural and operational needs of the county, but no county has exercised this option to date. New Hampshire counties have only those powers mandated by the state. Counties provide multiple services ranging from nursing homes to juvenile delinquency diversion programs. In New Hampshire, municipalities also provide traditional services such as garbage collection, road maintenance, and police protection.”

NEW JERSEY – According to “Home Rule in America: A Fifty-State Handbook,” “The status of home rule in New Jersey is mixed. While few provisions of the state constitution serve as guarantees, legislative deference to local interests is common...The power to create new local government units had been reclaimed by the legislature by 1947 [the year the current constitution was adopted]...State control over local finances pre-dates 1947, including

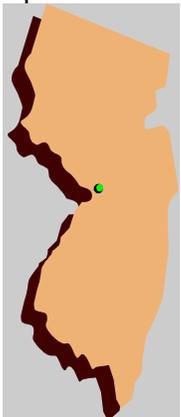
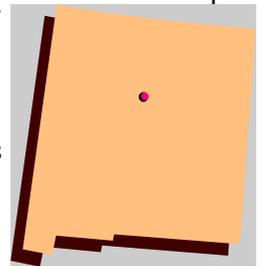
budget review, auditing requirements, limits on purchasing and the issuance of debt, and the right to take over the financial affairs of failing municipalities. Perhaps the most onerous aspect of state control was the state’s limiting of local revenue sources largely to the property tax, a policy that was rooted in the state’s past. On the other hand, some home rule powers were in place in 1947. The constitutional prohibition against special local laws dates to 1875, a statutory grant of authority for municipalities to engage in a wide variety of functions was included in the Home Rule Act of 1917, and the zoning power was guaranteed to municipalities by constitutional amendment in 1927...Although local officials almost universally complain about state infringement on their prerogatives, there still is a substantial area for local initiative in New Jersey. State control of local governments generally extends to procedures rather than to policies. Although the state may tell the municipalities how to do something, it rarely tells them what to do.”

From NACo, “New Jersey counties derive their powers from the state constitution and statutes, which establish the legal framework for county government and list the powers and duties of the county governing bodies. New Jersey allows two basic forms of government to its 21 counties: Noncharter or Optional Charter status...The 1972 Optional Charter Law (NJSA 40:41A-1) allows major increases in the centralization and management capacity of the county. This is accomplished by separating the executive and legislative functions, and by providing for chief executive officer primarily respon-

sible for managing government operations. Charter law also allows counties to reorganize their methods of service provision as long as the required services are maintained.”

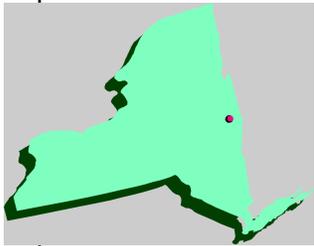
NEW MEXICO – Spoke with Roger Makin, Legislative Counsel. Mr. Makin stated that there are both constitutional and statutory provisions for home rule, however these apply only to municipalities. These municipalities can form charter commissions which can propose charters that are then voted on by the public. According to Mr. Makin, non-charter municipalities can only do what is allowed by state statute. Mr. Makin also stated that there is a constitutional prohibition on single item laws, and that the state legislature cannot enact a statute that affects only one city, it must apply state-wide.

From NACo, “New Mexico’s counties derive their powers from the state constitution and statutes. These establish the legal framework for county government and list the powers and duties of the county governing bodies...Article X, Section 5 of the New Mexico constitution provides that any county less than 144 square miles in area and having a population of 10,000 or more may become an Incorporated County. As the only Incorporated County in the state, Los Alamos possess a home rule charter that provides the form and organization of the county government...An Incorporated County may exercise all powers and shall be subject to



all limitations granted to municipalities by Article 9, Section 12 of the state Constitution and by statute.”

NEW YORK – Spoke with Patrick Cummings, New York Association of Counties. According to Mr. Cummings, there is both statutory and constitutional home rule in New York, though it provides only so much flexibility. Mr. Cummings stated that counties still have to get state approval for some things, e.g., changing sales tax rates. Mr. Cummings also



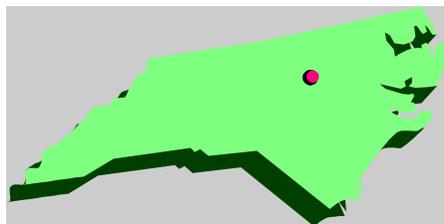
stated that the state still controls and regulates some aspects of county government. Local

statutes cannot restrict state law, and conflicts between local and state statutes could go through the court system. According to Mr. Cummings, there are no constitutional amendments for county issues, it can all be dealt with through statute. Mr. Cummings also stated that charters give counties a greater degree of flexibility in terms of administrative structure, but generally there is not a great deal of difference in powers allowed to charter and non-charter counties.

From NACo, “New York counties derive their powers from the state constitution, statutes, and strong home rule powers...New York’s 58 counties can be characterized under two basic forms of government: Charter and Noncharter status...The counties of New York have the power to enact laws, adopt resolutions, and take other actions within their jurisdictions.”

NORTH CAROLINA – Spoke with Todd McGee, North Carolina Association of County Commissioners. Mr. McGee stated that county powers are expressly granted in statute, and characterized North Carolina as a, “Mother May I” state. According to Mr. McGee, if state statute doesn’t “say that you can do something,” you probably can’t. There are local bills that go through the legislature, which go through a local government committee. Mr. McGee stated that there are no constitutional amendments for local issues, any amendments would deal with statewide issues. There are some restrictions on what a local bill can be, and it does sometimes go to court. Mr. McGee stated that North Carolina was not “truly” a home rule state, and that the legislature does spend time on local bills and likes to keep things “close to the vest.”

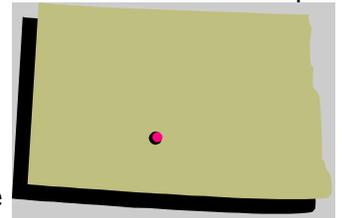
From NACo, “Counties in North Carolina derive their powers from the state constitution and statutes, which establish the legal framework and list the powers and duties of the county governing bodies...Counties may provide, at their option, a variety of public services...North Carolina counties have neither inherent powers nor a constitutional right to home rule. They may only exercise those pow-



ers and options specifically conferred on them by law. Although constitutional home rule does not exist, statutory home rule is quite

broad, and gives county government broad powers to run their own affairs.”

NORTH DAKOTA – Spoke with Terry Traynor, North Dakota Association of Counties. Mr. Traynor stated that the North Dakota Constitution allows for county home rule, and that legislature has confirmed home rule powers in statute as well. According to Mr. Traynor, 7 counties have



opted for home rule so far. Mr. Traynor also stated that county authority under home rule is “quite broad,” and counties can manage finances, adopt any taxes, fees or revenue raising acts. The legislature does restrict county power to change income tax laws. Counties with charters are granted ordinance authority, those without are subject to “strict” organizational statutes passed by the state. Mr. Traynor also noted that the legislature is granted broad authority to establish statutory powers for local governments. Counties that have adopted home rule are generally larger and more populated, while sparsely populated rural counties simply enforce state statutes. Mr. Traynor explained that there is not a large demand for home rule in these rural counties simply because the low population doesn’t require many county services. Stated that constitutional amendments are always applicable statewide, and that there are not even any local or private statutes that apply to a single city or county (excepting legislation relating to the Fargo school dis-



trict). Statutes must be applicable to all counties, and single counties are never named in legislation.

From NACo, “North Dakota’s 53 counties derive their powers from the state constitution and statutes...The home rule powers are vested in the board of commissioners, which enacts ordinances to determine policies and prescribe functions of government to be performed under the charter. Additionally, several of the powers granted in the home rule law restate the authority that counties possess under general laws, such as the power of eminent domain, zoning, intergovernmental contracting, and conduct of corporate affairs. Home rule counties are also authorized to provide for matter pertaining to county elections, to control financial and fiscal affairs, to enact penalties for violations of ordinances, and to enact resolutions and regulations designed to carry out their powers.”

OHIO –Email from Josh Hahn, Ohio Association of Counties. Mr. Hahn sent links to the Handbook for Ohio County Commissioners. Chapter 1, “Basic Structure of County Government,” states,

“County government does not possess home rule authority. That is to say, county officials may act only when and as specifically authorized by state law...Counties,

not possessing home rule or powers of local self-government, may perform only those governmental functions specifically authorized by state law and in the manner specified in law. If the ORC [Ohio Revised Code] is silent on the subject,

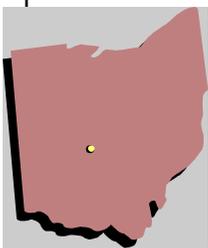
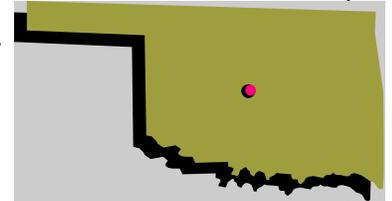
counties do not possess the authority to act. Municipalities, on the other hand, are generally free to act in areas where counties may not. The Home Rule Amendment to the Ohio Constitution grants municipalities almost unlimited authority to exercise powers of local self-government...For example, county commissioners are without authority to license and control cats, as they do dogs, because the ORC is silent on the subject. Municipalities, however, are free to enact ordinances requiring licensing of cats.” In Chapter 2, “County Structural Options,” the process for adopting a county charter is outlined. It states, “The adoption of a county charter has been described by the Attorney General (OAG 85-047) as a way by which ‘the people of any county may increase the authority of their county government.’...Essentially [...] counties which adopt charters [...] may enact legislation in whatever areas appear appropriate, whether or not they have explicit authority to do so under state statute.” There are some restrictions on this power—e.g., if a county law conflicts with a municipal law, the municipal law is what takes precedence. According to Mr. Hahn, there are currently two counties that have adopted charters, and the reason that more have not is “it’s a very difficult process to accomplish.”

From NACo, “Ohio’s counties derive their power from the state constitution and the revised code...All counties operate under the statutory commission form of government with a three-member board of county commissions...An optional form can be either a charter or a constitutionally outlined

alternative form of government and can include certain home rule powers.”

OKLAHOMA – According to “Home Rule in America: A Fifty-State Handbook,” “Oklahomans have adopted only one state constitution.

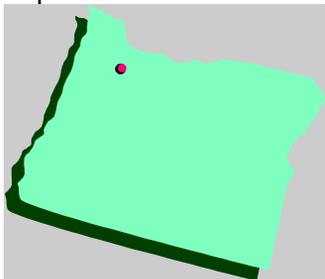
This constitution has always provided for municipal home rule...Counties in Oklahoma do not have home rule...Despite the appearance of a fairly broad grant of power to Oklahoma charter cities, a 1993 Advisory Committee on Intergovernmental Relations (ACIR) study classifies Oklahoma as having only ‘structural’ home rule as opposed to ‘broad functional’ home rule...The constitutional provision for home rule established at statehood has encouraged more experimentation with municipal forms and structures than would have occurred otherwise. Counties are another matter; Oklahoma lags behind most other states in providing for either home rule or optional forms of county government. The anomalous treatment of cities and counties in Oklahoma is difficult to comprehend. Perhaps more than anything else, this situation is a testimony to the continued political power of county officials, particularly the commissioners, who strongly oppose any significant change in the status quo...Counties in Oklahoma are severely constrained, functioning almost solely as administrative extensions of state government.”



THE VOICE OF ALABAMA
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From NACo, “Oklahoma counties derive their powers from the state constitution and statutes...Since all counties are a subdivision of the state government, all of their powers are delegated by the state as authorized by the state legislature...There is no constitutional or statutory authority permitting counties to exercise home rule powers or to adopt charters. Additionally, there are no provisions authorizing an alternative form of government.”

OREGON – Spoke with Laura Cleland, Oregon Association of Counties. According to Ms. Cleland, there are two ways that home rule powers are granted to counties in Oregon. One is through a constitutional amendment passed in 1958 that allows for charter counties. Ms. Cleland stated that once charters are adopted, a county has a great deal of local legislative authority, and does not need to go to the state for a grant of authority.



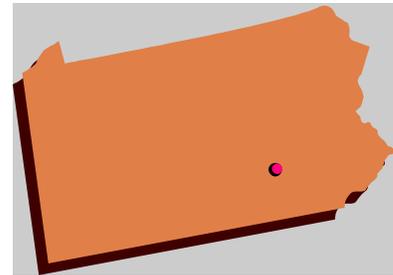
The other way came with a broad statutory home rule law passed in 1973, that gave General Law counties

greater authority. However, General Law counties do not have the same protections against state pre-emption that charter counties have. Ms. Cleland stated that both General Law and charter counties have “authority over county affairs.” Also stated that statutory (General Law) counties do have to get permission from the state to take some actions, and that all counties still work closely with the state legislature because of shared services

and revenues. According to Ms. Cleland, constitutional amendments would “never” be for a single county, and issues relating to county power are dealt with through statute. Ms. Cleland also noted that counties in Oregon control planning authority and make all decisions at the county level.

From NACo, “Oregon’s counties derive their power from the state constitution and statutes, which establish the legal framework for county government and list the powers and duties of the governing bodies. Oregon offers two basic forms of government to its 36 counties, General Law or optional Home Rule Charter status...Article VI, Section 10 of the state constitution permits voters to adopt, amend, or repeal a county charter. This section also permits a general grant of powers in the charter to the county’s governing body...Oregon’s counties provide a great variety of public services and facilities. State law mandates some county functions, while others are permissive.”

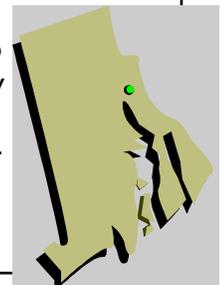
PENNSYLVANIA - Email from Lisa Schaefer, Government Relations Manager, County Commissioners Association of Pennsylvania. Ms. Schaefer wrote that “we typically don’t do legislation that pertains to just one county, because our constitution states, ‘The General Assembly shall pass no local or special laws in any case which has been or can be provided by general law and specifically the General Assembly shall not pass any local or special law...’ (Article III, section 32)” Ms. Schaefer also sent a link to a Manual for County Commissioners, which can be found at http://www.newpa.com/webfm_send/1542 Relevant sections on home



rule begin on page 91. States that, “A new local government article was added to the Pennsylvania Constitution in 1968. It guaranteed the rights of all Pennsylvania counties and municipalities to adopt home rule charters and exercise home rule powers.”

From NACo, “The counties in Pennsylvania derive their powers from the state constitution and statutes. These documents establish the legal framework for county government and list the powers and duties of the governing bodies. Pennsylvania’s 67 counties utilize one of three structural alternatives: the Commission form, Home Rule Charter, and the Optional County Plan of government...In 1972, the state legislature enacted the Home Rule Charter and Optional Plans Law...Presently, seven counties have adopted home rule charters...”

RHODE ISLAND –Spoke with Peter Schaffer, Director, Rhode Island League of Cities and Towns. Rhode Island has no county government and all local governance is handled through incorporated cities and towns. Article XII of the Rhode Island Constitution, entitled “Home Rule for Cities and Town,” states in Section I, “It is the intention of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters.” Mr. Schaeffer





stated that cities and towns can do anything except for levy taxes and borrow money, which is controlled by the state, and that cities and towns have “leeway” except for in these two areas. Mr. Schaeffer stated that there is not supposed to be any local or special legislation, though General Assembly can find loopholes sometimes. According to Mr. Schaeffer, there are no constitutional amendments which affect a single city or town, and that any amendments will deal with state-wide issues.

Rhode Island is not included in the NACo report, as it has no functioning county governments.

SOUTH CAROLINA – Spoke with Jenna Stephens, Staff Attorney, South Carolina Association of Counties. Ms. Stephens stated that home rule powers are granted equally to all counties in South Carolina. Ms. Stephens explained

that the 1973 constitutional amendment gave the legislature the power to enact the Home Rule Act of

1975. According to Ms. Stephens, there are still some restrictions placed on counties, e.g. limits on millage. Ms. Stephens stated that despite a constitutional prohibition on special legislation, the state legislature does still pass bills that are county specific. However, these would not be general grants of power, but rather specific acts that relate to school systems, tax rates, etc. According to Ms. Stephens, constitutional amendments are not required to give counties powers, as general police powers are already granted by the Home Rule Act.

From NACo, “South Carolina’s 46 counties derive their power from the state constitution and statute...All counties in South Carolina began operating under home rule when the Home Rule Act was passed in 1975...A 1973 constitutional amendment in South Carolina provided counties with additional powers through general laws. Even with its home rule authority, the counties’ fiscal powers are still somewhat restrictive...South Carolina’s counties are granted enough authority to expand their services beyond traditional limited county purposes.”

SOUTH DAKOTA – Email from Kris Jacobson, Deputy Director, South Dakota Association of County Commissioners. Ms. Jacobson sent a link to the

Home Rule Statutes for South Dakota. Can be found at: <http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=6-12&Type=Statute>

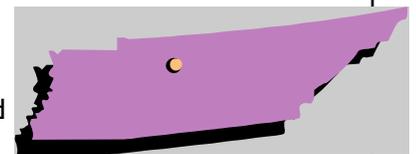
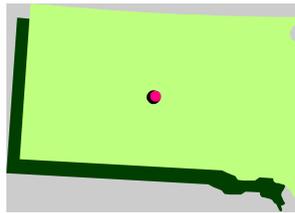
Some relevant excerpts include:

Statute 6-12-5, which reads, “Neither charter nor ordinances adopted thereunder may set standards and requirements which are lower or less stringent than those imposed by state law, but they may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law prohibits otherwise.”

Statute 6-12-6 which sets forth “Restrictions on power of home rule units” and Statutes 6-12-14 and 6-12-15, which describe the limits on taxing authority.

From NACo, “South Dakota’s counties derive their power from the state constitution and statutes...Article IX of the state constitution authorizes any county to adopt or amend a charter, if approved by a simple majority of the voters. A home rule charter makes it possible for counties to exercise any legislative power or perform any function not denied by its charter, the constitution, or general laws of the state. The charter also provides for any form of executive, legislative, and administrative structure that shall be of superior authority to statute.”

TENNESSEE – According to David Connor, Executive Director of Tennessee County Commissioners Association, “In general (and as interpreted by our courts), counties in Tennessee can only exercise the authority given to them expressly by the state constitution or state statute or necessarily implied from a specific grant of authority...in the mid-1990s counties by general law were given the option to exercise many municipal powers, including making special assessments, spending money for all lawful purposes, granting franchises for utilities or public services, contracting, waste, disposal and collection, etc...While not as broad as municipal authority, I think counties have fairly broad authority now in Tennessee. Elsewhere in statute counties have been authorized for a long time to do planning, zoning, and land use regulation. Relative to ordinance authority, I do not think there are significant differences between charter



and non-charter counties. Charter counties (under the recent supreme court decision) to have authority to make structural changes to county government (i.e. consolidate offices or positions, impose term limits, etc.) that other counties operating under the constitutional form of government cannot make... There are of course constitutional limitations around how counties are structured and how taxes may be levied by local government that are limited by our constitution (for instance, you would have to amend our constitution to levy an income tax), but in general the state legislature has a lot of freedom to establish the parameters of county government in the state without changing the constitution. I don't think there is even a mechanism under the Tennessee Constitution for amending the constitution relative to a particular county, with a local referendum. We do have some acts of our state legislature that are local in effect and then they require approval by a 2/3 vote of the local government body or approval of the voters in a referendum."

From NACo, "The counties in Tennessee derive their power from the state constitution and statutes... Tennessee affords its 95 counties three governmental structures to choose from: Commission, County Charter, and City-County Consolidation... As of September 1, 1986, Shelby County became Tennessee's first Charter County. The County Charter provides for a separation of the county's legislative, executive, and judicial functions, as in all Tennessee counties. At the heart of the charter, however, is a stronger elected executive who possesses veto powers over commission ordinances and resolu-

tions. A commission serves as the legislative body of the county with the authority to adopt county ordinances."

TEXAS – Spoke with Lonnie Hunt, Texas Association of Counties. Mr. Hunt stated that there is no statutory or constitutional home rule, and Texas counties may only do what is specifically allowed in either the constitution or statute. According to Mr. Hunt, counties are frequently having to get approval from the state legislature—e.g., if a county cannot find an enabling statute that allows them to do what they



need to they must petition the legislature. Mr. Hunt stated that while technically there is not supposed to be local legislation, most statutes (that relate to local issues) do apply to a single county through "clever" population guidelines. Mr. Hunt stated that there are sometimes constitutional amendments that relate to county issues, but it is not common, and they seldom apply to a single county. The example Mr. Hunt gave was if a county (or group of counties) wanted to abolish a constitutionally outlined county office (e.g. county treasurer) a constitutional amendment would be needed to allow the county to do this. Since the office is established by the constitution, an amendment is needed to abolish it. According to Mr. Hunt, this is the most frequent county related reason that a constitutional amendment would have to be passed. In general, Mr. Hunt stated that most other issues can be dealt with through statute. Also stated that

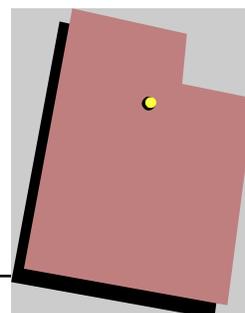
most legislators (who only meet for 6 months in even-numbered years) generally take the position of trying to carry forth the wishes of the county commissioners. According to Mr. Hunt, there has not been much advocacy for real home rule reform, however some have asked for counties to have greater zoning or planning authority (which is currently very limited).

From NACo, "The counties in Texas derive their powers from the state constitution and statute... The Commissioners Court's major powers and duties are executive and legislative in nature. These powers are granted in specific, limited terms. Counties have no home rule authority, charters, or other structural alternatives... The state constitution grants 15 specific powers to the Commissioners Court. In addition to these constitutional powers, the state legislature has granted other powers and duties to the court, which include building public roads and issuing bonds to finance specific functions stated in the legislation. In general, a county in Texas has limited powers and serves as an administrative arm of the state."

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UTAH – Spoke with Brent Gardner, Utah Association of Counties. Mr. Gardner stated that Utah has statutory home rule powers for counties. The process for a county to adopt home rule is outlined in statute, and requires a public vote before being adopted. Once adopted, Mr. Gardner characterized these home rule



powers as "limited." According to Mr. Gardner, 6 counties have opted for home rule. In those counties that have not, Mr.



Gardner stated that the courts in Utah had overturned Dillon's Rule (see *end note 1*)—except for with taxing authority—and now counties generally have “broad authority” and just go ahead and act without waiting for approval or clarification from the state legislature. The exception to this is in the area of taxing authority, where the legislature is more involved. Mr. Gardner stated there are no constitutional amendments for single counties or county issues, and that any constitutional amendment will relate to a statewide issue.

From NACo, “The counties derive their power from the state constitution and the Utah code...In addition to the Commission form, Utah offers its 29 counties five other structural formats: Expanded County Commission form, Executive and Chief Administrative Officer-Council form, County Executive-Council form, Council-Manager form, and Council-County Administrative Officer form.”

VERMONT – Spoke with Lori Vjornlund, Vermont Association of Counties. According to Ms. Vjornlund, most local governance in Vermont works on the town level, and there are 246 towns that have yearly town meetings to deal with municipal governance. Ms. Vjornlund stated that towns have statutory home rule powers, though there are some laws set out by the state legislature that towns have to follow.

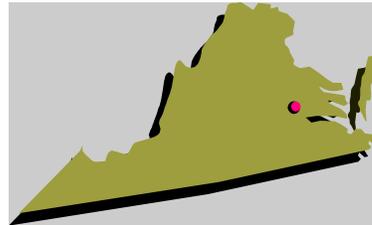
County government is mostly utilized for elections, while day to day governance happens on the town level. Ms. Vjornlund also stated that towns maintain their own government separate from the

legislature, though certain guidelines need to be followed. According to Ms. Vjornlund, the Vermont legislature only passes bills that can be applicable to all towns. Ms. Vjornlund also noted that constitutional amendments are statewide, and never required to deal with local issues.

From NACo, “Vermont's counties derive their power from the state constitution and statutes...Presently, all of the 14 counties operate under the County Court system, which consists of a superior judge appointed by the governor and assistant judges of the superior court, who are elected at large...Vermont does not have any county charter or home rule provisions, optional forms of county government, or a county administrator system.”

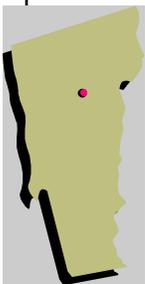
VIRGINIA – Email from Ted McCormack, Virginia Association of Counties. Mr. McCormack rote that, “There are two types of laws for localities passed by the legislature – general laws (requiring only a simple majority to pass) that affect all localities and special acts (requiring passage by two-thirds vote) that affect only a specifically named jurisdiction.” Mr. McCormack also wrote, “All 39 cities and 190 towns have charters – special acts that grant specific, sometimes broad, powers to each municipality. Often these powers are unique to the municipality...Counties, for the most part, operate under general law...Because of the Dillon Rule [see *end note 1*], municipalities must request amendments to their charters from the legislature. If a county wants additional powers, that also requires legislative approval...Back

in the 1950s, the legislature began granting powers to specific counties using population brackets...Geography is still used but generally only for three or more counties collectively described by regional planning area. At every legislative session, however, single counties seek additional powers or to have their names added to the list of counties that currently have specific authority through a special act. For the most part, they are successful...Some scholars say that Virginia counties enjoy more flexibility than localities in Home Rule states, and, with the exception of taxation, I agree...Because of Dillon Rule [see *end note 1*], if a county cannot find specific authority in state law for an ordinance, they generally have to request the authority from the legislature, unless they have a brave or adventurous local attorney who is a loose constructionist on the Dillon Rule. Generally, the authority they seek has been granted to another county by general law, so all they need to do is get their name added to the list in the



law...There are no county or municipal specific amendments to the Virginia Constitution. As noted above, the legislature is given authority to address local government concerns by either general law or special act.” Also sent link to an article related to home rule in Virginia, which can be found at <http://www.altdaily.com/blogs/news-blogs/politics-blogs/because-of-dillon-state-rules-over-localities.html>

From NACo, “Virginia's counties derive their power from the state constitution and code, which establish the legal framework for county





THE VOICE OF ALABAMA

ALABAMA CITIZENS FOR
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government and list the duties and powers of the governing bodies...In Virginia, the county depends on the legislature for authority to act. There is no provision for home rule and only three counties have charters...While charters bestow some powers, most local decisions must be approved by the general assembly."

WASHINGTON – Directed by the Washington Association of Counties to speak to someone at Municipal Research and Services Center of Washington, who directed me to documents that can be found on their website, www.mrsc.org

One such document was a report from November 2011 titled, "Knowing the Territory: Basic Legal Guidelines for Washington City,

County, and Special Purpose District Officials." It states, "Counties, cities, and special purpose

purpose districts are creatures of the state, exercising only powers delegated to them by the constitution and laws of the state...Charter cities incorporated under article 11, section 10 of the state constitution, code cities under Title 35A RCW, and charter counties under article 11, section 4 of the state constitution exercise a broader degree of self-government or home rule than do others."

From NACo, "Washington's counties derive their powers from the state constitution. Washington affords its 39 counties two structural options, Commission or Home Rule Charter status...Presently there are six Home Rule Charter counties...Washington's counties

serve as the administrative arm of the state and provide a diverse range of services such as public safety, judicial services, land use planning, road maintenance, and public health."

WEST VIRGINIA – According to "Home Rule in America: A Fifty-State Handbook," "West Virginia local governments have developed what has been characterized as a classic unitary relationship with their state government...The state government determines the functions, finances, and organizational structure of local governments. The state legislature has significant plenary power over the activities and affairs of local governments in the state has exercised it over time in a manner consistent with Dillon's Rule [see end note 1], which holds that all power resides with the state...Although

counties were initially viewed as primarily administrative, they have gained some additional authority and responsibilities as well as lost some major functional responsibilities. However, the state constitution continues to deny them home rule. Furthermore, the courts have continued to support the view that counties may exercise only those powers expressly granted to them by the state constitution and statutes. Those powers can be expanded or contracted at the will of the state. Currently, counties in West Virginia are able to exercise little initiative when confronting a problem or a demand for additional services, since they often lack the authority or financial resources to respond. Thus, the institutional capacity to govern West Virginia

counties is severely restrained by state government."

From NACo, "West Virginia's counties derive their powers from the state constitution, which provides for the creation of counties and their officers. The traditional Commission form, the only form permitted by the legislature, governs all 55 counties...Each county may submit an application to the state legislature for any county to reform, alter, or modify the county commission...West Virginia counties do not have available to them charter authority or home rule powers, although 33 counties have adopted the position of appointed county administrator...[County Commissioners] also have superintendence and responsibility for administration of the police, internal fiscal affairs of their counties, and authority to lay and disburse county levies...County Commissioners may exercise other powers and perform other duties, not

of a judicial nature, as prescribed by law."

WISCONSIN – Email from David Callender, Wisconsin Association of Counties. Mr. Callender wrote that, "As an overview, basically Wisconsin counties are primarily an agent of the state. Counties may only do what they are allowed to do or required to do by statute or the state constitution. They cannot do anything other than that...You are correct that Wisconsin counties have administrative and organizational home rule. This allows counties to determine the type of government structure they want...Counties do NOT have unlimited legislative authority. Ordinances enacted by counties only apply to towns and unincorporated areas, but not to





cities and villages...If something is mandated or prohibited by state law that counties need or want to do, then, yes, a change in statute

must be enacted by the Legislature and the governor...Generally, legislation affecting county powers is addressed through legislation and not by constitutional amendment. There would be nothing on the order of the amendments you mentioned in Alabama affecting any county in Wisconsin.”

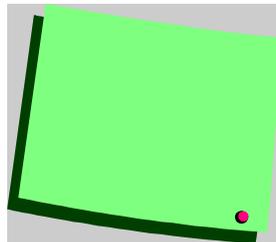
From NACo, “Wisconsin’s counties derive their powers from the state constitution and statutes...In 1985, counties were granted administrative and organizational home rule powers. According to Section 59.025 of the state statutes, every county may exercise any organizational or administrative power subject only to the constitution and an enactment of the legislature, which has a statewide impact and uniform affect on every county. County powers are still limited to those granted by the legislature, but administrative home rule provides counties with some flexibility in determining how their powers will be carried out.”

WYOMING – Spoke with Temple Stoellinger, Wyoming Association of Counties. Ms. Stoellinger stated that Wyoming has no home rule, and that all county powers must be delegated by the state. Ms. Stoellinger also stated that counties must act within the limits set by the state, which gives counties their missions. According to Ms. Stoellinger constitutional amendments would never

be used to grant or clarify county powers, it would be done through statute. Ms. Stoellinger also stated that there has not been much of a push for home rule or optional forms of county government, and that generally counties and the state “get along pretty well.”

From NACo, “Wyoming’s counties derive their powers from the state constitution and statutes. These provide for the creation of counties and their officers, while empowering the legislature to direct county goals...The board’s lawmaking powers are generally limited to enacting types of ordinances and regulations permitted by state law. The counties do not have available to them charter authority, home rule powers, or any other county alternative...Wyoming counties serve as an arm of the state by providing the following required services: the assessment of property, the collection of property taxes, the recording of deeds and other property documents, maintenance of rural roads, law enforcement, and the administration of electoral and judicial functions...Recently, there has been a tremendous growth of newer services performed by the county, not as an administrative arm

of the state, but as a more independent branch of local government.”



NOTES

1. Dillon’s Rule states that the powers of local government are limited to the express words of any grant of authority and necessarily implied or indispensable to the carrying out of the explicit power. As a matter of interpretation, then, under Dillon’s Rule, the validity of any exercise of power that doesn’t fall clearly within any express grant of local authority is subject to challenge.

2. Cooley doctrine is the principle that Congress has exclusive power under the commerce clause to regulate national commercial matters and that the states share this power, in the absence of federal preemption. With respect to local matters, the Cooley Doctrine can basically be explained as a contrasting legal theory that is more or less the opposite of Dillon, meaning it proposes local governments should have authority over their own affairs without needing a statutory grant of power from the state.



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