

## PUB 7580 STATE AND LOCAL GOVERNMENT

Spring 2024, Oakes Hall 207

Thursday, 3:35 – 5:10pm

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### Office Hours

I will hold drop-in office hours on Thursdays during the semester from 2:00 to 3:00 p.m. I am also available to meet by appointment, either in person or on Teams. Please email me to set up an appointment.

### Required Materials

Assigned readings are listed in the syllabus below. The reading is primarily drawn from Frug, Ford, Baron, and Anderson Local Government Law (7th ed. 202), abbreviated here as FFBA. This book will be supplemented with materials located on the Modules link of the Canvas class website. I may issue an updated version of this syllabus to account for the pace of our discussions and final reading assignments.

### Evaluation

**Class participation.** As a small-size class, class participation will greatly contribute towards the final grade.

**Response papers.** Each student will be required to submit FOUR response papers of approximately 5 pages each. You can pick which weeks you would like to submit a response paper. Response papers will be due via email by 11:59pm Wednesday night, the night before class.

**Optional alternative - longer paper.** If any of you would like to do a longer research paper project (e.g. ~20 pages or more), you may do so in lieu of the response papers. If you pursue this option, please get in touch with me to discuss possible topics by Feb 8. We will discuss topics, and a reasonable timeline for your paper. I am available to work with you on independent research projects.

### Class Commitments

**Attendance.** Students should plan to attend class regularly. If there is an emergency or a personal situation that might affect your attendance and your ability to keep up with the material, please get in touch. The attendance policy is explained in more detail in the Vermont Law and Graduate School Student Handbook §II(A). Failure to attend class will have a detrimental effect on your understanding of the material and your grade. It could also result in a grade of F-Wd.

**Participation and engagement.** This class depends on everyone’s willingness to engage with one another and participate. I strongly encourage each of you to come to class with questions, comments, and reactions, and to engage with one another’s points throughout our discussions.

For those of you who seek an alternative or supplemental mode of participation, I welcome you to share interesting materials that are directly relevant to our class. These might include: newspaper, magazine, blog, or scholarly articles; artwork, plays or literature; pieces of music; or other materials. Please use the Canvas link titled “Discussions” and post your materials into the most suitable sub-folder.

**Mutual respect and consideration.** We will be engaging some contentious questions over the course of the semester. I ask all of us to engage in these discussions in a spirit of shared respect and consideration for the different life experiences and viewpoints represented in the room.

**Recording and accommodation.** All materials (written and recorded) in this course, including those on the course website, are copyrighted. This also includes any recording of the class by the professor, any student, or any other person. These materials are only for the use of the individual student enrolled in this course and may not be reproduced or distributed without the express written consent of the professor.

If you would like to request accommodation, please review our Disability Policy at Vermont Law and Graduate School at: <https://www.vermontlaw.edu/community/students/academic-success/accommodations>. If you have questions, please make an appointment with Dean Ryan.

## Syllabus & Assignments

This syllabus provides an overview of the major topics and readings we’ll cover during the quarter. I may issue an updated version of this syllabus to account for the pace of our discussions and final reading assignments.

Date	Topic	Readings & Assignments	
1/18	Economic, Democratic, and Egalitarian Theories of Local Power	-FFBA 1-23 (Calvino, Tocqueville (skim), Madison (skim), <i>Romer</i> )  -FFBA 99-120 (Calvino, Tiebout, Nozick, Buchanan, Michelman, Young)	-In preparation for class, think about the descriptions of local power from these theorists. Do they resonate with your views and experience? Be prepared to discuss your understanding of these theories and counterarguments for them.  -As you take notes on these cases, put yourself in the place of a local official. What advice for governing would you take from each theorist?
1/25	The Forms of Local Power: Cities, Counties, HOAs, CIDs, Special Districts	-FFBA 64-89 (Ellickson, McKenzie, Miller, Ball v. James)	-This material is a practical introduction to the complex landscape of local governments, but it is also a chance to start observing a deeper question: Are local governments public or private entities? What kinds of

			rules push them in one direction or another? In what ways are Miller’s “cities by contract” more “private” than a historic city like Los Angeles? In what ways are they not?
2/1	The City-State Relationship as a Matter of Federal Law and State Law	-FFBA 127-40 ( <i>Hunter, New York, Barron</i> )  -FFBA 140-143 (Dillon), 149-55 ( <i>Olesen, Abbott Labs, Morris</i> )	-Consider how these major cases (plus Romer) portray local government power as defined by the U.S. Constitution and federalism.  -Dillon’s rule is best understood as a rule of statutory construction for reading state laws. What is that rule, in your own words? -Abbott Labs and Morris’s article introduce you to a powerful tool of local government authority in California, Bus. & Prof. Code, § 17200 et seq. What does this law allow some local governments to do? What’s the argument for empowering LGs in this way?
2/8	Home Rule Power: Initiative & Shield	-Initiative: FFBA 155-59, 168-173 ( <i>Intro, New Mexicans for Free Enterprise</i> )  -Shield: FFBA 175-187 ( <i>New Orleans Campaign, Telluride</i> )  - FFBA 244-247 (National League of Cities, Principles of Home Rule for the 21st Century)	- After reading the NLC Principles, revisit the earlier cases to more closely observe what problems the NLC authors are trying to solve. If a state adopted these principles, how might these cases come out differently?
2/15	State Preemption	-Old preemption: FFBA 195-205 ( <i>Holt’s Cigar, AFS v. Oakland</i> )  - New Preemption: FFBA 205-219 ( <i>Florida Carry Inc., Briffault</i> )	-If you were “operationalizing” these cases for yourself as a future lawyer for a city government, what method would you use for analyzing preemption? Look back at Telluride for this purpose as well.  -As you read Florida Carry, look for examples of the “new preemption” features that Briffault describes.
2/22	The City-Federal Relationship	-FFBA 247-264 (Nat’l League, Garcia, Printz), 268-272 (Lead-Deadwood), 285-290 (Note)	-Notice ways that the federal government works within and works around state law to direct

		-FFBA 314 (Calvino)	local governments. We will not have time in class to undertake a deep analysis of the background federalism principles here; instead, focus on the mechanics of federal lawmaking here and the major arguments to block or permit federal law.
2/29	Cities and their Suburbs	-FFBA 342-371 (Jackson, Jackson, Ford, Mumford, Baxandall, Weir)  -FFBA 28-30 (City as a Public or Private Entity)  -FFBA 60-64 ( <i>Mazdabrook</i> )	-Think back to Nozick and our other Class 1 readings as you engage with the first group of theorists, <i>Mazdabrook</i> , and the public/private entities question. Should we think of general purpose municipal governments as public or private, and what flows from that distinction? Should we think of them as reflections of the consumer preferences of their residents, or as local delegates of the state police power?
3/14	City Formation & Annexation	-Incorporation: FFBA 378-393) (Briffault, Miller, Lang, Bd of Supervisors) -Annexation: FFBA 433-444 -Secession & Dissolution: FFBA 444-462 ( <i>City of Herriman</i> , Note, Taylor et al, Anderson)	-What kind of rules of incorporation and annexation reflect a more privatized view of municipalities? Which rules and policies make them accountable to state or regional interests?  -Incorporation is often used as a defense to annexation. Why might states give or withhold the power for an annexing municipality to override a defensive incorporation?  -Think back to <i>Hunter v. Pittsburgh</i> . What voting rules were at play in that case?  -Secession and dissolution are making a comeback in the US right now. Here too, what kinds of rules for secession favor self-determination/private power?
3/21	Race and Class Segregation	-FFBA 462-481 ( <i>Arlington Heights, Mt. Laurel</i> , Note), 483-496 (Cashin, Ford, Note)	-These cases consider circumstances where individual federal and state constitutional rights might serve as a check on

			<p>local power. In what circumstances do individual rights overcome local authority? Where do they fail to do so? Why?</p> <p>-Read Mt. Laurel as if you were a city attorney for that town. What arguments would you make on behalf of your zoning laws, without resorting to racist or classist arguments? Now reconsider Mt. Laurel as if you were a city attorney for the high-poverty city of Camden nearby. What are you and your constituents' interests in this case?</p>
3/28	Regional Planning, Regional Government, and Regionalized Fair Housing Laws	<p>-Skim FFBA 578-604 (Rusk, Note, Weir, Frug)</p> <p>- FFBA 937-939 (<i>DeVita v. County of Napa</i>)</p> <p>- FFBA 481-483 (<i>Urban Habitat v. Pleasanton</i>)</p>	<p>-Assemble a list of the problems resulting from the local exercise of police powers (as discussed in the prior class). With today's readings, build on that list and identify some of the proposed legal solutions to those challenges.</p> <p>-Are you from Portland, Minneapolis, Miami, or St. Louis? If so, please help update and bring the regional governments readings to life.</p>
4/4	Local Governments Financing	<p>-FFBA 703-709 (<i>Nordlinger, Schwartz</i>), 712-719 (Reynolds, Frug &amp; Barron, TIF)</p> <p>- Skim LAO, "An Initial Look at Effects of the COVID-19 Pandemic on Local Government Fiscal Condition" <a href="#">LINK</a></p> <p>-Play around with the Lincoln Institute of Land Policy's state-by-state visualization tool for local finance. <a href="#">LINK</a></p>	<p>-Use the general readings in FFB to get your bearings on local finance, then drop down into one state to see the mechanics with more specificity. I know we're not in California, but the LAO overview slide deck is particularly handy for seeing one big state's legal changes that have affected local funding. It gives you a sense of the chronology of major tax control laws and reforms (like realignment). Take some notes on COVID-19 budget impacts as well, which will give you an even stronger sense of where LGs get funding and the kinds of transactions they rely on.</p>

			- Using the Lincoln Institute of Land Policy's visualization tool, research the property tax system in your home state (or another state of interest).
4/11	Local Governments as Regulators	-FFBA 630-637 ( <i>Belle Terre</i> ), 646-650 (Note), 657-668 (Warner, Ford), -FFBA 674 ( <i>Calvino</i> )	-This class is our chance to look squarely at local governments' power over land use and how it can generate outsized influence beyond their boundaries.
4/18	The Local and the Global	-FFBA 830- 836 (Sassen), 843-853 ( <i>Kelo, Kaur</i> ) -FFBA 879-884 ( <i>Lozano</i> ), 892-894 (Su)	- How do cities evolve in the era of globalization? What are the legal opportunities and challenges that local governments face on those matters?
4/25	TBD		