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CASES AND MATERIALS ON
STATE AND LOCAL
GOVERNMENT LAW

Seventh Edition



Richard Briffault, Laurie Reynolds

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CASES AND MATERIALS ON
**STATE AND LOCAL
GOVERNMENT LAW**

SEVENTH EDITION

■ ■ ■

By

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610 Opperman Drive
St. Paul, MN 55123
1-800-328-9352

Printed in the United States of America

ISBN: 978-0-314-18361-3



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To Mrs. P, O, and J, R.B.
To my three Loves, L.R.

*

PREFACE

This is an exciting time to study state and local government law. The federal system as a whole is in ferment, and states and local governments are playing a large and growing role in providing public services, in regulating private economic activity, and in addressing controversial social questions. States and localities are experimenting with new forms of service delivery, new institutional structures, new means of raising money, new types of interlocal arrangements, and new public policies. They face a host of difficult challenges, including problems of interlocal inequality, assuring democratic accountability, and addressing the problems of metropolitan regions. Lawyers will continue to play crucial roles in this complex process—drafting legislation, litigating cases, and advising clients, as they help individuals, community organizations, firms, and governments negotiate the increasingly complex world of state and local government law.

Building on its predecessors, the Seventh Edition of our casebook will provide law students with a knowledge of the legal doctrines, institutions, processes, theories, and analytical tools that will enable them to succeed as state and local government lawyers. Like its predecessors, this edition is founded on the authors' belief that the study of state and local government law requires an understanding of case law, of the often-conflicting theories and normative concerns that have driven the development of that case law, of the distinctive institutions that mark the state and local sphere, and of the real-world problems that state and local governments face. This edition will continue to provide students with a critical introduction to the many important functions performed by states and local governments, and to the role that law and legal institutions play in structuring state and local activities and promoting effective and accountable governance at the state and local level.

The Seventh Edition closely resembles the Fifth and Sixth Editions in both content and style. However, the many changes that continue to reshape, and roil, the field are well-reflected in this new edition, from the question of second-home voting in local elections (in Chapter III); to the local role in such controversial social policy areas as gay rights and same-sex marriage, gun control, tobacco and fire-arm regulation and the living wage (in Chapter IV); to new state efforts to come to grips with school finance reform and urban sprawl (in Chapter V); to new controversies over local order maintenance

ordinances (in Chapter VII); to the latest Supreme Court decisions concerning federalism (in Chapter VIII).

Chapter I provides both an important analytical framework for understanding the often bewildering variety of local governments in our system and an introduction to the longstanding constitutional, political, and legal debate which has framed many of the central issues of local government law: the question of which level of government should undertake which functions, and what issues and concerns need to be considered in order to answer that question. Drawing on both classic sources like Madison and Tocqueville and contemporary legal scholars, Chapter I provides a stimulating foundation for the study of such legal questions as local government formation and annexation, home rule and state-local conflicts, interlocal relations and regional governance, and state and local finances and services. This chapter also analyzes state constitutions and the differences between the federal and state constitutions. This section will be a useful basis for study of the role state constitutional law plays in shaping many of the issues considered in later chapters.

Chapter II examines the federal constitutional status of local governments. At a time of renewed and intense Supreme Court attention to federalism, the constitutional position of local governments is of great importance. Indeed, the Court's views of local government have produced constitutional decisions in areas of great local concern, including land use and education. The Court's cases also provide a useful pedagogical device for examining the conceptions of local government that have been central to our legal system. All of local government law has been shaped by the multiple and, at times, conflicting visions of local government as arm of the state, as local democracy, and as quasi-proprietary firm. As we indicate, these different visions have shaped, and are captured by, the Supreme Court's application of the one person, one vote doctrine to local governments. This chapter, thus, has the additional benefit of providing an analysis of the structure of political representation at the local level.

Chapter III addresses local government formation and boundary change. It provides students with an understanding of the significance of the creation or expansion of a new local government, both for local residents and for residents of the surrounding area. At a time of rapid population growth and accompanying boundary issues in many metropolitan areas, this chapter offers a nuanced examination of the many legal, fiscal, social, and institutional concerns that go into the vitally important questions of local government formation and boundary change.

Chapter IV examines state-local relations, with particular attention to local home rule. It includes several new cases and notes that enable students to consider the connection between local home rule and the authority of local governments to experiment with innovative policies in a range of controversial areas. The final section distills many of the complex issues presented when questions of local power and state-local conflicts arise into a succinct and useful study aid.

Chapter V examines interlocal relations and metropolitan area problems. At a time when urban sprawl, deteriorating regional infrastructure, interlocal conflicts, interlocal differences in the financing quality of basic services like education, and regional governance are hotly debated across the country, we believe that a state and local government law book must give the legal issues that frame these questions greater attention. Chapter V considers a wide range of recent cases, statutes, institutional innovations and legal and social writings concerning interlocal conflicts, interlocal cooperation, the possibilities of metropolitan area regional governance, state approaches to the problems associated with sprawling development in metropolitan areas.

The treatment of state and local finance in Chapter VI includes a number of new, cutting-edge issues. Longstanding state constitutional public purpose requirements have been increasingly challenged by state and local economic development programs that provide direct aid to private enterprises. Voter initiatives and other state constitutional innovations have imposed new legal restrictions on state and local taxation and debt. The ever-rising demand for state and local services, however, has sparked the creation of a host of revenue-raising and borrowing devices, and expanded the role of special districts and public authorities in order to avoid those constraints. This point-counterpoint of restriction and evasion has generated an extensive body of challenging case law, and has proved to be of vital importance to the financing of state and local governments at a time when states and localities have taken on an even greater role in providing public services.

Building on Chapter VI's treatment of the financing of state and local government, Chapter VII turns to the business of government. These include the legal obligations that attach when government provides services, such as tort liability, the rights and regulation of local public employees, and the possibility of privatization. It also gives new attention to the fundamental questions of when government is obligated to provide services, and of how norms of equal treatment apply to service delivery. Chapter VII also looks at the scope of local regulatory authority by examining some of the constitu-

tional constraints that apply to one of the most important manifestations of the local police power—the maintenance of public order.

Finally, Chapter VIII situates states and local governments in the federal system. It provides a new and significantly expanded treatment of the role of federalism in our constitutional order, with specific attention to both “vertical federalism,” that is, the relationship between the federal government and the states, and “horizontal federalism,” or the impact of our federal system on interstate relations.

The authors of the Seventh Edition are indebted to numerous individuals who contributed to the preparation of this edition. Professor Briffault thanks several generations of Columbia Law students for their assistance in developing his thinking about state and local government law; Columbia Law School for its generous administrative support; and his research assistant Adrian Rodriguez for his particular help with the Seventh Edition. Professor Reynolds wishes to thank Pat Estergard for many hours of secretarial assistance, always given with a smile; her research assistants Lauren Waidzunus and Mike Halpin; and the many other students who contributed, either with their research assistance or as members of the classes in which earlier versions of these materials were tested.

RICHARD BRIFFAULT
LAURIE REYNOLDS

November 2008

ACKNOWLEDGMENTS

The authors gratefully acknowledge the generosity of the following authors and publishers. They have allowed us to reprint portions of their work in this book. The works are listed here in alphabetical order by last name of the first author.

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