

LOCAL GOVERNMENT LAW

CASES AND MATERIALS

Fourth Edition

Gerald E. Frug
Richard T. Ford
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LOCAL GOVERNMENT LAW

Fourth Edition

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Introduction

Studying local government law requires thinking about the organization of American government: how much decentralization of power is possible — and desirable — in the United States? Given the way that decentralized power is now being exercised by local governments in metropolitan regions throughout the country, one could frame this question in more specific terms: can governmental power be decentralized without creating and perpetuating inequality within and between local jurisdictions? Or, put differently, how can power be decentralized in a way that would overcome existing inequality?

Decentralization has always been a controversial topic in American political life. Many people, both on the right and the left of the American political spectrum, argue that decentralization of power is an essential and increasingly threatened ingredient of political freedom. Genuine democratic self government, they claim, is possible only on a local level because only local government is close enough to its constituents to permit their own participation in the decisionmaking that affects their lives. Moreover, only a local government can tailor its policies to the needs and desires of a particular community. Others, however, defend the long-standing effort in the United States to increase the power of state governments over cities and to increase the power of the federal government over both states and cities. Centralization, they contend, is necessary to regulate the effects of local decisionmaking on outsiders, to minimize conflicts between local policies, to overcome inter-jurisdictional inequity, and to prevent the invasion of minority rights.

Local government law is one of the ways in which the legal system resolves this debate between proponents of decentralization and centralization. The constitutional provisions, statutes, and cases reproduced in this casebook not only raise but seek to answer critical questions about the proper organization of governmental power: Should local government law embody a view of society that favors the decentralization of power? If so (or if not), how is the term “decentralization” defined? What specifically can (and should) be done to change the balance of power among federal, state, and local governments?

To examine the answers offered by local government law to these questions, this casebook is organized into four parts. Chapter One introduces the basic arguments for and against the decentralization of power that pervade the cases and materials found in the rest of the casebook. It also introduces the complexities involved in making a public/private distinction when power is decentralized in America — not just to cities, local public authorities, business improvement districts, and charter schools but also to homeowners associations and shopping malls. Chapter Two

then addresses the question of the relationships between cities and states and between cities and the federal government. Since local governments are subject to the exercise of both state and federal power, the extent of their authority depends in large part on how this centralized power is exercised. Chapter Two thus focuses on important state law concepts, such as home rule, and on issues of federal constitutional law, such as the recent effort by the Supreme Court of the United States to limit federal power over both cities and states.

Chapter Three shifts the subject of inquiry to the problem of inter-local relationships. Because American metropolitan areas are divided into dozens (sometimes hundreds) of separate cities, decentralization of power requires an allocation of responsibilities not only between cities and higher levels of government but also among neighboring cities. Chapter Three focuses specifically on the relationships between central cities and suburbs located in the same metropolitan area and among the suburbs themselves. It examines critical issues such as race and class segregation, inequalities of wealth, and sprawl. In doing so, it deals not only with the current legal rules that determine the nature of these relationships but also with possible changes in the existing legal structure, such as regional solutions to city-suburb conflict. Finally, Chapter Four investigates the legal relationship between city governments and their constituents. The quality of life of most Americans is significantly affected by the exercise of city power: by the ability of cities to determine the community's character through zoning and community economic development, by the ways in which cities raise revenue and deliver city services, and by the allocation of the right to vote in local elections. Chapter Four addresses issues such as these and, by doing so, examines such cutting edge urban issues as the privatization of governmental services, crime control mechanisms ranging from community policing to private security guards, school vouchers, and the transformation of areas of major central cities into urban theme parks.

This casebook, in sum, concentrates on three relationships: between cities and higher levels of government, between neighboring cities, and between cities and the people who live within their boundaries. The problems engendered by these three relationships are the basic ingredients of local government law, and the ways in which these ingredients interact helps determine the extent to which current local government law rules generate — or help to overcome — inequality.

An example of what we have in mind when we say this might be helpful. Consider two legal powers discussed below in Chapter Three: the state-granted power given many American local governments to engage in exclusionary zoning and the additional power states grant them to spend the money they raise in property taxes solely on their residents. The first of these powers allows cities to design what their communities looks like and, by doing so, has enabled them to determine the types of residents that will inhabit them. The easiest way to achieve such a goal is to specify the kind of housing that will be permitted in the city and to do so in a way that makes it very expensive: limiting housing to single-

family residences, requiring large lots on which they can be built, increasing the amount of space between houses, and so forth. If no apartments or houses suitable for the poor are allowed, the poor are not able to move to town. The town can therefore become what is often called an “exclusive” community. This zoning power is then accompanied by the second important legal power just mentioned: the ability of residents to treat the property within their city limits as their own property — as a resource that can be used to support the people who live within city boundaries and no one else. Since local government financing is largely dependent on the property tax in the United States, prosperous communities, once they exclude the poor, can therefore support their services in a much more lavish way than can their poorer neighbors. Indeed, if their property is worth a lot, they can raise a lot of money even with a low tax rate. In cities with low property values, on the other hand, it is impossible to raise much money even if the tax rate is very high.

For many, these two rules create a legal structure that allows people to govern themselves. By delegating these powers to local residents, the states enable them to fund their own governments and create the kind of community in which they would like to live. This perspective has considerable influence; that’s why most states have enacted these two rules. From this perspective, an effort to redistribute local taxes to neighboring communities would be seen as an attempt to reallocate the wealth. And an effort to limit the exercise of the zoning power would be viewed as inviting centralized control over the character of one’s own community. Besides, advocates of these rules might add, by allowing each community to offer prospective residents a package of services, priced through taxes at a certain level, neighboring cities can compete with one another and thereby enable a mobile citizenry to choose the package they prefer.

For us, however, as for many others, these two legal rules do as much to limit local power as to protect it. Together, they fuel suburban sprawl. They enable the wealthy to move to an area that excludes the poor and then spend the money raised in taxes only on themselves. Indeed, those who can afford to move across city lines can dramatically improve their life simply by leaving other people behind. Some people move to wealthy communities, if they can afford it, simply to save the money that they would have spent on the poor had they remained in a class-integrated jurisdiction. As the wealthy move to their suburbs with this cost-consciousness in mind, taking their resources with them, the cities they abandon begin to decline. As a result, people in the middle class move to their own suburbs and exclude those poorer than they are, and the central cities decline even further. In short, these two legal rules create a sprawl machine — they create a legally-generated incentive to move out of town. By offering this legally-generated incentive, they disempower the cities left behind.

The materials in all four chapters are designed to investigate how this sprawl machine is constructed by legal doctrine and the kinds of changes that could be made in legal rules in order to produce a different, more equitable, metropolitan design. They are also designed to question whether moving to a more equitable metropolitan design requires us to

give up on decentralization. Could a change in the design of this sprawl machine promote local power rather than limit it? If so, what would such a change look like?

As this example illustrates, the selection and organization of topics and materials in this casebook — like in any casebook — represent only one of the many possible ways to define the relevant subject matter. Some topics have been omitted that could well have been covered in a local government law course, and others have been included even though no one before us has thought them essential. Although this kind of partiality exists in all casebooks, we want to encourage readers of this casebook to be mindful of our prejudices. Question why the materials are presented in the way they are, and consider what kinds of issues and perspectives have been omitted. We have sought to emphasize the relevance of our partiality in this casebook by including a number of excerpts from our own published work. We believe that this form of presentation alerts readers to the fact that our discussion of an issue is not the only possible way to understand it. We expect these excerpts from our work to be read critically; they are included not only to persuade but also to provoke thinking about the subject.

This casebook also includes a number of excerpts from books and articles dealing with questions of political theory, urban history, urban sociology, urban economics, and geography (as well as a few excerpts from a work of fiction). These excerpts are designed to introduce the reader to nonlegal materials that illuminate and are illuminated by legal doctrine. We have included relatively substantial excerpts from these works in the belief that local government law can be understood only in the context of the historical development of cities in America and in terms of the variety of non-legal theories that the legal doctrines governing city power have relied on and incorporated. Not only are non-legal materials scattered throughout the casebook but a special section of each chapter of the casebook is devoted entirely to democratic theory. These sections are designed to suggest criticisms of the conceptions of democracy found in local government law and to offer ways of thinking about alternatives to these conceptions. To evaluate the possible ways of decentralizing power in America, it is important to understand not only the versions of democracy that the law has embraced but also the versions that, although possible, the law has rejected.

Finally, we need to make a technical point about the presentation of the materials. Citations and footnotes have been omitted from both the cases and the work of commentators and concurring and dissenting opinions have been omitted from the cases without specifically noting these omissions. When footnotes are included in the materials, they retain the original numbering.

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- Public Choice for excerpts from James Buchanan, *Principles of Urban Fiscal Strategy*, XI Public Choice 1 (1971)
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- Alfred A. Knopf, Inc. and Robert A. Caro for excerpts from Caro, *THE POWER BROKER*, copyright © 1974 by Robert A. Caro
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- Gregg Easterbrook and the Fannie Mae Foundation for excerpts from Gregg Easterbrook, Comment on Karen A. Danielson, Robert E. Lang, and William Fulton's "Retracting Suburbia: Smart Growth and the Future of Housing," *Housing Policy Debate* 10(3): 541-547
- Peter Eisinger and Sage Publications for excerpts from Peter Eisinger, *The Politics of Bread and Circuses*, 35 *Urb. Affairs Rev.* 316 (2000)
- Robert Ellickson and University of Pennsylvania Law Review for excerpts from Robert Ellickson, *Cities and Homeowners Associations*, 130 *U.Pa.L.Rev.* 1519 (1982)
- John Findlay and the University of California Press for excerpts from John Findlay, *MAGIC LANDS: WESTERN CITYSCAPES AND AMERICAN CULTURE AFTER 1940*, copyright © 1992 The Regents of the University of California
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- Stanford Law Review for excerpts from Richard Ford, *Geography and Sovereignty: Jurisdictional Formation and Racial Segregation*, 49 *Stan. L. Rev.* 1365 (1997)
- Michigan Law Review for excerpts from Richard Ford, *Law's Territory (A History of Jurisdiction)*, 97 *Mich. L. Rev.* 843 (1999)
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- Audrey McFarlane and the Brooklyn Law Review for excerpts from Audrey McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 Brooklyn L. Rev. 861 (2001)
- Evan McKenzie and Yale University Press for excerpts from Evan McKenzie, *PRIVATOPIA*, copyright © 1994 by Yale University
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- Jamin Raskin and University of Pennsylvania Law Review for excerpts from Jamin Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 *U.Pa.L.Rev.* 1391 (1993)
- Laurie Reynolds and the Florida Law Review for excerpts from Laurie Reynolds, *Taxes, Fees, Assessments, Dues, and the "Get What You Pay For" Model of Local Government*, 56 *Fla. L. Rev.* 373 (2004)
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- William Simon and the Wisconsin Law Review for excerpts from William Simon, *The Community Economic Development Movement*, 2002 *Wisc. L. Rev.* 377
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- The University of Chicago Press for excerpts from Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 *J. Pol. Econ.* 416 (1956)
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Table of Cases

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- Abbott v. Burke, 119 N.J. 287, 575 A.2d 359 (N.J.1990), 454
- African American Legal Defense Fund, Inc. v. New York State Dept. of Educ., 8 F.Supp.2d 330 (S.D.N.Y.1998), 454
- Alden v. Maine, 527 U.S. 706, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999), 239, 275
- American Financial Services Ass'n v. City of Oakland**, 23 Cal.Rptr.3d 453, 104 P.3d 813 (Cal.2005), 227, **230**
- American Tel. & Tel. Co. v. Village of Arlington Heights**, 156 Ill.2d 399, 189 Ill.Dec. 723, 620 N.E.2d 1040 (Ill.1993), 733, **747**
- Arlington County v. White**, 259 Va. 708, 528 S.E.2d 706 (Va.2000), 139, **148**
- Arlington Heights, Village of v. Metropolitan Housing Development Corp.**, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977), 420, **422**
- Avery v. Midland County, Texas**, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968), 839, **840**
- Bagford v. Ephraim City**, 904 P.2d 1095 (Utah 1995), **758**
- Ball v. James**, 451 U.S. 355, 101 S.Ct. 1811, 68 L.Ed.2d 150 (1981), 57, **74**
- Bannum, Inc. v. City of St. Charles, Mo., 2 F.3d 267 (8th Cir.1993), 630
- Belle Terre, Village of v. Boraas**, 416 U.S. 1, 94 S.Ct. 1536, 39 L.Ed.2d 797 (1974), 616, **616**, 628, 629
- Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971), 815
- Board of County Com'rs of Bryan County, Okl. v. Brown, 520 U.S. 397, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997), 816
- Board of Ed. of City School Dist. of City of Cincinnati v. Walter, 58 Ohio St.2d 368, 390 N.E.2d 813 (Ohio 1979), 454
- Board of Educ., Levittown Union Free School Dist. v. Nyquist, 453 N.Y.S.2d 643, 439 N.E.2d 359 (N.Y.1982), 454
- Board of Estimate of City of New York v. Morris, 489 U.S. 688, 109 S.Ct. 1433, 103 L.Ed.2d 717 (1989), 414, 839, 845
- Board of Supervisors v. Local Agency Formation Com.**, 13 Cal.Rptr.2d 245, 838 P.2d 1198 (Cal.1992), 334, **343**
- Board of Sup'rs of Fairfax County v. DeGroff Enterprises, Inc.**, 214 Va. 235, 198 S.E.2d 600 (Va.1973), **439**
- Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001), 239, 275
- Boerne, City of v. Flores, 521 U.S. 507, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997), 239, 275
- Brookings, City of v. Winker, 554 N.W.2d 827 (S.D.1996), 629
- Brower v. State of Washington**, 137 Wash.2d 44, 969 P.2d 42 (Wash.1998), 864, **874**
- Buse v. Smith, 74 Wis.2d 550, 247 N.W.2d 141 (Wis.1976), 457
- Bush v. Vera, 517 U.S. 952, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996), 839
- Campaign for Fiscal Equity, Inc. v. State, 769 N.Y.S.2d 106, 801 N.E.2d 326 (N.Y. 2003), 454
- Campbell County School Dist., State v., 32 P.3d 325 (Wyo.2001), 454
- Cane v. Worcester County, Md., 35 F.3d 921 (4th Cir.1994), 849
- Cane v. Worcester County, Md., 847 F.Supp. 369 (D.Md.1994), 848
- Carrollton-Farmers Branch Independent School Dist. v. Edgewood Independent School Dist., 826 S.W.2d 489 (Tex.1992), 454
- Champoux, State v., 252 Neb. 769, 566 N.W.2d 763 (Neb.1997), 629
- Charter Tp. of Delta v. Dinolfo, 419 Mich. 253, 351 N.W.2d 831 (Mich.1984), 629, 631
- Chicago Nat. League Ball Club, Inc. v. Thompson**, 108 Ill.2d 357, 91 Ill.Dec.

- 610, 483 N.E.2d 1245 (Ill.1985), 160, 160
- Cincinnati Bell Tel. Co. v. Cincinnati**, 81 Ohio St.3d 599, 693 N.E.2d 212 (Ohio 1998), 227
- City of (see name of city)**
- Claremont School Dist. v. Governor**, 144 N.H. 210, 744 A.2d 1107 (N.H.1999), 454
- Claremont School Dist. v. Governor**, 142 N.H. 462, 703 A.2d 1353 (N.H. 1997), 474
- Claremont School Dist. v. Governor**, 147 N.H. 499, 794 A.2d 744 (N.H.2002), 454, 457
- Cleburne, Tex., City of v. Cleburne Living Center**, 473 U.S. 432, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985), 616, 622, 628, 631
- Coalition for Economic Equity v. Wilson**, 122 F.3d 692 (9th Cir.1997), 114, 115, 122
- Columbia, City of v. Omni Outdoor Advertising, Inc.**, 499 U.S. 365, 111 S.Ct. 1344, 113 L.Ed.2d 382 (1991), 277
- Columbia Falls Elementary School Dist. No. 6 v. State**, 326 Mont. 304, 109 P.3d 257 (Mont.2005), 454
- Community Communications Co., Inc. v. City of Boulder, Colo.**, 455 U.S. 40, 102 S.Ct. 835, 70 L.Ed.2d 810 (1982), 277
- Council of Organizations v. Engler**, 455 Mich. 557, 566 N.W.2d 208 (Mich.1997), 23, 51
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- Cuyahoga Falls, Ohio, City of v. Buckeye Community Hope Foundation**, 538 U.S. 188, 123 S.Ct. 1389, 155 L.Ed.2d 349 (2003), 864, 885
- Danson v. Casey**, 484 Pa. 415, 399 A.2d 360 (Pa.1979), 454
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- Dinan v. Board of Zoning Appeals of Town of Stratford**, 220 Conn. 61, 595 A.2d 864 (Conn.1991), 628
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- DuPree v. Alma School Dist. No. 30 of Crawford County**, 279 Ark. 340, 651 S.W.2d 90 (Ark.1983), 454
- Durand v. IDC Bellingham, LLC**, 440 Mass. 45, 793 N.E.2d 359 (Mass.2003), 733, 733
- Durant v. State**, 251 Mich.App. 297, 650 N.W.2d 380 (Mich.App.2002), 454
- Eastlake, City of v. Forest City Enterprises, Inc.**, 426 U.S. 668, 96 S.Ct. 2358, 49 L.Ed.2d 132 (1976), 863, 864
- Edgewood Independent School Dist. v. Kirby**, 777 S.W.2d 391 (Tex.1989), 455, 458, 470
- Education/Instruccion, Inc. v. Moore**, 503 F.2d 1187 (2nd Cir.1974), 550, 554
- El Dorado County, People ex rel. Younger v.**, 96 Cal.Rptr. 553, 487 P.2d 1193 (Cal.1971), 539, 541, 549
- Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati**, 128 F.3d 289 (6th Cir.1997), 114, 115, 128, 279
- Fair School Finance Council of Oklahoma, Inc. v. State**, 746 P.2d 1135 (Okla.1987), 454
- Fisher v. City of Berkeley, Cal.**, 475 U.S. 260, 106 S.Ct. 1045, 89 L.Ed.2d 206 (1986), 277
- Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources**, 504 U.S. 353, 112 S.Ct. 2019, 119 L.Ed.2d 139 (1992), 370
- Garcia v. San Antonio Metropolitan Transit Authority**, 469 U.S. 528, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985), 238, 239, 240, 246
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- Gonzales v. Raich**, — U.S. —, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005), 239
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- Hallie, Town of v. City of Eau Claire**, 471 U.S. 34, 105 S.Ct. 1713, 85 L.Ed.2d 24 (1985), 277
- Helena Elementary School Dist. No. 1 v. State**, 236 Mont. 44, 769 P.2d 684 (Mont.1989), 454
- Hills Development Co. v. Bernards Tp. in Somerset County (Mt. Laurel III)**, 103 N.J. 1, 510 A.2d 621 (N.J.1986), 437
- Hoke County Bd. of Educ. v. State**, 358 N.C. 605, 599 S.E.2d 365 (N.C.2004), 454, 458
- Holder v. Hall**, 512 U.S. 874, 114 S.Ct. 2581, 129 L.Ed.2d 687 (1994), 846
- Holmdel Builders Ass'n v. Township of Holmdel**, 121 N.J. 550, 583 A.2d 277 (N.J.1990), 437
- Holt Civic Club v. City of Tuscaloosa**, 439 U.S. 60, 99 S.Ct. 383, 58 L.Ed.2d 292 (1978), 350, 351
- Home Builders Ass'n of Northern California v. City of Napa**, 108 Cal. Rptr.2d 60 (Cal.App. 1 Dist.2001), 717, 730
- Hornbeck v. Somerset County Bd. of Educ.**, 295 Md. 597, 458 A.2d 758 (Md.1983), 454
- Horton v. Meskill**, 172 Conn. 615, 376 A.2d 359 (Conn.1977), 454