

Bibliography

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Municipal Law Institute 2018 Symposium
FEDERAL AUTHORITY, HOME RULE & FILLING THE EMERGING REGULATORY GAP
February 16, 2018

UC Hastings College of the Law – Alumni Reception Center (2nd floor)
200 McAllister Street, San Francisco, CA 94102

Co-Sponsors: The Municipal Law Institute of the League of California Cities / UC Hastings
College of the Law / The State Bar of California Public Law Section

EVENT DESCRIPTION

The U.S. Constitution grants limited powers to the federal government and reserves all other regulatory powers to the state and local agencies. The new Presidential Administration has imposed new and modified regulations and signaled changes in enforcement of federal law—both of which significantly impact local governments. In particular, executive orders from the Oval Office have changed federal policy related to the environment, international trade, and immigration. Some local agencies welcome the increased federal involvement, but most are concerned by the federal government's threats to withhold funds from a local government that does not comply with the new federal regulations.

The program will provide an in-depth exploration of the boundaries, as well as opportunities, of federal regulation of local government activities.

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Articles:

Bunch, Jaclyn. Does Local Autonomy Enhance Representation? The Influence of Home Rule on County Expenditures. 46 *State & Local Government Review* 106 (2014). <http://www.jstor.org/stable/24639164>

Abstract: This article examines the interactive role between institution type and ideology at the local governmental level, demonstrating that additional degrees of autonomy allow for meaningful policy decisions locally. With increased discretion over policy expenditures, autonomy enhances the opportunity for ideological representation of constituents.

Chemerinsky, Erwin. The Constitutionality of Withholding Federal Funds from Sanctuary Cities. 40 *Los Angeles Lawyer* 60 (2017).

<https://www.lacba.org/docs/default-source/lal-back-issues/2017-issues/april-2017.pdf>

Abstract: Coercion of local governments violates principles of federalism long advocated by the conservative justices on the Supreme Court. The federal government can use its agencies and agents to enforce federal immigration law however it chooses, but it cannot turn local governments into enforcement arms of the federal government.

Chemerinsky, Erwin and J. Forman, A. Hopper and S. Kamin, Cooperative Federalism and Marijuana Regulation. 62 *UCLA Law Review* 74 (2015). <https://www.uclalawreview.org/pdf/62-1-2.pdf>

Abstract: The ongoing clash of federal and state marijuana laws forces us to consider the preemptive power of federal drug laws and the appropriate roles for state and federal governments in setting drug policy. This conflict also creates debilitating instability and uncertainty on the ground in those states moving from prohibition to regulation of marijuana.

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Diller, Paul A. Reorienting Home Rule: Part 1 - The Urban Disadvantage in National and State Lawmaking. *77 Louisiana Law Review* 287 (2016). <https://digitalcommons.law.lsu.edu/lalrev/vol77/iss2/7/>
Abstract: This article explains how American legislative countermajoritarianism operates in a distinctly anti-urban way. The most obvious contributor to an urban disadvantage in lawmaking at the federal level is the Senate, whose egregious malapportionment disadvantages urban priorities by enlarging the influence of small- and rural-state policy preferences.

Diller, Paul A. Reorienting Home Rule: Part 2 - Remediating the Urban Disadvantage through Federalism and Localism. *77 Louisiana Law Review* 1045 (2017). <https://digitalcommons.law.lsu.edu/lalrev/vol77/iss4/8/>
Abstract: This paper explains why preemption of local initiatives is so common and also why it is often of questionable democratic legitimacy. This article then explores potential legal doctrines that might protect cities and underrepresented states from excessive preemption.

Elias, Stella Burch. The New Immigration Federalism. *74 Ohio State Law Journal* 703 (2013). <http://moritzlaw.osu.edu/students/groups/oslj/files/2013/12/6-Elias.pdf>
Abstract: There is a new "immigration federalism" with increased emphasis on states' and localities' opportunities to promulgate immigrant-inclusionary measures. This new immigration federalism, grounded in immigrant-inclusionary rulemaking, has the potential to inform, complement, and occasionally contradict federal efforts at comprehensive immigration reform.

Huntington, Clare. The Constitutional Dimension of Immigration Federalism. *61 Vanderbilt Law Review* 787 (2008). https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1181&context=faculty_scholarship
Abstract: Although the federal government is traditionally understood to enjoy exclusive authority over immigration, states and localities are increasingly asserting a role in this field. This article argues that the Constitution allows immigration authority to be shared among levels of government.

Owen, Dave. The Conservative Turn Against Compensatory Mitigation. *48 Environmental Law* ___ (2018). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3104011
Abstract: This essay considers the recent conservative turn against compensatory mitigation policies. Those policies allow environmentally destructive activities to proceed, but on the condition that regulated actors compensate by protecting or improving environmental conditions somewhere else.

Schragger, Richard. The Political Economy of City Power. *44 Fordham Urban Law Journal* 91 (2017). <https://ir.lawnet.fordham.edu/ulj/vol44/iss1/4/>
Abstract: Home rule reforms, national urban policy, and regionalism have failed to produce empowered cities. The author discusses three aspirational approaches to city power, each of which seeks to remake the existing legal and economic order by emphasizing the city's central role in political and economic life.

Schragger, Richard. The Attack on American Cities. *96 Texas Law Review* ___ (forthcoming, 2018). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3026142
Abstract: The last few years have witnessed an explosion of preemptive legislation challenging and overriding municipal ordinances across a wide-range of policy areas. This article provides a current accounting of state preemptive legislation and assesses the cities' potential legal and

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political defenses. It concludes that without a significant rethinking of state-based federalism the American city is likely to remain vulnerable.

Stahl, Kenneth. Preemption, Federalism, and Local Democracy. *44 Fordham Urban Law Journal* 133 (2017). <https://ir.lawnet.fordham.edu/ulj/vol44/iss1/5/>

Abstract: Though it is hardly unprecedented for states to preempt local legislation, the breadth and ambition of the recent preemption efforts have rarely been seen in American history. They are the result of a profound political realignment within many states that is having reverberations throughout our democratic system and undermining many assumptions about the nature of our democracy.

Su, Rick. Have Cities Abandoned Home Rule? *44 Fordham Urban Law Journal* 181 (2017). <https://ir.lawnet.fordham.edu/ulj/vol44/iss1/6/>

Abstract: Home Rule grants cities the power to act without state authorization. It also provides them with protections from state interference. The scope of these powers and protections have long been unclear. But, given recent events, one might assume that a renewed debate over Home Rule is fast approaching.

Trisolini, Katherine A. All Hands on Deck: Local Governments and the Potential for Bidirectional Climate Change Regulation. *62 Stanford Law Review* 669 (2010) <http://www.stanfordlawreview.org/wp-content/uploads/sites/3/2010/03/Trisolini.pdf>

Abstract: Many prominent environmental law scholars have dismissed the climate change plans of U.S. cities and other local governments, presuming that these efforts will have no more than a trivial effect on greenhouse gas emissions. This article envisions local governments as important players in a multilevel governmental effort that regulates greenhouse gas emissions from the bottom up and the top down.

Zerunyan, Frank Vram. The Evolution of the Municipal Corporation and the Innovations of Local Governance in California to Preserve Home Rule and Local Control. *44 Fordham Urban Law Journal* 217 (2017). <https://ir.lawnet.fordham.edu/ulj/vol44/iss1/7/>

Abstract: This article covers the history of the municipal corporation, California's Charter Law, the significance of sovereignty in municipal affairs, and uniform laws.

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https://www.americanbar.org/groups/state_local_government.html

American Legislative Exchange Council
<https://www.alec.org>

Institute for Local Government
<http://www.ca-ilg.org/>

International Municipal Lawyers Association
<http://www.imla.org>

League of California Cities
<http://www.cacities.org/>

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