**Home Rule in Alabama**

**Background**

For more than a decade, a debate has raged in Alabama over whether the state should scrap its 111-year-old constitution and adopt another one. While many changes have been made to reduce its length and remove outdated and racist language, the controversial topic of “home rule” remains.

Home rule is the extent to which local governments manage the resources at their disposal without being required to seek authorization from the state. The concept was first articulated in 1868 by Judge John Dillon of the Iowa Supreme Court[[1]](#endnote-1) and later upheld by the U.S. Supreme Court in 1907.[[2]](#endnote-2) According to “Dillon’s Rule,” local governments can exercise no more governing authority than state government permits.[[3]](#endnote-3) In his words:

*Municipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control*.[[4]](#endnote-4)

When Alabama’s Constitution was adopted in 1901, it stated in Section 44 that “the legislative power of the state shall be vested in a legislature, which shall consist of a senate and house of representatives,”[[5]](#endnote-5) but local governments were not given any authority at all. Because of this lack of power, the State Legislature makes decisions for counties and local governments, one at a time, through “local acts.” To make matters more confusing, constitutional amendments must regularly be passed by the entire state so that the Legislature may vote on local issues that they were originally prohibited from addressing by the 1901 Constitution. As a result of these rules, Alabama has the dubious honor of having the longest constitution in the world, with more than 35,000 local acts ensconced in it.[[6]](#endnote-6)

**Policy Considerations**

There are several ways Alabama could clarify and expand its existing home rule laws, each with its advantages and disadvantages.

Unlimited home rule.

In its purest form, unlimited home rule would allow local governments to make decisions about all local issues that are of no concern to the rest of the state. Local taxes could be raised or lowered, building restrictions could be eased or tightened, and zoning laws could be changed or established without having to wait for the state government to give its approval.

While advocates of unlimited home rule espouse the freedom it would provide, the practice of unlimited home rule is more complicated. The Alabama Constitution requires both the state government and local governments to have balanced budgets. Presently, the size of local government is limited because of the inability of counties and municipalities to raise revenues without state legislative approval. When local governments are able to unilaterally raise their own taxes, residents could find themselves subject to ever expanding local bureaucracies and tax burdens, in addition to those already placed on them by the state and federal government.

Another concern arises when local governments make poor fiscal decisions. Because local governments are subdivisions of the state government, the state may, in some instances, be held responsible for the debts and obligations created by local governments.

Limited home rule.

One way to expand home rule without some of the concerns associated with unlimited home rule is to carve out certain legislative areas from the consideration of local governments. Under this model, the State Legislature would retain jurisdiction over issues such as zoning and taxation, while ceding authority to local governments in other areas. Local governments would also be able to allocate and manage resources provided by the state and federal governments, allowing them to use them more efficiently and effectively. Periodically, the state would conduct audits to ensure that local governments were accountable for state resources, and to prevent the use of state money for personal political gain.

**Conclusion**

Regardless of how Alabamians resolve the issue of home rule, local governments need a clear delineation of their authority. Generations of legislation and constitutional amendments have resulted in a patchwork of power that confuses citizens and results in different treatment of local governments across the state. In order for the state to prosper, Alabama should adopt a uniform system of limited home rule that improves government efficiency without increasing the state’s exposure for local fiscal decisions or the burden of government that Alabamians already face.

**Box Points**

* Home rule is the extent to which local governments manage the resources at their disposal without being required to seek authorization from the state.
* Alabama should adopt a uniform system of limited home rule that improves government efficiency without increasing the state’s exposure for local fiscal decisions or the burden of government that Alabamians already face.

1. Clinton v. Cedar Rapids & Missouri River R.R. Co., 24 Iowa 455 (1868). [↑](#endnote-ref-1)
2. Hunter v. City of Pittsburgh, 207 U.S. 161 (1907). [↑](#endnote-ref-2)
3. Gene Owens, *Capital Has the Power in Alabama*, Mobile Press Register (Dec. 11, 1994), *available at* www.celdf.org/downloads/Alabama%20-%20Capital%20Has%20the%20Power.pdf. [↑](#endnote-ref-3)
4. 24 Iowa 455, 475 (1868). [↑](#endnote-ref-4)
5. Ala. Const. art. I, § 44. [↑](#endnote-ref-5)
6. Jim Williams, *Home Rule and the Alabama Constitution*, The Alabama Baptist (Nov. 10, 2011), *available at* www.thealabamabaptist.org/print-edition-article-detail.php?id\_art=21242&pricat\_art=10. [↑](#endnote-ref-6)