

Towns & Schools

New Jersey...and how it got that way: November

by Brett Avery
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SITUATION:The accumulated home-rule power of New Jersey's 566 municipalities and 611 school districts stymies efficient government at the state level.

CAUSE:Home rule was originally intended to protect the autonomy of entities such as school districts, municipalities, and counties from micromanagement by the state. Its spirit dates to the colonists' struggle against the British Crown, and the principle held even after the signing of the U.S. Constitution in 1787. A form of home rule initially worked reasonably well in rural states such as Maine, New Hampshire, and Vermont, which were controlled by one party. But New Jersey did little to adapt the principle as its population grew in the 1800s and political power split between primarily Democratic urban centers and Republican-controlled rural areas.

Even when the U.S. courts confirmed the hegemony of states over municipalities in decisions such as the 1868 decree known as Dillon's Rule, New Jersey protected local political prerogatives. The state Senate, for example, remained composed of one member per county. This arrangement eroded control of the state by its entire population because senators from rural counties could form a voting majority despite representing a tiny fraction of the state's residents.

New Jersey was one of only a few states retaining this kind of county representation in its upper legislature when the U.S. Supreme Court ruled in 1966 that such arrangements violated the principle of "one man, one vote." That decision brought about today's 40 legislative election districts, weakening the legal basis for home rule. Local control was further undermined by state Supreme Court decisions in succeeding decades on topics such as school funding (Abbott districts) and fair housing (Mount Laurel).

Still, home rule survives in the psyche of many New Jersey residents (where it has become "fossilized," according to one book on the state's municipalities). Politicians are leery of attacking this sacred cow, so Trenton has put forth few, if any, proposals on how the state and municipalities can better collaborate to provide essential services. New Jersey stubbornly ignores judicial reality as well as the fiscal consequences of preserving a needlessly large number of municipalities and schools.**HOW TO FIX:**

1. **CHANGE THE STATE CONSTITUTION.** No fewer than 39 bills calling for a constitutional convention have been filed in the Legislature since 2000. (One passed the Assembly in 2005.) Most of these measures didn't climb out of committee, but a majority of voters recognize the need: A Monmouth University/Gannett New Jersey Poll in October showed respondents favoring a constitutional convention by a 2-to-1 margin.

A constitution provides the framework within which a state operates. The current New Jersey document was enacted in 1947. (It was revised in 1966 as a reaction to the "one man, one vote" court decision.) Constitutional experts considered the 1947 document a model for other states. It transformed the office of the governor from one of the weakest in the nation to the very strongest by changing the term from a single three-year stint to four years with the possibility of re-election. The '47 document also reformulated one of the nation's most convoluted court systems—one that had been plagued with jurisdictional conflicts—into a clear structure that became a model for other states. And it added a general antidiscrimination clause, although without special protection for African-Americans and women.

The authors, however, did not foresee suburban sprawl, nor an emerging sense of statewide identity. The constitution was written five years before the opening of the Turnpike increased mobility and spawned countless "What exit?" jokes. But there was nothing funny about the way politicians bent home rule to justify simultaneously holding local and state jobs (a practice the Legislature finally outlawed this year).

People relocating to the state wonder why there are so many costly small municipalities (184 have fewer than 5,000 residents) and school districts (154 have fewer than 450 students, including 22 with none). The answer they're given? That's the way we've always done it, and change is fine—for other towns.

Surprisingly, home rule is not actually written into our constitution. Consider the crucial first sentence of Section IV: "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen." In the 1940s, when most schools performed well and taxes were low, that seemed an ideal promise. Even now, your district has a locally elected board that hires administrators, crafts a budget and is answerable to the community. But the above sentence says the responsibility for all schools falls on the state, not the localities. That means you, as a New Jersey resident, are also responsible for each of the other 610 districts. That was the state Supreme Court decree in its Abbott decisions beginning in the 1980s: the Legislature was not delivering the constitution's "thorough and efficient" promise to every school, especially those struggling to survive in the inner cities. Trenton pumped steadily larger amounts of money into underperforming Abbott districts and borrowed heavily while steadily decreasing aid to the other 585 districts. The latter, wedded to the idea of home rule, responded by raising property taxes. Finally, the Legislature called a special session



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last summer to examine property taxes.

But it's more than just schools. It's each municipality's police and fire departments and government hierarchies contributing to expenses. It's 566 communities with planning and zoning boards competing to woo businesses and providing tax breaks that thrill companies but don't provide the commensurate economic benefits and lead to other costly issues such as infrastructure upgrades (widened roads, etc.).

A constitutional convention could provide many avenues for reform, depending on its mandate (see chart). It could examine all the problems the Legislature has ignored or grudgingly addressed. It could examine taxation and spending. And it could provide one massive civics lesson so that residents finally understand how clinging to an antiquated vision of local control is bankrupting New Jersey and hindering its growth and prosperity.

2. ADOPT AN AUTOMATIC "CONVENTION CALL." Experts say many of the state's most significant problems could have been addressed in previous decades had a constitutional convention been called. More than a dozen states require periodic referendums on whether to call a convention. Hawaii holds such a vote every nine years; Michigan, every sixteen. Voters rarely approve them—since 1970 there have been only four, dealing with issues such as term limits and balanced budgets. But such a provision would give New Jersey voters the right to trigger a convention if they believed one was needed.

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