



Fairfax VOTER

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Dillon’s Rule in 2017 - How Much Does it Matter?

Once again, LWVFA is considering how Dillon’s Rule has affected, and may still be affecting (or not), Virginia localities and Fairfax County in particular. Long-time Leaguers are groaning, and newer Leaguers are saying, “What is Dillon’s Rule?” May’s article updates local governance trends and discovers some new wrinkles in this century-plus principle that Virginia follows. A lot has happened since 2004 - the last time the LWVFA published an in-depth article on the topic - and we would like 2017 to be the final installment. Let’s hope you find all your questions answered. One committee member, Therese Martin, has been writing about this since 1976 (!) and she says “No more; let’s concentrate on the issues and getting people to vote.”

Calendar

May 2017

- 1 *Fairfax Voter* deadline
- 2 Vienna Town Council elections
- 6 LWFVCA Annual Convention
- 6 **LWFVFA Briefing and At-Large meeting**
- 8-11 **LWFVFA unit meetings**
- 17 **LWFVFA Board meeting**
- 18 Burgundy Farms community election
- 20 McLean Community Center election
- 22 Voter registration deadline for the June Primary Election

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Presidents' Message



What a busy and exciting winter and early spring it has been! We now have approximately 350 members, and our new members are motivated and helping with exciting projects. Our focus for this month's letter will be voter registration and our High School Voter Pilot Project.

We thank the High School Voter Pilot Project team members Beth Tudan, Judith Helein, Sidney Johnson, Alison Symons, MaryBeth Davis, Dupelia Numa, Janice Yohai, Bob Meredith, and Ken Wheeler. Special recognition goes to new members MaryBeth Davis, Alison Symons, and Dupelia Numa, as well as Beth Tudan for writing and coordinating the project and to Sidney Johnson for augmenting on-line voter registration training sessions with in-person sessions at the Packard Center.

The team members have contacted school principals or social studies chairs at the pilot schools. In the initial contact, the team members have provided classroom sets of "Facts for Voters" and information about the Governor's Challenge in High School Voter Registration. The team members have also developed lesson plans for classroom presentations and voter registration. They have offered to register students at times that best meet the needs of the schools and the students: before or after school, during homeroom or lunch or class, or at senior events or sports activities.

In April, Beth Tudan, Maggi Luca, Judy Helein, and Peggy Knight met with Fairfax County and Fairfax City Office of Elections, and Inspire Virginia to discuss high school voter registration and education. They discussed what's working and what could be improved about high school voter registration, including the application process and what students need to know about in-person and absentee voting if they go away to college.

In addition, Sidney and the voter registration team have been busy. Since the gubernatorial primaries will take place June 13, there will be voter registration events on May 13 and May 20. You can volunteer through SignUp Genius or contact Bob Meredith, VoterRegistration@lww-fairfax.org or 563-299-5316.

Sidney Johnson and Peggy will be coordinating candidate forums this year and are looking for a few more good men and women to join those who have already volunteered in

various roles. If you would like more information or want to volunteer, go to <http://www.lww-fairfax.org/Volunteer.html> or contact Sidney at VoterServices@lww-fairfax.org.

All of these great activities require volunteer power and money. The community elections that LWVFA conducts are a key funding source. Please consider volunteering at one of the upcoming elections: McLean Community Center Election May 20 and Skyline Condominium Election June 14. To volunteer, go to <http://www.lww-fairfax.org/CommunityElectionVolunteers.html>, or contact Anne Thomas, CommunityElections@lww-fairfax.org.

Peggy and Wendy

Are You the One?

If you are the person who has the Fairfax League's "scrapbook" aka History Album, will you please take it to the League Office at the Packard Center. If you would like to keep it a while longer, please phone Bernice Colvard at (703) 978-3227. Thanks!

Domestic Violence Hotline
(703) 360-7273

LWVFA Fairfax VOTER 2016 - 2017

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or call 703-658-9150

LWVFA Members Ponder Enormity of Opioid Epidemic In America

By Diana Willers, Program Committee

In March LWVFA members tackled the opioid epidemic that is threatening our nation and communities. The excellent study by Sheila Iskra and Kathleen Pablo gave LWVFA unit groups ample issues to discuss and ponder. Here are our questions and comments.

All units found the enormity of the problem to be most surprising: more Americans died from drug overdoses—the preponderance of those (80%) being opioid-related—than from car fatalities, suicides, or gun deaths in 2015. The high percentage of Americans with pain issues leading to increasing, and often endless, legal prescriptions was startling to many members. The seeming complicity of drug companies and the medical community was also remarkable. Other factors that prompted comments were the cost of the opioid problem, the demographics of users, and the fact that Fairfax County authorizes only fire department responders to carry Naloxone.

Unit discussion groups raised many questions. They want more statistical data and analysis. Some units want further information on other countries' experiences and solutions in pain management and opioid usage. Many questioned the doctor's role and responsibility and queried the position of the American Medical Association. What other methods of pain management are condoned and encouraged by the medical community? We need more information regarding prescription databases. Are they kept by insurance companies? Why don't doctors utilize them more? Is patient privacy at risk? Some members wanted more information on the roots of this epidemic.

Units identified multiple factors that have contributed to the expansion of opioid usage and abuse in the U.S. The pain management "industry," which includes both Big Pharma and the medical community, was held most culpable. Pharmaceutical companies are considered blameworthy through aggressive, incessant advertising and courting doctors to prescribe more costly and addictive medications.

The medical community seems to be guilty of the following: doctors place heavy emphasis on drugs for pain management; doctors have too little time to correctly diagnose and counsel a patient; doctors accede to patients' desires without discussing the dangers of opioids; emergency rooms are too

willing to prescribe opioids; prescription registries are inadequate, resulting in "doctor shopping"; an increase in surgical procedures, and there isn't

inadequate post-

rehab follow up. Medicare was criticized for its generosity in paying for pain killers for the over-65 age group. Many acknowledged our society's failure to address the sociological issues, i.e., unemployment, time pressures, wealth (or lack thereof), growing belief of the right to be "pain free," and ease of availability.

The difficulty of opioid recovery produced deep and insightful discussions. Most units pointed to the painful and lengthy process, which translates into possible years of sustained support and increasing costs before a patient returns both mentally and physically to "normal." The support network of institutional organizations and family is often strained or absent, heightening the chances for relapse. Opioid addiction is often accompanied by additional issues that must be treated in order to alter the recovery/relapsing situation. The cost of recovery and lack of facilities/programs were highlighted by all but two units. Programs are expensive and time consuming. Heroin is much cheaper than rehabilitation. Many government rehabilitation programs are inadequately funded or suffer a scarcity of beds. Addiction can lead to loss of employment, loss of income, and a roadblock to future employment. In Europe a successful recovery drug, Naltrexone, is used but is considered too expensive in the U.S.

The high and rising cost of Naloxone generated numerous possible solutions by members. The majority felt government, both local and federal, needs to get involved by using the power of bulk procurement, authorizing subsidies, allowing imports from other countries, and enforcing stricter oversight of Big Pharma. Public outrage over high prices can pressure drug companies to refrain from profiteering. Expanding distribution of Naloxone to the police department, community organizations, state facilities, and citizens with training was recommended. One unit identified patent reform as a viable way to combat drug-company monopolies.



Most units affirmed medical marijuana as an alternative to opioids. This was tempered by a desire for further medical research, concern over the danger to adolescents, recognition that it cannot be prescribed in Virginia, and that insurance will not cover it. The question arose as to whether marijuana is as effective as opioids.

Members suggested lobbying lawmakers for the availability and funding of treatment facilities, stronger accountability, lower prices of Naloxone, and updating Virginia's PMDP. Public advocacy for Fairfax County's Diversion First program and education in the community were also recommended. Leaguers believe Fairfax County and the state should make a greater effort to publicize emergency contact numbers. Other ideas: LWV of the National Capital Area (LWVNCA) should update its 1989 position on controlled

substances and that it, or the LWVFA, sponsor a forum to highlight opioid addiction and work on solutions. Individuals could discuss the issue with physicians and encourage them to promote alternatives to pain management. People should secure and dispose of their own opioids responsibly, e.g. Drug Take Back Day. Information on opioid abuse should be distributed to senior centers. Vocational education should be encouraged, offering more employment opportunities to our youth, which might provide reinforcement for avoiding drug use and abuse.

All agreed that this well-written and well-researched article revealed an alarming epidemic in our country and neighborhoods. Members were invigorated by the challenge to combat this problem as evidenced by the many questions they had and the solutions they offered.

Virginia State Primary Election – June 13, 2017

Voter Registration

Online by Mon., May 2

In-Person by Mon., May 22

Postmarked by Mon., May 22

Absentee Ballot Request

Post received by Tue., June 6, 5 p.m.

In-Person by Sat., June 10, 5 p.m.

Absentee Ballot Return

Received by Tue., June 13, 7 p.m.

In-person Absentee Voting

Sun., Apr. 30– Fri., June 9

A Primary Election is one in which registered voters select a candidate that they believe should be a political party's candidate for elected office to run in the General Election. Virginia's primaries are open, which means that voters of any affiliation may vote in the primary of any party. They cannot vote in more than one party's primary.

The Virginia State Primary elections are scheduled for June 13, 2017. To vote in Virginia, one must be a U.S. citizen, a resident of Virginia, and at least 18 years old. You must be registered to vote, and registration can be completed online, in-person at a local voter registration office, or by mail. The registration deadline is 22 days before any primary or general election. For more information about voting provisions in Virginia, contact the following agency:

Virginia Department of Elections, 804-864-8901 or info@elections.virginia.gov

tool, they developed a four-hour training on dynamics and overlaps between these types of abuse, screening-policy recommendations, how to conduct a brief intervention referral and resources available in the County.

A total of 224 healthcare staff have been trained, as well as approximately 50-60 George Mason University and Clinic staff and students, on the use of the Partners AAS tool and sources available for referral. The screening is suitable for patients 14 and older and any pregnant women, and serves both English and Spanish populations. In FY 2016, 3,063 pregnant women participated.

Once the data is analyzed and validated, it will be used for other populations. The goal is to have a comprehensive kickoff to bring all healthcare providers to learn from this pilot and use it.

Partner Violence/Sexual Assault Screening

To help healthcare professionals improve screening for domestic and sexual violence experienced by patients, a group of Fairfax County and other agencies are using a diagnostic tool to assist patients with domestic and sexual violence. The group reviewed multiple validated tools to assess for intimate partner violence and sexual assault and adopted the Abuse Assessment Screen (AAS) tool. The tool has 10 questions, including power and control issues in a variety of relationships and situations. It screens for and aims to identify domestic violence, dating violence, sexual violence, stalking, financial control, human trafficking, reproductive coercions, and strangulation. Along with this

Dillon's Rule in 2017 – How Much Does it Matter?

By Therese Martin, Peggy O'Neil, Rachel Roberts, Diana Willers & Sherry Zachry

Introduction

“What is that?” asked a person attending the March 2017 Civic Engagement workshop in Reston when “Dillon’s Rule” was given as a reason why Fairfax County could not set its own rules. Over the past 50 years, the League of Women Voters of the Fairfax Area (LWVFA) has prepared studies and held discussions about local government forms and authority - in Virginia and Fairfax County - at least twice during each decade. The role of Dillon’s Rule (or the Dillon Rule) in Virginia has had a prominent spot in all of these discussions. But for many, the rule is new and, in fact, is still confusing to those who have heard about it many times.

This report is an update on changing trends since October 2004 - the last time LWVFA explored this topic in depth in an article, “Dillon Rule: Good or Bad for Local Governments?” We have included material on topics associated with its application as well as the effect of city status for Virginia jurisdictions. Both recent legislation and the changing political scene have lessened its importance in determining the powers of local governments. In fact, it may be that sometimes League members have used “Dillon’s Rule” to explain situations that are too complex for an easy answer - or because it satisfies the League’s need to give a nonpartisan answer (i.e., to not identify a specific politician or political party as the “problem.”)

What Is the Dillon Rule and Who Uses It?

The history of municipal or town rule, beginning with London, stretches back to the 11th century in England. Thus, American colonists had a rich history of municipal autonomy. When the U.S. Constitution was written there was no mention of local government. The 10th Amendment (ratified December 15, 1791) specifies that “. . . any powers not entrusted to the federal government will be given to the states.”

During the mid- and late 1800s there was widespread local government corruption and fiscal irresponsibility across the country, leading to much litigation in various state courts regarding the degree of autonomy local governments should have. In 1868 Justice John F. Dillon of the Iowa Supreme Court ruled in the case of *City of Clinton v. Cedar Rapids and Missouri River Railroad Company* that municipal governments are the creation of the state and, therefore, have no inherent rights but are limited to exercising **only** the powers states grant to them. Dillon’s Rule (subsequently upheld by the U.S. Supreme Court) makes clear that [local] municipal governments can wield **only those powers expressly given to them by the state**. Further, these powers can be extended only if necessary and indispensable to the original powers the state granted. If there is any doubt, the state overrules local government.

Judge Thomas Cooley of Michigan’s Supreme Court came to a different conclusion in 1871. Cooley held that the 10th Amendment granted local government inherent rights by delineating that powers are reserved for the states “or to the people.” In his concurring opinion, Cooley asserted the belief that local governments hold the inherent right of local self-governance. This ruling bolstered the Home Rule movement (which gives localities the most autonomy) but it gradually waned as the U.S. Supreme Court upheld the Dillon Rule in 1903 and 1923.

Virginia’s Supreme Court first recognized Dillon’s Rule in 1896 [in *City of Winchester v. Redmond*] “. . . when the Court decided that the City of Winchester did not have the authority to issue a reward for the apprehension and conviction of criminals.” Since that time, the Virginia Supreme Court’s decision has been construed as setting a fundamental principle for determining the scope of local governmental powers in Virginia.



According to a 2003 study by the Brookings Institution (*Is Home Rule the Answer? Clarifying the Influence of Dillon’s Rule on Growth Management*, Richardson, et al, January 1, 2003) 39 states employ Dillon’s Rule to define the power of local governments, which can include granting some kind of Home Rule authority to counties and cities. Of those 39 states, 31 apply the rule to all municipalities (i.e., cities, counties, parishes, townships, etc.) and eight (such as California, Illinois, and Tennessee) appear to use the rule for only certain municipalities. Ten states do not adhere to the Dillon Rule at all. (West Virginia

will be finishing a pilot home-rule program at the end of 2017.) Most states have a combination of Dillon Rule and Home Rule. Both Maryland and Virginia are “Dillon Rule states,” with Maryland now having conferred Home Rule status to all of its counties.

Supporters of the Rule see greater state control as promoting business expansion by decreasing bureaucracy, with more uniformity in methods of taxation, regulation, and business licenses throughout the state. State oversight can prevent exclusionary and provincial actions by local governments and can lead to regional cooperation among several jurisdictions. Some believe Dillon’s Rule is beneficial for local government officials, allowing them to use it as an excuse to not do things that the public wants (such as raising necessary but unpopular taxes).

Detractors point to the lack of understanding of local issues and unnecessary increase in workload of state legislators as well as the need for local government officials (or hired lobbyists) to trek to Richmond to ask for more authority on strictly local issues. In 2015, Fairfax County had to introduce HB 118 in order to have animal control officers in the police department. However, Fairfax County seems to be less inclined to push for changing or amending the effects of the Rule in its more recent legislative programs.

How Do a City’s and a County’s Powers Differ (in Virginia)?

The Dillon Rule highlights the difference in powers granted to Virginia’s cities, towns and counties. The General Assembly grants authority to localities based on §15.2-204 [uniform charter powers] of the Virginia Code.

Cities and towns shall have all powers set forth in Article 1 (§ [15.2-1100](#) et seq.) of Chapter 11, known as the uniform charter powers. Such powers do not need to be set out or incorporated by reference in a city or town charter.

Counties shall have all powers set forth in Article 1 (§ [15.2-1100](#) et seq.) of Chapter 11 only when such powers are specifically conferred upon the county.

The most significant differences in powers between counties and cities are in their ability to borrow money and to tax. Counties must seek voter approval to issue general obligation bonds or enact a new tax. Cities, on the other hand, may pass new taxes and issue general obligation bonds without voter approval as long as total indebtedness does not exceed 10 percent of assessed real estate valuation. The powers granted to cities and towns vary according to

their particular charters and any amendments the General Assembly approved. Powers granted to counties also vary, depending upon their form of government and any authority they have obtained from the General Assembly for specified functions.

As of 2016 Virginia is divided into 38 independent cities, 95 counties and 190 incorporated towns. It is unique among states in that cities are totally *independent* from counties even if a city is completely surrounded by a county (as is the City of Fairfax, which incorporated as a city in 1961). Counties and cities are separate political entities with their own laws and system of governance but all are “creatures” of the state and operate under specific guidelines the General Assembly grants at the time of their creation. Any modifications in boundaries or powers of the entity must be “acts” of the legislature.

Towns, on the other hand, are part of the counties in which they are located. Town residents pay additional taxes and receive additional services such as police, fire or trash removal from the town government. Generally, a town shares services such as courts and schools with its surrounding county. There are three incorporated towns in Fairfax County: Vienna, Herndon and Clifton.

Historically, counties were created to implement state authority at the local level, and cities and towns were incorporated to provide urban services to more densely populated areas. The Virginia Company’s General Assembly first established counties in 1634 when Virginia was still an English colony. Eight counties (originally “shires”) were formed as the population grew and spread out from Jamestown.

According to the Virginia Places website (www.virginiaplaces.org) the distinctions between cities and towns were not significant until after the Civil War when a new state constitution was adopted in 1869. By the time of the 1902 Constitution, through a confusing evolution of case law and legislative practices rather than a single act of the General Assembly, Virginia cities had become politically independent entities from their surrounding counties whereas towns remained sub-units of the county. Virginia’s unique situation is not a function of Dillon’s Rule, but the inequities between cities and counties have been complicated by, and in some instances exacerbated by, the maxim that local jurisdictions have only powers expressly granted by the state at the time the locality is incorporated.

Fairfax County, in Particular

Fairfax County has evolved greatly from the rural jurisdiction

William Fairfax (cousin of Lord Fairfax) established in 1742. As of 1968, it operates under a form of government called “Urban County Executive” (UCE) that the General Assembly created to apply only to Fairfax County (after much debate between the County and General Assembly about appropriate powers to grant the County). It is so specifically tailored for Fairfax County to that it contains many earmarks of a charter, which the County considered pursuing at one time.

In general Fairfax County has considered itself constrained by the Virginia General Assembly under the Dillon Rule, especially when compared with local authority granted to independent cities. Indeed, the Fairfax County Government website asserts, in part, that (emphasis added by Fairfax County):

Fairfax County operates under the urban county executive form of government, an optional form of Virginia county government, and like other Virginia local governments, **Fairfax County has limited powers.** . . .

The Virginia Supreme Court and other Virginia courts routinely apply the Dillon Rule to determine whether or not a local government has the legal authority to undertake a disputed action. **For well-established county functions, like planning, zoning, and taxation, there are a number of statutes that give the county clear direction and authority to act, but in new areas of governmental concern, the Dillon Rule can serve as a constraint to innovative governmental responses.**

This means that Fairfax County has *limited powers in areas such as raising revenue*, and it cannot take certain actions without appropriate action from the state, which limits revenue diversification options among other things. (<http://www.fairfaxcounty.gov/government/about/dillon-rule.htm>)

Since Fairfax County’s power to diversify its revenue base beyond real estate property taxes is limited, it must hold a referendum to seek additional revenue from bonds or taxes. The General Assembly has granted Fairfax County the authority to add taxes (such as a restaurant or entertainment tax) within certain limits but requires that the citizens vote on the tax, whereas cities can levy additional taxes without a vote of its residents. In the 2016 general election Fairfax County proposed a four percent tax on prepared meals but that referendum failed.

Can Dillon’s Rule Be Amended?

Short answer: its application can be amended but the General Assembly really has to want to do so! Dillon’s Rule is a *common law principle* of limited authority for local governments used to interpret law when there is a question of whether or not a local government has a certain power. As noted in Fairfax County Attorney Bobzien’s memo to the Fairfax County Board of Supervisors (BOS) in December 2005: “[It]. . . refers to a commonly used **maxim of judicial construction** (emphasis added) that holds that local governments are political subdivisions of their respective states and that those political subdivisions have only limited powers.”

As such the “rule” cannot actually be amended in the traditional sense as there is not an explicit adoption of Dillon’s Rule in the Virginia Constitution or Commonwealth statutes. Rather, language in the Virginia Code could limit or eliminate the need to apply it – to make it irrelevant. As the County Attorney stated in his memo, “. . . the General Assembly would have [the] authority to enact legislation directing that the statutory powers conferred on local governments be interpreted broadly.”

Over the years, the General Assembly has considered attempts to “amend” or eliminate the need for judicial application of the Dillon Rule. The most notable was in 1969 when it rejected the Virginia Commission on Constitutional Revision’s proposal to switch from Dillon Rule to Home Rule. Attempts were made in 1976 (HR 19) and 1977 (HB 727); both died in the House. In 1991, Governor Wilder appointed the Governor’s Advisory Commission on the Dillon Rule and Local Government; 1992 recommendations were never implemented. More recently, proposals in 2008 for a joint committee to study the issue (HJ 111) and for a study commission (SJR 57) were left in the House Rules Committee.

The Fairfax County BOS has consistently supported these efforts. According to a response from Lee District Supervisor Jeffrey McKay to our inquiry, “the County has submitted letters through various interjurisdictional committees for the ability to administer basic-level government rules and regulations without first needing General Assembly approval. Those letters have been ineffective to date.” However, since then there is (and has been) movement from the General Assembly to grant Fairfax County additional revenue and reduce inequalities between cities and counties, especially in the area of transportation and land use planning, and throughout the state “suburbanizing areas” are no longer pressing to alter the Dillon Rule. (www.virginiaplaces.org)

A Charter for Fairfax County?

Long-time members of the LWVFA may ask whatever happened to proposals for a charter for Fairfax County, which was addressed in earlier studies of County government?

The question of becoming a charter county, as was the case in only two Virginia counties, arose periodically between the 1950s and 1993. Hoping to use a charter as a means of acquiring additional local authority the County prepared and submitted a proposed charter to the General Assembly in 1979. It failed to be enacted and the County did not pursue the issue any further. There were both strong pros and cons for taking such a step and the adoption of the Urban Center Executive form of government lessened the need for a charter.

In the early 1990s, a community group primarily concerned with the County's property tax called the Fairfax Citizens' Assembly prepared a charter but no action was taken and the issue has been dormant ever since.

Source: LWVFA studies. (cannot be found on Google)

Why Not Become a City?

Although changes to city status and local government boundaries were relatively common in Virginia's Tidewater region from the 1600s through the 1970s (where the cities of Chesapeake, Hampton, Newport News, Suffolk and Virginia Beach each absorbed their counties), the first instance that could be found could find of proposals for Fairfax County to change its status from a County to a city came in 1961, with the now - somewhat laughable proposal that the county consolidate with the Town of Clifton and become a 400 square-mile city. A referendum was scheduled for July of that year to obtain citizen approval for the County to undertake the consolidation. The prime reason for the proposal was to prevent further annexation threats to the County, which had already fought six such threats (from the cities of Falls Church and Alexandria and the Town of Fairfax) during the previous decade.

Since a new Fairfax City (comprised of the County) would have resulted in the termination of the Towns of Fairfax and Vienna, the latter town challenged the legality of the consolidation and the Town of Fairfax took steps to acquire its own city status. The Town Council approved the transition to become the City of Fairfax, having determined that the Dillon rule prohibited it from seeking town citizen input through an advisory referendum. The city was created by the Circuit Court on June 30, 1961, and its charter was approved by the General Assembly the following year. The court also ruled that Fairfax County and Clifton were proceeding illegally and issued an injunction delaying and eventually killing the referendum and the County's attempt to become a city. Furthermore, an annexation suit was filed by Alexandria.

Due principally to Virginia's system of independent cities

along with the diminishing difference between the functions and financial needs of cities and counties as population grew in both, there were a large number of annexation attempts in the first 75 years of the 20th century: 160 city-county proceedings and more than 200 for town-county annexations. The General Assembly decided that alternatives to the process were in order and established a moratorium on annexation proceedings in 1971 while it studied the situation. It established new regulations in 1979, which allowed some counties to request total immunity from annexation. But the issue continued to be divisive; a new moratorium went into effect in 1987 and **continues today**, having been extended to July 1, 2024, during the 2016 General Assembly session. (15.2-3201). The Code also prohibits the granting of a new city charter during the same period.

Fairfax County's interest in city status, hoping for more control over its finances and transportation, has cooled since the League's latest study on the subject was published in May, 2011. It was clear that the process would be long, expensive (and maybe not approved in a referendum) and the funding provided for transportation not likely to increase over what the State was paying for Fairfax roads. No follow-up action has been taken. With the current moratorium on granting new city charters and the enactment of the Commercial and Industrial property tax (HB3202) in 2007 and (HB 2313) in 2013, which provided a funding stream for Northern Virginia transportation projects, the cost issues for County roads have been somewhat ameliorated and it is unlikely that the County will be pursuing city status in the future.

Fairfax County BOS Legislative Package

The LWVFA and other groups in the County annually address the BOS about its legislative program for the

upcoming session of the General Assembly. In late 2005, the BOS asked that the County attorney prepare a paper on the history of the Dillon Rule and how it could be amended since several speakers at that public hearing had spoken in favor of reducing its limitations on the County. (Material from that paper is also mentioned earlier in “Amending the Dillon Rule.”)

The request may have indicated that the BOS did not place the same emphasis on the Dillon Rule as did some of the citizens who were testifying. Review of several years of County legislative programs shows that the package of legislative requests is most often for budget items but not predominantly in terms of the County’s local authority (or lack thereof). While the County has asked for a diversification of revenue sources and an end to cuts in funding of local shares and underfunding of core services, such as schools and transportation, the requests have not always been framed in the context of the Dillon Rule.

For instance, its legislative program for 2017 included proposed legislation to:

- encourage the use of reusable shopping bags;
- prohibit discrimination on the basis of sexual orientation;
- provide local authority over limited residential lodging;
- preserve local taxing authority without preemption;
- restore proffer authority and provide no further restrictions on land use authority;
- preserve community involvement in wireless telecommunication facility siting;
- prohibit possession of dangerous weapons on locality facilities;
- protect financial interest of local governments’ based on declining revenues in communications sales and use taxes;
- establish a fuels’ tax floor for the regional gas tax; and to
- allow adoption of an ordinance to ban the use of pneumatic guns on school grounds.

See: <http://www.fairfaxcounty.gov/government/board/adopted-2017-program-12-6-16.pdf>

So, Now What? Emerging Trends in Locality v. State Government Authority

The Dillon Rule has been, and is being, used as an explanation or sometimes an “excuse” as to why counties in Virginia, and Fairfax County in particular, do not have the authority they need to accomplish their agendas. Yet that premise is losing ground as the General Assembly extends the County additional authorities, such as the transportation

legislation of 2013, and additional powers for specific issues that face urban communities, whether a city or county.

In its 2017 legislative program the County opposed “. . . any legislation that would require the transfer of secondary road construction and maintenance responsibilities to counties, especially if these efforts are not accompanied with corresponding revenue enhancements. While there are insufficient resources to adequately meet the maintenance and improvement needs of secondary roads within the Commonwealth, the solution to this problem is not to simply transfer these responsibilities to counties that have neither the resources nor the expertise to fulfill them.” What a difference a few years and some proactive legislation from the State can make!

With the growing similarity between the functions of cities and their surrounding counties, including the fiscal stress on both units of local government, there have been more instances of *reversions* of jurisdictions from city to town status. Both Clifton Forge and Bedford cities have reverted to town status since 2000, and in mid-March of this year the city of Martinsville contacted the Henry County Board of Supervisors seeking a discussion about a possible reversion to become a town within the county - for financial reasons. In 2016 the Town of Columbia in Fluvanna County reverted to being part of the unincorporated county, reducing the number of towns in Virginia to 190.

In previous LWVFA articles about the vagaries and inequities produced by the fact that Virginia is Dillon Rule State, there was the common lament that Montgomery County, MD - similar to Fairfax County in many demographic aspects - was in a much better situation to control its own destiny because the State of Maryland had granted it more autonomy, i.e., broad powers similar to Home Rule. However, the Brookings article of 2003 compared all 50 states in terms of local autonomy, and **Virginia ranked 8th** in the degree of **overall** discretionary authority its localities enjoyed despite the fact that Virginia courts apply Dillon’s Rule more rigorously than many other states (Maryland ranked 6th). From recent newscasts and forecasts regarding budgetary issues facing both Fairfax and Montgomery Counties there seems to be common concern for future economic growth and stability of revenue, regardless of Dillon Rule or Home Rule.

Notable “Dillon Rule” Cases – Are They Changing, Too?

Virginia adopted the Dillon Rule when the court applied the wording of the Rule in its 1882 decision in *Kirkham v. Russell* which overturned the selection process used to

choose Council members for the City of Petersburg. This was followed more than a decade later by a ruling in *Winchester v. Redmond* in 1896. Perhaps one of the most fruitful sources of issues requiring the application of the Dillon Rule over the years have been those relating to land use and zoning. Fairfax County's struggle to gain land use and zoning authority is cited in an article titled "Local Government Autonomy and the Dillon Rule in Virginia" on the Virginia Places website (www.viriniaplaces.org) which states:

"The impacts of suburban sprawl after World War II spurred local governments to steer or block development of housing units on private land . . . and state court rulings on strict application of the Dillon Rule shifted between the 1950s and the 1980s. In the 1950s and 1960s, state courts routinely blocked efforts by Fairfax County to rezone property to lower density . . . claiming the county had exceeded the zoning authority granted by the General Assembly. In the 1970s, other judges used the same basis justification to prevent [the] county from limiting the pace of development by imposing a moratorium on connections to the sewer system. . . . The strict interpretation of the Dillon Rule on the power of local government to shape land use limited the county's flexibility to deal with suburban development and transportation issues. Finally, in 1985, the Fairfax Circuit Court empowered [county] officials in the *Aldre Properties, Inc. v. Board of Supervisors* decision and approved the downzoning of 41,000 acres near the Occoquan Reservoir."

(Note: The LWVFA was one of the civic organizations joining this case in support of the County.)

A complete discussion of Dillon's Rule application to and limitations on a Virginia locality's land use power can be found in the Albemarle County Land Use Law Handbook. <http://www.albemarle.org/departments.asp?department=cityatly&relpage=3190>

Many discussions of Dillon's Rule point to its use in *Stallings v. Wall* (1988) when the Court considered the authority of Virginia Beach (a city) to enact an ordinance requiring a police permit to acquire a pistol or revolver. The Court held that the city had the authority. Virginia general law soon began taking away authority over "gun issues" and by 2014, the General Assembly was acting to prohibit any county, city or town from adopting any ordinance to govern the purchase, possession, transfer, ownership, etc. , of firearms other than those expressly authorized by statute. That action is now codified as §15.2-915. Since it applies

statewide, it is an example of "preemption".

The exercise of state government preemption over localities is happening all over the U.S. in the current decade and will probably continue as the century-old principles of Home Rule and Dillon Rule cannot entirely accommodate the crises and realities in today's society. Such is the case in the opioid epidemic now sweeping the country. State governments have passed laws and instituted programs to deal with the crisis statewide - which certainly is a form of preemption, albeit a positive use. Another example of preemption comes from the National League of Cities' (NLC) February 2017 report "*City Rights in an Era of Preemption*," which examines the prevalence of state preemption across the nation in seven key policy areas: minimum wage, paid leave, anti-discrimination, home-sharing, ride-sharing, municipal broadband, and tax and expenditure limitations (TEs). The report states, in part, about Transportation Network Companies (TNCs) (Uber, Lyft) in Virginia:

When the Virginia state legislature [General Assembly] passed a bill regulating the operation of TNCs in Virginia in 2015 cities were effectively prohibited from passing their own regulations. Prior to that, taxicab companies in the state of Virginia were regulated at the local level. TNCs changed the regulatory landscape by pre-empting the authority to regulate similar services from the local level and moving it to the state level.

The legislation became the following law:

§ 46.2-2099.46. Control, supervision, and regulation by Department. Except as otherwise provided in this chapter, every transportation network company, TNC partner, and TNC partner vehicle shall be subject to exclusive control, supervision, and regulation by the Department, but enforcement of statutes and Department regulations shall be not only by the Department but also by any other law-enforcement officer. Nothing in this section shall be construed as authorizing the adoption of local ordinances providing for local regulation of transportation network companies, TNC partners, or TNC partner vehicles. 2015, cc. 2, 3. <http://www.nlc.org/article/city-rights-in-an-era-of-preemption-new-report-from-national-league-of-cities>

Virginia cities are not always granted complete authority over local affairs. In 2013 Fairfax City appealed to the General Assembly seeking to "increase [the] maximum transient occupancy tax that the city may levy from four percent to

six percent.” SB1343 and HB 1533 were introduced and passed, but the Governor vetoed them and the Senate upheld the veto by 21-19 margin. Therefore Fairfax City couldn’t raise its transient occupancy tax (for hotels, campgrounds, motels, etc.). By the way, Fairfax County has authority to levy the same tax rate (four percent) for transient occupancy.

In Virginia we have seen a growing trend of preemption on issues such as discrimination on the basis of sexual orientation (*Lafferty vs. Fairfax*, which challenges Fairfax County’s authority to have stricter non-discrimination laws in County public schools than does the state); treatment of school starting dates before Labor Day; Civil War memorials/monuments; local minimum wage initiatives; and local lawsuits with regard to and transportation of firearms. Local governments are worrying less about Dillon’s Rule and more about those responsible for establishing the do’s and don’ts for local governance. As mentioned earlier the 10th Amendment to the U.S. Constitution, powers not delegated to the federal government are reserved to the states [or the people], and what authority Virginia gives to local governments, it can also take away.

What Does All This Mean?

Recent trends in Virginia governance lead one to question whether many local government complaints about state action are correctly “blamed” on the Dillon Rule. The moratorium on annexation, fiscal stress causing city status to no longer be viewed as favorably as in earlier years, and growing use of general legislation by the General Assembly to establish both requirements for and prohibitions against local government action have joined to change the actual and perceived role Dillon’s Rule plays. While Dillon’s belief in the primacy of states continues, his name no longer graces the term most often used to describe this. “Preemption” is the new term for the principle that state law trumps local regulation, just as federal law supersedes state law.

At the same time, the tenor of the issues at the forefront of much current legislation in Virginia (and elsewhere), coupled with the sharply divided populace, has made the relatively esoteric theories of governance just one of many battlegrounds. The Dillon Rule and preemption are not only issues for local authorities but also for the citizens living in the locality who support or oppose candidates based on their positions on issues of public policy. The voting patterns in Virginia, whether by legislators in the General Assembly or by citizens in electing those legislators, show the differences between rural and urban voters, progressives and conservatives. In 2017, the divided, executive-legislative power split prevents the state from being classified as either “true red or true blue.”

The Dillon Rule still has a role to play as courts determine the extent of local authority on issues not fully covered by general law. But it should no longer be considered the “bogeyman” in local governance. Maybe League members and others who try to explain what the Dillon Rule is (or does) can more fruitfully spend their time urging citizens to vote in state and local elections where the laws that are passed have the greatest impact on their lives. We can redouble our efforts to provide education and a forum for the candidates to make their positions known so that voters will be able to elect lawmakers who agree with them on the issues they believe are important. They also would serve to remind people that “elections have consequences.”

As the husband of a committee member said: “We wouldn’t have a problem with Dillon’s Rule or preemption if we would vote for the right people!” We recognize that sometimes gerrymandered districts limit our choices in candidates but that is another issue affecting democracy (and very important to the League) that we will save for another day (and article)!

DISCUSSION QUESTIONS:

1. What was one new thing (if any) that you learned from the study?
2. What are the ramifications to local jurisdictions of applying Dillon’s Rule (whether in Virginia or other states)? Can you provide some examples?
3. Who decides whether a state is a Dillon’s Rule state or not? What entity can change how Dillon’s Rule is applied to Virginia’s local governments?
4. Can a state follow both Dillon’s Rule and Home Rule? Does it really matter?
5. Both Virginia and Maryland are considered Dillon’s Rule states. What are some differences in decision-making by the two jurisdictions you may have noted over the years?
6. Have you noticed what issue areas seem to be left to local counties and cities and what areas does Virginia want to control? Do you think that this has changed over the years? If so, why?
7. Can you list any authorities that cities and towns have that counties don’t? What do you think about this, as either a county or city/town resident?

8. What do you think of the suggestion that we (LWVFA) establish our own moratorium on studying government and **devote more resources to issues and getting people to vote on the issues?** (i.e., no more Dillon's Rule articles!)

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Environmental Protection and the G.A. Session

By Elizabeth Lonoff

The Virginia General Assembly convened January 11 to process 800 legislative proposals in 45 days. Based on its analysis of the proposals the LWV-VA advocated per our positions. Supporting appropriate fracking regulations was a top environmental-protection priority. Legislative outcomes included:

Fracking. The bills giving oil and gas companies a Freedom of Information Act “trade secrets” exemption for the chemicals they inject into the ground during fracking operations failed. Also, SB 911 reenacted the Orphaned Well Fund. The surcharge to operators applying for a new permit was raised from \$50 to \$200.

Coal Ash, SB 1398. New closure requirements followed reports of pollutants leaking from Dominion Virginia Power coal ash ponds. To close a pond, the owner or operator now must correct any water pollution, evaluate ash recycling or removal to a landfill, and demonstrate the unit’s long-term safety and ability to keep ash out of wetlands. The governor recommended restoring the original intent that the Department of Environmental Quality review this assessment before issuing a closure permit for facilities in the Chesapeake Bay watershed.

Raw Sewage. The sewer system serving 540 acres in Old Town Alexandria combines sewage from homes and

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Dillon’s Rule: Good or Bad for Local Governments? October 2004

An Overview: Should Fairfax County Seek City Status? May 2011

businesses with stormwater runoff from streets, rooftops, and parking lots. When it rains, the treatment plant can become overloaded. Overflow containing sewage is piped into streams through permitted outfalls, sending 140 million gallons/year to the Potomac River. Required by the GA to accelerate a fix into the next decade, Alexandria’s Fiscal Year 2018 budget proposal included \$386 million and a new stormwater utility fee.

Congratulations

On April 4, Maryland became the third state to ban fracking, the first with Marcellus Shale to enact such a statute. When the legislature passed the bill, the governor said, “Our administration has concluded that possible environmental risks of fracking outweigh any potential benefits.” The ban is effective October 1.

Since being profiled here last year **Meredith Keppel** spent a high school semester at a marine science school where she researched the population genetics of a paralytic phytoplankton for the Maine Department of Marine Resources. Catch her May 6 TEDxHerndon talk, “5 Mushrooms to Make You Love Fungi.”

Danielle Wynne, an ecologist with Fairfax County Stormwater Planning, and the Fairfax County Public Schools were honored by the Chesapeake Stormwater Network for involving 350 students from several elementary schools and Marshall High School in stream monitoring. The sites for this year-long partnership span multiple watersheds in the Citizen Scientist Floatables Monitoring Program.

Volunteers Needed for LWVFA Community Elections

Monitoring community elections is one of our biggest fundraisers. Volunteers must be League members and over 18 years old.

McLean Community Center Election on Saturday, May 20

Please sign up for a shift to work at the McLean Community Center Election on Saturday, May 20. There are three shifts, from 10 a.m. to 1 p.m.; 1 to 5 p.m.; and 5 to 8 p.m. The first two shifts will work at the McLean Day Festival at Lewinsville Park on Chain Bridge Road. We will count ballots during the last shift from 5 to 8 p.m. at the McLean Community Center. For more information, please contact

Anne Thomas at (571) 291-3206 or CommunityElections@lww-fairfax.org. McLean Community Election: <http://www.signupgenius.com/go/20f0d48afa82fa7f94-mclean1>

Skyline Condo Election on Wednesday, June 14

We are also seeking volunteers for the Skyline Condominium Election on Wednesday, June 14. The election will take place in the lobby at the Skyline Plaza Condominiums, 3703 S. George Mason Dr., Falls Church. To volunteer, go to <http://www.signupgenius.com/go/20f0d48afa82fa7f94-skyline1>

For more information about Skyline, contact Anne Thomas at anneathomas@gmail.com or call (571) 291-3206.

Use this link to volunteer for all the 2017 community elections: <http://www.signupgenius.com/tabs/23676DA05A1CFE9C24-2017elections>

Olga Hernandez, a LWVUS's Democracy Defender

The right to vote is something Olga Hernandez, a League member has never taken for granted. Maybe because she was born in Cuba. Maybe because she was 18 before she became a U.S. citizen.

And maybe because, as one of the driving forces in the League of Women Voters of Virginia for more than 20 years, she has seen how the faces of new voters—from high school students to new citizens—light up when they get their first voter registration card.

That's why Olga has invested so much of her time and energy into defending voters' rights and expanding citizen access to the ballot ... and *that* is why she's the second of three **Democracy Defenders** the LWVUS is highlighting in March as part of our celebration of Women's History Month.

Olga became involved with the League of Women Voters of Virginia shortly after she and her husband moved to Fairfax, just outside Washington, DC, in 1995. After serving as President of the LWV of the Fairfax Area from 2000 to 2005, she went on to serve as Vice President and then President of the LWV of Virginia.

She has organized and moderated senatorial and gubernatorial debates, lent her energy and expertise to the State Board of Elections and many civic organizations, and has become a respected source for reporters from the *Washington Post* and



Olga Hernandez is carrying forward the League's 96-year legacy of fighting for voting rights.

other media covering controversial election law proposals. Thanks in large part to leaders like Olga, over the last decade the League has tirelessly advocated to protect the rights of millions of Virginians and directly empowered hundreds of thousands to successfully cast a vote. She is, in other words, the perfect example of why the League of Women Voters has been the country's preeminent advocate for voters and defender of voters' rights for more than 96 years!

Congratulations to Olga Hernandez for being a Democracy Defender!

Sincerely,
Chris Carson,
President,
League of Women Voters of the U.S.

Note: Lois Page of the Fairfax League is shown directly behind Olga in the photo.

Unit Discussion Meeting Locations

Topic: Dillon's Rule in 2017 - How Much Does it Matter?

Members and visitors are encouraged to attend any meeting convenient for them, including the "At Large Meeting" and briefing on Saturdays when a briefing is listed. As of April 1, 2017, the locations were correct; please use phone numbers to verify sites and advise of your intent to attend. Some meetings at restaurants may need reservations.

Saturday, May 6

10 a.m. At-Large Unit and Briefing

League Conference Room
Packard Center (inside Annandale Community Park)
4026 Hummer Road
Annandale, VA 22003
Contact: Sherry 703-730-8118

Contact: Gail (703) 360-6561 or Diane (703) 704-5325

10 a.m. Fairfax Station (FXS)

8739 Cuttermill Place
Springfield, VA
Contact: Kathleen, 703-644-1555

9:30 a.m. Springfield (SPF)

Packard Center
4026 Hummer Road
Annandale, VA 22003
Contact: Marge, 703-451-0589

10 a.m. Centreville-Chantilly (CCD)

Sully District Government Center
4900 Stonecroft Blvd.
Chantilly, VA 20151
Contact: Leslie, 571-213-6384

Monday, May 8

1:30 p.m. Greenspring (GSP)

Hunters Crossing Classroom
Spring Village Drive
Springfield, VA 22150
Contact: Edith (703) 644-3970 or Gloria (703) 852-5113

7:15 p.m. Fairfax City Evening (FCE)

The Green Acres Center, Room 112
4401 Sideburn Road
Fairfax VA 22030
Contact: Ellen and Amy,
Farfaxcityunit@lwv-fairfax.org

1 p.m. Fairfax/Vienna (FX-V)

Oakton Regional Library
Oakton Room 1
10304 Lynnhaven Pl.
Oakton, VA 22124
Contact: Bob, 563-299-5316

Wednesday, May 10

9:30 a.m. McLean Day (McL)

StarNut Café
1445 Laughlin Ave.
McLean, VA 22101
Contact: Adarsh (703) 795-7281 or Anjali (703) 509-5518

7:30 p.m. Reston Evening (RE)

Hunter Mill District Community Room
North County Government Center
1801 Cameron Glen Drive
Reston 20190
Contact: Kelly, 202-263-1311

7:45 p.m. Mt. Vernon Evening (MVE)

Paul Spring Retirement Community
Mt. Vernon Room
7116 Fort Hunt Road
Alexandria, VA 22307
Contact: Jane, 703-960-6820

9:45 a.m. Mt. Vernon Day (MVD)

Mt. Vernon District Government Center
2511 Parkers Lane
Alexandria, VA 22306

Thursday, May 11

9 a.m. Reston Day (RD)

12100 Stirrup Rd.
Reston, VA 20191
Contact: Charleen, 703-620-3593

June Meetings:

"Do Your Own Thing!"



The League of Women Voters of the Fairfax Area (LWVFA)
 4026-B Hummer Road, Annandale, VA 22003-2403
 703-658-9150. Web address: www.lwv-fairfax.org

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May, 2017

Peggy Knight, Co-President
Wendy Fox-Grage, Co-President
Ron Page, Editor
Liz Brooke, Content Editor

The League of Women Voters is a nonpartisan political organization that encourages the public to play an informed and active role in government. At the local, state, regional and national levels, the League works to influence public policy through education and advocacy. Any person at least 16 years old, male or female, may become a member.

The League of Women Voters never supports or opposes candidates for office, or political parties, and any use of the League of Women Voters name in campaign advertising or literature has not been authorized by the League.

LWVFA MEMBERSHIP FORM

Membership Dues: Individual \$65 _____ Household \$90 (2 persons, 1 Voter) _____ Student \$32.50 _____
Dues year is July 1 – June 30 (A subsidy fund is available; check here _____ and include whatever amount you can afford.)
Membership Status: New _____ Renewing _____ Reinstatement _____ Donation _____
(Dues are not tax deductible. Tax-deductible donations must be written on a separate check or PayPal Payment to “LWVFA Ed Fund.”)

(Please print clearly)

Name _____ **Unit (if renewing)** _____

Address _____

City _____ **State** _____ **Zip + 4** _____

Phone (H) _____ **(M)** _____ **E-Mail** _____

Please make checks payable to “LWVFA” and mail to: LWVFA, 4026-B Hummer Road, Annandale VA 22003-2403.
OR Join Online at: www.LWV-Fairfax.org/join.html

I am interested in becoming involved in (please indicate by circling the appropriate bullet(s)):

- **Providing organizational support** (graphics design, website development/maintenance, fundraising/ grant writing)
- **Voter Services** (e.g., voter registration drives, candidate forums, developing Voters’ Guides)
- **Researching/writing about issues in which LWVFA has an interest** (e.g., environment, firearms safety, mental health, schools, domestic violence, criminal justice; or, chairing an LWVFA study committee on voter turnout or human trafficking).
- **Representing the League in governmental fora** (e.g., serving as LWVFA representative on Fairfax County citizens’ committees and agencies, such as affordable housing, Fairfax County Public Schools).
- **Other** _____