



SECTION ON **STATE AND LOCAL
GOVERNMENT LAW**

NEWSLETTER

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CHAIR'S COLUMN

OCTOBER 2022

Professor Jonathan Rosenbloom

Dear Friends and Colleagues,

After too many years of being remote, the annual AALS meeting in San Diego, January 3-7, 2023 will be in-person! While most of us have become proficient at zoom, teams, and the like, there is nothing like seeing a warm smile in-person. And heckling just isn't the same over zoom.

2022 was a busy year in our world of state and local government law. We should expect much of the same in 2023. A significant amount of state and local legal activity will likely be in response to moves or omissions at the federal level.

Turning a blind eye to Winston Churchill's well-stated advice ("I always avoid prophesying beforehand because it is much better to prophesy after the event has already taken place."), here's a list of ten policies we might see state and local governments take-on in 2023.

1. **Reproductive health care:** This is probably the most obvious of the list. Following the U.S. Supreme Court's opinion in *Dobbs v. Jackson Women's Health Organization*, state and local governments responded. We are likely to see states go both ways on this into 2023 in which they add restrictions (ex. Kentucky and Montana) or add protections (ex. California and Vermont) to state constitutions and statutes.
2. **Sexual orientation and gender identity:** Like reproductive health care, this issue is also likely to get pushed and pulled in opposing directions depending on the political party in control. In 2022, states completely controlled by Republicans enacted various pieces of legislation affecting the transgender community (ex. Florida) (for those keeping score, Utah has had a Republican trifecta since 1985, the longest running trifecta).
3. **Climate change and corporate governance:** State and local governments have taken the reins on climate regulations in the past several years. This year I suspect we'll see a slight shift in state and local policy where there is more regulation of corporate governance relative to climate change (ex. California's introduction of SB 260, which would require companies with over \$1 billion annual revenue to disclose scope 1, 2, and 3 greenhouse gas emissions). Relatedly, electrification of buildings will continue to move forward.
4. **Taxes and tax revenue:** These, always big state and local issues, will get a different look in 2023 as there are changes in both the real estate market affecting revenues and the municipal bond yields affecting borrowing, changes likely to continue at least into the first quarter or two of 2023.
5. **Infrastructure:** After reproductive health care, this is probably the second most obvious choice on this list. The federal government set aside over a trillion dollars in subsidies for

infrastructure in the Infrastructure Investment and Jobs Act and the American Rescue Plan Act, including \$55 billion to improve water infrastructure in places like Jackson, Mississippi.

6. **Gun control:** Here, again, we are likely to see a push and pull in opposite directions where some state and local governments increase access and rights to carry laws, while others seek to limit both.
7. **Homelessness:** As the cost of housing remains high in both the home ownership and rental markets, we can expect increases in homelessness and corresponding policies.
8. **Blockchain, Web3, Crypto Regulation:** We are unlikely to see big moves from state and local governments on these issues in 2023. However, I suspect we'll see a lot more discussion and proposals floated to regulate these issues and any challenges stemming from these growing technologies.
9. **Election fright:** State and local governments will not be immune from election fright, and in many instances they may very well be at the heart of the battle (ex. *Merrill v. Milligan* (Supreme Court heard oral arguments on October 4, 2022 to determine whether Alabama's 2021 redistricting plan for its seven seats in the US House of Representatives violated Section 2 of the Voting Rights Act)).
10. **Reforming police to address equity:** Some governments have already started tackling this issue, particularly in the areas of police budgets and operating procedures. We could very well see more demands for action throughout 2023.

I would be interested to hear what you think about this list and what might be missing.

At the annual meeting this year, our Section is participating in several panels that explore some of these important issues. Our primary panel is jointly sponsored with the Property Law Section. It is entitled, *Homes, Neighborhoods & the Future of Residential Land Use: Who Should Decide Where and How We Live?*. We have a great range of panelists, including: Rebecca Bratspies (City University of New York School of Law), Jade Craig (Nova Southeastern University Shepard Broad College of Law), Nestor Davidson (Fordham University School of Law), and Stephen Miller (University of Idaho College of Law).

Our section is also co-sponsoring four other panels: *Governance and Politicization of Primary and Secondary Public Schools*; *From Aspiration to Implementation for Energy and Environmental Justice*; *Topics in Agriculture and Law*; and *Community Development for Resilience in the Face of Climate Change*.

Earlier this year, we hosted an insightful discussion on *State Attorneys General: Teaching Public Law through the Lens of the People's Lawyer*. That discussion included Keith Ellison (Attorney General of Minnesota), Carolyn Shapiro (Chicago Kent College of Law), and Jim Tierney (Harvard and former Attorney General of Maine). The conversation was moderated by Meryl Justin Chertoff (Georgetown University Law Center).

I very much look forward to seeing you at AALS and at our annual breakfast on **Friday, January 6, 2023 at 7:00am.**

Sincerely,

Jonathan Rosenbloom

Albany Law School

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(Sept. 2021 – Oct. 2022)**

by

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