



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

**Digital Commons @ Touro Law
Center**

Scholarly Works

Faculty Scholarship

1978

Through a Glass Darkly: Equal Protection for Home Rule Units in Illinois – Urbana v. Houser

Daniel H. Derby

Touro Law Center, dderby@tourolaw.edu

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>



Part of the [Conflict of Laws Commons](#), [Constitutional Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

27 DePaul L. Rev. 871 (1977-1978)

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

**THROUGH A GLASS DARKLY:
EQUAL PROTECTION FOR HOME RULE UNITS
IN ILLINOIS—*URBANA V. HOUSER***

"It requires no strong prisms to see the breadth and depth of home rule powers," the Illinois Supreme Court stated in the recent decision *Urbana v. Houser*.¹ However, for Illinois practitioners of local government law, *Houser* represents the latest in a series of decisions that have shrouded the nature of the powers of home rule units in mystery.

The confusion is apparent in three areas: the definition of home rule powers; the effect of statutes conflicting with exercise of home rule powers; and the validity of statutes discriminating between units of local government on the basis of the home rule powers they possess.² The 1970 Illinois Constitution provides the authority for home

1. 67 Ill. 2d 268, 367 N.E.2d 692 (1977).

2. The City of Des Plaines can testify to the inscrutability of home rule under Illinois decisions. In contests with the Metropolitan Sanitary District of Greater Chicago (MSD), and the Chicago and North Western Railway Co. (C&NW), it found that decisions suggesting that home rule powers were broad and deep could be of surprisingly little importance in the face of particular statutes.

Des Plaines' first encounter with the vagaries of home rule came in its effort to bar construction in a residential area of the city of a sewage treatment plant proposed by the MSD. In the contest between the statutorily created MSD and the city on the basis of zoning powers, Des Plaines had been dealt a stinging defeat before the 1970 Illinois Constitution became effective. *City of Des Plaines v. Metropolitan Sanitary Dist.*, 48 Ill.2d 11, 268 N.E.2d 428 (1971). After becoming a home rule unit, however, the city intended to recontest the issue. To its dismay, the court held that the doctrine of *res judicata* was applicable and barred further litigation notwithstanding the city's accession of home rule powers. *City of Des Plaines v. Metropolitan Sanitary Dist.*, 59 Ill.2d 29, 319 N.E.2d 9 (1974). An imaginative effort enabled Des Plaines to get another day in court when it shifted its basis of action from zoning to health control. However, the outcome was again a defeat, this time on the grounds that regional sewage treatment plants, although located within a city, are not local concerns for the purpose of application of home rule powers. *Metropolitan Sanitary Dist. v. City of Des Plaines*, 63 Ill.2d 256, 347 N.E.2d 716 (1976).

The ruling of *res judicata*, notwithstanding Des Plaines' change in status, seems to suggest that home rule powers mean nothing in a power struggle with an instrumentality of the legislature such as the Metropolitan Sanitary District. Yet home rule units clearly are free to enact ordinances that supersede inconsistent pre-1970 statutes. See *Clarke v. Village of Arlington Heights*, 57 Ill.2d 50, 54, 309 N.E.2d 576, 579 (1974).

The second decision is similar to the result that Des Plaines encountered in its attempt to impose noise standards on idling switch engines. The court determined that the Illinois Environmental Protection Act precluded local regulations that were more strict than those imposed by the state, despite language in both the 1970 Constitution and the Act itself characterizing state action as being in cooperation with local action. *City of Des Plaines v. Chicago & North Western Ry. Co.*, 65 Ill.2d 1, 357 N.E.2d 433 (1976). Viewed in conjunction with decisions permitting municipalities to set higher minimum drinking ages than provided by statute, see, e.g., *Illinois Liquor Control Comm'n v. City of Joliet*, 26 Ill. App.3d 27, 324 N.E.2d 453 (3d Dist. 1975), this result is not easy to appreciate.

rule powers in this state. Under Article VII, Section 6,³ qualifying units of local government are authorized to exercise any power and perform any function pertaining to their government and affairs except as limited by the section itself or by legislation enacted in accordance with that section.⁴ Powers under this grant are termed home rule powers and, with respect to such powers, units of local government are liberated from their former status as complete creatures of the legislature. Consequently, units so endowed are no longer subject to Dillon's Rule, which held that units of local government are without power to act absent express or implied legislative authorization.⁵ Home rule units enjoy autonomy with respect to local affairs unless the legislature has preempted their powers in accordance with constitutional prescriptions.⁶

The scope of this autonomy, however, is defined by the phrase in Section 6(a), "pertaining to its government and affairs." A few examples of these matters are provided in that section,⁷ but, as recognized at the Constitutional Convention, the general language of the constitutional grant of home rule powers requires significant judicial interpretation.⁸ The drafters contemplated that the grant would em-

For a commentary on Des Plaines' experience, see Minetz, *Recent Illinois Supreme Court Decisions Concerning the Authority of Home Rule Units to Control Local Environmental Problems*, 26 DE PAUL L. REV. 306 (1977).

3. Section 6(a) provides that: "A County which has a chief executive office elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units." ILL. CONST. art. VII, § 6(a).

4. *Illinois Liquor Control Comm'n v. City of Joliet*, 26 Ill. App.3d 27, 31, 32 N.E.2d 453, 455 (1975).

5. The rule "is so labeled because it found expression in 1 DILLION MUNICIPAL CORPORATIONS 448 (5th ed. 1911)." *Id.*

6. *Kanellos v. County of Cook*, 53 Ill.2d 161, 166, 290 N.E.2d 240, 243 (1972). See 7 RECORDS OF PROCEEDINGS, Sixth Illinois Constitutional Convention 1616-17 (Local Government Report) [hereinafter cited as PROCEEDINGS].

7. Article VII, Section 6(a) describes the grant of home rule powers as "including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." ILL. CONST. art. VII, § 6(a).

8. The Illinois Supreme Court has observed:

It was acknowledged in the constitutional debates that by virtue of the general language of the grant and the qualifying phrase 'pertaining to its government and affairs' the right of a home rule unit to exercise any power will ultimately depend upon an interpretation by this court as to whether or not the power exercised is within the grant of Section 6(a).

Amperсанд, Inc. v. Finley, 61 Ill.2d 537, 540, 338 N.E.2d 15, 17 (1975), citing 4 PROCEEDINGS 3052. See also Baum, *Illinois Home Rule—Part I*, 1972 ILL. L.F. 137, 152; Parkhurst, *Article VII—Local Government*, 52 CHI. BAR REC. 94 (1970); Vitullo, *Recent Developments in Local Government Law in Illinois*, 22 DE PAUL L. REV. 85, 96 (1972). For a contention that judicial interpretation would have been crucial regardless of the language chosen, see Sandalow, *The Limits of Municipal Power Under Home Rule: A Role for the Courts*, 48 MINN. L. REV. 643, 664-67 (1964).

brace local but not federal or state matters.⁹ Because local concerns often overlap with federal and state concerns,¹⁰ determination of whether a matter was federal or state in character could depend on such factors as whether the matter was the subject of extensive state or federal legislation or was assigned to a regulatory commission.¹¹

As a result, determination of whether a given power is a home rule power frequently requires reference to statutes bearing on the same subject matter. However, use of statutes for this purpose requires careful reconciliation with subsection (i) of the home rule section.¹² This section provides that home rule units may exercise power concurrently with the state unless specifically preempted by legislation complying with the standards set in subsections (g) and (h).¹³

Section 6 therefore calls for examination of statutes for two distinct purposes: under 6(a) statutes may be considered as evidence as to whether a given matter is by nature local; and under 6(g) and (h) statutes may pre-empt home rule action by removing a matter from the scope of home rule powers. For the first of these purposes, inferences can be freely drawn from any statute. For the second purpose, however, only statutes specifically declaring an intent to pre-empt and having been approved by constitutionally mandated majorities¹⁴

9. Froehlich, *Home Rule*, in ILLINOIS MUNICIPAL LAW, ch. 24, §§ 24.12 and 24.81 (IICLE, 1974) (noting framer's intent regarding limitation of home rule powers to local concerns).

10. Examples of overlap between local and larger unit concerns are abundant. Highland Park, for example, found that widening of county highways passing through its city limits could not be barred by city ordinance because such matters were beyond the scope of home rule powers. *City of Highland Park v. County of Cook*, 37 Ill. App.3d 15, 344 N.E.2d 665 (2d Dist. 1975).

11. 7 PROCEEDINGS 1615-44.

12. Article VII, section 6(i) of the Illinois Constitution provides:

Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

ILL. CONST. art. VII, § 6(i).

13. The modes for such legislative preemption are set out in sections 6(g) and (h). Section 6(g) provides:

The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (1) of this section.

ILL. CONST. art. VII, § 6(g).

Section 6(h) provides:

The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (1) of this section.

ILL. CONST. art. VII, § 6(h).

14. *Id.*

can affect home rule powers. The effect of these statutes is unambiguous: they bar any action by home rule units in that area.

Because statutes serve two purposes and are subject to different standards for each purpose, home rule analysis requires that the purpose for which the statute is being examined be clearly delineated. Illinois decisions, however, have often failed to preserve this distinction.¹⁵ As a result, it is difficult to predict which powers will be found by the courts to be home rule powers or how statutes touching upon activities of local government units will affect freedom of action of home rule units. Whether a given power is a home rule power and what effect a statute relating to such power should be given has become intertwined and confused.

In view of this confusion, statutes that discriminate between home rule and non-home rule units pose a difficult problem for equal protection analysis. A statute does not deny equal protection if it operates differently upon classes which can be meaningfully distinguished,¹⁶ but the difference between home rule and non-home rule units consists simply of the former's possessing home rule powers. Because the nature of these powers is confused, it is difficult to say whether possession of or lack of such powers is a meaningful basis for distinguishing between units of local government.

Against this background, Illinois practitioners have anxiously awaited each reported decision relating to home rule powers and statutes affecting such powers, hoping to expand their understanding of the penumbra defining their scope. The recent decision in *Urbana*

15. Frustration with the lack of a clear approach for determination of whether a given power is a home rule power is widespread. See Beibel, *Home Rule in Illinois After Two Years: An Uncertain Beginning*, 6 J. MAR. J. PRAC. & PROC. 253 (1973); Froehlich, *Illinois Home Rule in the Courts*, 63 ILL. B.J. 320 (1975); Froehlich, *Illinois Home Rule in the Courts—Continued*, 65 ILL. B.J. 214 (1976).

16. The formula most often employed is that equal protection is denied if a law provides differing treatment to persons or things that are similarly situated with respect to the legislative purpose. See *Stein v. Howlett*, 52 Ill.2d 570, 289 N.E.2d 409 (1972) (distinction between state and local government officials in Government Ethics Act upheld); *Fanio v. John W. Breslin Co.*, 51 Ill.2d 366, 282 N.E.2d 443 (1972) (different notice requirements for suits by adults and minors under the Illinois Tort Immunity Act upheld); *King v. Johnson*, 47 Ill.2d 247, 265 N.E.2d 874 (1970) (different notice requirements for suits under Government Employer and Employee Tort Immunities Act for local and state governments upheld); *Begich v. Industrial Commission*, 42 Ill.2d 32, 245 N.E.2d 457 (1969) (limiting recovery under workmen's compensation laws for a nontraumatic injury).

Ironically, equal protection issues regarding discrimination between home rule and non-home rule units are actually one-sided. By virtue of the Illinois Constitution of 1970, home rule units are guaranteed a privileged status. "Equal protection" issues arise only where an attempt to make non-home rule units in some way superior to home rule units is involved. Thus, the constitution discriminates between home rule and non-home rule units, but discrimination by the legislature is subject to scrutiny under constitutional equal protection principles.

v. Houser, in which all three troublesome home rule questions (existence of a particular home rule power, effect of restrictive statutory language and equal protection) were present would therefore have intrinsic importance for local government lawyers. However, its holding, that home rule units may utilize the Illinois demolition statute¹⁷ despite language in that statute appearing to deny such use, is probably less significant than its analytical aspects. *Houser* is difficult to reconcile with an earlier landmark home rule decision, and may represent either an implied overruling of that precedent or a case of first impression based on a subtle distinction.

The purpose of this Note is to review the analysis in *Houser* in light of earlier decisions and their methods, to examine the resolution of particular issues in *Houser* as well as its overall holding, and finally to assess the future significance of *Houser* for cases involving home rule units.

FACTS AND PROCEDURAL HISTORY

Urbana v. Houser arose from a complaint for demolition filed in 1976 by the City of Urbana, alleging that a structure within its municipal limits was so dangerous and unsafe that its condition could not be eliminated by repair and that the city's building official had declared the structure dangerous within the meaning of the Illinois demolition statute. *Houser* moved for dismissal, alleging that the city lacked the power to maintain the action because the demolition statute upon which it relied had been amended in 1971 to exclude its application to home rule units.¹⁸

The circuit court dismissed the complaint, determining that the demolition statute was unavailable to home rule units, so that a home rule unit could maintain a demolition action only on the basis of its constitutionally derived home rule powers. To do so, it reasoned, a home rule unit would first have to enact an ordinance.¹⁹ *Urbana's*

17. ILL. REV. STAT. ch. 24, § 11-31-1 (1975).

18. The demolition statute, ILL. REV. STAT. ch. 24, § 11-31-1 (1975), provides in part that municipalities may "demolish, repair or cause the demolition or repair of dangerous and unsafe buildings or uncompleted and abandoned buildings" after obtaining an order from a circuit court. *Id.* Courts are to expedite applications for such orders. In addition, action pursuant to such an order creates a lien against the property in question for the cost of such action. This lien is "superior to all prior existing liens and encumbrances, except taxes." *Id.*

The 1971 amendatory act extended this statute to certain counties and concluded with the words, "This Amendatory Act of 1971 does not apply within the jurisdiction of any home rule Unit." P.A. 77-1416, § 1, eff. Sept. 1, 1971.

19. *Urbana v. Houser*, Memorandum of Decision No. 76-L-267 (6th Judicial Cir. 1976). The requirement that the exercise of a home rule power be preceded by enactment of an ordinance appears to be based on an interpretation of due process in actions by municipalities recited in

claim that the statute denied equal protection to home rule units was rejected.²⁰ The decision was appealed to the appellate court, and then transferred to the Illinois Supreme Court pursuant to Rule 302(b).²¹

ISSUES RAISED IN *HOUSER*

As the case unfolded before the circuit court, three issues were presented. First, the court had to determine the meaning of the statutory language cited by Houser as the basis for the claim that the demolition statute had been made unavailable to home rule units. Then, it was necessary to determine whether Urbana could exercise demolition powers independently of statutory authorization. Finally, it was necessary to consider whether there was any violation of equal protection in applying the statute under the given circumstances.

The supreme court, however, did not explicitly isolate these three issues. It characterized the issue as whether a home rule unit lacks "the demolition authority conferred on it by statute prior to the 1970 Constitution because that statute was amended with a sentence stating that '[t]his amendatory Act of 1971 does not apply within the jurisdiction of any home rule unit.'" ²²

This formulation of the issue may be significant for two reasons. First, it presages an analysis that touches on the three issues isolated by the circuit court but fails to resolve each before proceeding to the next. Second, it indicates that the court viewed *Houser* in a unitary

People *ex rel.* J.C. Penney Properties, Inc. v. Village of Oak Lawn, 38 Ill. App. 3d 1016, 349 N.E.2d 807 (1972).

20. The right of home rule units to litigate in order to determine their rights was recognized in *Forestview Homeowners Ass'n, Inc. v. County of Cook*, 18 Ill. App.3d 230, 309 N.E.2d 763 (1974).

21. Illinois Supreme Court Rule 302(b) provides:

After the filing of the notice of appeal to the Appellate Court in a case in which the public interest requires prompt adjudication by the Supreme Court, the Supreme Court or a justice thereof may order that the appeal to be taken directly to it [*sic*]. Upon the entry of such an order, any documents already filed in the Appellate Court shall be transmitted by the clerk of that court to the clerk of the Supreme Court. From that point the case shall proceed in all respects as though the appeal had been taken directly to the Supreme Court.

ILL. REV. STAT. ch. 110a, § 302(b) (1975).

One might wonder why Urbana did not moot the issue by enacting an ordinance meeting the requirements of the circuit court decision. Some insight into the nonlegal factors operative in the city government at that time which tend to explain Urbana's failure to do so is provided in *People ex rel. Urbana v. Paley*, 68 Ill.2d 62, 368 N.E.2d 915 (1977). In that case the city had brought a mandamus action against its mayor in an effort to force him to sign certain general obligation bonds and interest coupons authorized by an ordinance of the city council for the purpose of acquiring a parcel of land as part of an urban development program. *Id.*

22. 67 Ill.2d 268, 271, 367 N.E.2d 692, 693 (1977).

way, suggesting perhaps that the three distinct issues found by the circuit court were not as crucial to the case as some single, unarticulated principle that the supreme court recognized.

Demolition as a Home Rule Power

The supreme court's discussion of whether demolition is a home rule power is limited to a review of the basic principles of home rule with an emphasis on the breadth and potency of such powers. However, no conclusion is articulated as to whether demolition is a home rule power.

The court quoted the basic home rule grant in Section 6(a) of the local government article of the 1970 Illinois Constitution, the provision for concurrent exercise of state and local powers in Section 6(i), and the signal language of Section 6(m) that home rule powers are to be construed liberally.²³ The court also noted that home rule units have an "autonomy and independence limited only to restrictions imposed by the Constitution or authorized by it,"²⁴ and "have the same powers as the sovereign except where such powers are limited by the General Assembly." (The decision cited *Kanellos v. Cook County*²⁵ as authority for the latter proposition, although that decision did not make so strong a statement.) "According to the court, [i]t requires no strong prisms to see the breadth and depth of home rule powers."²⁶

This treatment stands in stark contrast to home rule power analysis under prior decisions which have employed five methods for determining whether a given power is a home rule power. First, the examples listed in Section 6(a) sometimes have expressly covered the power in question.²⁷ Second, it has been possible to analogize the

23. Section 6(m) provides that "[p]owers and functions of home rule units shall be construed liberally." ILL. CONST. art. VII, § 6(a). Apparently this subsection has been noted in only one prior reported decision, *Ampersand, Inc. v. Finley*, 61 Ill.2d 537, 542, 338 N.E.2d 15, 18 (1975).

24. 67 Ill.2d 268, 273, 367 N.E.2d 692, 694 (1977).

25. 53 Ill.2d 161, 290 N.E.2d 240 (1977). The actual language employed is:

Under the home rule provisions of the 1970 Constitution, however, the power of the General Assembly to limit the actions of home rule units has been circumscribed and home rule units have been constitutionally delegated greater autonomy in the determination of their government and affairs.

Id. at 166, 290 N.E.2d at 243.

26. 67 Ill.2d 268, 273, 367 N.E.2d 692, 694 (1977).

27. See, e.g., *Mulligan v. Dunne*, 61 Ill.2d 544, 338 N.E.2d 6 (1975) (power to impose sales tax on nonresidents selling within the jurisdiction); *Evanston v. Cook County*, 53 Ill.2d 312, 291 N.E.2d 823 (1972) (power to tax property and non-property); *Kanellos v. Cook County*, 53 Ill.2d 161, 290 N.E.2d 240 (1972) (power to incur debt); *Bloom, Inc. v. Korshak*, 52 Ill.2d 56, 284 N.E.2d 257 (1972) (power to impose privilege tax).

power in question to one of those listed in Section 6(a).²⁸ Third, an assessment of a given matter in relation to the phrase "pertaining to its government and affairs" has also proved adequate.²⁹ Fourth, inclusion of a particular matter in the Constitution has been found to preclude that subject from the exercise of home rule power.³⁰ Finally, an examination of the history of the treatment of the subject in question under statutes at times has been dispositive of the issue.³¹

In *Houser*, the court did not appear to apply any of these analytical methods. In its formulation of the issue, the court did note that prior to the 1970 Constitution all municipalities³² were endowed with statutory demolition powers. The court, however, did not explain the significance of this observation³³ nor did it examine the nature of the demolition power to determine just what it includes.

The court's review of basic home rule principles was not unprecedented, but its failure to apply them to the facts was unique. By replacing such analysis with mere general statements regarding the

28. See, e.g., *Bruce v. Champaign*, 24 Ill. App. 3d 900, 321 N.E.2d 469 (1975) (power of zoning); *People ex rel. City of Salem v. McMackin*, 53 Ill.2d 347, 291 N.E.2d 807 (1972) (power to issue industrial development bonds); *Illinois Liquor Control Comm'n v. City of Joliet*, 26 Ill. App.3d 27, 324 N.E.2d 453 (3d Dist. 1975) (power to control liquor sales).

29. *Carbondale v. Van Natta*, 61 Ill.2d 483, 338 N.E.2d 19 (1975) (extraterritorial zoning power not a home rule power); *Town of Godfrey v. City of Alton*, 33 Ill. App.3d 978, 338 N.E.2d 890 (1975) (power to determine means of becoming a municipality is not free from legislative controls); *Forestview Homeowners Ass'n, Inc. v. County of Cook*, 18 Ill. App.3d 230, 309 N.E.2d 763 (1974) (power to litigate).

30. See, e.g., *People ex rel. Lignoul v. City of Chicago*, 67 Ill.2d 480, 368 N.E.2d 100 (1977) (constitutional ban on branch banking prevents authorization of such banking from being a home rule power); *Metropolitan Sanitary Dist. v. City of Des Plaines*, 63 Ill.2d 256, 347 N.E.2d 716 (1976) (environmental protection is, in accordance with indications of intent of delegates to constitutional convention, primarily a state field of action); *Ampersand, Inc. v. Finley*, 61 Ill.2d 537, 338 N.E.2d 15 (1975) (existence of unified statewide court systems created by the constitution establishes that the administration of justice is a state concern, and the state's dominant concern precludes the power to act in this area from being a home rule power). See also Minetz, *Recent Illinois Supreme Court Decisions Concerning the Authority of Home Rule Units to Control Local Environmental Problems*, 26 DE PAUL L. REV. 306 (1977).

31. See, e.g., *City of Des Plaines v. Chicago & North Western Ry. Co.*, 65 Ill.2d 1, 357 N.E.2d 433 (1976) (environmental protection act prevents local government units, even under home rule status, from having standards more stringent than those imposed by the state); *Illinois Liquor Control Comm'n v. City of Joliet*, 26 Ill. App.3d 27, 324 N.E.2d 453 (3d Dist. 1975) (history of dram shop acts indicates that a role for local governments was a consistent feature).

32. "Municipalities," by definition, covers cities, villages and incorporated towns, whereas the term "local government unit" also embraces such entities as school districts, park districts, mosquito abatement districts, counties and townships. Only municipalities and counties can ever be home rule units, so the absence of a term that covers both without including others makes it necessary to fall back on the term "units of local government" when referring to potential home rule units.

33. See note 53 and accompanying text *infra*.

breadth and scope of home rule powers, the court invites the conclusion that these powers are so encompassing that, of course, they include demolition powers. The fleeting reference to pre-1970 demolition powers suggests that the court may have regarded home rule powers as embracing all functions performed by local government units prior to the new Constitution. But because the court did not articulate any conclusion as to whether demolition is a home rule power, the meaning of these remarks and the court's purpose in making them is a matter for speculation.

Statutory Construction in Houser

The court's treatment of the issue of statutory construction presented in *Houser* also is perfunctory. The language in question was contained in an amendment to the demolition statute, enacted in 1971,³⁴ which stated that the amendatory act was inapplicable within the jurisdiction of any home rule unit. The amendment had altered the statute by extending its applicability to certain counties. Previously, it had been applicable only to municipalities. Urbana had taken the position that a construction of an amendment which both extends and restricts applicability of the statute was incongruous. The language in question, according to Urbana, could be given any of four possible meanings.³⁵ However, the supreme court mentioned only one possible interpretation—that the amendatory act purported to deprive home rule units of any power to maintain demolition actions. The supreme court erroneously stated that this was the construction given to the statutory language by the circuit court.³⁶

34. The amendment provided that a county board with a statutory health department may demolish any dangerous and unsafe buildings within the territory of any city or village or incorporated town having less than 50,000 population. P.A. 77-1417, § 1, eff. Sept. 1, 1971.

35. Urbana's suggested possible constructions were: (1) that the restriction applied only to the language added to the statute by the amendment; (2) that the language removed the former statutory demolition power of home rule units, but leaves untouched their home rule based power of demolition; (3) that no restriction at all was intended on home rule units; and (4) that all powers of demolition of home rule units are thereby removed. The first of these possible interpretations would seem to be by far the most congruent with the apparent intent of the remainder of the amendatory act.

36. The circuit court had determined that the amendment removed the former statutory demolition power of home rule units. In addition, it found that demolition is a home rule power. Applying the rule stated in *People ex rel. City of Salem v. McMackin*, 53 Ill.2d 347, 291 N.E.2d 807 (1972), the court upheld the statutory restriction, on the grounds that home rule units were different from non-home rule units with respect to dependence on enabling legislation for demolition power, so that it was permissible to treat them differently.

One might wonder how the complaint against *Houser* was even filed if Urbana had no ordinance dealing with demolition actions. The complaint was filed pursuant to Urbana City Ordi-

The supreme court professed doubt that such a construction could be correct, and noted the incongruity that would result were the language in issue given such a construction, since a companion statute dealing with injunctions to enforce building codes³⁷ contained no restrictive language. It further noted that the General Assembly had employed a number of linguistic formulations to clarify the intended effect of amendments to existing laws which might touch on home rule powers.³⁸ Without explaining how this observation contributed to an understanding of the language in question, the court concluded that the legislature hardly could have intended that an amendatory act which merely extended the power of demolition to certain counties would restrict demolition powers of home rule units within such counties. Pairing this observation with the cited legislative formulae would appear inapposite.³⁹

Thus, the court expressed dissatisfaction with one interpretation of the statutory language, which it attributed to the circuit court, but never indicated what it thought was the proper statutory construction. The court's misunderstanding of the actual construction of the statute by the circuit court is so blatant as to raise doubts as to whether the supreme court failed to understand the circuit court's view of the status of demolition or deliberately chose to ignore the possibility that such a power could derive from the constitutional grant of home rule powers.

nance No. 7475-73, which set forth a minimum housing code, authorized building inspections and citations, and authorized the inspector, if compliance was not forthcoming, to turn the matter over to the city attorney.

37. ILL. REV. STAT. ch. 24, § 11-31-2 (1975) authorizes the use of injunctions to secure compliance with municipal building codes.

38. "The amendatory Acts. . . are not a limit upon any municipality which is a home rule unit," ILL. REV. STAT. ch. 24, §§ 8-4-3, 8-7-2 (1975) (issuance of refunding and general obligation bonds); "This amendatory Act does not apply to any (municipality) which is a home rule unit," ILL. REV. STAT. ch. 24, § 3-4-6.1 (1975); ILL. REV. STAT. ch. 108½, § 22-306 (1975); ILL. REV. STAT. ch. 24, §§ 3-13-5, 3-13-6 (1975) (emergency appointment procedure for temporary mayor; pensions and medical benefits for police and firemen; payment limits for municipal officers); "This Act is not a limit upon any home rule unit," ILL. REV. STAT. ch. 85 § 1781 (1975) ILL. REV. STAT. ch. 11½ § 705.02 (1975) (American Bicentennial Celebration Act, Regional Transportation Authority Act); "The provisions of this Section are not a limitation on the powers of a home rule municipality," ILL. REV. STAT. ch. 24, § 8-1-17 (1975) (power to receive federal funds under Comprehensive Employment and Training Act of 1973).

39. The examples cited by the court are all instances where the legislature has left the powers of home rule units untouched, and has used clear language to express an intent to do so. Accordingly, the examples would seem to support the view that the legislature is mindful of the potential impact of amendments on home rule powers and tries to spell out their intended effect. For the court to devote space to this list of examples (*see* note 38 *supra*) and then turn its back on the problem of proper construction of the restrictive language in issue would seem incongruous.

This treatment of the issue of statutory construction in *Houser* amounted to no analysis at all for it ignored well-established principles for resolving such issues.⁴⁰ The court's failure to consider possible alternative constructions of the statutory language in question raises the suspicion that the court did not regard the issue of statutory construction as crucial to the outcome in *Houser*. On its face, however, such a view would seem unsupportable.⁴¹

Equal Protection Analysis

The court in *Houser* approached the issue of equal protection using an interpretation of the demolition statute that it had criticized and never adopted as its own. Under that interpretation, non-home rule units but not their home rule counterparts would be able to maintain demolition actions. From this perspective, a clear issue of equal protection was presented because the statute discriminated between two classes of local government units solely on the basis of their status with respect to home rule.

Only two prior Illinois Supreme Court decisions have dealt with statutory discrimination on the basis of home rule status, and they reached opposite results based on a delicate distinction. Accordingly, the supreme court was faced with the question of which precedent to apply. Rather than analyze these precedents, the court applied one and completely ignored the other.

40. The principles of statutory construction in Illinois are extremely well-established. They include the following:

(1) Statutes are to be construed in accordance with their apparent meaning and the intent of the legislature. *Lincoln Nat'l Life Ins. Co. v. McCarthy*, 10 Ill.2d 489, 140 N.E.2d 687 (1957).

(2) The primary goal of construction is to affect the legislative intent. *Hagen v. Rock Island*, 18 Ill.2d 174, 163 N.E.2d 495 (1960).

(3) Statutes themselves afford the best means of exposition and where the legislative intent can be determined from its provisions, that intent of a statute will prevail without resort to other means of construction. *Gibson v. Cannon*, 65 Ill.2d 366, 357 N.E.2d 1180 (1976); *Jones v. Pebler*, 371 Ill. 309, 20 N.E.2d 592 (1939).

(4) A construction leading to an absurd result should be avoided where two constructions are possible. *People v. Hudson*, 46 Ill.2d 177, 262 N.E.2d 473 (1970); *People v. Day*, 321 Ill. 552, 152 N.E. 485 (1926).

(5) It will never be presumed that the legislature intended to pass an act in violation of the constitution and, if the purposes of an act can be carried out by another construction, the unconstitutional construction will be avoided. *Chicago v. Willett Co.*, 406 Ill. 286, 94 N.E.2d 195 (1950).

41. Such a view would appear to run counter to the principles of statutory construction that apply where an equal protection issue is involved, as discussed in note 36 *supra*. Moreover, whether the statute was intended to deprive home rule units of all power or only statutory power to act in matters of demolition may have been of crucial importance.

The precedential cases are *City of Carbondale v. Van Natta*⁴² and *People ex rel. City of Salem v. McMackin*.⁴³ *Van Natta* concerned a statute extending extraterritorial zoning powers to non-home rule units but expressly excluding home rule units. *McMackin* dealt with a statute enabling local government units to issue industrial development bonds which also expressly excluded home rule units. The statute in *Van Natta* was found to violate equal protection, but in *McMackin*, the statute was upheld.

In *Van Natta*, the court noted that the power to zone extraterritorially could not be derived from the constitutional grant of home rule power because, by virtue of its non-local nature, it did not pertain to local government and affairs.⁴⁴ Accordingly, absent statutory authority, home rule units would be unable to engage in extraterritorial zoning. A statute conferring extraterritorial zoning powers only upon non-home rule units would therefore leave home rule units at a relative disadvantage. Such a result was found unconstitutional as a violation of equal protection.⁴⁵

In *McMackin*, the power to issue bonds to finance industrial development was found to inherently exist in home rule units by virtue of their status under the constitution because that power did pertain to local affairs.⁴⁶ Accordingly, home rule units possessed the power to issue such bonds regardless of statutory authority. Under these circumstances, a statute extending power to issue industrial development bonds only to non-home rule units would provide non-home rule units with a power that home rule units already possessed. To grant such power to home rule units by statute would be redundant. *McMackin* presumed that language in the statute excluding home rule units from the grant of authority was intended merely to deny them statutory authority, and not to attempt to interfere with any constitutional powers of home rule units.

Thus, *Van Natta* and *McMackin*, read jointly, would seem to set forth the proposition that the validity of a statute discriminating between home rule and non-home rule units in granting powers depends on whether the power in question is a home rule power. *Van Natta* would require voiding the discriminatory provision if the power is not a home rule power, while *McMackin* would call for upholding it where the power is a home rule power.

42. 61 Ill.2d 483, 338 N.E.2d 19 (1975).

43. 53 Ill.2d 347, 291 N.E.2d 807 (1972).

44. 61 Ill.2d 483, 486, 338 N.E.2d 19, 21 (1975).

45. *Id.* at 490, 338 N.E.2d at 23.

46. 53 Ill.2d 347, 291 N.E.2d 807, 818 (1972).

In *Houser*, the supreme court applied the rule in *Van Natta* and voided the restrictive language in the demolition statute, but did not even mention *McMackin*. The court borrowed language from *Van Natta*, adopting the result that the exclusionary language should be voided as a violation of equal protection while the remainder of the demolition act remained valid.⁴⁷ However, the court studiously avoided quoting language in *Van Natta*, referring to the fact that the classification created by the statute was invalid only because home rule and non-home rule units were equally dependent on legislative authority to act in that field. Therefore both types of units are considered similarly situated with respect to the legislative purpose.⁴⁸

The significance of the court's failure to note this point is apparent when one considers that this is the sole basis for distinguishing *Van Natta* from *McMackin*, in which the opposite result was reached.⁴⁹ Moreover, this basis for distinguishing the two precedents is in effect a restatement of the judicially formulated standard of equal protection applied under both the federal and Illinois Constitutions: a law may not discriminate between two classes if they are similarly situated with respect to the purpose of the law.⁵⁰ Under *Van Natta* and *McMackin*, the concept of being similarly situated was interpreted as being equally dependent upon legislative authority. This dependence was found to turn upon the practical result of the statute's discriminatory language. Under both statutes legislative authority to act was extended only to non-home rule units while home rule units were unaffected.

In *McMackin*, however, the practical result of this discriminatory treatment was found to be a situation of relative equality because an inherent home rule power was substantially the equivalent of the

47. The court in *Van Natta* stated:

What remains of the statute after the excision of the offending classification is obviously independent and complete in itself. Too, it had been enacted prior to the objectionable additions of 1971, and obviously it cannot be said that the legislature would not have passed the statute in the absence of the material which we delete.

61 Ill.2d 483, 491, 338 N.E.2d 19, 24 (1975).

48. In *Houser* the court quoted this portion of *Van Natta*:

We have seen that a municipality does not have extraterritorial zoning authority under its home rule powers. Thus, if the legislative classification confining the applicability of section 11-31-1 to non-home rule units were to be judged valid, there would be the incongruous situation of non-home rule units being able to zone extraterritorially, while home rule units could not.

Id. at 490, 338 N.E.2d at 23. However, the court omitted the next sentence: "We can see no reasonable basis for differentiating between non-home rule so far as the power to zone extraterritorially is concerned." *Id.*

49. In the circuit court opinion this distinction was clearly drawn. See note 36 *supra*.

50. See note 16 *supra*.

statutory power bestowed on non-home rule units. Thus, in *McMackin* the ultimate result of the discrimination was simply to bring non-home rule units to parity with home rule units with respect to the power in question.

In *Van Natta*, the practical result was substantial inequality because the statutory power in question was not equivalent of constitutional home rule. Thus discrimination as to extension of that statutory power would deny home rule units a power granted to non-home rule units.⁵¹

Accordingly, both *Van Natta* and *McMackin* applied the constitutional standard of equal protection by first construing the challenged statute, then determining whether the power in question was one that home rule units did not already possess independently of legislative authority or whether the power was constitutionally granted.

In contrast, *Houser* skipped these steps for determining whether home rule and non-home rule units were similarly situated with respect to the provisions of the demolition statute. In fact, it could not have followed these steps under its equal protection analysis because it had initially failed to determine whether demolition was a home rule power and had not articulated any conclusion as to the correct interpretation of the demolition statute's restrictive language.

A finding on the equal protection issue therefore represented a failure to utilize the accepted standard for analyzing equal protection issues. Moreover, it constituted a failure to adhere to other well-established principles of equal protection analysis which require that, before a statute is voided as denying equal protection, an effort be made to construe the statute in a constitutional form.⁵²

Thus, in *Houser* there was a finding as to equal protection, but no analysis. The inadequacy of the court's treatment of the issue of equal protection may make it difficult to believe that its equal protection

51. As the *McMackin* court reasoned, home rule units apparently still would be at a slight disadvantage because they would have to enact an ordinance empowering themselves. The circuit court in *Houser* adopted this view stating: "[*Van Natta*] would not necessarily be authority for the position that in every instance the qualifying language restriction would be inapplicable. [*McMackin*] accepted the language. . ." See note 19 and accompanying text *supra*.

52. Moreover, in this context, the principles of equal protection and statutory construction are interrelated, so that a construction that faces equal protection problems should be abandoned in favor of one posing no such difficulties. See note 40 *supra*. See also *People ex rel. City of Salem v. McMackin*, 53 Ill.2d 347, 363, 291 N.E.2d 807, 819 (1972). Thus, the court's failure to indulge in meaningful statutory analysis adds to the incongruity of its seizing upon *Van Natta* without stating a reason for doing so. The court had multiple alternatives; at least four constructions were advanced by Urbana in its brief. In addition, the interpretation adopted by the circuit court was different from the one adopted by the supreme court. However, the supreme court made no effort to examine any of these constructions.

finding was dispositive of the case. Although other grounds for reaching the same outcome were available,⁵³ the court clearly indicated that its holding was based on equal protection.

THE FUTURE SIGNIFICANCE OF HOUSER

In assessing the precedential value of *Houser* it must be noted that the decision contains no new principles for determining whether a given power is a home rule power nor one for construing statutes. On the contrary, it ignores settled rules of analysis for such issues and even fails to articulate any conclusion as to these issues. It likewise ignores well-established principles of construction of statutes under equal protection challenge and fails to use the analytical approach to equal protection of home rule units pioneered in two earlier decisions. And finally, without generating any analytical approach of its own, it blindly applies the conclusion of one of these prior precedents to the case at hand without even mentioning the alternative precedent.

It is tempting, therefore, to conclude that *Houser* represents no more than a momentary lapse of judicial diligence, or more euphemistically, that it is a decision whose applicability will be limited to the unique set of facts from which it arose. However, *Houser* is a decision on state law issues made by the highest state court. Its precedential potential will not remain untapped if any explanation of its handling of the issues presented can be advanced. The very vagueness that makes *Houser* appear inscrutable leaves considerable flexibility in constructing a rationale that would give it a fixed location in the evolving constellation of home rule law. While little in *Houser* will provide support for a given explanation, there is little to negate a proposed explanation.

The central question which any such explanation must address is why the rule of *Van Natta* rather than *McMackin* was applied. Each of these precedents complied with established principles of equal pro-

53. One might argue, for example, that home rule units' powers were, at the time of their establishment with the adoption of the 1970 Constitution, all powers possessed by local government units of like form under statutes then in effect. Language in *Houser* emphasizing that municipalities enjoyed demolition powers before the Constitution went into effect could be cited as support. See text accompanying note 33 *supra*. Thus, to take away home rule units' statutory powers that existed in 1970 is to take away their constitutional home rule powers, which can be done only in accordance with the limits of Sections 6(g) and (h) of the local government article of the Constitution.

Alternatively, the case could have been resolved by interpreting the restrictive statutory language as merely limiting the power of counties to engage in demolition within the jurisdiction of home rule units, and not as a limitation of home rule powers.

tection, focusing on whether home rule and non-home rule units were similarly situated. Why did the court adopt the conclusion of one and not the other, and why did the court not expressly apply the analytical scheme which distinguishes them from one another? And, more generally, how could the court have chosen between them without reaching clear conclusions as to the elements of this analytical scheme in the case before it—statutory construction and determination of whether the power involved was a home rule power?

There are three logical approaches to explaining a choice between two competing precedents: (1) *Houser* fell clearly within the scope of applicability of *Van Natta*; (2) *Houser* was beyond the scope of either precedent, so the court was free to extend either to cover this new situation; or (3) *Houser* fell within the scope of *McMackin*, so that in applying *Van Natta*'s contrary rule the court impliedly overruled *McMackin*. Each of these approaches has the potential of supplying the unarticulated bases of the result in *Houser*.

An argument under the first approach would readily explain application of *Van Natta* and partially explain the court's failure to mention *McMackin*, for if the facts in *Houser* closely matched those in *Van Natta* the court would be under no obligation to explain its nonapplication of a consistent, rival precedent. However, such an argument would have to include contentions that the court had impliedly found the statute and the power dealt with in *Houser* to be similar to those in *Van Natta*, since the holding in *Van Natta* was carefully based on these factors. Thus it would be necessary to argue that the court's failure to articulate conclusions as to the proper construction of the demolition statute and status of the demolition power did not mean the court had failed to reach conclusions. The conclusions reached were that the statute left home rule units without power to maintain demolition actions.

In *Van Natta*, the statute was found merely to deny home rule units statutory power to act in extraterritorial zoning, but because there was no corresponding home rule power, the statute left home rule units powerless in this area. To precisely parallel *Van Natta*, the court in *Houser* would have had to find that the demolition statute denied statutory power to home rule units and that there existed no home rule power of demolition. However, it could also be argued that the statute in *Houser* was viewed as denying all power, whether statutorily or constitutionally derived, to home rule units in the area of demolition, so that its effect would be to leave home rule units in the same situation which constituted a denial of equal protection in *Van Natta*.

Arguing that *Houser's* findings paralleled those in *Van Natta* would require overlooking that *Houser* applied its equal protection test to a construction of the statute that left home rule units completely without power. However, the thrust of the discussion of home rule powers in *Houser* appeared to favor finding home rule powers everywhere. In other words, the language of *Houser* tends to suggest that the court favored findings contrary to those in *Van Natta* as to both statutory construction and existence of a home rule power.

Arguing that the result of the statutes in both cases was the same because the demolition statute as construed in *Houser* would have denied *all* power to home rule units is more consistent with the language in *Houser*. However, such an argument would fail to explain the court's settling on such an unconstitutional construction when it was under a clear duty to impose a constitutional construction if possible. Likewise, such an argument could not explain the court's failure to refer to the requirements of Article VII, Section 6(g) and (h) which state that statutes pre-empting the exercise of home rule powers meet exacting standards.

The second approach to explaining *Houser*, characterizing it as a case of first impression, requires that *Hauser* be considered distinguishable from its two precedents. One distinction that could be drawn would be that the demolition statute *withdrew* power whereas the statutes in *Van Natta* and *McMackin* merely *failed to extend* power. On its face, such a distinction appears spurious, but it may gain some credibility when viewed in light of the fact that demolition powers were enjoyed by all municipalities prior to adoption of the 1970 Illinois Constitution which created home rule powers. Various arguments could be made that such pre-1970 powers are inviolate because they are especially fundamental, and that the court was giving unclear voice to such a proposition in *Houser*.

Another way of distinguishing *Houser* would be to maintain that the power of demolition is actually a composite, comprising distinct subsidiary powers, some of which home rule units possess by virtue of constitutionally derived home rule powers and some of which must be based on a grant of legislative authority.⁵⁴ Under such a view the

54. This point requires some explanation. The term demolition power was used freely by both the circuit court and the supreme court without any attempt to define or characterize it. The problem is that a statutory power of demolition is defined in the demolition statute. This power consists of the authority to file a complaint in the circuit court based on an inspection of a building, to obtain an expedited hearing on that complaint and, if the complaint is upheld, to demolish the building and thereafter obtain a lien against the property for the cost of the demolition. On the other hand, if a constitutional home rule power existed, the question is whether it necessarily is coextensive with the statutory power.

demolition power would be a hybrid that could merit special treatment, but the distinction is probably too nice to deserve preservation in practice. If a distinction between *Houser* and the prior precedents were accepted, however, it would explain *Houser's* application of *Van Natta* as an extension of the rule in that case. It would not, however, explain why *McMackin* was not chosen.

While each of the explanations under these first two approaches has some merit when applied to the choice of precedents none satisfactorily addresses the more general question of why *Houser* did not articulate any resolution of the issues of statutory construction or status of the demolition power. Because these subsidiary issues are crucial to the choice between the two available precedents, failure to explain the perfunctory treatment they received in *Houser* reflects on the value of any argument which otherwise explains the choice of precedents.

Under the third approach, which views *Houser* as impliedly overruling *McMackin*, it is possible to explain not only the choice of *Van Natta* but also the court's lack of concern for these three issues. If *Houser* is viewed as overruling *McMackin*, then obviously it constitutes a rejection of the equal protection rule in that case. That rule in turn was based on a carefully drawn distinction—that there existed in that case a home rule power upon which home rule units could rely in the absence of statutory power to act and since the statute in question left that power intact, home rule units were not in the position of helplessness as those in *Van Natta* were. To reject the rule of *McMackin* is to reject that distinction, and to render unimportant the

Insofar as the statutory power of demolition overlaps with the home rule power (if any), *McMackin* would seem applicable. Thus there was no violation of equal protection, and home rule units would empower themselves by ordinance to exercise these subsidiary powers. However, *Van Natta* would appear applicable to the extent that statutory elements were absent from the constitutional power. For example, the right to an expedited hearing would seem to be within the state-dominated field of administration of justice. See the discussion of *Ampersand, Inc. v. Finley* in note 30 *supra*.

Clearly, the result is that anything a non-home rule unit can do, a home rule unit can do. If one finds that there is no home rule power of demolition at all, *Van Natta* applies and home rule units receive full statutory powers. If one finds that there is a constitutional home rule power of demolition, upon which home rule units may rely and which is coextensive with the statutory power conferred by their non-home rule counterparts, the result is the same.

Thus, any of the three possibilities—*Van Natta*, *McMackin*, or both—will provide the same practical result, except that under *Van Natta*, home rule units would not have to arm themselves with empowering ordinances. Obviously, unless some advantage can be supposed in requiring home rule units to go through this step, clarity and economy of effort militate in favor of applying *Van Natta* to not only mixed power cases, but to all cases of discrimination in grants of statutory power to non-home rule units.

precise statutory meaning and existence or non-existence of a home rule counterpart to the power in question.

A powerful argument can be made that the rule in *McMackin* was of no value, however appealing may be its academic aspects. Although the distinction upon which it rested was sufficiently clear to be applied, its practical meaning was simply that home rule units could be discriminated against whenever the discrimination would be ineffective. In other words, a statutory power can be denied to a home rule power provided home rule units do not need it. Accordingly, overturning *McMackin* would restore realism to equal protection of home rule units, and prohibit harmless as well as harmful discrimination in statutes dealing with powers of local government units.

Under this view, *Houser* would extend *Van Natta* to cover not only statutes discriminatorily extending power, but also those discriminatorily withdrawing power. Moreover, the cavalier treatment given by *Houser* to the issues of statutory construction and status of the power in question would support the contention that *Houser* establishes a *per se* rule of invalidity for statutes discriminating between home rule and non-home rule units. In other words, regardless of the meaning of the statute or the nature of the power it deals with, a statute in any way discriminating between home rule and non-home rule units will be unconstitutional as a denial of equal protection.

Such a *per se* rule would be sound because home rule units need equal statutory treatment, since they may enact ordinances which supersede inconsistent applicable statutory provisions.⁵⁵ Thus, if a statute limits powers of local government units, but does not contain specific pre-emptive language, home rule units are free to ignore the statute. The pre-emptive language, if added, would then make the limitation uniform. Statutes extending powers to local governments would automatically apply to home rule units, and any language purporting to deny such extending powers to home rule units would be ineffective under *Houser*.

Accordingly, viewing *Houser* as adopting a *per se* rule of invalidity of ordinances discriminating between home rule and non-home rule units would explain both *Houser's* choice of *Van Natta* rather than *McMackin* without detailed analysis and *Houser's* failure to resolve the issues of statutory construction and status of the power of demolition. And such a view would be consistent with sound, realistic policy. However, there is one matter which such a view cannot explain:

55. See note 2 *supra*.

why *Houser* did not expressly overrule the equal protection rule of *McMackin*. Compared to the flaws of other possible explanations of *Houser*, though, this is not serious and should not be a basis for adopting the *per se* rule it embodies with its obvious policy advantages.

CONCLUSION

Urbana v. Houser comprises a holding but no rationale. Its bare holding, that home rule units may avail themselves of the Illinois demolition statute despite the restrictive language added to it by amendment, is far less interesting or important than the rule that may underlie it.

Houser's true significance, therefore, is not yet known. The rule its holding represents will have to be articulated before its potential can be assessed, and the greatest impact of that rule will be to set the limits of constitutionality for future legislative attempts to discriminate against home rule units. Whether *Houser* closes the door to any such future attempts or merely guarantees equal rights to home rule units in matters relating to demolition remains to be seen. No decision since *Houser* provides a clue as to the view the supreme court may adopt since none of them presented the kinds of issues involved in *Houser*.⁵⁶ Accordingly, *Houser's* statement that "it requires no strong prisms to see the breadth and depth of home rule powers"⁵⁷ stands in stark contrast to *Houser's* own impact on home rule law. Until the rule stated in *Houser* is clarified, the law of equal protection of home rule units will be far out of focus.

Daniel H. Derby

56. Since *Houser*, only three Illinois Supreme Court decisions have touched upon home rule. In *Krughoff v. Naperville*, 68 Ill.2d 352, 369 N.E.2d 892 (1977), Naperville defended a city ordinance requiring donations from developers for schools and parks as a condition for approval of development plans on the basis that it was a valid exercise of the city's home rule powers. The ordinance was upheld on the basis of the city's statutory authority. In *Andress v. Evanston*, 68 Ill.2d 215, 369 N.E.2d 1258 (1977), the court held that the power of home rule units to license real estate brokers had been successfully preempted by the Real Estate Brokers and Salesmen License Act, ILL. REV. STAT. ch. 114½, § 124 (1975). The court ruled in *ex rel. Lignoul v. City of Chicago*, 67 Ill.2d 480, 368 N.E.2d 100 (1977) that the constitutional ban on branch banking prevents authorization of such banking from being a home rule power. Obviously, none of these cases produced issues related to those raised in *Houser*, so none provide any basis for determining the future significance of that case.

57. 67 Ill.2d at 273, 367 N.E.2d at 694.