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## Home Rule

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## HOME RULE

*N.Y. CONST. art. IX, § 2(b)(2):*

*Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature: . . . (2) Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b) except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in his judgment constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.*

## COURT OF APPEALS

City of New York v. State<sup>776</sup>  
(decided September 18, 1990)

The City of New York claimed that chapter 773 of the Laws of 1989<sup>777</sup> was unconstitutional because it violated the home rule message<sup>778</sup> requirement of the New York State Constitution<sup>779</sup> because the legislation concerning Staten Island residents' interest in secession was more than advisory. The city also claimed that chapter 773 violated the equal protection clause of both the state<sup>780</sup> and federal<sup>781</sup> constitutions.<sup>782</sup>

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776. 76 N.Y.2d 479, 562 N.E.2d 118, 561 N.Y.S.2d 154 (1990).

777. Act of December 15, 1989, ch. 773, 1989 N.Y. Laws 1563, amended by Act of March 1, 1990, ch. 17, 1990 N.Y. Laws 22 (McKinney).

778. The definition of home rule is a "[s]tate constitutional provision or type of legislative action which results in apportioning power between state and local governments by providing local cities and towns with a measure of self government if such local government accepts terms of the state legislation." BLACK'S LAW DICTIONARY 733 (6th ed. 1990).

779. N.Y. CONST. art. IX, § 2(b)(2).

780. N.Y. CONST. art. I, § 11.

Chapter 773 requires that Staten Island residents vote, at the next general election, on whether or not they wish to be separated from New York City and establish the city of Staten Island.<sup>783</sup> If the majority votes yes, then the law requires that a commission be established to explore a charter and other matters the commission deems to be relevant. The commission is to be composed of Staten Island residents and legislators. After a charter is proposed, Staten Island residents can vote on it; if the charter is adopted, then the commission is to propose legislation to separate Staten Island from New York City. If the charter is rejected, the commission can try once again to propose a charter. However, if the charter is rejected a second time, then the commission is to dissolve.<sup>784</sup>

There are other commissions to be established, all without any input from New York City, with the single exception that the Mayor of New York City is to appoint one member of the civil service rights and retirement benefits committee. When completed, the state will have information regarding whether or not the residents of Staten Island wish to be separated from New York City, and if so, on what terms. Ultimately, however, Staten Island will remain part of New York City unless the legislature enacts legislation to disengage it.<sup>785</sup>

The trial court declared chapter 773 constitutional on the basis that the state has plenary power to determine municipal boundaries without being subject to the home rule. The appellate division affirmed, three justices agreed with the lower court's reasoning. Two other justices concurred only in the decision. They reasoned that chapter 773 was only advisory in nature<sup>786</sup> and, therefore, it was not subject to the home rule message requirement.

The court of appeals found that the law was more than advisory

781. U.S. CONST. amend. XIV, § 1.

782. *City of New York*, 76 N.Y.2d at 486, 562 N.E.2d at 121, 561 N.Y.S.2d at 157.

783. *Id.* at 483, 562 N.E.2d at 119, 561 N.Y.S.2d at 155.

784. *Id.*

785. *Id.* at 484, 562 N.E.2d at 119, 561 N.Y.S.2d at 155.

786. *Id.*

because it authorized the commitment of public resources to explore secession from New York City. The court held, however, that the law was constitutional because it only allows Staten Island to explore secession.<sup>787</sup> Secession, itself, cannot occur without further legislative action. In this case, allowing Staten Island residents to express their views regarding secession, without a unilateral right to complete it, was constitutional.<sup>788</sup>

The court examined the purpose of a home rule message. “The intent of these provisions of the Constitution was to provide some measure of protection to a city from possible danger of ill considered interference by the Legislature in its local affairs.”<sup>789</sup> The court found it unnecessary to evaluate the strength of the state interest supporting such legislation because there was “no State interference in New York City property, affairs or government.”<sup>790</sup>

The court also held that there was no violation of the equal protection clause of the state and federal constitutions, because a state may create classifications based upon political subdivisions as long as they are reasonable. Here, allowing Staten Island residents to express their views regarding secession, without a unilateral right to complete it, was reasonable, and therefore, constitutional.<sup>791</sup>

The court specifically found it unnecessary to decide whether the home rule message would be required if there was secession legislation.<sup>792</sup>

Judge Hancock dissented, in an opinion in which Judge Alexander concurred. They found that chapter 773 intruded deeply into the affairs of the city, “and has a direct and immediate impact on the personnel, finances and administration of the city. For this reason, and because the subject matter of the statute

787. *Id.* at 485-86, 562 N.E.2d at 120, 561 N.Y.S.2d at 156.

788. *Id.* at 487, 562 N.E.2d at 121, 561 N.Y.S.2d at 157.

789. *Id.* at 485, 562 N.E.2d at 120, 561 N.Y.S.2d at 156 (quoting *City of New York v. Village of Lawrence*, 250 N.Y. 429, 439, 165 N.E. 836, 839 (1929)).

790. *Id.* at 485, 562 N.E.2d at 120, 561 N.Y.S.2d at 156.

791. *See* 76 N.Y.2d at 486-87, 562 N.E.2d at 121, 561 N.Y.S.2d at 157.

792. *See id.* at 486-87, 562 N.E.2d at 120, 561 N.Y.S.2d at 156.

is essentially of local -- not State -- concern, a home rule message was mandated under [the New York] Constitution, article IX, section 2(b)(2)."<sup>793</sup>

According to the dissent, the only purpose of chapter 773 was to begin the process of separating Staten Island from New York City.<sup>794</sup> The commission was not set up merely to study secession; its purpose was, among other things, to support the borough's secession.<sup>795</sup> The effect of chapter 773 will most likely be: 1) to create uncertainty and confusion because many of the city's governmental areas may be affected, therefore planning may become a problem; and 2) to cause the conscription of resources and personnel from the city, which will result in costs to New York City.<sup>796</sup> Neither of these effects was considered by the majority.

If these effects on the city government were taken into account, then the prevailing authority would require the state to demonstrate that without a home rule message, such action is permissible "only where a concern exists 'of sufficient importance to the State, transcendent of local or parochial interest.'"<sup>797</sup> Therefore, the majority's failure to provide any state interest is in direct contradiction with this prevailing authority.

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793. *Id.* at 488, 562 N.E.2d at 122, 561 N.Y.S.2d at 158 (Hancock, J., dissenting) (citation omitted).

794. *Id.* (Hancock, J., dissenting).

795. *Id.* at 488-89, 562 N.E.2d at 122, 561 N.Y.S.2d at 158 (Hancock, J., dissenting).

796. *Id.* at 489-90, 562 N.E.2d at 123, 561 N.Y.S.2d at 159 (Hancock, J., dissenting).

797. *Id.* at 490, 562 N.E.2d at 123, 561 N.Y.S.2d at 159 (Hancock, J., dissenting) (quoting *Wambat Realty Corp. v. State of New York*, 41 N.Y.2d 490, 494, 362 N.E.2d 581, 584, 393 N.Y.S.2d 949, 952 (1977)).