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Issue: *Illinois Home Rule: A Thirty Year Assessment*

The home rule provisions in Illinois' 1970 constitution represent a unique innovation in the way states bestow power and authority on their city and county governments. Through its home rule system, Illinois gives the broadest and most liberal authority to cities and counties of any state in the nation. With Illinois now completing thirty years of home rule experience, the time is appropriate to undertake a comprehensive assessment of Illinois' experience with home rule. Such is the task of the following paragraphs.

Who uses home rule?

At the time of the November 2000 elections, Illinois had 147 cities and villages and one county (Cook) with home rule powers. Of the home rule cities, 77 had gained home rule by virtue of their size (all cities over 25,000 are granted home rule automatically unless it is rescinded in a city referendum) and 70 had gained home rule by referendum (the constitution gives cities under 25,000 this option). A list of current home rule users is provided in Table 1 on the next page.

Ironically, although a minority of municipalities and counties have home rule, over seven million Illinois residents live in a home rule community — and most have done so for more than a quarter of a century. Thus it is safe to conclude that Illinois voters have had widespread experience with home rule.

How do voters feel about home rule?

Because having a referendum on home rule is relatively easy, there have been 191 such referenda — an average of more than 6 per year — in Illinois home rule's thirty year history. As might be expected, the aggregate of those referenda present a mixed voter reaction to home rule. Voters supported home rule in 97 of those referenda and rejected it in 94 others.

As Table 2 (on page 3) shows, however, there are three different kinds of home rule referenda and each reflects a different picture of voter attitudes toward home rule.

The mission of the Center for Governmental Studies includes education of the public on important public policy issues. This article is one in a series of policy briefs designed to provide an objective view of an issue.

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table one Home Rule Units in Illinois as of November 2000

Cities and villages adopting home rule by referendum have the date of the referendum indicated. Those with no date gained home rule automatically because of population size.

I. Counties

Cook

II. Cities and Villages

Addison	Des Plaines	Mascoutah, 1979	Rock Island
Alton	Dolton	Maywood	Rolling Meadows, 1985
Alsip, 1990	Downers Grove	McCook, 1971	Rosemont, 1972
Arlington Heights	East Hazel Crest, 1989	Mettawa, 1990	St. Charles
Aurora	East St. Louis	Moline	Sauget, 1976
Barrington Hills, 1990	Elgin	Monee, 1996	Schaumburg
Bartlett	Elk Grove Village	Monmouth, 1999	Schiller Park, 1994
Bedford Park, 1971	Elmhurst	Morton Grove	Sesser, 1989
Belleville	Elmwood Park	Mound City, 1973	Skokie
Bellwood, 1994	Elwood, 1997	Mount Prospect	South Barrington, 1975
Berkeley, 1994	Evanston	Mt. Vernon, 1986	South Holland
Berwyn	Evergreen Park, 1982	Muddy, 1981	Springfield
Bloomington	Fairview Heights, 1993	Mundelein	Standard, 1975
Bolingbrook	Flora, 1975	Murphysboro, 1994	Stickney, 1974
Bryant, 1974	Freeport	Naperville	Stone Park, 1972
Buffalo Grove, 1980	Galesburg	Naples, 1982	Streamwood
Burbank	Glendale Heights	Niles	Sycamore, 1996
Burnham, 1980	Glen Ellyn	Normal	Thornton, 1980
Cahokia, 1997	Glenview	Norridge, 1973	Tinley Park
Calumet City	Glenwood, 1986	Northbrook	University Park, 1975
Calumet Park, 1976	Golf, 1976	North Chicago	Urbana
Carbondale	Granite City	Northlake, 1994	Valmeyer, 1994
Carol Stream	Gurnee	Oak Forest	Washington, 1998
Carpentersville, 1993	Hanover Park	Oak Lawn	Watseka
Champaign	Harvey	Oak Park	Waukegan
Channahon, 1982	Harwood Heights, 1995	Old Mill Creek, 1993	West Dundee, 1990
Chicago	Highland Park	Orland Park	Wheaton
Chicago Heights	Hillside, 1995	Palatine	Wheeling, 1977
Chicago Ridge, 1994	Hodgkins, 1996	Park City, 1973	Wilmette
Cicero	Hoffman Estates	Park Forest	Woodridge, 1975
Country Club Hills, 1993	Inverness, 2000	Park Ridge	
Countryside, 1972	Joliet	Pekin	
Crystal Lake	Kankakee	Peoria	
Danville	Lake Barrington, 1991	Peoria Heights, 1986	
Darien	Lansing	Peru, 1981	
Decatur	Lincolnshire, 1975	Quincy	
Deerfield, 1975	Lincolnwood, 1997	Rantoul, 1982	
DeKalb	Manhattan, 1996	Robbins, 1998	
	Marion, 1994	Rockdale, 1982	

tabletwo Home Rule Referenda Record

Years	Total Number of Referenda	Total Referenda For + or Against - Home Rule			Municipal Adoption Referenda		Municipal Retention Referenda		County Adoption Referenda	
		+	-	% +	+	-	+	-	+	-
1971-75	36	20	16	56	19	7	1	0	0	9
1976-80	42	21	21	50	8	17	13	2	0	2
1981-85	23	16	7	70	9	5	7	2		
1986-90	27	11	16	41	9	16	2	0		
1991-95	36	17	19	46	15	19	2	0		
1996-2000	27	12	15	44	12	15				
Totals	191	97	94	51	72	79	25	4	0	11

Note: Table summarizes all home rule referenda held prior to November 2000. November 2000 data not available when this report was prepared.

Do county voters support home rule?

No. Nine counties held a total of eleven referenda between 1972-76 to adopt home rule. All failed by substantial margins. In the aggregate, county voters rejected home rule by a margin of 3-1. No county has attempted such a referendum since 1976.

But the picture is more complex. The framers of Illinois' 1970 constitution wanted to strengthen county govern-

ment by encouraging the use of elected county executive officers — an office previously used only in Cook County. The framers used home rule as an inducement to the voters to adopt such a change. Instead, by combining two separate issues in one referendum, the framers effectively blocked the adoption of either an elected county executive or home rule.

But the legislature later gave voters another option: a county executive plan without home rule. Voters in several counties (e.g. Kane, Will,

Madison) adopted this plan. Many other counties have passed ordinances creating the office of county administrator to strengthen the executive function in county government.

The fact that these structural changes have taken place but county home rule has still not been adopted by referendum further emphasizes county voters' rejection of home rule for counties other than Cook. Voters in Cook County have never attempted to rescind county home rule.

Of the four communities which had and then abandoned home rule, the voters in two — Lisle and Rockford — reacted negatively to actual or proposed home rule use. In two others — Lombard and Villa Park — voters rejected home rule in the mistaken assumption that it would lower their taxes (mistaken because their home rule powers had not been used to levy any taxes).

The experience of these four communities demonstrated that voters can, when motivated to do so, abolish an operating home rule system.

So, how do voters feel about home rule?

In the 152 Illinois local governments that have tried home rule in the last thirty years, 147, or 97 per cent, still have it. Voters in only 26 of these communities, or 17 per cent, have even challenged the system with a retention election. In short, *where home rule has been tried in Illinois, voters have been supportive of it.*

What issues have concerned voters?

Supporters of home rule have pointed to the value of local authority and flexibility to address local problems, lessened dependence upon the state legislature, and more freedom from

legislative mandates. They stress the greater flexibility home rule gives local governments to deal with issues of community development, to prevent community blight, and to shift local tax burdens to non-residents, primarily through sales and use taxes.

Opponents of home rule focus upon the threat of unwanted and excessive taxation under home rule governments. Sometimes, too, opponents argue that home rule gives local governments the power to suppress individual rights.

What does the record show on these issues?

There is a diverse body of evidence that indicates that home rule communities have used their more flexible powers in innovative ways to address local problems. The most commonly cited uses of home rule powers have involved economic development, control of community development, reduced borrowing costs, and local tax burdens shifted to non-residents.

Opponents argue that home rule brings much heavier tax burdens for local residents. Their claims rely on anecdotal, not empirical evidence. Surprisingly, they do not cite their most compelling case — the City of Rockford — where voters abolished home rule after the city council enacted a series of property tax increases.

In contending that home rule powers are used to suppress individual rights, opponents of home rule cite the

Morton Grove home rule ordinance prohibiting hand gun ownership. However, the Illinois Supreme Court ruled in 1984 that the ordinance did not violate any constitutional rights under either the Illinois or U.S. constitutions. (*Kalodimos v Morton Grove*, 1984).

Anticipating the potential for abusive use of home rule powers, the framers of the 1970 Illinois constitution established constitutional safeguards to prevent such abuses. There are three kinds of such safeguards: electoral recision discussed above, legislative preemption, and judicial review. The latter two are discussed in the following paragraphs.

What is legislative preemption and how has it worked?

Recognizing that there would be overlaps between state and local governments in the exercise of power, the Illinois constitution gave the Illinois General Assembly the authority to *preempt* or take away home rule powers by a 3/5ths vote of both houses or to provide for the exclusive state exercise of a power by a simple majority vote of both houses. These provisions give the legislature broad leeway to reduce home rule powers. But, while the Assembly has used its preemption powers to deal with specific issues, it has not seriously eroded the home rule authority set forth in the constitution.

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In some respects, the legislature has been supportive of home rule power. It has, for example, stipulated by law that no legislative enactment shall be construed as restricting home rule power unless that enactment has “specific language limiting or denying” the home rule power.

Except for a series of bills restricting home rule authority to license or regulate specific occupations, the General Assembly did little in home rule’s first 15 years to limit home rule powers, but such limitations have become more common in the last 15 years.

Legislative limitations can be grouped into several categories. In one category are laws like the Open Meetings Act and statutes containing state-wide rules governing public labor relations. These apply state-wide principles of good government to home rule units. A second category has clarified the state’s exclusive role in regulating certain businesses and activities. For instance, to reduce drunk driving accidents, the legislature took away home rule powers to set minimum ages for the purchase of alcoholic beverages, but it also eliminated particular drinking age problems which had faced communities with college campuses.

Third, the legislature has established exclusive state authority over certain personnel policies in local government. Again, the legislature has protected the obvious benefits that stem from uniform state-wide practices, such as state-wide municipal employee retirement programs, in this field.

Has the legislature preempted any home rule tax powers?

The final category is legislative action taken to limit home rule tax powers. The legislature imposed a referendum requirement on the use of a real estate transfer tax, effectively limiting further use of the tax. It also eliminated home rule authority to impose local sales taxes. In the latter instance, however, it authorized home rule units to raise the rate of the local portion of the state sales tax levy. Thus, while limiting home rule power and flexibility, the legislature protected home rule access to additional revenues from the use of the sales tax (called the retail occupation tax in Illinois law).

Perhaps most important is what the legislature has *not* done. It *has not* authorized local use of an income tax; it *has not* imposed a limit on real estate taxes levied with home rule powers; and it *has not* imposed limits on borrowing and indebtedness by home rule units. Furthermore, the legislature *has* exempted home rule units from complying with tax caps recently imposed on the annual rate of increase in local property taxes.

In the last ten years, the legislature also initiated the practice of “partial exemptions” — imposing obligations or denying powers to some but not all home rule units. To date, partial exemption laws have treated Chicago differently than other home rule units. This practice weakens home rule by splitting the block of legislators who represent the interests of home rule governments in the legislature. The result has been preemptions of home rule powers that local governments have been unable to prevent.

How has judicial review affected home rule powers?

Specific uses of home rule powers have often been challenged in the courts which, in turn, have frequently but not always upheld a liberal interpretation of home rule powers. For example, besides the Morton Grove handgun ordinance, the courts have upheld: the sale of general obligation bonds without a referendum (*Kanellos v County of Cook*, 1972); a home rule ordinance that authorizes actions contrary to state statutes (*Rozner v Korshak*, 1973), and a home rule ordinance that legislates concurrently with the state on environmental matters (*Chicago v Pollution Control Board*, 1974).

But the courts have also been willing to constrain home rule uses it views as excessive. It refused, for example, to enforce a Des Plaines noise pollution ordinance against a railroad, holding that noise pollution was a matter requiring regional or state-wide rather than local regulation (*Des Plaines v Chicago & Northwestern Ry.*, 1976). It struck down ordinances altering the statutory appointment powers of municipal officials, (*Pechous v Slawko*, 1976), and an ordinance imposing a local fee on filing cases in civil court (*Ampersand v Finley*, 1975).

The courts have treated the use of home rule taxing powers in a similar manner. They have: upheld home rule wheel taxes (*Gilligan v Korzen*, 1974), upheld Chicago's employers' expense tax (*Paper Supply v Chicago*, 1974), and approved a home rule admissions tax (*Cicero v Fox Valley Trotting Club*, 1976; *Kerasotes Rialto Theatre v Peoria*, 1979), but they struck down home rule utility tax levies which exceeded statutory rate limits (*Waukegan Community Unit School District v Waukegan*, 1983).

The courts thus have demonstrated that they will constrain home rule actions they deem to be beyond the scope of constitutional and statutory restrictions.

As the body of case law regarding home rule has grown, the courts have tended to reaffirm the precedents set in the early years. For instance, the courts reaffirmed, in 1998, that, despite ordinances to the contrary, home rule municipalities have a duty to bargain collectively with employee unions (*Public Labor Council v Cicero*, 1998); and they reaffirmed the principle that implied preemption is not sufficient to deny home rule communities the power to regulate matters of local affairs (*Bolingbrook v Citizens Utility Co*, 1994; *Barrington Police Pension Fund v Barrington Ethics Board*, 1997). The Supreme Court has also upheld partial preemption (*Nevitt v Langfelder*, 1993).

So what does all of this mean for Illinois' home rule system?

All of this means that the home rule system adopted in Illinois as part of the state's 1970 constitution has demonstrated after thirty years, that it is a workable system for empowering local governments. Illinois home rule has served, and continues to serve over seven million people in 148 local governments. It gives residents in non-home rule counties, cities, and villages additional options when searching for new ways to solve community problems.

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