10-1-1975

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Recommended Citation
Barbara M. Ryniker, Abolishing Multiple Majority Referendum Requirements: Is This the Cure for Metropolitan Ills?, 25 Buff. L. Rev. 357 (1975).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol25/iss1/11

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ABOLISHING MULTIPLE MAJORITY REFERENDUM REQUIREMENTS: IS THIS THE CURE FOR METROPOLITAN ILLS?

INTRODUCTION

Patterns of growth and change in metropolitan areas\(^1\) during recent decades have easily surpassed the ability of local governments to meet the increasing demands for services made by area residents. Traditional local governments were created to serve the needs of a different era and have neither the power nor the fiscal resources to provide all the services needed by metropolitan areas. Attempts to modernize local governments through creation of centralized metropolitan governments with wide ranging powers have met significant obstacles. State constitutional and statutory requirements have been among some of the more formidable barriers. These provisions require that a multiple or triple majority of each of the local government units as a whole — city, town and village — must be gained in a popular referendum before reform measures can be implemented. A recent case, *Citizens for Community Action at the Local Level, Inc. (CALL) v. Ghezzi*\(^2\) has challenged these multiple majority requirements.

This article will explore recent trends in metropolitan area growth and the structural problems of local governments in those areas. A discussion of the *Ghezzi* decision in the district court, including reasons for its affirmation, will follow. Finally, an attempt will be made to analyze the impact of abolishing multiple majority requirements upon metropolitan problems.

I. THE INTERRELATION BETWEEN METROPOLITAN AREA PROBLEMS AND LOCAL GOVERNMENT

A. Trends in Metropolitan Area Development

There have been three major developments in metropolitan areas which have caused the current failures in the provision of services by

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1. Metropolitan areas have been defined as heavily populated areas of land made up of a central city and surrounding suburban regions, where there is a high degree of economic and social interaction between the central and outlying sectors. J. BOLLENS & H. SCHMANDT, THE METROPOLIS 6 (1965). Further references to metropolitan areas within this article will imply this definition.

local governments. The first of these has been the considerable increase in the population of metropolitan areas as a whole. According to 1970 census figures, most of the nation's 212 Standard Metropolitan Statistical Areas (SMSA's) increased in size over their 1960 populations. The Chicago SMSA, for example, increased 12.2%, Philadelphia 7.6%, New York 7.8% and St. Louis 12.8%. Such growth rates have followed over a century of continued expansion and are predicted to culminate in the year 2000 with 77% of the population of the continental United States concentrated into 11% of its land area. Thus, the population pressures which have strained local governments in recent years are likely to grow worse in the next decades.

A steady decline in the "core city" population of most SMSA's, with a parallel shift in population to outlying suburban areas, marks the second influential trend. Despite the increases in the population of the SMSA as a whole, the core city in the respective SMSA's has declined 5.2% in Chicago since 1960, 2.7% in Philadelphia, 1.1% in New York and 17% in St. Louis. More significant than the numbers themselves is the profile of those represented. It is the more affluent city dwellers, industries and retail tradesmen who are leaving the core cities and deserting poor and minority residents, whose tax dollars cannot support the services they require. The suburban exodus has not only strained urban governments but suburban municipalities as well, which...
often become unduly reliant upon facilities supplied by private land developers.\(^8\)

The final and most notable direction taken by metropolitan areas has been toward an incredible proliferation of local governments, usually of a limited purpose variety. It is usually expected that the number of local governments would increase in direct proportion to the size of the SMSA. However, an examination of the larger SMSA's reveals no such relationship. The Chicago SMSA contains an astounding 1060 local governments, as compared with 963 in Philadelphia, 555 in New York and 439 in St. Louis.\(^9\) The main reason for this abundance lies in the traditionally circumscribed territorial jurisdiction of the various levels of local government and the equally limited powers these governments possess.\(^10\) Since no one governmental unit or level of government has power over an area concomitant with the problems to be solved, new governments are usually formed to solve the problems. An examination of current local government structures and their powers, as well as the methods by which their powers have been granted and interpreted, will explain why this situation has developed.

B. Levels of Local Government

Local governments have been divided into general purpose and limited purpose governments. General purpose governments are further divided into municipal corporations and incorporated areas, categories which, in states like New York, can overlap. In the past, only cities, boroughs, towns and villages enjoyed the wider range of powers

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8. This reliance has been particularly evident in water supply and waste disposal, where local governments depend upon private wells and septic tanks, rather than providing public water and sewage systems. Likewise, local governments often provide services only after a crisis. A typical example is land development where natural resources are polluted and prime land, which could have been developed for civic purposes, is taken by private developers before local government can act to acquire it. ACIR, METROPOLITAN AMERICA CHALLENGE TO FEDERALISM 3 (1966).

9. J. BOLLENS & H. SCHMANDT, supra note 1, at 144.

10. The powers granted to local governments and thus the type of local government that develops, varies according to "geographic, economic, and social condition, and special local interests." COMM. FOR ECONOMIC DEV., MODERNIZING LOCAL GOVERNMENT TO SECURE A BALANCED FEDERALISM 24 (1966). Therefore, there are extensive regional variations in the types of local governments which have evolved. Although limited space does not permit extensive analysis of these regional differences and their implications, some introduction to the variations at the outset of the discussion of local governments is in order. The New England states, for example, have favored a "township" form of government, and make extensive use of special districts, downplaying the role of county government. There are no county governments, for example, in Connecticut and Rhode Island. The Southern, Midwestern and Western states, in contrast, have made counties the most important units of local government. Id. at 24-25.
afforded by their municipal corporation status. Counties were purely administrative, unincorporated arms of the state, performing only the "state-directed functions [of judicial administration], custody and preservation of official documents, and assessment of property." Today, counties also enjoy the privileges of municipal corporations and exercise a wide variety of governmental functions. However, general purpose governments as a whole, even with the greater powers of municipal corporate status, have been unable to supply all the necessary services to local residents. Therefore, limited purpose governments or "special districts" have been formed to augment general purpose governments. Special districts are generally specially created units of government which are limited to the provision of one service. Many special districts have the ability to tax and issue bonds to support the service they provide but don't exercise power beyond the narrow sphere of one-service or limited-service provision. The jurisdiction of special districts extends over the boundaries of existing general purpose governments, thereby tending to obscure the inability of those general purpose governments to provide the service. Due to the fact that most of those administering special districts are politically appointed, rather than popularly elected like general government officials, local residents maintain no control over the administration of some of the most vital services in their communities. Despite their numerous drawbacks, special districts have filled the gap of service provision that general purpose governments could not fill, and thereby have become the most numerous kind of government currently existing in America.

11. Id. at 25-28.
12. Id. at 28-29. For more extensive studies of county governments and their emerging forms see ACIR, PROFILE OF COUNTY GOVERNMENT (1972); ACIR, FOR A MORE PERFECT UNION—COUNTY REFORM (1971); J. BOLLENS, AMERICAN COUNTY GOVERNMENT (1969); H. DUNCOMBE, COUNTY GOVERNMENT IN AMERICA (1966); Jones, Gansel & Howe, COUNTY GOVERNMENT Organization and Services, in INTERNATIONAL CITY MANAGEMENT ASSOCIATION, THE MUNICIPAL YEAR BOOK 1972, at 211-38 (1972); S. TORRENCE, GRASS ROOTS GOVERNMENT: THE COUNTY IN AMERICAN POLITICS (1974).
13. The role of special districts in obscuring the failure of general purpose local governments has been noted in studies of efforts to reform local government through city-county consolidation. One study found that support of city-county consolidation proposals was negatively correlated to the number of special districts in the areas involved. This indicates that so long as services are being provided in some fashion, voters do not examine the source or methods of provision. Marando, Voting in City-County Consolidation Referenda, 26 WESTERN POL. Q. 93 (1973).
14. Despite this accurate criticism, in certain limited situations special districts have proven to be extremely effective. This effectiveness has been noted in the solution of areawide problems, such as transportation, through such organizations as the Port of New York Authority and San Francisco Bay Area Rapid Transit District.
15. Jones, Gansel & Howe, supra note 12, at 216.
Both general and limited purpose governments have been ineffective in solving the problems which metropolitan areas face. There are a host of factors contributing to this inefficiency. First, most local governments are too small and contain too few people to effectuate meaningful changes. Further, popular control over the mechanisms of government is too insignificant to be effective, while governmental policy-making mechanisms are too weak to effectuate change without aid. Especially in the less developed areas, antiquated administrations of generally unqualified personnel are the only staff available to institute modernization. Ironically, it is these individual political entities in municipal government who are in the best position to change the current situation but are the most resistant to change. All cohesive regional planning efforts and "intrusions" by other levels of government are viewed as threats to the individual dominions of power governed by the smaller units of local government. Given this rather dismal picture, it is clear why the recent growth patterns in metropolitan areas have pushed local governments to the point of almost total immobility regarding service provision and other municipal functions.

C. Limitations on Local Governmental Power

There are two factors which have caused local government powers to be so limited. The first has been the traditionally limited grants of power by the state to local government, while the second stems from the narrow judicial interpretation given to those grants of power. As to the granting of powers, under the "State Supremacy Doctrine," all local governments receive their powers from the state. This doctrine arises from the fact that regulation of local government has always been one of the "reserved" powers retained by the state under the tenth amend-

16. Comm. for Economic Dev., supra note 10, at 11, 13. Citizen participation movements and attendant developments favoring advocacy planning have not solved the problem of popular control and some sources claim these groups have furthered fragmentation and other local government ills. D. Hagman, Public Planning and Control of Urban and Land Development 233 (1973). A fair appraisal of the effect of citizen participation, in general, upon local government problems is that the most effective movements are those like Citizens for Community Action at the Local Level in the Ghezzi case, which emphasize structural reforms and not merely short-term remedies.


18. Municipal officeholders are not alone in their opposition to governmental reform measures. In a study of a major governmental consolidation involving the city of Miami and the county of Dade, other organizations were found to oppose reform. Other opposition groups included a county league of local municipalities, municipal chambers of commerce, unions for municipal and county employees and a citizens committee of local residents formed to oppose the planned change. E. Sofen, The Miami Metropolitan Experiment 68-70 (Rev. ed. 1966).
ment of the United States Constitution.\textsuperscript{19} States have had the option, therefore, of either granting local governments a wide range of authority or denying that authority. Traditionally, states have chosen the latter option and local governments have languished with little real control over their affairs. In recent times, states have begun to delegate greater authority to local governments through grants of authority termed "home rule provisions." Home rule provisions have either been in the form of state constitutional amendments or acts of the state legislature. These provisions have either been self-implementing, going into effect as soon as they're passed, direct grants by the legislature to the local government or have required adoption of a local charter through a popular referendum for implementation.\textsuperscript{20}

The second factor limiting the interpretation of the powers granted local governments has been "Dillon's Rule."\textsuperscript{21} Dillon's Rule states that municipal corporations can only exercise powers which are expressly granted to them, are clearly implied in the grant or are essential to the purposes of the corporation.\textsuperscript{22} Where there is a question regarding the existence of any municipal power, according to Dillon's Rule, the dispute must be resolved against the corporation. Dillon's Rule hampered the development of municipal governments for many years. Even when home rule powers were granted to local governments, the grant was narrowly construed. Although Dillon's Rule has been eroded in recent times, it still operates in some instances to shackle the free and full exercise of local governmental powers. Furthermore, even though it is no longer a vital concept of judicial construction, it is only recent home rule grants which have been free of its influence.

\begin{enumerate}
\item[19.] U. S. Const. amend. X states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
\item[21.] J. Dillon, 1 Municipal Corporations § 237(89), at 448-50 (5th ed. 1911).
\item[22.] Dillon's Rule" states:

\begin{itemize}
\item It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.
\end{itemize}

\textit{Id.} (footnotes omitted).
\item[22.] Id.
D. Strengthening County Government

Due to the many problems which have strained local governments in recent times, home rule provisions have been enacted in about half of the states and the number is growing.\(^2\) The purpose of the original grants of home rule power was to "free central cities who then controlled the major portions of the geographic area in metropolitan complexes,"\(^2\) and who needed greater control over the ever widening areas they controlled.\(^2\) The era of extensive urban expansion ended in the early part of the twentieth century and since then, the focus of home rule provisions has been upon counties. Home rule provisions have been used to free counties from their former position as merely administrative entities. These provisions have granted counties a fuller range of powers and have permitted the transfer of functions from other local governments to counties. Although states have varied in their approaches to home rule, many have followed the pattern of New York and permit either direct grants of home rule power or popular referendums on local charters to implement home rule.\(^2\) Two major provisions in New York, Article IX of the New York State Constitution\(^2\) and the Municipal Home Rule Law,\(^2\) allow counties to devise their own charters and

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23. The importance of home rule in developing local governments has been noted in T. Murphy, Metropolitics and the Urban County 26 (1970), where Murphy said:

The whole question of metropolitan organization is directly related to home rule and state attitudes toward it. This has been a significant factor in the development of cities and of some of the adaptive techniques they have used to handle the new challenges of concentrated urbanism in fragmented metropolitan environments. The precedents set in this process are becoming increasingly important for they are being applied to the powers of county governments.

24. Mandelker, supra note 20, at 68.

25. These widening areas of control were due mainly to numerous annexations by cities of the areas surrounding them. This annexation trend will be discussed infra Part III.

26. Local charters have been described as, "a series of compromises arrived at by people of differing interests and concerns." A. White, Charters As Municipal Constitutions 1 (Council of Planning Librarians Exchange Bibliography No. 477, 1973). "Although certain structural, political and economic concepts are basic in all charters, details are developed by local conditions at time charter is drafted." Id.

27. Article IX of the New York State Constitution was amended into its current form in 1963. Section 1, entitled "Bill of Rights for Local Governments," enumerates a series of grants to local governments including the right to a legislature; elect officials; intergovernmental cooperation of local governments; eminent domain; apportion costs of governmental services; amend county government if approved by a triple majority of voters; and abolish or create elective offices. Section 2 directs the legislature to grant local governments the necessary home rule powers while section 3 enumerates the powers which are expressly retained by state legislatures.

transfer functions from other units of local government to counties.\textsuperscript{29} Unfortunately, both of these provisions require that a majority be received in all the city, town and village units, each taken as a separate entity, before a charter can be passed.

The trend toward strengthening county government, by transferring functions of other local governments to the county, has been seriously thwarted by these multiple majority requirements. In many instances, a county charter will be approved by the areas within the city limits and defeated by the areas outside the city. Therefore, multiple majority requirements have served to shield the political groups in towns and villages who wish to protect their powers from the incursion

for an elected Board of Supervisors, the manner of election or appointment for county officers and their terms of office and the other agencies and officers responsible for performance of functions and duties of the county. The charter must also provide for the equalization of real property taxes consistent with a legislative standard. Additionally, the charter may provide for a county executive with a privilege of vetoing actions of the Board of Supervisors, for the transfer of power between county and municipalities and various other powers. Section 34 lists a rather extensive number of limitations and restrictions on the powers of counties to prepare, adopt and amend county charters and charter laws. Limitations include provisions that the county charter cannot deal with: taxation of state property; exemption from taxation; state aid; boundary units of local government; compensation for judiciary members; composition, functions or jurisdiction of a court; imposition, judicial review or distribution of taxes or benefit assessment; the education system or a school district; required performance of functions at local expense; functions performed and financed by the state and provisions contained in specified laws of the state. Section 35 allows for liberal construction of the county charter law and interpretation of unclear sections by the board of supervisors.

29. Almost half a century has passed between New York's initial grants of home rule powers to cities and its current authorization for transfers of functions from other local governments to counties. At the 1935 elections, a constitutional amendment was first passed permitting counties outside New York City to alter their governmental structure. The amendment permitted the transfer of functions from other units of government to counties and provided that counties could devise a method of selecting offices and abolishing them and could exercise a variety of other powers. Nevertheless, the State Constitutional Convention of 1938 amended the 1935 amendment. Whereas the 1935 amendment required that alternative forms of government be approved by a majority of the total votes cast in (1) the county (2) every city containing more than 25% of the population of the county and (3) that part of the county outside such cities, the 1938 amendment required approval of every unit affected, as a class. The stringent 1938 amendment was modified by popular vote in the 1958 election, whereby transfers of local government functions to the county would become operative if approved by a majority of the votes cast outside of cities and in the areas within the cities, each considered as one unit. If the transfer involved removing powers from village governments, an additional majority of all the villages, taken as whole, was required. In 1965, Article IX of the New York State Constitution (known as the Bill of Rights for Local Governments) was amended to its present form. The triple or multiple majority referendum requirements approved in the 1958 election were incorporated into N.Y. CONST. art. IX, § 1(h)1. At the same time, the County Charter Law, (N.Y. MUN. HOME RULE LAW §§ 30-35 (McKinney 1969)) was enacted, outlining the mechanics for the adoption of county charters and requiring in section 33(7) the same multiple majority referendum requirements as section 1(h)1 of Article IX of the New York State Constitution. STATE OF NEW YORK, TEMPORARY STATE COMM'N ON THE CONSTITUTIONAL CONVENTION, LOCAL GOVERNMENT REPORT NO. 13, at 23-24 (1967).
of centralized county governments. Multiple majority requirements have also served the interests of suburban and rural dwellers as a whole, many of whom view the transfer of any local government powers with great dismay. The source of their dissatisfaction springs from their perception that transfers of functions to the county are the first step toward union with problem-ridden cities. Since so many suburban dwellers have recently moved from the cities to the suburbs to avoid such urban ills, they favor further autonomy rather than greater unity with urban areas. Thus, both the suburban-rural political leaders and their local constituents view the continued existence of multiple majority referendum requirements as vital to the continued existence of their local governments.

Diametrically opposed to this suburban-rural coalition are reform groups who are both civically and economically motivated. These reformers regard multiple majority referendum requirements as the most formidable obstacle blocking their efforts. Reformers who favor stronger county governments lament that the continuation of multiple majority referendum requirements both protects and promotes the rampant isolationism of most suburban and rural areas. Fostering such isolationism denigrates the many virtues that strengthened county governments have to offer. Not only are county boundaries coterminous with many metropolitan areawide problems and resources, but they have established contacts with state and federal funding sources for solution of these problems. Strengthened county-wide government would also eliminate duplicate efforts by local governments and could undertake regional planning and capital improvements to solve metropolitan problems.

In light of the pressures that have been building up between sub-


31. Civic minded reformers are usually groups such as areawide chambers of commerce, local newspapers, leagues of women voters and other like-minded civic organizations. These groups were involved in both the Miami-Dade consolidation and the Nashville consolidation. D. Booth, Metropolitics: The Nashville Consolidation 19-20 (1963); E. Sofen, supra note 18, at 34.

The more economically motivated reformers are those who identify with certain economic interests which would tend to gain by governmental reform measures. In the past, these economic groups have included industrial and real estate investors and developers, construction businesses, retail businesses and private transit companies. The source of their interest is obvious, especially in light of the fact that land-use planning, zoning, building regulations and transportation are important local government functions which stand to be improved through reform measures. ACIR, supra note 3, at 10.


33. Id.
urban-rural local government interests and county-minded reformers, it is no surprise that a challenge to the New York State multiple majority referendum requirements was recently brought in Citizens for Community Action at the Local Level, Inc. (CALL) v. Ghezzi. Also, it is not surprising that the two groups which are currently involved in the Supreme Court challenge to the offending provisions represent these two mutually exclusive groups.

II. ATTEMPTS TO ALLEVIATE METROPOLITAN PROBLEMS THROUGH THE ABOLITION OF MULTIPLE MAJORITY REFERENDUM REQUIREMENTS

A. The Challenge to the New York State Multiple Majority Referendum Requirement: The Niagara County Charter Case

Citizens for Community Action at the Local Level (CALL) v. Ghezzi involved one of these reform-minded local citizen groups in Niagara County and their attempts to formulate and obtain passage of a county charter form of government in Niagara County. The situation in Niagara County that prompted their efforts was very similar to that in metropolitan areas throughout the nation. The Buffalo-Niagara Falls metropolitan area, encompassing both Erie and Niagara Counties, had experienced a 40% increase in population during the period between 1930 and 1960. During recent years the heaviest population growth had occurred in the areas surrounding Niagara Counties' three cities. These outlying areas had been lightly settled and neither the county government nor the twelve existing town governments were prepared to provide the needed services for the newly concentrated population. As one analysis of the area stated, "[t]he resources, the facilities, the patterns of growth and the needs all overrun these old boundaries." Citizens For Community Action at the Local Level (hereinafter referred to as CALL) was a New York membership corporation dedicated to amending the existing structure of county government in Niagara County. They were convinced that current local government structures

35. Id.
37. Id.
38. Id. at 55.
39. Id.
were inadequate to meet the challenge that population pressures in the area presented. They were equally convinced that a county charter form of government was the answer to the dilemma. Thus, a Niagara County Charter was drafted by CALL and publicized through a media campaign and a series of public meetings. The charter was approved by the Niagara County Legislature by local law on September 6, 1972. The charter created the elected position of county executive and extended the term of office for county legislators from two to four years. More importantly, the charter provided the county with the authority to establish a tax rate and to adopt laws and procedures regarding the equalization of assessments. Additionally, the charter authorized the election of a county comptroller and permitted the county to maintain county property and roads and administer mental and physical health programs. Public welfare, drainage and refuse disposal also came under the auspices of the county government. These amendments to the current structure of county government were received with extreme skepticism by residents and officials of the five villages and twelve townships of the county. They viewed the charter as an usurpation of their autonomy which would be the first in a series of “transfers of function” that would eventually lead to the collapse of town and village governments. Further, the charter was viewed as permitting greater autonomy to the county’s three cities than to the smaller governmental units within the county.

The skepticism of the non-city dwellers of Niagara County was manifested in the voter response to the charter in the November 7, 1972 referendum. Although the charter received an overall majority of the votes cast (28,885 in favor; 26,508 opposed) it failed to carry the area outside the cities by the constitutionally required majority. The cities approved the measure (18,220 in favor; 14,914 opposed) but the

41. Id. art. II, § 201.
42. Id. art. VII, § 708.
43. Id. art VI, § 602(c).
44. Id. art. IV, § 401.
45. Id. art. VIII, § 802.
46. Id. art. XIII, § 1302 & art. XII, § 1202.
47. Id. art XI, § 1102.
48. Id. art. VIII, § 802.
49. There is a question as to whether the Niagara County Charter really provides for the transfer of any functions from the local town and village governments to the county. Although the state and the town in Ghezzi would argue that the charter provides for such a transfer, this really isn’t the case. The charter does not “transfer” to the county any powers that it didn’t already have.
suburban and rural areas defeated it (10,665 in favor; 11,594 opposed). Thus, despite the existence of the 2,375 vote plurality county-wide, the charter was defeated by the 929 extra-city voters who resisted the change that the charter represented to them.

Due to the failure of the 1972 charter to receive the multiple majorities required, the State of New York refused to accept the charter for filing when it was presented in December of 1972. Subsequently, an action was commenced in federal court by the County of Niagara attacking the constitutionality of section 33(7) of the Municipal Home Rule Law and Article IX, section 1(h)1 of the New York State Constitution. The complaint was dismissed for failure to raise a substantial federal question on the basis of the court's determination that the state was acting within its sovereign power and, therefore, was insulated from federal judicial review under Gomillion v. Lightfoot.

The action by CALL was brought in the same district court, but

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51. Id.
52. Section 33 (7) reads in pertinent part:
   (7) A charter law
   (a) providing a county charter . . .
   (b) shall conform to and be subject to consideration by the board of supervisors in accordance with the provisions of this chapter generally applicable to the form of and action on proposed local laws by the board of supervisors. If a county charter, or a charter law as described in this subdivision, is adopted by the board of supervisors, it shall not become operative unless and until it is approved at a general election or at a special election held in the county by receiving a majority of the total votes cast thereon (a) in the area of the county outside of cities and (b) in the area of the cities of the county, if any, considered as one unit...

53. This section provides:
   Counties . . . shall be empowered . . . to adopt, amend or repeal alternative forms of county government . . . . Any such form of government . . . may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature of the state, or may abolish one or more offices, departments, agencies or units of government provided, however, that no such form or amendment . . . shall become effective unless approved on a referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit.

N.Y. Const. art. IX, § 1(h)(1).
56. Joining Citizens for Community Action at the Local Level, Inc. [hereinafter cited as CALL] as a plaintiff in the action was Francis Shedd, a citizen of Niagara County who was suing on behalf of himself and all those whose votes had been impaired
unlike the previous action, the plaintiff's request that a three judge district court be convened pursuant to 28 U.S.C., sections 2281 and 2284, was granted. The gravamen of CALL's complaint was that Article IX, section 1(h)1 of the New York State Constitution and section 33(7) of the Municipal Home Rule Law denied them equal protection of the law by partitioning Niagara County into two separate voting units of unequal population, one urban and the other extra-urban, and by requiring separate majorities in each for the adoption of the county charter form of government.57 This distinction, they argued, created arbitrary and irrational classifications based solely upon residence which resulted in a constitutionally impermissible voting pattern. In order to redress this grievance, plaintiff sought a declaratory judgment stating that the challenged provisions were violative of the fourteenth amendment and, therefore, that the Niagara County Charter had been duly adopted and was in full force. Further, an injunction was sought directing the implementation of the charter and the election of a county executive and comptroller as provided in the charter.

Defendant argued that the action should be barred by the doctrine of res judicata on the grounds that the prior action by the County of Niagara was brought on behalf of plaintiffs here and raised the same issues. Alternatively, relying upon Judge Henderson's decision in the County of Niagara case, the state argued that the challenged statutory and constitutional provisions were within the discretion of the state and thus beyond judicial scrutiny. The state also asserted that a referendum on a charter need not comply with the one person-one vote principle since it was not an election of a representative.

B. The District Court Decision

Judge Timbers, writing the unanimous opinion for Judges Burke and Curtin, granted plaintiff's motion for summary judgment, thereby dismissing defendant's cross motion for summary judgment. Rejecting

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57. A state commission had suggested prior to the Ghezzi case that the multiple majority referendum provision should be abolished. However, no legislative action was ever taken on the proposal. State of New York, Temporary State Comm. on the Constitutional Convention, supra note 29, at 43.
the state's procedural claim first, the court held that collateral estoppel could not be invoked in this case because the plaintiffs in this action were not formal parties to the prior action and the county did not have authority to sue on behalf of its citizens and voters. Also determinative in the defeat of the collateral estoppel claim was the fact that none of the formal requisites for a true class action under Rule 23 of the Federal Rules of Civil Procedure were met.

The defense that the state has sovereignty in areas of developing new forms of local government and is therefore immune from judicial scrutiny was dismissed as "wholly without merit." Relying upon Gomillion, the court recognized "the sovereign right of a state to create political subdivisions to assist it in carrying out state governmental functions" but held that this did not mandate that a state could exercise its sovereign right "so as to impair constitutionally protected rights of its citizens." Also cited as controlling were Gray v. Sanders, where the Supreme Court held that once instituted, a state primary procedure must give all participants an equal vote, and Avery v. Midland County, where population distortions in judicial election districts were overturned. Referring to the learning of these two cases, the court in Ghezzi summarized:

[...]he State of New York, having chosen to create subordinate units of government, is not immune from judicial scrutiny when confronted with a claim that its exercise of sovereign power results in the imposition of unconstitutional conditions upon the voters of that political subdivision.

58. The requisites for application of res judicata—a final judgment on the merits in a prior action, identical issues in both actions and identical parties or privity of parties in both actions—were set out by the Second Circuit in Kreager v. General Elec. Co., 497 F.2d 468, 471-72 (2d Cir. 1974), quoting from Zdanok v. Glidden Co., 327 F.2d 944, 955 (2d Cir.), cert. denied, 377 U.S. 934 (1964), and were relied upon by the Ghezzi court in making this determination.


60. Id. Fed. R. Civ. P. 23 (a) states that the prerequisites of a class action are: One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. The court pointed out that the fairness requirement of (a)(4), in particular, would not be served if the plaintiff's were not permitted to continue with their suit.


62. Id.

63. Id.

64. 372 U.S. 368 (1963).


After subjecting the constitutional and statutory provisions in question to such judicial scrutiny, the court found that they were violative of the one person-one vote doctrine. The state had conceded that this doctrine would be violated by the multiple majority provisions in question if the provisions had been applied to the election of representatives. The multiple majority referendum requirement in this case was immune from the Reynolds v. Sims67 doctrine and its progeny equality principle, according to the state, because no representatives were being elected. The court cited the cases of City of Phoenix v. Kolodziejski,68 Gordon v. Lance69 and Cipriano v. City of Houma,70 where no representatives were being elected and the one person-one vote principle was applied, thereby dismissing the state's argument.71

Similarly, the court disagreed with the state's contention that the multiple majority requirement in question would fit under either of the recent exceptions to the one person-one vote principle. Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.72 involved statutes which limited the franchise with respect to water management and flood control to landowners in the affected district. The reasons for upholding the restriction in Salyer were the "special limited purpose" of the water storage district and the "disproportionate effect of its activities on landowners as a group."73 Since the county government established in the Niagara County Charter was of a "general governmental nature" which affected all the residents of Niagara County, Salyer was found not to support defendant's position.

Gordon v. Lance,74 the other recent case in which an exception to the one person-one vote principle was made, was also found not to be controlling. In Gordon, West Virginia's statutory and constitutional requirement that no political subdivision incur bonded indebtedness or raise taxes beyond a set figure, without a 60% majority of referendum votes, was upheld. Despite defendant's allegation to the contrary, Judge Timbers found that Gordon differed from the instant case in three respects: (1) the dual majority requirement in Ghezzi had a potential for unlimited dilution of the majority vote, while Gordon had a limited super majority requirement of 60%; (2) while the scheme in

68. 399 U.S. 204 (1970).
69. 403 U.S. 1 (1971).
71. 386 F. Supp. at 8.
73. Id. at 728.
74. 403 U.S. 1 (1971).
Gordon was not discriminatory, the dual majority requirements in Ghezzi diluted and debased the vote of the city dwellers of Niagara County; (3) the Gordon court had specifically reaffirmed its prior position that any dilution of voting power because of group characteristics that bore no relation to the interest of those groups in the subject matter of the election, was invalid. The restriction in Ghezzi is just such a dilution due to a group characteristic—i.e., geographic location. Therefore, finding no merit in any of the defenses offered by the state, summary judgment was granted to the plaintiffs.

C. Recent Developments

While the validity of the multiple majority referendum procedure used for the 1972 charter referendum was being challenged in the district court, another charter was being drafted for Niagara County. A charter, similar to the 1972 charter, was formulated by a charter revision committee and was adopted by the Niagara County Legislature on August 20, 1974. The 1974 charter varied from the 1972 charter in that Article XIV of the 1972 charter entitled, "Department of Economic Development and Planning," was omitted and minor linguistic changes were made. Further, the 1974 charter added Article IX entitled, "Department of Parks and Recreation," and Article XIV, "Department for the Aging". The 1974 charter was submitted to the county voters in a referendum on November 5, 1974. However, like the 1972 results, the required multiple majority of all the county residents outside the cities was not received. Subsequent to the 1974 referendum, the district court rendered its decision invalidating New York's multiple majority referendum requirements and on January 9, 1975, granted an injunction declaring section 33(7) of the Municipal Home Rule Law and Article IX, section 1(h)1 of the New York State Constitution unconstitutional. The district court judgment also ordered the state to accept the charter for filing and on February 28, 1975, the Secretary of State for New York complied with this order.

At this point in time, the litigants in the case were altered. The change was initiated when the Attorney General for the State of New York announced on February 13, 1975 that he would not take an appeal to the Supreme Court in the case. Thereupon, on March 5, 1975, the Town of Lockport in Niagara County and Floyd Snyder, the Town Supervisor, were granted leave to intervene in the case on the ground

75. 386 F. Supp. at 9.
76. Id.
that the potential effect of the 1972 charter on them would give them an interest in the case. Because the state decided not to press an appeal in this case, the court determined that the town's interests could not be protected unless they were permitted to intervene and appeal. However, although leave to intervene was granted at that time, an application for a stay was denied. On the following day, March 6, 1975, an appeal was filed before the United States Supreme Court pursuant to 28 U.S.C., section 1253 and was docketed on May 5, 1975.

During the months after the district court decision and before the Supreme Court's consideration of the acceptance of the appeal, a state court proceeding was commenced. After being granted leave to intervene by the district court, the Town of Lockport made applications for stays to the district court, on March 5 and May 22, which were both denied. Likewise, a motion to vacate the judgment was denied by the district court on June 11, 1975. Thereafter, on June 27, 1975, the town commenced an application for relief in New York State Supreme Court pursuant to Article 78 of the New York Civil Practice Laws and Rules to revoke and rescind the Secretary of State's certification of the 1974 Niagara County Charter, on the grounds that the charter was not adopted pursuant to existing New York law at the time. In the alternative, the town sought to stay the effective date for the 1974 charter's implementation pending the outcome of the town's application to the Supreme Court to hear the appeal involving the 1972 charter.

Judge Kuszynski, in his memorandum decision for the Supreme Court of the County of Niagara, on July 31, 1975 denied both the Article 78 petition and the application for a stay. The basis of the denial of the Article 78 petition was the concurrence of the court with the federal district court's position that Article IX, section 1(h)1 of the New York State Constitution and section 33(7) of the Municipal Home Rule Law violated the equal protection clause of the United States Constitution. The stay application was also denied on the grounds that there could be no assurance that the case would be decided before the 1975 elections in November and to refuse to permit the implementation of the 1974 charter would be to ignore the mandate given by the majority who had voted in its favor.

The state court judgment brought about a controversy as to the mootness of the issue raised in the Supreme Court appeal. The town filed a brief and other supporting papers to influence the Supreme Court's decision to hear the appeal. They claimed that the 1972 charter
was moot because the 1974 charter superseded the 1972, through section 101 of the 1974 charter, which states:

[...]his charter together with any and all amendments hereto, if any, shall provide for and constitute the form of government for Niagara County and shall supersede any and all other forms of Government for the County of Niagara, including any charter previously adopted.

Further, the town asserted that the 1974 charter was the only instrument defining local government in Niagara County. Thus, the town argued that because the 1972 charter had been superseded and was inoperative, there was no live "case or controversy" worthy of the Supreme Court's review.

The essence of the CALL position on the mootness issue was that so long as section 33(7) of the Municipal Home Rule Law and Article IX, section 1(h)1 of the New York State Constitution were in force, the controversy was a live one, regardless of which charter was at issue. Thus the gravamen of the CALL argument was that the question is essentially a constitutional one. Further, the CALL brief emphasized that the district court decision was so obviously correct that it should be affirmed without plenary consideration.

The Supreme Court entered a judgment in the case on October 6, 1975,77 vacating the district court judgment and remanding the case for reconsideration in light of the new provisions in the Niagara County Charter of 1974. The district court heard oral arguments in the case during which time the plaintiffs made a motion to amend their complaint to include the Niagara County Charter and make the 1974 Charter part of the proceedings in the case. At that time, the plaintiff, the New York State defendants and the Niagara County defendants all agreed that the case was not moot and should be litigated in federal court. The intervenor-defendant, Town of Lockport, in contrast, argued that the case was moot because the 1974 Charter was certified, thereby making the 1972 Charter and its validity no longer worthy of resolution. The district court decided on October 23, 1975, that the case was not moot as the problem presented was one which was capable of repetition yet evading review. Further, the court found that certification did not alter the nature of the controversy between the parties. Thus, the court

reinstated its decision of January 9, 1975, as to the constitutional question, and amended that decision so that the 1974 Charter be considered to be in full force and effect in Niagara County. Finally, the court enjoined the Town of Lockport from proceeding further in the state court action. Although there has been no appeal filed in this case now, it is likely that the Town of Lockport will appeal the case. It is possible that the Supreme Court will determine that there is no live case or controversy in the case and that the issues raised in the district court in Ghezzi are now moot. Even if the issues are not fully litigated again in the Ghezzi context, it is likely that the same issues will arise again, either in New York or one of the other states which have similar statutes or constitutional provisions.

D. A Three Point Attack Upon Multiple Majority Referendum Requirements

If an appeal is taken and the Supreme Court agrees to hear the appeal in the Ghezzi case, it is likely that the Town of Lockport will vigorously press many of the arguments presented less forcefully by the state in the district court. Even if an appeal is not allowed there are three possible arguments which could be made against the position taken by the district court in Ghezzi. These arguments could also be made in any case involving statutes or constitutional provisions similar to those of New York State. All of these arguments, in the author's opinion, could be successfully rebutted.

A primary and strong argument that could be made is that the establishment of the structure of municipal governments is solely within the province of the state and is, therefore, immune from federal judicial scrutiny. In support of this position it could be argued that the fourteenth amendment has never been applied to such state procedures before and was not designed to cover this area of exclusive state sovereignty. Further, it would be stressed that questions like these are "political questions," and as such, are beyond the scope of the Supreme Court's jurisdiction.

Although this argument may appear to have merit, the Ghezzi case is a logical extension of the Gomillion-Gray-Avery line of cases and is thus clearly within the ambit of the Court's jurisdiction. In Gomillion, black citizens of Tuskegee, Alabama challenged the state legislature's gerrymandering attempts to disenfranchise them through alterations of the city's boundary lines. The court in Gomillion recognized
the precedent of *Hunter v. City of Pittsburgh* and the breadth of the state's power regarding municipal corporations. However, the court also noted that it had "never acknowledged that the States have power to do as they will with municipal corporations regardless of consequences" and went on to say that "[l]egislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution." As was cited in *Ghezzi*, the court held that only "[s]tate exercises [of] power wholly within the domain of state interest," are federally protected, not exercises of state power used "as an instrument for circumventing a federally protected right."  

Similarly, *Gray* struck down Georgia's county-unit system of voting in democratic senatorial primaries. The Court condemned in that case a system whose end results were similar to those in *Ghezzi*, observing that "Georgia gives every qualified voter one vote in a statewide election; but in counting those votes she employs the county unit system which in end result *weights the rural vote more heavily than the urban vote* and weights some small rural counties heavier than other larger rural counties." Finding state primaries an area of state concern, as was redistricting in *Gomillion* or governmental reorganization in *Ghezzi*, the Court could not sanction a system which denied the voters of that state the equality mandated by the one person-one vote principle. Summarizing this sentiment, the court said "'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications."  

*Avery*, along similar lines, overturned a Texas districting scheme which permitted gross population disparities among judicial election

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78. 207 U.S. 161 (1907). *Hunter v. City of Pittsburgh* involved a challenge by the citizens of Allegheny, Pennsylvania to a merger with the city of Pittsburgh. The citizens claimed that they had a contract with the municipality of Allegheny to be taxed only for the governmental purposes of that city. Further, they claimed that the consolidation deprived them of property without due process because the proposed consolidation would probably raise their taxes. Dismissing their claims, the Court recognized that the state was supreme in matters regarding municipal corporations and, therefore, the consolidation was well within their powers. The Court explained:

> Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences.

*Id.* at 179.

79. 364 U.S. at 344-45.

80. *Id.* at 347.

81. 372 U.S. at 379 (emphasis added).

82. *Id.* at 380.
districts. This districting scheme, like the voting scheme in *Gray*, heavily favored rural areas and was, therefore, found to be invidiously discriminatory and violative of the fourteenth amendment. Also, as in *Gomillion* and *Gray*, the Court found that generally such matters regarding “the forms and functions of local government” are matters of state concern.\(^{83}\)

Reviewing the precedents of *Gomillion*, *Gray*, and *Avery*, it is evident that Judge Timbers’ decision that the state’s multiple majority requirements are subject to federal judicial scrutiny is a sound one. These cases clearly prescribe that state actions regarding municipal governmental organization which invidiously discriminate against one group to the derogation of the federally protected rights of another group, are subject to strict judicial scrutiny.

In the *Ghezzi* case, the New York multiple majority referendum requirement operated such that, regardless of an overall majority of votes cast in favor of a proposal, the failure of such a majority to accrue in all specified geographical areas as a whole—city, town and village—could defeat the measure. Such a plan, based upon an arbitrary and irrational classification, functioned to invidiously discriminate against all those voters residing in the area where the majority vote was cast. This discrimination deprived all those residing in that area of their fundamental right to have their vote counted and weighed equally with all other votes cast in the referendum. Since the challenged provisions in *Ghezzi* operated in an invidiously discriminatory fashion to deprive voters on the basis of an irrational classification—geographic area—of their fundamental right to equality in the weight of their vote, the *Ghezzi* case was clearly one that should have been subject to strict federal scrutiny.

As a second argument, one might reiterate the state’s contention in the district court that the one person-one vote rule should not be extended to referenda on municipal changes. However, this position seems untenable in light of the group of cases beginning with *Kramer v. Union School District No. 15*,\(^{84}\) which invalidated a variety of municipal referenda on the grounds that they contravened the equal protection clause of the fourteenth amendment. *Kramer*, the first of these cases, overturned section 2012 of the New York Education Law which restricted otherwise qualified voters from participating in school district elections unless they either owned or leased realty in the area or

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\(^{83}\) 390 U.S. at 480.
were parents of school children enrolled in local schools. The Court concluded at the outset that the provision should be subject to strict scrutiny, "to determine whether each local resident has, as far as possible, an equal voice . . ."85 The state's argument that the franchise was reasonably narrowed to those who were "primarily interested" in school affairs was not found to satisfy the compelling state interest test of the fourteenth amendment. The Court summarized that section 2012 was "not sufficiently tailored to limiting the franchise to those 'primarily interested' in school affairs to justify the denial of the franchise . . ."86

On the same day as Kramer, Cipriano v. Houma87 declared violative of the fourteenth amendment a statute similar to that in Kramer. The Louisiana statute in Cipriano limited the franchise in municipal utility bond elections to property taxpayers. As in Kramer, the Court could find no "special interest" among property taxpayers justifying their privileged status and noted that "[p]roperty owners, like non-property owners, use the utilities and pay the rates; [and] the impact of the revenue bond issue on them is unconnected with their status as property taxpayers."88 In a subsequent case, City of Phoenix v. Kolodziejski,89 the Court invalidated a real property taxpayer limitation in elections regarding the issuance of general obligation bonds to finance municipal improvements. Again, the Court found "[t]he differences between the interests of property owners and the interests of nonproperty owners are not sufficiently substantive to justify excluding the latter from the franchise."90

The most recent addition to this line of cases is Hill v. Stone.91 The Court in Hill nullified provisions of the Texas Constitution and Election Code as well as the Fort Worth Charter, which limited the franchise in municipal bond elections to property owners who "rendered," i.e., made available, their property for taxation.92 The Court found that the library bonds involved in the Fort Worth referendum were not a matter of "special interest" to property owners who "rendered" their property for taxation. The Court concluded, therefore, that there was no compelling state interest to justify limiting the franchise to rendering property owners.

85. Id. at 627.
86. Id. at 633.
88. Id. at 705.
89. 399 U.S. 204 (1970).
90. Id. at 209.
91. 95 S. Ct. 1637 (1975).
92. Id. at 1643.
In light of the extension of the one person-one-vote principle to cover "general interest" municipal referenda in the Kramer, Cipriano, City of Phoenix and Hill cases, the second argument has little merit. However, if it was conceded that the one person-one-vote principle does apply to the Ghezzi situation, a third argument could be made. The gist of the third argument would be that the Ghezzi case fits under either the Salyer Land Co. v. Tulare Water District or the Gordon v. Lance exception. As was discussed in Ghezzi, however, Salyer can be distinguished factually from Ghezzi. Salyer involved the election of directors of a California water storage district, which had been formed only to provide water to farmers in the Tulare Lake Basin and thus, provided no other municipal services. Furthermore, all the costs of the projects undertaken by the defendant water storage district were assessed against the land serviced by the district, in proportion to the benefits received. The unusual limited purpose of the district was held to warrant the challenged voting scheme whereby each voter was entitled to cast one vote for each $100 value of land and improvements owned. The voting in Ghezzi involved, as Judge Timbers pointed out, an all purpose local government. Hence it seems impossible to apply the "limited purpose" exception of Salyer to the Ghezzi situation.

The situation in Gordon v. Lance, although clearly distinguished from the case at bar by Judge Timbers' opinion in Ghezzi, arguably offers the defendant more room for a substantial defense. In Gordon, Chief Justice Burger upheld a 60% "super majority" requirement in referendums on general obligation municipal bonds and increased tax levies. The decisions in Gray and Cipriano, which held that no dilution of voting power due to geographic location or property ownership could be tolerated, were not viewed as controlling. Rather, it was noted that no identifiable group was discriminated against in Gordon, unlike the obviously racial classifications in Hunter v. Erickson.\footnote{93. 393 U.S. 385 (1969). Hunter v. Erickson involved a challenge by a Negro citizen of Akron, Ohio to an amendment to the city charter which required a majority referendum vote on any city council ordinance dealing with race, religion or ancestral discrimination in housing before such ordinance could be exacted. Justice White in his majority opinion overturned the referendum requirement as violative of the fourteenth amendment. In destroying the state's defense that it has to move more slowly in the race relations area, Justice White hinted at the one person-one vote problems which have been raised in the Ghezzi case: [I]nsisting that a State may distribute legislative power as it desires and that the people may retain for themselves the power over certain subjects may generally be true, but these principles furnish no justification for a legislative structure which otherwise would violate the Fourteenth Amendment .... The sovereignty of the people is itself subject to those constitutional limitations which have been duly adopted and remain unrepealed. Even though Akron might have proceeded by majority vote at town meeting on all its municipal legislation, it}
invidious discrimination, the Court voted that "there is nothing in the language of the Constitution, our history, or our cases that requires that a majority always prevail on every issue."\textsuperscript{94}

Since no invidious discrimination was present in \textit{Gordon}, the state was not required to meet a compelling state interest standard. Instead, West Virginia had to meet the legitimate state interest or traditional equal protection test by demonstrating that their "super majority" requirement was a rational one which furthered a proper governmental purpose. The state in \textit{Gordon} relied upon the \textit{long term} implications of incurring long term debts in justifying its 60\% requirement. In approving this requirement as a rational one, the Chief Justice concluded "[i]t must be remembered that in voting to issue bonds voters are committing, in part, the credit of infants and of generations yet unborn, and some restriction on such commitment is not an unreasonable demand."\textsuperscript{95}

The contention of the state in the district court in \textit{Ghezzi} that the long range consequences of the charter form of government fit the case under the \textit{Gordon} exception, was defeated by Judge Timbers, as was the state's contention that the challenged provisions do not discriminate against any identifiable class. The potential for unlimited discrimination, which obviously diluted the vote of those city dwellers in Niagara County on the basis of their geographic location, was targeted as the main reason for this failure. Despite this resounding defeat in the district court, it appears that further arguments under the \textit{Gordon} guidelines might offer the only potential for relief for the town. Such argument would be composed of the two step process evident in \textit{Gordon}. The first step is establishing the fact that there was no invidious discrimination in the application of Article IX, section 1(h)1 or section 33(7) to the Niagara County Charter case and, therefore, that the state need only show a legitimate state interest. The second step is emphasizing the "town interest" in maintaining the current local government structures in Niagara County.

Any attempt at establishing the fact that there was equality of treatment in the \textit{Ghezzi} referendum, would have to prove that there was none of the geographic discrimination found by the district court.

\textsuperscript{94} Id. at 392-93.
\textsuperscript{95} Id. at 6.
This approach would stress that there was no deliberate attempt to dilute the vote of any particular group, as was the case in Gomillion. Further, it would be argued that there would be no predictable rural bias as in Avery and Gray if a multiple majority requirement was continued because there could be an urban bias in some areas. Additionally, it could be emphasized that each level of government—city, town, and village—was given an equal chance to defeat a charter. The assertion could also be made as it was in James v. Valtierra, that a neutral referendum requirement should not be struck down merely because it sometimes operates to disadvantage the interests of a certain group. Finally, it could be urged that geographic area is not a suspect classification such as race, religion or national origin and that therefore, there is no reason to assume that the challenged system discriminates on the basis of any suspect criteria.

Assuming the equal right of any geographic location in a county, city, town or village to defeat a proposal which alters current governmental structures, Judge Timbers' geographically discriminatory argument seems weak. Further, since all members of all levels of government get to participate and exercise their “equal” right to veto any proposal, it could be contended that the fundamental right to vote was in fact not being diluted, as was contended by the appellees in the lower court.

If the absence of such discrimination which would compel a strict scrutiny test is acknowledged by the Court, then the only task for the Town of Lockport is to show a rational purpose behind the multiple majority referendum requirements. If the Court were to recognize that the traditional equal protection test applies, it would not be very difficult for the town to meet the test as set out in Lindsley v. Natural Carbonic Gas Co. of “some rational connection between the fact proved and the ultimate fact presumed, [where] the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.”

The best purpose for the multiple majority pro-

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96. 402 U.S. 137 (1971). James v. Valtierra involved article XXXIV of the California State Constitution, which required a majority referendum vote in a community before any low rent housing project could be built there. The referendum requirement was upheld in a majority opinion by Justice Black, as no invidious discrimination was manifest by the statute’s wording or its operation. Additional reasons for upholding the requirement were that the state demonstrated a long history of using referenda for various purposes and also showed a legitimate state interest in allowing people to vote on proposals which would place additional fiscal burdens upon them.

97. 220 U.S. 61 (1911).

visions that could be asserted by the appellants would be the "town interest" in maintaining the present governmental structures in Niagara County. The argument in favor of a "town interest" would be that the state created multiple majority requirements to assure that all changes in governmental structure have the support of all the levels of government in the county which could be effected by such changes. In developing the multiple majority requirement, the state recognized that each level of local government as a whole—city, town or village—has a special interest in seeing that all their needs are served by the best governmental structure possible. The state also recognized in providing for the multiple majority requirements that the governmental needs of each level of government may be different from the needs of other levels of government and that these diverse needs must be recognized. Finally, in granting local governments greater home rule powers initially, the state recognized that each level of government in the county had a unique group of functions. Therefore, it only allowed for the transfer of functions with the condition that each unit would have veto power over any plan that did not serve their best interests.

Although a rather strong argument could be presented in support of this third argument, it is likely that Judge Timbers' decision in the district court would be upheld. The one person—one vote principal protects the fundamental right of individuals to have their vote free from dilution. The argument of the "town interest" denies that the right to vote is an individual right. In Ghezzi, it is clear that the individual's right has been fatally undermined by the recognition of this fictional "town interest." To apply the lower standards of scrutiny applicable to the traditional equal protection test would be equivalent to denying the right of the individual appellees to have their vote weighed equally with those of other voters.

Even if the court were to recognize the existence of a "town interest," it would be very difficult to prove that implementation of the Niagara County Charter damaged any "town interest." The charter merely changed the names of many department heads and created several new positions. It did not really transfer any vital functions to the county but merely reiterated many of the functions that were already vested in the county government. The thrust of the complaints voiced by those in opposition to the charter was mainly focused upon the precedent that the charter set for the future increase of powers vested in the county. However, the charter itself neither provided for any meaningful transfer of functions to the county government, nor divested the towns of any substantial powers.
Perhaps the main reason why this third argument would be defeated lies with the precedent set recently by the Supreme Court in *Hill v. Stone*. The Court in *Hill* defeated a requirement in the Texas constitution and law that voters in municipal elections "render" their property for taxation in order to have their vote count in municipal bond elections. The "rendering" procedure used in all state bond elections was implemented through a "dual box" election procedure. The procedure required that all those who rendered taxable property cast their ballots in one box while all other voters cast their ballots in a separate box. A bond issue was not considered to have passed unless it was approved both by a majority of the renderers' box and an overall majority. In *Hill*, a transportation bond proposal in Fort Worth, Texas was approved through the usual procedure, while a library bond issue was defeated because, although it received an overall majority, it was not passed by a majority of the renderers' vote.

The Court began its examination of the challenged procedure by stating that "as long as the election in question is not one of special interest, any classification restricting the franchise on grounds other than residence, age or citizenship cannot stand unless the districts or State can demonstrate that the classification serves a compelling state interest." Initially, the Court defeated the state's contention that municipal bond elections were special interest elections. Further, they upset the state's alternative position that the "rendering" classification was a reasonable one, on the grounds that

our cases . . . have not held or intimated that only property-based classifications are suspect; in an election of general interest, restrictions on the franchise of any character must meet a stringent justification. The Texas scheme creates a classification based on rendering, and it in effect disfranchises those who have not rendered their property for taxation in the year of the bond election. Mere reasonableness will therefore not suffice to sustain the classification created in this case.

Also, the Court questioned the state's position that the rendering requirement extended protection to property owners who bore the direct fiscal burdens of the bond issue. This position was dismissed on the grounds that not only taxpayers but all members of the community bore the cost of the bond issue. Finally, the Court dismissed the state's argument that the "rendering" requirement encouraged people to pay their

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100. Id. at 1642.
101. Id. at 1643.
property taxes. In summary, the “rendering” referendum system was overturned as none of the state’s rationales for the distinctions met the compelling state interest standard.

There are many similarities between Hill and Ghezzi which could defeat the argument that the Ghezzi case should be an exception to the one person-one vote principle. Primarily, the “dual box” voting procedure which was declared unconstitutional in Hill is very similar to the multiple majority referendum requirement in Ghezzi. While the dual box procedure necessitates a majority of the renderers and an overall majority, the Ghezzi procedure entails a majority of the area within the cities and a majority outside the cities, as well as an overall majority. Also, the subject matter in both cases was of general interest to all voters with no true relationship to the franchise distinctions. Likewise, the voting distinctions in both cases were unrelated to the generally acceptable distinctions of residence, age and citizenship. Thus, the state defendants in both cases were under strict scrutiny to come up with a justification for the distinctions, and were forced to meet a compelling state interest standard. In both cases, it seems unlikely that the states could present sufficient justification for their franchise classifications to meet the test. Thus, it is logical that as the Hill procedure was found to be violative of the fourteenth amendment, so too will the Ghezzi multiple majority requirements be found unconstitutional. There seems to be little hope, in light of the Hill precedent, that the Ghezzi case will be presumed to form an exception to the one person-one vote principle.

In summary, the district court in Ghezzi has set a meaningful precedent by invalidating the multiple majority referendum requirements in the New York State Constitution and the New York Municipal Home Rule Law. The wisdom of this position was recognized by the New York State Supreme Court in denying the Article 78 petition by the town. If the Supreme Court considers further appeals, or similar issues are decided by another court, hopefully the Court will recognize the soundness of the position taken by the district court and decide the case in a similar fashion.

III. THE IMPACT OF THE ABOLITION OF MULTIPLE MAJORITY REFERENDUM REQUIREMENTS UPON METROPOLITAN PROBLEMS

A. The Effect on County Charter Proposals

It is clear that if this decision were upheld, provisions requiring multiple majorities of specified political subdivisions or geographic
areas for county charter passage would be unconstitutional. Thus, the New York requirement of a triple majority of the city, town and village areas in order to institute a county charter form of government, as well as similar provisions regarding county charters nationwide, would be eliminated. Since county charters can provide for the transfer of functions from other local governments to the county, eliminating multiple majority referendum requirements would help the passage of county charters. Also, passage of county charters in more metropolitan counties would thwart the interests of towns who view strengthened county government as a threat to their autonomy.

However, there is a question whether county charters will really serve the interests of the reform groups who have fought for their passage. Charters like the Niagara County Charter do not provide for any meaningful "transfers of function" from the smaller governmental entities to the county. Rather, only minor changes were involved in the Niagara County Charter. Nonetheless, if more county charters are passed after the multiple majority referendum requirements are dropped, the interests of reform groups in alleviating metropolitan problems are likely to be served. Although county charters do not radically alter existing governmental structure, they provide a framework for change. Despite the fact that no substantive functions are transferred initially, a conduit and a precedent for such transfers has been established by the passage of the charter. Although the original charter in a county such as Niagara County did not make a significant inroad into the problems of service provision by local government, it was a start. Perhaps subsequent transfers of function will create more areawide planning facilities which could put greater efforts toward creating a cohesive pattern of responsive governmental services. It is this possibility — that such planning would undermine the existing outmoded local government structures — that the appellants in the Ghezzi case and their counterparts most fear.

Another source of worry for town and village governments and their constituents is the likelihood that the abolition of multiple majority referendum requirements would be extended to other governmental referenda. An examination of other referenda in which a majority of the cities, towns and villages is separately required illustrates why an extension of the abolition to cover these situations is feared.

B. The Effect on Other Local Governmental Reform Measures

Of the proposed reforms for local government structure, transfers of functions through county charters is the least comprehensive. More
radical reform measures have included annexation, the federation approach, city-county separation and city-county consolidation. Identical to the multiple majorities required for county charter passage, each of these measures up until this time has required passage through a majority of city, town and village voters, separately. However, if the Supreme Court upholds the district court and decides that such multiple majority requirements are violative of the one person-one vote principle, there is a very good chance that the abolition would extend beyond county charter referenda. Nonetheless, it does not appear that any of the governmental units involved in these reform measures could demonstrate a compelling state interest in maintaining the multiple majority referendum requirement.

The first of these more extensive reform measures is annexation. Annexation involves the absorption by the city of the areas surrounding it. This approach was first extensively used during the period between the late nineteenth and early twentieth century when the area sur-

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102. These are the only reform measures which necessitate multiple majority referendum approval for passage and, therefore, are the only measures which warrant extensive textual discussion. However, several reform measures which have been proposed to alleviate metropolitan problems are worthy of some mention. One method of reform has been through the expansion of the authority of the cities to exercise power beyond their territorial confines in order to reach certain problem areas. The method is used in most cases for health care and nuisance abatement. Since the procedure doesn't include zoning powers to eliminate the problem, it has limited applicability in most places. ACIR, ALTERNATIVE APPROACHES TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS 20-25 (1962).

Another reform measure has been the development of voluntary metropolitan councils of public officials to cooperate on areawide solutions. The growth of these councils has been spurred by federal legislation which requires that such metropolitan councils be created to disburse federal funds. Metropolitan councils have no independent operating capability without the presence of federal funds and usually work in a purely advisory capacity to local governments. They are, therefore, not particularly effective in solving metropolitan problems but are used only in laying the groundwork for inter-local cooperation. Id. at 34-38; see ACIR, METROPOLITAN COUNCILS OF GOVERNMENTS (1967); J. BOLLENS & H. SCHMANDT, supra note 1, at 371-99; Frisken, supra note 4, at 405.

Intergovernmental agreements for sale of services and jointly exercised powers among local governments, another reform proposal, is the most widely used method of increasing the scope and powers of local governments. This method, most often referred to as the "Lakewood Plan," is used frequently in California. The plan originated there when the city of Lakewood contracted with Los Angeles County to provide many of its municipal services. The Lakewood Plan is thought to have a limited potential for the solution of metropolitan problems, as it is feasible only where there is no conflict of interest between the participants, and when the particular function is suitable for such contracting. ACIR, supra at 26-33.

All of these reform proposals have an advantage over those reforms listed in the text because these reforms require no popular approval before implementation. However, as was noted above, they also provide very limited solutions to metropolitan problems.
rounding major cities was more sparsely settled than today. Although most of the annexations by major cities, especially in the Northeast, ended by 1930, a tremendous upsurge of annexation activity has occurred in the smaller cities since the end of World War II, with particular activity in the South and West. Although some of these annexations have been passed by multiple majorities in a popular referendum, many states do not require a referendum for passage of annexations. Only those states which require multiple majorities for annexation would, thus, be affected if these multiple requirements were abolished. Those states might argue that a compelling reason for requiring such multiple majorities in referendum voting is the fact that the individual units become totally merged through annexation. Further, where unincorporated areas are merged, it might be argued that the residents of the unincorporated area are having a totally new government imposed upon them and, subsequently, have a right to have their votes count as a “unit.” Residents of unincorporated areas could emphasize this reasoning, explaining that they are totally changing the form of their local government which gives them a special interest city voters in a referendum do not have. It is a dubious distinction of interests made by those residents being annexed to the city and the Court would probably recognize it as such. Despite the fact that residents of areas to be annexed have a stronger claim than those residents in county charter cases, their interest does not reach the level of a “compelling” state interest justifying derogation of the fundamental right to have all votes count equally.

103. The first major annexation trend in the United States began with Philadelphia in 1854. The trend continued with Boston in 1867, Chicago in 1889 and culminated in 1898 with the merger of over two million people from Brooklyn, Queens and Staten Island into New York City. Smaller cities began annexing during the earlier decades of the twentieth century, including Cleveland, Detroit, Los Angeles, Pittsburgh and Cincinnati. Suburban areas surrounding these and other major cities began incorporating to avoid annexation around this time, curtailing further annexation by major cities. Forstall, Annexations and Corporate Changes since the 1970 Census, in INTERNATIONAL CITY MANAGEMENT ASSOCIATION, THE MUNICIPAL YEAR BOOK 1975, at 21 (1975).

104. With the exception of the Northeastern cities, almost every city of 10,000 and many smaller places, have annexed significant amounts of surrounding territories. Between 1950 and 1970, of 177 cities of 50,000 or more in the South and West, only 6 didn’t make significant annexations. Id. The most dramatic overall expansion in area of cities, mostly attributable to annexation, has occurred in the South where larger cities have grown more than 1000% over the past 70 years. Id. at 29.

105. Other methods of annexation include legislative determination, home rule annexations initiated by the municipality itself, judicial determination through review proceedings and quasi-legislative annexations made by a commission or board. F. Sengstock, ANNEXATION: A SOLUTION TO THE METROPOLITAN AREA PROBLEM 9-41 (1960). However, not all states which require a popular referendum for passage of annexations require multiple majorities for passage. E.g., N.Y. CONST. art IX, § 1(d) only requires a simple majority.
Abolition of multiple majority referendum requirements for annexations of cities would have a limited impact on metropolitan problems. Annexation tends to strengthen city governments by giving them control over larger areas of land and in most cases does nothing for counties. It is only feasible where metropolitan areas are not dense and provides no remedy for heavily populated metropolitan areas. Thus, eliminating multiple majority referendum requirements will only aid the less populous metropolitan areas where annexation is still feasible and multiple majorities through popular referendums are still required.

The federation, or "borough plan" approach to reforming metropolitan government holds more promise for solving metropolitan problems and would be aided by abolition of multiple majority referendum requirements. Federation is a two level approach to local government where areawide functions are performed by a large metropolitan government covering all of the local units, and local functions are left to "boroughs," which are usually enlarged municipalities. Federations have the advantage of providing a medium for areawide provision of services as well as a milieu for more localized service provision through boroughs. Boroughs enable local towns and villages to expand and provide the services which only require local control to be effective. The federation approach has been used successfully in the Canadian metropolitan areas of Toronto and Winnipeg but has not been attempted in the United States. One governmental assessment of the federation approach claimed that the requirement of multiple majority referendum approval would seriously hamper its chances for success in this country. Thus, if multiple majorities are declared unconstitutional when used for county charter passage, it is unlikely that states would require them for federation approval. If federation becomes a more popular concept in the United States and the approach is attempted in some of the more populous metropolitan areas, an improvement in service provision and other metropolitan problems would be likely to occur.

City-county separation is another infrequently used metropolitan governmental reform measure that might be sparked by the abolition of multiple majority referendum requirements. The process involves just what its name implies and is usually coupled with an expansion of

106. ACIR, ALTERNATIVE APPROACHES TO GOVERNMENTAL REORGANIZATION IN METROPOLITAN AREAS 74-75 (1962). The merger of Miami and Dade County in Florida, discussed by E. SOFEN, supra note 18, is the closest reorganization in this country that has approached a "federation" model.
107. Id. at 94-95.
city boundaries which allows the city to take over some of the county functions. Baltimore, Denver, St. Louis and San Francisco used the process in the latter half of the nineteenth century, but the approach has not been tried successfully since that time. The process has a limited value for solving current metropolitan problems, and the current trend is toward consolidation rather than separation. However, if it were to be tried, a multiple majority referendum approval would probably be required. In those limited circumstances where such separation would be practical, abolition of multiple majority referendum requirements, would undoubtedly aid the approach. Any argument of "special interest" that could be made by either the city or county, would probably be defeated as it was by the district court in Ghezzi.

The greatest impact upon metropolitan problems could be felt through the abolition of multiple majority referendum requirements for passage of city-county consolidation proposals. There are three basic kinds of city-county consolidation, ranging from the total merger of all local government units into the county structure, to a substantial merger of such units, to a partial consolidation which allows some of the municipalities within the county borders to remain autonomous. Of the states that permit such consolidations, almost all require multiple majority referendum approval for passage. The existence of this requirement is largely responsible for the fact that up until 1973, although consolidation had been attempted twenty-four times, it had been successful only in Baton Rouge, Nashville, Jacksonville, Columbus and three Virginia areas. The poor success rate of city-county consolidation attempts has discouraged many areas from attempting to put such proposals on the ballot. Despite the reluctance to attempt to institute such proposals, during the period from June 1971 through February 1973, 256 city-county areas in 38 states were studying the feasibility of consolidation proposals.

108. Id. at 68-71.
109. Id.
110. Id.
111. Id. at 71.
112. Some states, however, do not provide for a popular referendum at all in order to pass a city-county consolidation. The Indianapolis-Indiana consolidation was effectuated purely through an act of the legislature, as required by Indiana law.
113. Marando, supra note 13, at 90. Efforts which have failed include Kings County-Seattle (1923); Cuyahoga County-Cleveland (1925); Multnomah-Portland, Oregon (1927); Boston area (1931); Jackson County-Kansas City, Mo. (1933); Jefferson County-Birmingham (1936); and Jefferson County-Louisville, Wyandotte County-Kansas City, Kansas and Milwaukee County-Milwaukee in 1937.
114. The states included: Alabama, Alaska, Arizona, California, Colorado, Florida,
The reason for the great theoretical interest in city-county consolidation is the fact that it has been termed a panacea for metropolitan ills. The city-county consolidation approach emphasizes a strengthened county government, with a broad jurisdiction to solve the areawide problems most local governments are too small to handle. The consolidated government would have the taxing power to finance and distribute areawide services more equitably than smaller units, as well as the ability to plan for future provision of services. In many ways, county charters are thought to be a first step toward such city-county consolidation measures. Just as the abolition of multiple majorities for passage of county charters was fought by town and village interests, so too would the abolition of such requirements for city-county consolidation be resisted. But as no compelling interest could be found by the district court in Ghezzi to uphold such requirements for county charters, no compelling state interest could justify such requirements for city-county consolidations.

C. Other Factors Affecting Local Government Referenda

Even if multiple majority referendum requirements were eliminated, there is no guarantee that the future passage of city-county consolidation proposals would be assured. Numerous studies of city-county consolidation referenda have yielded a disparate group of variables affecting the outcomes of referenda. Although the studies have been limited to city-county consolidation efforts, the same factors probably affect all metropolitan government referenda.

Initially, it has been found that consolidation efforts are more successful in smaller, less developed metropolitan areas.\textsuperscript{115} Most successful consolidation attempts have not been in the major SMSA's of the county and have been in areas like Miami-Dade, where almost one-half of the population lived in thinly settled, unincorporated areas at the time of consolidation.\textsuperscript{116} It has been hypothesized that smaller metropolitan areas are more receptive to change because people are less attached to any one existing political framework and none of the


entrenched political power groups have been established to resist change.\footnote{117}

As of now, there is no clear evidence of a correlation between socio-economic status and referendum voting on metropolitan government. Both affluent suburban dwellers and poor urban dwellers have been known to vote against consolidation proposals. Political scientists have attempted to establish a paradigm to predict voting patterns, but with little success. "Ecological" theorists have claimed that the greater the socio-economic diversity in an area, the less likely a consolidation proposal will be passed.\footnote{118} However, no pattern has been found to determine which socio-economic groups vote which way on consolidation proposals.

Studies of racial factors in consolidation voting have revealed more illuminating results. Political scientists originally predicted that core city minority groups would vote as a bloc in favor of consolidation proposals. These theorists did not anticipate that core city minority leaders would be generally opposed to reorganization of any type if it threatens to dilute their power base in the inner city. Black leaders, in particular, recognize that they can dominate a concentrated black vote in an urban area, but cannot exert the same influence in a county-wide predominantly white organization. In a study of the Indianapolis-Indiana consolidation, it was remarked that most moves to unify government at best ignored blacks and at worst were motivated by racist attitudes on the part of a monolithic white power structure.\footnote{119} It is clear, then, that the solid bloc of urban support counted on by many political theorists for passage of consolidation and other reform measures, cannot be guaranteed in areas where black cities are surrounded by white suburbs.\footnote{120}

\begin{footnotes}
\footnote{117. Note, \textit{supra} note 32, at 529.}
\footnote{118. Hawkins, \textit{A Note on Urban Political Structure, Environment, and Political Integration}, 2 Polity 32, 42 (1969).}
\footnote{119. Lugar, \textit{Decision-Making Allocation in Indianapolis}, 1971 Utah L. Rev. 88. The article was written by the mayor of Indianapolis who was a prime mover in the Indianapolis-Marion County consolidation. An interesting aspect of the black view of consolidation lies in the question of what black control of cities really means. One commentator has said that once blacks assume positions of power in municipal governments, the white-rural-dominated state legislatures will be even less inclined to provide urban areas with much needed resources. Friesma, \textit{Black Control of Central Cities: The Hollow Prize}, 35 J. Am. Institute Planners 75 (1969).}
\footnote{120. The reason for black resistance to any municipal reform measure that would alter boundary lines is that many such boundary changes are merely pretexts for dis-}
\end{footnotes}
The reluctance found in black political leaders has also been noted in traditional party leaders as a whole. Although civic reformers generally favor consolidation and other reform measures, Republican and Democratic leadership often do not. In a study of the Indianapolis consolidation, local Democratic leaders were found to fear the possibility that consolidation would weaken their political strength in the core city and dilute the party’s strength as a whole.\textsuperscript{121} Republican officeholders, who it was initially thought would favor consolidation, feared their positions would be lost when a new government was formed.\textsuperscript{122} A similar feeling has been recognized to exist in many metropolitan areas, especially in the North, where the city is traditionally Democratic while the suburbs are Republican.\textsuperscript{123}

Another variable which has been found to effect consolidation efforts has been the level of organization and methods employed by reform groups. Media campaigns, in particular, have been found to be very influential in the success or failure of metropolitan government referenda. The importance of the media is in its outreach to the metropolitan populace. Most reform measures spring from an elite group and have to be “sold” to the area citizenry. The failure of many city-county consolidation measures has been attributed to the fact that most of the campaigns have not reached out to the people, relying instead upon the “logic” of the proposal to ordain its success.\textsuperscript{124} However, a successful consolidation effort in Nashville demonstrated the validity of media campaigns for metropolitan government referenda. In Nashville, ex-

\textsuperscript{121} Cole & Caputo, Leadership Opposition to Consolidation, 8 Urban Affairs Q. 253, 253-58 (1972).

\textsuperscript{122} Id.

\textsuperscript{123} Lineberry, supra note 115, at 692-93.

\textsuperscript{124} Marando & Whitley, City-County Consolidation: An Overview of Voter Response, 8 Urban Affairs Q. 181, 195 (1972).
tensive telephone canvassing, door to door campaigning, public hearings and mass communications in newspaper, on radio and on television were responsible for the measure's successful passage.\textsuperscript{125}

A final, frequently discussed factor in all city-county consolidation attempts has been suburban opposition to consolidation with cities. It has been uniformly found that suburban voters turn out in larger numbers than city dwellers for governmental referenda\textsuperscript{126} and generally vote against proposals for change.\textsuperscript{127} The stronger the population dominance of the city over the suburban areas, the less likely the outlying areas are to support moves for consolidation.\textsuperscript{128} However, suburban opposition to reform measures is not a fixed quantity and can be influenced by the nature and extent of the reform proposal.\textsuperscript{129}

\textbf{CONCLUSION}

The precedent set by the \textit{Ghezzi} case in striking down multiple majority referendum requirements is undoubtedly a meaningful one. Hopefully, the Supreme Court will consent to hear the appeal in the case and will affirm. Nonetheless, it is clear that the abolition of multiple majority referendum requirements is not the cure-all for metropolitan ills. The problems of provision of services to metropolitan areas have been developing over a number of years and will take an equally long time to resolve. However, if the trend toward developing increasing numbers of local governments to solve metropolitan problems can be halted, an important first step will be taken. Reform measures, such as transfers of functions to county governments through county charters, annexation, federation, city-county consolidation and city-county separation may be able to halt the trend. However, these reforms cannot be implemented in most cases so long as multiple majorities in referendum voting are still required. Thus, abolition of multiple majority requirements can provide the impetus for greater utilization of reform measures, and may insure greater success for these reforms.

But abolition of multiple majority referendum requirements is just a start. The most significant effect of such abolition will be to prevent suburban opposition in towns and villages from exercising\textsuperscript{125\\126\\127\\128\\129}

\begin{itemize}
\item \textsuperscript{125} See D. Booth, \textit{supra} note 31.
\item \textsuperscript{126} Marando & Whitley, \textit{supra} note 124, at 187.
\item \textsuperscript{127} Id.; see T. Murphy, \textit{supra} note 23.
\item \textsuperscript{128} Marando, \textit{supra} note 13, at 94.
\item \textsuperscript{129} Id. at 93.
\end{itemize}
their long-standing veto power, a power disproportionate to their numbers in the population.\textsuperscript{130} Even after this disproportionate suburban control is eliminated, as long as there is a popular vote involved, people will have to be convinced that a proposed reform measure is a valid one.

Using city-county consolidation efforts for models, it appears that popular referendums on metropolitan governmental reforms will still be most successful in smaller, homogeneous areas, where the population has not become dominated by a proliferation of entrenched political interests. Where the area is more developed and/or composed of core central city minority groups and white majority suburbs, entrenched political leaders are likely to present formidable opposition. Reform groups utilizing the more sophisticated media techniques available to them will have to alert the population to the need for reform, the inadequacies in the existing structures and the potential for change inherent in the reform proposal. Special efforts will have to be made to convince minority leaders and political party incumbents in both parties that the reform measures will permit just representation of all groups. If people can be convinced that the reform is a needed one, then they will exercise their prerogative and approve passage of the change. It is only after such overall approval is gained that the effect of the abolition of multiple majority requirements will be felt.

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\textsuperscript{130} For a fuller discussion of suburban opposition and other factors affecting voting for governmental reforms see ACIR, \textit{Factors Affecting Voter Reactions to Governmental Reorganization in Metropolitan Areas} 24 (1962). \textit{See also} Scott, \textit{Metropolitan Governmental Reorganization Proposals}, 21 Western Pol. Q. 252 (1968).