

**Unshackling Upstate:
A Rational Basis for Treating
Upstate and Downstate Differently**

**Prepared for
Assemblyman Robin Schimminger
Chair, New York State Assembly Committee on
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**by
Dana L. Leier, J. D. Candidate
University at Buffalo Law School
The State University of New York**

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UNSHACKLING UPSTATE: A RATIONAL BASIS FOR TREATING UPSTATE AND DOWNSTATE DIFFERENTLY

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I. INTRODUCTION

In order to enact legislation pursuant to the agenda of Unshackle Upstate, the New York State Legislature may be compelled to treat upstate and downstate differently. Any time a law is not universally applied, it may automatically come into the purview of the judiciary as a potential violation of the equal protection guarantees of both the State and Federal Constitutions. However, it is permissible to enact laws that may impact different regions of the state differently. In practice, the Legislature often enacts laws that treat various regions, counties and municipalities differently in the laws' application. And, many laws that have been enacted by the State Legislature that impose different standards upon different regions of the state have been upheld by the State judiciary under rational basis scrutiny so long as they are

rationally related to a legitimate matter of state concern. So, because the New York State Legislature would be enacting laws with varying impacts across the state for the legitimate state purpose of improving the State's economy, the laws would sufficiently satisfy the rational basis standard created under the common law because, even though the purpose of Unshackle Upstate's agenda is to restore and rejuvenate the economy of Upstate specifically, the positive impact will be felt statewide.

II. THE UNSHACKLE UPSTATE AGENDA

In an effort to revitalize the economy of Upstate New York, there has been a significant movement to reform existing laws that have restricted and hindered economic growth and to empower upstate regions with the ability to affect their own economic futures. The movement is led by a grassroots organization appropriately titled, "Unshackle Upstate." As the name suggests, the main agenda of the coalition is to liberate Upstate from economically restrictive, anti-competitive laws and policies while simultaneously promoting the enactment of new legislation that takes into consideration the economic diversity of different regions in the state and shifts a portion of economic development and spending authority to the various Upstate regions.ⁱ Ultimately, the goal is to enable self-sustained economic growth through investment, not consumption, and to reinvent Upstate New York's image as an attractive place for new businesses, a desirable destination for business to relocate, and an appealing place for individuals to live, work and call home.

Upstate New York is in a state of economic crisis. Young people are fleeing Upstate in search of economic opportunity at an alarming rate; from 1990 to 2003, 324,000 people between the ages of 20 and 34 moved out of Upstate.ⁱⁱ And, there are very few prospects for economic growth because restrictive laws enacted to address unique issues of New York City and the

downstate region make Upstate an unattractive choice for new development. Instead, businesses choose to expand, develop and relocate to other states such as Ohio, Michigan, Pennsylvania and Virginia. These so-called “rust-belt” states all suffered similar fates with the flight of manufacturing industry, but rebounded by making their states more attractive for new growth.ⁱⁱⁱ If Upstate New York had had the authority to determine its own business climate, it would have probably followed in this movement, and would likewise be a viable competitor for new business. Instead, policy in Upstate New York was forced to take a back seat to policy enacted to address issues and concerns of the downstate region.

A. Many New York State Laws are Prohibitive to Positive Economic Growth in the Upstate Regions

Currently, the enactment of general laws by the New York State Legislature often results in a benefit for one region and a hardship for another. Because there are tremendous differences from one region to the next throughout the State, the universal application of many general laws will disparately impact the economies of those different regions. A shining example is the New York Scaffold Law enacted by the New York State Legislature in 1885 in an effort to protect the interests of construction workers who were injured while working on skyscrapers.^{iv} The law is still in effect statewide and imposes liability on employers whose workers are injured while working on scaffolds above and well beyond what is normally allowed under the Workers’ Compensation Laws.

The Legislature’s intent was to force employers to implement strict safety standards for workers working in the extreme conditions atop skyscrapers in New York City, which it has undoubtedly done. However, the unique conditions the law was meant to address only exist in a limited number of circumstances, yet the law has been allowed to apply universally across the state to all scaffold workers, ultimately increasing the cost of doing construction across the state

and effectively chilling the climate for new construction Upstate. Businesses are often willing to take on the excess liability risk in exchange for the opportunity to develop in New York City where sky-high rents and land values mask the added cost of the law, but the added costs are often difficult for businesses to justify when considering development in one of the Upstate regions versus another state with less restrictive development laws.

The Wicks Law has also had similar disparate impact on the cost of doing business Upstate.^v The Wicks Law requires multiple contractors be hired for single public construction projects amounting to more than \$50,000, and was intended at the time of its enactment in 1912 to prevent corruption in project bidding. There is a lot of evidence to suggest that by requiring multiple bidders, the law decreases project cost-efficiency. For instance, in New York City, where the construction of public schools is exempt from the restrictions of the Wicks Law, a PricewaterhouseCoopers study suggested there has been a savings of at least \$192 million. In all likelihood, similar substantial savings would be seen if an exemption were to be extended to construction projects Upstate. Without the exemption, figures equal to the savings felt in New York City add up as costs for public construction projects in Upstate New York and contribute to the high cost of business.

The Wicks Law and the Scaffold Law are but two examples of many that have adverse impacts on the Upstate economy. In addition to these counterproductive laws, the tax burden is heavier in New York State than in any other nationwide and energy costs here are significantly higher than in competitor states; the aggregate cost of doing business is only higher in Hawaii.^{vi} Many of these policies that are unfavorable for the economic well-being of businesses may be deemed appropriate. But, the regions Upstate should not be forced to sustain the negative economic impact of those policies. In order to simultaneously address the unique concerns and

conditions that exist Upstate and Downstate, the New York State Legislature should be allowed enact legislation the application of which varies according to its potential impact upon particular regions in the State that may otherwise be forced to bear a prohibitive negative economic impact. The implementation of such laws will improve the economic climate in Upstate and will ultimately improve the economy of New York State as a whole. The New York State Legislature would therefore have a rational basis for taking such action.

III. THE NEW YORK STATE LEGISLATURE'S CONSTITUTIONAL AUTHORITY TO ENACT LAWS

The New York State Legislature is endowed with State Constitutional authority to enact general laws to be universally applied across the state. One of the only explicit limitations to this authority is a Constitutional provision granting local governments the power to govern matters related to the “property, affairs or government” of that local municipality.^{vii} But, the Legislature is allowed to enact laws in areas normally preserved as matters of local concern^{viii} upon special request of the local government.^{ix} The rationale behind such a limitation is to preserve the "structural integrity of local governments and [grant] them some power to act with respect to local matters."^x The Constitution essentially limits the actions of the State Legislature to matters of state concern, thereby allowing local governments to engage in a certain degree of “home rule” over specific matters of local concern.

Because the Unshackle Upstate agenda ultimately deals with the health of the New York State economy, enacting laws pursuant to that agenda will be a matter of state concern. As such, it must be done through the enactment of general laws. However, because the Unshackle Upstate agenda calls for the Legislature to treat the various Upstate regions differently with respect to their unique economic concerns, the Legislature must take care not to infringe on the home rule authority of local governments. The purpose of this limitation is to "confine the power

of the legislature to the enactment of general statutes conducive to the welfare of the state as a whole, to prevent diversity of laws on the same subject, to secure uniformity of law throughout the state as far as possible, and to prevent the granting of special privileges."^{xi}

But, even if local governments were to raise their concerns that their home rule authority had been infringed as a result of the State Legislature's enactment of policies pursuant to the agenda of Unshackle Upstate, it is unlikely that a New York State Court would find an infringement upon home rule authority. The State Courts have consistently held in favor of State Legislative action when local governments have challenged legislative infringement on home rule authority. The standing common law rule addressing this issue can be found in the Court of Appeals ruling in *Adler v. Deegan*.^{xii} In that case, Chief Justice Cardozo held that the language found in the State Constitution does not limit the actions of the State Legislature to matters solely attributable to state concern.^{xiii} Rather, the "objective standard" for determining whether the Legislature may act on the issue is if it is "a subject in a substantial degree a matter of State concern . . . though intermingled with it are concerns of the locality."^{xiv} So, as long as the State Legislature is acting upon an issue that is of substantial state concern, such as the health of the State's economy, its actions are justified even if they simultaneously affect issues generally left to local governments for action under home rule authority.

IV. THE EQUAL PROTECTION CLAUSE REQUIRES STATE LAWS BE UNIVERSALLY APPLIED

Except in those instances where local municipalities have specifically requested the enactment of a local law, general laws must apply equally to all municipalities within the state and to all individuals who therein reside. The equal protection clause of the 14th Amendment provides that "no state shall . . . deny to any person within its jurisdiction the equal protection of the laws."^{xv} The right to equal protection under the laws is further protected by the New York

State Constitution, which provides that "no person shall be denied equal protection of the laws of this state or any subdivision thereof."^{xvi} Both provisions are meant to afford individuals equal protection under the law and to prevent governments from discriminating against groups of individuals without just cause by requiring all laws to be universally applied throughout the State's jurisdiction. So, the enactment of a law pursuant to the agenda of *Unshackle Upstate* that inherently treats the various regions of Upstate New York differently than the Downstate regions must be reconciled with issues of the individual's right to equal protection under the law.

Specifically, any such law created by the New York State Legislature will essentially create regional classifications. Any time a state enacts a law that treats different groups of people differently, or creates "classifications," the law may potentially be struck down for violating the equal protection clauses of the federal and state constitutions. If the New York State Legislature chooses to implement the agenda of *Unshackle Upstate*, it may ultimately be required to treat portions of the state differently, thereby potentially subjecting its actions to judicial scrutiny. However, the following analysis would inform that scrutiny, finding that such classification would not run afoul of equal protection concerns.

A. Laws that create classifications must survive judicial scrutiny in order to be considered constitutional for the purposes of equal protection

In order to ascertain whether a given law will survive judicial scrutiny under the equal protection clause, a full analysis of why the classification has been made, how it is enforced and the ultimate effect of the law must all be analyzed. Essentially, any time a court is asked to determine whether a law satisfies the constitutional requirements of equal protection, it must always answer the same "basic question: Is the government's classification justified by a sufficient purpose?"^{xvii} In answering this basic question, the courts generally engage in a three-tiered level of inquiry, first inquiring what type of classification is being made, then determining

the appropriate level of scrutiny before finally determining whether the government action meets that level of scrutiny.^{xviii}

Courts are most concerned with eliminating those laws that create classifications based on suspect criteria, such as race or religion, or that implicate fundamental rights.^{xix} Any time a suspect classification has been made or a fundamental right has been implicated by the law on its face or in its effect, courts will utilize strict scrutiny, a heightened level of scrutiny that generally leads to the law being overturned for being unconstitutionally discriminatory.^{xx} In New York, when a law involves no element of suspect classification, the courts will utilize rational basis scrutiny, a more legislatively deferential level of judicial review, and will generally uphold the law as constitutional so long as it bears some rational relation to a legitimate government purpose.^{xxi}

In order to ascertain what type of classification is being made, all equal protection inquiries must begin with an analysis of how the state is distinguishing between individuals in order to determine whether or not the classifications are unconstitutionally discriminatory either on their face or in their effect.^{xxii} Any time a state enacts a law that treats different groups of people differently, or creates "classifications," the law may potentially be struck down for violating the equal protection clauses of the federal and state constitutions. If the New York State Legislature chooses to implement the agenda of *Unshackle Upstate*, it will ultimately be required to treat portions of the state differently, thereby potentially subjecting its actions to judicial equal protection scrutiny.

B. Classifications made by the Legislature pursuant to the agenda of *Unshackle Upstate* are economic in nature and will be scrutinized under rational basis review

The classifications that will inevitably be made by the New York State Legislature if it chooses to enact laws pursuant to the agenda of *Unshackle Upstate* will be rooted solely upon

economic differences of the various Upstate regions and, if challenged, will therefore justify a court's use of rational basis review. In its decision to utilize rational basis review, the New York County Supreme Court in *Gboizo v. The State of New York Division of Housing and Community Renewal* relied upon United States Supreme Court decision to hold "in the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classification made by its laws are imperfect (or) results in some inequality."^{xxiii} Similarly, laws enacted pursuant to the agenda of *Unshackle Upstate* will create classifications on the basis of varying economic conditions that exist from one region of the State to the next. Because those classifications may result in some inequality, they are not necessarily going to violate the equal protection clause. In fact, the Equal Protection Clause primarily contemplates disparate treatment that results in unconstitutional discrimination.^{xxiv}

On its face, the New York State Legislature's decision to create classifications on the basis of economic differences does not rise to the level of discriminatory intent implicitly forbidden under the Equal Protection Clause and should be analyzed under rational basis scrutiny accordingly. In *Consolidated Edison Co. of New York, Inc. v. Pataki*, the Second Department of the Appellate Division held that "legislation that does not restrict a fundamental right or employ a suspect classification ... is presumed valid as long as it is rationally related to a legitimate government interest."^{xxv} In upholding legislation that the court deemed to be "economic and social" in nature, the *Consolidated Edison* court ultimately upheld the classifications employed by the Legislature were legal because those classifications were "not arbitrary" and "rested[ed] upon some ground of difference having a fair and substantial relation to the object of the legislation."^{xxvi} So, as long as the New York State Legislature avoids creating classifications that "employ suspect classifications," it will have the benefit of a presumption of validity under

¹rational basis review so long as the classifications it does use are not arbitrary and are rationally related to the purpose of the legislation.^{xxvii}

If the New York State Legislature enacts laws pursuant to the agenda of *Unshackle Upstate*, it will essentially create classifications on the basis of regional economic dispositions, not on the basis of a suspect classification, nor at the expense of individuals' constitutionally protected fundamental rights. New York State Courts have repeatedly held that the equal protection clause does not always mean that all people must be treated identically.^{xxviii} Rather, the New York State Legislature is allowed to enact laws that treat different groups of people differently as long as the method of classification does not involve the use of "suspect classification" on the basis of an individual's race or religion nor implicate any other fundamental right.^{xxix} In enacting a law pursuant to the agenda of *Unshackle Upstate*, if the Legislature does not utilize a method of classification that draws into question fundamental rights nor use suspect criteria, the law will be scrutinized under a gentler rational basis scrutiny.

C. There is a general presumption that laws enacted at the will of the State legislature are valid

Under rational basis review, the courts employ a general presumption that laws enacted at the will of the State Legislature are valid. At the commencement of its utilization of rational basis review, the *Gboizo* Court held that "a classification neither involving fundamental rights nor proceeding along suspect lines is accorded a strong presumption of validity," when scrutinized under rational basis review.^{xxx} Expanding upon the same principle, the *Consolidated Edison* court further acknowledged "the presumption of validity is buttressed by the notion that governments are entitled to wide deference when enacting social and economic legislation."^{xxxi} New York Courts have demonstrated a consistency in applying this principle. In fortifying this

presumption as dictated by the United States Supreme Court, the Court of Appeals has gone on to note that “nothing but a clear violation of the Constitution will justify a court in overruling the legislative will.”^{xxxii}

D. State laws enacted pursuant to the *Unshackle Upstate* agenda bear a rational relationship to a legitimate state purpose: Repairing and Restoring the New York State Economy

In all likelihood, the Legislature's implementation of *Unshackle Upstate's* agenda will be upheld under judicial scrutiny because it is rationally related to a legitimate state purpose: repairing and restoring the State's economy. In New York, a legislative action will survive rational basis scrutiny if (1) the challenged action has a legitimate government purpose, and (2) it was "reasonable for the legislators to believe that the challenged classification would have a fair and substantial relationship to that purpose."^{xxxiii} In *Abberbock v. County of Nassau*, the Second Department held that legislative action creating an economic classification should be upheld because there was a legitimate governmental purpose and there was "a rational relationship between the classification and [the] action," even though the classification was imperfect.”

Unshackle Upstate promotes the regional classifications in order to better address the economic concerns specific to those regions. While this type of classification may be imperfect as being both under- and over-inclusive of those who are either in economic distress or not, the reason for creating the classifications is rationally related to the betterment of the State's economy on the whole. Even though the purpose of *Unshackle Upstate's* agenda is to restore and rejuvenate the economy of Upstate specifically, the impact will be felt statewide. So, as long as the Legislature builds upon this legitimate reason for treating Upstate and Downstate differently, its utilization of classifications pursuant to that purpose will be done so legitimately.

Although it may be helpful to do so, the State Legislature is required neither to specifically nor to thoroughly document evidence of its purpose for enacting laws that utilize classifications. If a law that utilizes classifications is challenged in a New York State court and that court determines it appropriate to use rational basis scrutiny to determine the law's constitutionality in light of the equal protection clause, it will begin its inquiry by examining the legislative history surrounding the law.^{xxxiv} But, because there is a general presumption that Legislature will generally act pursuant to some legitimate government purpose, the absence of a substantial legislative history is not generally held against it when a law is scrutinized. But, if there is substantial history that is clearly demonstrative of the legislature's intent to enact a particular law to further some legitimate government interest, it will further fortify the argument in favor of the law's constitutionality in the eyes of a scrutinizing court. So, because the Legislature would be embarking upon a quest to heal the State's economy with the knowledge that it would necessarily utilize classifications to further its purpose, it may be in its best interest to document that purpose fully and accurately in anticipation of judicial scrutiny.

V. THERE IS A RATIONAL RELATIONSHIP BETWEEN THE USE OF CLASSIFICATIONS AND THE LEGITIMATE STATE PURPOSE FOR ENACTING LAWS TO UNSHACKLE UPSTATE

The use of classifications by the New York State Legislature would be rationally related to the legitimate purpose of healing and restoring the economy of the state as a whole. The Court of Appeals has held that "a classification is rationally related to a legitimate government interest as long as it does not place persons into different classes on the basis of criteria wholly unrelated to the objective of the state."^{xxxv} In creating regional classifications, the Legislature would be enabling the various Upstate regions to positively affect the economic plight affecting

their specific areas. Reducing impediments to economic growth in Upstate regions would ultimately result in a statewide economic healing process.

Laws utilizing classifications may be overturned on the basis that they created classes that are far too under-inclusive. The *Consolidated Edison* Court held that such under-inclusivity that also “bears no relation to the statute’s purpose, the court will strike it down.”^{xxxvi} The concern underlying such a restriction on the use of classification by the State Legislature is to maintain a level of “neutrality that must always characterize the performance of the sovereign’s duty to govern impartially.” So, while the State Legislature is clearly authorized to enact laws that create classifications if doing so is rationally related to a legitimate government purpose, it must be careful to ensure the laws apply alike across a given region, for example, without excluding large portions of that population to which the law must obviously apply. The exclusion of small portions of the population either intentionally or not may not always be avoidable. However, the courts are clearly more concerned with preventing blatant uses of classification to single out specific individuals and exclude others in such a way that sovereign neutrality becomes compromised than with instances where minor over- and under-inclusiveness might occur.

A. The New York State Legislature has consistently enacted legitimate laws using classification as a matter of practice

Historically, New York State has enacted laws that treat portions of the state differently from one another. Most commonly, the Legislature will embed an exemption for cities with more than a given population or for those cities with less than a specific population. Effectively, these laws create an exemption for the inclusion or exclusion of New York City in the law's application. While this practice has been challenged in the Courts, the Court of Appeals and others have been repeatedly willing to uphold the utilization of populations as a basis for

classification. In *Farrington v. Pinckney*, the Court of Appeals held that it would uphold those laws utilizing population as a basis for classification “if conditions, because of such population, can be recognized as possibly common to a class and are reasonably related to the subject of the statute.”^{xxxvii} The Court of Appeals went on to declare that the creation of “separate classes based on population are permissible where conditions due to differences in population might reasonably require differentiation in laws applicable to them.” So, if the Legislature can adequately demonstrate that differences in population are correlative to the differences in economic situation facing Upstate, it may be justified in using population as a means of creating classifications.

The Legislature must be careful, however, to avoid creating classifications utilizing population if doing so is simply a means of referencing a specific city where the reason for treating the city differently cannot be rationally related to its population in comparison with other cities or municipalities of the same size. In *Farrington*, the Court noted that where “reference to population serves only to designate and identify the place to be affected, it will be deemed a local act . . . masquerading as a general” and should be struck down accordingly.^{xxxviii} As discussed previously, the Legislature is forbidden from enacting local laws except at the specific request of the local municipality in an effort to guarantee the local government a right to home rule authority.

Within the past several years, there have been numerous instances in which the Legislature has enacted laws utilizing population as a way to create classifications. In *East Coast Moving & Storage, Inc. v. Flappin*, a court ruled that a provision in the Transportation Law dealing with the transportation of goods to and from cities with populations larger than one million is not a misuse of classifications on the basis of population even though only one city is a

member of the class created by the law.^{xxxix} This type of classification stands out in many other laws, such as the proposed legislation known as the “Bigger Better Bottle Bill” that creates a similar classification effectively exempting New York City from some of its provisions.^{xi} Other laws that have singled out specific cities or municipalities through the utilization of population language, such as Assessments Law Chapter 418 of 2006 that applies only to municipalities with a population between 17,100 and 20,000 in counties with a minimum population of 200,600, and the law titled “Traffic Signs and Signals – installation – photo violation monitoring systems” that applies again only to cities with a population of more than one million, have gone unchallenged.^{xii}

Thus, there seems to be an inherent recognition by the state legislature that there are fundamental differences between upstate and downstate and that treating those regions equally is not always fair, nor feasible, as a matter of practice. For example in 2006, the New York State Legislature enacted a law to conduct a study researching how to bring more medical professionals into rural areas of the state.^{xiii} In order to rationalize the creation of a law that would effectively benefit specific regions in the state, the Legislature found that “some parts of rural New York are suffering from physician and nurse practitioner shortages forcing residents to forego proper care or travel long distances to receive health care,” thereby creating a rational basis for creating a law that essentially created a regional classification.^{xliii} The arguments made in favor of upholding those laws that create classifications on the basis of population or otherwise in the State of New York may be similarly utilized by the Legislature in its enactment of laws pursuant to the agenda of *Unshackle Upstate*.

The State Legislature may continue the practice of using population as a basis for creating classifications within a given law when implementing the agenda of *Unshackle Upstate*.

It may be difficult to enumerate other terms or reasons for creating classifications, but doing so is not out of the question as long as the classification is rationally related to the purpose and effect of the law. But, because there is a strong correlation between the economic disposition of a given region and the region's population, using population language to create classifications is one of the best models to follow because it has been successfully tested before the State Judiciary.

However, if the Legislature is successful in unshackling upstate, the state and the various upstate regions will hopefully see a population growth. This may create challenges for the continued effectiveness of laws that create classifications on the basis of population. Thus, the Legislature may find it necessary to revisit those laws that it determines to use population to create classifications after every census in order to ensure the laws continue to have the intended effects upon the various regions in the State. On the other hand, the Legislature may seek to utilize some other basis for classification such as job growth, population growth or other economic index that can be rationally related to the intended purpose of the law.

There are many instances in which the State Legislature has enacted laws that are universally applicable across the state which have ended up having quite a disparate impact upon the Upstate region. Underlying land and rent values, patterns of sustained economic strength, inherent favorable situation in the global economy, and longstanding trends in population growth versus decline are all factors which mask the deleterious impact of state laws and policies that injure areas of the state when these factors are absent. Such laws and policies are themselves disparate in their impact upon the various regions and, one might argue that in effect, Upstate and Downstate are *not* currently provided equal protection of the laws in these situations. Therefore, in order to truly carry out the full agenda as charged by the *Coalition to Unshackle Upstate*, the Legislature must not only enact new legislation that treats Upstate and Downstate

differently, it must address those laws that have negatively impacted the different regions of the state. Altering its previous policy may be done under the same rational basis premise as the enactment of new law and doing so will not only better the economic situation in the Upstate regions, but will ultimately improve the State's economy as a whole.

ⁱ Advance Upstate New York, *et al.*, Unshackle Upstate: A Growth Strategy for a Stagnant Economy, available at <http://www.unshackleupstate.org> (last viewed November 15, 2006), hereinafter Unshackle Upstate Report.

ⁱⁱ Robert G. Wilmers, *Speech given at Unshackle Upstate Summit*, October 12, 2006.

ⁱⁱⁱ Unshackle Upstate Report, *supra* note 1.

^{iv} The Scaffold Law, N.Y. Lab. Law §240(1).

^v Wicks Law, N.Y. Gen. Mun. Law §101, N.Y. State Fin. Law §135.

^{vi} Unshackle Upstate Report, *supra* note 1.

^{vii} N.Y.S. Const. Art. 9 §3.

^{viii} *Id.* The New York State Legislature has the power to enact special law only when it is requested to do so by two-thirds the total membership of the local government's legislative body.

^{ix} *Id.*

^x Richard Briffault, *Voting Rights, Home Rule and Metropolitan Governance: The Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, COLUM. LAW REV. 775, 806 (May 1992).

^{xi} C.J.S., STATUTES §151.

^{xii} *Adler v. Deegan*, 251 N.Y. 467, 167 N.E. 705 (1929).

^{xiii} *Id.*

^{xiv} *Id.* at 713-714.

^{xv} U.S. Const. Amend. XIV, §15.

^{xvi} N.Y.S. Const. §11.

^{xvii} Erwin Chemerinsky, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES, 643, Aspen Publishers (2002), hereinafter Chemerinsky, CONSTITUTIONAL LAW.

^{xviii} *Id.* at 643-647.

^{xix} *Id.* at 645.

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- ^{xx} *Id.* at 644-646.
- ^{xxi} *Village Auto Body Works v. Town of Hempstead*, 445 N.Y.S.2d 492, 85 A.D.2d 692 (2d Dept. 1981), vacated on other grounds, 452 N.Y.S.2d 651, 89 A.D.2d 612.
- ^{xxii} Chemerinsky, CONSTITUTIONAL LAW, *supra* note 16, at 644.
- ^{xxiii} *Gboizo v. The New York Division of Housing and Community Renewal*, 820 N.Y.S.2d 789, citing *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).
- ^{xxiv} Chemerinsky, CONSTITUTIONAL LAW, *supra* note 16, at 643.
- ^{xxv} *Consolidated Edison Co. of New York, Inc. v. Pataki*, 117 F.Supp.2d 257, 262 (NDNY 2000), citing *City of Cleburn Living Center*, 473 U.S. 432, 439 (1982) and *Romer v. Evans* 517 U.S. 620, 631(1996).
- ^{xxvi} *Id.* at 263, citing *Reed v. Reed*, 404 U.S. 71, 76 (1971).
- ^{xxvii} *Id.*
- ^{xxviii} *People ex rel. Dioguardi v. Warden of Rikers Island Pen.*, 365 N.Y.S.2d 446, 80 Misc.2d 972 (1975).
- ^{xxix} See generally *D'Amico v. Cresson*, 93 N.Y.2d 29, 686 N.Y.S.2d 756 (1999), and *Village Auto Body Works*, *supra* note 20.
- ^{xxx} *Gboizo*, 820 N.Y.S.2d 789, citing *Heller v. Doe*, 509 U.S. 312, 319-320 (1993).
- ^{xxxi} *Consolidated Edison*, 117 F.Supp.2d at 262, citing *Cleburne Living Center*, 437 U.S. at 439.
- ^{xxxii} *Farrington v. Pinckney*, 150 N.Y.S.2d 585, 591 (1956).
- ^{xxxiii} *Abberbock v. County of Nassau*, 624 N.Y.S.2d 446, 447 (2d Dept. 1995), citing *New York City Managerial Empls. Assn. v. Dinkins*, 807 F.Supp. 958, 965.
- ^{xxxiv} *Consolidated Edison*, 117 F.Supp.2d at 263, citing *Johnson v. Robinson*, 415 U.S. 361, 376 (1974).
- ^{xxxv} *Id.* at 263-264, citing *Reed* 404 U.S. at 76.
- ^{xxxvi} *Id.* at 264, citing *Long Island Lighting Co. v. Cuomo*, 666 F.Supp. 370, 423 (NDNY 1987).
- ^{xxxvii} *Farrington*, 1 N.Y.2d at 80-81.
- ^{xxxviii} *Id.*
- ^{xxxix} *East Coast Moving & Storage, Inc. v. Flappin*, 355 N.Y.S.2d 525 (1974).
- ^{xl} A.2517-C, “The Bigger Better Bottle Bill,” (2006).
- ^{xli} Sess. Law News of N.Y. Ch. 418 (S.8247-A, 2006), Sess. Law News of N.Y. Ch. 658 (S.5357-B, 2006)
- ^{xlii} Sess. Law News of N.Y. Ch. 587 (A.8155-A, 2006).
- ^{xliii} *Id.* at §236-a(1)(a).