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Daniel Chase Fishbein

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**300 GOVERNMENTS: UNDERSTANDING INTERMUNICIPAL
COLLABORATION IN NASSAU COUNTY, NY AND POLICIES OF
“FORCED EFFICIENCY” IN NEW YORK STATE**

*Daniel Chase Fishbein**

INTRODUCTION

On the eastern seaboard of the United States, where the state of New York wedges itself between New Jersey and Connecticut, explorers of political affairs can observe one of the great unnatural wonders of the world: that is, a government arrangement perhaps more complicated than any other that mankind has yet contrived or allowed to happen.¹

In 1960, the Harvard Public Policy School (now the Harvard Kennedy School of Government) produced a book series detailing “a 22-county expanse” that it called the “New York Metropolitan Region.”²

* J.D. Northwestern Pritzker School of Law, 2015. An earlier version of this article was submitted to Northwestern’s Owen L. Coon/James A. Rahl Senior Research Program. The inspiration for this article came from my experience volunteering on Tom Suozzi’s campaign for Nassau County Executive in 2013. I fully disclose my affiliation with the Nassau County Democratic Party. Since June 2009, I have participated in the county’s political scene in different capacities: as an intern to Democratic Counsel’s Office in the County Legislature, as Executive Director to the Town of Oyster Bay Democratic Committee, and a short stint as an employee of the County Board of Elections leading up to my departure for law school. I would like to thank Professors Nadav Shoked and Steven Elrod for their exhaustive edits and comments. I would also like to thank Matthew Hettrich, Lauren Wittlin, and the rest of the editors of the Touro Law Review in preparing this article for publication. Lastly, I would like to give a special thanks to Dave Gugerty, for without him this article would not be possible. All errors are my own.

¹ ROBERT C. WOOD & VLADIMIR V. ALMENDINGER, 1400 GOVERNMENTS: THE POLITICAL ECONOMY OF THE NEW YORK METROPOLITAN REGION 1 (1961).

² *Id.* The 22 counties studied by Wood and Almendinger were: Hudson, Essex, Union, Passaic, Bergen, Monmouth, Middlesex, Somerset, and Morris in New Jersey, and Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, Dutchess, and the five city boroughs in New York. Fairfield County in Connecticut was studied as well.

The nine-part study was written at the behest of the Regional Plan Association, a nonprofit agency that sought to promote coordinated development of the region and has done so for over ninety years.³ The eighth book, *1400 Governments*, took an in-depth look at the region's decentralized municipal government structure.⁴ Aptly titled, author Robert C. Wood with the assistance of Vladimir V. Almendinger set out to explain the political economy of twenty-two suburban counties that governed themselves “by means of 1467 distinct political entities [at their latest count in 1960], each having its own power to raise and spend the public treasure, and each operating in a jurisdiction determined more by chance than design.”⁵

Throughout the New York Metropolitan region, towns, villages, and special districts provide the majority of municipal services. Special districts, also known as special improvement districts or special taxing districts, are independent municipal entities that carry out government services ranging anywhere from sanitation to schooling.⁶ In Nassau County alone there are over 300 separate units of government—at least 179 of those being special districts (and more, depending how you count it)⁷—a pernicious total given that each unit operates with great autonomy and the ability to tax homeowners for the services it provides.⁸

Initially chartered in 1899, Nassau County was partitioned

³ *Id.* For the Regional Plan Association's 90-year history see REG'L PLAN ASS'N, <http://www.rpa.org> (last visited Apr. 7, 2016).

⁴ WOOD & ALMENDINGER, *supra* note 1, at 1.

⁵ WOOD & ALMENDINGER, *supra* note 1, at 1.

⁶ See Nadav Shoked, *Quasi Cities*, 93 B.U. L. REV. 1971, 1973 (2013). While the exact definition of a special district is rather unsettled, Professor Shoked—drawing on the history of special districts and Supreme Court precedent—recommends that the technical definition of special district be “[a] [g]overnment [l]acking [p]owers of [r]egulation [b]eyond [i]ts [f]acilities.” *Id.* at 1997-99.

⁷ Calculating the total number of government units varies depending on how a municipal entity is defined. The total number of municipal entities within a larger regional jurisdiction is important to the overall discussion about the size and scope of municipal government. See Erika Rosenberg, *Who Provides Services on Long Island?*, LONG ISLAND INDEX (June 2012), http://www.longislandindexmaps.org/newsmedia/Who_Provides_Services_on_Long_Island.pdf. The Long Island Index, a nonprofit group, puts the total number of governmental units at 336, while the Long Island Regional Planning Council, an intergovernmental relations council, puts that number at 305. *Long Island Index, 2012 Profile Report*, LONG ISLAND INDEX (2012), http://www.longislandindex.org/wp-content/uploads/2015/10/LI_Profile_2012.pdf; *Sustainable Strategies for Long Island 2035*, LONG ISLAND REG'L PLANNING COUNCIL (Dec. 2010), http://www.lirpc.org/3.2010-12-02_LI2035StrategiesReport.pdf.

⁸ Rosenberg, *supra* note 7, at 3; see also Shoked, *supra* note 6, at 1973.

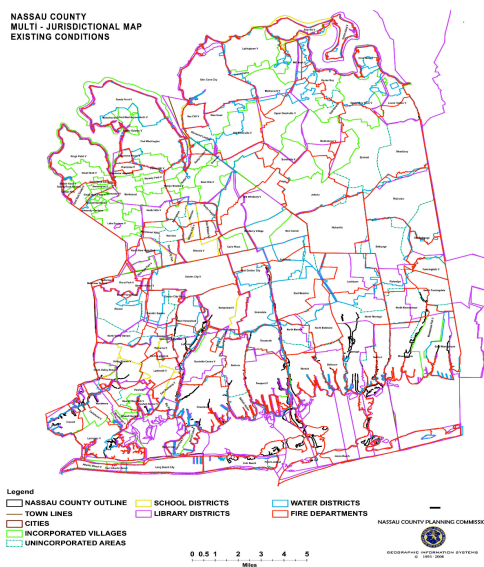
from Queens County as its residents stood in opposition to New York City annexing Long Island out east.⁹ Growing over time to a population of 1.3 million, Nassau has further divided into three townships—Hempstead, North Hempstead, and Oyster Bay—and two cities—Long Beach and Glen Cove.¹⁰ Like their sisters in the Metropolitan Region, those cities are still further divided into 53 hamlets and 64 incorporated villages. While that might seem overly complex in and of itself, services provided through separate special districts don't necessarily conform to local government's traditional vertical structure of county—town or city—village or hamlet—special district. Often instead special districts have their own unique jurisdictional lines, creating a “crazy quilt”¹¹ as to how residents receive their sanitation, fire, water, library, and school services. Just look at this map showing the lack of uniform jurisdictional lines for different services in any particular area.¹²

⁹ Keith Williams, *How Queens Became New York City's Largest Borough*, CURBED NY (Oct. 20, 2015, 6:00 PM), <http://ny.curbed.com/2015/10/20/9912148/how-queens-became-new-york-citys-largest-borough>.

¹⁰ *Quick Facts Nassau County, New York*, UNITED STATES CENSUS BUREAU, (last visited Apr. 7, 2016).

¹¹ The term “crazy quilt” has been used to describe a web of special districts for some time. See TEARFORD, POST-SUBURBIA, *infra* note 52, at 2; THOMAS R. SUOZZI, SPECIAL DISTRICT ELECTION DATE STUDY: A CRAZY QUILT (2007) (using the term “crazy quilt” in the title of a county report).

¹² *Nassau County Multi-Jurisdictional Map: Existing Conditions*, NASSAU CNTY. PLAN. COMM'N, <http://www.fixmypropertytaxes.com/map-zoom-special-districts-nassau-county> (last visited Apr. 7, 2016).



History has shown that Nassau's residents like their special districts providing decentralized government services.¹³ In defending so many local governments, residents often talk about the benefits of more personalized service.¹⁴ Some public choice theorists believe that because there are so many varying hyper-local options, residents are better able to choose the level of government services they are willing to pay for.¹⁵

But having so many municipal units can come at the cost of larger tax bills because service providers lack economy of scale and sometimes lack sufficient expertise and professionalization in service delivery—considerations that residents don't necessarily take into account when voting and government officials don't necessarily take into account when developing public policy. And in Nassau County, existing boundary lines for municipal units in the county were often drawn taking race and socio-economic standing heavily into ac-

¹³ See discussion *infra* Part I.

¹⁴ See, e.g., Plainview Water Commissioner Andrew Bader. I interviewed Mr. Bader for this project and thank him for his time. He is known throughout the community and he is passionate about delivering quality water to the community. In fact, Plainview won a competition in 2012 for the best drinking water in Nassau. Joe Dowd, *Plainview's Water Voted Best in Nassau: the Water District's H2O Now Takes on Suffolk for the Title of this Year's Champ*, PLAINVIEW PATCH (May 11, 2012, 10:25 PM), <http://patch.com/new-york/plainview/plainview-s-water-voted-best-in-nassau>. Mr. Bader prides himself in the fact that when the water isn't working—a water main break, Superstorm Sandy or a snow storm—people in the community know exactly who to call.

¹⁵ See discussion *infra* Part III.A.

count—a factor that has significantly contributed to a continued pattern of high concentration poverty in many of Nassau’s African American and Latino communities today.¹⁶

Nassau was at a time a model for the nation. But while the county is still a great place to live with one of the highest standards of living in the nation,¹⁷ only 40 percent of Long Island residents think Nassau is headed in the right direction.¹⁸ This might be because although residents on average have high incomes, they pay one of the highest median property tax rates as a percentage of income in the country.¹⁹ Nassau’s job growth is stagnant.²⁰ Its population is aging while its younger population is leaving.²¹ Its overall cost of housing as a percentage of income is substantially higher than its peers,²² but produces few new homes.²³ Nassau’s infrastructure is deteriorating, with plans to replace it often being frustrated by intractable zoning processes.²⁴ And high concentration of low-income communities—

¹⁶ See discussion *infra* Part I.A.

¹⁷ In 2011, Nassau according to U.S. Census data ranked twelfth in median household income at \$94,414. *Highest Income Counties in the Nation*, WASH. POST (Sept. 20, 2012), <http://www.washingtonpost.com/wp-srv/special/local/highest-income-counties/>.

¹⁸ *Long Island Index 2012 Profile Report* (2012), LONG ISLAND INDEX, http://www.longislandindex.org/wp-content/uploads/2015/10/LI_Profile_2012.pdf.

¹⁹ MCMAHON, *infra* note 240, at 5. Nassau is ranked second in the nation for median property taxes paid at \$8,940 per household and fifth in property taxes as a percentage of income at 8.56 percent. MCMAHON, *infra* note 240, at 5.

²⁰ LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 2.

²¹ LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 2. Nassau’s Baby Boomer population is aging, while their millennial children appear to be leaving Long Island, in part possibly due to the high cost of housing. LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 7. Nassau and Suffolk’s young adult population, ages 25-34, has shrunk by twelve percent between the 2000 and 2010 census.

²² LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 7.

[T]he share of household income that 25-34-year-olds spend on housing is higher than in any other part of the region. On Long Island, 43% in this age group pay more than 35% of their income for housing, compared to 37% in New York City and 38% in other suburban parts of the region.

LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 7. That statistic is also alarmingly high across all age groups at 38% in 2010. Nassau also has an incredibly low rental stock. “[O]nly 21% of housing units are rentals on the Island compared to 35% in Westchester and southwestern Connecticut and 37% in northern New Jersey.” LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 7.

²³ LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 13. (“In the last decade, there were 16 residential building permits issued for each 1,000 residents of Nassau and Suffolk. By comparison, there were 25 permits issued for every 1,000 residents of southwestern Connecticut, 27 in the Hudson Valley and 31 in northern New Jersey.”).

²⁴ LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 14; see, e.g., Editorial Op.,

overwhelmingly minority—continues to be a challenge to overcome.²⁵ To top it off, the county's finances in 2010 were brought in to state receivership, making it even more difficult to alleviate these issues.²⁶

Nassau is not the only county in New York State facing financial difficulty. Westchester and Suffolk Counties also have precariously high property taxes as a percentage of income.²⁷ For that matter, Suffolk County is having deficit problems of its own.²⁸ But the bottom line is that Nassau was built for the 20th century and has struggled to adapt in the 21st, while its peer counties outside of New York like Fairfax in Northern Virginia are thriving.²⁹

Many attribute Nassau County's struggles in part to its glut of governmental units. Critics point rightly to the lack of economy of scale. But they also highlight incidents of districts operating inefficiently with bloated salaries for employees—often under the radar screen and out of the public prevue.³⁰ Critics have also attributed the lack of streamlined government as a barrier to new development. The most glaring incident: The County's failure to persuade the Town of Hempstead to make necessary zoning changes for new development around the Nassau Coliseum, known as the Lighthouse Project.³¹ The Town of Hempstead's refusal to change the zoning

Oyster Bay Running Behind Even the LIRR, NEWSDAY (Feb. 24, 2015, 5:33 PM), <http://www.newsday.com/opinion/editorial/oyster-bay-running-behind-even-the-lirr-editorial-1.9972810> (discussing the lost opportunity to revitalize community after major infrastructure improvement).

²⁵ LONG ISLAND INDEX, *2012 Profile Report*, *supra* note 18, at 4.

²⁶ See discussion *infra* Parts I.B., E.

²⁷ MCMAHON, *infra* note 240, at 5. Westchester County residents pay even higher property taxes than Nassau residents at a median of \$9,044 ranking first in the nation. The county also ranks 7th in property taxes as a percentage of income at 8.24 percent. Suffolk County for that matter also ranks high in median taxes at 11th with a median of \$7,361. Its property tax rate as a percentage of income ranks just below Suffolk's at 8th in the nation with a rate of 7.98 percent. MCMAHON, *infra* note 240, at 6.

²⁸ Rick Brand, *Suffolk Shortfall Could Hit \$170 Million in 2015*, NEWSDAY (Apr. 22, 2014, 10:43 PM), <http://www.newsday.com/long-island/suffolk/suffolk-shortfall-could-hit-170-million-in-2015-1.7794780>.

²⁹ Susan Weaver, *Large Community Case Study: Rosslyn-Ballston Corridor, Arlington, Virginia*, LONG ISLAND INDEX (Jan. 2011), http://www.longislandindex.org/wp-content/uploads/2015/10/Case_Study_Rosslyn-Ballston_Corridor.pdf.

³⁰ Sandra Peddie, *Special Districts: Big Salaries, Little Oversight*, NEWSDAY (Dec. 15, 2007 11:23 AM), <http://www.newsday.com/long-island/special-districts-big-salaries-little-oversight-1.877177>.

³¹ Randi F. Marshall, *Hempstead Town Plan Cuts Lighthouse Project in Half*, NEWSDAY (July 12, 2010), <http://www.newsday.com/long-island/nassau/hempstead-town-plan-cuts-lighthouse-project-in-half-1.2096669>.

ordinance was a significant factor in causing the New York Islanders to move west to Brooklyn.³²

Although the outlook appears bleak, there have long been proponents for reform. The most recent advocates came in 2001 when Tom Suozzi and Howard Weitzman were elected Nassau County Executive and Comptroller. During their tenure in office, they along with the state's top officials—Governors Spitzer, Paterson and Cuomo and Comptroller Di Napoli—actively campaigned and promoted local government reform.³³ The collective efforts across the state led to two legislative accomplishments: the New N.Y. Government Reorganization And Citizen Empowerment Act, and the New York State Property Tax Cap.

The Reorganization and Citizen Empowerment Act, passed by the state legislature in 2009, reformed New York's procedures for consolidation and dissolution of local government units.³⁴ Consolidation of local governments occurs when two government units merge together, and dissolution occurs when a government unit is terminated and ceases to exist.³⁵

On the revenues side, the property tax cap limits municipalities' abilities to increase their budgets. The cap places a constraint on local property taxes by which local lawmakers could only increase tax levies by either two percent or a rate of inflation formula.³⁶ Local legislative bodies can "pierce" the cap, but at the intended cost of a

³² See Joseph Berger, *Developer Wins Approval to Renovate Nassau Coliseum*, N.Y. TIMES (Sept. 23, 2013), http://www.nytimes.com/2013/09/24/nyregion/developer-wins-approval-to-renovate-nassau-coliseum.html?_r=0; David M. Halbfinger, *Fiscal Worries Fueled Defeat of Arena Plan*, N.Y. TIMES (Aug. 2, 2011), <http://www.nytimes.com/2011/08/03/nyregion/nassau-coliseum-vote-reflected-anger-over-debt-limit.html>; Marshall, *Hempstead Town Plan Cuts Lighthouse Project in Half*, *supra* note 31. In 2009 County Executive Suozzi and New York Islanders owner Charles proposed the "Lighthouse Project" to renovate the Nassau Coliseum and its surrounding area. Town of Hempstead Supervisor Kate Murray, a Republican, stood in staunch opposition. Although Suozzi was the County Executive, Murray had significant power because the town, not the county, controlled the zoning of the area, which ironically was county-owned property.

³³ See *infra*, Part I.B-E. Governor Cuomo, like Suozzi and Weitzman, has also been a steadfast proponent of special district reform. Cuomo has campaigned on it in both of his gubernatorial elections, even running a television ad dedicated to the issue.

³⁴ N.Y. GEN. MUN. LAW §§ 750-93 (McKinney 2016).

³⁵ Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364, 1367 (2012).

³⁶ N.Y. GEN. MUN. LAW § 3-c; Thomas Kaplan, *Upset at Cuomo's Property-Tax Cap, Communities Move to Get Around It*, N.Y. TIMES (Oct. 24, 2011), http://www.nytimes.com/2011/10/25/nyregion/cuomo-cap-on-property-taxes-rankles-communities.html?_r=0; See *infra* Part II.D (discussing lower transactions costs of inter-municipal activities).

painful vote approving an increase by at least 60 percent and only for that given year.³⁷ Passed in 2011, the property tax cap has been considered among many in New York's political class a success in reining in local government tax levies.³⁸

In 2014, building on the property tax cap, Governor Cuomo signed into law another local government reform entitled the property tax freeze. This two-year tax credit program reimburses homeowners who qualify under New York State's STAR tax credit program intended for low, middle-income, and upper-middle income families.³⁹ In the program's first year, qualifying homeowners receive a tax credit if their local government unit stays within the tax cap.⁴⁰ Homeowners receive a tax credit in the program's second year if their local government unit stays within the cap and also "implement[s] a Government Efficiency Plan to reduce costs by consolidating services" or collaborating with other municipalities.⁴¹

Intermunicipal coordination, or collaboration, occurs when municipalities engage with each other to perform services or jointly purchase together in order to provide cost savings, economy of scale, and improved service delivery for their constituents.⁴² While municipalities have duties and obligations to perform services, under state law they can share the burden with others by engaging in intermunicipal agreements and by participating in shared service organizations.⁴³ Over the decade Nassau has seen increasing collaboration, especially in the wake of the great recession.

Many see the property tax cap combined with collaboration and consolidation as symbiotic policies toward the larger goal of reducing

³⁷ N.Y. GEN. MUN. LAW § 3-c(5).

³⁸ Yancey Roy, *Report: LI School-Tax Growth Rate Plummets Since Tax Cap Enacted*, NEWSDAY (May 19, 2015, 7:17 PM), <http://www.newsday.com/long-island/politics/spin-cycle/report-li-school-tax-growth-rate-plummets-since-tax-cap-enacted-1.10450699>.

³⁹ See N.Y. TAX LAW § 606; see also *infra* Part II.C.2 (discussing the property tax freeze).

⁴⁰ N.Y. GEN. MUN. LAW § 3-d; see *infra* Part II.C.2 (discussing the property tax freeze).

⁴¹ N.Y. GEN. MUN. LAW § 3-d; OFFICE OF GOV. ANDREW M. CUOMO, THE NEW YORK STATE PROPERTY TAX CAP: RESULTS. SUCCESS. SAVINGS. (June 3, 2015), <https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/PropertyTaxCap.pdf>; Michael Gormley, *New Yorkers to see Property Tax Breaks Under State Budget Deal*, NEWSDAY (Mar. 29, 2014, 12:55 PM), <http://www.newsday.com/long-island/politics/spin-cycle/new-yorkers-to-see-property-tax-breaks-under-state-budget-deal-1.7544496>; see *infra* Part III.

⁴² See N.Y. GEN. MUN. LAW § 119-o; see *infra* Part II.B.

⁴³ See *infra* Part II.B.

the tax bill for local governments.⁴⁴ Local lawmakers would be forced to interact with each other with a tangible constraint of the property tax cap and tax freeze in the background. Local governments have taken notice. In 2014 the New York School Board Association, Association of Towns, Conference of Mayors and Municipal Officials, and Association of Counties met for a summit for “Municipal Innovation And Exchange” entitled: “Grace Under Pressure: Innovation In A Time Of Force Efficiencies.”⁴⁵ As the conference’s name suggests, these associations sought to exchange ideas on intermunicipal coordination in a time when local governments faced increasing fiscal stress, in part due to the property tax cap and desired tax credit from the freeze.⁴⁶

However, while governments have felt pressure and have been more inclined to collaborate as a result, residents haven’t felt the pressure to consolidate. Even though the Reorganization and Citizen Empowerment Act was heralded as an achievement in reducing the barriers to implementing consolidation—such as easier signature requirements for plebiscites—very few districts have actually been consolidated or dissolved under the new law.⁴⁷

Politicians who used to champion consolidation have also changed tactics after seeing the lack of success after passage of the new law. Tom Suozzi advocated for consolidation during his first two terms in office.⁴⁸ But when he ran for reelection for his old seat in 2013, he campaigned on a different platform for local government reform: that special districts should instead collaborate in order to deliver more cost effective services because consolidation is “just never going to happen.”⁴⁹

Suozzi’s shift from consolidation to collaboration was a pragmatic policy shift and one that other politicians and policy makers should follow. In this Article, I make the case that Nassau County can solve its special district problem through intermunicipal collabo-

⁴⁴ See *infra* Part III.B.

⁴⁵ Brochure, Mun. Innovation Exch. Summit, Grace under Pressure: Innov. In a Time of Force Efficiencies (Apr. 25, 2014), http://www.nyssba.org/clientuploads/nyssba_pdf/ebrochure-summit-041614.pdf.

⁴⁶ *Id.*

⁴⁷ See *infra* Part II.A and note 176.

⁴⁸ Dan Janson, *Suozzi Goes for 'Collaboration' Over 'Consolidation'*, NEWSDAY (Aug. 18, 2013 6:04 PM), <http://www.newsday.com/long-island/columnists/dan-janison/suozzi-goes-for-collaboration-over-consolidation-1.5913736>

⁴⁹ *Id.*; see *infra* Part I.E.

ration, using a range of tools that the state and its local governments have created toward furthering local government reform. I also track the state's lawmakers' newfound movement toward "forced efficiency" of local governments, and argue that while forced efficiency may indeed induce collaboration, forced efficiency and incentive policies should be tailored to better achieve equity aims.

In Part I of this Article, I give a brief history of special districts in Nassau County, tracking its early history and Suozzi's tenure in office, as well as the recently passed local government reforms in the state. In Part II, I give a survey of intermunicipal law in New York State, showing that although the Reorganization And Citizen Empowerment Act has certainly reformed consolidation and dissolution procedures, it is still a cumbersome process compared to collaboration. In addition, I also survey the property tax cap, property tax freeze, and grants incentivizing intermunicipal activity. In Part III.A, I discuss the scholarship around new regionalist paradigms and argue that new regionalist paradigms, despite their detractors, can still achieve equity aims and, therefore, should be preferable to policy-makers because of collaboration's political viability compared to consolidation and dissolution models. In Part III.B, I discuss Professor Michelle Anderson's "[f]aces of [m]unicipal [d]issolution" and make the case that those themes are also applicable to intermunicipal collaboration. I also make the case that "forced efficiency" is a new theme for intermunicipal activity and should be included in the academic discussion.

Lastly in Part IV, I outline the toolbox available to fix Nassau's special district problem in order to achieve both efficiency and equity aims. In Part IV.A, I make the case that cost disparities and inefficiencies in municipal spending are real and collaboration can produce meaningful cost-savings. Next, I demonstrate with polling data from Tom Suozzi's 2013 campaign that collaboration is a politically viable policy platform, while consolidation is not—at least at the plebiscite stage. In Part IV.B, I argue that although "forced efficiency" is likely to be a factor for municipalities in the years to come, collaborative centric policies should not be tied to "force efficiency" devices, such as the property tax cap, because such all-or-nothing policies can impede equity goals. Instead, I argue that while collaborative centric incentive policies tethered to the tax cap can avoid rent-seeking behavior on the part of local officials, those policies should also have alternative forms of qualifying criteria to incentivize collaboration

with high concentration poverty and low-assessment municipalities. Lastly, in Parts IV.C-E, I outlay how grants, local government education programs and local offices of intermunicipal coordination are all low cost methods toward lowering transaction costs and information asymmetries to better facilitate collaboration among municipalities.

I. A BRIEF HISTORY OF SPECIAL DISTRICTS IN NASSAU COUNTY

While perhaps an “unnatural wonder,” Nassau County’s formation from a “Rural Hinterland to Suburban Metropolis”⁵⁰ is a rich history in suburban development. Home to the first Post-War large-scale planned community of Levittown, Nassau was considered the model for the nation during the middle of the twentieth century.⁵¹ Importantly, Nassau’s layers of governments and improvement districts have played a principal role in its narrative.⁵²

⁵⁰ JOANN P. KRIEG & NATALIE A. NAYLOR, NASSAU COUNTY: FROM RURAL HINTERLAND TO SUBURBAN METROPOLIS (2000).

⁵¹ Levittown, New York was a planned subdivision built by its namesake William Levitt. Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 *FORDHAM URB. L.J.* 699, 782 (1993). A true visionary, Levitt built the community in an assembly-line style, meeting the post-war housing shortage demand of the mid-twentieth century. *Id.* In total Levitt built over seventeen thousand single story “Cape Cods,” and 800-square foot “ranch homes.” Corey Kilgannon, *Change Blurs Memories in a Famous Suburb*, N.Y. TIMES (Oct. 13, 2007), <http://www.nytimes.com/2007/10/13/nyregion/13suburb.html>. Because of its success as the “earliest large-scale suburban housing development in Post WWII America,” Levittown has been regarded as an “archetypical suburban community,” not only receiving its own Smithsonian exhibit, but in fact the Smithsonian has gone so far as to try and buy one of the last remaining Levitt houses. *Id.*; see *Levittown, New York, Is Fifty Years Old*, SMITHSONIAN, <http://www.si.edu/Exhibitions/Details/Levittown-New-York-Is-Fifty-Years-Old-4183> (last visited Mar. 6 2015) (“50th anniversary of Levittown” exhibition held from Dec. 3, 1997 – Mar. 31, 1998); Note, *Locating the Suburb*, 117 *HARV. L. REV.* 2003, 2011 (2004). However, Levittown was not ideal for everyone. William Levitt built the development in accordance with FHA housing policies that gave incentive to build segregated communities. Kevin Fox Gotham, *Racialization and the State: The Housing Act of 1934 and the Creation of the Federal Housing Administration*, 43 *SOC. PERSP.* 291, 308-10 (2000) (citation omitted) (“[T]he FHA not only sanctioned racial discrimination in the housing industry but also fostered the development of large ‘community builders’ who specialized in assembling huge tracts of vacant suburban land for lot sales and uniform home construction on a large scale.”). According to Gotham, “As late as 1960, not one of Levittown’s 82,000 residents was African American.” *Id.* at 309.

⁵² For a much more expansive history on Long Island’s development read JON C. TEAFORD, *POST-SUBURBIA: GOVERNMENT AND POLITICS ON THE EDGE CITIES* 1-3 (1997) [hereinafter TEAFORD, *POST-SUBURBIA*].

A. “Keep the Tammany Tiger out of Nassau”⁵³

Understanding Nassau’s web of municipalities requires a short stop at Tammany Hall.⁵⁴ The infamous fine-tuned political machine of the nineteenth and early twentieth centuries pervaded all aspects of city life until the Great Depression.⁵⁵ Tammany Hall has been marked as an “unenviable place” in America’s history as a hot bed of corruption.⁵⁶ And while certainly true, the loathing of the institution is probably better explained by Tammany’s roots with the Irish-American community and the larger immigrant community taking hold in the boroughs as they left Ellis Island.⁵⁷ During this period New York City saw a rapid population spike, increasing from a little more than 60,000 people in 1800 to over 3.4 million by 1900, and booming to more than 6.9 million by 1930.⁵⁸ A substantial percentage of the population spike consisted of immigrants heading west, who found Tammany as an “ally” in an alien city.⁵⁹

With these structural changes to the city’s demographics and its political institutions, people of means headed out to the “gold coast” of Long Island in the 1920s and 1930s.⁶⁰ But while city folk migrated east, New York City was also thinking outward as well. From the mid-nineteenth century to the early twentieth century New York City sought rapid annexation beyond its Manhattan confines in an effort to outpace its rival cities like Chicago and Philadelphia, increasing its

⁵³ There are many iterations of this line, especially in Teaford’s literature. Jon C. Teaford, *Nassau County: A Pioneer of the Crabgrass Frontier*, in *NASSAU COUNTY: FROM RURAL HINTERLAND TO SUBURBAN METROPOLIS* 26 (Joann P. Krieg & Natalie A. Naylor eds. 2000) [hereinafter Teaford, *Pioneer of the Crabgrass Frontier*]. But I attribute this particular rendition to Tom Suozzi when I first approached him about this project.

⁵⁴ WOOD & ALMENDINGER, *supra* note 1, at 5.

⁵⁵ WOOD & ALMENDINGER, *supra* note 1, at 9. The Tammany Hall machine ultimately came to an end with the election of Fiorello La Guardia, ushering in a new chapter for the city that was dealing with the Great Depression. *Tammany Hall*, HISTORY.COM, <http://www.history.com/topics/tammany-hall> (last visited Apr. 12, 2016).

⁵⁶ TERRY GOLWAY, *MACHINE MADE, TAMMANY HALL AND THE CREATION OF MODERN POLITICS* xvii (2014).

⁵⁷ *Id.* at xvii-xviii (“Tammany, at its worst, certainly was guilty of many of the charges arrayed against it. But the accusations of political and moral corruption were often linked to a profound bigotry rooted in a transatlantic . . .”).

⁵⁸ *Total and Foreign-born Population: New York City, 1790-2000*, N.Y.C. DEP’T OF CITY PLAN., http://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/historical-population/1790-2000_nyc_total_foreign_birth.pdf (last visited Apr. 10, 2016).

⁵⁹ GOLWAY, *supra* note 56, at xvii.

⁶⁰ *See* TEAFORD, *POST-SUBURBIA*, *supra* note 52, at 11-12.

city limits “from 44 to 299 square miles” by 1898.⁶¹ Proponents of annexation, such as the residents of Queens County, favored expansion of the city’s limits because of the potential for improved services that City Hall could provide.⁶² But while Queens welcomed annexation, the people of Nassau County stood in opposition.

Thus, during the first half of the twentieth century, Nassau’s population rapidly expanded with hundreds of thousands flocking east.⁶³ Nassau’s population rose from a little more than 45,000 in 1890, to over 600,000 in 1950 and more than 1.3 million by 1960.⁶⁴ But the population influx in such a short span meant that suburban governments, threatened by overpopulation, tailored themselves to maintain their “exclusivity.”⁶⁵ And so the strategy adopted by municipal governments was to use incorporation as a “protective device,” designed to shield residents against unwanted development.⁶⁶ According to suburban historian Jon Teaford, “in 1920 there were only twenty village or city governments in Nassau”⁶⁷ But by 1930 there were forty-seven, and by the mid 1930s there were “sixty-five villages and cities” as well as “173 special districts.”⁶⁸ Even as early as the 1930s, a government survey reported: “There are so many local jurisdictions that it was not possible to prepare a map of the county or even of one town showing local unit boundaries.”⁶⁹

That said, not all residents supported decentralized local government. In 1914, a good-government group called the Nassau County Association, lobbied to correct these problems attributed to home rule.⁷⁰ Through their efforts, the group won a vote in the state legis-

⁶¹ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 27-28.

⁶² Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 28-29.

⁶³ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 30 (citing U.S. census data).

⁶⁴ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 30.

⁶⁵ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 28-31.

⁶⁶ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 31. Reasons for protecting incorporation were not always the same. For example, aristocratic communities on the North Shore of Long Island, such as “Saddle Rock, Centre Island, Old Brookville, and Old Westbury,” sought to avoid new development around their estates and maintain their low-density profiles, while other rationales might have been less aesthetic and more financially motivated. Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 31.

⁶⁷ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 31.

⁶⁸ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, 31-32.

⁶⁹ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 32-33. (citing THOMAS H REED, *THE GOVERNMENT OF NASSAU COUNTY* 4, 58 (1934)).

⁷⁰ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 33.

lature for the creation of a commission to propose reforms.⁷¹ In 1918, that commission called for “greater centralization and responsibility of authority,” to eliminate the inefficiencies of so many small and overlapping government units.⁷²

While the commission’s proposed reforms ultimately were not adopted, its progress dovetailed into a 1921 state constitutional amendment that allowed Nassau and Westchester Counties to create new forms of government with centralized features.⁷³ The amendment passed statewide—even with a slim majority in Nassau.⁷⁴ Nevertheless, Nassau voters rejected proposals for implementing new forms of government in both 1925 and 1935.⁷⁵

While Nassau’s voters rejected reforms, its local politicians were under increasing pressure from the state to create some type of reform.⁷⁶ So the solution to Nassau’s many governments and districts was to keep Nassau’s many governments and districts intact with the introduction of several compromise measures.⁷⁷ In 1932, the state enacted what amounted to a freeze on new commissioner run districts, by abolishing all separate boards of commissioners for improvement districts except for fire districts and those that previously existed under the law’s savings clause.⁷⁸ The law also extended this ban to services provided by villages, effectively transferring the power to provide any newly created services to Nassau’s towns.⁷⁹ In 1936, Nassau County finally approved a charter for a new form of

⁷¹ Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 33.

⁷² Teaford, *Pioneer of the Crabgrass Frontier*, *supra* note 53, at 33.

⁷³ TEAFORD, POST-SUBURBIA, *supra* note 52, at 34. The amendment changed Art. 3, §§ 26 and 27 of the old constitution to establish governing bodies in Nassau and Westchester. *Votes Cast For and Against Proposed Constitutional Conventions and Also Proposed Constitutional Amendments*, N.Y. STATE COURTS, https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf (last visited April 10, 2016) [hereinafter *Votes*].

⁷⁴ The measure was passed on November 8, 1921 by a total of 655,506 for and 640,701 against and won narrow support in Nassau winning by only 361 votes. *Votes*, *supra* note 73; TEAFORD, POST-SUBURBIA, *supra* note 52, at 34.

⁷⁵ TEAFORD, POST-SUBURBIA, *supra* note 52, at 35-38.

⁷⁶ TEAFORD, POST-SUBURBIA, *supra* note 52, at 37.

⁷⁷ TEAFORD, POST-SUBURBIA, *supra* note 52, at 40.

⁷⁸ N.Y. TOWN LAW § 61 (McKinney 2016); *Id.* § 341; *see* 27 N.Y. JUR. 2D COUNTIES, ETC. § 1337; Howard Weitzman, *Nassau County Special Districts: The Case for Reform*, NASSAU CNTY., Dec. 19, 2005 <https://www.nassaucountyny.gov/DocumentCenter/View/1356> [hereinafter Weitzman, *The Case for Reform*].

⁷⁹ N.Y. TOWN LAW § 61. For a concise explanation of the change, *see* 26 N.Y. JUR. 2D COUNTIES, ETC. § 750.

government that went into effect in 1938.⁸⁰ It created an elected county executive, with its legislative body consisting of a board of supervisors.⁸¹ This board consisted of the supervisors of each of Nassau's three towns and its two cities and operated under a "weighted" voting system.⁸² The County Charter also created county-wide functions of the Nassau police force and a county assessment system.⁸³ Some years later, then-County Attorney and Professor Jack B. Weinstein commented that at the time, these improvements were "remarkable achievements," providing "a model for other counties of the state."⁸⁴ While transferring power to the county, the charter also put limitations on the towns. Townships and villages retained their planning authority, but the county had veto power over any zoning regulation that involved municipal boundary lines.⁸⁵ This policy prevented municipalities from placing undesirable land uses at their peripheries, creating a potential externality for an abutting community.⁸⁶

A major proponent of the 1936 charter and Nassau's first County Executive under the new system, Russel Sprague, stated that the charter was created under "the theory of the 'two layers' of government."⁸⁷ According to Sprague, the lower layer "ensured 'the preservation of home rule' while the 'county governmental layer was to be brought up to date.'"⁸⁸ That Sprague was such an advocate of the "two layer" system is no accident. A key factor in the defeat of the

⁸⁰ N.Y. Sess. Laws 1936, ch. 879, as amended, N.Y. Sess. Laws 1937, ch. 618.

⁸¹ *Id.* § 102.

⁸² Jack B. Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 COLUM. L. REV. 21, 44-45, n.95 (1965). Before his Article III days, Judge Weinstein served as H. Eugene Nickerson's County Attorney. Jack B. Weinstein, *In Memoriam – Eugene H. Nickerson*, 102 COLUM. L. REV. 1193 (2002).

⁸³ Weinstein, *The Effect of the Federal Reapportionment Decision on Counties and Other Forms of Municipal Government*, *supra* note 82, at n.95. Judge Weinstein cites the charter as creating a county wide police force, but Teaford documents a county-wide police force created in 1925 that "patrol[ed] unincorporated areas and any villages that chose to avail themselves of the service." TEAFORD, POST-SUBURBIA, *supra* note 52, at 36.

⁸⁴ Weinstein, *The Effect of the Federal Reapportionment Decision on Counties and Other Forms of Municipal Government*, *supra* note 82, at n.95.

⁸⁵ TEAFORD, POST-SUBURBIA, *supra* note 52, at 39.

⁸⁶ TEAFORD, POST-SUBURBIA, *supra* note 52, at 39.

⁸⁷ TEAFORD, POST-SUBURBIA, *supra* note 52, at 40. Sprague was elected County Executive in 1937 and went on to serve five consecutive terms, stepping down in 1952. While Sprague was County Executive, he also remained Chairman of the Nassau County Republican Committee, an indicator of just how powerful the Republican machine was in Nassau (quoting RUSSELL SPRAGUE, NASSAU COUNTY CHARTER 224-25).

⁸⁸ TEAFORD, POST-SUBURBIA, *supra* note 52, at 40.

1925 and 1935 government proposals was Republican Party opposition, which from early on in Nassau's history had a machine hold on the County's politics.⁸⁹ Thus, the 1936 proposal that passed was not just a compromise between a centralized government and decentralized services, but also a compromise between state interests and local Republicans' interests in maintaining power.⁹⁰

Sprague's iteration of county government would last for decades until 1993, when Judge Spatt in *Jackson v. Nassau Cnty. Bd. of Supervisors*⁹¹ ruled that Nassau's system of weighted voting violated the one-person, one-vote principle of the Equal Protection Clause of the Fourteenth Amendment.⁹² In its place, members of the Board of Supervisors negotiated the district lines of a new legislative body consisting of 19 single-member districts, which Nassau's voters approved by referendum in 1994.⁹³ While the Board of Supervisors is no longer in existence, the centralized features transferred to the county government remains, which has caused significant problems for the county decades later.⁹⁴

⁸⁹ TEAFORD, POST-SUBURBIA, *supra* note 52, at 35-38. The old Nassau Republican machine was a well-known institution, and as late as 2001, there were even references to it in preparatory school textbooks as one of the last remaining bona fide political machines in the country. Bruce Lambert, *Party Machine A Ballot Issue For the G.O.P. in Nassau*, N.Y. TIMES (Nov. 3, 2001), <http://www.nytimes.com/2001/11/03/nyregion/party-machine-a-ballot-issue-for-the-gop-in-nassau.html?module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22R1%3A11%22%7D> (Dr. Howard A. Scharrow, a political science professor at the State University of New York at Stony Brook, stated: "[a]ll the textbooks mention Nassau as about the last of the old machines remaining, the biggest and most spectacular . . . One book even has a picture of its headquarters." While I did not find an old textbook during the course of my researching for this article, reading about the old Republican machine in my middle school social studies class precipitated the search for this news article.).

⁹⁰ TEAFORD, POST-SUBURBIA, *supra* note 52, at 40-41.

⁹¹ 818 F. Supp. 509, 535 (E.D.N.Y. 1993).

⁹² It should be noted that while Judge Weinstein thought Nassau's previous iterations of government were "remarkable achievements," he also prophetically saw weighted voting as a potential problem down the road, and importantly opined that he did not think weighted voting was an ideal method of apportionment. Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, *supra* note 82, at 44-46, n.95. ("Conceivably, if the voting rights of those in the most populous town were more seriously impaired, the limitation would constitute an unconstitutional impediment.").

⁹³ N.Y. Sess. Laws 1936, ch. 879, as amended, N.Y. Sess. Laws 1937, ch. 618; Peter Marks, *Nassau Board Approves a Legislative Map*, N.Y. TIMES (Aug. 2, 1994), <http://www.nytimes.com/1994/08/03/nyregion/nassau-board-approves-a-legislative-map.html> ("Several supervisors said the pressure on the board to avoid having a map imposed on the county by the Federal court was a major factor in getting Democrats and Republicans to reach an agreement.").

⁹⁴ It should also be noted that while Judge Weinstein was perhaps at the time correct about

During post-war America throughout the 1940s and 1950s, Nassau's population tripled from its pre-war population.⁹⁵ The more Nassau developed, the more it transcended suburbia altogether, becoming an edge city that mixed suburban and urban elements into a "hybrid" community.⁹⁶

But just as Nassau's population increased rapidly before the war, its municipal officials a generation later again sought to use boundary-lines to ensure the exclusivity of existing communities with race, ethnic, and socioeconomic standing playing a significant factor in new development.⁹⁷ Because the state curbed the ability of municipalities to provide services through commissioner-run special districts or villages when it enacted Town Law Section 61 decades earlier, Nassau's towns were required to find new ways to increase the amount of decentralized governments by other means than their pre-1932 method of incorporating villages and commissioner-run special

the innovation of the county assessment system, the system today is structurally broken with reforms proposed regularly. *Baldwin Union Free Sch. Dist. v. Cnty. of Nassau*, 9 N.E.3d 351, 357 (N.Y. 2014) ("In 2002, the County Comptroller announced that the County had more than \$2.8 billion in debt . . . [and] blamed the debt burden in part on the unusually large number of tax certiorari proceedings in the county and in part on the County Guaranty."). Because the county was responsible for the numerical calculation of tax assessments, in 1948 the Board of Supervisors created the colloquially named "County Guaranty" that shifted all assessment error and surplus payments from tax grievances to the county. *Id.* at 355. The State Legislature acquiesced and carved out an exception in its Real Property Tax Law for Nassau County. *Id.* at 355. However, this system has become a major burden for the county, as it had to borrow more than \$80 million annually. Robert Brodsky, *State Lawmakers Pass Overhaul of Nassau Tax Challenge System*, *NEWSDAY* (June 24, 2014), <http://www.newsday.com/long-island/nassau/state-lawmakers-pass-overhaul-of-nassau-tax-challenge-system-1.8519871>. In 2014, Nassau County lost a court battle to repeal the County Guaranty unilaterally without the State Legislature's approval. *Baldwin Union Free Sch. Dist.*, 9 N.E.3d at 353. Reform has not been enacted since.

⁹⁵ Richard L. Forstall, *New York: Population of Counties by Decennial Census: 1900 to 1990*, U.S. BUREAU OF THE CENSUS (Mar. 27, 1995), <http://www.census.gov/population/cencounts/ny190090.txt>.

⁹⁶ TEAFORD, *POST-SUBURBIA*, *supra* note 52, at 46. In 1991, journalist Joel Garreau coined the phrase "edge cities" to describe the phenomenon of post-suburban metropolises. TEAFORD, *POST-SUBURBIA*, *supra* note 52, at 1. Edge cities lack the typical features of suburbs, particularly with respect to the lack of reliance on their sister city as the center of commerce. TEAFORD, *POST-SUBURBIA*, *supra* note 52, at 1-2. Teaford surveyed six "edge cities:" Oakland County, Michigan; DuPage County, Illinois; St. Louis County, Missouri; Orange County, California; and of course, Nassau and Suffolk Counties. TEAFORD, *POST-SUBURBIA*, *supra* note 52, at 3.

⁹⁷ See generally Amanda Tillotson, *Race, Risk and Real Estate: The Federal Housing Administration and Black Homeownership in the Post World War II Home Ownership State*, 8 DEPAUL J. FOR SOC. JUST. 25 (2014); Marc Seitles, *The Perpetuation Of Residential Racial Segregation In America: Historical Discrimination, Modern Forms Of Exclusion, And Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89 (1998).

districts.⁹⁸ The solution this time was to keep the number of municipalities the same but to proliferate the number of special districts that were administered by the towns (which, of course, would appoint an administrator who often would have the title of “commissioner”).⁹⁹ According to Teaford, “[f]rom 1945 to 1955 the number of nonschool special districts in Nassau County climbed from 199 to 268.”¹⁰⁰ And, not surprisingly, “all of Nassau’s 41 fire districts” were commissioner-run, under Section 61’s exemption.¹⁰¹

By 1970, Nassau reached its highest population at 1.4 million and has since topped off at around 1.3 million.¹⁰² Its population total has since remained relatively stable.¹⁰³ But the number of special districts remains, along with rising costs, higher taxes and fiscal insolvency that County Executives decades later have fought to eliminate.

B. Reining in the “Unnatural Wonder”: The Suozzi Administration

In 2001, Democrats Thomas Suozzi and Howard Weitzman won their seats in a historic election, breaching the Republican political machine’s hold on the County’s executive branch.¹⁰⁴ Suozzi became the first Democrat elected to the office of County Executive since H. Eugene Nickerson, who served from 1962-1970.¹⁰⁵ The vic-

⁹⁸ TEAFORD, POST-SUBURBIA, *supra* note 52, at 59-60.

⁹⁹ TEAFORD, POST-SUBURBIA, *supra* note 52, at 59-60.

¹⁰⁰ TEAFORD, POST-SUBURBIA, *supra* note 52, at 59.

¹⁰¹ TEAFORD, POST-SUBURBIA, *supra* note 52, at 60.

¹⁰² Richard Forstall, *New York: Population of Counties by Decennial Census: 1900 to 1990*, U.S. BUREAU OF THE CENSUS (Mar. 27, 1995), <http://www.census.gov/population/cencounts/ny190090.txt>.

¹⁰³ *Id.*

¹⁰⁴ Bruce Lambert, *The 2001 Elections: Nassau County; Suozzi Wins Easily in Rebuke of Nassau’s G.O.P. Machine*, N.Y. TIMES (Nov. 7, 2001), <http://www.nytimes.com/2001/11/07/nyregion/2001-elections-nassau-county-suozzi-wins-easily-rebuke-nassau-s-gop-machine.html>. Two years prior in 1999, Democrats won the legislative majority for the first time since the legislature’s inception, ending one party rule and serving the first blow to the Republican machine in decades. David M. Halbfinger, *The 1999 Elections: Nassau; Nassau County Halts a Century of G.O.P. Rule*, N.Y. TIMES (Nov. 3, 1999), <http://www.nytimes.com/1999/11/03/nyregion/the-1999-elections-nassau-nassau-county-halts-a-century-of-gop-rule.html>.

¹⁰⁵ Halbfinger, *supra* note 104. Nickerson, like his Democratic successor decades later, also foresaw the need to fix the special district problem. Weitzman, *The Case for Reform*, *supra* note 78, at 2 (“Nickerson blamed the previous decade’s ‘fantastic rises’ in taxes on, among other things, ‘the perpetuation of fragmented, irresponsible special taxing districts.’”)

tory was achieved largely in part due to the county's financial troubles, for which many pointed to Suozzi's predecessor, Thomas Gulotta, as the source of fiscal mismanagement.¹⁰⁶

Just one year before the election, Governor George Pataki and the New York State legislature created the Nassau Interim Finance Authority (NIFA) to bring oversight and long-term structural reform to Nassau County's government.¹⁰⁷ The County in dire financial

(quoting ARTURO F. GONZALEZ, EUGENE H. NICKERSON: STATESMAN OF A NEW SOCIETY 28 (James H. Heineman, Inc. 1964)). After his tenure as County Executive, Nickerson served a remarkable career as a federal judge. *See*, Weinstein, *In Memoriam – Eugene H. Nickerson*, *supra* note 82.

¹⁰⁶ Vivian S. Toy, *It's Broke, and He Has to Fix It*, N.Y. TIMES (Dec. 23, 2001), <http://www.nytimes.com/2001/12/23/nyregion/it-s-broke-and-he-has-to-fix-it.html>. Thomas Gulotta was the Nassau County Executive from 1987 to 2001, choosing not to seek reelection due to the County's plummeting finances. While his tenure in office was ultimately marred by the County's financial shortcomings, Gulotta was a political force for decades, considered by many a legitimate candidate for governor in 1990 and in 1994. Al Baker, *The Man Who Could Not Say No Cries Uncle*, N.Y. TIMES (Mar. 18, 2001), <http://www.nytimes.com/2001/03/18/nyregion/the-man-who-could-not-say-no-cries-uncle.html?src=pm&pagewanted=1>. Nevertheless, in Nassau County politics Gulotta's surname has become synonymous with fiscal mismanagement. The practice of using the word "Gulotta" to describe the County Executive's handling of Nassau's finances has become so commonplace, that Newsday's Editorial Board in 2014 coined the term "Gulottaville" in describing the current state of budgetary policies. Editorial Op., *Editorial: Nassau County is on the Road to Gulottaville*, NEWSDAY (July 26, 2014), <http://www.newsday.com/opinion/nassau-county-is-on-the-road-to-gulottaville-editorial-1.8891205>.

¹⁰⁷ N.Y. PUB. AUTH. LAW § 3652 (McKinney 2016); *see generally Nassau Interim Finance Authority 2000 Annual Report* (2000), http://www.nifa.state.ny.us/reports_financial/annual/2000AnnualReport.pdf. NIFA is a public benefit corporation of the State of New York created in June 2000 to oversee the County's finances in response to Nassau's then growing fiscal crisis. N.Y. PUB. AUTH. LAW, ch. 43-A, art. 10-D, T. 1. The act gave NIFA a toolbox including the ability to issue bonds and notes to restructure the County's debt, and the ability to declare a "control period," a drastic measure, which when triggered gives NIFA substantial oversight and veto authority over the County's budget. *Id.* §§ 3656, 3669. There are several ways to trigger a control period; the most relevant method being that the county incurs a major operating funds deficit of one percent or more during a given fiscal year. *Id.* § 3669; *see also* *Cnty. of Nassau v. Nassau Cnty. Interim Fin. Auth.*, 920 N.Y.S.2d 873 (N.Y. Sup. Ct. Nassau County 2011) (finding determination of "control period" by NIFA to be a valid imposition of authority). Since 2000, avoiding a NIFA "control period" has become a barometer for the County's fiscal health. *See e.g.*, David M. Halbfinger, *New York State Seizes Finances of Nassau County*, N.Y. TIMES (Jan. 26, 2001), http://www.nytimes.com/2011/01/27/nyregion/27nassau.html?pagewanted=all&_r=0. Being an administration under NIFA control has been shown to have major political consequences not only because of the objective determination of fiscal failure, but also because a control period hamstring the County Executive's ability to negotiate labor contracts. *See Carver v. Nassau Cnty. Interim Fin. Auth.*, 730 F.3d 150 (2d Cir. 2013). However, as dire as a triggering of a "control period" may be, it is not necessarily fatal to the County Executive's reelection outcome. *See* Dan Janison, *Nassau's Mangano: Now NIFA 'Communicates'*, NEWSDAY

straits was \$2.7 billion in debt, allocating nearly a quarter of its spending to debt service.¹⁰⁸ As a result, the County's bonds had been downgraded by rating agencies to just one level above junk status.¹⁰⁹ By the end of his term, Gulotta had averted a takeover of the County's finances by NIFA, but still left office with the County's fiscal health on shaky ground.¹¹⁰ Just days before the 2001 inauguration, the Maxwell School of Government rated Nassau the "worst run" county in the nation out of the 40 largest.¹¹¹

Inheriting the fiscal mess, the newly elected Suozzi and Weitzman took the challenge head on and with enthusiasm. In their first term, the pair quickly turned around the County's finances: reducing the County's portion of residents' property taxes, reducing employee headcount and keeping spending growth behind inflation.¹¹² In his proposed budget for fiscal year 2006, Suozzi froze property taxes for a third straight year and for the first time since he took office, did not request NIFA issued bonds, touting 10 straight credit-rating upgrades.¹¹³ With such expeditious progress, in September 2005 Suozzi triumphantly declared: "the fiscal crisis is over."¹¹⁴ That November,

(Nov. 25, 2013), <http://www.newsday.com/long-island/politics/spin-cycle-1.812042/nassau-s-mangano-now-nifa-communicates-1.6493151?&p=393221>.

¹⁰⁸ Halbfinger, *New York State Seizes Finances of Nassau County*, *supra* note 107.

¹⁰⁹ Michael Cooper, *Pataki Proposes a Fiscal Bailout of Nassau County*, N.Y. TIMES (May 10, 2000), <http://www.nytimes.com/2000/05/10/nyregion/pataki-proposes-a-fiscal-bailout-of-nassau-county.html?pagewanted=all>.

¹¹⁰ Tina Kelley, *Nassau Averts Takeover, But Not Close Oversight*, N.Y. TIMES (Dec. 9, 2000), <http://www.nytimes.com/2000/12/09/nyregion/nassau-averts-takeover-but-not-close-oversight.html?module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22RI%3A7%22%7D>. Even in his last days of office, Gulotta made several last minute changes to the budget that at least the N.Y. Times Editorial Board thought was fiscally irresponsible. Editorial Bd., *Thomas Gulotta's Irresponsible Exit*, N.Y. TIMES (Dec. 22, 2001), <http://www.nytimes.com/2001/12/22/opinion/thomas-gulotta-s-irresponsible-exit.html?module=Search&mabReward=relbias%3Ar%2C%7B%221%22%3A%22RI%3A7%22%7D>.

¹¹¹ Robert Brodsky, *Thomas Suozzi Pushes for Second Chance in Nassau County Executive Race*, NEWSDAY (Oct. 30, 2013, 11:56 PM), <http://www.newsday.com/long-island/nassau/thomas-suozzi-pushes-for-second-chance-in-nassau-county-executive-race-1.6350690>.

¹¹² *Office of the County Executive, Repairing, Reforming, and Reimagining Nassau: The Suozzi Administration 2002-2009* (2009), http://suozzi.3cdn.net/0e8be36e72864001e4_p1m629h3h.pdf.

¹¹³ Bruce Lambert, *Nassau Executive Declares County Fiscal Crisis is Over*, N.Y. TIMES (Sept. 13, 2005), <http://www.nytimes.com/2005/09/13/nyregion/metrocampaigns/13nassau.html?pagewanted=print>.

¹¹⁴ *Id.*

Suoizzi and Weitzman won reelection with commanding majorities, in due part to their first term accomplishments.¹¹⁵

Suoizzi's first term success garnered statewide and national attention.¹¹⁶ It also won him a good deal of political capital. Suozzi would spend it on two fronts in his second term: an unsuccessful gubernatorial bid in 2006 against Eliot Spitzer and an aggressive agenda to further reform Nassau County.¹¹⁷ The latter yielded bold policy proposals including the Property Tax Cap and the Nassau County Master Plan for a "new suburbia."¹¹⁸ These policies had broad scope and substance to make Nassau County an attractable suburb for a new generation of New York suburbanites.¹¹⁹ Suozzi's leadership in passing the Property Tax Cap statewide as a vehicle for reducing local

¹¹⁵ Bruce Lambert, *Democrats Score Gains in Nassau and Suffolk*, N.Y. TIMES (Nov. 9, 2005), <http://www.nytimes.com/2005/11/09/nyregion/09nassau.html?module=Search&mabReward=relbias%3As%2C%7B%221%22%3A%22RI%3A7%22%7D> ("With almost all of the vote counted, Mr. Suozzi had a margin of more than 20 points over his Republican opponent, Gregory Peterson - an impressive showing, since Republicans still hold an enrollment edge.").

¹¹⁶ Campbell Robertson, *Up for Re-election, and Maybe More Suozzi*, N.Y. TIMES (Mar. 20, 2005), <http://www.nytimes.com/2005/03/20/nyregion/20lisuoz.html?pagewanted=1>. Not all of Suozzi's media attention was garnered strictly through governing. For the 2004 election, Suozzi created the "Fix Albany" political action committee with the backing of former New York City Mayor Ed Koch, raising \$150,000. The "Fix Albany" campaign targeted Republicans as well as a Democratic state senator, which caused quite a ruckus during the 2004 Democratic National Convention when the Democratic Speaker Sheldon Silver attempted to block Suozzi from the convention. Chris Smith, *The Suozzi-Spitzer Showdown*, N.Y. MAG., <http://nymag.com/nymetro/news/politics/columns/citypolitic/15396/> (last visited Apr. 14, 2016); Bruce Lambert, *After Mixed Results, Suozzi Presses On to Fix Albany*, N.Y. TIMES (Nov. 7, 2004), <http://www.nytimes.com/2004/11/07/nyregion/07suozzi.html>. Regardless of how you view optics, many saw substance in Suozzi's first term achievements. One organization, Governing Magazine, named Suozzi the 2005 State and Local Government Public Official of the Year. Rob Gurwitt, *Public Officials of the Year: Thomas R. Suozzi, 2005 Honoree*, GOVERNING MAG., <http://www.governing.com/poy/Thomas-Suozzi.html> (last visited Apr. 14, 2016).

¹¹⁷ Patrick Healy, *Spitzer and Clinton Win in N.Y. Primary*, N.Y. TIMES (Sept. 13, 2006), <http://www.nytimes.com/2006/09/13/nyregion/13york.html?ref=nyregion>.

¹¹⁸ Nicholas Confessore, *Panel Urges 4% Tax Cap on Property in New York*, N.Y. TIMES (June 3, 2008), <http://www.nytimes.com/2008/06/03/nyregion/03taxes.html>; Mike Russo, *Nassau County: A Model for the Nation?* LI HERALD (Oct. 1, 2009), <http://liherald.com/eastmeadow/stories/Nassau-County-A-model-for-the-nation,849> (indicating that "Suozzi proposes master plan hinging on Lighthouse, downtown revitalizations"); Bruce Lambert, *Rethinking the Nation's First Suburb*, N.Y. TIMES (Dec. 25, 2005), <http://www.nytimes.com/2005/12/25/nyregion/nyregionspecial2/25liburb.ready.html?pagewanted=all>.

¹¹⁹ See Marcelle S. Fischler, *Retrofitting for a 'New Suburbia,'* N.Y. TIMES (Oct. 2, 2009), <http://www.nytimes.com/2009/10/04/realestate/04Lizo.html>.

government tax levies would have lasting impact years later.¹²⁰

While Suozzi's innovative governance was necessary for the long-term success of the county, the 2008 fiscal crisis and precedent gubernatorial primary left him exposed when he ran for a third term. In a surprising upset by only a few hundred votes, Suozzi lost his reelection bid to Edward Mangano in 2009.¹²¹

Often lost in the popular narrative of Suozzi's and Weitzman's tenure in office were their efforts to solve the special district problem. Even with their marked success in reviving the county's finances, school, water, fire, sanitation library, town and village taxes levies consisted of a much larger percentage of a resident's tax bill.¹²²

In their second term, the pair launched a multiyear effort to address the problem. Their objective was to first further identify the scope of Nassau County's special district problem and to second, implement solutions to deal with it. In 2005, Weitzman's office issued the first in a series of reports outlining the need for special district reform.¹²³ In it the Comptroller reported his findings from six sanitation district audits performed by his office.¹²⁴ Weitzman found systemic problems with how these sanitation districts conducted business including inadequate procurement policies, poor accounting practices, inadequate time keeping and payroll procedures and improper procurement of legal services.¹²⁵ In particular, Weitzman found that the larger districts audited imposed lower taxes for their services than their smaller counterparts.¹²⁶ As a result, the Comptroller recommended a larger scale review of special districts within the county.¹²⁷

In the interim, in 2006 Weitzman in conjunction with Hofstra University held a symposium on Nassau's special districts.¹²⁸ The

¹²⁰ See *infra* Part III.

¹²¹ William Murphy, *Suozzi Concedes; Mangano to Take Helm in Nassau*, NEWSDAY (Dec. 1, 2009, 10:24 PM), <http://www.newsday.com/long-island/nassau/suozzi-concedes-mangano-to-take-helm-in-nassau-1.1631322>.

¹²² Press Release, Office of the Nassau Cnty. Comptroller, Comptroller Weitzman Stands with Governor, Cnty. Exec & Civic Grps. to Rally for Reforms of Special Dists. (Feb. 8, 2008) (on file with the author).

¹²³ Weitzman, *The Case for Reform*, *supra* note 78.

¹²⁴ Weitzman, *The Case for Reform*, *supra* note 78, at i.

¹²⁵ Weitzman, *The Case for Reform*, *supra* note 78, at i-ii.

¹²⁶ Weitzman, *The Case for Reform*, *supra* note 78.

¹²⁷ Weitzman, *The Case for Reform*, *supra* note 78, at 17-18.

¹²⁸ Conference on Nassau County Special Districts, HOFSTRA (June 8, 2006), http://www.hofstra.edu/Academics/CSS/css_conf_060806.html.

conference garnered bi-partisan turnout among Nassau's elected officials and was also well represented by local think tanks including the Rauch Foundation and Hofstra University's Center for Suburban Studies.¹²⁹

At the end of 2006, Weitzman released another report detailing cost saving ideas for Nassau's special districts.¹³⁰ The Comptroller's office studied major expenditures including insurance, hiring, and purchasing, concluding that between \$23.8 and \$35.7 million could be saved if special districts county-wide adopted better spending practices.¹³¹ Among the suggestions included a call to Nassau towns to increase their oversight practices.¹³²

In 2007, Weitzman followed up with yet another report in an attempt to understand cost disparities in pricing for services among special districts. His office found that variation in pricing occurred when "(1) the district spends more; and (2) the district has significantly more commercial property than the average district to subsidize the cost charged to residential home owners."¹³³ Importantly, Weitzman found that cost was not correlated with quality of service.¹³⁴ Additionally, the Comptroller included more particularized estimates to cost-savings. For instance, in the Town of Hempstead, households could see \$168 dollars in tax savings per year if the town instead of six independent commissioner-run entities ran garbage collection districts.¹³⁵

In the same year, Suozzi put out his own literature on the mat-

¹²⁹ Howard S. Weitzman, *Cost Disparities in Special Districts in Nassau County* (Dec. 18, 2007), <http://www.nassaucountyny.gov/DocumentCenter/View/1361> [*hereinafter* Weitzman, *Cost Disparities in Special Districts*]. According to Weitzman, approximately 400 people attended the event including a bi-partisan collection of elected officials including "then assemblyman Thomas DiNapoli, then Senator Michael Balboni, [now former] County Executive Thomas R. Suozzi, [now former] Comptroller Howard S. Weitzman, [now former] Chairman of the Board of Assessors Harvey Levinson," now former Supervisor and current NIFA Chairman Jon Kaiman and Supervisors Kate Murray and John Venditto.

¹³⁰ *Id.*

¹³¹ *Id.* at vi.

¹³² *Id.* at 41.

¹³³ Howard S. Weitzman, *Nassau County Office of the Comptroller- Cost Disparities in Special Districts in Nassau County* (Dec. 18, 2007), <https://www.nassaucountyny.gov/DocumentCenter/View/1361>.

¹³⁴ *Id.* The Comptroller's office showed quality of service did not correlate to cost in sanitation districts through two metrics: curbside service versus back door service (which in theory should be costlier) and frequency of pickup.

¹³⁵ *Id.* For more information on methodology, see *infra* Part IV (discussing suggestions to fix Nassau's special district problems to achieve both efficiency and equity aims).

ter, but from a different angle: commissioner election dates. After a survey of 71 special districts throughout the county, Suozzi found that special district elections occurred on 24 different days throughout the year, with not a single one occurring on Election Day—when voter turnout would typically be the highest.¹³⁶ In contrast, voter turnout for four of the districts audited in Weitzman’s 2005 report was three percent or less—well below any off year election in recent memory.¹³⁷

C. Parallel Efforts at the State Level: Passage of the Government Reorganization and Citizen Empowerment Act and the Property Tax Cap

Suozzi’s and Weitzman’s efforts at the county level were original and novel attempts at dealing with the special district problem. Yet in many ways what they sought to do was nothing new in the “post-suburbia” era. Over the past few decades New York governors have committed themselves to similar exploration. But these efforts to engage state and local officials prior to 2005 were largely unsuccessful. A 1992 study looking at school consolidation produced few tangible results.¹³⁸ A 1993 commission for local government reform established by Mario Cuomo proposed reforms—none of which were enacted.¹³⁹ A 2004 commission established by George Pataki produced even fewer results, failing to release a final report.¹⁴⁰

But in 2006 momentum started to build for a reinvigorated statewide response to tackle the problem. Making the issue a campaign platform, Governor Spitzer in April 2007 launched the state commission on “Local Government Efficiency and Competitiveness.”¹⁴¹ This commission had wide ranging support from elected officials throughout the state, notably then Attorney General Andrew Cuomo and State Comptroller Thomas DiNapoli, whose offices both

¹³⁶ Weitzman, *supra* note 129.

¹³⁷ Weitzman, *supra* note 129. Voter turnout in the last county executive race was 29 percent. Dan Janison, *Voter Turnout Disappointing in Tuesday's Elections*, NEWSDAY (Nov. 11, 2013, 1:33 AM), <http://www.newsday.com/long-island/columnists/dan-janison/voter-turnout-disappointing-in-tuesday-s-elections-1.6413164>.

¹³⁸ Maureen Nolan, *New York State School District Won't Merge Even When Offered Extra Money*, THE POST STANDARD (Mar. 4, 2012, 7:11 AM), http://www.syracuse.com/news/index.ssf/2012/03/new_york_state_school_district.html.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

worked in coordination with the Governor's toward reform.¹⁴² Over a one year period the commission gathered input from local officials, identified initiatives of interest among municipalities, and commissioned consultant studies to perform cost benefit analysis among other data driven inquires.¹⁴³ Concurrently, the Comptroller's office issued several information-gathering reports on special districts and the possible benefits of dissolution and intermunicipal coordination.¹⁴⁴ In 2008, the commission released its final report making recommendations in seven areas: centralizing and expanding regional shared services; modernizing municipal structures through updated legal frameworks; school district restructuring and expanding back end services; homogenized election dates and procedures; providing aids and incentivizes through grants; addressing structural cost drivers; and providing sustained sufficiency and continuity.¹⁴⁵

The commission translated its recommendations into legislation and in 2009, the legislature passed the New N.Y. Government Reorganization and Citizen Empowerment Act. That law replaced the previous consolidation and dissolution system and implemented a simpler system for enacting reform.¹⁴⁶ Among its features, the law reduced the required number of signatures required for consolidation and dissolution petitions from 33 percent to no more than 10 percent of the municipality's electorate in most instances.¹⁴⁷ Also important-

¹⁴² Once Mr. Suozzi's rival for County Executive, State Comptroller Thomas DiNapoli saw a common cause to collaborate with the Nassau County Executive for local government reform. Press Release, Office of the N.Y. State Comptroller, DiNapoli & Suozzi Propose Measures to Reform Special Dists. (Jun. 6, 2007); John Rather, *A Skeptical New Look at Special Tax Districts*, N.Y. TIMES (Mar. 23, 2008), http://www.nytimes.com/2008/03/23/nyregion/nyregionspecial2/23districtsli.html?_r=0.

¹⁴³ Rather, *supra* note 142; REPORT OF THE NEW YORK STATE COMMISSION ON LOCAL GOVERNMENT EFFICIENCY & COMPETITIVENESS 1-9 (2008).

¹⁴⁴ See Rather, *supra* note 142; OFFICE OF THE NEW YORK STATE COMPTROLLER, TOWN SPECIAL DISTRICTS IN NEW YORK: BACKGROUND, TRENDS AND ISSUES <http://www.osc.state.ny.us/localgov/pubs/research/townspecialdistricts.pdf> (last visited Apr. 5, 2016) [hereinafter TOWN SPECIAL DISTRICTS IN NEW YORK]; OFFICE OF THE NEW YORK STATE COMPTROLLER, INTERMUNICIPAL COOPERATION AND CONSOLIDATION: EXPLORING OPPORTUNITIES FOR SHARED SERVICE DELIVER, <http://www.osc.state.ny.us/localgov/pubs/research/cooperation1.pdf> (last visited Apr. 5, 2016) [hereinafter INTERMUNICIPAL COOPERATION AND CONSOLIDATION].

¹⁴⁵ Rather, *supra* note 142.

¹⁴⁶ N.Y. TOWN LAW § 202 (c) (McKinney 2016). The previous system of dissolution existed under N.Y. TOWN LAW § 202-c. Much of this section has been amended.

¹⁴⁷ N.Y. GEN. MUN. LAW § 757 (McKinney 2016). According to Section 757 of the General Municipal Law:

The petition shall contain the signatures of at least ten percent of the

ly, the law eliminated a provision requiring that only owners of real property within the district were eligible petitioners.¹⁴⁸ The successful enactment of the consolidation and dissolution law has had sustained impact on other state governments, with other states using the act as a model for themselves.¹⁴⁹

Supplementing the consolidation law, New York State also sought to spur intermunicipal activity through its Local Government Efficiency Grant program.¹⁵⁰ These grants replaced an older version and sought to reduce transaction costs associated with consolidations and intermunicipal agreements such as impact studies.¹⁵¹

While the consolidation law went through the legislative process, state officials were concurrently working on other legislation to reduce local government costs. In 2008 Governor Spitzer designated a complementary commission to the Local Government Efficiency Commission entitled the New York State Commission on Property Tax Relief.¹⁵² Then County Executive Tom Suozzi was appointed the committee's chair.¹⁵³ The committee vigorously analyzed New York's property tax problems and in particular the two most structural issues.¹⁵⁴ The first was that while state tax dollars were in relative

number of electors or five thousand electors, whichever is less, in each local government entity to be consolidated; provided, however, that where the local government entity to be consolidated contains five hundred or fewer electors, the petition shall contain the signatures of at least twenty percent of the number of electors.

Id.; N.Y. GEN. MUN. LAW § 779(2) (noting the parallel language for dissolution procedures).

¹⁴⁸ Nicholas Confessore, *Senate Passes Bill to Ease Government Consolidation*, N.Y. TIMES (June 4, 2009), <http://www.nytimes.com/2009/06/04/nyregion/04consolidate.html>. The law eliminated the following language:

Such petition shall be signed by resident owners of taxable real property aggregating at least one-half of all the taxable real property of the district owned by resident owners according to the latest completed assessment roll of the town, and acknowledged or proved in the same manner as a deed to be recorded

See 2009 N.Y. Laws Ch. 74 (A. 8501).

¹⁴⁹ 20 ILL. COMP. STAT. 3987/99 (2011). In 2011, Illinois passed the Local Government Consolidation Act of 2011. According to the Illinois Commission, the state's *bête noire* served as inspiration for its own law. *Id.*

¹⁵⁰ N.Y. STATE FIN. LAW § 54 (McKinney 2016).

¹⁵¹ *Id.*; Press Release, Dep't of State Div. of Local Gov't Services, Local Gov't Efficiency Grant Applications (2008), http://www.nyslocalgov.org/pdf/Blast_September_08.pdf.

¹⁵² *The New York State Commission on Property Tax Relief: Preliminary Report* (June 3, 2008), <http://blog.syracuse.com/indepth/2008/06/Suozzi%20report>.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

proportion with the nationwide average, the local property tax bill outside New York City was a whopping 79 percent above the national average, the highest in the nation.¹⁵⁵ That disparity is in part due to the second structural problem: That school districts outside of New York City spent more than any other per student in the nation at \$18,768.¹⁵⁶

The committee recommended multiple courses of action, one of which was the Property Tax Cap.¹⁵⁷ The proposal made it all the way to the Governor's desk, and in 2011 Governor Cuomo signed it into law.

D. Post-Enactment and the Andrew Cuomo Administration

Progress toward reducing the size and number of local governments after the enactment of the consolidation law has been mediocre at best. It has certainly yielded interest by local governments and local activists to initiate consolidations and engage in intermunicipal coordination.¹⁵⁸ At the helm of New York State's government after the consolidation law's enactment is Andrew Cuomo. The two-term Governor has been an active proponent of special district reform throughout his tenure in the state's highest office and as Attorney General.¹⁵⁹ While Governor Spitzer proposed the efficiency commission in 2007, and while Governor Paterson signed the consolidation bill into law in 2009, it was Attorney General Cuomo who drafted the legislation introduced in the state house.¹⁶⁰

Indeed, Cuomo campaigned on reducing the size of local government in both his gubernatorial elections. In 2010 he issued campaign content advertising the successful passage of the consolidation

¹⁵⁵ *Id.* at 13.

¹⁵⁶ *Id.* at 18.

¹⁵⁷ Confessore, *supra* note 148, at 3. The committee had three recommendations. The first was the Property Tax Cap, the second was a STAR homeowner tax credit reform called a "circuit breaker" based on income, and the third was a series of more general recommendations on state law and unfunded mandate relief, including passing the LGEC's recommendations and reforming the state pension system, much of which has been passed as well.

¹⁵⁸ See *Local Government Efficiency Studies & Reports*, DEP'T OF STATE, DIV. OF LOCAL GOV'T SERVS. (2011), http://www.dos.ny.gov/lge/lge/Case_Studies.html#consolidationdissolution (providing various reports created by municipalities to study consolidation).

¹⁵⁹ Confessore, *supra* note 148.

¹⁶⁰ Confessore, *supra* note 148.

law.¹⁶¹ In 2014 Cuomo went a step further airing a 30 second campaign ad entitled “Castle,” stating that while state income taxes have decreased, local property taxes continue to be the highest in the nation because of “the waste and duplication of our over 10,000 local governments.”¹⁶²

The Governor’s campaign promises have also been followed up with substance. In 2014, New York State went a step further in attempting to constrain local government spending with the Property Tax Freeze.¹⁶³ In addition to continuing applications for the Local Government Efficiency Grant, the Governor also created the Local Government Citizens Reorganization Empowerment Grant.¹⁶⁴ This grant is a non-competitive grant designed to encourage the study and implementation of consolidation schemes.¹⁶⁵ In 2015, Governor Cuomo furthered his continued support of the grant system, calling for \$150 million to be added to the current grant structure in a new “Local Government Efficiency Fund” in his 2015 State of the State Opportunity Agenda.¹⁶⁶

E. Rematch: Suozzi 2013

In 2013, Tom Suozzi and Howard Weitzman ran for their old jobs against Ed Mangano and George Maragos.¹⁶⁷ The election came

¹⁶¹ Anderson, *supra* note 35, at 1393-94 (citing and describing Cuomo’s now defunct 2010 campaign literature).

¹⁶² Jesse McKinley, *Cuomo, Citing Local Government Waste, Says It’s ‘Time We Fix’ High Property Taxes*, N.Y. TIMES (Oct. 27, 2014), <http://www.nytimes.com/2014/10/28/nyregion/cuomo-citing-local-government-waste-says-its-time-we-fix-high-property-taxes.html>.

¹⁶³ Freeman Klopott, *Cuomo Backs \$2.2 Billion in N.Y. Tax Cuts Proposed by Panel*, BLOOMBERG (Jan. 6, 2014, 3:50 PM), <http://www.bloomberg.com/news/articles/2014-01-06/cuomo-backs-panel-s-call-for-two-year-n-y-property-tax-freeze>.

¹⁶⁴ Press Release, Dep’t of State, Sec’y of State Perales Announces Application Availability for Local Gov’t Efficiency Grant & the Local Gov’t Citizens Reorganization Empowerment Grant Programs (Dec. 15, 2011) <http://www.dos.ny.gov/press/2011/1215grants.html>.

¹⁶⁵ *Id.*

¹⁶⁶ Andrew Cuomo, *Opportunity Agenda: 2015 State of the State Address* 24-25 (2015) http://nysbroadband.ny.gov/sites/default/files/documents/2015_Opportunity_Agenda_Book.pdf.

¹⁶⁷ Joseph Berger, *Rematch for Nassau Executive Could Be Bellwether of National Trend*, N.Y. TIMES (Oct. 1, 2013), <http://www.nytimes.com/2013/10/02/nyregion/rematch-for-nassau-executive-could-be-bellwether-of-national-trend.html?pagewanted=all> (“It’s the Thrilla in Mineola,” said Lawrence Levy, executive dean of the National Center for Suburban Studies at Hofstra University.”). Many political analysts also saw the rematch as a bellwether for the nation in the lead up to the 2014 midterm elections. *Id.*

at another period of poor fiscal health for the county. Just two years earlier, Nassau unsuccessfully prevented NIFA's seizing its finances as a result of the county's 2011 \$176 million budget deficit.¹⁶⁸ While largely caused by the 2008 financial crisis, Mangano's refusal to cooperate with the board and refusal to raise property taxes (even up to the cap) further aggravated the county's path toward solvency.¹⁶⁹ But Mangano's anti-tax platform in the face of deteriorating county finances was a popular position.¹⁷⁰

To counter, Suozzi—hamstrung with having raised property taxes during the beginning of his own tenure as County Executive—campaigns on the “ideal suburb.”¹⁷¹ That vision included keeping the county and its municipalities within the property tax cap, and fixing the county's struggling assessment system.¹⁷² Another layer was to attract young people.¹⁷³ An additional emphasis was to get the county out of NIFA control.¹⁷⁴ The last message pillar was an alternative position to his consolidation that he advocated for during his tenure: getting special districts to collaborate in order to deliver cost

¹⁶⁸ *Nassau Interim Finance Authority 2011 Annual Report (2011)*, http://www.nifa.state.ny.us/reports_financial/annual/2011AnnualReport.pdf; Halbfinger, *New York State Seizes Finances of Nassau County*, *supra* note 107.

¹⁶⁹ See Susan Berfield, *New York's Nassau County Going Broke as No One Wants to Share Pain*, BLOOMBERG (Apr. 14, 2011, 5:00 PM), <http://www.bloomberg.com/news/2011-04-14/new-york-s-nassau-county-going-broke-as-no-one-wants-to-share-fiscal-pain.html>. County Executive Mangano not only resisted NIFA's recommendations but even waged a lawsuit to test the legality of the takeover. *County of Nassau v. Nassau Cnty. Interim Fin. Auth.*, 920 N.Y.S.2d 873, 875 (N.Y. Sup. Ct. 2011). However, Mangano was not the only frustrated political actor. Nassau's police unions also waged a battle with NIFA testing the legality of its wage freeze. *Carver v. Nassau Cty. Interim Fin. Auth.*, 730 F.3d 150, 152 (2d Cir. 2013).

¹⁷⁰ Will James, *Election 2013: Nassau County Executive Wins Re-Election*, WALL ST. J. (Nov. 6, 2013), <http://www.wsj.com/articles/SB10001424052702304391204579180480568844864>. Dean Lawrence Levy of Hofstra University's Suburban Studies Center said “[t]he Republicans came up with a simple but powerful message: ‘Thank you, Ed Mangano, for not raising taxes and for being there for us after Sandy’ ‘Tom Suozzi and the Democrats never came up with an effective answer that resonated as personally and as powerfully with voters.’” *Id.*

¹⁷¹ Rashed Mian, *Tom Suozzi Running for Nassau County Executive . . . Again*, LONG ISLAND PRESS (Feb. 13, 2013), <http://www.longislandpress.com/2013/02/13/tom-suozzi-running-for-nassau-county-executive-again/> (“Nassau County was once the ideal suburb and we can be again.”).

¹⁷² *Ed Mangano vs. Tom Suozzi: Where They Stand on the Issues*, NEWSDAY, <http://www.newsday.com/elections/ed-mangano-vs-tom-suozzi-where-they-stand-on-the-issues-1.6316783#sect-1> (last visited Apr. 12, 2016).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

effective services.¹⁷⁵ Citing the political realities of failed consolidation efforts Suozzi was in favor of “getting different . . . [entities] that want to work together to figure out how to share costs and to save money.”¹⁷⁶ While Suozzi’s policy stance was innovative, he and Weitzman lost their reelection bids to Mangano and Maragos.¹⁷⁷

Since that election, the county has remained in state receivership with no timetable for leaving NIFA control. Compounding this problem for the county is a substantial and seemingly structural loss in sales tax revenue.¹⁷⁸ Consequently, Mangano in 2014 did exactly the opposite of what he campaigned on. After a fervent battle with the County Legislature he raised property taxes in late 2014.¹⁷⁹

Mangano and Maragos have also chosen not to use the auditing function of the Comptroller’s office to examine special district inefficiencies.¹⁸⁰ Although Mangano has sought some cost-saving measures, such as establishing the Long Island Purchasing Counsel in conjunction with Suffolk County, he and Maragos have not actively advanced new intermunicipal activity.¹⁸¹

¹⁷⁵ Dan Janison, *Suozzi Goes for ‘Collaboration’ over ‘Consolidation’*, NEWSDAY (Aug. 18, 2013 6:04 PM), <http://www.newsday.com/long-island/columnists/dan-janison/suozzi-goes-for-collaboration-over-consolidation-1.5913736>.

¹⁷⁶ *Id.* In late 2012 the first consolidation referendum on Long Island—disbanding Hempstead Sanitary District No. 2—failed even with grass roots support by local public interests groups. For more background *see also* Will James, *Residents Try to Take Out Trash District*, WALL ST. J. (Jul. 31, 2012, 10:24 PM), <http://www.wsj.com/articles/SB10000872396390444860104577561133415646876?autologin=y>.

¹⁷⁷ Jennifer Barrios & Ellen Yan, *Edward Mangano Defeats Thomas Suozzi*, NEWSDAY (Nov. 6, 2013), <http://www.newsday.com/long-island/edward-mangano-defeats-thomas-suozzi-1.6379659>.

¹⁷⁸ Memorandum from Maurice Chalmers, Dir., Office of Legis. Budget Review to Hon. Howard Kopel, Chair, Budget Review Comm. & All Members of the Budget Review Comm. (Aug. 20, 2014) <https://www.nassaucountyny.gov/DocumentCenter/View/8919>.

¹⁷⁹ Paul Larocco, *NIFA OKs Nassau’s Budget -- after Pledge to Stop Borrowing for Operating Costs in 4 Years*, NEWSDAY (Nov. 24, 2014 10:19 PM), <http://www.newsday.com/long-island/nassau/nifa-ok-s-nassau-s-budget-after-pledge-to-stop-borrowing-for-operating-costs-in-4-years-1.9650731>.

¹⁸⁰ Soon after the Government Reorganization and Citizen’s Empowerment Act took effect, George Maragos stated that he would not conduct audits of special districts as his predecessor Howard Weitzman had. William Murphy, *Nassau Comptroller’s Special District Policy Knocked*, NEWSDAY (Apr. 1, 2010 9:42 PM), <http://www.newsday.com/long-island/politics/nassau-comptroller-s-special-district-policy-knocked-1.1842798>.

¹⁸¹ Press Release, N.Y. State Ass’n of Counties, Cty. Execs, Mangano & Levy Announce Second Joint Purchase to Achieve Millions in Taxpayer Sav. (Oct. 13, 2011) <http://nysac.org/news/county-voices/county-executives-mangano-and-levy-announce-second-joint-purchase-to-achieve-millions-in-taxpayer-savings/> (“Bulk purchasing is just one of a myriad of ways to reduce costs for all taxpayers,” said County Executive Mangano.

Although they lost the election, Tom Suozzi's and Howard Weitzman's mission to solve the county's long-standing special district was a reminder of the solutions needed to solve the county's structural problems, and the issue remains an important part to the county's future.

II. A SURVEY OF INTERMUNICIPAL LAW IN NEW YORK STATE

New York State law provides for consolidation, dissolution, and intermunicipal cooperation between local governments. But while consolidation or dissolution might provide greater cost savings over time (although this has been disputed by some for the lack of empirical evidence),¹⁸² cooperative frameworks are inherently more nimble and involve fewer transaction costs. This next section unpacks both frameworks as they are implemented in New York State, as well as the state's implementation of the property tax cap, property tax freeze and local government grants in an attempt to incentivize more intermunicipal activity.

A. Consolidation and Dissolution After the New New York Government Reorganization and Citizen Empowerment Act

The Reorganization and Citizen Empowerment Act allows for both consolidation and dissolution.¹⁸³ The Act provides for two types of consolidation—"board initiated" by the entity itself and "voter ini-

"By working together, we can and will assist all municipalities in achieving cost-savings."); see also LONG ISLAND PURCHASING COUNCIL, <http://www.lipurchasingcouncil.org>; Press Release, Comptroller Maragos: Special Dists. & Villages Should be Judged on Merit by their Local Cntys. (Mar. 23, 2009), <http://archive.nassaucountyny.gov/agencies/Comptroller/specialdistrictspolicy.html> ("The Comptroller's Office will not be advocating broad consolidation or dissolution of special districts," said Comptroller Maragos. "I have not seen any credible formal analysis that would support the wholesale consolidation of special districts and villages in Nassau County.").

¹⁸² See Warner, *infra* note 328.

¹⁸³ The act is codified in N.Y. GEN. MUN. LAW Art. 17-A; N.Y. MUN. HOME RULE LAW § 33-a.; N.Y. TOWN LAW § 57, 81, 174, 176, 195, 202-c, 208-b, 209-q; N.Y. VILLAGE LAW § 2-254, 9-912; and N.Y. LOCAL FIN. LAW § 2.00, 24.00. For an easy to read flowchart giving point by point analysis, see Andrew Cuomo, *The New N.Y. Government Reorganization and Citizen Empowerment Act: A Summary of the Process for Consolidation and Dissolution*, N.Y. STATE DEP'T OF STATE (June 2009) 2, 6, 11, 14, <http://www.dos.ny.gov/lg/publications/ConsolidationDissolutionProcedures-summary.pdf> [hereinafter Cuomo, *Consolidation Summary Report*].

tiated” by referendum—and three types of dissolution—”board initiated,” “voter initiated,” and “county initiated.”¹⁸⁴ Additionally, not all government units may be dissolved or consolidated. Lawmakers carved out exceptions for school districts, as well as special districts created by a county.¹⁸⁵

Under a consolidation framework, a local government unit can either be absorbed into another, or merged together to form an entirely new unit. Importantly, a local government unit cannot act unilaterally to consolidate. It must find a partner. In the case of voter-initiated consolidation, the voters organizing the referendum must find the partners themselves.¹⁸⁶ Both types of consolidation require a “joint consolidation agreement” with an accompanying impact study.¹⁸⁷ To accomplish this, New York State suggests designating a

¹⁸⁴ *Id.* at 1, 5, 10, 13, 18.

¹⁸⁵ N.Y. GEN. MUN. LAW § 750(13).

¹⁸⁶ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 5.

¹⁸⁷ N.Y. GEN. MUN. LAW § 750(12) (“Joint consolidation agreement” shall mean a written document that contains terms and information regarding the consolidation of two or more local government entities and that has been finalized and approved by the governing body or bodies of such entities pursuant to this article.”); N.Y. GEN. MUN. LAW § 752(2)(a)-(m). Any agreement must specify:

(a) the name of each local government entity to be consolidated; (b) the name of the proposed consolidated local government entity, which name shall be such as to distinguish it from the name of any other like unit of government in the state of New York (except the name of any one of the entities to be consolidated); (c) the rights, duties and obligations of the proposed consolidated local government entity; (d) the territorial boundaries of the proposed consolidated local government entity; (e) the type and/or class of the proposed consolidated local government entity; (f) the governmental organization of the proposed consolidated local government entity insofar as it concerns elected and appointed officials and public employees, along with a transitional plan and schedule for elections and appointments of officials; (g) a fiscal estimate of the cost of and savings which may be realized from consolidation; (h) each entity's assets, including, but not limited to, real and personal property, and the fair value thereof in current money of the United States; (i) each entity's liabilities and indebtedness, bonded and otherwise, and the fair value thereof in current money of the United States; (j) terms for the disposition of existing assets, liabilities and indebtedness of each local government entity, either jointly, separately or in certain defined proportions; (k) terms for the common administration and uniform enforcement of local laws, ordinances, resolutions, orders and the like, within the proposed consolidated local government entity, consistent with section seven hundred sixty-nine of this title; (l) the effective date of the proposed consolidation; and (m) the time and place or places for the public hearing or hearings on such proposed joint consolidation agreement pursuant to section seven hundred fifty-four of this title.

study group and bringing in public input early on into the process.¹⁸⁸ In cases of voter-initiated consolidation, this process would not start until after a successful referendum.¹⁸⁹

Board-initiated consolidation starts with a proposed resolution by all participating local government units.¹⁹⁰ The proposed agreement must be made readily available in a public place, posted on each municipality's website. The government units must provide a summary of the agreement in "a newspaper having a general circulation within each entity."¹⁹¹ The publication is followed by a public hearing in each entity.¹⁹² After the last public hearing, a municipality may decline or amend the agreement, in which the amendment must be agreed to by its partner government units and posted publicly as well.¹⁹³

Under the new law, if the parties to the board-initiated agreement are only special districts then the entities do not need to hold a referendum.¹⁹⁴ But if a party to the agreement is anything else, a referendum in each municipality must be held between 60-90 days from the time of the passing of the final agreement.¹⁹⁵

Awareness of the election is again an important feature at this stage with the law requiring publication of notice in a newspaper of general circulation four weeks before the referendum. And importantly, if the referendum fails, a new consolidation process may not be "initiated for the same purpose within four years of the date of such referendum."¹⁹⁶

Voter-initiated consolidation involves a different procedural process and a great deal of coordination from actors outside the local governments involved.¹⁹⁷ It starts with petitions for each government entity being consolidated, a model of which can be found in Section 757(3).¹⁹⁸ The petition must contain "at least 10 percent of the voters

N.Y. GEN. MUN. LAW § 751(2)(a)-(m).

¹⁸⁸ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 1.

¹⁸⁹ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 5.

¹⁹⁰ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 1.

¹⁹¹ N.Y. GEN. MUN. LAW § 753(1)-(3) (McKinney 2016).

¹⁹² *Id.* at § 754(1)-(2).

¹⁹³ *Id.* at § 754(3)-(4).

¹⁹⁴ *Id.* at § 755.

¹⁹⁵ *Id.* at § 758.

¹⁹⁶ N.Y. GEN. MUN. LAW § 759(4).

¹⁹⁷ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 5.

¹⁹⁸ N.Y. GEN. MUN. LAW § 757(3).

in each government entity or 5000 signatures.”¹⁹⁹ This petition is filed with the clerk of the town of the largest entity being consolidated.²⁰⁰ If there are a sufficient number of signatures, the local government entities affected must then have a referendum, with the same notice and time limitation requirements as with board-initiated consolidation.²⁰¹ And as with board-initiated consolidation, if the referendum fails, another one cannot occur for four years.²⁰² But if the referendum succeeds, the affected government units must meet within 30 days after the referendum’s certification and propose a joint-consolidation plan.²⁰³ To complicate things further, voters may file a petition to require a second referendum within 45 days after the agreement is approved.²⁰⁴ This petition requires the signatures of either 25 percent of voters, or 15,000 signatures in each entity—a higher percentage than the first referendum.²⁰⁵

Importantly, because threatened local government officials can effectively halt voter-initiated consolidation through intentional inactivity or impropriety, the law provides for court enforcement and judicial review at various points in the process.²⁰⁶ During the qualifying-petition stage, a voter who signed the petition may seek judicial review if a town or village determines the petition has insufficient signatures.²⁰⁷ In cases where local officials fail to comply with a voter-initiated consolidation, the Reorganization and Citizen Empowerment Act also provides for court-ordered consolidation.²⁰⁸ This procedure is invoked when governing bodies fail to “prepare and approve a dissolution plan” or are “unable or unwilling” to implement a consolidation.²⁰⁹ In these cases, “any five electors who signed” the consolidation petition may implement an Article 78 pro-

¹⁹⁹ *Id.* at § 757. “[H]owever, that where the local government entity to be consolidated contains five hundred or fewer electors, the petition shall contain the signatures of at least twenty percent of the number of electors.” § 757(2).

²⁰⁰ *Id.* at § 757(1). “[I]f one or more of the entities to be consolidated is a village the original petition of electors from the village shall be filed with the clerk of the village.”

²⁰¹ *Id.* at § 758(3); § 758(1).

²⁰² *Id.* at § 759(4).

²⁰³ N.Y. GEN. MUN. LAW § 760(1).

²⁰⁴ *Id.* at § 763(2).

²⁰⁵ *Id.* at § 763(3).

²⁰⁶ *Id.* at § 980-h(c).

²⁰⁷ *Id.* at § 757(6); 763(4).

²⁰⁸ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 14.

²⁰⁹ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 5, 14.

ceeding.²¹⁰ Under Section 764, state courts not only have the power to order consolidation when resisted, but can order mediations and appoint a judicial hearing officer to supervise.²¹¹

Board-initiated and voter-initiated dissolution have nearly identical procedures to their counterparts and require a similar thorough implementation plan.²¹²

The Reorganization and Empowerment Act also provides for one additional procedure called county-initiated dissolution, in which the legislative body of a county has the power to abolish any unit of local government entirely within its boundaries.²¹³ Before the law, counties had the ability to delegate functions among governmental units.²¹⁴ Now under the new provision, a county can dissolve a governmental unit when all of its functions have been transferred, and therefore the unit has no further obligation.²¹⁵ That said, a county may not dissolve a governmental unit without the approval of voters by referendum. The dissolution must not only receive a majority of votes within the affected municipality, but a majority of voters in the county.²¹⁶

Success under the Government Reorganization and Citizen Empowerment Act has been limited. As of 2012, five villages in the state have approved dissolution—Altmar, Perrysburg, East Randolph, Randolph, and Seneca Falls.²¹⁷ Notably, none of these dissolutions occurred on Long Island. And as expected, there have been more failures than successes in that period: the villages of Whitesboro, Cuba, Farnham, Lakewood, North Collins, Odessa, Sloan and Williamsville, as well as the villages Brockport and Port Henry, which at-

²¹⁰ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 5, 14. N.Y. C.P.L.R. Art. 78 codifies original writs of mandamus and prohibition into a statutory civil cause of action and civil proceeding against public officials.

²¹¹ N.Y. GEN. MUN. LAW § 764(1), (3).

²¹² *Id.* at § 773-90. The requirements for proposed dissolution plans are outlined in § 774.

²¹³ N.Y. MUN. HOME RULE LAW § 33-a (McKinney 2016).

²¹⁴ Cuomo, *Consolidation Summary Report*, *supra* note 183, at 18.

²¹⁵ N.Y. MUN. HOME RULE LAW § 33-a.

²¹⁶ *Id.* Further, if the dissolution affects the duties of other municipalities, those affected municipalities must also approve. *Id.*

²¹⁷ Anderson, *Dissolving Cities*, *supra* note 35, at Appendix A, http://www.yalelawjournal.org/images/documents/121.5.anderson_appendices.pdf. Professor Anderson's appendices are mightily useful for this discussion. It appears quite difficult to capture the number of dissolutions and failed attempts. Curiously enough, while her appendices are labeled "Approved Dissolutions 1857–2010," the appendices themselves contain entries after 2010.

tempted dissolution in both 2009 (under the old law), and 2010 under the new law.²¹⁸

B. Cooperative Frameworks Under New York State Law

Like consolidation and dissolution, intermunicipal cooperation through intermunicipal agreements and shared services requires legal authority. Although a creature of contract, intermunicipal coordination is specifically laid out in New York's Constitution allowing a municipality to achieve its obligations by engaging with another governmental unit:

Local governments shall have power to agree, as authorized by act of the legislature, with the federal government, a state or one or more other governments within or without the state, to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power to provide separately. Each such local government shall have power to apportion its share of the cost thereof upon such portion of its area as may be authorized by act of the legislature.²¹⁹

²¹⁸ *Id.* at Appendix B.

²¹⁹ N.Y. Const. Art. IX, § 1(c). In addition Art. VIII, Section 1 provides for shared services in local government finance:

[T]wo or more such units may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of such units has the power to provide separately. Each such unit may be authorized by the legislature to contract joint or several indebtedness, pledge its or their faith and credit for the payment of such indebtedness for such joint undertaking and levy real estate or other authorized taxes or impose charges therefor subject to the provisions of this constitution otherwise restricting the power of such units to contract indebtedness or to levy taxes on real estate. The legislature shall have power to provide by law for the manner and the proportion in which indebtedness arising out of such joint undertakings shall be incurred by such units and shall have power to provide a method by which such indebtedness shall be determined, allocated and apportioned among such units and such indebtedness treated for purposes of exclusion from applicable constitutional limitations, provided that in no event shall more than the total amount of indebtedness incurred for such joint undertaking be included in ascertaining the power of all such participating units to incur indebtedness. Such law may provide that such determination, allocation and apportionment shall be conclusive if made or approved by the comptroller.

In addition, the General Municipal Law codifies the state's plenary grant of authority to allow local governments to meet their needs through collaborative schemes.²²⁰ This enabling statute—Article 5-G—allows any number of local government entities to share responsibilities through two different types of “joint service” agreements.²²¹ The first is where one or more municipalities jointly perform a service by pooling resources together.²²² The second type is a “provider-recipient” agreement where one municipality performs a service for another.²²³

The statute places few restrictions on local governments entering into agreements. One limitation is that a local entity may only participate in an agreement for those functions that it was empowered to perform individually.²²⁴ The second restriction is that each municipal entity must have approved the agreement by at least a majority vote.²²⁵ Third, the law requires due process measures if such a measure would be normally required to carry out the service.²²⁶

Interestingly, Article 5-G does not require an agreement be committed to writing (although the Comptroller's Office strongly recommends this and with good reason: “[m]ore than one-fifth of sharing arrangements are informal understandings between local officials”).²²⁷ But it does enumerate several areas where an agreement may have specified provisions, provides for a default term of five

This provision shall not prevent a county from contracting indebtedness for the purpose of advancing to a town or school district, pursuant to law, the amount of unpaid taxes returned to it.

N.Y. Const. Art. VIII, § 1. For an informative write up on legal authority for intermunicipal cooperation read OFFICER OF THE NEW YORK STATE COMPTROLLER, INTERMUNICIPAL COOPERATION AND CONSOLIDATION: EXPLORING OPPORTUNITIES FOR SAVINGS AND IMPROVED SERVICE DELIVERY 15-17 (2007) <http://www.osc.state.ny.us/localgov/pubs/research/cooperation1.pdf> [hereinafter COOPERATION AND CONSOLIDATION].

²²⁰ *Id.*

²²¹ See N.Y. GEN. MUN. LAW § 119-m—o.

²²² COOPERATION AND CONSOLIDATION, *supra*, note 219, at 15.

²²³ *Id.*

²²⁴ N.Y. GEN. MUN. LAW § 119-o(1); see COOPERATION AND CONSOLIDATION, *supra* note 219, at 15.

²²⁵ N.Y. GEN. MUN. LAW § 119-o(1); see COOPERATION AND CONSOLIDATION, *supra* note 219, at 15.

²²⁶ N.Y. GEN. MUN. LAW § 119-o(1); see COOPERATION AND CONSOLIDATION, *supra* note 219, at 15.

²²⁷ COOPERATION AND CONSOLIDATION, *supra* note 219, at 16. A REFORM THAT WORKS, *infra* note 331, at 1.

years, and a residual clause for anything “reasonably necessary and proper to effectuate and progress the joint service.”²²⁸

While Section 119-o allows for wide latitude for intermunicipal agreements, it does require a degree of specificity for “mutual sharing plans” (or shared service agreements) including describing (1) the necessary officers and employees required to execute the agreement, (2) “any limitations on joint services that may be rendered” as a result of the plan, and (3) providing notice to the necessary governing bodies.²²⁹ Mutual sharing plans also require that a service receiver be “liable and responsible” to the service provider for its share of the service.²³⁰

New York law allows the creation not only of intermunicipal agreements between local government units, but also new entities to create in planning and cost purchasing called “intergovernmental relations councils.”²³¹ These councils are central forums and can contain any combination of local governmental units.²³² Councils must also adopt bylaws, and elect a chairman, secretary, along with other necessary officers.²³³ Section 239-n legally empowers these councils to conduct research and studies as well as being a central hub for co-operative purchasing, among other powers.²³⁴ Intergovernmental re-

²²⁸ N.Y. GEN. MUN. LAW § 119-o(2)(a)-(m); *see* COOPERATION AND CONSOLIDATION, *supra* note 219, at 16. The Comptroller’s office paraphrased the various provisions suggested: (1) “A method or formula for equitably allocating revenues and costs;” (2) “[t]he manner of employing and compensating personnel;” (3) “[t]he acquisition, ownership, custody, operation, maintenance, and lease and sale of property;” (4) “[t]he manner of handling any liabilities that might be incurred in the operation of the joint service and obtaining adequate insurance coverage;” (5) “[c]ustody by the fiscal officer of one of the participants of any or all moneys made available for expenditure for the joint service, and authorize for that fiscal officer to make payments on audit of the auditing official or body of his or her municipal corporation or district;” (6) “[p]eriodic review of the agreement, including terms relating to its duration, extension or termination;” and (8) “[a]djudication of disputes or disagreements.” COOPERATION AND CONSOLIDATION, *supra* note 219, at 16.

²²⁹ N.Y. GEN. MUN. LAW § 119-o(3)(a); COOPERATION AND CONSOLIDATION, *supra* note 219, at 16.

²³⁰ N.Y. GEN. MUN. LAW § 119-o(3)(b); COOPERATION AND CONSOLIDATION, *supra* note 219, at 16.

²³¹ N.Y. GEN. MUN. LAW § 239-n; *see* COOPERATION AND CONSOLIDATION, *supra* note 219, at 17.

²³² N.Y. GEN. MUN. LAW § 239-n; *see* COOPERATION AND CONSOLIDATION, *supra* note 219, at 17.

²³³ N.Y. GEN. MUN. LAW § 239-n.

²³⁴ *Id.* Under § 239-n, all of the powers of intergovernmental councils are:

[a.] Make surveys and studies and conduct research programs to aid in the solution of local governmental problems and in efforts to improve administration and services; [b.] Provide for the distribution of infor-

lations councils have been used in a variety of ways to increase collaboration among municipalities.²³⁵

Surprisingly enough, even with the vast freedom New York's intermunicipal coordination law provides, case law arising under § 119 is sparse. New York courts have determined that municipal police forces have jurisdiction where they engage in joint protection agreements.²³⁶ They've also determined that even when a municipal corporation is comprised of consortiums of local government, it still retains its legal status and protections as a municipal corporation.²³⁷ These decisions appear to be quite intuitive. For example, a consolidated joint police officer board would have the ability to hire and fire

mation resulting from such surveys, studies and programs; [c.] Consult and cooperate with appropriate state, municipal and public or private agencies in matters affecting municipal government; [d.] Devise practical ways and means for obtaining greater economy and efficiency in the planning and provision of municipal services and make recommendations in accordance therewith; [e.] Promote the general commercial, industrial and cultural welfare of the participating municipalities; [f.] Otherwise promote strong and effective local government, public health, safety, morals and general welfare by means of local and intercommunity planning or performance of municipal services. [g.] Employ such persons and adopt such rules and regulations as shall be necessary and proper to effectuate the purposes of this section; [h.] Provide a forum for local governments to explore and develop areas for municipal cooperative activities pursuant to article five-G of this chapter; [i.] Operate as a purchasing consortium, where authorized by participating municipalities, for the purpose of obtaining economies through joint bidding and purchasing; [j.] Purchase and make available to participating municipalities, where authorized by participating municipalities, goods and equipment, including but not limited to computer hardware and software; [and] [k.] Gather and make available information on surplus goods and equipment for sale or lease.

²³⁵ See, e.g., Part III *infra* talking about the Long Island Purchasing Council, Long Island Water District Commissioner's Association and Nassau BOCES.

²³⁶ *Old Brookville Policeman's Benev. Ass'n, Inc. v. Incorporated Village of Muttontown*, 942 N.Y.S.2d 323, 326 (N.Y. Sup. Ct. 2012); *People v. Greenfield*, 808 N.Y.S.2d 919 (Justice Court, Village of Muttontown, New York 2005).

²³⁷ *Madison-Oneida-Herkimer Consortium v. North American Administrators, Inc.*, 765 N.Y.S.2d 184, 189 (N.Y. Sup. Ct. 2003) (citing *Matter of Passino v. Jefferson-Lewis School Employees Healthcare Plan*, 716 N.Y.S.2d 229 (N.Y. App. Div. 4th Dep't 2000) ("municipal cooperative health benefit plan created [under] § 119-o was an 'agency' subject to Freedom of Information Law requests because it was created to benefit public employers"); *American Ref-Fuel Co. of Niagara, L.P. v. Northeast Southtowns Waste Management Board*, 737 N.Y.S.2d 494 (N.Y. App. Div. 4th Dep't 2002) ("contract dispute between waste hauler and municipal consortium for waste management created [under] § 119-o concerned a 'public contract'"); *Rice v. Cayuga-Onondaga Healthcare Plan*, 599 N.Y.S.2d 344, 346 (N.Y. App. Div. 4th Dep't 1993).

employees.²³⁸ Additionally, courts have occasionally enforced statutory requirements of these intermunicipal agreements when they have been insufficient.²³⁹

C. The Property Tax Cap And Property Tax Freeze

1. The Property Tax Cap

The Property Tax Cap is a rather simple “blunt” force instrument.²⁴⁰ Section 3-c of New York’s General Municipal law imposes a cap on a municipal government’s tax levy by the lesser of “(i) one and two one-hundredths; or (ii) the sum of one plus the inflation factor; provided, however, that in no case shall the levy growth factor be less than one.”²⁴¹ And while two percent is a nice round number, according to the Comptroller the ladder inflation factor formulation will most likely be the limit imposed year to year.²⁴² The final number is also augmented by a series of exceptions including the growth of the tax base, school district capital expenditures, shared service agreements, consolidation or dissolution of the government within the fiscal year and creation of a new government.²⁴³ Additionally, the rate for each local government is calculated by the New York State Commissioner of Taxation.²⁴⁴

However, it is up to the local government to come up with its budget. And if the local government wants to, it may “pierce” the cap with a vote of 60 percent of its members.²⁴⁵ School districts are an exception, with “voting strength” being the yearly school budget vote.²⁴⁶

²³⁸ Thompson v. Lent, 383 N.Y.S.2d 929,, 932 (N.Y. App. Div. 3d Dep’t 1976)

²³⁹ Town of Oneonta v. City of Oneonta, 594 N.Y.S.2d 838, 838-839 (N.Y. App. Div. 3d Dep’t 1993).

²⁴⁰ E.J. McMAHON, THE CASE FOR THE CAP: WHY AND HOW IT CAN WORK IN NEW YORK 3 (Empire Center 2011) <http://www.empirecenter.org/publications/the-case-for-a-cap/>.

²⁴¹ N.Y. GEN. MUN. LAW § 3-c. (2011) (effective June 26, 2015).

²⁴² Thomas P. DiNapoli, *Three Years of the Tax Cap: Impact On School Districts*, NEW YORK STATE OFFICE OF THE COMPTROLLER (2015), <http://www.osc.state.ny.us/localgov/pubs/research/snapshot/schooldistricttaxcap0215.pdf> [hereinafter THREE YEARS OF THE TAX CAP].

²⁴³ *Id.*

²⁴⁴ N.Y. GEN. MUN. LAW § 3-c (2011) (effective June 26, 2015).

²⁴⁵ THREE YEARS OF THE TAX CAP, *supra* note 242.

²⁴⁶ *Ibid*; N.Y. EDUC. LAW § 2023. (2011). Curiously enough, Section 2023 was unsuccessful.

While the Property Tax Cap has been considered a success by its political proponents, it has its detractors. One commentator was frustrated that the law “doesn’t exclude from the computation of the previous year’s tax levy amount, repayment of principal and interest on previously issued general obligation municipal bonds . . .” and doesn’t exclude “repayment of principal and interest on previously issued revenue bonds.”²⁴⁷ Other frustrations have been that the cap does not deal with a larger structural problem of federal and state unfunded mandates that municipalities are obligated to perform.²⁴⁸

The most overarching concerns about property tax caps are whether they achieve equitable aims and also whether municipalities can maintain the same level of service delivery under their constraints. A property tax cap is not a new idea. There are at least 21 states with some form of the device.²⁴⁹ The first kind of property tax cap was passed in 1978 by California’s voters as part of a “tax revolt” movement that swept the country during the late 1970s and 1980s.²⁵⁰ In passing Proposition 13, California’s voters instituted a cap on the property tax levy, and instituted a cap on how much a property could be assessed by.²⁵¹ New York City and Nassau County have their own versions of the assessment cap.²⁵² An assessed home value cannot increase by more than 6 percent in any one year, or more than 20 percent over a five year period.²⁵³

Assessment caps can be problematic for a few reasons. The first is when and if at all to reassess properties when they are sold.²⁵⁴

fully challenged as violating the New York State Constitution; *New York State United Teachers ex rel. Iannuzzi v. State*, 993 N.Y.S.2d 475 (N.Y. Sup. 2014).

²⁴⁷ Kenneth S. Kamlet, *Land Banking, Tif Amendments, And The Tax Cap: What The Heck Do They Have In Common?*, 85 N.Y. ST. B.J. 30, 35 (May, 2012).

²⁴⁸ Patricia E. Salkin & Charles Gottlieb, *Engaging Deliberative Democracy At The Grassroots: Prioritizing The Effects Of The Fiscal Crisis In New York At The Local Government Level*, 39 FORDHAM URB. L.J. 727, 744-55 (2012).

²⁴⁹ Andrew T. Hayashi, *Property Taxes and Their Limits: Evidence From New York City*, 25 STAN. L. & POL’Y REV. 33, 37-38 n.4 (2014) (citing MARK HAVEMAN & TERRI A. SEXTON, LINCOLN INST. OF LAND POL’Y, PROPERTY TAX ASSESSMENT LIMITS 11 (2008), http://www.lincolninst.edu/pubs/1412_Property-Tax-Assessment-Limits.).

²⁵⁰ MCMAHON, *supra* note 240.

²⁵¹ Hayashi, *supra* note 249, at 37-38.

²⁵² MCMAHON, *supra* note 240.

²⁵³ N.Y. RP Tax LAW § 1805; (1981) (effective June 22, 2010); *see O’Shea v. Board of Assessors of Nassau County*, 864 N.E.2d 1261 (N.Y. 2007).

²⁵⁴ *See Hayashi, supra* note 249, at 37-38. (explaining how both California and Florida “permit annual adjustments to assessed values at the lower of a specified rate and the rate of inflation,” but resetting the market value can discourage “long time home owners from mov-

The second is that assessment caps can redistribute property tax burdens as home prices unevenly increase, which generally tends to benefit more valuable properties over less valuable ones.²⁵⁵

New York's property tax cap on the other hand is not an assessment cap, and is most similar to Massachusetts' cap, which limits the total amount of revenues that can be collected.²⁵⁶ Proposition 2½ gets its name from its 2.5% municipal tax cap.²⁵⁷ And similar to New York's cap, the cap can be overridden by a majority vote.²⁵⁸ Detractors of the Massachusetts cap cite an increase in reliance on state aid.²⁵⁹ On the other hand, proponents of the Massachusetts cap tout the roughly forty percent success rate of cap overrides as evidence of meaningful choice for residents, and that that the cap has not caused services to deteriorate.²⁶⁰ For example, despite over two decades of the tax limitation, proponents cite Massachusetts's schools rank among the best in the nation and still spend well above the national average per pupil.²⁶¹

It is difficult to determine the results of New York State's property tax cap given its relative infancy and that the State Comptroller only has limited data available. The Comptroller has found that property tax levy growth has slowed since the enactment of the property tax cap.²⁶² But that slowdown could be attributed to residual effects of the housing market collapse and "citizen concerns over the high tax burden even before the property tax cap was enacted."²⁶³

ing out" because of the large increase in taxes they would experience if they were to move homes, and New York and Nassau's assessment cap on the other hand does not reset values upon the sale of the home.).

²⁵⁵ Hayashi, *supra* note 249, at 37-51 (finding the benefits accrued from New York City's assessment cap go to the most valuable properties in the city). Hayashi, *supra* note 249, at 45-46.

²⁵⁶ Hayashi, *supra* note 249, at 37-38 n.14 (citing *Property Tax Limitation in Massachusetts*, 71 J. PUB. ECON. 313 (1999)); McMAHON, *supra* note 240.

²⁵⁷ M.G.L.A. LAWS 59, § 21C (1980) (effective Aug. 14, 2007).

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ See McMAHON, *supra* note 240, at 13-14. State aid as a percentage of local revenues increased from 28 percent in 1980 to 36 percent in 2005. *Id.*

²⁶¹ *Id.* at 13. (showing that Massachusetts schools spent \$13,454 per pupil in 2008, the eighth highest in the nation).

²⁶² Thomas DiNapoli, *2014 Annual Report on Local Governments*, OFFICE OF THE NEW YORK STATE COMPTROLLER at 4 (Jan. 2015), <http://www.osc.state.ny.us/localgov/datanstat/annreport/14annreport.pdf> ("Property tax levy growth has slowed over the last several years, from a peak increase of 7.7 percent in local fiscal year ending (FYE) in 2003 to 2.0 percent aggregate increase in FYE 2013.").

²⁶³ *Id.*

2. *The Property Tax Freeze*

Comparatively, the property tax freeze acts as an incentive to local governments rather than a constraint (although some taxpayers would probably like to tell their local government officials it's a constraint!). Under § 3-d of New York's General Municipal Law, the property tax freeze is more specifically a real property tax credit that reimburses homeowners for the years increase in their property taxes.²⁶⁴

Enacted in 2014, in the first year of the freeze, homeowners receive a reimbursement if their local government unit does not pierce the property tax cap.²⁶⁵ And in the second year, homeowners receive a tax credit if their local government is both compliant with the tax cap and additionally files an efficiency plan that is approved by the State Division of Budget.²⁶⁶ Approved efficiency plans demonstrate "three years of savings and efficiencies of at least one percent per year from shared services, cooperation agreements and/or mergers or efficiencies over the aggregate tax levies."²⁶⁷ There is also incentive to submit plans jointly. While local governments can submit individual plans, counties are encouraged to submit county-wide or regional-wide plans to facilitate wider coordination.²⁶⁸

D. **Grants Lowering Transaction Costs of Intermunicipal Activity**

Municipal consolidation, dissolution, and coordination all enable local governments to reduce costs. And New York State has actively sought in recent years to incentivize this behavior.²⁶⁹ Section 54 of New York State Finance Law provides the legal framework for the Local Government Efficiency Grant and the Local Government

²⁶⁴ N.Y. GEN. MUN. LAW § 3-d; *see* NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, NEW YORK STATE PROPERTY TAX FREEZE: FACTS SHEET (2014) http://www.tax.ny.gov/pdf/publications/orpts/rp5301fs_prop_tax_facts.pdf. Also important to know, the tax reimbursements are for homeowners that qualify under the STAR tax exemption. To qualify, the property must be the homeowner's primary residence, have a total household income of \$500,000 or less, and live outside of New York City's boundaries. N.Y. TAX LAW § 606.(H) at (2)(i)(a) – (3)(ii)(a).

²⁶⁵ N.Y. GEN. MUN. LAW § 3-d(1).

²⁶⁶ *Id.* at § 3-d.

²⁶⁷ *Id.* at § 3-d(3).

²⁶⁸ *Id.* at § 3-d(4).

²⁶⁹ *See* N.Y. STATE FIN. LAW § 54.

Citizens Re-organization Empowerment Grant programs.²⁷⁰ Set forth in N.Y. Finance Law Section 54, both programs have been continually renewed by the state legislature.²⁷¹

III. ASSESSING NEW-REGIONALIST ASSUMPTIONS AND DEFINING THEMES OF INTERMUNICIPAL ACTIVITY

A. “New Regionalist” Paradigms Can Achieve Equitable Aims

According to Professor Michelle Wilde Anderson, “local government law as an academic field grew up amidst the postwar suburban boom and the toll it took on older core cities.”²⁷² Thus, much of the scholarship in the area tends to focus on the relationship between the suburb and its “central city.”²⁷³ Encircling this concept, scholarship has sought to analyze intermunicipal cooperation from varying lenses. Some from the lens of public choice theory,²⁷⁴ while other paradigms lay in the microeconomic decision making of the firm.²⁷⁵ Still others look at the locality’s decision making as a problem of rational choice or game theory.²⁷⁶ Often prominent—at least in the economic discussion—is the idea of allocative efficiency among coordination municipalities.²⁷⁷ For example, the level of service provided might be inefficient in one municipality, but can be mitigated by another locality’s assistance in order to reach the optimal level of service.

And of course societal and political underpinnings play an important role in the discussion. Many scholars that focus on suburb to

²⁷⁰ *Id.*

²⁷¹ *See id.*

²⁷² *Dissolving Cities*, *supra* note 35, at 1428.

²⁷³ Clayton P. Gillette, Regionalization And Interlocal Bargains, N.Y.U. L. REV. 190, 190 n.1 [hereinafter *Interlocal Bargains*] (listing recent scholarship); *see, e.g.*, Clayton P. Gillette, *The Conditions of Interlocal Cooperation*, 21 J.L. & Pol. 365, 366 (2005) [hereinafter *Conditions of Interlocal Cooperation*]; Symposium on Regionalism, 48 BUFF. L. REV. 1 (2000).

²⁷⁴ *See, e.g.*, Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. OF POL. ECON. 416 (1956).

²⁷⁵ *See, e.g.*, *Interlocal Bargains*, *supra* note 273.

²⁷⁶ *See, e.g.*, *Conditions of Interlocal Cooperation*, *supra* note 273; Richard Briffault, *Our Localism* (pts. 1-2), 90 COLUM. L. REV. 1, 346 (1990) [hereinafter *Our Localism*].

²⁷⁷ *See, e.g.*, *Interlocal Bargains*, *supra* note 273, at 210.

city interaction conclude or start off with the underlying assumption that suburbs exploit their poorer metropolitan neighbors.²⁷⁸ However, some scholars in the field have recently taken a more nuanced approach, finding that high-poverty concentration is just as likely to occur in suburbs too.²⁷⁹ For example, “white flight, population loss, and economic abandonment” in rustbelt cities like Detroit and Buffalo are more accurately explained through a binomial suburb-city framework,²⁸⁰ while New York City’s relationship with Long Island in 2015 should more likely be explained through a different paradigm as both New York City and its suburbs have evolved. On the other hand, shades of Federalism lurk in the background in explaining the current dominant institutional order.²⁸¹ And others cite Montesquieu to support theories that decentralized local government produces an efficient distribution of the desired level of services in any given locality.²⁸²

Although the scholarship is diffuse with varying theoretical frameworks, there is a recurring set of concerns when thinking about institutional design. The first concern is what form of government organization is the most optimal yet also politically attainable? That debate has been defined by three paradigms: localism, regionalism, and “new regionalism” (essentially trying to adopt the principle of regionalism while working within a localism framework).²⁸³ The second concern is the ordinal priority of the institutional design: efficiency versus equity. This concern is also sometimes predicated on the two virtues being mutually exclusive.²⁸⁴

²⁷⁸ See, e.g., Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008) [hereinafter *Cities Inside Out*]; Ashira Pelman Ostrow, *Emerging Counties? Prospects for Regional Governance in the Wake of Municipal Dissolution*, 122 YALE L.J. ONLINE 187, 189-91 (2013).

²⁷⁹ Richard Briffault, *Localism And Regionalism*, 48 BUFF. L. REV. 1, 11-12 (2000) (“[T]he concentration of poverty in a relative small number of metropolitan area consensus tracts is not a product solely of the local government system. Much broader economic and social factors are at work. . . . But the local government system contributes to the problem.”).

²⁸⁰ See *Dissolving Cities*, supra note 35, at 1430 for a discussion on defining the city-suburb relationship as scholarship has developed.

²⁸¹ See William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 FORDHAM L. REV. 57, 91-117 (1999).

²⁸² *Interlocal Bargains*, supra note 273, at 208; see generally Robert P. Inman & Daniel L. Rubinfeld, *The Political Economy of Federalism*, in *Perspectives on Public Choice* 73, 83-85 (Dennis C. Mueller ed., 1997).

²⁸³ Ostrow, supra note 278, at 187; Briffault, *Localism And Regionalism*, supra note 279.

²⁸⁴ Ostrow, supra note 278, at 187; but see Briffault, *Localism And Regionalism*, supra note 279.

Localism is the idea that having many dispersed and small local governments is most optimal in allocating resources and setting local policy, including land use, taxes, and providing services.²⁸⁵ Professor Briffault has identified three arguments for decentralization of power in a given region: efficiency, democracy and community.²⁸⁶ The efficiency argument originated with public choice theorist Charles Tiebout who saw local government and service delivery as a public good. The more local governments, the more consumer choice, and more consumer choice means the more efficient sorting of people into localities when it comes to how much someone is willing to pay.²⁸⁷ Another way of putting it, decentralization allows for maximum efficiency. The second and third arguments for localism are that it provides for more citizen democracy and stronger communities because of greater homogeneity in shared values.²⁸⁸

On the other hand, regionalism recognizes that people don't necessarily act day to day within their locality and actually most likely interact with a much larger community of people. Proponents of regionalism seek to establish formal regional governments that have jurisdictional power over their smaller municipal units.²⁸⁹ From this perspective, proponents see the region as "a real economic, social and ecological unit."²⁹⁰ It is not localities that determine the housing market, or the labor market, but the larger region collectively. And especially in today's inter-connected world, a regional system can implement policies adapting to the conditions of the global economy.²⁹¹ The most common pure regionalist approach is large-scale consolidation in favor of straightforward centralization of services.²⁹²

But, regionalism's virtues must confront the existing order of governmental organization. This is because regions for the most part

²⁸⁵ Briffault, *Localism And Regionalism*, *supra* note 279.

²⁸⁶ *Id.*

²⁸⁷ *Id.* (citing Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. OF POL. ECON. 416 (1956)).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ Briffault, *Localism And Regionalism*, *supra* note 279, at 3-4.

²⁹¹ *Id.* at 5.

²⁹² Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1766-91 (2002) (discussing the quest for regional government); DAVID RUSK, CITIES WITHOUT SUBURBS 3 (2d ed. 1995) ("Having a metropolitan government is much better than trying to get multiple local governments to act like a metropolitan government. The former is a more lasting and stable framework for sustained, long-term action.").

tend to “lack formal legal or political existence.”²⁹³ As seen in Nassau County and throughout New York State and the nation, regionalism in most instances has been met with “insurmountable political opposition.”²⁹⁴

Once popular in the 1960s and 1970s but falling out of vogue for practicality, national scholarly interest in regionalism increased again in the 1990s due to a proliferation in land development around major metropolitan areas, and an increase in high-poverty concentrated communities.²⁹⁵ In the late 1980s and 1990s, land use regulation in the form of exclusionary zoning increased suburban sprawl, creating a “leap frog” pattern of communities out into metropolitan exurbs.²⁹⁶ And a corollary to the sprawl was concentrated poverty.²⁹⁷ According to Professor Briffault, high poverty areas require more municipal services, increasing taxes on an already small tax base while producing low service quality.²⁹⁸ Those who could leave high poverty areas did. And by the 1990s concentrated poverty was not only located in the cities, but was a problem in “inner suburbs” as well.²⁹⁹ That said, high-concentration of poverty is not solely caused by sprawl although sprawl is a very significant factor in the equation.³⁰⁰

It is indeed the case that Long Island today still suffers from the pernicious effects of home-owning policies during America’s post-war suburban boom, perpetuated by the Federal Housing Administration and carried out by developers like Mr. Levitt.³⁰¹ African Americans post-war were denied the opportunity to buy homes in many developments across Long Island, leading to many of the boundaries and demographic concentrations we have today.³⁰² And decades later

²⁹³ *Id.* (citing DAVID RUSK, *CITIES WITHOUT SUBURBS* 3 (2d ed. 1995)).

²⁹⁴ Ostrow, *supra* note 278, at 187; *Dissolving Cities*, *supra* note 35, at Appendix A http://www.yalelawjournal.org/images/documents/121.5.anderson_appendices.pdf.

²⁹⁵ Ostrow, *supra* note 278, at 187; Briffault, *Localism And Regionalism*, *supra* note 279, at 10-14.

²⁹⁶ *Id.*

²⁹⁷ Briffault, *Localism And Regionalism*, *supra* note 279, at 10-14.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ See Marc Seitles, *The Perpetuation Of Residential Racial Segregation In America: Historical Discrimination, Modern Forms Of Exclusion, And Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89 (1998).

³⁰² See Amanda Tillotson, *Race, Risk And Real Estate: The Federal Housing Administration And Black Homeownership In The Post World War II Home Ownership State*, 8

key economic indicators show that there is still more work that must be done: “Blacks and Hispanics constitute 90 percent of students in high-poverty schools but only 23 percent in schools with medium poverty rates and 9 percent in schools with low-poverty rates.”³⁰³ This concentration also correlates with graduation rates.³⁰⁴ Furthermore, statistical findings do support the assumption that municipalities with similar neighbors share more, leaving those poorer municipalities that might benefit the most from sharing behind.³⁰⁵

But while regionalists in the 1990s recognized the benefits centralization could provide, they also recognized the infeasibility of a pure regionalist solution. And so in regionalism’s stead came “new regionalism.”³⁰⁶ Under a new regionalist framework, regionalist solutions of central decision-making were sought using existing municipal structures.³⁰⁷ Many new regionalists believe that cooperation among municipalities would be induced not because of virtues of equity but because lacking coordination would cause more harm than not.³⁰⁸ But many detractors have lamented that the pragmatism of new regionalism only benefits efficiency goals and not equity ones.³⁰⁹ An efficiency regionalism paradigm ignores structural problems including race and socioeconomic issues. Local governments today reinforce these inequities by resisting initiatives that attempt to solve

DEPAUL J. FOR SOC. JUST. 25 (2014).

³⁰³ LONG ISLAND INDEX 2012 PROFILE REPORT, *supra* note 7, at 4; *see also* John Hildebrand & Joie Tyrrell, *Long Island, NYS high school graduation rates rise in 2014*, NEWSDAY (Dec 18, 2014 at 10:59PM) <http://www.newsday.com/long-island/long-island-nys-high-school-graduation-rates-rise-in-2014-1.9729087> (chart showing graduation rates of schools).

³⁰⁴ *Id.*

³⁰⁵ BINGXI QIAN & MILDRED WARNER, DO MUNICIPALITIES SHARE SERVICES WITH POORER NEIGHBORS? FACTORS EXPLAINING LEVELS OF SERVICE SHARING AMONG MUNICIPALITIES IN NEW YORK STATE (Nov. 2014) <http://s3.amazonaws.com/mildredwarner.org/attachments/000/000/470/original/1c4257ef315f77acb2e5618229499b0f> (Professor Warner found that “average sharing level among local municipalities within the same county correlates with income inequality.”).

³⁰⁶ *See* Ostrow, *supra* note 278, at 187 (citing Frug, *supra* note 292, at 1786-87); *see also* DAVID RUSK, INSIDE GAME/OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA (1999) [hereinafter *Inside Game/Outside Game*]; Todd Swannstrom, *What We Argue About When We Argue About Regionalism*, 23 J. URB. AFF. 479, 492 (2001) (“The new regionalists have for the most part given up the ideal of forming powerful general-purpose regional governments.”).

³⁰⁷ *See* Ostrow, *supra* note 278, at 187; Lisa T. Alexander, *The Promise and Perils of “New Regionalist” Approaches to Sustainable Communities*, 38 FORDHAM URB. L.J. 629, 641-42 (2011).

³⁰⁸ *See* Ostrow, *supra* note 278, at 187 (citing Swannstrom, *supra* note 306, at 492).

³⁰⁹ *Id.* at 190-92; Laurie Reynolds, *Local Governments and Regional Governance*, 39 URB. LAW. 483, 517 (2007).

societal imbalances or in the lack of initiative resist *sub silentio* by maintaining their boundaries. But nonetheless, these same municipalities are willing to engage in initiatives that produce efficiency in the cost of service such as joining others to create an economy of scale.³¹⁰

That doesn't mean all is for naught when it comes to a collaborative approach among Nassau's municipalities. While it is easy to dismiss an intermunicipal cooperation paradigm as insufficient,³¹¹ equity in our county still remains a valence issue with a menu of solutions available to achieve it.³¹² And for that matter, regionalist frameworks implemented in other comparable counties have not necessarily resulted in equity gains.³¹³ Collaborative policies ultimately remain politically viable and scholarship has suggested some ways they can be tailored to achieve equitable aims.³¹⁴ And it should not

³¹⁰ Ostrow, *supra* note 278, at 187; Reynolds, *supra* note 309, at 6-7; Frug, *supra* note 287, at 1787-88.

³¹¹ Professor Ostrow believes that there is a "paradox of regionalism: effective regional structures are not politically viable, and politically viable regional structures are not effective." Ostrow, *supra* note 278, at 187.

³¹² See Scott A. Bollens, *Concentrated Poverty And Metropolitan Equity Strategies*, 8 STAN. L. & POL'Y REV. 11 (1997); see generally Donald E. Stokes, *Spatial Models of Party Competition*, 57 AM. POL. SCI. REV. 368, 373 (1963) (discussing the framework of a "valence issue.").

³¹³ Montgomery County Public Schools despite being one unified school district still have significant achievement gap issues along racial lines. In a 2014 report, the school system found that "economic, racial, and ethnic stratification of students" in its schools had increased, citing "specifically, the share of Black and Latino students in MCPS' consortia and consortia-like high schools grew while the share of White, Asian, and non-FARMS students in MCPS' low-poverty non-consortia high schools grew." ELAINE BONNER-TOMPKINS, OFFICE OF LEGISLATIVE OVERSIGHT, PERFORMANCE OF MONTGOMERY COUNTY PUBLIC SCHOOLS' HIGH SCHOOLS—A FY 2014 UPDATE (2014) <http://www.montgomerycountymd.gov/OLO/Resources/Files/OLO%20Report%202014-7%20Final.pdf>. Other pertinent statistics include: (1) "Students receiving free and reduced priced meals (FARMS) accounted for 2 in 5 students compared to 1 in 6 students among MCPS' other, low-poverty non-consortia high schools;" (2) "Blacks and Latinos accounted for 2 in 3 students compared to less than 1 in 3 students among MCPS' other high schools;" and (3) Whites and Asians accounted for 1 in 4 students compared to nearly 2 in 3 students among MCPS' other high schools." *Id.*

³¹⁴ Bollens, *supra* note 312, at 15-19. Bollens discusses eleven "metropolitan equity strategies" that can be accomplished through new regional frameworks: (1) channeling federally-assisted housing expenditures to lessen racial concentration, (2) establishing a regional government campaign against residential segregation, (3) limiting regional urban sprawl, (4) requiring "fair-share" affordable housing obligations, (5) encouraging balanced distribution of jobs and housing, (6) targeting regional transportation and redevelopment strategies, (7) modify development review to advantage distressed areas, (8) cite "locally unwanted land uses" based on equity criteria, (9) develop guidelines for local integration maintenance programs, (10) attack root fiscal reasons behind ineffective municipal planning, (11) link re-

be forgotten that where sharing is least—in poorer and smaller communities—there is the most room for reducing cost and improving service delivery.³¹⁵

B. Themes of Intermunicipal Activity

1. “Faces of Municipal [Activity]”

For these many reasons and more it is difficult to create a theory of intermunicipal activity that explains a large band of outcomes. One reason could be that municipal decision-making is not unilateral and usually requires the participation of multiple actors on any given side, escaping the principle of transitive decision-making.³¹⁶ Another reason could be the inherent difficulty in creating a model that takes into account the numerous variables that policymakers make when evaluating the political costs of engaging in intermunicipal coordination.³¹⁷ And another reason could be the lack of uniformity of home rule laws. A lack of legal uniformity among states and among localities conceivably creates a variance in the barriers to entry and transactions costs associated with intermunicipal activity.³¹⁸

Thus, it is simpler and more appropriate to identify themes of intermunicipal coordination rather than conditions to it. Professor Michelle Anderson provides an excellent starting point with her

gional and local equity strategies. *Ibid.* In addition, Professor Warner suggests a New York specific equity strategy: “differentiated state aid should be used to make higher need and higher cost municipalities more attractive as cooperation partners.” QIAN & MILDRED WARNER, *supra* note 305, at 6; *see also* Part IV.DVI.B.

³¹⁵ BINGXI QIAN & MILDRED WARNER, *supra* note 305, at 6.

³¹⁶ *See, e.g.,* Herbert Hovenkamp, *The Limits Of Preference-Based Legal Policy*, 89 NW. U. L. REV. 4 (discussing the Virginia School and Arrow’s theorem in the context of public choice and theorizing that “the task of discovering and evaluating preferences is so filled with unverifiable assumptions and gaps that it cannot be described in any fashion other than as normative or even speculative. As a result, a complete legal policy can never be based on the policymaker’s observations of the preferences of her constituency.”).

³¹⁷ Amnon Lehari, *Property Rights And Local Public Goods: Toward A Better Future For Urban Communities*, 36 URB. LAW. 1, 97 (“It should be clear, in any case, that it is not feasible to design a universal formula that would equally apply to all types of local public goods. Thus, for new legal rules and remedies to be readily implemented, they must be constructed narrowly and precisely for different categories of local public goods.”)

³¹⁸ *See* Jonathan Rosenbloom, *New Day At The Pool: State Preemption, Common Pool Resources, And Non-Place Based Municipal Collaborations*, 36 HARV. ENVTL. L. REV. 445, 450-61 (2012).

“Faces of Municipal Dissolution.”³¹⁹ In her elaborate and quite exhaustive study of municipal dissolution, Professor Anderson identified “[f]ive themes that repeatedly arise” in municipal dissolutions, or lack thereof:

(1) decline (i.e., budgetary crisis and depopulation due to industrial or rural abandonment), (2) taxes, or more specifically, the rebellion against them, (3) reform to address corruption and mismanagement, (4) race, in settings ranging from banishment to autonomy to desegregation, and (5) community, or the desire to preserve neighborly bonds and history.³²⁰

Indeed, these five themes are quite applicable to intermunicipal coordination and are present in instances of intermunicipal coordination throughout Nassau County.

While there are surely thematic commonalities between dissolution and coordination, the difference in how the theme is present is likely a difference in the degree of the problem. Because dissolution requires higher transaction and political costs compared to coordination, the themes might in some sense be more amplified when successful dissolutions occur. For example, a lower degree and immediacy of a budgetary crisis—like Nassau County’s entering state receivership—has not produced urgency for dissolutions. But fiscal stress on Nassau’s municipalities has meant localities have been more willing to engage and test the waters with intermunicipal coordination in areas such as cooperative purchasing.³²¹

Nassau County compared to the dissolution in Seneca Falls provides an interesting contrast. When the village of Seneca Falls dissolved in 2010, the quaint community was quite different from the bustling industrial corridor it was at the famous Seneca Falls convention.³²² And the numbers speak for themselves. In its proposed dissolution plan, the village touted an annual savings of \$706,000 per year—a reduction in 7.8 percent of the town and village budgets combined.³²³ From a tax savings perspective, village taxpayers had

³¹⁹ *Dissolving Cities*, supra note 35, at 1399-1417.

³²⁰ *Id.* at 1400.

³²¹ See *infra* Part IV.A.1 on the Long Island Purchasing Council.

³²² Anderson, *Dissolving Cities*, supra note 35, at 1372-75.

³²³ DISSOLUTION STUDY COMMITTEE, VILLAGE OF SENECA FALLS DISSOLUTION PLAN 5 (2009) <https://www.dos.ny.gov/lg/publications/LGEProjectReports/2008/SenecaFallsDissPlan.pdf>.

an estimated decrease “from \$16.93 per \$1,000 of assessed value to \$8.82 per \$1,000 of assessed value, or a reduction of 48 percent.”³²⁴ The campaign to dissolve Hempstead Sanitary District 2 on the other hand never suggested such savings.³²⁵

Many ventures to collaborate in Nassau might have been brought on in part by fiscal stress—a short term to medium term problem.³²⁶ The Long Island Purchasing Council and BOCES back-end services project grant in 2009 were both sought during the crux of the financial crisis, and had waning interest for further iterations in each case.³²⁷

Thus, it is a logical assumption that Anderson’s themes of dissolution are also themes of cooperation, but just milder in the intensity for intermunicipal cooperation to take place.

2. *A New Theme: “Forced Efficiency”*

The advent of New York State’s property tax cap and the addition of the property tax freeze tethering tax credits to the former bring a new dynamic to the discussion. The term “forced efficiency” as New York’s regional associations have called it is aptly put.³²⁸ When hard budgetary constraints like the property tax cap are applied, local officials have been obligated to operate within those constraints or face the political consequences.³²⁹

Indeed, Professor Mildred Warner’s findings suggest that municipalities statewide appear to be responding to the property tax cap. To get an idea of the pressure the property tax cap alone causes on municipalities, if the cap were in place from 2000-2011, local governments staying within the cap would have made 23 percent less in

³²⁴ *Id.* (“The projected tax reduction for a Village dwelling with a market value of \$100,000 would be \$810.69.”).

³²⁵ *See infra*, Part IV.A.3.

³²⁶ *See* OFFICE OF THE NEW YORK STATE COMPTROLLER, FISCAL STRESS MONITORING SYSTEM RESULTS FOR 2013 CALENDAR YEAR ENTITIES (2014) <http://www.osc.state.ny.us/localgov/fiscalmonitoring/pdf/FSMSResultsFor2013Entities.pdf>.

³²⁷ *See infra*, Part IV.C.

³²⁸ *See* Mildred Warner, Shared Services in New York State: A Reform that Works (slide presentation) Grace Under Pressure: Innovation in a Time of Forced Efficiencies Summit, (Apr. 25, 2014) [hereinafter slide presentation] <http://s3.amazonaws.com/mildredwarner.org/attachments/000/000/444/original/36e977e4576fd16d34930af6bf656d11>.

³²⁹ *Id.*

expenditures.³³⁰ In Professor Warner's survey, responding municipalities reported that the three most common reasons for engaging in intermunicipal coordination were cost savings, fiscal stress, and maintaining service quality.³³¹ Importantly, a majority of local governments reported the tax cap was a moderate or significant contributor to their fiscal stress.³³² That said the most popular response to fiscal stress was to raise user fees by 41 percent of respondents. But shared services were the second most popular response at 34 percent. Of note, only 18 percent of municipalities said they would consider consolidation.³³³

As for the tax freeze, the Comptroller has not had data available for municipalities and efficiency plans. But 97 percent of school districts during the first year of the freeze in fact levied "property taxes equal to or less than their respective tax levy limit."³³⁴

Anecdotally, it does appear that at least some municipalities prepared for the freeze. In 2006 the Town of North Hempstead created the Office of Intermunicipal Coordination (OIC).³³⁵ It is tasked with creating open lines of communication not only among villages and special districts, but also between the town and its local government units.³³⁶ In the wake of the property tax freeze in 2014, the town has been using the office to engage mayors and special district commissioners to discuss cooperative opportunities in order for those mayors to create their government efficiency plans.³³⁷ Additionally,

³³⁰ *Id.*

³³¹ HOMSY, BINGXI QIAN, YANG WANG & MILDRED WARNER, SHARED SERVICES IN NEW YORK STATE: A REFORM THAT WORKS 8 (2013), <http://s3.amazonaws.com/mildredwarner.org/attachments/000/000/416/original/34bf106eb022022037f46a9fad5f042f> [hereinafter "A REFORM THAT WORKS"].

³³² *Id.* at 76.

³³³ *Id.* at 8. Additionally, only 22 percent of responding municipalities said they've reduced services and only 10 percent said they would eliminate services. Municipal bankruptcy was considered by less than one percent of respondents. *Id.*

³³⁴ *Id.* at 12; THOMAS DiNAPOLI, DiNAPOLI FINDS SLOW PROPERTY TAX GROWTH FOR LOCAL GOVERNMENTS (2015), <http://www.osc.state.ny.us/press/releases/jan15/010915a.htm>.

³³⁵ TOWN OF NORTH HEMPSTEAD, OFFICE OF INTERMUNICIPAL COORDINATION, ABOUT OCI (last visited Apr. 9, 2016), <http://www.oicnorthhempsteadny.net/About.aspx>

³³⁶ *Id.*

³³⁷ Lisa Irizarry, *North Hempstead village mayors map strategies for sharing services, cutting costs* NEWSDAY (Dec. 14, 2014 7:28 PM), <http://www.newsday.com/long-island/towns/north-hempstead-village-mayors-map-strategies-for-sharing-services-cutting-costs-1.9712548>. "Cuomo 'used the carrot of tax cuts to bring together people who should have been talking about their common interests for a long time,' said Lawrence Levy, head of the National Center for Suburban Studies at Hofstra University.")

the “Grace Under Pressure” summit put together by New York’s regional associations shows the lengths regional associations are going to for greater collaboration as well.³³⁸

Forced efficiency is also different from Anderson’s theme of tax rebellion. A “tax revolt” movement for government dissolution usually involves a plebiscite.³³⁹ But New York State’s property tax cap and property tax freeze were legislative enactments.³⁴⁰ It is indeed the case that many property tax caps were enacted by referendum, including California’s Proposition 13 and Massachusetts Proposition 2 1/2.³⁴¹ But New York’s property tax cap is not characterized as a tax revolt, nor was it passed during the tax revolt era.³⁴² The cap was passed after years of exhaustive reports and analysis under two Governors.³⁴³ For that matter, the property tax freeze also does not appear to be a creature of tax revolt.

Taking it all together, New York State’s forced efficiency policies to incentivize intermunicipal coordination in recent years suggests a new theme in the vernacular of intermunicipal activity.

IV. WHAT’S IN THE TOOL BOX? ASSESSING NEW YORK STATE’S LOCAL GOVERNMENT REFORMS

This final section evaluates the toolbox available for municipal activity. I first evaluate the political viability of collaboration and consolidation and through polling data from Tom Suozzi’s 2013 campaign conclude that collaboration is more politically viable than consolidation, at least at consolidation’s plebiscite stage—where more failures than successes have occurred. I next evaluate the effectiveness of collaborative centric policies being tethered to “forced efficiency” policies and conclude that the tactic could impede equity goals, and therefore should be reformulated to incentivize equity

³³⁸ See generally NEW YORK STATE ASSOCIATION OF COUNTIES, GRACE UNDER PRESSURE: INNOVATION IN A TIME OF FORCED EFFICIENCIES (2014), http://www.nyssba.org/clientuploads/nyssba_pdf/ebrochure-summit-041614.pdf.

³³⁹ See *Dissolving Cities*, *supra* note 35, at 1405.

³⁴⁰ Ben Lane, *New York Senate Passes Bill to Cap Property Taxes in New York City*, HOUSINGWIRE (Feb. 3, 2016), <http://www.housingwire.com/articles/36204-new-york-senate-passes-bill-to-cap-property-taxes-in-new-york-city>.

³⁴¹ MARVIN F. POER AND CO. EPOER REPORT, ASSESSMENT AND REVENUE CAPS IN THE SPOTLIGHT (2010), <http://www.mfpoer.com/poer-report/2010/2010-07-assessment-revenue-caps-spotlight.pdf>.

³⁴² *Id.*

³⁴³ See *infra* Part I.C.

aims. Lastly, I talk about the effectiveness of grant programs and how training programs and designated officials for intermunicipal coordination can cut down information asymmetries to collaboration.

A. The Case for Collaboration

1. *Cost Disparities and Inefficiencies in Special Districts Are Real and Savings Under Collaborative Frameworks can Produce Meaningful Gains*

Articulating how much can be saved and how much can be improved through intermunicipal coordination is a tall order. But there appears to be much we do know about coordination that we don't necessarily know about consolidation. At least one expert believes that while empirical research has shown cost savings through collaboration, the "research does not support claims of cost savings" for consolidation.³⁴⁴

Professor Mildred Warner has accomplished an exhaustive effort in understanding intermunicipal coordination and overall service delivery in New York. In 2013 she led an extensive survey partnering with many of the regional associations that participated in the "Grace Under Pressure" summit.³⁴⁵ Warner found sharing services is in fact quite common among New York municipalities. With 29 different types of services measured, Warner found that municipalities shared services around 27 percent of the time.³⁴⁶ Promisingly municipalities reported cost savings 56 percent of the time, improved service quality 50 percent of the time, and improved cross-jurisdictional service coordination 35 percent of the time.³⁴⁷ Professor Warner has identified administrative and support services as one of the most underutilized avenues for shared services that has the biggest potential

³⁴⁴ See A REFORM THAT WORKS, *supra* note 331, at 8. "While there is pressure to consider consolidation, little has occurred to date and research does not support claims of cost savings. In contrast, service sharing is widespread and does lead to cost savings and service quality improvements." *Id.* But see William Duncombe & John Yinger, *Does School District Consolidation Cut Costs?*, SYRACUSE CENTER FOR POLICY RESEARCH 30 (").

³⁴⁵ See A REFORM THAT WORKS, *supra* note 331, at 1. Warner's survey received an overall response rate of 60 percent across all municipalities. *Id.*

³⁴⁶ See *id.* at 1.

³⁴⁷ See *id.* at 6.

for cost savings.³⁴⁸ In this category, municipalities reported cost savings 78 percent of the time.³⁴⁹ This suggests that further expansion could produce greater economies of scale. And as Professor Warner has noted, the greatest area for improvement is in smaller or poorer communities that share the least.³⁵⁰ Additionally, former Comptroller Weitzman's finding that service delivery did not appear to be correlated with service cost also suggests collaboration can lower costs without affecting service delivery negatively.³⁵¹

That said, oversight and evaluation are certainly required in the process. The Nassau Board of Cooperative and Educational Services (BOCES) is the county's largest shared service program and has largely been hailed as a success, providing a range of joint educational as well as backdoor and administrative services for the county (each county in the state has a BOCES).³⁵² However, a recent report questioned the competitiveness of bids for some items like furniture using BOCES vendors.³⁵³ The article reported that school superintendents were aware of the problem, but would rather keep the large amount of state aid their schools receive from BOCES, than go outside the system for competitive bidding on mismatched items.³⁵⁴

Furthermore, collaborative efforts must also be maintained. In 2010 Nassau and Suffolk entered into their first attempt at cooperative purchasing to reduce costs across the county by forming the Long Island Purchasing Council.³⁵⁵ Its first bid was for 24,000 cases of multipurpose office paper. The council's initial membership was quite promising as well.³⁵⁶ But soon after the council's initial incep-

³⁴⁸ *Id.* at 3. For example, only 12 percent of municipalities engage in joint health insurance, only 8 percent for professional staff, only 6 percent for liability insurance, and only 4 percent in payroll and bookkeeping. *See A REFORM THAT WORKS*, *supra* note 331, at 3.

³⁴⁹ *See id.* at 5.

³⁵⁰ *See id.* at 7.

³⁵¹ *See* COST DISPARITIES IN SPECIAL DISTRICTS, *supra* note 129.

³⁵² SHARED SERVICES, CHRISTOPHER GLENN HAYES, MORE THAN CAREER EDUCATION: A BOCES PRIMER (2013), <http://s3.amazonaws.com/mildredwarner.org/attachments/000/000/423/original/124313a5f2f505667ba21c7c80246ef9>.

³⁵³ David Winzelberg, *BOCES no bargain for LI taxpayers*, LONG ISLAND BUSINESS NEWS (June 20, 2014) <http://libn.com/2014/06/20/boces-no-bargain-for-li-taxpayers/>.

³⁵⁴ *Id.*

³⁵⁵ Press Release, Suffolk County Executive, Landmark Agreement: Long Island Purchasing Council Formed, (2010) <https://suffolkcountyexecutive.wordpress.com/2010/10/21/landmark-agreement-long-island-purchasing-council-formed/>.

³⁵⁶ The Town of Oyster Bay and Suffolk's Town of Brookhaven joining at the council's

tion enthusiasm waned. To date the council has only made two purchases, the initial paper purchase in 2010 and a joint purchase of wastewater treatment and pool chemicals in 2012, the latter saving the counties \$1.1 million.³⁵⁷

Although these two examples highlight some of the pitfalls of collaboration, sufficient oversight and evaluation along with maintained relationships among local leaders should help mitigate inefficiency and lack of continuity in sharing. But, overall collaborative ventures have been shown to achieve economy of scale and provide cost savings year to year among municipalities.

2. *Polling Data Show That “Collaboration” is a Politically Viable Position*

Juxtaposed to consolidation, intermunicipal coordination is widely assumed to be more politically viable. Tom Suozzi in his 2013 campaign gave us a deep insight into that approach. A synonym to coordination is “collaboration,” and that word was an important point in Suozzi’s campaign message. The last pillar of Suozzi’s message was “collaboration,” and specifically that Suozzi would “cut waste by encouraging local governments to collaborate.”³⁵⁸ The following is a long form sound bite from one of the Suozzi campaign’s internal polls:

Tom Suozzi wants to cut waste in government by bringing Nassau County’s towns and villages together to find ways to collaborate on sharing costs. There are over 400 taxing entities in Nassau and Suozzi knows we can save millions of dollars every year by getting

inception along with a handful of special districts. *Id.* “Had Suffolk alone issued the bid its potential usage would have been approximately 15,000 cases, Nassau 8,000, Oyster Bay 750 and Brookhaven 700, but because the Council is issuing the bid on behalf of all members the usage will be in excess of 24,000 cases per year.” *Id.* According to Newsday, the counties saved \$107,000 on the paper purchase. *Glen Cove joins L.I. Purchasing Council*, NEWSDAY (Jan. 12, 2011) <http://www.newsday.com/long-island/towns/glen-cove-joins-l-i-purchasing-council-1.2604522>. The City of Glen Cove joined at the beginning of 2011, and by the end of that year Nassau BOCES joined, adding its 56 member school districts and hoping to further increase the range of joint purchasing efforts it was already engaged in.; John Callegari, *Nassau BOCES joins LI Purchasing Council*, LONG ISLAND BUSINESS NEWS (Oct. 24, 2011), <http://libn.com/2011/10/24/nassau-boces-joins-li-purchasing-council/>.

³⁵⁷ John Callegari, *LIPC saves counties \$1M on chemicals*, LONG ISLAND BUSINESS NEWS (Apr. 17, 2012) <http://libn.com/2012/04/17/lipc-saves-counties-1m-on-chemicals/>.

³⁵⁸ Polling Data of Tom Suozzi taken by author (on file with author). I greatly appreciate Tom Suozzi’s and Global Strategies’ help in lending me their insightful work.

county and local governments to work together and share expenses for things like computer systems, payroll administration, and the maintenance of parks and roads.³⁵⁹

Suozzi's "collaboration" message polled at 46 percent, tied for the best among "positive vision messages."³⁶⁰ The other best message was about Nassau's tax certiorari system: Suozzi's "[p]lan to fix [the] assessment system will make sure commercial property owners pay fair share"³⁶¹ According to Isaac Goldberg, campaign manager of Nassau County's Democratic coordinated campaign in 2013, an ideal campaign message polls above 50 percent or "50+1".³⁶² While these messages polled below that ideal threshold, he still considered both messages viable positions that created added value to the campaign's messages.

In contrast, the other seven "positive vision" messages polled below 40 percent. These messages included two advocating for the development of "vibrant downtowns," one on "rooting out corruption and patronage," a message on "streamlining services," one on appointing a "chief innovation officer," as well as a message on "negotiating underwater mortgages" and one about developing the Nassau Hub into a walkable destination for its surrounding colleges, businesses and communities.³⁶³

According to Global Strategies, the polling firm for the campaign, "collaboration" was a successful policy position because it was a smaller-scale idea.³⁶⁴ In contrast, "grand ideas" did not test well.³⁶⁵ While Global Strategies did not poll on consolidation, it is likely it would not have polled well given, for one of many reasons, its grand vision appeal like the other positive vision messages tested.

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.* The long form message was:

Tom Suozzi's plan to fix Nassau County's broken property tax assessment system starts with making sure big commercial property owners pay their fair share. Instead of hassling individual homeowners, Suozzi will focus on getting accurate commercial assessments so big companies no longer win huge appeals that cost taxpayers hundreds of millions of dollars a year.

³⁶² Interview with Isaac Goldberg (on file with author).

³⁶³ Global Strategies Statistical Data, taken by author (on file with author).

³⁶⁴ *Id.*

³⁶⁵ *Id.*

That voters in Nassau County would prefer smaller-scale incremental improvements to larger visions makes sense from a historical perspective. The county's political history is one of compromise. The majority of changes to its municipal structure have occurred only because of court ordered mandates and pressure from the state.³⁶⁶ These changes only occurred because they were palatable to a population aware of existing problems but wary of too much disruption. Another way of putting it: voters are risk averse.

It is also important to note that collaboration has fewer political transaction costs than consolidation. Professor Warner has found local leadership and trust rank high as a factor for collaboration among reporting municipalities in her survey.³⁶⁷ In contrast, consolidation requires a plebiscite, which creates an additional political barrier than traditionally campaigning on and passing laws.

3. *Consolidation Does Not Appear to Be Politically Viable, At Least When Assessing Plebiscites*

Although it appears homeowners are risk averse in their voting preferences toward local government, they are extremely wary of high taxes. A recent poll tracking residential satisfaction from the Long Island Index shows that in 2011, forty-one percent of Long Island residents thought that high property taxes were an “extremely serious” problem in their county, while another 40 percent thought the problem was “very serious.”³⁶⁸ In addition, sixty-six percent of residents thought the problem of a lack of affordable housing on Long Island was either extremely serious or very serious.³⁶⁹ Even more intriguing, seventy-eight percent of people thought that it was either an extremely serious or a very serious problem that their children would move away from Long Island, and that same percentage of residents thought they themselves would have to leave because of the high cost of living.³⁷⁰

³⁶⁶ See *supra*, Part I.A.

³⁶⁷ HOMSY, *supra* note 331, at 555. (Responding municipalities reported local government leadership as a factor 91 percent of the time).

³⁶⁸ Stony Brook Center for Survey Research, *Tracking Residential Satisfaction On Long Island*, (2012) <http://www.stonybrook.edu/commcms/surveys/docs/Tracking%20Residential%20Satisfaction%202012.pdf>.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

Much of the literature on consolidation and regionalism opines about how consolidation is not politically viable. And that lack of political viability is, for the most part, an unchallenged premise taken as fact in new regionalist argumentation.³⁷¹ But why then was Governor Cuomo—considered by many to be a savvy, calculating, adept, and quite careful politician³⁷²—so inclined to champion the Reorganization and Citizen Empowerment Act if it was so politically unpopular? Take that a step further, and why would the Governor campaign on local government reform—specifically consolidation—in television advertisements and headline grabbing quotes?³⁷³

While we are not privy to Cuomo's polling data, it is safe to say that his television advertisement "Castle" was vetted by his campaign staff and perhaps even tested in focus groups.³⁷⁴ And that the Governor only won fifty-four percent of the vote against a fairly weak Republican opponent suggests he would have been disinclined to campaign on an unpopular position.³⁷⁵

Indeed, consolidation proposals overwhelmingly do not pass at the plebiscite stage.³⁷⁶ But one possible explanation for this variance between the Governor's campaign platform and consolidation outcomes is the monitoring cost. In a gubernatorial election, the state's highest office is being voted for and during a national midterm election. But local officials like Suozzi are elected during off cycle elections, and plebiscites are usually held during a special election, both more traditionally lower turnout affairs. As the number of public officials who must be monitored (or putting it another way voted for) increases, only those stakeholders who have an "idiosyncratically high interest" will take necessary action—those most likely to benefit from the current regime such as employees of special districts.³⁷⁷

³⁷¹ See, e.g., Ostrow, *supra* note 278, at 187; Reynolds, *supra* note 309; Frug, *supra* note 292, at 1787-88; Briffault, *Localism And Regionalism*, *supra* note 279, at 10-14; Swannstrom, *supra* note 306, at 492; Anderson, *Dissolving Cities*, *supra* note 35.

³⁷² See, e.g., Chris Smith, *The Albany Machiavelli*, N.Y. MAG (Apr. 14, 2013) [http://nymag.com/news/features/andrew-cuomo-2013-4/\(describing the Governor as having, among other traits, "unmatched political virtuosity\).](http://nymag.com/news/features/andrew-cuomo-2013-4/(describing%20the%20Governor%20as%20having,%20among%20other%20traits,%20%20unmatched%20political%20virtuosity).)

³⁷³ See *supra* Part I.D.

³⁷⁴ See *supra* Part I.D; McKinley, *supra* note 162.

³⁷⁵ Thomas Kaplan, *ANDREW CUOMO IS RE-ELECTED NEW YORK GOVERNOR, BUT LOSES CLOUT*, N.Y. Times (Nov. 4, 2014) http://www.nytimes.com/2014/11/05/nyregion/andrew-cuomo-is-re-elected-governor-of-new-york.html?_r=0.

³⁷⁶ See Anderson, *supra* note 35, http://www.yalelawjournal.org/images/documents/121.5.anderson_appendices.pdf.

³⁷⁷ Gillette, *supra* note 273, at 208.

The failed dissolution of Hempstead Sanitary District 2 illustrates the monitoring costs involved for plebiscites. The district was one of the municipalities selected by Weitzman for audit in his 2007 report on special districts.³⁷⁸ Out of the 21 sanitary districts audited, Sanitary District 2 had the third largest tax bill at \$625.³⁷⁹ And with this enhanced scrutiny on the district, the Long Island Progressive Coalition and Residents for Efficient Special Districts seized the opportunity. The groups combined with other local political leaders in gathering around 5,400 signatures and launching a full-fledged campaign. Even Newsday issued an endorsement for dissolution, further raising the referendum's profile.³⁸⁰

But ultimately the campaign for dissolution failed. While the campaign collected over 5,000 signatures in favor of dissolution, the vote total yielded a starkly different number: "4,597 to keep the district in place and 1,682 to dissolve it."³⁸¹ There are no apparent explanations for the discrepancy. In fact, the LIPC Communications Director seemed rather impressed by their vote total.³⁸²

Monitoring costs could explain the stark difference between the signatures collected versus votes for. The monitoring costs in this case were lower for the petition stage, where voters merely had to sign at their own front door. But voting for dissolution required the resident to participate in an off year and off cycle election, driving to the polls to express their preference.³⁸³

Regardless of the explanation, plebiscites still stand as an insurmountable obstacle to consolidation that collaboration does not require.³⁸⁴

³⁷⁸ *Id.*

³⁷⁹ Weitzman, *supra* note 125, at 36 (Chart 19).

³⁸⁰ Connolly, *VOTE TO DISSOLVE SANITARY DISTRICT 2*, Newsday (Dec 12, 2012 at 8:14PM) <http://www.newsday.com/opinion/vote-to-dissolve-sanitary-district-2-editorial-1.4315821> ("[T]he district is a bloated patronage pit, benefiting the politically connected with top salaries, pension benefits and contracts. That's why supporters of eliminating it have had to battle every step of the way to even get the issue on the ballot.").

³⁸¹ Chris Connolly, *Sani2 to Stay*, Long Island Herald (Dec. 20, 2012) <http://liherald.com/baldwin/stories/Sani2-to-stay,45087>.

³⁸² *Id.* ("Turnout was at least triple the mobilization you usually see, which means people are talking about these issues.")

³⁸³ Drew Desilver, *Voter Turnout Always Drops Off for Midterm Elections, But Why?*, Pew Research Center, <http://www.pewresearch.org/fact-tank/2014/07/24/voter-turnout-always-drops-off-for-midterm-elections-but-why/>.

³⁸⁴ *Id.*

B. Incentive Programs Should Not be Solely Tethered to “Forced Efficiency” Policies in Order to Better Facilitate Efficiency and Equity Goals

The property tax cap is likely to be a mainstay of New York’s fiscal policy. The law has a sunset date for June 2016, but from all reports, it is likely to be renewed this year due to the drafters linking it to New York City’s rent control law.³⁸⁵ Additionally, calls for reform of tax caps in California and Massachusetts and other states have not materialized into repeal of those laws.³⁸⁶ Professor Warner’s survey indicates that municipalities have felt pressured to collaborate due to the property tax cap and property tax freeze.³⁸⁷ But tethering collaborative centric programs to forced efficiency programs, like property tax caps, produces all or nothing stakes that can impede equity goals in tax policy. Tethering collaborative focused tax credits to the cap appears intended to mitigate rent-seeking behavior of municipalities that pierce the cap—municipalities seeking to alleviate the tax increase with state aid received for engaging in collaborative ventures. But the tax freeze could achieve an equitable goal by containing alternative criteria for collaborative focused tax credits. This could allow low property assessments for municipalities that pierce the cap, in order to meet service delivery needs, to still benefit from tax incentives through collaboration. Additionally, alternative criteria options could also allow high-assessment municipalities that might be more likely to pierce the cap to still be incentivized to collaborate with low assessment ones.

The prevailing assumption with the tax cap is that high-assessment communities are more likely to pierce the cap to meet

³⁸⁵ 2011 N.Y. Sess. Laws Ch. 97 (S. 5856) (McKinney). The pertinent language reads:

[T]his act shall remain in full force and effect at a minimum until and including June 15, 2016 and shall remain in effect thereafter only so long as the public emergency requiring the regulation and control of residential rents and evictions and all such laws providing for such regulation and control continue as provided in subdivision 3 of section 1 of the local emergency rent control act. . . .

See also Rick Karlin, *TAX CAP HAS SAVED AT LEAST \$7.6 BILLION, SUPPORTERS SAY*.com (May 19, 2015 at 10:56PM) <http://www.timesunion.com/news/article/Tax-cap-has-saved-at-least-7-6-billion-6274588.php>.

³⁸⁶ See, e.g., David Crane, *JERRY BROWN’S LAST CHANCE TO SAVE CALIFORNIA*, Bloomberg Business, (May 20, 2013) <http://www.bloomberg.com/news/articles/2013-05-19/jerry-brown-s-last-chance-to-save-california..>

³⁸⁷ See *supra* Part III B.2.

demands for a higher level of service delivery.³⁸⁸ However, poorer municipalities could still pierce the cap to meet necessary service delivery costs.³⁸⁹ These municipalities would not gain the benefit of a tax credit for submitting an efficiency plan under the property tax freeze program.³⁹⁰ Under this scenario, inequities for high concentration poverty communities are further compounded because the collaboration subsidy would be no longer available, but could still be used to achieve better service delivery and better economy of scale—different from a rent-seeking motive.

Tethering the collaborative focused incentives to the cap could also have the effect of disproportionately burdening low and middle-income families in high assessment jurisdictions. The property tax freeze was not the only tax credit program the Governor has sought to tether to the property tax cap. In his 2015 proposed budget, the Governor proposed a revised STAR circuit breaker, designed to alleviate property tax burdens for low and middle-income families.³⁹¹ However, the Governor also conditioned the tax credit received from the circuit breaker on the homeowner's municipality staying within the property tax cap.³⁹² Thus, those low and middle income families in jurisdictions that pierced the cap would not receive their credit.³⁹³ This would also mean that low and middle income residents in high-assessment communities, which may be more likely to pierce the cap for higher level of service, would not receive tax credits as well, creating an inequity between low and middle income residents across a region.³⁹⁴ This policy did not ultimately pass,³⁹⁵ but it shows a pattern from the Governor's office of how it would likely use the property tax cap.

³⁸⁸ See, e.g., MCMAHON, *supra* note 240.

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ Fiscal Policy Institute, *Summary of Selected Tax Provisions Final 2015-2016 Budget*, <http://fiscalspolicy.org/summary-of-selected-tax-provisions-nys-2015-2016-budget>. (last visited Apr. 14, 2015).

³⁹² Fiscal Policy Institute, *Policy Brief: Proposed Tax Relief Will Assist Low and Middle Income Property Taxpayers, But Tweaks are Needed*, <http://fiscalspolicy.org/wp-content/uploads/2015/03/Property-Tax-Circuit-Breaker-Brief-3-5-2015.pdf>. (last visited March 5, 2015).

³⁹³ *Id.*

³⁹⁴ *Id.* <http://fiscalspolicy.org/wp-content/uploads/2015/03/Property-Tax-Circuit-Breaker-Brief-3-5-2015.pdf>.

³⁹⁵ New York State Senate, <https://www.nysenate.gov/newsroom/press-releases/john-j-bonacic/bonacic-tax-cap-legislation-passes-senate> (last visited April 13, 2016).

The property tax freeze, while not a circuit-breaker program, is still predicated on this year's STAR qualification, which limits the tax credit for lower, middle, and upper-middle income families.³⁹⁶ Thus, a similar inequity problem will occur where homeowners of low-assessment properties in nonetheless higher-assessment jurisdictions do not gain the tax credit.

Instead of tying collaborative centric forced efficiency programs only to staying within the cap, collaborative programs should be predicated on multiple alternative criteria points that take into account equitable considerations and incentivize sharing where need is greatest. Professor Warner suggests equitable considerations for shared service policies can be achieved through a "differentiated state aid" model much like New York's BOCES.³⁹⁷ New York State provides partial refunds in order to incentivize BOCES services through the greater of two formula calculations, one benefiting wealthier communities "with high assessments and low property tax rates," and poorer school districts with "low assessments."³⁹⁸ Professor Warner believes similar subsidy formulations can be translated for use by other municipal units.³⁹⁹

And those municipalities that desire more services at a higher price should still be encouraged to collaborate with neighbors in order to achieve economy of scale across the larger region. While a collaborative tax credit for a high assessment municipality that pierces the cap might appear to be a rent-seeking use of state resources, there is still a larger potential comparative advantage in having that municipality collaborate with others for overall reduction in the cost of services and economy of scale across the state, especially for low

³⁹⁶ Fiscal Policy Institute, *supra* note 391.

³⁹⁷ BINGXI QIAN & MILDRED WARNER, *supra* note 305, at 363.

³⁹⁸ Cristopher Glenn Hayes, *More than Career Education: A BOCES Primer*, SHARED SERVICES (Dec. 2013), <http://s3.amazonaws.com/mildredwarner.org/attachments/000/000/423/original/124313a5f2f505667ba21c7c80246ef9>.

[The] incentive aid is calculated by multiplying eligible expenses by the higher of two ratios, found in the New York State Aid Handbook: A millage ratio based on tax rate, with higher tax rates receiving less aid ($1 - .008/\text{tax rate}$), or [a]n aid ratio based on total assessed value of district per student, with higher value per student districts receiving less aid ($1 - .51 * (\text{Value}/\text{RWADA})/639,200$), with a maximum of 90% and a minimum of 36%.

Id.

³⁹⁹ BINGXI QIAN & MILDRED WARNER, *supra* note 305, at 363.

assessment municipalities where cost savings would benefit the most.

While the property tax cap is surely a blunt force instrument, it does not need to be too blunt of a force.

C. Grants Can Subsidize Transaction Costs

The state's Local Government Efficiency Grants program has lowered the barriers to collaboration by providing subsidies for the transaction costs associated with implementation.

There are notable examples on Long Island. In 2009, Nassau BOCES sought a \$1 million comprehensive 21st Century Demonstration Project Grant to create a shared services platform for non-instructional functions.⁴⁰⁰ This included cooperative purchasing, information technology, out-of-district transportation, internal auditing and future long-term planning.⁴⁰¹ Nassau BOCES has touted meaningful savings from the grant at a value of \$9.5 million.⁴⁰² The strides made in cooperative purchasing seemed to be quite robust. As of 2012, Nassau BOCES has placed cooperative bids on various items, including utilities and professional services.⁴⁰³ In addition, BOCES has successful joint purchasing bids for natural gas, gasoline, and of course its joint purchase of paper with the Long Island Purchasing Council.⁴⁰⁴ Nassau BOCES also explored opportunities for joint capital projects.

Professor Mildred Warner at Cornell University has taken notice of the potential to reduce school tax bills with backend services too. A recent case study developed under her Restructuring Local

⁴⁰⁰ *Local Government Efficiency Program: Annual Report 2008-2009* 11, NEW YORK STATE DEPARTMENT OF STATE, https://www.dos.ny.gov/lg/publications/LGE_Annual_Report_2009.pdf (last visited Apr. 10, 2016); *See generally* N.Y. STATE FIN. LAW § 54 (McKinney 2013)..

⁴⁰¹ *Local Government Efficiency Grant Program* 32, NASSAU BOCES, <http://www.nassauboces.org/cms/lib5/NY18000988/Centricity/Domain/56/Nassau21sCenturyDemonstrationProjectApplication.pdf> (last visited Apr. 10, 2016).

⁴⁰² *Shared services grant saves the county millions*, NASSAU BOCES, <http://www.nassauboces.org/site/Default.aspx?PageType=3&DomainID=1213&PageID=6435&ViewID=047e6be3-6d87-4130-8424-d8e4e9ed6c2a&FlexDataID=15147> (last visited Apr. 10, 2016) (“[T]he initiative has saved more than \$550,000 in out-of-district transportation costs for school districts, \$400,000 in mandated building condition surveys, \$160,000 in IT and telecommunications services, \$8 million in cooperative energy purchasing. . . [and] \$400,000 in phone line redundancy removal . . .”).

⁴⁰³ *Cooperative Purchasing*, NASSAU BOCES, http://www.nassausharedservicesgrant.org/index_files/page0005.htm (last visited Apr. 20, 2015).

⁴⁰⁴ *Id.*

Government Project analyzed some of the per year savings effects of Nassau BOCES' grant project and resulted in findings of \$900,000 in savings per year from joint cell phone plans and \$240,000 per year from the redundant phone lines project.⁴⁰⁵ The study also identified other areas where increased collaboration could yield meaningful savings.⁴⁰⁶ Although recent reports have questioned certain purchasing practices of BOCES,⁴⁰⁷ the overall success of the grant program and the resulting saved costs should not be looked over.

The Local Government Efficiency Grants provide ancillary benefit to other municipalities as the state lists past Local Government Efficiency Grant studies and reports on its website, providing models to other municipalities looking to enter into collaborative schemes.⁴⁰⁸ Municipalities can borrow assumptions and accounting figures when appropriate, and avoid problems other municipalities faced. Prior studies were used by the Village of Farmingdale when, in 2008, it applied for a Local Government Efficiency Grant to study the feasibility of shared services between its district and the South Farmingdale Water District.⁴⁰⁹ In 2009, New York State approved the application and issued a \$25,000 disbursement.⁴¹⁰ With these new funds, the Village of Farmingdale contracted a local architectural and engineering firm, Holzmacher, McLendon & Murrell, P.C. (H2M), to prepare a study that the firm released in 2010.⁴¹¹ The firm analyzed both the Village of Farmingdale and the South Farmingdale Water District, looking at each governmental unit's existing infrastructure, the current and projected needs of the village and the water district, and possible alternatives to achieve cost reductions.⁴¹² In

⁴⁰⁵ Christopher Glenn Hayes, INTERMUNICIPAL SHARING: BOCES HELPS TOWNS AND SCHOOLS COOPERATE ACROSS NEW YORK 3 (Dec. 2013)

⁴⁰⁶ *Id.*

⁴⁰⁷ *See supra* Part IV.A.1

⁴⁰⁸ *See generally Local Government Efficiency Studies & Reports*, DEPARTMENT OF STATE, DIVISION OF LOCAL GOVERNMENT SERVICES, http://www.dos.ny.gov/lg/lge/Case_Studies.html (last updated Dec. 1, 2015).

⁴⁰⁹ *Regular Meeting of the Board of Trustees*, VILLAGE OF FARMINGDALE (Nov. 3, 2008) <http://www.farmingdalevillage.com/BOT%20minutes%2011-03-08%20Approved.pdf>,

⁴¹⁰ *Governor Paterson Announces More Than \$2 Million In Local Government Efficiency Grants For Long Island*, MEDIA-NEWSWIRE, http://media-newswire.com/release_1094555.html. (last visited Apr. 14, 2016). (Oct. 7, 2009).

⁴¹¹ *Shared Public Water Services Feasibility Study 1.1*, DEPARTMENT OF STATE (Jun. 2010), https://www.dos.ny.gov/lg/publications/LGEProjectReports/2008/Farmingdale_Report.pdf

⁴¹² *Id.*

making its recommendations, H2M relied on past studies and reports available through the grant program, including an entire section in its analysis.⁴¹³ Although the Village of Farmingdale ultimately did not pair up with any partners, the grant program allowed it to access the feasibility of its options without incurring additional costs.

D. Local Government Training and Resources And Offices of Intermunicipal Coordination Can Help Reduce Information Asymmetries

1. Local Government Training Resources

Entering into intermunicipal agreements—although requiring significantly less intricacy than collaboration—still requires planning among local government officials. But local officials often lack expertise in municipal government administration, especially upon arrival to office. Because of this, New York State offers local government training. It produces literature on each process and lists best practices and strategies for successful planning.⁴¹⁴ In 2009, Comptroller DiNapoli took training a step further by launching a “Local Government Leadership Institute” to help spur intermunicipal activity in the wake of the economic crisis and the passage of the Reorganization and Empowerment Act.⁴¹⁵ Teaming up with Hofstra University and Cornell University, the Comptroller put on a series of lectures across the state in an attempt to educate local officials on how to reduce costs through collaborative efforts with other municipalities.⁴¹⁶

⁴¹³ *Id.* at 5.1.

⁴¹⁴ *Local Government Training*, DEPARTMENT OF STATE, DIVISION OF LOCAL GOVERNMENT SERVICES, <http://www.dos.ny.gov/LG/lut/index.html> (last visited Apr. 14, 2016) (course listings for “Intermunicipal Agreements,” “Intermunicipal Planning,” “Financial Analysis of Shared Services and Intermunicipal Cooperation,” and “Smart Growth”); *See generally* DEPARTMENT OF STATE, DIVISION OF LOCAL GOVERNMENT SERVICES, LOCAL GOVERNMENT HANDBOOK 9 (6th ed. 2009), 2011) http://www.dos.ny.gov/lg/publications/Local_Government_Handbook.pdf; INTERMUNICIPAL COOPERATION AND CONSOLIDATION, *supra* note 140, at 1; SHARED SERVICES IN LOCAL GOVERNMENT, *supra* note 140, at 1.

⁴¹⁵ *Local Government Leadership Institute: Previous Institutes*, OFFICE OF THE NEW YORK STATE COMPTROLLER, <https://www.osc.state.ny.us/localgov/lgli/index.htm> (last visited Apr. 5, 14, 2016).

⁴¹⁶ *Beyond the Fiscal Crisis: How to Build Partnerships and Leverage Opportunities 3*, NEW YORK STATE OFFICE OF THE STATE COMPTROLLER (Aug. 13-14, 2009), https://www.osc.state.ny.us/localgov/lgli/pdf/cardi_finalreport.pdf; “*Beyond the Fiscal Cri-*

And years later, with the advent of the property tax freeze, the state created new education sessions on ways local government officials can create compliant efficiency plans.⁴¹⁷

The state's local government training initiatives serve practical education functions and lower information asymmetries inherent in collaboration. According to Professor Warner, liability and risk concerns, accountability, and state rules and regulations rank highest among local officials as obstacles to shared service agreements.⁴¹⁸

Further, the Comptroller sought to reduce information asymmetries through these programs as state officials fostered relationships with local government officials by having a face-to-face opportunity to better understand local government needs.⁴¹⁹ These programs can also serve a dual purpose of local officials fostering relationships with each other. Warner found that social networking among local officials promotes service sharing—another benefit to education initiatives.⁴²⁰

Local government training sessions have been less frequent since the passage of the state's major local government reform legislation in 2009 and 2011. But given the benefits derived from intermunicipal subject programing, the Comptroller should again provide more frequent and consistent training sessions in order to facilitate a reduction in information asymmetries that allow local government leaders to build trust among one another.

2. *The North Hempstead Office of*

sis: How to Build Partnerships and Leverage Opportunities" 1, LOCAL GOVERNMENT LEADERSHIP INSTITUTE (Jun. 11, 2009), https://www.osc.state.ny.us/localgov/lgli/pdf/hofstra_whitepaper.pdf [hereinafter HOFSTRA LEADERSHIP SESSION].

⁴¹⁷ *Property Tax Freeze*, OFFICE OF THE NEW YORK STATE COMPTROLLER, <https://www.osc.state.ny.us/localgov/realprop/taxfreeze.htm>. (last visited Apr. 14, 2016).

⁴¹⁸ A REFORM THAT WORKS, *supra* note 331, at 6 ("Liability/risk concerns" polled at 85 percent, "[a]ccountability concerns in sharing arrangements" also polled at 85 percent, and [s]tate rules/legal regulations polled at 83 percent).

⁴¹⁹ HOFSTRA LEADERSHIP SESSION, *supra* note 416, at 7727. The three "major goals" for the leadership institute were (1) "to build relationships among local government and school leaders and between officials on Long Island and New York State employees;" (2) "to improve local government efficiency by presenting panels discussing best practices and key leadership skills, enabling leaders to learn from each other;" and (3) "to help the Comptroller's Office understand 'How we can help you, as local officials, develop the leadership principles that help you to deliver. . . .'" *Id.*; HOFSTRA LEADERSHIP SESSION, *supra* note 416, at 7.

⁴²⁰ BINGXI QIAN & MILDRED WARNER, *supra* note 305, at 3.

Intermunicipal Coordination

In 2006, the Town of North Hempstead, under the leadership of former Supervisor Jon Kaiman, created the Office of Intermunicipal Coordination (OIC). The OIC appears to be the only one of its kind for a township in the country.⁴²¹ The actual OIC is quite small: just one person. But its current director, Rachel Brinn, talks to the town's villages and special districts on an almost daily basis, finding out what their needs are and how the town can serve in assisting them. According to Nick Guariglia, Deputy Chief of Staff to the Town Supervisor, having one firm source of contact is probably the most efficient and productive model for increasing lines of communication and executing the office's mandate.⁴²² This is because if an intermunicipal agreement is entered into, most of the work in drafting the deal is conducted by the town and village attorneys, along with other necessary technical experts.

Over time, the OIC has slowly increased its portfolio. In 2014 alone, North Hempstead's Town Board approved 13 intermunicipal agreements and entered into 11 of them.⁴²³ Additionally, the town is also looking at ways to increase cooperative purchasing.⁴²⁴ According to Guariglia, most cooperative purchasing agreements are initiated by phone conversations. However, the OIC recently created an online client-relationship management system (CRM) for cooperative purchasing, and if activity were robust enough, it would supplement the current over-the-phone method. Guariglia believes the OIC has helped the town towards achieving its homeowners' property tax credit—gains that would be more difficult to achieve without it.

The strategy of a larger municipality assigning a point person for collaborative ventures is a simple and cost effective way to reduce information asymmetries amongst its smaller governmental units.

⁴²¹ After multiple searches online I have not been able to find another office like the one in North Hempstead. That said it is entirely possible that another office of intermunicipal coordination exists somewhere in the nation.

⁴²² Interview with Nick Guariglia, Deputy Chief of Staff to the Town Supervisor,

⁴²³ See generally *Supervisor Jon Kaiman Invited Guest at Meeting of the New York State Commission on Local Government Efficiency and Competitiveness*, Town of North Hempstead, <http://www.northhempsteadny.gov/news/?FeedID=258&ShowDetailsDate=false> (last visited Apr. 14, 2016).

⁴²⁴ See generally *Intermunicipal Agreements*, TOWN OF NORTH HEMPSTEAD, <http://www.oicnorthhempsteadny.net/IntermunicipalAgreements.aspx> (last visited Apr. 14, 2016).

CONCLUSION

Wood and Almendinger concluded *1400 Governments* concerned about two “burning issues”: (1) the case for municipal bankruptcy while (2) the demand for services increases.⁴²⁵ Their discussion was predicated on the notion that government in the Metropolitan Region was “hopelessly antiquated, narrow, inefficient, and inadequate,” and therefore unable to meet the demands of residents for the future.⁴²⁶ In particular, Wood and Almendinger cited Nassau County’s rapid increase in school expenditures, quoting one individual’s finding “that the tax burden on the real estate owner in Nassau County is greater and is increasing at a faster pace than the tax burden on the property owner in New York City.”⁴²⁷

Of course, municipal bankruptcy hasn’t happened, and services provided by Nassau’s local governments have surely increased over time. Nassau has not reached the “point of no return” on its tax system’s capacity,⁴²⁸ but has seemingly looked to be at a crossroads for over half a century.

Whatever Nassau’s solution is to its special district problem, it is clear that a wider reaching solution will be necessary, so long as its current financial position and cost of living fail to improve. But the toolbox at the disposal of state and local government officials should be sufficient to achieve progress. Collaboration is more practical than consolidation or dissolution in achieving the necessary change in the tax bill, and it creates more equitable service delivery across the county. Additionally, the state’s current fiscal policy is helping to facilitate it too. “Forced efficiency” with the property tax cap appears to be a new mainstay for local governments. However, although it has made public officials more aware and more willing to engage in collaborative ventures, the state must be careful in how it further forces municipalities to collaborate, and it should make it a priority to tailor collaborative centric incentives around equitable goals. Furthermore, grants, education programs and offices of intermunicipal coordination (or just merely designated point people) are meaningful low cost tools that can help create more collaboration in the county.

⁴²⁵ WOOD & ALMENDINGER, *supra* note 1, at 177-91.

⁴²⁶ WOOD & ALMENDINGER, *supra* note 1, at 177-91.

⁴²⁷ WOOD & ALMENDINGER, *supra* note 1, at 180 (citing SAMUEL F. THOMAS, NEW YORK CITY: ITS EXPENDITURE AND REVENUE PATTERNS 58-59 (1958)).

⁴²⁸ WOOD & ALMENDINGER, *supra* note 1, at 181.

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In all likelihood, Nassau's "crazy quilt" is here to stay for better or for worse, but it doesn't mean that collaborative strategies can't be employed to solve the problem nor does it mean we can't tailor those strategies that incentivize or force collaboration to achieve the efficient, equitable and prosperous county we want—a county with good schools, new development, new and returning people, and a reasonable cost of living along the way. Collaboration can be an important part in making Nassau County the "ideal suburb" and one that its citizens can whole-heartedly embrace.