

Avenues Toward City-County Consolidation in New York

By Amy Lavine

I. Introduction

With more than 4,200 local government entities,¹ New York's local government structure has been criticized for being one of the most fragmented in the country.² A recent study suggests that the classifications of cities, towns, and villages no longer correspond to population densities or development patterns, supporting the proposition that New York's governmental structure is outdated, overly complex, inefficient and somewhat irrational.³ Given these figures, as well as the financial problems and increasing tax burdens in many communities,⁴ it is not surprising that policy makers across the state have raised the possibility of reforming local government structures in order to improve efficiency and quality in service delivery, to attract new economic development, and to better enable local governments to address regional issues and challenges.⁵



One approach to structural reform in particular has recently been given considerable attention, both in and outside of New York: city-county consolidation⁶—a process whereby a county government merges with one or more municipalities to create an entity with characteristics of both.⁷ The interest in consolidation is based in part on the desire to minimize the unnecessary and costly duplication of services by different layers of government, but this only partly explains the recent resurgence in interest in city-county consolidation, as there is speculation as to whether city-county consolidation actually results in cost savings.⁸ Another, more current basis for supporting consolidation is found in the regionalist movement, which posits that modern life has transformed the nature of local units in such a way as to require increased cooperation among local government units.⁹ Regionalists claim that, whereas town, village, and city governments were once effective in securing public goals and objectives, changing demographic patterns, combined with modern transportation and communication options, have made regions, rather than single municipalities, the “real cities” of the twenty-first century.¹⁰ Regional governance is considered to be necessary not only to improve efficiency and quality in service delivery, but also to more effectively deal with issues that are inherently regional in scope, such as environmental degradation, land use planning and sprawl, urban-suburban income disparities, and the decreased ability of highly fragmented regions to attract economic development.¹¹

Although city-county consolidation is not a perfect response to regionalist ideals, as county lines often do not correspond with regional boundaries, it has the benefit of using preexisting governmental structures—counties—to meet regional needs, rather than requiring the creation of new governmental and geographic entities.¹² Consolidation is also advocated as a better option than other forms of intergovernmental cooperation because it simplifies local government structures rather than adding more layers of complexity.¹³ It should not be assumed, however, that city-county consolidation is the best solution to regional problems; numerous scholars and politicians have amassed a host of criticisms weighing against city-county consolidation, ranging from the claim that it does harm to federalist ideals of local government, to the suggestion that it decreases efficiency by interfering with the market for services, to the possibility that it may disenfranchise the poor and minority city dwellers that it purports to benefit through regionalization.¹⁴

In New York, city-county consolidation has been suggested primarily as a means to address the inefficiencies caused by overly fragmented governance and to thereby lower municipal taxes, but regionalist principles have entered into the debate as well, even if they are not expressly stated as such. This is illustrated by the 2007 executive order that established the New York State Commission on Local Government Efficiency and Competitiveness. Although the order focuses on the costs of unnecessary duplication of government functions and the effect that this has on taxes and economic competitiveness, Governor Spitzer also made clear that local government reform is necessary to facilitate the implementation of “smart growth practices, and otherwise improve the living environment for New Yorkers.”¹⁵ These concerns have also been voiced in relation to the city-county consolidations that have been considered by various governmental and public interest groups across the state.¹⁶

City-county consolidation, however, is not well facilitated by the laws of New York as they now stand. Unlike towns and villages, for which the legislature has provided means for merger, consolidation and dissolution by local action, cities and counties have not been provided with specific legislation authorizing consolidation or setting forth a process by which it can be accomplished. Although city-county consolidation is possible under current New York law, the processes by which city-county consolidation could presently occur are complex, involving constitutional and statutory issues and requiring action by many parties. Because these legal challenges themselves may constitute one of the greatest barriers to city-county consolidation in New York, the goal of this

article is to distill the various legal provisions that may inhibit city-county consolidation, and to suggest means by which consolidation may be effected.

II. The Validity of Consolidated City-Counties Under the New York Constitution

Perhaps the most fundamental question relating to city-county consolidation is whether consolidated city-counties would be valid under the New York State Constitution, since a 1938 amendment prohibits the creation of any new type of general purpose municipal government.¹⁷ The short answer to this question is that there is no constitutional bar to the creation of consolidated city-counties, so long as they are classified as either cities or counties. In most cases, a consolidated city-county in New York would likely opt to retain its county status, but it is conceivable that a smaller county, such as Schenectady or Rockland, might opt to become a single city.¹⁸

A more difficult question is whether this type of “super county” would be able to improve efficiency and urban-suburban equity as effectively as city-county governments in other states, which are often vested with the attributes and powers of both cities and counties.¹⁹ The inability to classify a consolidated city-county as anything but a city or county could also have practical effects on the ability of the resulting entity to impose taxes and incur debts.²⁰ Whereas separate governments may impose separate taxes and incur separate debts in order to provide the aggregate of services provided in the city and county, a “super county” would be subject to the constitutional tax and debt limitations for counties. As a result, the city-county would be left with only one source of taxing and borrowing power to provide the services previously funded by two different entities. Moreover, limiting consolidated city-counties to either the city or county classification could interfere with the distribution of state and federal aid.

In order for a new type of city-county government to be created that could address these and related problems, constitutional amendments would be necessary. The complexities involved in predicting what this kind of constitutional amendment would look like, however, are beyond the scope of this article.

III. Processes to Establish City-County Governments in New York

Without a constitutional amendment, state authorization of some type would likely be necessary before a city-county government could be created, as New York law does not currently enable cities and counties to consolidate, merge or dissolve.²¹ There are several methods by which this could occur: by general legislation authorizing cities and counties to consolidate through local action; by special legislation authorizing a particular city and county to consolidate upon the request of the affected

local governments and their constituencies; by a transfer of substantially all of a city’s functions to its county; or by general or special legislation mandating the consolidation of a city and county. Each of these approaches has particular benefits, and each has its own drawbacks and possible barriers.

A. Consolidation by General Legislation

The state legislature is vested with the power to “provide for the creation and organization of local governments,”²² and via this power the state may enact laws authorizing cities and counties to consolidate, merge or dissolve.²³ Such provisions do, in fact, exist for towns and villages, which may, in certain circumstances, choose to alter their existences without further state involvement.²⁴ General authorization of this type, applicable to all cities and counties (or certain classes thereof) would provide the most straightforward method for cities and counties to pursue consolidation.

Any general legislation enacted providing for city-county consolidation could be tailored to require state involvement in the process. Legislation along these lines has been enacted in other states, where cities and counties may consolidate only after study, consent of the governments and constituencies to be consolidated, and approval by the state.²⁵ Alternatively, general legislation could be enacted authorizing or mandating the consolidation of only a certain class of city and county governments. The classification could be based on such factors as population size or density of either or both the city and county, and in this manner the state could ensure that only certain governments would be eligible for consolidation.²⁶

B. Consolidation by Special Legislation Upon Local Request

Nearly all of the city-county consolidations to have occurred in the United States, including those to have occurred pursuant to general legislation, have been initiated at the local level and have been dependent upon the consent of the affected local governments and their constituents.²⁷ Consent-based city-county consolidation may be more sustainable in the long term than state-mandated restructuring, as this process ensures that a significant percentage of the local population and its representatives desire government reorganization and are committed to implementing the new government in as effective a manner as possible.²⁸ This bottom-up approach may also serve to increase the public’s participation in local government by encouraging dialogue, fostering a sense of community, and reminding citizens of their ability to effect change and influence their region’s future in positive ways.²⁹ The disadvantage of this method of consolidation, however, stems precisely from the fact that it operates only upon approval of the people and governments to be affected by the consolidation. Rural and suburban municipal governments often oppose consolidation with their counties for the simple reason that they would like

to continue to exist, and public support for city-county consolidation is often defeated by inertia in the face of dramatic governmental changes and a preference for maintaining the status quo. Moreover, even when the government and residents of a city support consolidation, the effort can still be overcome if a sufficient number of county residents oppose the consolidation (and they often do, fearing increased taxes and changes in services).³⁰ Indeed, few consolidation referenda are successful.³¹

Because local governments in New York are vested with only those powers that have been granted to them by the state,³² and no legislation exists generally authorizing the consolidation, merger or dissolution of either cities or counties, the first step to be taken by a New York city and county presently wishing to consolidate would be the filing of a home rule request by both local governments seeking legislation authorizing a consolidation.³³ Such legislation would entail the creation of a new county charter, and the Municipal Home Rule Law would require the new charter to be approved separately by the residents of both the city and the county.³⁴ Accordingly, city-county consolidation pursued in this fashion would require the approval of: (1) both the city and county governments; (2) the state; and (3) the residents of the city and county. The length of this process and its need for repeated approvals contribute to the failure of many city-county consolidation proposals, but it embodies fundamental democratic principles by ensuring that all stakeholders have an opportunity to voice their hopes and concerns.

C. De Facto Structural Consolidation Without State Approval

As noted above, the power to dissolve a city in order for it to be consolidated with its county lies exclusively with the state, absent legislation authorizing cities to dissolve through the enactment of purely local laws. However, it may be possible for a city to transfer substantially all of its functions to its county without the need for state enabling legislation.³⁵ This would leave the city intact as a mere shell and achieve a de facto city-county consolidation. A consolidated city-county of this type, might, in fact, be preferable to other forms of consolidated city-counties due to the debt and taxing limits contained in the constitution, as discussed above. In a de facto city-county consolidation, the city could retain its powers to tax and incur debt, and it could thus provide increased fiscal capacity to the restructured government entity. Moreover, under a de facto city-county consolidation approach, the risk of interruptions to state and federal aid provided to the city would be minimized, as the city would technically continue to exist.

A de facto city-county consolidation would be authorized by Article IX, section 1(h) of the State Constitution and sections 33 and 33-a of the Municipal Home Rule Law. Together, these provisions authorize counties

to adopt alternative forms of county government and to transfer functions among the units of local government within a given county. Because the adoption of such an alternative form of county government would require the adoption of a new charter, approval of the populations of the city and county separately would be necessary.³⁶ In addition to the complexities of transferring certain functions to the county,³⁷ there is a potential legal barrier to the formation of a de facto consolidated city-county: the Municipal Home Rule Law prohibits county charter amendments from abolishing units of local government.³⁸ It is unclear whether a de facto city-county consolidation, which would leave the city intact as a mere shell, would be considered to be the equivalent of dissolving the city itself.

D. State Mandated Consolidation

Indianapolis/Marion County, Indiana, is the only consolidated city-county in the United States to have been mandated by state act without the request of the local governments involved.³⁹ The absence of more widespread state mandated city-county consolidation may seem somewhat surprising, as the United States Supreme Court ruled in 1907 that, subject only to state constitutional restraints, the states have the power to extinguish and modify their municipal governments as they see fit.⁴⁰ Numerous state courts, including those of New York, have reaffirmed the broad state powers to create, modify and rescind the powers and characteristics of municipal governments.⁴¹

While state mandated consolidation would be contentious among elected officials and residents, top-down consolidation has one particularly significant benefit over consolidation initiated at the local level: the State can impose consolidation upon all of the municipalities located within a county (or any proportion of them).⁴² As previously explained, the typical city-county consolidation involves a large city and its county, leaving other municipalities within the county as independent governments. Because of this reality, city-county consolidation has frequently been criticized for failing to achieve its economic and regionalist goals; the state is left with one less local government (out of possibly thousands); the duplication of services is removed only as between two local governments; and the fragmented suburbs and rural areas continue to compete with the city by enacting lenient land use ordinances and imposing low taxes, thereby sustaining continuing patterns of sprawl and urban-suburban inequity.⁴³ While there are still benefits to city-county consolidation, requiring, or somehow strongly encouraging, the county's other local governments to join in the consolidation is what is needed to make city-county consolidation most effective.⁴⁴ An important question, then, is whether the legislature has the power, under the laws of New York and the State Constitution, to order a city-county consolidation against the opposition of the municipal governments that it seeks to consolidate,

or even against the residents of those municipalities. This is not a simple question, and an understanding of New York's constitutional home rule provision is necessary to answer it.

Home rule laws were enacted in many states in the nineteenth and early twentieth centuries in order to guarantee local governments a certain degree of protection from state actions intrusive upon their internal functioning. Article IX of the New York State Constitution, enacted in 1923, contains the basis of New York's home rule laws. It draws a distinction between "general" and "specific" laws: general laws are those that apply equally to all local governments, or a general class thereof, while special laws are directed at particular local governments. The Home Rule Article provides that the state "[s]hall have the power to act in relation to the property, affairs or government of any local government only by general law"⁴⁵ There are two exceptions laid out in this rule. First, the state may act by "special law" upon a home rule request by a municipality (as would occur in the case of a locally initiated consolidation proposal). The second exception applies when the governor certifies that the special law is needed due to emergency circumstances. As noted above, it would be possible for the state to draw general legislation mandating the consolidation of a particular city and county by restricting the application of the legislation, possibly by population size and/or density. In this manner, the legislation, while generally applying to all local governments falling within such parameters, could have the practical effect of applying only to one city and its county.⁴⁶ Whether the state could do away with this pretext and enact special legislation ordering a city-county consolidation is a more difficult question.

The home rule article prohibits special legislation that interferes with local governments' "property, affairs and government." On its face, this provision seems to restrict quite narrowly the traditionally broad powers that states are said to hold over their local governments. However, two cases decided in 1929 held that home rule protections are trumped when the subject matter of a special law involves a "state concern." The first of these cases, *New York v. Village of Lawrence*,⁴⁷ is of particular relevance to the issue of consolidation, as it concerned another form of municipal boundary change—annexation. The case involved a dispute between New York City and the town of Hempstead over the location of the municipalities' borders. When the legislature passed a special law unilaterally designating the boundary and annexing the contested strip of land to Nassau County, the city sought to overturn the law on the basis that it violated the home rule article by interfering with its property and affairs. The court explained, however, that the constitutional home rule provision did not alter the state's authority to fix municipal boundaries:

The power to enlarge or restrict the boundaries of an established city is an incident of the legislative power to create and abolish municipal corporations and to define their boundaries. . . . Legislation relating to the boundaries of political divisions of the State is a matter of State concern, and its benefits extend beyond the limits of the property, affairs and government of the city which is affected.⁴⁸

Thus was born into New York jurisprudence the doctrine of state concern, which holds that matters of state concern do not implicate the home rule prohibition of special laws. The doctrine was strengthened later that year, when the Court of Appeals upheld a special law relating to New York City tenements in *Adler v. Deegan*.⁴⁹ It is Justice Cardozo's concurring opinion that has resonated through the years, particularly his determination that matters involving local concerns nevertheless may fall without the scope of home rule protection if they also implicate sufficiently important state concerns.⁵⁰

These principles have been repeatedly upheld,⁵¹ although the 1963 amendments to the constitution expanded municipal home rule protection. Notably, these amendments included an annexation provision,⁵² which requires the consent of the affected local governments before any annexation may take place. While some have viewed this as an indication that local consent should be required for all municipal boundary changes,⁵³ it has also been suggested that, by limiting the amendment to annexation, the legislature intended to exclude from the consent requirement other forms of municipal alteration, including merger, dissolution and consolidation.⁵⁴

Another interesting twist was added to the home rule jurisprudence in 1990, when the Court of Appeals decided that state legislation authorizing Staten Island to place on the ballot a question relating to its possible secession from New York City did not violate the State Constitution.⁵⁵ While the supreme and appellate courts ruled in favor of the state, based on the state concern doctrine, the Court of Appeals dodged the issue and affirmed on the narrow ground that the law did not interfere with the property, affairs or government of the city because the authorized referendum was merely advisory and could not itself result in any change to the city's boundaries.⁵⁶ Whether the court's refusal to adopt the state concern doctrine in this case was indicative of its hesitancy to follow the home rule precedent, or whether it was simply deciding the case on the narrowest ground possible, is not known. The dissenting judge, however, made a forceful case for rejecting the state concern doctrine and requiring a home rule request.

This rather protracted discussion is intended to illustrate that the question of whether the state could force a city and county to consolidate is thoroughly unclear.

Long-standing precedent supports the power of the state to alter local government boundaries and classifications as it wishes so long as such action would involve significant state interests, and the economic and regionalist principles supporting city-county consolidation likely fall within this category. In this regard, the use of state power to consolidate communities (including those that would not do so voluntarily) in order to provide for regional governance that is more equitable to all of the citizens within a large metropolitan region is peculiarly a matter of state concern. At the same time, however, the extent of the impact that a forced city-county consolidation could have on the concerned municipalities calls for deference to local consent, and the developments in home rule jurisprudence since 1929 have clearly strengthened local governments' stance in relation to the state. Moreover, the lack of American examples of mandated consolidation may also suggest that imposed consolidation has not generally been seen as a viable approach. In short, if and how this issue will be decided is uncertain, but it is nevertheless one avenue toward city-county consolidation that should be discussed, if only to better understand the interrelationships that are at play in any city-county consolidation, both those between municipalities and the state and those among the municipalities themselves.

IV. Beyond Statutory Authority: How to Make Consolidation Work in New York

This article has barely scratched the surface of the political concerns that are involved in city-county consolidations, but a few points should be clear: city-county consolidation has significant potential to improve outdated municipal structures that are inefficient, inequitable, and harmful to regional and economic needs; consolidation has the most potential to ameliorate current local government problems when it extends beyond the major city in a county to include suburban and rural municipalities, even though these local governments are unlikely to voluntarily join in any consolidation; and, while state imposed consolidation would have the benefit of providing for inclusive city-county consolidations, it is not politically or legally attractive. For these reasons, and because the major restructuring of local governments entails a long and expensive transition, financial incentives for consolidation may prove to be the most desirable approach to making city-county consolidation possible in New York. Even if such incentives were only significant enough to encourage one or two consolidations, these local governments could then be studied and evaluated by others that might consider following the lead. Nevertheless, in order for incentives to be successful in encouraging city-county consolidation, local governments need a straightforward process by which they can begin to consider and implement plans for consolidation. In addition to resolving some of the murky issues presented in the consolidation approaches presented in this discussion, state legislation detailing preferred consolidation approaches would also

provide a signal that the acceptance of city-county consolidation in New York State is growing. This would help to move the discussion and debate to the next level.

Endnotes

1. Office of the New York State Comptroller, 2006 Annual Report on Local Governments 29-30, *available at* <http://www.osc.state.ny.us/localgov/datanstat/annreport/06annreport.pdf> [hereinafter 2006 Annual Report]. In addition to these 4,200 local governments (which include cities, towns, villages, school and fire districts, and special purpose entities), there are more than 6,900 town special districts, adding another layer of complexity to the mix. Office of the New York State Comptroller, *Town Special Districts in New York: Background, Trends and Issues* (2007), *available at* <http://www.osc.state.ny.us/localgov/pubs/research/townspecialdistricts.pdf>.
2. David Rusk, *Upstate New York: A House Divided 10*, *available at* <http://www.gamaliel.org/DavidRusk/Thruway%20Alliance%20report.pdf> (noting that New York State has the eighth highest rate of municipal fragmentation in the country).
3. See Office of the New York State Comptroller, *Outdated Municipal Structures: Cities, Towns and Villages—18th Century Designations for 21st Century Communities* (2006), *available at* <http://www.osc.state.ny.us/localgov/pubs/research/munistructures.pdf> [hereinafter *Outdated Municipal Structures*].
4. See 2006 Annual Report, *supra* note 1, at 8. New York has the third highest state and local tax rates in the country. Tax Foundation, *Tax Data: State and Local Tax Burdens Compared to Other U.S. States, 1970–2007*, *available at* <http://www.taxfoundation.org/taxdata/show/335.html>.
5. See Governor Eliot Spitzer, 2007 State of the State Address, *available at* <http://www.ny.gov/keydocs/NYS-SoS-2007.pdf>; see also New York State Commission on Local Government Efficiency & Competitiveness, *Local Initiatives by Type*, http://www.nyslocalgov.org/local_initiatives_type.asp#cons.
6. City-county consolidation is not a new concept. The first such consolidation, between New Orleans and Orleans Parish, dates back to 1805, with the consolidations of Philadelphia, San Francisco, New York City, Boston, Denver and Honolulu all occurring before 1910. See National Association of Counties, *Successful City-County Consolidations*, http://www.naco.org/Content/ContentGroups/Publications1/County_News1/20035/6-2-03/Successful_City-County_Consolidations.htm. While interest in city-county consolidation decreased in the 1980s, the successful consolidation of Louisville and Jefferson County, Kentucky, in 2000 (and several smaller, preceding consolidations) has revived public interest in consolidation. See Jered B. Carr, *Perspectives on City-County Consolidations and Its Alternatives*, in *CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES* 3, 4 (Jered B. Carr & Richard C. Feiock, eds., 2004).
7. City-county consolidations should be distinguished from independent cities (such as Baltimore), where the city is not located within any county, and from metropolitan or regional governments (such as the Portland Metro Council), where a separate governmental entity is set up to deal with regional concerns but does not displace the local governments that it serves. See U.S. Census Bureau, Appendix A.: *Census 2000 Geographic Terms and Concepts A-12 to A-13*, *available at* <http://www.census.gov/geo/www/tiger/glossry2.pdf>.
8. See Richard C. Feiock, *Do Consolidation Entrepreneurs Make a Deal with the Devil?* in *CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES* 43, 43-44 (Jered B. Carr & Richard C. Feiock, eds., 2004).
9. See generally Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 *GEO. L.J.* 1985 (2000).

10. See Rusk, *supra* note 2, at 14-18; see also David Rusk, *Cities Without Suburbs: A Census 2000 Update 5* (2003).
11. See Richard Briffault, *Localism and Regionalism*, 48 BUFFALO L. REV., 17-14; Cashin, *supra* note 9.
12. See Rusk, *supra* note 2, at 19-20.
13. One study of local governments in Kentucky that compared a consolidated city-county and a fragmented county found that citizens were more likely to be aware of and participate in local government matters in the consolidated city; the authors attributed this to the consolidated government being more understandable, and thus, more accessible to its constituents than the decentralized system. WILLIAM E. LYONS, DAVID LOWERY & RUTH HOOGLAND DEHOOG, *THE POLITICS OF DISSATISFACTION: CITIZENS, SERVICES, AND URBAN INSTITUTIONS* 98-105 (1992).
14. These criticisms are beyond the scope of this article, but the controversial nature of city-county consolidation should be acknowledged. The fact remains that, with fewer than thirty-five consolidated city-counties in the United States, the benefits and disadvantages of city-county consolidation are not thoroughly understood. Linda S. Johnson & Jered B. Carr, *Making the Case for (and Against) City-County Consolidation*, in CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 246 (Jered B. Carr & Richard C. Feock, eds., 2004). For a general discussion of some of the potential drawbacks of city-county consolidation, see Feock, *supra* note 8. For a general discussion about the nature of localism and regionalism, and the good and bad aspects of each, see Briffault, *supra* note 11.
15. Executive Order No. 11, available at <http://www.nyslocalgov.org/pdf/Executiveorder.pdf>; see also Governor Spitzer's 2007 State of the State Address, available at http://www.ny.gov/governor/keydocs/2007sos_speech.html.
16. City-county consolidations have entered the public debate in Syracuse/Onondaga County, Rochester/Monroe County, Binghamton/Broome County, and Nassau County. Erie County and the City of Buffalo, however, have been the only New York local governments to actually attempt city-county consolidation (since New York City's consolidation in the late nineteenth century). The consolidation effort failed, however, primarily due to concerns over the county's financial ability to oversee the city. See Craig R. Bucki, "Revisiting Regionalism to Streamline Governance in Buffalo and Erie County, New York," present issue.
17. New York Local Government Handbook Ch. 4, pp. 1-2; N.Y. CONST. art. VIII, § 3. The prohibition is not absolute, but only prevents the creation of new types of municipal corporations that have both the power to tax and to the ability to incur debts. It is unrealistic, however, to imagine that any functional city-county government could be created without these powers.
18. The preference for county status stems from the geographic and demographic attributes of most of the counties in New York, and from the fact that most city-county consolidations include only the major city and the county. See discussion, *infra*. In these cases, retention of the county government would be necessary to ensure the continuation of county services to unconsolidated municipalities. In the smaller counties, it is more imaginable that city-county consolidations might include all of their municipalities, which would allow the formation of either a "super county" or a "super city."
19. See, e.g., KY. REV. STAT. § 81.310; KAN. STAT. ANN. § 12-345 (l)-(m).
20. See N.Y. CONST. art. XIII, § 4.
21. Such provisions have been enacted for towns and villages. See note 24, *infra*.
22. N.Y. CONST. art. IX, § 2(a).
23. See generally 1-5 ANTIEAU ON LOCAL GOVERNMENT LAW, Second Edition § 5.02.
24. N.Y. TOWN LAW §§ 79-a *et seq.*; N.Y. VILLAGE LAW §§ 18-1806, 19-900 *et seq.* Consolidation, merger and dissolution procedures also exist for fire districts, county and town special districts, and school districts. See New York State Commission on Local Government Efficiency & Competitiveness, Consolidation Procedures, available at http://www.nyslocalgov.org/pdf/Consolidation_Procedures.pdf.
25. See, e.g., N.C. GEN. STAT. §§ 153A-401 to 153A-405.
26. In the United States, Indianapolis/Marion County, Indiana, is the only consolidated city in recent history to have been established in this manner. National Association of Counties, Questions and Answers on Consolidation, http://www.naco.org/Content/ContentGroups/Publications1/Research_Briefs1/Questions_and_Answers_on_Consolidation.htm [hereinafter Questions and Answers].
27. Raymond A. Rosenfeld & Laura A. Reese, *Local Government Amalgamation from the Top Down*, in CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 219 (Jered B. Carr & Richard C. Feock, eds., 2004).
28. *Id.* at 222.
29. See Craig Schneider, *Cities Mull Cost-Cutting Mergers*, CFO.com, Feb. 23, 2005, available at <http://www.cfo.com/article.cfm/3689399?f=search> (noting that "[p]roponents also argue for the psychological benefits of mergers. Re-branding 'Greater Buffalo' as the tenth-largest city in the U.S. 'would show the world, and show ourselves that we are a world-class, progressive region,' says the Greater Buffalo Commission's Web site").
30. See Suzanne M. Leland & Gary A. Johnson, *Consolidation as a Local Government Reform: Why City-County Consolidation Is an Enduring Issue*, in CITY-COUNTY CONSOLIDATION AND ITS ALTERNATIVES 25, 31 (Jered B. Carr & Richard C. Feock, eds., 2004).
31. *Id.* at 25 (noting that first-time consolidation proposals are passed in less than fifteen percent of referenda).
32. See, e.g., *New York v. State*, 86 N.Y.2d 286 (1995) (holding that, without enabling legislation, the plaintiff city had no standing to sue the state).
33. See N.Y. MUN. HOME RULE LAW § 40.
34. N.Y. MUN. HOME RULE LAW § 33 (7)(b).
35. This approach was recommended by the Greater Buffalo Commission in its proposal to consolidate the governments of Buffalo and Erie County. Telephone interview with William Greiner, President Emeritus, University at Buffalo Law School, and chair of the Greater Buffalo Commission (Sep. 25, 2007).
36. N.Y. MUN. HOME RULE LAW § 33(h).
37. For example, because Articles 51 and 52 of the Education Law establish city school districts, it is unclear whether a city could transfer this function to its county. This complication would not arise in the case of an actual city-county consolidation, however, since Articles 51 and 52 apply only to "cities."
38. N.Y. MUN. HOME RULE LAW § 34(2)(d).
39. See Questions and Answers, *supra* note 26.
40. *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907).
41. See, e.g., *New York v. Village of Lawrence*, 250 N.Y. 429, 436 (explaining that "[i]n the absence of express restrictions placed by the Constitution upon the exercise of its legislative powers, the Legislature may create or destroy, enlarge or restrict, combine or divide, municipal corporations").
42. Researchers of Canadian "amalgamations," which are often mandated from higher levels of government, have also noted that this approach may result in a more "radical restructuring of governmental arrangements because decision makers are less politically beholden to any particular interest group[.]" Rosenfeld & Reese, *supra* note 27, at 224. For the same reason, top-down consolidation may reduce the number of municipal employees more than other approaches to consolidation, thereby resulting in increased efficiency and cost savings. *Id.*

43. See, e.g., David Rusk, Why City-County Consolidation Makes No Sense in “Little Boxes” Regions Like Buffalo-Erie County, available at <http://www.gamaliel.org/DavidRusk/Why%20city-county%20merger%20no%20sense.pdf>.
44. See, e.g., Leland & Johnson, *supra* note 30, at 30–31.
45. N.Y. CONST. art. IX, § 2(b)(2).
46. This was the approach taken by Indiana in enacting the “Unigov” bill that established the consolidated city-county of Indianapolis/Marion County. Essentially, the consolidation mandate was phrased in general terms, but its population density requirements made it applicable only to Indianapolis and Marion County. In *Dortch v. Lugar*, 255 Ind. 545 (1971), the Supreme Court of Indiana explained that the act did not become a special law merely because it was enacted with Indianapolis and Marion County in mind; rather, the legislation retained its classification as a general law because it was applicable to any county in which the density requirements might eventually be met. The effect of this legal sleight of hand was to avoid nearly all of the home rule problems that will be discussed in this section.
47. *New York v. Village of Lawrence*, 250 N.Y. 429 (1929).
48. *Id.* at 440.
49. *Adler v. Deegan*, 251 N.Y. 467 (1929).
50. *Id.* at 489-91. Justice Cardozo’s stance that any state concern is sufficient to trump home rule protection has been tempered over the years, with courts today generally requiring a sufficiently important state concern. See, e.g., *City of New York v. Patrolmen’s Benevolent Ass’n*, 89 N.Y.2d 380, 390-91 (1996) (explaining that “where State concern is involved ‘to a substantial degree, in depth or extent,’ the State may freely legislate notwithstanding the legislation’s impact on local concerns” (quoting *Wambat Realty Corp. v. State*, 41 N.Y.2d 490, 494 (1977))).
51. See, e.g., *Wambat Realty Corp. v. State*, 41 N.Y.2d 490 (1977); *Kelly v. McGee*, 57 N.Y.2d 522 (1982); *City of New York v. Patrolmen’s Benevolent Ass’n*, 89 N.Y.2d 380 (1996); *City of New York v. State*, 94 N.Y.2d 577 (2000).
52. N.Y. CONST. art. IX (1)(d).
53. See *New York v. State*, 76 N.Y.2d 479, 490-92 (Hancock, J., dissenting); Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L.REV. 755, 812-814 (1992).
54. Briffault, *supra* note 53.
55. *New York v. State*, 76 N.Y.2d 479 (1990).
56. Following this decision, the residents of Staten Island did in fact vote to create a charter commission, but when legislation was introduced to enable the secession, the Assembly Speaker refused to bring the bill up for consideration before a home rule request was filed by New York City. A lawsuit was filed against the Speaker, but it was dismissed by the trial court based on separation of powers principles. Joseph P. Viteritti, *Municipal Home Rule and the Conditions of Justifiable Secession*, 23 FORDHAM URB. L.J. 1, 4-5 (1995).

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