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# The Constitutional Convention and Court Merger in New York State


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# The Constitutional Convention and Court Merger in New York State

## PERSPECTIVE

By Jay C. Carlisle & Matthew J. Shock\*

### I. Introduction

In November 2017, voters in New York, for the first time in twenty years, will be asked to decide whether there “[s]hall be a convention to revise the constitution and amend the same?”<sup>1</sup> If it is decided by the electorate to call a convention, “delegates will be elected in November 2018, and the convention will convene in April 2019.”<sup>2</sup> One of the significant goals of a convention would be the achievement of court merger in the Empire State. The purpose of this perspective is to discuss the pros and cons of a constitutional convention with an emphasis on court merger.

### II. Background

The Constitution of New York provides that in the general election, the voters are to be asked: “[s]hall there be a convention to revise the constitution and amend the same?”<sup>3</sup> The New York

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1. Josefa Velasquez, *State Bar Overwhelmingly Approves Constitutional Convention*, N.Y. L.J. (June 17, 2017), <http://www.newyorklawjournal.com/id=1202790400751/State-Bar-Overwhelmingly-Approves-Constitutional-Convention?slreturn=20170730094021>.

2. N.Y.C. BAR ASS'N, REPORT OF THE NEW YORK CITY BAR ASSOCIATION TASK FORCE ON THE NEW YORK STATE CONSTITUTIONAL CONVENTION 5 (2017) [hereinafter 2017 TASK FORCE REPORT].

3. N.Y. CONST. art XIX, § 2. See Franklin Feldman, *A Constitutional Convention in New York: Fundamental Law and Basic Politics*, 42 CORNELL L. REV. 329, (1957) (a seminal article that presents the reader with an overview of a constitutional convention in New York, beginning with a background, followed by a theory and structure of the convention. Although, based on whether a convention would be held in 1957, the article provides the reader

Constitution was first adopted in 1777, preceding the Federal Constitution by ten years.<sup>4</sup> In 1821, New York, by a popular vote, adopted the second constitution.<sup>5</sup> In 1846, New York, by both a majority vote and approval by the people, adopted its third constitution, including a “mandatory provision for periodic opportunity for revision by convention.”<sup>6</sup> Since the third constitution of 1846, “there has been a provision that every twenty years or so [calls for] . . . a referendum upon calling another constitutional convention to amend and revise the then existing one.”<sup>7</sup> More specifically, the applicable provision, “requiring submission to the people . . . of whether a constitutional convention shall be called, appears in Article 19, Section 2 of the present constitution, which specifies that the question shall be submitted in the year 1957 and every 20th year thereafter.”<sup>8</sup> Most recently, in 1997, when asked whether a call for a convention to revise the New York State Constitution and amend the same, voters answered no.<sup>9</sup> The requirements for a constitutional convention in New York State are:

If a majority of the persons voting on the issue decide in favor of a convention, the electors of every senate district in the state, as then organized, select three delegates at the next

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with a remarkable overview of the constitutional convention process in New York).

4. *Id.* at 330.

5. 20 N.Y. JUR. 2D *Constitutional Law* § 5 (2017).

6. *Id.*

7. Feldman, *supra* note 3, at 330 (in 1801, 1821, and 1846, there were constitutional conventions, which were called by the people themselves after a vote in favor of a convention, and was then submitted and recommended by legislatures). Specifically, the 1846 Constitutional Convention believed that the additional clause was necessary, as it struck “constitutional affirmation of popular sovereignty: that all power is inherent in the people and every twenty years they may take that power in their own hands. The provision legitimized the extraconstitutional tradition of the legislature, submitting the question of the calling of a constitutional convention to the people.” PETER J. GALIE, *THE NEW YORK STATE CONSTITUTION* 309 (G. Alan Tarr ed., 2011). Further, “[t]he year 1957 was chosen as the start of the twenty-year cycle because if the voters chose to hold a convention, delegates would be elected in 1958, the year of statewide elections, and the aim was to insulate the delegate selection process from other elections.” *Id.*

8. 20 N.Y. JUR. 2D, *supra* note 5, § 5. *See generally id.* § 8.

9. 2017 TASK FORCE REPORT, *supra* note 2, at 5.

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ensuing general election, and the electors of the state voting at the same election select 15 delegates at large.<sup>10</sup>

Specifically:

If a majority of voters cast their ballots in favor of holding a convention on November 7, 2017, voters would elect 204 convention delegates on November 6, 2018. Fifteen of the delegates would be elected statewide. Three would be elected from each of the state's 63 senate districts, totaling 189. The constitutional convention would convene on April 2, 2019, in Albany.<sup>11</sup>

On the first Tuesday of April, the elected delegates must convene at the state capitol and continue their session until the convention is completed.<sup>12</sup> If any proposed constitution or amendment is in fact adopted by the constitutional convention “[it] must [first] be submitted to a vote of the electors of the state.”<sup>13</sup> However, before an amendment may be submitted to the electors, “a majority of all the delegates elected to the convention” is needed.<sup>14</sup>

### III. Arguments “For” and “Against” a Constitutional Convention

While there is overwhelming support for a constitutional convention, as much reforms are needed,<sup>15</sup> there are still numerous risks presented by holding a convention in New York.<sup>16</sup> The arguments in favor of holding a constitutional convention include, but are not limited to, the need for electoral reforms, as well as reforms in areas of ethics, local government, equal rights for all, and most importantly, structural change, in

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10. 20 N.Y. JUR. 2D, *supra* note 5, § 8.

11. *New York Proposal 1, Constitutional Convention Question (2017)*, BALLOTPEdia, [https://ballotpedia.org/New\\_York\\_Proposal\\_1,\\_Constitutional\\_Convention\\_Question\\_\(2017\)](https://ballotpedia.org/New_York_Proposal_1,_Constitutional_Convention_Question_(2017)) (last visited Sept. 19, 2017).

12. 20 N.Y. JUR. 2D, *supra* note 5, § 8 (citing N.Y. CONST. art. XIX, § 2).

13. *Id.*

14. *Id.*

15. *See* 2017 TASK FORCE REPORT, *supra* note 2, at 5.

16. *See id.* at 1.

the court system and judiciary.<sup>17</sup> However, a constitutional convention may create a difficulty in ensuring a predictable process of selecting delegates, challenges in courts and conventions regarding competing arguments of who is the sole legitimate convention, and finally, an attempt to become a “permanent, self-perpetuating font of piecemeal amendments.”<sup>18</sup>

### A. Arguments “Against”

First, we address the arguments that weigh against approving a constitutional convention in New York State.<sup>19</sup> Article XIX, section 2 of the current New York Constitution, is “so short on details that it would be nearly impossible to ensure any predictable process for selecting delegates.”<sup>20</sup> This represents a deterrent to implementing a constitutional convention, as the lack of predictability in the selection of delegates may result in a lack of predictability in the entire convention process.<sup>21</sup> The second issue that arises with implementing a constitutional convention is the lengthy possible, “challenges in state and federal courts and . . . competing conventions, each claiming to be the sole legitimate [one].”<sup>22</sup> These challenges could result in many lawsuits, alleging an unconstitutional selection method, being brought before a convention or the selection of delegates begins.<sup>23</sup> Finally, it is possible that a constitutional convention in New York State “would attempt to constitute itself as a permanent, self-perpetuating font of piecemeal amendments.”<sup>24</sup> Each of

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17. *See id.* at 3; Evan A. Davis, *Why I Favor Calling a Constitutional Convention*, 89 N.Y. ST. B. ASS’N J. 43, 47 (June 2017) (“[t]he reality is that if we wait for state government to cure itself, it will never happen.”).

18. Robert Kantowitz, *The Downsides of a Constitutional Convention*, 89 N.Y. ST. B. ASS’N J. 39, 39 (June 2017).

19. *See id.* (noting these are only suggestions that should be considered before amendment, as “if it were possible to limit the subject matter of a constitutional convention to the judiciary and the election of the legislature, [the author] could support a convention called for these specific purposes.”).

20. *Id.* at 39; *see* N.Y. Const. art. XIX, § 2.

21. *See* Kantowitz, *supra* note 18, at 39.

22. *Id.*

23. *Id.*

24. *Id.* (noting that while not intended, it is “arguably within the purview of what is literally permitted under Article XIX, section 2.”).

these objectives may be sufficient reason to vote against a constitutional convention.

### B. Arguments “For”

There are several arguments that can be made in favor of a constitutional convention.<sup>25</sup> We begin the arguments in favor of a constitutional convention by addressing electoral reforms. New York currently ranks close to the bottom in turnout in every type of election, with no hope of improving voter turnout.<sup>26</sup> New York does not have early voting, the ability to vote by mail, or same-day registration, all of which are available in several other states.<sup>27</sup> These rights are “barred by the Constitution,” specifically, article 2.<sup>28</sup> Thus, “[a] constitutional convention could propose sweeping away all these obstacles . . . [and] could go further and affirmatively require these measures that make it easier to vote.”<sup>29</sup>

Second, is the problem of ethics. New York State is in dire need of “tougher ethics reforms aimed not only at investigating and prosecuting ethics violations, but also at preventing them.”<sup>30</sup> Further, New York State needs to fix the local government article of the state constitution, as there have many judicial decisions to undermine the protections of local governments against the use of special bills directed at a single locality.<sup>31</sup> There is also the issue of unfunded mandates when New York imposes costs on local governments who are unwilling to pay,

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25. See 2017 TASK FORCE REPORT, *supra* note 2, at 4 (concluding “a constitutional convention is necessary in order to enact important judiciary, voting, and ethics reforms in our State. . . [as] it is time for New Yorkers to exercise the authority that was carefully inserted into the Constitution and convene a body to create a more responsive and effective State government.”); see also Davis, *supra* note 17, at 43 (describing “reasons for a ‘yes’ vote that are most compelling.”).

26. Davis, *supra* note 17, at 44; 2017 TASK FORCE REPORT, *supra* note 2, at 6-7.

27. Davis, *supra* note 17, at 44.

28. *Id.*

29. *Id.*

30. 2017 TASK FORCE REPORT, *supra* note 2, at 8; Davis, *supra* note 17, at 43 (noting “it is time to put a strong and independent ethics enforcement mechanism into the Constitution.”).

31. Davis, *supra* note 17, at 44-45.

and finally, there is the issue of local government consolidation.<sup>32</sup> Each of these concerns can be eliminated by a constitutional convention.

Similarly, there is “the need to add a strong and inclusive equal rights provision to our Bill of Rights that will help to unite and secure equal opportunity for our diverse population.”<sup>33</sup> New York State needs to “provide equal rights for women, those of diverse sexual orientation or identity and all others targeted by a prejudice of inferiority including discrimination based on ethnicity, national origin, disability or citizenship.”<sup>34</sup> A constitutional convention can achieve these goals.

The third argument for a constitutional convention is the need for reforms in New York State’s judiciary.<sup>35</sup> New York State has “perhaps the most complicated court system in the country, with 11 different types of trial courts and four different types of appellate courts.”<sup>36</sup> This is an intolerable condition existing in New York for years that can be changed by a constitutional convention.

#### IV. Brief Overview of the New York State Court System

##### A. Introduction

At the trial court level, some of the courts are “of general jurisdiction, some [are of] jurisdiction of only a specialized field

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32. *Id.*

33. *Id.* at 45.

34. *Id.* (noting that there is a strong need in New York for “an overarching constitutional commitment to equality.”).

35. See 2017 TASK FORCE REPORT, *supra* note 2, at 9-10.

36. See JOSEPH MARINO, MCKINNEY’S FORMS CIVIL PRACTICE LAW & RULES § 2:3 (2017) (“[t]he subject-matter jurisdiction of the various trial and appellate courts is set forth in N.Y. CONST. art. VI, the Judiciary Law, the C.P.L.R., the Criminal Procedure Law, the court act for the particular type of trial court (each type of trial court, except the supreme and county courts, has a court act), and even court rules.”); Quintin Johnstone, *New York State Courts: Their Structure, Administration and Reform Possibilities*, 43 N.Y. L. SCH. L. REV. 915, 916 (2000) (“the New York court structure is complex, somewhat unique, and in the opinion of many, antiquated.”); see generally DAVID D. SIEGEL, NEW YORK PRACTICE § 9 (5th ed. 2011); JACK B. WEINSTEIN, HAROLD L. KORN & ARTHUR R. MILLER, NEW YORK CIVIL PRACTICE, ¶ Intro.03 (David L. Ferstendig ed., 2d ed. 2017).

of law, and some [are of] broad but inferior jurisdiction.”<sup>37</sup> Also, “[s]ome trial courts may also hear appeals from lower courts; and to some extent, the jurisdictions of different types of trial courts overlap.”<sup>38</sup> For example, there are two types of jurisdiction at the trial court level: courts of superior jurisdiction and courts of inferior jurisdiction.<sup>39</sup> Courts of superior jurisdiction hear more serious matters and include the supreme court, county court, family court, surrogate’s court, and court of claims.<sup>40</sup> Courts of inferior jurisdiction typically hear less serious claims, and include the New York City Civil Court and New York City Criminal Court, as well as town and village courts, which have limited monetary jurisdiction and may handle misdemeanor offenses.<sup>41</sup> In New York City, civil courts are set in each of the five boroughs.<sup>42</sup>

The New York appellate court structure is comprised of “the Court of Appeals as the highest appellate court and appellate divisions of the supreme court as the highest intermediate appellate courts.”<sup>43</sup> There are four appellate division courts that exist, “one for each of four geographical areas into which the state is divided, referred to as departments.”<sup>44</sup> The appropriate department of the appellate division handles “[a]ppeals from the supreme court, court of claims, family courts, and surrogate’s courts.”<sup>45</sup> Further, “[a]ppeals from the county courts in the Third and Fourth Departments are . . . taken to the appellate division.”<sup>46</sup> Also, “[i]n the First and Second Departments, civil and nonfelony criminal appeals from the county courts, as well as appeals from the New York City Civil Court, city courts outside City, district courts, and town and village justice courts, are taken to an appellate term.”<sup>47</sup> Finally, “[a]ppeals from city courts and town and village justice courts in the Third and

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37. See Johnstone, *supra* note 36, at 916.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. See Johnstone, *supra* note 36, at 920.

43. *Id.*

44. *Id.*

45. See MARINO, *supra* note 36, § 2:3.

46. *Id.*

47. *Id.*



Fourth Departments are taken to the appropriate county court.”<sup>48</sup>

### B. *The Court Structure*

#### 1. The Court of Appeals

The highest court is the New York Court of Appeals, which, in a majority of cases, also serves as the court of last resort. The court consists of a chief judge and six associate judges, who are appointed to fourteen year terms by the governor, with the advice and consent of the senate.<sup>49</sup> The court is said to be a “court of very limited jurisdiction,” and has appellate jurisdiction over both civil and criminal cases.<sup>50</sup> In most instances, the court only reviews questions of law, with the exception of an appeal involving a criminal judgment imposing the death penalty, as well as an appellate division’s decision to reverse or modify a judgment due to new facts.<sup>51</sup> In both instances, the court of appeals would be permitted to review the facts, as “New York’s policy [is] to allow at least one appellate review of the facts.”<sup>52</sup> Finally, when asked to answer a question of New York law by the U.S. Supreme Court, a federal court of appeals, or another state’s highest court, the court of appeals is the only court in New York allowed to render an advisory opinion.<sup>53</sup>

#### 2. Appellate Division

There are four appellate divisions of the supreme court, one in each of the four judicial departments.<sup>54</sup> The justices are comprised of elected members of the supreme court who have been appointed by the governor to sit on the appellate division.<sup>55</sup>

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48. *Id.*

49. *See* SIEGEL, *supra* note 36, § 10 (citing N.Y. CONST. art. VI, § 2(a)).

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* (citing N.Y. CONST. art. VI, § 3(b)(9)).

54. *See* SIEGEL, *supra* note 36, § 11.

55. *See id.*

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The number of justices varies in each department.<sup>56</sup> The court reviews both the law and facts and has primarily appellate jurisdiction, hearing “appeals from the supreme court and from the county courts, the family court, the surrogate’s court, the court of claims, and appellate terms of the supreme court.”<sup>57</sup> There has been a difference in opinion as to whether “the appellate division, as a branch of the supreme court, has all of the latter’s original jurisdiction.”<sup>58</sup> Most notably, it has been held that “as a matter of administrative convenience [the court] will ordinarily decline to take original jurisdiction.”<sup>59</sup> However, it is important to note that the court “may do so whenever it sees fit.”<sup>60</sup>

### 3. Supreme Court

The supreme court is a state-wide trial court, with a branch in each county.<sup>61</sup> The justices are elected from judicial districts, for fourteen-year terms.<sup>62</sup> The supreme court, the state’s court of “general jurisdiction,” has the broadest jurisdiction, conferring “almost all of the jurisdiction the state can confer.”<sup>63</sup> However, the supreme court lacks original jurisdiction over cases where Congress confers exclusive jurisdiction on the federal courts, as well as actions against the state, where “jurisdiction is conferred exclusively on the court of claims.”<sup>64</sup> In instances involving concurrent jurisdiction, when a case is presented to the supreme court that could have been brought before some other court, the supreme court still has jurisdiction over the matter in accordance with New York’s policy.<sup>65</sup>

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56. *Id.*

57. *Id.*

58. *Id.* See, e.g., *Merritt Hill Vineyards, Inc. v. Windy Heights Vineyard Inc.*, 460 N.E.2d 1077 (N.Y. 1984) (holding that the Appellate Division had authority to grant summary judgment to defendants dismissing the cause of action for consequential damages even in the absence of a cross appeal).

59. *In re Ass’n of the Bar of N.Y.*, 227 N.Y.S. 1, 13 (App. Div. 1928).

60. *Id.*

61. SIEGEL, *supra* note 36, § 12.

62. *Id.* (citing N.Y. CONST. art. VI, § 6(c)).

63. *Id.*

64. *Id.*

65. *Id.*

However, in such instances, the supreme court will acknowledge jurisdiction over the matter and usually transfer it to the appropriate court.<sup>66</sup> Finally, the supreme court also has some appellate jurisdiction as well.<sup>67</sup> In most instances, appeals from the supreme court go directly to the local appellate division.<sup>68</sup>

#### 4. Appellate Term

In each department, the appellate division enjoys the pleasure of creating an appellate term.<sup>69</sup> To this date, only the First and Second Departments have appellate terms, hearing appeals from New York City Civil Court and New York City Criminal Court.<sup>70</sup> The Second Department also hears appeals from “the district, city, town, and village courts in all cases, and from the county courts in civil cases and in certain criminal cases.”<sup>71</sup> Appeals from the appellate term go directly to the appellate division.<sup>72</sup>

#### 5. County Courts

There is a county court in each county located outside New York City, with judges elected for ten-year terms.<sup>73</sup> The county court has criminal jurisdiction, including felonies, as well as substantial civil jurisdiction.<sup>74</sup> The county courts, treated as different in each county, have limited jurisdiction in civil cases, in amounts up to twenty-five thousand dollars.<sup>75</sup> Further, there are other statutory jurisdictional requirements that must be met. Otherwise, dismissal of the action is warranted.<sup>76</sup>

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66. SIEGEL, *supra* note 36, § 12.

67. *Id.*

68. *Id.*

69. *See id.* § 13.

70. *Id.* (citing N.Y. COMP. CODES R. & REGS. tit. 22, §§ 640.1, 730.1(b) (2017)).

71. SIEGEL, *supra* note 36, § 13 (citing N.Y. COMP. CODES R. & REGS. tit. 22, §730.1(d) (2017)).

72. *Id.*

73. *See id.* § 14 (citing N.Y. CONST. art. VI, §10(b)).

74. *Id.* (citing N.Y. CONST. art. VI, § 11(a)).

75. N.Y. CONST. art. VI, § 11(a); N.Y. JUD. LAW §190(3) (McKinney 2005).

76. *See* N.Y. JUD. LAW §190; SIEGEL, *supra* note 36, § 14.

Additionally, the county courts have jurisdiction over “real property actions if the land is in the county, and . . . there is no monetary limitation,”<sup>77</sup> as well as jurisdiction over incompetency proceedings affecting residents or real property in a county and further, summary proceedings to recover real property in a particular county.<sup>78</sup> Further, on a money counterclaim, the counterclaim specifies that the county court had unlimited monetary jurisdiction.<sup>79</sup> The county courts act as intermediate appellate courts for certain lower court decisions.<sup>80</sup> In some rural counties outside of New York City, the county court judge is permitted to simultaneously perform the functions of county, surrogate, and family court judge, or a combination of all three.<sup>81</sup> Appeals from the county court go directly to the appellate division, except in the Second Department, where appeals (except involving felony cases) go directly to the appellate term.<sup>82</sup>

## 6. Surrogate’s Court

There is a surrogate’s court in every county in New York State, with at least one judge, called a surrogate.<sup>83</sup> Each county has an election, and New York City county judges hold fourteen-year terms, while elsewhere have ten-year terms.<sup>84</sup> The surrogate’s court handles all matters involving decedents’ estates and probate of wills.<sup>85</sup> “As long as ‘affairs of decedents’ is the subject, the court has subject matter jurisdiction whether the claim involves law or equity.”<sup>86</sup> Appeals from the surrogate’s court go directly to the appellate division.<sup>87</sup>

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77. SIEGEL, *supra* note 36, § 14.

78. *See* N.Y. JUD. LAW § 190(4) (McKinney 2005); *see also* N.Y. REAL PROP. ACTS. LAW § 701(1) (McKinney 2013).

79. SIEGEL, *supra* note 36, § 14.

80. *Id.*

81. *Id.* (citing N.Y. CONST. art. VI, § 14).

82. *Id.*

83. *Id.* at § 15 (citing N.Y. CONST. art. VI, § 12).

84. SIEGEL, *supra* note 36, § 15.

85. *Id.*

86. *Id.*

87. *Id.*

### 7. Family Court

There is a family court in every county in New York State, with at least one judge on each court, and more as the statute provides.<sup>88</sup> Family court judges in New York City are appointed to ten-year terms by the mayor, and in counties outside of New York City, they are elected to ten-year terms.<sup>89</sup> Family court judges hear almost all family matters, regardless of whether they are civil or criminal cases but have no subject matter jurisdiction over divorce matters.<sup>90</sup> Family court is governed by the Family Court Act, and is granted jurisdiction over “neglect, support, and paternity proceedings; adoption, guardianship and custody; juvenile delinquency and persons in need of supervision; family offenses; and conciliation proceedings.”<sup>91</sup> Appeals from family court go directly to the appellate division.<sup>92</sup>

### 8. Court of Claims

The court of claims is a state-wide court, governed by the Court of Claims Act, that has the jurisdiction “to hear and determine claims against the state or by the state against the claimant.”<sup>93</sup> Court of claims judges are appointed to nine-year terms by the governor, with advice and consent of the senate.<sup>94</sup> Appeals from the court of claims go to the appellate division.<sup>95</sup>

### 9. New York City Criminal Court

New York City Criminal Court exists solely in New York City and has only criminal jurisdiction.<sup>96</sup> The court handles the misdemeanors and lesser offenses.<sup>97</sup> Judges are appointed to

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88. *Id.* § 16 (citing FAM. CT. ACT § 131).

89. *See* SIEGEL, *supra* note 36, § 16 (citing N.Y. CONST. art. VI, §13(a)).

90. *Id.*

91. *Id.*

92. *Id.*

93. N.Y. CONST. art. VI, § 9.

94. *Id.* art. VI, § 10(b).

95. SIEGEL, *supra* note 36, § 17.

96. *Id.* § 18 (citing N.Y. CONST. art. VI, § 15(a)).

97. *Id.*

ten-year terms by the mayor.<sup>98</sup> Appeals from this court go to the appellate term.<sup>99</sup>

#### 10. New York City Civil Court

New York Civil Court exists solely in New York City and has only civil jurisdiction.<sup>100</sup> The court has monetary jurisdiction up to twenty-five thousand dollars.<sup>101</sup> This court also has jurisdiction over real property actions with a monetary limitation of twenty-five thousand dollars, unlike in county court where such limitation is inapplicable.<sup>102</sup> However, “[t]he monetary limit does not apply to counterclaims, but it has been held applicable to cross-claims.”<sup>103</sup> Further, the court has jurisdiction of the summary proceedings and interpleader claims.<sup>104</sup> In New York City, small claims court is a part of the New York City Civil Court, hearing cases with money damages up to five thousand dollars.<sup>105</sup> Further, judges are elected and serve ten-year terms.<sup>106</sup> Appeals from this court go to the appellate term.<sup>107</sup>

#### 11. District Courts

“There are two district courts in [New York], one covering Nassau County and the other the western part of Suffolk County.”<sup>108</sup> The district court has criminal jurisdiction in cases involving misdemeanors and lesser offenses.<sup>109</sup> The court’s civil jurisdiction amount is fifteen-thousand dollars, and in cases involving summary proceedings there is no limitation on the

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98. *Id.*

99. *Id.*

100. SIEGEL, *supra* note 36, § 19 (citing N.Y. CONST. art. VI, § 15(a)).

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. SIEGEL, *supra* note 36, § 19.

106. *Id.* (quoting N.Y. CONST. art. VI, § 15(a)).

107. *Id.*

108. *Id.* § 20.

109. *Id.*

amount of judgment for rent.<sup>110</sup> Similarly to county courts and the New York City Civil Court, “counterclaim jurisdiction is without monetary limitation.”<sup>111</sup> Further, while the district court can hear interpleader claims within the fifteen thousand dollar jurisdictional limit, the court does have little equity jurisdiction.<sup>112</sup> Finally, the New York Civil Practice Law and Rules (“CPLR”) governs in the district courts.<sup>113</sup>

## 12. City Courts

There is a city court in all sixty-one cities outside of New York City.<sup>114</sup> Monetary jurisdiction is fifteen thousand dollars, and the CPLR governs to the extent it is consistent with the Uniform City Court Act.<sup>115</sup> The city court also hears summary proceedings with no monetary limitation on a rent judgment.<sup>116</sup> The city court can also hear interpleader claims within the applicable monetary limitation and has little equity jurisdiction as well.<sup>117</sup> The city courts have criminal jurisdiction in cases involving misdemeanors and below.<sup>118</sup> Appeals from this court go to the county court unless the local appellate division has set up an appellate term, like in the Second Department.<sup>119</sup>

## 13. Town and Village Courts

Every county in New York State outside of the city is divided into towns.<sup>120</sup> Within these towns are villages located around the state.<sup>121</sup> Together, these courts are known as the “justice

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110. SIEGEL, *supra* note 36, § 20.

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* § 21.

115. *See* UNIFORM CITY CT. ACT § 202 (McKinney 1989); *see also* SIEGEL, *supra* note 36, § 21.

116. SIEGEL, *supra* note 36, § 21.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. SIEGEL, *supra* note 36, § 22.

courts.”<sup>122</sup> The courts have criminal jurisdiction over cases involving misdemeanors and below.<sup>123</sup> Civil jurisdiction in each of these courts is governed by the Uniform Justice Court Act.<sup>124</sup> These courts have monetary and replevin jurisdiction up to three thousand dollars.<sup>125</sup> Further, these courts have jurisdiction over summary proceedings “if the property is in the municipality in which the court serves, and a judgment for rent is not limited in amount.”<sup>126</sup> Each town and village has a small claims court where the three thousand dollar limitation applies.<sup>127</sup> Also, the justice courts have no significant equity jurisdiction.<sup>128</sup> Appeals from this court go to the county court unless an appellate term has been set up, like in the Second Department.<sup>129</sup>

## V. Is a Constitutional Convention Necessary to Implement Court Merger?

### A. Introduction

Times have changed since the last call for a constitutional convention in 1997, and there are several changes that could be made by a constitutional convention, which would have a tremendous impact on the New York State court system. Some potential changes are: (1) restructuring the appellate division;<sup>130</sup> (2) adding a Fifth Department;<sup>131</sup> (3) redistributing counties;<sup>132</sup>

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122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. SIEGEL, *supra* note 36, § 22.

127. *Id.*

128. *Id.*

129. *Id.*

130. David B. Saxe, *Bringing About Structural and Jurisdictional Change to New York’s Appellate Division*, 88 N.Y. ST. B. ASS’N J. 45, 46 (2016) (explaining that there is currently “a pronounced imbalance in the departments.”).

131. *Id.* at 46.

132. *Id.* at 46-47. As the total population in New York State is more than nineteen million and there are currently uneven populations among the departments, it has been suggested to redistribute counties among the departments. *Id.* For example, adding counties Richmond, Westchester, and Rockland to the First Department and adding the more northerly of the Second



(4) combining New York City;<sup>133</sup> (5) limiting appellate division justices;<sup>134</sup> (6) amending the constitutional limit on the number of supreme court justices;<sup>135</sup> (7) consolidating the appellate term;<sup>136</sup> and (7) merging the trial courts.<sup>137</sup> The most notable changes that could be brought about by a constitutional convention are the addition of a Fifth Department, the limiting of justices, and the need for a merger of trial courts.<sup>138</sup>

### B. A Fifth Department and Limits on Judicial Selection

A Fifth Department has been recommended by the Task Force to permit the legislature to create an additional department to assist the imbalanced caseload that currently exists among the existing four departments.<sup>139</sup> It has been noted that the presumption is “that a number of counties would be extracted from the Second Department to make up the new Fifth Department,” however, “these plans do not actually specify how the counties should be reallocated.”<sup>140</sup> The most practical plan “would probably be to set Kings, Queens and Richmond counties in the Second Department, and include all the other counties in

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Department counties, Orange, Putnam, and Dutchess, to the Third Department. *Id.* This redistribution would not require a constitutional amendment, as the Legislature is allowed, once every decade, to alter the boundaries of the judicial districts and departments. *Id.*

133. *Id.* at 47 (this has been suggested to address the issue of having one city, New York City, divided into two separate judicial departments, set forth by the 1894 Constitution. This can be problematic as “we are left with an unusual situation in which the residents of one city are subject to two different sets of common law rulings and interpretations of law, depending on which judicial department their borough is in.”).

134. *Id.* at 47-48.

135. Saxe, *supra* note 130, at 48.

136. *Id.* It has been suggested to consider to incorporate the appellate term back into the appellate division, which the appellate division may do at any time. *Id.*

137. See 2017 TASK FORCE REPORT, *supra* note 2, at 9; see also Saxe, *supra* note 130, at 47-48.

138. See 2017 TASK FORCE REPORT, *supra* note 2, at 9-10; see also Saxe, *supra* note 130, at 47-48.

139. See 2017 TASK FORCE REPORT, *supra* note 2, at 9 (“[t]he boundaries of a new Department are properly a matter of political concern best left to the Legislature.”); see also Saxe, *supra* note 130, at 46.

140. Saxe, *supra* note 130, at 46.

the new Fifth Department.”<sup>141</sup> However, the issue should be deferred to the legislature, as there has been “concern about creating a department containing a population with a large majority concentration from one or the other political party, making it likely that most of the judges of that department will be affiliated with that political party.”<sup>142</sup>

The Task Force<sup>143</sup> recommends changing the number of justices on the appellate division, as well as amending the constitutional limit on the number of supreme court justices.<sup>144</sup> Specifically, the Task Force suggests amending to “increase the number of Appellate Divisions *or* to provide for a mechanism that allows more flexibility by granting the Legislature authority to regulate matters of structure through appropriate legislation.”<sup>145</sup> Also, the Task Force recommends allowing the legislature to increase the number of supreme court justices if it deems necessary.<sup>146</sup> Article VI, section 6(d) of the New York Constitution “provides for the total number of justices of the Supreme Court in each district, including justices designated to the Appellate Divisions of the Supreme Court.”<sup>147</sup> The legislature is allowed to increase the number of supreme court

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141. *Id.*

142. *Id.*

143. The New York City Bar Association has convened a Task Force on the New York State Constitutional Convention and has asked its members to undertake an analysis similar to the one done by the New York City Bar Association twenty years ago. 2017 TASK FORCE REPORT, *supra* note 2, at 1 (“Twenty years ago, the predecessor to the current New York City Bar Association Task Force on the New York State Constitutional Convention (the “Task Force”) studied the question of whether to support the call for a constitutional convention, which appeared on the November 1997 ballot.”). In 1997, even though the Task Force concluded that the constitution needed significant reform, they ultimately recommended that the New York City Bar Association not support the convention because of concerns with the delegate selection process. *Id.* There is significantly more momentum to reform twenty years later. *Id.*

144. *Id.* at 9.

145. *Id.*

146. *Id.* (“The Task Force recommends that Article VI, section 6(d) of the Constitution be amended to authorize the Legislature to regulate the apportionment of judges by appropriate legislation without limitation and to increase the number of justices of the Supreme Court to an amount it deems necessary to effectively and expeditiously handle the judicial business in the respective districts.”).

147. *Id.*

justices in any judicial district, once every ten years when given the opportunity, “except that the number in any district shall not be increased to exceed one justice for fifty thousand, or fraction over thirty thousand, of the population thereof as shown by the last federal census or state enumeration.”<sup>148</sup> This population-based formula “significantly undermines the court system’s ability to deal with New York’s large and complex case load. This constitutional cap should be eliminated by constitutional amendment.”<sup>149</sup>

### C. Court Merger

The Task Force recommends a merger of trial courts, which can be accomplished by a constitutional convention in New York State.<sup>150</sup> Specifically, the Task Force recommends that “the trial courts be merged to create a two-tiered structure comprised of a statewide Supreme Court of general jurisdiction and a statewide District Court with inferior jurisdiction (as well as separate appeals courts for each lower court).”<sup>151</sup> If adopted, this recommendation accounts for some of the issues and difficulties that surround one of the most complicated court systems in the country.

In 1986, the legislature voted to pass a constitutional amendment entitled “merger-in-place” which involved merging into the supreme court the following courts: county court, court of claims, family court, surrogate’s court, New York City Civil Court, and New York City Criminal Court, as well as authorizing the legislature to create up to two new judicial departments.<sup>152</sup> It is obvious that “a Constitutional Convention could provide a unique opportunity to re-design, restructure,

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148. 2017 TASK FORCE REPORT, *supra* note 2, at 9 (quoting N.Y. CONST. art. VI, § 6(d)).

149. *Id.*

150. *Id.*

151. *Id.* (noting that creation of such a merger should result in the adoption of “merger in place,” retaining the current selection process for judges and justices).

152. COMM. ON THE N.Y. STATE CONST., N.Y. STATE BAR ASS’N, THE JUDICIARY ARTICLE OF THE NEW YORK STATE CONSTITUTION—OPPORTUNITIES TO RESTRUCTURE AND MODERNIZE THE NEW YORK COURTS 26 (2017). For an illustration of the proposed court structure, see *id.* at 31.

modernize and simplify our State's Unified Court System—whether using the . . . merger-in-place model or some modification of that plan.”<sup>153</sup> One of the issues that arise in the current structure of the court system is “[t]he multiplicity of courts [which] inevitably leads to confusion among litigants and attorneys, increased administrative expense and additional administrative procedures required to assign judges where and when they are required. The fragmentation of jurisdiction frequently prevents litigants from obtaining relief in one forum.”<sup>154</sup> For example, “[t]he Supreme Court has sole jurisdiction over divorces, while it shares jurisdiction over custody, visitation and support with Family Court.”<sup>155</sup> In a prior proposal for court reform, a restructuring proposal to merge New York's courts included: first, a merger of the major trial courts into a consolidated supreme court, and next, consolidation of the lower courts into a new system of regional district courts statewide.<sup>156</sup> This would result in a much more efficient court system, reduced costs, a decrease in evidentiary issues, and other additional benefits. As a result of the proposed reform, New York would avoid the issues currently plaguing the court system including: duplication of evidence, motion practice, along with other issues that present a waste of time and money to the New York court system.

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153. *Id.* at 37.

154. N.Y.C. Bar Ass'n, *Report of the Task Force on the New York State Constitutional Convention*, 52 THE RECORD 522, 599 (1997). A “[m]erger would bring us a step closer to ‘Equal Justice Under Law.’” *Id.* at 600.

155. *Id.* at 599. Furthermore, “[i]ncidents of domestic violence can be addressed in family offense proceedings in Family Court, and, if serious enough, in criminal prosecutions in a local criminal court . . . County Court or at the Criminal Term of Supreme Court.” *Id.* at 600.

156. SPECIAL COMM'N ON THE FUTURE OF THE N.Y. STATE COURTS, A COURT SYSTEM FOR THE FUTURE: THE PROMISE OF COURT RESTRUCTURING IN NEW YORK STATE 68-72 (2007) [hereinafter COURT SYSTEM FOR THE FUTURE]. Under the proposed reform, rather than “having duplicate and inconsistent proceedings in several different courts, all cases would be heard in either Supreme or District Court.” *Id.* at 68 (this is in addition to several other benefits). For an illustration of the proposed court structure, see *id.* at 74.

#### D. *The Need for Reform*

When voters in New York, for the first time in twenty years, are asked to decide “[whether there] shall be a convention to revise the constitution and amend the same,”<sup>157</sup> the decision should rest on the issues that have been plaguing the Empire State for years. If it is decided by the electorate to call a convention, “delegates will be elected in November 2018, and the convention will convene in April 2019.”<sup>158</sup> For years, a concern in New York has been the need to reform the complicated court system, as the fact remains, there continues to be “a judicial system with eleven different trial-level courts (more than any other state), a judiciary article that comprises almost one-third of the entire Constitution, and a court system so byzantine that most lawyers are unable to describe it accurately.”<sup>159</sup> As stated by former President Stephen Younger of the New York State Bar Association, there is a “need to modernize [New York’s] court system . . . [T]he only way we will get serious court reform is through a constitutional convention.”<sup>160</sup> Further, as indicated by the Special Commission on the Future of the New York State Courts:

New York State has the most archaic and bizarrely convoluted court structure in the country. Antiquated provisions in our state Constitution create a confusing amalgam of trial courts: an inefficient and wasteful system that causes harm and heartache to all manner of litigants, and costs businesses, municipalities, and taxpayers in excess of half a billion dollars per year.<sup>161</sup>

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157. Velasquez, *supra* note 1.

158. 2017 TASK FORCE REPORT, *supra* note 2, at 5.

159. *Id.* at 2; see Henrik N. Dullea, *We the People: A Constitutional Convention Opens the Door to Reform*, 89 N.Y. ST. BAR ASS’N J. 32, 34 (2017) (“[t]he Judiciary Article is the longest and some would say the most complicated in the constitution.”).

160. Velasquez, *supra* note 1 (statement of former state bar association president Stephen Younger).

161. A COURT SYSTEM FOR THE FUTURE, *supra* note 156, at 7; see Dullea, *supra* note 159, at 34 (noting the proposed reform would result in an estimated

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Thus, while there previously has been unsuccessful calls for a constitutional convention, “there is significantly more momentum for reform than there was in 1997, and there appears to be broader agreement that reforms are particularly needed in the areas of suffrage, government ethics, and the judiciary.”<sup>162</sup> Further, as has been noted, “[t]he 20-year automatic vote provision in our Constitution was designed precisely for the situation we face today. It should be used.”<sup>163</sup>

## VI. Conclusion

For all the reasons set forth above, it is recommended that on November 7th, the voters cast a vote of “yes” for a constitutional convention in New York, as the fact remains that these same persistent issues have been plaguing the New York State court system for years, with no corrective action in place. Notably, “[w]hile some progress has been made over the last decades, fundamental reform is likely to be considered only at a constitutional convention.”<sup>164</sup> Time and time again calls for a constitutional convention have been turned down, and the New York State court system has been left untouched, resulting in “an inefficient and wasteful system that causes harm and heartache to all manner of litigants.”<sup>165</sup> New Yorkers should not fear approval of a constitutional convention, as “[a] constitutional convention has no power to change the constitution,” rather “[a]ll it can do is propose changes.”<sup>166</sup> There is an immediate urgency for a constitutional convention to be approved, so that proposed changes can be made to repair a court system that has been unjust, unfair, inefficient, and burdensome on the citizens of New York for many years.

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fifty-nine million dollars in annual savings).

162. 2017 TASK FORCE REPORT, *supra* note 2, at 1.

163. Davis, *supra* note 17, at 47.

164. Dullea, *supra* note 159, at 34.

165. A COURT SYSTEM FOR THE FUTURE, *supra* note 156, at 7.

166. Velasquez, *supra* note 1 (statement of former President Mark Alcott of the New York State Bar Association).