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## A Firm Pillar of Local Justice: The Failures of the New York Town and Village Justice Courts Supporting Statewide Adoption of the District Court Model

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**A FIRM PILLAR OF LOCAL JUSTICE: THE FAILURES  
OF THE NEW YORK TOWN AND VILLAGE JUSTICE  
COURTS SUPPORTING STATEWIDE ADOPTION OF THE  
DISTRICT COURT MODEL**

*Noah Sexton*<sup>\*</sup>

*Town and village justice courts have been the center of municipal law, both civil and criminal, since the mid-nineteenth century. However, in the modern world, they have become corrupt, poorly managed institutions, creating issues involving procedural integrity and civil rights. In order to remedy these failures and modernize the New York State Unified Court System, state legislators must look to the district court model as it currently exists in Nassau and Eastern Suffolk Counties. The district court model offers several benefits, including the imposition of educational and experiential requirements for judges, the creation of internal and external oversight institutions, the expansion of jurisdiction for local judges, and increased transparency in records and court dealings. By creating such a centralized, professionalized system of municipal courts, oversight can be expanded, procedural uniformity can be promoted, and basic civil rights now left unguarded or outright denied by justice courts can be protected. Moreover, to preserve the spirit of democratically elected local judicial offices, the Vermont justice of the peace model may be adopted in New York, creating popularly elected positions responsible for handling key local functions, such as giving oaths of office, solemnizing marriages, and hearing tax appeals. By moving away from the unwieldy, outdated*

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*town and village justice court regime, New York can catch up with a growing number of similarly minded states, move forward with its efforts to reform the justice system, and ensure that fair local justice is guaranteed to all New Yorkers—not just those living downstate.*

## INTRODUCTION

The judiciary of New York State is one of the oldest in the nation, with its roots stretching to well before the independence of the United States.<sup>1</sup> Since being initially structured around the disjointed county-based and traveling circuit courts of the early United States, the people of the state have sought several times to simplify judicial procedure.<sup>2</sup> This desire was evinced by New Yorkers' popular approval of sweeping changes to the structure of its courts in 1846, when such reforms were imposed by the Third Constitution of New York.<sup>3</sup> Indeed, even in the modern era, one of the primary concerns of the New York Unified Court System is the assurance of speedy and just resolution of conflicts—a sentiment reflected not only in the words of administrators, but in the mandates of the Consolidated Rules of Civil Practice as well.<sup>4</sup> The sentiment is reflective of that found in the Federal Rules of Civil Procedure, and one that has been aspired to with great zeal in the federal judicial system.<sup>5</sup>

Despite the recognition of the importance of just and speedy trials by New York judicial authorities and policymakers, in practice, the New York judicial system has come to possess “the most archaic and bizarrely convoluted court structure in the country.”<sup>6</sup> In the words of former Chief Judge Charles D. Breitl,

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<sup>1</sup> *The Evolution of the Court*, N.Y. STATE UNIFIED CT. SYS., [http://ww2.nycourts.gov/courts/1jd/supctmanh/A\\_Brief\\_history\\_of\\_the\\_Court.shtml](http://ww2.nycourts.gov/courts/1jd/supctmanh/A_Brief_history_of_the_Court.shtml) (last visited Mar. 3, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*; TEMPORARY STATE COMM'N ON CONST. REVISION, *THE NEW YORK STATE CONSTITUTION: A BRIEFING BOOK* 11 (Gerald Benjamin ed., 1994).

<sup>4</sup> N.Y. C.P.L.R. § 104 (2021).

<sup>5</sup> Fed. R. Civ. P. 1.

<sup>6</sup> SPECIAL COMM'N ON THE FUTURE OF N.Y. CTS., *A COURT SYSTEM FOR THE FUTURE: THE PROMISE OF COURT RESTRUCTURING IN NEW YORK STATE* 5

“New York has no unified court system. It is a constitutional fiction. The reality is otherwise, New York has . . . [a] confused and sprawling mass of [eleven] trial courts.”<sup>7</sup> The size and functioning of the courts in New York are among the most glaring marks of inefficiency that commentators and policymakers have pointed out.<sup>8</sup> These issues include the existence of eleven separate trial courts (more than any other state in the nation), the inability of court administrators to adjust judicial presence to accommodate caseloads, and the tendency of cases to be drawn out through multiple trial-level proceedings in multiple trial courts.<sup>9</sup> While many proposals for addressing these issues have been brought forward, most recently in 2019 with Chief Judge DiFiore’s constitutional reform recommendations,<sup>10</sup> none appear to fully address one of the most archaic facets of the New York Unified Court System: the existence of the town and village courts.

While Judge DiFiore’s recommendations, as well as those preceding them, seek to implement some reform to the function of these so-called “justice courts,” none of them address the major discrepancies between the scope of these courts and the qualifications of those who would preside over them, or the requirements of other courts both within and without the state.<sup>11</sup> Specifically, one of the most startling and outdated aspects of the

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(Feb. 2007), [http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/courtsys-4future\\_2007.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/courtsys-4future_2007.pdf).

<sup>7</sup> Charles D. Breitel, *Improving Our New York Courts*, 46 N.Y. ST. B.J. 229, 231 (1974).

<sup>8</sup> Katy Feinberg, *Constitutional Changes to NY Court System Supported by the Partnership*, P’SHP FOR N.Y.C. (Nov. 13, 2019), <https://pfnyc.org/news/constitutional-changes-to-ny-court-system-supported-by-the-partnership>.

<sup>9</sup> *Id.*

<sup>10</sup> Press Release, Hon. Lawrence K. Marks, *Chief Judge Proposes Constitutional Reforms to Simplify Outdated Court Structure, Aiming to Enhance Access, Optimize Resources*, N.Y. STATE UNIFIED CT. SYS. (Sept. 25, 2019), [https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/PR19\\_22.pdf](https://ww2.nycourts.gov/sites/default/files/document/files/2019-09/PR19_22.pdf).

<sup>11</sup> See generally JUDITH S. KAYE, STATE OF THE JUDICIARY (2007), <http://www.nycourts.gov/ctapps/news/soj2007.pdf>; JUDITH S. KAYE & JONATHAN LIPPMAN, ACTION PLAN FOR THE JUSTICE COURTS (2006), <http://ww2.nycourts.gov/sites/default/files/document/files/2018-06/ActionPlan-JusticeCourts.pdf>.

structure of the town and village courts is the fact that, despite their relatively broad jurisdiction, the justices presiding over them are not required to—and primarily do not have—any form of professional legal education.<sup>12</sup> This fact, while perhaps not shocking to the drafters of the 1846 and 1967 State Constitutions, is one unlike any other in the country, and one which has been deeply scrutinized. The seriousness of this issue, and others facing the justice courts, is reflected in the deep focus the state has placed on seeking resolution to these structural defects, and the existence of special committees on the issue of justice courts alone.<sup>13</sup> Moreover, a number of journalists and social commentators have published works attacking the very existence of the justice courts.<sup>14</sup>

This Note argues that, rather than implementing reforms to the justice courts, they should be abandoned by the state—in light of the inherent flaws the institutions possess—in favor of the statewide adoption of the district court model as it currently exists in Western Suffolk County.<sup>15</sup> Unlike other proposed models for elimination of the justice courts, including consolidation with the other lower courts,<sup>16</sup> or the implementation of a potentially contentious, sweeping constitutional reform, the adoption of the district court model is relatively straightforward. The current Constitution of New York permits the adoption of the model and offers a legal precedent of popular consent for such a change in the structure of the courts, allowing the adoption of the district court model by popular vote on a local level.<sup>17</sup> This system, which establishes a network of centralized, typically county-based courts with functioning branches

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<sup>12</sup> N.Y. CONST. art. VI, §§ 20(a), (c).

<sup>13</sup> KAYE, *supra* note 11, at 3; KAYE & LIPPMAN, *supra* note 11, at 17–18.

<sup>14</sup> See William Glaberson, *Broken Bench: In Tiny Courts of N.Y., Abuses of Law and Power*, N.Y. TIMES (Sept. 25, 2006), <https://www.nytimes.com/2006/09/25/nyregion/25courts.html> (noting that various commentators have decried the institution of the justice courts for over a century, and that no meaningful reform efforts have been implemented in that time).

<sup>15</sup> *History of the Suffolk County District Court*, N.Y. STATE UNIFIED CT. SYS., <http://ww2.nycourts.gov/courts/10jd/suffolk/dist/history.shtml> (last visited Oct. 9, 2020).

<sup>16</sup> *Justice Court Consolidation Solution*, TUG HILL COMM’N (Feb. 2016), <https://tughill.org/wp-content/uploads/2020/06/Justice-Court-Consolidation-Solutions-Final.pdf>.

<sup>17</sup> N.Y. UNIFORM DIST. CT. ACT § 2603.

in individual municipalities, is held to the same standard of operation of the other New York courts.<sup>18</sup> Not only would this model allow for the retention of local control over certain judicial processes and the physical presence of such courts within individual municipalities, it would also simultaneously address the lack of education on the part of municipal justices and the issue of financial stress placed on localities to support local courts. It should be noted that the New York City Courts, which cover all five counties therein, are technically municipally based, but their structure and regulation are entirely separate from that of the other courts of the state.<sup>19</sup> Furthermore, their processes and the qualifications for their judges are governed by separate acts of New York State, the New York City Civil Court Act and the New York City Criminal Court Act.<sup>20</sup> As such, the reforms proposed here do not affect New York City, which already maintains a largely separate system of courts, and does not possess any equivalent to the justice courts, either in size or structure.<sup>21</sup>

This Note also argues that, in order to preserve some of the fundamental and ceremonial duties currently held by justice court justices, the “justice of the peace” model currently in use in the neighboring state of Vermont, as well as other sister states, should be adopted statewide.<sup>22</sup> While this model largely eliminates the judicial role of the local justice of the peace, it preserves some of the oldest functions of such officials, including solemnizing marriages, swearing in local officials, and hearing municipal tax appeals.<sup>23</sup> Under the Vermont model, these justices of the peace could also serve a potentially important load-lightening function, when necessary, by a simple act of the state high court granting them magisterial powers.<sup>24</sup> Moreover, the adoption of this model would

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<sup>18</sup> *Id.*

<sup>19</sup> DAVID SIEGEL, SIEGEL’S NEW YORK PRACTICE 34 (West Academic Publishing, 6th ed. 1976).

<sup>20</sup> N.Y. CITY CIV. CT. ACT § 102; N.Y. CITY CRIM. COURT ACT § 20.

<sup>21</sup> N.Y. CONST. art. VI, § 15.

<sup>22</sup> VT. CONST. art. II, § 52.

<sup>23</sup> SEC’Y OF STATE OF VERMONT, THE VERMONT JUSTICE OF THE PEACE GUIDE (2019), <https://sos.vermont.gov/media/zaalj01i/jp-guide-2019.pdf>.

<sup>24</sup> *See id.* at 7 (indicating that a Justice of the Peace can serve as a magistrate if commissioned by the Supreme Court).

allow for the creation of municipal Boards of Civil Authority, which would consist of all justices of the peace, town or village legislators, and town or village clerks.<sup>25</sup> Taken as a whole, this system would reduce the potential workload of the new district courts and county courts by allowing ceremonial and exceptionally small, localized matters to be heard by purely local, democratically elected officers.

Finally, this Note will argue that appellate terms should be created in all four judicial districts in the state, designated to deal with appeals from the district courts and, in select circumstances, the decisions of justices of the peace. Under the current justice court system, at least within the Third and Fourth Judicial Departments, appeals from justice courts are heard by the county court where the town or village is located.<sup>26</sup> However, the First and Second Judicial Departments of the state, which cover New York City, Long Island, and the inner suburban counties of Downstate New York, have established appellate terms to hear appeals from municipal courts.<sup>27</sup> Appellate terms are distinct from the appellate divisions of the four judicial departments, as they are a form of a provisional appellate court meant to hear appeals on certain matters and from certain courts, which are comprised of a panel of judges (typically three) appointed to hear such appeals.<sup>28</sup> By establishing such terms statewide, the county courts of New York, which already deal with the majority of felony cases in the state,<sup>29</sup> will be relieved of any potential burdens stemming from petty municipal matters.

This Note will begin by discussing the history of the New York justice courts, their role in the modern era, and the issues they face today, including concerns over civil rights violations, administrative and financial difficulties, the risks posed by unqualified judges, and the modern movement in favor of reform, as well as past attempts at such reform. Part II will discuss the archaic nature of the current municipal court model in New York, and the ways in which New York's sister states have moved beyond such a disjointed, relatively

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<sup>25</sup> VT. STAT. ANN. tit. 24, § 225-8 (2021).

<sup>26</sup> N.Y. UNIFORM DIST. CT. ACT § 1701.

<sup>27</sup> See N.Y. COMP. CODES R. & REGS. tit. 22 § 730.1 (2020) (clarifying the 2nd Department's Appellate Term rule).

<sup>28</sup> N.Y. Const. art. VI, § 8(c).

<sup>29</sup> SIEGEL, *supra* note 19, at 27.

crude system of justice. Part III will address the solution proposed above: the adoption of the district court model, as well as the Vermont model for justices of the peace. This part will delve into the key benefits of both the district court model and the Vermont justice of the peace model and the ways in which they solve issues pressing upon the justice courts. Finally, this Note concludes with a summary of the above arguments, and a recap of the issues stemming from justice courts that cannot, in the interest of justice, be further ignored.

## I. HISTORY OF THE TOWN AND VILLAGE JUSTICE COURTS

The origins of the town and village courts of New York can be found in the 1846 version of the New York State Constitution, which defined positions of “justice of the peace” and “local judicial officer,” and the manner in which they are to be chosen.<sup>30</sup> Despite the fact that this key provision was incorporated into the state’s constitution in the nineteenth century, this system of locally based courts of justice is rooted in the colonial era of New York.<sup>31</sup> The logic behind the establishment of such small and numerous courts was, at the time of their inception, reasonable, as journeys between towns for the purpose of attending a county court case were often a long affair, with the only real options being travel by horse or by foot.<sup>32</sup> From the beginning, these courts were considered a part of the judiciary, and were given certain constitutional powers granting them both civil and criminal jurisdiction.<sup>33</sup> The position of justice of the peace, as it was understood in the 1846 constitution, was further established in the text of the current Constitution of the State of New York, passed in 1967, which establishes the institution and role of the justice courts.<sup>34</sup>

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<sup>30</sup> N.Y. CONST. of 1846, art. VI, §§ 17–18.

<sup>31</sup> KAYE & LIPPMAN, *supra* note 11, at 12–13.

<sup>32</sup> Lauren Rosenthal, *After a 90-Year Fight for Reform in NY’s Courts . . . What’s Changed?*, N. COUNTRY PUB. RADIO (Apr. 13, 2018), <https://www.northcountrypublicradio.org/news/story/36007/2018413/after-a-90-year-fight-to-reform-ny-s-courts-what-s-changed>.

<sup>33</sup> N.Y. CONST. of 1846, art. VI, § 14.

<sup>34</sup> N.Y. CONST. art. VI, § 17.



This version of the Constitution, which remains in effect today, established the town and village justice courts and granted specific jurisdiction to them.<sup>35</sup> Since that time, a number of proposals have been put forward in favor of reforming the structure and function of the local courts—and more specifically the justice courts—but none have been implemented in any significant way.<sup>36</sup> Fundamentally, these courts have remained the same in function since the passage of the 1846 Constitution,<sup>37</sup> and this antiquated nature is visible in the lack of standards applicable to prospective holders of the office of town or village justice. Specifically speaking, under the current constitution, justice court justices may hold their position without any form of a legal education,<sup>38</sup> while still possessing jurisdiction that can be, in some circumstances, key to the administration of everyday justice in the state. Accordingly, because these courts do not require their judges to have any legal education, the vast majority do not actually possess a law degree.<sup>39</sup> These local justices have created a significant presence within state and local politics, as well as within the structure of their communities, and have grown to become “wired into the same party mechanisms that produce the state’s lawmakers, judges, and governors.”<sup>40</sup>

#### *A. Role of the Justice Courts in the Modern Era*

Justice court positions, while largely confined to the specific town or village the courts exist in, are not merely ceremonial or petty in their functioning. Indeed, these courts possess relatively wide jurisdiction over both civil and criminal matters, and currently have the capacity to hear money actions up to \$3,000, the power to

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<sup>35</sup> *Id.*

<sup>36</sup> See generally KAYE & LIPPMAN, *supra* note 11; Glaberson, *supra* note 14.

<sup>37</sup> Rosenthal, *supra* note 32.

<sup>38</sup> N.Y. CONST. art. VI, §§ 20(a), (c).

<sup>39</sup> Rosenthal, *supra* note 32.

<sup>40</sup> Joe Sexton, *Despite Exposés and Embarrassments, Hundreds of Judges Preside in New York Without Law Degrees*, PROPUBLICA (June 26, 2017, 2:44 PM), <https://www.propublica.org/article/hundreds-of-judges-new-york-preside-without-law-degrees> (quoting William Glaberson, *How a Reviled Court System Has Outlasted Critics*, N.Y. TIMES (Sept. 27, 2006), <https://www.nytimes.com/2006/09/27/nyregion/27courts.html>).

adjudicate misdemeanor and petty crimes, and even the power to arraign defendants in felony cases before their appearance in the county court or supreme court.<sup>41</sup> The overall importance of the jurisdiction of these courts is evident from their impressive caseload; justice courts hear two million cases a year, and collect millions of dollars in fees and fines imposed on litigants.<sup>42</sup>

More importantly, in terms of the interests of the average citizen, justices of the peace are vested with considerable powers that have a direct impact on civil liberties and everyday life. These powers include, but are not limited to, the ability to sentence people to jail time, approve of evictions, and even control bail when exercising their arraignment jurisdiction over felony cases.<sup>43</sup> The looming presence of these courts is undeniable; as of 2018, over 1,200 justice courts exist across the state of New York in both suburban and rural settings.<sup>44</sup>

However, despite the ubiquitous presence of these courts throughout the entire state, their influence is most strongly felt in the context of small, rural communities dotting Upstate New York.<sup>45</sup> Their strength within small towns is further reinforced by the relative dearth of attorneys and legal services available in rural areas, with justice courts often acting as the only available means of small dispute resolution to those who cannot afford or get access to a lawyer.<sup>46</sup> In extremely rural regions of the state almost no justice court justices are lawyers, yet they are still empowered to preside over matters as important as setting bail for felons, hearing expensive small claims cases, and presiding over landlord-tenant and eviction proceedings within a municipality.<sup>47</sup> These actions,

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<sup>41</sup> N.Y. UNIFIED CT. SYS., JUSTICE COURT MANUAL 7 (2015), <http://www.nycourts.gov/courts/townandvillage/FinalJusticeCourtManualforUSCsite.pdf>.

<sup>42</sup> William Glaberson, *Justice Court for Small New York Towns to Be Overhauled*, N.Y. TIMES (Nov. 26, 2006), <https://www.nytimes.com/2006/11/22/nyregion/22court.html>.

<sup>43</sup> *Id.*

<sup>44</sup> Rosenthal, *supra* note 32.

<sup>45</sup> Glaberson, *supra* note 14.

<sup>46</sup> William Glaberson, *Small-Town Justice, with Trial and Error*, N.Y. TIMES (Sept. 26, 2006), <https://www.nytimes.com/2006/09/26/nyregion/26courts.html>.

<sup>47</sup> *Id.*

while perhaps petty when compared to larger civil actions before the supreme court, have a tangible impact on the lives of the parties involved.

In light of the relatively wide jurisdiction possessed by the justice courts, perhaps the most surprising aspect of their modern form is the fact that their procedures have remained largely unchanged. Indeed, despite their importance, and the potentially serious implications of their decisions, there have been almost no changes made to the structure and administration of these courts in the better part of a century.<sup>48</sup> This system, which has led to a veritable wave of issues and criticisms from political and social figureheads over the last several decades, has “lost all contact with reality,” and its image has become inextricably tied to a number of problems related to amateurism of judges and violations of civil liberties.<sup>49</sup> The system has long had its detractors, from governors to activists,<sup>50</sup> and the fundamental message they have carried remains both clear and pressing: the justice courts are inherently broken, and something must be done to overhaul the very foundations they are built upon.

While solutions have been proposed and advocated for over the last several decades, very little has changed in the nature of these courts. Although there have been attempts to create programs to educate local justices on state laws and court procedures, these efforts have been largely unsuccessful, and the key points of criticism of these courts still remain ingrained in their present form.<sup>51</sup> While small reforms, such as the imposition of a judicial training requirement, installation of new recording measures, and oversight funding lend credence to many of the concerns regarding

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<sup>48</sup> William Glaberson, *How a Reviled Court System Has Outlasted Critics*, N.Y. TIMES (Sept. 24, 2006), <https://www.nytimes.com/2006/09/27/nyregion/27courts.html>.

<sup>49</sup> *Id.*

<sup>50</sup> *See id.* (quoting Gov. Franklin D. Roosevelt as saying that justice courts are “an outworn system”).

<sup>51</sup> *See* SPECIAL COMM’N ON THE FUTURE OF N.Y. STATE CTS., JUSTICE MOST LOCAL: THE FUTURE OF TOWN AND VILLAGE COURTS IN NEW YORK STATE 2 (2008), [http://www.nycourtreform.org/Justice\\_Most\\_Local\\_Part1.pdf](http://www.nycourtreform.org/Justice_Most_Local_Part1.pdf) (demonstrating the minor changes to certification and monitoring of justice courts).

justice courts, they fail to actually address the root of the problem.<sup>52</sup> As such, the primary concerns raised by members of the longstanding opposition to the existence of justice courts have persisted into the twenty-first century.<sup>53</sup> Moreover, the failures of the justice courts have been perpetuated by the historic unwillingness of local justices to change, and the hurdles that have been created by proponents of the current system.<sup>54</sup>

## II. DISCUSSION AND ANALYSIS

### *A. Procedural and Civil Rights Issues Related to the Justice Courts*

Given the surprisingly vast jurisdiction possessed by the justice courts, and more specifically their jurisdiction over criminal and eviction matters, concerns over the civil rights of parties to matters before the justice courts have arisen in the academic and judicial community.<sup>55</sup> The lack of any formal legal education by sitting justices of these courts has led not only to instances of confusion of law, but a significant number of incidences of outright judicial misconduct arising from the wrongful actions of non-lawyer justices.<sup>56</sup> Moreover, the structure of these courts leaves little room for oversight in daily operations, often allowing such misconduct to go unchecked.<sup>57</sup> While these issues range in scope from purely financial concerns to violations of civil liberties, the impact of these shortcomings is no worse felt than by those who go before the court in actions implicating their basic rights and freedoms.

In a series of articles written in the *New York Times* by William Glaberson, a number of individual instances of violations of civil liberties by the justice courts were discussed at length, revealing the

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<sup>52</sup> *Id.* at 26.

<sup>53</sup> See Glaberson, *supra* note 46; See also Glaberson, *supra* note 48.

<sup>54</sup> See Glaberson, *supra* note 48.

<sup>55</sup> See Sexton, *supra* note 40 (exploring specific instances of judicial misconduct, summarizing disciplinary reports, and interviewing local clerks and legal experts).

<sup>56</sup> *Id.*

<sup>57</sup> Glaberson, *supra* note 46.

true depth of the issue.<sup>58</sup> These instances, which took place primarily in rural areas of New York, involve the most basic of modern civil rights and discrimination protections, and occurred in small courtrooms lacking even basic recording technology.<sup>59</sup> In one case in New York's "North Country" region, a woman who had been assaulted by her husband sought a civil protection order against him on behalf of herself and her children, but was denied when the town justice stated, "every woman needs a good pounding every now and then."<sup>60</sup> In another instance, where a Black soldier was charged with a misdemeanor following a bar fight in rural Jefferson County, a village justice rejected the soldier's objections to the blatantly racist language used against him in court by his accusers.<sup>61</sup> These few cases, while purely anecdotal, are indicative of a larger trend in the justice courts, one in which cases are decided by justices based upon their uninformed opinions, rather than deference to the law.<sup>62</sup>

Further aggravating protections of civil rights in the justice courts is the fact that their very structure has left little room for comprehensive oversight of non-lawyer judicial decisions by the public in the form of the vote. The position of town and village justice is, like other trial court positions in New York,<sup>63</sup> an elected office, and one whose occupants are chosen by popular vote within the confines of the town or village of their jurisdiction.<sup>64</sup> While this may be seen by some as a way to hold potentially corrupt or incompetent judges to the standards of the community, this claim does not hold weight when one key issue in our democracy is brought to light—the fact that local elections consistently result in low voter turnout.<sup>65</sup> This leads to a lack of accountability to both the public and parties in actions before these justices, and can lead to a

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<sup>58</sup> See Glaberson, *supra* note 14; Rosenthal, *supra* note 32.

<sup>59</sup> Glaberson, *supra* note 46.

<sup>60</sup> Glaberson, *supra* note 14.

<sup>61</sup> *Id.*

<sup>62</sup> Glaberson, *supra* note 46.

<sup>63</sup> N.Y. CONST. art. VI, § 6(c); Siegel, *supra* note 19, at 21.

<sup>64</sup> SIEGEL, *supra* note 19, at 36–37.

<sup>65</sup> Callie Crossley, *Why Is Voter Turnout in Local Elections so Low?*, WGBH NEWS (Sept. 16, 2019), <https://www.wgbh.org/news/commentary/2019/09/16/why-is-voter-turnout-in-local-elections-so-low>.

fundamental lack of supervision by public authorities.<sup>66</sup> Coupling these procedural and oversight concerns with the real civil rights implications that have reared their heads throughout history, it is clear that the current system fosters discrimination, inefficiency, and lack of transparency in local justice. Under the justice courts, civilians are subject to a slew of risks to their freedoms while being left with almost no way to hold judges accountable.<sup>67</sup> These grave flaws in the current system do not just require fixing; they require a fundamental overhaul if injustice is to be avoided.

*B. Administrative and Fiscal Issues Related to Justice Courts*

The potential civil rights implications of modern justice courts are deeply disturbing. Equally concerning, however, is the vast and convoluted size and structure of the justice courts, as well as their lack of a uniform procedure. This system has created a patchwork of over 1,200 individually operated courts that is, by sheer nature of its size and complexity, difficult to fully oversee.<sup>68</sup> While the New York Commission on Judicial Conduct, which is charged with the ability to “investigate, sanction and, if necessary, remove justice court judges,”<sup>69</sup> has attempted to enforce standards on judges and increase accountability, their efforts are confounded by the size of the system and the level of misconduct that arises from the justice courts.<sup>70</sup>

In the year 2016 alone, the Commission received 326 separate complaints about town and village justices, 177 of whom were non-lawyers, and took corrective action in those cases twenty-four

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<sup>66</sup> Glaberson, *supra* note 46.

<sup>67</sup> *Id.*

<sup>68</sup> THE FUND FOR MODERN CTS., FINES AND FEES AND JAIL TIME IN NEW YORK TOWN AND VILLAGE JUSTICE COURTS: THE UNSEEN VIOLATION OF CONSTITUTIONAL AND STATE LAW (2019), at 4, <http://moderncourts.org/wp-content/uploads/2019/04/Fines-and-Fees-and-Jail-Time-in-New-York-Town-and-Village-Justice-Courts-The-Unseen-Violation-of-Constitutional-and-State-Law.pdf>.

<sup>69</sup> *Id.* at 6.

<sup>70</sup> *Id.* at 7.

times.<sup>71</sup> This number of complaints is both cumbersome and startling, especially when compared to the number of complaints made against judges of other trial-level courts in the state. For example, in 2016, only twenty-eight complaints were filed against district court judges, eighty against court of claims judges, and 192 against family court judges. Moreover, judges were only disciplined five times in all of those instances.<sup>72</sup> The workload associated with the comparatively vast number of complaints filed and handled from the justice courts makes the Commission's oversight goals noble, but utterly unsustainable, as it leaves a single entity to weed through complaints associated with the over 1,800 town and village justices in New York.<sup>73</sup> The stress imposed on the Commission by this burden is further compounded by the fact that, despite being charged with overseeing the entire judicial system, it has been reduced to half of its original size in the recent past.<sup>74</sup> The culmination of the effects of a lack of financial resources, a shrinking staff, and an onslaught of complaints regarding lower courts has been striking; there are now only two investigators for the entirety of the western portion of the state (including the two most populous counties in Upstate New York) and they have necessarily failed to properly monitor the fitness of justice court officers and justices.<sup>75</sup> In analyzing these grim facts, only one conclusion has been consistently reached by commentators and scholars: the system of justice courts, as they exist now, cannot be effectively monitored by the state through the Commission on Judicial Conduct.<sup>76</sup>

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<sup>71</sup> N.Y. STATE COMM'N ON JUD. CONDUCT, ANNUAL REPORT (2017), <http://www.scjc.state.ny.us/Publications/AnnualReports/nyscjc.2017annualreport.pdf>.

<sup>72</sup> *Id.* at 4–6.

<sup>73</sup> THE FUND FOR MODERN CTS., *supra* note 68, at 6–7.

<sup>74</sup> Glaberson, *supra* note 14.

<sup>75</sup> *Id.*

<sup>76</sup> *See, e.g.*, THE FUND FOR MODERN CTS., *supra* note 68 (discussing oversight failures leading to constitutional violations); *see also*, Corey Stoughton, *Proposals to Reform the New York State Justice Courts*, ACLU OF N.Y. (Dec. 14, 2016), <https://www.nyclu.org/en/publications/proposals-reform-new-york-state-justice-courts> (discussing the cumbersome size of the system leading to a lack of enforcement and standards of operation).

Furthermore, on top of their practical and administrative risks, the justice courts pose a risk to the economic health of the state and the interests of the taxpayer in the proper allocation of their tax dollars. As New York Attorney General Letitia James stated it, “[j]ustice [c]ourts create enormous burdens on taxpayer-funded resources at the local, county, and state levels.”<sup>77</sup> Currently, justice courts are funded entirely by the towns and villages they are located within, naturally leading to great disparities in the funding and quality of such courts across the geographical and economic spectrum of the state.<sup>78</sup> The impact of this financial burden is especially strong in less populated areas of the State, where a lack of tax revenue and the need to provide other services leads to further defects in an already defective justice court system.<sup>79</sup> As a result of this burden, especially in rural and impoverished communities in New York, many justice courts are lacking even basic resources, sometimes holding hearings in little more than a small room with no other judicial necessities.<sup>80</sup> In many areas, the duty to provide for the justice courts, when coupled with statutory caps on taxation and a rising cost of living, has created great pressure on local governments to provide for municipal services generally, as well as to keep their courts operating.<sup>81</sup> This burden extends further beyond the confines of individual municipalities and into county governments, as counties are obligated to ensure that adequate representation is available in every justice court matter in the county.<sup>82</sup> This not only compounds the issue of low funding for justice courts, but also a lack of necessary staff, such as public

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<sup>77</sup> Letitia A. James, *Reforming Court System Needed to Ensure Justice*, NNY 360 (Dec. 5, 2019), [https://www.nny360.com/opinion/columns/attorney-general-letitia-a-james-reforming-court-system-needed-to-ensure-justice/article\\_3a8fb99a-3138-5a6e-9f05-cb1ad875cc3c.html](https://www.nny360.com/opinion/columns/attorney-general-letitia-a-james-reforming-court-system-needed-to-ensure-justice/article_3a8fb99a-3138-5a6e-9f05-cb1ad875cc3c.html).

<sup>78</sup> SPECIAL COMM’N ON THE FUTURE OF N.Y. STATE CTS., *supra* note 51, at 80–81.

<sup>79</sup> *Id.*

<sup>80</sup> James, *supra* note 77; Glaberson, *supra* note 14 (discussing two local justices who operate their courts out of mechanic’s garages).

<sup>81</sup> TUGG HILL COMM’N, *supra* note 16.

<sup>82</sup> SPECIAL COMM’N ON THE FUTURE OF N.Y. STATE CTS., *supra* note 51, at 55.



defenders and prosecutors, in such courts.<sup>83</sup> On an even grander scheme, the justice courts as a whole impose an unnecessary burden on taxpayers statewide. In a 2003 study by the Office of the Comptroller's Division of Local Government Services, it was revealed that shrinking the size of the justice courts even marginally could reduce the taxpayer burden in the state by millions of dollars.<sup>84</sup>

Another startling aspect of the financial risks and shortcomings posed by the justice court system is the lack of oversight of their regular financial procedures and decisions. Despite taking in more than \$200 million in fines and fees every year, reports from the State Comptroller have shown "serious financial management problems" in the justice courts and noted that a large amount of taxpayer money seems to disappear every year.<sup>85</sup> The Office of the Comptroller has, since May of 2006, requested further reform of the financial affairs of the justice courts, noting that in their current form, they lack consistent internal control and cause money to be lost over time in random, often high amounts.<sup>86</sup> This lack of oversight is also apparent in the conduct of municipal governing bodies, who are often acting under pressure to cut costs and maximize efficiency. In a study conducted by the Special Commission on the Future of New York State Courts, evidence was presented that justices have faced significant pressure from local leaders to cut corners, make ill-advised plea deals, and impose high penalties as a source of funding.<sup>87</sup> Arising from that trend is a concern that municipalities have and will use the courts as a source of independent funding meant for use entirely outside of the justice courts.<sup>88</sup> As such, considering the aforementioned lack of oversight afforded to justice courts, the financial burden they place on their constituencies, and the potential for corruption created by those conditions, it seems clear that the system as it now stands must be remedied.

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<sup>83</sup> *Id.* at 71.

<sup>84</sup> *Id.* at 36.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 77.

<sup>88</sup> *Id.*

*C. Risks to Justice and Individual Liberties Posed by  
Inexperienced Judges*

As previously discussed, according to the Constitution of the State of New York, a person seeking or holding the office of town or village court justice need not possess a law degree, nor any other formalized higher education.<sup>89</sup> Indeed, the lack of standards that individuals sitting as a town or village justice are subject to is striking, with one author noting that, in New York State, “[the New York Constitution] demands more schooling for licensed manicurists and hairstylists.”<sup>90</sup> While some have argued that such lax standards are the only way for small towns to receive municipal justice,<sup>91</sup> the issues that have arisen from the presence of objectively unqualified individuals on legally powerful benches is undeniable.

It is a matter of public record that unqualified judges are the source of much grief in the justice court System.<sup>92</sup> Moreover, it is no secret that some justice court Justices themselves have recognized their lack of education, with one local justice stating, “I’m almost like a pilot flying by the seat of my pants.”<sup>93</sup> Most concerning, however, are the civil rights implications that arise from the lack of education received by most justices. These justices, who need not possess even a full high school education, are left to deal with complex issues of fact and law, including criminal law, with no guidance available to them aside from a poorly administered attorney hotline,<sup>94</sup> and an underfunded local record system.<sup>95</sup> As Robert Tembeckjian, a member of the Commission on Judicial Conduct, put it: “many of the problems [the system] sees with non-lawyer judges stem from their lack of sophistication in the law.”<sup>96</sup>

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<sup>89</sup> N.Y. CONST. art. VI, §§ 20(a), (c).

<sup>90</sup> Glaberson, *supra* note 14.

<sup>91</sup> *See id.* (noting the isolated nature of upstate New York and lack of accessibility to county court facilities).

<sup>92</sup> *See* N.Y. STATE COMM’N ON JUD. CONDUCT, *supra* note 71 (showing disproportionate levels of misconduct and malfeasance in justice courts).

<sup>93</sup> *Id.*

<sup>94</sup> SPECIAL COMM’N ON THE FUTURE OF N.Y. STATE CTS., *supra* note 51, at 18.

<sup>95</sup> James, *supra* note 77.

<sup>96</sup> Glaberson, *supra* note 14.

Moreover, given this lack of legal education and only tenuous connection with the law that exists, commentators, public officials, and policymakers have come forward with arguments that the right to counsel in a criminal matter ought to extend to the “right to go before an attorney judge.”<sup>97</sup> That interpretation has been endorsed by Attorney General Letitia James,<sup>98</sup> and is indicative of a trend toward recognizing the issues that are attendant to the current order of the system.

While many New Yorkers associate justice courts with small claims matters and civil disputes, it is important to remember that these courts do possess criminal jurisdiction, creating an often dire situation in which judges act not out of regard for the law, but “common sense.”<sup>99</sup> Indeed, analysis of the trends involving discipline of non-lawyer judges have revealed that defendants across the state have been deprived of their civil rights through acts of retaliation, lack of consideration of their legal rights by judges, and abuses of power.<sup>100</sup> As previously mentioned, almost 80% of the judges who have been removed from office are justice court justices, and allegations against them range from use of inappropriate language to denial of legal protections based on race or gender.<sup>101</sup> This shocking reality, and one in which civil rights—and specifically constitutional Due Process Rights—are denied, can be found in the story of Justice Walter Purtell, justice of the small Upstate town of York.

Walter Purtell, a non-lawyer justice in a rural community,<sup>102</sup> was removed from the bench and excluded from ever seeking judicial

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<sup>97</sup> Dan M. Clark, *At Hearing on Judiciary Consolidation, AG James Urges Look at Overhaul of Town and Village Courts*, N.Y.L.J. (Nov. 2019), <https://www.law.com/newyorklawjournal/2019/11/21/at-hearing-on-judiciary-consolidation-ag-james-urges-look-at-overhaul-of-town-and-village-courts/?slreturn=20201022155636>.

<sup>98</sup> *Id.*

<sup>99</sup> Glaberson, *supra* note 14.

<sup>100</sup> Glaberson, *supra* note 46.

<sup>101</sup> Glaberson, *supra* note 14 (discussing claims of misconduct against justices including sexist denial of a protective order and sustaining an assault charge largely on the basis of a defendant’s race).

<sup>102</sup> See Gary Craig, *Judge Was Facing Multiple Misconduct Allegations*, DEMOCRAT & CHRON. (Mar. 16, 2017, 9:52 AM), <https://www.democratandchronicle.com/story/news/2017/03/16/judge-who-barred-media-never-again->

office again after he wrongfully excluded the public from viewing the arraignment of the daughter of a state police major.<sup>103</sup> Upon closer inspection of his record, however, the startling impact of his lack of knowledge of, and clear disregard for, the law came to light. In one instance, he declined to inform a young defendant of his right to counsel, going so far as to make hiring a lawyer appear to be a bad idea, and in another, he repeatedly insisted that a defendant make incriminating statements about himself without informing him of his right against self-incrimination.<sup>104</sup> Ultimately, Justice Purtell was investigated for his actions, and came under scrutiny.<sup>105</sup> More significantly, on a grander scale, Justice Purtell's story inspired calls for statewide reforms in local justice.<sup>106</sup>

While the tale of Justice Purtell offers only one example of the incompetence and, in many cases, outright corruption of non-lawyer judges, it is one of many in a long and damning list of complaints against the justice courts.<sup>107</sup> While many might seek to downplay the potential evils that arise from this system, and even claim that justices are adequately educated by the brief "judicial education" training required for all local judges,<sup>108</sup> the correlation between a lack of education and inequitable results remains clear. A non-lawyer justice is not only prone towards "flying by the seat of [their] pants";<sup>109</sup> they are not held to the same oversight or standards as judges sitting on any other court. Most significantly, they are not

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[judge-walter-purtell-danielle-allen-marcus-postell-ny-commission-on-judicial-conduct/99246116/](http://www.judge-walter-purtell-danielle-allen-marcus-postell-ny-commission-on-judicial-conduct/99246116/).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> See *Judge Walter Purtell of York, NY; Pompous Buffoon*, THE COMM. TO EXPOSE DISHONEST AND INCOMPETENT JUDGES, ATT'YS, AND PUB. OFFS. (Feb. 2017), <http://www.noethics.net/News/index.php?view=article&id=16652> (providing an example of the local outrage attendant to Justice Purtell's inexperience and unethical decisions); Jordan Mazza, *Town Justice Known for Kicking Media Out of Courtroom Announces Sudden Retirement*, SPECTRUM NEWS (Feb. 25, 2017), <https://spectrumlocalnews.com/nys/buffalo/crime/2017/02/24/york-town-justice-walter-purtell-livingston-county>.

<sup>106</sup> See Glaberson, *supra* note 46.

<sup>107</sup> *Id.*

<sup>108</sup> See SPECIAL COMM'N ON THE FUTURE OF THE N.Y. STATE CTS., *supra* note 51, at 96–98 (specifying proposed training procedures as a claimed solution).

<sup>109</sup> Glaberson, *supra* note 14.

educated in or beholden to the Canons of Judicial Conduct, and often create rules of procedure by their own accord.<sup>110</sup> This, coupled with instances of abuse and nationwide recognition of the threat posed by inexperienced and uneducated judges, makes the need for reform in the modern era clearer and more pressing than ever before.<sup>111</sup>

*D. The Modern Movement in Favor of Reform and Past Attempts at Reform*

Skepticism towards the structure of the New York Unified Court System is not a new phenomenon, and several calls for such reforms have been made, stretching as far back as ninety years ago.<sup>112</sup> The most significant of historical calls for change, and arguably the birth of the modern move towards reform, came in January of 1959, under the administration of Governor Nelson Rockefeller.<sup>113</sup> While the world may not have been as connected as it is today, even then, New York politicians and residents “were sick of the slow, confusingly organized system and the patronage appointees . . . who filled it from top to bottom.”<sup>114</sup> With the 1967 New York State Constitutional Convention looming in the not-too-distant future, Rockefeller and his advisors promised to create a more modern court system, and began to craft constitutional changes to the structure of the courts and their relationship to the state.<sup>115</sup> However, these lofty goals for reform were met with intense criticism and antagonistic lobbying, primarily from local justices themselves, as well as those who felt that Rockefeller’s reforms were forcing a “downstate” approach to local justice on rural New Yorkers.<sup>116</sup> In the end, the opponents of reform won the day, and the provisions proposed for

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<sup>110</sup> See Model Rules of Pro. Conduct r. 8.2; Model Code of Judicial Canon r. 1.1.

<sup>111</sup> Matt Ford, *When Your Judge Isn’t a Lawyer*, ATLANTIC (Feb. 5, 2017), <https://www.theatlantic.com/politics/archive/2017/02/when-your-judge-isnt-a-lawyer/515568/>.

<sup>112</sup> Glaberson, *supra* note 46.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

the constitution were shut out.<sup>117</sup> While this was seemingly a death blow to the idea of reform, criticisms and calls for reform have come back into light in the modern era.

Perhaps most significantly, in November of 2006, Chief Judge Judith S. Kaye, following the lead of Chief Judge Janet DiFiore, advanced an extensive proposal for court consolidation and justice education.<sup>118</sup> While these reforms have called for necessary changes in the overall structure of the Unified Court System and in the Supreme Court, none have sought to comprehensively approach the issue of town and village courts beyond meager provisions for increased training for nonlawyer justices.<sup>119</sup> As a result, no major reforms have been implemented,<sup>120</sup> and the town and village court structure has remained largely untouched.<sup>121</sup> Moreover, calls for at least partial elimination of the justice courts, including those from current New York Attorney General Letitia James, have been tempered with political platitudes that only compound the failed attempts at reforming the system—without eliminating any part of it.<sup>122</sup>

All of the past reforms proposals share two common responses: the aforementioned unwillingness to totally abolish the courts, and massive resistance from local politicians and state representatives.<sup>123</sup> Perhaps the most common sentiment expressed by defenders of justice courts is that the institutions preserve a form of “local justice,” in which the community determines for itself what a just outcome is.<sup>124</sup> As one justice participating in an anti-reform

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<sup>117</sup> *Id.*

<sup>118</sup> KAYE & LIPPMAN, *supra* note 11, at 24–33, 41–52.

<sup>119</sup> *E.g.*, SPECIAL COMM’N ON THE FUTURE OF N.Y. STATE CTS., *supra* note 51 (showing example of proposed reform of justice courts by creating a standardized multi-week cursory training program).

<sup>120</sup> Glaberson, *supra* note 14.

<sup>121</sup> *See id.*

<sup>122</sup> *See* Clark, *supra* note 97 (summarizing AG James’s position and showing policymaker focus on attempting to reform existing justice court structure without change).

<sup>123</sup> *See* KAYE & LIPPMAN, *supra* note 11 at 6–8. (demonstrating desire to “save” the institution, rather than abolish it, at the highest level of New York court administration).

<sup>124</sup> Glaberson, *supra* note 46.

gathering put it, “[j]ustice courts are as much of your American heritage as the Stars and Stripes,”<sup>125</sup> a statement reflecting the often-popular belief in rural New York that justice courts are the best way to offer local solutions for local problems.<sup>126</sup> In the eyes of proponents of the current system, “community justice” offers better outcomes for people in rural areas, especially those who feel they are already beholden to the standards of Downstate lawyers and politicians.<sup>127</sup> Moreover, some at least moderately powerful political forces have taken up the cause of local justices throughout the state, such as the New York Conservative Party.<sup>128</sup> Considering the massive resistance that has erupted in response to past attempts at justice court reform, the issue was largely swept aside until it was raised again by Attorney General James in 2019.<sup>129</sup> At this point, it should be clear that any potential solution to the problems ailing the justice courts, or any alternative to the system that could be proposed, must attend to the concerns that have traditionally arisen surrounding reforms, and must leave some vestige of local control present in municipal justice.

### III. NEW YORK SHOULD JOIN THE TREND OF OTHER STATES MOVING TOWARD MODERNIZED COURT SYSTEMS

Ultimately, the existence of municipal courts in other states that are reminiscent of the New York town and village justice court system is actively declining in light of similar issues to those faced in New York. As such, now more than ever, it is appropriate to follow that trend and begin the process of modernizing the unified court system. At present, thirty states still retain such a municipal court system, and that number is rapidly declining.<sup>130</sup> However, New York is just one of eight states that do not require local judges

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<sup>125</sup> *Id.*

<sup>126</sup> Rosenthal, *supra* note 32.

<sup>127</sup> *Id.*

<sup>128</sup> Glaberson, *supra* note 46.

<sup>129</sup> Clark, *supra* note 97 (summarizing AG James’s position and showing policymaker focus on attempting to reform existing justice court structure without change).

<sup>130</sup> Glaberson, *supra* note 14.

to be lawyers.<sup>131</sup> Several other states have become concerned about the civil rights and ethics issues related to such courts, and have either eliminated them, reduced their jurisdiction, or imposed educational requirements.<sup>132</sup> For example, in 1998, based on concerns about abuses of power and the cumbersome size of their system, California voters chose to offer counties the option to consolidate their municipal and superior courts to create a single, county-based trial court system.<sup>133</sup> Furthermore, even in the few states that maintain lax standards for local judges, lawyers and legal scholars have criticized similar abuses as those that have been pointed out in the New York system.<sup>134</sup> Perhaps the most relevant example of these concerns comes from Missouri, which maintains a similarly sized network of local courts and requires only a high school diploma for its judges.<sup>135</sup> In that state, abuses of law and judicial discretion by nonlawyer judges are so prominent that they drew the attention of the Department of Justice following the shooting of Michael Brown,<sup>136</sup> and led the state's Chief Municipal Court Judge to order a complete overhaul of the municipal courts.<sup>137</sup> While Missouri and California offer only two examples of a nationwide discussion, a trend seems clear: the flow of history is going against the existence of lightly regulated, municipality-based courts with judges largely untrained in the law presiding over them.

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<sup>131</sup> John Whittaker, *Bill Would Require Town, Village Justices to Be Lawyers*, OBSERVER (Mar. 16, 2020), <https://www.observertoday.com/news/local-region/2020/03/bill-would-require-town-village-justices-to-be-lawyers/>.

<sup>132</sup> Glaberson, *supra* note 14.

<sup>133</sup> JUD. COUNCIL OF CAL., FACT SHEET: TRIAL COURT UNIFICATION (2005), <https://www.courts.ca.gov/documents/tcunif.pdf>.

<sup>134</sup> Ford, *supra* note 111.

<sup>135</sup> *Judicial Selection in Missouri*, BALLOTPEDIA, [https://ballotpedia.org/Judicial\\_selection\\_in\\_Missouri](https://ballotpedia.org/Judicial_selection_in_Missouri) (last visited Feb. 18, 2021).

<sup>136</sup> U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEP'T 42–54 (2015).

<sup>137</sup> Mark Hansen, *Ferguson Judge Moves to Overhaul Municipal Court System*, AM. BAR ASS'N J. (Aug. 15, 2015), [https://www.abajournal.com/news/article/ferguson\\_mo.\\_judge\\_moves\\_to\\_overhaul\\_municipal\\_court\\_system](https://www.abajournal.com/news/article/ferguson_mo._judge_moves_to_overhaul_municipal_court_system).



*A. Adoption of the District Court Model Statewide*

While it may seem that the issue of judicial power existing at the municipal level can only be remedied by consolidation with higher courts, an alternative exists that will preserve local control and ease of access to the courts, while also imposing necessary changes and requirements on judges and court proceedings: the district court model as it currently exists in Long Island. This system, which began operating in 1964, currently exists only in Nassau County and the western municipalities of Suffolk County.<sup>138</sup> Despite its lack of popularity outside of Long Island, the current Constitution of the State of New York contains a mechanism by which counties—and in theory the State—could adopt the district court model by means of a popular vote.<sup>139</sup> Moreover, the Uniform District Court Act contains a model by which such elections would take place, and an example of the regulations that the legislature would impose on a statewide network of district courts and their judges.<sup>140</sup> Therefore, unlike other reform proposals, such as the most recent one brought forward by Judge DiFiore,<sup>141</sup> adoption of the district court model requires no truly fundamental rebirth of the Unified Court System. Nor does it create the risk of the inevitable political, legal, and constitutional events that would undoubtedly occur following a total reinvention of the court system. Indeed, the Constitution and laws of the state of New York have already sorted out the issue of how such a change could be implemented by providing for the procedures for the district court model's adoption statewide<sup>142</sup>—a fact that will ease potential implementation and make the adoption of a statewide district court appealing.

The proposed statewide network of courts would be structured per the Uniform District Court Act and would be composed and governed by the same provisions as currently exist in the New York State Constitution. Under this model, district courts would be

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<sup>138</sup> N.Y. STATE UNIFIED CT. SYS., *supra* note 14.

<sup>139</sup> N.Y. CONST. art. VI, § 16. This provision allows the board of supervisors of any county to request that the legislature establish the district court in that county if approved by a majority of voters therein in a general election. *Id.*

<sup>140</sup> N.Y. UNIFORM DIST. CT. ACT § 2603.

<sup>141</sup> Marks, *supra* note 10.

<sup>142</sup> N.Y. CONST. art VI, §§ 8(b), (c); N.Y. UNIFORM DIST. CT. ACT § 2603.

divided by county, with one court operating in each county in New York, with the exception of the boroughs of New York City.<sup>143</sup> The district courts of the individual counties would be further divided, with one centralized district court having jurisdiction over the whole county but possessing “branches” in each incorporated town in the county.<sup>144</sup> These individual “branches” would also be district courts, and be numbered according to the will of the legislature, as they are in Long Island.<sup>145</sup> For example, within Suffolk County, the district court “branch” in the town of Hempstead is known as the Second Judicial District.<sup>146</sup> These courts possess slightly larger jurisdiction than the justice courts, and have the power to “hear the same small cases now heard in the New York City-wide courts.”<sup>147</sup> Specifically, the district courts would have jurisdiction over money actions not exceeding \$15,000,<sup>148</sup> summary proceedings such as evictions,<sup>149</sup> interpleader actions under \$15,000,<sup>150</sup> and may hear misdemeanor criminal cases, local ordinance violations, and other offenses carrying a possible penalty of less than a year in jail.<sup>151</sup> They may also, when necessary, hear arraignments on felony matters before they are brought before the county court.<sup>152</sup>

This jurisdiction is relatively broad and entirely concurrent with that of the justice courts, which is part of the reason why the Uniform District Court Act expressly abolishes the justice courts of Suffolk County.<sup>153</sup> While the fact that the district courts could

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<sup>143</sup> N.Y. UNIFORM DIST. CT. ACT § 2403.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* § 2405.

<sup>146</sup> *Id.*

<sup>147</sup> Marc Bloustein, *A Short History of the New York State Court System*, THE HIST. SOC’Y OF THE CTS. OF THE STATE OF N.Y. (Dec. 5, 1985), [http://www.nycourts.gov/history/legal-history-new-york/documents/History\\_Short-History-NY-Courts.pdf](http://www.nycourts.gov/history/legal-history-new-york/documents/History_Short-History-NY-Courts.pdf).

<sup>148</sup> N.Y. UNIFORM DIST. CT. ACT § 202.

<sup>149</sup> *Id.* § 204.

<sup>150</sup> *Id.* § 205.

<sup>151</sup> *Courts Outside New York City: District Court*, N.Y. STATE. UNIFIED CT. SYS. (Mar. 23, 2013), <https://www.nycourts.gov/courts/cts-outside-nyc-district.shtml>.

<sup>152</sup> *Id.*

<sup>153</sup> N.Y. UNIFORM DIST. CT. ACT § 2402.

seamlessly absorb the jurisdiction of the justice courts is, arguably, a solid basis for support of the adoption of the district court model, other benefits exist that make such an adoption more appealing. These benefits offer solutions to the most pressing problems of the justice court system and can be instrumental in creating a fairer justice system in New York municipalities. Moreover, in terms of the issue of educational deficiencies among municipal judges, the Uniform District Court Act provides a simple solution: it imposes a five-year legal practice requirement upon all district court judges.<sup>154</sup> This provision not only ensures that local judges possess a suitable education for their position, but that they have the experience to prove their knowledge, and be held not only to principles of justice, but the ethical duties of a lawyer as well.<sup>155</sup>

As noted above, one of the key structural flaws that has led to the plethora of issues arising from the justice courts is relatively simple: a lack of effective oversight by state judicial authorities.<sup>156</sup> While justice court judges are technically accountable to the Office of Court Administration, it is “not equipped to fully police their vast numbers.”<sup>157</sup> Moreover, given the fact that they are funded at the local level, the state possesses little leverage over them in terms of funding.<sup>158</sup> This issue, while related in part to the sheer number of municipalities (and, as a consequence, municipal courts) in New York, could be surmounted by the creation of a new position within the district court system charged entirely with the oversight of municipal judges and their courts. Section 2403 of the Uniform District Court Act, which provides a structure for the District Courts in Long Island, states that “the entire district court system shall constitute the first judicial district in which one district court judge shall be elected.”<sup>159</sup> This position is one possessing oversight abilities, and its supervisory power is augmented by another body created by the Uniform District Court Act: the Board of Judges.<sup>160</sup>

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<sup>154</sup> *Id.* § 2404.

<sup>155</sup> N.Y. COMP. CODES R. & REGS. tit. 20, § 100.3(B).

<sup>156</sup> THE FUND FOR MODERN CTS., *supra* note 68, at 2–3.

<sup>157</sup> Glaberson, *supra* note 14.

<sup>158</sup> *Id.*

<sup>159</sup> N.Y. UNIFORM DIST. CT. ACT § 2403.

<sup>160</sup> *Id.* § 2407.

The Board of Judges, as per the District Court Act, is a regulatory body comprised of all of the district court judges within a given county, as well as the judge of the overarching First District, who serves as President.<sup>161</sup> They are empowered to designate the number and location of individual judges and courts and designate judges to hear cases when required by emergencies.<sup>162</sup> Moreover, they are collectively responsible for appointing one clerk for each judicial district within a county.<sup>163</sup> Perhaps most significantly in terms of the issue of oversight, the District Court Act grants the Board of Judges the power to provide “general supervision of the business of the court.”<sup>164</sup> This means that, unlike under the justice court model, there is no need for state involvement or further centralization in monitoring the proceedings and everyday affairs of the courts, which has been the source of the bulk of the system’s oversight shortcomings.<sup>165</sup>

The final major benefit offered by the district court model is its ability to satisfy both those seeking to create a fairer court system for all New Yorkers, and those who seek to retain traditional local control over municipal judicial officers. One of the key criticisms brought forward by the opponents of past reform proposals involves concern over a loss of local power and choice in who renders justice in their municipalities.<sup>166</sup> Especially in rural areas in Upstate New York, some of the residents, justices, and attorneys of small towns and villages have occasionally come to the defense of the justice court system, praising the institution’s ability to render “hometown” justice.<sup>167</sup> The perception by many, especially in blue collar towns, is that justice courts offer the opportunity for “an honest moment,” in which the community can make reasonable decisions.<sup>168</sup> This concern for the role of community in the administration of local

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* § 2413.

<sup>164</sup> *Id.* § 2407.

<sup>165</sup> Rosenthal, *supra* note 32.

<sup>166</sup> See Glaberson, *supra* note 46 (discussing the nature of defenses put forward by opponents of reform in the past and showcasing perspectives of current justices).

<sup>167</sup> Rosenthal, *supra* note 302.

<sup>168</sup> *Id.*

justice is easily addressed by the district court model, as it not only allows for the popular election of district judges, but also centers its operations within the town it serves, keeping it physically present in the community—and likely staffed by its members.<sup>169</sup>

Put simply, the district court model can allow for the complete professionalization of municipal courts, while also retaining the “hometown spirit” of a local judicial position, by placing courthouses in each town, and by electing district judges from among the populations of these communities. It offers the chance to streamline and regulate local justice, while also reducing the burden it places on the state government. Perhaps most importantly, it offers a way in which the wrongs associated with the justice courts can be approached without a complete overhaul of the state’s constitution. As such, it seems that the best option would be to move towards the statewide adoption of the district court model.

#### *B. Adoption of the Vermont Justice of the Peace Model*

While the merits of adopting a more centralized district court model are ample, certain ceremonial functions of the current town and village justice courts present a separate issue. Some matters, such as municipal tax appeals, local small claims summary matters, and the swearing in of public officials, are all within the current jurisdiction of the justice courts.<sup>170</sup> It could be argued that, applying the same logic as that supporting the adoption of a statewide district court, even these small matters are best left to judges qualified under the restrictions of the proposed model. However, considering the fact that the justice courts hear an average of 2.2 million cases annually, there is good reason to be concerned about the potential burden these ancillary proceedings could impose on the district courts.<sup>171</sup> Fortunately, another option exists that can allow for these core municipal functions to continue on an elected, local basis: the

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<sup>169</sup> N.Y. UNIFORM DIST. CT. ACT § 2407.

<sup>170</sup> N.Y. UNIFORM JUST. CT. ACT § 204; Glaberson, *supra* note 14 (discussing the importance placed on democratic choice of judges within a community by justice court advocates).

<sup>171</sup> Glaberson, *supra* note 14.

adoption of the justice of the peace model as it currently exists in the neighboring state of Vermont.

The position of justice of the peace in Vermont is established through a provision of the Vermont Constitution.<sup>172</sup> It is popularly elected by the residents of all incorporated municipalities in Vermont, with each municipality having a minimum of five, but no more than fifteen, justices of the peace, depending on population.<sup>173</sup> Although Vermont justices of the peace were once more powerful,<sup>174</sup> possessing similar jurisdiction to the New York justice courts, they have slowly been sapped of their judicial duties and now possess very little civil jurisdiction, and no criminal jurisdiction.<sup>175</sup> However, they still play an important role in Vermont and are given powers over matters that help alleviate crowded dockets in the state courts, allowing them to have *some* minor official power, despite there being no educational requirement for the positions.<sup>176</sup> These matters include overseeing elections, hearing municipal tax appeals, solemnizing marriages, acting as notaries, and delivering oaths to public officers.<sup>177</sup> Moreover, in times of extreme need, they can also serve as magistrates by order of the Vermont Supreme Court.<sup>178</sup>

New York justice courts have a broader jurisdiction than do the Vermont counterparts and vary slightly in terms of official

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<sup>172</sup> VT. CONST. CH. II, § 43.

<sup>173</sup> VT. LEAGUE OF CITIES & TOWNS, HANDBOOK FOR VERMONT TOWN OFFICERS Ch. 19 (2014), [http://waitsfieldvt.us/wp-content/uploads/2016/04/VLCT\\_Town\\_Officers\\_Handbook\\_Justice\\_of\\_Peace\\_2014.pdf](http://waitsfieldvt.us/wp-content/uploads/2016/04/VLCT_Town_Officers_Handbook_Justice_of_Peace_2014.pdf) (listing the powers and responsibilities and delineating the jurisdiction of the Vermont Justice of the Peace position).

<sup>174</sup> Amy Kolb Noyes, *Just What Is a Justice of the Peace, Anyway?*, VT. PUB. RADIO (Nov. 12, 2014), <https://www.vpr.org/post/just-what-justice-peace-anyway#stream/0>.

<sup>175</sup> VT. JUDICIARY, THE HISTORY OF THE VERMONT JUDICIARY [https://www.vermontjudiciary.org/sites/default/files/documents/History\\_VT\\_Judiciary.pdf](https://www.vermontjudiciary.org/sites/default/files/documents/History_VT_Judiciary.pdf) (last visited Mar. 4, 2021); *see generally* VT. SEC'Y OF STATE, VERMONT JUSTICE OF THE PEACE GUIDE 2019, <https://sos.vermont.gov/media/zaalj01i/jp-guide-2019.pdf> (outlining the responsibilities of the Justice of the Peace and the extent of its judiciary power).

<sup>176</sup> VT. LEAGUE OF CITIES & TOWNS, *supra* note 173, at 39–42.

<sup>177</sup> VT. SEC'Y OF STATE, *supra* note 175, at 7.

<sup>178</sup> *Id.* at 24.

responsibilities.<sup>179</sup> As such, the potential role of the Vermont justice of the peace model in the State of New York is, simply put, already clearly defined: a smaller judicial role, requiring no formal legal education and under local voter control, that exists to perform minor legal functions and hear very small claims.<sup>180</sup> Given the expanded scope of jurisdiction found in the district courts, which will likely bring far larger monetary claims than the justice courts,<sup>181</sup> it is both illogical and unnecessary to saddle them with hearing disputes under \$500, swearing in officials, or acting as a notary. It would seem, therefore, that in order to ensure that the district court's expanded scope is used to its full potential, and that local participation and support remains high, that the justice of the peace model offers the best alternative to imposing such duties on district judges.

*C. Creating Appellate Terms in All Four Judicial  
Departments of the State to Hear Municipal Appeals*

Appellate terms offer a relatively uncomplicated and well-precedented means by which the burden placed on both the lower courts and appellate division can be reduced, but very few New Yorkers know what they are. Appellate terms are appellate tribunals created at the pleasure of the appellate division of the department in which they are located, and are meant primarily to reduce specific types of burdens that would otherwise be imposed on the appellate terms.<sup>182</sup> In some areas, like in the First and Second Departments, the Appellate Division has established permanent appellate terms meant to eliminate the aforementioned local appeals burdens on the appellate divisions entirely.<sup>183</sup>

In the First and Second Departments, appellate terms are assigned to hear appeals from decisions made by the justice courts,

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<sup>179</sup> Compare *id.* at 7 (listing Vermont Justice of the Peace duties), with N.Y. UNIFORM JUST. CT. ACT §§ 204–10 (enumerating the jurisdiction of justice courts in New York).

<sup>180</sup> *Id.*; VT. LEAGUE OF CITIES & TOWNS, *supra* note 173, at 41–42.

<sup>181</sup> N.Y. UNIFORM JUST. CT. ACT § 204.

<sup>182</sup> N.Y. CONST. ART. VI, §§ 8(c), 10.

<sup>183</sup> *An Overview of the Appellate Terms*, SUP. CT. OF THE STATE OF N.Y., [http://www.courts.state.ny.us/courts/ad2/appellateterm\\_aboutthecourt.shtml](http://www.courts.state.ny.us/courts/ad2/appellateterm_aboutthecourt.shtml) (last visited Mar. 6, 2021).

where they have been met with success in “disposing promptly of a constantly increasing mass of litigation.”<sup>184</sup> However, in the rest of the state, the Uniform Justice Court Act provides that “appeals in civil causes [within the justice courts] shall be taken to the county court.”<sup>185</sup> While the statute does allow for the establishment of appellate terms for the purpose of hearing local appeals,<sup>186</sup> as previously mentioned, only the Downstate First and Second Departments have actually opted to do so.<sup>187</sup> If, upon the adoption of the district court model, no other change is made to the appeals process for municipal decisions in the rest of the state, the county courts outside of the downstate region would remain forced to hear appeals on municipal matters coming from district courts.<sup>188</sup>

While on its face, this issue may seem small, it becomes a real concern when considering not only the vast number of cases,<sup>189</sup> but the fact that the appellate divisions of the state are already seriously backlogged, with their justices overburdened as a result.<sup>190</sup> However, this potential strain may be alleviated—and easily—by the establishment of appellate terms, as they—much like the district courts—are already in existence and easily replicated.<sup>191</sup> As in the First and Second Departments, the creation of appellate terms in all departments under this model would allow for local appeals to be heard outside of the already backlogged Appellate Division and county courts, before a tribunal organized to deal with such complaints.<sup>192</sup> Moreover, there is no need to formulate a method for adopting such a system, as the New York State Constitution already

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<sup>184</sup> *Id.*

<sup>185</sup> N.Y. UNIFORM JUST. CT. ACT. § 1701.

<sup>186</sup> *Id.*

<sup>187</sup> SIEGEL, *supra* note 19.

<sup>188</sup> *See* N.Y. UNIFORM JUST. CT. ACT. § 1701 (showing that the only option aside from an appellate term is appealing to the county court).

<sup>189</sup> Glaberson, *supra* note 14.

<sup>190</sup> Donald L. Swanson, *A Mandatory Mediation Process in New York—with Sanctions Procedures*, MEDIATBANKRY (Aug. 4, 2020), <https://mediatbankry.com/2020/08/04/a-mandatory-mediation-process-in-new-york-with-sanctions-procedures/>.

<sup>191</sup> *See* SUP. CT. OF THE STATE OF N.Y., *supra* note 183 (showing detailed pre-existing structure of potential new appellate terms).

<sup>192</sup> *Id.*



provides for their creation by decree of the appellate divisions.<sup>193</sup> Put succinctly, the appellate term model does not truly require “adopting” much at all, it merely involves invoking a legal mechanism that has always existed. Therefore, in the interests of advancing efficiency and minimizing effort in reform, the appellate terms are unmatched in their ability to offer a guiding model for efficiency.

#### CONCLUSION

The justice court system is, to any watchful observer, a source of great woe in the New York judicial system. However, these issues of oversight, administration, and regulation can be remedied simply through the adoption of the district court model in tandem with the more limited, locally elected justice of the peace model. Moreover, this approach can eliminate longstanding concerns over community justice and local control of legal proceedings by retaining democratic features in local justice. This approach to reform is, therefore, unique in its ability to both bring in the new and keep the few good aspects of the old, and is likely the best, most attainable hope the state of New York has in its quest for a fairer system.

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<sup>193</sup> N.Y. CONST. art. VI, §§ 8 (“The appellate division of the supreme court in each judicial department may establish an appellate term in and for such department . . . Any such appellate term may be discontinued and re-established as the supreme court in each department shall determine from time to time . . .”).