

REGIONALISM REVISITED: THE EFFORT TO STREAMLINE  
GOVERNANCE IN BUFFALO AND ERIE COUNTY, NEW YORK

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I. INTRODUCTION

During the first half of the twentieth century, burgeoning grain transshipment trade and heavy manufacturing spurred the bustling economy of Buffalo, the eastern-most port on the shores of Lake Erie and the second-largest city in the State of New York.<sup>1</sup> With the jobs that these industries provided came residents to occupy them. In the 1900 census, Buffalo ranked as the eighth-largest city in the United States, with a population of over 350,000.<sup>2</sup> By 1950, Buffalo could claim over 580,000 residents—the most ever in its 118-year history to that time.<sup>3</sup> Buffalo had become overwhelmingly dominant among the many municipalities in the County of Erie.

However, the 1959 opening of the St. Lawrence Seaway, which encouraged large oceangoing vessels to bypass Buffalo via Ontario's Welland Canal, severely damaged Buffalo's grain trade in the decades that followed.<sup>4</sup> Meanwhile, numerous manufacturing concerns, most notably Bethlehem Steel in 1982, transferred their operations to southern states and foreign countries in search of lower taxes, less stringent environmental regulations, and a workforce that demanded lower wages. These changes have sapped the City of Buffalo of much of the industrial core that drove its

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<sup>1</sup> See RICHARD C. BROWN & BOB WATSON, *BUFFALO, LAKE CITY IN NIAGARA LAND* 220 (1981).

<sup>2</sup> G. Scott Thomas, *Buffalo's Population Decline Gathers Speed*, *BUS. FIRST OF BUFF.*, June 30, 2005, available at <http://buffalo.bizjournals.com/buffalo/stories/2005/06/27/daily35.html>.

<sup>3</sup> *Id.*

<sup>4</sup> BROWN & WATSON, *supra* note 1, at 222.

economy through the 1950s. Just as residents arrived with the advent of new jobs, they have left in the wake of those jobs' departure. Although approximately 950,000 people still call Erie County home,<sup>5</sup> the United States Census Bureau estimated Buffalo's population, as of July 2004, at just 282,864—a decline of nearly 10,000 from the Bureau's official count in 2000.<sup>6</sup>

Recognizing this precipitous drop in population and the exodus of industry, a handful of politicians and community leaders in the mid-1990s publicly recommended merging the City of Buffalo into Erie County as an elixir.<sup>7</sup> Such a merger would enable Buffalo to claim the residents of surrounding towns, and thereby vault ahead in the rankings of America's most populous cities. Perhaps more important, proponents of the merger sought to assign successful suburban communities responsibility for returning Erie County's urban center of Buffalo to its former prominence.<sup>8</sup>

The parlance of Buffalonians has termed this effort to transform the governmental structure of Buffalo and Erie County as “regionalism.” Support for regionalism gathered steam with the 1999 election of Republican County Executive Joel Giambra, a staunch advocate of consolidation to promote, in the words of a campaign slogan, “better, smarter and cheaper” service delivery.<sup>9</sup> By 2004, having earned re-election with nearly fifty-five percent of the vote against a regionalism opponent in solidly Democratic Erie County,<sup>10</sup> Giambra charged a commission of citizens, led by former State University of New York at Buffalo President William Greiner, to devise a plan for city-county merger that he could present to the voters in a referendum that he optimistically scheduled for November 2005.<sup>11</sup> Soon thereafter, however, the winds of political change suddenly shifted course. Although the commission released a plan of merger in January 2005, it abruptly suspended its work

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<sup>5</sup> Hon. Joel A. Giambra, Erie County Executive, State of the County Address: On the Frontier (Feb. 15, 2007), <http://www.erie.gov/exec/soc.asp> (last visited Jan. 1, 2008).

<sup>6</sup> Population Div., U.S. Census Bureau, *Table 1: Annual Estimates of the Population for Inc. Places over 100,000, at 2 (2005), available at* <http://www.census.gov/popest/cities/tables/SUB-EST2004-01.xls>.

<sup>7</sup> Giambra, *supra* note 5.

<sup>8</sup> *Id.*

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

<sup>10</sup> 2003 SURVEYUSA ELECTION POLLS (Dec. 5, 2003), <http://www.surveyusa.com/2003Elec.html>.

<sup>11</sup> County Executives of Am., *Buffalo, Erie County Research Regional Government, COUNTY EXECUTIVE SUMMARY*, Oct. 2004, at 5, 5, *available at* <http://countyexecutives.org/news/newsletters/20041004.pdf>.

indefinitely later that month, in the wake of a multimillion dollar county budget deficit that voters blamed on the previously popular County Executive.<sup>12</sup> With nearly 80% of Erie County residents believing that Giambra should resign as County Executive,<sup>13</sup> and with Giambra's "favorable[]" poll rating in the single digits,<sup>14</sup> the regionalism effort that seemed plausible to succeed in 2004 has now stalled, as citizens continue to leave the City of Buffalo for suburban Erie County and beyond.

As a new Erie County Executive takes office on January 1, 2008, this Paper seeks to examine the etiology of this current state of inertia, and to consider those provisions of New York law which may offer an electorally palatable alternative to formal consolidation of municipalities, which may nonetheless spur renewed investment to grow the property tax base in the City of Buffalo. To provide a framework for analysis, Part II of this Article summarizes academic literature that divides the substance of regionalism into "old" and "new" varieties. Questioning "old" regionalism's promotion of inter-municipal consolidation to revive struggling urban centers, "new" regionalism has expressed skepticism concerning the political will among suburbanites for such wholesale change. As a response, new regionalists have emphasized cooperation among towns and cities within the existing structure of municipal governance.

In addition to identifying two substantive kinds of regional change, Part II also distinguishes "old" and "new" procedures for their implementation. Whereas the "old" method presumes that business leaders and elected officials must devise proposals for government consolidation, the "new" procedural regionalism anticipates that such proposals will originate among the general populace. A prominent, recent example of regional planning in Utah has demonstrated collaboration among community stakeholders, heeding the preferences of the citizenry at large, and has proven successful as a procedure for implementing new regionalism's substantive goals.<sup>15</sup>

Upon tracing the origins of the movement for regionalism in

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<sup>12</sup> See Phil Fairbanks & Robert J. McCarthy, *Voters Blame Giambra for Budget Mess: Poll Finds 79 Percent Want Him Out of Office*, BUFF. NEWS, July 3, 2005, at A1.

<sup>13</sup> *Id.*

<sup>14</sup> Bob McCarthy, Op-Ed., *Giambra on the Road to Resurrection*, BUFF. NEWS, Nov. 27, 2005, at H3.

<sup>15</sup> See Note, *Old Regionalism, New Regionalism, and Envision Utah: Making Regionalism Work*, 118 HARV. L. REV. 2291, 2292 (2005) [hereinafter *Envision Utah*].

Buffalo to the present day, Part III demonstrates the inability of “old” procedural regionalism to convince Erie County residents to change the structure of their local governance. Since the mid-1990s, “regionalism” has meant old-style consolidation, rather than new-style intergovernmental cooperation. Plans to merge the City of Buffalo into Erie County resulted not from reflective debate among a broad range of community leaders, but rather from promotion by a small group of influential power-brokers, including County Executive Giambra and the publishers of the *Buffalo News*, Erie County’s most widely circulated daily newspaper. Although this derivation won backers for consolidation at the height of Giambra’s popularity, it also rendered regionalism vulnerable upon the revelation of Erie County’s budget crisis in 2004. As soon as voters no longer supported County Executive Giambra, regional reforms inseparably associated with his tenure correspondingly lost public confidence. As this Paper posits, had genuine input from numerous stakeholders and ordinary citizens generated proposals for regionalism, they could have survived in spite of Erie County’s fiscal troubles and Giambra’s sudden fall from grace.

Informed by this lesson, Part IV presents a partial plan for “new” regionalism in Buffalo and Erie County. First, from a procedural standpoint, Erie County’s municipalities can form an “intergovernmental relations council,” pursuant to New York’s General Municipal Law. Consisting of interested businessmen, developers, unions, community leaders, and other stakeholders, the council would gather input from citizens concerning their preferred vision for regionalism. Based upon their comments, the council would devise a regional plan that could win broad acceptance among Erie County residents. Second, to rebuild within its current boundaries, the City of Buffalo should pursue the substantive tool of tax-increment financing—also afforded by the General Municipal Law—which can permit reconstruction on blighted and vacant properties by interested developers. Pursuant to a redevelopment plan for targeted neighborhoods, the City could issue municipal bonds to fund property enhancements that would rehabilitate the urban tax base. The excess taxes collected as a result of these improvements would subsequently subsidize repayment on the bonds’ principal and interest.

## II. REGIONALISM: SUBSTANTIVE AND PROCEDURAL, OLD AND NEW

In the United States of America, the concept of regionalism arose

from the post-World War II growth of suburbia, newly populated with young veterans and their families who desired new houses away from the cramped conditions offered by inner cities. Suburban development caused cities to become “surrounded by increasing numbers of municipal governments” that steadily claimed the residential property-tax base that the cities had once predominantly enjoyed.<sup>16</sup> For example, in Erie County, new construction of single-family homes in the 1950s and 1960s in “first-ring” communities such as Tonawanda, Amherst, Cheektowaga, West Seneca, and Hamburg lured thousands of middle-class residents away from the duplexes of Buffalo’s ethnic neighborhoods.<sup>17</sup> Consequently, Buffalo and other industrial cities suddenly faced a challenge to maintain their municipal services despite the exodus of property-tax revenue to suburban communities.<sup>18</sup> In response, despite well-known opposition,<sup>19</sup> some commentators have proposed to rehabilitate urban property tax rolls by consolidating cities and their suburbs into general-purpose, metropolitan governments. Most notably, David Rusk, a former mayor of Albuquerque, New Mexico, and syndicated columnist Neal Peirce have argued for such a drastic alteration in the landscape of local governments.<sup>20</sup>

A. “Old” Substantive Regionalism: Annexation and Consolidation

Rusk seeks to create “elastic cities,” with “the political and legal tools to annex new land.”<sup>21</sup> In many states, “annexation . . . generally requires the consent of local residents.”<sup>22</sup> For example, the New York “Bill of rights for local governments” provides:

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<sup>16</sup> Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and The New Regionalism*, 78 WASH. L. REV. 93, 102 (2003).

<sup>17</sup> See ERIE-NIAGARA FRAMEWORK FOR REGIONAL GROWTH, GROWTH & DEVELOPMENT IN THE ERIE-NIAGARA REGION 7 (2003), <http://www.regionalframework.com> (follow “Documents and Resources” hyperlink, and then follow “Growth & Development in the Erie-Niagara Region—Full Report” hyperlink).

<sup>18</sup> See *Envision Utah*, *supra* note 15, at 2292 (discussing the revenue raising limitations of poor municipalities due to the exclusionary zoning of wealthier surrounding communities).

<sup>19</sup> See, e.g., Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1060 (1980) (criticizing the view that city and suburbs must consolidate in order to spark urban revitalization).

<sup>20</sup> See Edward A. Zelinsky, Book Review, *Metropolitanism, Progressivism, and Race*, 98 COLUM. L. REV. 665, 668, 678–79 (1998).

<sup>21</sup> DAVID RUSK, CITIES WITHOUT SUBURBS 10 (1993).

<sup>22</sup> Shelley Ross Saxer, *Local Autonomy or Regionalism?: Sharing the Benefits and Burdens of Suburban Commercial Development*, 30 IND. L. REV. 659, 671 (1997).

No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by majority vote on a referendum and until the governing board of each local government, the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the overall public interest.<sup>23</sup>

Although this constitutional guarantee protects local governments from unwanted intrusion by their neighbors, it also prevents tax-deprived cities from tapping into the fiscal resources at the disposal of suburban communities. As a consequence, cities cannot fund schools, police, or other vital services at nearly the same level per capita as their suburban counterparts. For Rusk, “[t]he pursuit of the American dream—the building of suburban America—has also created the American nightmare—decaying, poverty-impacted, racially impacted central cities.”<sup>24</sup>

Rusk’s solution to this problem involves “mak[ing] a city the real city . . . through aggressive annexation or consolidation.”<sup>25</sup> Thus, although it might leave rural towns intact, Rusk’s utopia would amalgamate Erie County’s three cities and its suburbanized towns under the jurisdiction of a single general-purpose government. Whereas the City of Buffalo currently can rely only upon property tax revenue paid by its citizens, such a mega-government could apply tax proceeds generated from suburban mansions and sprawling subdivisions to fund services in Erie County’s urban core.

Despite its optimism for refilling cities’ fiscal coffers, an extremely pessimistic view of prospects for urban revitalization underlies this plan. In particular, Rusk holds little hope that development can rehabilitate cities’ tax bases from within. Therefore, governmental consolidation is necessary to enlist suburban tax revenue as a crutch to support an ailing urban center. As Rusk commented prior to the publication of his landmark book *Cities Without Suburbs*, “leav[ing] people in place and build[ing] from within . . . isn’t going to work. My research shows that no community which has begun its downward slide in terms of growing poverty and growing minority concentration and growing gaps between the suburbs and

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<sup>23</sup> N.Y. CONST. art. IX, § 1(d).

<sup>24</sup> Gene Marlowe, Editorial, *U.S. Pays for Suburban Dream by Having an Urban Nightmare*, BUFF. NEWS, Dec. 20, 1992, at G9 (quoting David Rusk).

<sup>25</sup> *Id.*

the cities . . . has reversed that trend.”<sup>26</sup> Even if inner-city residents could find high-paying jobs to bolster their economic fortunes, Rusk believes that this would not enhance the urban tax base. “When people [residing in cities] are successful—as many have been—it usually doesn’t help because they get out—as is only sensible.”<sup>27</sup>

Whereas Rusk seeks to expand urban borders to encompass new development, Neal Peirce has embraced intergovernmental consolidation to serve a much broader focus.<sup>28</sup> Regionalism should not merely invigorate a city’s property tax base, but rather recognize interdependence between a central city and surrounding suburbs that comprise what Peirce calls a “citistate,” which “function[s] as a single zone for trade, commerce, and communication.”<sup>29</sup> Facing increasing competition in a global economy from other citistates, metropolitan areas must “mobilize all their skills to protect their center cities.”<sup>30</sup> In Erie County, such protection would dissolve its cities, towns, and villages into a single municipal government mindful of its primary goal to revitalize the urban core.<sup>31</sup> For example, with regard to land use, no longer could towns and villages prioritize parochial desires in blindly approving gleaming office parks that would lure businesses from Buffalo’s downtown. Under Peirce’s plan, a metropolitan government would expressly consider a project’s possible impact upon the urban tax base before bestowing its approval. In contrast to Rusk’s narrow emphasis upon urban expansion to absorb high-value properties, Peirce views intermunicipal merger as a means to achieve the inner-city revitalization that Rusk deems so elusive.

### *B. “New” Substantive Regionalism: Cross-Border Cooperation and Citizen Involvement*

In response to the consolidation proposals of Rusk and Peirce,

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

<sup>27</sup> *Id.*

<sup>28</sup> See Zelinski, *supra* note 20, at 678–79 (reviewing NEAL R. PEIRCE ET AL., CITISTATES: HOW URBAN AMERICA CAN PROSPER IN A COMPETITIVE WORLD (1993)) (“Peirce leaves no doubt as to his ultimate goal for municipal governance: to replace the current pattern of decentralized localities and single purpose regional districts with metropolitan governments of general jurisdiction.”).

<sup>29</sup> The Citistates Group, What is a Citistate?, <http://www.citistates.com/whatis.html> (last visited Jan. 1, 2008).

<sup>30</sup> *Id.*

<sup>31</sup> See PEIRCE ET AL., *supra* note 28, at 56, 119–20, 215 (proposing a “strong regional authority” to govern metropolitan Phoenix, supporting expansion of the powers of county government in Seattle, and voicing a need for “metropolitan government” in Dallas).

“New Regionalis[ts]” have “suggested that voluntary local measures and interlocal cooperation can be effective substitutes for centralized control.”<sup>32</sup> Although they “embrace a wide range of divergent strategies,” they stand united in doubting the odds of public enthusiasm for replacing a familiar pattern of towns with a single regional authority.<sup>33</sup> Rusk and Peirce assume that such enthusiasm would arise among altruistic suburbanites, willing to dismantle their local system of government for the predicted benefit of their urban neighbors. However, for at least two reasons, suburban residents may deeply value the autonomy of the successful communities that they have populated. First, consolidation would invalidate their choices to live outside the city limits.<sup>34</sup> Some citizens consciously select a jurisdiction within a given region based upon the services that it provides.<sup>35</sup> In the wake of that jurisdiction’s abolition, a new regional government especially devoted to rehabilitating the central city could not necessarily guarantee to offer the same level or caliber of service that suburban residents have enjoyed. Second, suburbanites understandably may not feel obligated to relinquish their structure of government in order to atone for the urban core’s decline. Consolidation would not only dilute the political clout that a critical mass of African Americans has won in the City of Buffalo, but also nullify the unique opportunity that every town and village board affords suburban citizens to lobby and influence their elected officials.<sup>36</sup> Although Neal Peirce “sees public participation as vital to the development of regional citistates,” his version of regionalism would actually hinder such personal lobbying—“among the most participatory features of the American polity.”<sup>37</sup> Such a result

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<sup>32</sup> *Envision Utah*, *supra* note 15, at 2292.

<sup>33</sup> Reynolds, *supra* note 16, at 112; *see also* Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 362 (1990) (acknowledging the difficulty of convincing voters to support formal consolidation of general-purpose governments).

<sup>34</sup> Interview with Daniel J. Ward, Amherst Town Bd. Member, 2003 Democratic Candidate for Erie County Executive, in Amherst, N.Y. (May 22, 2005) (on file with author).

<sup>35</sup> For instance, in Erie County, a parent of an aspiring hockey player might choose to reside in Amherst to take advantage of the Town’s Pepsi Center, the largest facility of its kind in the Buffalo metropolitan area. For the seminal discussion of why citizens may consider the services offered by a community in choosing their homes, *see generally* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 418–20 (1956).

<sup>36</sup> For example, every meeting of the Amherst Town Board contains a period of “suspension of rules,” during which residents may speak before the Board concerning any issue of local importance. Citizens also may comment concerning rezonings and local laws during specially scheduled public hearings.

<sup>37</sup> Zelinsky, *supra* note 20, at 680.



represents a high price for residents of any suburban town to pay for tax base attrition in an entirely different political subdivision. In the view of a defiant localist, if these suburbs could learn on their own to allocate their finite resources to supply quality services while maintaining their fiscal health, so should the City of Buffalo.

In response to these concerns, rather than reinvent the wheel of governance, new regionalists seek to promote voluntary, cross-border regional collaboration “that do[es] not completely supplant local governments.”<sup>38</sup> Most often, such cooperation would entail two municipalities to contract to render a capital-intensive service, provided that they minimize transactional costs.<sup>39</sup> Thus, despite its depressed property tax base, a city could negotiate with county government or a successful town to offer services for which the city alone could not pay.<sup>40</sup> Hopeful new regionalists envisage that cities could enlist their neighbors’ help by formulating not one or two, but “multiple, overlapping webs of interlocal agreements” for service delivery.<sup>41</sup> In this way, adjoining municipalities could maintain their *independence*, yet also achieve the regional *interdependence* sought by proponents of consolidation.

### C. Procedural Regionalism and Its Impact on Substantive Regionalism

In the academic literature, new regionalism has traditionally promoted *substantive* ideas for cooperation, but has long encountered difficulty in identifying examples of, or *procedural* means to achieve, “voluntary [intermunicipal] cooperation . . . in any significant way.”<sup>42</sup> However, in May 2005, the Harvard Law Review cited “Envision Utah,” which began in the mid-1990s as an organization that sought to combat sprawl in greater Salt Lake City, as a new regionalist success story notable for its *process* in creating a plan for regional growth.

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<sup>38</sup> Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2027 (2000).

<sup>39</sup> See Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190, 192 (2001) (stating that transactional costs best explain the lack of service contracts between neighboring cities).

<sup>40</sup> A prime example of such a situation arose in 2004, when the City of Buffalo contracted with Erie County to maintain its renowned system of parks designed by Frederick Law Olmsted.

<sup>41</sup> H.V. Savitch & Ronald K. Vogel, *Paths to New Regionalism*, 32 ST. & LOC. GOV'T REV. 158, 164 (2000).

<sup>42</sup> *Envision Utah*, *supra* note 15, at 2293.

For Rusk and Peirce, successful regionalism entails implementation of the consolidation plans that they have already devised. In contrast, Envision Utah “began with an ironclad rule: it had no agenda,” and “involved as many people as possible . . . in defining what the region’s agenda should be.”<sup>43</sup> At the inception of Envision Utah, business and government leaders from a predecessor group, known as the Coalition for Utah’s Future, gathered support among “a large group of stakeholders, who were diverse in terms of geography, race, gender, political ideology, and community role,” and who included “both conservationists and developers.”<sup>44</sup> After assembling its broad array of stakeholders, Envision Utah conducted several high-profile public forums that invited all citizens “to place chips representing anticipated regional population growth on a map,” and thereby indicate their “preferences regarding where and how the region should grow.”<sup>45</sup> Relying on the data collected at the public forums, the stakeholders utilized their professional and political expertise to translate citizens’ preferences into a plan for regional action:

Using the input from the workshops, Envision Utah involved its stakeholders in creating four alternate growth scenarios for the future of Utah . . . .

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. . . [A] low-density scenario, a moderate-density scenario, a high-density scenario, and a baseline scenario demonstrating the future result of existing trends. . . . Working with professional planners and analysts—many from state and local governments—Envision Utah determined the consequences of each scenario, including effects on commute times, infrastructure spending, water use, air quality, and land consumption, and then presented the scenarios to citizens through an extensive outreach campaign and asked them to select their preference. Survey results indicated that residents overwhelmingly favored strategies that increase relatively compact, transit-oriented development.

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After adopting a regional vision, Envision Utah held more

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

<sup>44</sup> *Id.* at 2299.

<sup>45</sup> *Id.*

public and stakeholder meetings and workshops to develop a Quality Growth Strategy, which lists seven goals along with strategies for achieving them. Implementation has proceeded . . . [b]y educating the public and decisionmakers [to engender] . . . remarkable success at promoting voluntary smart growth efforts that fit the New Regionalist model.<sup>46</sup>

Pursuant to its efforts to solicit preferences concerning future growth, and to educate the citizenry concerning how properly to achieve these goals, Envision Utah also convinced a very conservative electorate in 2000 to vote in favor of a sales tax increase to raise revenue to subsidize rapid transit expansion.<sup>47</sup> The conscious refusal of Envision Utah to impose upon the populace its own vision for intergovernmental consolidation or appropriate municipal growth, combined with its painstaking efforts to involve residents in drafting a plan for new development, encouraged citizens of a wide variety of political viewpoints to adopt the Quality Growth Strategy as their own, and to pursue the steps necessary to achieve its aims.

In addition to the paradigm presented by Envision Utah, political science literature discussing “deliberative democracy” provides a theoretical model by which concerned constituents could derive a plan for regionalism, whether substantively “old” or “new.” Lamenting the roles that party elites and residents of small states (notably states that hold early caucuses and primaries, such as Iowa and New Hampshire) play in selecting presidential candidates in the United States, James Fishkin has proposed to implement “deliberative opinion poll[s],” which would summon a sizable, diverse group of voters to question potential nominees concerning their views on important issues during intensive sessions over a period of days.<sup>48</sup> As Fishkin observes, the current system of whittling the field of presidential hopefuls rewards well-funded candidates whose resources can subsidize mass media blitzes in a limited number of states, where primary victories can develop nationwide momentum on the road to an eventual party nomination.<sup>49</sup> However, the deliberative opinion poll would serve as a “first evaluation of candidates” “shorn of their standard stump

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<sup>46</sup> *Id.* at 2299–300, 2303, 2310–11 (footnotes omitted).

<sup>47</sup> *Id.* at 2311.

<sup>48</sup> JAMES S. FISHKIN, *DEMOCRACY AND DELIBERATION: NEW DIRECTIONS FOR DEMOCRATIC REFORM 1–2* (1991).

<sup>49</sup> *Id.* at 5, 7–8.

speeches [and] . . . media packaging for television,” and would feature “the thoughtfulness and depth of face-to-face politics, as well as the representative character of a national event” that would include as many interested citizens as possible.<sup>50</sup>

Indeed, the deliberative opinion poll constitutes an ideal candidate selection process that would prove difficult to implement in the real world. For example, in the days immediately preceding a deliberative opinion poll, candidates would likely advertise via mass media in an effort to influence the various delegates. Moreover, seasoned political consultants could surely equip a candidate with stock answers in response to most every possible question. Nonetheless, despite the practical flaws of implementing a deliberative opinion poll under laboratory conditions, deliberative democracy underscores the desirability of the general public’s involvement in directing public policy. Just as Fishkin endorses the deliberative opinion poll as a means of choosing presidential nominees, so would he support the formulation of a regional plan for growth or governance developed not from the inclinations of a few outspoken elites, but rather in response to the preferences expressed by concerned citizens who have answered a call for input.

While delegates to a deliberative opinion poll could choose from a number of available candidates for office, a populace could consider a wide array of approaches from the intergovernmental consolidation required by old substantive regionalism to mere intermunicipal collaboration demanded by new regionalism. “[R]ather than present a plan for [regional consolidation] and then attempt to garner the support of local officials, business executives, and religious leaders,” as Rusk and Peirce would proceed, promoters of new procedural regionalism would seek “input from these stakeholders and others in creating the regional agenda.”<sup>51</sup> Whereas old regionalism requires consolidation, the flexibility of new procedural regionalism, as demonstrated by Envision Utah, permits it to refuse to assume the superiority of one strategy over another. Instead, new procedural regionalism can empower residents to tailor unique efforts toward cooperation or consolidation, and thereby grant them ownership in the future of their government.

Despite the promise of new procedural regionalism, some scholars

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<sup>50</sup> *Id.* at 8–9.

<sup>51</sup> *Envision Utah*, *supra* note 15, at 2298–99 (describing Utah’s “smart growth” legislation as arising from the genuine input of concerned citizens).

doubt the likelihood of success for a substantive model emphasizing shared services and collaboration among multiple municipalities. Professor Laurie Reynolds has cautioned against “an uncritical endorsement of widespread intergovernmental cooperation.”<sup>52</sup> As she ominously predicts, extensive intermunicipal contracting would sap funding from non-regional functions, such as social services that predominantly assist low-income residents of the inner city.<sup>53</sup> Also, because suburban towns can selectively choose which contracts to sign, they may only undertake those projects that will yield them the greatest benefit, while imposing upon their urban neighbor the greatest cost.<sup>54</sup> Meanwhile, James Magavern, a prominent Buffalo attorney who has studied extensively the possibility for intergovernmental consolidation in Erie County, views intermunicipal contracts alone as insufficient incentives to convince suburbs of their vested interests to spark urban renewal. As a threshold matter, a municipality could abandon a cross-border initiative as easily as the municipality embraces it.<sup>55</sup> Yet, even if an intermunicipal agreement did succeed, it would delineate a boundary of collaboration beyond which suburb and city would not interact. To remedy such a potential limitation, Professor Magavern has advocated shifting Buffalo’s power of property taxation to Erie County, such that proceeds earned countywide from the transferred increment would subsidize services for urban residents.<sup>56</sup> In his view, this mechanism would not only directly assign suburbanites a true stake in the City’s fiscal health, but also indirectly encourage towns to consider the regional implications of their decisions, particularly those that might diminish the urban tax base.<sup>57</sup>

Although old and new regionalists alike long for urban revitalization to counteract decades of sprawl and decay, they disagree sharply regarding the substantive strategies necessary to achieve this goal. Whereas old regionalism favors consolidation at

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<sup>52</sup> Reynolds, *supra* note 16, at 156–57.

<sup>53</sup> *Id.* at 157.

<sup>54</sup> *Id.*

<sup>55</sup> Interview with James Magavern, Partner, Magavern Magavern Grimm LLP, and Adjunct Professor, State Univ. of N.Y. at Buffalo Law School, in Buffalo, N.Y. (May 27, 2005) [hereinafter Interview with James Magavern]. For example, as Professor Magavern explained, Cheektowaga, Erie County’s second-largest town, scuttled a planned intermunicipal recycling program in the 1990s upon its decision to withdraw abruptly from the agreement. *Id.*

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

<sup>57</sup> *Id.*

the cost of suburban autonomy, new regionalism trumpets interlocal collaboration as a less drastic alternative to wholesale elimination of municipal jurisdictions.<sup>58</sup> Moreover, both old and new substantive regionalism may result either from old-fashioned advocacy by intellectual, business, and government elites, or from the preferences of ordinary citizens pursuant to the new procedural model. Mindful of the dichotomies within substantive and procedural regionalism, one may consider how properly to classify the postponed movement for regional governance in Erie County.

### III. THE CAMPAIGN FOR INTERMUNICIPAL CONSOLIDATION IN BUFFALO: "OLD" REGIONALISM DERAILED

Two days after printing a letter by David Rusk that discussed his newly published book, *Cities Without Suburbs*, the *Buffalo News* editorial page opined:

Canadians shake their heads, wondering what's wrong with us. Why have we let so many of our cities turn into rotten cores, surrounded by affluent suburbs but unable to tax them to gain any help as problems concentrate? Why didn't we take the sensible step of adopting regional government, as Toronto and so many areas of Ontario did?

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New York, with particularly rigid requirements for annexation or consolidation of municipalities, has sealed its fate.<sup>59</sup>

Thus, in 1993, Buffalo's only major newspaper commenced its steadfast advocacy in favor of merging Erie County's local governments.<sup>60</sup> Regionalism in Buffalo resembled the "old" version not only in its substance, but also in its development. The call for consolidation subsequently gathered momentum not from popular sentiment, but rather from promotion by several influential, well-financed leaders in Erie County. Most notably, these included the *Buffalo News*, which consistently supported consolidation on its

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<sup>58</sup> See *Envision Utah*, *supra* note 15, at 2292 (noting that past solutions involve a lack of local land controls while new solutions attempt to promote voluntary cooperation).

<sup>59</sup> Barbara Ireland, Editorial, *Why Can't 'The Buffalo Area' Be Buffalo?*, BUFF. NEWS, Sept. 21, 1993, at C2.

<sup>60</sup> See, e.g., *id.* ("The state is expected to have a constitutional convention soon. The delegates had better give some hard thought to making annexation and consolidation a lot easier.").

editorial page;<sup>61</sup> Kevin Gaughan, a Buffalo attorney who organized academic conferences to discuss intermunicipal merger;<sup>62</sup> the Buffalo Niagara Partnership, a chamber of commerce that marshaled support in the business community;<sup>63</sup> and County Executive Joel Giambra, who emphasized consolidation as a centerpiece of his successful campaigns in 1999 and 2003.<sup>64</sup> Eventually, their efforts contributed to a rise in popular support for combining the City of Buffalo into Erie County. Viewing his reelection with fifty-five percent of the vote as a mandate for change, Giambra assembled, in 2004, a commission of civic leaders to draft a roadmap for merger.<sup>65</sup>

However, just as endorsement by these stakeholders lent credibility to the drive for regionalism, so did it stall this drive in 2004, when Erie County encountered a budget shortfall for which voters would blame the Giambra administration.<sup>66</sup> In response to the crisis and Giambra's sudden unpopularity, the commission shelved its goal for a referendum on merger that it hoped to schedule for November 2005. Had the will for consolidation initially originated among Erie County's citizens, as new procedural regionalism would have recommended, Giambra's political status would not likely have impacted its chances for success. Instead, the "old" strategy for promoting an "old" solution actually has placed regional governance on hold.

#### A. *The Origins of Regionalist Rhetoric in Erie County*

After his stunning election over Mario Cuomo in 1994, New York Governor George Pataki announced an integral component of his plan to cut state spending: implementation of a "No Mercy" fiscal

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<sup>61</sup> E.g., Phil Fairbanks & Brian Meyer, *Shall We Merge? County Executive Joel A. Giambra's Ambitious Plan for Merging City and County Governments Has Both Critics and Supporters Skeptical It Can be Done*, BUFF. NEWS, Feb. 12, 2004, at A1; Editorial, *The Selling of a Merger; Commission Looking at Consolidation of City and County Ready to Sell Its Plan*, BUFF. NEWS, Dec. 17, 2004, at A10.

<sup>62</sup> See Susan Schulman, *Chautauqua Plans Conference on Regional Governance*, BUFF. NEWS, Apr. 22, 1997, at B4 [hereinafter Schulman, *Chautauqua Plans Conference*].

<sup>63</sup> Chet Bridger, *Open to Opportunities; Leaders Say Instead of a 'Silver Bullet,' What's Needed is a Long-Term Commitment Based on the Region's Strong Work Ethic and Commitment to Quality*, BUFF. NEWS, Jan. 27, 2002, at 4.

<sup>64</sup> Sandra Tan, *New Term, New Urgency for Giambra: The County Executive Says He's Ready to Push Hard for His Economic Priorities—And Risk Alienating Other Leaders—To Get the Job Done*, BUFF. NEWS, Nov. 10, 2003, at A1.

<sup>65</sup> Interview with James Magavern, *supra* note 55.

<sup>66</sup> Matthew Spina, *Legislators Criticize Budget; Giambra Fails to Pick Up Support—From Either Party—For a Hike in the Sales Tax*, BUFF. NEWS, Nov. 6, 2004, at A1.

policy to cut monetary aid upon which cities had relied to balance their budgets despite declining tax bases.<sup>67</sup> Recognizing that Buffalo could face a deficit of over \$20 million in the absence of such aid, *Buffalo News* columnist and ardent consolidation supporter Donn Esmonde saw a silver lining in his preferred solution to the fiscal crunch:

THE WORD is “dissolution.”

. . . [T]he City of Buffalo ceases to exist.

Surrounding communities pick up the pieces—[whether they] like it or not.

South Buffalo becomes part of West Seneca. North Buffalo joins forces with Kenmore. The East Side aligns with Cheektowaga.

[Fiscal crisis] force-feeds consolidation of services and regional government to Western New York.

It’s an extreme “solution” to Buffalo’s problems. But [it’s] one that City Comptroller Joel Giambra is looking into.<sup>68</sup>

Heeding Esmonde’s advice, several county legislators from Buffalo soon proposed that Erie County acquire and operate City assets such as the Buffalo Zoo, the Buffalo Convention Center, and Kleinhans Music Hall.<sup>69</sup> Eventually, these proposals proved moot, because Buffalo avoided a property tax increase thanks to service cuts and sufficient state aid despite Pataki’s hard line. However, opposition to the asset acquisition plan by suburban legislators drew the ire of the *News*, which criticized them for failing to acknowledge “[r]egional government” as “[the Buffalo] area’s long-term salvation.”<sup>70</sup> Nonetheless, this reluctance among suburban officials did not prove surprising. Esmonde acknowledged in May of 1995 that the call for regional consolidation emanated from enlightened leaders like City Comptroller Giambra, rather than from Erie County citizens who could force such change by electing new legislators. Summarily assuming that any consolidation would automatically lower the cost of government, Esmonde advised suburban politicians to “sell to the folks back home” that

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<sup>67</sup> See Donn Esmonde, Editorial, *For Buffalo, Dissolution May Be the Only Solution*, BUFF. NEWS, Feb. 14, 1995, at C1.

<sup>68</sup> *Id.*

<sup>69</sup> Margaret Hammersley, *Legislators Propose City-County Consolidations*, BUFF. NEWS, Apr. 8, 1995, at 1.

<sup>70</sup> Donn Esmonde, Editorial, *Suburbs in No Hurry to Aid City*, BUFF. NEWS, May 6, 1995, at C1.



“consolidations aren’t charity for the city, but a way of saving suburban taxpayers money.”<sup>71</sup> To assist in this pitch, the *News* wholeheartedly endorsed, in 1995, Erie County Legislature candidates who supported “consolidating fragmented government functions within a more regional context.”<sup>72</sup>

Despite the *News*’ backing of intermunicipal merger, public officials in 1996 lacked willingness to adopt it as a goal for regionalism. Instead, with the *News*’ encouragement, government leaders sponsored less drastic proposals for Erie County to assume a subset of the City’s fiscal burdens.<sup>73</sup> Yet, proponents of consolidation would not need to wait long for their views to enjoy public attention. Through the advocacy of the Buffalo Niagara Partnership, Kevin Gaughan, and the extensive press coverage from the *News*, 1997 came to represent a watershed year for the emergence of intermunicipal consolidation as a viable alternative of governance.

### B. *The Partnership and Kevin Gaughan*

As of 1997, the Greater Buffalo Partnership, formerly the Buffalo Chamber of Commerce, represented “3,300 local firms that employ[ed] 200,000 people.”<sup>74</sup> That December, it changed its name to the Buffalo Niagara Partnership, and even redesigned its official logo to incorporate “a curved bridge” as “a metaphor . . . to stress the importance of linkages between municipalities.”<sup>75</sup> These cosmetic changes followed the Partnership’s active efforts throughout the year to campaign for intergovernmental consolidation. Notably, in April, the Partnership announced an initiative for regionalism that would “encompass[] all local governments—including suburban and

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

<sup>72</sup> Editorial, *NEWS Lists Choices in Races for Erie County Legislature; Best Nominees Support a Regional Viewpoint*, BUFF. NEWS, Oct. 29, 1995, at F8.

<sup>73</sup> For example, Buffalo Mayor Anthony Masiello and County Executive Dennis Gorski cooperated with a study by the State University of New York at Buffalo that would review opportunities for special district consolidation and shared service delivery. See Susan Schulman, *Masiello, Gorski Endorse Plan to Study Consolidation*, BUFF. NEWS, Feb. 3, 1996, at C5. The *News* also approved of Gorski’s plan for Erie County to accept responsibility for City garbage pickup. See Editorial, *Gorski Has an Offer on the Table Now for Serious City-County Talks; City’s Health is Vital to County, and It Needs Help Now*, BUFF. NEWS, Apr. 19, 1996, at B2.

<sup>74</sup> Brian Meyer, *Greater Buffalo Partnership Adopts New ‘Regional’ Name, Logo*, BUFF. NEWS, Dec. 13, 1997, at A9.

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

rural communities.”<sup>76</sup> Although the Partnership’s Chairman, Andrew Rudnick, acknowledged the impracticality of immediately merging Erie County’s cities, towns, and villages into one super-government as in Indianapolis or Jacksonville, he sought to implement “change . . . over a significant amount of time in incremental steps, where the steps lead to another.”<sup>77</sup> Therefore, the Partnership did not recommend eliminating the City of Buffalo, but rather proposed less disruptive plans to regionalize economic development as a means to reduce property taxes<sup>78</sup> and to create a “regional asset fund” to subsidize public works projects that would benefit citizens throughout Erie County.<sup>79</sup> In addition to drafting its own ideas, the Partnership joined with the State University of New York at Buffalo to consider further opportunities for intermunicipal collaboration. For example, the Partnership contributed panelists to regionalism conferences hosted by the newly established Institute for Local Governance and Regional Growth at the University at Buffalo.<sup>80</sup>

The Buffalo Niagara Partnership’s expressed desire for gradual reform might seem a rejection of the wholesale consolidation advocated by Rusk<sup>81</sup> and Peirce.<sup>82</sup> However, its strategy for change resembled prototypical old procedural regionalism. Rather than consult first with a broad group of stakeholders—including a sampling of ordinary Buffalo and Erie County residents—before developing its regional agenda, the Partnership planned to develop the agenda before consulting with the stakeholders. As the *Buffalo News* aptly described in April 1997, “[The Partnership] says regional government is the answer to area financial woes and is planning a public relations campaign to win widespread support for the idea.”<sup>83</sup> Thus, even before the University at Buffalo formed its Institute for Local Governance and Regional Growth to *study*

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<sup>76</sup> Susan Schulman, *Business Group Maps Push for Regional Government*, BUFF. NEWS, Apr. 20, 1997, at C1 [hereinafter Schulman, *Business Group Maps Push*].

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

<sup>78</sup> See Susan Schulman, *Regional Efforts Urged to Stem Soaring Taxes*, BUFF. NEWS, June 24, 1997, at A1 [hereinafter Schulman, *Regional Efforts Urged*].

<sup>79</sup> Editorial, *The Case for a Regional Asset Fund*, BUFF. NEWS, Dec. 17, 1997, at B2.

<sup>80</sup> See Kevin Collison, *Erasing Misconceptions, Achieving Excellence Focus of Regionalism Conference at UB*, BUFF. NEWS, Nov. 20, 1997, at B5; Kevin Collison, *Follow-up Session Gives Added Push to Regionalism*, BUFF. NEWS, Nov. 26, 1997, at B5; *Events Set to Explore Regionalization*, BUFF. NEWS, July 27, 1997, at C9.

<sup>81</sup> See RUSK, *supra* note 21, at 10.

<sup>82</sup> See generally PEIRCE ET AL., *supra* note 28.

<sup>83</sup> Schulman, *Business Group Maps Push*, *supra* note 76, at C1.

regional government, the Partnership had identified it as Erie County's salvation, without holding a single forum inviting County residents to share their thoughts. Practically assuming the automatic merit of its imminent plan, it resolved in April to "promote the regionalism idea and persuade people throughout Erie and Niagara counties of its importance" via an expensive public relations campaign.<sup>84</sup> For the Partnership, crafting the agenda would come first, while convincing the public would come second.

Meanwhile, attorney Kevin Gaughan, with experience as the Erie County Legislature's policy director, earned public attention by planning and organizing a landmark conference in June 1997 to discuss regional governance. Held at the world-renowned Chautauqua Institution, the four-day meeting was touted "as a way to educate local politicians and business leaders who [were] debating how to revive Buffalo and other upstate New York cities."<sup>85</sup> Whereas the Partnership openly admitted regional government as its goal for Erie County's future, Gaughan claimed that "the conference [would not] endorse any particular regionalism plan."<sup>86</sup> Rather, Gaughan assembled an impressive group of scholars and government officials alike to consider not only merger of general-purpose governments, but also regional land-use planning,<sup>87</sup> intermunicipal tax sharing,<sup>88</sup> and coordinated plans for economic development.<sup>89</sup>

Yet, despite Gaughan's promise of open, unbiased dialogue, the *Buffalo News* portrayed the Chautauqua conference as a high-profile event to promote consolidation of municipalities, rather than cross-border collaboration. Applauding Gaughan's initiative next to photos of two advocates for old-style regional consolidation, namely David Rusk and metropolitan Indianapolis Mayor William Hudnut, the *News* opined:

[The conference] will bring together noted experts on regionalism from around the country with local leaders to discuss how best to overcome *the cumbersome drawbacks of fractured local governments*. . . .

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

<sup>85</sup> Schulman, *Chautauqua Plans Conference*, *supra* note 62, at B4.

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

<sup>87</sup> See Susan Schulman & Jerry Zremski, *Sprawl Causing Crisis in Buffalo Region, Urban Expert Says*, BUFF. NEWS, June 4, 1997, at A1.

<sup>88</sup> See Jerry Zremski, *Suburban IDAs Look for Ways to Help, Not Hurt the Urban Center*, BUFF. NEWS, June 4, 1997, at A10.

<sup>89</sup> *Id.*

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... If New York State is not misgoverned, it is surely overgoverned—an expensive sport New Yorkers excel at. Hundreds of local units with overlapping functions and jurisdictions—villages, cities, towns, school districts, lighting and sewer districts, fire districts—litter the landscape. They duplicate services. They hire too many for too little return. They clamor for attention and revenues from overburdened taxpayers.<sup>90</sup>

Like the Partnership, the *News* had already decided its preferred agenda for regionalism—one that would mandate intermunicipal consolidation. Rather than gauge public support for such change in advance, the *News* desired to impose its view upon the citizens of Erie County. Sounding at least mildly paternalistic, the *News*' editorial page further commented:

New regional arrangements—consolidating governments, sharing functions and so forth—frighten people. So they cling to archaic arrangements. They are likely to continue to do that until leaders with vision and courage explain tangible and certain benefits from change.

Perhaps the Chautauqua conference can substitute a few truths tested elsewhere for an excess of scary myths here.<sup>91</sup>

As one reader succinctly described the *News*' view, which prevailed despite the admonition of conference panelists of the political infeasibility of intermunicipal consolidation,<sup>92</sup> “[r]egionalism is another word for ‘We know what’s good for you.’”<sup>93</sup>

### C. *Joel Giambra: A Savior for Consolidation Arrives*

In the wake of the Chautauqua conference, a number of municipalities embarked upon small-scale endeavors to streamline service delivery to their constituents and to study further avenues for cooperation.<sup>94</sup> More than ever before, towns and cities were

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<sup>90</sup> Editorial, *Great Time, Great Place, Good Ideas for a Confab on Regional Government*, BUFF. NEWS, May 4, 1997, at H2 (emphasis added).

<sup>91</sup> *Id.*

<sup>92</sup> See Jerry Zremski, *At Chautauqua Conference, Leaders Address Regionalism, Suburban Fears*, BUFF. NEWS, June 3, 1997, at A4.

<sup>93</sup> Richard F. Brox, Letter to the Editor, *Let Home Rule Rule*, BUFF. NEWS, June 28, 1997, at C3.

<sup>94</sup> See, e.g., Margaret Hammersley, *Suburbs' Wish List of Projects Shows Effort to Share Resources*, BUFF. NEWS, June 12, 1998, at B8 (discussing how the towns of Boston, Concord,

recognizing the “countless possibilities” for cross-border collaboration.<sup>95</sup> Yet, one year after the conference, no plan had yet surfaced to implement Rusk’s and Peirce’s end goal to combine general-purpose government units. As *News* columnist Donn Esmonde lamented,

It has been a year [since Chautauqua], and what we’ve done reminds me of a junior high romance: A lot of talk, not much action.

. . . .

We’ve got the city and Amherst still sparring in court over [Amherst’s] pirating businesses from an ever-emptyer downtown.

There’s no Portland-style growth boundary, which would help a region that is bleeding people from mindlessly—and expensively—spreading outward.<sup>96</sup>

Moreover, disagreements between important stakeholders and opposition to collaboration by some elected officials have threatened any opportunity for such grand progress.<sup>97</sup>

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Colden, and Eden shared a single vacuum street sweeper); *Holland Town Board Seeks Grant to Promote Cooperation*, BUFF. NEWS, May 14, 1998, at B5 (describing a grant to enable the Town of Holland and the Holland Central School District to study mechanisms for eliminating service duplication); Joyce Kryszak, *Village Seeks Aid for Takeover of Water System*, BUFF. NEWS, May 28, 1998, at C5 (reporting the plan of the Village of Depew to transfer its water operations to the Erie County Water Authority); Patrick Lakamp, *Grelick Says Planning Must Go Beyond Town Borders*, BUFF. NEWS, Jan. 24, 1998, at C5 (mentioning Amherst’s offer to assist Buffalo in formulating a new master plan); Harold McNeil & Janice L. Habuda, *Gowanda Gets Buffalo’s Help in Cleaning Up After Flood*, BUFF. NEWS, July 2, 1998, at D12 (describing Buffalo’s donation of manpower and equipment to assist with flood cleanup in the Village of Gowanda); Mary Pasciak, *Village, Town Look to Save Money by Forming Natural Gas Cooperative*, BUFF. NEWS, May 5, 1998, at B4 (discussing plan for natural gas purchasing cooperative between the Village of Springville and the Town of Concord); Jay Rey, *Gabryszak Wants Cheektowaga to Play Lead Role in Debate over Regionalism*, BUFF. NEWS, Jan. 16, 1998, at B4 (announcing plan to form a “town committee on regionalism” in first-ring suburb Cheektowaga); Jay Rey, *Towns to Cooperate on Economic Development Plan*, BUFF. NEWS, May 22, 1998, at B5 (detailing proposal for Cheektowaga and Lancaster to commence joint economic development activities); *Tonawanda to Join in Bid for Yard-Waste Study Grant*, BUFF. NEWS, May 6, 1998, at B5 (describing agreement among northern Erie County suburbs to study “yard waste collection, processing and disposal options”).

<sup>95</sup> Editorial, *Finally, Some Signs of Municipal Cooperation*, BUFF. NEWS, July 7, 1998, at B2.

<sup>96</sup> Donn Esmonde, *We’re Talking the Talk but Not Quite Walking the Walk*, BUFF. NEWS, June 5, 1998, at C1.

<sup>97</sup> See, e.g., Brian Meyer, *Concerns Raised over Partnership’s Progress on Area Marketing Plan*, BUFF. NEWS, Dec. 19, 1998, at C11 (detailing conflict between the Buffalo Niagara Partnership and the Amherst Industrial Development Agency in developing a blueprint for regional marketing); Susan Schulman, *Board Member Under Attack for Anti-Regionalism Talk*, BUFF. NEWS, Nov. 25, 1998, at B1 (reporting Lancaster Town Board Member Donna

The absence of large-scale change after the optimism of the Chautauqua conference presented a ripe opportunity for politicians to voice their ideas for regional cooperation. Buffalo City Comptroller Joel Giambra seized the moment. As early as 1996, in order to circumvent “iron-clad labor contracts” and to remedy “[a] shrinking tax base that show[ed] no signs of growth,” Giambra had recommended the “dissolution” of the City of Buffalo, and the merger of its municipal functions into Erie County.<sup>98</sup> Yet Giambra commenced active promotion of his idea in the months that followed the Chautauqua conference,<sup>99</sup> including among the faithful in his Democratic Party.<sup>100</sup> Giambra met resistance among Democrats for his regional plans, however, even after he softened his rhetoric to accept mere sharing of services among municipalities instead of full-blown consolidation.<sup>101</sup> As then County Legislator, now New York State Assemblywoman, Crystal D. Peoples skeptically remarked in response to Giambra’s proposal to merge the county and city police and fire departments, “[h]ow can we save money transferring [sic] workers to another government body and paying them the same salary and benefits?”<sup>102</sup> Some other leaders in the African-American community responded more bluntly. “I think [Giambra’s plan is] inherently racist,” said James W. Pitts, then President of the Buffalo Common Council.<sup>103</sup> Frank B. Mesiah, a leader in the Buffalo chapter of the National Association for the Advancement of Colored People (NAACP), elaborated:

Blacks have little enough governance of their political life [sic] in the city and even less in the county with only two African-American legislators . . . . As you strengthen the

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Stempniak’s opposition to regional governance).

<sup>98</sup> Jack Stack, President, United Taxpayers’ League of Buffalo & Erie County, Letter to the Editor, *Fiscal Problems in City Call for a Concerted Effort*, BUFF. NEWS, Mar. 17, 1996, at F8.

<sup>99</sup> See, e.g., Helen Jones, *Giambra Tells Group of City-County Plans*, BUFF. NEWS, June 27, 1997, at C4 (reporting Giambra’s discussion of regionalization with local elected officials); Robert J. McCarthy, *Does Giambra’s Future Hold Party Switch?*, BUFF. NEWS, Jan. 26, 1998, at A1 [hereinafter McCarthy, *Giambra’s Future*] (detailing how Giambra had delivered over 90 speeches statewide concerning regionalism in just two years).

<sup>100</sup> See Susan Schulman, *Democrats Hear Proposal on Regional Government*, BUFF. NEWS, May 21, 1997, at B1.

<sup>101</sup> See Susan Schulman, *Giambra Softens Position on Government Consolidation*, BUFF. NEWS, June 3, 1997, at A4 (reporting that Giambra still supported consolidation in principle, but decided to focus only upon sharing of services to allay the fears of suburban residents).

<sup>102</sup> Lisa Haarlander, *Giambra Wins Friends for Consolidation at Forum*, BUFF. NEWS, July 30, 1997, at B5 (internal quotation marks omitted).

<sup>103</sup> Phil Fairbanks, *Giambra Looks to People to Support Plan*, BUFF. NEWS, July 10, 1997, at E1.

county, city residents lose their power because the majority of the county legislators respond to their white constituents. We all know that those white county legislators respond to the needs of their white suburban constituents and not the city needs.<sup>104</sup>

Giambra's advocacy for regionalism not only earned him criticism, but also hindered his advancement in Democratic politics. "For Giambra, some serious disenchantment began [in 1997] when his long-stated ambition to run for state comptroller was stymied when H. Carl McCall, the [then] comptroller, was considering a bid for governor."<sup>105</sup> So long as he remained a Democrat, Giambra would also encounter difficulty in running for higher office locally, because the party remained committed to incumbent County Executive Dennis Gorski.<sup>106</sup> In January 1998, Giambra hinted at his ambition for a promotion in the *News*. Upon criticizing New York State Assembly Democrats for being "preoccupied with the union response" in resisting his call for regionalism, Giambra expressed that "[t]he best place to implement [his] agenda for change [would be] the county executive's seat."<sup>107</sup>

Fewer than ten months later, Giambra changed his party affiliation and became a Republican, in a move that the *News* characterized as an opportunity for "a new pulpit for preaching his doctrine of regional cooperation and consolidation."<sup>108</sup> From the perspective of self-interest, Giambra's move was an easy one. As he candidly explained, "To advance my ideas, at some point I may have to seek other office . . . . And the Democratic Party has said to me: 'You're not the guy.'"<sup>109</sup> Yet, Giambra would prove to be "the guy" for Erie County Republicans. In February 1999, he announced his candidacy for Erie County Executive at the Buffalo-Niagara International Airport, chosen as a symbolic site "where [county residents] come to say goodbye to [their] children . . . when they leave for jobs and economic opportunity everywhere in America but here."<sup>110</sup>

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<sup>104</sup> Haarlander, *supra* note 102, at B5 (internal quotation marks omitted).

<sup>105</sup> McCarthy, *Giambra's Future*, *supra* note 99, at A1.

<sup>106</sup> Robert J. McCarthy, *Giambra Leaves Democratic Party to Join the GOP*, BUFF. NEWS, Nov. 2, 1998, at B1 [hereinafter McCarthy, *Giambra Leaves Democratic Party*].

<sup>107</sup> McCarthy, *Giambra's Future*, *supra* note 99, at A1 (internal quotation marks omitted).

<sup>108</sup> McCarthy, *Giambra Leaves Democratic Party*, *supra* note 106, at B1.

<sup>109</sup> *Id.* (internal quotation marks omitted).

<sup>110</sup> Gene Warner, *Party Chiefs Fire Opening Salvos in County Executive Race as Giambra Opens Campaign*, BUFF. NEWS, Feb. 19, 1999, at C5 (internal quotation marks omitted).

In response to incumbent Dennis Gorski's record of fiscal management, which included transforming a \$75 million budget deficit in 1988 into a multi-million-dollar budget surplus ten years later,<sup>111</sup> Giambra emphasized his plans to promote regional cooperation, along with a promise of a thirty percent property tax cut for all county residents.<sup>112</sup> Indeed, in Giambra's first television advertisement, he stressed a need for "regional cooperation" as a way to cut taxes that "have devastated [Erie County's] economy, forcing people to leave."<sup>113</sup> As Giambra remarked in the advertisement after it portrayed him and his wife beside Buffalo's waterfront, "[t]o grow, we have to change . . . . My plan allows governments to *work together* to cut costs and cut taxes so that business[es] can create new jobs."<sup>114</sup> To avoid losing the votes of wary suburbanites, Giambra no longer spoke overtly of merging Buffalo into Erie County. The rhetoric of regionalism, however, remained a centerpiece of his campaign. Whereas Gorski criticized Giambra for "say[ing] he wants metropolitan government and that he wants to merge City Hall with County Hall as well as merge the city and county police,"<sup>115</sup> Giambra introduced multiple initiatives to promote regionalism, including a plan to foster "[a]ggressive cooperation across municipal lines to get the best possible services at the lowest possible cost,"<sup>116</sup> to transfer some duties of the Buffalo Police Department to the Erie County Sheriff's Department,<sup>117</sup> and to encourage Erie County's municipal industrial development agencies (IDAs) to merge voluntarily.<sup>118</sup> Citing these proposals, the pro-regionalism *Buffalo News* endorsed Giambra for Erie County Executive:

Yes, we have some reservations, mostly because of the excellent job Gorski has done in the past [twelve] years restoring and keeping county finances in order.

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<sup>111</sup> See Robert J. McCarthy, *Gorski Kickoff Gives Hint of Rough Campaign to Come*, BUFF. NEWS, May 12, 1999, at B4.

<sup>112</sup> Editorial, *Giambra for County Executive*, BUFF. NEWS, Oct. 24, 1999, at H2.

<sup>113</sup> Robert J. McCarthy, *Early Ads Presage Giambra Campaign for Gorski's Seat*, BUFF. NEWS, June 2, 1999, at B1.

<sup>114</sup> *Id.* (emphasis added) (internal quotation marks omitted).

<sup>115</sup> Robert J. McCarthy, *Rhetoric Heating Up in Gorski-Giambra Campaign*, BUFF. NEWS, Aug. 18, 1999, at B4.

<sup>116</sup> Helen Jones, *Giambra Plan Urges Cooperation, Not Consolidation, to Reduce Costs*, BUFF. NEWS, May 9, 1999, at B7 [hereinafter Jones, *Giambra Plan Urges Cooperation*].

<sup>117</sup> See Michael Beebe, *Giambra Evolves Into Front-Runner*, BUFF. NEWS, Oct. 17, 1999, at A1.

<sup>118</sup> See Brian Meyer, *Giambra Proposes Voluntary Merger for County's IDAs*, BUFF. NEWS, Apr. 28, 1999, at D7.



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[But] Gorski has not been able to move from “good manager” to “innovative leader.” . . .

And while he has made some strides toward regionalization, he has not provided the bold kind of proposals that Giambra has.

Joel Giambra has shown an ability to seek solutions with daring ideas. . . . [A]nd [he] deserves the chance to put them into action.<sup>119</sup>

Agreeing with the *News*' assessment, Erie County voters elected Giambra County Executive by a margin of fifty-four to forty-three percent.<sup>120</sup> Most important, this result indicated that residents had accepted Giambra's persistent call for regionalism. Indeed, in interviews with voters as they left their polling booths on Election Day, the *News* found that many had supported Giambra, or at least had considered voting for him, because of “his grand plan for lowering costs by consolidating government services.”<sup>121</sup> Following the old procedural model, Giambra devised an agenda for regional governance, then successfully sold it to citizens thirsty for change.

#### *D. The Journey from Mere Collaboration to City-County Consolidation*

Early in his 1999 campaign for county executive, Joel Giambra conceded the political impracticability of a merger of the City of Buffalo with Erie County—a seemingly drastic reversal from his prior advocacy for Buffalo's dissolution. “I've spent the last three years listening to citizens, economists, business leaders and legal experts,” [Giambra] said. “Taxpayers want to keep democratic control, and nobody, including me, wants to pay for services they don't get.”<sup>122</sup> Indeed, at the start of his term, Giambra's boldest initiatives for “regional cooperation of a less radical nature”<sup>123</sup> proposed to consolidate the Erie County Holding Center with a correctional facility in the rural Town of Alden, to convince the City

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<sup>119</sup> *Giambra for County Executive*, *supra* note 112, at H2.

<sup>120</sup> Robert J. McCarthy, *Gorski Out After 12 Years in Control*, BUFF. NEWS, Nov. 3, 1999, at A1.

<sup>121</sup> Phil Fairbanks & Kevin Collison, *Voters Sure of What's Needed: Change: Dennis Gorski Reigned for a Dozen Years as the Chief Executive of Erie County. What Factors Pushed Him Out of Office?*, BUFF. NEWS, Nov. 3, 1999, at A1.

<sup>122</sup> Jones, *Giambra Plan Urges Cooperation*, *supra* note 116, at B7.

<sup>123</sup> Robert J. McCarthy, *Defying the Status Quo*, BUFF. NEWS, Jan. 7, 2001, at A1.

of Tonawanda to contract with the Erie County Water Authority rather than build its own treatment plant, and to create a countywide police training academy.<sup>124</sup> With the logistical support of the Buffalo Niagara Partnership, Giambra also formed the “Who Does What?” Commission, which unveiled in 2001 a seventy-seven-page report that proposed to save taxpayers \$48 million by pooling insurance bidding and investing among municipalities, professionalizing management of Erie County’s golf courses, centralizing tax billing and assessment at the county level, and transferring Buffalo’s human services functions on behalf of seniors and the disabled to analogous departments in county government.<sup>125</sup> These plans did not rival the originality or daring of Giambra’s previous drive for intermunicipal consolidation. Thus, Kevin Gaughan, the organizer of the Chautauqua Conference, gave Giambra in mid-2000 a grade of “C” for the pace at which he sought regional change.<sup>126</sup> In reality, however, Giambra still maintained hope for the outright consolidation that he publicly renounced. As his first term in office progressed, Giambra and other stakeholders, relying upon Giambra’s continued popularity as political capital, eventually formulated a strategy for implementing the old-style plan of merger that they had long desired.

Giambra suddenly renewed his call to merge Buffalo into Erie County in December 2001, soon after the terrorist attacks of September 11, 2001 severely limited New York State’s ability to close Buffalo’s annually growing budget shortfalls, which were projected to reach over \$40 million in fiscal year 2002.<sup>127</sup> Giambra did not announce his plan via a public forum for discussion, but rather in a front-page interview with the *Buffalo News*, which just three months earlier had expressed its resounding support for his tenure by “add[ing] a new criteria” in selecting candidates to endorse for seats on the Erie County Legislature:

Believing that Erie County voters demanded a historic change of direction two years ago, when they elected Joel A.

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<sup>124</sup> See Charity Vogel, *Getting Past First Gear: County Executive Labors to Regain Momentum*, BUFF. NEWS, Apr. 9, 2000, at A1.

<sup>125</sup> See Charity Vogel, *Giambra Says It’s ‘Time to Act’ on Regionalism*, BUFF. NEWS, Jan. 31, 2001, at A1.

<sup>126</sup> Kevin P. Gaughan, Editorial, *A Regional Report Card: ‘A’ for Progress, ‘C’ for Pace*, BUFF. NEWS, June 2, 2000, at C2.

<sup>127</sup> Phil Fairbanks, *Giambra Again Seeks to Dissolve City; ‘Why Do We Need a City Government? I Think It’s a Valid Question’*, BUFF. NEWS, Dec. 10, 2001, at A1 [hereinafter Fairbanks, *Giambra Again Seeks to Dissolve City*].

Giambra as county executive, The News editorial board will also factor into its evaluations whether any given candidate is more or less likely to help move the county away from the *ruinous patterns of the past* and toward the goals voters endorsed when they propelled . . . Giambra into the county's top office: *regionalism, lower taxes, smarter government*.<sup>128</sup>

Although Giambra had changed his rhetoric in boosting merger, he had not altered his old-style procedure for promoting it, namely to devise the plan himself, then sell it to the populace. Contrasting the upward spiral in the cost of government with the downward spiral in Buffalo's population, Giambra reflected, "I suspect when all this is over, the community will see [merger] as the best scenario for moving forward."<sup>129</sup>

Despite the numerous obstacles to formal merger, including required approval by the Buffalo Common Council and the Erie County Legislature prior to a referendum among voters,<sup>130</sup> the *News* availed its status as Western New York's only major newspaper to trumpet Giambra's consolidation proposal. After reporting widespread opposition among county legislators, city councilmen, town supervisors, and New York State assemblymen,<sup>131</sup> the *News* chastised them on its editorial page:

No, that WHOOSH you heard this week was not a tornado touching down. It was the sound of political knees jerking in unison as a wide array of elected officials reacted to County Executive Joel A. Giambra's idea to merge the county and city governments. That reaction tells you all you need to know about why Buffalo is a fiscal mess and Erie County is economically stagnant.

. . . [O]ur question is this: What, exactly, does the political class see around here that is working so well that it precludes an honest look at fundamental change?

Let us answer our own question. Members of the political class see their jobs in jeopardy by consolidation, and that always has taken precedence over the community's welfare.

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<sup>128</sup> Editorial, *County Legislature Races*, BUFF. NEWS, Sept. 3, 2001, at B6 (emphasis added).

<sup>129</sup> Fairbanks, *Giambra Again Seeks to Dissolve City*, *supra* note 127, at A1.

<sup>130</sup> *Id.*

<sup>131</sup> Charity Vogel et al., *Giambra Plan Draws Little Favor*, BUFF. NEWS, Dec. 11, 2001, at A1.

... [T]hose who reflexively reject even a look at consolidation apparently are content with the continued decline of a once-great region.<sup>132</sup>

Just two weeks later, to counter the conventional wisdom that suburban residents would never accept a city-county merger, the *News* commissioned and announced on its front page its own poll, conducted by Zogby International just before the imposition of a state control board to monitor Buffalo's finances, which found support among fifty-one percent of Erie County residents.<sup>133</sup> Despite this bare majority, and despite its fortuitous timing at the depth of fiscal panic in Buffalo, the *News* touted this figure as "broad public support for merging the city into the county."<sup>134</sup> Once again dismissing elected officials who had genuinely disagreed with the County Executive, the *News* heralded the poll as "a warning shot over the obstructionists [that] gives ammunition to reformers like . . . County Executive Joel A. Giambra. The reformers should load their weapons and the obstructionists should get out of the way."<sup>135</sup> The message of the *News*' dichotomy was clear. Citizens who opposed Giambra's politics deserved the obstructionist label, and the path to reform necessarily included intermunicipal merger.

Despite Giambra's advocacy and the *News*' cheerleading amid its claim of "broad public support,"<sup>136</sup> no drive immediately developed among citizens to implement a plan of merger into action. Nonetheless, the *News* continued to promote it with articles about successful consolidation of municipalities in Ottawa, Canada;<sup>137</sup> a proposal by the mayor of Rochester to merge the city into Monroe County;<sup>138</sup> and the creation of a metropolitan government in Louisville, Kentucky.<sup>139</sup> Yet, when Giambra once again touted the

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<sup>132</sup> Editorial, *The Political Class in Denial*, BUFF. NEWS, Dec. 13, 2001, at B6.

<sup>133</sup> Patrick Lakamp & Brian Meyer, *Majority in Poll Backs City-County Merger: Respondents Also Favor Control Board for Buffalo*, BUFF. NEWS, Dec. 30, 2001, at A1.

<sup>134</sup> Editorial, *Vision in the Community*, BUFF. NEWS, Jan. 6, 2002, at F2.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> See Randall Denley, *One Ottawa, Over All: As Buffalo and Its Suburbs Consider Regionalization Plans, We Can Learn from the Experience of Canada's Capital City and Surrounding Towns When They Merged a Year Ago*, BUFF. NEWS, Feb. 24, 2002, at F1 (discussing the merger of eleven townships and cities into a metropolitan government in Ottawa).

<sup>138</sup> See Charity Vogel, *Rochester Pitches a 'Metro' Revolution; Merger with County Called Necessary to Transform City*, BUFF. NEWS, Mar. 19, 2002, at A1.

<sup>139</sup> See Brian Meyer, *Push to Consolidate: On Jan. 6, Louisville, Ky., Will Merge with Jefferson County, a Move that is Escalating the Debate Over a Possible Merger of Buffalo and Erie County*, BUFF. NEWS, Nov. 27, 2002, at A1.

virtues of combined city-county government before a receptive audience of business leaders in 2003, the *News* recognized that its advocacy had not yielded rapid progress toward the goal of municipal consolidation, fifteen months after its unveiling.<sup>140</sup> Once again, the *News* lectured public officials to follow Giambra's lead, while simultaneously offering a pessimistic outlook on the City's future. Accordingly, the *News* delineated a loaded dichotomy that separated enlightened merger supporters from its misguided critics:

County Executive Joel Giambra is, once again, sounding the alarm [about consolidation]. . . .

. . . .

. . . It would be one thing if Buffalo was robust. But it is not. It seems that every year the city faces another fiscal crisis, and must cut back on services. What's more, there is no end in sight to this *depressing* cycle. There is no question that . . . a merger would be difficult. But there also is no question that *this city is dying, and infecting the entire region with its malaise.*

. . . .

. . . [M]etropolitan areas across North America have shown that *ruinous parochialism* can be overcome with liberal doses of civic foresight and political courage. Louisville, Indianapolis, Toronto and Ottawa, among others, have found a way to make government mergers and consolidation work for an improved civic life. Why not here? Well, for one thing, Buffalo's timid leaders would rather cling to the failed policies of the past than strive for the possibilities of the future.<sup>141</sup>

However, the stifling criticism generated results. Two days later, Buffalo Mayor Anthony Masiello publicly labeled "inevitable" the prospects for a city-county merger "as 'a last resort,'" and "the only alternative to . . . unacceptable higher taxes or drastically reduced services."<sup>142</sup> Kevin Gaughan, the convener of the Chautauqua conference who had pledged not to endorse one scheme for regionalism over another, applauded Masiello's conversion. In a

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<sup>140</sup> See Editorial, *One City, One County, One House: Giambra's Call for a Unified Government is an Appeal the City Should Heed*, BUFF. NEWS, Feb. 14, 2003, at C10.

<sup>141</sup> *Id.* (emphasis added).

<sup>142</sup> Robert J. McCarthy, *Mayor Backs City-County Merger: Regional Government is 'Inevitable,' Masiello Says*, BUFF. NEWS, Feb. 16, 2003, at A1.

drastic change from his open-mindedness of six years earlier, Gaughan remarked, “Nothing but good comes from examining all methods to save our city—including the elimination of political boundaries . . . . Buffalo Niagara is held back by too much government.”<sup>143</sup> One month later, Gaughan announced his own plan for full-scale metropolitan government. Published by the *News*, and developed without the input of Erie County residents, it aimed to abolish all town and village boards, merge first-ring suburbs into the City of Buffalo, create a countywide legislature having six Buffalo representatives and just five suburban representatives, and even change the name of Erie County to Buffalo County.<sup>144</sup> Having previously discussed regional government only as a concept, the *News* printed a plan for its mechanics for the first time—even though Gaughan’s regime unrealistically assumed that New York would agree “to pilot projects that [would] temporarily exempt our region from state laws that [would] prohibit these measures.”<sup>145</sup>

Likely because of his impending reelection campaign, Giambra relaxed his push for merger in 2003. His opponent in that election was Daniel J. Ward, a Councilman in the Town of Amherst, the largest first-ring suburb in Erie County. After defeating Councilman Ward, and relying upon Masiello’s continued support, Giambra was ready to establish the city-county merger as a centerpiece of his second-term agenda. Without announcing a specific mechanism for merger (though officials working for Governor George Pataki conceded that they had researched such a mechanism at Giambra’s request),<sup>146</sup> Giambra articulated at his State of the County Address in February 2004 his general vision for consolidating Buffalo into Erie County.<sup>147</sup> Notably, Giambra did not inform some state legislators—the very individuals who might pass laws to ease the path toward intermunicipal merger—of his plan in advance of his speech.<sup>148</sup> As Crystal Peoples, a Democratic assemblywoman from Buffalo, commented:

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<sup>143</sup> Vanessa Thomas, *Masiello’s Epiphany Rouses Believers, Skeptics*, BUFF. NEWS, Feb. 17, 2003, at B1.

<sup>144</sup> Kevin P. Gaughan, *The Next Steps in Consolidating the City and County*, BUFF. NEWS, Mar. 16, 2003, at H1.

<sup>145</sup> *Id.*

<sup>146</sup> Phil Fairbanks & Brian Meyer, *Shall We Merge? County Executive Joel A. Giambra’s Ambitious Plan for Merging City and County Governments Has Both Critics and Supporters Skeptical It Can Be Done*, BUFF. NEWS, Feb. 12, 2004, at A1.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

To throw out a concept of creating a new Buffalo with no county or city government without any input from the folks who are going to have to pass the law to have it happen is in some ways arrogant, and I'm not sure is the right strategy . . . . There's a fair representation of legislators here who represent Buffalo and Erie County and, in all due respect, he should have reached out.<sup>149</sup>

Even Kevin Gaughan, who supported the substance of old-style consolidation, did not agree with the procedure through which Giambra had begun to implement it. Reacting to Giambra's speech, Gaughan skeptically said, "The top down, somewhat arrogant way [Giambra] proposes these reforms tends to undermine our chances of achieving them."<sup>150</sup>

However, Gaughan, like Giambra, assumed that intermunicipal consolidation constituted the silver-bullet solution to economic stagnation and declining population, and only thereafter sought to convince residents of his position. The third of Gaughan's "Buffalo Conversations," widely publicized and even broadcast by a local television station, represents the best example of an old procedural strategy to presume a particular plan's preeminence. Held in June 2004, the Buffalo Conversation represented an open forum that would combine testimony from experts in local governance with commentary from citizens who attended.<sup>151</sup> Although the Conversation indeed was "open" to the public and invited comments from the audience, it was not "open" to ideas for governmental reform that would diverge from the preferred model of consolidation. The list of speakers consisted solely of a "who's who" of proponents of municipal consolidation, including Neal Peirce; William Hudnut, the former mayor of metropolitan Indianapolis; Bruce Katz of the Brookings Institution, which had guided Louisville along its journey toward regional government; and Joan Riehm, the deputy mayor of Metro Louisville.<sup>152</sup> Moreover, the event featured a presentation by lawyers whom Gaughan had retained to research specifically the legal obstacles to city-county merger.<sup>153</sup> Consequently, their report explicitly declined to consider

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Phil Fairbanks, *Regionalism Forum is Heading for the Suburbs*, BUFF. NEWS, Mar. 4, 2004, at B3.

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

<sup>153</sup> Phil Fairbanks, *Law Firm to Research Steps for Merger*, BUFF. NEWS, Apr. 7, 2004, at B1.

the legality of versions of “new” regionalism, such as “a federation of governments or other extensive use of intergovernmental agreements.”<sup>154</sup> Although the *News* hailed the Conversation as a forum in which “comments counted, and everyone mattered,”<sup>155</sup> it ostensibly assumed the premise of city-county consolidation.

While Gaughan invested his own personal resources in the Conversation to promote consolidation, Joel Giambra kept the promise of his State of the County speech to devise a detailed city-county merger plan ready for swift implementation. In conjunction with Mayor Masiello, Giambra formed, in May 2004, a commission of two other elected officials and seven private citizens, led by former State University of New York at Buffalo President William Greiner, to determine the format of a new regional government to be presented to voters for approval no later than November 2005.<sup>156</sup> Undaunted by a new *Buffalo News* poll indicating that fewer than half of Erie County voters supported his idea,<sup>157</sup> and ignoring opposition from town supervisors who enjoyed no representation on the commission that would drastically revise the local municipal landscape,<sup>158</sup> Giambra assiduously proceeded anyway, and pledged “to use money from any approved source—including his own campaign account—to fund [a] public campaign *to sway public opinion in favor of the proposal*.”<sup>159</sup> Recognizing the necessity of a public relations campaign, the Greiner Commission commenced to orchestrate one even before it released its plan of merger. By September 2004, the Commission had conversed with media consultant Michael Shea, who had successfully managed the campaign for metropolitan government in Louisville, about organizing a publicity effort that would incorporate “television, radio and print media, a Web site and mailings.”<sup>160</sup> To subsidize its sales pitch, the Commission planned to spend over \$500,000, raised

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<sup>154</sup> Memorandum from Daniel A. Spitzer & Jeffrey F. Swiatek, Hodgson Russ, LLP, to Kevin P. Gaughan, Founder, Buffalo Conversation 1 n.1 (Sept. 1, 2004), <http://www.kevingaughan.com/MergerLegal.pdf>.

<sup>155</sup> Editorial, *Buffalo Conversation: An Attempt to Focus Community Debate Keeps the Argument Moving Forward*, BUFF. NEWS, June 15, 2004, at A6.

<sup>156</sup> Robert J. McCarthy, *Merger Panel Appointed: County, City Leaders Seek Specifics for Referendum*, BUFF. NEWS, May 14, 2004, at A1 [hereinafter McCarthy, *Merger Panel Appointed*].

<sup>157</sup> Phil Fairbanks, *City, Suburbs Split on Merger Issue*, BUFF. NEWS, May 3, 2004, at A1.

<sup>158</sup> See Robert J. McCarthy, *Consolidation Panel Faces Difficult Task*, BUFF. NEWS, May 15, 2004, at B1.

<sup>159</sup> McCarthy, *Merger Panel Appointed*, *supra* note 156, at A1 (emphasis added).

<sup>160</sup> Matthew Spina, *Public Relations Help Sought to Sell 'Regional City of Buffalo'*, BUFF. NEWS, Sept. 22, 2004, at B5.



from supportive private-sector businesses, at a time when Buffalo's own government experienced difficulty paying its bills day to day.<sup>161</sup> By Giambra's words and the Greiner Commission's actions, it was confirmed that the desire for a city-county merger had arisen not from popular sentiment, but rather from strategic stakeholders—notably Giambra and the very business representatives who applauded his 2004 State of the County address—who sought to impose their preferred vision for governance by convincing cautious Erie County citizens to go along.

*E. A Plan for City-County Merger Devised, Then Abruptly Derailed*

In January 2005, the Greiner Commission, via an advance leak to the supportive *Buffalo News*, announced its ambitious plan for creating a “Regional City of Buffalo” that would encompass the nearly 950,000 residents of Erie County.<sup>162</sup> It would face numerous hurdles, namely passage by both houses of the New York State Legislature, a home rule message from Erie County, the subsequent amendment of Erie County's charter, and a split referendum among cities and towns to provide popular endorsement.<sup>163</sup> Yet, the Commission promised a new vision of governance at the end of this procedural tunnel. As a “municipal services district,” Buffalo no longer would possess a mayor or a Common Council, or its autonomy as a city; instead, seven new County Legislature members exclusively representing Buffalo would decide matters pertaining to issues within its historical boundaries.<sup>164</sup> In addition, a regional planning board would enable towns to collaborate to minimize sprawl and encourage commercial development in Erie County's urban core.<sup>165</sup>

This optimistic proposal, however, would suffer its demise just one month after its unveiling, not as the result of reasoned debate concerning its merits, but rather on account of Joel Giambra's sudden political unpopularity. The *Buffalo News* soberly described the origin of this demise, which arose from a \$130 million budget

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<sup>161</sup> Editorial, *The Selling of a Merger: Commission Looking at Consolidation of City and County Ready to Sell Its Plan*, BUFF. NEWS, Dec. 17, 2004, at A10.

<sup>162</sup> Matthew Spina & Brian Meyer, *Commission Looks at a Merged Future: Final Report Folds Common Council into County Legislature, Eliminates Post of Mayor, Transfers 2,700 City Employees*, BUFF. NEWS, Jan. 13, 2005, at A1.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *See id.*

deficit that Erie County faced as it entered 2005:

Like other counties around New York, Erie County's recent ailments can be traced to Medicaid, which will cost local taxpayers \$200 million [in 2005]. But Erie County has reached its predicament through an unusual route—from riches to rags.

Giambra was swept into office in 2000 after promising to return millions of dollars to taxpayers, and he made good on his promise. He and county lawmakers cut property taxes in 2000 and 2001 and held them flat ever since. Erie became the only county in New York to go so long without a tax increase.

*To meet everyday expenses, budget officials drained millions of dollars in once-ample reserves left by former County Executive Dennis T. Gorski.*

Meanwhile, this region did not shake off a recession like other regions of the country, so Medicaid rolls swelled. And the fizzling stock market meant New York's public employee pension fund would bill local governments millions more to cover losses.

But the county isn't facing a 2005 deficit because overall expenses will be \$130 million more next year. It's facing a deficit because Erie County can no longer tap reserves without further risking its credit rating.<sup>166</sup>

While blaming the growing cost of Medicaid reimbursements as the reason for the steep deficit, Giambra responded to the fiscal crisis by introducing two budgets: a "green" budget that entailed a one-percent sales tax increase whose proceeds would maintain services and retain county employees, and a "red" budget that would cut over 6,000 jobs in lieu of raising taxes.<sup>167</sup> *Buffalo News* columnist and regionalism proponent Donn Esmonde viewed Giambra's strategy as political genius, a "face-slap to a sleeping public" that would insulate Giambra from taking a political hit for a tax increase, yet simultaneously send a message that "Medicaid is

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<sup>166</sup> Matthew Spina, *Giambra's Point of No Return: Facing a \$130 Million Budget Gap and Lacking State Approval to Increase Sales Tax, County Executive Prepares to Cut Services Drastically and Eliminate Entire Agencies*, BUFF. NEWS, Oct. 22, 2004, at A1 (emphasis added).

<sup>167</sup> See Matthew Spina, *Giambra Budget Could Cost 6,000 Jobs: Funding for Arts, Libraries Would End; Sales Tax Hike Prescribed as Cure for Layoffs, Cuts*, BUFF. NEWS, Nov. 5, 2004, at A1.

breaking [Erie County], and it's Albany's fault."<sup>168</sup>

However, as discussion over whether to raise the sales tax progressed, voters came to conclude that Erie County's budgetary troubles did not constitute Albany's fault, or Medicaid's fault, but rather the result of fiscal mismanagement. At public forums and rallies throughout Erie County, citizens rallied against the "red budget" that threatened to cut funding for libraries, parks, and even the Buffalo Zoo.<sup>169</sup> Meanwhile, county legislators in Giambra's own Republican Party publicly lambasted the "green budget," and vowed never to support any tax increase.<sup>170</sup> Moreover, as county legislators struggled to find additional funding for the District Attorney's Office, the Sheriff's Department, the Board of Elections, cultural institutions, and a host of other concerns, the *Buffalo News* revealed that Erie County employed twenty Giambra relatives and friends—including an \$81,000 per year chauffeur—at a combined annual salary of nearly \$1 million.<sup>171</sup> Although he promised to reassign some patronage hires and lay off others, he dismissed public criticism by declaring patronage as "not an evil thing."<sup>172</sup>

Despite the "red budget's" drastic service cuts, Erie County legislators could not provide the ten votes necessary to adopt the one-percent sales tax increase that would have avoided them. Consequently, in early February 2005, thousands of county workers received layoff notices, and parks and neighborhood health clinics closed due to inadequate staffing.<sup>173</sup> Reflecting upon this ruinous end to Erie County's budget process, voters blamed County Executive Giambra, for better or worse. Whereas he had received nearly fifty-five percent of the vote for re-election in 2003, Giambra enjoyed a job approval rating of just 1.6, on a scale from a low of one to a high of five, in a poll conducted in February 2005.<sup>174</sup> Only nineteen percent of respondents believed Giambra's claim that

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<sup>168</sup> Donn Esmonde, Editorial, *Giambra in Stare-Down with Albany*, BUFF. NEWS, Nov. 8, 2004, at B1.

<sup>169</sup> See, e.g., Matthew Spina, *Fiery Crowd Speaks Out on Saving County Services*, BUFF. NEWS, Nov. 23, 2004, at A1 (describing one such forum).

<sup>170</sup> See Lou Michel, *7 from GOP Oppose Property Tax Hike: Legislators Vow to Block Option in Budget Crisis*, BUFF. NEWS, Nov. 21, 2004, at B1.

<sup>171</sup> See Robert J. McCarthy, *Giambra Vows His Intent Not to Pursue Third Term: He Wants No Politics to Hamper His Agenda*, BUFF. NEWS, Dec. 10, 2004, at A1.

<sup>172</sup> *Id.*

<sup>173</sup> See Michael Beebe & Lou Michel, *County Closings to Start Monday*, BUFF. NEWS, Feb. 6, 2005, at A1.

<sup>174</sup> Phil Fairbanks, *Voters Put Blame on Giambra; Responsibility for County Budget Mess Rests Mainly with Executive, Poll Shows*, BUFF. NEWS, Feb. 27, 2005, at A1.

Medicaid payments had caused Erie County's budget deficit.<sup>175</sup> The results clearly indicated that voters "simply don't believe what [Giambra] says."<sup>176</sup>

For this reason, the Greiner Commission's merger plan, touted so long by County Executive Giambra, could not hope to win voter approval in 2005. Thus, the Commission quietly elected to table the plan's implementation indefinitely.<sup>177</sup> As Giambra admitted in reaction to this development, "The timing might be bad right now . . . I'm interested in finding a scenario that will succeed. It doesn't have to be this November."<sup>178</sup> Echoed Paul Tokasz, then the New York State Assembly Majority Leader, "Even to the casual observer, it's pretty obvious that, with the county's fiscal problems, I don't know how [the merger] could go forward."<sup>179</sup> With Giambra's approval rating in the single digits, the strategy to consolidate the City of Buffalo into Erie County remains on hold.

The dream for city-county merger owes its meteoric rise and its sudden fall to the old-style regionalism procedure employed by its proponents to market it. Indeed, Joel Giambra deserves credit for daring to suggest the dissolution of Buffalo in 1995, and for focusing his administration as County Executive upon achieving intermunicipal consolidation. In response to a dwindling industrial base and a shrinking population in Erie County, community leaders such as Kevin Gaughan and the Buffalo Niagara Partnership also bolstered consolidation as a means of reducing the tax burden imposed on citizens by overlapping layers of government. With an assist from favorable press coverage by the *Buffalo News*, the steadfast advocacy of Giambra, Gaughan, and the Partnership brought Erie County to the brink of a referendum on merging with the City of Buffalo—a choice that County residents likely never would have entertained without their leadership.

However, the strategy to devise the concept of merger *before* selling it to Erie County voters rendered the work of the Greiner Commission vulnerable to failure. As soon as the electorate no longer supported County Executive Giambra, it correspondingly could not trust the merits of the consolidation plan that he had so

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> See Robert J. McCarthy, *Merger Plan Falls Victim to County Crisis*, BUFF. NEWS, Feb. 13, 2005, at A1.

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

<sup>179</sup> *Id.*

publicly advanced over the course of a decade. Had commitment to regional government originated from thoughtful debate among ordinary citizens, rather than solely from sustained promotion by a few civic leaders and the *Buffalo News*, its viability might have survived Erie County's fiscal doldrums and Giambra's steep drop in popularity. Instead, for the indefinite future, opponents of any intermunicipal cooperation or consolidation may invoke the name of Joel Giambra to conjure fears of regionalism among Erie County residents. Yet, as Buffalo continues to lose population and its property tax base, this result is unacceptable. Therefore, the time is ripe to reinvent the concept of regionalism in Buffalo and Erie County.

#### IV. TWO BRIEF PROPOSALS FOR IMPLEMENTING "NEW" REGIONALISM IN BUFFALO AND ERIE COUNTY

Drafting a thorough solution that alleviates the high cost of government and that commits suburbs to the goal of revitalizing Erie County's urban center will require thousands of hours of research, citizen discussion, and careful strategy. Such a solution may consist of numerous reforms, such as the creation of a regional planning board or consolidation of industrial development agencies and special districts. However, in reaction to the failure of the campaign to sell an old regionalist plan for intermunicipal merger to Erie County residents, this Paper proposes a new regionalist alternative. Procedurally, much like Envision Utah, it would wipe clean the slate of regional change, and solicit input from government officials, businessmen, developers, clergy, labor advocates, neighborhood activists, and ordinary voters to derive practical reforms that can meet public approval. Substantively, rather than divest the City of Buffalo or any other municipality of its autonomy, it would encourage rehabilitation of Buffalo's population and tax base from within. To achieve these ends, Erie County's municipalities should form an intergovernmental relations council to glean public input on regionalism, and should support tax-increment financing to encourage residential and commercial development in inner-city Buffalo.

##### *A. An Intergovernmental Relations Council: New Procedural Regionalism*

Article 12-C of New York's General Municipal Law grants

counties, towns, cities, and villages broad authority to screen opportunities for consolidation and cross-border collaboration under the auspices of “intergovernmental relations councils.” Created by agreement among interested municipalities, governed by an adopted set of bylaws, and directed by a chairman elected by their membership,<sup>180</sup> such councils enjoy an extensive mandate “to strengthen local governments and to promote efficient and economical provision of local governmental services.”<sup>181</sup> Specifically, they may undertake an array of initiatives, including surveys and research “to aid in the solution of local governmental problems,”<sup>182</sup> consultation with “appropriate state, municipal and public or private agencies in matters affecting municipal government,”<sup>183</sup> consideration of “practical ways and means for obtaining greater economy and efficiency in the planning and provision of municipal services,”<sup>184</sup> operation as a “purchasing consortium, . . . authorized by participating municipalities, for the purpose of obtaining economies through joint bidding and purchasing,”<sup>185</sup> and overall promotion of participants’ “general commercial, industrial and cultural welfare”<sup>186</sup> “by means of local and intercommunity planning.”<sup>187</sup> By the generality of these prescriptions, which no reported case has ever interpreted or limited, New York has granted municipalities wide leeway to develop plans for regionalism upon soliciting input from residents and other key stakeholders.<sup>188</sup>

An intergovernmental relations council sponsored by all of Erie County’s cities and towns would achieve the primary procedural objective of new regionalism, namely, empowering citizens to determine the destiny of their government. With respect to its membership, the council could consist of at least one representative selected by each participating municipality in addition to a fixed number of appointments by the County Executive and the County Legislature. Ideally, the council would include representatives of

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<sup>180</sup> N.Y. GEN. MUN. LAW § 239-n(2) (McKinney 1999).

<sup>181</sup> *Id.* § 239-n(1).

<sup>182</sup> *Id.* § 239-n(1)(a).

<sup>183</sup> *Id.* § 239-n(1)(c).

<sup>184</sup> *Id.* § 239-n(1)(d).

<sup>185</sup> *Id.* § 239-n(1)(i).

<sup>186</sup> *Id.* § 239-n(1)(e).

<sup>187</sup> *Id.* § 239-n(1)(f).

<sup>188</sup> For example, an intergovernmental relations council formed by the Town of Tonawanda has studied collaboration with the Village of Kenmore to provide services to residents. See Michael Levy, *Committee Will Study Regionalizing Area Services*, BUFF. NEWS, Aug. 19, 2000, at C5.

key constituencies—such as business, residential and commercial developers, labor, racial and ethnic minorities, and the faith community—who already have expressed great interest in shaping the future of Erie County. Not only should the council incorporate a broad range of talents, occupations, and economic interests, but it should also welcome a diversity of viewpoints concerning the proper direction for regional change.

Upon its creation, the council would conduct public hearings throughout Erie County. Unlike Kevin Gaughan's third Buffalo Conversation, however, such hearings would not presume the superiority of intermunicipal consolidation over cross-border collaboration. Rather, in advance, the council's members would compile, through assiduous research, the numerous alternatives for regional governance—from mere intergovernmental contracting to full-blown city-county merger—that public officials and private citizens have proposed over the past decade. At each council hearing, following a brief presentation of each option, members would invite audience commentary, which the council's secretary could record in the minutes of the meeting. Moreover, the council could afford citizens at the meeting an opportunity to vote upon their preferred plans for regionalism, much as Envision Utah enabled concerned citizens to identify their favored plans for future growth. The resulting tallies would provide the council with hard data regarding regional steps that would meet the approval of Erie County residents.

Subsequent to this series of public hearings, the council would produce a conceptual plan for regionalism that another committee, such as the Greiner Commission, could translate into a mechanism for action. This conceptual plan could support consolidation of fire, sewer, lighting, and water districts. It could encourage municipalities to actively seek opportunities for multilateral contracting and sharing of capital equipment. It could even seek the abolition of Erie County's local governments. In short, this plan could recommend any strategy imaginable, from the mergers demanded by old substantive regionalism to mere intermunicipal cooperation.

Most important, however, this plan would derive not from promotion by personalities buoyed by ephemeral popularity, *but rather from the will of the populace as expressed during the council's public hearings*. Of course, some citizens would criticize any regional plan authored by the council, regardless of the level of

public input that contributed to its drafting. Yet, extensive public participation, combined with balanced and reasoned reporting of its fruits, would enable Erie County residents to claim true ownership in the future of their local government. A majority of residents would identify regionalism not as the platform of Joel Giambra, but rather as *their* platform that deserves implementation. Thus, the procedural model of the intergovernmental relations council would immunize its regional plan well from unanticipated political crises that might otherwise threaten regional progress. Just as conservative voters in Utah approved a tax increase necessary to subsidize rapid transit expansion that would satisfy the regional plan that they had created by their input, so would Erie County voters *more likely* support the means of implementing regionalism as filtered through a collaborative process directed by the intergovernmental relations council.

Despite the harbinger of success that Envision Utah provides, the formation of an intergovernmental relations council does not *automatically* assure the eventual adoption of a blueprint for regional growth or intermunicipal cooperation in Erie County. Just as an enterprising candidate could dispatch advertising to attract advance support among delegates to a deliberative opinion poll, so could proponents of consolidation raise hundreds of thousands of dollars from private-sector businesses (as they had planned in anticipation of a November 2005 referendum) to subsidize mass-media appeals before the intergovernmental relations council's public hearings. Moreover, whereas a clear majority of participants in the hearings sponsored by Envision Utah favored a particular vision for dense growth, Erie County residents may not easily reach a similar consensus concerning a plan for regionalism, despite the best efforts of an intergovernmental relations council. Unfortunately, such an absence of consensus would fail to yield a popular strategy for regionalism, and would thereby maintain the status quo of municipal governance.

In Erie County, however, the potentially beneficial role that an intergovernmental relations council can play in devising a regional plan from public input far outweighs any risk of continued inertia that could result from its work. Top-down imposition of a regional plan by a county executive or business elites does not represent an intrinsic evil *per se*. Yet, unless such a plan arises from a comprehensive effort to solicit genuine feedback from Erie County citizens concerning their preferences for regional governance, the



cause of regionalism will continue to suffer. As *Buffalo News* columnist Donn Esmonde observed in 2006,

Sales tax just went up another half-cent. City and county are shaky ships steered by financial control boards. [Erie County residents] pay more taxes than just about anywhere else [sic]. We're bleeding jobs and people.

....

He says it is absurd. He is right. There is one problem: His name is Joel Giambra.

The county executive is political poison, an automatic rejection notice, a walking gag reflex, a sure-fire discussion-ender.

This is what happens when a cause is connected to its champion. He goes down; it goes down with him.

So it goes with Giambra and regionalism. The cause is just. Its crusader is battered and bloody.

Two years ago, regionalism was the talk of the town. Now the word is seldom heard. Regionalism is the collateral damage of Giambra's budget-bungling fall.<sup>189</sup>

Thus, the cause of regionalism will not succeed until Erie County residents dissociate its merits from County Executive Giambra. Such distinction will take place only if Erie County adopts a procedural mechanism that will reset the regionalism debate, and that will afford residents an opportunity to consider anew a variety of options, from intermunicipal consolidation to cross-border collaboration. An intergovernmental relations council that adopts a blueprint for regionalism solely on the basis of public comment and preferences can furnish citizens this chance.

### *B. Tax-Increment Financing: New Substantive Regionalism*

Although David Rusk's conception of metropolitan government replenishes a city's property tax coffers by stretching its borders, it does not rejuvenate dilapidated urban neighborhoods. Therefore, whereas procedural new regionalism regulates the process of creating a regional plan, substantive new regionalism seeks alternatives to intermunicipal consolidation that nonetheless can rehabilitate the urban core. Tax-increment financing, described by

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<sup>189</sup> Donn Esmonde, *Right Message but Flawed Messenger*, BUFF. NEWS, Feb. 1, 2006, at B1.

New York General Municipal Law Article 18-C, can achieve this goal without curtailing the municipal autonomy of Erie County's suburban towns.

Tax-increment financing ("TIF"), permitted by statute in New York since 1984, "is an economic development tool that municipalities can use to stimulate private investment and development in targeted areas by capturing the increased tax revenue generated by the private development itself and using the tax revenues to pay for public improvements and infrastructure necessary to enable development."<sup>190</sup> In particular, TIF enables any municipality in New York to identify "blighted area[s]", defined as areas containing "a predominance of buildings and structures which are deteriorated or unfit or unsafe for use or occupancy; or . . . a predominance of economically unproductive lands, buildings or structures, the redevelopment of which is needed to prevent further deterioration which would jeopardize the economic well being of the people."<sup>191</sup> Pursuant to such identification, the municipality can issue a bond "backed by the [*ad valorem*] property tax revenues produced by the increase in the property values" that would surely result from redevelopment of the blighted areas.<sup>192</sup>

Before engaging in tax-increment financing to revitalize targeted areas, a municipality in New York must follow a precise roadmap that values the input of expert planners and concerned citizens, in the spirit of procedural new regionalism. First, a municipality must formally study the feasibility of any redevelopment, and afford "[a]ny person, group, association or corporation" an opportunity to request a focus on a particular blighted neighborhood.<sup>193</sup> After the completion of the feasibility study, the municipality's legislative body (namely a city council or a town or village board) must adopt "preliminary plans" for revitalization, which primarily identify the boundaries of the TIF redevelopment area and offer a general statement describing the purpose of revitalization, its conformity with the municipality's master plan, and any impact on surrounding neighborhoods.<sup>194</sup> Subsequently, the municipality must draft a

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<sup>190</sup> Kenneth W. Bond, Partner, Squire, Sanders & Dempsey L.L.P., *Tax Increment Financing—Can You? Should You?* (Sept. 15, 2004), <http://www.nysedc.org/memcenter/TIF%20Paper.pdf>.

<sup>191</sup> N.Y. GEN. MUN. LAW § 970-c(a).

<sup>192</sup> RICHARD BRIFFAULT & LAURIE REYNOLDS, *CASES AND MATERIALS ON STATE AND LOCAL GOVERNMENT LAW* 580 (6th ed. 2004).

<sup>193</sup> N.Y. GEN. MUN. LAW § 970-d.

<sup>194</sup> *Id.* § 970-e.

detailed “redevelopment plan,” which not only elaborates upon the general objectives noted by the preliminary plans, but also specifically describes the logistical means of achieving revitalization.<sup>195</sup> In particular, the redevelopment plan should provide (i) for a method for financing improvements to the blighted areas,<sup>196</sup> most often by issuing bonds for which the municipality would not pledge its full faith and credit,<sup>197</sup> and which would not count toward the municipality’s constitutional or statutory indebtedness limits;<sup>198</sup> (ii) for municipal authority to sell or lease properties within the revitalization area<sup>199</sup> and to acquire private properties via “gift, purchase, lease, or condemnation”<sup>200</sup> or eminent domain;<sup>201</sup> and (iii) for relocation of any citizens whom the plan’s implementation might displace,<sup>202</sup> whereby “no person or family of low and moderate income [would] be displaced unless and until there is suitable housing available and ready for occupancy . . . at rents comparable to those paid at the time of . . . displacement.”<sup>203</sup> Upon the composition of the redevelopment plan, the municipality’s legislative body must afford expert planners an opportunity to review its provisions,<sup>204</sup> and must hold a public hearing at which any community member may comment in favor or against its adoption.<sup>205</sup> Only after adhering to these procedures may the legislative body vote to commence redevelopment.

Despite the power of tax-increment financing as a tool for revitalization, and its widespread use in states such as California, Florida, and Illinois, few New York municipalities have established TIF redevelopment districts since 1984.<sup>206</sup> Thus, in delineating such districts, the City of Buffalo could not only serve as a trailblazer in economic revitalization but also spur the residential and commercial redevelopment that it desperately needs to resuscitate its tax base. Once enacted, a redevelopment plan for

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<sup>195</sup> *Id.* § 970-f.

<sup>196</sup> *Id.* § 970-f(d).

<sup>197</sup> *Id.* § 970-o(b).

<sup>198</sup> *Id.* § 970-o(g).

<sup>199</sup> *Id.* § 970-f(e).

<sup>200</sup> *Id.* § 970-f(j).

<sup>201</sup> *Id.* § 970-i.

<sup>202</sup> *Id.* § 970-f(n).

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* § 970-g.

<sup>205</sup> *Id.* § 970-h.

<sup>206</sup> See SAM CASELLA, TAX INCREMENT FINANCING: A TOOL FOR REBUILDING NEW YORK 1 (2002), [http://nynv.aiga.org/pdfs/NYNV\\_TaxIncrementFinancing.pdf](http://nynv.aiga.org/pdfs/NYNV_TaxIncrementFinancing.pdf) (memorandum disseminated by New York New Visions: A Coalition for the Rebuilding of Lower Manhattan).

targeted neighborhoods would permit the City to issue bonds in order to generate funding to acquire vacant, abandoned, and dilapidated residential properties, which it could subsequently sell to developers ready to build new working-class housing in their place. Such housing could attract not only neighborhood citizens but also suburban residents who desire to reside in newly-constructed homes at the heart of Erie County's urban core. Similarly, the City could obtain abandoned commercial properties that developers could renovate as prime office space, rather than erect suburban "industrial parks" that only aggravate sprawl. With each new build, property values in the TIF redevelopment districts would inevitably rise, thereby enabling the City to collect greater property tax revenue. As required by statute, any increment of revenue in excess of what the City would have accumulated in the absence of redevelopment would subsidize repayment of the original bonds.<sup>207</sup>

Moreover, successful tax-increment financing could create new jobs for residents of Buffalo's TIF redevelopment districts. Pursuant to New York law, demolition, construction, and other property improvements commenced pursuant to a redevelopment plan "may give priority for such work to [neighborhood] residents . . . and to persons displaced . . . as a result of redevelopment activities."<sup>208</sup> "To the greatest extent feasible," such improvements must also offer employment opportunities to low-income persons who reside in the TIF redevelopment district.<sup>209</sup> Thus, TIF redevelopment could not only provide jobs for citizens of Buffalo's most economically challenged areas but also enable citizens to claim greater ownership in the reconstruction of the neighborhoods that they call home.

Like any redevelopment proposal, tax-increment financing will not avoid criticism entirely. Most notably, some homeowners may object to government seizure of private property in the name of economic development. In June 2005, in *Kelo v. City of New London*, the United States Supreme Court did hold that such use of eminent domain would not violate the Fifth Amendment to the United States Constitution, which prohibits the taking of private property "for public use without just compensation."<sup>210</sup> The New

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<sup>207</sup> N.Y. GEN. MUN. LAW § 970-p.

<sup>208</sup> *Id.* § 970-k(b).

<sup>209</sup> *Id.*

<sup>210</sup> U.S. CONST. amend. V, cl. 4; *Kelo v. City of New London*, 545 U.S. 469, 483–84 (2005)

York State Court of Appeals has similarly determined that seizure of blighted land does not offend the takings clause of the New York Constitution. Unanimously, the Court ruled:

Where, then, land is found to be substandard, its taking for urban renewal is for a public purpose, just as it would be if it were taken for a public park, public school or public street. The fact that the vehicle for renewed use of the land, once it is taken, may be a private agency does not in and of itself change the permissible nature of the taking of the substandard property. . . .

. . . .

Moreover, extensive authority to make the initial determination that an area qualifies for renewal as “blighted” has been vested in the agencies and the municipalities; courts may review their findings only upon a limited basis.<sup>211</sup>

However, an unbridled grant of eminent domain authority for the purpose of economic development would surely generate controversy among Erie County citizens. For example, in 2005, a private developer proposed to the Town of Cheektowaga a plan to seize the homes of thousands of residents in the working-class neighborhood of Cedargrove Heights via eminent domain, and to replace them with a mix of more upscale patio homes and retail outlets.<sup>212</sup> Although the developer vowed to compensate all homeowners for the fair-market value of their properties, he faced staunch opposition from neighborhood residents who protested vocally at one Cheektowaga Town Board meeting to discuss the potential use of eminent domain.<sup>213</sup> Their resistance only intensified after the United States Supreme Court decision in *Kelo*, which prompted then-New York State Assembly Majority Leader Paul Tokasz to express publicly his own concerns regarding the possibility for eminent domain abuse at Cedargrove Heights.<sup>214</sup> As a result,

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(ruling that seizures of private property solely for purposes of economic development do not violate the takings clause).

<sup>211</sup> *Yonkers Cmty. Dev. Agency v. Morris*, 335 N.E.2d 327, 331–32 (N.Y. 1975).

<sup>212</sup> See Barbara O’Brien, *Neighborhood Redevelopment Aired*, BUFF. NEWS, Feb. 4, 2005, at D2.

<sup>213</sup> See Barbara O’Brien, *Overflow Crowd Protests Plan to Demolish Neighborhood*, BUFF. NEWS, May 3, 2005, at B3 (describing the chants of angry Cedargrove Heights residents that their homes were “not for sale”).

<sup>214</sup> See Barbara O’Brien, *Neighborhood Shudders at Eminent Domain’s Reach; High Court Ruling Broadens Threat to Residents Confronting Developers*, BUFF. NEWS, July 1, 2005, at A1

proposals to raze the Cedargrove Heights neighborhood have stalled.

Nonetheless, New York's tax-increment financing statute provides residents ample opportunity to express their concerns about eminent domain orally or in writing during a public hearing concerning a proposed redevelopment plan.<sup>215</sup> In response to a neighborhood's overwhelming opposition to reconstruction, the Buffalo Common Council could exclude that neighborhood from TIF revitalization. Notably, New York does not require a municipality to utilize tax-increment financing throughout its borders. Rather, pursuant to a flexible statute, a municipality may target for revitalization a single neighborhood, or a series of blocks, or vacant and abandoned properties alone. Therefore, Buffalo may easily tailor tax-increment financing to benefit only those residents who support it, or only those properties where citizens do not currently live.

Detractors of tax-increment financing could also criticize issuance of additional debt by the City of Buffalo for the sake of economic development, even in the absence of a pledge of full faith and credit, so long as a state-imposed control board must monitor Buffalo's financial health. Yet this concern, albeit legitimate, should not halt Buffalo from pursuing tax-increment financing on a trial basis. At the threshold of redevelopment, the Common Council could establish a TIF redevelopment district within a single area of a few blocks. Successful enhancement of the tax base in this experimental district, combined with subsequent repayment of the bonds that funded the improvements there, would justify the creation of more districts elsewhere in the City in future years. Indeed, the control board's supervision over Buffalo's fiscal status dictates that the City should proceed with tax-increment financing cautiously. However, such oversight should not frighten Buffalo from pursuing a bold strategy such as tax-increment financing to rejuvenate its tax base from within, rather than via intermunicipal consolidation.

## V. CONCLUSION

In response to Buffalo's declining population and property tax rolls, the *Buffalo News*, along with key politicians, business leaders,

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(describing the *Kelo* decision and Majority Leader Tokasz's position).

<sup>215</sup> See *supra* note 205 and accompanying text.

and activists, promoted the city-county consolidation recommended by David Rusk, Neal Peirce, and the promoters of old substantive regionalism as the ultimate solution.<sup>216</sup> However, Erie County's fiscal crisis of 2004 has stymied enthusiasm among residents for intermunicipal merger.<sup>217</sup> In light of this setback, Buffalo and Erie County cannot wait idly for a revival in support for such a wholesale overhaul of local governance. Rather, citizens must devise strategies to bring about a new kind of regionalism in Western New York. These strategies may be procedural, as in creating an intergovernmental relations council to process public input, or substantive, as in implementing tax-increment financing as a tool to rehabilitate the tax base of the City of Buffalo. Above all, however, Erie County must continue to pursue every available opportunity for fostering intermunicipal cooperation, for reducing the cost of government, and for encouraging new development at its urban center. Provided that residents and municipalities persevere by refusing to abandon ten years of regional progress, they may hope soon to earn a reputation for innovative governance that would exemplify the greatness and resourcefulness of Buffalo and Erie County.

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<sup>216</sup> See *supra* Part III.

<sup>217</sup> See *supra* Part III.