

**VOTER PARTICIPATION AND  
PERSISTENCE: UNDERSTANDING THE  
ROLE OF COMMUNITY IN VOTER  
TURNOUT DURING OFF-YEAR ELECTIONS  
IN NEW YORK STATE**

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INTRODUCTION.....	546
I.METHODOLOGY.....	551
II.REGISTRATION AND PARTICIPATION .....	552
III.PERSISTENT PARTICIPATION .....	560
IV.REGIONAL VOTER PERSISTENCE AT THE LOCAL LEVEL.....	568
V.HARD CORE VOTERS: LEVELS AND RELATIVE RATES OF PARTICIPATION ON A SELECTED REFERENDUM QUESTION.....	572
VI.BUILDING LOCAL GOVERNMENT; CREATING PERSISTENT VOTERS.....	578
VII.OBJECTIONS .....	584
CONCLUSIONS .....	586

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## INTRODUCTION

Americans are asked to vote often, for a lot of offices, and on a lot of matters. Participation tends to be highest on the first Tuesday, after the first Monday, in November, the regular Election Day.<sup>1</sup> It drops off for primary elections or balloting at other times.<sup>2</sup> More New Yorkers participate in national elections, fewer in statewide contests, and even fewer in those that are local, such as elections for village councils, school boards, or fire district boards.<sup>3</sup> On Election Day there is usually a pattern of “voter fatigue,” with fewer votes counted in down ticket races or referenda than for races at the top of the ticket.<sup>4</sup>

Survey results are sliced and diced to determine nuanced differences in actual or potential voter participation, in general and for particular elections. Among the most well established findings: people of higher socioeconomic status and those who are older and more educated are more likely to vote.<sup>5</sup> Women are more likely to vote than men,<sup>6</sup> as are more whites and blacks than Hispanics.<sup>7</sup>

Related to these findings, the participation rates in New York State—further discussed below—may be explained, in part, by the changing composition of the State’s population. According to research conducted by the Empire Center, the outward migration from New York State to other states in the Nation consists primarily of taxpayers with a higher average adjusted gross income, while those moving into New York have on average

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<sup>1</sup> See Dr. Michael McDonald, *2012 General Election Turnout Rates*, U.S. ELECTIONS PROJECT (July 22, 2013), [http://elections.gmu.edu/Turnout\\_2012G.html](http://elections.gmu.edu/Turnout_2012G.html) (listing the voter eligible population turnout rates for the 2012 general election).

<sup>2</sup> See Dr. Michael McDonald, *2012 Presidential Nomination Contest Turnout Rates*, U.S. ELECTION PROJECT (Sept. 6, 2012), [http://elections.gmu.edu/Turnout\\_2012P.html](http://elections.gmu.edu/Turnout_2012P.html) (listing the voter eligible population total ballots cast for the 2012 presidential nomination contest turnout rates).

<sup>3</sup> See *Elections and Voter Participation*, [http://www.nyslocalgov.org/pdf/Voter\\_Participation\\_in\\_Elections.pdf](http://www.nyslocalgov.org/pdf/Voter_Participation_in_Elections.pdf) (last visited Jan. 20, 2014) (showing the difference between NY voter turnout for presidential and odd numbered year elections).

<sup>4</sup> See Ekua Boateng, *America has Voting Fatigue*, FAIR VOTE (April 30, 2008), <http://www.fairvote.org/america-has-voting-fatigue#> (discussing voter fatigue generally).

<sup>5</sup> KAY L. SCHLOZMAN ET AL., *INEQUALITIES OF POLITICAL VOICE* 23 <http://www.apsanet.org/imgtest/voicememo.pdf> (last visited Jan. 20, 2014).

<sup>6</sup> *Id.* at Table 1.

<sup>7</sup> *Id.* at Table 1, Table 2.

twenty-two percent lower incomes than those leaving.<sup>8</sup> We know that, historically, people with higher incomes vote more often,<sup>9</sup> so New York's population shift could have a diminishing effect on voter turnout. The 2010 census also shows that twenty-two percent of New Yorkers are foreign born immigrants;<sup>10</sup> as detailed further below, many of these noncitizen residents are not eligible to vote.

The number of people who vote and their characteristics, motivations, and interests, are of course critical factors in determining election outcomes. Fortunes are spent by campaigns to identify potentially favorable voters, get them registered, shape and reinforce their predispositions, and make sure that they actually turn out to vote.<sup>11</sup> Statutory and regulatory efforts by Republicans in 2012 to discourage voting by citizens likely to support Barack Obama were the subject of considerable debate, and some litigation.<sup>12</sup> The President's reelection and margin of his victory have been attributed in part to his campaign's success, in the face of these disenfranchising efforts, in getting several million additional voters to the polls on Election Day.<sup>13</sup>

Election outcomes are, of course, important. But, just as important is the legitimacy of government and its stability. Voting is the elemental act of citizenship in a representative democracy—the base of the pyramid of citizen engagement. In its study entitled *Inequalities of Political Voice*, the Task Force on Inequality in American Democracy notes that even

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<sup>8</sup> E.J. McMahon & Robert Scardamalia, *Outward Bound New Yorkers: Where They Went, 2000–09*, EMPIRE CTR. (Sept. 26, 2011), <http://www.empirecenter.org/pb/2011/09/migration2092611.cfm>.

<sup>9</sup> SCHLOZMAN ET AL., *supra* note 5, at 23.

<sup>10</sup> Elizabeth M. Grieco et al., *The Foreign-Born Population in the United States: 2010*, U.S. CENSUS BUREAU (May 2012), <http://www.census.gov/prod/2012pubs/acs-19.pdf>.

<sup>11</sup> *The Purposes and Beneficiaries of Party "Soft Money"*, BRENNAN CTR. FOR JUSTICE AT NYU SCH. OF L., [http://www.brennancenter.org/sites/default/files/legacy/d/purposes\\_beneficiaries070301.pdf](http://www.brennancenter.org/sites/default/files/legacy/d/purposes_beneficiaries070301.pdf) (discussing how funds are spent primarily on advertising to reach voters).

<sup>12</sup> *See Restrictive Voting Laws and Legislation in 2011–2012*, FAIR ELECTIONS LEGAL NETWORK, [http://www.fairelectionsnetwork.com/webfm\\_send/10](http://www.fairelectionsnetwork.com/webfm_send/10) (last visited Jan. 20, 2014) (identifying states and their restrictive voting laws); Ari Berman, *How the GOP's War on Voting Backfired*, THE NATION (Nov. 8, 2012), <http://www.thenation.com/blog/171146/gops-failed-voter-suppression-strategy>.

<sup>13</sup> *See Julie Pace, Obama 2012: President Wins The Way His Campaign Predicted*, HUFFINGTON POST, (Nov. 8, 2012) [http://www.huffingtonpost.com/2012/11/08/obama-2012-campaign\\_n\\_2092452.html](http://www.huffingtonpost.com/2012/11/08/obama-2012-campaign_n_2092452.html). *See also* Berman, *supra* note 12.

“[d]emocratizing regimes inevitably establish procedures for national elections even if they neglect other guarantees . . . that are usually deemed essential to a functioning democracy.”<sup>14</sup> The relationship between civic engagement and governmental responsiveness and efficacy is well established. For example, Robert Putnam in his now classic work, *Bowling Alone*, shows that municipalities in which citizens are socially and politically engaged display greater levels of governmental responsiveness, effectiveness, and efficiency.<sup>15</sup> Other studies show that areas with higher rates of voter participation receive larger allocations of local, state, and federal financial political rewards.<sup>16</sup> The practice of voting is, thus, not only the threshold act of civic engagement, fundamental to the legitimacy of states that claim to be democratic, but a utilitarian behavior as well.

This research is a first step in trying to assess the impact of community coherence on aggregate levels of participation in voting. For the purpose of this paper, the size of a place—its population—is used as a surrogate for its communal cohesiveness. This draws upon the considerable existing research on “size and democracy.”<sup>17</sup> In particular, in his seminal work, *Real Democracy: The New England Town Meeting and How It Works*, University of Vermont political scientist Frank Bryan demonstrates that large proportions of citizens engage—and differences in participation based upon socio-economic distinctions fall away—in smaller settings in which they may directly participate in governance.<sup>18</sup> Bryan points out too, that the vitality of town meetings is directly linked to their capacity to address consequential issues, and that engagement in these meetings is diminished when that capacity is withdrawn.<sup>19</sup> Michael Sandel, in *Public Philosophy: Essays on Morality in Politics*, also sings the praises of virtuous, small-scale communities capable of “engaging citizens in a common life beyond their private pursuits, and by cultivating the habit of

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<sup>14</sup> SCHLOZMAN ET AL., *supra* note 5, at 21–22.

<sup>15</sup> See ROBERT PUTNAM, *BOWLING ALONE* 347–49 (2000).

<sup>16</sup> Paul S. Martin, *Voting's Rewards: Voter Turnout, Attentive Publics, and Congressional Allocation of Federal Money*, 47 AM. J. POL. SCI. 110, 111–12 (2003).

<sup>17</sup> See ROBERT A. DAHL & EDWARD R. TUFTE, *SIZE AND DEMOCRACY* 91–93 (1973).

<sup>18</sup> FRANK M. BRYAN, *REAL DEMOCRACY* 280, 284 (2004).

<sup>19</sup> *Id.* at 280–81.

attending to public things.”<sup>20</sup>

We think of voting and community as interactive. Interestingly, though voting has powerful communal consequences and, indeed, is an affirmation of community through participation, it is rarely studied as a communal act.<sup>21</sup> Polling data, gathered at the individual level, tells us much of what we know about who votes and who does not.<sup>22</sup> Comparisons of voter registration and turnout at the national and state levels do not tell us what is happening in communities and, importantly, systematically neglect information about levels of participation for years in which there are no national or statewide elections.<sup>23</sup> When turnout is considered by researchers at the community level, the goal is usually to determine what understanding may be gleaned about geographically concentrated racial, ethnic, religious, or cultural minorities, and not to assess the possible impact of voting participation on the nature of the community itself.<sup>24</sup>

Importantly, we have indications that the legitimacy of our representative institutions are slipping.<sup>25</sup> Polls measure trust in national and state government to be at or near historic lows.<sup>26</sup> Nonetheless, people remain more trusting of local government,<sup>27</sup> interestingly and in accord with the linkage between community and citizenship explored in this paper.

Approaches to addressing nonvoting are linked to views about its causes.<sup>28</sup> A cost/benefit paradigm offers one organizing idea.<sup>29</sup> It posits that voting is irrational for individuals—the benefits of the act are almost entirely societal and remote, while its costs are

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<sup>20</sup> MICHAEL J. SANDEL, *PUBLIC PHILOSOPHY* 41 (2005).

<sup>21</sup> See Martin, *supra* note 16, at 111.

<sup>22</sup> See generally *Texas Politics-Voting, Campaigns, and Elections*, TEX. POL., [http://texaspolitics.laits.utexas.edu/6\\_printable.html](http://texaspolitics.laits.utexas.edu/6_printable.html) (last visited Jan. 22, 2014).

<sup>23</sup> See *Voter Turnout Frequently Asked Questions*, U.S. ELECTIONS PROJECT, <http://elections.gmu.edu/FAQ.html> (last visited Jan. 16, 2014) (using a presidential election year (2004) to calculate turnout based on voter registration).

<sup>24</sup> See *Who Votes? Voter Turnout in New York City*, N.Y.C. CAMPAIGN FIN. BD. (June 11, 2012), [http://www.nyccfb.info/pdf/issue\\_reports/whovotes.pdf](http://www.nyccfb.info/pdf/issue_reports/whovotes.pdf).

<sup>25</sup> Jeffrey M. Jones, *Americans Trust in Government Generally Down this Year*, GALLUP (Sept. 26, 2013), <http://www.gallup.com/poll/164663/americans-trust-government-generally-down-year.aspx>.

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

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

<sup>28</sup> See *Turning Nonvoters into Voters?*, NONVOTERS IN AMERICA (2012), <http://nonvotersinamerica.com/2013/05/turning-nonvoters-into-voters/>.

<sup>29</sup> *Texas Politics-Voting, Campaigns and Elections*, *supra* note 22.

almost entirely personal and immediate.<sup>30</sup> Some are entirely sanguine about the implications of this idea.<sup>31</sup> They point out that many people still vote, and that those who do not vote do not think very differently on most matters than those who do.<sup>32</sup> Others, encouraged by higher rates of participation in some places than others, seek greater turnout for social or partisan reasons and suggest several approaches to reducing costs or increasing perceived benefits to encourage more people to vote:

- Engage in socialization to make individuals more willing to “pay” the costs for a collective benefit.<sup>33</sup>
- Reduce the costs by reducing or removing legal or bureaucratic barriers (e.g., no registration, remote registration, same day registration and voting).<sup>34</sup>
- Reduce the costs by making the act of voting easier or more convenient (e.g., voting by mail, voting electronically, early voting, weekend voting).<sup>35</sup>
- Reduce costs by making information on choices more available (e.g., mandated neutral voter information pamphlets or websites).<sup>36</sup>
- Increase actual or perceived individual benefits (material or psychological) by linking them to social benefits (e.g., if you vote, then a person like you is more likely to be elected, policies that benefit you are more likely to be adopted, a system that benefits you will be preserved).<sup>37</sup>

All of these approaches are attempts to affect individual perceptions and/or behaviors. None of these focus on altering the communal context of voting. None seek to determine if altering this context in material ways may have the desired effect at the individual level. An alternative is to consider a solution to the

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

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *See id.* (finding participating in elections provides a voter with a sense of belonging to the community).

<sup>34</sup> Anthony Morse, *What Is The Best Way To Increase Voter Participation In The United States?*, FORBES (Oct. 16, 2012 12:14PM), <http://www.forbes.com/sites/quora/2012/10/16/what-is-the-best-way-to-increase-voter-participation-rates-in-the-united-states/>.

<sup>35</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-69, VIEWS ON IMPLEMENTING FEDERAL ELECTIONS ON A WEEKEND (2012).

<sup>36</sup> Aina Gallego, *Understanding Unequal Turnout: Education and Voting in Comparative Perspective* (2010) (unpublished manuscript) (on file with author).

<sup>37</sup> *Id.*

problem of nonvoting in New York State centered around building strong, localized communities of democratically virtuous citizens, linked by an associative political obligation to persistently self-govern through the act of voting.<sup>38</sup>

## I. METHODOLOGY

This study utilizes both quantitative and qualitative methodologies, with the empirical and theoretical elements guiding each other. Drawing from traditional republicanism and communitarian political theories, we offer an alternative to the overwhelmingly individualistic conception of electoral politics found in a traditional liberal democracy. Similarly, we follow empirical lines of research into the relationship between size and democracy and the virtues of citizenship in small communities, as it relates to voting.

We begin our research at the state level, analyzing voter participation first by breaking down the process of voting into its composite parts—registering and turning out to cast a vote.<sup>39</sup> By analyzing registration separately from turnout, we are able to more accurately understand declining voter participation. We wanted to study elections throughout a four-year election cycle, 2008–2011, covering years in which there are national and statewide elections and others in which only local officials are selected. In order to gather statewide voting totals for off-years, we aggregated local results for top-of-the-ticket countywide races from county election board websites or through contact with election boards either by phone or email. Hamilton and Lewis Counties provided no information, either online or through direct contact. For these counties, off-year turnout was estimated from totals in multi-candidate elections for state supreme court judge. In these cases, the total vote for supreme court justices in Hamilton and Lewis Counties was divided by the number of justices elected to estimate the number of voters who turned out to vote in those elections. Remarkably, New Yorkers were asked to approve the same constitutional amendment, to suspend local

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<sup>38</sup> Associative or communal political obligation refers to the idea that political obligation extends beyond an individual obligation to the state and applies also to an obligation to one's community. See RONALD DWORKIN, *LAW'S EMPIRE* 196 (1986).

<sup>39</sup> Corey Peterson, *Student: We Must Break Down the Barriers to Voting*, PROJECT VOTE (Jan. 24, 2013), <http://www.projectvote.org/blog/2013/01/student-we-must-break-down-the-barriers-to-voting>.

borrowing limits for a specified purpose, decennially since 1963.<sup>40</sup> For an additional look at participation in odd number years, we consider the six cases of voting on these referendum questions.

After making statewide comparisons, we disaggregated our newly compiled off-year data back down to the county level. This allowed us to analyze not only which counties had the highest turnout rates, but in which counties voters persisted most strongly throughout a four-year election cycle. Voter persistence is calculated by dividing the number of those who turn out to vote in the least participatory election of a four-year election cycle (2011)<sup>41</sup> by the number of those who turned out in the most participatory election (2008).<sup>42</sup> Voter persistence rates, rather than basic voter turnout rates, are used as the dependent variable in our county-level statistical models, with which we consider the potential factors affecting turnout throughout the election cycle. We used linear and multivariate regression models to analyze the relationship between voter persistence and various independent variables—social and economic factors suggested as important by previous research on voter turnout. For additional evidence, we correlate county level voter turnout on the same specified state constitutional amendment with county population in the most recent two odd numbered years for which this data is available—2003 and 2013.

## II. REGISTRATION AND PARTICIPATION

Noting on August 16, 2012, that New York ranked “47th in the nation in voter registration, with less than 64% of eligible residents registered [to vote],” Governor Andrew Cuomo launched an initiative to increase New York’s voter registration rates.<sup>43</sup> It sought to make registering to vote easier and more secure by allowing residents with New York State driver’s licenses or non-driver ID cards to register to vote, update personal information,

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<sup>40</sup> Jon Campbell, *Six Changes To NY Constitution On Ballot*, DEMOCRAT & CHRONICLE (Nov. 5, 2013, 6:36 PM), <http://www.democratandchronicle.com/store/news/local/2013/11/02/six-changes-to-the-constitution-on-ballot/3390391/>.

<sup>41</sup> See Marc Meredith, Persistence in Political Participation 10 (unpublished paper) (on file with University of Pennsylvania).

<sup>42</sup> See *id.* (finding voter persistence rates by dividing turnouts in 2004 and 2006).

<sup>43</sup> Glenn Blain, *Cuomo Administration Unveils Reforms Designed to Computerize the Voter Registration Process*, N.Y. DAILY NEWS (Aug. 16, 2012, 8:54 PM), <http://www.nydailynews.com/new-york/cuomo-administration-unveils-reforms-designed-computerize-voter-registration-process-article-1.1138200>.

or change party affiliation via a secure online program, either from home or at their local DMV.<sup>44</sup> The intention of this electronic voter registration system was to make registering to vote more cost and time-effective, accurate, and accessible by eliminating the tedious and error-prone process associated with manual registration.<sup>45</sup>

Governor Cuomo's initiative was, of course, not the first attempt to increase registration rates in the hopes of improving voter participation overall.<sup>46</sup> New York State had a bill on the docket providing for automated registration via the Voter Empowerment Act.<sup>47</sup> If passed, this legislation would require the Department of Motor Vehicles and the Department of Taxation and Finance to provide the State Board of Elections with the names and addresses of all residents who are, or will be, eighteen years of age by the next general election.<sup>48</sup> Bills have also been introduced providing for pre-registration beginning at age sixteen (S.B. 5256 and A.B. 7440 of 2011) and Election Day registration (A 1684, A 6421, and S.B. 1769 of 2011).<sup>49</sup>

Many other states have also recently either introduced or approved various forms of voter registration reform.<sup>50</sup> For example, Arizona, California, Michigan, Washington, Rhode Island, and Maryland have all introduced legislation that would allow sixteen-year-old high school students to register to vote in advance through registration drives, as well as, educate these students about the mechanisms of voting and voter participation.<sup>51</sup> Eight states already have a mobile registration system which allows voters who have moved to vote even if they have not updated their registration information by Election Day.<sup>52</sup> In Oregon, the secretary of state proposed an amendment that

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

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

<sup>46</sup> Assemb. 187B (N.Y. 2013).

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

<sup>48</sup> Assemb. 1712, 2011–2012 Reg. Sess. (N.Y. 2011).

<sup>49</sup> *VRM in the States: New York*, BRENNAN CTR. FOR JUSTICE (Aug. 17, 2012), <http://www.brennancenter.org/analysis/vrm-states-new-york>.

<sup>50</sup> *States Take on Voter Registration Reform*, THE CTR. FOR VOTING & DEMOCRACY, [http://www.fairvote.org/states-take-on-voter-registration-reform#UXqc\\_MqGfTq](http://www.fairvote.org/states-take-on-voter-registration-reform#UXqc_MqGfTq) (last visited Jan. 20, 2014).

<sup>51</sup> *Id.*

<sup>52</sup> *Voter Registration Modernization in the States*, BRENNAN CTR. FOR JUSTICE (Aug. 13, 2013), <http://www.brennancenter.org/analysis/voter-registration-modernization-states>.

would implement universal voter registration.<sup>53</sup>

At the federal level, the National Voter Registration Act of 1993 (Motor Voter Law) aimed to ease the costs of voter registration by allowing citizens to register by mail or when applying for a driver's license or for social assistance.<sup>54</sup> Efforts by Governor Mario Cuomo to implement this law by executive order, challenged by Republicans, were upheld by the State's highest court, the Court of Appeals.<sup>55</sup> New Jersey lawmakers have introduced legislation that would change the application of Motor Voter in the State to an opt-out system, rather than its current opt-in method.<sup>56</sup>

While the national Motor Voter Law did effectively increase registration rates, it did not have the same bolstering effect on voter turnout.<sup>57</sup> Research shows that turnout increased in the 1994 midterm election, immediately following the passage of Motor Voter; in subsequent elections, however, the law's effects have been less apparent.<sup>58</sup>

Over time, New York State saw results similar to those at the national level.<sup>59</sup> Voter registration rates began to increase significantly for the 1994 gubernatorial election and have since continued to rise.<sup>60</sup> Turnout rates, on the other hand, have not followed the same rate of increase, causing the gap between those registered to vote and those who turnout to vote to steadily widen

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<sup>53</sup> Jeff Mapes, *Republican Lawmakers Express Concerns about Kate Brown's Universal Voter Registration Legislation*, OREGONLIVE (March 20, 2013, 5:32 PM), [http://www.oregonlive.com/mapes/index.ssf/2013/03/republican\\_lawmakers\\_express\\_c.html](http://www.oregonlive.com/mapes/index.ssf/2013/03/republican_lawmakers_express_c.html).

<sup>54</sup> Raymond E. Wolfinger & Jonathan Hoffman, *Registering and Voting with Motor Voter*, 34 POL. SCI. & POL. 85, 85 (2001).

<sup>55</sup> *Clark v. Cuomo*, 486 N.E.2d 794, 795–96 (N.Y. 1985) (holding Governor Mario Cuomo's Executive Order No. 43, establishing a "Voter Registration Task Force," did not violate the New York State Constitution).

<sup>56</sup> Assemb. A 3599, 213th Leg. (N.J. 2009).

<sup>57</sup> G. Terry Madonna & Michael Young, *Motor Voter and The Politics of Voter Turnout*, FRANKLIN & MARSHALL COLL. (July 31, 2001), <http://www.fandm.edu/politics/politically-uncorrected-column/2001-politically-uncorrected/motor-voter-and-the-politics-of-voter-turnout>.

<sup>58</sup> Andrew S. Fullerton & Casey Borch, *Reconsidering Explanations for Regional Convergence in Voter Registration and Turnout in the United States, 1956–2000*, 23 SOC. F. 755, 759 (2008).

<sup>59</sup> N.Y. STATE BD. OF ELECTIONS, MEDIA & PUBLIC INFORMATION GUIDE FOR THE 2010 ELECTIONS 111 (2010) [hereinafter 2010 ELECTIONS GUIDE]. See generally Gerald Benjamin & Carling Devin, *Voter Data Project Research* (2013) (on file with author) [hereinafter Benjamin & Devin Research].

<sup>60</sup> 2010 ELECTIONS GUIDE, *supra* note 59. See *infra* Figure 1.

over time.<sup>61</sup> Between 1970 and 2010, New York's population went from 18,236,967 to 19,378,102.<sup>62</sup> For presidential elections, the total vote in the State was about the same in 1996 as it was in 1980;<sup>63</sup> the presidential vote total achieved in 1972 was not exceeded until 2004, and it decreased in 2012 from the 2008 peak.<sup>64</sup> Even more interesting, and notwithstanding the increase in voter registration numbers during the 1990s,<sup>65</sup> the total vote for governor has remained relatively flat in recent years.<sup>66</sup> In fact, 1970 was the peak year for gubernatorial voting in the last half century, even though Nelson Rockefeller won his fourth term for governor over Arthur Goldberg in a landslide.<sup>67</sup>

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<sup>61</sup> 2010 ELECTIONS GUIDE, *supra* note 59.

<sup>62</sup> *Compare 2010 Demographic Profile NY*, U.S. CENSUS BUREAU, <http://www.census.gov/popfinder/?fl=36> (last updated Aug. 6, 2013), *with* U.S. Census Bureau, *Number of Inhabitants: New York 34-7* (1970), available at <http://www.census.gov/prod/www/abs/decennial/1970cenpopv1.html> (showing an increase in New York State's population from 1970-2010).

<sup>63</sup> *Compare Election of 1980*, THE AM. PRESIDENCY PROJECT, <http://www.presidency.ucsc.edu/showelection.php?year=1980> (last visited Jan. 20, 2014), *with Election of 1996*, THE AM. PRESIDENCY PROJECT, <http://www.presidency.ucsc.edu/showelection.php?year=1996> (last visited Jan. 20, 2014) (showing similarities between the total votes cast for president in 1980 (6,201,959) and in 1996 (6,316,129)).

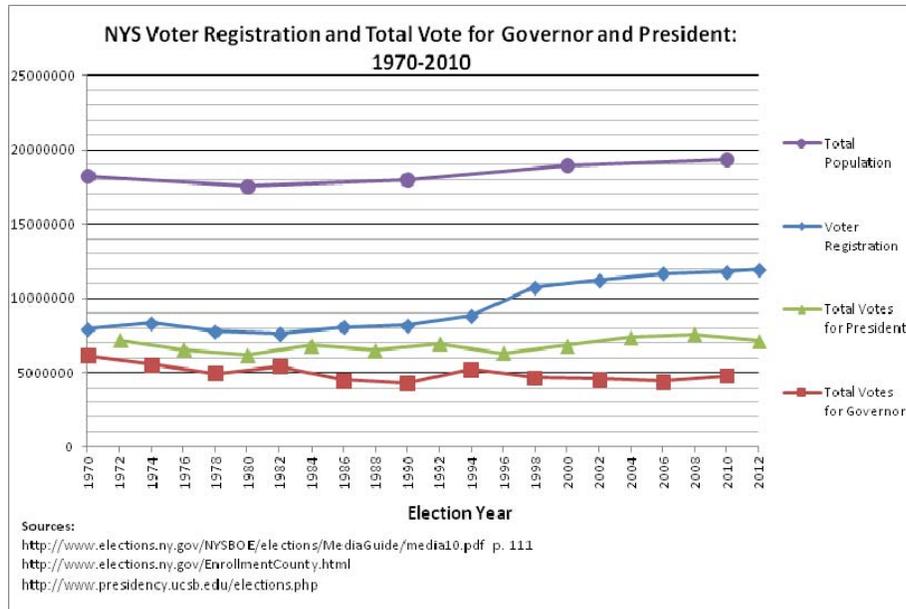
<sup>64</sup> Benjamin & Devin Research, *supra* note 59. *Compare Election of 1972*, THE AM. PRESIDENCY PROJECT, <http://www.presidency.ucsc.edu/showelection.php?year=1972> (last visited Jan. 20, 2014), *with Election of 2004*, THE AM. PRESIDENCY PROJECT, <http://www.presidency.ucsc.edu/showelection.php?year=2004> (last visited Jan. 20, 2014) (showing that 2004's vote total (7,391,036) exceeded 1972's vote total (7,165,919)), *and Election of 2008*, THE AM. PRESIDENCY PROJECT, <http://www.presidency.ucsc.edu/showelection.php?year=2008> (last visited Jan. 20, 2014), *with Election of 2012*, THE AM. PRESIDENCY PROJECT, <http://www.presidency.ucsc.edu/showelection.php?year=2012> (last visited Jan. 20, 2014) (presenting the vote total for 2008 (7,591,233), the highest total cited, in contrast to 2012's decline in vote total (7,061,925)).

<sup>65</sup> 2010 ELECTIONS GUIDE, *supra* note 59.

<sup>66</sup> *Id.*

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

**Figure One: NYS Voter Registration and Total Vote for Governor and President: 1970–2010**<sup>68</sup>



What of the assertion that New York suffers from relatively low voter registration rates?<sup>69</sup> Examination of the available evidence shows that registration rates in New York State, when considered relative to that portion of the State's population that is *eligible* to vote (VEP), have steadily increased and are now quite high.<sup>70</sup> Figure 2 demonstrates that about ninety-three

<sup>68</sup> Benjamin & Devin Research, *supra* note 59.

<sup>69</sup> See N.Y. STATE ASS'N OF CNTYS., A PRIMER ON EARLY VOTING PROPOSAL IN NEW YORK STATE 4 (2013) ("New York has one of the lowest voter registration rates in the nation. As of 2010, less than 64 percent of eligible New Yorkers were registered to vote.").

<sup>70</sup> It is becoming more broadly understood that turnout might be better measured based on voter eligible population (VEP) than voter age population (VAP). See generally Michael McDonald, U.S. ELECTIONS PROJECT, <http://elections.gmu.edu/index.html> (using comparisons of the voter eligible population to non-eligible populations and voter turnout). The VAP includes many people of voting age who are ineligible to vote, such as noncitizens and felons still serving their sentences. *Id.* Compare Michael McDonald, 2000 General Election Turnout Rates, U.S. ELECTIONS PROJECT, [http://elections.gmu.edu/Turnout\\_2000G.html](http://elections.gmu.edu/Turnout_2000G.html) (last updated Dec. 28, 2011), with *Total Statewide Enrollment*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2000), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov00.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov00.pdf) [hereinafter *2000 Voter Enrollment*], and Michael McDonald, 2004 General

percent of the VEP was registered to vote for the 2008 presidential election.<sup>71</sup> In the following 2010 gubernatorial election, ninety percent of the VEP was registered.<sup>72</sup> The 2012 presidential election again saw ninety-two percent VEP registration.<sup>73</sup>

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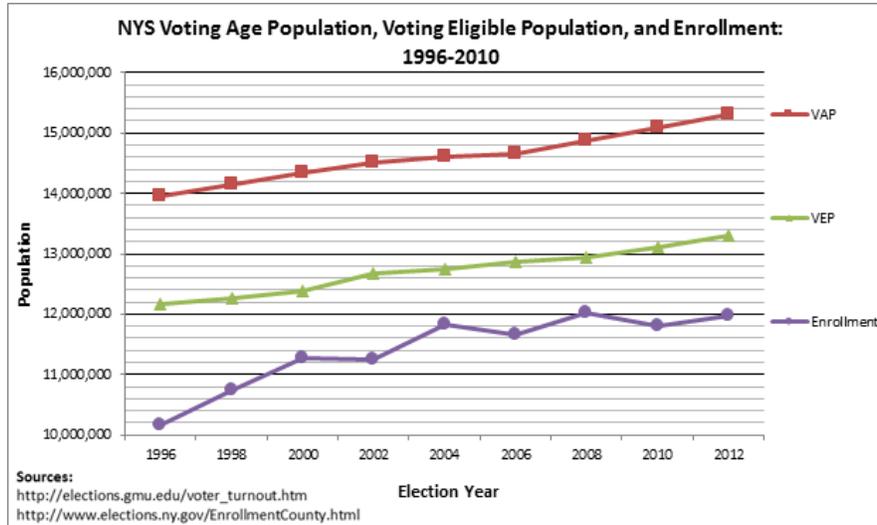
*Election Turnout Rates*, U.S. ELECTIONS PROJECT, [http://elections.gmu.edu/Turnout\\_2004G.html](http://elections.gmu.edu/Turnout_2004G.html) (last updated Dec. 28, 2011), *with County Enrollment Totals*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2004), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov04.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov04.pdf) [hereinafter *2004 Voter Enrollment*], and Michael McDonald, *2008 General Election Turnout Rates*, U.S. ELECTIONS PROJECT, [http://elections.gmu.edu/Turnout\\_2008G.html](http://elections.gmu.edu/Turnout_2008G.html) (last updated Mar. 31, 2012), *with NYS Voter Enrollment by County, Party Affiliation and Status*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2008), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov08.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov08.pdf) [hereinafter *2008 Voter Enrollment*] (showing the correspondence of voter registration state-wide as compared to the voting eligible population from 2000–2008).

<sup>71</sup> Compare *2008 General Election Turnout Rates*, *supra* note 70, with *2008 Voter Enrollment*, *supra* note 70.

<sup>72</sup> *NYS Voter Enrollment by County, Party Affiliation and Status*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2010), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov10.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov10.pdf) [hereinafter *2010 Voter Enrollment*].

<sup>73</sup> *NYS Voter Enrollment by County, Party Affiliation and Status*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2012), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov12.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov12.pdf) [hereinafter *2012 Voter Enrollment*].

**Figure Two: New York State Age Population, Voting Eligible Population, and Enrollment: 1996–2010**<sup>74</sup>



Even using the more familiar voting age population (VAP) instead of the VEP as our base of potential registrants, over eighty percent in New York were registered to vote in 2008.<sup>75</sup> In 2010 and 2012, seventy-eight percent of New York's VAP were registered.<sup>76</sup> We also considered the possibility that Governor Cuomo's alleged low registration rate might distinguish between active and inactive registered voters, and that he may have used

<sup>74</sup> Michael McDonald, *Turnout 1980–2012*, U.S. ELECTIONS PROJECT, <https://docs.google.com/file/d/0B0bHdAFS4MgqWmdKdEdWTHRzbUE/edit> (last visited Jan. 22, 2014) [hereinafter *Turnout 1980–2012*]; *2012 Voter Enrollment*, *supra* note 73; *2010 Voter Enrollment*, *supra* note 72; *2008 Voter Enrollment*, *supra* note 70; *NYS Voter Enrollment Statistics by County*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2006) [hereinafter *2006 Voter Enrollment*], [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov06.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov06.pdf); *2004 Voter Enrollment*, *supra* note 70; *Total Statewide Enrollment*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2002), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov02.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov02.pdf) [hereinafter *2002 Voter Enrollment*]; *2000 Voter Enrollment*, *supra* note 70; *Enrollment by County and Party*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 1998), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov98.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov98.pdf); *Enrollment by County and Party*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 1996), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov96.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov96.pdf).

<sup>75</sup> *Turnout 1980–2012*, *supra* note 74; *2008 Voter Enrollment*, *supra* note 70.

<sup>76</sup> *2012 Voter Enrollment*, *supra* note 73; *2010 Voter Enrollment*, *supra* note 72. See also *Turnout 1980–2012*, *supra* note 74.

only active registrants in his calculations.<sup>77</sup> Considering *active* registrants only, eighty-three percent of the VEP was registered in 2012.<sup>78</sup> These figures are still at odds with those released by Governor Cuomo's office; both ninety percent and eighty percent are significantly more impressive rates of voter registration than is sixty-four percent.<sup>79</sup>

Our findings presented in Figures One and Two show that, contrary to Governor Cuomo's assertion of low registration rates, at least ninety percent of New York State's constantly growing VEP has been registered to vote for every national or statewide election since 2000 with the sole exception of the 2002 gubernatorial election, which was only slightly under at eighty-nine percent.<sup>80</sup> Moreover, our research shows that while registration rates have been growing proportionally with the VEP, voter turnout has remained relatively consistent, resulting in a declining percentage of registered voters turning out over

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<sup>77</sup> See Press Release, Governor Andrew M. Cuomo, Governor Cuomo Announces Reforms to Expand Access to Voter Registration (Aug. 16, 2012), available at <http://www.governor.ny.gov/press/08162012-voter-registration-reform> [hereinafter Cuomo Press Release]; U.S. ELECTION ASSISTANCE COMM'N, 2010 STATUTORY OVERVIEW 11–12 (May 2011), [http://www.eac.gov/assets/1/Documents/FINAL\\_2010%20Statutory%20Overview%20Report.pdf](http://www.eac.gov/assets/1/Documents/FINAL_2010%20Statutory%20Overview%20Report.pdf). According to the U.S. Election Assistance Commission, New York defines active registered voters as those who are registered to vote, and inactive registered voters as those who are registered but failed to reply to a confirmation notice. *Id.* at 12. Each state has its own criteria for what counts as an active or inactive voter, and some states do not make any statutory distinction between active and inactive voters. *Id.* at 11–12.

<sup>78</sup> *Turnout 1980–2012*, *supra* note 74; *2012 Voter Enrollment*, *supra* note 73.

<sup>79</sup> *Turnout 1980–2012*, *supra* note 74; *2010 Voter Enrollment*, *supra* note 72; Cuomo Press Release, *supra* note 77. In the process of trying to discern which data Governor Cuomo's administration might have used which resulted in such a low registration rate in New York State, we noticed that the registration statistics from the 2010 census are significantly lower than those reported by the New York State Board of Elections. Where the census reports that fewer than 8.5 million New Yorkers were registered to vote in 2010, the NYSBOE reports over 14 million registrants, resulting in a disparity of almost 4 million people. *Voting and Registration in the Election of November 2010*, U.S. CENSUS BUREAU, Table 4a (Nov. 2010), <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>; *2010 Voter Enrollment*, *supra* note 72. This may be because census workers only asked residents if they were registered to vote if they reported not voting in the last election, possibly resulting in many registered inactive voters unknowingly misreporting themselves as unregistered. If Governor Cuomo based his analysis of registration rates on census data instead of NYSBOE data, then this could account in part for the difference in our findings.

<sup>80</sup> See *supra* Figure One; *supra* Figure Two.

time.<sup>81</sup> Based on this evidence, we conclude that New York State does not have a voter registration problem, but a voter turnout problem.

### III. PERSISTENT PARTICIPATION

Among all important areas of public policy, election administration is probably the most episodic and prone to the problem of short attention spans . . . What would the world be like if we only gave intense attention to education, corrections, transportation and public health problems for a one-week period every four years?<sup>82</sup>

– Professor Charles Stewart III, MIT

American national and state officials are elected to fixed, two, four, or six-year terms, generally in even numbered years.<sup>83</sup> The availability of systematic voter participation evidence across major jurisdictions in these years focuses researchers' attention on these elections and on this part of the election cycle. By looking at one state only, and gathering data at the county level, we are able to include off-year elections in our analysis of voter engagement. Comparing off-year turnout to turnout in major election years allows us to look at what we call *voter persistence*, or the proportion of those who vote in major elections who also vote in off-year elections.<sup>84</sup> In order to analyze voter persistence, we examined voter turnout rates in each county over the most recent four-year election cycle, 2008–2011, using newly aggregated data for the 2009 and 2011 off-year elections.

Researchers and political activists have long known that odd-numbered, off-year elections attract fewer voters than do

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<sup>81</sup> See 2010 ELECTIONS GUIDE, *supra* note 59, at 111; *Turnout 1980–2012*, *supra* note 74 (showing that presidential voting turnout trends in New York, between 2004 and 2012, slightly decreased by 322,728 while VEP percentages remained relatively the same); Benjamin & Devin Research, *supra* note 59.

<sup>82</sup> Adam Liptak, *Lost Votes, Problem Ballots, Long Waits? Flaws are Widespread, Study Finds*, N.Y. TIMES, Feb. 5, 2013, [http://www.nytimes.com/2013/02/06/us/politics/us-voting-flaws-are-widespread-study-shows.html?\\_r=0](http://www.nytimes.com/2013/02/06/us/politics/us-voting-flaws-are-widespread-study-shows.html?_r=0).

<sup>83</sup> U.S. CONST. art I, § 2, cl. 1; U.S. CONST. art I, § 3, cl. 1; U.S. CONST. art. II, § 1, cl. 1; N.Y. CONST. art. III, § 2; N.Y. CONST. art. IV, § 1 (listing the Constitutional term lengths of various federal and New York State public officials).

<sup>84</sup> Kevin Denny & Orla Doyle, *Does Voting History Matter? Analysing Persistence in Turnout*, 53 AM. J. POL. SCI. 17, 17 (2009).

elections in even-numbered, major election years.<sup>85</sup> It is precisely with this in mind that the New York State Constitution requires city elections to be in odd-numbered years;<sup>86</sup> this practice isolates the effects of turnout in New York City mayoral elections on statewide contests. We know from observation that the year in which the New York City mayoral election is held always produces higher statewide voter turnout than the odd-numbered year with no such election.<sup>87</sup> Turnout in the State in those years is also affected by mayoral races in three of New York's five next largest cities in those years—Syracuse, Albany, and Rochester—and county executive contests in three of the five of the most populous counties outside New York City—Nassau, Westchester, and Rockland.<sup>88</sup>

The New York State Board of Elections (NYSBOE) collects and publishes voter registration information at least twice a year.<sup>89</sup> With regard to elections, the NYSBOE provides results from statewide candidate contests, statewide referenda, and races for state legislative and judicial offices.<sup>90</sup> It does not collect results from local elections; this is the province of the county boards of

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<sup>85</sup> See ZOLTAN L. HAJNAL ET AL., *MUNICIPAL ELECTIONS IN CALIFORNIA* viii (2002). The authors state that voter turnout in elections depends on the timing of elections, and include a chart showing greater voter participation in elections that occur in even-numbered, major election years, than odd-years. *Id.*

<sup>86</sup> N.Y. CONST. art. XIII, § 8.

<sup>87</sup> Compare *State Supreme Court Election Returns*, N.Y. STATE BD. OF ELECTIONS (Nov. 8, 2011), <http://www.elections.ny.gov/2011ElectionResults.html>, with *State Supreme Court Election Returns*, N.Y. STATE BD. OF ELECTIONS (Nov. 5, 2013), <http://www.elections.ny.gov/2013ElectionResults.html> (representing a one million voter differential in favor of the 2013, off-year general election when New York City held a mayoral race, compared to the 2011 off-year general election, where New York City did not hold a mayoral race).

<sup>88</sup> See Michael Barbaro & David W. Chen, *De Blasio is Elected New York City Mayor in Landslide*, N.Y. TIMES (Nov. 5, 2013), [http://www.nytimes.com/2013/11/06/nyregion/de-blasio-is-elected-new-york-city-mayor.html?\\_r=0](http://www.nytimes.com/2013/11/06/nyregion/de-blasio-is-elected-new-york-city-mayor.html?_r=0); Matthew Hamilton & Alysia Santo, *Her Honor, Mayor of Albany*, TIMES UNION (Nov. 6, 2013), <http://www.timesunion.com/local/article/Her-Honor-mayor-of-Albany-4959081.php>; *Warren Wins Rochester Mayor's Office*, DEMOCRAT & CHRON. (Nov. 6, 2013, 12:32 AM), <http://www.democratandchronicle.com/story/news/local/2013/11/05/rochester-mayors-election-sure-to-be-historic-/3447069/>; *Other Races: New York City Borough President, District Attorney, State Assembly, County Executive Mayors*, N.Y. TIMES (Nov. 6, 2013), <http://www.nytimes.com/projects/elections/2013/general/other-races/results.html>.

<sup>89</sup> See *Enrollment by County*, N.Y. STATE BD. OF ELECTIONS, <http://www.elections.ny.gov/EnrollmentCounty.html> (last visited Feb. 1, 2014).

<sup>90</sup> See *2013 Election Results*, N.Y. STATE BD. OF ELECTIONS, <http://www.elections.ny.gov/2013ElectionResults.html> (last visited Jan. 20, 2014).

elections.<sup>91</sup> In order to compare statewide turnout in major and off-year elections, we therefore had to gather and then aggregate off-year data at the county level, using judicial elections at the state level, or countywide races reported at the county level.

As expected, Figure Three reveals that the 2008 presidential election saw the highest turnout rate in the four-year election cycle considered here, with just over sixty-three percent of the registered voters turning out, followed by the 2010 gubernatorial election, with turnout at just above forty percent.<sup>92</sup> The results of our newly aggregated off-year data also aligned with our expectations. The 2009 off-year election, in which there was a New York City mayoral race and many county executive races throughout the State, had a twenty-nine percent statewide turnout rate.<sup>93</sup> The 2011 election saw the lowest statewide turnout rate, weighing in at slightly above twenty percent.<sup>94</sup>

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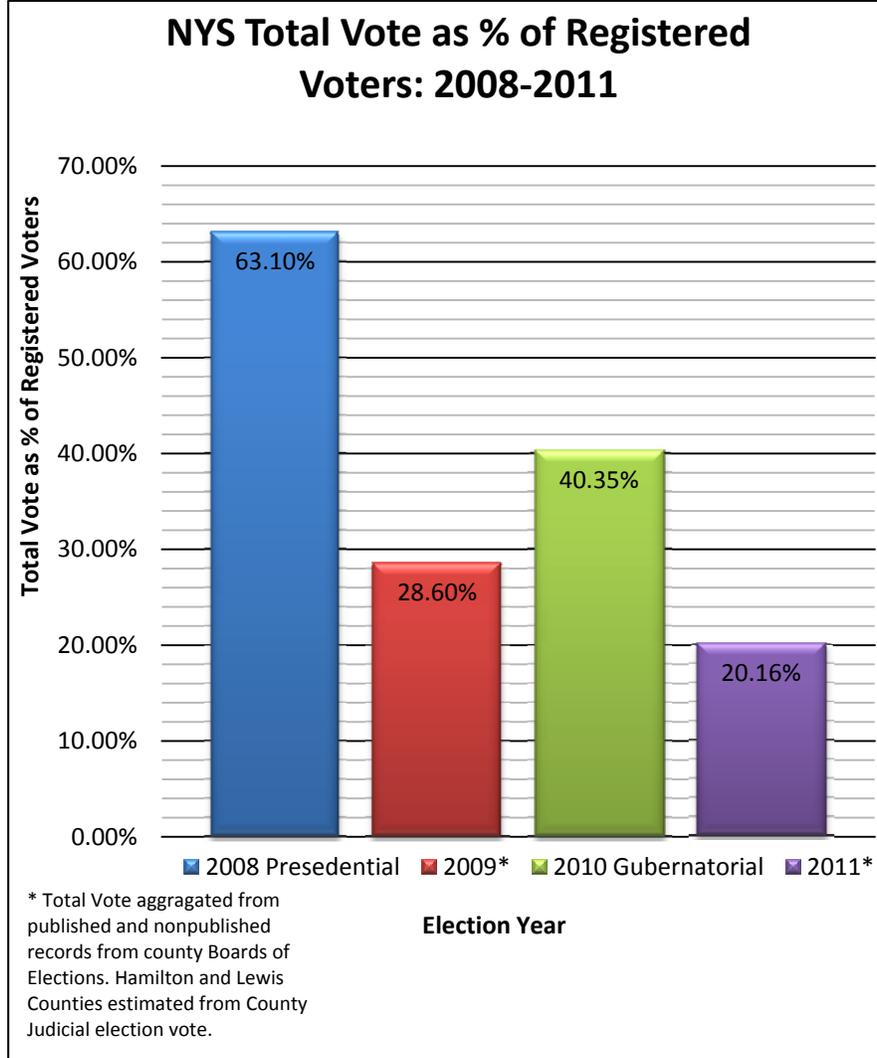
<sup>91</sup> See *2013 Election Results*, NASSAU CNTY. BD. OF ELECTIONS (Nov. 5, 2013), <http://www.nassaucountyny.gov/agencies/boe/results.html>; *2013 General Election Results*, ROCKLAND CNTY. BD. OF ELECTIONS (Dec. 11, 2013), <http://rocklandgov.com/departments/board-of-elections/election-results/>.

<sup>92</sup> See *infra* Figure Three.

<sup>93</sup> See *id.*

<sup>94</sup> See *id.*

**Figure Three: NYS Total Vote as % of Registered Voters: 2008–2011<sup>95</sup>**



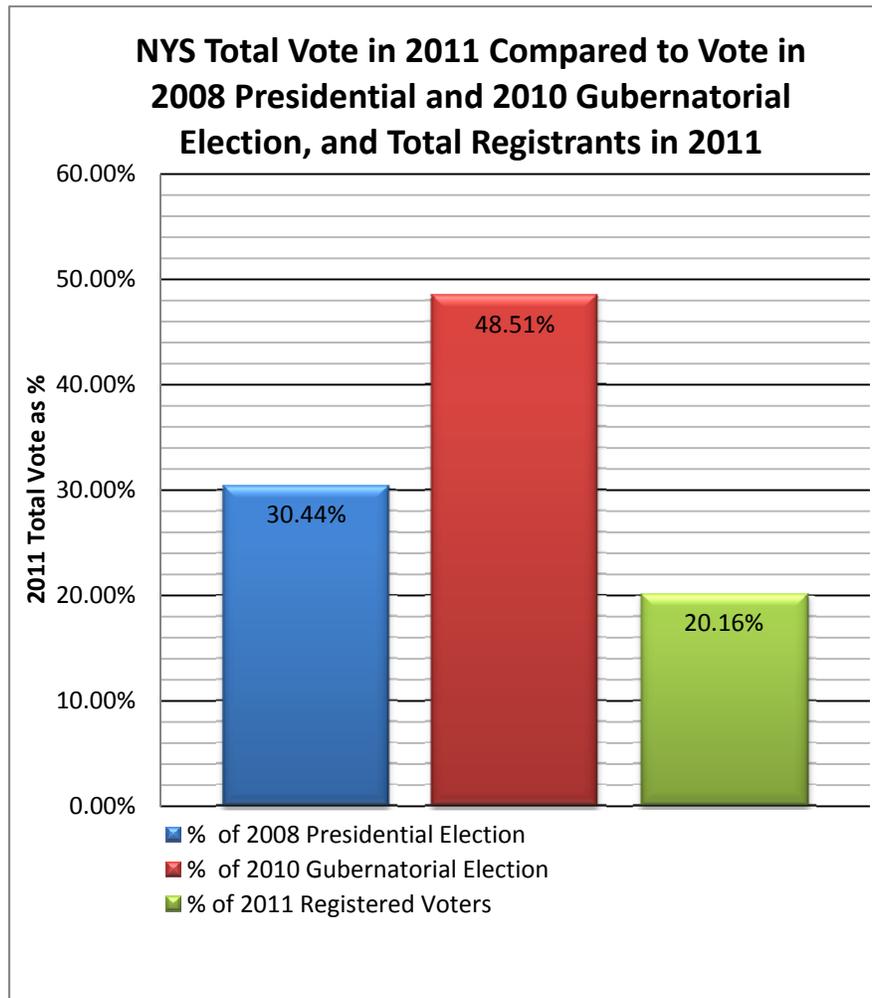
To gain a better understanding of how major and off-year election turnout rates relate to one another, we then calculated off-year turnout rates as percentages of major election year turnout rates to determine statewide voter persistence. Because 2011 exhibits the lowest statewide turnout rates,<sup>96</sup> we selected

<sup>95</sup> Benjamin & Devin Research, *supra* note 59.

<sup>96</sup> See *supra* Figure Three.

participation in this year as most indicative of persistent voting behavior. As Figure Four demonstrates, only thirty percent of those who turned out to vote in the most participatory election under consideration—the 2008 presidential race—also turned out to vote in the 2011 off-year election.<sup>97</sup>

**Figure Four: NYS Total Vote in 2011 Compared to Vote in 2008 Presidential and 2010 Gubernatorial Election, and Total Registrants in 2011**<sup>98</sup>



<sup>97</sup> See *infra* Figure Four.

<sup>98</sup> Benjamin & Devin Research, *supra* note 59.

## 2014] VOTER PARTICIPATION AND PERSISTENCE 565

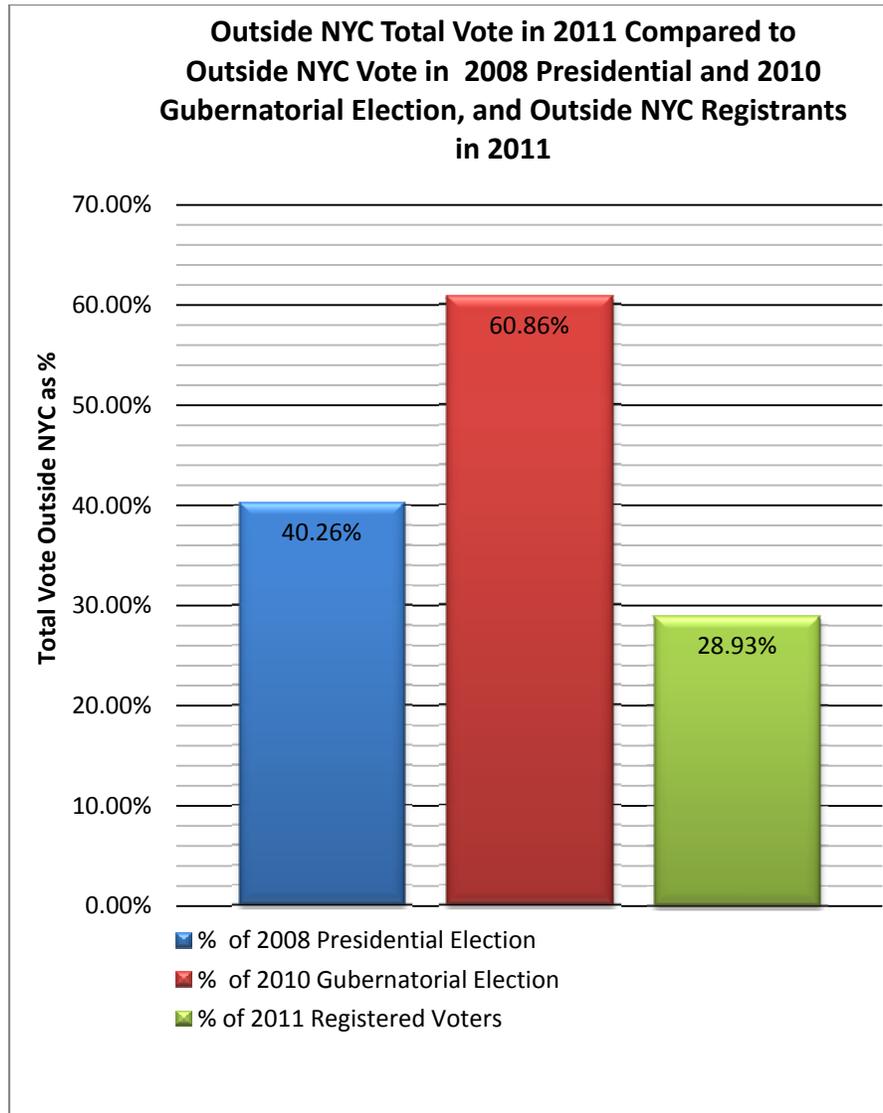
The absence of comparative data for other states did not allow us to determine the relative persistence of New York voters; but, with the data we gathered we could look inside New York for comparisons. First, we compared voter persistence in New York State outside New York City to that within New York City. We found a significant disparity. Over forty percent of voters outside of NYC who voted in 2008 also voted in 2011, about thirty percentage points more than the persistence rate inside that city.<sup>99</sup> Specifically, within NYC only ten percent of those who voted in the 2008 election also voted in the 2011 election.<sup>100</sup>

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<sup>99</sup> See *infra* Figure Five; *infra* Figure Six.

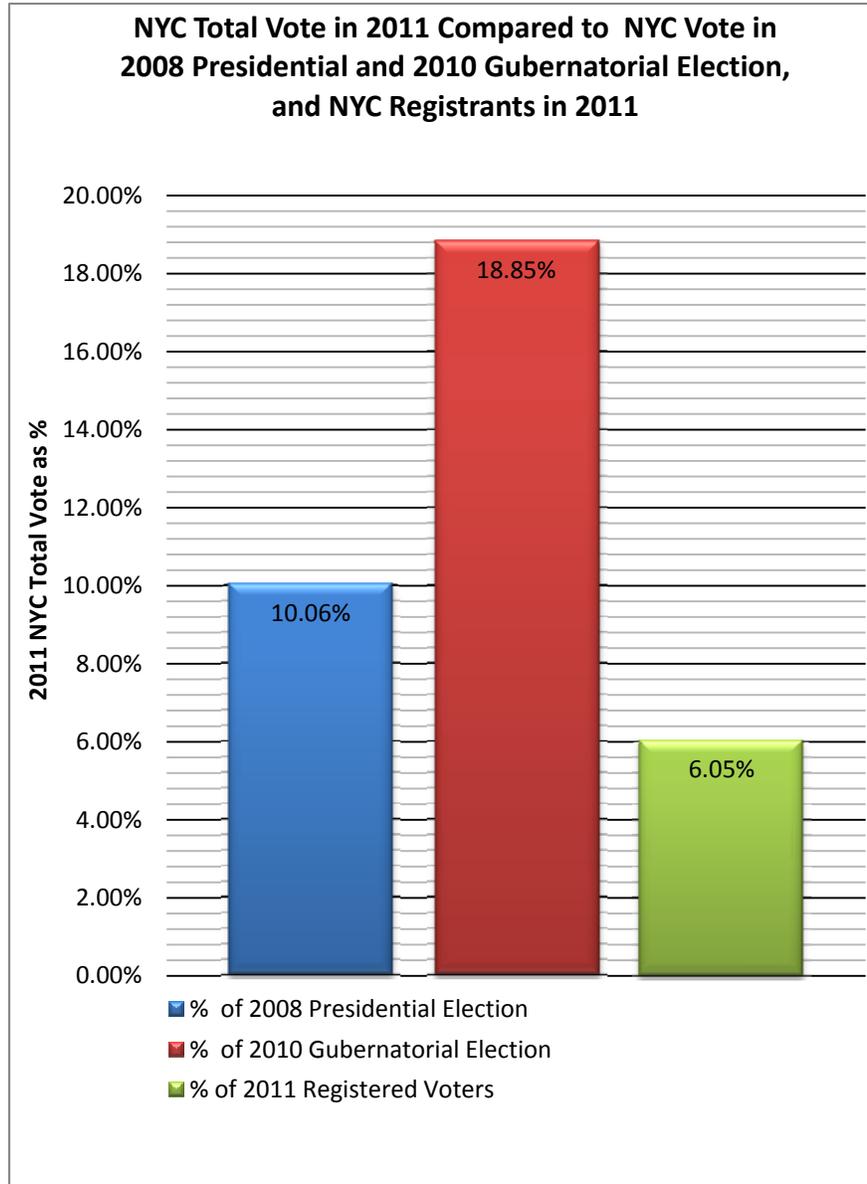
<sup>100</sup> *Id.*

**Figure Five: Outside NYC Total Vote in 2011 Compared to Outside NYC Vote in 2008 Presidential and 2010 Gubernatorial Election, and Outside NYC Registrants in 2011<sup>101</sup>**



<sup>101</sup> Benjamin & Devin Research, *supra* note 59; *NYS Voter Enrollment By County, Party Affiliation and Status*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2011) [hereinafter *2011 Voter Enrollment*].

**Figure Six: NYC Total Vote in 2011 Compared to NYC Vote in 2008 Presidential and 2010 Gubernatorial Election, and NYC Registrants in 2011<sup>102</sup>**



<sup>102</sup> Benjamin & Devin Research, *supra* note 59; *2011 Voter Enrollment*, *supra* note 101.

## IV. REGIONAL VOTER PERSISTENCE AT THE LOCAL LEVEL

In accord with our earlier stated view that community matters in citizen engagement, the enormous gap between voter persistence within and outside of New York City revealed in these statewide numbers suggest a next step, the examination of a potential linkage between size of place and regularity across years in voter turnout. Traditionally, variables such as socioeconomic status (SES), race, gender, age, and education levels have been used to analyze and predict voting behaviors, with higher SES long understood as having a strong, positive relationship with voter participation.<sup>103</sup> SES notwithstanding, we hypothesized a positive correlation between being a rural voter—that is, living in a place with lower population—and higher rates of voter persistence.

We calculated rates of voter persistence in each county based on the most and least participant elections, 2008 and 2011, respectively. Hamilton County, the least populous county in New York State (4,836 residents), has the highest rate of voter persistence.<sup>104</sup> Slightly over three quarters of those who voted in Hamilton County in 2008 also voted in the 2011 off-year election.<sup>105</sup> The five counties with the most persistent voters—Hamilton, Lewis (27,087), Schuyler (18,344), Tioga (51,125), and Columbia (63,096)—are not all among the least populous, but none are among New York's biggest of the fifty-seven counties outside New York City.<sup>106</sup> Of these five counties, only one includes a city: the relatively small City of Hudson in Columbia County, with a population of only 6,713.<sup>107</sup>

For towns in the three most persistent counties that provided election data online—Schuyler, Tioga, and Columbia Counties—seventy-five percent of the top of the local ticket races in 2011 were for the chief town elected officer, the town supervisor.<sup>108</sup> Of

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<sup>103</sup> *But see* Fullerton & Borch, *supra* note 58, at 756 (suggesting that voter turnout has been dropping despite rising SES in the United States).

<sup>104</sup> Benjamin & Devin Research, *supra* note 59. *See infra* app.

<sup>105</sup> Benjamin & Devin Research, *supra* note 59. *See infra* app.

<sup>106</sup> Benjamin & Devin Research, *supra* note 59. *See infra* app.

<sup>107</sup> *Hudson (city)*, NY, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3635969.html>.

<sup>108</sup> *2011 Election Results*, SCHUYLER CNTY. BD. OF ELECTIONS, <http://www.schuylercounty.us/Index.aspx?NID=128>; *Official General Election Results*, TIOPA BD. OF ELECTIONS (Nov. 8, 2011), <http://www.tiogacountyny.com/departments/board-of-elections.html>; *Town/City Election Results 2011*, COLUMBIA CNTY. BD. OF ELECTIONS, <http://www.columbiacountyny.com/>

these town supervisor races, over half were competitive.<sup>109</sup> These local elections offer voters meaningful choices on a scale in which each vote cast may make a difference in determining who gets elected and which referenda pass.

Conversely, the five counties with the lowest rates of voter persistence are all within New York City, with Bronx County at only six percent.<sup>110</sup> The most persistent of these five counties is the city's smallest, Richmond County (Staten Island).<sup>111</sup> Voter persistence there was just under seventeen percent in 2011.<sup>112</sup> Outside of NYC, the five least persistent counties are Chemung (88,830), Livingston (65,392), Genesee (60,079), Orange (372,813), and Ontario (107,932) Counties.<sup>113</sup> Chemung, Genesee, Orange, and Ontario Counties all include at least one moderately sized city with a population above ten thousand residents.<sup>114</sup> Livingston County, while lacking an urban center, is home to a large and mobile college population due to the presence of the State University of New York in the Town of Geneseo.<sup>115</sup>

That being said, six percent of Bronx County's 664,369 registrants in 2011 (39,862) is still more than ten times the voters in actual numbers than seventy-five percent of Hamilton County's 4,856 (3,642).<sup>116</sup> Because of this, even places with the lowest rates of persistent voter participation have by far the greatest influence over outcomes in New York's statewide and

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elections/town2011.html.

<sup>109</sup> Compare 2011 Election Results, *supra* note 108, with Official General Election Results, *supra* note 108, and Town/City Election Results 2011, *supra* note 108 (out of twenty-one races for town supervisor in the counties of Shuyler, Tioga and Columbia, only thirteen were competitive).

<sup>110</sup> Benjamin & Devin Research, *supra* note 59.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> See *infra* app.

<sup>114</sup> State & County Quick Facts, Middletown (city), New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3647042.html> (last visited Feb. 12, 2014) (located in Orange County with a population of 27,886); State & County Quick Facts, Batavia (city), New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3604715.html> (last visited Feb. 12, 2014) (located in Genesee County with a population of 15,399); State & County Quick Facts, Elmira (city), New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3624229.html> (last visited Feb. 12, 2014) (located in Chemung County with a population of 29,987); State & County Quick Facts, Geneva (city), New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3628640.html> (last visited Feb. 12, 2014) (located in Ontario County with a population of 13,210).

<sup>115</sup> Directions, SUNY GENESEO, <http://www.geneseo.edu/about/directions>.

<sup>116</sup> 2011 Voter Enrollment, *supra* note 101.

national elections. People in small places persist in voting<sup>117</sup> even though their greater turnout cannot come close to making them more important for statewide contests.

We first attempted to demonstrate the statistical relationship between size and voter persistence by running a series of linear regressions, discretely measuring the effect of population, SES, education levels, and age on voter persistence. These simple bivariate analyses did not provide us with statistically significant results.

We then conducted a multivariate regression analysis to test the relationship between size of place and voter persistence. We include measures of population density, economic inequality (using the GINI index), age, and education in our multivariate model in order to isolate the effects of each variable considered. As Figure Seven illustrates, population density was the only independent variable in the equation that showed a statistically significant relationship to voter persistence ( $p = 0.0007$ ).<sup>118</sup> This evidence further indicates the importance of size of jurisdiction for persistent voter participation.

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<sup>117</sup> Benjamin & Devin Research, *supra* note 59. *See infra* app.

<sup>118</sup> *See infra* Figure Seven.

2014]

## VOTER PARTICIPATION AND PERSISTENCE

571

**Figure Seven: Population Density as a Significant Determinant of Voter Persistence in NYS<sup>119</sup>**

	<i>Coefficients</i>	<i>Standard Error</i>	<i>t Stat</i>	<i>P-value</i>	<i>Lower 95%</i>	<i>Upper 95%</i>	<i>Lower 95.0%</i>	<i>Upper 95.0%</i>
<b>Intercept</b>	-0.3162	0.2817	-1.1223	0.2665	-0.8803	0.2480	-0.8803	0.2480
<b>Pop. Density</b>	0.0000	0.0000	-3.5791	0.0007	0.0000	0.0000	0.0000	0.0000
<b>GINI Index</b>	0.0028	0.0050	0.5614	0.5767	-0.0072	0.0128	-0.0072	0.0128
<b>%H.S. Grad</b>	0.0747	0.2587	0.2887	0.7739	-0.4433	0.5927	-0.4433	0.5927
<b>% Age&gt;50</b>	1.6578	0.3246	5.1070	0.0000	1.0077	2.3078	1.0077	2.3078

<sup>119</sup> Benjamin & Devin Research, *supra* note 59.

V. HARD CORE VOTERS: LEVELS AND RELATIVE RATES OF PARTICIPATION ON A SELECTED REFERENDUM QUESTION<sup>120</sup>

The New York State Constitution places limits upon the debt-incurring authority of the State's general purpose local governments, based upon "percentages of the average full valuation of [their] taxable real estate."<sup>121</sup> Governor Nelson Rockefeller first proposed allowing municipalities to borrow for ten years for sewer projects outside their debt limits in 1963.<sup>122</sup> He said that this would help them "meet their sewerage treatment requirements without impairing their ability to finance other essential capital expenditures."<sup>123</sup> New Yorkers approved.<sup>124</sup> The need persisted. Despite increasing concerns about the level of state and local debt, voters renewed this exception to the limit for an additional decade five times since, in 1973, 1983, 1993, 2003, and 2013.<sup>125</sup>

Thus we have a rare natural experiment—the same question on the ballot ('held constant') asked every decade for more than half a century.<sup>126</sup> What may we learn about trends in the baseline size of the electorate and levels of voting participation and persistence from looking at this "experiment?"

First, the core point—referendum participants in New York State are truly hard-core voters. New York has no initiative and referendum process;<sup>127</sup> its voters occasionally consider ballot questions only for often-arcane constitutional changes or to authorize state borrowing.<sup>128</sup> Moreover, these questions are not

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<sup>120</sup> Will Raphaelson, the CRREO Cetrino Fellow for the Fall of 2013, gathered and analyzed the data and prepared the charts for this section of this paper.

<sup>121</sup> N.Y. CONST. art. VIII § 4.

<sup>122</sup> Gerald Benjamin, *What Do The Eight Proposed State Constitutional Amendments Tell Us?*, CITY & ST. (July 15, 2013), <http://www.cityandstateny.com/proposed-state-constitutional-amendments-us> [hereinafter *Proposed Amendments*]; Gerald Benjamin, *The Legislature Asks Permission—Six Times: Shall We Give It?*, CITY & ST. (Nov. 3, 2013), <http://www.cityandstateny.com/the-legislature-asks-permission-six-times-shall-we-give-it/> [hereinafter *Legislature Asks Permission*].

<sup>123</sup> *Legislature Asks Permission*, *supra* note 122.

<sup>124</sup> *Id.*

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

<sup>126</sup> *Id.*

<sup>127</sup> *See Proposed Amendments*, *supra* note 122 ("[A]mending the New York Constitution requires passage by two separately elected legislatures and approval by voters in a statement referendum; the governor has no formal role in this process.").

<sup>128</sup> *See id.*; *Legislature Asks Permission*, *supra* note 122.

prominently placed on the (quite long) ballot.<sup>129</sup> And, as noted, there are no highly visible national or statewide contests for office to attract the less motivated to vote in the odd-numbered years in which these referendum votes were held.<sup>130</sup>

This said, it is evident from the data that over the past half century, even as voting registration increased, the hard-core, off-year electorate for ballot questions statewide contracted persistently and enormously, both in numbers and as a percentage of the electorate.<sup>131</sup> In 1963, of the 5 million New Yorkers (sixty-nine percent) who turned out to vote,<sup>132</sup> about half were not counted on the ballot question.<sup>133</sup> In 2003, despite over a fifty percent increase in registered voters,<sup>134</sup> twenty-eight percent turned out;<sup>135</sup> forty-eight percent missed or ignored the question.<sup>136</sup>

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<sup>129</sup> See *Legislature Asks Permission*, *supra* note 122.

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

<sup>131</sup> See *infra* Figure Eight; *County Enrollment Totals*, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2003), <http://www.elections.ny.gov/NYSBOE/enrollment/county/county-nov03.pdf> [hereinafter *2003 Voter Enrollment*].

<sup>132</sup> N.Y. DEP'T OF STATE, MANUAL FOR THE USE OF THE LEGISLATURE OF THE STATE OF NEW YORK FOR THE YEAR 1163, 1199 (1964–65) [hereinafter *MANUAL*].

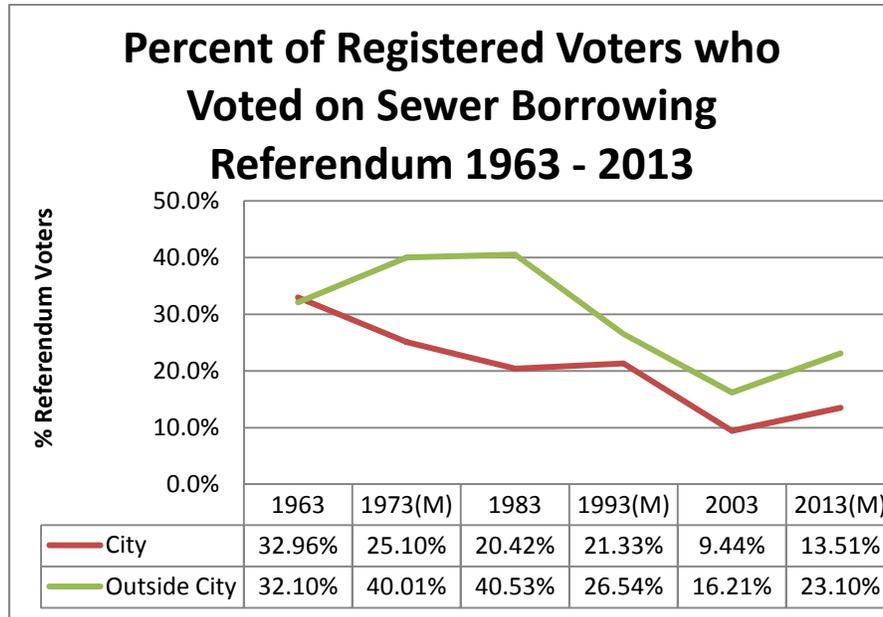
<sup>133</sup> DEP'T OF STATE, VOTES CAST FOR AND AGAINST PROPOSED CONSTITUTIONAL CONVENTIONS AND ALSO PROPOSED CONSTITUTIONAL AMENDMENTS, [http://www.nycourts.gov/history/legal-history-new-york/documents/Publications\\_Votes-Cast-Conventions-Amendments.pdf](http://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf) (last visited Feb. 14, 2014) [hereinafter *VOTES CAST*].

<sup>134</sup> Compare *2003 Voter Enrollment*, *supra* note 131, with *MANUAL*, *supra* note 132 (showing 11,008,086 people registered in 2003 and 7,251,108 in 1963).

<sup>135</sup> Compare *2003 Voter Enrollment*, *supra* note 131, with *Exclusion of Indebtedness Contracted for Sewage Facilities, General Election Proposal Number One*, N.Y. STATE BD. OF ELECTIONS (Nov. 4, 2003), [http://www.elections.ny.gov/NYSBOE/elections/2003/2003\\_prop1.pdf](http://www.elections.ny.gov/NYSBOE/elections/2003/2003_prop1.pdf) [hereinafter *General Election Proposal*] (showing 11,008,086 people were registered to vote and only 3,048,313 actually voted).

<sup>136</sup> *General Elections Proposal*, *supra* note 135 (showing 3,048,313 people voted in 2003 but 1,450,746 did not vote on the proposition).

**Figure Eight: Percent of Registered Voters Who Voted on Sewer Borrowing Referendum 1963–2013<sup>137</sup>**



These were not years in which a New York City Mayoral election was held. In 1993, which was a mayoral election year, forty-eight percent statewide actually voted “Yes” or “No.”<sup>138</sup> In 2013, 3,278,423 New Yorkers voted; almost three-quarters (seventy-three percent) were recorded on this ballot question.<sup>139</sup> The general point—over decades fewer New Yorkers are voting, but those that do vote are more likely to persist through the entire ballot.

Even competitive mayoral elections that elevate city turnout do not necessarily produce voters on propositions within the city. In 1993 (Dinkins vs. Giuliani) 1,761,982 city voters came out; only twenty-one percent of these voted on the proposition.<sup>140</sup> There

<sup>137</sup> *Id.*; VOTES CAST, *supra* note 133; NYS Voter Enrollment by County, Party Affiliation and Status, N.Y. STATE BD. OF ELECTIONS (Nov. 1, 2013), [http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_nov13.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov13.pdf) [hereinafter *2013 Voter Enrollment*]; Proposal Election Returns, N.Y. STATE BD. OF ELECTIONS (Nov. 5, 2013), <http://www.elections.ny.gov>.

<sup>138</sup> See *supra* Figure Eight.

<sup>139</sup> Proposal Election Returns, *supra* note 137.

<sup>140</sup> Todd S. Purdum, *The 1993 Elections: Mayor; Giuliani Ousts Dinkins by a Thin Margin; Whitman is an Upset Winner Over Florio*, N.Y. TIMES (Nov. 3,

were almost double the number of referendum votes cast in New York City in the most recent mayoral election (2013: 655,987) than most recent non-mayoral election (2003: 385,719) in this data.<sup>141</sup> But since 1963, those outside the City who voted on the referendum questions under study far outnumbered those who voted on them within the City.<sup>142</sup> In 2003, (the most recent non-mayoral year in this data) the ratio was more than 3 to 1;<sup>143</sup> in 2013, (the most recent mayoral year in this data) it was slightly less—2.67 to 1.<sup>144</sup>

Both in mayoral and non-mayoral years, there is a strong negative correlation between the number of registered voters in a county and referendum turnout. In 2003, a non-mayoral year, it was -.42;<sup>145</sup> in 2013, it was -.59.<sup>146</sup> Clearly, for hard-core voters, as for all New York voters, voting persistence is linked to the size of the place.

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1993), <http://www.nytimes.com/1993/11/03/nyregion/1993-elections-mayor-giuliani-ousts-dinkins-thin-margin-whitman-upset-winner.html>. See *supra* Figure Eight.

<sup>141</sup> *2013 Voter Enrollment*, *supra* note 137; *General Election Proposal*, *supra* note 135.

<sup>142</sup> See *supra* Figure Eight.

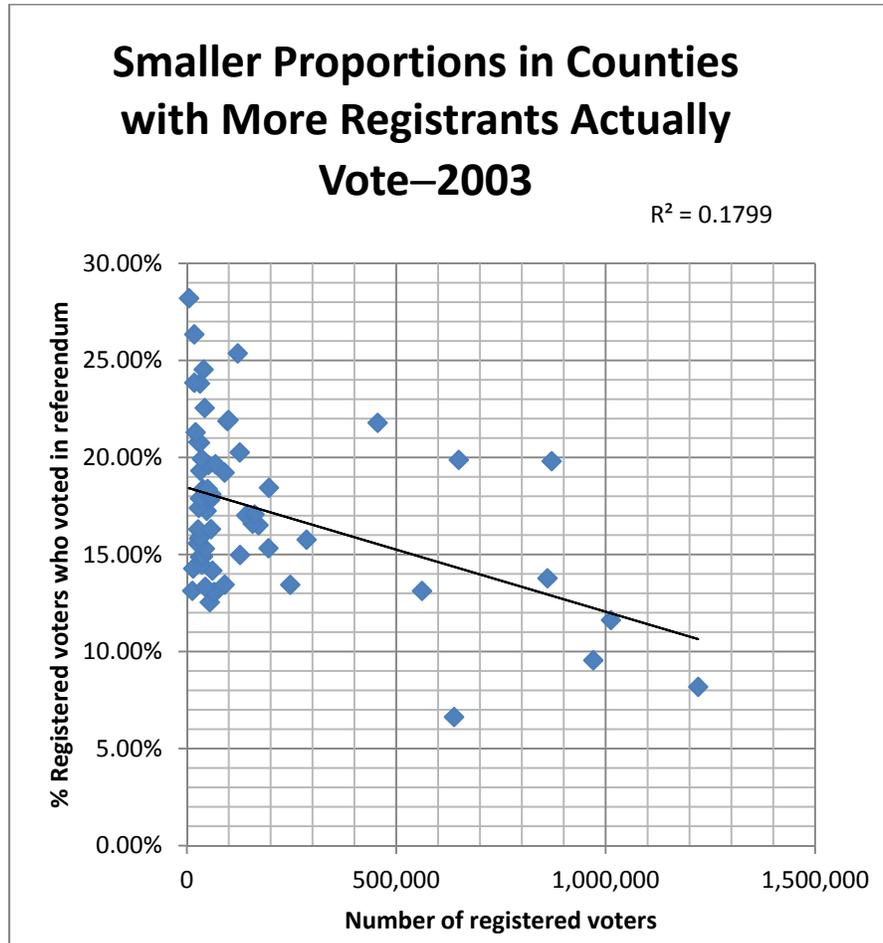
<sup>143</sup> *General Election Proposal*, *supra* note 135 (showing that 1,211,848 voted outside the city and 385,719 voted inside).

<sup>144</sup> *Proposal Election Returns*, *supra* note 137 (showing that 1,749,609 voted outside the city and 655,987 voted inside).

<sup>145</sup> See *infra* Figure Nine.

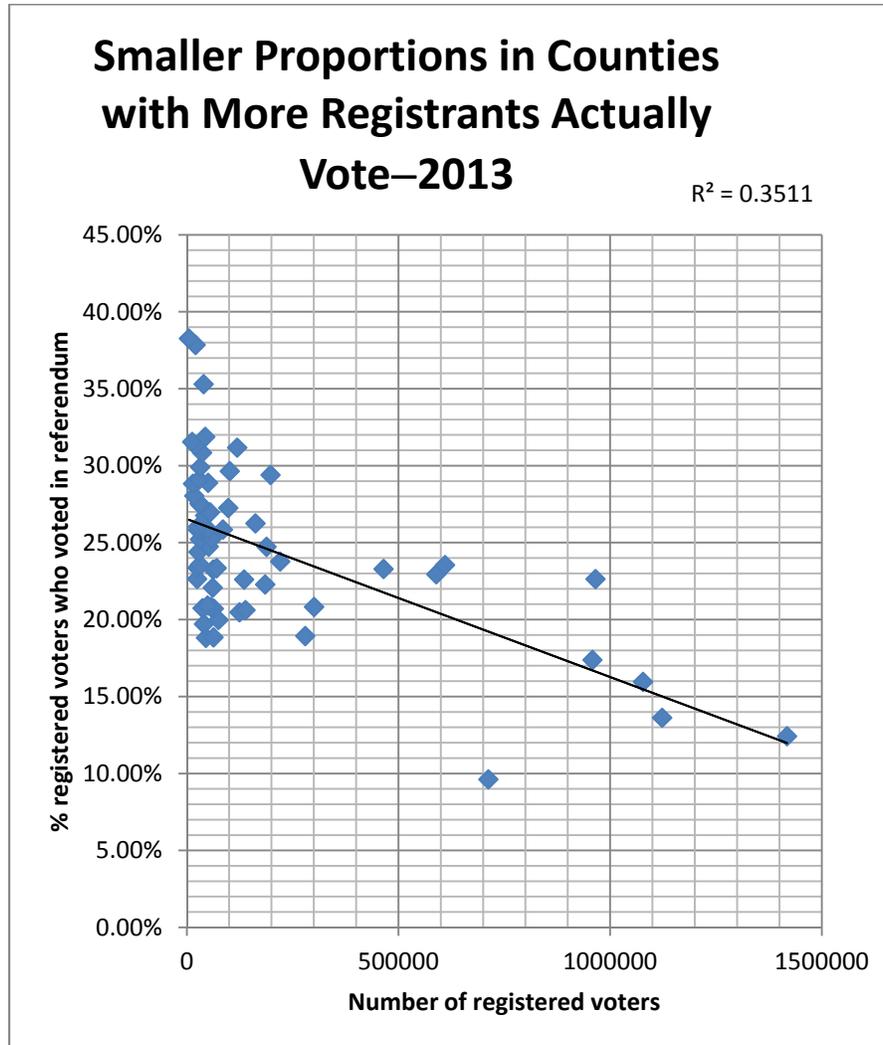
<sup>146</sup> See *infra* Figure Ten.

**Figure Nine: Smaller Proportions in Counties with More Registrants Actually Vote—2003<sup>147</sup>**



<sup>147</sup> Compare 2003 Voter Enrollment, *supra* note 134, with 2003 Election Results, Statewide Ballot Propositions, N.Y. STATE BD. OF ELECTIONS, <http://www.elections.ny.gov/2003ElectionResults.html> (last visited Feb. 14, 2014) (showing voter registration for each county and the turnout for the referendums). See also Benjamin & Devin Research, *supra* note 59.

**Figure Ten: Smaller Proportions in Counties with More Registrants Actually Vote—2013<sup>148</sup>**



<sup>148</sup> Compare 2013 Voter Enrollment, *supra* note 137, with 2013 Election Results, Ballot Proposition Results, N.Y. STATE BD. OF ELECTIONS, <http://www.elections.ny.gov/2013ElectionResults.html> (last visited Feb. 14, 2014) (showing voter registration for each county and the turnout for the referendums). See also Benjamin & Devin Research, *supra* note 59.

## VI. BUILDING LOCAL GOVERNMENT; CREATING PERSISTENT VOTERS

At one polling location in Pennsylvania in 2012, signs were hung around the parking lot which read: “No parking for Democrats – Walk, that will be the most work you do all day.”<sup>149</sup> This was clearly offensive and likely illegal. But the introduction of formal measures to increase the “costs” of voting—characterized by Democrat opponents as “voter suppression tactics” and presented by Republican proponents as efforts to reduce election fraud—emerged as a major issue in connection with the 2012 presidential election.<sup>150</sup> Many States enacted strict photo-identification and proof-of-citizenship laws, shortened early voting periods, and increased barriers to felon re-enfranchisement—all of which were likely to have the greatest effect on poor and minority voters more likely to vote for a Democratic candidate.<sup>151</sup> In the end, these efforts failed. Post-election analysis attributed President Barack Obama’s reelection to successful efforts to increase turnout among voters favorable to him.<sup>152</sup>

In contrast, New York State Assembly Speaker Sheldon Silver, as well as others in and outside of New York, has suggested election reforms that would lower the “costs” of voting by: starting earlier, allowing voters to mail in their ballots, allowing for Election Day registration (EDR), and implementing no-fault absentee ballots.<sup>153</sup> Some states have models in place.<sup>154</sup>

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<sup>149</sup> Brett Brownell, *5 Signs at Pa. Polling Place: “No Parking for Democrats”*, MOTHER JONES (Nov. 6, 2012, 2:51 PM), <http://www.motherjones.com/politics/2012/11/pennsylvania-democrats-no-parking>.

<sup>150</sup> See *The New Face of Jim Crow: Voter Suppression in America*, PEOPLE FOR THE AM. WAY, <http://www.pfaw.org/media-center/publications/new-face-jim-crow-voter-suppression-america> (last visited Jan. 16, 2014) [hereinafter *Voter Suppression*]; Berman, *supra* note 12.

<sup>151</sup> *Voter Suppression*, *supra* note 150.

<sup>152</sup> See Berman, *supra* note 12; Julie Pace, *Obama 2012: President Wins the Way His Campaign Predicted*, HUFFINGTON POST (Nov. 8, 2012, 2:40 AM), [http://www.huffingtonpost.com/2012/11/08/obama-2012-campaign\\_n\\_2092452.html](http://www.huffingtonpost.com/2012/11/08/obama-2012-campaign_n_2092452.html).

<sup>153</sup> See Liz Benjamin, *Silver Weighs In on Disclosure, Election Reform*, NY ST. OF POL. (Dec. 27, 2012, 4:54 PM), <http://www.nystateofpolitics.com/2012/12/silver-weighs-in-on-disclosure-election-reform>; *Assembly Passes Election Reform Measure*, N.Y. ST. ASSEMBLY (Mar. 2, 2011), <http://assembly.state.ny.us/Press/20110302> (amending military absentee ballots for special elections); N.Y. State Assemb. A00689A, 2013–14 Leg., Reg. Sess. (N.Y. 2013); *Same Day Voter Registration*, NAT’L CONF. OF ST.

California, Connecticut, Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, Wyoming, and the District of Columbia currently use EDR.<sup>155</sup> In fact, Iowa and Montana are currently considering legislation to repeal this practice.<sup>156</sup> In 2013 alone, EDR legislation was or is still being considered in seventeen more states.<sup>157</sup> In 1998, Oregon voters adopted voting by mail exclusively by approving Ballot Measure 60, a reform which remains popular among the State's registered voters.<sup>158</sup> In 2011, Washington State followed in Oregon's footsteps by passing Senate Bill 5124, which also mandated an all-mail voting system.<sup>159</sup> Twenty-seven states plus the District of Columbia currently allow for no-excuse absentee voting, and thirty-two plus D.C. allow for early voting.<sup>160</sup> Additionally, Iowa is currently testing online voting, intended to target and mobilize young voters.<sup>161</sup> In New York, early voting was actually adopted for village elections in Port Chester in Westchester County in March of 2013, in order to comply with orders issued by a federal judge

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LEGISLATURES, <http://www.ncsl.org/research/elections-and-campaigns/same-day-registration.aspx> (last visited Feb. 14, 2014).

<sup>154</sup> *Same Day Voter Registration*, *supra* note 153. See generally *Voter Suppression*, *supra* note 150 (discussing voter suppression laws and measures taken to defeat those laws).

<sup>155</sup> *Same Day Voter Registration*, *supra* note 153.

<sup>156</sup> *Id.*

<sup>157</sup> See *id.* EDR registration had been introduced in seventeen different states in 2013: Alabama, Alaska, Arizona, Colorado, Delaware, Georgia, Hawaii, Illinois, Massachusetts, New Jersey, New York, Pennsylvania, Tennessee, Texas, Utah, Vermont, and Washington. *Id.* Iowa's HF 308, which would close registration eleven days prior to Election Day, passed the house in March 2013. *Id.*; Bill History for HF 308, H.F. 308, 2013 Sess. (Iowa 2013), available at <http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&var=HF&key=0343C>. Montana's SB 405 will leave the decision to repeal EDR up to the voters. *Same Day Voter Registration*, *supra* note 153.

<sup>158</sup> Priscilla L. Southwell, *Five Years Later: A Reassessment of Oregon's Vote by Mail Electoral Process*, 37 PS: POL. SCI. & POL. 89, 90 (2004); *Election History*, OR. SECRETARY OF ST. KATE BROWN, <http://sos.oregon.gov/elections/Pages/electionhistory.aspx> (last visited Jan. 15, 2014); *Measure No. 60*, OR. SECRETARY OF ST. KATE BROWN, <http://oregonvotes.org/pages/history/archive/nov31998/guide/measure/m60.htm> (last visited Jan. 30, 2014).

<sup>159</sup> *2011 Senate Bill 5124: Modifying Elections by Mail Provisions*, WASHINGTON VOTES, <http://washingtonvotes.org/Legislation.aspx?ID=123064> (last visited Jan. 30, 2014).

<sup>160</sup> *Absentee and Early Voting*, NAT'L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/legislatures-elections/elections/absentee-and-early-voting.aspx#a> (last updated May 28, 2013).

<sup>161</sup> O. Kay Henderson, *Pushing for Online Voter Registration in Iowa*, RADIO IOWA (Dec. 26, 2013), <http://www.radioiowa.com/2013/12/26/pushing-for-online-voter-registration-in-iowa/>.

designed to give Hispanic voters a better chance of electing a representative of their choice.<sup>162</sup> Port Chester is, however, the exception to the rule in New York.<sup>163</sup> Statewide, New York currently has no early voting period, requires an excuse for absentee voting, and is still in the process of considering EDR.<sup>164</sup>

Legislative deliberations on election law reform might be informed by a summary analysis of the literature on “Convenience Voting,” which found generally that “no-excuse absentee balloting, permanent absentee balloting, and early in-person voting have no effect on turnout; only voting by mail has a statistically significant positive impact of 4.7% on turnout[.]”<sup>165</sup> A meta-analysis of voting reform research (done by three of its same authors) cited in this study reports that “the overall impact is statistically significant but small—generally between 2% and 5%.”<sup>166</sup> Later work by others suggests that election law reforms which concentrate on a single Election Day (e.g., EDR) increase turnout, while those that dissipate this energy over a period of time (e.g., early voting) may have little additive effect (simply making it easier for those already inclined to vote to cast their ballots) or actually decrease participation.<sup>167</sup> Perhaps this is why increasing voter participation was not among the virtues claimed for adopting early voting in New York in a 2013 study by Diana Kasden of the Brennan Center of the NYU Law School.<sup>168</sup>

Other scholars have expressed concern that processes that make voting easier simultaneously diminish its value as a collective, affirming communal act of citizenship.<sup>169</sup> “When citizens go to the polls on the same day, publicly participating in a common experience of civic engagement [Dennis Thompson has

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<sup>162</sup> *Early Voting Information*, PORT CHESTER VOTES, [http://portchestervotes.org/Page\\_3.html](http://portchestervotes.org/Page_3.html) (last visited Jan. 30, 2014); *New York: Port Chester At-Large System Violates Voting Rights Act*, VOTELAW (Jan. 23, 2008, 5:46 AM), <http://www.votelaw.com/blog/archives/005598.html>.

<sup>163</sup> See *Absentee and Early Voting*, *supra* note 160 (stating in a chart that there is no early voting in New York, and that an excuse is required for absentee voting, thereby making Port Chester an exception to the rule in New York).

<sup>164</sup> See *id.*; *Same Day Voter Registration*, *supra* note 153.

<sup>165</sup> Paul Gronke et al., *Convenience Voting*, 11 ANN. REV. POL. SCI. 437, 443 (2008).

<sup>166</sup> *Id.*

<sup>167</sup> BARRY C. BURDEN ET AL., *ELECTION LAWS, MOBILIZATION, AND TURNOUT* 1 (2010).

<sup>168</sup> DIANA KASDAN, *EARLY VOTING* 1 (2013).

<sup>169</sup> See Dennis F. Thompson, *Election Time: Normative Implications of Temporal Properties of the Electoral Process in the United States*, 98 AM. POL. SCI. REV. 51, 57 (2004).

written], they demonstrate their willingness to contribute to the democratic process on equal terms.”<sup>170</sup> Moreover, while changes that ease the act of voting might make the franchise more *accessible*, they do not necessarily make elections more *meaningful*. In order to bolster persistent voting during both major and minor elections, something more than increased accessibility is required. In order to not only increase voter participation, but also voter persistence, we must establish meaningful relationships between voters and their *local* governments and promote communities of engaged citizens who self-govern collectively and democratically.

Following research into alienation-based voter abstention, we argue that urban governmental structures and procedures oftentimes alienate voters, whereas highly localized, rural governmental structures can work to make voters feel more connected and, therefore, more persistently participatory. Political alienation encompasses a complex network of feelings and sentiments regarding one’s relationship to her government.<sup>171</sup> Those who are considered to be politically alienated report feeling as though the government does not care what people like them think, and that the government is run for the benefit of the few and the wealthiest.<sup>172</sup> They also report lacking feelings of external political efficacy (i.e., the belief that when one participates in politics, she will be effective and the government will be responsive).<sup>173</sup> In summary, Priscilla Southwell understands political alienation as the compounding of attitudes of cynicism, powerlessness, and meaninglessness.<sup>174</sup>

Expanding upon suggestions made in chapter four of *Regionalism and Realism: A Study of Governments in The New York Metropolitan Area*,<sup>175</sup> we contend that urban areas in New York State, particularly those within the five boroughs of New York City, essentially lack truly local governments. The most

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<sup>170</sup> *Id.* at 58.

<sup>171</sup> See Brian Montopoli, *Alienated Nation: Americans Complain of Government Disconnect*, CBS NEWS (June 28, 2011, 10:14 AM), <http://www.cbsnews.com/news/alienated-nation-americans-complain-of-government-disconnect/> (stating various reasons why Americans feel alienated from their government).

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

<sup>173</sup> Priscilla L. Southwell, *Alienation and Nonvoting in the United States: A Refined Operationalization*, 38 W. POL. Q. 663, 663, 665 (1985).

<sup>174</sup> *Id.* at 665.

<sup>175</sup> See GERALD BENJAMIN & RICHARD P. NATHAN, *REGIONALISM AND REALISM* 77 (2001).

“local” election in New York City is that for the city council, a body that was enlarged from thirty-five to fifty-one members in 1989.<sup>176</sup> With a total City population of 8,336,697, each district includes approximately 163,465 residents.<sup>177</sup> This means that a single city council district in New York City has more people in it than do all the cities in the state except Buffalo, Rochester, and Yonkers.<sup>178</sup> The State’s most populated places are too populous to allow communal connections to form between elected officials and their constituents. Thus, local elections become less meaningful in these urban areas.

New York City does have community-based structures. Its fifty-nine community boards are appointed by elected borough presidents, half being elected on the recommendation of city council members.<sup>179</sup> They have important roles in key areas of policy implementation; land use is one example.<sup>180</sup> But they are a locus of action for relatively small groups of activists, and are not headed by elected officials, known widely in the community, exercising powers, and deploying resources to significantly affect communal life.<sup>181</sup> Business Improvement Districts (BIDs) are another example. Through them, neighborhoods voluntarily tax themselves to provide enhanced services.<sup>182</sup> However, these districts are paid for and governed only by the property owners in the area; they are not governance venues inclusive of all members of the local community.<sup>183</sup>

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<sup>176</sup> Brad Lander, *A Bold Progressive Vision for the New York City Council (Really!)*, THE NATION (Apr. 18, 2013), <http://www.thenation.com/article/173940/bold-progressive-vision-new-york-city-council-really>.

<sup>177</sup> *State & County QuickFacts: New York (city)*, New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3651000.html> (last visited Feb. 14, 2014).

<sup>178</sup> *State & County QuickFacts: Buffalo (city)*, New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3611000.html> (last visited Feb. 14, 2014); *State & County QuickFacts: Rochester (city)*, New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3663000.html> (last visited Feb. 14, 2014); *State & County QuickFacts: Yonkers (city)*, New York, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3684000.html> (last visited Feb. 14, 2014).

<sup>179</sup> *About Community Boards*, NYC MAYOR’S COMMUNITY AFFAIRS UNIT, <http://www.nyc.gov/html/cau/html/cb/about.shtml> (last visited Jan. 30, 2014).

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> William J. Mallett, *Managing the Post-Industrial City: Business Improvement Districts in the United States*, 26 AREA 276, 277 (1994).

<sup>183</sup> *Id.*; BENJAMIN & NATHAN, *supra* note 175, at 81–82 (noting also that while housing property owners can offset BID taxes to their tenants, these tenants are nonetheless barred from voting rights within the BID district).

After a review of sub-city governance in New York, Benjamin and Nathan argue that the city lacks real local government, and make suggestions for implementing village-like structures headed by elected officials within the city to reconnect citizens to real local government.<sup>184</sup> They think that by creating smaller, rural-style elected governments within the context of the larger city government, meaningful connections between communities of voters and their representatives may be strengthened. In turn, increased persistent voter participation is likely to ensue.

This builds upon feelings of community already present in city life. Tony Hiss, an independent writer and lecturer on American cities, has noted the presence of “sacred sites” in urban neighborhoods that are centers of the community.<sup>185</sup> These are not just found in safe neighborhoods with good schools and lower crime rates; they may be overcrowded parks and hole-in-the-wall eateries where everyone is treated like a regular, or a street in Brooklyn where every house hangs bright and colorful lights during the winter holidays.<sup>186</sup> Amid the hustle and bustle of fast paced city life, these semblances of tight-knit, small town community persist.

Thus there is a resource in place. But still, the challenge remains: how does a sense of community translate into a widespread willingness to self-govern collectively as expressed through voting at the local level? The mere presence of community does not necessarily indicate a communal attention to public participation, nor does it entail cohesive self-governance. We lack the necessary polling data to make definitive claims about the difference that the size of a place can make in determining one’s attitudes regarding her role in a community. The greater persistence of voting in less populated places, however, leads us to speculate about the relationship between a community’s size and the strength of that community’s associative political obligation.

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<sup>184</sup> See BENJAMIN & NATHAN, *supra* note 175, at 85–87, 89.

<sup>185</sup> Tony Hiss, *The ‘Sacred Sites’ That Make a Neighborhood Work*, N.Y. TIMES (Mar. 12, 1995), <http://www.nytimes.com/1995/03/12/realestate/the-sacred-sites-that-make-a-neighborhood-work.html?pagewanted=all&src=pm>.

<sup>186</sup> See *id.*

## VII.OBJECTIONS

There are two major sets of objections to the idea that we need to refocus on community to reinvigorate citizenship. One has the liberal commitment to the individual at its core, and worries about the “coerced good life.”<sup>187</sup> The other accepts the value of community, but worries about the effect of “bad communities.”<sup>188</sup>

Unlike the teleological democracy of the localized city-state, which sought to push its citizens toward an established threshold of civic virtue and public participation, expansive democratic nation-states are founded upon the idea that the government should have little say in what constitutes a good or virtuous life.<sup>189</sup> Instead, according to the liberal tradition, government ought only to provide the most basic necessities for citizens to define and pursue their own interpretations of the “good life.”<sup>190</sup> This freedom of the individual will from governmental and communal encroachments exists at the heart of the American conception of liberty.

And so this objection goes: a government that seeks to formulate “virtuous” communities of citizens who vote regularly is a government that defines the “good life” and takes a stand on what it means to be virtuous. Theoretically, this conflicts with the common American desire to define what is good and virtuous for oneself, even if it means that some Americans choose nonvoting and civic disengagement as their particular “good lives.”

However, as Sandel makes clear, the individualistic incarnation of American political life has failed to live up to its promises of liberty: “For despite its appeal, the liberal vision of freedom lacks the civic resources to sustain self-government. The public philosophy by which we live cannot secure the liberty it promises, because it cannot inspire the sense of community and civic engagement that liberty requires.”<sup>191</sup> Here, Sandel touches upon the paradoxical limitations of an individualistic conception of freedom.<sup>192</sup> While conceiving of ourselves as uninhibited, atomistic selves may at first appear to maximize our agency, the

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<sup>187</sup> SANDEL, *supra* note 20, at 39–40.

<sup>188</sup> *See id.* at 42–44.

<sup>189</sup> *Id.* at 9, 11, 157.

<sup>190</sup> *Id.* at 9.

<sup>191</sup> *Id.* at 11.

<sup>192</sup> *Id.* at 11, 26.

test of time has proven the individual conception of freedom unsustainable in a modern democratic society centered on the practice of voting. Understanding ourselves as entirely independent and unbound to communal obligations disempowers self-governance by diminishing the civic state of mind that encourages participation in public affairs.

Our empirical research supports this element of Sandel's communitarian idea, showing that citizens of smaller communities, to which they feel connected and obligated, self-govern through voting at higher rates and more persistently than voters from large counties that lack a strong communal obligation.

The second objection is less concerned with the formulation of civic virtue and is more concerned with the risk that "bad communities may form bad characters."<sup>193</sup> This danger is not so easily dismissed; history reveals that the politics of small communities can, at times, work to limit the rights of individuals, particularly the rights of minorities.<sup>194</sup> Consider, for example, the creation of whites-only neighborhoods, often referred to as "sundown towns," which popped up across the country between 1890 and 1968, some of which still exist today.<sup>195</sup> The communities in these towns were bound not by a civic obligation to public attendance, but by a communally reinforced discriminatory agenda—keeping blacks and other minorities out of their neighborhoods.<sup>196</sup> Similar concerns can be raised in regards to more recently created gated communities where Homeowners Associations, private governments, have contractual authority to limit some of the freedoms of those who live in the community, as well as control who has access in the first place.<sup>197</sup>

National laws, such as the Civil Rights and Voting Rights Acts of the mid-1960s, worked to protect individual rights from discriminatory small-town local politics.<sup>198</sup> Following the Supreme Court ruling in *Brown v. Board of Education*, which

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<sup>193</sup> *Id.* at 26.

<sup>194</sup> *See, e.g.*, JAMES W. LOEWEN, *SUNDOWN TOWNS* 4 (2005) (discussing racially segregated "sundown towns").

<sup>195</sup> *Id.* at 4, 16.

<sup>196</sup> *Id.* at 4.

<sup>197</sup> EDWARD J. BLAKELY & MARY GAIL SNYDER, *FORTRESS AMERICA* 1–2 (1997); Peter Applebome, *Our Towns; My House; My Rules. Or So One Might Think*, N.Y. TIMES (July 29, 2007), <http://query.nytimes.com/gst/fullpage.html?res=9806E0D8143CF93AA15754C0A9619C8B63>.

<sup>198</sup> LOEWEN, *supra* note 194, at 151, 395–96.

deemed racial segregation unconstitutional,<sup>199</sup> the integration of Little Rock Central High School was famously delayed by the Arkansas National Guard, by order of the governor, until President Eisenhower and the United States Army forced the city to allow black students into its historically white schools.<sup>200</sup> Nor were racial confrontations over school desegregation limited to the South.<sup>201</sup> In Boston, the desegregation of busing following the 1965 Racial Imbalance Act incited violent protest and rioting.<sup>202</sup> White residents, particularly the lower-class Irish-Americans most affected by desegregation, opposed the racial integration of schools for nearly a decade.<sup>203</sup>

Over time, however, integration became less of a hot-button issue as inclusion became more prevalent, with subsequent generations exposed to more integrated and diverse communities.<sup>204</sup> While local politics in small towns have come a long way since the early days of the civil rights movement, the fears associated with discrimination in small-town politics are still valid, especially in communities that still fail to afford equal rights to all, including those in the LGBTQ community.<sup>205</sup>

#### CONCLUSIONS

Most research into voting relies on individual level analyses of participation in order to examine and predict voting behavior. Our study on voter participation and persistence in New York State suggests that a communal variable such as size of place should get more attention when remedies to low voter participation are considered.

By examining registration rates separately from turnout rates, we were able to determine that New York State's decline in voter participation is not a result of low registration rates but of lower

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<sup>199</sup> 347 U.S. 483 (1954).

<sup>200</sup> *Executive Order 10730: Desegregation of Central High School (1957)*, OURDOCUMENTS.GOV, <http://www.ourdocuments.gov/doc.php?flash=true&doc=89> (last visited Jan. 17, 2014).

<sup>201</sup> See, e.g., *Busing's Boston Massacre*, HOOVER INSTITUTION (Nov. 1, 1998), <http://www.hoover.org/publications/policy-review/article/7768>.

<sup>202</sup> *Id.*

<sup>203</sup> Margalit Fox, *Kevin H. White, Mayor Who Led Boston in Busing Crisis, Dies at 82*, N.Y. TIMES (Jan. 27, 2012), <http://www.nytimes.com/2012/01/28/us/kevin-h-white-82-boston-mayor-during-busing-crisis-dies.html?pagewanted=2>.

<sup>204</sup> LOEWEN, *supra* note 194, at 447–48.

<sup>205</sup> *Id.* at 16–18, 330.

turnout rates as the VEP continues to rise.<sup>206</sup> Registration rates have increased proportionally with New York's VEP since the implementation of national registration reform in the early 1990s, while turnout rates—variously assessed—have remained relatively stagnant.<sup>207</sup> By identifying the problem as lower turnout specifically, we can effectively and efficiently allocate time and resources toward working to increase voter turnout, rather than focusing largely or entirely on already high registration rates.

In accord with Dahl and Tufte, Bryan, Sandel, and others writing on the relationship between “size and democracy,” our research demonstrated a link between the relative population and its rates of voter participation.<sup>208</sup> We found that voters from rural parts of the State vote more persistently throughout a four year election cycle and on ballot questions than do voters from larger cities, resulting in higher rates of localized, democratic self-governance within these smaller communities.<sup>209</sup>

Much of the conversation surrounding nonvoting is centered on trying to decrease the “costs” and increase the “benefits” of voting in order to get more people registered and out to the polls. However, our research showed that these efforts have not produced the desired increase in voter participation, particularly in local elections.<sup>210</sup> Instead, we posit an alternative method of addressing nonvoting by creating smaller scale communities in more populous parts of the state. This can be done by building truly locally-elected governmental infrastructure within the larger city government, through which residents of urban areas can directly participate in collective self-governance.

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<sup>206</sup> See discussion *supra* Part II.

<sup>207</sup> *Id.*

<sup>208</sup> DAHL & TUFTE, *supra* note 17, at 13; SANDEL, *supra* note 20, at 55–56; BRYAN, *supra* note 18, at 286.

<sup>209</sup> See *supra* Figure Five; *supra* Figure Six; *supra* Figure Eight.

<sup>210</sup> See discussion *supra* Part II.

Appendix<sup>211</sup>

Off-Year County Turnout as % of Presidential 2008 Turnout in NYS		
County	Population	2011 Total Vote as % of 2008 Total Vote
Albany	304,204	44.13%
Allegany	48,946	38.45%
Bronx	1,385,108	5.90%
Broome	200,600	38.73%
Cattaraugus	80,317	46.85%
Cayuga	80,026	48.67%
Chautauqua	134,905	39.63%
Chemung	88,830	22.50%
Chenango	50,477	34.72%
Clinton	82,128	44.65%
Columbia	63,096	59.22%
Cortland	49,336	33.77%
Delaware	47,980	48.18%
Dutchess	297,488	42.57%
Erie	919,040	53.16%
Essex	39,370	51.56%
Franklin	51,599	41.11%
Fulton	55,531	37.06%
Genesee	60,079	30.41%
Greene	49,221	47.88%
Hamilton	4,836	76.93%
Herkimer	64,519	51.34%
Jefferson	116,229	43.19%
Kings	2,504,700	12.19%
Lewis	27,087	63.20%
Livingston	65,393	27.88%

<sup>211</sup> Benjamin & Devin Research, *supra* note 59. See also *Map Room: NYS Population*, JIMAPCO.COM, <http://www.jimapco.com/maproom/ny/population/> (last visited Jan. 8, 2014); *Election Results 2008–New York: Presidential County Results*, *Election Results*, N.Y. TIMES (Dec. 9, 2008), <http://elections.nytimes.com/2008/results/states/president/new-york.html>.

2014]

## VOTER PARTICIPATION AND PERSISTENCE

589

Madison	73,442	37.61%
Monroe	744,344	38.30%
Montgomery	50,219	44.32%
Nassau	1,339,532	33.61%
New York	1,585,873	10.26%
Niagara	216,469	39.21%
Oneida	234,878	50.45%
Onondaga	467,026	32.55%
Ontario	107,931	31.23%
Orange	372,813	30.62%
Orleans	42,883	33.65%
Oswego	122,109	35.10%
Otsego	62,259	52.65%
Putnam	99,710	36.10%
Queens	2,230,722	8.09%
Rensselaer	159,429	53.60%
Richmond	468,730	16.56%
Rockland	311,687	46.27%
Saratoga	219,607	36.17%
Schenectady	154,727	45.31%
Schoharie	32,749	55.56%
Schuyler	18,343	62.78%
Seneca	35,251	51.86%
St. Lawrence	111,944	47.97%
Steuben	98,990	38.58%
Suffolk	1,493,350	37.39%
Sullivan	77,547	53.69%
Tioga	51,125	58.41%
Tompkins	101,564	37.01%
Ulster	182,493	48.71%
Warren	65,707	42.22%
Washington	63,216	44.71%
Wayne	93,772	34.07%
Westchester	949,113	36.56%

590

ALBANY GOVERNMENT LAW REVIEW

[Vol. 7

Wyoming	42,155	40.70%
Yates	25,348	45.45%