

**ILLINOIS CONSTITUTION REVISITED: TIME TO MERGE
THE STATE TREASURER AND COMPTROLLER**

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During Illinois' 1970 Constitutional Convention, the debate regarding whether to collapse the constitutional offices of Comptroller and State Treasurer ended in inaction. During the convention, the separation of the offices was presented as necessary to prevent corruption and abuse of government spending. Since then, the debate has been repeatedly revisited, in both the legislative and executive branches, with many failed attempts at merger despite overwhelming support. This Note argues that the offices should be merged into one office: the Chief Financial Officer. Given technological advances, the existence of Executive Inspectors General, and the successful mergers in other states, worries of corruption are overstated. This Note both explains why proposed mergers have failed in the past and recommends how this merger could be successful.

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“There was a debate in the constitutional convention . . . to separate the offices—those issues have not been addressed.”¹

I. INTRODUCTION

In June 2011, Illinois House of Representatives Speaker Michael Madigan used his influence in the House Rules Committee to end the progress of a state constitutional amendment that would have combined

1. Chris Wetterich, *Madigan Blocking Merger of Treasurer, Comptroller's Offices*, STATE JOURNAL-REGISTER (updated June 9, 2011, 6:47 AM), <http://www.sj-r.com/top-stories/x795262278/Madigan-blocking-proposed-merger-of-Treasurer-comptrollers-offices>.

the constitutionally elected roles of the State Treasurer and the Comptroller, despite the unanimous support of the State Senate.² His spokesman offered the above statement to clarify the Speaker's opinion that "merger proponents, including the two current officeholders, have never sufficiently countered the reasons two offices were created at the 1970 constitutional convention."³

In recent years, the idea of combining the Treasurer and the Comptroller has played a significant role in the government reform conversation on both sides of the aisle in the State of Illinois.⁴ Recent candidates and elected officials argue that the merger would eliminate redundancies and result in beneficial cost savings to state taxpayers.⁵ Speaker Madigan's concerns, however, identify a significant missing piece in the current arguments of merger proponents: while much time has been spent debating the merits of cost savings, few have framed their arguments in a way that addresses, or even challenges, the motivations of the 1970 Constitutional Convention.

This Note argues that these reservations can be resolved, and that the time has come to merge the offices of the Treasurer and Comptroller. The 1970 Constitutional Convention was not as focused on corruption as current opponents suggest, and, regardless, the rise of technology and the institution of Executive Inspectors General significantly diminish the possibility of such corruption within those positions. Based on analysis of the competencies of the positions, the examples of other states, and the benefits of different merger configurations, this Note argues that the best course of action for Illinois is to synthesize the duties of each current position into a new merged office, the Chief Financial Officer, which would remain accountable to the people as an elected position. Part II of this Note discusses the development of each office throughout the State's history, as well as the current landscape of failed proposals to merge the two positions. Part III considers why the merger debate has persisted into its fifth decade. It then analyzes the concerns of the 1970 Constitution in light of delegates' motivations at the time, intrastate governmental development, and administration of other states. Part IV recommends a way forward for a successful merger. Part V concludes with a brief sum-

2. *Id.*

3. *Id.* Speaker Madigan is in a unique position to make this argument, given that he served as a delegate to the Convention and was present during the executive article debates. *Id.*

4. See Mike Riopell, *State Treasurer Candidates Want to Combine Financial Offices*, HERALD & REV. (Aug 17, 2010, 3:01 AM), http://herald-review.com/news/state-and-regional/state-Treasurer-candidates-want-to-combine-financial-offices/article_f3e7ed99-21eb-5cb3-8cb0-b49f16915a5f.html (noting that both offices' nominees from the Republican and Democratic tickets supported the merger in the 2010 election).

5. See *id.* ("With the state \$13 billion in the red, Illinois taxpayers cannot afford duplicative services and wasteful spending.") (Statement of Robin Kelly, 2010 Democratic nominee for Illinois State Treasurer).

mary, before providing a model ballot provision and constitutional change in the Appendix.

II. BACKGROUND

This Part analyzes the foundations of the offices that are currently the Treasurer and the Comptroller, and considers the arguments and results of the 1970 Constitutional Convention. It also discusses the present landscape, both of the officers' responsibilities and of the attempts to merge them.

A. Foundations of the Offices Pre-1970

1. The Comptroller's Predecessor: The Auditor of Public Accounts

Until the 1970 Constitution, the role of the Comptroller was largely housed in its predecessor office, the Auditor of Public Accounts.⁶ The Auditor position, springing from Illinois' roots in the Northwest Territory and Indiana Territories,⁷ solidified when Illinois became a territory of the second grade in 1812.⁸ When Illinois attained statehood in 1818, the first State Constitution preserved it under the purview of the Legislature.⁹ After varying between four-year and two-year appointments for a few decades,¹⁰ the Constitution of 1848 made the Auditor a constitutional office, elected by the people of Illinois to a four-year term.¹¹ The Constitution of 1870 preserved this model, and it lasted until the Auditor office's abolition in 1970.¹²

At its core, the Auditor served as a chief accountant for the state. The primary functions of the Auditor included auditing the state officers and agencies, and keeping detailed records of the state's finances.¹³ In 1951, the office's auditory role expanded to include auditing small munic-

6. ILL. CONST. OF 1848, art. IV, § 23.

7. See *History*, STATE OF ILL. COMPTROLLER, <http://www.ioc.state.il.us/index.cfm/about-our-office/history/> (last updated Oct. 29, 2014, 11:13 PM).

8. *Illinois Territory-RG100*, ILL. STATE ARCHIVES, <http://archon.ilsos.net/?p=creators/creator&id=2> (last visited Oct. 30, 2014). Enacting legislation can be found in Act of Dec. 23, § 20, 1812 Ill. Terr. Laws, reprinted in THE LAWS OF THE ILLINOIS TERRITORY, 1809–1818 59, at 63 (Francis S. Philbrick ed. 1950).

9. ILL. CONST. OF 1818, sched., § 10.

10. *Auditor of Public Accounts-RG105*, ILL. STATE ARCHIVES, <http://archon.ilsos.net/?p=creators/creator&id=9> (last visited Oct. 30, 2014).

11. ILL. CONST. OF 1848, art. IV, § 23.

12. *Auditor of Public Accounts-RG105*, *supra* note 10.

13. Act of Mar. 24, 1819 Ill. Laws 240 (defining the duties of Auditor and Treasurer). Naturally, as with many government offices, the Auditor was called upon by the General Assembly to assume an array of ancillary duties during the life of the office. For a summary of a few of these roles, see *Auditor of Public Accounts-RG105*, *supra* note 10 (outlining former roles of the Auditor, ranging from taxation and bank regulatory duties to assistance with the sale of seminary and school lands).

ipalities in the state.¹⁴ Its most powerful tool, however, derived from the 1870 Constitution: pursuant to appropriation, the Auditor had the sole power to withdraw funds from the state's treasury.¹⁵ Despite this significant responsibility, trust in this office suffered no significant scars for the majority of its existence.¹⁶

That all changed with Orville Hodge. In 1956, Hodge was completing his first term as the Auditor of Public Accounts.¹⁷ Not only did his second term seem inevitable, but he was also a star of the Illinois Republican Party and was considered a top pick to be the next Governor.¹⁸ Friends marveled at his private success as well: he owned two private planes, multiple luxury cars, a lake house, suites in Chicago, and a hotel in Florida.¹⁹ Many assumed his personal wealth came from the success of his family real estate and construction business in Granite City, Illinois.²⁰

That July, however, he resigned from office in disgrace.²¹ George Thiem, the *Chicago Daily News*' statehouse reporter, conducted an investigation into Hodge's sources of wealth.²² Alan Dixon's account concisely narrates what happened next:

[I]t was shown that Orville had diverted huge amounts of taxpayer dollars under his control into his and acquaintances' pockets. Hodge had used state dollars to pay for a wide range of personal expenses. With the help of several aides in his office and one or more outside bankers, Hodge had gotten away with authorizing bogus state warrants (checks) that were cashed by or for him. Fake contracts, false expense accounts, and other fabrication augmented phony checks. It also turned out to be true that he padded his office payroll with individuals doing little or no work. These were "ghost"

14. Act of July 3, 1951 Ill. Laws (providing for "audits of the accounts of cities, villages and incorporated towns having a population not exceeding 500,000").

15. ILL. CONST. OF 1870, art. IV, § 17 ("No money shall be drawn from the treasury except in pursuance of an appropriation made by law, and on the presentation of a warrant issued by the auditor thereon.").

16. The Comptroller's website provides brief biographies of all the previous Auditors and Comptrollers of Illinois back to the beginning of the Illinois Territory. It appears that the only major scandal in the office before the 1950's came from James Shield (Auditor from 1841 to 1843) when he challenged Abraham Lincoln to a duel. *History*, *supra* note 7.

17. Obituary, *Orville Hodge, Auditor Who Robbed State*, CHI. TRIB. Jan. 1, 1987, http://articles.chicagotribune.com/1987-01-01/sports/8701010079_1_mr-hodge-state-auditor-orville-hodge.

18. ALAN J. DIXON, *THE GENTLEMAN FROM ILLINOIS: STORIES FROM FORTY YEARS OF ELECTIVE PUBLIC SERVICE* 69 (2013). Dixon, who was an Illinois State Representative at the time of the Hodge incident, went on to have a distinguished public service career of his own, including terms as the Illinois State Treasurer and a U.S. Senator.

19. Obituary, *supra* note 17.

20. *Id.* Even in its proper historical context, it is difficult to understand why people accepted this justification: Granite City suffered a slump in the 1950's as its major factory outputs became obsolete. See generally *History of Granite City: Part III—The Rise and Fall of a Powerhouse (1896 - 1956 A.D.)*, GRANITE CITY, IL, http://www.granitecity.illinois.gov/community/history_of_granite_city/part3.html (last visited Oct. 30, 2014).

21. See Obituary, *supra* note 17.

22. DIXON, *supra* note 18, at 70.

employees who received checks from the auditor's office and kicked back most of the money to Orville.²³

The publication earned the *Chicago Daily News* a Pulitzer Prize, while Orville Hodge received Inmate Number 25303²⁴ and served six and a half years in prison after pleading guilty to "conspiracy to embezzle state funds by forging state warrants and for misappropriation of bank funds."²⁵ Though it was never definitively determined how much he embezzled,²⁶ most sources place the figure somewhere around \$1.5 million.²⁷

The Hodge incident hurled trust in the Auditor's office into a free-fall. In 1957, the state legislature responded by creating the Department of Audits.²⁸ This department, headed by the Auditor General, a position appointed by the Governor, wrested responsibility for all state agency audits from the Auditor of Public Accounts.²⁹ While the Auditor's office retained the power to withdraw state funds, its auditing power was thus largely relegated to pre-auditing activity.³⁰

2. *The State Treasurer*

The State Treasurer experienced a less noteworthy, albeit much less scandalous, development. Just like the Auditor of Public Accounts, it was officially designated as an office of the Illinois Territory in 1812³¹ and initially was placed under the control of the General Assembly in the first years of statehood.³² It, too, became a constitutional office elected by the people of Illinois under the Constitution of 1848.³³

Unlike the Auditor, however, the Treasurer only served two-year terms until a constitutional amendment in 1959 adjusted it to a four-year

23. *Id.*

24. *Hodge Begins Term in Illinois Prison*, MIAMI DAILY NEWS, Aug. 21, 1956, at 4A, available at <http://news.google.com/newspapers?nid=2206&dat=19560821&id=VccyAAAIBAJ&sjid=FuwFAAIAIBAJ&pg=2308,1767660>.

25. Edward McClelland, *The 12 Most Corrupt Politicians In Illinois History: Orville Hodge*, WARD ROOM (updated Jan. 16, 2012, 3:54 PM), <http://www.nbcchicago.com/blogs/ward-room/The-12-Most-Corrupt-Public-Officials-In-Illinois-History-Orville-Hodge-137427063.html>. Hodge ranked sixth on the Ward Room list. *Id.*

26. DIXON, *supra* note 18, at 70 (recalling argued figures between \$1 and \$2.5 million).

27. *See, e.g., id.*; Obituary, *supra* note 17. Accounting for inflation from 1956, that would be over \$13 million in 2014 dollars. *CPI Inflation Calculator*, BUREAU OF LAB. STAT., http://www.bls.gov/data/inflation_calculator.htm (last visited Oct. 30, 2014).

28. ILL. G.A. LEGISLATIVE RESEARCH UNIT, 11-154, COMBINING THE OFFICES OF COMPTROLLER AND TREASURER 1,2 (2013) (copy on file with author).

29. *See* Illinois Auditing Act of 1957, 1957 Ill. Laws 2307.

30. ILL. G.A. LEGISLATIVE RESEARCH UNIT, *supra* note 28, at 2.

31. Act of Dec. 23, 1812, § 20, 1812 Ill. Terr. Laws, *reprinted in* THE LAWS OF THE ILLINOIS TERRITORY, *supra* note 8, at 26.

32. ILL. CONST. OF 1818, art. III, § 21.

33. ILL. CONST. OF 1848, art. IV, § 24.

term.³⁴ Surprisingly, the Constitution of 1870 contained additional provisions that barred the Treasurer from serving multiple consecutive terms and allowed the governor to require “reasonable additional security” from a Treasurer-elect he deemed inferior to the task, which would result in a vacant seat if not provided.³⁵ These provisions lasted until the 1970 Constitutional Convention.³⁶

These additive provisions portray, at least subconsciously, an image that the Treasurer’s office was meant to be subordinate to the other elected positions. No other popularly-elected statewide officer besides the Treasurer could be prevented from taking office *ex ante* by another official.³⁷ Though the 1870 Convention surely had good reasons for these provisions,³⁸ they effectively caused the office to function more like the government’s banker and less like a constitutional executive officer.

The Treasurer’s primary duties developed as largely subordinate roles, as well. One duty included collecting state revenue, but he could only disburse it at the command of the Auditor of Public Accounts.³⁹ The Treasurer’s other primary duty required him to keep record of these collections and to submit these records each month to the Auditor so that the Auditor could enter them into his own records.⁴⁰

Based on these qualification restrictions for the officeholders and the subordinate nature of the position’s duties, the Treasurer’s office risked elimination due to redundancy well before the 1970 Constitutional Convention.

B. *The 1970 Constitutional Convention*

1. *Opening Arguments*

When Illinois opened its sixth Constitutional Convention in December 1969, many elected leaders hoped to reform the offices of the State Treasurer and the Auditor of Public Accounts. The opening addresses of the elected officers foreshadowed the debates to come. Auditor Michael Howlett, one of the first leaders to speak, argued that both his office and that of the Treasurer should be merged into a single Office

34. *State Treasurer-RG104*, ILLINOIS STATE ARCHIVES, <http://archon.ilsos.net/?p=creators/creator&id=8> (last visited Oct. 30, 2014).

35. ILL. CONST. OF 1870, art. V, § 2.

36. *State Treasurer-RG104*, *supra* note 34.

37. See ILL. CONST. OF 1870, art. V, § 2. This idea of security for the Treasurer began with the 1819 enabling legislation, which required the Treasurer to post a bond before taking office and gaining access to state money. Act of Mar. 24, 1819, 1819 Ill. Laws 240 (defining the duties of Auditor and Treasurer).

38. 2 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ILLS 1781 (1870) (statement of Del. Elliott Anthony) (arguing that it is reasonable to give the Governor the additional security power “to make the State secure”).

39. Act of Mar. 24, 1819 Ill. Laws 242 (defining the duties of Auditor and Treasurer).

40. *Id.*

of the Comptroller.⁴¹ Likewise, Adlai E. Stevenson III, the sitting State Treasurer, minced no words when sharing his opinion about his office:

The state treasurer should . . . be abolished as an elected constitutional office. My responsibilities by custom or statute, but not by constitutional mandate, include the examination of safety deposit boxes in Cook County for inheritance tax purposes, the collection of inheritance tax receipts from county treasurers, and administration of the protest tax fund. Some of the treasurer's responsibilities for the issuance of warrants and the maintenance of various contracts are shared—and oftentimes duplicated—with the auditor of public accounts and the Department of Finance. *None of these responsibilities is central to the function of a treasurer. They all could be either abolished or transferred to other more appropriate agencies such as an officer of comptroller*⁴²

2. *Replacing the Auditor of Public Accounts*

The Convention did away with the Auditor, replacing it with an elected Comptroller, but with much debate and difficulty.

From the outset, the delegates largely agreed that the time had come to eliminate the office of the Auditor of Public Accounts. Some believed the office's stature should be reduced to better reflect the minimized pre-auditing duties the office had carried out since the Hodge incident.⁴³ Others were much more explicit, urging for the outright elimination of the role because of Hodge's misdeeds.⁴⁴

The largest question, however, was what should be the next steps. The delegates considered whether to replace the Auditor with an elected comptroller or a position more like an independent auditor appointed by the Governor.⁴⁵ Some believed, since almost all post-auditing responsibilities had been turned over to the office of the Auditor General, that

41. 2 SIXTH ILLINOIS CONSTITUTIONAL CONVENTION: VERBATIM TRANSCRIPTS 219 (1970) [hereinafter 2 TRANSCRIPTS] (statement of Auditor of Public Accounts Michael Howlett) ("My proposal for a new elective state controller contemplates elimination of the present auditor of public accounts, elimination of the present state Treasurer, and a transfer of some pre-auditing responsibilities to the controller from other state agencies.").

42. *Id.* at 248 (statement of Treas. Adlai E. Stevenson III) (emphasis added). Stevenson enjoyed particular deference, above that accorded to his office, due to his father's fame as a former Governor of Illinois and two-time Democratic Presidential nominee, and his great-grandfather's service as Vice President of the United States. "Adlai E. Stevenson (1893–1897)," in *Essays on Grover Cleveland and His Administration*, MILLER CENTER, <http://millercenter.org/president/cleveland/essays/vicepresident/1849> (last visited Mar. 10, 2014).

43. ANN M. LOUSIN, *THE ILLINOIS STATE CONSTITUTION: A REFERENCE GUIDE* 25 (2010). Ms. Lousin was a staff researcher for the convention. *Id.*

44. THE CONSTITUTION OF ILLINOIS: A SELECTIVE BIBLIOGRAPHY 84 (Charlotte B. Stillwell & Stanley E. Adams eds., 1970) (referring to State Sen. Everett R. Peters' recommendation for eliminating the Auditor's office after "enumerate[d] abuses of the office . . . under Orville E. Hodge"); see also McClelland, *supra* note 25 ("Hodge's corrupt [sic] led to the abolition of his own office . . .").

45. See 2 TRANSCRIPTS, *supra* note 41, at 218 (statement of Auditor of Public Accounts Michael Howlett).

there was little reason to have an elected financial officer.⁴⁶ Delegate Dawn Clark Netsch proposed an amendment to delete the proposed comptroller from the executive article of the proposed Constitution. Netsch claimed that the responsibilities it would inherit from Auditor of Public Accounts were no longer essential to be in an elected office, arguing that now that its duties were primarily “technical” and “ministerial.”⁴⁷ Delegate Peter Tomei echoed, “I think we’ve got one guy to handle the money chores of the state [in the Auditor General] and we ought to stick with him.”⁴⁸

Other delegates sided with Auditor Howlett, who insisted that allowing an appointed auditor only could lead to “nightmare” consequences.⁴⁹ Reminding the Convention that Hodge was once considered to be a potential governor, he hypothesized what could have happened if Governor Hodge had been able to appoint his own auditor: “[H]ad he appointed . . . the same accountant who went to prison with him, [it] would have been accepted publicly as outstanding because the accountant was a CPA [certified public accountant]. With no check on the governor or the auditor of public accounts, they could have embezzled untold millions.”⁵⁰ Delegate Charles Coleman’s push to create an elective comptroller further demonstrated support for this opinion.⁵¹ He admitted that he did not “really envision a comptroller as a person who is going to make a lot of vast decisions.”⁵² He supported electing the position, however, because he believed “what the people want is to go to bed at night with some assurance that they have something to do with what’s happening to their money,” reminding the body that the comptroller would be the “only official between the spenders and the pot where the money is kept.”⁵³ Ultimately, the Convention rejected Delegate Netsch’s proposal, and supported creating an elected comptroller while eliminating the Auditor.⁵⁴

3. *Keeping the State Treasurer as a Separate Elected Office*

The debate heated up again when the Convention considered whether the Treasurer should maintain its role as an independent constitutional office or if it should be eliminated. Delegate Netsch again took

46. See 3 SIXTH ILLINOIS CONSTITUTIONAL CONVENTION: VERBATIM TRANSCRIPTS 1244–45 (1970) [hereinafter 3 TRANSCRIPTS] (statement of Del. Dawn Clark Netsch).

47. *Id.* at 1245 (statement of Del. Dawn Clark Netsch) (“I would suggest that if you are going to provide at all for most of the functions that are specified for the comptroller in . . . this executive article, that you make provision for the selection of a computer rather than a comptroller.”).

48. *Id.* at 1246 (statement of Del. Peter Tomei).

49. 2 TRANSCRIPTS, *supra* note 41, at 218 (statement of Auditor of Public Accounts Michael Howlett).

50. *Id.*

51. 3 TRANSCRIPTS, *supra* note 46, at 1247–48 (statement of Del. Charles Coleman).

52. *Id.* at 1248.

53. *Id.*

54. The final vote was 29–62. *Id.* at 1249.

the lead, twice proposing an amendment to eliminate the Treasurer over the course of the Convention.⁵⁵ Interestingly, neither of these attempts incorporated the idea of a merger suggested by Treasurer Stevenson.⁵⁶

Those favoring elimination had multiple factors in their favor, such as the support of both the sitting Treasurer and Auditor⁵⁷, and made many strong arguments. Some advanced arguments that paralleled the opinions expressed for preventing an elected comptroller. “We have here, under the proposal of the committee, an office that has become virtually a shell office,” Convention President Witwer declared.⁵⁸ “If we fail to adopt the Netsch amendment, we will be in the posture of requiring the people of this state every four years to go to the polls to elect a ministerial performer.”⁵⁹ Still others pointed to the support of independent reports about the office. For instance, Delegate Ronald Smith rooted his support in the findings of a report drafted in the wake of the Hodge Scandal: “It is obviously unnecessary to elect an officer who exercises so little discretion and independent judgment as does the State Treasurer.”⁶⁰

Unconvinced, many delegates were still wary of trusting any stewardship of state money in the hands of someone unaccountable to the electorate of Illinois. Delegate Charles Coleman, at first in favor of appointing a treasurer, eventually changed his mind and decided to defend keeping financial offices elected.⁶¹ For him and those who agreed with him, any alternative to an independently elected treasurer fell short of the necessary safeguards required to prevent corruption.⁶² In regards to an official merger with the proposed comptroller, he warned, “If you really want the possibility for a scandal in this state, take a man and let him keep the funds and also prepare all the checks, so he can prepare his check”⁶³ Even an independent official, separate from a comptroller but appointed by the Governor, would be insufficient: “I don’t think we realize what we are doing when we put these spots under the governor and making [sic] them appointive spots, because you know the same man is not governor always.”⁶⁴ Opponents also believed that their stance

55. The amendments were proposed in the first and second readings of the executive article. ILL. G.A. LEGISLATIVE RESEARCH UNIT, *supra* note 28, at 2–3.

56. *See supra* text accompanying note 42.

57. 2 TRANSCRIPTS, *supra* note 41, at 219 (statement of Auditor of Public Accounts Michael Howlett); *id.* at 248 (statement of Treas. Adlai E. Stevenson III).

58. 5 SIXTH ILLINOIS CONSTITUTIONAL CONVENTION: VERBATIM TRANSCRIPTS 3732 (1970) [hereinafter 5 TRANSCRIPTS] (statement of Pres. Samuel Witwer).

59. *Id.*

60. LLOYD MOREY, ALBERT E. JENNER, JR. & JOHN S. RENDLEMAN, REPORTS AND RECOMMENDATIONS TO ILLINOIS BUDGETARY COMMISSION WITH RESPECT TO INVESTIGATION ON BEHALF OF THE COMMISSION AS TO OPERATIONS OF THE AUDITOR’S OFFICE UNDER ORVILLE E. HODGE 55 (1956), *cited in* 3 TRANSCRIPTS, *supra* note 46, at 1235 (statement of Del. Ronald Smith).

61. 5 TRANSCRIPTS, *supra* note 58, at 3731 (statement of Del. Charles Coleman).

62. *See id.*

63. 3 TRANSCRIPTS, *supra* note 46, at 1228 (statement of Del. Charles Coleman).

64. 5 TRANSCRIPTS, *supra* note 58, at 3731 (statement of Del. Charles Coleman).

aligned with the people of Illinois. Rather than being concerned about voter apathy and ballot length like the proposing delegates,⁶⁵ some opinion polls suggested that the citizens of Illinois desired to elect their state officers instead of risk a government appointee.⁶⁶

In the end, despite all signs pointing against it,⁶⁷ this ambivalence won the day both times: first by a vote of 50-55,⁶⁸ then by a vote of 51-56.⁶⁹

4. *Results Adopted in the Constitution*

The adopted Constitution of 1970 abolished the Auditor.⁷⁰ Instead, it created an elected Comptroller and kept an elected Treasurer, both to four-year terms without restriction on succession or reelection, with their duties enumerated in the body of the Constitution.⁷¹

The Constitution of 1970 tasks the Comptroller with pre-auditor functions: to “maintain the State’s central fiscal accounts, and order payments into and out of the funds held by the Treasurer.”⁷² The Constitution of 1970 also reaffirmed the office of the Auditor General, codifying its control of all post-audit duties stripped from the Auditor in the 1950s.⁷³ Rather than preserving it as a Governor-appointed position, the Auditor General was placed under the direction of the General Assembly, which elects the officer for ten-year terms.⁷⁴

The Treasurer became “responsible for the safekeeping and investment of monies and securities deposited with him, and for their disbursement upon order of the Comptroller.”⁷⁵ Other than removing what

65. *Id.* at 3734 (statement of Del. David Kenney) (speaking in favor of the merger) (“What we desperately need in statewide politics in Illinois is greater attention to issues. . . . [W]e can do this by shortening the ballot somewhat and paying more attention to those policy-making officials we do elect.”).

66. 3 TRANSCRIPTS, *supra* note 46, at 1231 (statement of Del. Edward Rosewell). Rosewell’s supporting evidence was very much up for interpretation, however. The opinion polling he relied on was in response to the very broad question: “How do you feel about the election or appointment of our state officials?” *Id.*

67. *Id.* at 1238 (statement of Del. Jeffrey Ladd) (“[W]hile this Convention was called by the greatest vote that any constitutional question ever received, and while the office of Treasurer was—we were told by the present Treasurer that it should be eliminated; by the present auditor, that the two offices of Treasurer and auditor should be combined; by one of the candidates that is now running for state Treasurer, that it should be eliminated; and by—every study commission in the executive branch of government has recommended the same thing; yet this Convention decided not to exercise its judgment . . .”).

68. *Id.*

69. 5 TRANSCRIPTS, *supra* note 58, at 3738.

70. See ILL. GENERAL ASSEMBLY, <http://www.ilga.gov/commission/lrb/conent.htm> (last visited Nov. 12, 2014).

71. See ILL. CONST. art. IV, §§ 23-24.

72. ILL. CONST. art. V, § 17.

73. ILL. CONST. art. VIII, § 3.

74. *Id.*

75. ILL. CONST. art. V, § 18.

remained of the Treasurer's past semi-auditory duties, this represented no significant change in the responsibilities of the office.⁷⁶

C. *The Current Landscape*

1. *The Offices Today*

The present functions of the Treasurer and Comptroller continue to reflect all the concerns voiced during the Constitutional Convention.

Nominally, the positions seem to be complementary and distinct. The Treasurer's core responsibility is to "establish[] sound investment policies to ensure the safekeeping of [State] funds, provide the necessary liquidity to pay the state's bills, and earn the best rate of return for taxpayers and local governments."⁷⁷ Additionally, the Treasurer is currently responsible for investing over \$10 billion of taxpayer and state money, as well as about \$6 billion of pooled funds from local governments.⁷⁸ The Comptroller, on the other hand, focuses on "revenue receipts and spending," both through "maintaining the State's central fiscal accounts and ordering payments"⁷⁹

In practice, however, significant overlap exists between them. While the Treasurer is supposedly responsible for all investment,⁸⁰ the Comptroller shares the responsibility of managing one of the State's most important investments: pensions.⁸¹ The Comptroller not only sits with the Treasurer on the Illinois State Board of Investment, but also serves as the designated chair of the State Employees' Retirement System Board.⁸² And though the Comptroller issues warrants and provides avenues for citizens to make inquiries about warrants through the office,⁸³ the Treasurer's office is responsible for investigating and processing warranty fraud and forgery claims.⁸⁴

Moreover, both offices devote significant energy to similar ancillary responsibilities. Outgoing Treasurer Dan Rutherford, for instance, is noted for his commitment to I-Cash, the State's unclaimed property pro-

76. See Act of Mar. 24, 1819 Ill. Laws 240 (defining the duties of Auditor and Treasurer). The Treasurer first received the ability to make investment decisions in 1908, and it grew as a discretionary power throughout the first half of the 20th century. *State Treasurer-RG104*, *supra* note 34.

77. ILL. BLUE BOOK, 2011-2012, 274 (Jesse White ed. 2012).

78. *Id.*

79. See ILL. BLUE BOOK, 2013-14, 19 (Jesse White ed. 2014), available at <https://www.cyberdriveillinois.com/publications/handbook/comptroller.pdf>.

80. ILL. CONST. art. V, § 18.

81. See Ill. Blue Book, *supra* note 79, at 19.

82. *Id.*

83. *Warrant Inquiry Form*, OFFICE OF THE ILL. STATE COMPTROLLER, <https://www.wh1.ioc.state.il.us/index.cfm/financial-inquiries/warrant-inquiry-form/> (last visited Oct. 30, 2014).

84. *Warrants*, OFFICE OF THE ILL. STATE TREASURER, <http://www.treasurer.il.gov/finances/warrants/warrants.aspx> (last visited Oct. 30, 2014).

gram,⁸⁵ and to Operation Reunite, which returns lost war medals to servicemen and women.⁸⁶ Comptroller Judy Baar Topinka, meanwhile, sponsored Check for Cash, which essentially functions as I-Cash for unclaimed state checks;⁸⁷ the Comptroller's office also controls both licensing and trust maintenance for certain kinds of cemeteries and funeral homes.⁸⁸ Both offer numerous similar programs to raise awareness about a range of fiscal issues among the Illinois populace, whether about debt,⁸⁹ tax refunds,⁹⁰ or consumer protection.⁹¹ This further demonstrates the superfluous nature of separate offices.

2. *Recent Attempts to Merge the Offices*

Although the 1970 Constitutional Convention declined to do so, the debate on whether to eliminate one office or consolidate the two elected officers continues. Since 1970, there have been multiple attempts to override the delegates' decision. Calls for reconsideration have grown considerably stronger in recent years: in the last three sessions of the General Assembly alone, fourteen joint resolutions have been proposed to merge the offices.⁹²

In fact, candidates for Comptroller and Treasurer in 2010 made the merger a centerpiece of the election. Because the redundancies evident in 1970 (and before that) remain inherent in the offices to this day, supporting this opinion was likely a simple choice for these candidates, particularly in an election notably focused on government accountability and reform.⁹³ Both the Republicans and the Democrats fought to be seen

85. ILLINOIS STATE TREASURER'S I-CASH, <https://icash.illinois.gov/index.asp> (last visited Oct. 24, 2014).

86. *State Treasurer Seeks To Reunite Unclaimed Military Medals With Owners*, CBS CHI. (updated Nov. 11, 2011, 11:17 AM), <http://chicago.cbslocal.com/2011/11/11/state-treasurer-seeks-to-reunite-unclaimed-military-medals-with-owners/>.

87. *Check for Cash!*, OFFICE OF THE ILL. STATE COMPTROLLER, <http://www.ioc.state.il.us/index.cfm/financial-inquiries/uncashed-checks/> (last updated Oct. 29, 2014, 11:13 PM).

88. ILL. BLUE BOOK, *supra* note 79, at 270.

89. *See id.* at 275; *\$127 Billion. Is Illinois Drowning in Debt?*, FISCAL FOCUS, Dec. 2013, at 4, available at <http://www.ioc.state.il.us/index.cfm/resources/fiscal-focus/december-2013-long-term-debt/>.

90. *Topinka's MyRefund Site Draws More Than 26,000 Participants*, OFFICE OF THE ILL. STATE COMPTROLLER'S OFFICE, <http://www.ioc.state.il.us/index.cfm/news-portal/topinka-unveils-tax-return-alert-system/> (last updated Sept. 5, 2014, 11:40 PM).

91. ILL. BLUE BOOK, *supra* note 77, at 278.

92. ILL. G.A. LEG. RESEARCH UNIT, *supra* note 28, at 4.

93. The state of Illinois had a particular fixation on reform in the 2010 election. Like the rest of the nation, it experienced the wave of Tea Party activism for limited government after the passage of the Affordable Care Act. *See, e.g.*, Dan Hinkel & Katherine Skiba, *Bean Concedes to Walsh in 8th District: Tea Party Republican Secures Seat in D.C.*, CHI. TRIB., Nov. 16, 2010, http://articles.chicagotribune.com/2010-11-16/news/ct-met-walsh-bean-1117-20101116_1_tea-party-traditional-gop-candidates-robert-dold. However, 2010 was also the first opportunity for Illinoisans to react at the ballot box to the impeachment of former Governor Rod Blagojevich, who was on trial during the campaign season for his attempts to make a profit off of his ability to appoint President Barack Obama's replacement in the U.S. Senate. *See, e.g.*, Kevin McDermott, *Illinois Democrats Take Pains to Separate*

as the candidate more in favor of the merger.⁹⁴ Their arguments for the merger focused almost exclusively on fiscal considerations, often citing potential savings of \$10–12 million annually.⁹⁵

The 2010 victors went to the Capitol after the election to bring this promise to fruition, but were ultimately unsuccessful.⁹⁶ The closest attempt to a successful merger emerged in 2011 with Senate Joint Resolution 13.⁹⁷ Under this resolution, the Comptroller and the Treasurer's offices would join to become the office of the Comptroller of the Treasury. The proposed Comptroller of the Treasury's key duties would have been a literal combination of the roles, requiring the individual to "(i) maintain the State's central fiscal accounts, and order payments into and out of the funds held by him or her, [and] (ii) be responsible for the safekeeping and investment of monies and securities deposited with him or her, and for their disbursement upon his or her order"⁹⁸

Resolution 13 passed through the State Senate with a unanimous vote of 55-0; with more than fifty cosponsors already committed in the State House of Representatives, its passage seemed imminent.⁹⁹ Speaker Madigan and the House Rules Committee, however, never called it for a vote because of the sponsors' inability to address what the Speaker believed to be the unanswered questions of the Constitutional Convention; in particular, Madigan's opposition stressed that a merger would frustrate the Convention's goal to preserve a key check and balance on state fiscal responsibility, and expressed skepticism about the touted potential cost savings.¹⁰⁰

from Rod Blagojevich, ST. LOUIS POST-DISPATCH, Aug. 19, 2010, <http://www.stltoday.com/news/local/govt-and-politics/5306f373-4900-560d-9aa2-676b61625393.html>.

94. Then-candidate for Treasurer Dan Rutherford, after his opponent announced her support for the merger, wanted the public to know that he had supported the move for "quite some time;" certainly longer than his opponent. Riopell, *supra* note 4.

95. See, e.g., *id.*; *Candidates Would Merge Treasurer, Comptroller Offices*, ST. J. REG. (updated Aug. 23, 2010, 10:16 PM), <http://www.sj-r.com/breaking/x1794934784/Candidates-would-merge-Treasurer-comptroller-offices>.

96. Wetterich, *supra* note 1 (citing both the Comptroller and the Treasurer as working to persuade the Speaker of the House to support a constitutional amendment).

97. S.J. Res. 13, 97th Gen. Assembly (Ill. 2011).

98. *Id.* at 3.

99. See ILL. G.A. LEGISLATIVE RESEARCH UNIT, *supra* note 28, at 4.

100. See *supra* notes 1–3 and accompanying text. For those unfamiliar with the Illinois political culture, such a result may come as a shock. The power wielded by Speaker Madigan is an often-discussed topic in the state. The Speaker is a somewhat larger-than-life figure, having served forty-four years in the State House of Representatives, with thirty of those as Speaker. *Representative Michael J. Madigan (D)*, Ill. Gen. Assembly, <http://www.ilga.gov/house/rep.asp?MemberID=1840> (last visited Oct. 30, 2014). He also serves as chairman of the state's Democratic Party, giving him virtually unprecedented power over his representatives. For an introduction to Madigan's leadership style and controversy, see James Ylisela Jr., *Michael Madigan Is the King of Illinois*, CHICAGO MAG. (Nov. 20, 2013, 10:21 AM), <http://www.chicagomag.com/Chicago-Magazine/December-2013/michael-madigan/>. In regard to his control of the Rules Committee, Ylisela writes:

Madigan's dominance over the legislative process means that lawmakers, lobbyists, and other supplicants must pay obeisance through favors, patronage, or political contributions. "We're expected to follow along like lemmings and take a loyalty test over and over," griped Julie Hamos, a

3. *Continued Frustration, but Potential Opportunity*

The defeat of these merger proposals has not dampened calls to combine the offices. Rather, disgruntled proponents blame the failure on accusations of political self-interest. The 2014 Chicago Tribune endorsement for the Treasurer's Republican primary is illustrative of that frustration:

This year's election for state treasurer shouldn't be happening. The Democratic and Republican candidates who ran for treasurer and comptroller in 2010 vowed to support a merger of the two offices, which would save at least \$12 million a year . . . [b]ut, as in so many other instances in Springfield, inertia has prevailed. A merger has gone nowhere. No one in position to make a difference has really pushed for it. The constitutional amendment that would be required has been bottled up in the legislature.

The two Republicans running for treasurer . . . say they will push to eliminate the office. We won't hold our breath.¹⁰¹

More poignantly, the subject launched back into the public consciousness just before this Note went to print. Judy Baar Topinka, who had served as both Treasurer and Comptroller, passed away December 10, 2014, just weeks before she was to be inaugurated to a second term as Comptroller.¹⁰² Many elected officials have remembered her for her commitment to merging the offices, and have suggested that the vacancy left by her death should be used to complete her dream.¹⁰³ Outgoing Governor Pat Quinn has voiced his support for the move, and suggested it be named Judy's Amendment or the "Topinka Amendment" in her honor.¹⁰⁴ More radically, Lieutenant Governor Sheila Simon, who ran against Topinka in the 2014 election, penned an opinion piece in the *Chicago Tribune* urging the Governor to complete the merger immediately by appointing incoming Treasurer Michael Frerichs to the position.¹⁰⁵ While that did not happen, both Frerichs and incoming appointed Comp-

former Democratic state representative from Evanston, after Madigan and his lieutenants blocked a 2009 ethics plan that she supported from coming out of his Rules Committee.

Id.

101. *For the GOP: Tom Cross*, CHI. TRIB., Mar. 7, 2014, http://articles.chicagotribune.com/2014-03-07/opinion/ct-illinois-Treasurer-endorsement-edit-0307-20140307_1_state-Treasurer-dupage-county-auditor-tom-cross.

102. Rick Pearson, *Judy Baar Topinka Remembered for Political Style*, CHI. TRIB., Dec. 10, 2014, <http://www.chicagotribune.com/news/local/breaking/chi-illinois-comptroller-judy-baar-topinka-dies-at-age-70-20141210-story.html#page=1>.

103. See Kerry Lester, *Topinka's Death Renews Talk of Merging Offices*, CHI. SUN-TIMES, Dec. 23, 2014, <http://chicago.suntimes.com/politics/7/71/229156/topinkas-death-renews-talk-merging-offices/>.

104. Paris Schutz, *Quinn Appoints New Interim Comptroller, Avoids Legal Battle with Rauner*, CHI. TONIGHT (Dec. 19, 2014, 2:16 PM), <http://chicagotonight.wttw.com/2014/12/19/quinn-appoints-new-interim-comptroller>.

105. Sheila Simon, *Sheila Simon: Appoint Treasurer-Elect Mike Frerichs as Comptroller*, CHI. TRIB., Dec. 15, 2014, <http://www.chicagotribune.com/news/opinion/commentary/chi-illinois-comptroller-sheila-simon-mike-frerichs-topinka-perspec-20141215-story.html>.

troller Leslie Munger have expressed that they will work in the coming term towards introducing and passing such an Amendment.¹⁰⁶ This environment could provide another chance to allow a merger to succeed.

III. ANALYSIS

In this Part, Section A evaluates the root causes of the continued merger debate, considering why there has been no resolution for more than forty years. Next, Sections B and C analyze the concerns of the 1970 Constitutional Convention, both in their historical context and in light of developments in the decades since. Finally, Section D explores the administrations of other state governments, evaluating the Illinois structure against its alternatives.

A. *Why the Continued Debate*

First and foremost, the debate continues because it is generally accepted that proponents of the merger have raised persuasive points.¹⁰⁷ It appears that very few state leaders would deny the benefits that could be derived from the merger,¹⁰⁸ with most seeming to focus on the potential budget reduction.¹⁰⁹ Even though the exact amount of savings that would result from the merger is “difficult to project,” it is rather likely that savings would, at the very least, be produced from “reduc[ing] staff, and . . . from sharing office space and technology.”¹¹⁰ On the more optimistic end, “there are many duplicative functions that could be eliminated for considerable savings.”¹¹¹

Despite its simplicity, however, it appears that the most significant reason that the merger proposals have failed, dating back to Delegate Netsch’s proposals at the Convention, comes down to a problem of mis-

106. See Tom Kacich, *Tom Kacich: Candidates for Frerichs Seat Include Minister*, Champaign News-Gazette, Dec. 17, 2014, <http://www.news-gazette.com/news/local/2014-12-17/tom-kacich-candidates-frerichs-seat-include-minister.html> (citing Frerichs’ spokesman’s statement that, although Frerichs would not accept a “dual appointment” or “informal consolidation,” he does favor merging the offices); *Rauner Chooses Topinka Replacement*, WARD ROOM (Jan. 5, 2015, 4:12 PM), <http://www.nbcchicago.com/blogs/ward-room/Rauner-Chooses-Munger-for-Comptroller-287568891.html#ixzz3O0fD38ef> (quoting Munger’s statement upon her appointment: “I will relentlessly advocate that the General Assembly put a Constitutional amendment on the 2016 ballot to merge the Comptroller’s office with the Treasurer’s office. That’s what Judy wanted, and the people deserve the opportunity to vote on it. I would look forward to helping eliminate the very office to which I was appointed.”).

107. ILL. G.A. LEGISLATIVE RESEARCH UNIT, *supra* note 28, at 4.

108. Resolution 13, between the State Senators who voted in favor of it and the State Representatives who had signed on as cosponsors, claimed the support of 105 of the 177 members of the General Assembly without ever coming to a vote in the State House. *Id.*

109. The General Assembly’s Legislative Research Unit spends the bulk of its analysis of the potential combination of roles focused on potential savings. *Id.*

110. *Id.*

111. *Id.*

identifying the necessary audience. Rather than addressing the opposition's concerns head-on, proponents continue to make their arguments solely to the electorate.

Nearly every proposal has focused almost exclusively on the aforementioned benefits of government efficiency.¹¹² The archetypal stump speech regularly returns to reformist terms such as “ministerial,”¹¹³ “duplications,”¹¹⁴ and “cost savings,”¹¹⁵ as well as somewhat provocative overtones like “low-hanging fruit”¹¹⁶ and “common sense.”¹¹⁷ These populist arguments resonate well with citizens in the general population who believe their government should function more efficiently while decreasing the effect on their pocketbooks,¹¹⁸ particularly in a state known for its political largesse.¹¹⁹

Unfortunately, outside of convincing the citizenry to treat the next General Assembly election as a referendum on the merger (a prospect that is, at best, bleak), popular support means little until the amendment can successfully pass each house of the General Assembly by a three-fifths majority.¹²⁰ To be fair, merger opponents also do their fair share of talking past their opponents.¹²¹ Their arguments, however, do not have to

112. *See id.*

113. 5 TRANSCRIPTS, *supra* note 58, at 3732 (statement of Pres. Samuel Witwer).

114. Wetterich, *supra* note 1.

115. Gerald J. Roper, Letter to the Editor, *Merger Mistake*, CHI. TRIB., May 30, 1998, http://articles.chicagotribune.com/1998-05-30/news/9805300192_1_consolidation-Treasurer-illinois-senate (arguing that a recent rejection of a proposed merger amendment was in error because, even if the anticipated cost savings ended up on the low end of the spectrum, it would still result in tax money being directed toward “better-managed, more efficient government” in tune with the “real world”).

116. Kristen McQueary, *Move to Allow Vote to Merge Treasurer and Comptroller Jobs Stalls in House*, N.Y. TIMES, Dec. 31, 2011, <http://www.nytimes.com/2012/01/01/us/illinois-voters-may-vote-whether-to-merge-treasurer-and-comptroller-jobs.html>.

117. *Illinois Senate OKs Treasurer-Comptroller Merger*, CBS CHI. (updated Apr. 1, 2011, 9:39 AM), <http://chicago.cbslocal.com/2011/03/31/illinois-senate-oks-treasurer-comptroller-merger/>.

118. *See, e.g.*, Roper, *supra* note 115.

119. Illinois has the most units of government of any state in the nation at 7,000 units, beating second-ranked Texas by over 1,800. BRIAN COSTIN, ILL. POLICY INST., TOO MUCH GOVERNMENT: ILLINOIS' THOUSANDS OF LOCAL GOVERNMENTS 1 (2013) (arguing that this has “add[ed] unnecessary layers of local government and bureaucracy, leading to expensive duplication of public services”).

120. ILL. CONST. art. XIV, § 2. Under the Illinois Constitution, citizens can propose amendments independently of the General Assembly only if they pertain to the contents of the legislative article. ILL. CONST. art. XIV, § 3. This exception has proven to be exceedingly narrow. *See e.g.*, Clark v. Illinois State Bd. of Elections, No. 14 CH 07356 (Cir. Ct. of Cook Cty., Ill. June 27, 2014), available at <https://drive.google.com/file/d/0B4Bi-iePG1O6V25HbkpxeVdzUDg/edit> (invalidating two attempted citizen proposed amendments and stating that “precedent dictates a very narrow provision for allowing the voters to directly enact amendments to the Illinois Constitution”).

121. Today's iteration of the opposition inevitably centers on Michael Madigan, thanks to his position as one of Illinois' most powerful officials. *See supra* note 100. His reasons for opposing the merger have not been spared from public skepticism. As mentioned earlier, Speaker Madigan was a delegate to the Constitutional Convention. *See supra* note 3. He, incidentally, was one of the fifty-five “no” votes during Netsch's first attempt to abolish the Treasurer's office. 3 TRANSCRIPTS, *supra* note 46, at 1237–38. This has widely been speculated to be the real cause for his opposition to the bill. Wetterich, *supra* note 1. It has further been speculated that, in 1998, he opposed another attempted merger amendment because it would have named the new position “Treasurer,” and he did not want the combined office to go to the Republican who currently occupied the Treasurer's office. *Id.*

be overly convincing or, arguably, anything more than moderately rational;¹²² they are not the ones hoping to change the status quo. So long as the merger opponents' arguments continue to hold over two-fifths of either house of the General Assembly¹²³ (or maintain the favor of a leader strong enough to prevent its appearance for a floor vote),¹²⁴ the public will never enter the amendatory process.

The Convention delegates articulated multiple arguments that might be persuasive to policymakers; however, many of these have fallen out of use. A key argument during the debates, for instance, was the idea that the merger would yield a shorter ballot with fewer offices, which would allow citizens to spend less time focusing on multitudes of candidates and more time involving themselves in the real issues facing the state, such as public works, education, and environmental protection.¹²⁵ Employing this "issue-oriented" argument may at least balance the cost-cutting argument, if not change the minds of some policymakers altogether.¹²⁶

Furthermore, even if current efforts have the potential for success, they are often lost in the clamor for state government reform generally. For instance, many advocates discuss the merger in a broader scheme of comprehensive constitutional office reform, including with it the abolition of the Lieutenant Governor's office.¹²⁷ Some go further still, expanding these sweeping plans into discussions about another Constitutional Convention, making the proposals increasingly far-reaching and decreasingly likely to be accomplished with any urgency.¹²⁸

The best hope for resolving the issue definitively is to focus on the issue at hand, go beyond the fiscal savings speculation, and earnestly consider the 1970 Constitutional Convention's reservations as well as the administrative merits of a merged office.

B. Motivations Underlying the Constitutional Convention Were Not Merely About Fraud

While popular consciousness recalls the merger's defeat at the 1970 Convention as a stance grounded in the fear of continued corruption,¹²⁹

122. For instance, it seems implausible to argue, as Madigan's spokesman has, that "anybody who's spent any time around [the offices] knows" that the officers are almost too different to combine when generations of Comptrollers and Treasurers have spoken in favor of the merger. *Id.*

123. See ILL. CONST. art. XIV, § 2.

124. McQueary, *supra* note 116.

125. 5 TRANSCRIPTS, *supra* note 58, at 3734.

126. *Id.* (statement of Del. David Kenney).

127. ILL. G.A. LEGISLATIVE RESEARCH UNIT, *supra* note 28, at 3–4.

128. See, e.g., Ann M. Lousin, Will Illinois Hold a Constitutional Convention? 41 (Sept. 2, 2008) (unpublished manuscript), available at <http://ssrn.com/abstract=1262467>.

129. See *supra* Part II.B.

an analysis of the floor debate reveals that there were also less altruistic undertones at play.

First, it appears that some proponents may have been more concerned about the continued opportunities for themselves or their party to obtain elective experience and executive control than they were about protecting the state's finances. Take, for example, Delegate David Kenney's plea to his fellow delegates in the treasury debate:

I recognize full well that we need to have, perhaps, several statewide elective officers to accomodate [sic] the patronage needs of the parties, but surely if we elect a comptroller statewide and surely if we elect the attorney general statewide and surely if we elect the secretary of state statewide, this will take care of the patronage needs of our parties. Beyond that, let's tighten it up, and let's not elect the treasurer.¹³⁰

Others, however, used the argument to support preserving the position's place on the ballot. Speaking favorably of this same point, Delegate Dwight Friedrich commented that Illinois "had some real distinguished people serve in [the Treasurer's] office in the past," who then went "up through the ranks" to serve in more prominent positions.¹³¹ His list included William J. Scott (Illinois Attorney General at the time of the Convention), William Stratton (the Governor), and even Adlai E. Stevenson III (the Treasurer, who was mounting a successful bid for the U.S. Senate at the time).¹³² Although he prefaced it with his opinion that the Treasurer was not "just a bookkeeper at all," Friedrich argued that the office provided enough value simply as a training ground for future leaders, continuing: "And if it served no other purpose than to give the people a chance to look at a person on a statewide basis and to give them a place in the sun for the press and for the people . . . I think it is a wholesome thing."¹³³

Just as importantly, Delegate Netsch's amendments seemed to doom themselves by being simultaneously overly broad and vague. Debate transcripts reveal that many delegates hesitated to support the amendments because they were afraid that removing an office from the Constitution would effectively eliminate the constitutional requirement for the government to perform the office's duties. Concerned about the Treasurer's executive responsibilities and discretion to set investment policy, Delegate Coleman argued that the elimination of the office would not properly control "who gets the money."¹³⁴ He attributed this largely to a lack of precise wording in the constitutional framework, noting, "had

130. 5 TRANSCRIPTS, *supra* note 58, at 3734 (statement of Del. David Kenney).

131. *Id.* at 3736 (statement of Del. Dwight Friedrich).

132. *See id.*

133. *Id.*

134. *Id.* at 3731 (statement of Del. Charles Coleman).

we done a little bit better on other articles, I would have no real objection”¹³⁵

The second problem with Delegate Netsch’s amendments originated from the uncertainty of what would come next. These problems primarily stemmed from focusing on abolition of the office instead of a merger of the Treasurer with the Auditor (now Comptroller).¹³⁶ By not transferring the duties explicitly into the job description of another office, confusion emerged about whether the role would (1) be housed in the office of the comptroller,¹³⁷ (2) become an official appointed by the governor,¹³⁸ or (3) become an office under the purview of the General Assembly.¹³⁹ Rather than directing the legislation towards a unified, declared end, this vagueness allowed the debate to descend into a cacophony of questions that remained unanswered in the chamber just moments before the votes took place.¹⁴⁰ For instance, Delegate Louis Bottino had a list of questions he wanted answered before he could “go back home and try to argue for what [he had] done.”¹⁴¹ These included such fundamental questions as “where this treasurer is going to be, who he is going to be responsible to, [and] who is going to name him”¹⁴²

These *sotto voce* considerations and structural shortcomings surrounding the Netsch amendments are likely much more responsible for the preservation of the two offices than transparency.

C. *Modern Advancements Have Significantly Reduced the Likelihood of Future Misconduct*

With the façade of the corruption-fighting justification exposed, the merger can finally be discussed in its proper context. While the often-forgotten policy arguments mentioned above remain valid,¹⁴³ major developments over the last forty-five years have made the possibility of another Orville Hodge incident much less likely than at the time of the 1970 Convention.

135. *Id.*

136. *See id.* at 3729 (demonstrating the amendment as an elimination of the Treasurer from the Constitution, rather than a merger of the responsibilities into another office).

137. *Id.* at 3730 (statement of Del. Netsch).

138. *Id.* at 3731 (statement of Del. Coleman).

139. *Id.* at 3730 (statement of Anthony Peccarelli).

140. *See, e.g., id.* at 3731 (statement of Del. Louis Bottino).

141. *Id.*

142. *Id.*

143. *See supra* notes 125–26 and accompanying text.

1. Technology

As with many functions of American society, the rise of technology and the Internet have changed the way that the Treasurer and Comptroller carry out their constitutional duties.

One facet of these advancements is simply the nature of money and its present day uses. While the Hodge scandal was notable for its amount and Hodge's role as Auditor, an examination of former Secretary of State Paul Powell is a more instructive example for this topic. After his death in October 1970, Powell, who never made more than \$30,000 a year, was found with an estate worth over \$4.6 million¹⁴⁴ and over \$750,000 in cash found in shoeboxes, cases, and lockboxes in his Springfield hotel suite.¹⁴⁵ Those who discovered these stashes recounted seeing denominations of hundred, even thousand, dollar bills in the late Secretary's stash.¹⁴⁶ To this day, it is unclear where all the money came from.¹⁴⁷

In today's market place, it is much less likely that another Shoebox Heist could take place. Treasurer Rutherford has commented before that the Illinois treasury has become a "transparent, electronic system" because of this change, noting that "[t]here is no cash, or certificates, sitting in a vault in my office that someone could walk away with."¹⁴⁸

Another key technological advancement is that the Internet allows for greater oversight of the State's financial stewards, particularly by the people of Illinois. The Internet has significantly changed politics in recent years, pushing for greater transparency and accountability from campaign contributions¹⁴⁹ to voting records.¹⁵⁰ Illinois State finances have not been exempted from this push. In an effort to make government "an open book," the Comptroller's office has created The Ledger, an online

144. Steve Aschburner, *Déjà Vu: Growing Up with Chicago Pals in the 'Land of 10,000 Snakes,'* MINN. POST, Dec. 10, 2008, <http://www.minnpost.com/politics-policy/2008/12/deja-vu-growing-chicago-pals-land-10000-snakes>.

145. Ron Grossman, *From Hero to Bum in a Flash*, CHI. TRIB., Feb. 24, 2013, http://articles.chicagotribune.com/2013-02-24/news/ct-per-flash-paul-powell-0224-20130224_1_shoe-box-clothes-closet-hotel-room.

146. *Id.* Oddly enough, the man who discovered the shoebox was John Rendleman, who helped compose the Morey-Jenner Report. MOREY, JENNER & RENDLEMAN, *supra* note 60.

147. Grossman, *supra* note 145 (explaining how his personal secretary (with whom he had a romantic affiliation) spirited away two suitcases of papers from his office "hours after learning of his death," and recounting how the grand jury discovered a pattern of bribery). The shoeboxes also contained "hundreds of thousands of dollars" in personal checks written simply to the order of Paul Powell instead of the Secretary of the State by "unsuspecting Illinois residents who thought they were paying license plate registration fees." Claire Suddath, *A Brief History of Illinois Corruption*, TIME, Dec. 11, 2008, <http://content.time.com/time/nation/article/0,8599,1865681,00.html#ixzz2sV5iEeCe>.

148. McQueary, *supra* note 116.

149. See, e.g., *Disclosure Data Search*, FEDERAL ELECTION COMMISSION, http://www.fec.gov/finance/disclosure/disclosure_data_search.shtml (last visited Oct. 30, 2014).

150. See, e.g., PROJECT VOTE SMART, <http://votesmart.org/> (last visited Oct. 30, 2014).

database that allows citizens to peruse the State's books.¹⁵¹ This tool, and others like it, opens the door for citizens to be more informed about their public officials' stewardship of state finances.¹⁵²

Together, these advances make the need for a bi-office physical barrier between the bank account and the financial records more obsolete than it was in 1970.

2. *Legislative Action*

Since the 1970 Convention, important developments have also come from the General Assembly. Often installed in response to other crises of public trust, the General Assembly has ushered in substantive structural changes to the way those who govern Illinois are held accountable for their stewardship.

One such law is the State Officials and Employees Ethics Act of 2003.¹⁵³ It was created in the wake of a corruption scandal that ensnared former Governor George Ryan and many of his employees, spanning multiple years and constitutional offices.¹⁵⁴ The Act provided, among other things, for the development of an Executive Ethics Commission to evaluate the conduct of the constitutionally elected officers, and placed an independent office of an Inspector General in each executive office.¹⁵⁵

The Executive Ethics Commission is a bipartisan body designed to ensure ethical conduct in the State government. A nine-member organization, where no more than five members may be of the same political party,¹⁵⁶ the Commission "receives complaints, conducts administrative hearings, prepares and publishes guides regarding the ethics laws, issues subpoenas, . . . makes rulings and recommendations in disciplinary cases . . . [and] has jurisdiction over the employees and officers of the Executive Branch of government."¹⁵⁷

The Inspectors General are the officials tasked with investigating claims and referring substantiated ones to the proper individuals or entities. The Executive Inspector General for the Treasurer describes his office's duties as such:

151. *The Ledger Redefines State Government Transparency*, THE LEDGER, <http://ledger.illinois.comptroller.com/> (last visited Oct. 30, 2014).

152. See, e.g., OPENBOOK, <http://www.openbook.illinoiscomptroller.com/> (last visited Oct. 30, 2014); THE WAREHOUSE, <http://warehouse.illinoiscomptroller.com/> (last visited Oct. 30, 2014).

153. State Officials and Employees Ethics Act, 5 ILL. COMP. STAT. 430120 (2012).

154. Ryan's dealings began while serving as Secretary of State. He eventually was convicted in 2006 of fraud and racketeering. David Schaper, *Former Illinois Gov. George Ryan Heading to Prison*, NPR (Nov. 6, 2007, 3:36 PM), <http://www.npr.org/templates/story/story.php?storyId=16051850>.

155. 5 ILL. COMP. STAT. 430/20-10 (2012).

156. The governor selects five of the commissioners, and each of the remaining constitutional officers selects one commissioner. *Commission & Staff*, STATE OF ILLINOIS EXECUTIVE ETHICS COMMISSION, <http://www2.illinois.gov/eec/Pages/members.aspx> (last visited Oct. 30, 2014).

157. *Ethics and Public Integrity*, ILLINOIS ATTORNEY GENERAL, <http://illinoisattorneygeneral.gov/government/ethics.html> (last visited Oct. 30, 2014).

The EIG acts as an independent agency of government whose function is to investigate fraud and abuse in state government. Specifically, the Executive Inspector General receives and investigates complaints of violations of the Ethics Act and any violation of any law, rule, regulation or abuse of authority or other forms of misconduct by the Treasurer, the appointees and employees of the Office.¹⁵⁸

This mission directs the Inspectors General to serve a dual role: to advise the executive officer on ways to improve staff ethics, as well as to report to the Commission, or directly to prosecutors, any misconduct of the staff or even of the officer.

Amendments to the Ethics Act and the Governmental Ethics Act were made after Governor Rod Blagojevich's infamous impeachment in 2009¹⁵⁹ in an effort to further strengthen these laws as protection against potential executive corruption.¹⁶⁰ In particular, the amendments allow the Executive Ethics Commission "to publicly disclose reports of executive inspectors general in instances where misconduct was found."¹⁶¹ These reports, as well as disciplinary decisions and appeals, are now easily accessible on the Commission's website.¹⁶²

Though there have been no founded reports regarding a constitutional officer since the 2009 amendments took effect, recent events demonstrate that the process is being used to review executive actions and that, at some level, the people trust the Inspector General to conduct these reviews. On January 31, 2014, a one-time employee of the Illinois State Treasurer accused Treasurer Rutherford, among other things, of pressuring him and other employees to do political work regarding Rutherford's gubernatorial campaign during state time at the Treasurer's

158. OFFICE OF THE INSPECTOR GENERAL FOR THE ILLINOIS STATE TREASURER, <http://Treasurer.il.gov/OIG/default.html> (last visited Oct. 30, 2014).

159. Blagojevich's proceeding was the first convicted impeachment in Illinois history. Ray Long & Rick Pearson, *Impeached Illinois Gov. Rod Blagojevich Has Been Removed from Office*, CHI. TRIB., Jan. 30, 2009, <http://www.chicagotribune.com/news/local/chi-bлагоjevich-impeachment-removal,0,5791846.story>. Amanda Vinicky concisely recounts the results of his trial:

Blagojevich was convicted on 17 counts, including attempted extortion, extortion conspiracy, bribery conspiracy, and ten counts of wire fraud. His crimes include trying to shake down a children's hospital CEO and a racetrack executive in exchange for campaign cash and, most infamously, attempting to sell President Barack Obama's vacated U.S. Senate seat. As federal prisoner 40892-424, Blagojevich will serve a prison sentence of 14 years—double his time as Illinois' chief executive.

Amanda Vinicky, *Illinois: The Story Behind the Score*, STATE INTEGRITY INVESTIGATION, http://www.stateintegrity.org/illinois_story_subpage (last visited Oct. 30, 2014).

160. See Vinicky, *supra* note 159.

161. *Support Continues to Grow for Increased Transparency in State Government*, ILL. ETHICS MATTERS (Office of Executive Inspector General for the Agencies of the Illinois Governor, Ill.), Mar. 2, 2012, at 1, available at http://www2.illinois.gov/oeig/documents/newsletter_march_2_2012_se.pdf.

162. *Decisions, Reports, & Appeals*, STATE OF ILLINOIS EXECUTIVE ETHICS COMMISSION, http://www2.illinois.gov/eec/Pages/disciplinary_decisions.aspx (last visited Oct. 30, 2014).

office, a violation of campaign ethics laws.¹⁶³ The accuser's attorney stated that her client registered a complaint with the Executive Inspector General for the Treasurer.¹⁶⁴ While no statement will be made unless or until the Inspector General deems the accusations founded, this instance demonstrates the role the Inspector General is expected to play in monitoring the executive officer's adherence to his or her duty to the populace.

These legislative steps have eclipsed much of the Convention's justifications for dual offices. The Comptroller was kept separate of the Treasurer so that it could ensure that the state's money was not being mismanaged; today, any violation is more likely to be discovered and handled by the Office of the Executive Inspector General before the other constitutional officer would ever be involved. The power of non-partisan entities like the Executive Ethics Commission and the Inspectors General will likely continue to grow; given the gubernatorial corruption track record alone during the last fifty years,¹⁶⁵ the likelihood of the General Assembly (and the people of Illinois) returning these pre-auditory review responsibilities to elected officials seems quite slim.

D. Other States Demonstrate that Two Elected Financial Officers Is Neither Essential nor the Norm, and Provide Guidance for a Potential Illinois Merger

The General Assembly's Legislative Research Unit have identified fifteen states that have positions functionally similar to that of Illinois' Comptroller.¹⁶⁶ These states can largely be divided into two categories: those who appoint and those who elect this position.¹⁶⁷

Those that appoint their comptroller position do so either through the office of the governor or through the director of a state agency.¹⁶⁸ None are appointed by the state legislature.¹⁶⁹

Only four states currently elect an officer that performs functions similar to the Illinois Comptroller.¹⁷⁰ Three of them, however, also fall within another important category. Comptroller Topinka frequently cited that twenty-three states operate their government with one financial

163. John Chase, *Employee at Center of Rutherford Allegations Resigns*, CHI. TRIB., Feb. 3, 2014, http://www.chicagotribune.com/news/politics/clout/chi-employee-at-center-of-rutherford-allegations-resigns-20140203,0_5894948.story.

164. Rick Pearson, *Rutherford Investigating Employee Allegation, Blames Rauner*, CHI. TRIB., Jan. 31, 2014, http://articles.chicagotribune.com/2014-01-31/news/chi-rutherford-investigating-employee-allegation-blames-rauner-20140131_1_dan-rutherford-bruce-rauner-state-Treasurer.

165. Including George Ryan and Rod Blagojevich, four of the last nine governors have spent time in prison. See Vinicky, *supra* note 159.

166. ILL. G.A. LEGISLATIVE RESEARCH UNIT, *supra* note 28, at 4.

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

officer,¹⁷¹ and these ranks include three similar states: New York, Texas, and Florida.¹⁷²

These three states have lessons that would behoove Illinois politicians to consider: their reasons for merging, their process for achieving amendment, and their manner of combining the offices. While none completely match the needs and circumstances of Illinois, their similarities in terms of population size and economic power lend themselves to considering the viability of an Illinois merger.¹⁷³ More importantly, they provide a springboard for considering a proper way forward.

1. *New York*

New York houses its elected financial affairs official in the constitutional office of the Comptroller.¹⁷⁴ Of the three similar states, New York was the first to adopt the one-officer system.¹⁷⁵ Despite the passage of time, the state's history and reasoning for the shifts in offices are particularly instructive for Illinois.

Like Illinois, New York initially chose to maintain two separate elected financial offices. Responding to a wave of populism, it first added the State Treasurer and Comptroller as popularly elected constitutional officers in the "people's constitution" of 1846.¹⁷⁶ The separated offices were justified as an effort to increase democracy and accountability, particularly in the realms of fiscal transparency and investment.¹⁷⁷ In addition to the Treasurer and Comptroller, a number of other positions with control over significant state investments, assets, and rights were likewise

171. McQueary, *supra* note 116.

172. See ILL. G.A. LEGISLATIVE RESEARCH UNIT, *supra* note 28, at 34. For a description of each state's officer's duties, see *About the Comptroller's Office*, OFFICE OF THE NEW YORK STATE COMPTROLLER, <https://www.osc.state.ny.us/about/response.htm> (last visited Oct. 30, 2014); *Meet the CFO*, FLORIDA'S CHIEF FINANCIAL OFFICER, <http://www.myfloridacfo.com/sitepages/agency/cfo.aspx> (last visited Oct. 30, 2014); *About Us*, WINDOW ON STATE GOVERNMENT: SUSAN COMBS—TEXAS COMPTROLLER OF PUBLIC ACCOUNTS, <http://www.window.state.tx.us/about/> (last visited Oct. 30, 2014).

173. In terms of population, 2013 estimates put Texas, New York, Florida, and Illinois at numbers two through five in the nation, respectively. *Top Ten Most Populated States of the USA-2013*, LISTCRUNCH (Dec. 14, 2012), <http://www.listcrunch.com/2012/12/14/top-ten-most-populated-states-of-the-usa-2013/>. It seems that they were in exactly the same positions for the 2009 GDP estimates, as well. *List of U.S. States by GDP*, WIKIPEDIA, http://en.wikipedia.org/wiki/List_of_U.S._states_by_GDP (last visited Oct. 30, 2014).

174. *About the Comptroller's Office*, *supra* note 172.

175. New York First combined the responsibilities of treasurer, auditor, and comptroller in 1925. THOMAS SANZILLO, the New York State Comptroller's Office, in *THE OXFORD HANDBOOK OF NEW YORK STATE GOVERNMENT AND POLITICS* (Gerald Benjamin, ed. 2012). Texas followed suit in 1995. Laurie E. Jasinski, *State Treasurer*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/mbsex>, (last visited Oct. 30, 2014). Most recently, Florida made its move in 1998. FLA S. INTERIM PROJECT REP., S. 2003-109 at 1 (2003), available at http://archive.flstate.gov/data/publications/2003/Senate/reports/interim_reports/pdf/2003-109bi.pdf.

176. THE ENCYCLOPEDIA OF NEW YORK STATE 495 (Peter Eisenstadt & Laura-Eve Moss eds. 2005) [hereinafter N.Y. ENCYCLOPEDIA].

177. *Id.*

elevated to the status of constitutional officers to allow the electorate to keep them accountable.¹⁷⁸

This democratic ideal, however, quickly became a “loose, unmanageable collection of agencies and departments,”¹⁷⁹ and efforts to remove positions from the ballot began shortly thereafter.¹⁸⁰ The most sweeping embodiment of efforts for a change came in 1915 when, with the permission of a special referendum, the state convened a Constitutional Convention.¹⁸¹ The Convention put forth five proposals that November, containing thirty-three constitutional changes.¹⁸² One proposal would have removed the Treasurer as an elected official and consolidated “the more than one hundred and fifty bureaus, departments, commissions, boards and officials” into seventeen departments.¹⁸³ These proposals ultimately failed to gain the consent of the people.¹⁸⁴

Despite their failure at the polls, analysts after the election argued “that the voters did not disapprove of the substance of the amendments, but that they objected to the packaging of disparate controversial amendments into five large proposals presented on a take-it-or-leave-it basis.”¹⁸⁵ This seems to have been the case at least for the merger, as the issue was quickly revived. A more streamlined proposal was offered in 1925, focused on government structure and including the abolition of the Treasurer; the electorate approved the measure that November.¹⁸⁶ Since the Treasurer’s abolition, the position’s responsibilities have been divided between the State Comptroller¹⁸⁷ and a Department of Taxation and Finance, which is run by a commissioner appointed by the Governor.¹⁸⁸ For most of the Department’s treasury functions, it shares responsibilities with the Comptroller.¹⁸⁹

New York is a useful case study for Illinois in many aspects. First, the trials it underwent to achieve the merger serve as a lesson for those

178. These included positions as varied as the “attorney general” and “secretary of state,” as well as the “canal commissioner, state engineer and surveyor, state prison inspector, and Court of Appeals judge.” *Id.*

179. Richard I. Nunez, *New York State Constitutional Reform—Past Political Battles in Constitutional Language*, 10 WM. & MARY L. REV. 366, 370 (1968).

180. N.Y. ENCYCLOPEDIA, *supra* note 176, at 495 (noting the introduction of amendments favoring “shorten the ballot” efforts as early as 1867).

181. See 2 ALDEN CHESTER & E. MELVIN WILLIAMS, *COURTS AND LAWYERS OF NEW YORK: A HISTORY, 1609-1925*, at 748 (1925).

182. Nunez, *supra* note 179, at 369.

183. CHESTER & WILLIAMS, *supra* note 181, at 748.

184. *Id.* at 755.

185. Nunez, *supra* note 179, at 370.

186. See N.Y. ENCYCLOPEDIA, *supra* note 176, at 496; Nunez, *supra* note 179, at 370.

187. *About the Comptroller’s Office*, *supra* note 172.

188. *Purpose Statement*, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, <http://www.tax.ny.gov/treasury/> (last updated June 28, 2011).

189. In particular, they are jointly responsible for the state’s general checking account. *Major Functions*, NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, <http://www.tax.ny.gov/treasury/majorfunctns.htm> (last updated June 16, 2011).

who wish to propose it in the midst of a sweeping omnibus reform movement.¹⁹⁰ Although the merger was still in the context of a broader reform effort,¹⁹¹ New York learned from the 1915 rejection that success is more easily obtained when the question is put forth directly. Second, many of the issues New York faced in 1925 continue to rankle Illinois in 2015 (and, for that matter, even in 1970). In addition to the problem of excessive units of government,¹⁹² New York also recognized the merger as an effort to “diminish the power of the state’s political party bosses,” who reaped the positions for “patronage that nourished a disciplined party system.”¹⁹³ Taken as a whole, it seems the vehicle and justification for the state’s merger could be persuasive for Illinois.

The New York model, however, is not a perfect fit on its own. Illinois has the opportunity to offer an even more directed amendment than New York’s. Even though Illinois struggles with local units of government, it has a much more streamlined executive branch than New York had at the time of the merger.¹⁹⁴ More importantly, the divided functions between the Department of Taxation and Finance and the Comptroller would be viewed more skeptically in Illinois: the fear of unsavory conduct by the Governor is too real of a threat to allow a gubernatorial appointee to share power with Illinois’ Comptroller in the wake of a merger.¹⁹⁵

2. *Texas*

Texas merged its Treasurer into the Auditor of Public Accounts in 1995.¹⁹⁶ In the early 1990’s, the Texas Treasurer shared many parallels with Illinois’ Auditor and Treasurer roles at the time of the 1970 Convention. The Texas Treasurer similarly served as a stepping-stone to higher office: In 1993, the office was vacated when Treasurer Kay Bailey Hutchison was appointed to the U.S. Senate; her predecessor in the treasury, Ann Richards, was the Governor who appointed her.¹⁹⁷ And, not unlike the Hodge scandal, the Texas Treasurer was “mired in controversy.”¹⁹⁸ Though it was not directly related to her duties as a fiduciary of the State, a district attorney impaneled a grand jury to consider whether Hutchison used her office and its employees to advance the political as-

190. See notes 127–28 and accompanying text.

191. Nunez, *supra* note 179, at 370.

192. See *supra* note 119.

193. N.Y. ENCYCLOPEDIA, *supra* note 176, at 496.

194. Compare ILL. CONST. art. V, with *supra* note 176.

195. See the various gubernatorial scandals mentioned in Part III.C.2.

196. Jasinski, *supra* note 175.

197. ROBERT D. HISRICH & AMR AL-DABBAGH, GOVERNPRENEURSHIP: ESTABLISHING A THRIVING ENTREPRENEURIAL SPIRIT IN GOVERNMENT 84 (2012).

198. *Id.*

pirations of herself and her compatriots.¹⁹⁹ The proceedings were fraught with political insinuations,²⁰⁰ and ultimately ended with an acquittal,²⁰¹ but the entire process began to breed skepticism about the value and future of the office.²⁰²

Unlike in Illinois, however, the merger proposal was not nearly as widely supported on both sides of the aisle. Debate began in earnest during the 1994 elections, when Democratic candidate, and sitting Treasurer, Martha Whitehead promised she would work to abolish the office and merge it with the Texas Comptroller of Public Accounts.²⁰³ She advanced many of the same arguments Illinois politicians have used: saving expense, reducing bureaucracy, and eliminating “unnecessary duplication.”²⁰⁴

Whereas both Treasurer candidates in the Illinois 2010 race fundamentally agreed that the office should merge, Texas voters were given a stark contrast. Rather than support the end of the office, 1994 Republican candidate David Hartman actually advocated for expanding the role of the treasury as a way to save money, arguing that the office should assume the roles of departments like the Public Finance Authority and the Pension Review Board.²⁰⁵ He also argued that the Treasurer was a fiscal “watchdog,” and that separation was necessary for accountability: “State government needs financial controls. Any CPA . . . will tell you that the person who handles the books shouldn’t be handling the cash.”²⁰⁶

In the end, voters narrowly sided with Whitehead.²⁰⁷ During the first months of 1994, she proved that her vision was possible by ceding some

199. More specifically, the grand jury was asked to consider accusations that she had “repeatedly used public employees to perform personal and political chores for her and for the Bush-Quayle campaign.” Sam Howe Verhovek, *Senator Goes Before Texas Grand Jury*, N.Y. TIMES, Sept. 10, 1993, <http://www.nytimes.com/1993/09/10/us/senator-goes-before-texas-grand-jury.html>. These claims closely resemble the allegation brought against Treasurer Rutherford. See *supra* note 163 and accompanying text.

200. In addition to questions about the admissibility of the evidence the district attorney had collected, there was also the fact that the district attorney had asked Governor Richards to appoint him to the U.S. Senate seat instead of Hutchison. *Trial to Begin for Texas Senator*, L.A. TIMES, Feb. 6, 1994, http://articles.sun-sentinel.com/1994-02-06/news/9402050347_1_hutchison-s-democratic-opponent-texas-state-Treasurer-employees-and-equipment.

201. Sam Howe Verhovek, *Fight Over Evidence Results in Acquittal of Senator in Texas*, N.Y. TIMES, Feb. 12, 1994, <http://www.nytimes.com/1994/02/12/us/fight-over-evidence-results-in-acquittal-of-senator-in-texas.html?pagewanted=3&src=pm>.

202. See HISRICH & AL-DABBAGH, *supra* note 197, at 85.

203. Sam Howe Verhovek, *The 1994 Campaign: Texas; Candidate Seeks Job She Would Cut*, N.Y. TIMES, Oct. 30, 1994, <http://www.nytimes.com/1994/10/30/us/the-1994-campaign-texas-candidate-seeks-job-she-would-cut.html?scp=57&sq=texas%20state%20Treasurer&st=cse>.

204. HISRICH & AL-DABBAGH, *supra* note 197, at 85.

205. Verhovek, *supra* note 203.

206. *Hartman Sees Treasurer as “Watchdog,”* VICTORIA ADVOC., Sept. 29, 1994, at 7A, available at <http://news.google.com/newspapers?nid=861&dat=19940929&id=btROAAAIBAJ&sjid=BEsDAAAIBAJ&pg=7071,5897482>.

207. Whitehead attained 2,084,274 votes (50.29%) to Hartman’s 2,060, 707 (49.70%). OFFICE OF THE SEC’Y OF STATE, *Race Summary Report: 1994 General Election*, (1994), <http://elections.sos.state.tx.us/elchist.exe> (last visited Sept. 16, 2014).

responsibility back to the Comptroller before any merger occurred.²⁰⁸ The legislature took up the issue that fall. In addition to the resolution to merge the offices, the Senate included a bill “to provide for a smooth transition” process.²⁰⁹ Arguments against the merger were very similar to Madigan’s concerns: it would eliminate a key element of checks and balances, and hypothetical cost savings could prove illusory.²¹⁰ Supporters focused on the redundancy of the offices and cost savings, certainly, but they also relied on two factors discussed above: legislative developments and technology. They argued that legislation-made entities (in Texas’ case, the State Depository Board) took responsibility for safeguarding against corrupt conduct, and posited that technology had automated the Treasurer’s role to such a degree that the “value of the Treasurer’s involvement [was] . . . now outweighed by the inefficiency of maintaining an entire independent state agency to perform the Treasurer’s role.”²¹¹ In November, the populace voted to abolish the office.²¹²

Texas demonstrates that evidence of technological and legislative advances can be persuasive in favor of a merger. Again, though, Texas does not provide a perfect roadmap for Illinoisans. While Whitehead was able to successfully crusade for her office’s closure, it was less of an uphill battle: the Texas Treasurer’s office was already “dwarfed in size and authority by the office of the Texas Comptroller.”²¹³ Also, perhaps because of this lopsided division of duties as well as Whitehead’s leadership on the issue, the title of the ballot proposition was “abolishing state Treasurer office.”²¹⁴ In Illinois, however, where there is evidence of past arguments over naming rights, declaring one office the winner over the other in this manner is less likely to garner support within the legislature.²¹⁵

3. *Florida*

Florida, the most recent of the three to adopt the single office system, amended its constitution to provide for electing a Chief Financial Officer (“CFO”).²¹⁶ While the State is less instructive for the specific

208. HISRICH & AL-DABBAGH, *supra* note 197, at 85 (“In February 1994, she was able, through interagency agreement, to transfer the tobacco tax collection division back to the Comptroller’s office . . .”).

209. TEX. LEG. COUNCIL, ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS: NOVEMBER 7, 1995, ELECTION 27 (1995).

210. Detractors also made the novel argument that, since the Treasurer’s office was the constitutional office most often held by women, eliminating the office may limit women’s political opportunities. HOUSE RESEARCH ORGANIZATION, TEXAS HOUSE OF REPRESENTATIVES, FOURTEEN AMENDMENTS ON NOVEMBER BALLOT 24–25 (1995).

211. TEX. LEG. COUNCIL, *supra* note 209, at 28–29.

212. It became effective in 1996. Jasinski, *supra* note 175.

213. Verhovek, *supra* note 201.

214. HOUSE RESEARCH ORGANIZATION, *supra* note 210, at 22.

215. See *supra* note 121.

216. Passed in 1998, the new cabinet structure took effect in 2003. Kent J. Perez, *The New Constitutional Cabinet—“Florida’s Four,”* 82 FLA. BAR J. 62, 66. (2008).

functions of the office, its choice of form and ballot language clarity are particularly useful for future mergers.

The State of Florida has a rather unique form of government, which makes it difficult to apply every aspect of its merger to Illinois. Florida's executive branch operates under a cabinet system of governance, which, in essence, is a "plural executive" system where the governing decisions are made by vote of the constitutional officers.²¹⁷ One of the primary considerations for the Florida merger was the fact that, under the old system, the Governor served as an equal with six other elected officials.²¹⁸ The merger streamlined the cabinet to give the Governor more power while preserving the cabinet system by endowing the three remaining cabinet officers with broader powers and responsibilities than they once had.²¹⁹

Florida's decision to name the merged office "CFO" stands out amongst the three example states. By using this widely-understood, business-oriented language, the State made the position more comprehensible and accessible to the citizens, which may better serve accountability by allowing them to use their vote in a more informed way. Supporters stressed the intuitive nature of the name, separating the government into spheres: the newly constituted cabinet "retain[ed] the governor as the chief executive officer, the attorney general as chief legal officer, and combin[ed] the comptroller and Treasurer positions into a single chief financial officer."²²⁰ Recognizing the "benefit in providing a forum for the people of the state to appear before the executive," they argued that this formulation would preserve the benefit while also streamlining the cabinet.²²¹ These arguments, it seems, may be easily linked: by having positions that better reflect that office's sphere of influence, a citizen wishing to be heard by the executive will now have a better idea of whom to appear before, as well as whom to hold accountable for certain actions.

Additionally, the Florida legislature presented voters with remarkably clear language in the ballot proposal. Proposed as Revision 8, it was entitled "Restructuring the State Cabinet."²²² Somewhat elegantly, the part relevant to the merger was explained in the simplest terms possible: "Merges cabinet offices of treasurer and comptroller into one chief fi-

217. *Id.*

218. *Id.*

219. *Id.*

220. *Transcripts of CRC Meetings: September 11, 1997*, FLA. CONST. REVISION COMM'N, <http://www.law.fsu.edu/crc/minutes/crcminutes91197.html> (last visited Mar. 10, 2014). For a time, these three positions were to be the only members of the new cabinet; the Commissioner of Agriculture was added back after concerns were voiced by the state's farming community. See *Transcripts of CRC Meetings: March 17, 1998*, FLA. CONST. REVISION COMM'N, <http://www.law.fsu.edu/crc/minutes/crcminutes031798b.html> (last visited Oct. 30, 2014).

221. *Transcripts of CRC Meetings: September 11, 1997*, *supra* note 220.

222. *Analysis of All Proposed Florida Constitution Revisions for the 1998 Ballot*, FLA. CONSTITUTION REVISION COMM'N, <http://www.law.fsu.edu/crc/tabloid.html#R8> (last visited Oct. 30, 2014).

nancial officer.”²²³ Compared to the “abolishing” language employed by the previous two states,²²⁴ the Florida referendum laid out clearly and consistently the intent of the proposal to merge the two positions equally into an entirely new entity.

IV. RECOMMENDATION

A. *Lessons Learned*

Considered in the aggregate, the foregoing analysis provides key considerations for Speaker Madigan and the General Assembly to ponder before rejecting or proposing another merger proposal.

For those hoping to reject a merger, they must realize that many of their assumptions are not as they seem. Contrary to popular belief, the 1970 Constitutional Convention was not a resounding call to arms for government accountability, but rather an amalgamation of general uncertainty and less-than-altruistic intentions.²²⁵ Additionally, there are advances that have developed since then in favor of a merger, including the advancement of technology and legislative action. For Speaker Madigan, the latter development should actually be a source of pride, given he helped bring about those changes as Speaker. Furthermore, the states discussed above serve as examples of how a merger can be accomplished without sending Illinois into a storm of corruption and unaccountability.²²⁶ These example states cannot be dismissed as too different to apply: all three are very similar in size and economic stature to Illinois, making them difficult to cast aside.²²⁷

Merger proponents also must reconsider their strategy. Whatever the policy and political justifications of the debate, a significant factor hampering progress has been drafting issues. Advocates propose amendments that either fail to define the future or drown the merger’s clarity in over-zealous attempts to reform the entire government. While they have strong policy-driven arguments to support their position, they too often ignore these reasons in favor of populist calls for cost savings and redundancy elimination. These decisions weaken their position against the opposition, unnecessarily weighing down a proposal that has broad popular support.

223. *Id.*

224. *See supra* text accompanying notes 139, 189.

225. *See supra* Part III.B.

226. This is not to say that these states have not had their share of embarrassments and political misbehavior. For instance, New York Comptroller Alan G. Hevesi resigned in 2006 as part of a plea deal for fraud relating to “his use of state employees as chauffeurs and aides to his wife.” Michael Cooper, *Hevesi Resigns, Pleading Guilty to Fraud Count*, N.Y. TIMES, Dec. 22, 2006, <http://www.nytimes.com/2006/12/22/nyregion/22cnd-hevesi.html?hp&ex=1166850000&en=d92ef16b58866d38&ci=5094&partner=homepage>.

227. *See Top Ten Most Populated States of the USA-2013, supra* note 173.

Both sides of the debate will need to internalize these lessons and challenge their current positions before a merger can be achieved.

B. A Way Forward: The Illinois Chief Financial Officer

If both the opponents and proponents are able to reorient themselves, a way forward is certainly attainable. Based on the analysis in this Note, it is clear that a unified, constitutionally elected office is the best route for Illinois. Such a merger cannot be accomplished, however, unless the amendment is proposed in a simplified manner, and its proponents bolster their arguments with policy-oriented arguments and supplements.

1. The Offices Should Be Merged into a Constitutionally Elected Officer

Merging the Comptroller and the Treasurer's responsibilities into one constitutionally elected office is clearly the most sensible merger style for Illinois. The plausibility of reducing the roles into one office has been discussed throughout this Note; equally pervasive, though, has been the discussion of events over the last fifty years that have legitimized fears of government corruption and fiscal irresponsibility in the State. While there are many ways to combine the offices (for instance, making one an appointed position or ceding some responsibilities to assorted agencies like New York did),²²⁸ many of them would not satisfy the factor of accountability because they would deprive the public of the right to directly oversee the state's financial affairs. Florida's amendment debates captured this concept when they recognized the "benefit in providing a forum for the people of the state to appear before the executive."²²⁹

The best way to be true to both of these influencing factors, then, is to merge the offices into a position that remains constitutionally answerable to the citizens of Illinois through the ballot box.

2. The CFO Is the Most Sensible Hybrid of the Offices

When deciding what to name the newly merged office, Illinois should look to Florida's amendment and designate the position as the Chief Financial Officer. The selection of this title will serve two important purposes: (1) encouraging citizen oversight, and (2) saving the office's title from a potential political struggle.

First, choosing the title CFO advances the idea of accountability to the people. The average citizen is more likely to understand the position of a CFO than a "comptroller of the treasury"²³⁰ or "comptroller of pub-

228. See *supra* text accompanying note 174.

229. *Transcripts of CRC Meetings: September 11, 1997*, *supra* note 220.

230. ILL. G.A. LEGISLATIVE RESEARCH LEG. RES. UNIT, *supra* note 28, at 4.

lic accounts.”²³¹ People will likely (and rightly) look to the business context to understand the CFO as the official to look to for the state’s financial stewardship, which will ultimately make them more informed when affirming or rejecting that officer’s decisions at the polls. Such a common understanding may actually make the merged position more accountable to the people than the current two positions.

Although the term “Treasurer” may also be considered similarly accessible to the populace, the term “CFO” is also superior because it will help to diminish any lingering political hesitations to combining the offices. As mentioned earlier, previous merger attempts in Illinois have been thwarted because of hesitations that the party who held selected name’s office at the time would receive a boost or victory at the other party’s expense.²³² Choosing an entirely new name will eliminate that reservation, and thus hopefully pave the way for bipartisan support of the amendment.

3. *A Directed Amendment Has the Best Likelihood of Success*

The lessons learned from Illinois’ experience, as well as from the example states, dictate that a simple but directed constitutional amendment is the key to achieving the merger.

a. In the General Assembly

The proposal before the General Assembly needs to be both streamlined and policy-driven.

First, the amendment proposal should be limited, looking only at the merger of the Treasurer and the Comptroller. Committing to a limited amendment style would remove reservations from legislators uneasy about the current proposals that are joined with either abolishing the Lieutenant Governor’s office²³³ or, more dramatically, calling for a new constitutional convention.²³⁴ Regardless of the merits of these other changes, Illinois’ charged political discourse will frustrate any across-the-board reinvention of the state government structure in the near future. Limiting the proposal to the task at hand will ensure that proponents in the General Assembly will not be driven away by disagreements over other provisions.

Second, rather than merely eliminating one role, the amendment should merge the text of the offices’ responsibilities together. Even though the “abolish” approach worked in New York and Texas,²³⁵ Illinois

231. See TEX. CONST. art. IV, § 1.

232. See *supra* note 94.

233. See *supra* text accompanying note 93.

234. See *supra* text accompanying note 94.

235. See *supra* text accompanying notes 188, 197.

does not have the same circumstances. Delegate Netsch's failed attempts to solve this issue using that approach in the 1970 Convention demonstrate that it is unlikely to work in Illinois.²³⁶ Furthermore, the state's history of political corruption makes citizens, let alone political opponents, skeptical of simply trusting the General Assembly or the Governor to make sure the tasks are carried out in a responsible way.²³⁷ Using an explicit merger instead of abolition will work to eradicate the ambivalence that Netsch experienced.²³⁸ By preserving the constitutional language of the tasks of both positions, there will be no question as to whether each office's responsibilities will be covered or who will perform them.

With the amendment proposal thus constructed, sponsoring legislators should set about convincing the Speaker and other opponents to support the legislation using policy rather than populism. Putting cost savings on a distinctive backburner, legislators instead should highlight the arguments discussed in this Note: technology has diminished the need for a physical barrier between the bank account holder and the check writer, legislative action has created strong alternative ways to combat impropriety, and other states in similar circumstances have successfully made the transition from two offices into a merged position.²³⁹ Pointing to the CFO language, they should also stress how valuable a singular fiscal officer with a commonly accessible title will be for the average voter.²⁴⁰ This strategy is better designed to address opponents' concerns about checks and balances, which increases its likelihood of approval in the Legislature. Only then will proponents finally have reason to use populism amongst the electorate to gather support for the proposal.

b. At the Polls

Once it is approved by the General Assembly, the merger must be explained as concisely as possible to voters on the ballot to ensure its success. As it was with the selection of a name, Florida's example is again instructive.²⁴¹ Because Illinois' political climate requires the merger to be more limited than Florida's broad streamlining of its cabinet system, the ballot measure could successfully communicate the purpose to voters using only the first clause of the Florida proposal: "Merges cabinet offices of treasurer and comptroller into one chief financial officer."²⁴² This intuitive and brief description is especially applicable for Illinois, given the

236. See *supra* Part III.B.

237. See, e.g., the discussion regarding corruption and citizen awareness of it in Part III.C.2.

238. See *supra* Part III.B.

239. See *supra* Part III.C.1.

240. See *supra* Parts III.D.3, IV.B.1-2.

241. See *supra* Part III.C.1.

242. *Analysis of All Proposed Florida Constitution Revisions for the 1998 Ballot*, *supra* note 224.

extensive voter outreach that has already occurred on the issue in recent election cycles.²⁴³

A model for such an amendment proposal and ballot measure can be found in the Appendix of this Note.²⁴⁴

V. CONCLUSION

The time has come for Illinois to merge its constitutional offices of Treasurer and Comptroller. Despite widespread support to merge them in the 1970 Constitutional Convention, political undertones and ambivalence towards the proposal's drafting allowed them to remain separate for the last forty years in the name of preventing government corruption. Rather than persuading opponents that their fears about checks and balances have been ameliorated, current merger proponents are too focused on heralding to the general populace the benefits of potential cost savings that would come from a unified office or on advocating for an across-the-board shakeup of Illinois' government foundations.

There is a way forward, however. Legislators must propose a simple, direct amendment that combines the two offices into a new position: the CFO. Not only will this facilitate better citizen oversight through commonly understood language; it will also remove opponents' hesitation regarding political interests in the current office titles and questions over whom would take responsibility for the eliminated office's roles. Proponents should work to convince legislative detractors by discussing perspectives on technology, legislative action, and examples of similar states, and then work to ensure ballot success by putting forth short and accessible ballot language.

Creating the Illinois CFO would allow for a streamlined fiscal executive for the state while continuing to allow the people to hold the officer accountable at the ballot box. Such an outcome would preserve the priorities of both sides of the debate, and will ultimately prove far more valuable than the merger's projected cost savings.

243. See *supra* text accompanying notes 95–96.

244. See Appendix *infra*.

APPENDIX: RECOMMENDED BALLOT PROVISION AND CONSTITUTIONAL AMENDMENTS

A. Ballot Language

Restructuring The State Executive Branch

Merges cabinet offices of Treasurer and Comptroller into one chief financial officer.

B. Constitutional Amendments²⁴⁵

Article V: The Executive

Section 1. Officers

The Executive Branch shall include a Governor, Lieutenant Governor, Attorney General, Secretary of State, and Chief Financial Officer ~~Comptroller and Treasurer~~ elected by the electors of the State. They shall keep the public records and maintain a residence at the seat of government during their terms of office.

...

Section 3. Eligibility

To be eligible to hold the office of Governor, Lieutenant Governor, Attorney General, Secretary of State, or Chief Financial Officer ~~Comptroller or Treasurer~~, a person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his or her election.

...

Section 7. Vacancies In Other Elective Offices

If the Attorney General, Secretary of State, or Chief Financial Officer ~~Comptroller or Treasurer~~ fails to qualify or if his office becomes vacant, the Governor shall fill the office by appointment. The appointee shall hold office until the elected officer qualifies or until a successor is elected and qualified as may be provided by law and shall not be subject to removal by the Governor. If the Lieutenant Governor fails to qualify or if the his office becomes vacant, it shall remain vacant until the end of the term.

...

Section 17. Comptroller - Duties (REPEALED)

~~The Comptroller, in accordance with law, shall maintain the State's central fiscal accounts, and order payments into and out of the funds held by the Treasurer.~~

Section 18. Chief Financial Officer ~~Treasurer~~ - Duties

The Chief Financial Officer ~~Treasurer~~, in accordance with law, shall serve as the chief fiscal officer of the State, and shall (i) maintain the State's central fiscal accounts, and order payments into and out of the

245. This proposal amends ILL. CONST. art. V.

funds held by him, (ii) be responsible for the safekeeping and investment of monies and securities deposited with him, and for their disbursement upon his order, and (iii) have the duties and powers that may be prescribed by law of the Comptroller.