

Washington University Law Review

Volume 83 | Issue 1

January 2005

A Regional Government for Fragmented St. Louis: Even the “Favored Quarter” Would Benefit

Jennifer Frericks

Washington University School of Law

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Land Use Law Commons](#)

Recommended Citation

Jennifer Frericks, *A Regional Government for Fragmented St. Louis: Even the “Favored Quarter” Would Benefit*, 83 WASH. U. L. Q. 361 (2005).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol83/iss1/5

This Note is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

A REGIONAL GOVERNMENT FOR FRAGMENTED ST. LOUIS: EVEN THE “FAVORED QUARTER” WOULD BENEFIT

I. INTRODUCTION

In 1990, roughly three out of every four Americans lived in a metropolitan area.¹ When a traveler is asked where she is from, she is likely to say “Atlanta” or “Los Angeles,” rather than naming either her state or the individual municipality in which she resides.² Her strong identification with the metropolitan region is based on daily experience: she likely lives in one locality, works in another, and spends time or money in several others.³ Like citizens, businesses operate beyond the immediate locality to find their customers, workers, and suppliers.⁴ Entertainment areas, cultural institutions, and natural resources are shared regionally.⁵ Yet the American system of local government ignores these realities. The lines of local government were set up for an earlier age, not today’s highly mobile and interconnected society.⁶

The outdated system of local governments has left America’s metropolitan regions ill-equipped to deal with modern challenges. “[I]n most metropolitan regions the collective well-being of the region is not being pursued, primarily because of the aggregate spillover effects of local power being exercised by scores of autonomous localities, each without consideration of the impact of local decisions on the entire region.”⁷ Legal

1. E. TERRENCE JONES, *FRAGMENTED BY DESIGN: WHY ST. LOUIS HAS SO MANY GOVERNMENTS* 142 (2000).

2. *Id.*

3. Richard Briffault, *Localism and Regionalism*, 48 *BUFF. L. REV.* 1, 3 (2000).

4. *Id.* See also EAST-WEST GATEWAY COORDINATING COUNCIL, *WHERE WE STAND: THE STRATEGIC ASSESSMENT OF THE ST. LOUIS REGION 6* (4th ed. 2002), which reports:

America’s metropolitan areas are hubs of population, innovation, and wealth—the attributes that drive the largest producer of goods and services in the world. Although they comprise only 20 percent of its land area, the nation’s 319 metros account for 80 percent of America’s population, 84 percent of its employment, and 85 percent of its Gross Domestic Product. . . . It is not possible to understand America’s place in the global economy, the performance of the national marketplace, or the forces that push some cities to grow and others to decline without first understanding the dynamics of metropolitan growth and inter-regional competition.

Id.

5. Briffault, *supra* note 3, at 3.

6. Janice C. Griffith, *Smart Governance for Smart Growth: The Need for Regional Governments*, 17 *GA. ST. U. L. REV.* 1019, 1019 (2001).

7. Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter*:

scholars have long called for regional government, and in recent years, the growing problem of “urban sprawl”⁸ has led to an increasing national consciousness of the need for change.⁹

Sprawl occurs when low-density development causes a metropolitan area’s growth in size to outpace its growth in population.¹⁰ Often, this growth leaves behind a central core of disproportionately poor,¹¹ minority¹² citizens to face crumbling infrastructure, inferior schools,¹³ and

Addressing the Barriers to New Regionalism, 88 GEO. L.J. 1985, 2030–31 (2000).

8. There are six characteristics commonly included in the working definition of sprawl:

First, sprawl has a low relative density. Second, it consists of unlimited and noncontiguous or “leapfrog” development. In residential areas, this type of development primarily includes single-family tract housing. Third, under sprawled conditions, different types of land uses tend to be segregated. In these areas, municipal zoning ordinances only permit one use in each district. Fourth, sprawl consumes large quantities of exurban agricultural and other fragile lands. Fifth, in sprawled areas, people must rely on automobiles to access individual land uses. Finally, some commentators include the lack of integrated land-use planning as a component of urban sprawl. They claim that sprawl occurs in areas in which the land-use framework has been fragmented among numerous municipalities and developers.

Jeremy R. Meredith, Note, *Sprawl and the New Urbanist Solution*, 89 VA. L. REV. 447, 449 (2003) (citations omitted).

9. Meredith, *supra* note 8, at 450; see also Michael Lewyn, *Sprawl, Growth Boundaries and the Rehnquist Court*, 2002 UTAH L. REV. 1, 2 (“A recent survey by the General Accounting Office (GAO) revealed that 84% of county officials and 64% of city officials rate sprawl as a ‘high,’ ‘very high,’ or ‘moderate’ concern.”); Larry Conley, *Poll Identifies Sprawl as a National Concern*, ATLANTA J.–CONST., Oct. 23, 2000, at B3 (reporting that a survey by Smart Growth America found that seventy-eight percent of Americans favor policies to curb sprawl and “that more than three-quarters of Americans want government to use tax dollars to preserve open space.”).

10. REID EWING ET AL., SMART GROWTH AMERICA: MEASURING SPRAWL AND ITS IMPACT 3, at <http://www.smartgrowthamerica.org/sprawlindex/MeasuringSprawl.pdf> (last visited Apr. 9, 2005); see also ANDRES DUANY ET AL., SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM (2000). Architects Duany, Plater-Zyberk, and Speck write that sprawl is made up of five arrangeable components, each strictly segregated from the others: housing subdivisions, strip centers, office parks, civic institutions, and roadways. *Id.* at 5–7. They lament:

Each year, we construct the equivalent of many cities, but the pieces don’t add up to anything memorable or of lasting value. The result doesn’t look like a place, it doesn’t act like a place, and, perhaps most significant, it doesn’t feel like a place. Rather, it feels like what it is: an uncoordinated agglomeration of standardized single-use zones with little pedestrian life and even less civic identification, connected only by an overtaxed network of roadways. Perhaps the most regrettable fact of all is that exactly the same ingredients—the houses, shops, offices, civic buildings, and roads—could instead have been assembled as new neighborhoods and cities. Countless residents of unincorporated counties could instead be citizens of real towns, enjoying the quality of life and civic involvement that such places provide.

Id. at 12.

11. Michael E. Lewyn, *Suburban Sprawl: Not Just an Environmental Issue*, 84 MARQ. L. REV. 301, 302 (2000) (“In 1960, central cities contained one-third of America’s poor people; by 1990, the central city share had climbed to one-half, and thirty-one of America’s thirty-seven largest cities had poverty rates above the national average.”) (citations omitted).

12. See DAVID RUSK, INSIDE GAME/OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA 71–72 (1999) (revealing that, in 1990, 33% of white metropolitan residents lived in central cities, whereas 67.8% of African-American metropolitan residents lived in central cities).

a severely eroded tax base.¹⁴ At the close of the twentieth century, long commutes, a sense of alienation from community life, and dreary strip-mall architecture made many who had chosen suburban lifestyles aware that the consequences of sprawl were not experienced by city-dwellers alone.¹⁵ Yet Americans remain attached to the idea of their local governments.¹⁶ Localities that are bastions of privilege—sometimes called the “favored quarter” in legal literature¹⁷—fear ceding any control to the region at large, despite a growing recognition that even they would benefit from increased regionalism.¹⁸

This Note looks first at the problem of sprawl in general, giving an overview of its causes, the dilemmas it creates, and the reasons it persists.¹⁹ Second, this Note focuses on St. Louis, Missouri, to show how the general trends are embodied there.²⁰ Third, this Note examines the solutions to sprawl posed in the legal literature and tried in a few other cities.²¹ Finally, it offers a specific proposal for a regional legislature in St. Louis.²²

13. See generally JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991).

14. Note, *Making Mixed-Income Communities Possible: Tax Base Sharing and Class Desegregation*, 114 HARV. L. REV. 1575, 1575–76, 1582–85 (2001).

[G]eographic isolation creates a self-perpetuating cycle of poverty that compounds the burdens of poverty alone. There are few jobs in the ghetto, and opportunities for economic and educational advancement are limited. Residents of these communities often become socially isolated from the rest of society, both because it is difficult for them to break out, and because nonghetto residents will not move into the decaying neighborhoods.

Id. at 1575–76 (citations omitted).

15. See DUANY ET AL., *supra* note 10, at 234 (“Happily, after ten years of media coverage of the ills of sprawl—*Newsweek* covers, *Nightline* episodes, well-publicized local stories—the topic is finally of national political interest. In 1999, for the first time in history, an American president and vice president took a swing at sprawl.”); JAMES HOWARD KUNSTLER, *THE GEOGRAPHY OF NOWHERE: THE RISE AND DECLINE OF AMERICA'S MAN-MADE LANDSCAPE* (1993); ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 204–15 (2000); RAY SUAREZ, *THE OLD NEIGHBORHOOD: WHAT WE LOST IN THE GREAT SUBURBAN MIGRATION* (1999).

16. See generally JONES, *supra* note 1.

17. Cashin, *supra* note 7, at 2004 (defining the “favored quarter” as an area that “(1) captures the largest or a disproportionate share of public infrastructure investments in the region; (2) it has the region’s largest tax base and is the area of highest job growth; and (3) it retains local powers, which it uses in a manner that closes its housing markets to non-affluent regional workers, thus becoming ‘both socially and politically isolated from regional responsibilities.’”) (citation omitted).

18. *Id.* at 2041 (citations omitted).

19. See *infra* Part II.A.

20. See *infra* Part II.B.

21. See *infra* Part III.

22. See *infra* Part IV.

II. OVERVIEW

A. *Sprawl*

American metropolitan areas have hollowed out since the 1950s.²³ Then, almost seventy percent of those living in urban regions actually lived in the central city.²⁴ By 1990, over sixty percent lived in the suburbs.²⁵ Development has spread out, using more land per resident. The growth in size of most urban regions in America has far outpaced the growth in population.²⁶

1. *Causes*

Several twentieth century trends have caused sprawl. The proliferation of cars and federal government funding²⁷ of highways²⁸ made it possible for people to live far from their jobs.²⁹ Many veterans returning from World War II, enabled by federal mortgage guarantees of new single-family homes³⁰ and “red-lining” of areas containing older structures,³¹

23. Cashin, *supra* note 7, at 1991.

24. *Id.* (citation omitted).

25. *Id.* at 1992 (citation omitted).

26. Briffault, *supra* note 3, at 8 (citation omitted).

27. Michael Lewyn, *Campaign of Sabotage: Big Government's War Against Public Transportation*, 26 COLUM. J. ENVTL. L. 259, 267–68 (2001). Many Americans deride mass transit as dependent on government subsidy while believing that cars are a product of the free market, but history reveals otherwise. *Id.* at 267. The transit companies of the late nineteenth and early twentieth centuries were private and unsubsidized. *Id.* at 268. When the government started building roads in the early twentieth century, it used general tax funds. *Id.* at 267–68. Meanwhile, it regulated fares on the private transit lines. *Id.* at 268. Thus, the government regulated streetcars while using taxes paid in part by railroads and streetcars to subsidize drivers. *Id.* “[O]ne-third of American streetcar companies were bankrupt by 1919.” *Id.*

28. DUANY ET AL., *supra* note 10, at 8 n.■ (“75 percent of government expenditures for transportation in the United States in the postwar generation went for highways as opposed to 1 percent for urban mass transit. [Today], the government pays seven times as much to support the operation of the private car as to support public transportation. . . .”) (citing Senator Gaylord Nelson of Wisconsin in JANE HOLTZ KAY, *ASPHALT NATION: HOW THE AUTOMOBILE TOOK OVER AMERICA, AND HOW WE CAN GET IT BACK* (1997)).

29. Briffault, *supra* note 3, at 9–10.

30. DUANY ET AL., *supra* note 10, at 7–8. They write:

The most significant of [the federal policies that encouraged sprawl] were the Federal Housing Administration and Veterans Administration loan programs which, in the years following the Second World War, provided mortgages for over eleven million new homes. These mortgages, which typically cost less per month than paying rent, were directed at new single-family suburban construction. Intentionally or not, the FHA and VA programs discouraged the renovation of existing housing stock, while turning their back on the construction of row houses, mixed-use buildings, and other urban housing types. . . . Within the new economic framework, young families made the financially rational choice . . .

Id. (citations omitted).

purchased suburban dream homes on increasingly larger lots,³² trying to escape the noise, pollution, and density of the central city.³³ Others fled mandated desegregation, a phenomenon commonly known as “white flight.”³⁴ Many of these trends, though set in motion in the twentieth century, continue today.

While racism, car dependence, and federal government subsidies have caused sprawl, the structure of local governments has enabled and exacerbated the problem.³⁵ States, through general enabling legislation, have allowed municipal incorporation and annexation to occur at the local level with sometimes minimal procedural requirements and without regard to the impact on the larger region.³⁶ A group of landowners can create a municipal government based on arbitrary borders having little to do with shared community. An extensive survey of why local governments incorporate found that “service needs, fiscal concerns, and racial exclusion were primary factors in the formation of new cities.”³⁷ The ease of

31. Robert D. Bullard et al., *The Costs and Consequences of Suburban Sprawl: The Case of Metro Atlanta*, 17 GA. ST. U. L. REV. 935, 947–48 (2001) (defining redlining as the phenomenon occurring when a house’s location in a minority neighborhood, rather than a white neighborhood, increases the chances that a mortgage application will be denied; and noting that redlining can accelerate the flight of capital from inner-city neighborhoods).

32. Douglas R. Porter, *Reinventing Growth Management for the 21st Century*, 23 WM. & MARY ENVTL. L. & POL’Y REV. 705, 707 (1999). The trend toward larger lots is easily discernable by the casual observer. Professor Porter, in detailing America’s culture of land consumption, points out that standard 4,000 square-foot lots have been replaced recently by standard half-acre and sometimes two to five acre homesites. *Id.*

33. DUANY ET AL., *supra* note 10, at 136. Ironically, the noise, dirt, and pollution of the central cities has been replaced by the noise, dirt, and pollution of the extensive highway system. *Id.* at 8.

34. Note, *supra* note 14, at 1580. The author notes:

The mechanisms of racial segregation in the United States are well-documented. One model posits a neighborhood in which a few whites oppose any racial integration, a few are completely indifferent to their neighbors’ race, and the rest have varying levels of tolerance for different amounts of integration. First, when a few minority families move into the neighborhood, only the strictest segregationist whites will leave. If more minority families replace them, however, the shift in racial composition may induce the most segregationist whites of those remaining to exit, and so forth. Beyond a certain “tipping point,” this feedback loop becomes self-perpetuating, and white residents begin to leave in droves. Panic feeds a decline in property values, leading even nonracist whites to leave the neighborhood. Ironically, the departing whites in this scenario escape with the smallest losses, and the incoming minority households find themselves in a neighborhood with tumbling property values. Minority families and integration-indifferent whites are thus left to bear the cost of racist preferences.

Id. (citations omitted).

35. MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* 74 (1997).

36. See DANIEL R. MANDELKER ET AL., *STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM* 57, 70–72 (rev. 5th ed. 2003).

37. *Id.* at 74 (citing N. BURNS, *THE FORMATION OF AMERICAN LOCAL GOVERNMENTS* (1994)).

incorporation of new municipalities allows these new “cities” to box in the central city, inhibiting its natural growth and keeping it from extending governance over those nearby residents that still largely depend on it for work, shopping, and play.³⁸

Once incorporated, a new city may set its own zoning requirements. Because local governments are largely dependent on property taxes, they have an incentive to zone in a manner that excludes residents that may use more in services than they pay in taxes.³⁹ For example, a municipality may set a three-acre minimum base for all residential lots and may forbid multi-family housing developments, thus excluding low-income residents.⁴⁰ This allows the municipality to export the tax burden of providing social services to neighboring localities, which may respond by passing their own restrictive land-use requirements.⁴¹ In this way, poverty becomes concentrated in the established central cities and inner-ring suburbs. Even when these areas set very high tax rates for themselves, they are unable to generate enough revenue to carry the inequitable social burden. In contrast, the municipalities engaging in “exclusionary zoning” may be able to set lower property tax rates and still provide superior schooling and public services to their wealthier residents.⁴² Although the structure of incorporation and zoning powers is by no means the sole reason for the proliferation of low-density municipalities far from the regional center, it has exacerbated the problem⁴³ and has left regions as a whole ill-equipped to fight the trend.

2. “Freedom of Choice”

Many members of the favored quarter see the increasing economic segregation of their regions⁴⁴ as the product of free choice, and they resent

38. *Id.* at 56.

39. Briffault, *supra* note 3, at 8; Orfield, *supra* note 35, at 5–6.

40. Briffault, *supra* note 3, at 9.

41. *See generally* Briffault, *supra* note 3.

42. *See id.* at 11.

43. *Id.* at 9; Cashin, *supra* note 7, at 1993.

44. Cashin, *supra* note 7, at 1995; *see also* Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 19–20 (1990). Professor Briffault writes:

Interlocal differences in wealth are often enormous. Within a particular state the disparity in assessed valuation per capita between the wealthiest and poorest school district may be on the order of 100 to 1; even if the extremes are ignored, and the school districts at the 90th and 10th percentiles of taxable wealth per capita are compared, the differences are still often as much as 3 or 4 to 1. These wealth differences regularly occur in districts located only a few miles apart in the same metropolitan area.

Id. (citation omitted).

any implication that poverty in the region's core is their responsibility.⁴⁵ They believe that, as long as people pay their own way, they should be free to live where they want and have the government they choose at the tax rate they choose.⁴⁶ A problem with this "free market" outlook is that the favored quarter is *not*, contrary to popular belief, paying its own way.⁴⁷ Public subsidies, ensured by the disproportionate political power of the favored quarter, support expensive low-density development: new roads, bridges, sewers, fire departments, and schools must be built, and the urban core is helping to pay these costs.⁴⁸ The status quo of our cities has not been shaped by pure market forces; rather, people's "choices" have been encouraged and subsidized by government policies.⁴⁹

Furthermore, the widely held conception of government as a consumer good that one purchases with one's tax dollars is flawed. Commentator Gerald Frug has written of a "privatized definition of city power," in which people analogize property located within city borders to property jointly owned by the residents.⁵⁰ This view helps justify exclusion because the right to exclude others is a basic property right. But government "for the people, by the people" was never intended to be purchased as a consumer good, and cities were never intended to be created as private domains.⁵¹ Defenders of the current regime argue that, in America, a person can live on a three-acre lot if he chooses.⁵² Certainly, one has a

45. Cashin, *supra* note 7, at 2026. Professor Cashin notes:

[T]he racial and economic segregation by political jurisdiction that has accompanied suburbanization, while a relatively new phenomenon, has come to be accepted by the metropolitan populace as the "natural" order. The degree of government intervention or subsidy that contributed to metropolitan socioeconomic fragmentation is not generally acknowledged or recognized, and citizens may tend to view resulting fiscal, economic, and social inequality as reflections of private choice and merit.

Id. (citation omitted).

46. Adherents to this outlook point to the work of Charles M. Tiebout, particularly his "Pure Theory of Local Expenditures," as a model. Charles M. Tiebout, *A Pure Theory of Local Expenditures* 64 J. POL. ECON. 416 (1956). Tiebout argued that citizens, as "consumer-voters," choose to live in communities that best satisfy their preferences for public goods and services. *See id.* at 424.

47. Daniel J. Hutch, *The Rationale for Including Disadvantaged Communities in the Smart Growth Metropolitan Development Framework*, 20 YALE L. & POL'Y REV. 353, 356–60 (2002). Hutch points out the unfairness of the mantra that central cities and older declining areas are dependent on government subsidies, when government has systematically been averting resources away from them to more affluent suburbs. *Id.* at 356. These resources include mortgage subsidies, tax deductions, transportation subsidies, and infrastructure subsidies. *Id.* at 356–60.

48. Cashin, *supra* note 7, at 2006–07, n.111; *see also* DUANY ET AL., *supra* note 10, at 133.

49. Gerald E. Frug, *Against Centralization*, 48 BUFF. L. REV. 31, 32–33 (2000).

50. *Id.* at 34.

51. *See id.* at 34–35.

52. *See, e.g.*, Tiebout, *supra* note 46.

right to control his own property.⁵³ The question is, rather, whether he and his neighbors can band together and create a government that limits other people's choices—excluding those who might wish to live on a one-acre rather than a three-acre minimum lot, for example—without any approval or oversight by the region as a whole.

3. *What Do We Want?*

The focus on choice and what people want often assumes that people who have moved to far-flung suburbs have gotten what they wanted. Yet, there is growing evidence of discontent with long commutes, strip-mall architecture,⁵⁴ and the loss of community.⁵⁵ Those who moved to the outer edges of the region to escape traffic jams and strip malls have gotten more of the same, and the natural beauty they sought is increasingly being paved over.⁵⁶ A car-centered lifestyle⁵⁷ has contributed to health problems: in addition to traffic deaths,⁵⁸ both obesity⁵⁹ and respiratory problems are on

53. See Frug, *supra* note 50.

54. Robert W. Burchell & Naveed A. Shad, *The Evolution of the Sprawl Debate in the United States*, 5 HASTINGS W.-NW. J. ENVT'L. L. & POL'Y 137, 150 (1999) (finding that, while "people feel comfortable with their current housing and its suburban location," they also "think that sprawl has an ugly look and that suburbs are becoming increasingly congested").

55. PUTNAM, *supra* note 15, at 213. Robert Putnam has identified data revealing that Americans have grown increasingly disconnected from one another and that participation in social organizations, such as the Parent-Teacher Association (PTA), churches, or political parties, has declined over the past half century. *Id.* He lists mobility and sprawl as the prime culprits in this decline, noting that "each additional ten minutes in daily commuting time cuts involvement in community affairs by 10 percent." *Id.* (emphasis omitted).

56. See Frug, *supra* note 49, at 35.

57. DUANY ET AL., *supra* note 10, at 55–56. The car-centered lifestyle is also contributing to a middle class housing crisis:

In 1970, about 50 percent of all families could afford a median-priced home; by 1990, this number had dropped below 25 percent. There are many reasons behind this phenomenon, but the most significant factor is [that] . . . every single adult in the household must drive a car in order to function . . .

According to the American Automobile Association, the average cost of owning a Ford Escort—one of the cheapest cars available—is over \$6,000 per year. At conventional mortgage rates, that figure translates into more than \$60,000 in home purchasing power. In other words, two cars will pay for a starter home . . .

Id. (citation omitted). "One need look no further for a reason why American cities continue to sprawl into the countryside. In Europe, where gasoline costs about four times the American price, long-distance automotive commuting is the exclusive privilege of the wealthy, and there is relatively little suburban sprawl." *Id.* at 95.

58. See Ewing et al., *supra* note 10, at 5 ("Residents of more sprawling areas are at greater risk of dying in a car crash.")

59. *Id.* at 126 ("Eighty percent of all suburban automobile trips have nothing to do with work at all, but are short drives to places that used to be accessible on foot, such as shops, schools, parks, and friends' houses. With the disappearance of that once common activity, the useful walk, the weight of

the rise.⁶⁰ “Main Street” America, where a cross-section of economic classes met and mingled, has largely been lost and replaced with homogeneous subdivisions with, for example, houses ranging from \$150,000 to \$175,000.⁶¹ A narrowly sliced homogeneity of social class has become the hallmark of neighborhoods rather than shared history. Thus, the favored quarter—so-called because the current system protects their economic and political privilege—is also suffering from sprawl.⁶²

There is a growing body of evidence indicating that ostensible economic gains by the favored quarter under the status quo are also illusory. “[I]n today’s economy metropolitan regions are the ‘units of economic competition,’” and a failure to deal with the social and economic problems of poorer areas can inhibit a region’s competitiveness in the global market.⁶³ A study by the National League of Cities found that areas with the greatest income disparities had lower employment growth overall, and those areas in which income disparities were narrowest had the

the average American adult has risen eight pounds in ten years. Nearly 60 percent of Americans are overweight.”) (citations omitted); see also Rob Stein, *Car Use Drives Up Weight, Study Finds*, WASH. POST, May 31, 2004, at A2 (reporting that “[p]eople who live in neighborhoods where they must drive to get anywhere are significantly more likely to be obese than those who can easily walk to their destinations,” that a “study of nearly 11,000 people in the Atlanta area found that people living in highly residential areas tend to weigh significantly more than those in places where homes and businesses are close together,” and that “[e]ach hour spent in a car was associated with a 6 percent increase in the likelihood of obesity and each half-mile walked per day reduced those odds by nearly 5 percent”).

60. See Ewing et al., *supra* note 10, at 19 (“Of all the variables tested, the degree to which a region sprawled was the best indicator of a metro area’s ozone levels.”); Centers for Disease Control and Prevention, *Asthma—United States, 1982–1992*, 43 MORBIDITY & MORTALITY WKLY. REP. 952, 952 (1995) (noting that asthma’s emergence as an epidemic in the United States is demonstrated by a 40% increase in the annual age-adjusted death rate from asthma between 1982 and 1991).

61. See Thomas Benton Bare III, *Recharacterizing the Debate: A Critique of Environmental Democracy and an Alternative Approach to the Urban Sprawl Dilemma*, 21 VA. ENVTL. L.J. 455, 464 (2003).

62. Frug, *supra* note 49, at 35–36. Professor Frug points out certain categories of people hurt by suburban sprawl:

[W]omen whose ability to combine their professional and family life is frustrated by long commuting time and lack of access to nearby child care; elderly people who are prevented from remaining in their neighborhood because zoning rules prohibit them from subdividing their house to make room for family members or because the decline of their neighborhood (or its gentrification) makes it impossible to stay; . . . and middle-class African-Americans, now living in their own suburbs, who are increasingly isolated both from white suburban residents and from the poor African-Americans they left behind.

Id. (citation omitted). Architects Duany et al., *supra* note 10, at 115–33, add to this list the “cul-de-sac” kids who have lost all mobility and autonomy and the “soccer moms” who must drive them around; “bored teenagers” who disproportionately die in traffic accidents or of suicide—“national rates of teenage suicide are much higher in suburbs than in cities”; and “stranded elderly” who can no longer drive and cannot feasibly ride public transit in suburbia. *Id.*

63. Briffault, *supra* note 3, at 12 (citation omitted).

greatest overall regional growth.⁶⁴ A second study found that suburbs did best in income growth when their cities did best.⁶⁵ A recent book by Professor Richard Florida observed that the “creative class,” the young and highly mobile knowledge workers who are the engine of the economy, choose to live in areas that prize diversity and feature vibrant downtowns.⁶⁶ The most fragmented, socially stratified, and sprawled cities do not fit the bill and may lose out on attracting these workers from other areas or on keeping the ones that were raised locally.⁶⁷ Companies may lose out not only on the high-end workers, but also may be unable to find adequately trained workers at any level in areas where educational systems are failing.⁶⁸ “Suburbanites cannot completely dissociate themselves from the central city because local regional economies are inextricably linked. . . . Hence, regional planning should be in everyone’s economic best interest.”⁶⁹

Sprawl hurts everyone in a metropolitan region. Caused in part by federal programs encouraging families to move away from the city core, and persisting in part because of the competing multitude of small local governments with parochial interests, sprawl is largely a product of government action.⁷⁰ Thus, government action will be needed to solve the problem.

B. Sprawl in St. Louis, Missouri

1. History

St. Louis, known as the “Gateway to the West” because of its towering Gateway Arch and its distinction as the jumping-off point for the Lewis and Clark expedition, is one of the most sprawled regions in America.⁷¹ As its nickname suggests, St. Louis just keeps traveling west. With 2.6 million residents living in Missouri and Illinois in 2000, it was the

64. *Id.* at 13 (citation omitted).

65. *Id.*

66. RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS AND HOW IT’S TRANSFORMING WORK, LEISURE, COMMUNITY, AND EVERYDAY LIFE 227 (2002).

67. *See id.*

68. *See* Briffault, *supra* note 3, at 13–14.

69. Georgette C. Poindexter, *Beyond the Urban-Suburban Dichotomy: A Discussion of Sub-Regional Poverty Concentration*, 48 BUFF. L. REV. 67, 69 (2000).

70. *See supra* notes 27–44 and accompanying text.

71. 1998 Sierra Club Sprawl Report: 30 Most Sprawl-Integrated Cities, at http://www.sierraclub.org/sprawl/report98/st_louis.asp (last visited Apr. 9, 2005) (The Sierra Club ranked St. Louis second in its list of ten most sprawl-threatened large cities.).

eighteenth-largest metropolitan area in the United States.⁷² Its population is spread over eleven counties⁷³ and the City of St. Louis, an urban core which “makes up one of the smallest percentages of the population among the thirty-five largest metropolitan areas.”⁷⁴ The City of St. Louis was the nation’s fourth-largest city when the world met in St. Louis for the World’s Fair and the Olympics of 1904.⁷⁵ It now hovers around thirtieth.⁷⁶ The city lost 48,496 residents in the 1990s, down only slightly from the 56,400 it lost in the 1980s—the second highest decline among the nation’s 100 largest center cities.⁷⁷ At the dawn of the twentieth century, city dwellers outnumbered those in the county ten to one.⁷⁸ At its end, there were about three Countians for each resident of the city.⁷⁹

As in the rest of the nation, St. Louis suburbanization has been caused by car dependence, federally funded highways and mortgage guarantees, and the desire to flee pollution, density, and racial integration.⁸⁰ And, as in the rest of the nation, part of the reason St. Louis has been unable to stop the trend is its highly fragmented system of local government. In all, the St. Louis region includes nearly 800 local governments.⁸¹ “When

72. THE BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, GROWTH IN THE HEARTLAND: CHALLENGES AND OPPORTUNITIES FOR MISSOURI 35 (2002).

73. Most observers agree that the eleven counties comprising the St. Louis region are St. Louis County, Jefferson County, St. Charles County, Jersey County, Lincoln County, Warren County, Franklin County, Monroe County, Madison County, St. Clair County, and Clinton County. *See, e.g.*, EAST-WEST GATEWAY COORDINATING COUNCIL, *supra* note 4, at 16.

74. SUAREZ, *supra* note 15, at 88 (noting that St. Louis is trailed only by Minneapolis, Atlanta, Washington D.C., and Boston). In addition, “[t]he St. Louis region has one of the highest median ages, one of the smallest working-age populations, and one of the largest shares of elderly people in all the largest metropolitan areas.” *Id.*

75. *About St. Louis: History*, at <http://stlouis.missouri.org/citygov/planning/research/data/about/history.html> (last visited Apr. 9, 2005).

76. SUAREZ, *supra* note 15, at 89.

77. THE BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, *supra* note 72, at 15.

78. JONES, *supra* note 1, at 25.

79. *Id.*

80. *Id.* at 25–26; *see also* ERIC SANDWEISS, ST. LOUIS: THE EVOLUTION OF AN AMERICAN URBAN LANDSCAPE 234 (2001). Sandweiss writes:

In the neighborhoods of central and North St. Louis, enforced housing desegregation (thanks in part to the St. Louis-based, 1948 Supreme Court case of *Shelley v. Kraemer*) at last allowed the city’s fast-growing number of African American families to seek housing outside of Mill Creek and the near North Side, the areas to which they had previously been confined (first by the 1916 segregation ordinance and then, after that law was declared unenforceable in 1918, by the efforts of the St. Louis Real Estate Exchange)—but only as racial fears and government disincentives combined to drive away middle-class white families and depress property values within those same neighborhoods.

Id. (citation omitted).

81. ST. LOUIS COUNTY PLANNING DEP’T., ST. LOUIS COUNTY STRATEGIC PLAN, 2000–2004, at 23, available at <http://www.co.st-louis.mo.us/plan/comp-plans/Strategic-Plan/county-role.pdf>.

considering taxing authority, the St. Louis region jumps to the highest in the nation at 26.8 taxing units per 100,000 people.⁸²

St. Louis City is a county unto itself. Journalist and author Ray Suarez tells the story of how this happened:

During the nineteenth century, St. Louis was a Northern-flavored city on the edge of Southern-flavored Missouri. St. Louisans' fear of political domination after Reconstruction, by the strongly Jim Crow "Little Dixie" region surrounding it, brought a vote for complete independence and separation of county and city functions in 1876.

They could never have imagined they were signing their own death warrant, these local worthies who froze their borders and took on home rule with St. Louis at sixty-one square miles, and nowhere to grow. By the 1920s, business leaders saw the writing on the wall and sponsored a referendum to incorporate St. Louis County into what would have become the world's largest city. It was approved by city voters and overwhelmingly defeated in the county. There have been periodic attempts in the decades since to move the city-county divide, but as the city decayed and power shifted to the county, change became less and less likely.⁸³

Not only is the City permanently separated from its surrounding counties, but the City government itself is also fragmented, with a charter dating from 1914.⁸⁴ Some independently elected offices are directly controlled by the State and are not in any way controlled by the mayor.⁸⁵

The fragmentation does not stop at the city-county border. St. Louis County alone has over ninety municipalities;⁸⁶ fifty of them formed

82. *Id.*

83. SUAREZ, *supra* note 15, at 88–89.

84. *See Choked to Death*, ST. LOUIS POST-DISPATCH, Nov. 4, 2004, at C14; *see also The City of St. Louis Charter* (1914), available at <http://www.spl.lib.mo.us/cco/charter/>. A contingent of citizens in the City of St. Louis—known as the Advance St. Louis stakeholders—recently engaged in a process to rewrite the charter, but the proposed changes were voted down in a city-wide election in November of 2004. Jake Wagman, *Proponents Cite Reasons for Defeat for Home Rule Changes*, ST. LOUIS POST-DISPATCH, Nov. 4, 2004, at C01.

85. *See City Government Organizational Chart*, at stlouis.missouri.org/government/organiz.htm (last visited Apr. 9, 2005). The police chief, for example, is appointed by the Governor of Missouri. *Id.* There are eight independently elected county offices, many of which duplicate activities of the City offices: Treasurer, Sheriff, Recorder of Deeds, Collector of Revenue, License Collector, Circuit Clerk, Circuit Attorney, and Public Administrator. *Id.*

86. JONES, *supra* note 1, at 28.

between 1945 and 1952.⁸⁷ During this time period, local governments could form at will: one needed only to present a petition signed by fifty percent of the residents from the proposed new city to the County Government;⁸⁸ even today, state law requires only a petition with a minimum number of signatures and a majority vote of the residents of the proposed jurisdiction.⁸⁹ In both the new and old systems, the incorporation of a new municipality occurs without regard to the impact on neighboring municipalities or the region as a whole.

2. Today

St. Louis's suburban sprawl has continued unabated. According to a recent Brookings Institution report on Missouri's growth in the 1990s, "St. Louis demonstrates that rapid decentralization can occur even against the background of slow regional growth. Despite its modest single-digit absolute population growth, the region saw widespread new suburban development and fast growth at its periphery."⁹⁰ Between 1982 and 1997, the St. Louis area "consumed land four times faster than it grew,"⁹¹ making it the "second most wasteful user of land among major metro areas in the country."⁹² In 1997, nearly an acre and a half of new land was used for every newcomer to the region.⁹³

3. Effects

This pattern of growth has not been without consequences for the region. Consistent with the pattern of sprawl in other cities, "poverty remained concentrated in the region's central city and older suburbs as jobs, people, wealth, and opportunities departed. In 2000, a full third of the

87. *Id.* at 30.

88. *Id.* at 29.

89. *Id.* at 35. Most incorporations were an attempt to avoid annexations by existing cities. *Id.* at 32–33. In 1953, a new law required a county circuit court ruling that an annexation was "reasonable and necessary to the proper development of said city" before it could go through. *Id.* This slowed down both annexations and incorporations. *Id.* In 1963, the Missouri General Assembly made annexations more difficult by requiring a majority vote in both the acquiring municipality and the area to be acquired. *Id.*

90. THE BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, *supra* note 72, at 36 (noting that "[n]early two-thirds (64 percent) of the entire region's growth took place in one fast-growing western county—St. Charles, which added 71,000 residents in the decade").

91. *Id.* at 38.

92. *Id.*

93. *Id.*

region's poor people lived in St. Louis City, with an additional huge share clustered in the innermost neighborhoods of St. Louis County."⁹⁴

Sprawl has also helped to make St. Louis one of the most racially segregated metropolitan areas in the country.⁹⁵ A full seventy percent of the region's black population resides in the north half of the city of St. Louis.⁹⁶ The impoverished Illinois city of East St. Louis is ninety-eight percent black, while suburban St. Charles County—far to the west and across a river from the city core—is ninety-four percent white.⁹⁷

The consequences of sprawl have not been limited to the urban core. Researchers at the University of Missouri predict “that demand for local government expenditures will outpace revenues under the current spread-out development patterns.”⁹⁸ Unfettered growth is eroding Missouri's rural heritage, as farmland, old battlefields, scenic country roads, and fishing spots disappear.⁹⁹ The United States Environmental Protection Agency has designated eight counties in greater St. Louis as moderate-level non-attainment areas for ozone.¹⁰⁰ The American Lung Association's “State of the Air 2002” report gave seven metropolitan counties in Missouri “F” grades on air quality.¹⁰¹ The Texas Transportation Institute reports that the “annual delays suffered by each rush-hour driver in the St. Louis area increased . . . from 19 hours in 1990 to 43 hours in 2000.”¹⁰²

The business community is also damaged. “St. Louis ranks 34th in job growth and 32nd in growth in business establishments among 35 peer regions.”¹⁰³ Between 1997 and 2000, St. Louis was 26th in Gross Metropolitan Product per capita.¹⁰⁴ Thousands of St. Louis area residents leave the region for other areas every year.¹⁰⁵ The Brookings Institute concludes, “The bottom line: The St. Louis region's unbalanced

94. *Id.* at 40.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 44. “Since 1990, the Francis Howell School District in growing St. Charles County near St. Louis has added 12 new buildings at a cost of \$126 million” and sewer and water districts have asked voters for bond or tax increases to pay for line extensions and new treatment capacity. *Id.* at 45.

99. *Id.* at 46–47.

100. *Id.* at 48.

101. *Id.* at 49.

102. *Id.* at 52.

103. *Id.*

104. *Id.*

105. METROPOLITAN FORUM, *St. Louis Case Study* (2003), available at http://www.regionalstewardship.org/ARS_forums/st_louis/Case_Study.pdf (last visited Mar. 25, 2005). See also EAST-WEST GATEWAY COORDINATING COUNCIL, *supra* note 4, at 37, which reports that in 2000 the percentage of St. Louis adults having post-secondary education (8.0%) is below the average for its 35 peer regions (8.8%).

development patterns entangle both suburbs and core in a dynamic that may be undercutting the region's overall economic competitiveness as well as its social and fiscal health."¹⁰⁶

III. ANALYSIS

A. *Three Approaches*

While there are still those who embrace localist ideals and assert that numerous small local governments best serve citizens' needs for democratic participation, efficiency, and community,¹⁰⁷ numerous urban scholars call for greater regionalism.¹⁰⁸ Finding the best and most politically palatable way of making regionalism a reality has been the challenge for many metropolitan areas. Current attempts at regional cooperation fall roughly into three categories: (1) fully consolidated metropolitan government; (2) regional limited government supported by regional tax sharing; and (3) voluntary regional service sharing.¹⁰⁹ Twenty-seven large urban areas have some form of these regional collaborations between city and suburbs.¹¹⁰

The regions that have adopted one of the first two options are those Professor Cashin calls the "pinnacle" of metropolitan cooperation.¹¹¹ Four regions share consolidated metropolitan area government: Indianapolis, Indiana; Jacksonville, Florida; Miami, Florida; and Nashville, Tennessee.¹¹² Three others have regional limited governments, supported by a regional tax,¹¹³ that deliver a set of regional services: Portland, Oregon; Seattle, Washington; and Minneapolis-St. Paul, Minnesota.¹¹⁴ All

106. THE BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, *supra* note 72, at 42.

107. Cashin, *supra* note 7, at 2042.

108. *See generally id.*

109. Cashin, *supra* note 7, at 2028. See Georgette C. Poindexter, *Towards a Legal Framework for Regional Redistribution of Poverty-Related Expenses*, 47 WASH. U. J. URB. & CONTEMP. L. 3 (1995), for a fourth proposal. Professor Poindexter proposes creating a "state agency to redistribute revenue across regions to pay for local poverty-related expenses." *Id.*

110. Cashin, *supra* note 7, at 2028 (citation omitted).

111. *Id.*

112. *Id.* at 2028 n.227.

113. *See generally* Note, *supra* note 14.

114. Cashin, *supra* note 7, at 2028–29 n.228.

[T]he Twin Cities region now has a limited-purpose regional government—the Metropolitan Council—with meaningful powers. Rather than serve merely as a forum for voluntary cooperation and negotiation, among other things, the Council administers all sewer and transportation services for the seven counties and 188 cities and townships in the region. Administering approximately \$600 million a year in public funds, it sets the direction for the region's land use and transportation policies. In addition, all of the localities in the Twin

but one of the other twenty governments—including St. Louis—have set up ways to share services.¹¹⁵ This option is most often embraced because it does not require municipalities to give up autonomy.¹¹⁶

B. Inadequacy of Voluntary Local Cooperation

St. Louis's current system of voluntary cooperation is inadequate. Professor Laurie Reynolds has argued persuasively that voluntary efforts to share services “fail to correct, and often exacerbate, the socioeconomic gap.”¹¹⁷ She concludes that the favored quarter participates when it has something to gain—transportation, sewer systems, libraries—but refuses to support regional policies for such things as housing, job creation, tax revenue distribution, and schools.¹¹⁸ “The end result is a selective regionalism, for which the metropolitan area is ‘all in it together’ when regional action benefits the favored quarter, but for which the ‘it’s your problem’ response can be given to central city proposals to correct inadequacies in city infrastructure or services.”¹¹⁹

Voluntary inter-local cooperation in St. Louis has resulted in an unusually high number of “special districts.”¹²⁰ These “governments” each provide a single service: public transportation, community colleges, sewers, and cultural institutions. Because they have the ability to impose special assessments or to collect fees for their services, and because their boards are often appointed rather than elected, many scholars are

Cities region participate in a system of tax base sharing whereby a percentage of each locality's annual growth in tax revenues is placed in a regional pool and shared.

Id. at 2035–36 (citation omitted).

115. *See id.* at 2029.

116. *See* Oliver A. Pollard, *Smart Growth: The Promise, Politics and Potential Pitfalls of Emerging Growth Management Strategies*, 19 VA. ENVTL. L.J. 247, 281 (2000) (citation omitted).

117. Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93, 93 (2003).

118. *See id.* at 155–56.

119. *Id.* at 156.

120. *See* JONES, *supra* note 1, at 95–96.

Excluding school districts, the most common type, there are still many more special purpose governments, about 32,000, than there are municipalities (slightly more than 12,000) or counties (a little over 3,000). And their numbers have been growing rapidly during the past half century, especially in metropolitan areas, going from 4,943 in 1952 to 13,343 in 1992. The typical metropolitan region has over forty special districts and, true to its tradition that one can never have too many governments, the St. Louis area has even more. Both Missouri and Illinois laws make it relatively easy to form such units and, as a result, Missouri has more than fourteen hundred and Illinois almost three thousand.

Id.

Some of the most well-known special districts in the St. Louis region are the Metropolitan St. Louis Sewer District, the St. Louis Junior College District, and the Zoo-Museum District.

concerned that they lack accountability.¹²¹ Studies show that this lack of accountability leads special districts to spend more than they would if they were part of the general budget.¹²² These concerns, in addition to Reynolds' "picking and choosing" indictment, show "voluntary cooperation" to be inadequate to the task of bringing the fragmented St. Louis region together, and it may be making things worse.

C. Full Consolidation Not Feasible

While St. Louis has attempted voluntary cooperation, it has explicitly rejected the approach of fully consolidated government adopted by Indianapolis, Jacksonville, Miami, and Nashville. As noted earlier, St. Louis has tried on more than one occasion to achieve a city-county merger,¹²³ only to be rejected by the voters.¹²⁴ It is highly unlikely that a region-wide, twelve-county popular election will result in a single county

121. MANDELKER ET AL., *supra* note 36, at 95. Special districts:

have an advantage in that they enable functions to be distanced from the political arena and performed in a manner that meets technical requirements. However, democracy is weakened and accountability is reduced. This may not be a problem for services such as sewerage and water supply where technical requirements usually have priority, but it can easily be a problem for services such as police protection and libraries; and certainly it is a problem if a significant proportion of local government functions are performed by such authorities.

Id.

122. Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1784 (2002). Frug explains:

Despite their claim to efficiency, these governmental forms are a more expensive way to perform a given public function than is city government. Even more significant is their effect on governmental priorities: special purpose governments—in the metropolitan areas that have many of these entities—routinely get more resources than city governments get to perform the same functions. In regions filled with special purpose governments, in other words, more money is spent on technical matters and less is spent on social welfare.

Id. (citation omitted).

123. See JONES, *supra* note 1, at 57: "About every thirty years, first in the 1920s, then in the late 1950s and early 1960s, and, less visibly, again in the 1980s, efforts have been made to rejoin the City and the County." Jones goes on to explain why St. Louis failed at consolidation while Indianapolis, Jacksonville, Miami, and Nashville succeeded:

First, none of these others involved two totally separated governments. In the four successful consolidations, the major city already existed within the principal county. There was no earlier history, like St. Louis's 1876 experience, of the central city having jettisoned its more rural surroundings. Since the city was already within the county and the latter was providing some services to the municipal area, the negotiation could commence with who does what, not who marries whom under what conditions.

Second, at the times these consolidations occurred, there were at most modest socioeconomic differences between the combining governments' populations. Since it was more a merger of equals, there was less tendency for one of the units to drive a hard bargain.

Id. at 92–93.

124. *Id.*

where earlier efforts to combine only the City of St. Louis and St. Louis County have failed. While full consolidation into a single government entity may not be a politically feasible option because a popular election would be required, the time has come for the state legislature to create a new, regional layer of government.¹²⁵ “A compromise between the advocates of regional government and local home rule is a metropolitan entity capable of making land use and taxation decisions that have regional impact, but which leaves decisions of local impact to existing local governments.”¹²⁶ Action by the state of Missouri, following in the footsteps of Minnesota, Washington, and Oregon, is needed.¹²⁷

125. Professor Cashin, *supra* note 7, at 2041, explains why state action will be necessary:

Although studies suggest that the favored quarter ultimately would be better off by being part of a region with a more even distribution of resources and burdens, given the often brutish, short-term perspective of local politics it is hard to imagine an outer-ring mayor agreeing to give up power and advantage. In short, any meaningful approaches to regionalism will require that structural reforms be enacted by the state legislature.

Id. (citation omitted).

It is clear that state legislatures have the power to create regional governments. Ever since the landmark 1907 Supreme Court ruling in *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907), it has been widely recognized that local governments are legal creatures of the state. In *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71 (1978), the Court reaffirmed the holding of *Hunter*: “[W]e think that the case continues to have substantial constitutional significance in emphasizing the extraordinarily wide latitude that States have in creating various types of political subdivisions and conferring authority upon them.” See also Paul Boudreaux, *E Pluribus Unum Urbs: An Exploration of the Potential Benefits of Metropolitan Government on Efforts to Assist Poor Persons*, 5 VA. J. SOC. POL’Y & L. 471, 531 (1998) (describing Indianapolis as the “only recent example of metro government being imposed by state legislative action alone.”).

126. Peter W. Salsich, Jr., *Thinking Regionally About Affordable Housing and Neighborhood Development*, 28 STETSON L. REV. 577, 604 (1999). Reserving purely local powers to currently existing local entities is not only politically palatable, but it also would help a regional government system survive the legal challenge under the Home Rule Clause of the Missouri Constitution that would inevitably result. Because the Home Rule doctrine grants cities freedom from state interference with regard to matters of purely local concern (streets, sidewalks, parks, fire departments), a regional government would be able to survive a Home Rule challenge only if its powers were truly regional and did not expropriate from cities and counties the power to rule on local matters. See Kenneth A. Brunetti, Note, *It’s Time to Create a Bay Area Regional Government*, 42 HASTINGS L.J. 1103, 1107 (1991) (citation omitted). For a full discussion of Home Rule, see David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2257 (2003).

127. This Note does not mean to understate the differences between the state of Missouri and the states that have already blazed the trail toward regional government. As Professor Hank Savitch has pointed out:

It is not by chance that a state like Oregon or Washington or Minnesota has the most advanced legislation with regard to containing sprawl. We face a situation where there is an inverse relationship between the capacity to contain sprawl and the need to do it. The states best able to deal with sprawl are often least threatened by it and least threatened by the social implications of cooperation. . . . Racial separation, poverty, and resulting animosities can create enormous obstacles to containing sprawl.

Hank Savitch, *Dreams and Realities: Coping With Urban Sprawl*, 19 VA. ENVTL. L.J. 333, 347–48 (2000); see also The Greater Baltimore Committee & The Greater Baltimore Alliance, *Greater*

D. Models for Regional Government

1. Minneapolis-St. Paul, Minnesota

The Twin Cities created its Metropolitan Council in 1967 as a planning agency.¹²⁸ Initially, it supervised agencies that met specific needs such as the Transit Board and the Waste Control Commission; however, in 1994, those boards were abolished and the Council assumed direct control of agency functions.¹²⁹ The governor appoints the Council's seventeen-member board, which has the power to suspend for up to one year projects that are not consistent with its regional plan.¹³⁰

2. Portland, Oregon

In 1977 the Oregon legislature authorized, with subsequent voter approval, the creation of "Metro," the Metropolitan Service District of Metropolitan Portland.¹³¹ Metro was "the nation's first regional entity with a directly elected governing body."¹³² It "coordinates planning activities of three counties, twenty-seven cities, and many districts with water and wastewater responsibilities."¹³³

IV. PROPOSAL

The solution for helping St. Louis fight sprawl and economic decline is for the state of Missouri to create a second-tier of government, a regional legislature to be elected¹³⁴ by the people of the St. Louis area.¹³⁵ This

Baltimore, State of the Region Report (Dec. 2000) (noting that the Twin Cities and Portland regions are 91.2% and 92.4% white, respectively).

128. Orfield, *supra* note 35, at 173. For a complete account of the Minneapolis-St. Paul system "from the horse's mouth," see generally Orfield, *supra* note 35.

129. *Id.* at 173.

130. Griffith, *supra* note 6, at 1030.

131. *Id.* (citation omitted).

132. *Id.* (citation omitted).

133. *Id.* (citation omitted). For a comparison favoring the Oregon plan over the Minnesota plan, see Carrie Daniel, *Land Use Planning—The Twin Cities Metropolitan Council: Novel Initiative, Futile Effort*, 27 WM. MITCHELL L. REV. 1941, 1956–68 (2001) (listing the key factors to Oregon's success as "1) state-wide planning, 2) stern growth boundary enforcement, 3) a directly-elected metropolitan planning agency, 4) and strong citizen support").

For a discussion of Portland's Urban Growth Boundary plan, see Keith W. Dearborn & Ann M. Gygi, *Planner's Panacea or Pandora's Box: A Realistic Assessment of the Role of Urban Growth Areas in Achieving Growth Management Goals*, 16 U. PUGET SOUND L. REV. 975 (1993). For a discussion of Growth Boundaries in general, see TOM DANIELS, *WHEN CITY AND COUNTRY COLLIDE: MANAGING GROWTH IN THE METROPOLITAN FRINGE* 185–209 (1999).

134. Professor Shelley Ross Saxer has discussed the difficulty in deciding whether representatives

legislature would be invested with all the powers currently held by the unaccountable special districts¹³⁶ (though not yet the school districts), as well as the power of “growth management.”¹³⁷ No longer would individual municipalities make decisions on incorporation, annexation, or zoning.¹³⁸

to a regional body should be appointed or elected:

[I]f the regional body is comprised of disinterested third parties appointed by a state agency, then local governments can validly complain that the decision makers are not familiar with quality of life issues in a particular locale, nor sufficiently impacted by the selection of new “neighbors.” However, if the regional decision makers are selected from the various local governmental units, they may become too interested, and the process may break down because “collections of local government officials in regional guise but ultimately accountable politically only to their local constituencies cannot be expected to produce effective advocacy for state and regional interests.”

Shelley Ross Saxer, *Local Autonomy or Regionalism?: Sharing the Benefits and Burdens of Suburban Commercial Development*, 30 IND. L. REV. 659, 680 (1997).

Famed Minnesota legislator Myron Orfield, the architect of the Twin Cities plan, has stated his preference for elected rather than appointed officials to a regional government, citing the Oregon plan as a model. Orfield, *supra* note 35, at 157–60.

Professor Janice C. Griffith argues persuasively for an elected board:

A representative form of government assures greater accountability to the people. Elected officials, especially those at the regional or local levels of government, can more effectively monitor smart growth implementation than unelected agency heads who often lack feedback from the citizenry or firsthand observation. Voters can remove elected officials who fail to meet their expectations, but possess very limited ability to oust appointed governmental officials.

Griffith, *supra* note 6, at 1032.

135. Defining the St. Louis area to include its usual twelve counties creates difficulties because these counties are located in both Missouri and Illinois. Both state legislatures would have to work together to make this happen. Professor Frug asserts:

Creating multistate regions is likely to be complicated, but there are already multistate institutions in the United States such as the Port Authority of New York and New Jersey and the Tahoe Regional Planning Agency. Congress could encourage multistate regional legislatures and consent to the interstate compacts necessary to bring them about, as it has for metropolitan transportation planning organizations.

Frug, *supra* note 122, at 1835 (citation omitted). St. Louis already has the East-West Gateway Coordinating Council, Metro, and several other bi-state organizations. It’s not difficult to imagine the two states cooperating to take the next step.

136. Including Metro Transportation (formerly the Bi-State Development Agency), the Metropolitan St. Louis Sewer District, the St. Louis Junior College District, and the Zoo-Museum-Garden District.

137. Griffith, *supra* note 6, at 1035–38. Professor Griffith suggests that “the regional government should be empowered to address the full array of forces that generate ‘unsmart’ growth.” *Id.* at 1031. She lists the following as powers that should be granted to a regional government: the authority to devise a master plan for the entire region; control of the metropolitan-wide transportation system; the power to zone and regulate land uses; the ability to tap into the broader tax base in order to address the equitable issues that arise from racial and economic segregation; the power “to impose impact fees upon developers to assure greater revenue to finance the public infrastructure necessary to service new development”; and the ability to make land use decisions to protect natural resources and to preserve community green space. *Id.* at 1035–38.

138. Additionally, the regional legislature could acquire the right to oversee designations of blight under Missouri’s Tax Increment Financing statute. Several authors have voiced concerns about the

The legislature would be funded in part by a Minneapolis-style tax sharing program,¹³⁹ and with state subsidy.¹⁴⁰ Thus, St. Louis would be replacing its failed voluntary regional service sharing approach with an elected regional limited government.

Professor Gerald Frug has proposed a model for a regional legislature based on lessons learned from the European Union.¹⁴¹ He suggests a system of qualified majority voting: “The European Union defines a qualified majority for Council decisionmaking by allocating votes to individual members very roughly according to their population and, in addition, establishing a minimum number of votes (and sometimes a minimum number of members casting these votes) before a policy can be adopted.”¹⁴² Frug recommends that one delegate be elected from every municipality. With the proliferation of municipalities in the St. Louis area, this would create a body of unwieldy and expensive proportions. Rather, I suggest that each school district elect a delegate, and that each delegate be

state allowing individual municipalities to unilaterally declare areas “blighted,” allowing the funding of projects that run contrary to the original intent of the law. See Julie A. Goshorn, Note, *In a TIF: Why Missouri Needs Tax Increment Financing Reform*, 77 WASH. U. L.Q. 919, 919 (1999). A recent study by the Brookings Institution reveals:

TIF is used extensively in high-tax-base Missouri suburban areas with little need for assistance in the competition for tax base. This is especially true in the St. Louis metropolitan area. . . . In fact, less than half of the 21 St. Louis-area cities that were using TIF in 2001 were disadvantaged or “at-risk” when evaluated on four indicators of distress. . . . [o]nly nine of the St. Louis region’s 33 TIF districts lie in the region’s core. . . . As a result, a potentially dynamic tool for reinvestment in Missouri’s most disadvantaged communities threatens to become an engine of sprawl as it is abused by high-tax-base suburban areas that do not need public subsidies.

THOMAS LUCE, RECLAIMING THE INTENT: TAX INCREMENT FINANCE IN THE KANSAS CITY AND ST. LOUIS METROPOLITAN AREAS, A DISCUSSION PAPER PREPARED FOR THE BROOKINGS INSTITUTION CENTER ON URBAN AND METROPOLITAN POLICY (2003).

It is interesting to note that the Kansas City region, which is less politically fragmented, shows a pattern more consistent with the revitalization goals of TIF, despite the fact that it could take advantage of the loophole in the same Missouri law. *Id.* Perhaps, then, the solution is not to rewrite the law, but rather to put the responsibility for designating areas of blight into the hands of a regional legislature instead of a municipality that is focused on its own narrow financial interests, often to the detriment of the region as a whole.

139. Frug, *supra* note 122, at 1821–22 (reporting that The Metropolitan Fiscal Disparities Act enacted in 1971 by the Minnesota legislature “makes forty percent of the increase in the region’s taxes on commercial and industrial property an areawide resource, one that is distributed to cities throughout the region according to a formula based on their population and fiscal capacity.”) (citation omitted). In modifying this to fit the St. Louis proposal, this Note would keep the tax-gathering formula, but instead of using a formula to redistribute the funds, this Note proposes allowing the elected regional legislature to choose worthwhile projects.

140. Because state tax revenues depend on the St. Louis area, the state of Missouri has a special interest in protecting the economic development of St. Louis. *St. Louis Region is Losing People, Income, Study Shows*, ST. LOUIS POST-DISPATCH, Feb. 21, 2003, at A1.

141. Frug, *supra* note 122, at 1792–94.

142. *Id.* at 1797 (citation omitted).

invested with a number of votes proportionate to the number of people residing within that school district.

This idea must overcome many political challenges, but it may be the right time to leap these hurdles.¹⁴³ Certainly it is time for Missouri to take bold action to protect its cities from economic decline and protect its countryside from further environmental degradation.

V. CONCLUSION

Fragmented local government is incapable of fighting urban sprawl. St. Louis, one of the most sprawled cities in the nation,¹⁴⁴ suffers sprawl's effects: environmental degradation, segregation by class and race, and economic decline.¹⁴⁵ While St. Louis may be highly resistant to change

143. The most obvious hurdle is creating a groundswell of support for the initiative. The state legislature, even with the recent enactment of term limits, does not like to take on politically unpopular tasks. Some glimmers of hope can be found in a recent poll taken of residents of St. Louis County, in which "the most serious problem identified . . . was the lack of cooperation between the City of St. Louis and St. Louis County" and "[n]early 40% . . . were concerned with government fragmentation . . ." ST. LOUIS COUNTY PLANNING DEPARTMENT, *supra* note 81, at 23. Other poll results were equally encouraging: "Regional leadership was identified as an opportunity for the County to pursue in the next five years by County officials and the general public" and "[a] significant majority of residents felt that St. Louis County should have more authority over County-wide planning. There was support for stronger regional planning and the creation of a plan to control growth and sprawl." *Id.*

With nearly twenty percent of the state's population and an average household income nearly \$15,000 higher than the state's average, St. Louis County has enormous political clout. *Id.* at 26. While St. Louis County is still the region's center of jobs, population, and wealth, it is also noticeably suffering the effects of sprawl. The Brookings Institute reports that while St. Louis County grew at "an anemic 2.3 percent" pace during the 1990s, peripheral St. Charles County added 71,000 residents, accounting for nearly two-thirds of the entire region's growth. BROOKINGS INST. CTR. ON URBAN & METRO. POLICY, *supra* note 72, at 36. Because most of that "growth" took place at the expense of the rest of the region—including St. Louis County—many members of the electorate have finally begun to take notice.

A more insidious roadblock is race. The East-West Gateway Coordinating Council reports that in the last decade:

We have seen no real progress in closing the racial disparity gap. In 1990, the St. Louis metropolitan area had the 5th highest rate of disparity between African-Americans and whites on an index of 15 health, housing, and economic variables. In 2000, this ranking had improved to 11th, although the regional score was no better than ten years earlier. Memphis and St. Louis each experienced an increase in the numerical disparity measure.

EAST-WEST GATEWAY COORDINATING COUNCIL, *supra* note 4, at 82.

The regions most noted for cooperation have not been racially diverse. While the resistance of the predominantly white residents of St. Louis County to integration has been well-documented, the resistance of city African-Americans, who have only recently become a fifty-one percent majority of city residents, to losing any gains in political representation is also strong. *Redistricting Plan Would Put Two Black Alderpersons in Same Ward*, ST. LOUIS POST-DISPATCH, June 28, 2001, at B2. All sides harbor strong suspicions that would have to be handled delicately.

144. *See supra* note 71.

145. *See supra* notes 23–70 and accompanying text.

because of the severity of its fragmentation, the severity of its problems demand action. The state legislature must take the lead in creating a regional body that can deal with regional issues in St. Louis.

*Jennifer Frericks**

* B.A. (1996), University of Missouri-Columbia; J.D. (2005), Washington University School of Law.