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Can St. Louis City and County Get Back Together? (Do Municipal Boundaries Matter Today?)

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**CAN ST. LOUIS CITY AND COUNTY GET BACK TOGETHER?
(DO MUNICIPAL BOUNDARIES MATTER TODAY?)**

PETER W. SALSICH, JR.* AND SAMANTHA CALUORI**

INTRODUCTION

*We are a border city. Missouri was a slave state that stayed in the Union; it did not experience Reconstruction. Immediately after the Civil War, it passed a host of Jim Crow laws, and added Jim Crowism to its Constitution and created a legacy of racial injustice.*¹

This statement by Dr. E. Terrence Jones, a political scientist at the University of Missouri–St. Louis, was in response to severe turmoil in the St. Louis County suburb of Ferguson, Missouri following the shooting death on Saturday, August 9, 2014 of an unarmed African American teenager by a white Ferguson police officer. The shooting touched off days and nights of protest—both peaceful and violent, a police response featuring a display of Humvees and other attack weapons acquired through a Defense Department policy offering surplus military equipment to state and local governments, and a deep feeling of unease, both locally and nationally, about the state of black-white relationships in America.²

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1. Megan Garber, *The Difference Between Ferguson and #Ferguson*, ATLANTIC, Aug. 12, 2014, <http://www.theatlantic.com/national/archive/2014/08/the-difference-between-ferguson-and-ferguson/375955/> (quoting E. Terrence Jones, Founder’s Professor of Political Science and Public Policy Administration, University of Missouri–St. Louis). Dr. Jones was a speaker at the symposium sponsored by the *Public Law Review* at Saint Louis University School of Law on February 28, 2014.

2. See generally Julie Bosman & Alan Blinder, *Missouri Orders Nightly Curfew to Quell Looting*, N.Y. TIMES, Aug. 17, 2014, at A1; Michael Wines & Erica Goode, *Cities Rocked by Past Unrest Offer Lessons*, N.Y. TIMES, Aug. 19, 2014, at A1; Julie Bosman, Matt Apuzzo & Marc Santora, *National Guard Is Pulling Out Of Ferguson as Tension Ease*, N.Y. TIMES, Aug. 22, 2014, at A1; Campbell Robertson, *Among Whites, Protests Stir a Range of Emotions and a Lot of Perplexity*, N.Y. TIMES, Aug. 22, 2014, at A15; Nancy Cambria, *History Repeats Itself, Says Race Riot Scholar*, ST. LOUIS POST-DISPATCH, Aug. 22, 2014, at A14. For a discussion of

The tragedy in Ferguson brought to the surface undercurrents of social and racial tension existing at least since the Civil War, when St. Louis residents fought on both sides.³ The extraordinary national, and even international, press coverage⁴ given to the shooting and the subsequent protests has raised renewed questions about the wisdom of the organizational structure of local governments in the St. Louis area. The immediate focus has been on the proliferation of small municipal courts in St. Louis County and their propensity to generate significant municipal revenues from fines resulting from minor traffic and other ordinance violations,⁵ along with concerns about the level of training of municipal police officers, particularly in small communities.⁶

Professor Jones's reference to the period immediately after the Civil War reminds us of another momentous decision Missourians made during that time affecting the present-day makeup of the St. Louis metropolitan area. In 1875,

the "militarization" of state and local police, *see* RADLY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* (2013); Areou Rezvani et al., *MRAPs And Bayonets: What We Know About The Pentagon's 1033 Program*, NPR, Sept. 2, 2014, <http://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program>. *See also* Ross Douthat, *Playing Soldier in the Suburbs*, N.Y. TIMES, Aug. 17, 2014, at SR11 (reporting that Missouri received approximately \$69 million in grants from the federal Department of Homeland Security over the past five years for acquisition of surplus military hardware).

3. *See, e.g.*, *Civil War History in St. Louis*, EXPLORE ST. LOUIS, <http://explorestlouis.com/visit-explore/discover/itineraries/civil-war-history-in-st-louis/> (last visited Nov. 30, 2014); *St. Louis Area Civil War Digitization Project*, MO. HISTORY MUSEUM, http://www.sos.mo.gov/archives/mdh_splash/default.asp?coll=stloucwproject (last visited Nov. 30, 2014).

4. *See supra* note 2 and accompanying text.

5. *See, e.g.*, Editorial, *Missouri Has Ignored Municipal Courts for Generations. It's Time to Fix Them*, ST. LOUIS POST-DISPATCH, Nov. 4, 2014, http://www.stltoday.com/news/opinion/columns/the-platform/editorial-missouri-has-ignored-municipal-courts-for-generations-it-s/article_d0cb9684-f0e0-5899-86dc-e5dcacfcd04e.html (citing T.E. Lauer, *Prolegomenon to Municipal Court Reform in Missouri*, 31 MO. L. REV. 69 (1966)); Jeremy Kohler, *Tiny Velda City Plans Massive Ticket Forgiveness Program for October*, ST. LOUIS POST-DISPATCH, Sept. 23, 2014, http://www.stltoday.com/news/local/crime-and-courts/tiny-velda-city-plans-massive-ticket-for-giveness-program-for-october/article_ef44413f-745e-5a38-b4f9-65f8e30e28ef.html; Jennifer S. Mann, *Ferguson is Focus of Calls for Reform in Traffic Courts*, ST. LOUIS POST-DISPATCH, Sept. 6, 2014, at A1. The Missouri Constitution and statutes limit the amount of money generated from fines that can be used by municipalities. MO. CONST. art. IX, § 7; MO. REV. STAT. Ch. 479; *see also* FORDYCE CONFERENCE, *THE CONSENSUS STATEMENT OF THE FORDYCE CONFERENCE: "ST. LOUIS-TOWARD THE YEAR 2000,"* at 5 (1969).

6. *See, e.g.*, William Freivogel, *Changing Police Practices In Ferguson Could Have Bigger Impact Than Indicting Officer Wilson*, ST. LOUIS PUB. RADIO, Sept. 29, 2014, <http://news.stlpublicradio.org/post/changing-police-practices-ferguson-could-have-bigger-impact-indicting-officer-wilson>. *See generally* Roger L. Goldman, *A Model Decertification Law*, 32 ST. LOUIS U. PUB. L. REV. 147 (2012); Roger L. Goldman & Steven Puro, *Revocation of Police Officer Certification: A Viable Remedy for Police Misconduct*, 45 ST. LOUIS UNIV. L.J. 541 (2001).

Missouri voters approved a new state constitution,⁷ which included a city-driven proposal⁸ to separate the urban-oriented City of St. Louis, then one of the predominant cities in the country,⁹ from rural St. Louis County.¹⁰ The proposal to separate the city from the county, which has been called the “Great Divorce,”¹¹ was part of a broader proposal for the State of Missouri to delegate substantial governing powers to the city, a concept known today as “home rule.”¹² Under the new state constitution, St. Louis was authorized to “frame a

7. MO. CONST. art. IX, §§ 20–23 (1875).

8. E. TERRENCE JONES, *FRAGMENTED BY DESIGN: WHY ST. LOUIS HAS SO MANY GOVERNMENTS 5–7* (2000); see also John Eligon & Tanzania Vega, *Deep Tensions Rise to Surface After Ferguson Shooting*, N.Y. TIMES, Aug. 16, 2014, <http://www.nytimes.com/2014/08/17/us/ferguson-mo-complex-racial-history-runs-deep-most-tensions-have-to-do-police-force.html>.

9. According to the 1870 census, St. Louis was the fourth largest city in the country with a population of 310,825 persons. WILLIAM E. PARISH, *A HISTORY OF MISSOURI: VOL. III 1860 TO 1875*, at 201 (2001). The city’s population peaked in 1950 at 856,796, then fell back to 319,294 in 2010, not far from the 1870 figure. See, e.g., Pamela Engel & Rob Wile, *11 American Cities That Are Shells of Their Former Selves*, BUS. INSIDER, June 26, 2013, <http://www.businessinsider.com/american-cities-in-decline-2013-6>; see also Wendell Cox, *Shrinking City, Flourishing Region: St. Louis Region*, NEWGEOGRAPHY.COM, Jan. 27, 2011, <http://www.newgeography.com/content/002013-shrinking-city-flourishing-region-st-louis-region>. For more on the story of St. Louis’s population decline, see generally COLIN GORDON, *MAPPING DECLINE: ST. LOUIS AND THE FATE OF THE AMERICAN CITY* (2009).

10. Richard Bose, *Summary of City-County Reorganization Attempts According to Fragmented by Design by E. Terrence Jones*, NEXTSTL, Feb. 22, 2014, <http://nextstl.com/2014/02/summary-attempts-city-county-reorganization-according-fragmented-design-e-terrence-jones>.

11. Ray Hartman, *The Great Divorce Lives On*, ST. LOUIS MAG., Mar. 21, 2014, <http://www.stlmag.com/news/think-again/Think-Again-The-Great-Divorce-Lives-On/>; see also JONES, *supra* note 8, at Foreword (“Only one governmental transformation, the City’s divorcing the County in 1876, can legitimately be labeled radical and revolutionary.”).

12. Missouri was the first state in the country to recognize municipal home rule authority in its state constitution. See MO. CONST. art. IV, § 19(a). Home rule developed in response to “Dillon’s Rule,” named after Iowa Judge John F. Dillon. Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1109–13 (1980) (explaining Judge Dillon’s position that states should maintain strict control over their cities); see also *City of Clinton v. Cedar Rapids & Mo. River Railroad Co.*, 24 Iowa 455, 475 (1868) (stating that local governments “owe their origin to, and derive their powers and rights wholly from, the legislature”). Judge Dillon later wrote a treatise in which he articulated a three-part analytical approach to municipal government authority: powers “granted in *express words*; . . . those *necessarily or fairly implied in, or incident to the powers expressly granted*; [and] . . . those *essential to the declared objects and purposes of the corporation*.” 1 JOHN F. DILLON, *THE LAW OF MUNICIPAL CORPORATIONS* § 55, at 173 (2d ed., 1873). Two forms of home rule have been recognized; the original form became known as “defined” or “*imperium in imperio*” (a “state within a state”) home rule in which cities have full authority over “local” matters. Lynn A. Baker & Daniel B. Rodriguez, *Constitutional Home Rule & Judicial Scrutiny*, 86 DENV. U. L. REV. 1337, 1339–41 (2009) (discussing the meaning of “*imperium in imperio*” home rule); see also *People ex rel. Le Roy v. Hulburt*, 24 Mich. 44, 108

charter for the government of the city . . . in harmony with and subject to the Constitution and laws of Missouri.”¹³ Following voter approval of a new charter, and assumption by the city of existing county debt, “the city and county of St. Louis shall be independent of each other.”¹⁴

In April of 1876, voters in the city and county chose a constitutionally authorized board of freeholders. Operating under a constitutionally imposed ninety-day deadline, the board announced a plan for separation on July 4, 1876—one hundred years after the American Declaration of Independence.¹⁵ Voters in both the city and county approved the separation plan, but it took a court-ordered recount of the county vote total to overcome an apparent defeat.¹⁶ The separation plan included a metes and bounds description of the boundaries of the City of St. Louis, but no specific mechanism for expansion of those boundaries.¹⁷ In effect, the city became landlocked because the city now was its own county. Growth in St. Louis County would come through annexation by existing municipalities, incorporation of new municipalities, and provision of urban services in unincorporated areas by the county.

For the last quarter of the nineteenth century, the urban city and the rural county went their separate ways, with little public discussion being given to the effects of that divorce.¹⁸ But during the twentieth century, five separate proposals to reverse that decision failed, while one proposal for incremental change—creation of the Metropolitan Sewer District (MSD)—was approved.¹⁹ As the number of failed attempts at reconciliation suggest, a significant

(1871) (Cooley, J., concurring) (stating that “local government is a matter of absolute right; and the state cannot take it away”); OHIO CONST. art. XVIII, §§ 3, 7 (stating that municipalities have “all powers of local self-government”). Dissatisfaction with the number of times courts were called on to settle disputes over what is covered by the term “local” led to the development of an alternative form of home rule, called “legislative” home rule, in which states grant home rule cities full authority “to exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.” PA. CONST. art. IX, § 2 (amended 1968); see also MO. CONST. art. IV, § 19(a) (stating that constitutional charter cities have “all powers which the general assembly . . . has authority to confer on any city, provided such powers are consistent with the constitution of this State, and are not limited or denied either by the charter as adopted, or by statute”). See generally DANIEL R. MANDELKER ET AL., STATE AND LOCAL GOVERNMENT IN A FEDERAL SYSTEM 133–76 (7th ed. 2010); JAMES E. WESTBROOK, MISSOURI MUNICIPAL LEAGUE, A MODEL CHARTER FOR MISSOURI CITIES 70–73 (2000).

13. MO. CONST. art. IX, § 20.

14. MO. CONST. art. IX, § 23.

15. JONES, *supra* note 8, at 10.

16. *Id.* at 16–22.

17. See *infra* note 50 and accompanying text.

18. JONES, *supra* note 8, at 20–23, 60–62.

19. GEORGE D. WENDEL, THE GOVERNING OF ST. LOUIS: DESIGN FOR THE FUTURE “THE WALKER REPORT,” 34–36 (1997).

number of civic leaders and reformers believe the 1876 decision to separate the city and county was a mistake,²⁰ but the general public does not appear to share that belief. In the meantime, new public agencies with regional or subregional jurisdiction, such as the St. Louis Junior College District,²¹ the Zoo-Museum District,²² the Bi-State Development Agency (“Bi-State”),²³ the Great Rivers Greenway,²⁴ and the St. Louis Economic Development Partnership (SLEDP),²⁵ were established. Though efforts at formal reconciliation of the city and the county have been unsuccessful thus far, proponents continue to advance this goal.²⁶ Opponents equate such proposals with merger of the city and county and urge more incremental efforts at cooperation and collaboration.²⁷

In this article we review previous attempts at reconciliation between the city and county, discuss recent examples of cooperation between the city and county, and compare several strategies that have been advanced to respond to the perceived fragmentation of public resources and services in the St. Louis metropolitan area.²⁸ Next, we consider the work of Beyond Housing, a nonprofit community development corporation currently collaborating with twenty-four municipalities located within the boundaries of the Normandy School District in St. Louis County,²⁹ the creation in 2013 of the St. Louis

20. Don Phares, *Planning for Regional Governance in the St. Louis Area: The Context, the Plans, the Outcomes*, in ST. LOUIS PLANS: THE IDEAL AND THE REAL ST. LOUIS 55–82 (2007).

21. See *infra* notes 146–55 and accompanying text.

22. See *infra* notes 157–64 and accompanying text.

23. See *infra* notes 89, 134–36 and accompanying text.

24. See *infra* notes 167–68 and accompanying text.

25. See *infra* notes 239–41, 262 and accompanying text; *County and City Collaborate to Launch St. Louis Economic Development Partnership*, ST. LOUIS ECON. DEV. P'SHIP, <http://www.stlpartnership.com/partnership.html> (last visited Mar. 2, 2015). The creation of SLEDP in 2013 responds to a national critique of the city and county in 1989: “[O]ne area in which there has been a decided lack of cooperation between the city and county is economic development.” Roger B. Parks & Ronald J. Oakerson, *St. Louis: The ACIR Study*, in 15 ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN GOVERNANCE FORUM ON THE ST. LOUIS METROPOLITAN AREA, INTERGOVERNMENTAL PERSPECTIVE 1, 11 (1989).

26. See *infra* Parts II, III.

27. See *infra* Part V.B. In the latter days of the 2014 midterm election campaign, the Democratic and Republican candidates for county executive of St. Louis County, Steve Stenger and Rick Stream, agreed that they “[did] not support a city-county merger.” Jessica Machetta, *Down To The Wire – Stenger-Stream*, WEBSTER-KIRKWOOD TIMES, Oct. 24, 2014, <http://www.websterkirkwoodtimes.com/Articles-Election-Coverage-i-2014-10-24-193599.114137-Down-To-The-Wire-StengerStream.html#axzz3TH3jQY9g>.

28. See *infra* notes 176–208 and accompanying text. Strategies include a “mega-merger” of the city and county, a “mega-mega-merger” of the city, county, and county municipalities, and a process of “targeted incrementalism.”

29. See *infra* notes 171–87 and accompanying text.

Economic Development Partnership, a collaboration between the City of St. Louis and St. Louis County,³⁰ and the role and current research findings of Better Together, a self-described “grassroots project” sponsored by the Missouri Council for a Better Economy.³¹

We conclude by recommending that a multistep process, which already may have begun,³² be strengthened and supported as a path to: (1) reentry of the city into the county, (2) a gradual reduction in the number of municipalities in the county, and (3) the creation of Neighborhood Service Areas to preserve the identities and some functions of municipalities that may be consolidated as their numbers are reduced. The work of the St. Louis Economic Development Partnership,³³ Beyond Housing’s “Vision 24:1 Initiative,”³⁴ Better Together’s research,³⁵ and the recommendations in the 1988 Board of Freeholders’s plan for consolidation of municipalities in St. Louis County³⁶ can serve as templates for reconciliation through a blend of incrementalism and comprehensive reform. In developing our recommendations, we are influenced by the principle of subsidiarity, an “organizational norm” which seeks to locate “decision making and the responsibility for acting . . . at the lowest capable level.”³⁷

30. See *infra* notes 162–70 and accompanying text.

31. See *infra* notes 235–41 and accompanying text.

32. See *infra* note 239–47 and accompanying text (describing the St. Louis Economic Development Partnership).

33. See *infra* notes 146–55 and accompanying text.

34. See *infra* notes 222–38 and accompanying text.

35. See *infra* notes 248–54 and accompanying text.

36. See ST. LOUIS CITY/CNTY. BD. OF FREEHOLDERS, PLAN FOR GOVERNMENTAL REORGANIZATION IN ST. LOUIS & ST. LOUIS COUNTY (Sept. 1988). Professor Salsich was a legal consultant to the board and drafter of the report.

37. Thomas C. Kohler, *Civic Virtue at Work: Unions as Seedbeds of the Civic Virtues*, in SEEDBEDS OF VIRTUE 155 (1995). Subsidiarity is a founding tenet of the European Union. *European Parliament Fact Sheets: The Principle of Subsidiarity*, EUROPEAN PARLIAMENT, http://www.europarl.europa.eu/facts_2004/1_2_2_en.htm (last visited Sept. 12, 2014). POPE PIUS XI, QUADRAGESIMO ANNO ¶ 79 (1931), available at http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html. Subsidiarity also is an important ethical principle of the Catholic Church:

Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.

I. 1875–1876: THE “GREAT DIVORCE”³⁸

During the two decades prior to the Civil War and the one immediately following it, St. Louisans became increasingly frustrated with what they perceived to be efforts to exploit the resources and wealth of the city by both the Missouri State Legislature and the government of St. Louis County. This frustration ultimately led city leaders to seek two major changes in the city’s governmental structure—legal separation from the county and the power to govern themselves through what became known as “home rule.”³⁹ Both proposals were included in the new Missouri Constitution of 1875.⁴⁰ One year later, city leaders used these new powers to effect separation from St. Louis County.⁴¹ In 1876, St. Louis became a consolidated city-county with two sets of governmental offices and officeholders.⁴²

As St. Louis celebrates the 250th anniversary of its founding,⁴³ one is prompted to wonder what forces and impulses drove presumably intelligent people to break with tradition⁴⁴ and devise a governmental scheme as complex as the one implementing the separation of the city from St. Louis County, at a time when it was one of the most influential cities in the country. In taking on “county responsibilities,” the City of St. Louis added a number of offices and

Stephen Schneck, *What is Subsidiarity?*, CATHOLIC UNIV. OF AMERICA: INST. FOR POLICY RESEARCH & CATHOLIC STUDIES, June 2, 2011, <http://ipr.cua.edu/blogs/post.cfm/what-is-subsidiarity>.

38. For the history of the separation of the City of St. Louis from St. Louis County, and the many efforts at reconciliation, we draw heavily on the work of JONES, *supra* note 8 and Phares, *supra* note 20—two eminent political scientists and observers of the St. Louis scene.

39. JONES, *supra* note 8, at 6–7; WENDEL, *supra* note 19, at 34–36; Jim Erikson, *Chesterfield mayor says seceding from St. Louis County might be option*, NEWS MAG. NETWORK, May 6, 2014, <http://www.newsmagazinenetwork.com/2014050647238/chesterfield-mayor-says-seceding-from-st-louis-county-might-be-option/>. See generally Mark Schlinkmann, *St. Charles County, St. Louis County officials call a Chesterfield move unrealistic*, ST. LOUIS POST-DISPATCH, May 7, 2014, at A8, available at http://www.stltoday.com/news/local/govt-and-politics/st-charles-county-st-louis-county-officials-call-a-chesterfield/article_63c7b794-8fe6-5247-8e66-706f1a767962.html; Editorial, *Chesterfield’s mayor casts a wandering eye. In wrong direction*, ST. LOUIS POST-DISPATCH, May 8, 2014, at A14, available at http://www.stltoday.com/news/opinion/columns/the-platform/editorial-chesterfield-s-mayor-casts-a-wandering-eye-in-wrong/article_4e1cf781-da68-516d-b5ec-ecd6be19c683.html.

40. MO. CONST. art. VI, § 19 (1945) begins: “Any city having more than five thousand inhabitants or any other incorporated city as may be provided by law may frame and adopt a charter for its own government.” See also THOMAS BARCLAY, *THE ST. LOUIS HOME RULE CHARTER OF 1876: IT’S FRAMING AND ADOPTION* (1962).

41. See WENDEL, *supra* note 19, at 34.

42. *Id.*

43. *A Brief History of St. Louis*, CITY OF ST. LOUIS, MO., <https://www.stlouis-mo.gov/visit-play/stlouis-history.cfm> (last visited Nov. 24, 2014).

44. *Id.*

departments, including assessor, license collector, prosecuting attorney (called circuit attorney in the city) and sheriff. By separating itself from St. Louis County, the city became landlocked, although its extended boundaries presumably provided plenty of room for expansion, and it lost the ability to expand its territorial jurisdiction beyond those extended boundaries through traditional state-authorized annexation procedures.⁴⁵

Historians generally agree that efforts by the state of Missouri and St. Louis County to “[tinker] with St. Louis’ governmental arrangements after the Civil War” and extract revenue from the city by “disproportionately allocat[ing] . . . funds derived largely from city taxpayers” played a large role in the split.⁴⁶ City residents believed they were being deprived of an equitable tax system.⁴⁷ One extraordinary example of the state’s preoccupation with the governmental structure of the city was the decision by the state legislature, as the country was entering the Civil War, to place the state in charge of the city’s police force in 1861.⁴⁸ The state refused to give up control of the St. Louis police force for over 150 years.⁴⁹

II. 1926–1992: “RECONCILIATION” EFFORTS

The constitution of 1875 did not anticipate the possibility that voters in the city and county would decide to reconcile and rescind their separation.⁵⁰ Fifty years later, a constitutional amendment authorized a board of freeholders to study the relationship between the city and county and recommend to city and county voters one of three alternatives: (1) consolidation of the city and the county, (2) reentry of the city into the county, and (3) annexation by the city of unincorporated areas in the county.⁵¹ A fourth alternative, creation of metropolitan service districts, was added by constitutional amendment in 1945,⁵² and a fifth, “any other plan for the partial or complete government of

45. See MO. ANN. STAT. § 71.011 (West 1998).

46. LANA STEIN, *ST. LOUIS POLITICS: THE TRIUMPH OF TRADITION* 3 (2002) (citing BARCLAY, *supra* note 40, at 1–2).

47. James M. Brasfield, *Reorganizing St. Louis County: The Debate Goes On*, INTERGOVERNMENTAL PERSPECTIVE 24, 26 (1989).

48. STEIN, *supra* note 46, at 2 (citing JAMES NEAL PRIMM, *LION OF THE VALLEY* 246–47 (2d ed. 1990)).

49. STATUTORY AMENDMENT TO MO. REV. STAT. §§ 84, 86, 105, RELATING TO MUNICIPAL POLICE FORCE, VERSION 7, 2012-088, available at <http://www.sos.mo.gov/elections/2012petitions/2012-088.asp> (Missouri voters approved an initiative petition in August 2012 transferring control of the St. Louis police force to the city); see also Alan Greenblatt, *After 152 Years, St. Louis Gains Control of its Police Force*, NPR, Aug. 28, 2013, <http://www.npr.org/blogs/thetwo-way/2013/08/28/216489820/after-152-years-st-louis-gains-control-of-its-police-force>.

50. ST. LOUIS PLANS: THE IDEAL AND THE REAL ST. LOUIS 62 (2007).

51. MO. CONST. of 1875, art. IX § 26 (amended 1927).

52. ST. LOUIS PLANS: THE IDEAL AND THE REAL ST. LOUIS, *supra* note 50, at 68.

all or any part of the city and the county,” was added by constitutional amendment in 1966.⁵³

The first alternative was chosen when the first board of freeholders submitted a plan to city and county voters in 1926 to consolidate the city and county under the control of the city.⁵⁴ The city charter would govern the entire area; all municipalities in the county would be eliminated, and the city police department and the city school board would service the entire area. City voters overwhelmingly approved the plan, but county voters summarily rejected it.⁵⁵ The Great Depression and World War II intervened and another board of freeholders was not convened until 1955. That board submitted a district plan for consolidation of the city and county.⁵⁶ The most recent attempts at reformation through the board of freeholders approach occurred in 1988 and 1990. The 1988 board used the fifth approach to propose a consolidation of municipalities in St. Louis County,⁵⁷ but the proposal died when the Supreme Court of the United States declared the use of a board of freeholders unconstitutional because it denied renters an opportunity to participate in the reorganization process. The subsequent board was called the “Board of Electors.”⁵⁸

In addition to the board of freeholders approach, the state constitution includes several other procedures for altering the relationship between the city and county.⁵⁹ The legislature,⁶⁰ or the people through the initiative process,⁶¹ can propose amendments to the constitution that must be approved by a majority of state voters.⁶² Alternatively, beginning in 1962, “and every twenty years thereafter,” voters can decide to call a constitutional convention “to revise and amend the constitution.”⁶³ Only two attempts have been made to reorganize the St. Louis governmental structure using the legislative/initiative

53. *Id.*

54. *Id.* at 63.

55. *Id.*

56. *State v. Metropolitan St. Louis Sewer District*, 275 S.W.2d 225 (Mo. banc 1955).

57. *See infra* notes 110–122 and accompanying text.

58. E. TERRENCE JONES & DON PHARES, MOVING TOWARD REGIONAL GOVERNANCE—INCREMENTALLY: THE ST. LOUIS CASE 16 (2006), available at pprc.umsl.edu/files/images/slide%20show/Terry%20Jones%20PPT.pdf.

59. MO. CONST. of 1945, art. VI, §§ 30(a)–32(b).

60. MO. CONST. of 1945, art. XII, § 2(a)–(b).

61. MO. CONST. of 1945, art. III, § 50.

62. MO. CONST. of 1945, art. VI, § 30(a) (“The power so given shall be exercised by the vote of the people of the city and county upon a plan prepared by a board of freeholders consisting of nineteen members.”).

63. MO. CONST. of 1945, art. III, §3(a).

path to amending the Missouri Constitution—in 1930 and again in 1962—both of which failed overwhelmingly, the latter defeated in every county.⁶⁴

Regardless of the approach taken, any proposed change must be approved by a majority of voters in both the city and the county.⁶⁵ Despite the apparent problems the separation has created and the “failure to ameliorate” the city and county’s already existing problems, the relationship has remained substantially unchanged for almost 140 years.⁶⁶ In the meantime, several single-purpose agency and district proposals successfully navigated the voter approval process, including the Bi-State Development Agency, the Metropolitan Sewer District, and the Junior College District.⁶⁷

A. 1926: Complete City-County Consolidation Plan

The first attempt at reformation in 1926 came about after the realization that the separation in 1875 may have been a mistake.⁶⁸ The 1875 constitution’s separation process did not include a way for reunification to occur.⁶⁹ Recognizing this deficiency, voters approved a constitutional amendment in 1924 that provided three options to reunify the city and county:⁷⁰

- (1) the city would extend its limits to include the entire county
- (2) the county would extend its limits to include the city which would then extend its limits under existing law, and
- (3) the city could annex part of the county under the exclusive jurisdiction of the city.

After the successful vote, a board of freeholders was convened in 1925 and introduced this “City-County Consolidation” plan.⁷¹ Essentially, this plan made the city charter the governing document for the new area, eliminated all

64. MO. CONST. of 1945, art. III, §3(a).

65. MO. CONST. art. VI, § 30(a).

66. CONFLUENCE ST. LOUIS, TOO MANY GOVERNMENTS? A REPORT ON GOVERNMENTAL STRUCTURE IN ST. LOUIS CITY AND COUNTY WITH RECOMMENDATIONS FOR CHANGE 5–7 (1987) [hereinafter CONFLUENCE].

67. See *infra* notes 132–174 and accompanying text.

68. Tim O’Neil, *A Look Back: St. Louis Leaders Had Second Thoughts About City-County Split in 1926*, ST. LOUIS POST-DISPATCH, Oct. 28, 2012, http://www.stltoday.com/news/local/govt-and-politics/a-look-back-st-louis-leaders-had-second-thoughts-about/article_ce761942-f7d5-56b0-b2a0-d8b5653a67f5.html?print=true&cid=print (After the 1920 census “demoted” St. Louis from fourth largest to sixth largest city in the United States, behind Cleveland and Detroit, “[l]ocal business leaders began doubting the wisdom of their grandfathers’ Great divorce from St. Louis County.”).

69. Phares, *supra* note 20, at 63.

70. MO. CONST. art. VI, § 30(a); see also Phares, *supra* note 20, at 63.

71. BOARD OF FREEHOLDERS PROPOSAL, 2 THE LEAGUE BULLETIN, NO. 24 (Virgil Loeb ed., June 21, 1926).

county offices and placed them under city control, transferred all county property to the city, eliminated all municipalities in the county, put the police department in control of the entire new area, and abolished all county school districts placing them under the city school board's control.⁷²

In addition to what was deemed as overall city dominance, the proposal included two financial aspects.⁷³ First, the city would assume all financial responsibility for all affected county governments, and second, the county agricultural land would be taxed at no more than 50% of the city rate.⁷⁴ Through political maneuvering and despite county leaders' strong opposition, the plan was placed on the ballot in 1926.⁷⁵ Municipal officials, county officeholders, and the St. Louis County Chamber of Commerce all campaigned actively against the proposal.⁷⁶ The plan, commonly referred to as a "complete city takeover plan" because it sought to abolish all units of government in the county, failed overwhelmingly,⁷⁷ leaving the governing status of the city and county unchanged.⁷⁸

B. 1930: Metropolitan Federation

With the board of freeholders appearing to be ineffective, an amendment to the Missouri Constitution was proposed in 1930 by various business leaders in the region and the chambers of commerce in both the city and county.⁷⁹ This 1930 amendment proposed creating a federation of local governments in the metropolitan area, commonly known as the "Metropolitan Federation Plan," in an effort to put the two entities on the same governmental team.⁸⁰ The coalition of business and civic leaders hired Professor Thomas H. Reed from the University of Michigan to draft a proposal.⁸¹ A new metropolitan government called "Greater St. Louis" would be incorporated. The city, county, and county

72. *Id.* at 3–9; *see also* Phares, *supra* note 20, at 63.

73. Phares, *supra* note 20, at 63; *see also* FRANCES A. ANDERSON ET AL., BOARD OF FREEHOLDERS PROPOSAL NO. 8 (1926) (stating the 1926 Board of Freeholders consisted of Frances A. Anderson, Maurice J. Cassidy, Henry S. Caulfield, John P. Collins, Laura C. Kroeger, Frederick W. Lehmann, Leo S. Rassieur, J. F. O. Reller, and Hugh K. Wagner).

74. Phares, *supra* note 20, at 64.

75. *Id.* ("With the signature of one of the nine County Board members the plan was placed on the October 26, 1926 ballot.")

76. JONES, *supra* note 8, at 68.

77. Phares, *supra* note 20, at 64 (explaining the plan failed in the county, with 67% of those voting being opposed, but passed overwhelmingly in the city with 87% of voters approving the plan).

78. *Id.*

79. JONES, *supra* note 8, at 69.

80. *Id.*

81. *Id.*

municipalities would “continue but with their respective roles diminished.”⁸² Additionally, the plan placed responsibility for services and functions such as water, sewers, and parks in the hands of the new government entity.⁸³ Assuming that a statewide vote had better prospects for approval than a city-county vote, organizers placed the proposal on the 1930 ballot.⁸⁴ Strong opposition arose in the county for fear that the “larger and more prosperous” city would dominate the federation.⁸⁵ Ultimately, the amendment failed statewide, 218,381 yes, to 378,718 no.⁸⁶

C. 1955: Special District: Metropolitan Transit District

Two years after the creation of MSD, Bi-State was asked to examine current and emerging transportation issues in the bi-state region.⁸⁷ After identifying the “chaotic” situation resulting from the efforts of an uncoordinated group of private transportation companies to serve an extremely large number of riders throughout the region,⁸⁸ civic and government leaders proposed that the region take control of the ownership and operation of the transit system.⁸⁹

Rather than focus on establishing a coordinated, publicly owned metropolitan transit system, the board appointed in 1953 proposed instead that the power to set bus and streetcar fares be shifted from the public service commission to a proposed new “Metropolitan St. Louis Transit District.”⁹⁰ The board received little support for this idea because of disappointment over its avoidance of the greater issue, public ownership of transit facilities.⁹¹ Opposition to the fare-shifting plan was led by Mayor Raymond Tucker and

82. *Id.*

83. Terry Jones, *St. Louis: Regionalism - yes; Consolidation - probably not*, ST. LOUIS BEACON, May 5, 2009, https://www.stlbeacon.org#!/content/21828/st._louis_ regionalism___ yes_consolidation___probably_not.

84. *See* JONES, *supra* note 8, at 69.

85. *Id.* at 69–70.

86. *See id.* City voters supported the proposal by a margin of just under 4,700 votes; county voters rejected the proposal by a margin of 7,000 votes out of a total of 37, 000 votes cast in the county.

87. Phares, *supra* note 20, at 65.

88. *Id.* (stating that more than fifteen companies provided transit services for over 400,000 daily riders).

89. *Id.*; *see also* MO. REV. STAT. § 70.370 (2000), available at <http://www.moga.mo.gov/mostatutes/stathtml/07000003701.html> (establishing the Bi-State Development Agency and the Bi-State Metropolitan District giving the agency the power “(1) [t]o plan, construct, maintain, own and operate bridges, tunnels, airports and terminal facilities and to plan and establish policies for sewage and drainage facilities”).

90. Phares, *supra*, note 20, at 65.

91. *See* CONFLUENCE, *supra* note 66, at 55.

County Supervisor Luman Matthews, as well as business and labor leaders.⁹² Additionally, voter turnout was extremely light, and the plan was defeated in both the city and the county.⁹³

D. 1959: Multipurpose District

A few years later, another special district approach to reconciliation was introduced.⁹⁴ This effort was spearheaded by a group of academics from Saint Louis University and Washington University, with financial support from the Ford Foundation and the McDonnell Aircraft Corporation Charitable Trust.⁹⁵ The academic team, chaired by Dr. John Bollens of UCLA, issued a lengthy report in 1957, *The Path of Progress for Metropolitan St. Louis*, which proposed the creation of a metropolitan district to take charge of seven major functional areas.⁹⁶

A new board of freeholders was appointed to consider the district proposal. That board also prepared a plan for city-county merger. After an extensive period of public discussion and debate, the freeholders approved a modified version of the district plan by a vote of 10–9 and submitted it to the voters in November, 1959.⁹⁷ The plan immediately became controversial.⁹⁸ Downtown business and civic leaders, including the American Association of University Women and the League of Women Voters, supported the plan.⁹⁹ The *St. Louis Post-Dispatch* and the *St. Louis Review*, the newspaper of the Archdiocese of St. Louis, promoted the plan.¹⁰⁰ But serious opposition was triggered by St. Louis Mayor Raymond Tucker's public announcement that the plan was "too revolutionary." Other municipal elected officials, suburban newspaper publishers, and most Republican and Democratic party leaders followed suit.¹⁰¹ With one camp believing that "it would create another layer of government," and another camp believing "it would not accomplish that much

92. *Id.*

93. *Id.* ("Only 54,000 votes being cast out of a total 576,000 registered voters, 10 percent of the city registered voters and 8 percent of county. Defeated by 3,099 votes in the city and 2,110 in the county."); see also Phares, *supra* note 20, at 65 (citing JONES, *supra* note 8, at 96–99).

94. JONES, *supra* note 8, at 70.

95. *Id.* at 72.

96. *Id.* at 73 (stating the seven functional areas were "arterial roads, public transit regulation, land use planning, economic development, wastewater sewers, civil defense, . . . and property assessment").

97. See *id.* at 74–76.

98. See *id.* at 76.

99. *Id.*

100. JONES, *supra* note 8, at 76.

101. *Id.* at 76–78.

improvement,” the “District Plan” was doomed, losing in both the city and the county.¹⁰²

E. 1962: The Borough Plan

Three years later, the freeholders’ second proposal also was rejected, this time by statewide voters. Known as the “Borough Plan,” this plan proposed a merger of the city and county, along with the county municipalities, fire districts, MSD, and other sewer districts, as well as the circuit courts in the city and county, into one “Municipal County of St. Louis,” containing twenty-two boroughs.¹⁰³

There is hereby created a single new political subdivision and body corporate named The “Municipal County” of St. Louis referred to herein as the Municipal County. It is both a City and a County. It consists of all territory heretofore comprised in the City of St. Louis and all territory comprised in St. Louis County. The City of St. Louis and St. Louis County and all other consolidated governmental bodies hereinafter specified shall by force of the constitution be consolidated into The Municipal County of St. Louis.¹⁰⁴

Because the constitutional authorization for “any other plan” of reorganization had not yet been added to the list of alternatives a board of freeholders could propose to city and county voters,¹⁰⁵ supporters of the Borough Plan opted for a statewide vote, as authorized by Article XII of the Missouri Constitution.¹⁰⁶ School district consolidation and return of city police department control from the state were left out of the proposal because of their political sensitivity.¹⁰⁷ Placed on the 1962 ballot after a significant investment in collecting the thousands of signatures required, almost all county businesses and elected officials voiced opposition.¹⁰⁸ Their resistance “to the notion that bigger government would be a better one” was initially led by their strong appeal to “the sanctity of local autonomy.”¹⁰⁹ Failing in every single county

102. *Id.* at 78.

103. Phares, *supra* note 20, at 67.

104. *Proposed Amendments to The Constitution of Missouri*, NEV. HERALD, Oct. 21, 1962, at 8.

105. Phares, *supra* note 20, at 68.

106. JONES, *supra* note 8, at 80 (stating supporters “decided altering the Missouri Constitution offered greater control over the reform’s content”).

107. *Id.* at 81.

108. *Id.* at 83.

109. *Id.* at 84 (explaining that county officials feared “that a handful of elected officials would dominate one-third of the State.” Specifically, “Governor John Dalton suggested that the plan would create a political Frankenstein in which two or three politicians might possibly control the City and County.”). The proposal was defeated by a statewide vote of 74% no to 26% yes.

statewide, no amendment to the Missouri Constitution regarding reunification has been proposed since.

F. 1988: County Municipal Reorganization

Twenty-five years later another board of freeholders began work in 1987, using the “any other plan” option added in 1966 to Section 30(a)¹¹⁰ of the Missouri Constitution.¹¹¹ The board decided to focus only on county and municipal issues.¹¹² The board had three priorities: (1) provide better municipal services to the 400,000 residents of the unincorporated portions of the county, particularly fire and EMS services; (2) relieve the county of its obligations to provide traditional municipal services; and (3) consolidate the ninety-one existing county municipalities into approximately one-third that number—and in the process, extend the boundaries of the reorganized municipalities to include all the territory of the county except Lambert Airport, which is owned by the City of St. Louis.¹¹³

Ultimately, the board’s final plan proposed incorporating the entire county into thirty-seven new municipalities.¹¹⁴ Existing fire/EMS districts were to be consolidated into four districts covering the entire county. To achieve the proposed reduction in county municipalities, the plan proposed that eleven municipalities be “created from a municipality and unincorporated territory,”¹¹⁵ seventeen municipalities from “two or more municipalities and unincorporated territory,”¹¹⁶ three primarily from unincorporated territory,¹¹⁷ and six “existing municipalities whose boundaries do not change substantially” be left alone.¹¹⁸ For each new city and reconfigured county, the board prepared a detailed fiscal profile¹¹⁹ and corresponding balance sheets.¹²⁰ The objectives

110. Phares, *supra* note 20, at 67–68.

111. *Id.*

112. *Id.* at 68.

113. *Id.* at 68–69; ST. LOUIS CITY/CNTY. BD. OF FREEHOLDERS, *supra* note 36, at 1, 2, 4.

114. Phares, *supra* note 20, at 69.

115. ST. LOUIS CITY/CNTY. BD. OF FREEHOLDERS, *supra* note 36, at 4 (listing Crestwood, Creve Coeur, Des Peres, Ellisville, Eureka, Florissant, Hazelwood, Kirkwood, Olivette, St. Ann, and Sunset Hills).

116. *Id.* at 4–5 (listing Ballwin, Bellefontaine Neighbors, Berkeley, Bridgeton, Chesterfield, Fenton, Manchester, Maryland Heights, Normandy, Overland, St. John, Ferguson, Ladue, Town and Country, Shrewsbury, Glendale, and Jennings).

117. *Id.* at 5 (listing Affton, Mehlville, and Spanish Lake).

118. *Id.* at 5 (listing Brentwood, Clayton, Maplewood, Richmond Heights, University City, and Webster Groves).

119. Phares, *supra* note 20, at 69–70 (“The proposed thirty-seven new cities ranged in population from 6,400 to 78,200 with only five having less than 10,000 residents; the average population size was about 27,000. Per capita assessed valuation (in 1987) ranged from \$3,912 to \$24,461, with an average of \$10,380. Per capita sales taxes ranged from \$79 to \$138, with an

to be accomplished by this plan included balancing resources with needs and enhancing revenue growth potential by a sales-based income tax.¹²¹

This plan never went before the voters. The United States Supreme Court invalidated the board of freeholder process before an election could be held, declaring the “freeholder” concept a violation of the Equal Protection Clause of the United States Constitution because its land ownership requirement excluded renters from participating in the reorganization effort.¹²²

G. 1990: Board of Electors’s Proposed Metropolitan Economic Development and Park Commissions

Shortly after the Court’s decision was announced, requiring the term “freeholder” to be interpreted as “qualified elector,”¹²³ a new board of electors was appointed and sworn in to resume work on the same issues that have preoccupied reformers for the past century.¹²⁴ Although the electors considered various plans and proposals reflecting past efforts, they ultimately chose to recommend creation of two commissions—a Metropolitan Economic Development Commission and a Metropolitan Park Commission.¹²⁵ The economic development commission, to be funded by a 2% tax on nonresidential utility service, was charged with developing programs that would “create, attract, retain, expand, improve, and enhance employment opportunities within the city and the county.”¹²⁶ An eleven-member board of commissioners would oversee the commission’s work, which would be carried out primarily by contracting with existing organizations.¹²⁷ The park commission would be responsible for the governance, repair, and protection of all parks under the commission’s jurisdiction. It was to be funded by a real and personal property tax of six cents per \$100 assessed value. Unless voters were to increase the park commission’s taxing authority, the commission’s only responsibility would be Forest Park in the city.¹²⁸ In proposing two separate metropolitan commissions, the board essentially attempted to separate financial and employment opportunity programs from maintenance and conservation

average of \$98; the variation here resulted from the 25 percent of sales tax yield that existing point-of-sale cities were allowed to retain outside of the per capita distribution.”).

120. ST. LOUIS CITY/CNTY. BD. OF FREEHOLDERS, *supra* note 36, at 83–93.

121. Phares, *supra* note 20, at 71.

122. *Quinn v. Millsap*, 491 U.S. 95, 110 (1989).

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Phares, *supra* note 20, at 74.

efforts.¹²⁹ Dubbed “weak and narrow” by one observer,¹³⁰ it came as no surprise that this plan was overwhelmingly defeated by the voters in 1992, becoming the fifth of six “freeholders/electors” proposals for comprehensive reorganization defeated by voters in the past ninety years.¹³¹

III. SOME NOTABLE SUCCESSES

A. 1949: Bi-State Development Agency

During the Depression and the Second World War, governmental reorganization efforts were suspended. But in 1949, an interstate compact between Missouri and Illinois established Bi-State.¹³² Bi-State was created to enhance the development of the region as a whole.¹³³ The agency was given statutory powers to plan, construct, maintain, own, and operate bridges, tunnels, airports, and terminal facilities as well as sewage facilities throughout the metropolitan St. Louis region.¹³⁴ In addition, Bi-State’s powers include coordination of streets and highways, charging and collecting fees for use of its facilities, and “all necessary and incidental functions” relating to its activities.¹³⁵ But Bi-State was not given the power to tax, a crucial limitation in the minds of some.¹³⁶

129. *Id.* at 90.

130. *Id.*

131. *Id.*

132. MO. REV. STAT. § 70.370 (2010); 45 ILL. COMP. STAT. § 105/10 (2012).

133. *History- In the beginning . . .*, METRO TRANSIT ST. LOUIS, www.metrostlouis.org/About/History.aspx.

134. MO. REV. STAT. § 70.370 (“Any two of the commissioners so appointed together with the attorney general of the state of Missouri may act to enter into the following compact: COMPACT BETWEEN MISSOURI AND ILLINOIS CREATING THE BI-STATE DEVELOPMENT AGENCY AND THE BI-STATE METROPOLITAN DISTRICT. The states of Missouri and Illinois enter into the following agreement. . . . The two states create a district to be known as the ‘Bi-State Metropolitan Development District’ (herein referred to as ‘The District’) which shall embrace the following territory; the city of St. Louis and the counties of St. Louis and St. Charles and Jefferson in Missouri, and the counties of Madison, St. Clair, and Monroe in Illinois. . . . There is created ‘The Bi-State Development Agency of the Missouri-Illinois Metropolitan District’ (herein referred to as ‘The Bi-State Agency’) which shall be a body corporate and politic. The bi-state agency shall have the following powers . . .”).

135. MO. REV. STAT. § 70.370. In 2003, Bi-State adopted the name Metro Transit for its transit operations and now is best known for its transit system. METRO TRANSIT ST. LOUIS, *supra* note 133.

136. Phares, *supra* note 20, at 82 (“In 1949, the Bi-State Development Agency was established . . . [as a] governmental wimp . . . with empowerment to deal with area transportation issues but no authority to tax or do much else except make plans.”). The agency was faced with the regional ridership exceeding 400,000 persons and more than fifteen companies providing

B. 1953: Metropolitan St. Louis Sewer District

Four years after the creation of Bi-State, and over twenty years after the previous board of freeholders's efforts, a new board was established to respond to an increasingly serious sewage disposal problem in the city and county.¹³⁷ This board produced the only board of freeholders proposal to be accepted by both city and county voters.¹³⁸

A Bi-State engineering study of sewer needs in the county, *The Metropolitan St. Louis Survey*,¹³⁹ uncovered serious sewage disposal problems in both the city and county that were causing area-wide health hazards.¹⁴⁰ The sewage disposal problems could not be handled separately because the urbanized area of the county drained through the city. Piecemeal efforts had failed because they did not include the entire affected area and lacked necessary resources to address the issue in a comprehensive manner.¹⁴¹

To remedy this problem, the board plan proposed the creation of a special-purpose district, MSD, with territorial jurisdiction in the city and the urbanized portion of the county.¹⁴² The city residents viewed the plan very favorably as they were not required to pay for the county since subdistricts were designated to set fees according to specific needs in the areas of the county to be served by MSD.¹⁴³ In an unusual expression of city-county agreement, voters in both the city and the county approved the MSD proposal by margins of 75% in the county and 77% in the city.¹⁴⁴ MSD was created on February 9, 1954 and established the current integrated sewer system.¹⁴⁵

transit services. Subsequently, Bi-State proposed the Metropolitan St. Louis Transit District, which was defeated in 1955. *Id.* at 99.

137. *Id.* at 81–82.

138. *Id.*

139. *Id.* at 81.

140. *Id.*

141. Phares, *supra* note 20, at 81.

142. *Id.*

143. *See id.* at 82.

144. *Id.*

145. *Our Organization: How the Metropolitan St. Louis Sewer District Was Formed*, METRO. ST. LOUIS SEWER DIST., <http://www.stlmsd.com/home> (last visited Aug. 13, 2014). The MSD was formed “when voters approved the Plan of the District to provide a metropolitan-wide system of wastewater treatment and sewerage facilities for the collection, treatment and disposal of sewage. MSD began operations in January 1956 in an area roughly composed of the City of St. Louis and the portion of St. Louis County located east of Interstate 270. . . . MSD’s service area now encompasses approximately 525 square miles, including all 62 square miles of the City and 462 square miles (approximately 90%) of the County. The current population served by MSD is approximately 1.3 million.” *Id.*

C. 1962: St. Louis Community College District

A third successful cooperative venture between the city and the county took place in the early 1960s with the establishment of the St. Louis Community College District.¹⁴⁶ In 1961, the Missouri General Assembly authorized voters in “any public school district, or in any two or more contiguous public school districts . . . [to] organize a community college district.”¹⁴⁷ While two-year postsecondary education had been offered in Missouri since 1915,¹⁴⁸ the 1961 legislation provided a mechanism for creating a statewide system of two-year postsecondary education,¹⁴⁹ expanding the size and capabilities of community colleges by authorizing the creation of community college districts.¹⁵⁰ Community college districts were given the “ability to levy local [property] taxes, borrow money and receive state appropriations.”¹⁵¹

St. Louis area voters approved a proposal to establish the Junior College District of St. Louis-St. Louis County (now St. Louis Community College District) in 1962 by a two-to-one margin.¹⁵² Beginning in 1963 with roughly 790 students in temporary buildings at two schools—Meramec Community College and Florissant Valley Community College—the St. Louis Community College District has grown to four colleges, adding Forest Park and Wildwood, with total annual enrollments between 26,000 and 30,000 students, after peaking at more than 34,000 students in 1983.¹⁵³

Community college districts are governed by boards of trustees who are elected at large if the district has no subdistricts, or from subdistricts if the

146. Phares, *supra* note 20, at 92 (noting the original name was the Junior College District of St. Louis City and St. Louis County).

147. MO. REV. STAT. § 178.770 (2000). The original legislation authorized the creation of junior college districts. Later the term “community” was substituted for “junior.”

148. *History of Missouri’s Community Colleges*, MO. CMTY. COLLEGES (2013), <http://mccatoday.org/history/> (last visited Oct. 31, 2014). According to the Missouri Community College Association (MCCA), Kansas City Polytechnic Institute (now the Kansas City Metropolitan Community College) was the first two-year institution to offer postsecondary education. Flat River Junior College (now Mineral Area College) opened in 1922 and Trenton Junior College (now North Central Missouri College) in 1927. A second wave of junior colleges opened in the 1960s: St. Louis Junior College (now St. Louis Community College) (1962), Crowder College and Jefferson College (1963), and Three Rivers College (1966), along with East Central College and State Fair Community College (1968). The last two community colleges to open were St. Charles Community College (1987) and Ozarks Technical Community College (1990). *Id.*

149. *Id.*

150. Phares, *supra* note 20, at 96.

151. MO. REV. STAT. § 178.770.2.

152. *History- STLCC Through the Years*, ST. LOUIS CMTY. COLLEGE DIST., <http://www.stlcc.edu/about/history.html#1961>.

153. *Id.*

community college district has been subdivided.¹⁵⁴ The St. Louis Community College District has four subdistricts, one including the northern and central portions of the city, the second including southern portions of both the city and the county, a third subdistrict including the northern and central portions of St. Louis County, and the fourth one including the western portions of St. Louis County, as well as small portions of Franklin and Jefferson Counties.¹⁵⁵

D. 1971: Metropolitan Zoological Park & Museum District

A 1970 constitutional amendment expanding the powers of home rule to counties such as St. Louis County granted such counties the ability to decide what services could be provided by counties in both incorporated and unincorporated areas.¹⁵⁶ Companion state legislation authorized voters in charter counties to provide tax support to financially struggling cultural institutions through the special district mechanism.¹⁵⁷ In an election on April 6, 1971, city and county voters approved the creation of the Metropolitan Zoological Park and Museum District (the “District”), including three subdistricts, one in the county for the Museum of Science and Natural History, and two in the city for the Saint Louis Zoo and the Art Museum.¹⁵⁸

As Dr. Terry Jones has noted, the new District “was a coalition rather than a combination.”¹⁵⁹ Neither the city nor the county would have the upper hand, as “each proposal would require a separate vote with concurrent majorities in the city and county.”¹⁶⁰ One main reason behind the county’s approval of the plan is often attributed to the fact that the proposal also incorporated the Museum of Science, located at that time in Oak Knoll Park in Clayton, in order to “furnish some protection against the charge that the new district was simply a tax grab on the county’s prosperity.”¹⁶¹

154. MO. REV. STAT. § 178.820 (2000).

155. *St. Louis Community College Subdistrict Map*, ST. LOUIS CMTY. COLLEGE DIST., http://www.stlcc.edu/Maps/Images/subdistrict_map.jpg (last visited Oct. 31, 2014).

156. MO. CONST. art. VI, §18(c).

157. MO. REV. STAT. §§ 184.350–184.384 (2000); *see also* *Zoological Park Subdistrict v. Dir. of Revenue*, No. 90-000490RS, WL 154843, at *1 (Mo. Admin. Hrg. Com. 1991); *About Us*, METRO. ZOOLOGICAL PARK & MUSEUM DIST., <http://Mzdstl.org/about.html> (last visited Aug. 13, 2014).

158. *Zoological Park Subdistrict*, 1991 WL 154843, at *1. In 1971 the Museum of Science and Natural History was located in Oak Knoll Park in Clayton. The Saint Louis Zoo and the Art Museum are located in Forest Park in the City of St. Louis. *See About Us*, *supra* note 157.

159. JONES, *supra* note 8, at 116.

160. *Id.* at 117.

161. *Id.* at 116. In 1985, the museum moved to its present location on Oakland Avenue in the city and changed its name to the St. Louis Science Center. *Our History: Igniting and sustaining lifelong science and technology learning*, SAINT LOUIS SCIENCE CTR., <http://www.slsc.org/our-history> (last visited Sept. 29, 2014).

While each subdistrict proposal was approved overwhelmingly in the city by at least 75% of the voters, the measures had a much more difficult time in the county, gaining the support of only slightly more than a majority of the voters.¹⁶² As mandated by the enabling legislation,¹⁶³ the District's board consists of eight members, four each from the city and the county, appointed by the respective chief executives.¹⁶⁴ The District has proven successful, as evidenced by statutory authorization and later votes in 1983 and 1987 to add the Missouri Botanical Garden and Missouri History Museum to the District as well.¹⁶⁵

E. 2000: Great Rivers Greenway District

After recognition that collaboration among the city and the county could prove to be beneficial, and following legislation in 1999¹⁶⁶ authorizing the creation of recreational park districts, the voters of St. Louis City, St. Louis County, and St. Charles County approved the Clean Water, Safe Parks and Community Trails Initiative in November of 2000.¹⁶⁷ Placed on the ballot¹⁶⁸ as Proposition C, voters in the city and the county, as well as St. Charles County, established the Great Rivers Greenway District ("Great Rivers"), and approved a one-tenth of one cent sales tax to provide Great Rivers with an annual budget

162. JONES, *supra* note 8, at 118. In the county, the Art Museum passed with a 51% majority, the Museum of Science with 52%, and the Zoo with 53%.

163. MO. REV. STAT. § 184.354 (2000).

164. *Id.* The board may also submit to the electorate a proposition to raise a district's tax rate or to reduce or restore the tax rate. MO. REV. STAT. § 184.357, 184.359 (2000).

165. MO. REV. STAT. § 184.353; JONES, *supra* note 8, at 119–120.

166. MO. REV. STAT. § 67.1700 (2000); 70 ILL. COMP. STAT. 1605 (2010). "HB 702 from the Illinois legislature and SB 405 from the Missouri legislature [created] the Metro-East Park and Recreation District to improve, restore and preserve parks, natural lands and water supplies in the St. Louis Metropolitan area. The legislation, which [was] subject to voter approval in a . . . referendum, authorize[d] the creation of separate metropolitan park and recreation districts. The districts [are] linked by an intergovernmental agreement that coordinate[s] the planning and development of the overall system of parks and trails. The district may extend into five Illinois counties and six Missouri counties." Peter M. Murphy, *Governor Approves Park and Forest Preserve Initiatives*, STATEHOUSE INSIDER, Sept. 1999, <http://www.lib.niu.edu/1999/ip990912.html>.

167. *Great Rivers Greenway District Works for St. Louis region trails system*, AM. TRAILS, <http://www.americantrails.org/resources/devel/Great-Rivers-Greenway-St-Louis.html> (last visited Aug. 13, 2014).

168. Bram Sable-Smith, *What's the Great Rivers Greenway District*, ST. LOUIS BEACON, Nov. 1, 2013, https://www.stlbeacon.org/#!/content/33431/greenway_explainer_102813; see also Roy C. Hengerson, *Big Opportunity for Regional Parks and Trails Support Proposition C*, SIERRA CLUB MO. CHAPTER, <https://missouri2.sierraclub.org/newsletter/big-opportunity-regional-parks-and-trails-support-proposition-c> (last visited Aug. 13, 2014).

of \$10 million.¹⁶⁹ Encompassing two counties and St. Louis City, the 1,200 square-mile district includes more than one hundred municipalities and oversees the planning and execution of a network of trails throughout the St. Louis region.¹⁷⁰ Currently with forty-five established greenways, this district employs four officers and nine full-time board members: six from the county, three from the city, and three from St. Charles County.¹⁷¹

Municipal collaboration is essential, as nearly every proposed greenway passes through more than one municipality.¹⁷² Thus, the completion of any project requires the district to acquire use of the land by working with the particular public or private entity controlling it.¹⁷³ By 2012, Great Rivers had built more than one hundred miles of dedicated urban green space and eighty-four miles of on-street bicycle trails through Bike St. Louis since 2000.¹⁷⁴

IV. STRATEGIC APPROACHES TO RECONCILIATION

Reconciliation can take many forms. Missouri's constitution acknowledges that fact by authorizing four specific approaches: (1) consolidate the city and county as the City of St. Louis, (2) consolidate the county functions of the two entities and have the city reenter the county as a new county municipality, (3) permit the city to annex unincorporated portions of the county, and (4) establish a metropolitan district or districts "for the functional administration" of common services; it also authorizes an all-purpose alternative: "any other plan for the partial or complete governance of all or any part of the city and the county."¹⁷⁵

A. *Mega-Merger (St. Louis City and County)*

During the 1960s and 70s, the concept of metropolitan government became popular among government reformers and political scientists as a way to respond to the explosive growth in urban America following the Second World War.¹⁷⁶ Merger of the central city and the county in which it was located

169. Sable-Smith, *supra* note 168.

170. *St. Louis County, MO*, CONSERVATION CAMPAIGN, http://www.conservationcampaign.org/find/get_involved.cfm?type=ballot&ID=10013 (last visited Jan. 1, 2015); *see also* ST. LOUIS CITY, MO., Ordinance 69700, available at <http://www.spl.lib.mo.us/cco/ords/data/ord9700.htm>.

171. Sable-Smith, *supra* note 168.

172. *Id.*

173. *Id.*

174. Danni Eickenhorst, *Safe & Accessible Public Parks Initiative introduced to St. Louis Board of Alderman Friday Dec 7*, GREAT RIVERS GREENWAY, Dec. 6, 2012, <http://www.greatriv ersgreenway.org/news.aspx?tabid=351&entryid=17#sthash.AwSLG4CS.dpuf>.

175. MO. CONST. of 1875, art. VI, § 30(a) (1924).

176. For a discussion of metropolitan governments, *see* ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, THE ORGANIZATION OF LOCAL PUBLIC ECONOMIES (1987),

became a popular way of conceptualizing a metropolitan government. Several of the best-known examples of this approach—Nashville, Tennessee, Indianapolis, Indiana, and Louisville, Kentucky—are located in the Midwest.

1. Nashville and Davidson County, Tennessee

The Nashville-Davidson County, Tennessee region was the earliest of the three to merge, adopting its charter on April 1, 1963.¹⁷⁷ Section 1.01 of the charter is straightforward:

[T]he governmental and corporate functions now vested in the City of Nashville . . . are hereby consolidated with the governmental and corporate functions of the County of Davidson. [The] consolidation shall result in the creation and establishment of a new metropolitan government to perform all, or substantially all, of the governmental and corporate functions previously performed by the county and by the city, to be known as “The Metropolitan Government of Nashville and Davidson County.”¹⁷⁸

The metropolitan government is organized into two service districts, a “general services district,” covering the “total area of Davidson County,” and an “urban services district,” to consist “originally of the total area of the City of Nashville.”¹⁷⁹ The charter permits the urban services district to expand by annexation “whenever particular areas of the general services district come to need urban services, and the metropolitan government becomes able to provide such service within a reasonable period, which shall not be greater than (1) after ad valorem taxes in the annexed area become due.”¹⁸⁰ The charter directs the metropolitan government to provide traditional county services in the general services district and services “customarily furnished” by city governments in metropolitan areas.¹⁸¹

2. Indianapolis and Marion County, Indiana (“Unigov”)

Former Senator Richard Lugar of Indiana led the move to merge Indianapolis with Marion County as a young mayor of Indianapolis in 1969. In a speech at the *St. Louis University Public Law Review’s* 2014 symposium, *United We Stand or Divided We Fall: The Reunification of St. Louis City and*

available at <http://www.library.unt.edu/gpo/acir/Reports/policy/a-109.pdf>; see also ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN ORGANIZATION: THE ST. LOUIS CASE (1988), available at <http://www.library.unt.edu/gpo/acir/Reports/information/m-158.pdf>

177. NASHVILLE AND DAVIDSON COUNTY, TENN. CHARTER OF THE METROPOLITAN GOVERNMENT, art. I, § 1.02 (1963).

178. *Id.* § 1.01.

179. *Id.* § 1.103.

180. *Id.* § 1.104.

181. *Id.* § 1.105.

County, Senator Lugar recalled the events leading up to the successful legislative initiative in 1969 that created what was popularly called “Unigov.”¹⁸² During his successful campaign for mayor, which he described as an upset,¹⁸³ he campaigned on the idea that Indianapolis was “on the threshold of . . . a revolution of ideas and growth and beauty, without being very specific as to how this was going to occur.”¹⁸⁴ He recalls that the impetus for this reform movement came, in part,

[b]ecause the people of Indianapolis were beginning to feel—after . . . [persons] who wrote about travel in those days described our beautiful city as . . . “Indiana-No-Place,” and that derogatory comment began to stick—that this was a mediocre, flat situation of very little interest to anyone outside [our community].¹⁸⁵

Mayor-elect Lugar recruited a small group of friends and advisors from the business and civic communities and began work immediately after the election on a plan to merge Indianapolis and Marion County. After the 1968 presidential and gubernatorial elections, draft legislation, which had been prepared without any public input or fanfare during Mayor Lugar’s first year in office, was presented to a larger group of business, civic, and political leaders, as well as “representatives of the African American community and representatives of the media.”¹⁸⁶

During the 1969 Indiana legislative session, supporters of Unigov decided not to include existing volunteer fire departments in the eight townships of Marion County outside Indianapolis, nor the Indianapolis school system.¹⁸⁷ The resulting merger was achieved by legislation, without a referendum on the legislation or a vote on a constitutional amendment.¹⁸⁸

3. Louisville and Jefferson County, Kentucky (“Metro Louisville”)

The setting leading up to the successful merger vote of Louisville and Jefferson County, Kentucky more closely resembles the current setting in St.

182. Senator Richard Lugar, Keynote Address at the St. Louis University Public Law Symposium (Feb. 28, 2014); see IND. CODE §§ 36-3-1-0.3–12 (1980). For a look back at 40 years’ experience with Unigov, see Jeff Wachter, *40 Years After Unigov: Indianapolis and Marion County’s Experience with Consolidated Government*, ABELL FOUND. (May 2014), available at www.abell.org/sites/default/files/publications/ec-unigov514.pdf.

183. Senator Richard Lugar, Keynote Address at the St. Louis University Public Law Symposium (Feb. 28, 2014).

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.* According to Senator Lugar, Winnipeg, Canada is the “only . . . [other] place . . . that succeeded in consolidation without a referendum.” *Id.*

Louis than did Indianapolis. Following three electoral defeats of consolidation plans in the previous forty-five years, voters in 2000 approved a merger of Louisville and Jefferson County, Kentucky into “Metro Louisville,” effective January 1, 2003.¹⁸⁹

Observers have identified several important events which laid a foundation for that successful vote: (1) a court-ordered, desegregation merger of city and county school districts in 1975, which took the “most contentious regional issue out of the way;”¹⁹⁰ (2) unsuccessful annexation attempts by Louisville of unincorporated land in the “growing county” following defeats of merger votes in 1982 and 1983;¹⁹¹ (3) a 1985 “city-county compact” agreed to by the newly elected mayor and the sitting county executive, who were “close friends,” in which Louisville pledged to stop annexation attempts in return for an agreement by Jefferson County to share some tax revenues, and the city and county agreed to merge planning, zoning, and economic development offices;¹⁹² (4) a simplified merger proposal affecting only the executive and legislative branches, and leaving certain county municipalities independent, although their residents could vote for the new metro mayor and council;¹⁹³ (5) a state legislative-created task force in 1998 of all fifty-six elected officials in Louisville and Jefferson County;¹⁹⁴ and (6) a strong “Say Yes to Unity” campaign, led by the business community, “that left little to chance.”¹⁹⁵

B. *Mega-Mega-Merger (St. Louis City, County, and County Municipalities)*

The first board of freeholders proposed a “mega-mega-merger” in 1925, arguably the most sweeping of all the consolidation plans that have been considered.¹⁹⁶ As noted earlier, this plan called for the abolition of all the municipalities in the county and the consolidation of the city and the county under a new city charter. The proposal made it to the ballot in 1926, but was

189. John Kroll, *How Louisville got regional – and what’s happened since*, PLAIN DEALER BLOG, Aug. 26, 2007, http://blog.cleveland.com/pdextra/2007/08/how_louisville_get_regional_and_what_s_happened_since.html.

190. *Id.*; *Newburg Area Council, Inc. v. Gordon*, 521 F.2d 578, 582 (6th Cir. 1975).

191. Kroll, *supra* note 189.

192. *Id.* The compact required that “[a]ny annexation by the city . . . of [county] territory shall be pursuant to the procedures established by” further provisions of the compact, and further mandated that certain license fees “collected by the city and the county shall be divided between the city of the first class and the county in accordance with the formula established” in a later section of the compact. KY. REV. STAT. ANN. §§ 79.315(1)–(2) (West 2014).

193. Kroll, *supra* note 189.

194. *Id.*

195. *Id.*

196. E. Terrence Jones & Don Phares, *Moving Toward Regional Governance Incrementally: The St. Louis Case*, in GOVERNING METROPOLITAN REGIONS IN THE 21ST CENTURY 80–81 (2009).

soundly defeated at the polls.¹⁹⁷ Such a sweeping change has not received serious consideration in the ensuing decades.

C. Targeted Incrementalism

In his book, *Fragmented by Design*,¹⁹⁸ political science professor Terry Jones argues that St. Louisans have rejected so many consolidation and merger proposals over the years because they like the blend of “cosmopolitan amenities with a small town lifestyle” the St. Louis region features.¹⁹⁹ Pointing to the successes of MSD,²⁰⁰ Bi-State Development, the Metro (a transit system that has been operating since 2003),²⁰¹ the St. Louis Junior College District,²⁰² and the St. Louis Zoo-Museum District,²⁰³ he advocates what he terms “Incremental Metropolitanism”—use of special-purpose local governments to respond to specific challenges while maximizing citizens’ choices through “governmental multiplicity.”²⁰⁴

The establishment of so many multi-county special purpose governments since World War II demonstrates that St. Louisans’ responses to cooperative public ventures is far from no way, no where, no time. They are open to considering proposals on a function-by-function basis, buying governmental reform retail rather than purchasing it wholesale.²⁰⁵

Dr. Jones notes that St. Louisans are particularly willing to enter into cooperative ventures “when the proposal does not threaten an existing entrenched force.”²⁰⁶ And he acknowledges that special-purpose local government units “bring their own set of governance challenges,”²⁰⁷ including low voter turnout and “meager” knowledge of candidates when officials are elected, “even less” public review of activities when officials are appointed,

197. *Id.* at 80.

198. *See generally* JONES, *supra* note 8.

199. *Id.* at 167.

200. *Id.* at 107.

201. *Id.* at 96. Bi-State was created by an interstate compact in 1949 to consolidate and modernize bus transportation in the metro area. 45 ILL. COMP. STAT. 105/0.01–105/9 (2005); MO. REV. STAT. § 70.370 (2000). With the advent of MetroLink, the light rail system serving the St. Louis area, Bi-State began doing business as Metro in 2003. *MetroBus 50th Anniversary*, METRO TRANSIT ST. LOUIS, <http://www.metrostlouis.org/About/History/MetroBus50thAnniversary.aspx> (last visited Apr. 2, 2015).

202. *See* JONES, *supra* note 8, at 115. The Junior College District was authorized by MO. REV. STAT. § 178.770.

203. *Id.* at 118. The Zoo-Museum District was authorized by MO. REV. STAT. § 184.350.

204. *Id.* at 94. He cites the work of economist Charles Tiebout, famous for his 1951 essay, “The Pure Theory of Local Expenditure,” which gave rise to “Public Choice” theory. *Id.* at 125.

205. *Id.* at 123.

206. *Id.*

207. *Id.*

and vulnerability to “becoming captive of the private interests . . . who most directly benefit from them.”²⁰⁸

D. *Neighborhood Subunits of Government*

In 1970, the Advisory Commission on Intergovernmental Relations (ACIR)²⁰⁹ first published a recommended state statute authorizing the creation of what it called, “Neighborhood Subunits of Government.”²¹⁰ According to ACIR, the recommendation stemmed from “the need for increasing citizen involvement in the governmental activities of neighborhoods within large cities and counties.”²¹¹ While many deprivations and frustrations triggered the urban unrest of the 1960s, ACIR believed that “the disappearance of any meaningful sense of community among residents of large cities and counties” played a major role in the “crisis in the cities.”²¹² Arguing that “a definite need” existed “to stimulate individual areas to develop programs of neighborhood improvement and self-improvement,”²¹³ ACIR recommended that states authorize “large cities and county governments in metropolitan areas” to establish “neighborhood sub-units of government with limited powers of taxation and local self government.”²¹⁴

ACIR drafted model state legislation to implement this recommendation, using the term “Neighborhood Service Areas,” in the 1975 version of the model statute.²¹⁵ Neighborhood Service Areas would be governed by “Neighborhood Councils,” which would be “legal entities of the city or county

208. JONES, *supra* note 8, at 123–124 (defining “contractors, goods suppliers, employee unions” as primary beneficiaries).

209. ACIR described itself as “a permanent national bipartisan body established by Act of Congress in 1959 to give continuing study to the relationships among local, state, and national levels of government.” ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, ACIR STATE LEGISLATIVE PROGRAM, 2. LOCAL GOVERNMENT MODERNIZATION, M-93, at 1 (1975). Over the years, ACIR published numerous influential reports, including its *State Legislative Program*. ACIR discontinued its operation in 1996 when Congress declined to continue funding its operations.

210. *Id.* at 108 (stating that the title and concept were derived from ADVISORY COMM’N ON INTERGOVERNMENTAL AFFAIRS, FISCAL BALANCE IN THE AMERICAN FEDERAL SYSTEM, REPORT A-31 (1967)).

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, *supra* note 209, at 110. An Act to Authorize Cities and Counties to Establish Neighborhood Service Areas to Advise, Undertake and Finance Certain Governmental Services.

government.”²¹⁶ The model legislation envisions two ways of creating Neighborhood Service Areas—by petition from concerned residents,²¹⁷ or by the governing bodies of cities and counties in metropolitan areas.²¹⁸ ACIR’s model legislation is quite expansive in the powers that could be delegated to neighborhood councils. In addition to “portions of the city budget and finance authority” and other administrative functions, the legislation provides for “advisory or delegated substantive authority or both” for a wide range of activities including “community facility development and operation; urban renewal; relocation, public housing, planning and zoning actions, and other physical development programs; crime prevention and juvenile delinquency programs; health services; code inspection; recreation; education; referral and complaint services; and manpower training.”²¹⁹

In 1973, then-senator Mark Hatfield of Oregon introduced what he termed the “Neighborhood Government Act of 1973.”²²⁰ Designed “to encourage communities and neighborhoods to incorporate for the purpose of providing their own neighborhood services,” the act authorizes a tax credit for contributions to a “certified neighborhood corporation,” defined as a not-for-profit, neighborhood-based corporation that “demonstrates a capacity to supply . . . services which were supplied by a municipal or other government prior to the establishment of the corporation.”²²¹

V. SHIFTING MOMENTUM

A. *Beyond Housing’s Vision 24:1 Initiative*

Beyond Housing, a not-for-profit affordable housing producer and manager, “convened and facilit[ates]” what it calls its “Vision 24:1 Initiative,” described as “a placed-based community-driven initiative” encouraging the twenty-four municipalities located within the boundaries of the Normandy

216. *Id.* Section 1 states that the purpose of the proposed legislation is “to encourage citizen involvement in government at the neighborhood level in urban areas.” *Id.*

217. *Id.* Section 4(1) mentions qualified voters or residents. *Id.*

218. *Id.* Section 4(e) refers to a city or county, “acting singly or jointly.” *Id.*

219. *Id.* at 112.

220. 119 CONG. REC. 145 (1978).

221. *Id.*

School District in north St. Louis County²²² to “solve . . . the serious challenges facing residents and communities” within that District.²²³

Beyond Housing describes itself as a “community development organization that works in defined geographies like the Normandy School District in order to focus our resources where we can have the greatest impact.”²²⁴ In 2011, Beyond Housing had 340 “affordable homes in [its] rental portfolio and had a 42-unit senior housing and retail units under construction in [Pagedale].” During the previous year, Beyond Housing completed the first new grocery store in Pagedale in over forty years.²²⁵ Preparation for the 24:1 Initiative included a year-long “planning committee process with over 100 participants,” as well as more than fifty community meetings attended by over 400 persons.²²⁶

Beyond Housing has been working to create diverse, safe, and livable neighborhoods in the area since 1975.²²⁷ In January of 2003, what originally were known as the Ecumenical Housing Production Corporation (EHPC) and the Neighborhood Housing Services of St. Louis merged their services and took the corporate name, Beyond Housing.²²⁸ In an effort to “expand their reach and impact in the St. Louis community” as a whole, the region’s two “most prominent non-profit organizations” recognized that their target audiences and missions were complimentary in nature.²²⁹ While EHPC was established to address the affordable housing needs of low-income families, Neighborhood Housing Services focused on neighborhood revitalization.²³⁰

222. The Normandy School District has struggled for several years for a variety of complex reason associated with the severe poverty of many of its families and dwindling state and local resources. A previously overlooked state statute, MO. ANN. STAT. § 167.131 (West 2010) allows students from the district to transfer to other districts within the area, as construed by the Missouri Supreme Court in *Breitenfeld v. Sch. Dist. of Clayton*, 399 S.W.3d 816, 828–834 (Mo. 2013).

223. *Vision 24:1 Overview*, BEYOND HOUS., <http://www.beyondhousing.org/programs/241-community-building-initiative/> (last visited Sept. 10, 2014); see also BEYOND HOUS., *THE 24:1 INITIATIVE COMMUNITY PLAN 2* (2011), <http://www.beyondhousing.org/wordpress/wp-content/uploads/2012/08/24-1-Community-Plan-Final-7-18-11.pdf>.

224. *Vision 24:1 Overview*, *supra* note 223.

225. BEYOND HOUS., *supra* note 223.

226. *Vision 24:1 Overview*, *supra* note 223.

227. Editorial, *Toward Racial Unity, for the Economic and Social Good of the Entire Region*, ST. LOUIS POST-DISPATCH, Apr. 19, 2014, http://www.stltoday.com/news/opinion/editorial-toward-racial-unity-for-the-economic-and-social-good/article_04abb50e-f5ed-50f6-83f4-0f19661db9b3.html.

228. Christopher Krehmeyer & Robert Harness, *A Case Study: Beyond Housing and the Battle to “Transform” the City of Pagedale, Missouri*, 26 ST. LOUIS U. PUB. L. REV. 79, 85 (2007). EHPC was incorporated in 1980 and Neighborhood Housing Services began work in 1975. Professor Salsich was a founding board member of EHPC.

229. *Id.*

230. *Id.*

Beyond Housing, as its name implies, seeks to “strengthen neighborhoods, one family at a time.”²³¹

In 2008, Beyond Housing officials met with several local elected officials in response to the rising foreclosure crisis, which disproportionately impacted the North County communities, and decided to focus their efforts on solving serious challenges among these municipalities.²³² In 2009, the organization received a five-year, \$3 million funding commitment to support a proposal, now known as Beyond Housing’s Vision 24:1 Initiative,²³³ that seeks to transform the twenty-four “inner ring” suburban municipalities located within the boundaries of the Normandy School District of St. Louis County,²³⁴ and to stabilize the families living throughout the district.²³⁵ Acting as the lead agency for the comprehensive initiative, Beyond Housing aims to facilitate collaboration across jurisdictional lines and combat suburban poverty through this program.²³⁶

The 24:1 Initiative, formally known as the Normandy School District Reformation Plan, identified key partnerships supporting the initiative, and described differences between the new approach and past efforts to improve learning and development throughout the Normandy School District.²³⁷ Since its implementation, the 24:1 Initiative has recruited teachers and superintendents from other districts, as well as volunteers from other disciplines, to help the Normandy School District as it works to regain accreditation, while seeking to stabilize the home environments of its students.²³⁸

231. *Id.*

232. BEYOND HOUS., *supra* note 223.

233. *Id.*

234. Susan Naimark, *It Started with Door Knocking and a Bit of an Idea*, MELKING INST., <http://www.melkinginstitute.org/blogs/wp-content/www.melkinginstitute.org/uploads/2012/07/It-Started-With-Door-Knocking-and-a-Bit-of-An-Idea.pdf> (last visited Aug. 13, 2014).

235. Sarah Jackson, *In St. Louis County, Communities Join to Fight Suburban Poverty*, CONFRONTING SUBURBAN POVERTY IN AMERICA, June 30, 2014, <http://confrontingsuburbanpoverty.org/2014/06/>.

236. *Id.*

237. NSD Reformation Plan: Executive Summary, BEYOND HOUS., <http://www.beyondhousing.org/wordpress/wp-content/uploads/2014/02/NSD-Plan-Executive-Summary.pdf> (last visited Aug. 14, 2014).

238. Tim Lloyd & Camille Phillips, *Normandy Reaccreditation Plan Focuses on Education and Socio-economic concerns: September 19, 2013*, BEYOND HOUS., Sep. 30, 2013, <http://www.beyondhousing.org/news/normandy-reaccreditation-plan-focuses-on-education-and-socio-economic-concerns-9-19-13/>.

B. *St. Louis Economic Development Partnership*

The city and the county marked a new era of cooperation in 2013 by joining forces in an effort to promote business financing.²³⁹ On August 1 of that year, Mayor Francis Slay and County Executive Charlie Dooley officially established a collaboration between the economic development agencies of the city and the county by creating the St. Louis Economic Development Partnership (the “Partnership”) as a nonprofit entity.²⁴⁰ The St. Louis County Economic Council, originally established in 1984,²⁴¹ changed its name to the St. Louis Economic Development Partnership. Ten employees of the city’s St. Louis Development Corp. moved to the new agency, which is housed in Clayton, the county seat. Both the city and the county agreed to support the Partnership with an annual appropriation of about \$1 million. The agency’s responsibilities include business development, business financing, and entrepreneurial support.²⁴²

However, before the Partnership could come into existence, strong opposition from some sectors had to be overcome.²⁴³ For example, Jennifer Bird, a Republican state committeewoman from St. Louis County, complained that the proposal “smells like City-County merger to me. . . . By merging duties of the business development councils you’re going to send the wrong messages to businesses and they’re going to leave the area completely. I’m just curious why we think we need to combine these two entities, specifically with relation to business.”²⁴⁴

Despite such concerns, the St. Louis County Council and the St. Louis City Board of Alderman approved the plan to merge the two agencies in early June of 2013.²⁴⁵ The ordinance creating the Partnership describes in detail the proposal, requirements, division of accountability, and intergovernmental cooperation agreement. County Executive Charlie Dooley emphasized the collaborative nature of the partnership: “There [are] a lot of things we do together. And why should we not? It just makes a lot of good sense. . . . The Dome, the Stadium, Metro, Great Rivers Greenway. All those things that make us a great community. We do it together. So why not do [this] together?”²⁴⁶

239. Jason Rosenbaum, *County Council approves city-county economic development partnership*, ST. LOUIS BEACON, June 18, 2103, https://www.stlbeacon.org#!/content/31474/eco devo_partnership_final_passage.

240. *Id.*; ST. LOUIS, MO., ORDINANCE 69454 (June 25, 2013).

241. *About St. Louis Economic Development Partnership*, ST. LOUIS ECON. P’SHIP, <http://main.stlpartnership.com/about-slcec.html> (last visited Aug. 13, 2014).

242. Rosenbaum, *supra* note 239.

243. *Id.*

244. *Id.*

245. *Id.*

246. *Id.*

The Partnership aims to boost innovation and entrepreneurship, attract and retain companies, increase international reach, and revitalize municipalities throughout the St. Louis metropolitan area.²⁴⁷

C. *Better Together*²⁴⁸

Better Together, an organization sponsored by the Missouri Council for a Better Economy, is spearheading the latest in the long line of efforts to repair the effects of the decision to separate the city from the county.²⁴⁹ Better Together organizers stress that “[their] role is to act as facilitator, a resource for information and new data.”²⁵⁰ Despite Better Together’s announced intention to play a neutral, fact-finding role, its creation sparked a backlash from some local municipalities and elected officials even before the organization issued its first report.²⁵¹ But officials from other county municipalities have voiced support for Better Together or advocated staying neutral on the issue while Better Together continues its research.²⁵²

247. *Id.*; see also Nicholas J.C. Pistor, *Partnership unveils plan to expand area economy*, ST. LOUIS POST-DISPATCH, May 28, 2014, at A4 (announcing six “strategic priorities”); Denny Coleman, former president and CEO of the County Economic Development Council, now serves as the CEO of the Partnership. Rosenbaum, *supra* note 239.

248. *About Better Together*, BETTER TOGETHER, <http://www.bettertogetherstl.com/about>. Better Together, a new civic organization created in 2013 to gather and disseminate data on topics of public interest such as public finance, economic development, public health, public safety, parks, recreation and infrastructure, and public administration, bills itself as a “grassroots project . . . born in response to growing public interest in addressing the fragmented nature of local government throughout St. Louis City and County, which dates back to 1876, when St. Louis City broke away from St. Louis County.” *Id.*

249. Press Release, Missouri Council For A Better Economy Announces The Launch Of Better Together (Nov. 19, 2013) (on file with author).

250. *Id.* (quoting Ambassador George Herbert (Bert) Walker III, MCBE Chairman). In a letter to the editor of the *St. Louis Post-Dispatch*, Ambassador Walker stated:

We look forward to seeing the plans that people create using Better Together data, as well as their own expertise. As recent events in our region have shown, now is the time to have important conversations about how we function and how we treat all our residents. While Better Together does not advocate for any specific plan or outcome, it is our privilege to support the conversation.

George Herbert Walker III, *Use Better Together’s data to advocate for meaningful change*, ST. LOUIS POST-DISPATCH, Oct. 23, 2014, at A16.

251. Within a few months of Better Together’s creation, several county municipalities, including Ballwin, Ellisville, Green Park, and Valley Park, passed resolutions opposing a merger between the city and county. Jason Rosenbaum & Nora Ibrahim, *As City-County Merger Study Unfolds, Some Municipal Leaders Are Speaking Out*, ST. LOUIS PUB. RADIO, May 11, 2014, <http://news.stlpublicradio.org/post/city-county-merger-study-unfolds-some-municipal-leaders-are-speaking-out>.

252. See, e.g., Tony Messenger, *Embracing Regionalism: Three Cheers for Ferguson*, ST. LOUIS POST-DISPATCH, Apr. 27, 2014, at A16.

Well before Ferguson, the reorganization issue was heating up on social media and the Internet. Following the announcement of Better Together's efforts and the *Public Law Review* conference, at least two organizations, Unify St. Louis (unifystl.com) and TomorrowSTL (tomorrowstl.com), a part of the Greater Gateway Alliance, have announced support for reorganization through a merger of city and county or the reentry of the city into the county.²⁵³ At least two organizations have surfaced opposing these efforts: the St. Louis County Preservation Committee, founded by a local businessman, and Common Sense for St. Louis, founded by a Republican candidate for county council for the 5th District.²⁵⁴ Where this will go is uncertain, but Ferguson laid bare some of the underlying issues.

VI. A WAY FORWARD

The development of Beyond Housing's Vision 24:1 Initiative,²⁵⁵ the creation of the St. Louis Economic Development Partnership,²⁵⁶ and the establishment of Better Together²⁵⁷ suggest momentum is building for another effort at reconciliation between the city and the county. A foundation for reform is being laid. Its focus is on cooperative efforts to apply the "subsidiarity principle" to identify the level of government best able to carry out particular public functions and services.²⁵⁸ The creation of SLEDP by the city and the county resembles a key element of the city-county compact that preceded the Louisville-Jefferson County merger.²⁵⁹

Economic development is a crucial element of regional growth. SLEDP's creation is a long-overdue step to repair what researchers for the Advisory Commission on Intergovernmental Relations in 1989 termed "a decided lack of cooperation between city and county [in] economic development."²⁶⁰ While this lack of cooperation had not hurt the county, in the researchers' opinion, the

253. Steve Giegerich, *Report: St. Louis City-County Merger Will Not Force County to Assume Debt*, ST. LOUIS POST-DISPATCH (Feb. 8, 2014, 11:45 PM), <http://www.stltoday.com/news/local/metro/report—st-louis-city-county-merger-would-not-force-county/article> (Discussing unifystl.com); *The St. Louis City-County Merger Debate Rages On*, BLOODLINES CREATIVE BLOG (February 28, 2014), <http://bloodlinescreative.com/wordpress/the-st-louis-city-county-merger-debate-rages-on/> (Discussing TomorrowSTL).

254. Gloria Lloyd, *Skeptics Outline Opposition to City-County Merger*, CALL (June 11, 2014), <http://www.callnewspapers.com/Articles-Impact-News-i-2014-06011-273186112112-Skeptics-outline-opposition-to-city-county-merger.html>.

255. See *supra* notes 222–238 and accompanying text.

256. See *supra* notes 239–247 and accompanying text.

257. See *supra* notes 248–254 and accompanying text.

258. See *supra* text accompanying note 34.

259. See *supra* text accompanying note 25.

260. Parks & Oakerson, *supra* note 25, at 11.

situation was quite different in the city. “Unless some way is found for the city and county to make common cause in economic development, the likely prospect is that the city will continue to lag well behind the county,” the researchers concluded.²⁶¹ SLEDP’s first order of business, after meeting “with over 200 stakeholders,” was to produce what it calls “the first-ever St. Louis City/County economic development strategic plan.”²⁶² According to the plan, SLEDP will focus on “three key areas:

Jobs—growing and retaining jobs and capital investment,

People—aligning talent with business needs and accelerating the growth rate of the region’s foreign-born,

Place—advancing the redevelopment/readiness of strategic real estate assets.²⁶³

Many local government watchers will consider SLEDP a success if it can find a way to halt the often developer-fueled competition among city, county, and county municipalities for sales tax-producing retail development supported by tax increment financing (TIF).²⁶⁴ If the city and the county can succeed in cooperating on economic development initiatives, rather than competing as has been the case so often in the past,²⁶⁵ perhaps the two can agree to cooperate on more comprehensive land use planning and regulation—something Louisville and Jefferson County were able to do.²⁶⁶

But the almost visceral reaction of some elected municipal officials to Better Together’s establishment and announced plan of governmental research, even before the organization had released any of its planned studies, is a stark reminder of the steep uphill climb local government reformers in the St. Louis area face.²⁶⁷ As if to rub salt in the wounds of local reformers, economists at the Federal Reserve Bank of St. Louis released a bank of statistics in 2014 purporting to show that life is pretty good in St. Louis.²⁶⁸ After perusing these

261. *Id.*

262. ST. LOUIS ECON. DEV. P’SHP, ST. LOUIS CITY AND COUNTY STRATEGIC PLAN FOR ECONOMIC DEVELOPMENT 1–33 (2014), available at www.stlpartnership.com/cmss_files/attachmentlibrary/EDP-Working-Strategic-Plan-2014.pdf.

263. *Id.* at 4.

264. Kenneth Hubbell & Peter J. Eaton, *Tax Increment Financing in the State of Missouri*, 9703 MSCDC ECON. REP. SERIES 1, 1 (June 1997).

265. *Id.*

266. See *supra* text accompanying note 222.

267. *Ellisville Takes Stance Against St. Louis City-County Merger*, ST. LOUIS POST-DISPATCH, April 16, 2014, http://www.stltoday.com/news/local/govt-and-politics/ellisville-takes-stance-against-st-louis-city-county-merger/article_d46963bc-384d-5564-af49-a0a1a6da01ef.html.

268. Jim Gallagher, *Lucky Us We Live in St. Louis*, ST. LOUIS POST-DISPATCH, June 28, 2014, http://www.stltoday.com/business/columns/jim-gallagher/lucky-us-we-live-in-st-louis/article_5bc4bf83-70e7-5970-9e04-5cd7336b1bd4.html.

statistics, Jim Gallagher, a columnist for the *St. Louis Post-Dispatch*, concluded, “[o]n average, we live a little better than elsewhere in America.”²⁶⁹

Given the political realities and the legal hurdles facing reformers, can any significant reform proposal hope to succeed? Our answer is a qualified yes. The first steps have been taken with the creation of the St. Louis Economic Development Partnership and Beyond Housing’s 24:1 Initiative. Better Together’s research can give a twenty-first century perspective to fiscal and political concerns that have kept the city and county apart for 140 years.

Assuming SLEDEP’s new regional economic development strategic plan begins yielding dividends, a next step could be the gradual reduction in the number of separate fire districts and police precincts in St. Louis County. For example, a 2014 map prepared by the St. Louis County Department of Planning identifies fifty-nine police precincts in incorporated municipalities, along with the University of Missouri–St. Louis Police Department, serving the university’s North County campus. The St. Louis County Police Department, which has jurisdiction over the unincorporated areas of the county, also serves by contract thirty-one additional incorporated municipalities in the county.

Public safety is expensive, as well as perhaps the fundamental reason for local government to exist. Considered from a subsidiarity perspective, the lowest governmental level at which fire and police services can be delivered in a capable manner may well be a considerably fewer number of fire districts and police departments than currently exist in St. Louis County. If those services were consolidated into twenty or so districts and departments, these reorganized districts and departments should have sufficient resources to purchase and maintain proper equipment and sustain sufficient personnel to provide necessary public safety services in the county.

The final steps could then be taken. The existing ninety county municipalities could be consolidated into thirty-plus municipalities with the resources to provide twenty-first century municipal services and functions, as well as maintain a twenty-first century police force. Fire prevention and protection services could be provided throughout the county from the twenty-plus fire districts capable of staffing and maintaining a twenty-first century fire protection service.

This process would not require existing small municipalities to lose their identities. They could be reorganized as “Neighborhood Service Areas” (NSAs) within larger reorganized municipalities. As NSAs, they could be delegated a range of powers and responsibilities according to their size and the interests of their residents.²⁷⁰

269. *Id.*

270. *See supra* notes 209–21 and accompanying text.

But lest we be accused of hopeless romanticism, we should remind ourselves that the 1988 effort to consolidate St. Louis County municipalities failed. James Brasfield, a professor of management at Webster University and a former alderman in the City of Crestwood in St. Louis County, commented in 1989:

A consensus is emerging that county government ought to get out of the local service business and concentrate its leadership on countywide issues. . . . If the entire county were incrementally incorporated, then the county government could focus on broad-impact issues and leave basic service provision to the municipalities.²⁷¹

He was referring to the 1988 freeholders' plan to reduce the number of county municipalities from ninety-one to thirty-seven.

CONCLUSION

As has happened approximately once a generation since the city-county divorce in 1876, momentum appears to be building for another attempt at reconciliation. Logic dictates that the City of St. Louis should give up its separate status as a county and reenter St. Louis County. Aside from the fact that home rule as a concept became a reality with the separation of the two, the original divorce was a serious mistake. Expansion became impossible once the fixed borders of the city were reached, and that happened not long after the 1904 World's Fair, perhaps the high point in the city's history.

As Professors Jones and Phares, as well as Better Together, have documented, migratory patterns led to overcrowding in the city, then an emptying out of the city and multiple incorporations of small municipalities in St. Louis County, particularly in the northern portions of the county. The Ferguson tragedy brought into the open two underlying concerns—deep-rooted racial and social tensions, and the fact that many county municipalities do not have the resources or the capability to obtain the resources necessary to discharge the responsibilities incorporated municipalities undertake. Those concerns move the questions of city-county reconciliation from academic speculation to local, state, and even national discussion.

But loose terminology can trigger unfortunate emotional responses, rather than objective analysis of possible responses. The term “merger,” which tends to be the shorthand description of a variety of approaches at reconciliation, is an emotionally charged term because it contemplates that one or more of the merging entities will lose its visible identity as well as control over the outcome of the merger.

271. Parks & Oakerson, *supra* note 25, at 27.

Reentry of the City of St. Louis into St. Louis County would not be a merger and would not require either entity to give up control of its vital interests.²⁷² The city is a general-purpose municipal government, organized to provide those types of general local government services and functions contemplated in our federal system of government. Reentering the county would not change the city's status or its traditional responsibilities. Reentry would require the city to shed its county functions, but those functions are more appropriately thought of as state responsibilities that have been delegated to a lower administrative level of government—the county.

Of course, change in governmental organization affects not only residents and taxpayers, but also people who work for the affected organization. St. Louis City residents recently spoke about change when they voted to reduce the size of the board of aldermen from twenty-eight to fourteen, effective in 2022.²⁷³ Presumably the reorganization necessitated by the pending reduction in size of the board will answer some questions that would accompany a serious reentry proposal. Another major personnel question is what would become of “county” officials currently working for the city. Some form of accommodation would have to be found—county residents do not need both an elected prosecuting attorney and an elected circuit attorney. One will do.

Nor do county residents need ninety-one incorporated municipalities, plus a home rule county, to deliver appropriate municipal services. Some range of twenty to thirty incorporated municipalities could deliver appropriate municipal services and functions while remaining true to the subsidiarity principle.

Beyond Housing's 24:1 Initiative, the goals and plans of the St. Louis Economic Development Partnership, and the research of Better Together are pieces of a reconciliation movement. Ferguson suggests that the reconciliation effort should be accelerated. How do we persuade elected leaders and residents to consider seriously reentry of the city into the county and reduction in the number of separate county municipalities? Do not try to do it all at once. Mediate rather than dictate.

272. But reentry is not a slam dunk. A number of questions would have to be answered concerning the city's earnings tax, the size of the county council, and the effect of reentry on the “political dynamics of the region.” Jason Rosenbaum, *Of devils and details: 8 potential obstacles to city-county reunion*, ST. LOUIS BEACON, Sept. 5, 2013, https://www.stlbeacon.org/#!/content/32613/blist_merger_reentry_questions.

273. *National and local history made at the polls*, ST. LOUIS AM. POL. EYE, Nov. 8, 2012, http://www.stlamerican.com/news/political_eye/article_34ac0ee8-2939-11e2-8882-001a4bcf887a.html?mode=print.

