




2015

# Ohio's Home-Rule Amendment: Why Ohio's General Assembly Creating Regional Governments would Combat the Regional Race to the Bottom under Current Home-Rule Principles

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## Recommended Citation

Note, Ohio's Home-Rule Amendment: Why Ohio's Genral Assembly Creating Regional Governments would Combat the Regional Race to the Bottom under Current Home-Rule Principles, 63 Clev. St. L. Rev. 865 (2015)

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# OHIO’S HOME-RULE AMENDMENT: WHY OHIO’S GENERAL ASSEMBLY CREATING REGIONAL GOVERNMENTS WOULD COMBAT THE REGIONAL RACE TO THE BOTTOM UNDER CURRENT HOME-RULE PRINCIPLES

JONATHON ANGAROLA\*

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#### I. INTRODUCTION

James Duane, the executive director of the Ohio-Kentucky-Indiana Regional Council of Governments, unflatteringly described Ohio's zoning practices in 1998 as "a patchwork of weak law, fragmented code, and a plethora of court cases. Local day-to-day land-use activity appears to center on individual zoning and subdivision approvals with little attention to how those discrete actions compose the big picture."<sup>1</sup> Duane's concern arises from Ohio's "home-rule amendment" under Article XVIII, Section 3 of the Ohio Constitution, which provides that municipalities have "authority to exercise all powers of local self-government . . . ."<sup>2</sup>

Critics of the amendment, like Ohio State University Agricultural Economics Professor Lawrence W. Libby, argue that this home-rule legal and cultural tradition impedes regional coordination among Ohio localities.<sup>3</sup> Others, like Columbia Law School Professor Richard Briffault, go further and argue that local self-interested zoning policies impose economic, environmental, and social externalities on the region as a whole.<sup>4</sup>

This Note argues that Ohio's home-rule principles foster a regional "race to the bottom"<sup>5</sup> and proposes that the Ohio General Assembly pass legislation creating regional governments to combat the absence of coordination among regional localities.

The fundamental problem under current home-rule principles is informational (hereafter the information problem), where localities are blinded from policies that affect their economic health because they fail to recognize that regional localities operate as interdependent, economic players.<sup>6</sup> The information problem prevents

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<sup>1</sup> Stuart Meck & Jason Wittenberg, *Working Paper: A Smart Growth Agenda for Ohio*, OHIO SMART GROWTH AGENDA (EcoCity Cleveland, Cleveland, Ohio), Fall 1998, at 33, available at <http://www.gcbl.org/files/resources/ecocityjournalv5n101112fall1998.pdf>.

<sup>2</sup> OHIO CONST. art. XVIII, § 3 (West, Westlaw through 2013 Files 24 and 26 to 38 of the 130th GA 2013-2014).

<sup>3</sup> Meck & Wittenberg, *supra* note 1, at 33.

<sup>4</sup> Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1115, 1147 (1996).

<sup>5</sup> *See id.* Because of the absence of regional coordination, interlocal tax competition causes wealthier inner city residents to flee to low property tax-rate havens in the suburbs. *See id.* at 1134-35. The inner city's poorer population drives up per capita costs of local services, the city has to raise property taxes to generate needed revenue, and this further reinforces the incentives for those with the means to do so to leave the inner city. *Id.* at 1137. This interlocal tax race causes both urban sprawl and decay in metropolitan urban cities, and this system may damage the economic health of the entire metropolitan region. *See id.* at 1137.

<sup>6</sup> *See id.* at 1137.

localities from developing the regional consciousness necessary to implement meaningful regional coordination. Regional governments would combat the information problem by creating a vehicle for regional coordination and an ability to internalize a locality's externalities by forging policies that bind localities.<sup>7</sup>

Although regional governments would have to "apply to all parts of the state alike"<sup>8</sup> to be Constitutional under Article XVIII,<sup>9</sup> Section 3, this Note will solely focus on the impact of a state's regional governments on metropolitan areas because of their importance, populously and economically.<sup>10</sup>

This is not a call for more government, but a call to streamline already existing government into more efficient mechanisms with sufficient authority to direct regional land-use issues. In the last fifty years, states have combated regional issues through "special purpose governments."<sup>11</sup> Special-purpose governments, like the Ohio Development Services Agency (ODSA),<sup>12</sup> are independent public agencies created under state law to combat specific issues.<sup>13</sup> A special-purpose government's limited purpose can lead to hundreds of independent agencies within a metropolitan area.<sup>14</sup> The profusion of municipal<sup>15</sup> and special purpose governments within a metropolitan area<sup>16</sup> dilutes a special purpose government's political accountability

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<sup>7</sup> *Id.* at 1122.

<sup>8</sup> *City of Canton v. Ohio*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21 (Ohio 2010).

<sup>9</sup> *See id.*

<sup>10</sup> Briffault, *supra* note 4, at 1116 ("most Americans live not in discrete, compact localities, but rather in sprawling metropolitan areas. In 1990, 193 million people, or 78 percent of the total population of the United States, lived in metropolitan areas, as defined by the Census Bureau.").

<sup>11</sup> *See* Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1781 (2002).

<sup>12</sup> *See* OHIO DEVELOPMENT SERVICES AGENCY, <http://development.ohio.gov/feat/whatisdsa.htm> (last visited Oct. 14, 2013). The ODSA is charged with the responsibility to attract and retain jobs in Ohio. *Id.*

<sup>13</sup> *See* Frug, *supra* note 11, at 1781.

<sup>14</sup> *Id.* at 1783.

<sup>15</sup> Cleveland's County, Cuyahoga County, has about 58 units of government. Joe Frolik, *Regional Government vs. Home Rule*, TEACHING CLEVELAND 7, [http://www.teachingcleveland.org/index.php?option=com\\_content&view=article&id=602:regional-government-vs-home-rule-&catid=50:regional-govt-vs-home-rule&Itemid=124](http://www.teachingcleveland.org/index.php?option=com_content&view=article&id=602:regional-government-vs-home-rule-&catid=50:regional-govt-vs-home-rule&Itemid=124). Also considering school districts and special taxing districts, there are about 100 units of government in Cuyahoga County. *Id.*

<sup>16</sup> *See* Frug, *supra* note 11, at 1784.

Not one major metropolitan area is governed by a single all-encompassing general purpose local government. Some metropolitan areas have special-purpose regional governmental entities. These bodies, however, are sometimes limited in territorial scope to just a portion of the metropolitan area. They are typically governed by appointed rather than elected officials. Most importantly, they nearly always lack the plenary taxing, regulatory, and service-delivery authority characteristic of general purpose municipal governments.

because of voter confusion, apathy, and the fact that special purpose governments are typically run by unelected political appointees.<sup>17</sup>

This Note will discuss in Part II (A) how home rule became law in Ohio, (B) what regional problems critics attribute to home-rule principles, (C) the principal arguments for home rule, and (D) what regional governments other states have implemented.

Part III addresses how a regional consciousness would internalize the information problem. In exploring this theory, I analyze (A) how regional governments would be constitutional under Ohio's home-rule amendment; (B) why statutory intervention by the state is needed to solve this problem; and (C) how regional governments present a more effective structure for the economic health of Ohio's regions.

## II. HOME RULE IN OHIO

### A. How Home Rule Became Law in Ohio

During the nineteenth century, the response to regional fragmentation was annexation.<sup>18</sup> All major cities during this period—Boston, New York, Philadelphia, Chicago, and Cleveland—grew by annexing their suburbs.<sup>19</sup> In 1890, New York City grew to 1.4 million residents on Manhattan, and across the river, the City of Brooklyn grew twentyfold between 1840 and 1890.<sup>20</sup> In the face of opposition from wealthy suburbanites in Brooklyn, New York's state legislature consolidated Brooklyn and four other boroughs into New York City in 1898 to create the world's largest city and first metropolitan government.<sup>21</sup> For the next five decades, New York operated as largely its own suburbs, and the city thrived as one of the most successful urban communities in the country with the best hospitals, schools, and city services.<sup>22</sup>

Ohio's General Assembly during the early nineteenth century went the other direction by enhancing the power of its municipalities to prevent annexation.<sup>23</sup> Cleveland's population, too, was booming in the early twentieth century, as its population grew from 381,000 in 1900 to 797,000 in 1920 and became the fifth largest city in the country.<sup>24</sup> As in New York City, overpopulation in the inner city

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Briffault, *supra* note 4, at 1117.

<sup>17</sup> See Briffault, *supra* note 4, at 1146.

<sup>18</sup> *Id.* at 1117.

<sup>19</sup> *Id.*

<sup>20</sup> DAVID RUSK, CITIES WITHOUT SUBURBS 18 (2d ed. 1995).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 19. Between 1900 and 1950, New York City captured over 50 percent of its suburban growth; after 1950, the city contributed -13 percent of its suburban growth. This comparison demonstrates that when New York City was a metropolitan government, the city thrived. When operating as a central city to a metropolitan region, as it did after 1950, the city's problems began. *Id.*

<sup>23</sup> See Frolik, *supra* note 15, at 3.

<sup>24</sup> *Id.*

led those with the means to do so to move to the suburbs, and a cordon of suburbs quickly incorporated around the city.<sup>25</sup> But unlike the consolidation of New York City, Cleveland's suburbs, armed with new home-rule powers in 1912, successfully parried any further annexation efforts by Cleveland during its formative population boom.<sup>26</sup>

Before Ohio's home-rule amendment was ratified in 1912, the state had preemption authority to override any law passed by a locality.<sup>27</sup> Under "Dillon's Rule," Ohio municipalities were only able to exercise those powers delegated by the General Assembly.<sup>28</sup> Progressives, who advocated for greater self-autonomy, railed against state preemption of local decisions.<sup>29</sup> As this was before the advent of the interstate highway system, municipalities were relatively autonomous and still had vast tracts of vacant land within their limits.<sup>30</sup> Newton Baker, a Progressive who was elected Mayor of Cleveland in 1911, convinced Ohio's 1912 Constitutional Convention to add strong home-rule language to Article XVIII, Section 3 of the Ohio Constitution.<sup>31</sup>

Ohio's home-rule amendment says, "[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws."<sup>32</sup> With the addition of the landmark decision by the Supreme Court in *Village of Euclid v. Ambler Realty Co.*, which held local zoning<sup>33</sup> to be constitutional,<sup>34</sup> suburban independence was further enhanced by empowering them

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<sup>25</sup> See *id.* at 3-4.

<sup>26</sup> See *id.* at 5. In 1912, delegates proposed, and the electorate later ratified in the fall, strong home-rule language to Ohio's Constitution at the fourth Ohio Constitutional Convention. Melanie Shwab, Note, *Crossing the Home-Rule Boundaries Should Be Mandatory: Advocating for a Watershed Approach to Zoning and Land Use in Ohio*, 58 CLEV. ST. L. REV. 463, 485 (2010).

<sup>27</sup> See Frolik, *supra* note 15, at 3.

<sup>28</sup> See Shwab, *supra* note 26, at 485.

<sup>29</sup> See Frolik, *supra* note 15, at 3.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* at 3.

<sup>32</sup> OHIO CONST. art. XVIII, § 3 (West, Westlaw through 2013 Files 24 and 26 to 38 of the 130th GA 2013-2014).

<sup>33</sup> "The legislative division of a region, esp. a municipality, into separate districts with different regulations within the districts for land use, building size, and the like." BLACK'S LAW DICTIONARY 1757 (10th ed. 2014).

<sup>34</sup> *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

to use exclusionary zoning<sup>35</sup> to shield themselves<sup>36</sup> from undesirable outgrowth of the inner-city.<sup>37</sup>

*B. Regional Problems Critics Attribute to Home-Rule Principles*

Today, critics of home-rule principles (hereafter regionalists) argue that cities, like Cleveland, which are locked in by their suburbs and bereft of means to either grow geographically or coordinate meaningfully with other localities are at a competitive disadvantage.<sup>38</sup> The disadvantage is that these cities do not proportionally share in the growth of their metropolitan areas and are devoid of means to adequately address regional issues with regional solutions.<sup>39</sup>

David Rusk, a regionalist and former mayor of Albuquerque, New Mexico, calls these types of cities “inelastic cities.”<sup>40</sup> Rusk says inelastic cities “[cannot] compete with new suburbs in offering the desired suburban-style model for family life.”<sup>41</sup> Incapable of capturing a share of suburban-type development, inelastic cities disproportionately fail to capture the growth of their metropolitan areas.<sup>42</sup> “A mostly built-out county[,] like Cuyahoga County[,] operates at a bit of a disadvantage. Family sizes are smaller than years ago; so it takes more homes—usually new homes—to grow. The fastest growing places usually have a lot of previously undeveloped land.”<sup>43</sup>

By contrast, Columbus, Ohio, an elastic city, has remained elastic in the face of Ohio’s home-rule amendment because the city used its water and sewer system as a means to geographically grow within Franklin County.<sup>44</sup> Between 1953 and 2013, Columbus grew from 39 to more than 210 square miles by requiring localities that wanted access to its water and sewer systems to annex to the city.<sup>45</sup> Former Cleveland Planning Director, Hunter Morrison, said, “[t]he energy (of development)

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<sup>35</sup> “Exclusionary zoning has been defined as land use regulation which raises the price of residential access to a particular area and thereby denies that access to members of low income groups.” Stuart Meck & Kenneth Pearlman, *Oh. Plan. & Zoning L.* § 6:13, in *BALDWIN’S OHIO HANDBOOK SERIES OHIO PLANNING AND ZONING LAW* (2014 ed.).

<sup>36</sup> “[T]he goal of incorporation was often very clearly to create an enclave for ‘our people.’ Sometimes that was people who looked or prayed alike. Other times, the restrictions were more economic in nature . . . . ‘The impetus for zoning in Northeast Ohio was exclusion’ . . . .” Frolik, *supra* note 16, at 5.

<sup>37</sup> *See id.* at 4-5.

<sup>38</sup> *See* RUSK, *supra* note 20, at 20.

<sup>39</sup> *See id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Rich Exner, *Census Estimates Show Greater Cleveland Population Down Slightly*, THE PLAIN DEALER (Mar. 17, 2013, 3:00 PM), [http://www.cleveland.com/datacentral/index.ssf/2013/03/census\\_estimates\\_show\\_greater.html](http://www.cleveland.com/datacentral/index.ssf/2013/03/census_estimates_show_greater.html).

<sup>44</sup> *See* Frolik, *supra* note 15, at 6.

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

goes to the new,<sup>7</sup> - and when a business or a developer wants to build something new in Central Ohio, Columbus has room for them to do it.”<sup>46</sup>

Cities that have flourished in the twentieth and twenty-first centuries, like Houston, Phoenix, San Diego, and Albuquerque have all done so through the regional solution of annexation.<sup>47</sup> A combination of permissive annexation laws, restrictions on the incorporation of new cities on the urban fringe, and political will enabled annexation in these cities.<sup>48</sup>

Today, Columbus is growing jobs at a rate more than three times the rest of Ohio.<sup>49</sup> From April 1 through June 30, 2013, Columbus’s job rate grew 1.6 percent, while the state’s was at .5 percent.<sup>50</sup> Columbus is the only big city in Ohio and western Pennsylvania whose population grew faster than the nation’s since 1980.<sup>51</sup> One cited reason for this has been Columbus’s ability to “streamlin[e] government and invest[] in the right things.”<sup>52</sup>

From 2011 to 2012, Cuyahoga County lost 4,872 residents, the second biggest decline in the country during that period and second only to Detroit’s Wayne County.<sup>53</sup> It also may be getting worse.<sup>54</sup> *USA Today* reported in 2011 that Cleveland lost 17% of its population from 2001 to 2011 and saw more residents abandon the city from 2000 to 2010 than in the 1990s.<sup>55</sup>

In inelastic cities unable to capture regional growth, metropolitan growth is not only disproportionately exported to its suburbs but the regions also reflect a sharp income and racial disparity between city and county.<sup>56</sup> A 2009 U.S. Census Bureau Survey revealed that Cuyahoga County had a median household income of \$41,101, while Cleveland’s median household income was \$24,687.<sup>57</sup> The African American and Hispanic populations surrounding inelastic cities are typically concentrated in

<sup>46</sup> *Id.* at 6.

<sup>47</sup> Frug, *supra* note 11, at 1769.

<sup>48</sup> *See id.*

<sup>49</sup> Mark Williams, *Central Ohio Leads the Way in Job Growth*, THE COLUMBUS DISPATCH (Aug. 15, 2013, 1:43 AM), <http://www.dispatch.com/content/stories/public/2013/08/14/central-ohio-added-jobs-in-second-quarter.html>.

<sup>50</sup> *Id.*

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

<sup>52</sup> Rana Foroohar, *How Columbus, Ohio Bounced Back from the Recession*, TIME MAGAZINE (Sept. 27, 2012), available at <http://business.time.com/2012/09/27/how-columbus-ohio-bounced-back-from-the-recession/>.

<sup>53</sup> Exner, *supra* note 43.

<sup>54</sup> *See* Dennis Cauchon, *Population Drastically Declines in Ohio Cities*, USA TODAY (Mar. 10, 2011), [http://usatoday30.usatoday.com/news/nation/census/2011-03-09-ohio-census\\_N.htm](http://usatoday30.usatoday.com/news/nation/census/2011-03-09-ohio-census_N.htm).

<sup>55</sup> *Id.*

<sup>56</sup> *See* Frolik, *supra* note 15.

<sup>57</sup> Robert L. Smith, *Census Shows Cleveland Is the Second-Poorest City in The United States*, THE PLAIN DEALER (Sept. 29, 2010, 10:00 AM), [http://blog.cleveland.com/metro/2010/09/census\\_shows\\_cleveland\\_is\\_the.html](http://blog.cleveland.com/metro/2010/09/census_shows_cleveland_is_the.html).



the inner city.<sup>58</sup> “[T]he segregation and concentration of impoverished populations in specific areas . . . increase[s] the social and public costs of income inequality.”<sup>59</sup> This destabilizing feature of inelastic cities stirs up racial, political, and social tensions and makes it less likely for regions to develop a regional consciousness.<sup>60</sup>

But while suburbs disproportionately capture metropolitan growth, they still continue to rely on central cities as the setting of many specialized activities—like work settings, cultural amenities, sports venues, and medical services.<sup>61</sup> Not only do affluent regional localities surrounding inelastic cities “free ride” by benefiting from metropolitan living and sharing in few metropolitan costs,<sup>62</sup> but these localities also maintain this position by using exclusionary zoning.<sup>63</sup> By means of a wealth test, exclusionary zoning keeps out undesirables who bring less to a locality’s tax base than costs in social services.<sup>64</sup>

When one regional locality uses exclusionary zoning, this triggers other localities to do the same to prevent undesirable growth from being diverted to them.<sup>65</sup> The aggregate use of exclusionary zoning causes urban sprawl by driving up home prices and forcing new homeowners to seek cheaper housing in the metropolitan fringe.<sup>66</sup> Over the last quarter-century, “many metropolitan areas have experienced far greater territorial expansion than population growth.”<sup>67</sup>

This “leapfrog pattern of development” has substantial costs on a region.<sup>68</sup> The geographic growth of a metropolitan area consumes natural resources and environmentally sensitive areas.<sup>69</sup> According to *Smart Growth America*,<sup>70</sup> “the degree of sprawl is more strongly related to the severity of maximum ozone days [in a metropolitan area] than per capita income or employment levels.”<sup>71</sup> By curbing

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<sup>58</sup> RUSK, *supra* note 20, at 27.

<sup>59</sup> Myron Orfield & Nicholas Wallace, *The Minnesota Fiscal Disparities Act of 1971: The Twin Cities’ Struggle and Blueprint for Regional Cooperation*, 33 WM. MITCHELL L. REV. 591, 604 (2007).

<sup>60</sup> See Briffault, *supra* note 4, at 1142.

<sup>61</sup> See *id.* at 1139.

<sup>62</sup> See *id.* at 1149.

<sup>63</sup> See *id.* at 1139-41.

<sup>64</sup> *Id.* at 1136.

<sup>65</sup> *Id.* at 1134.

<sup>66</sup> See *id.* at 1133.

<sup>67</sup> *Id.* at 1135.

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

<sup>69</sup> *Id.*

<sup>70</sup> “Smart Growth America is the only national organization dedicated to researching, advocating for and leading coalitions to bring smart growth practices to more communities nationwide.” SMART GROWTH AMERICA, <http://www.smartgrowthamerica.org/about/> (last visited Jan. 31, 2014).

<sup>71</sup> REID EWING ET AL., MEASURING SPRAWL AND ITS IMPACT, SMART GROWTH AMERICA, 23 (2002), available at <http://www.smartgrowthamerica.org/research/measuring-sprawl-and-its-impact/>.

urban sprawl and implementing controlled planning, a 1992 study by the Center for Urban Studies at Rutgers University projected that over a 20-year span New Jersey would save \$1.38 billion in local roads, state roads, water, sewer, and school costs.<sup>72</sup> It would also save 30,000 acres of farmland, 2.5 million gallons of water use, and 800,000 gallons of sewage.<sup>73</sup>

Today, Ohio is one of the most land-hungry states in the nation<sup>74</sup> and the state's home-rule principles reinforce this problem.<sup>75</sup> Even though between 1950 and 2002 Ohio ranked 22nd in the country for population growth, it ranked 2nd for rate of prime farmland loss, where the state lost 7 million acres in that period.<sup>76</sup> The farmland loss is greatest in metropolitan fringe communities, where development pressure is highest.<sup>77</sup> The trend of outward migration has resulted in high rates of abandonment in metropolitan inner cities and new development on the metropolitan fringe that is expensive for taxpayers to build and maintain.<sup>78</sup>

Ohio's loss of farmland and degree of urban sprawl is also reflected in the changing trends of its population density.<sup>79</sup> Between 1979-2006, the average person per acre in Northeast Ohio declined 22 percent.<sup>80</sup> In the 1980s and 1990s, Youngstown, Ohio lost about 40 percent of its population, and between 1960 and 2000, Cleveland lost almost two-thirds of its assessed property valuation.<sup>81</sup> Rusk says "[t]o end Cleveland's isolation you need a regional solution. You need to open up economically . . . . If you don't, it will affect the economic competitiveness of the entire region."<sup>82</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See David Beach, *The Smart Growth Challenge in Ohio*, FUNDERS' NETWORK FOR SMART GROWTH AND LIVABLE COMMUNITIES (EcoCity Cleveland, Cleveland Heights, OH), Oct. 2002, at 13, available at <http://www.gcbl.org/files/resources/ohiosmartgrowth0210.pdf> ("Ohio's 'developed land' increased 21.0% during the 1990s compared to a 4.7% increase in population—a 4.5 ratio of growth in developed land to population growth. This was the sixth worst ratio among all states, according to a recent study by urban analyst David Rusk.").

<sup>75</sup> See Briffault, *supra* note 4, at 1134-35.

<sup>76</sup> Marc Kovac, *Ohio Ranks Second in Nation for Loss of Farmland*, THE DAILY RECORD (Dec. 14, 2004), <http://www.the-daily-record.com/farm/2004/12/14/ohio-ranks-second-in-nation-for-loss-of-farmland>.

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

<sup>78</sup> *Vibrant NEO 2040: A Vision, Framework, and Action Products for Our Future*, NORTHEAST OHIO SUSTAINABLE COMMUNITIES CONSORTIUM INITIATIVE (NEOSCC, Cleveland, OH), Feb. 2014, at 31-32, available at [http://vibrantneo.org/wp-content/uploads/2014/04/Vibrant-NEO-Final-Report\\_3-31-14\\_lowres\\_ALL.pdf](http://vibrantneo.org/wp-content/uploads/2014/04/Vibrant-NEO-Final-Report_3-31-14_lowres_ALL.pdf).

<sup>79</sup> See NORTHEAST OHIO SUSTAINABLE COMMUNITIES CONSORTIUM, *Northeast Ohio's Population Has Been Spreading Out*, <http://cat.neoscc.org/findings/population-decline/northeast-ohios-population-has-been-spreading-out/> (last visited Oct. 14, 2013).

<sup>80</sup> *Id.*

<sup>81</sup> See Beach, *supra* note 74, at 14.

<sup>82</sup> *Past the Point of No Return?*, MOVING TO CORN FIELDS (EcoCity Cleveland, Cleveland Heights, OH), 1996, at 60, available at <http://www.gcbl.org/files/resources/movingtocornfields.pdf>.

Because public services are primarily funded by a locality's tax base, an affluent locality with an ample tax base can provide better services at a lower tax rate.<sup>83</sup> Both the better services and lower tax rates further attract the region's affluent.<sup>84</sup> More affluent localities maintain this position by deploying "exclusionary zoning techniques as an informal wealth test that keeps out newcomers who bring less to the locality in tax base than cost in local services . . . ."<sup>85</sup> The flight of inner-cities' affluent will reinforce the disparity in tax burdens and local services within a region.<sup>86</sup> "Poverty in metropolitan areas is increasingly concentrated in the older, so-called central city and in older suburbs."<sup>87</sup>

The concentration of a region's poor into these localities tends to drive up the costs of local services, which requires these localities to raise tax rates to provide "lower quality basic services."<sup>88</sup> The higher tax rates and lower quality services of a locality with greater concentrations of a region's poor provide that locality's affluent with just another incentive to leave.<sup>89</sup> In an interview with the *Wilson Center*, Rusk said,

There's a ninety-percent correlation between the elasticity of a city, as measured by its ability to capture the growth of its central county or counties, and its current municipal-bond rating . . . . I don't need to know who the mayor is, or the council, or what form of government they have, or anything about it. Just tell me . . . what is the elasticity of the city, and I can pretty well tell you what the bond rating of that city is going to be.<sup>90</sup>

Decaying inner cities can also hurt a region by impeding a region's ability to compete in an increasingly globalized world.<sup>91</sup> "In the long run . . . interlocal competition, interlocal wealth disparities, and the resulting inferior services and infrastructure in central cities can bring down the economic base of the region as a whole . . . ."<sup>92</sup>

Metropolitan areas are the face of a region, and in some states, the face of the state.<sup>93</sup> But regions with a deteriorating urban core, social tensions, and

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<sup>83</sup> Briffault, *supra* note 4, at 1136.

<sup>84</sup> *See id.* at 1136-37.

<sup>85</sup> *Id.* at 1136.

<sup>86</sup> *See id.* at 1137.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

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

<sup>90</sup> *Dialogue at the Wilson Center: Cities Without Suburbs*, WILSON CENTER (MHz Networks broadcast Sept. 25, 2013), <http://www.wilsoncenter.org/dialogue-program/cities-without-suburbs>.

<sup>91</sup> *See* Briffault, *supra* note 4, at 1137-41.

<sup>92</sup> *Id.* at 1140.

<sup>93</sup> *See* Beach, *supra* note 74, at 13.

environmental problems<sup>94</sup> have trouble attracting businesses and competing globally.<sup>95</sup> Cleveland's suburbs shared in the pain suffered by Cleveland between 2000 and 2010.<sup>96</sup> "Nearby suburbs shrank, too, although some growth occurred in distant suburbs."<sup>97</sup>

Urban sprawl further exacerbates a region's ability to globally compete because of the cost to taxpayers, demonstrated by the high correlation between a metropolitan area's size and the number of local governments.<sup>98</sup> This cost reflects increased administrative costs of more mayors, governmental personnel, school districts, police, and firemen.<sup>99</sup> But this cost also reflects the less obvious costs of overlapping regional infrastructure and providing services to distant localities.<sup>100</sup> Abandonment of the inner city also incurs costs of the loss of homeowner equity, visual blight, demolition, and maintenance of an infrastructure for non-existent residents.<sup>101</sup>

Even though Franklin County has less than 80,000 less residents than Cuyahoga County,<sup>102</sup> it spends far less money on government.<sup>103</sup> Cuyahoga County, a county with 457.19 square miles<sup>104</sup> and fifty-nine municipal governments,<sup>105</sup> spends \$800 million more per year than Franklin County,<sup>106</sup> a county with 532.19 square miles<sup>107</sup> and forty three municipal governments.<sup>108</sup> "Researchers hired by The Fund For Our Economic Future—a foundation-driven consortium that is trying to jumpstart development in Northeast Ohio—have identified the 'legacy cost' of excess government as a drag on this region's growth because it adds to the bottom-line of doing almost everything."<sup>109</sup>

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<sup>94</sup> "Sprawling development destroys valuable farm land open space, natural areas and streams." *Why Worry about Suburban Sprawl?*, MOVING TO CORN FIELDS (EcoCity Cleveland, Cleveland Heights, OH), 1996, at 17, available at <http://www.gcbl.org/files/resources/movingtocornfields.pdf>.

<sup>95</sup> See Beach, *supra* note 74, at 13.

<sup>96</sup> See Cauchon, *supra* note 54.

<sup>97</sup> *Id.*

<sup>98</sup> See Briffault, *supra* note 4, at 1120.

<sup>99</sup> See Beach, *supra* note 74, at 24.

<sup>100</sup> See *id.*

<sup>101</sup> VIBRANT NEO 2014, *supra* note 78, at 33-34.

<sup>102</sup> Exner, *supra* note 43.

<sup>103</sup> Frolik, *supra* note 15, at 7.

<sup>104</sup> UNITED STATES CENSUS BUREAU, STATE AND COUNTY QUICKFACTS (2013), available at <http://quickfacts.census.gov/qfd/states/39/39035.html>.

<sup>105</sup> Frolik, *supra* note 15, at 7.

<sup>106</sup> *Id.*

<sup>107</sup> UNITED STATES CENSUS BUREAU, STATE AND COUNTY QUICKFACTS (2013), available at <http://quickfacts.census.gov/qfd/states/39/39049.html>.

<sup>108</sup> See FRANKLIN COUNTY, CITIES, TOWNSHIPS, & VILLAGES, [www.franklincountyohio.gov/fc/content/citTownVil.cfm](http://www.franklincountyohio.gov/fc/content/citTownVil.cfm) (last visited Nov. 19, 2013).

<sup>109</sup> Frolik, *supra* note 15, at 7.

James Frank, associate professor of urban and regional planning at Florida State University, estimated in 1989 that providing services to a three-unit per acre development located ten miles from central facilities and employment centers costs taxpayers a \$48,000 premium.<sup>110</sup> This premium cost reflects providing infrastructure costs, like water mains, schools, fire stations, treatment plants, and roads.<sup>111</sup> By placing that same home closer to central facilities in a twelve-unit per acre development with an equal mix of townhouses, garden apartments, and single-family homes, the premium cost could be reduced fifty percent.<sup>112</sup>

Although regional governments can contract with other localities to address regional issues,<sup>113</sup> affluent regional localities will not delegate their land-use authority because they would be agreeing to share in metropolitan costs, like affordable housing, social services, and a reduction in its taxable base.<sup>114</sup> Thus, state intervention is needed for regional land-use coordination to occur.<sup>115</sup>

### C. Home-Rule Advocates' Principal Arguments

Home-rule advocates (hereafter localists) justify their support by arguing that localism fosters citizen participation, community, and efficiency.<sup>116</sup> Localists argue that by taking power out of the hands of local governments regionalism threatens a core value of local autonomy.<sup>117</sup> Small government fosters civic participation because the greater a citizen's impact, the more likely that citizen will participate in

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<sup>110</sup> Kevin Kasowski, *Sprawling Development Costs All of Us a Bundle*, MOVING TO CORN FIELDS (EcoCity Cleveland, Cleveland Heights), 1996, at 24, available at <http://www.gcbl.org/files/resources/movingtocornfields.pdf>.

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

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

<sup>113</sup> See OHIO REV. CODE ANN. §167.01 (West, Westlaw through Files 24 and 26 to 38 of the 130th GA 2013-2014) (“[G]overning bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.”).

<sup>114</sup> See Briffault, *supra* note 4, at 1122.

<sup>115</sup> See Beach, *supra* note 74, at 24; see also Briffault, *supra* note 4, at 1122 (“Such interlocal agreements are less likely when they require the cooperation of several localities scattered across a metropolitan region, or when the benefits are long-term and diffuse while the costs, in terms of loss of local regulatory or fiscal autonomy, are immediate and concrete. As a result, interlocal agreements are unlikely to affect local exclusionary land use practices or the current immunity of the local tax base from the revenue needs of other localities.”).

<sup>116</sup> See Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 1998-2002 (2000); Briffault, *supra* note 4, at 1123.

<sup>117</sup> Briffault, *supra* note 4, at 1121; see also FAYETTE COUNTY ISSUES TEA PARTY, <http://fayettecountyissuesteaparty.org/Pages/Regionalism.html> (last visited Jan. 31, 2013) (“The [Fayette County Issues Tea Party] supports local (or home) rule and freedom of association; therefore, it strongly opposes regionalism’s concept of forced centralized governance.”).

government.<sup>118</sup> Civic participation also generates a sense of community among citizens by empowering them to shape their localities.<sup>119</sup> “[Localists] contend that home rule should be preserved to ensure that people can define the character of the communities in which they live.”<sup>120</sup> The multitude of government under home-rule principles most efficiently allocates the best mix of taxes and services by citizens voting with their feet.<sup>121</sup>

Localists argue that a regional government would subject large numbers of people to policies they oppose and to a government whose performance is more difficult to monitor.<sup>122</sup> “[T]he standard arguments for home rule seek to defend the local freedom and choice that anti-sprawl reform appears to threaten.”<sup>123</sup> Localists use Ohio’s home-rule amendment as legal justification to protect these principles and combat new programs that would preempt local autonomy.<sup>124</sup>

#### *D. Today’s Regional Alternative*

Nevertheless, advocates of regional solutions have successfully implemented regional solutions around the country.<sup>125</sup> Minneapolis-Saint Paul created a regional institution with members appointed by the governor and vested with authority over issues such as transit, water quality, airports, and land-use.<sup>126</sup> The Twin Cities Metropolitan Council’s most distinctive feature is regional revenue-sharing.<sup>127</sup> “The Twin Cities tax-base-sharing program was an attempt to respond to a number of concerns, including increased property tax rates, tax-base and tax-rate disparities, and interjurisdictional competition for development.”<sup>128</sup> The program requires each jurisdiction to contribute forty percent of the growth in the value of its commercial-industrial tax capacity to a regional pool.<sup>129</sup>

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<sup>118</sup> See Cashin, *supra* note 116, at 1998-99. “For some, home rule is worth protecting because it ensures that governmental power is exercised closest to the people.” David J. Barron, *Reclaiming Home Rule*, 116 HARV. L. REV. 2255, 2259 (2003).

<sup>119</sup> Barron, *supra* note 118, at 2255.

<sup>120</sup> *Id.* at 2259-60.

<sup>121</sup> See Cashin, *supra* note 116, at 2000. “For others, home rule is important because it establishes a ‘market in places’ that promotes efficient competition in the provision of municipal services.” Barron, *supra* note 118, at 2259.

<sup>122</sup> See Briffault, *supra* note 4, at 1144.

<sup>123</sup> Barron, *supra* note 118, at 2260.

<sup>124</sup> See Meck & Wittenberg, *supra* note 1, at 31; see also Briffault, *supra* note 4, at 1171 (“Hostility to metropolitan government is intertwined with a commitment to local autonomy that is deeply rooted in both law and politics.”).

<sup>125</sup> Frug, *supra* note 11, at 1777.

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

<sup>127</sup> *Id.*

<sup>128</sup> Orfield & Wallace, *supra* note 59, at 592.

<sup>129</sup> *Id.* at 592.

Portland, Oregon, elects a regional body called a “Metro” that is authorized to regionally plan transportation and land-use but has no revenue-sharing feature.<sup>130</sup> Included in the Metro’s ability to regionally plan land-use is the authority to enact regional growth boundaries.<sup>131</sup> The Metro’s goal in managing the urban growth boundary in the Portland metropolitan area is to protect rural lands and focus investment in existing downtowns, main streets, and employment areas.<sup>132</sup> In a 2002 study by *Smart Growth America* measuring sprawl in eighty-three metropolitan areas, Portland ranked eighth,<sup>133</sup> and the study cited the Metro’s growth boundary a “model” to combat sprawl.<sup>134</sup>

Although Minneapolis and Portland are a positive step according to regionalists, neither government realizes many regionalists’ goal of a popularly elected regional government capable of regional revenue sharing and forging binding land-use policies.<sup>135</sup> Because of political opposition to a centralized metropolitan government, reformers have developed “federative” systems of governments that would move only some municipal functions to a regional body, like a county.<sup>136</sup> In the 1950s and 1960s, this scheme was developed in Miami-Dade County, Nashville-Davidson County, Jacksonville-Duval County, and Indianapolis-Marion County.<sup>137</sup>

Or, as demonstrated in New York City and Columbus, another politically viable regional alternative has been to impose regional structures over existing local governments.<sup>138</sup>

The major American cities that have flourished in the twentieth and twenty first centuries . . . [have all done so through] annex[ing] neighboring territory, sometimes with the consent of those being absorbed (Los Angeles, Nashville, Jacksonville), sometimes with the consent only

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<sup>130</sup> Frug, *supra* note 11, at 1777.

<sup>131</sup> See EWING ET AL., *supra* note 71, at 23.

<sup>132</sup> METRO, *Urban Growth Boundary* (last visited Feb. 1, 2014), <http://web.archive.org/web/20131219185801/http://www.oregonmetro.gov/index.cfm/go/by/web/id=277> (showing webpage as it appeared on Feb. 1, 2014).

The boundary controls urban expansion onto farm and forest lands. Land inside the urban growth boundary supports urban services such as roads, water and sewer systems, parks, schools and fire and police protection that create thriving places to live, work and play. The urban growth boundary is one of the tools used to protect farms and forests from urban sprawl and to promote the efficient use of land, public facilities and services inside the boundary.

*Id.*

<sup>133</sup> *Id.* at 16.

<sup>134</sup> See *id.* at 23.

<sup>135</sup> Frug, *supra* note 11, at 1777-78; see also Briffault, *supra* note 4, at 1117 (noting “[n]ot one major metropolitan area is governed by a single all-encompassing general purpose local government.”).

<sup>136</sup> Briffault, *supra* note 4, at 1118.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

of the property owners in the annexed areas (Phoenix), and sometimes without asking anyone's permission (Houston, Oklahoma City, Albuquerque).<sup>139</sup>

North Carolina's involuntary annexation statutes, for example, have been cited by regionalists, like David Rusk, as one of the most "progressive" in the country in terms of providing their municipalities the ability to expand their corporate boundaries. "Because North Carolina has historically allowed 'involuntary' annexation at the discretion of local municipalities, such municipalities have been able to expand their territories, gain favorable debt finance ratings, and enhance their tax bases more readily than many municipalities in other parts of the country."<sup>140</sup>

Although regional solutions vary depending on the political landscape, regionalists argue that any regional government that can preempt local land-use decisions would substantially facilitate a regional consciousness.<sup>141</sup>

### III. HOW A REGIONAL CONSCIOUSNESS WOULD INTERNALIZE THE INFORMATION PROBLEM

By not considering regional externalities, localists fail to recognize that home-rule principles inhibit civic participation, community, and efficiency.<sup>142</sup> This is because focusing on a locality's self-interest blinds citizens from their decisions' regional impact.<sup>143</sup> The absence of regional governments prevents citizens from participating in regional governmental affairs, recognizing their regional community, and efficiently allocating a region's resources.<sup>144</sup> "Government should design and finance public services on a scale commensurate with the scope of their costs and benefits. If they are not designed on the appropriate scale, then local and regional interests diverge."<sup>145</sup>

An effective regional government that is popularly elected and can preempt local land-use, on the other hand, could better converge a region's interest.<sup>146</sup> One important way a regional government would do this is through facilitating a regional consciousness.<sup>147</sup> A regional government requiring interlocal participation would force localities to consider their policies' regional impact.<sup>148</sup> Mandated participation

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<sup>139</sup> Frug, *supra* note 11, at 1768. As an example, North Carolina has Involuntary Annexation Statutes, which would permit a city to involuntarily annex only areas contiguous to the city that share at least one-eighth of their external boundaries with that city. Judith Welch Wegner, *North Carolina's Annexation Wars: Whys, Wherefores, and What Next*, 91 N.C. L. REV. 165, 196-97 (2012).

<sup>140</sup> *Id.* at 168.

<sup>141</sup> *See* Frug, *supra* note 11, at 1827.

<sup>142</sup> *See* Briffault, *supra* note 4, at 1164.

<sup>143</sup> *See id.*

<sup>144</sup> *See id.*

<sup>145</sup> Orfield & Wallace, *supra* note 59, at 604 (citations omitted).

<sup>146</sup> *See* Frug, *supra* note 11, at 1792.

<sup>147</sup> *See id.*

<sup>148</sup> *See id.*



would facilitate interlocal negotiation, which could, in turn, help internalize externalities on emitting localities.<sup>149</sup> Affluent localities that choose, for example, to use exclusionary zoning and not provide any affordable housing, could be subject under a regional government to compensate regional localities whose taxable bases are damaged by this policy.

According to David Beach, one of the reasons Ohio was one of only twelve states in 2002 not pursuing statewide reforms in advancing smart growth was because of Ohio's lack of an identity.<sup>150</sup> Because Ohio has more large urban areas than any other state in the Union, the media are fragmented, there are no common sources of information, no one in Cincinnati knows anything about Dayton, no one in Dayton knows anything about Columbus, and when you want to change state policies there is a tremendous educational challenge.<sup>151</sup> Ohio's topography also plays a factor in Ohio's cultural fragmentation, as the state is split up into five physiographic regions.<sup>152</sup> "Such divisions . . . make it extremely difficult to convene a statewide discussion on any topic, much less enact any comprehensive statewide reforms."<sup>153</sup>

Consequently, even though abrogating Ohio's home-rule amendment may be the most legally direct means of granting regional governments authority to preempt local land-use authority, doing so would have to overcome tremendous political hurdles.<sup>154</sup> Ohio's cultural fragmentation, strong home-rule tradition, and the codification of the amendment in Ohio's Constitution for over a century would make the abrogation of the amendment a colossal task.<sup>155</sup>

But Ohio courts have increasingly marginalized the home-rule amendment over the past decade.<sup>156</sup> This has opened the door for the General Assembly to

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<sup>149</sup> *See id.*

<sup>150</sup> Beach, *supra* note 74, at 9.

<sup>151</sup> *Id.*

While people feel attachment to some part of the state (a city, watershed, or region), they tend not to identify with Ohio as a whole. And that is understandable. Ohio has no coherent geography, no political or cultural center of gravity, and no mythology that celebrates it as a distinctive place.

*Id.*

<sup>152</sup> *Id.* The five physiographic regions are Glaciated Allegheny Plateau, Unglaciated Allegheny Plateau, Central Lowland Till Plains, Huron-Erie Lake Plains, and Interior Low Plateau. *Id.*

<sup>153</sup> *Id.* at 10.

<sup>154</sup> *See* Orfield & Wallace, *supra* note 59, at 604.

<sup>155</sup> *See id.* Ohio localities may especially be reluctant to abrogate Ohio's home-rule amendment lately because the amendment has been used as a legal defense to protect their communities from the environmental effects of oil and gas drilling. *See* Anne Foster, *Local Ohio Communities Allied in Defense of Ohio's Home-Rule, Oil and Gas Showdown To Be Held in Ohio's Supreme Court*, NORTH AMERICA SHALE BLOG (Sept. 18, 2013), <http://www.northamericashaleblog.com/2013/09/18/local-ohio-communities-allied-in-defense-of-the-ohios-home-rule-oil-and-gas-showdown-to-be-held-in-ohio-supreme-court/>.

<sup>156</sup> *See* State *ex rel.* Morrison v. Beck Energy Corp., No. 2013-0465, 2015-Ohio-485 (Ohio Feb. 17, 2015); City of Cleveland v. Ohio, 128 Ohio St. 3d 135, 2010-Ohio-6318, 942

constitutionally enact a statute creating regional governments that can preempt local land-use in the face of Article XVIII, Section 3.<sup>157</sup>

*A. The Constitutionality of Regional Governments to Preempt  
Local Zoning under Canton*

Article XVIII, Section 3 provides that municipalities have all powers of local self-government “and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.”<sup>158</sup> For a regional government to have sufficient authority to preempt a municipality’s land-use decisions, it must be permitted to do so by a “general law” within the meaning of Art. XVIII, Section 3.<sup>159</sup> Under this amendment, when municipal zoning conflicts with the “general laws of the state,” the ordinance is unconstitutional.<sup>160</sup>

Ohio considers municipal zoning to be an exercise of the state’s police powers and not an exercise of local self-government.<sup>161</sup> If an exercise of local self-government, “the analysis stops, because Ohio’s Constitution authorizes a municipality to exercise all powers of local self-government within its jurisdiction.”<sup>162</sup> Where, however, there is a conflict of Ohio’s concurrent police powers, the state’s exercise prevails if the state’s authority is derived from a “general law” within the meaning Art. XVIII, Section 3.<sup>163</sup>

In *Canton v. Ohio*, the Ohio Supreme Court defined a “general law,” as a statute that is (1) part of a statewide and comprehensive legislative enactment; (2) applies to all parts of the state alike and operates uniformly throughout the state; (3) sets forth police, sanitary, or similar regulations, rather than purport only to grant or limit municipalities’ legislative power to do so, and (4) prescribes a rule of conduct upon citizens generally.<sup>164</sup>

1. A Statute Creating Regional Governments Is Part of a Statewide and  
Comprehensive Legislative Enactment

If a state statute concerns subject matter that affects the general public as a whole more than local inhabitants, the statute is “part of a statewide and comprehensive

N.E.2d 370; *Am. Fin. Servs. Ass’n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776.

<sup>157</sup> See Shwab, *supra* note 26, at 480-93.

<sup>158</sup> OH. CONST. art. XVIII, § 3 (West, Westlaw through 2013 Files 24 and 26 to 38 of the 130th GA 2013-2014).

<sup>159</sup> See *City of Canton v. Ohio*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21.

<sup>160</sup> OHIO CONST. art. XVIII, § 3 (West, Westlaw through 2013 Files 24 and 26 to 38 of the 130th GA 2013-2014).

<sup>161</sup> See *Canton*, 766 N.E.2d, at ¶ 10.

<sup>162</sup> *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, 880 N.E.2d 906, at ¶ 10 (quoting *Am. Fin. Servs. Ass’n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776).

<sup>163</sup> See *id.*

<sup>164</sup> *Canton*, 766 N.E.2d, at ¶ 21.

legislative enactment<sup>165</sup> to satisfy the first element of the *Canton* test.<sup>166</sup> In *Ohio Ass'n of Private Detective Agencies, Inc. v. N. Olmstead*, the Ohio Supreme Court said “[a] general law has been described as one which promotes statewide uniformity.”<sup>167</sup> The Ohio Supreme Court has upheld natural resource conservation<sup>168</sup> and matters with extraterritorial impact as areas of statewide concern.<sup>169</sup> There is no need for a “comprehensive enactment” to regulate every aspect of the disputed conduct.<sup>170</sup>

Ohio Revised Code (O.R.C.) § 1509.02 preempts a locality’s ability to zone when the zoning issue concerns a matter of statewide concern.<sup>171</sup>

The [division of oil and gas resources management] has sole and exclusive authority to regulate the . . . location[] and spacing of oil and gas wells and production operations within the state . . . . The regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation . . . .<sup>172</sup>

In *Morrison v. Beck Energy Corp.*, the Ohio Supreme Court upheld O.R.C. § 1509.02 as constitutional under the home-rule amendment because the statute is a general law.<sup>173</sup> In analyzing whether § 1509.02 was a general law, the Ninth District Court of Appeals “beg[an] with the recognition that [the] oil and gas drilling statute specifically states that the regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation.”<sup>174</sup> The Ninth District held in *Smith Family Trust v. Hudson Bd. of Zoning Appeals* that § “1509 *et seq.* regulates the conservation of natural resources and is unquestionably a general law.”<sup>175</sup>

<sup>165</sup> *Id.* at 964.

<sup>166</sup> See *Cleveland Elec. Illuminating Co. v. City of Painesville*, 239 N.E.2d 75, 78 (Ohio 1968).

<sup>167</sup> *Ohio Ass'n of Private Detective Agencies, Inc. v. City of N. Olmsted*, 602 N.E.2d 1147, 1149 (Ohio 1992).

<sup>168</sup> See *Columbus v. Teater*, 374 N.E.2d 154, 158-59 (Ohio 1978).

<sup>169</sup> *Beachwood v. Bd. of Elections of Cuyahoga Cnty.*, 148 N.E.2d 921, 923 (Ohio 1958).

<sup>170</sup> *City of Cleveland v. Ohio*, 128 Ohio St. 3d 135, 2010-Ohio-6318, 942 N.E.2d 370, at ¶ 21 (citing *Marich v. Bob Bennett Constr. Co.*, 116 Ohio St. 3d 553, 2008-Ohio-92, 880 N.E.2d 906).

<sup>171</sup> See OHIO REV. CODE ANN. § 1509.02 (West, Westlaw through 2013 File 59 of the 130th General Assembly).

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

<sup>173</sup> *State ex rel. Morrison v. Beck Energy Corp.*, No. 2013-0465, 2015-Ohio-485, at ¶ 23 (Ohio Feb. 17, 2015).

<sup>174</sup> *State ex rel. Morrison v. Beck Energy Corp.*, 2013-Ohio-356, 989 N.E.2d 85, at ¶ 54 (9th Dist.) (quoting *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, 896 N.E.2d 967, at ¶ 29.).

<sup>175</sup> *Smith Family Trust v. City of Hudson Bd. of Zoning and Bldg. Appeals*, 9th Dist. Summit No. 24471 2009-Ohio-2557, ¶ 11.

Similarly, in determining whether a law is part of statewide and comprehensive legislative enactment, the Court in *Cleveland v. Ohio* stated in 2010 that “we took into account that the General Assembly had ‘express[ed] its intent for statewide comprehensive [laws].”<sup>176</sup> The legislative history of the statute in question in *Cleveland* indicated the intent to supersede the existing patchwork of ordinances.<sup>177</sup>

Thus, statutory language expressing the intent of the General Assembly to supersede the patchwork of zoning ordinances and promote the state’s interest in combating the extraterritorial impact of urban sprawl would satisfy the first element of the *Canton* test.<sup>178</sup>

## 2. A Statute Creating Regional Governments Applies to All Parts of the State Alike and Operates Uniformly throughout the State

Legislation creating regional governments in each of Ohio’s regions would “apply to all parts of the state alike and operate uniformly”<sup>179</sup> to satisfy the second element of the *Canton* test. Because no locality operates autonomously and regional governments should be created in each economically interconnected region to be constitutional, the statute would apply “to all parts of the state alike.”<sup>180</sup>

The purpose of the uniformity element “is not ‘to render invalid every law which does not operate upon all persons, property, or political subdivisions within the state,’ but simply to ensure that a general law operates uniformly with respect to every person and locality to which it relates.”<sup>181</sup> In *Ohioans for Concealed Carry, Inc. v. City of Clyde*, the Ohio Supreme Court held that application of a statutory framework inherently varies by jurisdiction.<sup>182</sup> In a 2014 *Cleveland v. Ohio* decision, the Ohio Supreme Court upheld a state statute that expressly preempted a municipality’s ability to regulate tow truck companies.<sup>183</sup> Although the application of this statute would impact Ohio regions differently, the court held that because the statute’s scope is statewide and there is no limitation upon the statute’s operation, the statute is uniform throughout the state.<sup>184</sup>

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<sup>176</sup> *Cleveland*, 942 N.E.2d, at ¶ 24.

<sup>177</sup> *Id.* at ¶ 24.

<sup>178</sup> *See Ohio Ass’n of Private Detective Agencies, Inc. v. City of N. Olmsted*, 602 N.E.2d 1147, 1149 (Ohio 1992); *Beachwood v. Bd. of Elections of Cuyahoga Cnty.*, 148 N.E.2d 921, 922-23 (Ohio 1958).

<sup>179</sup> *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21.

<sup>180</sup> *See id.*

<sup>181</sup> *State ex rel. Morrison v. Beck Energy Corp.*, No. 2013-0465, 2015-Ohio-485, at ¶ 21 (Ohio Feb. 17, 2015) (citations omitted) (quoting *State ex rel. Stanton v. Powell*, 142 N.E. 401 (Ohio 1924)).

<sup>182</sup> *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605, 896 N.E.2d 967, at ¶ 43.

<sup>183</sup> *City of Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86, 5 N.E.3d 644, at ¶ 5.

<sup>184</sup> *Id.* at ¶ 12.

Because a statute creating regional governments would have the uniform framework of promoting regional coordination upon all parts of the state alike, the second element of the *Canton* test would be satisfied.<sup>185</sup>

### 3. A Statute Deferring Regulatory Power to Implement Interlocal Coordination to Regional Governments Sets Forth Police Regulations

The third element of the *Canton* test would be satisfied because decentralizing land-use authority to regional governments “set[s] forth police [power] regulations”<sup>186</sup> that a locality’s zoning be in accordance with regional policy, “rather than purport only to grant or limit legislative power of a municipal corporation.”<sup>187</sup>

This element requires that “a statute which prohibits the exercise by a municipality of its home[-]rule powers[,] without such statute serving an overriding statewide interest[,] would directly contravene the constitutional grant of municipal power.”<sup>188</sup>

In the 2014 *Cleveland* decision, the Ohio Supreme Court said that in determining whether a statute establishes police regulations, the statute should also be read in conjunction with the delegated agency’s regulations.<sup>189</sup> A regional government that is delegated authority to implement regional coordination could promulgate specific regulations to ensure that localities’ land-use decisions are in accordance with regional policy to serve a statewide interest.

In *Morrison*, the Ohio Supreme Court held that the state reserving for itself “the permitting, location, and spacing of oil and gas wells” under § 1509.02 is a legitimate state interest.<sup>190</sup> Similarly, a statute creating regional governments to serve the state interest in efficient regional land-use coordination is legitimate.<sup>191</sup> Like § 1509.02, a statute creating regional governments would “preserve . . . regulatory control given to municipalities” but at the same time prevent municipalities from “exercising those powers in a way that . . . impedes” the state’s interest in regional coordination.<sup>192</sup>

Thus, like § 1509.02 under *Morrison*, a statute creating regional governments could set forth a specific police power to regulate the land use of a specific subject, except instead of “oil and gas wells” with regional governments it would be regional land-use coordination.<sup>193</sup> Because such a statute would set forth a police power regulation and only limit the legislative power of a municipal corporation when in

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<sup>185</sup> *See id.*

<sup>186</sup> *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* at ¶ 32 (quoting *Clermont Env’t Reclamation Co. v. Wiederhold*, 442 N.E.2d 1278, 1282 (Ohio 1982)).

<sup>189</sup> *Cleveland*, 5 N.E.3d 644, at ¶ 13.

<sup>190</sup> *See State ex rel. Morrison v. Beck Energy Corp.*, No. 2013-0465, 2015-Ohio-485, at ¶ 30 (Ohio Feb. 17, 2015).

<sup>191</sup> *See id.*

<sup>192</sup> *See id.*

<sup>193</sup> *See id.*

conflict with the state's interest in regional coordination, the third element of the *Canton* test would be satisfied.<sup>194</sup>

#### 4. A Statute Creating Regional Governments Prescribes a Rule of Conduct on Citizens Generally

The fourth element of the *Canton* test that “prescribe[s] a rule of conduct on citizens generally”<sup>195</sup> requires that a statute apply generally to all who would fall within the sphere of its legislation.<sup>196</sup> In *American Fin. Services Ass’n v. City of Cleveland*, the Ohio Supreme Court held that the statute, which prevented lenders from engaging in predatory lending, prescribed a rule of conduct on citizens generally because the statute specifically prescribed a rule of conduct on all state lenders.<sup>197</sup> Also, in the 2014 *Cleveland* decision, the Ohio Supreme Court held that a statute that expressly preempted a municipality’s ability to regulate tow truck companies prescribed a rule of conduct upon citizens generally because “the statute applies to all entities engaged in towing operations.”<sup>198</sup>

Similarly, a statute applying to all Ohio localities to regionally coordinate through the mechanism of a regional government would satisfy the fourth element of the *Canton* test to prescribe a rule of conduct on citizens generally.<sup>199</sup>

#### 5. By the Ohio General Assembly Expressing a Clear Intent to Further the State Interest of Regional Coordination, a Statute Creating Regional Governments Would Constitute a General Law

Because a statute creating regional governments in each economically interconnected Ohio region can satisfy all four prongs of the *Canton* test, this statute would constitute a “general law” within the meaning of Article XVIII, Section 3.<sup>200</sup> “Although the courts have established some basic principles regarding home[-]rule powers, they are not always consistently applied.”<sup>201</sup> But as demonstrated, courts have not been willing to construe the home-rule amendment broadly when the General Assembly has demonstrated a clear intent to divest localities of the power in furtherance of a state interest.<sup>202</sup>

Because it is in the state’s interest to control urban sprawl, protect Ohio’s natural resources, and benefit metropolitan economies, statutory authority preempting local

<sup>194</sup> *See id.*

<sup>195</sup> *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, at ¶ 21.

<sup>196</sup> *See Shwab, supra* note 26, at 492.

<sup>197</sup> *Am. Fin. Servs. Ass’n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 36.

<sup>198</sup> *City of Cleveland v. State*, 138 Ohio St. 3d 232, 2014-Ohio-86, 5 N.E.3d 644, at ¶ 5.

<sup>199</sup> *See id.*

<sup>200</sup> OHIO CONST. art. XVIII, § 3 (West, Westlaw through 2013 Files 24 and 26 to 38 of the 130th GA 2013-2014).

<sup>201</sup> Wendy H. Gridley, *Municipal Home Rule*, MEMBERS ONLY, Jan. 26, 2010, at 1, <http://www.lsc.ohio.gov/membersonly/128municipalhomeRule.pdf>.

<sup>202</sup> *See State ex rel. Morrison v. Beck Energy Corp.*, No. 2013-0465, 2015-Ohio-485, at ¶ 30 (Ohio Feb. 17, 2015).

land-use planning is constitutional.<sup>203</sup> As *Morrison* demonstrated, a statute that curtails a locality's zoning authority for specific state interests is constitutional.<sup>204</sup> As a general law with the specific state interest of facilitating regional coordination, the statutory enactment of regional governments would be constitutional, even in the face of Ohio's home-rule amendment.<sup>205</sup>

*A. The Need for a Statutory Enactment Creating Regional Governments*

The reason regional governments, as opposed to public state agencies, are necessary is because citizens need to foster a regional consciousness for meaningful regional coordination to occur.<sup>206</sup> "Political cooperation . . . must be the first step towards regional cooperation."<sup>207</sup> Because government is accountable to voters, a regional government would facilitate both legitimacy among voters and the idea of regional citizenship.<sup>208</sup> "To be effective, a regional legislature would have the power to ensure that its decisions, once made, will be followed by a region's cities,"<sup>209</sup> and a legitimate regional government would help maintain this authority.

Although annexation statutes are a step in the right direction towards creating more regional forms of government, the statutes can facilitate interlocal conflict and exacerbate a region's ability to foster a regional consciousness.<sup>210</sup> For example, although regionalists have long touted North Carolina's progressive state municipal annexation laws, these same laws have sparked "significant annexation wars" and "a number of lawsuits."<sup>211</sup> When the City of Buffalo attempted to merge into its surrounding county, Erie County, in 2004, proponents of the measure met resistance among those who saw it as attempting to augment suburban power at the expense of city residents.<sup>212</sup> "[H]ad genuine input from numerous stakeholders and ordinary citizens generated proposals for regionalism, [the proposal] could have survived . . . ."<sup>213</sup>

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<sup>203</sup> *See id.*

<sup>204</sup> *Id.*

<sup>205</sup> *See id.*

<sup>206</sup> *See Frug, supra* note 11, at 1827.

<sup>207</sup> *See Orfield & Wallace, supra* note 59, at 612.

<sup>208</sup> Briffault, *supra* note 4, at 1165-66.

[O]nly an elected regional government would enjoy the legitimacy that would enable it to displace the decisions of component local governments. And only an elected regional government would be able to assure voters they have a voice in policymaking and that regional decisionmaking institutions would ultimately be accountable to area residents.

*Id.* at 1166.

<sup>209</sup> Frug, *supra* note 11, at 1792.

<sup>210</sup> *See Wegner, supra* note 139, at 165.

<sup>211</sup> *Id.* at 165, 168.

<sup>212</sup> Craig R. Bucki, *Regionalism Revisited: The Effort to Streamline Governance in Buffalo and Erie County*, *New York*, 71 ALB. L. REV. 117, 131, 138-39 (2008).

<sup>213</sup> *Id.* at 120.

Furthermore, imposing regional governance on an existing governmental entity may only be a short-term solution.<sup>214</sup> Major metropolitan areas today are far larger in population and territory than the largest city in the region.<sup>215</sup> “[E]ven in New York [City], success was ultimately undone by the expansion of the metropolitan area beyond the boundaries of the consolidated city.”<sup>216</sup> Thus, the question as to what governmental scale would appropriately be commensurate with a given region will fluidly change over time, requiring a dynamic entity able to respond to the regional issues of the time.<sup>217</sup> Because a regional government, on the other hand, is merely a vehicle for regional collaboration, it can more quickly respond to changing regional issues.<sup>218</sup>

“No meaningful regional consciousness, let alone regional citizenship, now exists in major American metropolitan areas.”<sup>219</sup> However, unlike annexed or consolidated localities, “a regional citizenship is a worthwhile goal because it would help foster the kind of regional thinking needed to address metropolitan problems.”<sup>220</sup>

Regional governments should not only “serve as a vehicle for intercity negotiations designed to forge a regional perspective”<sup>221</sup> but also an authority on policies that bind regions.<sup>222</sup> Because local land-use “is a major source of metropolitan externalities,” regional authority should be broad enough to include land-use decisions.<sup>223</sup> A legitimate regional government with sufficient power to preempt local land-use decisions would help generate the idea of regional citizenship.<sup>224</sup> Regional policies will require an understanding of how one locality’s policies impact a region, which would help address localities’ regional ignorance embodied in the information problem.<sup>225</sup>

Localists validly argue that regionalism threatens their local autonomy by making it more difficult for them to effect change in larger governments and

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<sup>214</sup> See Briffault, *supra* note 4, at 1164.

<sup>215</sup> *Id.* at 1116.

<sup>216</sup> *Id.* at 1117.

<sup>217</sup> *See id.*

<sup>218</sup> *See id.*

<sup>219</sup> Frug, *supra* note 11, at 1827.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.* at 1827.

<sup>222</sup> Compare *id.* at 1791 (arguing that regional governments should be created for one purpose: “to serve as a vehicle for intercity negotiations designed to forge a regional perspective on metropolitan issues”), with Briffault, *supra* note 4, at 1166 (arguing that the optimal regional government must also determine land-use questions of regional significance).

<sup>223</sup> See Briffault, *supra* note 4, at 1147. “Localities simply do not enter into cooperative arrangements under which some localities accept regionally necessary but locally undesirable land uses. Similarly, localities rarely, if ever, agree to desist from competing for development against other localities in the same metropolitan area.” *Id.*

<sup>224</sup> *See id.*

<sup>225</sup> *See id.*



removing the choice of living under low-cost government.<sup>226</sup> But “in light of the intertwined relationships of local areas in metropolitan regions, we should redefine the scope of local autonomy . . . .”<sup>227</sup> Local governments are not receptive to regional issues, which threatens residents’ local autonomy to have a voice in policies that affect them.<sup>228</sup> Although there is evidence that a multitude of governments in a metropolitan area hold down local government costs, this argument disregards the costs associated with infrastructure and governmental overlap created by a profusion of government within a region.<sup>229</sup>

Contrary to arguments made by localists,<sup>230</sup> regional governments would facilitate community and civic participation by helping citizens recognize themselves as part of a regional community.<sup>231</sup> By focusing on the local community, citizens blind themselves to the regional community “economically and socially intertwined” with one’s locality.<sup>232</sup> “The defining feature of traditional localities—intensity of interaction within the locality and separation of that locality from others—are increasingly absent in the metropolitan setting.”<sup>233</sup>

Metropolitan residents don’t focus their activities strictly within their localities, and metropolitan businesses don’t draw most of their customers and employees from their home localities.<sup>234</sup> But even though metropolitan residents have increasingly interacted with their metropolitan areas, today “local boundaries often become the basis of interlocal conflicts.”<sup>235</sup> Under our current governmental structure, there is a “winner take all” situation when one locality, for example, builds a shopping center.<sup>236</sup> This shopping center may negatively affect businesses in neighboring localities.<sup>237</sup> But the locality building the shopping center is typically only concerned with its residents and interests.<sup>238</sup> Regional government could mitigate this conflict

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<sup>226</sup> *See id.* at 1123-25.

The costs of participation in terms of time, energy, and money needed to reach out, engage, and persuade other members of the polity are likely to be lower in smaller units than in larger ones . . . . This results in an increased sense of ‘citizen effectiveness,’ which, by rewarding participation, is likely to result in further participation.

*Id.*

<sup>227</sup> *Id.* at 1122.

<sup>228</sup> *See id.* at 1133.

<sup>229</sup> *Id.* at 1125.

<sup>230</sup> *See* Cashin, *supra* note 116, at 1998-2002.

<sup>231</sup> *See* Briffault, *supra* note 4, at 1164.

<sup>232</sup> *See id.* at 1143.

<sup>233</sup> *Id.* at 1116.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 1143.

<sup>236</sup> *See* Orfield & Wallace, *supra* note 59, at 596.

<sup>237</sup> *See id.*

<sup>238</sup> *See id.*

by facilitating citizens' regional consciousness and providing a means to civically address interlocal disputes.<sup>239</sup>

*B. How Regional Governments Present a More Effective Structure for the Economic Health of Ohio's Regions*

Because today's citizen is a regional creature, our current governmental structure isn't adequately addressing citizens' needs.<sup>240</sup> This structure inefficiently wastes resources by increasing costs of governmental services, urban sprawl, and individual expenditures.<sup>241</sup> Regional governments would more effectively address these issues through the lens of regional solutions.<sup>242</sup> Furthermore, regional governments would facilitate the regional consciousness necessary to implement meaningful, long-term regional coordination.<sup>243</sup>

1. Regional Governments Would More Efficiently Streamline Regional Infrastructure and Government

Regional planning can drive down costs by streamlining capital investment, maintenance, and the infrastructure and governmental overlap incidental to urban sprawl.<sup>244</sup> "[T]he marginal cost of new development closer to existing services or facilities is lower. However, because costs currently are evenly distributed among all users by average-cost pricing, those who live further away pay proportionately less. As a result, some users subsidize other users."<sup>245</sup>

Bills for services, like water and sewer services, are assessed on an average cost basis.<sup>246</sup> Even though new development makes providing these services more expensive, politicians don't marginally price these services to reflect the costs because they "don't like to charge voters one rate and others a different one."<sup>247</sup> Thus, the problem is a political one, and a regional government could help eliminate this political dilemma and align costs with services by setting regional policy, like a regional growth boundary.<sup>248</sup>

Regional governments can also improve efficiency by providing visibility of overlapping governmental functions with duplicative services that "hire too many for

<sup>239</sup> *See id.* at 1165.

<sup>240</sup> *See id.* at 1133.

<sup>241</sup> *See id.* at 604.

<sup>242</sup> *See id.*

<sup>243</sup> *See* Briffault, *supra* note 4, at 1137.

<sup>244</sup> *See* *Citistat*, MOVING TO CORN FIELDS (EcoCity Cleveland, Cleveland Heights, OH), 1996, at 55, <http://www.gcbl.org/files/resources/movingtocornfields.pdf>.

<sup>245</sup> Kevin Kasowaski, *Sprawling Development Costs All of Us a Bundle*, MOVING TO CORN FIELDS (EcoCity Cleveland, Cleveland Heights, OH), 1996, at 24, *available at* <http://www.gcbl.org/files/resources/movingtocornfields.pdf>.

<sup>246</sup> Kasowski, *supra* note 110, at 5.

<sup>247</sup> *Id.*

<sup>248</sup> *See* EWING ET AL., *supra* note 71, at 23.

little in return.”<sup>249</sup> This could be done by requiring interlocal negotiations while initiating informational campaigns that inform citizens of governmental overlap and the possible savings that could be gained through integration.<sup>250</sup> Visibility of these inefficiencies and forced negotiation could streamline governmental costs across localities.<sup>251</sup> “Greater Cleveland’s population problem screams out for regional government . . . . The result is a massive waste of tax dollars by the central city and suburbs, a waste that cries out for more shared services between municipalities, if not outright mergers.”<sup>252</sup>

## 2. Regional Governments Would More Effectively Address Regional Land-Use Issues Like Urban Sprawl

Effective regional land-use policies over time can both reduce costs and generate regional economic growth.<sup>253</sup> Some regional land-use issues, like urban sprawl, can only be addressed by regional policies because they are not the result of a single locality’s externalities imposed on the region but the aggregate result of local decisions.<sup>254</sup> “[T]he local government system makes it difficult for localities to take action to control sprawl.”<sup>255</sup> However, as Portland, Oregon has demonstrated, a metropolitan growth boundary created by its regional government can effectively deal with this problem.<sup>256</sup>

Policies that curb urban sprawl will capture more of the metropolitan growth in the existing metropolitan area.<sup>257</sup> This could result in more investment in metropolitan inner cities; a rejuvenated image of the face of the region to attract new businesses, tourists, and residents; and a benefit to the economic health of the entire region.<sup>258</sup> “The central city typically shapes outsiders’ images of the region and

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<sup>249</sup> Bucki, *supra* note 211, at 136.

There are over 1250 local governments in the Chicago area, including six counties and 261 municipalities; nearly 300 local governments in the Pittsburgh area, including more than 100 municipalities; more than 300 governments in Seattle, including three counties and sixty-five cities and towns; and approximately 350 governments, including 168 cities and towns, in metropolitan Baltimore.

Briffault, *supra* note 4, at 1119.

<sup>250</sup> See Frolik, *supra* note 15, at 7.

<sup>251</sup> See *id.*

<sup>252</sup> BRENT LARKIN, *WHAT POPULATION LOSS IS COSTING CLEVELAND—AND WHY IT MATTERS*, NORTHEAST OHIO MEDIA GROUP, JUNE 19, 2014, [HTTP://WWW.CLEVELAND.COM/OPINION/INDEX.SSF/2014/06/WHAT\\_POPULATION\\_LOSS\\_IS\\_COSTIN.HTML](http://www.cleveland.com/opinion/index.ssf/2014/06/what_population_loss_is_costin.html) (INTERNAL QUOTATIONS OMITTED).

<sup>253</sup> See Briffault, *supra* note 4, at 1137.

<sup>254</sup> See *id.* at 1164.

<sup>255</sup> *Id.* at 1136.

<sup>256</sup> See EWING ET AL., *supra* note 71, at 23.

<sup>257</sup> See Briffault, *supra* note 4, at 1139.

<sup>258</sup> See *id.* “Central cities remain focal points for economic production, higher education, health care, and entertainment. Nearly half of suburban households have at least one family

thereby determines the region's capacity to attract firms, high-skilled workers, and tourists and conventioners."<sup>259</sup>

"[A] growing body of research . . . suggests a tie between suburban growth and the economic health of central cities."<sup>260</sup> The high correlation between city and suburban growth in employment, income, and population indicates that the metropolitan area is an economically integrated entity "whose various component local parts tend to rise or fall together."<sup>261</sup> Thus, it makes little sense for a region's components to win at the expense of another.<sup>262</sup>

Former leader of the Cuyahoga County Mayors and Managers Association, Bruce Akers has spent more than a decade trying push a new model of regional cooperation that is premised on two ideas: (1) every community in greater Cleveland will sink or swim together; and (2) Cleveland's fate will dictate everyone else's.<sup>263</sup>

Another policy that would more effectively be addressed by regional governments would be regional agreement to mitigate the use of exclusionary zoning and implement more mixed-use areas.<sup>264</sup> A mixed-use area mixes "different land uses, often placing housing near shops, or offices above storefronts."<sup>265</sup> A defining characteristic of sprawl is the strict segregation of different land-uses.<sup>266</sup> In sprawling regions, housing is typically separated from shopping, offices, civic centers, and schools.<sup>267</sup> This separation creates an imbalance, where workers cannot find housing close to work and exacerbates sprawl by requiring workers to live in further localities.<sup>268</sup>

Mixed-use zoning eliminates this separation and, consequently, curbs regional sprawl.<sup>269</sup> Regional policies that require localities to implement mixed-use zoning would reduce the ability for localities to use exclusionary zoning to grow their tax bases.<sup>270</sup> Reduced exclusionary zoning no longer diverts as much metropolitan burdens to its neighbors, which would not only combat sprawl by providing cheaper housing options in these localities but also reduce the incentive for new homebuyers to seek cheap housing in the metropolitan fringe areas.<sup>271</sup>

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member who works in the central city. Consequently, it is not surprising that suburban housing prices are affected by employment growth in the central city." *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> Orfield & Wallace, *supra* note 59, at 604.

<sup>261</sup> Briffault, *supra* note 4, at 1139.

<sup>262</sup> *See id.*

<sup>263</sup> Frolik, *supra* note 15, at 8.

<sup>264</sup> *See* EWING ET AL., *supra* note 71, at 23.

<sup>265</sup> *Id.* at 10.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *See id.*

<sup>269</sup> *See id.*

<sup>270</sup> *See* Briffault, *supra* note 4, at 1134.

<sup>271</sup> *See id.*

Although less effective,<sup>272</sup> the Twin Cities tax-base-sharing model is another way to combat regional sprawl.<sup>273</sup> “[T]ax-base sharing weakens [governmental] incentive to waste taxpayer dollars by stealing it away from other communities . . . [or] restrict residential development to profitable types of housing, making efficient land-use planning easier.”<sup>274</sup> The Twin cities model shows that by capturing the growth in the tax base, this diminishes the incentive for a locality to engage in exclusionary zoning.<sup>275</sup> By mitigating the incentive for Twin City localities to vie for revenue-generating land uses, their incentives are more aligned “to engage in more thoughtful and beneficial land-use planning.”<sup>276</sup>

Tax-base-sharing also reduces tax disparities within a region and levels the playing field in encouraging reinvestment in regional inner-cities and other fiscally distressed communities.<sup>277</sup> Because tax-base-sharing reduces the incentive for localities to compete in drawing a region’s wealthy through lower tax rates, the Twin cities area manifests less of a tax-rate disparity.<sup>278</sup> “As a result of the sharing program, local tax-base disparities narrowed significantly (by roughly twenty percent).”<sup>279</sup>

### 3. Curbing Urban Sprawl Will Reduce Costs Imposed on Individuals

Urban sprawl imposes quantifiable costs by requiring individuals living in sprawling regions to drive more miles, suffer more traffic accidents, own more cars, pay for more car insurance, and breathe more polluted air.<sup>280</sup> In a 2002 study by *Smart Growth America*, sprawl was found to be a greater predictor than numerous demographic control variables to higher rates of driving and vehicle ownership.<sup>281</sup> “Average household vehicle ownership is an indicator of the degree to which a region’s population is dependent on automobiles for basic transportation . . . in sprawling areas where driving is the only way to get around, more households feel compelled to have a vehicle for each licensed driver.”<sup>282</sup>

Because mass-transit requires that most journeys be concentrated to a limited number of destinations, the dispersed nature of regional sprawl precludes mass

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<sup>272</sup> In a study measuring the sprawl of 83 metropolitan areas by Smart Growth America, the Minneapolis-Saint Paul metropolitan area was 38th most sprawling area. See EWING ET AL., *supra* note 71, at 15.

<sup>273</sup> See Orfield & Wallace, *supra* note 59, at 597.

<sup>274</sup> *Id.* at 601 (internal citations omitted).

<sup>275</sup> See *id.* at 605 (emphasis added).

<sup>276</sup> *Id.* at 592-93.

<sup>277</sup> *Id.* at 593.

<sup>278</sup> See *id.* at 603.

<sup>279</sup> *Id.*

<sup>280</sup> See EWING ET AL., *supra* note 71, at 5.

<sup>281</sup> *Id.* at 5.

<sup>282</sup> *Id.* at 18.

transit.<sup>283</sup> Thus, urban sprawl has a major influence on energy consumption and other individual costs incidental to vehicle-miles traveled.<sup>284</sup>

By reducing sprawl, the number of commuters walking, biking, or taking transit to work increases significantly.<sup>285</sup> The metropolitan areas that are more sprawling have 2.3 percent of workers taking public transportation to work, while less sprawling areas have 5.1 percent of workers taking public transportation.<sup>286</sup> “[R]esearch has been piling up that establishes a link between the spread of sprawl and the rise of obesity in our country.”<sup>287</sup> In an interview with Richard Jackson, MD, a pediatrician and chair of the Environmental and Health Sciences at UCLA, said that New Yorkers, the ultimate walkers, weigh on average six or seven pounds less than suburban Americans.<sup>288</sup> As the distance among where we live, work, shop and socialize increases, more time is spent in the car and less time is spent exercising.<sup>289</sup>

#### 4. Atlanta’s Sprawl

Atlanta is consistently included as one of the most sprawling metropolitan areas in the country.<sup>290</sup> In ranking 83 metropolitan areas by *Smart Growth America*, Atlanta was ranked 4th most sprawling.<sup>291</sup> “The Atlanta metro area is hyper-expanded to a space larger than the entirety of Massachusetts.”<sup>292</sup> Between 1990 and 2006, Atlanta’s metropolitan area expanded 47 percent and today is the least densely populated metropolitan area in the country.<sup>293</sup>

Atlanta is also consistently ranked as one of the worst commuter cities in the country.<sup>294</sup> This was evident on January 28, 2014,<sup>295</sup> when Atlanta suffered from a snowstorm that stranded thousands on its roads and required authorities to help motorists in rescue efforts.<sup>296</sup> “The proximate cause of the . . . traffic catastrophe . . .

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<sup>283</sup> Briffault, *supra* note 4, at 1135.

<sup>284</sup> *Id.* at 22.

<sup>285</sup> *Id.* at 17.

<sup>286</sup> *Id.* at 19.

<sup>287</sup> LEIGH GALLAGHER, *THE END OF THE SUBURBS* 86 (2013).

<sup>288</sup> *Id.* at 87.

<sup>289</sup> *Id.*

<sup>290</sup> See EWING ET AL., *supra* note 71, at 8.

<sup>291</sup> *Id.* at 15.

<sup>292</sup> Nicci Mende, *Death by Urban Sprawl*, LIBERTY VOICE BLOG (Jan. 31, 2014), <http://guardianlv.com/2014/01/death-by-urban-sprawl-video/>.

<sup>293</sup> *Id.*

<sup>294</sup> Francesca Levy, *Best and Worst Cities for Commuters*, FORBES.COM (Feb. 1, 2014), <http://www.forbes.com/2010/02/12/best-worst-commutes-lifestyle-mass-transit.html>.

<sup>295</sup> See Matthew Yglesias, *Atlanta is a Regional Transportation Planning Disaster*, MONEYBOX (Jan. 29, 2014), [http://www.slate.com/blogs/moneybox/2014/01/29/atlanta\\_traffic\\_nightmare\\_terrible\\_regional\\_planning.html](http://www.slate.com/blogs/moneybox/2014/01/29/atlanta_traffic_nightmare_terrible_regional_planning.html).

<sup>296</sup> Noah Rayman, *Atlanta Area Clearing 2,000 Cars Abandoned in Snow Snarl*, TIME.COM (Jan. 30, 2014), <http://nation.time.com/2014/01/30/atlanta-weather-traffic-school-closings-snow-abandoned-cars/>.

is a normally warm area grappling with unusual snowfall. But the larger story here is that . . . [Atlanta is] really a mess as far as a regional transportation planning viewpoint.<sup>297</sup>

The Atlanta metropolitan area has 16,000 miles of roads, the second-highest miles per capita of metropolitan areas in the country.<sup>298</sup> In 2013, the *American Lung Association* ranked Atlanta 18 out of 277 metropolitan areas for annual particle pollution.<sup>299</sup> The region's growth has depleted water resources in the area, raising concerns about water quantity and quality.<sup>300</sup> Half of all Georgians drink water from the Chattahoochee River, and the river's water quality is being threatened by rampant suburban growth.<sup>301</sup>

In response, the Georgia General Assembly established The Georgia Regional Transportation Authority in 1999 to oversee transportation and land use and promote smart growth measures to bring businesses closer to homes.<sup>302</sup> These measures have achieved some success, as Atlanta has reversed its long population decline<sup>303</sup> and grew about 6 percent over the past couple of years.<sup>304</sup>

But the Atlanta area still has a ways to go to realize a regional consciousness.<sup>305</sup> In 2013, the Atlanta Braves announced that they were moving twelve miles northwest of Atlanta to Cobb County.<sup>306</sup> "When we talk about sharing the cost of our regional infrastructure, that does not mean duplicating an existing stadium . . . That is not regionalism. That is one county government looking out for its own self-interest at the expense of another government . . ."<sup>307</sup>

<sup>297</sup> Yglesias, *supra* note 295.

<sup>298</sup> James E. Kundell & Margaret E. Myszewski, *Urban Sprawl*, NEW GEORGIA ENCYCLOPEDIA (June 5, 2014), <http://www.georgiaencyclopedia.org/articles/geography-environment/urban-sprawl>.

<sup>299</sup> *State of the Air 2013*, AMERICAN LUNG ASSOCIATION, <http://www.lung.org/assets/documents/publications/state-of-the-air/state-of-the-air-report-2013.pdf> (last visited Feb. 1, 2014).

<sup>300</sup> Kundell & Myszewski, *supra* note 298.

<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> Kim Severson, *With Braves Set to Move, a Broader Look at Atlanta*, N.Y. TIMES, Nov. 17, 2013, at A16, available at <http://www.nytimes.com/2013/11/17/us/with-braves-set-to-move-a-broader-look-at-atlanta.html?pagewanted=1>.

<sup>305</sup> *See id.*

<sup>306</sup> *Id.*

<sup>307</sup> Maria Saporta, *A New Braves Stadium in Cobb County Shows Metro Atlanta Still Doesn't Understand the Concept of Regionalism*, SAPORTA REPORT (Nov. 25, 2013, 1:51 PM), <http://saportareport.com/a-new-braves-stadium-in-cobb-shows-metro-atlanta-still-doesnt-understand-regionalism/>.

#### 5. Regional Governments Would Facilitate the Regional Consciousness Necessary for Meaningful, Long-Term Regional Coordination

Given that there are no metropolitan areas today governed by a single all-encompassing general-purpose government,<sup>308</sup> the political challenges are immense. In response to the Northeast Ohio Sustainable Community's Coalition's (NEOSCC) initiative to present a regional plan for Northeast Ohio, the Wayne County Tea Party wrote on its website that the "NEOCC is pushing this baloney about looking into the future and putting our people into high-density areas to live using bicycles and mass transportation in the future."<sup>309</sup>

But these challenges are slowly being eroded: walkable neighborhoods are gaining momentum in the real estate market with more baby boomers preferring the greater convenience of in-town living;<sup>310</sup> public officials are looking to regionalism to shore up the fiscal health of their municipalities;<sup>311</sup> and metropolitan areas are looking to regional cooperation for development.<sup>312</sup>

There is also a generational shift, as demonstrated by a 2011 survey by real estate firm Robert Charles Lesser & Co., where 77 percent of millennials said they planned to live in the "urban core."<sup>313</sup> CNN reported on January 2, 2015 that public transportation use across the country has risen twelve of the past fifteen quarters.<sup>314</sup> "Since 2007, Americans have been driving less . . . . The public transportation industry says commuters could gain an average annual savings of \$9,635 by taking public transit instead of driving."<sup>315</sup>

Higher fuel costs are also changing our behavior.<sup>316</sup> The building of the suburbs was built on the assumption of cheap oil.<sup>317</sup> However, from 2000 to 2008, the inflation adjusted price of a barrel of crude oil rose by 166 percent.<sup>318</sup> "It's no coincidence that where gas costs more-in Europe, for example, there is less

<sup>308</sup> Briffault, *supra* note 4, at 1117.

<sup>309</sup> Jim Ellert, *Report on Citizens' Sovereignty Versus Regionalism Forum*, WAYNE COUNTY TEA PARTY (Sept. 21, 2013), <http://www.waynecountyteaparty.org/?p=571>.

<sup>310</sup> See EWING ET AL., *supra* note 71, at 22.

<sup>311</sup> See Orfield & Wallace, *supra* note 59, at 597.

<sup>312</sup> *Id.* at 592.

<sup>313</sup> Shyam Kannan, *Suburbia, Soccer Moms, SUVs and Smart Growth*, ROBERT CHARLES LESSER & CO., PUBLIC STRATEGIES GROUP, Feb. 2, 2011, at 11, available at [http://www.rclco.com/pub/doc/presentation-2012-02-02-Suburbia\\_Soccer\\_Mom\\_s\\_SUVs\\_and\\_Smart\\_Growth.pdf](http://www.rclco.com/pub/doc/presentation-2012-02-02-Suburbia_Soccer_Mom_s_SUVs_and_Smart_Growth.pdf).

<sup>314</sup> Thom Patterson, *Five Signs America Is Falling in Love with Public Transit*, CNN (Jan. 2, 2015, 11:27 AM), [http://www.cnn.com/2014/12/17/travel/public-transportation-ridership-increasing/index.html?hpt=hp\\_t4](http://www.cnn.com/2014/12/17/travel/public-transportation-ridership-increasing/index.html?hpt=hp_t4).

<sup>315</sup> *Id.*

<sup>316</sup> See GALLAGHER, *supra* note 287, at 103.

<sup>317</sup> *Id.* at 99.

<sup>318</sup> See Tim McMahon, *Historical Crude Oil Prices*, INFLATIONDATA.COM (Mar. 6, 2014), [http://inflationdata.com/Inflation/Inflation\\_Rate/Historical\\_Oil\\_Prices\\_Table.asp](http://inflationdata.com/Inflation/Inflation_Rate/Historical_Oil_Prices_Table.asp).



sprawl.”<sup>319</sup> Rising fuel prices are trumping the notion that housing is cheaper the further you travel from the metropolitan center.<sup>320</sup>

Corporate headquarters are beginning to relocate back to cities from their massive suburban office parks.<sup>321</sup> In Chicago, United Airlines, Hillshire Brands, and Motorola Mobility each moved their headquarters from the suburbs to the city within the last ten years.<sup>322</sup> In Detroit, Quicken Loans relocated from suburban Livonia to the city in 2011. In Philadelphia, venture capital firm First Round Capital moved from the suburbs to the city in 2012.<sup>323</sup> In San Francisco, some of the newest start-ups are shirking Silicon Valley for the city, like Twitter, Zynga, Airbnb, Dropbox, Uber, Pinterest, and Yelp.<sup>324</sup> “The list goes on and on as companies competing for younger workers realize they need to move to where the talent wants to live.”<sup>325</sup>

According to a report published on February 24, 2014 by *City Observatory*, a think tank, city-center employment has grown in recent years, leaving less people employed in the surrounding suburbs.<sup>326</sup> The report found that employment within a three-mile radius of central business districts climbed half a percent between 2007 and 2011, while employment in the surrounding metropolitan areas declined one-tenth of a percent.<sup>327</sup> “People increasingly desire to live, work, shop and play in the same place, and to commute shorter distances—particularly the young and educated, who are the most coveted employees.”<sup>328</sup> Also, employers are increasingly realizing the economic benefit of working in the urban core: “For a certain sector of knowledge jobs, ideas bloom from spontaneous, face-to-face interaction in coffee shops or elevators.”<sup>329</sup>

But to implement meaningful, long-term regional coordination, a regional consciousness is critical.<sup>330</sup> Regional consciousness is critical to create regions that work together, rather than against one another.<sup>331</sup> David Beach said that one way to muster political support for smart growth reform in Ohio would be to appeal to

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<sup>319</sup> GALLAGHER, *supra* note 287, at 104.

<sup>320</sup> *Id.* at 100.

<sup>321</sup> *See id.* at 173.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> Claire Cain Miller, *More New Jobs are in City Centers, While Employment Shrinks in the Suburbs*, N.Y. TIMES, Feb. 24, 2015, A3, available at [http://www.nytimes.com/2015/02/24/upshot/more-new-jobs-are-in-city-centers-while-employment-growth-shrinks-in-the-suburbs.html?hp&action=click&pgtype=Homepage&module=mini-moth&region=top-stories-below&WT.nav=top-stories-below&\\_r=0&abt=0002&abg=0](http://www.nytimes.com/2015/02/24/upshot/more-new-jobs-are-in-city-centers-while-employment-growth-shrinks-in-the-suburbs.html?hp&action=click&pgtype=Homepage&module=mini-moth&region=top-stories-below&WT.nav=top-stories-below&_r=0&abt=0002&abg=0).

<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> *See* Briffault, *supra* note 4, at 1137.

<sup>331</sup> *See id.*

citizens' local and regional sensibilities to instill a regional consciousness.<sup>332</sup> A regional consciousness defeats this us-versus-them mentality.<sup>333</sup> "Regional land[-]use planning and regional redistribution are unlikely to occur without some clear sense among area residents of the region as a distinct community with shared interests and a common fate."<sup>334</sup> If a region more equitably distributes metropolitan growth and costs, this could mitigate racial, social, and political tensions, which both reduces the costs of these social problems and reinforces a positive image of the region.<sup>335</sup>

For instance, instead of concentrating a region's poor into its inner cities, regional policies could require affordable housing across localities to make a region more economically homogenous. Economic segregation is correlated with higher crime and unemployment rates.<sup>336</sup> "[A]s the disparity in per capita income between the central city and its suburbs rises, the overall economic health of the metropolitan region declines . . . . Areas with near parity in per capita income or in which the city had higher per capita income showed even greater employment growth."<sup>337</sup> Lower crime rates would reduce the costs of hiring law enforcement and facilitate economic growth by creating a safer environment for business.<sup>338</sup>

When the Twin Cities created the first metropolitan government in the country with the authority over regional tax-base-sharing in 1975,<sup>339</sup> criticism at the time labeled the initiative as economic socialism<sup>340</sup> and central-city versus suburban warfare.<sup>341</sup> But "[t]he Act's ultimate success required a unique coalition of central-city and suburban legislators working together to ensure the future economic vitality of the entire state."<sup>342</sup> Faced with rising public discontent over soaring property taxes, disparities in education between property-tax-rich and property-tax-poor districts, and the precarious conditions of municipality fiscal health within the region, the Act ultimately succeeded.<sup>343</sup>

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<sup>332</sup> See Beach, *supra* note 74, at 9-10. "If there is no strong 'Ohio' identity, what do Ohioans identify with? This will be an important question for a statewide movement for smart growth to answer . . . . People have roots in Ohio, but the roots are probably local. So (sic) organizing strategies for smart growth may have to appeal to local or regional sensibilities." *Id.* at 10.

<sup>333</sup> See *id.* at 1165; see also GERALD FRUG, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION 217 (Cornell Univ. Press 2008) (arguing that a regional consciousness can also reduce governmental costs because "the more city officials understand the impact of their decisions on each other, the less the regional legislature would have to do.").

<sup>334</sup> Briffault, *supra* note 4, at 1169.

<sup>335</sup> See *id.* at 1137-38.

<sup>336</sup> See *id.* at 1137.

<sup>337</sup> *Id.* at 1137-38.

<sup>338</sup> See Orfield & Wallace, *supra* note 59, at 604.

<sup>339</sup> *Id.* at 591-92.

<sup>340</sup> *Id.* at 596.

<sup>341</sup> *Id.* at 593.

<sup>342</sup> *Id.*

<sup>343</sup> See *id.* at 594.

Because U.S. Census Bureau estimates show that “four northern Ohio counties ranked among the top 10 nationally for losing population” from 2011-2012,<sup>344</sup> Ohio may be ripe for political change. Even affluent communities today are beginning to realize that they can’t stand alone in providing governmental services.<sup>345</sup> The Mayor of Hudson, Ohio, an affluent Cleveland and Akron suburb,<sup>346</sup> has called for regional tax-sharing, even though he acknowledges the political obstacles of such a measure.<sup>347</sup> “But he thinks that Northeast Ohio has no choice but to change.” When regions are becoming increasingly insolvent and disparate, “there are two viable options: either allow the disparity to deepen or work to find solutions that can benefit all.”<sup>348</sup>

#### IV. CONCLUSION

Although home-rule principles may have been appropriate in 1912, when localities were economically autonomous entities with available land to continue to grow, today “local fiscal health depends primarily on the health of the regional economy and on social conditions within the locality, which are largely beyond the power of localities, to control.”<sup>349</sup> Fundamentally, the problem is informational, where citizens are blinded from regional policies that significantly affect their lives.

The Ohio General Assembly should address this information problem by creating regional governments. Regional governments would not only provide citizens a vehicle to participate in policies that affect them but would also reduce costs and promote regional growth. Regional governments could reduce costs by requiring interlocal negotiations and shedding light on these inefficiencies. Effective regional policies could curb aggregate externalities, like urban sprawl, and promote investment in the existing metropolitan area.

However, regional governments will also be beneficial to Ohio’s regions by driving long-term regional coordination through developing a regional consciousness among its citizenry.<sup>350</sup> Through regional government, Ohio can more efficiently expend its resources and have greater control in investing in the economic engine of its regions by investing in regional inner cities.

This is particularly important today, when American metropolitan areas compete globally.<sup>351</sup> In a 2013 interview Blair Rubel, Director of the *Wilson Center’s Global Sustainability and Resilience Center*, said,

If you take a look at places that are doing relatively better, there are lot of experiments that are taking place in Latin America—a lot of improvement in Latin American cities. Brazilian cities are probably cutting edge in

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<sup>344</sup> Exner, *supra* note 43.

<sup>345</sup> See Frolik, *supra* note 15, at 8.

<sup>346</sup> Hudson, Ohio, CITY-DATA.COM, <http://www.city-data.com/city/Hudson-Ohio.html> (last visited Feb. 4, 2014).

<sup>347</sup> Frolik, *supra* note 15, at 8.

<sup>348</sup> Orfield & Wallace, *supra* note 59, at 611-12.

<sup>349</sup> Briffault, *supra* note 4, at 1140.

<sup>350</sup> See Frug, *supra* note 11, at 1827.

<sup>351</sup> See *Dialogue at the Wilson Center: Cities Without Suburbs*, *supra* note 90.

terms of urban management . . . . Unfortunately, we in the United States are so taken with our exceptional status, that we often don't look at experiments that are taking place outside the United States.<sup>352</sup>

The greater efficiency and effective investment that regional government could provide Ohio's regions can make Ohio's metropolitan areas more globally competitive and return economic benefits to Ohio's regions and the state as a whole.

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<sup>352</sup> *See id.*

