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ARTICLE

A FUTURE FOR THE MET COUNCIL

BRENDAN BALLOU¹

INTRODUCTION

This is an article about one of Minnesota's great innovations, the Metropolitan, or "Met," Council. The State Legislature created the Council in 1967 to handle regional land use policy. Over five decades, it has evolved to manage the Twin Cities' public transit, sewage, and affordable housing programs. In doing so, the Council has helped the region avoid many of the problems that similarly situated areas have faced, from urban sprawl and tax competition to concentrated poverty and environmental distress.

Yet the Met Council can do more. Segregation, stagnation, and sprawl are all challenges that the Council has the broad statutory authority to help address, should it so choose. An obstacle stands in the way of all this, however. Since its creation, the Met Council has been an unelected body. As such, it faces persistent political opposition from those who believe the Council fails to adequately consider their concerns. Politicians have proposed many solutions to this problem, none of which have been adopted.

This Article accomplishes three things. First, it briefly describes the history of the Met Council and the path by which it came to hold so much responsibility. Second, it outlines an agenda for the Council to consider—one that it has the statutory power to take on if it so chooses. And finally, it proposes a novel solution that resolves the Council's current political challenge while addressing critics' concerns and remaining legislatively feasible.

Focused as it is on such a unique institution, this Article is written for lawmakers and activists in Minnesota who are considering the Met Council's future. But it will also be of use to academics trying to understand the political forces that shape local government, and to citizens throughout the country looking for ways that they, too, can solve regional problems. The

1. J.D. Candidate, Stanford Law School. B.A., Columbia University. I am deeply indebted to Professor Myron Orfield of the University of Minnesota for helping me understand this issue. My debt should be clear in the numerous citations to his work throughout this Article. Thanks also to Professor Michelle Anderson, who guided this article to completion.

Met Council is a unique and uniquely Minnesotan innovation. This Article outlines an agenda for that organization and a path by which to achieve it.

I. THE MET COUNCIL'S ORIGINS

Across America, metropolitan areas are struggling to overcome challenges created by fractured governance. In Chicago, a “continuous battle between city and suburb” has created an overlapping transportation system that costs the city some \$6 billion per year.² In Alabama, where Mobile and Baldwin counties each run independent sewage systems,³ unexpected rainfall has resulted in over a million gallons of waste spilling into the Gulf of Mexico.⁴ In Ferguson, Missouri, concentrated poverty in a few municipalities has resulted in a police force that is 94% white patrolling a population that is 67% black.⁵

These problems are, in part, the result of fractured governance: single metropolitan regions managed by a bundle of local entities, few of which coordinate with one another, many of which compete. These are problems that are both tragic and common. But they are problems that Minnesota has largely avoided. It has done so at least in part because of the Metropolitan Council—an organization that is approaching fifty years of existence, that has grown to manage a range of regional issues, and that has done so largely without pitting local governments against one another.

The legislature established the Met Council in 1967, as Minnesota transitioned from a predominantly rural to a predominantly urban population.⁶ It was, in many ways, a golden era for the state. Politicians like Hubert Humphrey, Eugene McCarthy, and Walter Mondale held (or soon would hold) national influence. Companies such as Control Data, Medtronic, and 3M were leading the nation in computing, medical manufacturing, and consumer and industrial goods.⁷ And institutions like the North

2. Richard Wronski, *Chicago Transit System Dysfunctional, 'Depressing': International Study*, CHICAGO TRIBUNE (Sept. 15, 2014), <http://www.chicagotribune.com/news/ct-transit-study-met-20140914-story.html#page=1>.

3. MOBILE AREA WATER AND SEWER SYSTEM, <http://www.mawss.com> (last visited Aug. 1, 2015); BALDWIN COUNTY SEWER SERVICE, <http://www.baldwincountysewer.com> (last visited Aug. 1, 2015).

4. *Sewage Leak Prompts Some Beaches To Close*, WSFA.COM, <http://www.wsfa.com/story/1347598/sewage-leak-prompts-some-beaches-to-close> (last visited Aug. 3, 2015).

5. Emily Badger, *When Police Departments Don't Look Like the Cities They're Meant to Protect*, WASHINGTON POST (Aug. 12, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/08/12/when-police-departments-dont-look-like-the-cities-theyre-meant-to-protect/>; Elizabeth Kneebone, *Ferguson, Mo. Emblematic of Growing Suburban Poverty*, BROOKINGS INSTITUTION (Aug. 15, 2014), <http://www.brookings.edu/blogs/the-avenue/posts/2014/08/15-ferguson-suburban-poverty>.

6. See Susan Haigh, *The Metropolitan Council*, 40 WM. MITCHELL L. REV. 160, 163 (2013).

7. See *Company: Control Data Corporation (CDC)*, COMPUTER HIST. MUSEUM, <http://www.computerhistory.org/brochures/companies.php?alpha=Ac&company=com-42b9d5af185f1> (last visited Aug. 10, 2015); *A Legacy of Improving Lives*, MEDTRONIC, <http://www.medtronic.com/about-us/company-profile/medtronic-history/timeline/index.htm> (last visited Aug. 10,

Stars, the Vikings, and the Guthrie Theater were all playing to the public for the very first time. It is no wonder, then, that *Time* magazine would soon feature Governor Wendell Anderson on its cover, holding a Northern Pike and declaring, “The Good Life in Minnesota.”⁸

There were, of course, problems. The region’s growing suburbs relied largely on septic systems that overran in the rain. The cities’ privately owned buses were deteriorating. The rapid growth of the metro area threatened the state’s natural resources, and the entire state faced a growing problem of economic inequality.⁹

In response, Republican Governor Harold LeVander and the nonpartisan legislature, at the urging of civic organizations like the Citizens League, the League of Minnesota Municipalities, and the League of Women Voters, established the “Metropolitan Council.”¹⁰ In announcing its formation, Governor LeVander spoke broadly of the new institution’s powers, saying that it:

. . . [w]as conceived with the idea that we will be faced with more and more problems that will pay no heed to the boundary lines which mark the end of one community in this metropolitan area and the beginning of another . . . This Council was created to do a job which has proved too big for any single community.¹¹

The Council Governor LeVander established was unique in two senses. First, there were few regional governments elsewhere at the time—and even today very few exist, for that matter. Ontario had established a governing body for the greater Toronto area about a decade before, with broad responsibility over sewage, transit, health services, and construction.¹² But there was no corollary anywhere in the United States. The only other regional government with comparable authority, the Portland Metro, would not be created for another decade.¹³

Second, the Council’s members were appointed, not elected. This was not the original plan. The Citizens League, which laid much of the political

2015); *History*, 3M, http://solutions.3m.com/wps/portal/3M/en_US/3M-Company/Information/Resources/History/ (last visited Aug. 10, 2015).

8. Photo of Governor Wendell Anderson, *TIME MAG.*, Aug. 13, 1973, <http://content.time.com/time/covers/0,16641,19730813,00.html>.

9. Haigh, *supra* note 6, at 164.

10. ROBERT H. FREILICH ET. AL., *FROM SPRAWL TO SUSTAINABILITY* 125 (2010) (citing *MINN. STAT.* ch. 473 (2014)); Haigh, *supra* note 6, at 163; Act of May 25, 1967, ch. 896, 1967 *Minn. Laws* 895 (creating the Metropolitan Council).

11. Haigh, *supra* note 6, at 164.

12. James B. Milner, *The Metropolitan Toronto Plan*, 105 *U. PA. L. REV.* 570, 570–87 (1957); Thomas J. Plunkett, *Metropolitan Government in Canada*, 14 *U. TORONTO L.J.* 29, 36–37 (1961).

13. Carl Abbott & Margery Post Abbott, *A History of Metro*, *METRO* (May 1, 1991), http://www.oregonmetro.gov/sites/default/files/abbott-a_history_of_metro_may_1991.pdf.

and intellectual groundwork for the Council, had advocated for elections.¹⁴ It hoped that the Council would absorb the powers of many single-purpose districts like the Transit Commission and the Sanitary District.¹⁵ In exchange, the members of the new multi-purpose Council would be elected, increasing accountability and (hopefully) improving policymaking coordination.¹⁶ The bill that passed the legislature, however, was a half-measure: most of the independent commissions were kept intact, with the Council having some oversight over their operation. With this narrower scope, members were to be appointed, not elected.

There is no clear explanation for why the legislature adopted this measure. Part of it may have been that the Republican governor and conservative house and senate leadership hoped to grab some power away from the largely Democratic voters of the Twin Cities.¹⁷ Part of it may have been that the independent single-issue entities like the Airport and Transit Commissions were threatened by the prospects of an elected body; after all, it was the original ambition that the Council would replace these boards.¹⁸ And part of it may have been that legislators feared that elected Council members would work to solve their own parochial concerns over truly regional challenges. As one former Council chair put it, this insulation from direct election was the organization's primary advantage.¹⁹

In its original iteration, the Met Council was responsible for creating a "comprehensive development guide" for the area.²⁰ The authorizing statute stated that such a guide should broadly address "physical, social, or economic needs" of the region, and that its scope could include (but explicitly was not limited to) parks, airports, highways, public transit, hospitals, libraries, schools, and other buildings.²¹ To give this guide some force, the legislature gave the Council additional power to review the development plans of local governments and other regional organizations.²² It also gave the Council something of a bully pulpit by authorizing it to conduct research on topics of regional concern.²³

14. CITIZENS LEAGUE, A METROPOLITAN COUNCIL FOR THE TWIN CITIES AREA 38 (Feb. 6, 1967), <http://citizensleague.org/wp-content/uploads/2013/05/205.Report.A-Metropolitan-Council-for-the-Twin-Cities.pdf>.

15. *Id.* at 21–22, 26–27.

16. *Id.* at 1.

17. Both the Senate Majority Leader and Speaker of the House were Republicans, though the legislature was nonpartisan at the time. Meanwhile the mayors of both St. Paul and Minneapolis were Democrats.

18. Memorandum from Greer Lockhart, Chairman, Legislation Action Comm. of Citizens League, to Citizens League Bd. of Dirs. (Nov. 1, 1967), <http://citizensleague.org/wp-content/uploads/2013/05/210.Statement.Creation-of-Additional-Special-Districts-in-the-Metro-Area.pdf>.

19. Telephone interview with Al Hofstede, former Chair of the Metropolitan Council (Nov. 11, 2014).

20. Minn. Stat. § 473B.06 subd. 5 (1967).

21. *Id.*

22. *Id.* § 473B.06 subd. 6–7.

23. *Id.* § 473B.06 subd. 9.

Operationally, the Met Council started small, though over time it grew to absorb competing bureaucracies and take on new authorities. When first created, the Council had only the staff and property of a smaller regional planning office established a decade before.²⁴ As mentioned, its authority was largely limited to reviewing—though not necessarily approving—municipalities’ development plans. Between 1970 and 1994, however, the Council grew significantly. In 1970, the Metropolitan Transit Commission, over which the Council had some planning control, acquired the region’s previously private busing system.²⁵ Then, in 1974, the Council gained new authority for planning regional housing.²⁶ Finally, in 1976, the legislature gave the Council power to approve and disapprove—not just comment on—municipalities’ long-term development plans.²⁷ The biggest leap for the Council came in 1994, when the legislature absorbed into it the semi-independent regional transit and sewage bodies.²⁸ At that point, the Met Council had evolved from a small planning body into an organization with enormous operational responsibility, not just for considering but also for executing some of the region’s most critical services.

Viewed from a national perspective, the Met Council appears extraordinary; after all, it is one of only two regional governing bodies in the country. But the legislature’s approach with the Council was consistent with Minnesota’s general strategy of tackling problems regionally. Such a strategy was demonstrated by the growth of regional transit, sewage, and park systems, by the creation of the Metropolitan Regional Arts Council²⁹ and the Metropolitan Economic Development Association,³⁰ and by the so-called “Minnesota Miracle” deal to share tax revenues among metropolitan municipalities.³¹

The result has been that Minnesota has avoided many of the problems faced by metropolitan areas without regional governance. It is important to note that, without the Council, the Twin Cities are highly fragmented politically. There are 172 cities, 97 townships, and 76 school districts—well

24. *Id.* § 473B.05.

25. *A Bold Experiment: Met Council at 40* (TPT television broadcast June 10, 2007), available at http://www.mnvideovault.org/mvvPlayer/customPlaylist2.php?id=17410&select_index=1&popup=yes#0; <http://www2.mnhs.org/library/findaids/00207.xml>.

26. Haigh, *supra* note 6, at 174–75.

27. *Id.* at 168.

28. *See* Metropolitan Reorganization Act of 1994, 1994 Minn. Laws 1709.

29. METROPOLITAN REGIONAL ARTS COUNCIL, <http://www.mrac.org> (last visited Aug. 2, 2015).

30. METROPOLITAN ECONOMIC DEVELOPMENT ASSOCIATION, <http://meda.net> (last visited Aug. 2, 2015).

31. *See* 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, 591–612 (2007).

above average for a region of similar size.³² In general, such fragmentation makes it difficult to coordinate transportation, address sewage programs, and contain urban sprawl. Such fragmentation encourages “race to the bottom” tax competitions between municipalities and discourages economic growth. And such fragmentation increases the chance of concentrated poverty and segregation.³³

Yet, in part because of the Council, the Twin Cities have avoided many of these problems. Minnesota has had less sprawl than would be expected, given its level of fragmentation.³⁴ It has had better economic performance and higher job growth.³⁵ And it has experienced greater economic equality than would be predicted, given its fragmentation.³⁶ These results are due, at least in part, to a Council that has helped the region coordinate on crosscutting issues.

Today the Met Council’s powers are considerable: it manages the region’s transit, wastewater, and affordable housing.³⁷ It has a budget of \$890 million.³⁸ It operates a nationally recognized sewage system.³⁹ And it has made enormous investments in public transit, most recently with a light rail line connecting the airport to the Mall of America and the city centers of Minneapolis and St. Paul. But as the next section describes, there is more the Council can do.

II. THE MET COUNCIL’S POLICY OPPORTUNITIES

The Met Council’s current authorizing legislation grants it enormous powers. It can conduct investigations,⁴⁰ issue levies⁴¹ and debt,⁴² and acquire property.⁴³ It must produce a comprehensive development guide for

32. Myron Orfield, Thomas F. Luce, Jr. & Eric Myott, *Local Governance, Finance, and Growth, in REGION: PLANNING THE FUTURE OF THE TWIN CITIES 2* (2010).

33. MYRON ORFIELD & BARIS GUMUS-DAWES, MPO REFORM: A NATIONAL AGENDA FOR REFORMING METROPOLITAN GOVERNANCE 1 (Sept. 2009), https://www.law.umn.edu/uploads/f2/fe/f2fe92e906f31dc514d1439e254a78e2/6_MPO_Reform_A_National_Agenda.pdf. In an enormously influential essay, however, Professor Charles Tiebout argued that a multiplicity of local governments could actually help address the efficient provision of public goods. For a review of Professor Tiebout’s work, as well as some of the criticisms of his model with regards to segregation and sprawl, see Michael Howell-Moroney, *The Tiebout Hypothesis 50 Years Later: Lessons and Lingering Challenges for Metropolitan Governance in the 21st Century*, 68 PUB. ADMIN. REV. 97–109 (2008).

34. Orfield, Luce, Jr. & Myott, *supra* note 32, at 23.

35. *Id.* at 24, 49.

36. *Id.* at 39.

37. Haigh, *supra* note 6, at 165.

38. METROPOLITAN COUNCIL, 2014 UNIFIED BUDGET 7 (2013), <http://www.metrocouncil.org/METC/files/1c/1c4c5c42-0ecf-4dad-b42c-3cc2780abb3b.pdf>.

39. *MCES Awards Facts*, METROPOLITAN COUNCIL, (last visited Aug. 10, 2015) <http://www.metrocouncil.org/About-Us/Facts/Wastewater-WaterF/FACTS-MCES-Awards.aspx>.

40. Minn. Stat. § 473.129 subd. 9 (2014).

41. *Id.* § 473.123 subd. 2 (2014).

42. *Id.* § 473.132.

43. *Id.* § 473.129 subd. 7.

the region,⁴⁴ and it can invalidate the plans of other agencies⁴⁵ and municipalities⁴⁶ that conflict with its own. The Council can review applications for state and federal aid,⁴⁷ as well as all proposed matters of regional significance taken on by public or even private organizations.⁴⁸ The Council can conduct studies on consolidating municipalities.⁴⁹ If none of these enumerated authorities are sufficient, the Council's authorizing statute has a catch-all provision that grants it "all powers which may be necessary or convenient to enable it to perform and carry out the duties and responsibilities now existing or which may hereafter be imposed upon it by law."⁵⁰

Thus far, the Council has focused its powers on addressing three broad issues: housing, transportation, and sewage. Yet, as the above discussion should make clear, the Council possesses substantial authority that could be used to tackle a whole range of regional challenges. The following sections present three examples: segregation, stagnation, and sprawl. These are by no means the only crosscutting problems the Twin Cities will face, but they are representative of the range of issues that will increasingly occupy policymakers, and they are issues that the Council can help address.

A. Segregation

When the Met Council was created, less than 2% of Minnesotans were ethnic minorities.⁵¹ Today, nearly 19% are.⁵² As the state's South Asian, East African, and Hispanic populations continue to grow, the government's challenge will be to ensure that these groups are not segregated into low-quality housing and poor-performing schools.

Several factors are pushing Minnesota in the wrong direction, however. Voluntary school integration rules are encouraging predominantly white families to self-segregate into high-performing districts.⁵³ Discrimi-

44. *Id.* § 473.145.

45. *Id.* § 473.165.

46. Minn. Stat. § 473.175 (2014).

47. *Id.* § 473.171.

48. *Id.* § 473.173.

49. *Id.* § 473.129 subd. 5.

50. *Id.* § 473.129 subd. 1.

51. *Race*, MINNESOTA COMPASS, <http://www.mncompass.org/demographics/race#1-5105-g> (last visited Aug. 10, 2015).

52. *Id.*

53. See Margaret C. Hobday et. al., *A Missed Opportunity: Minnesota's Failed Experiment with Choice-based Integration*, 35 WM. MITCHELL L. REV. 936, 950 n.96 (2009) ("The process of unstable school integration and resegregation occurred as follows: Schools start to resegregate at about the same time that they begin to look integrated, when the school has a student-of-color population of around 31–36%. When the student-of-color population reaches this threshold, white parents, steered away by realtor or personal perceptions that integrated schools are inferior, stop moving to the school's attendance zone. Conversely, families of color are steered into integrated schools and neighborhoods. This process leads to neighborhood segregation, which usually trails school segregation." (internal citations omitted)).

natory mortgage denials, still common in the state,⁵⁴ are likely making it more difficult for minority families to join the middle class. And the Met Council's understandable drive to place affordable housing near public transit may be inadvertently increasing divisions along race and income.⁵⁵

The Council has taken some positive steps on segregation. Its recent Department of Housing and Urban Development-funded report on the subject shows that it is an increasing priority for the organization.⁵⁶ Yet so far the Council has viewed segregation through the lens of new housing and transit construction.⁵⁷ Given its broad authorities, there is more it can do. The Council could start investigating discriminatory lending practices.⁵⁸ It could become more active in strategically placing new schools to increase diversity.⁵⁹ And it could better enforce the fair housing goals it has already set, rather than merely resetting them when outer ring suburbs slip.⁶⁰ None of these tactics alone will solve the issue of segregation in the region, but they point to ways the Council, consistent with its existing statutory authorities, could be more active on the issue.

B. Stagnation

Minnesota's economy is outpacing the country. In fact, the Twin Cities' unemployment rate is currently the lowest in the nation.⁶¹ Yet there are worrisome indicators for the future. Minnesota's population is aging, which will slow economic growth⁶² and increase demand for local government services.⁶³ The industries that are currently growing the fastest—including

54. INST. ON METRO. OPPORTUNITY, TWIN CITIES IN CRISIS: UNEQUAL TREATMENT OF COMMUNITIES OF COLOR IN MORTGAGE LENDING 1 (2014), <http://www.law.umn.edu/uploads/ef/be/efbe0b8fda7508c925b74c7add571f41/IMO-Twin-Cities-Lending-Report-2014-Final.pdf>.

55. Frederick Melo, *U Professor Takes a Contrary View on Affordable Housing Development*, PIONEER PRESS (Mar. 24, 2014), http://www.twincities.com/localnews/ci_25213238/u-professor-takes-contrary-view-affordable-housing-development.

56. See CHOICE, PLACE, AND OPPORTUNITY: AN EQUITY ASSESSMENT OF THE TWIN CITIES REGION, METROPOLITAN COUNCIL (2014), <http://www.metrocouncil.org/METC/files/55/554c6841-270a-4f9e-8e2f-c8c2c279ecf1.pdf>.

57. See *id.*

58. This is an action that community activists have already called for. See *Metropolitan Council Divided on Equity*, ISAIAH: FAITH IN DEMOCRACY, (July 24, 2014), <http://isaiahmn.org/2014/07/metropolitan-council-divided-on-equity/>.

59. Telephone Interview with Thomas F. Luce Jr., Research Director, Institute on Race and Poverty (Nov. 19, 2014).

60. Shannon Prather, *Brooklyn Park, Brooklyn Center Accuse State of Fair-Housing Violations*, STAR TRIBUNE (Sept. 20, 2014), <http://www.startribune.com/local/north/275901391.html>.

61. Adam Belz and Jackie Crosby, *Twin Cities Jobless Rate – at 4% – is the Lowest in U.S.*, STAR TRIBUNE (July 2, 2014), <http://www.startribune.com/business/265471401.html>.

62. At a national level, aging populations are linked with lower economic growth. See *Implications of Population Aging for Economic Growth*, NATIONAL BUREAU OF ECONOMIC RESEARCH, <http://www.nber.org/digest/jul11/w16705.html> (last visited Aug. 10, 2015).

63. For example, aging residents in rural Oregon are increasing demand for government services. See Michelle L. Anderson, *The Western, Rural Rustbelt: Learning from Local Fiscal Crisis in Oregon*, 50 WILLAMETTE L. REV. 465, 469 (2014), <https://coursework.stanford.edu/access/con>

mining and logging⁶⁴—as extractive industries do not drive long-term development. And those industries that do—including financial services and information technology—are growing comparatively slowly, or in the case of information technology, actually shrinking.⁶⁵

As with segregation, the Met Council has tackled this problem indirectly through transit and housing. And, as with segregation, there is more that the Council can do. For instance, it could train local entrepreneurs on how to set up their businesses and export their goods.⁶⁶ It could advocate for statewide reforms affecting the metro region, such as a high-speed rail line connecting Rochester to the Twin Cities. Such a line would tie the area to the Mayo Clinic, expanding opportunities for both.⁶⁷ And it could create an economic development corporation to help businesses navigate government bureaucracy and finance larger investments. Minnesota has one independent organization, Greater MSP, working to do just that. As a relatively small non-profit, however, Greater MSP cannot afford to assist directly with large-scale financing. As with the challenge of segregation, these policies are not a panacea to stagnation, but they suggest that the Council could do more to tackle the problem.

C. *Sprawl*

While the Met Council has helped reduce the amount of urban sprawl that would otherwise be predicted given the region's political fragmentation, the Twin Cities are still sprawling. In fact, it remains the seventh least-urbanized major metropolitan area in the country,⁶⁸ and it has experienced

tent/group/F14-LAW-735-01_F14-LAW-735-02/CID%208-%20Anderson%2C%20Western%20Rural%20Rustbelt.pdf.

64. *Economy at a Glance: Minnesota*, UNITED STATES DEP'T OF LABOR, (Oct. 2014), <http://www.bls.gov/eag/eag.mn.htm>.

65. Mining and Logging grew 20% between January 2005 and January 2015. *State and Area Employment, Hours, and Earnings (Mining and Logging)*, BUREAU OF LABOR STATISTICS (Apr. 28, 2015), http://data.bls.gov/timeseries/SMS27000001000000001?data_tool=XGtable. Financial services grew 1% over the same time period. *State and Area Employment, Hours, and Earnings (Financial Activities)*, BUREAU OF LABOR STATISTICS (Apr. 28, 2015), http://data.bls.gov/timeseries/SMS27000005500000001?data_tool=XGtable. Information services shrunk 11%, *State and Area Employment, Hours, and Earnings (Information)*, BUREAU OF LABOR STATISTICS (Apr. 28, 2015), http://data.bls.gov/timeseries/SMS27000005000000001?data_tool=XGtable.

66. Timothy J. Bartik, *Evaluating the Impacts of Local Economic Development Policies on Local Economic Outcomes* 40 (W.E. Upjohn Inst., Working Paper No. 03-89, 2002), http://research.upjohn.org/cgi/viewcontent.cgi?article=1106&context=UP_workingpapers.

67. Jeffrey Pieters, *Study: Zip Rail Would Boost State Economy by \$1 Billion per Year*, THE POST-BULLETIN (Mar. 26, 2012), http://www.postbulletin.com/news/local/study-rail-would-boost-state-economy-by-billion-per/article_58362dce-4af3-5005-ae3d-2a13e557248d.html.

68. Steven Dornfeld, *Minnesota's Planning Laws Lag behind the Leaders*, MINNPOST (June 26, 2012), <http://www.minnpost.com/politics-policy/2012/06/minnesota%E2%80%99s-planning-laws-lag-behind-leaders>.

significantly more sprawl than has Portland, the only other city with a metropolitan government.⁶⁹

Unfortunately, the Council has deemphasized the fight against sprawl. For the most part, it has made no objection when rural areas have moved towards suburbanization.⁷⁰ In fact, the word “sprawl” appears just once in its most recent decennial planning document.⁷¹ Because the Council cannot set density requirements for counties bordering its authority, its capacity to control sprawl is limited. If the Council puts too much pressure on the counties it does oversee, developers will move their dense projects to the counties it does not. At a minimum, though, the Council could better enforce the density requirements it has already set. The Council has the authority to address this challenge, should it choose to.

III. THE MET COUNCIL’S POLITICAL OBSTACLE

These are all challenges that the Met Council can help address if it so chooses. But there is a political obstacle standing in the way. The Council is and always has been an unelected body. This has given the organization essential independence and the ability to make hard political choices. But it has also made the Council a popular political target.

To some, the Met Council is biased towards Minneapolis and St. Paul.⁷² To others, it is overly focused on public transit.⁷³ And to others, it is overly controlling of parks.⁷⁴ To some, the Met Council is doing too much to promote affordable housing, and to others, far too little. The Council’s most recent decennial report, Thrive MSP 2040, has drawn particular criticism; five counties have filed a unified complaint against it.⁷⁵

At its core, the common objection to the Met Council is that it is not politically responsive and not politically accountable. Arguments like this one, made by a Richfield city councilwoman, are typical: “There are a lot of

69. Myron Orfield & Thomas F. Luce, Jr., *Governing American Metropolitan Areas*, in MEGAREGIONS: PLANNING FOR GLOBAL COMPETITIVENESS 250, 259 (Catherine L. Ross, ed., 2009).

70. Myron Orfield, Nick Wallace, Eric Myott & Geneva Finn, *Governing the Twin Cities*, in REGION: PLANNING THE FUTURE OF THE TWIN CITIES 67 (2010) (“While the Met Council did successfully challenge development plans within the MUSA in *Lake Elmo*, it has never challenged a predominantly rural jurisdiction that creates land use plans with near suburban housing densities, and instead has simply changed its guidelines to reflect increasing rural densities outside the MUSA [Metropolitan Urban Service Areas].”); David Peterson, *Met Council panel OKs sprawl in long-term plan*, STAR TRIBUNE (Feb. 17, 2009), <http://www.startribune.com/local/south/39760222.html>.

71. METROPOLITAN COUNCIL, THRIVE MSP 2040 11 (May 28, 2014), [http://www.metrocouncil.org/Planning/Publications-And-Resources/Thrive-MSP-2040-Plan-\(1\)/ThriveMSP2040.aspx](http://www.metrocouncil.org/Planning/Publications-And-Resources/Thrive-MSP-2040-Plan-(1)/ThriveMSP2040.aspx).

72. Emma Nelson, *Scott County Commissioner Candidates Talk Met Council, Diversity*, STAR TRIBUNE (Oct. 28, 2014), <http://www.startribune.com/local/south/280670722.html>.

73. Telephone interview with Peggy Scott, Minnesota State Representative (Nov. 17, 2014).

74. Nelson, *supra* note 72.

75. Emma Nelson, *Suburban Counties Rise Up against Met Council*, STAR TRIBUNE (Sep. 30, 2014), <http://www.startribune.com/local/south/277535121.html>.

things that are going on [with] the Met Council that are very disturbing to people . . . *being that it's not even an elected body*" (emphasis added).⁷⁶ These are the arguments the most recent Republican candidate for governor made when he advocated for the Council's abolition.⁷⁷ And these are the arguments that Republican legislators have made in calling for the Council's overhaul.⁷⁸

At some level, none of this is new. There have always been criticisms of the Met Council, yet the Council itself has only gotten stronger. In the 1970s, some Dakota County municipalities threatened to withhold property tax revenues in opposition to the Council. In Anoka County, some citizens physically threatened the Council chair.⁷⁹ And these events occurred before the organization assumed the full transit and sewage operational responsibilities it has today.

However, there is some reason to think that the current attacks on the Council are more serious than those earlier ones. Minnesota politics are becoming more polarized; the ideological difference between the median Republican state legislator and the median Democratic legislator is growing;⁸⁰ and, in contrast to the region's past patchwork of Democratic and Republican neighborhoods, now the divisions are geographically clear: Republicans are concentrated in the outer suburbs, and Democrats live in Minneapolis and St. Paul.⁸¹ Given that it is primarily suburban residents who feel that the Met Council ignores them, it seems likely that the state Republican party will continue to take this up as a political issue.

The Met Council cannot continue to ignore criticisms about its own unaccountability. If it fails to reform, the legislature may try to cut its funding or abolish the Council entirely. Thus, the challenge is to find a way to make the Council more politically accountable in a manner that both the legislature and the governor will approve of, without making it subservient to parochial interests.

76. Andrew Wig, *Richfield argues against Met Council's affordable-housing plan*, SUN CURRENT (Nov. 6, 2014), <http://current.mnsun.com/2014/11/richfield-argues-against-met-councils-affordable-housing-plan/>.

77. *Issues*, JOHNSON FOR GOVERNOR, <http://web.archive.org/web/20140807153914/http://johnsonforgovernor.org/issues/#.VdUTxFNViko> (last visited Aug. 19, 2015).

78. Peter Callaghan, *GOP Targets Met Council as Campaign Issue*, MINNPOST (Oct. 17, 2014), <http://www.minnpost.com/politics-policy/2014/10/gop-targets-met-council-campaign-issue>.

79. *A Bold Experiment: Met Council at 40*, *supra* note 25.

80. See Boris Shor, *How U.S. State Legislatures Are Polarized and Getting More Polarized (in 2 Graphs)*, WASHINGTON POST (Jan. 14, 2014), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/01/14/how-u-s-state-legislatures-are-polarized-and-getting-more-polarized-in-2-graphs/>.

81. See Myron Orfield et. al., *The Politics of Regional Policy*, in REGION: PLANNING THE FUTURE OF THE TWIN CITIES 273–74 (2010).

IV. A MORE ACCOUNTABLE COUNCIL

Many people over many generations have proposed that the Met Council be directly elected. The Citizen League proposed direct elections in 1967.⁸² Professor Orfield (then Representative Orfield) proposed them in 1994.⁸³ And Humphrey School Dean John Brandl proposed them in 2007.⁸⁴ It is also worth noting that both Portland and Toronto elected their regional council members. But there are two problems with direct elections—one of policy, the other of politics.

The policy problem is that direct elections may subvert the purpose of the Council. As one former chair put it, the point of the organization was that members did not represent specific communities or local interest groups: “. . .we had to start with a concept that we did not represent either the local cities or the local counties or the local special interest groups—that we were in fact a regional agency.”⁸⁵ Direct elections by district would make Council members advocates for their own geographic areas, making it difficult for members to take a region-wide approach to problems. Former Governor Arne Carlson, a Republican, made that exact point when he vetoed a bill for Council elections, writing that “[t]he designers had in mind transcending parochial and geographically designated interests.”⁸⁶ Direct elections, he said, would force officials to behave parochially, and would create simply a new level of government bureaucracy.⁸⁷

This raises the second political problem. It is unlikely that any governor will sign a bill establishing direct elections for the Council. Even those politicians who tend to oppose the Council as candidates often support the organization as governors and are reluctant to give up the substantial power the office has over the Council.⁸⁸

Thus, direct elections both potentially undermine the purpose of the Met Council and are unlikely to be approved by a governor. Yet, most compromise options also suffer from one or both of these problems. In 2011, for instance, the Office of the Legislative Auditor suggested that the Council be comprised of a mix of gubernatorial appointees and elected officials.⁸⁹ Such a proposal is likely to satisfy neither side of the debate: those who believe the Council should be directly elected and those who hope to maximize the governor’s control over the organization. Others have proposed an arguably

82. CITIZENS LEAGUE, *supra* note 14.

83. Peter Callaghan, *Can the Met Council be Tamed?*, MINNPOST (Oct. 16, 2014), <https://www.minnpost.com/politics-policy/2014/10/can-met-council-be-tamed/>.

84. *A Bold Experiment: Met Council at 40*, *supra* note 25.

85. *Id.* (quoting James Hetland).

86. Letter from Governor Arne Carlson to Speaker of the House Phil Carruthers (May 15, 1997), http://www.leg.state.mn.us/archive/vetoes/1997veto_ch151.pdf.

87. *Id.*

88. Callaghan, *supra* note 78.

89. OFFICE OF THE LEGISLATIVE AUDITOR, GOVERNANCE OF TRANSIT IN THE TWIN CITIES REGION iii (2011), <http://www.auditor.leg.state.mn.us/ped/pedrep/transit.pdf>.

more politically feasible alternative: staggered gubernatorial appointments.⁹⁰ The hope would be that the governor would not have the same degree of control over the Council's agenda. But this does not solve the democratic accountability problem. If anything, it makes the Council harder for voters to control. Today, citizens can exercise authority by electing a new governor. But under this proposal, it would take several election cycles for citizens to effect their will. Further, what appears to be a more politically feasible solution in theory is not in fact. In 2008, Republican Governor Tim Pawlenty, who was originally an opponent of the Met Council, vetoed a bill to establish staggered appointments.⁹¹ In 2012, Democratic Governor Mark Dayton did the same.⁹² It seems, then, that staggered appointments are no more likely to survive a governor's veto than direct elections.

A final proposal, which Republican State Senator Dave Osmeck is currently circulating, would retain gubernatorial appointments but would require that appointees obtain resolutions of support from a certain number of municipalities within their districts.⁹³ The motivations for such a proposal are logical: citizens do not necessarily want to vote for yet another office they do not follow. As one community activist wrote, “[m]aybe they [Met Council members] should be elected, but already, no one knows who their county commissioner is”⁹⁴ Further, local elected officials will be quite knowledgeable about who can represent them on the Council. But this solution, perhaps more than others, turns the Met Council from a regional body into a parochial one. If Council members are beholden to local elected officials, they will understandably advocate for those local interests rather than take a regional view. Further, such a system will be time consuming and complicated, both for Council appointees and locally elected officials, many of whom work on a part-time basis.

So, none of the current proposals fully address the common criticism of the Council—that it is not democratically accountable—without either being politically infeasible or counter to the organization's mission. Some new proposal is necessary.

Two principles are important for fixing the Met Council's political problem. First, while the Council should be politically accountable, it should not be captured by purely local interests. Politicians frequently criti-

90. See S.F. 2605, 2007 Leg., 85th Sess. (Minn. 2007), https://www.revisor.mn.gov/bills/text.php?number=SF2605&version=0&session_year=2008&session_number=0.

91. Letter from Governor Tim Pawlenty to Senate President James Metzen (May 18, 2008), http://www.leg.state.mn.us/archive/vetoes/2008veto_ch339.pdf.

92. Letter from Governor Mark Dayton to Senate President Michelle L. Fischbach (Apr. 5, 2012), http://www.leg.state.mn.us/archive/vetoes/2012veto_ch158.pdf.

93. Telephone Interview with Dave Osmeck, Minnesota State Senator (Nov. 14, 2014).

94. Nick Magrino, *The Met Council is a Great Idea, but the Full Council Shouldn't Plan Transit*, MINNPOST (Oct. 24, 2014), <http://www.minnpost.com/minnesota-blog-cabin/2014/10/met-council-great-idea-full-council-shouldnt-plan-transit>.

cize this unelected body yet nevertheless pass hard problems onto it.⁹⁵ What has always made the Met Council special was that it has been politically independent and able to make hard choices.⁹⁶

The second principle is that any fix should allow the governor to set the Council's broad agenda. Governor Arne Carlson was right that full elections would create a new layer of bureaucracy. And as a general matter, it is very hard to set clear direction through a legislature; that is why gubernatorial appointment is so helpful to having a strong, directed Council.

Given these principles, given the objective of making the Council more democratically accountable, and given the political realities of what a governor will approve, there are not many workable fixes for the organization. There is one worth considering, however, and it is one that, to my knowledge, no one has yet proposed: retention elections. The basic idea is for the governor to appoint members of the Council, who are then voted up or down by the public. The model isn't so unusual; California has used retention elections for its Supreme Court since 1934.⁹⁷ For the Met Council, elections would probably occur within the specific districts that each appointee represents.

There are four advantages to retention elections. First, they would not overly politicize the Council, as the elections would be non-competitive. Second, they would allow the governor to set a direction for the Council through his or her appointment choices. Third, they would provide clear political accountability for the Council, as voters could disapprove of candidates they do not support. And while in practice most people would not pay attention to specific candidates, they could and would likely register their displeasure with the Council, when it occurs, by voting down whatever candidate the governor offered. Fourth, such a proposal does not significantly affect the governor's control over the Council and thus is far more likely to be approved than any of the other proposals yet considered.

Retention elections thread the figurative needle of democratic accountability, political feasibility, and gubernatorial agenda-setting. No doubt, retention elections can be criticized on both sides of the debate, arguing that the measure goes too far or does not go far enough. But for those who feel such elections do not go far enough, anything much further (short of abolition of the Council itself) is politically infeasible. And for those who feel

95. For example, the Base Realignment and Closure Commission, which recommended military base closures so that neither the President nor Congress needed to make these individually politically difficult decisions themselves. *See generally*, Edward Rubin, *Hyperdepoliticization*, 47 WAKE FOREST L. REV. 631, 662–63 (2012). In Minnesota, advocates are pushing for retention elections for state judges as well. Baird Helgeson, *Political Divide Emerges on Plan to Overhaul Minnesota Judicial Elections*, STAR TRIBUNE (Sept. 22, 2013), <http://www.startribune.com/politics/statelocal/224808652.html>.

96. Telephone Interview with Al Hofstede, *supra* note 19.

97. Joseph R. Grodin, *Developing a Consensus of Constraint: A Judge's Perspective on Judicial Retention Elections*, 61 S. CAL. L. REV. 1969, 1972 (1988).

that such elections go too far, abolition is actually a possibility. It was, after all, a major part of the last Republican gubernatorial candidate's campaign. As Minnesota politics becomes, at least for the time being, more polarized, supporters of the Council should reckon with the fact that reform is inevitable if the organization is to survive and thrive.

CONCLUSION

And thrive it should. The Met Council remains a great Minnesota innovation—one that has been much admired yet rarely imitated.⁹⁸ Despite eloquent advocacy, regional governance seems unlikely to exist elsewhere.⁹⁹ Yet that is hardly a reason why it should not succeed where it already exists. The Council was designed to make hard choices in order to solve collective problems. As former Council chair Al Hofstede put it, “if it doesn't hurt, you're not doing your job.”¹⁰⁰ And the Met Council has done its job, contributing to the enormous success of the region. The Twin Cities have had more job growth, less inequality, and less sprawl than similarly situated metropolitan areas, in part because of the Met Council. There is even more that can be done. From segregation to stagnation to sprawl, there are problems looming for the state that the Met Council is uniquely positioned to address. Now we have the need and the opportunity to reform the Met Council to make it politically accountable and to set a regional agenda for the next generation.

98. *A Bold Experiment: Met Council at 40*, *supra* note 25.

99. Richard Briffault, *Beyond City and Suburb: Thinking Regionally*, 116 *YALE L.J. POCKET PART* 203 (2006), <http://yalelawjournal.org/forum/beyond-city-and-suburb-thinking-regionally>.

100. Telephone interview with Al Hofstede, *supra* note 19.