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# CIVIC REPUBLICANISM, PUBLIC CHOICE THEORY, AND NEIGHBORHOOD COUNCILS: A NEW MODEL FOR CIVIC ENGAGEMENT

MATTHEW J. PARLOW\*

*This Article analyzes the lack of civic engagement in local government decision-making and the problems that result from it. Public choice theory offers one explanation: dominant special interest groups capture local governments for their own private interests. Thus, average citizens are not only alienated from their local government, but they also find the barriers to entry into local politics too high for collective action and participation. While at first glance this account seems accurate, public choice theory's explanation of local governments has normative limitations because it fails to recognize these features of the local political process as problematic—much less to offer any solutions.*

*Therefore, this Article suggests that we ought to reject this model of local government in favor of a model based on civic republicanism, which offers a solution to the problem of civic disengagement. Civic republicanism envisions local government substructures that provide meaningful opportunities for stakeholders to deliberate with one another regarding matters facing their community and thus inform the local decision-making process. This Article explores whether neighborhood councils—new substructures of local government that aim to involve citizens in policy- and decision-making processes—can improve civic engagement.*

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## INTRODUCTION

It is a truism in today's intellectual discourse that our democracy is failing in significant ways. Among other things, scholars bemoan that the general public is largely uninformed about politics;<sup>1</sup> that voter turnout is consistently low in federal, state, and local elections;<sup>2</sup> and that our democracy lacks civic virtue because of low public participation<sup>3</sup> in politics and government, whether measured by voter turnout or some other indicator of civic engagement.<sup>4</sup> These three phenomena are probably interconnected, with the last of these criticisms driving the other two: if people are not civically engaged, they are more likely to be uninformed about current political and governmental issues and are thus less likely to vote.

There are several possible explanations for the current lack of civic engagement. Public choice theory offers one: dominant special interest groups capture local government<sup>5</sup>

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1. Michael S. Kang, *Democratizing Direct Democracy: Restoring Voter Competence Through Heuristic Cues and "Disclosure Plus,"* 50 UCLA L. REV. 1141, 1143 (2003) ("Voters do not know basic facts about ballot measures, seem confused about the issues, and appear unduly influenced by superficial advertising."). But see BENJAMIN I. PAGE & ROBERT Y. SHAPIRO, *THE RATIONAL PUBLIC: FIFTY YEARS OF TRENDS IN AMERICANS' POLICY PREFERENCES* 1, 386-90 (1992) (disputing claims that voters are ignorant and uninformed in their policy preferences).

2. See generally THOMAS E. CRONIN, *DIRECT DEMOCRACY: THE POLICIES OF INITIATIVE, REFERENDUM, AND RECALL* 66-70 (1989) (discussing low voter turnout in elections); THOMAS E. PATTERSON, *THE VANISHING VOTER: PUBLIC INVOLVEMENT IN AN AGE OF UNCERTAINTY* 4 (2002) (noting the decline in voter turnout for elections).

3. Terms like "civic participation," "public participation," and "civic engagement" can include activities ranging from voting to joining a bowling league or local softball team. For purposes of this Article, I use these terms interchangeably to refer to citizen participation in their government decision-making process, either through formal (government-sponsored) or informal (community-driven) means.

4. ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 1-24 (2000) (describing the decline in social networks, social capital, community, and civic engagement). As Carlos González notes, "American politics vacillates between long periods of uninformed and apathetic disengagement, and relatively brief periods of popular ferment and participation." Carlos E. González, *Popular Sovereign Generated Versus Government Institution Generated Constitutional Norms: When Does a Constitutional Amendment Not Amend the Constitution?*, 80 WASH. U. L.Q. 127, 215 (2002).

5. In this Article, I use the term local governments, cities, and localities interchangeably and broadly to refer to local government entities. While the substance of this Article is most applicable to cities and, to a lesser degree, counties, the discussion of civic engagement and neighborhood councils has relevance to other local governments as well. By "substructure" of local government, I am re-

decision-making for their own private interests. Thus, average citizens are not only alienated from their government, but they also find the barriers to entry into local politics too high for collective action and participation. On a superficial level, public choice theory's descriptive account of local government appears accurate. It offers convincing explanations of some of the key features of local government today—in particular, lack of transparency in policy-making and the capture of the political process by interest groups. However, public choice theory fails to recognize such features as problematic, ignoring the widespread belief that the dearth of citizen participation is troubling in our democratic society, and, more importantly, that such disengagement may lead to dysfunction and illegitimacy in local government. Instead, it views lack of engagement as the consequence of rational choice, not a flaw in a system that fails to provide opportunities for public participation. Thus, public choice theory suffers from significant normative limitations.

Accordingly, we ought to reject a public choice theory model of local government in favor of a model infused with civic republicanism. Unlike public choice theory, civic republicanism views the lack of civic engagement as leading to suspect local policies that stem from an insiders' game controlled by dominant interest groups. Moreover, it explains the public participation problem as deriving not from rational choice, but rather from the inaccessibility of local government structuring. Therefore, civic republicanism envisions local government substructures that provide meaningful opportunities for stakeholders to deliberate with one another regarding matters facing their community and correspondingly inform the local decision-making process. In doing so, we can shift from viewing local governments as a winner-takes-all political arena to an understanding of local governments as a forum for engaging community stakeholders in a dialogic process to advance government policies that further the common good.

The goal of this Article is to explore whether neighborhood councils—new substructures of local governments that aim to

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ferring to smaller institutions or entities created within local government by the government itself. Such smaller institutions tend to address niche areas of policy or regulation—such as business improvement districts, enterprise zones, and the like—though, as I argue later, neighborhood councils would have a broader purpose.

involve citizens in policy- and decision-making processes—can improve civic engagement. By providing a viable avenue for effecting change in their communities, neighborhood councils can encourage everyday citizens to engage in their democracy in greater numbers and for a sustained period of time. This should be a salutary development in local government process, not only to those who favor the civic republican model of government, but also to public choice theorists. From either perspective, more participation should yield better, more representative decision-making.

Part I of this Article highlights some of the causes of civic disengagement as well as the problems that result from it and explains why local governments provide the most meaningful opportunity for citizen participation in our governmental system. Part II analyzes local governments from competing theoretical perspectives—public choice theory and civic republicanism—and makes a normative case for a civic republican form of local government. Part III discusses how and why past attempts at civic engagement on a local level have failed and the lessons that can be gleaned from those failures in order to better structure modern neighborhood councils. Finally, Part IV considers the advent of neighborhood councils, the potential pitfalls that may determine their success and longevity, and the transformation they may bring about in local governments through increased civic participation.

## I. LOCAL GOVERNMENT AS THE ANTIDOTE TO CIVIC DISENGAGEMENT

In *Downsizing Democracy*, Matthew Crenson and Benjamin Ginsberg observe that we have entered an era of “personal democracy” where citizens no longer collectively mobilize.<sup>6</sup> In this new personal democratic regime, citizens interface with their governments as individuals; they do not inform government policies through a deliberative process that enables the community to form a collective identity and express to decision-makers the common good for the community. As citizens become more private in their interactions with government, they participate less in the policy-making process and thus wield

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6. MATTHEW A. CRENSON & BENJAMIN GINSBERG, *Downsizing Democracy: How America Sidelined Its Citizens and Privatized Its Public* 1, 14 (2002).

less and less influence in the decisions that affect their day-to-day lives.<sup>7</sup>

In this grim assessment, Crenson and Ginsberg are not alone. One scholar notes that since the nineteenth century, individuals have had fewer and fewer opportunities to assert influence or control in their local government decision-making.<sup>8</sup> Another observes that as society becomes dominated by impersonal institutions, citizens experience increased anxiety about their ability to have a say in the government decisions that affect their lives.<sup>9</sup> This sentiment may stem from the belief that "there is . . . only a small probability that any change in benefits one receives can be effected by one's own political activities" in local government actions.<sup>10</sup> Such forced detachment leads citizens to develop a sense of alienation from government.<sup>11</sup>

This phenomenon pervades all levels of government, including local government, and is particularly acute in urban areas. Citizens describe their experience with local government as marked by apathy, frustration, and disenfranchise-

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7. See *id.* at 10–11. The cyber-revolution makes it even more likely that citizens will pay less attention to local affairs and further weaken already ineffective neighborhood monitoring of, and input in, local government decision-making. See Robert B. Ellickson, *Monitoring the Mayor: Will the New Information Technologies Make Local Officials More Responsible?*, 32 URB. LAW. 391, 393 (2000) (arguing that opportunity costs for involving oneself in local governmental affairs increase as the internet allows citizens to download movies and music; watch live sporting events; and bid on collectibles through an online auction).

8. See, e.g., Gerald E. Frug, *The City as a Legal Concept*, 93 HARV L. REV. 1059, 1068–69 (1980). Frug points out several possible explanations for this phenomenon: growth in the government bureaucracy, lack of citizen participation in the decision-making process, and inaccessible government officials making decisions without consulting the community.

9. See generally MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC POLITICAL PHILOSOPHY* 1, 1–7 (1996).

10. PAUL E. PETERSON, *CITY LIMITS* 119 (1981). Peterson examines both neighborhood and individual attempts at influencing local government decision-making. He notes two key considerations which relate to this feeling of anomie experienced by local residents. *Id.* First, policy change would have occurred irrespective of any lobbying or involvement by neighborhood organizations or individuals. *Id.* Second, change oftentimes does not occur even after vigorous lobbying efforts. *Id.* These observations lead to the prevalent "[y]ou can't fight City Hall" mentality. *Id.* at 119–20.

11. Norman I. Fainstein & Susan S. Fainstein, *The Future of Community Control*, 70 AM. POL. SCI. REV. 905, 905 (1976). But see J. Eric Oliver, *The Effects of Metropolitan Economic Segregation on Local Civic Participation*, 43 AM. J. POL. SCI. 186, 205 (1999) (positing that low civic participation corresponds with citizen satisfaction with their governments rather than stemming from feelings of apathy or alienation).

ment.<sup>12</sup> They feel that there are not enough opportunities for community input in local government decision-making processes.<sup>13</sup> Moreover, they lament the fragmentation of community and express feelings of anomie as a result of their lack of connectedness to others and their community.<sup>14</sup> When asked, citizens express a desire to feel part of an integrated community where they can both empathize with others over public concerns that affect their day-to-day lives and seek to address collectively such concerns.<sup>15</sup> Due to the failure of local governments to involve citizens in decision- and policy-making processes, "the public has become highly skeptical of the ability of government to ensure public safety, to oversee their general welfare, and to provide them with a satisfactory quality of life."<sup>16</sup>

Despite the disconnectedness between local governments and their constituents, local governments hold the greatest potential for increasing civic participation. As one scholar has noted, "cities are a patchwork . . . of neighborhoods, each one of which contains a somewhat greater denominator of values, needs, and interests than does the city as a whole."<sup>17</sup>

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12. Archon Fung & Erik Olin Wright, *Deepening Democracy: Innovations in Empowered Participatory Governance*, 29 POL. & SOC'Y 5, 37 (2001). Such apathy may result from the governmental structure—perhaps by design—or it may be that individuals in contemporary society do not have the time or interest for participation opportunities. *Id.* As Paul Peterson explains, most local governments and their decision- and policy-making processes are structured to discourage neighborhood group formation and involvement. PETERSON, *supra* note 10, at 121; see also Eleanor Holmes Norton, *Public Assistance, Post-New Deal Bureaucracy, and the Law: Learning from Negative Models*, 92 YALE L.J. 1287, 1293 (1983) (arguing that government administrative bureaucracies have refused to cede power or influence to community groups that were adopted—either formally or informally—into the decision-making process).

13. Michele Frisby & Monica Bowman, *What We Have Here Is a Failure to Communicate*, PUB. MGMT., Feb. 1996, at A-1. Moreover, residents believe that those avenues for participation do not really allow citizens or community organizations to effect change or influence the policy decisions. *Id.*

14. RICHARD C. HARWOOD ET AL., *MEANINGFUL CHAOS: HOW PEOPLE FORM RELATIONSHIPS WITH PUBLIC CONCERNS* 1 (1993).

15. See *id.* at 2.

16. William H. Hansell, Jr., *A Common Vision for the Future: The Role of Local Government and Citizens in the Democratic Process*, NAT'L CIVIC REV., Fall 1996, at 5, 5.

17. Thomas J. Mikulecky, *Neighborhoods: Small, More Responsive Local Government*, PUB. MGMT., AUG. 1990, at 9, 9. As Richard Briffault notes, "[a]s a social and a political concept, the city is a heterogeneous place, combining residence, work, recreation and cultural life, and mixing people of different racial and ethnic groups, socioeconomic classes and levels of education and occupational attain-

Neighborhoods, like families, have a history and an identity that oftentimes bind community members together. They serve “as the primary context—beyond the household—for family life and as a focus of many informal relationships and activities.”<sup>18</sup> The groups of people who form a neighborhood tend to share many of the same values, concerns, histories, and traditions that are often unique to their community because these values are based on the formative experiences that help define the neighborhood. This communal bond is deepened by the fact that community members are repeat players with one another in the most basic and essential activities in daily life: church, work, school, business, and community organization.<sup>19</sup> Community members thus get to know one another and build both trust and respect based on shared experiences and interactions that can foster a commitment to the public good.<sup>20</sup> This communal experience can, in turn, increase the likelihood that citizens will participate in their government, enhance its effectiveness, and give more credence to the policies adopted through their involvement.<sup>21</sup> Indeed, if channeled properly, this process becomes self-fulfilling and self-reinforcing. Local governments can create a greater sense of community that spurs more civic engagement. Such participation in the governmental process, in turn, can strengthen the bonds of the

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ment.” Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 347 (1990).

18. Robert J. Chaskin & Sunil Garg, *The Issue of Governance in Neighborhood-Based Initiatives*, 32 URB. AFF. REV. 631, 633 (1997).

19. Small, homogenous communities may have fewer internal conflicts and thus be able to organize better. Richard Briffault, *The Role of Local Control in School Finance Reform*, 24 CONN. L. REV. 773, 795 (1992). On the other hand, in our increasingly diverse society, such civic engagement enables community members—who might not otherwise interact—to understand one another better and deepen their mutual ties to their neighborhood. Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L.J. 1985, 2001 (2000).

20. Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1126–27 (1996) [hereinafter Briffault, *Local Government*]. The greater the distance between constituents, the less likely such communal bonding and unity of purpose can occur. See Richard Briffault, “What About the ‘Ism?’” *Normative and Formal Concern in Contemporary Federalism*, 47 VAND. L. REV. 1303, 1314 (1994) [hereinafter Briffault, “What about the ‘Ism?’”]; see also JEFFREY M. BERRY ET AL., *THE REBIRTH OF URBAN DEMOCRACY* 10 (1993) (stating that the neighborhood offers the “possibility of face-to-face interaction, which lies at the heart of the theory of participatory democracy”).

21. Briffault, *Local Government*, *supra* note 20, at 1127.



community.<sup>22</sup> Thus, the neighborhood as a "mediating institution" has the potential to be a meaningful entity "within the formal framework of democratic polity."<sup>23</sup>

Local governments are also more ideally suited for new models of civic participation because they are smaller in size.<sup>24</sup> While state and federal governments can command more resources and have control over broader policies than local governments, they are simply too large and inaccessible for meaningful civic participation. To the degree that federal and state governments could allow for citizen participation in the policy-making process, such involvement would constitute an insignificant percentage of the respective government's constituency.<sup>25</sup> In contrast, smaller forms of government invite a higher percentage of citizens to deliberate directly over issues affecting their community because it is easier for people to meet and share their opinions and to solicit feedback from their fellow citizens. Moreover, local governments also give community members a greater sense that their voices will be heard by the decision-makers as well as by their fellow citizens.<sup>26</sup>

In addition, constituents may be drawn to participate in local government because of the nature of the policies and regulations enacted at a local level. The purpose of most city governments is to provide goods and services to their residents, businesses, and other stakeholders. Such goods and services are usually those that affect people's day-to-day lives, such as

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22. Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775, 827 (1992).

23. See Chaskin & Garg, *supra* note 18, at 633-34.

24. Briffault, "What About the 'Ism'?", *supra* note 20, at 348 (noting that more than 75% of cities are less than 5,000 people). In fact, the town meeting form of government that marked the beginnings of our nation were heralded by many political thinkers at the time as being the quintessential form of self-government. George W. Liebmann, *Devolution of Power to Community and Block Associations*, 25 URB. LAW. 335, 336 (1993). However, due to the increase in population and the transformation of municipalities and their boundaries, this model of direct democracy has become almost non-existent. *Id.* at 336-37.

25. Fainstein & Fainstein, *supra* note 11, at 905. As Kathryn Abrams points out, federal governmental entities have been formed and developed by pluralist values and thus are, perhaps by design, distant and inaccessible to the average citizen. Kathryn Abrams, *Law's Republicanism*, 97 YALE L.J. 1591, 1604 (1988).

26. Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 505 (1997). Conversely, on the state or federal level, the average citizen is more likely to think that his or her voice will be ignored or washed out with the hundreds of thousands or millions of other constituents. See Briffault, *supra* note 17, at 395.

trash collection, libraries, education, street paving, parks, public safety, and land use regulation, to name a few.<sup>27</sup> Therefore, local governments provide an opportunity for citizens to engage in the decision- and policy-making process not only in a meaningful way, but also on issues that matter most to them.<sup>28</sup>

Costs of participation are similarly lower at a local level than at a state or federal level. Collective action is never easy, but the larger and more diffuse the group, the more difficult it is to mobilize and unite it. The amount of time, money, and energy necessary to reach, educate, and mobilize citizens is likely to be lower at the local level.<sup>29</sup> Problems of scale are minimized locally because of the relationships and networks in neighborhoods and communities that make the crafting of the participation process more economically efficient.<sup>30</sup> The accessibility and proximity of local governments and elected officials, in contrast to federal and state governments, also create greater efficiencies that encourage collective action. Therefore, local governments constitute the most viable avenue for engaging the public in the decision- and policy-making processes and provide the proper context for this Article.

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27. Richard Briffault, *Local Government and the New York State Constitution*, 1 HOFSTRA L. & POL'Y SYMP. 79, 80 (1996).

28. As Richard Briffault notes, "Local governments have long been celebrated for their role as incubators of democracy." Briffault, *Local Government*, *supra* note 20, at 1123. In fact, Briffault argues that local decision-making enables localities to tailor their policies to meet the unique needs and conditions of the community, policies that are far more difficult to craft at a more centralized level of government because of the divergent experiences that communities within larger governmental boundaries have. *Id.* at 1124.

29. Richard Briffault, *Home Rule for the Twenty-First Century*, 36 URB. LAW 253, 258 (2004).

30. See William R. Potapchuk, et al., *The Transformative Power of Governance*, 88 NAT'L CIVIC REV. 217 (1999); see also Carol M. Rose, *The Ancient Constitution vs. The Federalist Empire: Anti-Federalism from the Attack on "Monarchism" to Modern Localism*, 84 NW. U. L. REV. 74, 101 (1989) (asserting that since there are fewer constituents on a local level, they can organize more easily into groups that make up a larger percentage of the population and thus garner more attention and influence).

## II. TWO MODELS OF LOCAL GOVERNMENT: PUBLIC CHOICE AND CIVIC REPUBLICANISM

### A. *Public Choice Theory*

Many scholars view local governments from a public choice perspective.<sup>31</sup> This commonly held viewpoint explains well the lack of public participation on the local level. Public choice theory applies economic ideas to political structures and processes.<sup>32</sup> It focuses on the interaction of two parties—interest groups and policy-makers—seeking beneficial legislative and governmental decision-making outcomes through the rules of supply and demand.<sup>33</sup> As consumers of the public policy market, interest groups represent the demand side, while policy-makers represent the supply side.<sup>34</sup> Moreover, public choice theory assumes that all players in the local decision-making process—elected officials, bureaucrats, business interests, lobbyists, neighborhood groups, and others—will act in the political marketplace as actors in the private, financial marketplace do: in their own self-interest.<sup>35</sup>

Accordingly, the local political process is dominated by individuals who organize into special interest groups in order to

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31. See, e.g., MYRON ORFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* 5–6 (1997) (detailing the successes of the “favored quarter,” a phrase used to describe that portion of the population that reaps the greatest benefits from local governments); Cashin, *supra* note 19. As Robert Bennett notes, “No serious observer of contemporary American politics doubts that interest-group politics is thriving.” Robert W. Bennett, *Of Gnarled Pegs and Round Holes: Sunstein’s Civic Republicanism and the American Constitution*, 11 CONST. COMMENT. 395, 420 (1994); see also Robert C. Ellickson, *New Institutions for Old Neighborhoods*, 48 DUKE L.J. 75, 89 (1998) (detailing the capture of local governments by rent-seeking interest groups); Stephen M. Feldman, *The Persistence of Power and the Struggle for Dialogic Standards in Postmodern Constitutional Jurisprudence: Michelman, Habermas, and Civic Republicanism*, 81 GEO. L.J. 2243, 2243 (1993) (“Since the 1950s, most constitutional scholars have presumed that the American political system is pluralistic, with autonomous individuals struggling in the legislative arena to maximize the satisfaction of their preexisting private interests.”).

32. See GEORGE A. BOYNE, *PUBLIC CHOICE THEORY AND LOCAL GOVERNMENT: A COMPARATIVE ANALYSIS OF THE UK AND THE USA* 1 (1998).

33. See MICHAEL T. HAYES, *LOBBYISTS AND LEGISLATORS: A THEORY OF POLITICAL MARKETS* 17–18 (1981).

34. See ALAN PEACOCK, *PUBLIC CHOICE ANALYSIS IN HISTORICAL PERSPECTIVE* 13 (1992).

35. See Clayton P. Gillette, *Plebiscites, Participation, and Collective Action in Local Government Law*, 86 MICH. L. REV. 930, 978 (1988).

gain benefits for their members through the local government decision-making process.<sup>36</sup> These benefits, or “rents,” come in the form of local political commodities, such as laws, legislation, administrative decisions, government contracts, government subsidies, and the like. “Public choice theory suggests that only by organizing into special interest groups can individuals influence the political process” and gain such rents.<sup>37</sup> Therefore, individuals with similar goals and interests selectively join interest groups seeking to advance their economic, political, and social agendas in the local government policy-making process.

Because interest groups seek to maximize their self-interest, often they must compete against one another for scarce local government resources.<sup>38</sup> The success of a special interest group in public choice theory hinges on its effectiveness and efficiency. Large interest groups tend to be more effective, but given their need to administer themselves—through more complex organizational structures and power allocations—this effectiveness often comes at the expense of efficiency.<sup>39</sup> Smaller groups are typically more efficient because of their size, but may not be able to gather the resources necessary to gain effectiveness in the political process.<sup>40</sup>

The “free rider” problem also contributes to the inefficiency of interest groups. An interest group faces a free rider problem when it provides a benefit to its members that others may enjoy, even if they did not share any of the burden in attaining the benefit.<sup>41</sup> When free riding occurs, interest groups lose

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36. Gary Becker, *A Theory of Competition Among Pressure Groups for Political Influence*, 98 Q.J. ECON. 371, 371 (1983) (stating that “actual political choices are determined by the efforts of individuals and groups to further their own interest”); see also MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* 5 (2nd ed. 1971) (explaining that the purpose of all interests groups is to further their members’ interests).

37. See Dorothy A. Brown, *The Invisibility Factor: The Limits of Public Choice Theory and Public Institutions*, 74 WASH. U. L.Q. 179, 180 (1996).

38. JAMES Q. WILSON, *POLITICAL ORGANIZATIONS* 261 (1974).

39. OLSON, *supra* note 36, at 46–48.

40. *Id.*

41. *Id.* at 48. Olson points to three specific problems facing large interest groups. First, “the larger the group, the smaller the fraction of the total group benefit any person acting in the group interest receives.” *Id.* Second, “the smaller the share of the total benefit going to any individual, . . . the less the likelihood that . . . any single individual will gain enough from getting the collective good to bear the burden of providing even a small amount of it.” *Id.* Third, the larger the

membership, monetary contributions, and other resources, leading to the loss of the desired public policy benefit.<sup>42</sup> Therefore, interest groups that can best avoid free riding and maintain the equilibrium between effectiveness and efficiency will often receive a disproportionate share of any public policy benefits.<sup>43</sup>

Competition among interest groups in the public policy marketplace often leads to coalition-building and compromise. Coalitions may greatly increase the bargaining position and influence of what would otherwise be diffuse and statistically insignificant smaller interest groups.<sup>44</sup> According to James Q. Wilson, coalitions are most likely to form when "resources and autonomy for all prospective members can be significantly threatened (a crisis) or enhanced (an opportunity)."<sup>45</sup> Interest groups negotiate and compromise on an agreement to ensure that a majority of the interest groups involved in a public policy issue share in the benefit.<sup>46</sup> In this regard, the preferences of the different interest groups change so that the groups are able to come to a shared agenda that provides benefits to many or all groups and that has the best chance to affect public policy decisions. According to public choice theorists, this majority of interest groups can exert significant influence over policymakers, as opposed to the less effective influence of each individual, smaller interest group.<sup>47</sup> Indeed, the compromise process forces interest groups to abandon the "all-or-nothing" pitfall in public policy and adapt their goals to coincide with those of other similarly situated groups, thus gaining some benefit to

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number of members in the group, "the higher the hurdle that must be jumped before any collective good at all can be obtained." *Id.*

42. See William N. Eskridge, Jr., *Politics Without Romance: Implications of Public Choice Theory for Statutory Interpretation*, 74 VA. L. REV. 275, 286 (1988). Large interest groups are more susceptible to the free rider problem because the individual benefit will usually be very small, creating an incentive to rely on others to contribute and do the work. OLSON, *supra* note 36, at 53. Smaller interest groups can better overcome the free rider problem. *Id.* Not only is the potential for individual gain greater, which provides an incentive for the individual to contribute, but interest groups can more easily monitor free riders and perhaps exclude them from the public policy's benefit. *Id.*

43. See DENNIS C. MUELLER, PUBLIC CHOICE II 13 (1989).

44. See Saul Levmore, *Voting Paradoxes and Interest Groups*, 28 J. LEGAL STUD. 259, 261 (1999).

45. WILSON, *supra* note 38, at 267.

46. See MUELLER, *supra* note 43, at 63.

47. *Id.*; see also WILLIAM C. MITCHELL, PUBLIC CHOICE IN AMERICA: AN INTRODUCTION TO AMERICAN GOVERNMENT 195 (1971).

more interest groups and their members. However, this compromise process is only successful when all interest groups in this majority are engaged in a “mutually beneficial exchange.”<sup>48</sup> In the absence of coalitions, interest groups attaining the effectiveness and efficiency equilibrium mentioned above will dominate the public policy process.

Constituting the supply side of the political market, local elected officials’ overarching goal is to get reelected or elected to a higher office.<sup>49</sup> Local elected officials thus pursue means that lead to this goal: votes, political contributions, expanded budgets and/or staff, and other avenues for expanding their political support and power.<sup>50</sup> Votes are a critical component of sustaining elected status for such officials. Consequently, local elected officials will not undertake a course of action without first carefully deliberating upon whether their constituents would strongly oppose such action.<sup>51</sup> However, as David Mayhew points out, “the average voter has only the haziest awareness” of what his or her elected policymaker actually does in office.<sup>52</sup> Interest groups, on the other hand, can marshal resources other than votes—namely, political contributions and support—that are also essential for elections.<sup>53</sup> And unlike the average voter, interest groups are keenly aware of local elected officials’ actions and express their satisfaction or dissatisfaction with them through lobbying, pressure and, ultimately, through distribution of the aforementioned political

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48. See MITCHELL, *supra* note 47, at 122. Unless interest groups believe they can gain from such a compromise, there is no incentive for them to participate and the market fails.

49. See generally DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION at 36–38 (1974); see also Eskridge, *supra* note 42, at 288 (stating that “[p]ublic choice theory argues that legislative behavior is driven by one central goal—the legislator’s desire to be reelected”).

50. See Clayton P. Gillette, Comment, *Interest Groups in the 21<sup>st</sup> Century City*, 32 URB. LAW. 423, 424 (2000). This is not to imply that elected officials are corrupt or accept bribes, though some inevitably do. Rather, elected officials will act in ways that reward those interests that have garnered—and presumably will continue to garner—votes and/or political contributions for that official. Moreover, an elected official may act in a manner which seems to advance the public good—such as a new public improvement project in the community, like a community center—but the elected official may not derive his or her motivation for such action out of a disinterested obligation to the public good, but rather from a desire to appease the voting constituency.

51. See Eskridge, *supra* note 42, at 288.

52. MAYHEW, *supra* note 49, at 40.

53. See *id.* at 39–40.

resources. In response, local elected officials seek to keep such interest groups happy and thus create and distribute rents to those interest groups that support them in their elections.<sup>54</sup> Those interest groups that can provide these valuable commodities to elected officials will ultimately be more successful in the policy-making marketplace—leading to the capture of local governments by such interest groups.

Public choice theorists thus view local government as a forum for the political marketplace to play out. This means that local government decisions are illegitimate insofar as they constitute policy outputs that stem not from the community's preferences and needs, but rather from the influence of powerful interest groups that may or may not represent the majority view in the community.<sup>55</sup> Public choice theory recognizes this problem of capture, but it offers few realistic or viable solutions for a more transparent and responsive local government. For example, some public choice theorists recommend limiting the autonomy of local government in order to eliminate or minimize the capture problem.<sup>56</sup> A limited government offers fewer benefits, which should lead to less rent-seeking behavior. Others suggest increasing transaction costs for interest groups to make capture too expensive to sustain.<sup>57</sup> A third solution, championed by Charles Tiebout, contemplates consumer-voters "voting with their feet" and leaving a city that fails to meet their preferences.<sup>58</sup> The possibility of exodus by citizens, in

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54. See Becker, *supra* note 36, at 373–74 (stating that "taxes, subsidies, regulations, and other political instruments are used to raise the welfare of more influential pressure groups"). Robert Ellickson describes the purposefully crafted "cumbersomely indirect system for the delivery of favors" to interest groups—a system designed to hide public largess from voters that marks today's local governments. Ellickson, *supra* note 31, at 89. This cumbersome process for local governmental outputs also serves as an inhibitor to civic engagement because it is purposefully confusing to hide the captured system that showers benefits on the rent-seeking interest groups.

55. See Gillette, *supra* note 50, at 423–24.

56. See Donald J. Kochan, *"Public Use" and the Independent Judiciary: Condemnation in an Interest-Group Perspective*, 3 TEX. REV. L. & POL. 49, 106–14 (1998).

57. See *id.*

58. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 419 (1956). However, many have challenged the modern day practicality of this theory, noting that mobility is exceedingly more difficult for a growing percentage of American society because of costs and other factors. See Erin Ryan, *Federalism and the Tug of War Within: Seeking Checks and Balance in the Interjurisdictional Gray Area*, 66 MD. L. REV. 503, 615 (2007).

theory, creates an efficient marketplace where local governments compete for residents and businesses by providing a desirable set of goods and services.<sup>59</sup>

With the exception of Tiebout's theory, public choice ignores the role of citizens in government decision-making. Moreover, the role of the citizen that Tiebout does recognize is an extremely limited one of exit and entry rather than engagement, deliberation, and negotiation. At best, public choice theory envisions interest groups bargaining and reaching agreements to help bring about certain local government decision-making results that benefit them.<sup>60</sup> At worst, public choice theorists posit that consensus among divergent interest groups on governmental decisions can only be reached through deception, manipulation, and horse trading.<sup>61</sup>

Thus, implicit in the public choice perspective is a rejection of the notion that community stakeholders can and should; communicate with one another regarding their needs, interests, and values; change one another's views or positions through dialogue; and reach consensus on a decision that is in the public interest.<sup>62</sup> Instead, the conclusion of a local government decision-making process is one that merely reflects a temporary political judgment based on relative conditions and power dynamics in society or, at most, an aggregation of individual and group preferences.<sup>63</sup>

This perspective also suggests that there is nothing wrong with current levels of civic disengagement because it theorizes that it is the product of an efficient marketplace. In other words, public choice assumes that if individuals feel strongly enough about the common good, they will engage in collective action. Accordingly, weak public participation in local government decision-making suggests to a public choice theorist that people are either satisfied or at least satisfied *enough*, having calculated that the costs of participating are not worth the potential reward.<sup>64</sup> In short, public choice theory views the lack

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59. See Tiebout, *supra* note 58, at 419–20.

60. See Steven G. Gey, *The Unfortunate Revival of Civic Republicanism*, 141 U. PA. L. REV. 801, 807–08 (1993) (presenting idea that public choice theory dismisses the notion that there is an a priori set of communal values).

61. See Frank Michelman, *Law's Republic*, 97 YALE L.J. 1493, 1507 (1988).

62. See *id.*

63. See Gey, *supra* note 60, at 808.

64. See Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1546 (1988).



of civic engagement as the result of rational choice and general satisfaction.

However, as Part I of this Article detailed, many average citizens would like to participate in their local government decision-making but avoid doing so because they feel alienated from the process. This suggests that civic disengagement reflects dissatisfaction and frustration with government, not silent approval. If this is correct, then public choice theory's solutions are no solutions at all. On the contrary, lack of civic engagement creates the preconditions for local governments that lack transparency and community oversight, are subject to greater incidence of capture, and produce illegitimate local government outputs.

### *B. Civic Republicanism*

The fact that public choice theory largely accepts the status quo is reason enough to reject it as a model of local government. A government plagued by actual and perceived illegitimacy must be changed as well as explained. Public choice theory fails to advocate for change by positing that the current state of disengagement is a more or less rational state of affairs. This view is, however, inconsistent with our democratic ideal that government is accountable to all of its citizens, not just to those who have the luxury of power, money, and connections. Instead of continuing on our current course, we should strive for a model of local government that is infused with the values of civic republicanism.

Civic republicanism envisions local government as a deliberative democracy whereby community stakeholders engage with one another in a dialogic process to identify the needs of the community and the appropriate course of action that furthers the common good.<sup>65</sup> In this way, civic republicanism injects an indispensable third party in the process—the ordinary citizen—and recognizes that in the absence of public discourse among such citizens, local government decisions will be driven by private and factionalized interests.<sup>66</sup> To a civic republican,

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65. *Id.* at 1554–55. The terms “common good” or “public good” are inextricably linked to virtue or “civic virtue” in civic republican literature. See, e.g., Kathleen M. Sullivan, *Rainbow Republicanism*, 97 YALE L.J. 1713, 1713 (1988).

66. See S. Candice Hoke, *Preemption Pathologies and Civic Republican Values*, 71 B.U. L. REV. 685, 706 (1991).

then, disengagement is both a symptom and a cause of a serious problem that undermines government's appropriate role vis-à-vis its citizens. Fostering engagement, on the other hand, encourages positive government outputs and reduces public disenchantment.

Local governments, especially, can provide a forum for public discourse and a deliberative democracy.<sup>67</sup> Civic republicanism has roots that harken back to Aristotle, who argued for this model of government within the context of the Greek "communal city-state."<sup>68</sup> In ancient Greece, it was the *boule*—or "council"—rather than the assembly that was the policy-making entity for the community.<sup>69</sup> This governmental structure was attributable to the recognition that the *boule* could serve as a forum for deliberation that was at the core of Athenian democracy.<sup>70</sup> In the early years of our nation, civic republicanism was best embodied in town halls which, like the *boule*, resembled a gathering of neighbors rather than of the citizens of a larger state or nation. Within this local setting, community stakeholders come together to share ideas and understand different perspectives.<sup>71</sup> Such community deliberation may reveal to the collection of stakeholders their common values and help to identify norms greater than self-interest: the public

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67. See Joseph Lubinski, *Countering Majoritarian Politics: Challenging State-wide Initiatives at the Local Level*, 13 KAN. J.L. & PUB. POLY 85, 88 (2004). Community dialogue can occur in settings both public and private: neighborhood or civic associations, places of employment, block parties, government entities' meetings, and other such locations. Gerald Frug refers to the ability to deliberate with members of one's community in this manner as "public freedom." Frug, *supra* note 8, at 1068. But as this Article argues, such dialogue should occur within formal, recognized, and legitimized substructures of local government.

68. See Stefan Kapsch & Peter Steinberger, *The Impact on Legislative Committees and Legislative Processes of the Use of the Initiative in the American West*, 34 WILLAMETTE L. REV. 689, 696 (1998).

69. See *id.*

70. See *id.*

71. The deliberative process brings a diverse community to consensus, but not through horse trading and deal-making as we see in local governments viewed through a public choice lens. See Bennett, *supra* note 31, at 409. As Cass Sunstein explains, in a deliberative democracy, "political outcomes should be produced by an extended process of deliberation and discussion, in which new information and new perspectives are brought to bear." Cass R. Sunstein, *Administrative Substance*, 1991 DUKE L.J. 607, 612 (1991). While this process involves participation by a broad and diverse group of community stakeholders, it does not consist of merely aggregating different preferences "precisely because preferences have themselves been created by legal rules." Bennett, *supra* note 31, at 409 (quoting CASS R. SUNSTEIN, *THE PARTIAL CONSTITUTION* 11 (1993)).

good.<sup>72</sup> For civic republicans, such critical norms can only be developed and reached through this dialogic discernment process; they cannot be ascertained solely through the reflection of an individual political actor.<sup>73</sup>

Civic republicanism not only offers the possibility of better government, but also of better citizens and healthier communities. Community stakeholders are given the opportunity to confront one another—with their own biases, formed opinions, parochial interests, individualism, and differing experiences and cultural backgrounds—and transform themselves, their preferences, their intentions, and the community by searching for commonly held values, generating those public values, and agreeing upon the common good.<sup>74</sup> In this way, those who

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72. The common good is not the aggregation of various stakeholders' interests, but rather the qualitatively different concept of the community consensus regarding the common good derived from such dialogic politics. See Mark Seidenfeld, *A Civic Republican Justification for the Bureaucratic State*, 105 HARV. L. REV. 1511, 1528–29 (1992).

73. See MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* 183 (1982) (observing that “when politics goes well, we can know a good in common that we cannot know alone”). In fact, as Clayton Gillette notes, voting without a dialogic process leads to self-interested voting patterns that place minority views and interests in a vulnerable state. See Gillette, *supra* note 35, at 954–56. Nor is the initiative process properly informative, as it also is not deliberative. See Daniel M. Warner, *Direct Democracy: The Right of the People to Make Fools of Themselves; The Use and Abuse of Initiative and Referendum, A Local Government Perspective*, 19 SEATTLE U. L. REV. 47, 77–78 (1995) (noting that initiatives are written by a small group of people—devoid of debate or compromise—and are susceptible to oversimplification of the issues and appeals to prejudice, rather than the common good). As Candice Hoke points out, voting alone cannot properly inform government decision-making because it is not derived from the transformative deliberative process mentioned above. Hoke, *supra* note 66, at 709. Clayton Gillette echoes this sentiment in questioning whether voting can ever reflect the actual aggregate preferences of a community. See Gillette, *supra* note 35, at 933. While nothing precludes voters from discussing issues they must decide on, voters tend not to do so. See *id.* at 945. Moreover, voters merely choose between limited options rather than discuss a range of proposals and select one or more from the myriad brought up in the dialogic process.

74. See Feldman, *supra* note 31. When participants in the community dialogue change their minds, civic republicans view this change as part of the transformative process of a deliberative democracy. The change is not the result of coercion, but rather it comes from a normative understanding of the needs of the community as gleaned from the dialogic process. As John Stuart Mill explains, participation is the key to this transformative process: “the practical part of the political education of a free people, taking them out of the narrow circle of personal and family selfishness and accustoming them to the comprehension of joint interests, the management of joint concerns—habituating them to act from public or semi-public motives and guide their conduct by aims which unite instead of iso-

choose to engage in the dialogic process are encouraged to reflect critically on their own preferences, allowing others' viewpoints to move and shape them as their perspectives do so to others—the result being a more integrated and unified community.<sup>75</sup> Moreover, by strengthening community relationships and fostering participation, the dialogic process renders it more likely that decisions will be accepted, even by those who may not fully agree with it.<sup>76</sup>

To be sure, the civic republican model is an ideal. Some difficult challenges must be overcome for the process to yield agreement on the common good. For example, the process must be open to and include a diverse cross-section of the local community—people with different cultural backgrounds, values, and interests.<sup>77</sup> These different perspectives, while difficult to gather, are necessary for the deliberating community to awaken to the true needs of the collective whole. Moreover, community stakeholders must be equal in their participation in the dialogic process; historic disparities among socio-economic or racial groups in society and/or the political process must be eliminated for the outcomes to be successful and accepted by

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lating them from one another.” JOHN STUART MILL, *ON LIBERTY* 170 (Everyman ed. 2003).

75. Richard H. Fallon, Jr., *What Is Republicanism, and Is It Worth Reviving?*, 102 HARV. L. REV. 1695, 1721 (1989). While the dialogic process helps participants mold each other and their communities, the resulting formulation of the common good requires that each member of the community is concomitantly subject to these collective values. See Hoke, *supra* note 66, at 704.

76. Gey, *supra* note 60, at 858–59; see also Seidenfeld, *supra* note 72, at 1529 (“Through the transformative power of politics, citizens are able to define the community norms that restrict the behavior of all community members, yet all accept as just.”); Cynthia V. Ward, *The Limits of “Liberal Republicanism”: Why Group-Based Remedies and Republican Citizenship Don’t Mix*, 91 COLUM. L. REV. 581, 584–585 (1991) (“The ideal of contemporary republican citizenship is not initial agreement on substantive issues, but belief in the consensual possibilities of deliberative dialogue.”). But see Gillette, *supra* note 35, at 934 (questioning whether individuals can truly understand and set aside their preferences and not act in their own self-interest, while also recognizing that a deliberative process may enlighten people as to their own irrational motives and prejudices).

77. See Stephen M. Feldman, *Whose Common Good? Racism in the Political Community*, 80 GEO. L.J. 1835, 1849–55 (1992). Civic republicans do not ignore cultural differences and private self-interest. Rather, they see these characteristics as necessary to be shared with others, discussed and empathized with, and ultimately used in the dialogic process to help inform the collective discernment of the public good. Kathleen Sullivan calls this goal of gathering a diverse cross-section of the community “rainbow republicanism.” See Sullivan, *supra* note 65, at 1714.

the community.<sup>78</sup> Again, such equality among citizens may prove to be elusive.

In addition, citizens must have meaningful points of access to local government decision-makers in order to inform the decisions that affect their day-to-day lives.<sup>79</sup> Similarly, local government decision-makers must be open to, communicate with, and engage in the community dialogue. Government officials must also explain their decisions to this group and demonstrate how they advance the public good. Such transparency helps ensure that government decisions are not made to advance the interests of a few, but rather the community as a whole.<sup>80</sup> Otherwise, the process may devolve into yet another avenue to advance the interests of existing groups that already dominate the political process.<sup>81</sup>

This is not to say that interest groups are always bad for the political process from a civic republican perspective. Interest groups can serve a valuable role in consolidating citizens with similar goals and perspectives and streamlining their input into the local political process.<sup>82</sup> Moreover, representatives

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78. See Sunstein, *supra* note 64, at 1541.

79. See Michael A. Fitts, *Look Before You Leap: Some Cautionary Notes on Civic Republicanism*, 97 YALE L.J. 1651, 1656 (1988). This approach to local government decision-making resonates with basic tenets of American democracy: "to incorporate citizen participation in policy making and program delivery is to take seriously the rights and responsibilities of citizens to have some control over policies that will have an impact on their lives." Chaskin & Garg, *supra* note 18, at 633. The practical effect of such civic participation is the creation of better policies, programs, and services that inspire public confidence and approval. Moreover, the community's collective stewardship of local government decisions and policies stemming from the deliberative process has more legitimacy than individual interests attempting to use the government decision-making process for their own personal advantage. See Hoke, *supra* note 66, at 705.

80. See Seidenfeld, *supra* note 72, at 1530. Even assuming that some elected officials endeavor for the public good—freed of the political pressures of reelection and political self-perpetuation—it seems unlikely that all of the elected officials would be so common-good-oriented. Nevertheless, such transparency is valuable regardless of the number of such noble public servants.

81. See Feldman, *supra* note 31, at 2243–44. As Frank Michelman explains, "the pursuit of political freedom through law depends on 'our' constant reach for inclusion of the other, of the hitherto excluded—which in practice means bringing to legal-doctrinal presence the hitherto absent voices of emergently self-conscious social groups." Michelman, *supra* note 61, at 1529. Nor does civic republicanism embrace majoritarianism. Civic republicanism thus rejects majoritarianism—a "winners" and "losers" approach to politics. Instead, government exists to allow for community stakeholders to deliberate about decision and policies and to reach consensus for the common good. Seidenfeld, *supra* note 72, at 1514.

82. Nor does there necessarily need to be a negative connotation to the term "interest group." Indeed, many of the interest groups that may participate in such

from interest groups can communicate with their members regarding the policies and decisions adopted by their local government.<sup>83</sup> However, such interests groups must engage in the dialogic process with the goal of informing others of their views and goals, not intransigently pursuing their private interests. In other words, instead of dominating the decision-making process, interest groups should enjoy the same status as that of other community stakeholders. And like any other stakeholder, interest groups must remain open to agreeing to a solution that may not directly advance their cause but that the collective whole believes advances the common good.<sup>84</sup>

This civic republican model begs the question of whether one hundred percent community participation is even possible in contemporary society. As Steven Gey points out, classic civic republicanism favored small communities that were easier to organize and where the essential familiarizing and bonding could occur among citizens in order to reach a consensus as to the common good and then protect such values from outside pressures.<sup>85</sup> A more modern view of civic republicanism realizes the impossibility of replicating this model. Instead, it embraces a more modest goal of providing individuals and representatives of different stakeholder groups with genuine avenues for engagement with their government, even if they choose not to take advantage of them. In this regard, civic republicanism does not require forced or total community participation, just the meaningful opportunity for it.<sup>86</sup>

### III. PAST ATTEMPTS AT LOCAL CIVIC ENGAGEMENT

Given the importance of public participation to democratic legitimacy and good decision-making, it strikes one as odd that more opportunities for civic engagement and community deliberation are not available. In fact, federal, state, and local governments have attempted in the past to create means for citi-

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a dialogic process are critical stakeholders in the community: religious groups, civic associations, labor unions, homeless organizations, and others.

83. Seidenfeld, *supra* note 72, at 1530. *But see* Sullivan, *supra* note 65, at 1719 (arguing that private voluntary associations pose a threat to republicanism).

84. As I will discuss later in this Article, it remains to be seen whether it is realistic to expect interest groups to set aside their own interests—even occasionally—for the betterment of the common good.

85. Gey, *supra* note 60, at 814–15.

86. *See id.* at 819–20.

zen participation. However, with a few exceptions such efforts have largely failed to provide for meaningful, sustained, and broad public participation in government decision-making.<sup>87</sup> Analysis of these failures (beginning with the War on Poverty programs)—as well as some successes—provides valuable lessons for crafting lasting and effective models for civic engagement at the local level.

In conjunction with the federal government, many cities started programs to engage citizens in local government processes during the federal War on Poverty programs of the 1960s and 1970s, which were established by the Economic Opportunity Act of 1964. The War on Poverty programs encouraged “maximum feasible participation” by the poor in decisions that affected their communities.<sup>88</sup> This emphasis led to the creation of Community Action Programs and Community Development Corporations, which were intended to facilitate more involvement of poor citizens in redevelopment efforts, such as opening supermarkets, engaging in business enterprise, and building or rehabilitating housing.<sup>89</sup> These programs envisioned neighborhoods as the focal point for reform and for understanding and addressing problems plaguing urban areas. To that end, they sought to structure new opportunities for citizens—particularly those traditionally disenfranchised—to participate in local (and to a lesser degree federal) government decision-making.

Unfortunately, administrators for the War on Poverty programs—both at the federal and local levels—had little experience creating and fostering deliberative processes. There was minimal participation in these programs, due in part to skepticism that such economic development efforts would be any more successful than in the past and thus waste citizens’ time.<sup>90</sup> The programs also struggled because of heightened ex-

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87. And even those successes have distinct limitations. See *infra* text accompanying notes 98–110.

88. Robert R. Alford & Roger Friedland, *Public Participation and Public Policy*, ANN. REV. SOC., 429, 455–57 (1975). The federal Model Cities Program was very similar to these models, but also met the same unsuccessful fate. See James W. Lowe, Note, *Examination of Governmental Decentralization in New York City and a New Model for Implementation*, 27 HARV. J. ON LEGIS. 173, 202–03 (1990).

89. See Alford & Friedland, *supra* note 88, at 455–57; see also Ellickson, *supra* note 31, at 86–87.

90. Alford & Friedland, *supra* note 88, at 455–56.

pectations and inadequate funding.<sup>91</sup> These programs never fulfilled their potential and wound up having little impact on changing the functioning of government agencies or in successfully engaging citizens.<sup>92</sup> These programs failed in their entirety by the mid- to late-1970s.

Despite these failures, the federal government—and by extension local governments—attempted to spur more neighborhood planning and civic engagement in the 1980s and 1990s through major decentralization programs for urban revitalization. These levels of government collaborated to create territorially based formal substructures of local government—such as business improvement districts (BIDs)—that were created for specific purposes: namely taxation, services, and regulation. These programs continue to exist today. However, they are not designed in accordance with civic republicanism in that public participation in these programs stems from individuals organizing to pursue a common self-interest. In the case of a BID, for example, business owners band together to collect and spend money raised through additional property assessments for property owners in a certain designated geographic region. The group uses this money to pay for additional services like private security and street beautification.<sup>93</sup> Moreover, once the BID is established, a board of directors takes over its operations and the collective action and engagement of the group dissipates.

To be sure, entities like BIDs are successful in involving some community stakeholders in local governance.<sup>94</sup> But their success is limited because their membership is restricted. For example, BIDs are usually only open to property owners, excluding businesses, renters, and other community stakeholders. Moreover, these local government substructures engage only single-interest stakeholders—with BIDs, business owners. They also usually only focus on one issue—e.g., improving business conditions within the BID's boundaries. In

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91. Peter W. Salsich, Jr., *Grassroots Consensus Building and Collaborative Planning*, 3 WASH. U. J.L. & POL'Y 709, 713 (2000).

92. See Alford & Friedland, *supra* note 88, at 457; see also Neil Gilbert, *Maximum Feasible Participation? A Pittsburgh Encounter*, SOC. WORK, 84, 91–92 (1969) (providing a case study in Pittsburgh suggesting few successes with the programs seeking maximum feasible participation).

93. Mark S. Davies, *Business Improvement Districts*, 52 WASH. U. J. URB. & CONTEMP. L. 187, 191–92 (1997).

94. Briffault, *supra* note 29, at 531.



this sense, these substructures fail to engage an array of community stakeholders in a connected and coordinated system that promotes long-term and sustainable change and policy-making. Thus, they are generally insufficient to spur greater and broader civic engagement in cities.<sup>95</sup>

At the same time, cities also provided new opportunities for public participation through neighborhood services centers, city hall annexes, and expanded constituent service departments—all of which survive today.<sup>96</sup> While these avenues give residents some sense of participating in the decision-making process, such opportunities have minimal impact on policies and services because citizens do not interact directly with those making the decisions and because citizens do not speak in a collective voice. Citizens may have realized the inefficacy of these avenues for participation because during this same period, cities experienced a dramatic increase in community activism and neighborhood group organization. Termed the “backyard revolution,” this period saw the establishment of more private neighborhood groups that formed to advocate for better services and to oppose what they deemed to be undesirable land use decisions that affected their communities.<sup>97</sup>

These groups are entities separate from local government and form to advance the interests of the neighborhood residents in local government decision-making. In general, after an initial surge of interest, resident involvement is usually quite low, with only board members and a few gadflies attending meetings. However, when a particular land use decision threatens the character or quality of life in the community,

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95. *Id.* at 522 (questioning the effectiveness of sublocal government structures like BIDs, empowerment zones, and tax increment financing districts because of their targeted purposes).

96. Richard J. Cole, *Citizen Participation in Municipal Politics*, AM. J. POL. SCI., 761, 761 (1975).

97. William H. Simon, *The Community Economic Development Movement*, 2002 WIS. L. REV. 377, 388 (2002) (citing HARRY C. BOYTE, *THE BACKYARD REVOLUTION: UNDERSTANDING THE NEW CITIZEN MOVEMENT* (1980)). Ironically, at this same time, communities also experienced the decline in secondary associations within which neighbors meet and socialize, like the Boy Scouts and bowling leagues. See generally PUTNAM, *supra* note 4, at 1. Putnam argues that the strength of a democratic society rests in citizens' associational life, which enhances “social capital,” promotes civic engagement, and thus strengthens democracy. *Id.* The decline of such secondary associations, then, depletes social capital, weakens democracy, and creates new barriers for collective action. So these informal networks that begot social capital gave way to community groups focused on narrow issues.

perhaps one that increases traffic dramatically or poses environmental or health risks, the neighborhood group once again becomes flush with active residents who mobilize to oppose the project.<sup>98</sup> These neighborhood groups have often proved successful in fighting such projects—so much so that a new word was coined to describe their attitude: NIMBYism (“Not In My Back Yard”). But once the project has been defeated, the throngs of residents disband, and the group remains active largely in name only until another such threat or problem presents itself. Moreover, while such a group may be successful in bringing to light a particular issue in the immediate, this approach often fails to consider long-term effects of their goals.<sup>99</sup> Other self-interested, singularly-focused community groups such as environmental organizations, chambers of commerce, and the like experience similar limitations.

Like business-oriented substructures of local government, the problem with this model of civic participation is that these groups of stakeholders mobilize and unite around a single issue that directly affects them. Such involvement in local government affairs is solely self-interested, outcome-oriented, and oftentimes campaign-based. Moreover, it usually does not mix, say, residents from the neighborhood group with other community members who have a stake in the area, such as educators, environmentalists, and others. Those involved for such a fleeting issue do not communicate with others to understand the needs of the community at large and to inform government decision-makers about the interests of the collective whole. Rather, they push their individual agenda and attempt to influence the decision-making process through mobilizing and lobbying. And since the group quickly disbands after resolution of an issue, the lessons of collective action and community

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98. Harold A. Ellis, *Neighborhood Opposition and the Permissible Purposes of Zoning*, 7 J. LAND USE & ENVTL. L. 275, 275 (1992); see also Carol M. Rose, *Planning and Dealing: Piecemeal Land Controls as Problem of Local Legitimacy*, 71 CAL. L. REV. 837, 863 (1983). Indeed, this incidence is perhaps exacerbated by the mandatory public participation requirements in many land use decisions. See William A. Fischel, *Voting, Risk Aversion, and the NIMBY Syndrome: A Comment on Robert Nelson's "Privatizing the Neighborhood"*, 7 GEO. MASON L. REV. 881, 881–83 (1999).

99. Salsich, *supra* note 91, at 732–33. Such voluntary associations oftentimes face significant barriers to entry as their efforts to raise money and to build and galvanize membership are frequently plagued by free riding. See Ellickson, *supra* note 31, at 86.

involvement are not extended to other issues facing the community as a whole.<sup>100</sup>

These programs, which lead to semi-permanent and ad hoc public participation, appear to fit the public choice model of government decision-making. Single-issue, short-term groups are largely reactive. Instead of informing the policy- and decision-making process as it unfolds, these groups enter public life only in reaction to a result or threat—either intended or unintended—that they find untenable. This intermittent form of civic engagement may be reflective of the costs of political and collective action. Transaction costs such as time spent not working or not with one's family, and overhead costs for running such an active community organization, may prove too high for anything but those crisis situations where the personal costs of collective inaction far exceed those of collective action.<sup>101</sup> As a consequence, policymakers make decisions with, at best, the information of those who manage to involve themselves in the currently insulated local government processes. The governmental output thus lacks properly informed inputs from a broad cross-section of stakeholders who are not crisis-driven.

Many current methods to engage the community demonstrate the problems that exacerbate citizens' feelings of disconnectedness and lack of responsiveness from their local government. Typically, local governments interact with and engage local communities through two methods. The "try-and-sell" method, which involves no real community participation,<sup>102</sup> consists of local government agencies making a decision and then attempting to "sell" it—after the fact—to local communities through public meetings and other interactions.<sup>103</sup> The

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100. See, e.g., Potapchuk et al., *supra* note 30, at 17 (noting that the City of Denver's effective community governance is restricted to economic development projects and does not reach other areas of interest to the community).

101. As discussed further in Part IV.C., the question of time may be the most significant barrier to neighborhood council success.

102. See Frank Benest, *Serving Customers or Engaging Citizens: What is the Future of Local Government?*, 78 PUB. MGMT. A6, A8 (1996).

103. For example, a city might make a decision to privatize its trash collection service without providing meaningful input from its citizens. Elected officials would then speak at community group meetings after the decision was made in an attempt to build support for the decision by delineating all of the positives of the privatization move. Such an approach—even if correct on the merits—can alienate constituents who will inevitably feel as though decisions affecting their day-to-day lives were made without their input. Citizens might also feel insulted that

“try-and-sell” method has had little success with neighborhood groups or the community at large, generating a negative reaction and fostering mistrust in the decision-making process.<sup>104</sup>

The second approach is for local governments to create new community groups or support existing neighborhood organizations to provide input regarding policy-making and the needs of their communities.<sup>105</sup> These groups engage in discussions with local government officials and agencies regarding community concerns and approaches to solving neighborhood problems. This approach creates partnerships between city governments and neighborhood groups, spurring community clean-up, anti-drug, anti-gang, and after-school programs.<sup>106</sup> However, this model primarily relies on existing community-based organizations. Local governments believe that these groups are embedded institutions with mechanisms for inclusion and communication that can streamline representation of neighborhood interests.<sup>107</sup> But this assumption seems to be unfounded. First, as described above, these groups are usually singularly focused and do not engage a meaningful cross-section of the community. Second, rather than emerging as grassroots responses to local needs, these existing groups are established, at least in part, by outside organizations, such as government

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elected officials assume that community members will feel a sense of ownership in the decision if the elected officials come “cheerlead” at such a meeting.

104. See Benest, *supra* note 102. Local residents complain about traditional models of public information dissemination, seeking a more honest form of two-way communications between neighborhoods and city government. See Frisby & Bowman, *supra* note 13, at 4. Residents believe that public meetings, such as “meet your local government official day,” are more of a public relations opportunity for officials rather than a meaningful sharing of information. Such artificial shared governance relationships anger local communities. When invited to participate in community meetings with local officials, residents want an assurance that their opinions will be heard, valued, and used in the policy-making process. See *id.*

105. See Benest, *supra* note 102, at A9. In Brea, California, public officials often attend homeowners association meetings to inform residents of and seek their input on new policy initiatives or to gain their support for recycling, fire prevention, or crime resistance programs. See Frank Benest, *Creating Neighborhood Connections*, 72 PUB. MGMT. 6, 7 (1990) [hereinafter Benest, *Creating Neighborhood Connections*]. This type of relationship demonstrates an effective information dissemination and collecting model of city government to neighborhood relationship.

106. See Benest, *supra* note 102, at A9; see also Benest, *supra* note 105, at 6 (explaining how local governments have teamed with homeowners associations to counter gangs and drug dealers in their communities, as well as to take back local parks and community centers).

107. See Chaskin & Garg, *supra* note 18, at 634.

agencies or corporations, in need of information, support, or legitimacy in the neighborhood.<sup>108</sup> Third, a small group of local elites often run these organizations—a phenomenon referred to as the “iron law of oligarchy.”<sup>109</sup> These elite leaders operate with few mechanisms of communication with, or accountability to, the residents at large.<sup>110</sup> These issues demonstrate that these existing groups do not understand, represent, or concern themselves with the needs and concerns of the community as a whole for which they claim to speak.

These two approaches are designed in the “vending machine” mode of engagement. It finds citizens complacently acquiescing to pay an allotted amount of taxes and fees and in return receiving a corresponding value of services from their local governments.<sup>111</sup> In this regard, local governments view citizens as passive consumers rather than as active participants in the community decision-making process. Although some of the approaches mentioned above seek community input, neighborhood groups still do not have an official, institutional role in city government policy-making. In these models, local government officials often merely gather information from these groups rather than engage them in designing or crafting city policies. Moreover, these groups do not interact with one another as part of a larger, deliberative approach to local government decision-making.

Finally, some scholars see the suburbs and common interest communities (CIC)<sup>112</sup>—with their accompanying homeowners associations—as models for public participation.<sup>113</sup> While

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108. *Id.* at 634–35.

109. *Id.* See generally ROBERT MICHELS, *POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY* 15 (1958) (describing the “iron law of oligarchy” theory that political and governmental organizations will inevitably be taken over by self-perpetuating elites).

110. See MICHELS, *supra* note 109.

111. See Hansell, *supra* note 16, at 9.

112. CICs are residential developments—planned unit developments, condominiums, and cooperatives—where all units are subject to private land use covenants, conditions, and restrictions and are governed by a private homeowners association. CICs are separate, yet complementary entities to local government that supplement the goods and services that cities, counties, and other local governments provide to residents.

113. See generally Robert C. Ellickson, *Cities and Homeowners Associations*, 130 U. PA. L. REV. 1519 (1982) (arguing for more local control to neighborhood homeowners associations); Ellickson, *supra* note 31, at 75 (making the case for Block Improvement Districts and Neighborhood Improvement Districts based off of the popular Business Improvements Districts); Liebmann, *supra* note 24;

some research suggests that citizens participate more in suburbs than in cities,<sup>114</sup> other scholars suggest otherwise.<sup>115</sup> Moreover, suburbs are not microcosms of large, diverse cities. Rather, they are homogenous—in terms of race, ethnicity, and socio-economic status—and oftentimes represent the “favored quarter” of regional populations.<sup>116</sup> Similarly, CICs are limited in terms of their universal usefulness as a model of civic engagement because they are largely limited to the affluent who can afford to opt out of ordinary government goods and services.<sup>117</sup> As Wayne Hyatt notes, such communities are often “enclaves of wealth and privilege” that are coercive, not voluntary.<sup>118</sup> Moreover, attendance and participation in homeown-

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Robert H. Nelson, *Privatizing the Neighborhood: A Proposal to Replace Zoning with Private Collective Property Rights to Existing Neighborhoods*, 7 GEO. MASON L. REV. 827, 832 (1999) (same). The basis for these positions stems from a defense of property—a common mantra that underlies many decentralization arguments. However, local government and our conception of community involve far more than merely defending individual property rights.

114. Briffault, “What About the ‘Ism?’”, *supra* note 20, at 435.

115. See Oliver, *supra* note 11, at 190 (noting that more affluent neighborhoods may experience lower civic participation due to “fewer social needs”).

116. ORFIELD, *supra* note 31, at 1 (detailing the successes of the “favored quarter”); Cashin, *supra* note 19, at 1897 (noting that suburbs represent approximately 25% of a region’s population, but that this quarter of the population succeeds in obtaining or securing the largest share of the region’s infrastructure improvements).

117. See Timothy Egan, *The Serene Fortress: A Special Report; Many Seek Security in Private Communities*, N.Y. TIMES, Sept. 3, 1995 (citing Canyon Lake, California, as an example of a private, incorporated city that is not open to the public); see also Canyon Lake Home Page, <http://www.cityofcanyonlake.com>. This is also to say nothing of the potential impact such a privatization revolution would have on existing cities and their ability to maintain a tax base to provide goods and services to those remaining in their boundaries who could not afford to opt out in this manner, especially the poor. Moreover, cities are quite limited in their powers to begin with, so the powers that could be decentralized to local substructures of government are also, by definition, limited. Lowe, *supra* note 88, at 183; see also Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542, 2556–64 (2006) (noting the cities’ lack of power in our federal system). In addition, to the degree that such models seek to privatize local land use decision-making, they may run afoul of the legal protection that ensures that the government cannot transfer its police power. See Steven J. Eagle, *Privatizing Land Use Regulations: The Problem of Consent*, 7 GEO. MASON L. REV. 905, 919 (1999) (citing Carlino v. Whitpain Investors, 453 A.2d 1385, 1388 (Pa. 1982)); see also Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190, 224 (2001) (“Local government law retains a significant nondelegation doctrine that limits its decision-making authority to locally elected officials.”).

118. Wayne S. Hyatt, *Common Interest Communities: Evolution and Reinvention*, 31 J. MARSHALL L. REV. 303, 311–12 (1998) (“[B]ecause the range of housing

ers associations tend to be low.<sup>119</sup> When residents do engage with one another, it is often over petty disputes such as painting one's house a particular color, not maintaining one's lawn properly, or some other violation of a covenant.<sup>120</sup> Given the restrictiveness and conformity of CICs, it is no surprise that collective action rarely occurs and that participation is low.<sup>121</sup> In this regard, while suburbs or CICs may prove valuable as supplemental efforts to broader civic engagement initiatives, they ultimately fail to fill the void in our democracy and local government decision-making process.

The failed and limited programs of the past demonstrate that for meaningful and lasting change to occur, diverse stakeholders from across a community must establish collaborative relationships through a dialogic process to help reach consensus on the public good. Such efforts must be proactive and sustained, rather than reactive and crisis-driven. They must be structured as a formal part of the local government policy- and decision-making process so as to provide genuine access and to inform decision-makers about the needs and wants of the community as a whole. Systemic changes, long-term planning, and responsive policy-making—all hallmarks of good local government—can only be accomplished through a paradigmatic shift in civic engagement.<sup>122</sup> The remainder of the Article explores the advent of neighborhood councils, which embrace many of the values of civic republicanism and may signal such a shift in paradigm for local governance.

#### IV. NEIGHBORHOOD COUNCILS

##### A. Structure

With the failure of past attempts at increasing public participation, local governments have created promising new substructures that aim to engage community stakeholders, both

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choices is limited, individuals become subject to community association governance by necessity rather than by fully informed choice.”).

119. Clayton Gillette, *Court, Covenants, and Communities*, 61 U. CHI. L. REV. 1375, 1403 (1994). Such lack of involvement may stem from homeowners' general satisfaction in such homogenous communities where expectations and standards of living are somewhat predetermined.

120. *Id.*

121. Hyatt, *supra* note 118, at 360–61.

122. Potapchuk et al., *supra* note 30, at 4.

with one another and, ultimately, as part of the policy- and decision-making process: neighborhood councils.<sup>123</sup> The New York City Charter's explanation of its neighborhood councils provides a representative overview of the purposes of these entities: neighborhood councils exist "for the planning of community life within the city, the participation of citizens in city government within their communities, and the efficient and effective organization of agencies that deliver municipal services in local communities and boroughs."<sup>124</sup> Although the structure and work of neighborhood councils vary from city to city, their general goals are the same: to bring together a broad cross-section of the community to deliberate over various laws, policies, and decisions ranging from land use and transportation matters to goods and service delivery and then to inform the formal local government decision-making process with their input.<sup>125</sup>

Many questions naturally arise when considering whether and how a local government should adopt neighborhood councils. How will neighborhood council boundaries be defined and who should be allowed to participate? Should neighborhood council leadership be elected or appointed? Should they be formal or informal entities within local government? Should neighborhood councils be advisory or have decision-making authority? How neighborhood councils are formed and structured will make a significant difference in terms of the community's perception of their legitimacy and effectiveness.

### 1. Size and Boundaries

Cities differ as to what constitutes an appropriate size for a neighborhood council. The City of Simi Valley, California, created four neighborhood councils with approximately 25,000

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123. While the official names of these entities vary from city to city, I use the term "neighborhood council" to describe them as whatever name a city chooses, the entities are very similar, if not identical, in nature.

124. N.Y. CITY CHARTER ch. 69 § 2700 (1989). Most cities create neighborhood councils by ordinance or through their city charter. See BERRY ET AL., *supra* note 20, at 58 (noting that cities, like Portland, Oregon, created neighborhood councils by ordinance). Other cities, such as Washington, D.C., created neighborhood councils in their city charters.

125. See, e.g., Benest, *supra* note 102, at A7 (explaining the purpose of Brea, California, neighborhood councils); Salsich, *supra* note 91, at 717, 719–20 (describing Atlanta, Georgia, and Washington, D.C., neighborhood councils).



residents per district.<sup>126</sup> In Los Angeles, California, neighborhood councils average approximately 38,000 residents within their boundaries.<sup>127</sup> On the larger end, in New York City fifty-nine neighborhood councils each represent an average of 125,000 residents.<sup>128</sup> Some cities have attempted to give flexibility to communities in defining and shaping neighborhood councils in order to allow for better representation of natural neighborhoods. For example, the neighborhood council system in Los Angeles is set up to address matters such as boundary designation, structuring the neighborhood councils and their boards of directors, and drafting by-laws for each community that seeks to form such an entity.<sup>129</sup> New York City also drew its neighborhood councils' boundaries to satisfy certain criteria, such as conformity with historic neighborhoods and communities, suitability for the delivery of services, and population equity.<sup>130</sup>

Early studies show that in order for neighborhood councils to be effective, local governments should limit the scope of neighborhood councils to geographic areas with relatively small populations.<sup>131</sup> At the same time, they should remain flexible so as to permit boundaries that track existing neighborhoods. Smaller neighborhood councils allow for meaningful face-to-face interaction between community stakeholders engaging in a dialogic process, while flexibility allows such entities to remain true to natural communities with shared interests.

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126. See Coll Metcalfe, *Neighborhood Councils Put Their Stamp on City Issues*, L.A. TIMES, Mar. 30, 1998, at B8.

127. JULIET MUSSO ET AL., UNIVERSITY OF SOUTHERN CALIFORNIA URBAN INITIATIVE, NEIGHBORHOOD COUNCILS IN LOS ANGELES: A MIDTERM STATUS REPORT 1 (2004), [http://urban.usc.edu/main\\_doc/downloads/nc\\_midterm.pdf](http://urban.usc.edu/main_doc/downloads/nc_midterm.pdf).

128. See Richard Briffault, *The New York City Charter and the Question of Scale*, 42 N.Y.L. SCH. L. REV. 1059, 1064 (1998). New York City operates on a borough system. However, the large size of the boroughs—both geographically and in terms of population—necessitated another approach to true community participation in local governance. See *id.* at 1063. Consequently, in 1961, the City of New York created neighborhood councils—which they term community districts and boards—to gain more meaningful neighborhood participation in the operation of the city. See *id.* The City restricts neighborhood councils from encompassing more than 250,000 residents in order to bring these entities closer to the community than the boroughs. See *id.*

129. MUSSO ET AL., *supra* note 127, at 4.

130. See Frederick A. O. Schwarz, Jr. & Eric Lane, *The Policy and Politics of Charter-Making*, 42 N.Y.L. SCH. L. REV. 723, 823 (1998).

131. BERRY ET AL., *supra* note 20, at 49 (concluding that successful neighborhood councils covered smaller geographic regions that kept their representative populations between 2,000 and 16,000 people).

## 2. Who May Participate?

Eligibility to participate in neighborhood councils is often a hotly debated topic. Traditional participation theory views individuals as being part of only one community: the one in which they live.<sup>132</sup> And like most government entities, neighborhood councils are inevitably structured according to geography. However, many cities have attempted to be more inclusive in their neighborhood council participants. In Los Angeles, neighborhood councils can define for themselves the diversity of their general membership. Definitions of eligible community stakeholders vary widely among Los Angeles neighborhood councils but often include “any individual who lives, works, owns a business or owns property” within the neighborhood council’s boundaries; those who participate in educational, religious, non-profit, or community organizations; and members of senior groups, cultural groups, environmental groups, fraternal organizations, and military/veteran organizations.<sup>133</sup> In Portland, Oregon, individuals from neighborhood associations, churches, hospitals, businesses, and other segments of the community may participate in neighborhood councils.<sup>134</sup> In Atlanta, Georgia, residents and those who own property, run a business, or work within the neighborhood councils’ boundaries are eligible for membership and voting rights within these entities.<sup>135</sup>

Determining who constitutes community stakeholders, and thus who may participate in neighborhood councils, becomes a critical question for the effectiveness and longevity of the councils. To gain legitimacy in the community and the broader city, neighborhood councils must speak for a broad array of stakeholders and their views—not just residents who live within the boundaries, but others that have stakes in the community as well. Accordingly, cities should consider adopting a self-selection process whereby communities determine which

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132. See Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 413–14 (1993).

133. MUSSO ET AL., *supra* note 127, at app. 1.126. While membership of neighborhood councils tends to be dominated by residents (homeowners and renters), businesses, religiously-affiliated organizations, educational organizations, and representatives from social services also constitute significant percentages of the membership. *Id.* at 9.

134. BERRY ET AL., *supra* note 20, at 66.

135. Salsich, *supra* note 91, at 717.

stakeholders can participate in their neighborhood council. This approach allows for a more holistic definition of “community” in building neighborhood councils. Such horizontal integration in the community allows a diverse cross-section of stakeholders—homeowners, tenants, community leaders, commercial property owners, social service leaders, police representatives, students, educators, merchants, and others with vested interest in the quality of life in the neighborhood—to participate in neighborhood councils.<sup>136</sup> It thereby provides for a more representative entity for the entire stakeholder community. Moreover, the self-selection process joins different perspectives, bodies of expertise, bases of knowledge, and access to resources in the community.

This more inclusive vision is not unprecedented in local government scholarship. Gerald Frug and Richard Thompson Ford advocate for more expansive stakeholder inclusion on the local level—one that departs from our normal conceptions of residency voting and representation—through cross-border voting whereby non-residents could vote in local elections in areas where they do not reside.<sup>137</sup> This view stems from the realities of urban living: because many major metropolitan areas are densely populated, decisions in one neighborhood may impose externalities on surrounding communities. As such, a more inclusive definition of community stakeholder should make sense, especially for neighborhood councils in densely populated cities.

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136. Horizontal integration would also include neighborhood councils themselves communicating and engaging with one another to address citywide issues which transcend more than just the metes and bounds of a particular neighborhood council. Los Angeles attempts to achieve such horizontal integration through its Congress of Neighborhoods, which aims to serve as a larger deliberative forum for neighborhood councils to address citywide issues such as spending priorities for city services, transportation, development, and other quality of life matters. MUSSO ET AL., *supra* note 127, at Appendix 1.

137. Richard Thompson Ford, *The Boundaries of Race: Political Geography and Legal Analysis*, 107 HARV. L. REV. 1841, 1908–09 (1994); Gerald Frug, *Decentering Decentralization*, 60 U. CHI. L. REV. 253, 297 (1993). Of course, there is a question of just how broadly a community might want to define itself. For example, Erwin Chemerinsky notes that during his time as chairman of the Elected Charter Reform Commission for the City of Los Angeles, the commission debated the merits of including undocumented immigrants as part of neighborhood councils. Erwin Chemerinsky, *Further Reflections of a Framer: The Los Angeles Charter Reform Experience*, 3 GREEN BAG 2D 125, 132 (2000).

### 3. Leadership—Appointed or Elected?

Another controversy arises as to whether the leadership of the neighborhood councils should be elected or appointed. Neighborhood councils also have boards of directors that help administer the work of the group. The number of directors varies depending on the neighborhood council, ranging from five to more than fifty.<sup>138</sup> Moreover, some neighborhood councils designate certain director seats for particular stakeholder groups; others hold general at-large elections or elections based on districts within the neighborhood council's boundaries; and many adopt a combination of two or more of these or other approaches.<sup>139</sup> Other neighborhood councils have their directors appointed by elected officials.<sup>140</sup>

Both models of appointing or electing directors run into normative and/or legal problems. For example, a policy of elected officials appointing members to neighborhood councils runs counter to the notion of a local independent body that is truly representative of its community and that is more organically formed. Moreover, in such a model, appointed members to these councils may feel loyalty and ties to the elected official appointing them, thus preventing them from unfettered advocacy and representation of their neighborhoods.

On the other hand, electing directors to neighborhood councils' boards may fit the community-centered model of neighborhood councils better in terms of being more authentic

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138. For example, neighborhood councils' boards of directors in Los Angeles range from five to fifty-one members, with an average of approximately twenty. MUSSO ET AL., *supra* note 127, at app. 1. In New York City, neighborhood council boards range from thirty to fifty members. See Briffault, *supra* note 128, at 1064. In Portland, Oregon, neighborhood council boards contain between nine and twenty-three members, while Washington, D.C.'s has eight members each.

139. See Ted Rohrlich, *Neighborhood Power Is Key to Charter Debate*, L.A. TIMES, Mar. 19, 1998, at A1 (half of St. Paul's neighborhood councils elected their representatives by district, while half elected them at large, and some councils allocated board positions to particular representative groups, while others did not); Salsich, *supra* note 91, at 719 (Washington, D.C., neighborhood council directors are elected every two years by single-member districts comprised of two thousand residents).

140. Benest, *Creating Neighborhood Connections*, *supra* note 105, at 7 (Simi Valley City Council appoints members to the neighborhood councils' boards); see Briffault, *supra* note 128, at 1064 (discussing how in New York City, council members and borough presidents appoint community activists, developers, neighborhood leaders, political supporters, and other community members to these boards for two-year terms).

and representative of the broad cross-section of community stakeholders. However, the election of neighborhood councils with decision-making authority—discussed further below—creates serious legal issues stemming from the United States Supreme Court's decision in *Avery v. Midland County*, which extended voting apportionment rules for state legislatures to local governments.<sup>141</sup> In *Avery*, the Court held that locally representative bodies with decision-making authority over those within its boundaries must adhere to the one person/one vote doctrine, although it also indicated that special-purpose substructures of local government that focused on certain constituents more than others might be exempt from the rule.<sup>142</sup> The key to this seeming paradox is the "Supreme Court's basic premise . . . that residents of a jurisdiction have an equal right to participate in the election of their local government so long as they are comparably affected by that government."<sup>143</sup> Nevertheless, the Supreme Court has almost always limited the right to vote only to those citizens who physically reside within the jurisdiction, pointing out that such residency requirements are necessary "to preserve the basic conception of a political community."<sup>144</sup> Moreover, the Voting Rights Act would require neighborhood councils to contain an equal number of residents, the non-dilution of minority strength and balance, and the compactness and other qualities designed to ensure fairness and avoid discrimination against one segment of the population.<sup>145</sup>

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141. *Avery v. Midland County*, 390 U.S. 474, 480–84 (1968); see also Briffault, *supra* note 132, at 397.

142. *Avery*, 390 U.S. at 480–83; see *Kessler v. Grand Cent. Dist. Mgmt. Ass'n, Inc.*, 960 F. Supp. 760, 770–74 (S.D.N.Y. 1997) (holding that the one person/one vote doctrine was inapplicable to the Grand Central Business Improvement District elections because of the district's limited purpose); see also *Ball v. James*, 451 U.S. 355, 368 (1981) (holding the one person/one vote doctrine inapplicable to water reclamation district elections); *Sayler Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 725–730 (1973) (upholding a California statute limiting the right to vote to only landowners within the district).

143. See Briffault, *supra* note 132, at 397.

144. See *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 82 (1978) (upholding a state law limiting the right to vote to only those residing within local government boundaries).

145. See generally Briffault, *supra* note 132. The Voting Rights Act would also require the redistricting and redefining of neighborhoods every ten years. Such redistricting could not be done solely on the basis of race. Instead, it must include communities of interest, although minority voting rights must not be diminished in the process. *Id.* at 403–04.

In this regard, the prescriptions of the Voting Rights Act and other legal limitations would render self-selected boundaries for elected neighborhood councils an impossibility. Also, cities would incur significant costs by sponsoring neighborhood council elections and keeping the process consistent with the Voting Rights Act. Finally, formal elections would only allow registered voters to engage in the selection of the neighborhood council members. Given the aforementioned attempts at community-wide inclusiveness, this prescription would most likely limit the true representative nature of neighborhood councils by limiting those who choose their members. Accordingly, neighborhood councils should have either appointed boards of directors or elected boards with no decision-making authority.

#### 4. Advisory or Decision-Making Entities?

For the reasons just described, cities have understandably tended to shy away from granting any decision-making authority to neighborhood councils.<sup>146</sup> When cities adopt neighborhood councils, the debate about whether to grant such entities decision-making authority or make them advisory is oftentimes heated and controversial. On the one hand, formally empowered neighborhood councils pose many problems. As Richard Briffault points out, “[m]ore powerful community-based governments would certainly add to already protracted process of approving certain contracts and zoning changes, and would probably make it more difficult for city government to take action.”<sup>147</sup> Neighborhood councils with land use authority may reject many, if not all, development projects.<sup>148</sup> Many of these projects may serve important city purposes—thus exacerbating the NIMBYism problem.<sup>149</sup> This protective approach to land

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146. BERRY ET AL., *supra* note 20, at 159–60 (detailing how Portland’s neighborhood councils advise city officials about community development matters, among other issues); *id.* at 160–61 (noting how St. Paul’s neighborhood councils advise city officials on land use, zoning, and planning matters); Salsich, *supra* note 91, at 719–20 (noting that Washington, D.C., neighborhood councils advise city officials on planning, social service, transportation, and other public policy issues that affect their communities).

147. Briffault, *supra* note 128, at 1066.

148. *Id.*

149. Michael Wheeler, *Negotiating NIMBY: Learning from the Failure of the Massachusetts Siting Law*, 11 YALE J. ON REG. 241, 244–50 (1994). Another problem related to NIMBYism arises in the likelihood that neighborhood councils with such powers would not consider the loss of sales tax revenue that would come

use decision-making could easily stunt development and growth in the city, which—despite the already problematic issues that many cities face—is undesirable. In addition, a city would have to bear substantial legal liability for the actions of decision-making neighborhood councils, even if higher authorities could review such actions. Finally, neighborhood councils with decision-making authority significantly increase the city's costs related to the permitting and the planning processes.<sup>150</sup>

On the other hand, questions arise as to whether community stakeholders will engage in substructures of local government like neighborhood councils if they do not have decision-making authority. Richard Briffault, Gerald Frug, and other prominent local government scholars argue that average citizens will not engage in civic participation unless such decentralized substructures of government have legal power.<sup>151</sup> Briffault posits that citizens will perceive advisory entities as ineffective and thus not worthy of their time and effort.<sup>152</sup> If few in the community participate, then neighborhood councils will fail like past efforts at civic engagement.

However, it is not necessary that neighborhood councils have *de jure* decision-making power. To be sure, citizens will not participate in neighborhood councils and other forms of public participation if they believe that their efforts will not change or craft public policy.<sup>153</sup> But so long as advisory neighborhood councils wield sufficient *de facto* political power to affect governmental outputs—laws, decisions, policies, etc.—

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from denying development projects. Cities depend on expanded tax revenue from such projects to fund city services and supplement the city's budget. A city council or planning commission will be more likely to balance these competing considerations and thus better serve the interests of the city as a whole.

150. Briffault, *supra* note 128, at 1066. If a neighborhood council acts in a quasi-judicial capacity and thus must base its decisions upon evidence in the record and subsequent legally adequate findings, the neighborhood council will increase costs by requiring staffing by city planning departments, city attorneys offices, and other city departments involved in the land use process. Many projects coming before neighborhood councils will require environmental review, requiring additional professional staffing. Neighborhood councils would have to comply with conflict-of-interest laws, as well as maintain sufficient safeguards to protect the city from liability.

151. See Briffault, *supra* note 128, at 1066 ("Significant grass-roots participation would require real grass-roots power."); Frug, *supra* note 8, at 1070 ("No one is likely to participate in the decisionmaking of an entity of any size unless that participation will make a difference in his life.").

152. Briffault, *supra* note 128, at 1066.

153. *Id.*

community stakeholders would still have an incentive to participate.

Indeed, some neighborhood councils have been very successful without the delegation of legal and governmental decision-making authority.<sup>154</sup> Just as lobbyists and interest groups exert great power and influence over local government decision-making, so too can advisory neighborhood councils garner similar effective influence without having formal decision-making authority. In an advisory role, neighborhood councils can inform city elected officials and administrative staff of their wants, needs, and interests with regard to goods and service delivery. Neighborhood councils can also hear land use development proposals and make non-binding recommendations to planning commissions, city councils, and other city entities which adjudicate land use decisions. In this regard, if properly integrated into local government decision-making—discussed below—neighborhood councils can gain sufficient influence and political power to attract community stakeholders to join and participate.

### 5. Formal or Informal Roles in Local Government?

Most cities have created neighborhood councils as formal, legal substructures of their local government and embedded them as part of the administrative process in city decision-making (despite being advisory).<sup>155</sup> This type of vertical integration situates neighborhood councils within the local government decision-making hierarchy and power structure of elected officials, administrators, and bureaucrats. Moreover, this structure provides neighborhood councils the opportunity to provide input on and influence decisions that affect their

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154. BERRY ET AL., *supra* note 20, at 177–80 (noting neighborhood councils' considerable impact on local governmental outputs).

155. See, e.g., CHARTER OF THE CITY OF LOS ANGELES § 900–14 (2000) (formally incorporating neighborhood councils into city government and various decision-making processes—on an advisory basis—such as the land use and planning process, the delivery of city services, and city budgetary issues); Benest, *supra* note 102, at A7 (noting Simi Valley's incorporation of neighborhood councils into the land use approval process); Briffault, *supra* note 128, at 1063 (same for New York City). But see BERRY ET AL., *supra* note 20, at 58–59 (noting that though created by city ordinance, St. Paul neighborhood councils are not agencies of the city and instead are incorporated as 501(c)(3) non-profit organizations and operate under their own set of by-laws).



communities.<sup>156</sup> As an official part of local government, many neighborhood councils receive budgets and staff in order to fulfill this role.<sup>157</sup>

For neighborhood councils to succeed, local governments should follow this blueprint when adopting these substructures of local government. Communication between stakeholders and government decision-makers—as described previously—has been historically marked by distance, inefficiency, and varying degrees of irrelevance. As formal entities in city government structure, neighborhood councils link community stakeholders to these decision-makers and thus allow for meaningful and timely feedback on local government laws, policies, and decisions. In this regard, by incorporating neighborhood councils into their respective governmental structures and decision-making processes and by providing them with funding and staff in order to fulfill their envisioned role, cities provide neighborhood councils with institutional legitimacy, credibility in the community, and more influence in their local government.

### *B. Neighborhood Councils as a Model of Civic Republicanism*

While local governments may be the most fertile ground for involving average citizens in government decision-making, they are currently structured in a manner that cannot provide a meaningful level of civic participation, except perhaps in the

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156. This structure may also suggest that neighborhood councils ought to be coterminous with city council districts. On the one hand, strict adherence to this approach may be problematic as city council districts often do not correspond precisely with stakeholders' perceptions of the metes and bounds of different communities that might be logical boundaries for neighborhood councils. In this sense, certain communities that share common interests may be divided up into more than one neighborhood council because the community overlaps two or more city council districts. On the other hand, matching neighborhood councils with existing city council districts allows for more clear channels through which neighborhood councils—and their members—can influence local government decision-makers.

157. See, e.g., BERRY ET AL., *supra* note 20, at 113 (detailing how Portland provides funds for neighborhood councils and offers them the use of city staff members); Benest, *supra* note 102, at A7 (explaining how Simi Valley provides a full-time staff person to offer technical assistance to neighborhood councils); Salsich, *supra* note 91, at 719 (noting that part of the reason for neighborhood council success in Washington, D.C., stemmed from the funds provided by the District for their operation).

smallest of cities. Cities have grown so populous that without substructures of government to facilitate such civic engagement, direct public participation has become less and less feasible. However, as detailed in Part III, those prior attempts at public participation through substructures of local government have failed or had only minimal, limited results.

Neighborhood councils have the potential to fill this void and infuse civic republicanism into local governments by creating the opportunity for meaningful civic participation. Neighborhood councils engage stakeholders with one another so that they might deliberate over pending local government decisions and matters facing their communities. They bring together a broad cross-section of the community, spanning a more diverse group of stakeholders than currently constitutes the local political landscape. Community stakeholders will ideally approach the process with openness to others' points-of-view instead of pushing their own pre-formulated self-interest. However, it is possible that when community stakeholders converge, they may initially disagree virulently. The key to the dialogic process is that the engaged stakeholders, through arguing, discussion, persuasion, and the like, ultimately reach agreement on what is best for all those involved.

Those who engage in neighborhood councils will likely "form or transform [participants'] preferences and opinions in light of that undertaking," especially when exposed to diverse and oftentimes opposing views.<sup>158</sup> Through this transformative dialogue, participants will gather and process information provided by others in discerning the best policy or course of action, even if it winds up contrary to their initial preferences. By interfacing with a broad cross-section of their community, neighborhood council participants will begin to see that local government decisions have impacts on others in their community and will lead to a better sense of community interconnect-edness. In fact, the self-interested participants may even find themselves transformed by the deliberative process and thus become more altruistic after their interactions with other stakeholders. But even those stakeholders who approach the deliberative process with only their self-interest in mind will be forced to act reasonably and strategically in order to garner

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158. Fung & Wright, *supra* note 12, at 20.

support from others involved in the process and thus further their ultimate goals.

By providing this opportunity for involvement to the broader community, neighborhood councils also engage those normally disenfranchised from the local government decision-making process. As the influence of these entities stems from the broad consensus of the community, neighborhood councils mitigate against the importance of money and power in the group setting and allow for cross-class collaboration. The deliberative process is based, in theory, on reason, persuasion, and openness, instead of the traditional political advantages of power, money, and connections. In this regard, neighborhood councils and the dialogic process more evenly level the political playing field for those who have been traditionally disenfranchised, as well as for average citizens vis-à-vis the interest groups that currently dominate local government.

When local governments incorporate citizen participation in policy- and decision-making through neighborhood councils, they take seriously the right of citizens to have a meaningful role in shaping policies that will have an impact on their lives and communities—a key tenet of civic republicanism. Neighborhood councils also promote discussion among elected officials, local government administrators and bureaucrats, and the community with regard to local policies and decisions. By embedding neighborhood councils as formal entities within cities and as a necessary, albeit advisory, part of the decision-making process, local governments provide incentives for community stakeholders to see decisions effectuated because of their role in the process, instead of having them handed down by a distant local government.<sup>159</sup> As part of an enduring governmental entity, neighborhood council members can monitor the implementation of local government actions in which they participated. This ability should increase local government accountability. Moreover, such neighborhood council monitoring should also increase local government transparency, minimizing the threat of capture by interest groups which feed off of the current lack of transparency in city government.

In addition, the dialogic process of neighborhood councils and their formal role in the decision-making process should generate superior local government policies, laws, and deci-

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159. Fung & Wright, *supra* note 12, at 26.

sions than the less reflective alternatives of the managerial form of local government,<sup>160</sup> the insulated decision-making process currently in place, and aggregate voting.<sup>161</sup> By involving citizens in the crafting of policies and programs, local governments better suit the needs and priorities of their citizens.<sup>162</sup> Community stakeholders understand the needs, opportunities, priorities, and special dynamics at work in their neighborhoods in ways that professional non-residents attempting to craft and implement policies may not. Neighborhood councils thus allow for those most directly affected by local government decisions and policies to influence the process by sharing their knowledge and experience with each other and, ultimately, the decision-makers. While the public has other avenues for expressing its views—writing letters to elected officials, speaking at an open meeting of a city's decision-making body, attending a community event, etc.—many individuals do not feel as though their views are taken into consideration in any meaningful manner. In contrast, the meaningful and qualitative community input from neighborhood councils results in more connected, directed, responsive, and representative governmental outputs. Such outputs include more targeted public expenditures, more informed decision-making, enhanced delivery of goods and services, and laws and policies that more closely address the interests of the community.

To this end, the success of neighborhood councils will likely be judged by their impact on local government decision-

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160. The council-manager form of local government has an elected city council that vests—by appointment—administrative power, responsibility, and discretion in a professional city manager. See Schragger, *supra* note 117, at 2548.

161. Such involvement becomes more necessary with the sense that centralized, categorical efforts have failed to promote positive change. Indeed, the infusion of civic republican-inspired neighborhood councils into our local governments are necessary “because of the failures of both representative democracy and governmentally mandated citizen participation” and because categorical approaches to problem-solving have ignored interrelations among needs and circumstances of individuals. See Chaskin & Garg, *supra* note 18, at 633.

162. See *id.* at 632. By taking an active role, local communities no longer accept the reductionist label of client, customer, or interest group. See William R. Potapchuk, *Building Sustainable Community Politics: Synergizing Participatory, Institutional, and Representative Democracy*, NAT'L CIVIC REV., Fall 1996, at 54, 55. Instead, residents reprise their role as key deliberators on public affairs issues. In conjunction with the local government and the private sector, neighborhood groups work effectively to improve the quality of life for all members of the community. See Hansell, *supra* note 16, at 9.

making. In New York, elected officials and other local government decision-makers followed the advice of their neighborhood councils approximately eighty percent of the time.<sup>163</sup> Neighborhood councils are similarly influential in other cities as well.<sup>164</sup> Yet in a signal that such entities will not solely be powerful NIMBY forces, city officials approved a large shopping mall in Portland and a racetrack in Birmingham in the face of neighborhood opposition because of perceived greater regional interest that overrode the community's resistance.<sup>165</sup>

Neighborhood council success in influencing local government decision-making may stem, in part, from an openness on the part of elected officials, administrators, and bureaucrats to involve them in this process.<sup>166</sup> If neighborhood councils are taken seriously by local officials and incorporated into the decision-making process, such public participation should beget improved trust and confidence in local government by community members. In fact, the authors of *Rebirth of Urban Democracy* note that in the five cities they studied, the public had great confidence in neighborhood councils and that city officials had great respect for these entities as well.<sup>167</sup> In this regard, by providing proper avenues for citizen participation, local governments can function better and increase the satisfaction level of their citizens. Moreover, if neighborhood councils are a meaningful part of the local government decision-making process, then communities will be more likely to accept the out-

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163. Patrick McGreevy, *Appointed Charter Panel Weighs Reforms*, L.A. DAILY NEWS, Feb. 12, 1998, at N6; see also Rohrlich, *supra* note 139 (noting neighborhood council successes in New York City, Portland, and Birmingham).

164. BERRY ET AL., *supra* note 20, at 150–67 (discussing the successes of the neighborhood councils they studied); City of Los Angeles Department of Neighborhood Empowerment, *Neighborhood Councils' Accomplishments*, available at [http://www.lacity.org/done/accomplishments/donenewsflash\\_c94014787\\_10222003.pdf](http://www.lacity.org/done/accomplishments/donenewsflash_c94014787_10222003.pdf) (last visited Oct. 10, 2007) (detailing many individual and collective successes of neighborhood councils in Los Angeles).

165. Rohrlich, *supra* note 139.

166. BERRY ET AL., *supra* note 20, at 57–60, 65–67 (noting that local government officials in Portland, St. Paul, and other cities actively sought feedback from neighborhood councils on various pending matters).

167. See *id.* at 18 (stating that “[t]he neighborhood-based participation systems in the five core cities of our study fulfill a model of democracy substantially different from the representative democracy that exists in most American cities”); see also MUSSO ET AL., *supra* note 127, at 7 (noting that City of Los Angeles employees and community members viewed the neighborhood councils and their work favorably).

comes of the process, even when an outcome is contrary to the input they provided.<sup>168</sup>

While their success may lead to more legitimacy in the community, neighborhood councils may also increase social capital in communities, something that has dwindled in recent years.<sup>169</sup> Through the dialogic process, neighborhood councils should bolster a sense of community among stakeholders as well as clearer group identification. By bringing diverse stakeholders together to interact and discuss their respective needs and interests, neighborhood councils can promote tolerance between these different groups and break down walls of exclusion that homogeneous communities create.<sup>170</sup>

Individuals participating in neighborhood councils will likely also gain a sense of pride from helping better their community and taking responsibility for improving the quality of life for themselves and their neighbors. As stakeholders engage in the local government decision-making process, they will learn more about the needs of different segments of their community, as well as the interests of the community as a whole. This community education process can help inform stakeholders of the political and governmental issues, thus minimizing the necessity and desirability of relying on mass propaganda for the bases of political and governmental viewpoints and decisions. Therefore, civic engagement through neighborhood councils can lead to a more politically educated and adept electorate and, perhaps, better voter turnout at the local level immediately and at the state and federal levels in the future.<sup>171</sup> For with a better understanding of not only the gov-

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168. J. Vincent Buck, *The Impact of Citizen Participation Programs and Policy Decisions on Participants' Opinions*, 37 W. POL. Q. 468, 468 (1984).

169. See generally PUTNAM, *supra* note 4, at 19 ("Where physical capital refers to physical objects and human capital refers to the properties of individuals, social capital refers to connections among individuals—social networks and the norms of reciprocity and trustworthiness that arise from them.").

170. See Gerald E. Frug, *City Services*, 73 N.Y.U. L. REV. 23, 35–36 (1998). On the other hand, as discussed further below, neighborhood councils could lead to balkanization and NIMBYism where participants focus only on their community and not the city as a whole.

171. While the current focus of neighborhood councils should be within the local government in which they are formed, the long-term possibilities for regional and inter-governmental influence are promising. See David J. Barron, *The Community Economic Development Movement: A Metropolitan Perspective*, 56 STAN. L. REV. 701, 703 (2003) (explaining that "neighborhood solutions ultimately must be integrated into a reform program that attends to the metropolitan-wide relationship between distressed communities, the more prosperous jurisdictions that sur-

ernment and political system but also the needs and wants of other community members, through this involvement ordinary citizens may begin to see their ability to effect change through their participation and their voting.

### *C. Potential Pitfalls for Neighborhood Councils*

Neighborhood councils do not come without risks of significant unintended consequences and potential pitfalls. Some may claim that neighborhood councils are just another misguided utopian solution to a problem that cannot or need not be solved. Indeed, public choice theorists may posit that neighborhood councils and the dialogic process will never change what they see as human nature: rational actors will always pursue their self-interest, even when interacting with other community stakeholders. Critics will claim that this vision for the deliberative process is naively optimistic and will inevitably lead to more private deal-making. But even if this is the case, when viewed from a public choice theory perspective, this result is not untenable.

As mentioned before, the current local political and governmental opportunities for average citizens and those disenfranchised in society are limited, if not non-existent—either by design or because the barriers to entry and costs of collective action are prohibitive. By creating a forum for engagement, those who are not currently as invested in the local government decision-making process can not only have their voices heard, but also help influence results by being placed at a relatively equal status with those who currently wield more power. For example, in the neighborhood council forum, a developer will have to interact with, and perhaps make deals with, members of the community that he or she currently need not face until public hearings on land use decision-making. By the time such hearings happen, there is very little likelihood of derailing such a development project. Neighborhood councils thus encourage more stakeholders to come to the table with their respective views. From a public choice theory perspective, these groups will negotiate and compromise to find a solution that advances their respective self-interests and is palatable to all. At the

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round them, and the regional growth, transportation patterns, and labor patterns that span them”).

same time, this more inclusive set of stakeholders informing the decision-making process should correspondingly lead to more representative policies mirroring the community's wants and needs.

This model for neighborhood councils presumes that community stakeholders will have the time and fortitude to sustain potentially intensive involvement in the deliberative process. This issue may well determine the success or failure of neighborhood councils. One of the strongest criticisms of civic republicanism is the idealized notion that all community stakeholders will have the time and means to be able to engage in a deliberative democracy.<sup>172</sup> In our increasingly complex and demanding society, it may well be too much to ask of many community members—especially the poor—to give up time that could otherwise be spent working, spending time with family, or pursuing other interests.<sup>173</sup> On the other hand, stakeholders may find that participating in neighborhood councils gives them a sense of empowerment to counter the alienation and anomie they may feel with regard to their community and local government. Moreover, if community members see that their involvement in neighborhood councils leads to more representative decision-making, such results may motivate average citizens to find time in their busy lives for such public participation.

While it is no doubt true that not every community member will join or engage in their neighborhood council, one hundred percent participation is not the goal for increased civic engagement. Nor is it even practical, especially when considering that neighborhood councils will almost certainly face a free rider problem.<sup>174</sup> Instead, neighborhood councils need to build a critical mass of community stakeholders to engage in this en-

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172. W. Bradley Wendel, *Nonlegal Regulation of the Legal Profession: Social Norms in Professional Communities*, 54 VAND. L. REV. 1955, 2035 (2001).

173. Some may point to evidence that residents in common interest communities tend not to participate in associational meetings or affairs as evidence of citizens lack of time and/or interest in participating in a deliberative process. Gillette, *supra* note 119, at 1403. However, lack of participation in common interest communities may easily be explained as residents choosing to join a conformed, homogeneous community so that they would not have to engage in neighborhood decision-making. *Id.*

174. As Robert Dahl points out, if a town held a ten-hour meeting and every participant was afforded ten minutes to speak, only 60 people could participate. ROBERT DAHL, *AFTER THE REVOLUTION?: AUTHORITY IN A GOOD SOCIETY* 52 (1990).



deavor of shared decision-making in order for the benefits of increased public participation to accrue. The authors of *The Rebirth of Urban Democracy* note that neighborhood councils can be successful with only about ten percent of their representative population participating regularly.<sup>175</sup> As Frank Michelman posits, for meaningful civic engagement, the opportunity for political dialogue need only be open to all, not necessarily exercised by all.<sup>176</sup>

Neighborhood councils may also suffer from the cart-before-the-horse syndrome. The logic goes that if neighborhood councils are given legitimacy and influence in our local government system, then community stakeholders—especially those that currently refuse to engage in the decision-making process—will join and engage in neighborhood councils. But neighborhood councils can only gain such legitimacy and influence if they serve as representative voices for their respective communities. This proxy can only occur if a broad cross-section of the community participates in the dialogic process. Accordingly, elected officials, city administrators, and community leaders will need to conduct significant and meaningful outreach efforts to educate the community as to what the city's neighborhood council system envisions and entails and to entice those currently disengaged community stakeholders to join and participate early on in the development of neighborhood councils. The small size of neighborhood councils as envisioned in this Article should help provide incentives for such stakeholders to join. As Richard Briffault notes, smaller governmental units reward participation by increasing the likelihood that an individual's input will help influence a decision or policy.<sup>177</sup> By rewarding participation in this manner, neighborhood councils can provide tangible incentives for non-engaged stakeholders to participate—both initially and continually.

This notion of outreach by governmental and community leaders also presupposes a willingness on the part of these entrenched political players to share the power that they wield over the decision-making process. In this regard, neighborhood councils may meet fierce opposition from those who tradition-

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175. BERRY ET AL., *supra* note 20, at 95–98. Despite this turnout, half to three-quarters of residents in these cities knew of their neighborhood councils and thought that their efforts helped shift the balance of power in the city. *Id.*

176. Michelman, *supra* note 61, at 1503–04.

177. Briffault, *Local Government*, *supra* note 20, at 1124.

ally hold much of the power in local governance: city bureaucracies, lobbyists, business interests (particularly developers), and other special interest groups. As mentioned above, unless elected officials and city administrators embrace this new form of substructure of local government, neighborhood councils' chances of success will be considerably diminished.

Even if local government officials are welcoming of such civic engagement, a neighborhood council may be susceptible to capture by private interests, resulting in its serving less as a conduit for discerning the needs of the community and more as yet another governmental entity that advances an individual interest over the collective interest. In particular, those with more wealth or power may attempt to use these advantages to dominate and control neighborhood councils. To diminish the effectiveness of these rent-seekers, neighborhood councils must involve a broad cross-section of community stakeholders and must place all stakeholders on equal footing within the deliberative process. Moreover, by ensuring that neighborhood councils are transparent and accountable—through a city department working with these entities—such rent-seeking can be minimized, if not eliminated. Neighborhood councils can also avoid this capture concern by ensuring that they are accountable to the communities they serve. High visibility and an openness to a broad range of stakeholders in the community will help accomplish the transparency and accountability necessary to mitigate against interest group capture.

If they cannot capture neighborhood councils, interest groups or other self-interested parties may forum shop by seeking to influence the political process in other ways—for example, by going directly to elected officials or local government administrators. However, after they have participated in the process, one of the functions of neighborhood councils is to monitor local government decision-making and policy implementation. Such involvement should help to limit the ability of interest groups to capture the government process if they failed in doing so at the neighborhood council level. For this monitoring effect to occur, elected officials and other government decision-makers must accord neighborhood councils the influence and respect in the local government structure that this Article envisions. If they do so, interest groups may learn the impor-

tance of engaging in the deliberative process to gain support for their projects, interests, or other matters.<sup>178</sup>

While one of the goals of neighborhood councils is to bring stakeholders together to deliberate over matters facing their communities, the empowerment of communities in this manner may exacerbate the balkanization of localities where communities focus only on their own individual needs and not the city as a whole. Moreover, there is also the Madisonian concern that smaller, local governments are more subject to factions and the tyranny of the majority.<sup>179</sup> As James Lowe notes, “[c]ompletely eliminating supervision of decentralized units by central governments and the courts would open the door both to discrimination and tyranny within the unit and to inequality and discrimination between units.”<sup>180</sup> In this regard, structuring neighborhood councils as part of the local government system also has merit from a checks and balances standpoint that helps minimize these concerns. For example, a city could check a racially discriminatory neighborhood council by withholding its funding until it complies with the broad policy objectives for neighborhood councils. The city could even decertify such a neighborhood council if its nonconformance persists. Having an administrative staff within the city to help facilitate and oversee neighborhood councils also helps mitigate against such problems, as the staff can report and address neighborhood councils that act illegally or inconsistently with the city’s parameters for neighborhood councils. Moreover, if neighborhood councils are a formal part of city government, the city can work to coordinate horizontal integration between neighborhood councils by bringing them together periodically to talk with one another and learn about what each other is doing, as well as what impacts one council’s actions might have on others. This

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178. Some note how developers have realized the importance of obtaining support from the community when applying for entitlements and other land use approvals. See, e.g., Gabriel A. Espinosa, *Building on Brownfields: A Catalyst for Neighborhood Revitalization*, 11 VILL. ENVTL. L.J. 1, 24 (2000).

179. See THE FEDERALIST No. 10, at 49 (James Madison) (Clinton Rossiter ed., 1961); see also Rose, *supra* note 98, at 855 (a “body drawn from too small or too homogeneous a constituency may be dominated by a single interest or faction”). But see Ellickson, *supra* note 31, at 89 (arguing that the larger the size of government, the more difficult it is for citizens to monitor its decisions and policies, thus making larger governments more prone to capture by interest groups).

180. Lowe, *supra* note 88, at 183.

type of collaboration should also mitigate against balkanization.

Some of these concerns have already materialized in cities like Los Angeles. Accusations of electioneering, lack of community outreach, and excessive Board of Director influence have marked the early years of neighborhood councils in Los Angeles.<sup>181</sup> Other problems with Los Angeles' neighborhood council system include a lack of funding for the entities, a lack of diversity in terms of stakeholders, and the need for better communication between neighborhood councils.<sup>182</sup> And while neighborhood councils in Los Angeles seem to be connecting community members with one another and their local government, average neighborhood council meetings draw fewer than fifty people.<sup>183</sup> Nevertheless, despite these challenges, the neighborhood council structure—as evidenced by some of its successes thus far—has the potential for a long-term impact on local government.

## CONCLUSION

It is important to remember that “[s]ince the earliest days of the Republic, the maintenance of political participation by its citizens has been viewed as essential to the preservation of free government.”<sup>184</sup> Yet our government suffers from a lack of civic engagement. Neighborhood councils provide a new opportunity to reinvigorate community involvement in local government decision-making and shift from a winner-take-all process to a dialogic one that embodies civic republican values. As detailed above, there is evidence of some short-term successes in that regard. The question, of course, is whether such a transformation in local government can be duplicated in more cities and then sustained in the long term.

Neighborhood councils have the potential to effect such a transformation in ways that we have not seen since the early days of our nation. Even if they fail to live up to the lofty goals of civic republicanism, neighborhood councils still serve a valu-

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181. See MUSSO ET AL., *supra* note 127, at 3.

182. See generally JULIET MUSSO ET AL., REPRESENTING DIVERSITY IN COMMUNITY GOVERNANCE: NEIGHBORHOOD COUNCILS IN LOS ANGELES, Urban Policy Brief, University of Southern California Urban Initiative 1 (2004).

183. MUSSO ET AL., *supra* note 127, at 5.

184. Liebmann, *supra* note 24, at 336.

able purpose in changing—even if to a lesser degree—local government culture. By involving in the decision-making process people who are otherwise shut out of the current local government system, neighborhood councils bring more stakeholders and their views, wants, and interests to the bargaining table that public choice theory describes. Even if the community does not think and act in the common good as civic republicanism would envision, the infusion of broader viewpoints and interests still would lead to more representative decision-making as new political players and the currently entrenched ones negotiate in the political marketplace of public choice theory. In this regard, neighborhood councils have the potential to make a marked difference on local government through increased civic engagement that is—if not transformative—more democratic.