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## ESSAYS

### AMERICAN CITIES AS FIRMS IN THE 21<sup>ST</sup> CENTURY— OR, SHOULD PHILADELPHIA MOVE TO NEW JERSEY?

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New Jersey has for a long time not known what to do with Camden. From 1950 to 2000, the city's population declined from 124,555 to 79,904.<sup>1</sup> In 1999, the median household income of \$23,421 was 57% less than the state median of \$55,146; slightly more than 35% of the population lived below the federal poverty line (compared to 8.5% of the state population); and the median value of owner-occupied housing units in 2000 was \$40,700, approximately 76% less than the state median of \$170,800.<sup>2</sup> Camden has been the site for "all manner of unwanted incursions, from a sewage plant and garbage incinerator to a prison on its waterfront and an interstate highway cutting through the city's fabric. The city gradually [has come] to symbolize the physical blight and public neglect that have challenged urban centers across the nation."<sup>3</sup>

In addition to the city's miniscule residential tax base, many of the major institutions in the city—Rutgers-Camden, the Adventure Aquarium, and Cooper University Hospital, to name a few—are tax-exempt, at least at the city level, and the payments in lieu of taxes that they provide are only a fraction of what their actual taxes would be.<sup>4</sup> In 1981, the

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1. Campbell Gibson, *Population of the 100 Largest Cities and Other Urban Places in the United States* tbl.18 (U.S. Bureau of the Census Population Div. Working Paper No. 27, 1998), available at <http://www.census.gov/population/www/documentation/twps0027/twps0027.html>; U.S. BUREAU OF THE CENSUS, STATE & COUNTY QUICKFACTS, CAMDEN (CITY), NEW JERSEY, <http://quickfacts.census.gov/qfd/states/34/3410000.html> (last visited Apr. 31, 2010) [hereinafter CAMDEN QUICKFACTS].

2. CAMDEN QUICKFACTS, *supra* note 1.

3. CAROLYN ADAMS, DAVID BARTELT, DAVID ELSH & IFA GOLDSTEIN, RESTRUCTURING THE PHILADELPHIA REGION: METROPOLITAN DIVISIONS AND INEQUALITY 20 (2008) (citing HOWARD GILLETTE, JR., CAMDEN AFTER THE FALL: DECLINE AND RENEWAL IN A POST-INDUSTRIAL CITY (2005)).

4. Matt Katz, *Camden's Waterfront—and Its Woes*, PHILADELPHIA INQUIRER, Nov. 9, 2009, at A9.

city was put into partial receivership by the state to protect it from bankruptcy,<sup>5</sup> and it has since at least that time depended on state subsidies to meet its operating budget.<sup>6</sup>

In 2002, the state legislature approved, and Governor Jim McGreevey signed, the Municipal Rehabilitation and Economic Recovery Act (MREERA), which provided for \$175 million in loans and grants for capital projects in Camden, and which effectively also put the city in receivership by placing it under the control of a Chief Operating Officer appointed by the governor.<sup>7</sup> Camden historian Howard Gillette has noted that the MREERA, "although it addressed the effects of concentrated poverty, was crafted primarily to reduce the city's deficit."<sup>8</sup> In fact, it did neither. As one analyst testified in state legislative hearings in 2007, "[s]ince FY 2003, the amount of special state aid required to close the City's budget gap has increased from \$9 million annually to over \$47 million annually. Unless dramatic changes occur, this gap can be expected to increase by at least \$4-6 million annually for the next 3-5 years."<sup>9</sup> After an extensive investigation, the *Philadelphia Inquirer* reported in late 2009 that:

[M]easured by the standards of the recovery law itself . . . politicians and officials still failed to meet their goals. . . . Camden residents are just as poor today and just as likely to be murdered. They are just as unemployed and lacking in the skills to succeed at work. Their children's reading and math skills are just as abysmal. And the city is twice as reliant on state taxpayers as before.<sup>10</sup>

Yet Camden residents did receive some major improvements to the state aquarium (the recipient of the largest amount of recovery funds), such as the introduction of hippos.<sup>11</sup>

In his popular book *Cities Without Suburbs*, former Albuquerque mayor and committed regionalist David Rusk identified Camden as an American city past the "point of no return," meaning that "city-suburb economic disparities [had] become so severe that, in a broad sense, the

5. Dwight Cunningham, *New State Takes Charge in Camden Budget Middle*, PHILADELPHIA INQUIRER, Apr. 2, 1981, at B3.

6. For discussion of Camden's historic budget deficit see GILLETTE, *supra* note 3, at 90-93, 102-103, 194, 197.

7. Municipal Rehabilitation and Economic Recovery Act, N.J. STAT. ANN. §52:27BBB-2.1 (West 2010).

8. GILLETTE, *supra* note 3, at 192 (2005).

9. *Testimony, Public Comments, and Discussion About the Report Issued Pursuant to the Municipal Rehabilitation and Economic Recovery Act: J. Public Hearing Before the S. Community and Urban Affairs Comm., and Assem. Housing and Local Government Comm.*, 54x (N.J. 2007) (testimony of Derek Ziegler, Researcher, CAMConnect), available at [http://www.camconnect.org/dataloget/camconnect\\_testimony\\_1-30.pdf](http://www.camconnect.org/dataloget/camconnect_testimony_1-30.pdf).

10. Matt Katz, *Camden Rebirth: A Pledge Unmet*, PHILADELPHIA INQUIRER, Nov. 8, 2009, at A20.

11. Katz, *supra* note 4.

city is no longer a place in which to invest or to create jobs (with the exception of fortress-like downtown business districts)."<sup>12</sup> Such cities "cannot escape the grip of ghetto poverty solely by their own efforts."<sup>13</sup> Rather than investing in downtown aquariums, Rusk's major suggestion for cities in general was that they had to be able to expand geographically. Indeed, he has more recently argued that "[a] city's ability to annex land from its surrounding county is a primary determinant of its fiscal health."<sup>14</sup> It is thus notable that Camden is a minuscule eight square miles in size and is surrounded by more affluent and commercially vibrant suburban municipalities that support the impoverished residents of their neighboring city only insofar as their state and county tax dollars come back to Camden to meet the city's annual budget deficit.

Like almost every rust belt city, Camden stopped expanding geographically almost a century ago. The city, first incorporated in 1850, annexed part of Newton Township in 1871, the entire town of Stockton in 1899, part of Haddon Township in 1918, and it has remained the same size ever since.<sup>15</sup> By contrast, cities in the Sunbelt have expanded their jurisdictions tremendously since World War II, as reflected in the fact that, in the 1980 federal census, when five of the ten most populous cities in the United States were in the rust belt (New York, Chicago, Philadelphia, Detroit, and Baltimore) and five were in the Sunbelt (Los Angeles, Houston, Dallas, San Diego, and Phoenix), the average geographic size of the rust belt cities was 176.3 square miles, while the average of the Sunbelt cities was 399.62 square miles.<sup>16</sup> And the Sunbelt cities have continued expanding and increasingly moving past the rust belt cities in population size.

The significance of city size to the welfare of a city is evident by comparing Houston and Newark, another New Jersey city; the comparison also illustrates the unattained aspirations of rust belt cities. In 1908, the board of trade in Newark announced a bold plan for its city to annex the majorities of Hudson and Essex counties, as well as parts of Bergen and Union counties, to create what would have been the fourth-largest city in the country. The results were less than impressive. Newark made only one significant land annexation, absorbing the sparsely populated and largely undeveloped Ivy Hill area in 1927, bringing the city up to its

12. DAVID RUSK, *CITIES WITHOUT SUBURBS* 74 (2d ed. 1995) [hereinafter Rusk, *CITIES WITHOUT SUBURBS*].

13. *Id.* at 75.

14. DAVID RUSK, BROOKINGS INSTITUTION, *ANNEXATION AND THE FISCAL FATE OF CITIES* 1 (2006), available at [http://www.brookings.edu/metro/pubs/20060810\\_fiscocf\\_cities.pdf](http://www.brookings.edu/metro/pubs/20060810_fiscocf_cities.pdf) [hereinafter Rusk, *ANNEXATION*].

15. JOHN P. SNYDER, *THE STORY OF NEW JERSEY'S CIVIL BOUNDARIES*, 1606-1968, at 104 (1969).

16. Gibson, *supra* note 1, at tbl.21; see generally KENNETH T. JACKSON, *GRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 138-56 (1985).

current size of 23.6 square miles.<sup>17</sup> By contrast, Houston was in 1908 even smaller than Newark (approximately 15 square miles), yet by 1948 the Texas city had expanded to 216 square miles. By 2000, it encompassed 580 square miles, with a population that made Houston, not Newark, the fourth-largest city in the country.<sup>18</sup>

The divergent growth trajectories of the two cities have had significant policy consequences. In 1999, median household income in Houston was \$36,616, which was \$3,311 less than the Texas state average, while median household income in Newark was \$26,913, which was less than half the overall New Jersey average. In 2000, the home ownership rate was 45.8% in Houston and 23.8% in Newark.<sup>19</sup> The Texas Municipal League uses Newark as an example of what Texas cities would have become were they not able to expand their borders: "If San Antonio, for example, had the same boundaries it had in 1945, it would contain more poverty and unemployment than Newark, New Jersey."<sup>20</sup>

Yet, even Texas cities may find themselves in the same position as Newark in the future, and Houston is a case in point. While Houston has been able to expand dramatically over the last half century, it has, as a result, faced increasing resistance. Under the authority of a 1912 state constitutional amendment that provided home rule cities broad authority to unilaterally annex land, Houston engaged in an aggressive expansionist strategy that ultimately prompted a reaction on the part of suburban communities. These communities lobbied the legislature to pass the 1963 Municipal Annexation Act, which provided new procedural constraints on annexation.<sup>21</sup> As the Texas Municipal League has noted,

17. RICHARDSON DIWORTH, *THE URBAN ORIGINS OF SUBURBAN AUTONOMY* 179-81, 190-91 (2005).

18. U.S. BUREAU OF THE CENSUS, CITY & COUNTY QUICKFACTS, HOUSTON (CITY), Texas, <http://quickfacts.census.gov/qfd/states/48/4835000.html> (last visited June 18, 2010) [hereinafter Houston QuickFacts]. For more information on Houston, see Gibson, *supra* note 1. I am grateful to David Rusk for initially making this comparison between Newark and Houston. See David Rusk, *Book Review: Urban Origins of Suburban Autonomy*, by Richardson Diworth, 25 J. PLAN., EDUC. & RES. 222, 223 (2005) [hereinafter Rusk, *Book Review*].

19. HOUSTON QUICKFACTS, *supra* note 18; U.S. BUREAU OF THE CENSUS, CITY & COUNTY QUICKFACTS, NEWARK (CITY), NEW JERSEY, <http://quickfacts.census.gov/qfd/states/34/3451000.html> (last visited June 22, 2010).

20. SCOTT HOUSTON, TEXAS MUNICIPAL LEAGUE, MUNICIPAL ANNEXATION IN TEXAS: IS IT REALLY THAT COMPLICATED? 9 (2008) (citing TERRELL BLODGETT, TEXAS MUNICIPAL LEAGUE, TEXAS HOME RULE CHARTERS (1994)), available at [http://www.tml.org/legal\\_pdf/ANNEXATION012808.pdf](http://www.tml.org/legal_pdf/ANNEXATION012808.pdf).

21. See *id.* at 6 (discussing the home rule amendment and annexation); see also Arnold Fleischmann, *The Politics of Annexation: A Preliminary Assessment of Competing Paradigms*, 67 Soc. Sci. Q. 128, 135 (1986) (explaining similar instances in San Antonio and Milwaukee which "both resorted to defensive tactics such as litigation and lobbying"); Robert P. Thomas, *Metropolitan Structural Development: The Territorial Imperative*, 14 PUB. AFFS 83, 97-98 (1984).

"[F]ural landowners and others have regularly turned to their legislators for relief from city expansions, with the result that bills to curb unilateral annexations have surfaced in every session for the past fifty years."<sup>22</sup> And the Texas Senate Interim Committee on Annexation noted in its final 1998 report that "[a]nnexation has become an increasing source of contention between residents of extraterritorial areas and cities, particularly large cities."<sup>23</sup> Indeed, while Houston expanded by 132 square miles per decade between 1950 and 1980, it actually lost territory in the 1980s, and it gained a little less than 40 square miles in the 1990s.<sup>24</sup> Since at least the beginning of the twenty-first century, the population in the outer counties in the Houston-Sugar Land-Baytown Metropolitan Area has been growing significantly faster than the population in the inner counties.<sup>25</sup> This offers evidence of the sobering possibility that outlying population growth in the Houston metropolitan area will constrain the growth of the central city, ultimately creating an impoverished core on a scale much larger than Newark.

In short, the future of American cities depends to a great extent on their ability to absorb outlying land and communities. For the rust belt cities that stopped expanding about a century ago, the future thus looks bleak, and in the farther future, the Sunbelt cities may look even bleaker. Politically fragmented metropolitan regions have higher levels of racial and ethnic segregation, and greater levels of concentrated poverty.<sup>26</sup> As Myron Orfield has summarized from nearly three decades of research:

Neighborhoods of concentrated poverty destroy the lives of the people trapped in them and create a growing social and fiscal cancer in the midst of previously healthy communities. In cities and older suburbs, as joblessness, racial segregation, and single-parent families come to dominate neighborhoods, residents are cut off from middle-class society and the private economy.<sup>27</sup>

22. HOUSTON, *supra* note 20, at 6.

23. TEXAS SENATE INTERIM COMM. ON ANNEXATION, INTERIM REPORT, S. 76, at 5 (Comm. Print 1998), available at <http://www.senate.state.tx.us/75/Senate/commit/archives/C1/C13REP.PDF>.

24. HOUSTON QUICKFACTS, *supra* note 18; Gibson, *supra* note 1.

25. PAUL J. MACKON, U.S. BUREAU OF THE CENSUS, POPULATION CHANGE IN CENTRAL AND OUTLYING COUNTIES OF METROPOLITAN STATISTICAL AREAS: 2000 TO 2007, at 11 (2009), available at <http://www.census.gov/prod/2009pubs/p25-1136.pdf>.

26. See Rusk, CITIES WITHOUT SUBURBS, *supra* note 12, at 27-38; DAVID RUSK, INSIDE GAME/OUTSIDE GAME: WINNING STRATEGIES FOR SAVING URBAN AMERICA 5 (1999) [hereinafter Rusk, WINNING STRATEGIES]; Myron Orfield, *Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation*, 33 FORDHAM URB. L.J. 877 (2006). But see David R. Moigan & Patricia Maerschal, *Central-City/Suburban Inequality and Metropolitan Political Fragmentation*, 34 URB. AFF. REV. 578, 580-81 (1999).

27. MYRON ORFIELD, AMERICAN METROPOLITICS: THE NEW SUBURBAN REALITY 53-54 (2002).

Rusk and Orfield are both proponents of central city annexation and consolidation as a means of pursuing metropolitan policy reform, yet, both also take it as a foregone conclusion that the chances of Northeastern cities expanding through annexation are minimal at best.<sup>28</sup> Rather than suggest annexation or consolidation as a viable strategy, Orfield has instead concentrated on the formation of coalitions of interest between central cities and suburbs to promote metropolitan reform at the state level.<sup>29</sup> Rusk has argued that states should adopt laws that will facilitate annexation and consolidation.<sup>30</sup> Yet, in states where the majority of the metropolitan population resides in smaller incorporated municipalities, many of which were created in part specifically to avoid annexation,<sup>31</sup> it seems unlikely that elected state legislators will be motivated to make laws that make it easier for cities to annex outlying communities.

AN ALTERNATIVE REGIONALIST STRATEGY: CITIES AS FIRMS

I use Camden and the Philadelphia metropolitan region in this article to explore an alternate path toward the revival of annexation in the rust belt, and thus an alternate, and happier, future for rust belt cities. I propose that the city, state, and federal officials who represent Philadelphia should approach elected officials in New Jersey with a plan to redraw the Pennsylvania-New Jersey border so that Philadelphia becomes part of New Jersey, and so that Philadelphia and Camden can be consolidated into a single city. Thus absorbed into a city with a more stable tax base and better services, Camden would finally have a clear path toward no longer being a ward of the state. For Philadelphia, absorbing Camden would be a major financial burden, for which it would have to be compensated by including some more affluent New Jersey suburbs into the consolidated city as well. For that purpose, the hyper-fragmentation of northern Camden County is helpful, since smaller municipalities could be added incrementally—starting, say, with Pennsauken, then Collingswood, then Merchantville, then Woodlyrne, and so on—until there were enough higher-income communities added to compensate for the tax

28. *Id.* at 133-35; DAVID RUSK, BALTIMORE UNBOUND: A STRATEGY FOR REGIONAL RENEWAL 31-35 (1996) [hereinafter RUSK, BALTIMORE UNBOUND]; RUSK, CITIES WITHOUT SUBURBS, *supra* note 12. For critical overviews of the "new regionalist" movement of which Rusk and Orfield are both part, see Neil Brenner, *Decoding the Newest "Metropolitan Regionalism" in the USA: A Critical Overview*, 19 CITIES 3, 9-17 (2002); David L. Imbroscio, *Shaming the Inside Game: A Critique of the Liberal Expansionist Approach to Addressing Urban Problems*, 42 Urb. Aff. Rev. 224, 225 (2006).

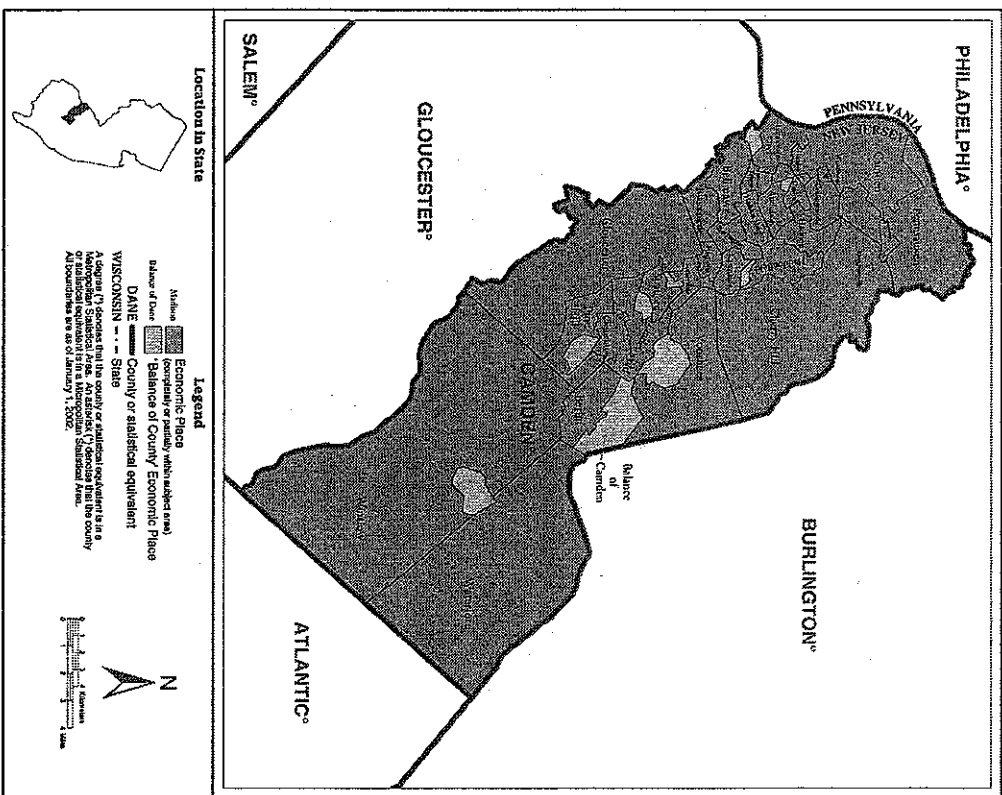
29. ORFIELD, *supra* note 27, at 153-54.

30. RUSK, CITIES WITHOUT SUBURBS, *supra* note 12, at 12-13.

31. For this relatively common line of argument, see, for example, JACKSON, *supra* note 16, at 150-51; RUSK, WINNING STRATEGIES, *supra* note 28, at 35.

burden of Camden, yet, not so much that their residents would have the clout to stop the consolidation from happening (see Figure 1).

FIGURE 1: CAMDEN COUNTY AND MUNICIPALITIES<sup>32</sup>



Once Philadelphia has struck a deal to be redrawn into New Jersey, it could go back to the Pennsylvania legislature and argue that, if Penn-

32. U.S. BUREAU OF THE CENSUS, 2002 ECONOMIC CENSUS, CAMDEN COUNTY, NJ—ECONOMIC PLACES, available at <http://www.census.gov/econ/census02/maps/nj/05000us34007.m.pdf>.

sylvania would like to keep its largest city, the legislature should authorize Philadelphia's annexation of one or more surrounding counties (Montgomery, Bucks, or Delaware). As a city in either New Jersey or Pennsylvania, Philadelphia would emerge from the struggle as an expanded city with a stronger tax base, and as a more powerful political player in whichever state it was located.

The benefits to expanding into suburban territory for Philadelphia are conceivably significant. The city, which is also a county, sits in the middle of a metropolitan region that covers eight other counties (four each in New Jersey and Pennsylvania), in which there are 352 municipalities.<sup>33</sup> While the overall regional population increased by 57% between 1940 and 2000, Philadelphia's population declined by 21% during the same period.<sup>34</sup> Many of the people who left the city were middle-class, with the result that many parts of Philadelphia are defined by highly concentrated poverty. During the 1990s, for instance, the city lost 26,206 households with annual incomes between \$34,000 and \$81,000.<sup>35</sup> By 2000, the Philadelphia region stood out among similar regions (namely Baltimore, Boston, Chicago, Cleveland, Detroit, Minneapolis, Phoenix, and Pittsburgh) as having the highest percentage of poor people living in census tracts where more than 40% of the population qualifies by federal standards as impoverished.<sup>36</sup> This geographic concentration of poverty is reinforced by the fact that most of the housing options for residents below the median metropolitan income of \$51,980 are located in Philadelphia, the cities of Camden and Chester, and a few inner-ring suburbs.<sup>37</sup>

Camden thus in many respects looks like an impoverished Philadelphia neighborhood that simply happens to be an independent city in another state, and for that reason is all the worse off. Yet, unlike Camden, Philadelphia is still a large American city, and the largest city in its state. Its population of approximately 1.5 million residents represents

33. ADAMS ET AL., *supra* note 3, at 16–18 (defining the geographic region). The U.S. Census Bureau, in fact, defines the metropolitan statistical area more broadly, as the Philadelphia-Camden-Wilmington, PA-NJ-DE-MD Metropolitan Statistical Area, which includes two additional counties. U.S. BUREAU OF THE CENSUS, METROPOLITAN AND MICROPOLITAN STATISTICAL AREAS AND COMPONENTS, NOVEMBER 2008, WITH CODES (2008), available at <http://www.census.gov/population/www/metroareas/lists/2008/List1.txt>.

34. ADAMS ET AL., *supra* note 3, at 16–18.

35. BROOKINGS INST. CTR. ON URBAN AND METROPOLITAN POLICY, PHILADELPHIA IN FOCUS: A PROFILE FROM CENSUS 2000, at 56 (2003) [hereinafter BROOKINGS INST.].

36. ADAMS ET AL., *supra* note 3, at 35.

37. *Id.* at 79–82.

approximately 12% of the population of Pennsylvania.<sup>38</sup> Approximately 14% of the members of both chambers of the Pennsylvania legislature have at least a part of Philadelphia in their districts, as do four members of the U.S. House of Representatives.<sup>39</sup> And while the city has lost its middle-class population, it has maintained its large population of upper-middle- and upper-class households—during the 1990s, it actually gained an additional 390 households with incomes greater than \$81,000.<sup>40</sup> In 2008, the City of Philadelphia was the fourth-largest employer in the state, followed by the University of Pennsylvania and the School District of Philadelphia.<sup>41</sup> The city thus has resources that provide it with influence in the state, and which I argue it could use to pique the interests of New Jersey. In the process expand territorially, become even more influential, and even help Camden City.

The strategy that I have so far briefly outlined here may sound outlandish for a city, yet it is standard practice for private firms, who routinely play states and municipalities against one another in order to extract the greatest benefits for locating in a given place. In the Philadelphia metropolitan region, for instance, the consulting firm Towers Perrin<sup>42</sup> benefited from over \$14 million in promised state and local government incentives to move 1,100 employees one mile from Voorhees, New Jersey, to Cherry Hill, New Jersey.<sup>43</sup> In suggesting that Philadelphia move to New Jersey, I am merely suggesting that cities act more like private firms.

Cities, of course, already engage in ostensibly firm-like behavior. They compete against one another for business by aggressively promoting themselves to tourists, and by providing tax breaks and other financial incentives so that companies will choose to locate within their jurisdic-

38. U.S. BUREAU OF THE CENSUS, CITY & COUNTY QUICKFACTS, PHILADELPHIA (CITY), PENNSYLVANIA, <http://quickfacts.census.gov/qfd/states/42/4260000.html> (last viewed June 22, 2010).

39. For the state legislators who serve Philadelphia, see The Pennsylvania General Assembly, Philadelphia PA County Legislators, [http://www.legis.state.pa.us/d/doors/legis/home/findyourlegislator/country\\_list.cfm?CNTYLIST=Philadelphia](http://www.legis.state.pa.us/d/doors/legis/home/findyourlegislator/country_list.cfm?CNTYLIST=Philadelphia) (last visited Apr. 13, 2010). The four districts for the U.S. House of Representatives that include parts of Philadelphia are the First (Rep. Robert Brady), Second (Rep. Chaka Fattah), Eighth (Rep. Patrick Murphy), and Thirteenth (Rep. Allyson Schwartz) Districts. The majority of Philadelphia is divided between the First and Second Districts, while the Eighth and Thirteenth Districts include only small portions of the city. See Congressional Districts: 110th Congress—Pennsylvania, NationalAtlas.gov, <http://www.nationalatlas.gov/primary-110th-congress-pennsylvania> (last viewed June 22, 2010).

40. BROOKINGS INST., *supra* note 35, at 56.

41. PA. DEP'T OF LABOR AND INDUS., CTR. FOR WORKFORCE INFORMATION AND ANALYSIS, PENNSYLVANIA EMPLOYERS WITH 500+ EMPLOYEES: 3RD QUARTER (2009), available at [http://www.paworkstats.state.pa.us/reports/page\\_500.pdf](http://www.paworkstats.state.pa.us/reports/page_500.pdf).

42. ADAMS ET AL., *supra* note 3, at 159.

tions, rather than in another city.<sup>43</sup> In the classic argument by economist Charles Tiebout, cities operate as firms by providing unique bundles of services that match the preferences of specific "consumer voters."<sup>44</sup> As the Advisory Commission on Intergovernmental Relations analogized, "[j]ust as market competition produces an economic system responsive to consumer needs, interjurisdictional competition can produce a government system responsive to voter desires."<sup>45</sup>

Yet, such interjurisdictional, intercity competition for tourist dollars, residents, or new industry is only superficially firm-like because it is competition premised on the very thing that distinguishes municipal from private corporations—namely, mobility. Cities will never be mobile in the same way as firms. Philadelphia is never going to open up a new branch city in Arizona to better compete against Phoenix, for example. But the success of cities lies in their relative ability to expand through consolidation or annexation,<sup>46</sup> which makes cities more mobile in the sense that they can move across space, even as they are tethered to their original locations. Thus, when I say in this article that cities might operate as firms, I am not suggesting new ways in which they might better compete against one another, but how they might benefit from intergovernmental competition itself.

In short, I propose and argue herein that, in the twenty-first century, traditional large American cities might take a more active role in reinventing American federalism by leveraging what influence they have to try to force state border changes to their advantage. There are at least three reasons for making this argument. First, I am proposing this strategy as an alternative and extension of the metropolitan reform strategies proposed by Rusk and Orfield. Like them, the strategy that I propose here is one of coalition-building for regional reform that attempts to lev-

43. For one of the classic statements on this strategy, see James M. Buchanan, *Principles of Urban Fiscal Strategy*, 11 PUB. CHOICE 1 (1971); see also Harvey Molotch, *The City as a Growth Machine: Toward a Political Economy of Place*, 82 AM. J. SOC. 309 (1976).

44. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956).

45. ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, INTERJURISDICTIONAL TAX AND POLICY COMPETITION: GOOD OR BAD FOR THE FEDERAL SYSTEM? (1991), quoted in John D. Donahue, *Tiebout? Or Not Tiebout? The Market Metaphor and America's Devolution Debate*, 11 J. ECON. PERSP. 73, 74 (1997).

46. Many authors distinguish between annexation and consolidation, though the distinction is not always consistent. For instance, Kenneth Jackson refers to annexation as "the addition of unincorporated land to the city" and to consolidation as "the absorption of one municipal government by another, usually adjacent. . . ." JACKSON, *supra* note 16, at 140–41. Orfield defines annexation as "the power granted to cities in some states to expand their boundaries to capture undeveloped land, unincorporated areas, or existing communities" and consolidation as "joining multiple jurisdictions into one larger jurisdiction." ORFIELD, *supra* note 27, at 133, 135. Given the overlap and lack of consistency in the distinction annexation and consolidation, I use the two terms interchangeably here.

erage the perceived self-interests of the actors involved. As Rusk has explained, one of the key lessons from Orfield's attempt to create greater inter-municipal coordination and equity in the Twin Cities region during his time in the Minnesota legislature, is that "communities seldom make progress on hard, divisive issues through friendly, consensual agreement. They do so by building political coalitions. And those coalitions are most durable when based on each member's political self-interest—that is, their perception of the interests of the constituencies they represent."<sup>47</sup>

Yes, unlike Rusk and Orfield, whose regionalist strategies are premised on building coalitions of groups within central cities and suburbs by demonstrating to them the collective benefits of regional reform, my strategy relies on building coalitions between central cities and statewide political party interests—both within states, and across state borders—substantial enough to simply overrule the interests of surrounding suburbs. The goals of my strategy are also somewhat different. Rusk and Orfield have proposed regional reforms that directly address racial and economic inequalities that are in part a function of metropolitan fragmentation (for instance, "fair share" affordable housing and tax-base-sharing programs)<sup>48</sup> My strategy directly addresses metropolitan fragmentation through central-city annexation, with the expectation and hope that larger cities, and thus less fragmented metropolitan areas, will result in greater equity.

Second, the strategy I propose here is theoretically significant because it reverses the traditional understanding that state government limits cities' ability to expand. As I explain in greater detail in the following section, the strategy I describe here relies not on the formal legal powers of cities, which are, of course, limited, but on their informal powers, primarily as political units often dominated by a single party.

Third, regardless of whether or not my proposed strategy is a viable option for cities—which it most likely is not—it is still, at least, an important thought experiment, because it allows for a rigorous re-imagining of our big cities as political units independent of the states with which they are usually associated. It thus takes up Gerald Frug's longstanding claim that "the powerlessness of cities has become so basic to our current way of understanding American society that no modest effort to 'revitalize' the cities by decentralizing power can succeed. Real decentralization requires rethinking and, ultimately, restructuring American society itself."<sup>49</sup> Indeed, I argue in the conclusion of this article that the ultimate and logical extension of thinking seriously of cities as political units independent and powerful enough to compel state border changes,

47. RUSK, WINNING STRATEGIES, *supra* note 26, at 247.

48. *Id.* at 230, 238–42; ORFIELD, *supra* note 27, at 105–08.

49. Gerald Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1060 (1980).

is a call for a new constitutional convention, in recognition of the fact that the United States has evolved from a primarily rural to a primarily urban nation since 1787. Yet, while a restructuring along the lines suggested by Frug is thus implicit in the strategy I propose, I only scratch the surface of what would actually be involved in a state border change and municipal consolidation. I concentrate primarily on the political motivations of the numerous state, local, and national officials who would have to approve the border change and consolidation, and I do not address at all the gargantuan work of consolidating administrative departments, information systems, pension funds, labor agreements, and the like.

While the strategy I propose here thus has broader significance beyond the Philadelphia metropolitan region, it is also obviously a practical strategy only for big cities that lie along state borders, such as New York, Chicago, St. Louis, Cincinnati, and Kansas City, Missouri. Of all those cities, Philadelphia makes a good case because it falls into the middle of the pack in terms of its post-World War II development. As Table 1 indicates, all six cities suffered their greatest period of population loss in the 1970s, with Philadelphia losing a greater proportion of its population than either Chicago or New York, but less than Cincinnati or St. Louis, and about the same as in Kansas City. Like Cincinnati and St. Louis, Philadelphia continued to lose population in the 1990s, but at a much slower rate than those two cities, thus making it a bit more similar to Kansas City and Chicago, both of which made modest population gains in that decade. And like New York and Chicago, Philadelphia, despite its population loss, has maintained its status as a major American city, having dropped from third- to fifth-largest American city between 1950 and 2000. By contrast, during that same period, St. Louis dropped from eight- to forty-eighth-largest American city, Kansas City dropped from twentieth to thirty-sixth, and Cincinnati dropped from eighteenth to fifty-third.<sup>50</sup>

50. Kansas City's notable ability to avoid the kind of devastating population loss that Cincinnati and St. Louis experienced in the 1960s, and to actually gain population during that decade, was due to massive geographic expansion. Between 1940 and 1970, Kansas City grew from 58.6 to 316.3 square miles. Tellingly, the city suffered from population loss in the first decade, the 1970s, when it was unable to annex any outlying land. U.S. BUREAU OF THE CENSUS, CITIES WITH 100,000 OR MORE POPULATION IN 2000 RANKED BY POPULATION, 2000 IN RANK ORDER, <http://www.census.gov/statab/cdb/citi1020.txt> (last visited, March 19, 2010) [hereinafter CENSUS, CITIES WITH 100,000 OR MORE] (providing population data for 2000).

TABLE 1: POST-WORLD WAR II DEVELOPMENT OF LARGE AMERICAN CITIES ON STATE BORDERS<sup>51</sup>

Year	Kansas City, MO Population	% change from previous Census	Cincinnati, OH Population	% change from previous Census	St. Louis, MO Population	% change from previous Census	Philadelphia, PA Population	% change from previous Census	Chicago, IL Population	% change from previous Census	New York, NY Population	% change from previous Census
1930	399,746		451,160		821,960		1,950,961		3,376,438		6,930,446	
1940	399,178	0	455,610	1	816,048	-1	1,931,334	-1	3,396,808	1	7,454,995	8
1950	456,622	14	503,998	11	856,796	5	2,071,605	7	3,620,962	7	7,891,957	6
1960	475,539	4	502,550	0	750,026	-13	2,002,512	-3	3,550,404	-2	7,781,984	-1
1970	507,087	7	452,524	-10	622,236	-17	1,948,609	-3	3,366,957	-5	7,894,862	2
1980	448,159	-12	385,457	-15	453,085	-27	1,688,210	-13	3,005,072	-11	7,071,639	-10
1990	435,146	-3	364,040	-6	396,685	-13	1,585,577	-6	2,783,726	-7	7,322,564	4
2000	441,545	2	331,285	-9	348,189	-12	1,517,550	-4	2,896,016	4	8,008,278	9

51. Gibson, *supra* note 1 (providing population data for 1930 through 1990); CENSUS, CITIES WITH 100,000 OR MORE, *supra* note 49.

As a major American city, Philadelphia thus likely maintains enough resources—especially, as I will explain below, in terms of population and votes—that it can influence policy at the state and national level. Indeed, it would have to do so in order to effect a border change between Pennsylvania and New Jersey. Furthermore, it has the motivation to do so because it has suffered in the same ways as other rust belt cities such as Cincinnati and St. Louis. St. Louis and Cincinnati, on the other hand, may have lost the kind of resources that they would need to bargain for a state boundary change. Meanwhile, New York and Chicago are successful enough that they would have no motivation to engage in such a dramatic and energy-intensive initiative. Philadelphia thus at least serves as a good test case that can be extended to other cities as a way to test the more general applicability of the expansionist strategy I will sketch out in some detail below.

If the idea that a city might be able to compel a state border change sounds simply too unrealistic, consider that, in 2001, the U.S. House of Representatives voted in favor of redrawing part of the Utah-Nevada border so that the city of Wendover might become part of Nevada rather than Utah, and thus consolidate with its neighbor, West Wendover, Nevada. The rationale was quite clear. West Wendover, being in Nevada, had gambling and liquor, and a vibrant tourist trade, and thus had enough local tax revenues to support good public services—most notably a school district.<sup>52</sup> Wendover, on the other hand, was a smaller, poorer community, in large part because anyone with any means had moved to West Wendover. Feeling arbitrarily denied adequate local services because of an arbitrary state border, Wendover's residents appealed to their House representative, James Hansen, who sponsored a bill, HR 2054, to redraw the state border.<sup>53</sup> As amended in the House Judiciary Committee, HR 2054 specified, among other things, that for the consolidation of the two Wendovers to take effect, the proposal required approval by acts of the legislatures of both Nevada and Utah; a majority vote of the residents of both cities during a general election for Federal office; and, because it was an interstate compact, by virtue of article I, section 10, clause 3 of the United States Constitution, it required approval by Congress and the President.<sup>54</sup>

In contrast to Wendover, the officials and business owners in West Wendover were hesitant to consolidate with a city that brought little in new tax revenues, would create new competition for existing casino own-

52. H.R. Rep. No. 107-469, at 3 (2002).

53. H.R. 2054, 107th Cong. (2001).

54. H.R. Rep. No. 107-469, at 2; see also Daniel Levin & Bryan Thirion, *Line Dancing: Municipal Unification Across a State Border* (paper presented at the annual meeting of the Western Political Science Association, Portland, Or., March 11-14, 2004) (on file with author).

ers, and was also in debt.<sup>55</sup> Possibly for all those reasons, the proposal was left to die in committee in the Senate. Yet, the proposed boundary change is still instructive for at least two reasons. First, the resistance to consolidation in West Wendover was due to the fact that West Wendover and Nevada would be absorbing a new city that was a new financial burden. For that reason, the strategy I sketch out here begins with a proposal to annex Philadelphia to New Jersey, rather than Camden to Pennsylvania, for which there would be no incentive on the part of Pennsylvania officials or residents. As I explain below, annexing Philadelphia to New Jersey would work in the interests of different factions in both states, most notably Democrats in New Jersey and Republicans in Pennsylvania, and for that reason the proposal would provide Philadelphia with significant bargaining power, especially with Democrats in Pennsylvania. Second, the annexation of Wendover to Nevada was of little political import to elected officials in either state—the towns were isolated and their combined population was approximately 6,500<sup>56</sup>—who thus had little motivation to pursue the proposal past what appears to have been a largely perfunctory approval in the House. By contrast, the proposal to move Philadelphia to New Jersey involves the movement from one state to another of more than a million residents, represented by elected officials at the city, state, and national levels, whose electoral districts would be significantly affected. Yet, it is precisely because of the dramatic impact that it would have that the proposal generates the kind of incentives, described in more detail below, necessary to bring about such a significant institutional change.

Prior to a detailed description of the motivational calculus that might create the necessary incentives for actors actually to carry through with a such a border change, the following section provides a brief discussion of how the proposal fits into a larger debate over the relationship between state law and local annexation—and more generally, the relative discretion that cities have in relation to state government.

#### CITIES, STATES, AND ANNEXTATION

Scholars have long held that the final blow to city autonomy came with the hegemony of John's Dillon's influential opinion that cities had no power independent of state law.<sup>57</sup> As William Munro noted in his influential 1923 text on American municipal government, "Dillon's

55. Tom Gorman, *2 Towns' Great Divide: Poor Utah City Wants to Unite With Its Richer Nevada Half To Work. The State Line Will Have to be Shifted a Bit*, L.A. TIMES, May 28, 2001, at A12.

56. *Id.*

57. See e.g., *City of Clinton v. Cedar Rapids & Missouri R.R. Co.*, 24 Iowa 455 (1868), quoted in ANWAR SYED, POLITICAL THEORY OF AMERICAN LOCAL GOVERNMENT 68 (1966). See also JOHN DILLON, THE LAW OF MUNICIPAL CORPORATIONS 143 (2d ed. 1873).



Rule" was "so well recognized that it is not nowadays open to question."<sup>58</sup> Yet, the focus on Dillon's Rule has obscured the fact that state law is often simply an expression of local interest. I have argued elsewhere, for instance, that, in the nineteenth and early twentieth centuries, central city efforts to annex outlying communities, and suburban efforts to remain independent, were primarily local conflicts, the outcomes of which often depended on the actual physical capacities of suburban municipalities to independently supply themselves with public services such as water and sewerage.<sup>59</sup> Annexation efforts certainly required some level of state authorization, such as the requirement that annexation be approved in referendums in all affected communities, but that state action was usually the result of local actors; beyond serving as a non-local venue for local negotiations, legislatures usually did not intervene in municipal border disputes in any meaningful sense.<sup>60</sup>

In direct response, legal scholars and regionalists such as Rusk have contended that I have ignored the significance of state law. Nicole Stelle Garnett argued, for instance, that my argument "fails to appreciate the importance of the emerging [state] legislative deference to suburban political autonomy."<sup>61</sup> Rusk claimed that "[s]tate law shapes whether a region will be highly fragmented . . . or relatively unified. . . . Legislatures create the skeleton; public works merely add the sinews."<sup>62</sup> And Gerald Frug contended that "the decision about whether to consolidate or remain independent was not (and is not) up to the suburbs. The suburbs had a voice in the matter only if the state legislature gave them one."<sup>63</sup> Yet there is in fact little empirical evidence that state law has, or ever has had, any consistent or strong impact on local annexation activity. In a recent and comprehensive review of the literature, for instance, Mary Edwards has noted that earlier studies from the 1960s and 1970s "found no consistent relationship between the restrictiveness of state annexation law and annexation activity," while more recent studies have found inconsistent and inexplicable relationships.<sup>64</sup> Jered Carr and Richard Feiock found, in the case of annexations in the 1990s, that most state laws ostensibly designed to make annexations more procedurally difficult

58. GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 49-50 (1999) (quoting WILLIAM MORRO, THE GOVERNMENT OF AMERICAN CITIES 53 (1923)).

59. DILWORTH, *supra* note 17, at 91-92.

60. *Id.*

61. Nicole Stelle Garnett, *Unsubsidizing Suburbia*, 90 MINN. L. REV. 459, 471 (2005) (reviewing DILWORTH, *supra* note 17).

62. Rusk, *Book Review*, *supra* note 18.

63. Gerald Frug, *Book Review*, 5 CITY & COMMUNITY 348 (2006) (reviewing DILWORTH, *supra* note 17).

64. Mary M. Edwards, *Understanding the Complexities of Annexation*, 2 J. PLAN. LITERATURE 119, 125 (2008).

were actually related to an increase in the frequency of annexations.<sup>65</sup> Rex Facer, testing the impact of 15 different state provisions relating to annexation on the annual volume of annexation activity during the 1990s, found that, while state provisions ostensibly designed to facilitate annexation were generally associated with more annexation activity, state provisions designed to constrain annexations had no impact on annexation activity.<sup>66</sup> The relationships uncovered between state law and annexation also tend to be of relatively minimal explanatory power, statistically speaking, thus leaving much to be explained about how and why cities annex outlying land.<sup>67</sup>

One outstanding example that refutes the idea that states completely determine local annexation activity is Milwaukee, one of the few traditional big industrial cities to expand significantly after World War II. Milwaukee's ability to expand had little to do with state laws, but was instead the product of city officials' determination that they were going to annex outlying land. Thus the Milwaukee Common Council in 1946 created the Department of Abstracting and Annexation, through which it expanded the city's territory by an additional 36 square miles by 1957, nearly doubling its pre-war size.<sup>68</sup> One of the department's chief jobs was to lead coordinated campaigns in suburban municipalities targeted for annexation, convincing suburban residents of annexation's benefits, and getting a majority of those residents to sign petitions approving annexation, as required by state law.<sup>69</sup> State law did not in this instance impede central city annexation, as Rusk and others suggest, though it was certainly a consideration in Milwaukee's annexation strategy. Similarly, the annexation strategy I sketch below takes state law and legislators into consideration, though those laws and legislators do not determine the strategy.

The evidence suggests at least that state annexation laws leave ample room for local governments to negotiate and maneuver in order to

65. Jered B. Carr & Richard C. Feiock, *State Annexation Constraints and the Frequency of Municipal Annexation*, 54 POL. RES. Q. 459, 466 (2001).

66. Rex L. Facer, II, *Annexation Activity and State Law in the United States*, 41 Urb. Aff. Rev. 697 (2006).

67. Of the relatively more recent studies, only that of Gaines Liner includes a measure of the extent to which the independent variables in his statistical model account for the variation in his dependent variable (annexation). In Liner's model, this measure, known as an  $R^2$  or adjusted  $R^2$ , was 0.105, meaning that the independent variables (including state law) explained only 10% of the variation in the dependent variable, which thus suggests that there is a good deal more to be explained. Gaines Liner, *Institutional Constraints and Annexation Activity in the U.S. in the 1970s*, 30 Urb. Stud. 1371, 1378 (1993); see also Fleischmann, *supra* note 20, at 129 (commenting on low explanatory power with regard to Thomas R. Dye, *Urban Political Integration: Conditions Associated With Annexation in American Cities*, 8 MIDWEST J. OF POL. SCI. 430 (1964)).

68. Joel Rast, *Annexation Policy in Milwaukee: An Historical Institutional Approach*, 39 POLITY 55, 55-56, 65, 70 (2007).

69. *Id.* at 67-68.

attempt to annex outlying territory (and for suburban communities to do the same to try to remain independent). My proposed strategy for consolidating Philadelphia and Camden relies precisely on the capability of cities to operate as such bargaining units, though my proposal is wider in its scope because it also suggests altering a state border. Key to implementing such a strategy, I argue, is forging favorable majorities at the local, state, and national levels, and in the next section of this article I sketch out a strategy for forging such majorities.

#### PHILADELPHIA, NJ OR PA?

Key to successfully consolidating Philadelphia with Camden City and its surrounding suburbs, and moving Philadelphia to New Jersey through a state border change, is structuring the proposal so that it benefits a majority of the relevant stakeholders and decision-makers at local, state, and national levels, while also avoiding or overcoming key veto players. Among these stakeholders, decision-makers, and veto players, the residents of the municipalities to be consolidated, who would undoubtedly have to vote to approve the measure, are the most inscrutable. They are numerous, diverse, and do not fit into institutional categories for which there are readily definable benefits.<sup>70</sup> Certainly, the residents of Philadelphia would receive some benefits as citizens of New Jersey that they do not currently get as Pennsylvanians, such as stricter gun laws,<sup>71</sup> yet whether that would be enough of an incentive to overcome other real or perceived negative factors depends on a host of other, mostly unknown, variables.

Attempts to assess the specific costs and benefits of a consolidation or annexation, much less how those costs and benefits are perceived by voters who have imperfect information, are usually exercises in futility, as

70. For studies that attempt to define the specific benefits different actors would receive from annexation, see Richard C. Feiock & Jered B. Carr, *Incentives, Entrepreneurs, and Boundary Change: A Collective Action Framework*, 36 *URB. AFF. REV.* 382 (2001). See also DILWORTH, *supra* note 17, at 12-32.

71. Philadelphia has had a long-standing conflict with the state over gun control laws. The city has twice attempted to pass local ordinances that would have created more stringent gun control requirements, and both times has had the ordinances struck down by state courts because the ordinances contradicted state restrictions against local gun control as specified in the Uniform Firearms Act. By contrast, in New Jersey, state courts have also overturned local gun control ordinances, such as one in Jersey City that limited gun sales to any one person to a maximum of one a month. But the New Jersey legislature, which is more amenable to gun control, has responded by making those limits state laws. On the conflict between Philadelphia and Pennsylvania, see Clarke v. House of Representatives, 957 A.2d 361 (Pa. Commw. Ct. 2008); Chris Brennan, Philly Clout Blog, PHILADELPHIA DAILY NEWS, Council Challenges Court Ruling on Local Gun Laws (Oct. 28, 2008), available at [http://www.philly.com/philly/blogs/cityhall/Council\\_Challenges\\_Court\\_Ruling\\_On\\_Local\\_Gun\\_Laws.html](http://www.philly.com/philly/blogs/cityhall/Council_Challenges_Court_Ruling_On_Local_Gun_Laws.html). See 18 Pa. Code §§ 908, 6105, 6110, and 6111, for Pennsylvania's gun control laws. See N.J. Stat. Ann. §§ 2C:39-1, et seq., and 2C:58-1, et seq. (West 2010) for New Jersey's gun control laws.

previous authors have noted.<sup>72</sup> Yet, what does seem likely is that the greatest resistance to the proposed consolidation will come from suburban residents in Camden County who, because their municipalities are included in the consolidation plan, stand to lose independent school districts and other services, and who are in general most likely to be predisposed to oppose annexation. Previous researchers have found, for instance, that opponents of consolidation tend most often to be "lower middle-class and working-class voters outside the central city who perceive consolidation both as an encroachment of urban culture and as an instrument of middle-class values."<sup>73</sup> Of the thirty-seven municipalities in Camden County, twenty-one have disproportionately more middle-income households (those in the middle three income quintiles for the region) than in the Philadelphia metropolitan region overall.<sup>74</sup>

If residents voted on the consolidation plan in separate elections in each of the municipalities included in the consolidation plan, and if each election had to show a majority in favor of consolidation, then the plan would no doubt be doomed. New Jersey residents in the municipalities surrounding Camden City would vote by majorities against consolidation and their municipalities would then be excluded from the plan. Philadelphia residents, expecting suburbanites in Camden County to reject consolidation, would most likely also reject the consolidation plan, since they would expect it to only include Camden City. However, if the New Jersey legislature authorized only a single election in the Camden County municipalities to be consolidated, where the votes from all municipalities were counted together, votes of approval from Camden City would most likely overwhelm suburban votes against consolidation. Expecting such an outcome, Philadelphia residents would thus also be more likely to approve the border change and consolidation.

A vote on consolidation in which the votes from all affected municipalities are counted together is certainly less common than counting the votes from each municipality separately, but it has been used in the past, specifically to override negative votes in smaller suburban communities. Such was the case with the municipal consolidation that created the five-borough system that is New York City. After prodding by the New York State Chamber of Commerce and other reform-oriented groups, the New

72. See DILWORTH, *supra* note 16, at 57. See also DAVID C. HAMMACK, POWER AND SOCIETY: GREATER NEW YORK AT THE TURN OF THE CENTURY 187 (1982).

73. William Lyons & John M. Schieb II, *Saying "No" One More Time: The Rejection of Consolidated Government in Knox County, Tennessee*, 30 *ST. & LOC. GOV'T. REV.* 92, 94 (1998).

74. Measure of middle incomes, and the family income data for Camden County, comes from the Metropolitan Philadelphia Indicators Project, Where We Stand: Community Indicators for Metropolitan Philadelphia 36 (2006), available at [http://mipj.temple.edu/mipj/2006ReportPDF/2006\\_MPIP\\_Annual.pdf](http://mipj.temple.edu/mipj/2006ReportPDF/2006_MPIP_Annual.pdf). For the municipalities in Camden County, see Camden County: Municipalities <http://www.camdencounty.com/government/about-camden-county/municipalities> (last visited June 22, 2010).

York legislature in 1890 created a Consolidation Inquiry Commission, which recommended, and the legislature approved, a referendum during the 1894 state general election, asking residents of twenty municipalities in four of the counties surrounding Manhattan whether they would like to be included as part of a consolidated "Greater New York." Several municipalities, such as the towns of Flushing and Westchester, voted against consolidation, yet the legislature used the overall majority vote in favor of consolidation as justification for consolidating all of the municipalities that voted on the issue in 1894. Indeed, New York state Republicans, thinking that New York City Democrats might lose control of an enlarged city, pushed the consolidation through the legislature, over the objections of the mayors of New York and Brooklyn, among others.<sup>75</sup>

Much as Republican legislators supported the creation of Greater New York because they thought it would help their party, so would contemporary Democratic legislators in New Jersey likely support the adoption of Philadelphia, because it would vastly increase Democratic support in their state. As of January 2010, 79% of the 1,056,519 registered voters in Philadelphia were registered as Democrats.<sup>76</sup> Were those voters added to New Jersey (and were they to maintain the same party affiliations), the composition of New Jersey's registered voters would shift from being 34% Democratic, 20% Republican, and 46% unaffiliated (as of June 2009), to 41% Democratic, 19% Republican, and 40% unaffiliated.<sup>77</sup> Pennsylvania's legislators would, of course, also have to approve the state border change, the motivations for which are the mirror image of those in New Jersey. Just as gaining Philadelphia would be a boon to New Jersey Democrats, losing the city would be to the advantage of Pennsylvania Republicans, who are numerous enough in the legislature that they could likely achieve majority votes for the measure in both chambers, as explained below.

In the 2010–2011 session of the New Jersey legislature, Democrats have a 46–33 majority in the House and a 23–17 majority in the Senate, and thus enough to approve a consolidation referendum and border

75. On the creation of Greater New York, see DUNWORTH, *supra* note 17, at 66–68; HAMMACK, *supra* note 72; and ALBERT E. HENSCHER, MUNICIPAL CONSOLIDATION: HISTORICAL SKETCH OF THE GREATER NEW YORK (1895).

76. See PA. DEP'T OF STATE, BUREAU OF COMMISSIONS, ELECTIONS & LEGISLATION, DIV. OF COMMISSIONS/ELECTIONS, VOTER REGISTRATION STATISTICS, available at [http://www.dos.state.pa.us/portal/server.pt/community/voter\\_registration\\_statistics/12725](http://www.dos.state.pa.us/portal/server.pt/community/voter_registration_statistics/12725) (follow the "Current Voter Registration Statistics" hyperlink) [hereinafter PA DEP'T OF STATE, STATISTICS].

77. These figures were calculated using *id.*, and N.J. DEP'T OF STATE, DIVISION OF ELECTIONS, STATEWIDE VOTER REGISTRATION SUMMARY (June 3, 2009) available at <http://www.state.nj.us/state/elections/2009/results/09primary/pt-elect-county-registration-summary-060309.pdf>.

change, at least through a straight party-line vote.<sup>78</sup> Republicans in Pennsylvania have a 30–20 majority in the state senate, though they have a 96–103 minority in the House.<sup>79</sup> The Democratic majority in the House would likely be overcome, however, since twenty-four of the House Democrats (in addition to four House Republicans) represent districts in Philadelphia,<sup>80</sup> and at least the majority of them would likely receive better positions as New Jersey legislators than those they currently have in Pennsylvania given that legislative districts in New Jersey include approximately 210,359 people, while Pennsylvania House districts include approximately 60,497 people.<sup>81</sup>

To ensure that the absorption of Philadelphia did not disrupt existing electoral districts and thus threaten sitting legislators, New Jersey's Constitution would have to be amended to allow for more than the current forty electoral districts, each of which elects one state senator and two state representatives.<sup>82</sup> If Philadelphia were divided into districts equal in size to the current legislative districts in New Jersey, it would create approximately seven new districts, from which fourteen representatives and seven senators would be elected. Seven of Pennsylvania's senators have districts in Philadelphia,<sup>83</sup> and they could thus all be transferred into the New Jersey legislature, while there would only be space for fourteen of the twenty-eight representatives whose districts are in Philadelphia. New Jersey Democrats would thus have to offer nominations to run for the New Jersey House to fourteen of the Democratic Pennsylvania representatives from Philadelphia, once they became New Jersey residents (and once the new districts were created), in exchange for them voting for the state border change in the Pennsylvania House. The four Penn-

78. For a list of New Jersey legislators and their party affiliations, see New Jersey Legislature, Legislative Roster, <http://www.njleg.state.nj.us/members/roster.asp> (last visited Apr. 20, 2010).

79. For a list of members of the Pennsylvania State Senate with party affiliations, see Pennsylvania State Senate, Members of the Senate, [http://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/senators\\_alpha.cfm](http://www.legis.state.pa.us/cfdocs/legis/home/member_information/senators_alpha.cfm) (last visited Apr. 20, 2010); for a list of members of the Pennsylvania House of Representatives, with party affiliations, see Pennsylvania House of Representatives, [http://www.legis.state.pa.us/cfdocs/legis/home/member\\_information/representatives\\_alpha.cfm](http://www.legis.state.pa.us/cfdocs/legis/home/member_information/representatives_alpha.cfm) (last visited Apr. 20, 2010). The Pennsylvania House of Representatives has 203 seats, though the number of actual representatives is sometimes lower due to vacancies.

80. For a list of Pennsylvania House members who represent Philadelphia, see Pennsylvania General Assembly, *supra* note 36.

81. U.S. BUREAU OF THE CENSUS, STATE & COUNTY QUICKFACTS, PENNSYLVANIA, <http://quickfacts.census.gov/qfd/states/42000.html> (last visited June 22, 2010); U.S. BUREAU OF THE CENSUS, STATE & COUNTY QUICKFACTS, NEW JERSEY, <http://quickfacts.census.gov/qfd/states/34000.html>. District population estimates use population data from the 2000 Census, which was the last time the districts were redrawn.

82. N.J. CONST. art. IV, § 2, cl. 1–3.

83. See Pennsylvania General Assembly, *supra* note 39.

sylvania House Republicans who represent Philadelphia, and who could expect to lose their seats, could be expected to side with the majority of Democrats and vote against the border change, though that would still leave a net gain of ten votes in favor of the border change from Democrats who would become representatives of larger districts in New Jersey, and in a more Democratic state.

In New Jersey, a constitutional amendment, such as would be required to increase the number of state legislative districts, requires three-fifths approval by the House and Senate, or majority approval in both chambers in two consecutive years, after which the state's voters must approve the measure at the next general election.<sup>84</sup> The actual state border change and municipal consolidation, however, do not require a constitutional amendment. After the border change has been approved by a simple majority vote in both the Pennsylvania and New Jersey legislatures, and in the United States Congress (discussed later), both Republican and Democratic New Jersey legislators will have a strong incentive to approve the increase in electoral districts, and voters would likely follow suit. Without such a change to the state constitution, the border change would require that each of the existing forty New Jersey legislative districts be radically redrawn after the state's population had increased by approximately 1.5 million overnight, and in only one relatively small area, which would threaten the seat of every sitting legislator. Legislative districts in Pennsylvania would also have to change dramatically with the loss of Philadelphia, but there legislators would face the happy outcome of having to draw their districts smaller, thus better encapsulating their core constituents (with the help of a friendly redistricting commission in what would at that point be a one-party state), to make room for more Republican representatives and senators.

Yet, legislative approval of the consolidation and border change would likely be followed by a gubernatorial veto in both states, since the current Republican governor of New Jersey would object to a border change that would make his state more Democratic, as would the Democratic governor of Pennsylvania object to making his state more Republican. The consolidation plan would then have to wait for the unlikely moment when there was a Republican governor of Pennsylvania and a Democratic governor of New Jersey, at the same time as the New Jersey and Pennsylvania legislatures maintain their respective Democratic and Republican majorities. In only three years since the end of World War II have the New Jersey governorship and both chambers of the legislature been controlled by Democrats at the same time as the Pennsylvania governorship and both chambers of the legislature been controlled by

Republicans.<sup>85</sup> Alternatively, Democratic legislators in New Jersey and Republican legislators in Pennsylvania could attempt to win votes across their respective aisles, through earmarks and other divisible benefits, in order to build coalitions large enough to override gubernatorial vetoes.<sup>86</sup> In New Jersey, assuming an otherwise straight party-line vote, Democrats would need to thus successfully entice four Republican senators and eight representatives to cross over and vote for the consolidation and border change proposal; and in Pennsylvania, Republicans would need to entice thirty-one Democratic representatives.<sup>87</sup> Assuming the Pennsylvania Republican senators would already be joined in supporting the proposal by the seven Democratic senators from Philadelphia who could expect to become New Jersey senators, as explained above, there would already be a veto-proof majority in the Pennsylvania Senate.

Though the largest apparent hurdle to winning enough votes for a veto-proof majority lies in the Pennsylvania House of Representatives, these legislators' small districts would suggest that they could be relatively easily enticed to vote for consolidation. In fact, Democratic representatives who are not from Philadelphia may side with Republicans without any inducement, based on a notorious "anti-Philadelphia" bias that has been known to cut across traditional partisan cleavages. As one long-time Pennsylvania journalist described the situation in the 1970s:

The Philadelphians are politically aggressive, if only because of ethnic and racial minority demands . . . . The besieged Philadelphia School District could gobble up the state's entire educational appropriation and still need more. . . . Many maintain that Philadelphia, or the Delaware Valley, ought to be a state unto itself. Short of that, the politicians try to cope with the conflict.<sup>88</sup>

At least one final concern at the state legislative level in New Jersey is the electoral consequence of approving the border change and municipal consolidation referendum (designed so that Camden City voters outnumbered suburban voters) for the legislators whose districts cover the municipalities to be consolidated. These legislators may well have at least

85. For histories of the partisan control of the Pennsylvania and New Jersey legislatures and for lists of governors, see 119 PENNSYLVANIA MANUAL, §§ 3-273 to -275, 4-21 to -22 (2009); MANUAL OF THE LEGISLATURE OF NEW JERSEY 306-09 (2009).

86. On the use of earmarks and other divisible benefits for coalition building generally, and as applied to the United States Congress, see generally DANA EVANS, GRASS-ROOTS THE WHEELS: USING PORK BARREL PROJECTS TO BUILD MAJORITY COALITIONS IN CONGRESS (2004).

87. These figures assume the current vacancies in the Pennsylvania House of Representatives and that the Republicans would have already won over the fourteen Democrats who would expect to become New Jersey legislators, as described earlier.

88. PAUL B. BEERS, PENNSYLVANIA POLITICS TODAY AND YESTERDAY: THE TOLERABLE ACCOMMODATION 10 (1980); see also Angela Couloumbis, *Water's Uphill Battle in Harrisburg*, PHILADELPHIA INQUIRER, May 25, 2009, at B1 (describing another instance of anti-Philadelphia sentiment in the Pennsylvania General Assembly).

a weak veto power over state approval of the consolidation referendum since they represent the affected municipalities, and legislators from elsewhere in the state may defer to them on local issues. The legislators who represent municipalities in Camden County are in any case almost all Democrats, so their votes are crucial to a veto-proof majority. Yet, these legislators can also expect to lose all votes in the next general election in the suburban municipalities included in the consolidation plan, and they might understandably thus vote against the consolidation and border change proposal in order to protect their own seats.

There are at least two possible strategies for minimizing the impact of the consolidation and border change on the electoral fortunes of the legislators who represent the municipalities to be consolidated. On the one hand, the consolidation plan might include only municipalities in a single electoral district—namely the Fifth District, since that includes Camden City—in order to minimize the number of legislators directly affected by the plan. It seems likely that, after the approval of the consolidation plan, the legislators from the Fifth District will maintain their electoral support in Camden City, but lose all their previous electoral support in the suburban municipalities to be consolidated. Thus, only so many suburban municipalities should be included in the consolidation plan, the total likely votes from which (all of which, we assume, would be against the sitting legislator after the consolidation vote) would be less than the expected votes for the sitting legislator from Camden City and unaffected suburban municipalities (those not included in the consolidation plan). For example, in the last state senate election in the Fifth District (which includes Camden City, Gloucester City, the boroughs of Woodlyne, Mount Ephraim, Audobon, Haddon Heights, Bellmawr, Barrington, Lawnside, Magnolia, Somerdale, Stratford, and several other municipalities in Gloucester County), in 2007, the winning candidate, Dana Redd, received 16,918 votes, while her opponent, Hans Berg, received 9,983 votes.<sup>89</sup> If Redd (who resigned from the senate after being elected mayor of Camden City) voted for the consolidation and border change, and if we assumed that (1) in the next senate election she would lose all votes previously cast for her in the suburban districts to be consolidated, and (2) that the suburban votes she lost would all be cast instead for an opponent who would have otherwise received the same number of votes as Berg did in 2007, then the consolidation plan should include as many contiguous suburban municipalities as collectively cast votes for Redd equal to one less than half her 2007 margin of victory over Berg, or

3,467 votes.<sup>90</sup> As a rough measure of the number of municipalities that could be thus included in the proposed consolidation, Gloucester City, Mount Ephraim, Audobon, Haddon Heights, and Woodlyne collectively cast 3,141 votes for Redd in 2007.<sup>91</sup>

Alternately, the municipalities to be included in the consolidation plan might each be in separate legislative districts, which would affect more legislators, but which would minimize the impact to each legislative district. For instance, the municipalities to be consolidated might include Camden City and Woodlyne Borough in the Fifth District; Collingswood Borough, Oaklyn Borough, and Haddon Township in the Sixth District; and Pennsauken Township and Merchantville Borough in the Seventh District. In this case, using the 2007 state senate race as before, the senator from the Fifth District would lose only 103 votes in the next election. In the Sixth District, where in 2007 John Adler won against Joseph Adolf by 25,737 to 15,846, Adler would receive 22,028 votes and Adolf 19,555 in a race after consolidation.<sup>92</sup> In the Seventh District, after consolidation, the current senator, Diane Allen, could expect to lose her

90. That is, every vote Redd would lose in the affected suburban municipalities after the consolidation referendum would be a vote gained for Berg, creating a two-point spread between the candidates in favor of Berg. Thus a loss of votes equal to half of Redd's margin of victory in 2007 would result in a tie between Redd and Berg, while a loss of votes equal to one less than half of Redd's margin of victory, would be the maximum amount of votes Redd could lose while still winning (though in reality this margin would likely result in Berg calling for a recount).

91. *Id.* Similar calculations for New Jersey House elections are complicated by the fact that voters each vote for two House candidates, and thus the number of votes a representative would lose to an opponent for approving the consolidation plan depends both on how many votes were cast for them in the previous election and on who else the voter voted for. For instance, the two winning candidates for House seats in 2009 in the Fifth District were Donald Norcross and Angel Fuentes, while Brian Kluchnick came in third. If we make the same assumptions as in the case of the senate race above, and if we assume the same suburban municipalities are to be consolidated as above, we also have to make assumptions about whether or not those people who voted for Norcross also voted Fuentes, and vice versa. If we assume that all suburbanites in municipalities to be consolidated who voted for Fuentes in 2009 also voted for Norcross, then in the next election (after the consolidation) Kluchnick would only receive, at maximum, as many extra votes as whichever winning candidate (Norcross or Fuentes) received the most votes in 2009 in each respective municipality. In addition, some other candidate would receive the second votes of everyone who had voted for both Norcross and Fuentes in 2009. If we assume that each person who voted for Norcross voted for a second candidate other than Fuentes in 2009 (and vice versa), then we can assume that Kluchnick would receive as many extra votes as the sum of those votes cast for both Norcross and Fuentes. However, if, among those suburbanites in municipalities to be consolidated who voted for either Norcross or Fuentes in 2009, their second vote was cast for Kluchnick, Kluchnick could not get an extra vote from them in the following election. Suffice it to say that, since these analyses are only meant for illustrative purposes, less assumptions need to be made by analyzing state senate races.

89. N.J. DEPT. OF STATE, DIVISION OF ELECTIONS, OFFICIAL GENERAL ELECTION RESULTS BY LEGISLATIVE DISTRICTS: FIFTH LEGISLATIVE DISTRICT (2007), available at <http://www.state.nj.us/state/elections/2007/results/07general-election/Results-by-leg-district/2007-5th-leg-district-by-municipality.pdf>.

92. N.J. DEPT. OF STATE, DIVISION OF ELECTIONS, OFFICIAL GENERAL ELECTION RESULTS BY LEGISLATIVE DISTRICTS: SIXTH LEGISLATIVE DISTRICT (2007), available

seat by a vote of 20,288 to 21,408.<sup>93</sup> Yet, Allen is a Republican who would likely vote against the consolidation and border change. The municipalities in her district might not be included in the consolidation plan, or they might be included in a bid to make hers a Democratic senate seat.

Below the state legislative level, local officials in the municipalities to be consolidated, most notably mayors, council members, borough commissioners, and school board members, though they would have no authority once the state legislature decided to authorize a consolidation, likely have some weak veto capabilities as a result of their political influence. The municipal officials might be offered commensurate positions in a new city council, which in many cases would likely come with a sizable salary increase. The borough commissioners of Merchantville, for instance, each currently receive annual salaries of \$982. Under the previously mentioned plan consolidating Philadelphia and Camden with Gloucester City, Mount Ephraim, Audobon, Woodlyne, and Haddon Heights, a new municipal council that included all the mayors and council members of the previous municipalities (with the exception of Philadelphia's mayor, who would likely become the mayor of the newly expanded city) would include fifty-two members. Under the plan to consolidate Philadelphia and Camden with Collingswood, Oaklyn, Haddon, Merchantville, Woodlyne, and Pennsauken, the council would number forty-nine.<sup>94</sup> By comparison, the city councils of Chicago and New York have fifty and fifty-one members, respectively.

ble at <http://www.state.nj.us/state/elections/2007results/07general-election/Results-by-district/2007-6th-leg-district-by-municipality.pdf>.

93. See N.J. DEPT. OF STATE, DIVISION OF ELECTIONS, OFFICIAL GENERAL ELECTION RESULTS BY LEGISLATIVE DISTRICTS: SEVENTH LEGISLATIVE DISTRICT (2007), available at <http://www.state.nj.us/state/elections/2007results/07general-election/Results-by-leg-district/2007-7th-leg-district-by-municipality.pdf>.

94. For information on municipal governments, see Philadelphia City Council, <http://www.phila.gov/citycouncil/> (last visited Apr. 20, 2010); Camden City Services and Government, <http://www.ci.camden.nj.us/cityservices.html> (last visited Apr. 20, 2010); The Mayor & Council of Gloucester City, <http://www.ciroygloucester.org/mayorcouncil.htm> (last visited Apr. 20, 2010); Borough of Mount Ephraim, NJ, <http://www.mountraphraim-nj.com> (last visited Apr. 20, 2010); Borough of Audobon, [http://www.boroughofaudobon.com/Board\\_of\\_commissioners.html](http://www.boroughofaudobon.com/Board_of_commissioners.html) (last visited Apr. 20, 2010); Woodlyne Borough Directory, <http://www.woodlynenj.com/directory.html> (last visited Apr. 20, 2010); Haddon Heights Mayor and Council, <http://www.haddonhts.com/mayor-and-council.php> (last visited Apr. 20, 2010); Collingswood, Administration—Mayor and Commissioners, <http://www.collingswood.com/government/mayor-and-commissioners> (last visited Apr. 20, 2010); Oaklyn Home Page, <http://www.oakland-nj.org> (follow "Borough Hall," "Mayor and Council," and "Borough Council" hyperlinks) (last visited Apr. 20, 2010); Haddon Township, Welcome to the Township of Haddon, <http://www.haddontrwp.com/> (last visited Apr. 20, 2010); Merchantville.com, Mayor & Council, <http://www.merchantville.com/index.php/borough-mainmenu-29> (last visited Apr. 20, 2010); Pennsauken Township, NJ, Township Committee 2009, [http://www.twp.pensauken.nj.us/pens\\_gov\\_township-committee.cfm](http://www.twp.pensauken.nj.us/pens_gov_township-committee.cfm) (last visited Apr. 20, 2010).

The new city charter that authorized the expanded Philadelphia council would hopefully also be used to achieve some recent and long-standing reform goals, such as the elimination of row offices in Philadelphia (i.e., Sheriff, Register of Wills, Clerk of Quarter Sessions, and the City Commissioners) and the establishment of term limits for council members.<sup>95</sup> In addition, the new charter should likely provide for some portion of the council seats to be at-large, in part to provide seats for which the council members from suburban municipalities can be nominated. This might give them the hope of appealing to a broader electorate, since the voters from their home municipalities would likely vote them out of office after the consolidation.

Row offices in Philadelphia are, at least in the case of the Sheriff, artifacts of the county government system that existed prior to the city-county consolidation of 1854.<sup>96</sup> No cities in New Jersey have ever been consolidated with their counties, and the state thus still has twenty-one county governments, including the Camden County Board of Freeholders. For the purposes of the proposed consolidation, the path of least resistance would most likely be to maintain Philadelphia's status as a consolidated city-county, with no independent county government, and to separate from Camden County the municipalities that were consolidated with Philadelphia. The current Camden County freeholders would likely suffer very little electorally, because the suburban residents affected by the consolidation would no longer be a part of their county. Indeed, the remaining suburbanites in Camden County might be happier with the freeholders, since their county taxes would no longer be subsidizing Camden City.

As for the Camden County school boards and their members, the least disruptive path, and one that might also reduce residential resistance to consolidation, would be to consolidate all of the schools in the newly expanded city into a single school district, but to convert all of the traditional public schools in the Camden County suburbs into charter schools. The members of the prior New Jersey school boards could then be made charter school board members, and current lower school students would be guaranteed admission into the upper-level schools they would have attended were they still in an independent district. Suburban municipalities and suburban school board members would thus maintain some control over their schools, though the schools would be open for admission to the entire city population.

95. On the elimination of row offices, see generally PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY, A HISTORY WE CAN NO LONGER AFFORD: CONSOLIDATING PHILADELPHIA'S ROW OFFICES (Nov. 2, 2009), available at [http://www.picapa.org/Docs/Row\\_Offices\\_Issue\\_Paper.pdf](http://www.picapa.org/Docs/Row_Offices_Issue_Paper.pdf).

96. 3 J. THOMAS SHARE & THOMPSON WESTCOTT, HISTORY OF PHILADELPHIA 1609-1884, at 1737-38 (1884).

At the national level, as previously noted, the state border change would require the approval of at least the two senators from New Jersey and Pennsylvania, the nineteen members of the House of Representatives from Pennsylvania (seven Republicans and twelve Democrats in the 111th Congress), and the thirteen representatives from New Jersey (five Republicans, eight Democrats).<sup>97</sup> Assuming that the two Democratic Pennsylvania representatives who would become New Jersey representatives if the border change were approved,<sup>98</sup> would join the seven current Republican Pennsylvania representatives to vote in favor of the border change, nine of Pennsylvania's nineteen representatives would vote in favor of the measure. They would be joined by the eight Democratic New Jersey representatives. The result would be that a slim majority—seventeen out of thirty-two members—of the House of Representatives from New Jersey and Pennsylvania could be expected to approve the border change. Assuming deference by other House members to the majority wishes of the two state delegations, the border change should thus pass in the House.

The two Democratic U.S. Senators from Pennsylvania, Arlen Specter and Robert Casey, Jr., could be expected to block the boundary change.<sup>99</sup> Yet by the time the proposal had reached the Senate, Philadelphia would have established its move to New Jersey as a sufficiently credible threat that city officials would already be in negotiations with Pennsylvania Democratic state legislators to keep Philadelphia in Pennsylvania. In exchange, the state would authorize the unilateral annexation of one of the surrounding suburban counties on the Pennsylvania side. Strategically, the best county to annex would be the politically weakest county with the most Republicans. As part of Philadelphia, the local offices in the county to be annexed, which are likely to some extent Republican patronage resources, would be eliminated. And even in the most populous of the outlying counties, Montgomery, the total population of 778,048 is slightly smaller (by 6%) than the number of registered Democrats in Philadelphia.<sup>100</sup>

97. For the New Jersey and Pennsylvania delegations to the U.S. House of Representatives, see U.S. House of Representatives, Representatives Offices, [http://www.house.gov/house/Member/WW\\_by\\_State.shtm#pa](http://www.house.gov/house/Member/WW_by_State.shtm#pa) (last visited Apr. 20, 2010).

98. For information about U.S. Reps. Chaka Fattah and Robert Brady, see *id.* Fattah and Brady are two Pennsylvania representatives whose districts would be transferred almost entirely to New Jersey were Philadelphia to become part of the state.

99. As in all cases described in this article, the use of current elected officials is for illustrative purposes. This is of course especially true of Senator Specter, who lost his Democratic primary bid to Joe Sestak, and who is thus serving his final term in the US Senate.

100. For population data on Montgomery County, see U.S. BUREAU OF THE CENSUS, STATE & COUNTY QUICKFACTS, MONTGOMERY (COUNTY), PENNSYLVANIA, <http://quickfacts.census.gov/qfd/states/42/42091.html> (last visited Apr. 31, 2010). For

By annexing a Republican suburban county, Philadelphia would thus weaken a Republican state stronghold, which should appeal to Democrats in Harrisburg. Yet, it would be precisely the Republicans in the legislature pushing for the state border change to move Philadelphia to New Jersey who would be providing Philadelphia the leverage to compel Democrats in the state legislature to authorize the annexation of a Republican suburb. Thus, the advantage that the Democrats gain by providing Philadelphia with a credible threat that it was going to move to New Jersey might hopefully even compel Pennsylvania's two Democratic U.S. senators to signal that they would approve of the border change.

Of the counties surrounding Philadelphia, Bucks County has the highest percentage of Republicans representing it in the state legislature, and it is the only surrounding county whose legislators hold no leadership positions.<sup>101</sup> By at least these indicators it is thus the politically weakest and most Republican of the outlying counties. It also has the highest median value for owner-occupied homes (\$163,200) and the second-highest median household income (\$70,688). By annexing Bucks County, Philadelphia's population would increase to approximately 2,069,038, and its median household income would increase from approximately \$35,431 to \$44,966.<sup>102</sup>

#### URBAN FEDERALISM

The strategy outlined above would work best under the following conditions:

- A state border with a large and politically powerful city dominated by a single party on one side, and a smaller, economically distressed city, that requires significant state subsidies on the other side.
- For the state that includes the bigger city, a state legislature roughly equally divided between the two major parties, preferably with a slight majority of the opposite party to that which controls

data on registered voters in Philadelphia, see PA DEP'T OF STATE, STATISTICS, *supra* note 76.

101. See Pennsylvania General Assembly, Bucks County PA Legislators, [http://www.legis.state.pa.us/d/docs/legis/home/findyourelegislator/county\\_list.cfm?CNTYL1ST=bucks](http://www.legis.state.pa.us/d/docs/legis/home/findyourelegislator/county_list.cfm?CNTYL1ST=bucks) (last visited Apr. 20, 2010).

102. For income, home value, and population data on Bucks county, see U.S. BUREAU OF THE CENSUS, STATE & COUNTY QUICKFACTS, BUCKS (COUNTY), PENNSYLVANIA, <http://quickfacts.census.gov/qfd/states/42/42017.html> (last visited Apr. 31, 2010). For the same information on Philadelphia county, see U.S. BUREAU OF THE CENSUS, STATE & COUNTY QUICKFACTS, PHILADELPHIA (COUNTY), PENNSYLVANIA, <http://quickfacts.census.gov/qfd/states/42/42101.html>. Figures are approximate because they are calculated using number of households per county in 2000 and median household income in 2007.

the city, and a United States Congressional delegation with a majority from the party that does not dominate the city.

- For the state with the smaller city, a state legislature and United States congressional delegation dominated by the same party as that which dominates the big city in the other state.
- Numerous small, preferably wealthy, suburban municipalities surrounding both the smaller and larger cities.

As simply a thought experiment, the fact that this strategy proposes to alter state borders for the sake of enlarging cities challenges the sanctity of those state borders, and thus the sanctity of statehood. And by challenging the sanctity of statehood, the strategy also challenges the principle of representation by state in the United States Senate. Indeed, the strategy can be seen as a logical continuation of the reapportionment revolution that the U.S. Supreme Court initiated in *Baker v. Carr*—which, like the current proposal, was a move toward redrawing political boundaries in recognition of the rights of urban areas.<sup>103</sup>

As a practical plan for city expansion, the significance of the proposed strategy depends crucially on whether or not it results in state border changes, which, in the case of Philadelphia, depends on whether New Jersey or Pennsylvania offer the city the best deal. If the strategy did not result in state border changes, it would still create larger and thus more politically powerful cities within states, yet those cities would likely no longer be dominated by single parties as much as they had been in the past. With more genuine two-party competition, the geographic expansion of cities that remain in their home states would likely result in significant reform movements within cities.

If the strategy did result in state border changes, it would concentrate large urban populations in fewer states, though those states would have significantly larger populations. It would also result in less politically competitive states, dominated to a greater extent by one of the two major political parties. At the national level, it would concentrate urban delegations in fewer states in the U.S. House of Representatives, decrease the representation of urban populations in the Senate, and it would likely also create more uniformly Republican and Democratic Congressional delegations in both chambers, since those delegations would be more aligned along the typical divide between urban Democrats and nonurban, suburban, or exurban Republicans.

Concentrated into fewer state delegations and representing more politically unified states, House representatives from urban areas would be better positioned to coordinate among themselves, and they would thus likely have more bargaining power in their chamber. Yet, they would also confront a Senate where urban interests had less representation. The state border changes themselves would have challenged the notion of rep-

resentation by state, and the urban delegations in the House, finding themselves in permanent conflict with the Senate, might thus be expected to raise a call for a Constitutional amendment to change the basis of representation in the Senate from statehood to population. Yet, the lack of urban representation in the Senate would have minimized the likelihood of gaining the necessary two-thirds vote in that chamber, or approval by two-thirds of the state legislatures.

The alternative to a constitutional amendment would be a new constitutional convention. The last convention, although it was held in a city, was drafted for a nation that was notoriously ambivalent, if not hostile, to big cities, and in which only approximately 5% of the population lived in communities of 2,500 or more people.<sup>104</sup> The anti-urban sentiment of many of the convention attendees made it at least somewhat easier to negotiate representation by statehood for the U.S. Senate. At the 1787 convention, Elbridge Gerry could thus also claim that he “conceived it to be the [general] sense of America, that neither the Seat of a State Govt. nor any large commercial City should be the seat of the [general government].”<sup>105</sup> In a nation today of more than 300 million people, where nearly 84% of the population lives in metropolitan areas,<sup>106</sup> the conversation might go a bit differently. It seems at least worthwhile to have that conversation.

104. U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES: 1789–1945, at 25 (1949).

105. As recorded in JAMES MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787, July 26, 1787, available at [http://avalon.law.yale.edu/18th\\_century/debates\\_726.asp](http://avalon.law.yale.edu/18th_century/debates_726.asp). Gerry is quoted, among other places, in Richardson Dilworth, *Bringing the City Back In*, in THE CITY IN AMERICAN POLITICAL DEVELOPMENT 3 (Richardson Dilworth ed., 2009). See also Robert C. Lieberman, The City and Exceptionalism in American Political Development, in *id.*, for a discussion of traditional American anti-urbanism.

106. U.S. CENSUS BUREAU, POPULATION BY CORE BASED STATISTICAL AREA STATUS AND STATE: 2008, available at <http://www.census.gov/compendia/statab/2010/tables/10s0024.pdf>.