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## Article

### County Government Unbounded

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*County governments occupy an awkward dual position in the sub-federal system. They are both local governments (democratic bodies, akin to cities and towns) and state agents (administrative units of state government, akin to departments and agencies). Neither role seems to suit counties particularly well. When acting as local democratic bodies, counties are constrained by state law and severely under-resourced, especially in contrast with municipal governments in their midst. As administrative agents of the state, moreover, counties are saddled with a cascade of responsibilities that the state has delegated to the regional level, duties they must perform without the same support afforded prototypical state agencies. A county's dissimilar roles thus share one unifying theme. On paper, as the slim legal literature on county governments has observed, counties are passive, static, and relatively powerless actors in both their local and state manifestations.*

*This conventional description is incomplete. Counties' unique intermediary position gives them a function—and therefore, a voice—in a wide variety of intergovernmental activities. Money and property flow through them; federal and state grants are administered by them. By virtue of their static boundaries and ubiquitous statewide presence, counties are tasked with managing public land, collecting and disbursing taxes, and providing services to other local governments. Significant powers are embedded within these responsibilities. Through a myriad of seemingly ministerial duties, counties have quietly become regional brokers who can (and do) wield influence over other local bodies, yielding a county apparatus that is far more muscular in practice than it is in theory.*

*This Article sheds light on the unheralded power of county governments. It focuses particularly on two entities that operate in a county's territorial orbit: sheriff's offices, one of several local officials who are elected directly by residents rather than appointed by county commissions, and library districts, one of a constellation of special-purpose districts that hold autonomous taxing authority in a local region. Sheriffs and library districts formally operate beyond the reach of a county commission's control. Indeed, their very existence would seem to underscore the institutional weakness of county government. Yet counties'*

*administrative powers afford them wide-ranging influence over the structures, policies, and operations of sheriff's offices and library districts, an intergovernmental regime that does not resemble what the law imagines.*

*This Article draws upon hundreds of original primary sources to sketch the expansive power of county government against an era of unsettled institutional norms. It argues that counties demand new attention from residents, scholars, and policymakers. Given that they will continue to play critical roles in the sub-federal system, counties should be given formal powers that they currently lack. At the same time, however, they should also be subject to novel channels of oversight that do not currently exist. Such a blend—of equal parts empowerment and disempowerment—can promote public accountability while strengthening regional governance. These reforms can preserve a county's important intermediary function, yet do so in a manner that recognizes rather than ignores the evolving intergovernmental norms against which counties and other bodies operate.*

## ARTICLE CONTENTS

INTRODUCTION .....	84
I. THE FORMAL REGIME OF COUNTY POWER.....	90
A. COUNTIES IN A REGIONAL SYSTEM.....	94
B. COUNTIES AND SHERIFFS .....	98
C. COUNTIES AND LIBRARY DISTRICTS .....	100
II. CHANNELS OF BUDGETARY INFLUENCE.....	104
A. SHERIFF BUDGETING CONTROL .....	105
B. LIBRARY DISTRICT BUDGETING CONTROL .....	112
III. STATE-AGENT ADMINISTRATIVE POWERS .....	116
A. APPOINTMENT CONTROL .....	116
B. DOMINO ADMINISTRATIVE POWERS .....	122
IV. INSTITUTIONAL CONSEQUENCES OF COUNTY POWER .....	136
A. ACCOUNTABILITY .....	139
B. BLURRED INSTITUTIONAL LINES.....	143
CONCLUSION.....	148



# County Government Unbounded

DANIEL B. ROSENBAUM\*

## INTRODUCTION

County governments occupy an awkward position in the American federal system. As conventionally understood, counties play two distinct, sometimes incompatible governance roles: they are both local governments (democratic bodies, akin to cities and towns) and state agents (administrative units of state government, akin to departments and agencies). Neither role seems to suit counties particularly well. When acting as local democratic bodies, counties are constrained by state law and severely under-resourced, especially in contrast with the relatively empowered municipal governments in their midst. As administrative agents of the state, counties are saddled with a cascade of responsibilities that the state has deemed convenient to delegate to the regional level, duties they must perform without the same support afforded prototypical state agencies. A county's dissimilar roles thus share one unifying theme: On paper, as the slim legal literature on county governments has observed, counties are passive, static, and relatively powerless actors in both their local and state manifestations.<sup>1</sup>

This conventional description is incomplete. Counties' unique intermediary position gives them a function—and therefore, a voice—in a wide variety of intergovernmental activities. Money and property flow through them; federal and state grants are administered by them. By virtue of their static boundaries and ubiquitous statewide presence, counties are tasked with managing public land, collecting and disbursing taxes, and providing services to other local governments. Significant powers are

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<sup>1</sup> A notable exception to the slim literature on county governments is the work of Michelle Anderson, whose scholarship serves as a jumping-off point for this Article. See *infra* Part I. Professor Anderson has remarked upon the otherwise scarce body of legal research into county structures and powers. E.g., Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1140–41 (2008) [hereinafter *Cities Inside Out*]; Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 935 (2010) [hereinafter *Mapped Out*]; Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364, 1420 (2012) [hereinafter *Dissolving Cities*].

embedded within these responsibilities. Through a myriad of drab, seemingly ministerial duties that counties perform as sub-federal intermediaries, they have quietly become regional brokers who can, and do, wield influence over other local bodies, yielding a county apparatus that is far more muscular in practice than it is in theory.

Consider a recent example from California. In 2021, Sacramento County conducted an audit of the office of Scott Jones, the Sacramento County Sheriff.<sup>2</sup> The audit found that deputies did not wear cameras while on patrol, a practice it believed would improve safety and public confidence,<sup>3</sup> and suggested that Sheriff Jones create a “plan and policy for the use of body worn cameras.”<sup>4</sup> Sheriff Jones was under no obligation to adopt the recommendation. Body worn cameras were not required by state law.<sup>5</sup> Nor was the underlying audit itself, for that matter. Nor was Sheriff Jones formally beholden to policy suggestions made by Sacramento County. Like many other local officials in California, and nationwide, Sheriff Jones was a constitutional officer, an elected position enshrined and protected under the state constitution. He was elected by local voters, not appointed by the county commission. His budget and staff were independent of the county’s. Should he have chosen to ignore the recommendation—or disregard the audit more broadly—the structural precepts of local government law would not have stood in Sheriff Jones’ way.

But Sheriff Jones took a different approach. His office began issuing body cameras to officers in February 2021, one month after the audit period ended, and planned to fully deploy them by June 2021, when the audit would be submitted to the county commission.<sup>6</sup> No doubt other exogenous voices also influenced his decision, most notably the strident criticism of community activists, who had assailed the sheriff for repeated instances of officers using excessive and at times deadly force against local residents of color.<sup>7</sup> Yet the sheriff acted only after the county government joined this chorus and added a public nudge. Moreover, had the county been so motivated, it could have harnessed an arsenal of more invasive tools to compel the same policy outcome. It could have squeezed the sheriff’s budget, notwithstanding that a sheriff’s finances are formally insulated from

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<sup>2</sup> CNTY. OF SACRAMENTO DEPT. OF FIN., COMPLIANCE WITH SENATE BILL (SB) 1421 AND ASSEMBLY BILL (AB) 748 1 (2021).

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* (“[W]e are not aware of any laws or regulations requiring installment of body worn cameras . . .”).

<sup>6</sup> See *Sacramento NAACP Demands Clear Policies as Sheriff Rolls Out Body Cameras*, ABC NEWS 10 (Feb. 15, 2021, 10:06 PM), <https://www.abc10.com/article/news/local/sacramento/body-cams-for-sacramento-county-sheriffs-office/103-7b773c30-8c14-4be3-9ba7-0d88b808cfdb> (“A full rollout of body cameras to the entire department is expected by June 2021 . . .”); CNTY. OF SACRAMENTO DEPT. OF FIN., *supra* note 2 (stating June 7, 2021, as audit submittal date).

<sup>7</sup> See *Sacramento NAACP Demands Clear Policies as Sheriff Rolls Out Body Cameras*, *supra* note 6 (reporting a “string of controversial cases” caught on deputy cameras).

county influence.<sup>8</sup> It could have refused to approve necessary contracts or inserted policy demands into lease agreements that the sheriff had no real ability to oppose.<sup>9</sup> And, perhaps, it could even have pushed Sheriff Jones out of office, notwithstanding that the voters had placed him there.<sup>10</sup>

In this manner, the vignette from Sacramento offers a singular example of a large phenomenon. In ways large and small, through the use of overlooked and often dormant levers of administrative control, counties exercise outsized influence over their regional environment. This Article sheds light on the unheralded power of county governments. In doing so, it argues that despite the real handicaps they face, counties quietly wield formidable influence, the tendrils of which reverberate around a local region.

This Article focuses particularly on two entities that operate in a county's territorial orbit: (1) sheriff's offices, which, as in Sacramento, are helmed by separately elected officials who do not report to the county commission, and (2) library districts, one of a constellation of special-purpose regional districts that hold autonomous taxing authority in the cluttered world of local government. Sheriffs are the sole local law enforcement officers for 130 million Americans; they also manage local jails and serve as central cogs in the carceral state.<sup>11</sup> Library districts operate tens of thousands of branch libraries across the country; they function as neighborhood anchors in large cities and as one-stop shops for resources, technology, and information in small towns.<sup>12</sup> On the whole, despite their profound differences, sheriffs and libraries are local entities with tremendous day-to-day salience for residents of a particular local place.

Complicating matters, sheriffs and library districts also exhibit another similarity: they often share coterminous territory with their local county governments. Indeed, frequently, they are labeled *county* sheriffs and *county* libraries, suggesting a collective membership in a unitary governance system. The reality is far more diffuse. At their core, most counties are

<sup>8</sup> See *infra* Part II.A (discussing sheriff budgeting control).

<sup>9</sup> See *infra* Part III.B (discussing administrative levers by which county commissions can exercise control over regional peers).

<sup>10</sup> See *infra* Part III.A (discussing appointment control).

<sup>11</sup> See Anthony O'Rourke, Rick Su & Guyora Binder, *Disbanding Police Agencies*, 121 COLUM. L. REV. 1327, 1371 (2021) ("Approximately forty percent of Americans live in communities where sherrifs' offices are the sole local law enforcement body."). Regarding the many roles played by local sheriffs, and particularly their common role in running local jails, see Sharon R. Fairley, *Survey Says: Powerful Sheriffs Successfully Limit the Rise of Civilian Oversight*, 23 N.Y.U. J. LEGIS. & PUB. POL'Y 803, 809–10 (2021). See also *id.* at 816 (discussing accountability deficits in sheriff's offices); E.D. Cauchi & Scott Pham, *County Sheriffs Wield Lethal Power, Face Little Accountability: "A Failure of Democracy"*, CBS NEWS (May 20, 2024, 6:00 AM), <https://www.cbsnews.com/news/county-sheriffs-deaths-accountability> (reporting citizens are more likely to die in sheriff custody than the custody of city law enforcement); see generally CONNOR BROOKS, U.S. DEPT. OF JUST. BUREAU OF JUST. STATS. STATISTICIAN, SHERIFFS' OFFICES PERSONNEL, 2020 (2022), <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/so-p20.pdf> (reporting personnel counts, demographic breakdowns, and staffing distribution within sheriffs' offices in 2020).

<sup>12</sup> See *infra* note 332 and accompanying text (discussing the evolution of libraries).

governed by a county commission—an elected legislative body that adopts budgets, procures services, and executes contracts and regulations.<sup>13</sup> A county commission might oversee a number of internal departments, such as a health department or a planning department, whose leaders and budgets are firmly subject to commission supervision.<sup>14</sup> But counties extend much further in territory than they do in formal power, and operating within their territory are a host of *other* county-level actors, most of whom are insulated from commission control. Separately elected local officials (such as sheriffs, but also treasurers and clerks) are electorally accountable to voters, not to county commissioners, while regional special districts (e.g., park, airport, sewer, and development authorities) enjoy dedicated funding sources that enable them to operate regardless of county support.<sup>15</sup> All of these independent local entities inhabit the same regional space as counties. Their existence further obscures, and seemingly erodes, the root county government that sits at a region’s structural core.

Recent years have witnessed a surge of institutional contestations in this diffuse regional system. Sheriffs use their offices to stake out controversial stances on hot-button political issues, even as commentators depict them as lawless actors and increasingly question their very existence.<sup>16</sup> Library

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<sup>13</sup> There are, however, various iterations of this general model and some notable exceptions to it. See, e.g., George E. Ward, *The Charter Form of County Government: Wayne County, 25 Years Later*, 54 WAYNE L. REV. 1791, 1801 (2008) (surveying various designs of county governing bodies); Enrico Andreoli, *The US Local Government Organisation: Origins, Development, and Federal Implications in LOCAL GOVERNANCE IN MULTI-LAYERED SYSTEMS: A COMPARATIVE LEGAL STUDY IN FEDERAL-LOCAL CONNECTION* 29, 35 (Matteo Nicolini & Alice Valdesalici eds., 2023) (discussing organizational government patterns found within counties). Some counties, mostly urban counties that have adopted charters, also have an elected executive official who serves as the head of an executive branch, a counterpart to the legislative commission. See Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 115 (1990) (discussing the concept of local variation); Jeff LeJava, *The Role of County Government in the New York State Land Use System*, 18 PACE L. REV. 311, 322 (1998) (“The election or appointment of a County Executive is one . . . principal difference[] between charter and noncharter counties.”). The county executive model divides power internally within the county. But for external purposes, a county executive, together with the county commission, is part of the same governing body. See *Shapiro v. Essex Cnty. Bd. of Chosen Freeholders*, 424 A.2d 1203, 1207 (N.J. Super. Ct. Law Div. 1980) (noting that the county executive combines with the county board to form the county government). In discussing “counties” and “county governments,” this Article refers to the governing body of a county—its commission and where applicable its executive officer—but not to any other elected officials within its territorial jurisdiction.

<sup>14</sup> See, e.g., 55 ILL. COMP. STAT. ANN. 5/5-15003 (West 2025) (regarding the departments of public works); 55 ILL. COMP. STAT. ANN. 5/5-25001 (West 2025) (regarding health departments). It bears noting, however, that the distinction between internal county departments and other local agencies and entities is not always clear. Maria Ponomarenko, *Substance and Procedure in Local Administrative Law*, 170 U. PA. L. REV. 1527, 1540 (2022). Therefore, while this Article focuses on entities that are formally external to a county’s governing body, internal county departments are also understudied and could benefit from future research.

<sup>15</sup> See *infra* Part I (discussing the formal regime of county power). See Ward, *supra* note 13, at 1800 (explaining how separately elected officials can exist even where residents elect a county executive).

<sup>16</sup> See JESSICA PISHKO, *THE HIGHEST LAW IN THE LAND: HOW THE UNCHECKED POWER OF SHERIFFS THREATENS DEMOCRACY* 372 (2024) (arguing for elimination of sheriffs’ offices).

districts, once consigned to a forgotten corner of local government, have become sites of political confrontation as residents debate what role, exactly, a local library should play in their communities. Counties have themselves been roiled by institutional debates, driven by a fringe but growing belief that county commissions can nullify decisions of federal and state actors they deem unconstitutional. Across the landscape of local government, traditional norms that once fortified the structural lines between separate local bodies suddenly rest on shaky ground.

Lost amidst these institutional battles are the residents affected by their outcomes.<sup>17</sup> The debates over sheriffs and libraries occur across and between communities, part of a broader wave of polarized national battles playing out at the local level.<sup>18</sup> Within communities, however, regardless of these national debates, residents still hold basic expectations of their local governments. They expect sheriffs to keep them safe, libraries to connect them with resources, and counties to provide them with roads, sanitation, and other core civic services.<sup>19</sup> Shaky institutional boundaries upend these expectations by creating outlets for motivated actors to aggrandize their institutional powers. As counties and sheriffs assert new realms of authority, other local bodies, library districts among them, suddenly find their powers squeezed and their missions eroded.<sup>20</sup>

Studying these three entities offers a telling glimpse into the zero-sum world of local government, which rests upon unsettled norms and relies on innocuous yet potent sources of authority. A county's state-agent duties assume a newfound salience in this environment. As cities and other local institutions assert new powers and face new external threats, counties seemingly operate at the periphery of this turmoil, static in appearance and well off the popular radar. As this Article will show, however, counties are not such passive actors as they often appear. Their administrative powers afford them wide-ranging influence over the structures, policies, and operations of sheriff's offices and library districts. The result is an intergovernmental regime that does not quite resemble what the law imagines.

This Article proceeds in five parts. Following this introduction, Part I provides the conventional account of county power and describes the formal role played by counties in their regional ecosystem. It also introduces sheriffs and library districts as independent local entities, insulated legally

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<sup>17</sup> Cf. CITY & CNTY. OF S.F. OFF. OF THE CONTROLLER, KEY STRATEGIES COULD HELP THE SHERIFF REDUCE ITS HEAVY RELIANCE ON OVERTIME AND BETTER COMMUNICATE ITS STAFFING NEEDS 21 (June 19, 2019) (“[T]he individuals most directly affected by the Sheriff’s budget cannot attend hearings because they are in custody.”).

<sup>18</sup> See Pishko, *supra* note 16, at 93 (regarding the shift towards national politics fueling local elections).

<sup>19</sup> See *infra* note 84 and accompanying text (discussing the expectations that communities have for their libraries); *infra* Part IV.B (describing the archetypal functions of local entities and how these functions can creep, erode, and blur in practice).

<sup>20</sup> *Id.*



and structurally from county control on paper. Part II complicates this narrative by painting a fuller picture of how counties and their regional brethren operate on the ground today. It argues that while county commissions might underwhelm while wearing their local-polity hat, they are delegated significant powers in their role as administrative agents of the state. Most centrally, counties are granted a role in the budgeting processes of other entities, which enables them to carve out a muscular regional role, notwithstanding a body of law that aims to draw formal lines between counties and the finances of their regional peers.

Yet budgetary power is not the only toehold of regional influence in a county commission's arsenal. Part III explores other potent cudgels of county power that, together, lend breadth and depth to a county's institutional strength. It begins by discussing appointment and removal protections for regional officials—a traditional lodestar of independence at the federal level, yet one that proves far less durable in local government. Part III then defines and excavates a county's *domino administrative powers*, this Article's term for a snowballing collection of administrative duties and levers that bleed into each other, creating a collective force that is greater than the sum of its parts. On the whole, Parts II and III demonstrate that counties are assigned significant state-agent powers, powers that are routinely exercised even as they also routinely lie dormant.

The plain lesson of Parts II and III—that counties are far more influential than they appear—is not, in itself, a cause for alarm. Indeed, many commentators would welcome a regional ecosystem marked by stronger county governments. Many would also welcome greater, rather than fewer, institutional checks on separately elected officials and regional special districts. From a normative perspective, therefore, it might be unalarming—or even heartening—that counties can exercise regional oversight through tools already at their disposal.

Yet as Part IV posits, what should concern residents and scholars of local government is that a county's administrative powers can be exercised unevenly. Sometimes counties choose to take active roles in the governance of independent local entities. Sometimes they do not. At times, county commissions may elect to weaponize their administrative powers towards substantive purposes, but often they leave these powers dormant or exercise them only sparingly. State law does not require counties to assert the full extent of their administrative powers, after all, and only rarely does it regulate how these powers are exercised. The governance lines between counties and other entities have thus grown incredibly porous. As Part IV proceeds to argue, porous boundaries complicate democratic precepts of local government law. First, it explores how porous boundaries can obscure channels of accountability, leaving residents unsure who to hold accountable

for policies they dislike and unable to participate in governance decisions made outside of the democratic process. Second, it argues that porous boundaries necessarily blur institutional lines, which can subvert the purposes of discrete local entities and call into question why we have separate counties, sheriffs, and libraries in the first place.

Building on the fundamental concerns raised in Part IV, this Article concludes by advocating for a new perspective on interlocal relations and a new approach to regional power. It argues that county commissions demand renewed attention, as do the interlocal nodes of local government that they inhabit and often influence. Given that counties will continue to play crucial administrative roles in the sub-federal system, they should be given formal powers that they currently lack. At the same time, however, they should *also* be subject to formal channels of oversight that do not currently exist. Such a blend—of equal parts empowerment and disempowerment—can promote public accountability while strengthening regional governance. It can further elevate counties’ sub-federal role as necessary conduits between state and local actors. In turn, perhaps, local regions can begin narrowing the divide between the siloed precepts of small-scale democracy and its increasingly scorched-earth institutional outcomes.

## I. THE FORMAL REGIME OF COUNTY POWER

Counties are ubiquitous across the United States. Nearly all states are divided into fixed geographic units of county government, a framework derived from the English shire system.<sup>21</sup> Counties manage local courts, clerks, registers of deeds, and other public-facing offices. They also serve as the default level of local administration. Typically, wherever territory has not been incorporated into a city, village, or town, counties fill this void by providing base services to the unincorporated community.<sup>22</sup> Despite their prevalence, counties occupy an unsettled place in the fabric of American federalism. They are frequently characterized as agents of state government, as administrative subdivisions designed merely for the regional exercise of

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<sup>21</sup> Andreoli, *supra* note 13, at 34. See Ashira Pelman Ostrow, *Emerging Counties? Prospects for Regional Governance in the Wake of Municipal Dissolution*, 122 YALE L.J. ONLINE 187, 197 n.55 (2013) (explaining how Alaska and Louisiana divide into boroughs and parishes, respectively, which are analog forms of government). Only Connecticut and Rhode Island lack a county-style government altogether. See *CT Towns & Counties*, CONN. STATE LIBR., <https://portal.ct.gov/csl/research/ct-towns-counties?language=en> (last visited Sept. 9, 2025) (“[T]he names and boundaries of [Connecticut’s] eight counties have existed only as geographical names used to define parts of the state.”); *Fun Facts & Trivia*, R.I. GOV’T, <https://www.ri.gov/facts/trivia.php#:~:text=Rhode%20Island%20has%20no%20county,own%20form%20of%20local%20government> (last visited Sept. 9, 2025) (“Rhode Island has no county government.”).

<sup>22</sup> Michelle Wilde Anderson has written at length on the function of counties as default service providers. *E.g.*, *Cities Inside Out*, *supra* note 1, at 1140; *Mapped Out*, *supra* note 1, at 994.

state power.<sup>23</sup> Yet commentators also recognize that counties function as local democratic polities, particularly in urban areas.<sup>24</sup>

Both portraits reflect reality; counties are both administrative agents of the state *and* sites of local governance.<sup>25</sup> While wearing their state-agent hats, counties maintain public roads, administer health and welfare programs, and serve as passthrough entities for a host of services and grants.<sup>26</sup> In parallel, while wearing their local-polity hat, counties take actions more frequently associated with cities: they deliberate local issues, regulate land uses, and pass laws governing conduct in their communities.<sup>27</sup> Counties straddle a seemingly rigid doctrinal line between state and local government.<sup>28</sup>

Their intermediary position in the federal hierarchy places counties in a double bind: it renders them relatively powerless as both state agents and as local polities. In treating counties as administrative subsidiaries, states saddle them with wide-ranging and expanding responsibilities. From a state's perspective, federal programs might be easier to implement at a regional level. Constitutional obligations carry costs—political and financial—that state legislatures would rather avoid.<sup>29</sup> These and other responsibilities are routinely delegated to counties, who must now manage potentially thorny programs and mandates, often without resources sufficient for the task. Counties administer social service programs on behalf

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<sup>23</sup> See, e.g., *Bd. of Trustees of Laramie Cnty. v. Bd. of Cnty. Comm'rs of Laramie Cnty.*, 460 P.3d 251, 257–58 (Wyo. 2020) (describing counties as “arm[s]” and “purely auxiliaries of the state”); *Bd. of Cnty. Comm'rs v. Colorado Dep't of Pub. Health & Env't*, 218 P.3d 336, 338, 345 (Colo. 2009) (labeling a county as a “subordinate state agency”).

<sup>24</sup> See *Dissolving Cities*, *supra* note 1, 1426 (regarding the “view of counties as democratic, general-purpose governments”).

<sup>25</sup> See John M. Claunch, *Toward a More Effective County Government*, 35 TEX. L. REV. 986, 988, 991 (1957) (illustrating the dual role of counties as state agents and local service providers); *Cities Inside Out*, *supra* note 1, at 1140 (noting that county governments play a role in local, state, and federal service provision); John Amrhein, *Are Michigan Counties a Local Government, or Just a Branch of State Government?*, MICH. STATE UNIV. EXTENSION, (Oct. 12, 2015), [https://www.canr.msu.edu/news/are\\_michigan\\_counties\\_a\\_local\\_government\\_or\\_just\\_a\\_branch\\_of\\_state\\_governme](https://www.canr.msu.edu/news/are_michigan_counties_a_local_government_or_just_a_branch_of_state_governme) (stating that counties function as both state agents and local governments).

<sup>26</sup> See Claunch, *supra* note 25, at 987 (discussing the county's facilitation role in tax, infrastructure, health, education, and justice).

<sup>27</sup> See Barry Gabay, *Socioeconomic Integration and the Greater Richmond School District: The Feasibility of Interdistrict Consolidation*, 50 U. Rich. L. Rev. 397, 432 (2015) (counties have “garnered more sophisticated municipal resources” over time); Michelle Wilde Anderson, *Sprawl's Shepherd: The Rural County*, 100 CAL. L. REV. 365, 372 (2012) [hereinafter *Sprawl's Shepherd*] (regarding zoning as a county land use and development tool). The characterization of county governments wearing multiple hats comes from Michelle Anderson. See *Mapped Out*, *supra* note 1, at 994 (“[C]ounty governments wear several distinct hats.”).

<sup>28</sup> Cf. Aaron Saiger, *Local Government as a Choice of Agency Form*, 77 OHIO ST. L.J. 423, 424 (2016) (complicating the traditional view that “local governments and state agencies are distinct legal genuses.”).

<sup>29</sup> See Justin Weinstein-Tull, *Abdication and Federalism*, 117 COLUM. L. REV. 839, 841–42 (2017) (arguing that states “abdicate” certain responsibilities to local governments “to shelter noncompliance with federal law at the local level”).

of state and federal agencies.<sup>30</sup> In many states, they are responsible for funding courts, appointing public defenders, and housing state prisoners—all challenging and costly activities, and all backed by constitutional mandate.<sup>31</sup> Yet counties are not treated as state agencies when the bills come due. Instead, they are often reliant on local funding sources, particularly property taxes, and might discover that the state has absolved itself of liability when litigation arises.<sup>32</sup>

Counties fare little better when cast as local governments. Compared with municipalities, only a small number of counties can adopt charters, which serve as semi-constitutional local documents and are often important prerequisites for local self-governance.<sup>33</sup> Relatedly, counties are far less likely than municipalities to be granted home rule, a legal status that enables localities to regulate without specific grants of state authority.<sup>34</sup> Without charters and home rule status, counties are comparatively hamstrung in their regulatory powers and comparatively less autonomous of state oversight.<sup>35</sup> In the face of these constraints, counties retreat to their traditional local governance role: serving as the primary substate government for unincorporated areas within their territory.

Rarely do they have any control over the size and scope of this unincorporated area. Municipalities hold power to incorporate, annex, and de-annex land.<sup>36</sup> Counties do not, reflective of their status as passive geographic units of the state.<sup>37</sup> Unsurprisingly, as Michelle Anderson has incisively

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<sup>30</sup> See Linda Lobao & David S. Kraybill, *The Emerging Roles of County Governments in Metropolitan and Nonmetropolitan Areas: Findings from a National Survey*, 19 ECON. DEV'T. Q. 245, 246 (2005) (describing counties as administrators of federal and state benefit programs).

<sup>31</sup> See Weinstein-Tull, *supra* note 29, at 841–42 (using the Sixth Amendment guarantee of defense counsel as an example of a constitutional mandate delegated to local government).

<sup>32</sup> Regarding local funding sources and property tax reliance, see *Sprawl's Shepherd*, *supra* note 27, at 376. Counties do receive and rely upon state intergovernmental transfers, yet these transfers do not ameliorate counties' administrative burden. J. Edwin Benton, *County Government Structure and County Revenue Policy: What's the Connection?*, 35 STATE & LOCAL GOV'T REV. 78, 80 (2003). See, e.g., *Davison v. State*, 466 P.3d 231, 238 (Wash. 2020) (explaining that local governments can carry the state's burden of providing and promulgating standards for indigent defense, even though the state does not provide direct funding for these functions).

<sup>33</sup> Nestor M. Davidson, *Local Constitutions*, 99 TEX. L. REV. 839, 857 n.73 (2021); Benton, *supra* note 32, at 80.

<sup>34</sup> Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 STAN. L. REV. 1361, 1374 (2020). See Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837, 860 (2020) (discussing home rule). On the racial history of counties' relative lack of home rule, see Will Parker, *Still Afraid of "Negro Domination?": Why County Home Rule Limitations in the Alabama Constitution of 1901 Are Unconstitutional*, 57 ALA. L. REV. 545, 546 (2005).

<sup>35</sup> Regarding regulatory power, see Robert C. Ellickson, *Zoning and the Cost of Housing: Evidence from Silicon Valley, Greater New Haven, and Greater Austin*, 42 CARDOZO L. REV. 1611, 1673 (2021) and LeJava, *supra* note 13, at 315–16. Regarding state oversight, see Benton, *supra* note 32, at 80.

<sup>36</sup> *Dissolving Cities*, *supra* note 1, at 1379. This municipal power often comes at the expense of a county's inability to stop it. For a recent example, see generally *Summit Cnty. v. Town of Hideout*, 557 P.3d 574 (Utah 2024).

<sup>37</sup> See *State v. Baltimore & Ohio R.R. Co.*, 44 U.S. 534, 550 (1845) (describing counties as “nothing more than certain portions of territory into which the state is divided”).

explored, unincorporated areas are often the left-behind corners of a region, those areas that for racial and economic reasons have missed the municipalization wave of the past century.<sup>38</sup> When considering the fragmented and often zero-sum world of local power, the relatively weak governance tools at a county's disposal lend clout to its neighbors—to the municipalities and authorities with which it shares overlapping jurisdictions.<sup>39</sup>

Academic literature is not entirely gloomy on the power of county governments. Notably, commentators have traced an increase in county authority over time, particularly an increase in land use authority among counties located in urban areas.<sup>40</sup> Their findings underscore that counties are diverse creatures. Urban charter counties are not identical to their rural, non-charter counterparts.<sup>41</sup> Some counties enjoy more resources or public salience than others.<sup>42</sup> And then there are infrequent but prominent examples of counties that transcend the standard state-local dichotomy entirely, such as consolidated county-city governments—in Nashville, Indianapolis,

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<sup>38</sup> *Mapped Out*, *supra* note 1, at 1003; *Dissolving Cities*, *supra* note 1, at 1425; *Cities Inside Out*, *supra* note 1, at 1155–56. See Ashira Pelman Ostrow, *Emerging Counties? Prospects for Regional Governance in the Wake of Municipal Dissolution*, 122 YALE L.J. ONLINE 187, 197 (2013) (discussing unincorporated areas as those outside of the “socioeconomic and racial lines [drawn] to exclude low-income residents and racial minorities”).

<sup>39</sup> See generally Yonah Freemark, *How Municipalities Exploit Their De Facto Power to Manage Metropolitan Planning Through Mutual Deference*, 61 URB. AFFAIRS REV. 772 (2024) (regarding outsized municipal influence over regional planning); John Thompson Stephens, *Political Control Over Special Districts in Local Government: A Case Study of the Las Vegas-Clark County Library District* 64 (May 1996) (M.A. thesis, University of Nevada, Las Vegas) (on file with University of Nevada, Las Vegas, University Libraries) (regarding zero-sum tax revenues); *Mapped Out*, *supra* note 1, at 994 (discussing the risk of capture by municipalities).

<sup>40</sup> See, e.g., *Cities Inside Out*, *supra* note 1, at 1128 (commenting that counties have increased land authority); LeJava, *supra* note 13, at 317, 325 (noting that urbanization has led to increased county powers).

<sup>41</sup> See generally Mark B. Feldman & Everett L. Jassy, *The Urban County: A Study of New Approaches to Local Government in Metropolitan Areas*, 73 HARV. L. REV. 526 (1960) (giving examples of charter counties). A number of urban-rural distinctions are indicated by the administrative county powers explored in this Article. Budget negotiations between sheriffs and counties offer one such example. In large urban counties, budget negotiations tend to assume a formal character: the commission issues a guidance letter, setting forth its vision for the next year's budget, the sheriff responds with a detailed budget proposal, and then, perhaps following some horse-trading, the commission will settle upon and approve a final budget for the coming fiscal year. See, e.g., Interview with Lauri Sams, General Accounting Manager, Collier County Sheriff Office (Sept. 17, 2024) (notes on file with author) (describing this negotiation process); COLLIER CNTY. BD. OF COMM'RS, FY 2025 RECOMMENDED BUDGET POLICIES (March 12, 2024) (on file with author); Letter from Kevin J. Rambosk, Sheriff, to Collier Cnty. Bd. of Comm'rs, Revised Certification of Proposed Budget for Fiscal Year 2025 (May 1, 2024) (demonstrating a sheriff's budget proposal to a county). In less populous counties, budgeting oversight may operate in more piecemeal fashion, and rural sheriffs in some states may come before the county commission for approval of many or most expenditures. See *infra* note 143 and accompanying text (discussing practices in Montana).

<sup>42</sup> Regarding resources, Massachusetts offers an outlier example of a jurisdiction with bare-bone county regimes. See Interview with Malav Patel, Middlesex Sheriff Office (Sept. 17, 2024) (notes on file with author) (describing county government in Massachusetts as “basically abolished”). Cf. Carrie B. Oser, Justin Strickland, Evan J. Batty, Erin Pullen & Michele Staton, *The Rural Identity Scale (RIS): Development and Validation*, 38 J. RURAL HEALTH 303, 305, 307 (2022) (regarding salience and measuring “county identity” in rural regions).

Louisville, and elsewhere—that can realize the benefits of municipalization without compromising their territorial reach.<sup>43</sup> Conversely, at the other end of the spectrum, some local regions are *so* fragmented that the county assumes an inherent leadership role.<sup>44</sup> The study of local government does not lend itself to clean generalizations, and counties are no exception.

Notable outliers aside, the remaining mass of counties share two core structural features—immutable territorial boundaries and limited authority over incorporated communities—that together leave counties relatively disempowered when compared with other local entities.<sup>45</sup> As a consequence, existing academic accounts paint counties as principally passive creatures: as passive administrative proxies while wearing their state-agent hats, and as passive spectators to the governance occurring around them while wearing local-polity hats.<sup>46</sup> Their perceived passive status has left counties well outside of the local government spotlight, long overlooked and underexplored by those who study local institutions.<sup>47</sup>

#### A. *Counties in a Regional System*

Our classical view of county powerlessness extends to—and is a product of—the relationship between counties and other public actors within their orbits. Significant countywide functions are exercised not by county commissions, the elected legislative body of a county, but rather by separately elected officials: by sheriffs, clerks, treasurers, and the like, all of whom are electorally accountable to voters and thus insulated structurally from a county commission’s control.<sup>48</sup> A system of separately elected officials fractures the

<sup>43</sup> See Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190, 197 n.21 (2001) (providing example of regional government); Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1769 n.25 (2002) (discussing the consolidated government in Louisville, Kentucky); Kristen Clarke, *Voting Rights & City-County Consolidations*, 43 HOUS. L. REV. 621, 626 (2006) (discussing the consolidations of counties in Tennessee, Indiana, and Kentucky).

<sup>44</sup> Arguably, Allegheny County plays such a role in the Pittsburgh metropolitan region. For a classic study, see generally ADVISORY COMM’N ON INTERGOVERNMENTAL RELATIONS, METROPOLITAN ORGANIZATION: THE ALLEGHENY COUNTY CASE (Feb. 1992).

<sup>45</sup> While this Article deliberately draws primary source material from a wide range of counties across the United States, it focuses primarily on counties that display these core structural features.

<sup>46</sup> See *Dissolving Cities*, *supra* note 1, at 1424–25 (describing counties as “silent and passive”); Claunch, *supra* note 25, at 987 (describing counties as “helpless and hopeless”).

<sup>47</sup> See *Cities Inside Out*, *supra* note 1, at 1140 (noting that in local government law scholarship, counties are often overlooked).

<sup>48</sup> In Mississippi, for example, justice court judges are elected by voters yet operate with and within county infrastructure. See MISS. CODE ANN. § 9-11-5 (West 2025) (setting forth the responsibilities of counties to provide judges with courtrooms and office space). Mississippi courts have emphasized that such institutional arrangements do “not otherwise grant the county any control whatsoever over the actions of the justice court judge.” Ward v. Morris, 895 F. Supp. 116, 118 (N.D. Miss. 1995). In some states, separately elected officials are described as “constitutional officers” because their positions are established in the state constitution. On debates over this distinction, see Ward, *supra* note 13, at 1806. See also Nadav Shoked, *The Forgotten Elected Officials*, at 5 (forthcoming 2026) (working manuscript on file with author) (“[A]s long as a state’s laws choose to render a given official separately-elected, that official’s discretion must be shielded from interference by other government bodies.”).

county polity, reducing the voice of county commissioners and dampening the effectiveness of county administration as a whole.<sup>49</sup> Only rarely do counties hold any formal authority to reconfigure this system and bring separately elected officials under commission oversight.<sup>50</sup>

Meanwhile, a host of other regional functions are carried out by independent special districts. Airports, libraries, sewer systems, hospital systems, parks, and more are commonly the domain of these regional districts, which operate on the same territorial scale as counties.<sup>51</sup> Special districts are heterogenous legal creatures that resist easy generalizations; they can vary considerably between states and functions.<sup>52</sup> Not all special districts operate wholly independently of other governments in their midst.<sup>53</sup> Few eyebrows are raised, for example, when cities exercise control over business improvement districts (BIDs) and other sub-municipal special districts that lie primarily or entirely within the boundaries of a single municipality.<sup>54</sup>

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<sup>49</sup> See Benton, *supra* note 32, at 80–81 (critiquing fragmented executive authority). Some states explicitly insulate separately elected officials from county commission control, see, e.g., ALA. CONST. Art. III § 43.02 (2022). For similar commentary on state institutions, see Miriam Seifter, *Understanding State Agency Independence*, 117 MICH. L. REV. 1537, 1552 (2019). For an incisive discussion of fractured county government in the context of separately elected officials, see Shoked, *supra* note 48, at 5, 29.

<sup>50</sup> Ward, *supra* note 13, at 1798. For an example of state law granting county commissions such formal power, see, e.g., MONT. CODE ANN. § 7-4-2110 (“The board of county commissioners has jurisdiction and power . . . to . . . supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing, or disbursing public revenue.”).

<sup>51</sup> The term “regional special district” is drawn from the works of Laurie Reynolds and Richard Briffault. Laurie Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, 78 WASH. L. REV. 93, 144–48 (2003); Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115, 1145–46 (1996). In contrast, with respect to sub-municipal districts, see George W. Liebmann, *The New American Local Government*, 34 URB. LAW. 93, 112 (2002). Legal commentators have also explored “subunits” of municipal governments and “sublocal” entities. See Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 508 (1997) (examining sublocal structures). See generally Clayton P. Gillette, *The Subdivided City*, 133 YALE L.J. 2701 (2024) (analyzing municipal subunits).

<sup>52</sup> Cf. Kellen Zale, *Local Government Formation and Boundary Change in Texas: A Post-Harvey Assessment*, 8 HLRE: OFF THE RECORD 105, 125 (2018) (explaining the difficulty of defining special districts); Nadav Shoked, *Quasi-Cities*, 93 B.U. L. REV. 1971, 1974–75 (2013) (discussing the line between “city” and “noncity”); CITY OF INDIANAPOLIS, Comprehensive Annual Fiscal Report 2014, at X (June 20, 2015) (on file with author) (distinguishing between “taxing districts” and “independent authorities”). Such fluid lines are emblematic of local government. See Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 982 (2019) (describing the challenge of defining “local” and “local affairs”).

<sup>53</sup> See Zale, *supra* note 52, at 125 (describing the potential for special districts to facilitate cross-jurisdiction coordination). For this reason, Nadav Shoked has argued for a “functional, rather than technical, definition of a special district.” Shoked, *supra* note 52, at 2027.

<sup>54</sup> Cf. Richard Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 COLUM. L. REV. 365, 456 (1999) (“Most state laws provide ample opportunities for municipal oversight and control of BIDs.”). See also Kathleen M. Naccarato, Note, *Private Patrolling at the Boundaries of Public Duty*, 118 NW. U. L. REV. 495, 501 (2023) (regarding BIDs); Liebmann, *supra* note 51, at 112 (discussing “historic preservation, business improvement, and tax increment financing districts.”).

But counties are reduced to fringe players in this drama. Prominent legal scholarship on sub-municipal districts focuses on city governments.<sup>55</sup> Meanwhile, despite their heterogeneity, regional special districts share a core feature of structural insulation: they are predominantly funded by dedicated tax levies, which enable them to operate without external financial support from a county's general fund.<sup>56</sup> Regional districts also enjoy other characteristics of fiscal autonomy, namely the power to issue bonds and assume debt independent of other local bodies.<sup>57</sup> Financial independence portends governance independence. To protect their standalone fiscal status, state laws expressly aim to insulate districts from city and county control.<sup>58</sup> Pointing to these schemes, courts and other state actors view regional districts as autonomous entities.<sup>59</sup> Additionally, legal commentators have also identified regional districts as particularly independent of overlapping general-purpose bodies.<sup>60</sup> These intersecting frameworks come at the

<sup>55</sup> See, e.g., Daniel B. Rosenbaum, *A Legal Map of New Local Parkland*, 105 MARQ. L. REV. 721, 736–37 (2022) (noting recent scholarship that considers sub-local governments below the municipal level).

<sup>56</sup> See *infra* note 159 and accompanying text (discussing the funding of library districts). See also Liebmann, *supra* note 51, at 110 (describing sources of local revenue); Chad D. Emerson, *Merging Public and Private Governance: How Disney's Reedy Creek Improvement District "Re-Imagined" the Traditional Division of Local Regulatory Powers*, 36 FLA. ST. U. L. REV. 177, 181 (2009) (discussing how "special districts' . . . budgets are not subject to the approval of other local governments."). Yet, there are exceptions to this model. Building authorities and economic development authorities are perhaps the most notable examples. See, e.g., TENN CODE ANN. § 12-10-109(a) (West 2025) (stating that a building authority is "a public instrumentality of the municipality. . ."). Indeed, a major impetus for the creation of special districts is their ability to operate without the fiscal limitations that face cities and counties. See Noah M. Kazis, *Special Districts, Sovereignty, and the Structure of Local Police Services*, 48 URB. LAW. 417, 443 (2016) (discussing the fiscal advantages and flexibility of special districts). Yet, for this very reason, when a city or county attempts to exercise fiscal control over a special district, courts in many states view such actions with alarm and create legal rules to inhibit them. See *infra* note 59 and accompanying text; *N. Port Rd. & Drainage Dist. v. W. Villages Improvement Dist.*, 82 So. 3d 69, 70 (Fla. 2012) (discussing the distinction between "dependent" and "independent" special districts in Florida).

<sup>57</sup> See, e.g., *N. Port Rd. & Drainage Dist.*, 82 So. 3d at 70 (distinguishing "dependent" from "independent" special districts under Florida law).

<sup>58</sup> In Utah, for example, the statutory scheme for county governments defines "special district" as "a political and corporate entity separate from the county . . . not subject[ed] to the direction and control of the county. . . ." UTAH CODE ANN. § 17-50-103 (West 2025). In Florida, state law "grants special districts authority equivalent to a county government, which includes self-governance. . . ." Julia Gibson, Comment, *Is Florida at War with the Mouse or Free Speech: Understanding the Dissolution of Disney's Reedy Creek and the Threat to Corporate First Amendment Rights*, 32 U. MIA. BUS. L. REV. 350, 355 (2024).

<sup>59</sup> See, e.g., N.M. Att'y Gen., Opinion Letter (March 12, 1990) ("A county commission's authority to control or interfere with the activities of other elected county officials is limited. This office has determined that state law does not grant general superintending control over elected officials to boards of county commissioners."); Russell J. Hanlon, *From the Agliano Era into the Cottle Era: A Review of the Opinions of the California Court of Appeal for the Sixth Appellate District in Civil Cases Decided in 1991 Through 1993*, 26 PAC. L.J. 1, 70 (1994) (discussing California's "essential control" test); *N. Brevard Cnty. Hosp. Dist. v. Roberts*, 585 So. 2d 1110, 1112 (Fla. Ct. App. 1991) (discussing the insulation of special districts' budgeting from county commission control).

<sup>60</sup> See Laurie Reynolds, *Home Rule, Extraterritorial Impact, and the Region*, 86 DENV. U. L. REV. 1271, 1298–99 (2009) (discussing districts' independence from other local entities); Laurie Reynolds, *Local Governments and Regional Governance*, 39 URB. LAW. 483, 512–13 (2007) (discussing the impact



expense of county power.<sup>61</sup> Indeed, a driving impetus for the creation of regional districts is their ability to capture economies of scale—to provide services across and irrespective of city boundaries.<sup>62</sup> Their proliferation has displaced counties from serving a similar regional function.<sup>63</sup>

Therefore, from the perspective of counties, regional districts and separately elected officials are two sides of the same disempowering coin. Regional special districts derive their revenues from voter-approved millages, not county commission largesse. Separately elected officials owe their positions to the voters, not to the county commission. These two structural attributes—funding independence and appointment independence—have been closely associated with a federal agency’s insulation in administrative law scholarship.<sup>64</sup> Local bodies would appear no different. Taken together, regional districts and separately elected officials hint at a dynamic, often cluttered regional ecosystem, one where county governments are just one of a wide array of possible public actors.

In order to explore the relationship between counties and other regional institutions in their midst—and by way of interrogating the formal narrative of county powerlessness—this Article will focus on two representative local bodies: county sheriffs, the most ubiquitous and historic of the separately elected county officials, and library districts, one of the most prevalent special districts across the United States.<sup>65</sup> As examined in the following

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districts have on the interests of other local governments). *See also* Saiger, *supra* note 28, at 438 (discussing how the “canonical treatment of special districts emphasizes their ‘independence’ from their ‘parent government’”) (*citing* KATHRYN A. FOSTER, *THE POLITICAL ECONOMY OF SPECIAL-PURPOSE GOVERNMENT* (Barry Rabe & John Tierney eds., 1997)).

<sup>61</sup> The relative nature of this dynamic has been aptly summarized by the Florida Attorney General. *See* Fla. Op. Atty. Gen., Opinion Letter on Special Districts—Fire Control Districts—Transfer of Function or Power—Formations of Local Governments Act—procedures for dissolution or merger of special district created by special act of the Legislature. § 4, Art. VIII, State Const.; § 6(d), Art. VIII, State Const.; § 165.041, F.S. (1982 Supp.); § 165.051, F.S. (Sept. 30, 1983) (“When the legislature has delegated to a public corporation . . . a governmental or public function that could have been delegated to a county to perform, it has, in effect, reserved to the state the power to control this particular function or service. . .”).

<sup>62</sup> *See* Liebmann, *supra* note 51, at 111 (noting that economies of scale are a motivation for district formation).

<sup>63</sup> *Cf.* Reynolds, *supra* note 51, at 144–48 (discussing regional characteristics of districts).

<sup>64</sup> *See* Rachel E. Barkow, *Insulating Agencies: Avoiding Capture Through Institutional Design*, 89 TEX. L. REV. 15, 42–49 (2010) (describing these features in federal agencies). *See also* Christopher R. Berry & Jacob E. Gersen, *Agency Design and Political Control*, 126 YALE L.J. 1002, 1024–25, 1038 (2017) (describing features of agencies, including distribution of funds and appointment powers).

<sup>65</sup> *See* U.S. CENSUS BUREAU, SPECIAL DISTRICT GOVERNMENTS BY FUNCTION, <https://www.census.gov/library/visualizations/2023/econ/special-district-governments-by-function.html> (last visited Jan. 6, 2025) (showing libraries as the ninth most common special district by function). Of course, sheriffs and library districts are only two of the local entities that share overlapping territorial jurisdiction with county governments. This Article does not contend that sheriffs are representative of all separately elected local officials, nor are library districts necessarily representative of all special purpose local bodies. A full accounting of regional governance networks is beyond the scope of this Article. In

Sections, both sheriffs and library districts are conceived and treated as autonomous entities, insulated formally from county commission control.

### B. *Counties and Sheriffs*

The insulation of county sheriffs has been well-documented. Modeled after “shire reeves,” local agents of the king in Medieval England, sheriffs have a long history in the United States: they trace to the earliest iterations of local government, in some communities predating even the organization of county bodies themselves.<sup>66</sup> From the beginning, sheriff offices have been empowered by state law—indeed, many are prescribed in state constitutions—and sheriffs have been viewed for most purposes as instrumentalities of the state.<sup>67</sup>

This structure has continued to the present day. Like other separately elected officials, sheriffs are elected by county voters rather than appointed by county commissioners.<sup>68</sup> Sheriffs command significant resources and political clout. They can draw upon distinct revenue sources, such as fees authorized directly by state law, and increasingly are asserting a muscular political presence in their communities, one associated with right-wing ideologies in recent years.<sup>69</sup> Employing law-and-order rhetoric and

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exploring sheriffs and library districts, this Article studies two dissimilar entities and posits that despite their dissimilarity, counties hold and exercise administrative state-agent powers over both. This Article hopes to inspire further research on how these administrative powers play out differently in different settings, legal environments, and interlocal networks. For a fuller account of separately elected local officials, see Shoked, *supra* note 48, at 6 (noting and then documenting the wide variety of separately elected local officials across the country).

<sup>66</sup> See O'Rourke, Su & Binder, *supra* note 11, at 1377 (describing the history of sheriffs, dating to the colonial era); James Tomberlin, Note, “Don't Elect Me”: *Sheriffs and the Need for Reform in County Law Enforcement*, 104 VA. L. REV. 113, 128–129 (2018) (noting that sheriffs, originally agents of the king, came to be seen as “locally accountable [and] autonomous”). See also Davidson, *supra* note 33, at 848–49 (noting that London's 12th-century municipal charter provided citizens a right to elect a sheriff).

<sup>67</sup> See O'Rourke, Su & Binder, *supra* note 11, at 1371–72 (observing that “sheriffs are ‘constitutional offices’ in nearly all states where they serve a law enforcement function” and “operate independently of county governments”); *McMillian v. Monroe County Alabama*, 520 U.S. 781, 794 (1997) (“As the basic forms of English government were transplanted in our country, it also became the common understanding here that the sheriff, though limited in jurisdiction to his county and generally elected by county voters, was in reality an officer of the State, and ultimately represented the State in fulfilling his duty to keep the peace.”). See also Gregory Taylor, student work, *Dillon's Rule: A Check on Sheriffs' Authority to Enter 287(g) Agreements*, 68 AM. U. L. REV. 1053, 1078 (2019) (providing examples of state law empowering sheriffs and defining their duties). Despite this general view, courts sometimes struggle to define whether sheriffs are state or local officials when faced with an Eleventh Amendment immunity claim. See *Baker v. Hayden*, 459 P.3d 834, at \*6 (Kan. Ct. App. 2020) (noting that “courts have been less than monolithic in [determining] whether a sheriff's department functions as part of the county government . . . or as an arm of the State”).

<sup>68</sup> See, e.g., *Est. of Belden v. Brown County*, 261 P.3d 943, 970 (Kan. Ct. App. 2011) (stating that county commissions lack hiring and firing power).

<sup>69</sup> See Pishko, *supra* note 16, at 10 (placing sheriffs and their supporters within a “far-right” ideology); Fairley, *supra* note 11, at 815 (noting that “Constitutional Sheriffs” believe that their power “supersedes” other levels of government). See also Aaron Littman, *Jails, Sheriffs, and Carceral*

mythologies about their “God-given right[s],” sheriffs have resisted efforts to reform policies regarding citizen arrests, office transparency, and deputy discipline.<sup>70</sup> They have embraced controversial positions on immigration, election integrity, drug legalization, mask mandates, and other hot-button national debates.<sup>71</sup> Some have proclaimed their offices superior to—not simply independent of—county commissions, as constitutional officers avowedly beyond the reach of any legislative control.<sup>72</sup>

Yet despite the rhetoric and precept of constitutional insulation, county commissions are not irrelevant actors at the fringe of a sheriff’s orbit. In practice, sheriffs receive a significant, often overwhelming percentage of their funding from the general funds of local counties, notwithstanding their revenue-generation powers in theory.<sup>73</sup> Many states even require counties to provide “sufficient” or “reasonable and necessary” resources to local sheriffs.<sup>74</sup> While couched as an obligation for county commissions, these statutory funding requirements could also offer commissioners a potential cudgel of influence. Conceivably, commissions could employ their control of the county purse to control the policies and practices of sheriff’s offices, perhaps going so far as to fund only those sheriffs who profess a shared political ideology. But state law has seemingly foreclosed such influence. In Georgia, for example, the state constitution prohibits county commissions from taking “[a]ction affecting any elective county office,” which has led courts to draw a firm line between funding a sheriff’s office and attaching

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*Policymaking*, 74 VAND. L. REV. 861, 917 (2021) (describing sheriffs’ influence over local politics and law enforcement).

<sup>70</sup> See Pishko, *supra* note 16, at 53, 65 (discussing these mythologies). See also Maurice Chammah, *The Law Enforcement Officers With Surprising Power*, N.Y. TIMES, (Oct. 15, 2024), <https://www.nytimes.com/2024/10/15/opinion/sheriff-power-trump.html> (discussing the “tremendous” law enforcement power of sheriffs).

<sup>71</sup> See Pishko, *supra* note 16, at 93, 101, 114 (regarding sheriff views on immigration, drug legalization, COVID-19 health mandates, and election integrity); Fairley, *supra* note 11, at 816 (regarding views on immigration).

<sup>72</sup> See Pishko, *supra* note 16, at 65, 69 (noting that interposition is central to the constitutional sheriff movement and that some believe that sheriff powers can usurp those of federal law enforcement); *id.* at 21 (discussing the “constitutional sheriff” movement); Fairley, *supra* note 11, at 815–16 (same).

<sup>73</sup> See, e.g., SACRAMENTO COUNTY, OFFICE OF BUDGET & DEBT MANAGEMENT, FY 2024–25 REVISED RECOMMENDED BUDGET C-17–C-27 (2024) (outlining sheriff’s budget); DAVID VILLANUEVA, CNTY. EXECUTIVE TO BD. OF SUPERVISORS, SACRAMENTO CNTY., FISCAL YEAR 2024–25 REVISED RECOMMENDED BUDGET (2024), [https://bdm.sacounty.gov/FY2024-25BudgetInformation/Documents/Rev.Recomm.Budget/CE\\_Letter.pdf](https://bdm.sacounty.gov/FY2024-25BudgetInformation/Documents/Rev.Recomm.Budget/CE_Letter.pdf) (noting the County of Sacramento’s three-million-dollar increase to the sheriff’s funding); CNTY. OF FULTON, G. FY2014 ADOPTED BUDGET 121 (2014) (showing sheriff as primary beneficiary of county general fund expenditures); BREVARD COUNTY SHERIFF’S OFFICE, FY 2022 ADOPTED BUDGET 17 (2021) (showing general revenue as primary source of sheriff’s funding). See also *Lake v. Skelton*, 840 F.3d 1334, 1351 (11th Cir. 2016) (“[T]he budget of the sheriff’s office . . . comes from the county funds.”).

<sup>74</sup> See, e.g., TENN. CODE ANN. § 8-4-115(b) (requiring the appropriation of sufficient funds to the sheriff’s department); *Carver v. Sheriff of La Salle Cnty.*, 787 N.E. 2d 127, 137 (Ill. 2003) (noting the statutory obligation of the county board to accommodate the sheriff’s “reasonable and necessary expenses”). See also *Chaffin v. Calhoun*, 415 S.E.2d 906, 908 (Ga. 1992) (discussing budget requirement of sufficient funding “to allow the sheriff to discharge his legal duties”).

strings to those funds. A typical articulation comes from *Pellitteri v. Prine*, a 2015 opinion of the 11th Circuit:<sup>75</sup> “While it is true that the State requires the county to fund the sheriff’s budget,” the court noted, “Georgia’s Constitution also expressly prevents counties from controlling or affecting the sheriff’s office or the personnel thereof.”<sup>76</sup>

Based on *Pellitteri* and similar cases, commentators have accepted as gospel that counties cannot exert substantive control over sheriff’s offices—that they cannot sway meaningful decisions about who occupies the office, what policies they adopt, and what programs they prioritize.<sup>77</sup> As one article succinctly stated, “the . . . independence of the sheriff means that the county’s duty to appropriate funds cannot be used as a means of controlling the internal operations of the sheriff’s office.”<sup>78</sup> Another scholar observed that because counties lack hiring, firing, and budgetary control, “the sheriff’s institutional features . . . insulate him almost entirely from attempts by local officials to hold him accountable.”<sup>79</sup> These perspectives stress that sheriffs operate without the accountability safeguards that apply to municipal police departments, even though the latter has faced far more public scrutiny.<sup>80</sup> Recently, however, sheriffs have enjoyed renewed academic and popular interest, driven significantly by this very alarm: that they hold powerful pulpits yet operate as thoroughly unaccountable figures.<sup>81</sup>

### C. Counties and Library Districts

For different reasons, library districts have also seen a surge in attention in recent years. Libraries have always been fora for debates over political speech, but these contestations have accelerated since 2010, a trend that commentators trace to the Tea Party movement.<sup>82</sup> Libraries are challenged to remove or

<sup>75</sup> *Pellitteri v. Prine*, 776 F.3d 777, 780 (11th Cir. 2015).

<sup>76</sup> *Id.* See also *Young v. Bailey*, 781 S.E.2d 277, 280 (N.C. 2016) (explaining that though the county funds the sheriff’s office, the office “is not a program or department of a county”).

<sup>77</sup> See Tomberlin, *supra* note 66, at 133 (noting that state law limits the ability of county governments to use their budgets to influence sheriffs’ decisions). See also *McMillian v. Monroe County*, Alabama, 520 U.S. 781, 793 (1997) (“Alabama sheriffs, when executing their law enforcement duties, represent the State of Alabama, not their counties.”).

<sup>78</sup> O’Rourke, Su & Binder, *supra* note 11, at 1374.

<sup>79</sup> Tomberlin, *supra* note 66, at 129. See also Fairley, *supra* note 11, at 815 (“Because sheriffs are constitutional officers seated by democratic elections, other county officials have limited authority, if any, to constrain their conduct or remove them.”). As a notable exception, see Littman, *supra* note 69, at 877 (observing that “sheriffs and county commissioners not infrequently come into conflict”).

<sup>80</sup> See, e.g., Tomberlin, *supra* note 66, at 131 (discussing these differences in local oversight).

<sup>81</sup> See, e.g., Chammah, *supra* note 70 (flagging sheriffs’ power over local policy); Pishko, *supra* note 16, at 4–5 (noting the central role sheriffs play as law enforcement and the lack of media attention sheriffs receive). See generally EMILY M. FARRIS & MIRYA R. HOLMAN, *THE POWER OF THE BADGE: SHERIFFS AND INEQUALITY IN THE UNITED STATES* (2024) (employing survey data to draw attention to the unchecked power of the sheriff’s office).

<sup>82</sup> See Jacob Sutherland, *Categories of Political Contestation in Public Libraries*, 57 STATE & LOCAL GOVERNMENT REVIEW 83, 88–89 (2024), <https://journals.sagepub.com/doi/epub/10.1177/01603>

relocate books that espouse certain political views, touch upon issues of sex and sexuality, and, most commonly, that contain LGBTQ+ themes.<sup>83</sup>

Recent library contestations have placed new focus on a particular local body: library district boards of directors. As community spaces, libraries might conjure familiar and relatively universal visions—of physical buildings filled with books and other media, as places that host public programs and offer local resources<sup>84</sup>—but as a form of government, libraries are incredibly diverse institutions.<sup>85</sup> Some libraries are not government bodies at all, but rather operate as non-profit foundations. Others are departments or agencies of a general-purpose government, whether city or county. And then there are special district libraries, which are governed by a board of directors with independent taxing authority.<sup>86</sup> Special district libraries are among the most common special-purpose governments in the country.<sup>87</sup> Their numbers have grown steadily over the past 75 years, accompanied in some states by a corresponding decline in county and municipal library departments.<sup>88</sup>

The popularity of library districts is a credit to their independent funding structure.<sup>89</sup> Library districts are empowered to levy taxes and issue bonds,

23X241280220 (describing public libraries as sites of protests); John Chrastka & Ashley Stewart, *Keeping Libraries “Right Side Up”*, LIBRARY J. (Feb. 12, 2024), <https://www.libraryjournal.com/story/keeping-libraries-right-side-up-budgets-and-funding-2024> (noting the Tea Party movement’s influence on changing library ballot procedures). Cf. *American Library Association Reports Record Number of Unique Book Titles Challenged in 2023*, AM. LIBR. ASS’N (March 14, 2024), <https://www.ala.org/news/2024/03/american-library-association-reports-record-number-unique-book-titles> (discussing increases in censorship of library books).

<sup>83</sup> Sutherland, *supra* note 82, at 86 (noting movements to pressure public libraries into censoring LGBTQ+ materials).

<sup>84</sup> Cf. Stephens, *supra* note 39, at 3 (describing the archetypal library).

<sup>85</sup> *Id.* (listing different library forms); Songmin Ahn, *The Influence of Governance Structure and Size of Public Libraries in the Provision and Production of Library Services*, at 53 (1995) (Ph.D dissertation, Indiana University) (listing different library forms in Illinois).

<sup>86</sup> See Stephens, *supra* note 39, at 6 (giving examples of special district libraries); Ahn, *supra* note 85, at iv (noting that “[s]pecial districts have access to their own tax base”); Issei Suzuki & Masanori Koizumi, *Dynamics of Management Between Special-Purpose Governments and Privatization of Public Libraries*, 42 LIBR. MGMT. 498, 500 (2021) (discussing tax levy and bonding authority).

<sup>87</sup> *Supra* note 65 and accompanying text.

<sup>88</sup> See Lee Brawner, *The People’s Choice: Public Library Districts*, 118 LIBR. J. 59, 60 (1993) (noting trend towards special district libraries); Suzuki & Koizumi, *supra* note 86, at 499–504 (describing study on library management); Ahn, *supra* note 85, at 78 (discussing decrease in township libraries while district library numbers have increased).

<sup>89</sup> Another explanation for the rise in library districts is that the model affords territorial flexibility: a district’s boundaries can be easily adjusted to include communities of interest and exclude those that wish to adopt a different library service model. See Ahn, *supra* note 85, at iv, 53, 78 (regarding different governance structures of libraries and reasons for transfer to district libraries); Suzuki & Koizumi, *supra* note 86, at 500 (discussing the financial circumstances and powers of library districts). See also Amir B. Ferreira Neto & Joshua C. Hall, *Economies of Scale and Governance of Library Systems: Evidence from West Virginia*, 20 ECON. OF GOV. 237, 239 (2019) (describing the regional scale as more efficient). Therefore, district libraries are traditionally associated with cross-municipal footprints, i.e., with jurisdictions that are regional rather than sub-local in scale. Stephens, *supra* note 39, at 16; Brawner, *supra* note 88, at 60.

which places them theoretically beyond the reach of county commission control. They can determine their budgets without county involvement and need not follow a local city or county's policies.<sup>90</sup> Nor are library districts obligated to compete with other local agencies for funding, but can instead take their messages directly to residents, who hold a district accountable through their approval (or non-approval) of requested tax levies.<sup>91</sup> Some district libraries are also governed by elected boards, leaving county commissions with no say in their appointment process.<sup>92</sup>

However, *most* boards of directors are appointed. One study found that three-quarters of library district boards are appointed, a rate similar to other prominent regional districts, with county commissions often holding or sharing this appointment power.<sup>93</sup> As with sheriffs, therefore, county commissions are not wholly removed from the governance of library districts. Yet counties are conventionally ignored—or at best, relegated to marginal actors—in this governance story. As a matter of law, library districts are considered subdivisions of state government, entities that derive their authority directly from state legislatures and occupy a status equal to, not subordinate of, cities and counties in the sub-federal hierarchy.<sup>94</sup>

A case from Nevada is illustrative of this perspective. In *Flores v. Las Vegas-Clark County Library District*, a district's ban on firearms was challenged by a library patron, who argued that it lacked authority to adopt the ban because cities and counties in Nevada are preempted from enacting firearm regulations. The district is an instrumentality of its overlapping city and county governments, the lawsuit argued, subject to their control and prohibited from exercising powers that the city and county themselves do not hold. The court disagreed. It highlighted the library district's fiscal independence—a factor of its independent tax levy, which does not touch

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<sup>90</sup> See Ahn, *supra* note 85, at 56 (discussing the fiscal independence of libraries).

<sup>91</sup> See Suzuki & Koizumi, *supra* note 86, at 502–03 (noting that districts are not reliant on general fund money); Cody White, *Rising from the Ashes: The Impact of Proposition 13 on Public Libraries in California*, 46 LIBRS. & THE CULTURAL REC. 345, 353 (2011) (regarding property tax levies); Chrastka & Stewart, *supra* note 82 (advising libraries to engage in voter outreach to promote library services and encourage voter support). Unsurprisingly, where libraries draw more revenues from taxes, they are less reliant on other funding forms, including aid from other governments. Ahn, *supra* note 85, at 111.

<sup>92</sup> Ahn, *supra* note 85, at 53; IDAHO STATE LIBR., HANDBOOK: IDAHO PUBLIC LIBRARY & DISTRICT TRUSTEES 9 (1978), <https://files.eric.ed.gov/fulltext/ED175480.pdf> (stating that elected trustees set the library's levy).

<sup>93</sup> Nicholas Bauroth, *The Influence of Elections on Special District Revenue Policies: Special Democracies or Automotons of the State?*, 37 STATE & LOC. GOV. REV. 193, 200 (2005) (reporting data as of 1990). While more recent data is scarce, research conducted for this Article found that a majority of the largest library districts are governed by appointed boards. *Infra* note 178 and accompanying text.

<sup>94</sup> See Interview with Bart Miller, General Counsel, Pueblo City-County Library District (Sept. 4, 2024) (notes on file with author) (discussing Colorado law); Suzuki & Koizumi, *supra* note 86, at 504 (citing studies regarding the role and characteristics of library districts). See also MD. ATT'Y GEN., Opinion Letter (Aug. 17, 2016) (“[I]t is our view that county governing bodies do not have day-to-day control over library personnel and equipment. Instead, those aspects of library governance are overseen by the library boards. . . .”).

the county's general fund—and observed that the district makes its own regulations and “is controlled in large part by *state* statutes, not local laws.”<sup>95</sup> Based on this logic, the library district was not an instrumentality of another local government, even though the city and county appointed its board of directors, and thus had “some” organic influence in its management.<sup>96</sup>

In a similar vein, courts in Michigan and Missouri have stressed that district libraries are state creatures, notwithstanding whether another local government holds organic appointment authority.<sup>97</sup> Courts in other states have upheld policy decisions made by library boards, even when those decisions go against the wishes of the local county.<sup>98</sup> This formalist perspective leaves local appointing authorities on the sidelines. For all other purposes, once an appointment is made, a county commission generally lacks positive legal power to remove the board member or otherwise control their actions.<sup>99</sup>

The formalist perspective on library districts has extended to the political arena, where recent campaigns have directed particular ire at library district boards.<sup>100</sup> In Missouri, for instance, the state legislature has sought to restructure how board members are selected by replacing appointed positions with at-large elections. The proposal—introduced in 2024 as House Bill 2498—was explained as an effort to “give the people a voice” in how library materials are chosen, a departure, ostensibly, from a status quo

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<sup>95</sup> *Flores v. Las Vegas-Clark County Library Dist.*, No. A-16-735496, 2016 WL 11589960, at \*3–5 (Nev. Dist. Ct. Oct. 26, 2016). The court's holding was affirmed by the Nevada Supreme Court. *Flores v. Las Vegas-Clark County Libr. Dist.*, 432 P.3d 173, 178 (Nev. 2018) (stressing that the library district's “authority came not from Clark County or the City of Las Vegas but directly from the Legislature”).

<sup>96</sup> *Flores*, 2016 WL 11589960 at \*5. The court proceeded to determine that the district was not subject to Dillon's Rule, a traditional principle that local government powers should be construed narrowly. *See id.* at \*5–6.

<sup>97</sup> *See* *Cap. Area Dist. Libr. v. Mich. Open Carry, Inc.*, 826 N.W.2d 736, 742 (Mich. Ct. App. 2012); *St. Louis Cnty. Libr. Dist. v. Hopkins*, 375 S.W.2d 71, 75 (Mo. 1964).

<sup>98</sup> *See, e.g., Madison County v. Culbreath*, No. W2006-01910-COA-R3CV, 2007 WL 1153103, at \*3–4 (Tenn. Ct. App. 2007) (regarding a county's challenge to a district library's authority to contract with a private entity for library management).

<sup>99</sup> *See* *Stephens*, *supra* note 39, at 37 (giving example of when a commission's appointment power did not imply removal power). *See also* *IDAHO STATE LIBR.*, *supra* note 92, at 3 (regarding budget control). County commissions sometimes also play a role in a district's creation. *See, e.g.,* MO. ANN. STAT. § 182.015 (West 2025) (empowering county commissions to establish county library districts and subdistricts under some circumstances). But most states require a general election. *See* *Browner*, *supra* note 88, at 60 (stating that most “state laws enabling library districts . . . call for a general election to establish the library district”); *Suzuki & Koizumi*, *supra* note 86, at 500 (stating that library districts are formed “through a referendum”).

<sup>100</sup> *See* *Chrastka & Stewart*, *supra* note 82, at 21 (regarding “upside-down” ballot measures); Jacob Holmes, *North Shelby Library Director Resigns After Board Takeover*, ALA. POL. REP. (Aug. 21, 2024) (discussing a state's reconfiguration of a local library district board following resident outcry). *See also* Joshua Pineda, *Controversy Surrounding Christian County Library District Concerns Residents*, OZARKS FIRST (Sept. 24, 2024) (reporting a local campaign urging library board to add warning labels to books with nudity and LGBTQ+ content).

where boards operate in opposition to the community's will.<sup>101</sup> Counties and cities have appeared chiefly as observers in this debate. Indeed, one supporter of the bill argued that library boards are undemocratic because their members are "self-appointed"—a denigration of the appointment power that counties and cities technically hold.<sup>102</sup>

In this manner, library districts typify our legal understanding about regional special districts more broadly. When the institutional lines that formally separate library districts from other local bodies are accepted as resilient, even absolute, we risk underestimating the reach of other localities around them, counties in particular. The next Part aims to flip this narrative by examining county commissions as consequential rather than fringe players in the local government ecosystem.

## II. CHANNELS OF BUDGETARY INFLUENCE

Part I painted a conventional view of county powerlessness set amidst a fractured local ecosystem of municipalities, special districts, and separately elected officials. This conventional view is not *wrong*; it cannot be brushed aside as a narrative of legal fiction. Formally, county commissions are indeed placed at a disadvantage relative to other bodies in their vicinity, a limitation with ripple effects across local government. Municipalities are stronger, all else being equal. Special districts are less accountable. And separately elected officials can *sometimes* operate with impunity within the fiefdoms of their subject matter coverage.

But this is not the whole story. For two interrelated reasons, the conventional view does not fully describe realities on the ground today. First, while county commissions might underwhelm while wearing their local-polity hat, they are delegated significant powers in their role as administrative agents of the state. As administrative agents, counties serve as convenient intermediaries between national and municipal governments. Counties are also convenient default sites of local managerialism. By virtue of their static boundaries and ubiquitous statewide presence,<sup>103</sup> counties are tasked with coordinating welfare programs, collecting and disbursing taxes, and providing human resource services to other local governments.<sup>104</sup>

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<sup>101</sup> Mark Schlinkmann, *New Bill Would Require Elected Library Boards Across Missouri*, ST. LOUIS POST-DISPATCH (Jan. 24, 2024) (quoting the legislator who introduced the bill).

<sup>102</sup> MO. H. R., Testimony on H.B. 2498 (Feb. 7, 2024), <https://documents.house.mo.gov/billtracking/bills241/witnesses/HB2498Testimony.pdf> (providing written testimony that "[m]ost self-appointed board members . . . have no accountability to the public").

<sup>103</sup> See Liebmann, *supra* note 51, at 99 ("The entire land area of the United States is substantially divided into counties or . . . their analogues.").

<sup>104</sup> See Lobao & Kraybill, *supra* note 30, at 246 (describing counties as "de facto coordinator[s] of regional planning"). Library districts are among the local bodies that outsource their human resource needs to county government. See Brawner, *supra* note 88, at 60 (discussing typical legal mandate for library districts to provide, or contract with the county, for personnel services); see generally Suzuki &



Serving as an administrative intermediary or default operative might often be a thankless, uninspiring role, one that carries more responsibility than influence.<sup>105</sup> But significant powers are embedded within these responsibilities, as this Part will begin to document in detail.

Second, drawing upon their embedded state-agent powers, counties have become regional brokers who can, and do, wield influence over other local bodies. To begin the task of dissecting a county's state-agent powers, this Part explores the unsung influence of county commissions over the budgets of other local actors. As discussed in Part I, a sheriff's budget is formally insulated from the county commission's control, even where the sheriff receives significant funding from the county's general fund. Likewise, library districts draw upon independent tax levies that immunize their budgets from commission influence. Both of these lines can blur and erode in practice, however, because county commissions have been assigned administrative, often ministerial duties that arise at crucial points of a sheriff's or library district's budgeting process. These duties give county commissions a seat at the table, with the consequence that they can influence the budget—and nudge the policy decisions—of a local entity they ostensibly do not control.<sup>106</sup>

#### A. *Sheriff Budgeting Control*

With the aim of making local budgets predictable and transparent, county commissions are often granted a degree of territorial budgeting control. Commonly, they are empowered to approve “unified county budgets”—that is, budgets that cover not only departments and agencies internal to the county, but also other offices that operate in the county's broader territory.<sup>107</sup> This assignment gives counties a leading voice in regional budget policy. How to allocate a county's limited tax revenues is necessarily a political decision, one where commissions make tradeoffs and set priorities to carry out a political agenda.<sup>108</sup> Their funding decisions translate into policy outcomes. As shown starkly by research into public

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Koizumi, *supra* note 86, at 502–04 (discussing budgetary responsibilities and resource allocation within library districts). Regarding counties' default role in tax collection, see, e.g., *St. Lawrence County v. City of Ogdensburg*, 215 N.E.3d 1179 (N.Y. 2023).

<sup>105</sup> Cf. Weinstein-Tull, *supra* note 29, at 883 (highlighting that states often delegate responsibilities to local governments).

<sup>106</sup> On the connection between institutional design and policy choices, see, e.g., Seifter, *supra* note 49, at 1579–80.

<sup>107</sup> Ward, *supra* note 13, at 1807; see also N.M. Att'y. Gen., *supra* note 59 (highlighting the broad discretion given to counties concerning county matters); W. Va. A.G., Opinion Letter (June 15, 2017). There are exceptions to this general approach, however. See, e.g., Davidson, *supra* note 33, at 888 n.228 (noting a county charter that gives more budgeting independence to some separately elected officials).

<sup>108</sup> Cf. Andrew Davies & Alyssa Clark, *Gideon in the Desert: An Empirical Study of Providing Counsel to Criminal Defendants in Rural Places*, 71 ME. L. REV. 245, 271 (2019) (emphasizing the role of political agendas in funding outcomes); *Sprawl's Shepherd*, *supra* note 27, at 377 n.64 (discussing “the political economies that select among competing [county] expenditures”).

defender offices, the resources a county places into indigent defense correlates with the quality and capacity of public defense in its region.<sup>109</sup> Budget policy also impacts the quality of state trial courts, another responsibility that some states delegate to their county governments.<sup>110</sup>

Like other separately elected officials, sheriffs are theoretically shielded by state law from a county's appropriation power, as observed in Part I.<sup>111</sup> Yet a far more muddled picture emerges upon closer examination. Statutory provisions designed to protect a sheriff's budgeting independence—for example, those that require counties to provide them with “sufficient” resources<sup>112</sup> prove mostly toothless when raised in litigation. In one case from Ohio, *Trussell v. Meigs County Board of Commissioners*, a sheriff sued after the local county commission declined to fully fund his budget request, the latest in a series of slashed budgets that forced the sheriff to fire officers and operate with dilapidated equipment.<sup>113</sup> The county did not dispute the sheriff's underlying complaints. Nevertheless, it argued that the commission acted within its discretionary authority in allocating funds as it had.<sup>114</sup> The appellate court agreed, buoyed by its observation that the budget was a result of difficult, non-arbitrary choices made under conditions of financial hardship;<sup>115</sup> “If [the commission's] choice necessitated curtailment of services,” the court wrote, “the sheriff's office . . . had to make that curtailment.”<sup>116</sup> A concurring judge would have gone even further. Questioning the very justiciability of the issue, this judge argued that courtrooms are poor forums for local funding disputes—“that courts should rarely interject themselves into the essence of politics, i.e., the allocation of scarce resources.”<sup>117</sup>

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<sup>109</sup> See generally Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219 (2010) (finding that county-level financing of indigent defense systems leaves low-income populations with less ability to afford adequate representation). See also Maybell Romero, *Lowball Rural Defense*, 99 WASH. U. L. REV. 1081, 1090 (2021) (showing that the contractual model of the public defender system may be better than the appointment model); Aiden Park, *Alone in the Lone Star State: How a Lack of Centralized Public Defender Offices Fails Rural Indigent Defendants*, 56 U. MICH. J.L. REFORM 571, 576 (2023) (noting the influence of resources on defense delivery methods).

<sup>110</sup> See Anne E. Nelson, *Fifty-Eight Years and Counting: The Elusive Quest to Reform Arizona's Justice of the Peace Courts*, 52 ARIZ. L. REV. 533, 543 (2010) (highlighting that county-based funding of justice courts creates disparate judicial support); see also Judson R. Peverall, *Inside State Courts: Improving the Market for State Trial Court Law Clerks*, 55 U. RICH. L. REV. 277, 278 (2020) (discussing inequities in county-funded state trial courts).

<sup>111</sup> See *supra* Part I (describing how sheriffs are not within the county commissions' control). Regarding other separately elected officials, see, e.g., W. Va. A.G., Opinion Letter (June 15, 2017).

<sup>112</sup> See, e.g., TENN. CODE ANN. § 8-4-115(b) (West 2025) (declaring that the county shall appropriate funds to the sheriff's office); see also *Carver v. Sheriff of La Salle Cnty.*, 787 N.E.2d 127, 137 (Ill. 2003) (showing that La Salle County is obligated to pay the reasonable expenses of the sheriff).

<sup>113</sup> *State ex rel. Trussell v. Meigs Cty. Bd. of Comm'rs.*, 800 N.E.2d 381, 383 (Ohio Ct. App. 2003).

<sup>114</sup> *Id.* at 386.

<sup>115</sup> *Id.* at 389.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 390 (Harsha, J., concurring).

*Trussell's* concurring position has resonated with courts in other jurisdictions. In Colorado, for example, the sheriff of Pueblo County sued the county commission after it rejected his budget request, which had sought funding to hire additional deputies.<sup>118</sup> Colorado law appeared favorable to the sheriff; it provided that “[e]ach sheriff may appoint as many deputies as [they] may think proper.”<sup>119</sup> On appeal, the Colorado Supreme Court agreed that the sheriff’s request was “reasonably necessary,” but it nevertheless declined to order an increase in his budget.<sup>120</sup> Because a commission’s budgeting decisions are legislative in nature, it concluded, a court should give them “great deference” and modify them only where a sheriff can demonstrate that the commission abused its discretion.<sup>121</sup> Similarly, in Michigan, a state appellate court refused to intervene when the county commission eliminated funding for the sheriff’s patrol and investigation division, effectively abolishing the division altogether;<sup>122</sup> “[I]n disputes such as the present one,” the court wrote, “the judiciary will not interfere with discretionary actions of a legislative body such as [the] Board of Commissioners.”<sup>123</sup> It went on to describe the commission’s decision as “highly political”—one “best left for resolution by the voters rather than by the nonpartisan courts.”<sup>124</sup>

There are exceptions to this general trend of judicial abstention.<sup>125</sup> And state law does place some meaningful guardrails around a commission’s budgeting power. Some states, for example, mandate minimum sheriff salaries or minimum funding levels, thereby setting an explicit funding floor that courts are unlikely to overlook. Yet these express funding floors tend to be relatively low.<sup>126</sup> On balance, when considering funding disputes that reach the point of litigation, courts repeatedly defer to the judgment of county commissions, notwithstanding the apparent thrust of state law and accord of legal scholars. The disconnect is epitomized by a recent article,

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<sup>118</sup> *Tihonovich v. Williams*, 582 P.2d 1051, 1052 (Colo. 1978).

<sup>119</sup> COLO. REV. STAT. ANN. § 30-10-506 (West 2025).

<sup>120</sup> *Tihonovich*, 582 P.2d at 1056.

<sup>121</sup> *Id.* at 1054.

<sup>122</sup> *Wayne Cnty. Sheriff v. Wayne Cnty. Bd. of Comm’rs*, 385 N.W.2d 267, 268–69 (Mich. Ct. App. 1983).

<sup>123</sup> *Id.* at 269.

<sup>124</sup> *Id.* at 270. For a discussion of courts’ recalcitrance to wade into interlocal disputes that involve separately elected officials, see Shoked, *supra* note 48, at 43.

<sup>125</sup> See, e.g., Fairley, *supra* note 11, at 851, n.332 (discussing *Wolfe v. Huff*, 210 S.E.2d 699, 700 (Ga. 1974), which holds that county commissioners were under a duty to adopt a budget that enabled the sheriff to perform their duties).

<sup>126</sup> As an example of a more robust mandatory regime, Maryland law mandates salaries, expense allowances, and some other costs for county sheriffs. Yet the total amount of mandatory funding still tends to be a small percentage of a sheriff’s budget, leaving county commissions with significant discretionary leeway nevertheless. Compare MD. CODE ANN., CTS. & JUD. PROC. § 2-330 (West 2025) (mandating certain salaries and other expenses for the Prince George’s County Sheriff) with PRINCE GEORGE’S COUNTY OFFICE OF MANAGEMENT AND BUDGET, FISCAL YEAR 2025 APPROVED OPERATING BUDGET 38 (2025) (noting the Sheriff’s approved budget of \$60.1 million for 2025).

*Disbanding Police Agencies*, which cites a Florida appellate court opinion for the proposition that “state courts have limited the influence that county boards can exercise over the sheriff through the appropriations process.”<sup>127</sup> Yet the appellate decision—which found that sheriffs can make certain budget transfers without county approval—was later overturned by the Florida Supreme Court, which reached an opposite conclusion: that these transfers are impermissible unless authorized by the county commission.<sup>128</sup>

These judicial decisions have real downstream effects. While states have carved out budgeting independence on paper, they offer sheriffs few tools to validate their power in practice. Litigation, already an unappealing prospect between peer government bodies, has proved itself an uphill battle. For every lawsuit a sheriff loses, we can imagine countless other situations where funding disputes are raised and negotiated through informal channels, or where litigation is threatened but never pursued. In 2014, for example, a public spat erupted in Johnson County, Kansas between the county sheriff, Frank Denning, and Ed Eilert, the chair of the board of commissioners. Denning accused Eilert of underfunding his budget, controlling his operations, and scheming to “attempt . . . a takeover” of his office—an accusation that riled conservative county residents, who rallied around Denning and against Eilert’s perceived overreach.<sup>129</sup> The flames were fanned a few months later, when Denning sent a demand letter to the board of commissioners, threatening to file a lawsuit if his funding needs were not met.<sup>130</sup> But no suit ever materialized even though Denning’s demand indeed went unheeded.<sup>131</sup> In fact, when interviewed two years later, Denning described good working relations with the board of commissioners and endorsed the virtues of compromise.<sup>132</sup> As strident as his grievance had become, Denning had realized, presumably, that litigation would not remedy it.

Denning’s journey from litigation to compromise suggests that state law provides sheriffs few tenable alternatives between these polarities. Only one state, Florida, has created an administrative appeals process for sheriff budgeting, where a disgruntled sheriff may bring their funding complaints

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<sup>127</sup> O’Rourke, Su & Binder, *supra* note 11, at 1374 (citing *Alachua County v. Darnell*, 301 So. 3d 1027 (Fla. Dist. Ct. App. 2019), *quashed by* *Alachua County v. Watson*, 333 So. 3d 162 (Fla. 2022)).

<sup>128</sup> *Alachua County v. Watson*, 333 So. 3d 162, 173 (Fla. 2022).

<sup>129</sup> Steve Vockrodt, *Johnson County Sheriff Frank Denning Seems Suspicious that Some Want to Take Over His Office*, THE PITCH (Mar. 26, 2014), <https://www.thepitchkc.com/author/steve-vockrodt/>.

<sup>130</sup> See Roxie Hammill, *Sheriff Threatens County Commission with Court Action Over Funding*, KANSAS CITY STAR (June 3, 2014), <https://www.kansascity.com/news/local/community/johnson-county/olathe/article419637.html?utm> (reporting on Denning’s demand letter).

<sup>131</sup> See Roxie Hammill, *Johnson County Sheriff Frank Denning Won’t Run Again*, KANSAS CITY STAR (Jan. 5, 2016), <https://www.kansascity.com/news/local/community/johnson-county/article53125980.html> (reporting that “[t]hings ha[d] quieted” between Denning and the county commissioners in the two years after his demand letter was issued).

<sup>132</sup> *Id.*

to a state-level agency.<sup>133</sup> Yet records show the process is used sparingly; only seven Florida sheriffs have filed a state appeal since 2014.<sup>134</sup> And while sheriffs are not *obligated* to accept county general funds, even the rare sheriff capable of staking out alone—i.e., by electing to operate solely on grants and direct fees—is likely to quickly discover that county commissions still stand between the collection and expenditure of these resources. Major federal and state grants are disbursed first to county governments, for instance, which often forces sheriffs to sign subrecipient agreements with counties before receiving any funds.<sup>135</sup> Moreover, some states mandate fee pooling, an accounting system where all fines and fees are placed within the county's general fund, even those originally collected by the sheriff and intended for the sheriff's future use.<sup>136</sup> Other states do not mandate the practice, but empower county commissions to extend fee pooling to a sheriff's office unilaterally, without the sheriff's consultation or consent.<sup>137</sup> Fee pooling offers plain administrative advantages. Among them, local officials credit fee pooling with improving cash flows, strengthening a locality's investment portfolio, bolstering the sophistication of its financial management, and, through unified budgeting, adding transparency to the

<sup>133</sup> See *Alachua Cnty v. Darnell*, 301 So. 3d 1027, 1028 (Fla. Dist. Ct. App. 2019) (showing the Florida administrative appeals process).

<sup>134</sup> See Response to Public Records Request, Barbara Leighty, Senior Pol'y Analyst, Executive Office of the Governor (Dec. 30, 2024) (on file with author).

<sup>135</sup> See Interview with Robert Fisk, Sheriff, Motley County, Texas (Sept. 4, 2024) (notes on file with author). For an example, see, e.g., MANATEE COUNTY SHERIFF'S OFFICE, Funding Agreement between Manatee County and Manatee Sheriff Office, at 1–2 (Nov. 21, 2023) (on file with author).

<sup>136</sup> See, e.g., Elizabeth R. McClellan, *An Eighteenth-Century Statute Meets Twenty-First Century Procedural Due Process: The Dubious Constitutionality of Tennessee Prejudgment Attachment*, 49 U MEM. L. REV. 315, 325 (2019) (showing the existence of mandated fee pooling); WSAZ NEWS STAFF, *Martin Sheriff Warns of Unpaid Bills; County Vows to Pay*, WSAZ NEWS (May 26, 2018), <https://www.wsaz.com/content/news/Under-mountain-of-debt-sheriff-warns-of-shutdown-483785461.html> (discussing a long-standing fee pooling system). On the concept of fee pooling, see Press Release, Auditor of Public Accounts, Harmon Releases Audit of Elliott County Clerk's Fee Account (2019), <https://www.auditor.ky.gov/Auditreports/Elliott/2019ElliottFEC-PR.pdf>; SIMPSON COUNTY, Minutes of the Simpson Cnty. Fiscal Ct. (May 3, 2011), <http://www.simpsoncounty.us/minutes/minutes20110503.pdf>.

<sup>137</sup> See Freddie Bourne, *Dame, Frizzell Resolve Fee-Pooling Dispute*, MESSENGER-INQUIRER (Jan. 31, 2023), [https://www.messenger-inquirer.com/news/dame-frizzell-resolve-fee-pooling-dispute/article%20\\_%200fb3f73a-a6b6-565a-819d-783139f9776f.html](https://www.messenger-inquirer.com/news/dame-frizzell-resolve-fee-pooling-dispute/article%20_%200fb3f73a-a6b6-565a-819d-783139f9776f.html) (proposing a unilateral ordinance). Sheriffs are sometimes informally consulted before an ordinance is adopted. See Elisabeth Moore, *Owen Sheriff Switches to Fee-Pooling*, THE NEWS-HERALD (June 21, 2017), [https://www.pmg-ky3.com/owenton/archives/owen-sheriff-switches-to-fee-pooling/article%20\\_%20f1a69992-b249-5ce6-a664-6589907f9020.html](https://www.pmg-ky3.com/owenton/archives/owen-sheriff-switches-to-fee-pooling/article%20_%20f1a69992-b249-5ce6-a664-6589907f9020.html). See also Temecka Evans, *Fee Pooling in Future? Ordinance Would Affect County Clerk's, Sheriff's Offices*, THE DAILY INDEPENDENT (Jan. 16, 2020), [https://www.dailyindependent.com/news/fee-pooling-in-future-ordinance-would-affect-county-clerk-s-sheriffs-offices/article\\_ec333034-37ee-11ea-a031-17afcb332f4.html](https://www.dailyindependent.com/news/fee-pooling-in-future-ordinance-would-affect-county-clerk-s-sheriffs-offices/article_ec333034-37ee-11ea-a031-17afcb332f4.html) (discussing a “gentleman’s agreement” with a past sheriff regarding fee pooling ordinance). But fee pooling is also adopted over a sheriff's strenuous opposition. See, e.g., A. Beckett, *Byars Feels Sheriff's Office is Being “Singled Out” in Fee Pooling Ordinance*, MARSHALL COUNTY DAILY (Dec. 3, 2015), <https://www.marshallcountydaily.com/2015/12/03/byars-feels-sheriffs-office-is-being-singled-out-in-fee-pooling-ordinance/> (discussing Marshall County's fee pooling ordinance).

oversight of local resources.<sup>138</sup> But officials also agree that a sheriff's budgeting autonomy is eroded in the process.<sup>139</sup>

As a consequence, funding differences between counties and sheriffs are routinely resolved through political rather than legal channels, with county commissioners controlling the purse strings and thus holding an upper hand. The system incentivizes sheriffs to pursue collegial, sometimes deferential relationships with county commissions, a point repeatedly emphasized by sheriffs interviewed for this Article. One sheriff remarked that he tries to work with the county "as much as possible" because "at the end of the day, the county commission is the one that determines your budget."<sup>140</sup> Another sheriff, citing the unpalatability of conflict, touted his "good working relationship" with the commission.<sup>141</sup> Maintaining good relations can be costly; some sheriff's offices pointedly document the free services and properties the county commission receives from them.<sup>142</sup> Others agree to limit their fiscal autonomy at the behest of county commissioners, such as in Montana, where sheriffs commonly request sign-off for purchases above \$500.<sup>143</sup>

These bilateral working relationships between counties and sheriffs produce interlocal policies. Notably, a commission might agree to allocate funds for the sheriff's budget, yet only on the condition they are used for a particular purpose. Recent sheriff budgets in Sacramento County, California, evince a number of allocations along these lines, including earmarks to fund new deputy positions that connect inmates with mental health treatment, a pilot program to implement Shot Spotter technology, and two "homeless outreach teams," each supported by dedicated staff,

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<sup>138</sup> See Evans, *supra* note 137 (noting stabilizing benefits of fee pooling); Bourne, *supra* note 137 (reporting on a proposed fee pooling arrangement meant to improve county cash flow); A. Beckett, *supra* note 137 (reporting on a proposed fee pooling system intended to eliminate irregular cash flow and establish fiscal soundness within county).

<sup>139</sup> See Interview with Carlisle County Sheriff Office (Aug. 8, 2024) (notes on file with author); Evans, *supra* note 137; Barbara Atwill, *Audit Discussion Dominates Fiscal Court Business*, THE FULTON CURRENT (July 12, 2022); Abigail Roberts, *Fiscal Court Approves Fee Pooling Ordinance with LCSO*, THE INTERIOR JOURNAL (Jan. 16, 2023), <https://theinteriorjournal.com/2023/01/16/fiscal-court-approves-fee-pooling-ordinance-with-lcso> (describing the arrangement as "giving up some power").

<sup>140</sup> Interview with Will Seastrom, Sheriff, Treasure County, Montana (Aug. 29, 2024) (notes on file with author).

<sup>141</sup> Interview with Robert Fisk, *supra* note 135.

<sup>142</sup> See, e.g., BREVARD CNTY. SHERIFF'S OFF., *supra* note 73 ("Sheriff's Office continues to be a fiscal partner with the Board by providing [the county with] inmate labor . . . NO other Brevard County Constitutional Officer or Board department funds their operational financial considerations as the Sheriff's Office does."); *Id.* (noting that the Sheriff's Office provided the Board with a property purchased by the Sheriff).

<sup>143</sup> Interview with Will Seastrom, *supra* note 140 (describing this practice). Similar arrangements exist in urban counties too. See, e.g., S.F. OFF. OF THE CONTROLLER, THE SHERIFF IS ENTITLED TO ADDITIONAL COMMISSIONS FROM ITS TELEPHONE SERVICES PROVIDER FOR THE INMATE WELFARE FUND 6 (2007) (approval required for contracts with anticipated revenues of one million dollars or more).

equipment, and vehicles.<sup>144</sup> The last of these—funding to create two homeless outreach teams—was added by the county’s board of supervisors during its 2017 budget hearings, *after* budget negotiations had concluded and notwithstanding that the sheriff’s office had stressed other priorities in its annual budget request.<sup>145</sup>

Counties also employ budgeting to make broader policy decisions, as they do when weighing the services provided by a sheriff against those of other county departments and elected officials. In Fulton County, Georgia, the commission decided to increase funding for the sheriff’s office—in large part, to build a replacement jail—which in turn necessitated budget cuts for other offices and officials.<sup>146</sup> Conversely, in San Francisco, the board of supervisors froze the sheriff’s budget while directing resources elsewhere, driven by “voter-approved restrictions and [other] legislative priorities.”<sup>147</sup> San Francisco’s decision prompted a strongly-worded protest from the local sheriff, who complained that a “lack of significant investment . . . has resulted in long-term consequences on my department’s ability to serve [San Francisco].”<sup>148</sup> “Unfortunately,” the sheriff’s letter proceeded to note, “our previous requests for help have been refused”—thus leaving little doubt as to the underlying balance of power at play.<sup>149</sup>

San Francisco’s choice to prioritize other investments might reflect poor policy. But a county’s decision to constrain the sheriff’s resources could just as well offer normative payoffs. For example, an audit in Indianapolis noted that the sheriff did not receive funding consonant with the demands on his office, such that local jails operated in a “crisis mode” for several years.<sup>150</sup> The audit went on to suggest, however, that the sheriff could address the crisis not with additional funding, but by avoiding “unnecessary incarceration.” by “implementing evidence-based diversion programs and alternatives to incarceration that have been shown to improve recidivism outcomes.”<sup>151</sup> A county’s funding restrictions could be designed to pressure such changes.

Finally, even when they are not actively allocating money, county commissions can still pass ordinances that require action by the sheriff<sup>152</sup>—an interlocal version of an unfunded mandate—and they can use the *threat* of their intermediary budget power to pressure sheriffs in a variety of

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<sup>144</sup> Villanueva, *supra* note 73; SACRAMENTO CNTY., 2017-18 ADOPTED BUDGET (2017), <https://bdm.saccounty.gov/FY201718BudgetInformation/Documents/2017-18%20Adopted%20Budget%20complete.pdf>.

<sup>145</sup> SACRAMENTO CNTY., *supra* note 144, at A-30.

<sup>146</sup> CNTY. OF FULTON, GA., 2024 FINAL ADOPTED BUDGET 13 (2024).

<sup>147</sup> CITY & CNTY. OF S.F. OFF. OF THE CONTROLLER., *supra* note 17.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> MARION CNTY. SHERIFF’S OFFICE, Improving the Efficiency of Public Safety Services, at 24, 115 (Nov. 2018) (on file with author).

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

<sup>152</sup> See, e.g., BREVARD CNTY. SHERIFF’S OFF., *supra* note 73 (discussing several such ordinances).

ways.<sup>153</sup> In ordinary cases, county commissioners will pose questions during the budget process that sheriffs feel compelled to answer, pushed by the implicit threat that skirting these questions might imperil a budget's approval.<sup>154</sup> In more extreme cases, county commission meetings are sites of debate and open conflict, where a sheriff might be "grilled" by a county commissioner about his or her policy choices, including and the office's spending practices.<sup>155</sup> When working relationships between counties and sheriffs have particularly eroded, county commissions have tried—and at times, have succeeded—in "constructively discharge[ing]" a sheriff or even functionally abolishing their office.<sup>156</sup> All these risks counsel sheriffs to cooperate rather than quarrel with counties in the budgeting process.

### B. *Library District Budgeting Control*

Library districts traverse a different path to budgetary independence. In contrast with how state law treats sheriff's offices, no statute professes to insulate library districts from county control.<sup>157</sup> Nor have courts found a legal basis elsewhere. Indeed, on what appears the sole occasion the issue was directly raised in litigation—in a 1940 Ohio case, when a library argued that the county commission impermissibly meddled with the library's board-approved budget—the court was unsympathetic, finding "no legal requirement" for the commission to stay out of the library's way.<sup>158</sup>

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<sup>153</sup> See *United States v. White*, 561 F. App'x 850 (11th Cir. 2014) (holding a board commissioner liable for bribery).

<sup>154</sup> See, e.g., Letter from Thomas Dart, Cook Cnty. Sheriff, to John Daley, Chairman Cook Cnty. Fin. Comm., Request for Information from FY2024 Budget Hearing (Oct. 31, 2023) (displaying the variety of questions imposed upon sheriffs). See also Interview with Robert Fisk, *supra* note 135 (regarding monthly reports).

<sup>155</sup> Kara Fohner, *County Leaders Investigating Financial Problems at Gaston County Sheriff's Office*, GASTON GAZETTE (July 12, 2024), <https://www.gastongazette.com/story/news/local/2024/07/12/county-leaders-investigating-financial-problems-at-gaston-county-sheriffs-office/74336119>. See, e.g., Karen Bricks, *Walworth County to Get 3rd Auditor this Year; Sheriff's Deputies Question County Commission's Treatment of the Office and its Officers*, DRG NEWS (Oct. 13, 2023), <https://drgnews.com/2023/10/13/walworth-county-will-get-a-new-auditor/> (discussing a particularly hostile commission meeting).

<sup>156</sup> See Jonathan Hogan, *Former Sheriff Sues Clark County Over Low Staffing, Says he Collapsed on the Job from Exhaustion*, THE POST REGISTER (May 18, 2023), [https://www.postregister.com/news/crime\\_courts/former-sheriff-sues-clark-county-over-low-staffing-says-he-collapsed-on-the-job-from/article\\_ac8a0b6](https://www.postregister.com/news/crime_courts/former-sheriff-sues-clark-county-over-low-staffing-says-he-collapsed-on-the-job-from/article_ac8a0b6) (showing claims of constructive discharge); *Smith v. Peyman*, 93 F. Supp. 3d 738, 742–43 (E.D. Ky. 2015) (regarding an effort to create a new police force to take over the sheriff's office's functions).

<sup>157</sup> Kansas law appears to come closest. See KAN. STAT. ANN. § 19-101(a) (West 2025) ("Counties may not exempt from or effect changes in the provisions of K.S.A. . . . 12-1276" (citing KAN. STAT. ANN. § 12-1276, which empowers a library district to adopt its budget)).

<sup>158</sup> *Bd. of Educ. of Cleveland Heights City Sch. Dist. v. Evatt*, 25 N.E.2d 453, 454–55 (1940). Courts have reacted similarly to arguments involving other regional special districts. See, e.g., *El Paso County v. El Paso Cnty. Emergency Servs. Dist. No. 1*, 622 S.W.3d 25, 41 (Tex. App. 2020) (rejecting emergency services districts' argument that country control of their budget constituted unconstitutional infringement of their independent authority).



But in contrast with sheriffs, library districts do not seem to *require* any statutory protections. With few exceptions, they receive their funding from a voter-approved tax millage.<sup>159</sup> How they allocate their resources—and whether they increase or decrease their budgets—is determined by a library district’s board of directors, subject only to the voters’ willingness to continue funding the library in the future. Library districts derive autonomy from the fiscal isolation of their tax millage, which is disbursed to them directly, without flowing first into a county’s general fund and coming under a unified budgeting process.<sup>160</sup>

Yet as they do with sheriffs, county commissions can still play an intermediary role in the formation of a library district’s budget. In some states, a library district must submit its annual budget to the county commission for approval, as is required of districts in Nevada.<sup>161</sup> In others, county commissions have *claimed* a right to approve library district budgets, notwithstanding that their basis of authority remains uncertain or contested. Colorado’s shaky legal framework is illustrative. In Colorado, county commissions hold exclusive power to adopt a county’s annual budget, which applies to all departments of county government as well as “other agencies” that receive money through county appropriations.<sup>162</sup> Whether library districts fall within the ambit of “other agencies” is open to debate under state law.<sup>163</sup> Equally unclear is whether tax revenues owed to the library

<sup>159</sup> In a review conducted for this Article of the fifty largest and smallest library districts by several metrics—circulation, service area population, branch libraries, and operating revenues—only two districts were identified that receive county funding. See MUSKEGON AREA DISTRICT LIBRARY, First Amendment to the Administrative Services Agreement (Feb. 16, 2011) (on file with author); YUMA COUNTY, Fiscal Year 2024/25 Estimate of Revenues and Expenditures (June 2024), <https://yumalibrary.org/wp-content/uploads/sites/114/2024/06/FY2024-25-Estimate-of-Revenue-and-Expenditures.pdf> (providing county expenditure data regarding library funds). Library district data was drawn from the Institute of Museum and Library Services. *Library Search & Compare*, INST. OF MUSEUM AND LIBR. SERVS., <https://www.ims.gov/search-compare> (last visited July 19, 2025) (filter set to all states during fiscal year 2022). Outside of this review, there are occasional references to library districts receiving county funding, see, e.g., Stephens, *supra* note 39, at 21, but these cases appear to be the exception to the rule. For a more common example, where county assessed property taxes compile a vast majority of a library district’s revenue, see, e.g., TIMBERLAND REG’L LIBR., FINAL BUDGET REPORT 2024, 9–12 (2023).

<sup>160</sup> On the disbursement of a district’s millage, see *City of Seymour v. Webster Cnty. Comm’n*, No. 07WE-CC00043, 2009 WL 7252874, \*7 (Mo. Cir. Ct. July 22, 2009). On a district’s budgeting as a source of autonomy, see Liebmann, *supra* note 51, at 113.

<sup>161</sup> See, e.g., Stephens, *supra* note 39, at 19 (discussing Clark County, Nevada, budgeting procedures).

<sup>162</sup> COLO. REV. STAT. ANN. § 30-11-107 (2)(a) (West 2025).

<sup>163</sup> Compare COLO. REV. STAT. ANN. § 24-90-109 (e)(I) (West 2025) (regarding appropriations for a county or municipal library), with *id.* at (e)(II) (stating that a library district has “exclusive control and spending authority over the disbursement of library funds”). Cf. COLO. DEP’T LOC. AFFS., CERTIFICATION OF TAX LEVIES FOR NON-SCHOOL GOVERNMENTS, <https://cdola.colorado.gov/sites/dola/files/documents/dlg70.pdf> (suggesting that commissions are involved only in budget certifications). Some library districts employ this template as their sole medium of budget communication with their local county. See ARAPAHOE LIBRARY DISTRICT, CERTIFICATION OF TAX LEVIES FOR NON-SCHOOL GOVERNMENTS (Jan. 9, 2024) (on file with author).

district, which are mandatorily distributed by the county, constitute an appropriation of county funds.<sup>164</sup> Notwithstanding these points of uncertainty, some counties in Colorado have read clear authority into the statutory scheme, concluding that library districts are obligated to submit their budgets for commission approval.<sup>165</sup> Their interpretation has not been litigated and the legal regime remains unsettled. In other legal contexts, scholars have theorized that vague legal rules can produce overcompliance, which helps explain why ostensibly independent state officials choose to cooperate with a governor rather than challenge their assertion of control.<sup>166</sup> Library officials can be forgiven for doing the same.

Jurisdictions like Nevada and Colorado—where county commissions regularly or occasionally approve library district budgets—appear relatively uncommon. More widespread is a receive-and-file requirement, where library districts must “submit” or “present” their annual budgets to the county commission.<sup>167</sup> The commission might be required to review the budget or hold a hearing upon it, but it lacks any gatekeeper authority to reject (or approve) the budget before it is finalized.<sup>168</sup> These receive-and-file requirements are foremost designed with administrative goals in mind, not necessarily to give commissioners a voice in the process. For one, in submitting its budget, a library provides the county with information it needs to fix the countywide tax levy, a purely ministerial duty.<sup>169</sup> For another, receive-and-file requirements promote transparency by airing library budgets in an external, theoretically more robust public forum. Particularly when accompanied by a public hearing, a budget already approved by a library board (at an open meeting of possible slim attendance) can receive public attention and face public scrutiny at a county commission meeting, where traditionally relatively stronger turnout from members of a community would be expected.

Accordingly, by virtue of their default institutional status in the local ecosystem, county commissions are assigned a clerical duty—receive, file,

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<sup>164</sup> See COLO. REV. STAT. ANN. § 24-90-109 (West 2025) (providing no clarity on the matter).

<sup>165</sup> See, e.g., GARFIELD COUNTY BOARD OF COMMISSIONERS, Jan. 3, 2006 Board Minutes, at 447 (2006) (referencing the Garfield County Board of Commissioners’ vote approving the amount of tax revenue to be distributed to the Garfield County Library District).

<sup>166</sup> See Seifter, *supra* note 49, at 1587 (discussing the value of overcompliance in the face of statutory ambiguity).

<sup>167</sup> E.g., MONT. CODE ANN. § 22-1-708 (West 2025); WASH. REV. CODE ANN. § 27.12.210(4) (West 2025); MO. ANN. STAT. § 182.291.7(3) (West 2025); KAN. STAT. ANN. § 12-1276(e)(1) (West 2025).

<sup>168</sup> See, e.g., OHIO REV. CODE ANN. § 5705.28 (stating that “the board of county commissioners must approve the Budget Request” and “may not alter or revise the Budget Request”); DEL. CODE ANN. TIT. 9, § 805 (West 2025).

<sup>169</sup> See, e.g., MONT. CODE ANN. § 22-1-708(2) (stating that “the county governing body shall . . . fix and levy a tax . . . sufficient to raise the amount certified by the board of trustees and approved by the electors.”). Regarding this action being ministerial, see Wash. Att’y Gen. Opinion Letter (Dec. 12, 1958) (describing the county commissioners “perform[ing] only a ministerial duty in making the actual levy of the tax.”).

and occasionally review a library's budget—which in turn affords them a measure of soft power. When receiving a library's budget, the commission commands a pulpit from which it can opine on the library's policy choices. When reviewing a budget, moreover, the commission can play an investigative role; it can ask questions, raise concerns, and demand explanations from library district officials.<sup>170</sup> Library officials are not legally obligated to participate in the process. Politically, however, ignoring the commission risks raising its ire and triggering more scrutiny down the road.<sup>171</sup> Officials thus take the opposite tack. It is “wise . . . to maintain good working relations with [county commissioners],” as one early study on library districts advised, even if the commission lacks formal budget oversight power<sup>172</sup>—a perspective also echoed by library officials interviewed for this Article.<sup>173</sup>

In this manner, even the softest of county power can prove influential on the ground. Soft power can embolden commissioners, enabling them to threaten financial repercussions for a library that ignores their policy wishes, even if this rhetoric overstates their legal authority.<sup>174</sup> And it can prompt library officials to respond to county pressure they would otherwise ignore. In fact, a county's informal role in the budget process can push library officials to formalize it by contract. Illustrative is an agreement in Multnomah County, Oregon, which provides that both the “County . . . and the [library district's] Budget Officer will prepare [the library district's] Budget.”<sup>175</sup> Other library districts have also agreed by contract to mix their investments with county funds, a voluntary fee pooling arrangement that further enhances a county's formal fiscal control.<sup>176</sup>

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<sup>170</sup> The power to compel information and reason-giving can extend beyond the budgeting process and transform into a regular reporting requirement. *See, e.g.*, Interview with Jeana Houf, Librarian, Wellsville Public Library (Sept. 4, 2024) (noting the library has to give a report to the city at the end of each business term).

<sup>171</sup> In a long-running saga in Nevada in the early 1990s, the Las Vegas - Clark County Library District came under scrutiny by the Clark County Commission, which became more aggressive in its efforts to control the district after its director failed to share information the commission had requested and answer questions it had posed. Stephens, *supra* note 39, at 36–38.

<sup>172</sup> IDAHO STATE LIBRARY, *supra* note 92, at 3.

<sup>173</sup> *See, e.g.*, Interview with Bart Miller, *supra* note 94 (noting that “we need to stay on good terms with both [the local county and city]”).

<sup>174</sup> *See, e.g.*, Monroe County Board of Commissioners, FACEBOOK (Aug. 22, 2024, 6:43 PM) (discussing a County Board Commissioner's “threat to de-fund Monroe County Library” if the library did not “take . . . action to move LGBTQ+-themed books”).

<sup>175</sup> MULTNOMAH COUNTY, RESTATEMENT OF INTERGOVERNMENTAL AGREEMENTS BETWEEN MULTNOMAH COUNTY AND THE MULTNOMAH COUNTY LIBRARY DISTRICT 7 (2015) (on file with author).

<sup>176</sup> *See, e.g.*, PLACENTIA LIBRARY DISTRICT, AGREEMENT FOR THE DEPOSIT AND INVESTMENT OF EXCESS FUNDS INTO THE COUNTY TREASURY (Oct. 16, 2017) (regarding the deposit of library funds into the Orange County Investment Pool); SNOHOMISH COUNTY TREASURER, SNOHOMISH COUNTY INVESTMENT POOL, OPERATING TERMS AND CONDITIONS (2024), 12 (on file with author).

### III. STATE-AGENT ADMINISTRATIVE POWERS

A county's administrative tentacles do not end with sheriff and library budgets. As much as budget oversight is central to this story, it is not the only tool of regional influence in a county commission's arsenal. This Part will explore other potent cudgels of county power. Taken together, the diverse tools at a county's disposal lend breadth and depth to its institutional strength.

This Part begins by briefly examining a county commission's power of appointment, which is central to many library district governance schemes—and sometimes, although less frequently, also offers a mechanism of control over sheriff's offices.<sup>177</sup> Next, the Part discusses a county's *domino administrative powers*, this Article's term for the intersecting, cascading, and often snowballing collection of administrative duties and levers that often bleed into each other, creating a collective force that is greater than the sum of its parts.

#### A. Appointment Control

Most library districts are governed by an appointed board of directors, an institutional arrangement in which county commissions hold outsized sway. Of the fifty largest library districts in the United States, a majority of these—either 30 or 35 districts, depending on the metric used—have boards that are solely or primarily appointed by a local county commission.<sup>178</sup> County commissions also share appointment authority with other governments, usually local cities, in a number of other jurisdictions.<sup>179</sup>

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<sup>177</sup> In some states, county commissions appoint a replacement sheriff if the elected sheriff resigns before the end of their term. *See, e.g.,* Edna Grant, *Sheriff John Clements resigns, Clark County Requests Law Enforcement Aid from ISP and Jefferson County*, THE JEFFERSON STAR (Dec. 7, 2022) [https://www.postregister.com/star/news/sheriff-john-clements-resigns-clark-county-requests-law-enforcement-aid-from-isp-and-jefferson-county/article\\_2dfeee6a-7025-11ed-89bf-ef175484df96.html](https://www.postregister.com/star/news/sheriff-john-clements-resigns-clark-county-requests-law-enforcement-aid-from-isp-and-jefferson-county/article_2dfeee6a-7025-11ed-89bf-ef175484df96.html) (discussing the role of Clark County's Board of Commissioners in appointing a new sheriff following a resignation). This interim appointment authority can be consequential. Counties have appointed replacements after squeezing the office's resources and allegedly forcing an elected sheriff from office. *See, e.g.,* Hogan, *supra* note 156 (discussing the refusal of Clark County Commissioners to hire temporary deputies, leading to sheriff's resignation). Moreover, particularly in rural areas where local elections are under-contested, a sheriff appointed to complete a partial term goes into the next election with a strong incumbency advantage. *See infra* notes 181–184 and accompanying text (regarding local elections). A county's appointment power might still install someone in the positions who remains there many years.

<sup>178</sup> By one metric (number of branch facilities), thirty-five of the largest fifty districts have boards primarily or fully appointed by a county commission. By another metric (circulation), thirty of the largest districts have county-controlled boards. All data is drawn from the Institute. Museum and Library Services., *see supra* INST. MUSEUM AND LIBR. SERVS. note 159.

<sup>179</sup> *See, e.g.,* LAS VEGAS-CLARK CNTY. LIBR. DIST., Board of Trustees Bylaws and Policies, Art. I (rev. Oct. 2017), <https://thelibrarydistrict.org/wp-content/uploads/sites/54/2017/10/boardbylaws.pdf> (detailing the split in appointing Las Vegas-Clark County Library District trustees between the Clark County Commission and Las Vegas City Council); GENESEE DIST. LIBR., Board By-Laws (rev. Apr. 18, 2011) (on file with author) (splitting appointment authority of Genesee District Library Board between the

Taken as a whole, even in states that place particular emphasis on the independence of library districts, it would seem that counties wield a degree of appointment authority more often than they do not.<sup>180</sup>

The design choices underlying this authority are easy to understand. Commentators have written at length about the risks and challenges of local elections, special district local elections in particular.<sup>181</sup> Historically, voter turnout for these elections has been perennially low.<sup>182</sup> Candidates often run unopposed, such that an incumbent might hold their position for years without meaningful political accountability.<sup>183</sup> Meanwhile, when a position is contested, today's voters lack the resources that were once provided by local media outlets to educate themselves on the candidates.<sup>184</sup> For these reasons and more, the trend over time has been away from "long ballot" elections and towards a short ballot system—with a number of once-elected

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Genesee County Board of Commissioners and Charter Township of Grand Blanc Board of Trustees); PIKES PEAK LIBR. DIST., Bylaws of the Board of Trustees Art. II Sec. 1 (rev. Jan. 18, 2023), <https://ppld.org/sites/default/files/bot/BOTBylaws.pdf> (stating that "[t]rustees are recommended by a joint committee composed of select members of the Colorado Springs City Council and members of the El Paso County Commissioners."); JACKSON DIST. LIBR., Board Bylaws Art. 3.1 (rev. Mar. 10, 2022), <https://jacksondistrictlibrary.app.box.com/s/4x9lzaemi428y9jff03kfdbxo78avjaic> (detailing that "three of the [Library District] Board Members shall be appointed by the [Jackson] City Council and three shall be appointed by the County Commission; the seventh shall be appointed at the end of each term alternately by the City Council and the County Commission."); CITY OF PUEBLO, Library District Board of Trustees, <https://www.pueblo.us/156/Library-District-Board-of-Trustees> (last accessed Jan. 15, 2025) (showing all library trustees appointed by the joint authority of Pueblo City and Pueblo County); POUDDRE RIVER PUB. LIBR. DIST., Board of Trustees, <https://www.poudrelibraries.org/board/> (last accessed Jan. 15, 2025) (explaining that library trustees are "jointly appointed by the City of Fort Collins and Larimer County").

<sup>180</sup> Cf. Interview with Jesse Butz, Director, Porter District Library (Sept. 3, 2024) (notes on file with author) (comparing appointment versus election models); Suzuki & Koizumi, *supra* note 86, at 502–03 (regarding independently appointed library boards).

<sup>181</sup> E.g., Liebmann, *supra* note 51, at 112–13 (discussing criticisms of special district local elections); Bauroth, *supra* note 93, at 194 (noting low turnout rates in special elections).

<sup>182</sup> See Lisa M. Card, *One Person, No Vote? A Participatory Analysis of Voting Rights in Special Purpose Districts*, 27 T. JEFFERSON L. REV. 57, 89 (2004) (discussing difficulties voters often have with determining boundaries of special districts and resulting low voter turnout); Sara C. Galvan, *Wrestling with Muds to Pin Down the Truth About Special Districts*, 75 FORDHAM L. REV. 3041, 3053–54 (2007) (noting "the sustained absence of democratic participation in special district activities over time").

<sup>183</sup> See Craig Monger, *Shelby County Delegation Backs Bill Requiring Delegation to Appoint Library Board Members After 2023 Controversy*, 1819 NEWS (Feb. 12, 2024), <https://1819news.com/news/item/shelby-county-delegation-backs-bill-requiring-delegation-to-appoint-library-board-members-after-2023-controversy> (regarding uncontested library elections). Cf. *Hearing on H.B. 2498 Before the H. Comm. on Gov't Efficiency and Downsizing*, 102d Gen. Assemb., 2d Reg. Sess. (Mo. 2024) (statement of Joellen Pratt, Director, Cameron Public Library) (discussing the challenge of finding library board candidates).

<sup>184</sup> See David N. Schleicher & Roderick M. Hills, Jr., *Local Legislatures and Delegation*, 102 TEX. L. REV. 495, 534 (2024) (discussing low salience candidates); David Schleicher, *From Here All-the-Way-Down, or How to Write a Festschrift Piece*, 48 TULSA L. REV. 401, 416 (2013) (regarding the general lack of local voter knowledge). For a larger discussion on the weakening of civil society, see Miriam Seifter, *Further from the People? The Puzzle of State Administration*, 93 N.Y.U. L. REV. 107, 114–27 (2018).

positions becoming appointed as a result.<sup>185</sup> The growth of library districts have corresponded with this broader movement.<sup>186</sup> Therefore, while some states elect all library district boards, it is not surprising that the majority are appointed.<sup>187</sup>

Given an appointed library board, what public body should hold requisite appointing authority? State law answers this question by looking to territorial congruence. Generally, states allocate appointment authority on the basis of geography, with a local city or county more likely to select a library's board the more its jurisdiction overlaps with that of the library district. In Indiana, for example, state statutes provide a number of different appointment configurations, which vary based upon a given library district's size and location.<sup>188</sup> These configurations do not deliberately favor counties above other local entities. But as a functional outcome, counties represent the most prevalent and thus most prominent appointing authority in Indiana.<sup>189</sup> Thanks to their regional scale and ubiquitous territories, counties are, by default, the government most likely to overlap with a library district.<sup>190</sup> Their outsized appointment authority flows naturally from this structural reality.

County commissions do not always treat their appointment authority as a valuable source of power. As library officials have observed, it is not uncommon for counties to informally delegate appointment decisions to

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<sup>185</sup> Seifter, *supra* note 49, at 1556. See Quinn Yeargain, *Administrative Capacity in Direct Democracy*, 57 U.C. DAVIS L. REV. 1347, 1363–64 (2023) (regarding “broader trends toward appointment of administrative officers who have primarily technical responsibilities”).

<sup>186</sup> Compare Yeargain, *supra* note 185, at 1363–64 (regarding the general trend toward short ballot systems), with Brawner, *supra* note 88 (regarding the growth of library districts).

<sup>187</sup> For an example of a state that elects library boards, see Interview with Jesse Butz, *supra* note 180 (discussing Illinois).

<sup>188</sup> See, e.g., IND. CODE ANN. § 36-12-2-16 (West 2025) (regarding appointments in library districts that are “partly or fully within the boundaries of a consolidated city” and “fully within the boundaries of one county”); IND. CODE ANN. § 36-12-2-11 (West 2025) (applying to a library district created in one county under certain conditions); IND. CODE ANN. § 36-12-5-12 (West 2025) (applying when a township is added to a library district); IND. CODE ANN. § 36-12-2-14 (West 2025) (applying when a library district is “entirely within the boundaries of one (1) municipality”); IND. CODE ANN. § 36-12-2-15 (West 2025) (applying to library districts in counties with strict population requirements that contain “all or part of the territory of each school corporation in the county”). As a wrinkle to this general observation, school districts are given appointment authority in some jurisdictions and play no appointment role in others, notwithstanding their degree of territorial overlap with a library district. See, e.g., N.Y. EDUC. LAW § 260(2) (McKinney 2025) (providing different authorities for the appointment of library trustees based on the establishing jurisdiction, including school districts in some cases).

<sup>189</sup> See IND. CODE ANN. § 36-12-2-14 (West 2025) (with respect to a sole municipality library district).

<sup>190</sup> See Ponomarenko, *supra* note 14, at 1541–42 (discussing the intersection between county, municipality, and special district borders); Card, *supra* note 182, at 82 (noting that “special purpose districts are more regional in scope” and “often do not perfectly map the boundary lines of other local governmental bodies”).

library boards themselves.<sup>191</sup> When a seat on the board becomes vacant, the remaining board members will together select a new colleague, whose name is relayed to the county commission for its rubberstamp of approval.<sup>192</sup> Such arrangements are effective, however, only so long as the county does not wish to upset them, perhaps because the commission agrees with the board's appointment decisions or because, more likely, the commission lacks interest in the library district's governance altogether.<sup>193</sup>

Tables can turn quickly when commissioners begin to care about library policy. The shift was recently epitomized in Monroe County, Georgia, where a preexisting practice of “rubber-stamp[ing]” board approvals was upended when some commissioners, in alignment with a vocal faction of residents, challenged the library's decision to include books with LGBTQ+ themes in the children's section.<sup>194</sup> Similarly, in Autauga County, Alabama, the commission disregarded its “standing courtesy” in 2023, when it appointed a candidate to the local library board who, in a departure from precedent, had not been first vetted and recommended by other board members.<sup>195</sup> The appointment likewise occurred amidst a hostile community battle over library materials, spurred originally by a resident's complaint that a library book contained inclusive gender pronouns.<sup>196</sup>

Once awakened from its indifference, a county commission can wield its appointment power widely. It can extract promises from board candidates, install board members who share its ideology, and even refuse to fill a vacant seat altogether, effectively preventing the library board from

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<sup>191</sup> See, e.g., Interview with Cliff Joe, Business and Compliance Officer, Pierce County Library (Aug. 30, 2024) (notes on file with author) (describing this practice); Interview with Bart Miller, *supra* note 94 (describing “self-perpetuating” boards in Colorado).

<sup>192</sup> *Id.* See also ASHLEY PUB. LIBR. DIST., Board Meeting Minutes Jan. 31, 2023 (noting that the departing board member informally chooses their replacement). In more extreme situations, county commissions do not realize they hold appointment authority. See Bradley Cox, *Dysfunction at the Athens-Limestone County Library as Board Not Following Its Own Policies*, 1819 NEWS (Apr. 12, 2024), <https://1819news.com/news/item/dysfunction-at-the-athens-limestone-county-library-as-board-not-following-its-own-policies> (detailing how members of a library board of trustees had been appointed entirely by city officials when two members were required to be appointed by the county).

<sup>193</sup> See Interview with Bart Miller, *supra* note 94 (explaining that county commissions generally stay out of library management “unless they want to be involved in something”). For a discussion regarding a similar dynamic at the federal administrative level, see Neal Devins & David E. Lewis, *The Independent Agency Myth*, 108 CORNELL L. REV. 1305, 1340–42 (2023).

<sup>194</sup> MONROE COUNTY BOARD OF COMMISSIONERS, *supra* note 174.

<sup>195</sup> Ralph Chapoco, *Autauga-Prattville Public Library Board Members Resign Over County Appointment*, ALABAMA REFLECTOR (Nov. 29, 2023, 6:59 AM), <https://alabamareflector.com/2023/11/29/autauga-prattville-public-library-board-members-resign-over-county-appointment/>.

<sup>196</sup> Ralph Chapoco, *Autauga County Commission Chooses New Library Board Member Amid Ongoing Battles*, ALABAMA REFLECTOR (Nov. 22, 2023, 10:55 AM), <https://alabamareflector.com/2023/11/22/autauga-county-commission-chooses-new-library-board-member-amid-ongoing-battles/>.

operating.<sup>197</sup> An active commission can also press its policy preferences outside of the appointment process itself. Pressure from a single commissioner prompted action in Pinellas County, Florida, where the library district removed a Pride display from the children's section following one commissioner's complaint.<sup>198</sup> Furthermore, in less politicized contexts, commissions enlist library boards to perform free county services. These can range from costly projects—for example, where a library agrees to perform a significant archival project at the county's request<sup>199</sup>—to gratuitous donations of labor and property, such as in St. Charles, Missouri, where the library board was pushed to donate property “as a courtesy.”<sup>200</sup>

Yet here a legal wrinkle emerges in our narrative. According to constitutional doctrine, the independence of an officer in the federal administrative state is associated closely with a president's *removal* power.<sup>201</sup> Regardless of how they were first appointed, the hallmark question of independence is whether an officer can be removed by the president at will.<sup>202</sup> The concept carries intuitive logic. As much as presidents might appoint officials who share their worldview or promise them undying loyalty, only the *ex post* power of removal provides an instrument of continued control, one backed by an actionable formal threat.

So too with library districts. Given that they are independent local governments, there is, in many states, a strong argument that a library district's board members are protected from county commission removal—

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<sup>197</sup> See *Library Advisory Board Awaits Commission Decision*, ANNA MARIA ISLAND SUN (Feb. 5, 2024), <https://amisun.com/library-advisory-board-awaits-commission-decision/> (postponing appointments and leaving the board inoperative because no candidates “shared the same viewpoint as the county commissioners”). See also Gloria Ruth Finney, *Monroe County Commission Debates Library Board's Size, Funding and Controversial Content*, WGXA NEWS (June 20, 2025, 1:19 AM), <https://wgxa.tv/news/local/monroe-county-commission-debates-library-boards-size-funding-and-controversial-content> (discussing political efforts to reshape the Monroe County Library Board); Douglas Soule, *Culture Wars Creeping into Public Libraries in Ron DeSantis' Florida*, TALLAHASSEE DEMOCRAT (Aug. 11, 2023, 4:57 PM), <https://www.tallahassee.com/story/news/politics/2023/08/10/florida-public-libraries-could-be-next-culture-war-battleground-kirk-cameron-brave-books/70527542007/> (discussing the ongoing political debate regarding library collections in Florida); Sasha Abramsky, *The Small-Town Library That Became a Culture War Battleground*, THE NATION (Aug. 7, 2023), <https://www.thenation.com/article/society/libraries-book-banning/> (discussing political controversy surrounding the Dayton Memorial Library in rural Washington).

<sup>198</sup> Soule, *supra* note 197.

<sup>199</sup> See EVANSVILLE VANDERBURGH PUBLIC LIBRARY, Agreement (Mar. 13, 2024) (on file with author).

<sup>200</sup> Cf. Interview with Julie Wolf, Chief Financial Officer, St Charles City-County Library (Sept. 16, 2024) (notes on file with author) (discussing pressure from a city to donate property because “politically, the way the mayor approached it was, you know, as a courtesy, you should donate the property”).

<sup>201</sup> See generally Aaron L. Nielson & Christopher J. Walker, *Congress's Anti-Removal Power*, 76 VAND. L. REV. 1 (2023) (discussing the president's removal power and evolving jurisprudence).

<sup>202</sup> See *id.*, at 12–13 (discussing the independence of an agency being directly tied to the president's removal power). See also *Morrison v. Olson*, 487 U.S. 654, 687 (1988) (noting that the United States Constitution does not provide the president with the “‘illimitable power of removal’ over the officers of independent agencies”) (quoting *Humphrey's Executor v. United States*, 295 U.S. 602, 629 (1935)).



notwithstanding that the commission holds initial appointment authority.<sup>203</sup> The design would seemingly ensure that a commission's influence goes only so far. In practice, however, county commissions employ the threat of removal as a mechanism of post-appointment control even in jurisdictions where board members *appear* to enjoy for-cause protections.<sup>204</sup> Commissions threaten to remove individual board members who fail to comply with desired policy changes, as seen recently in Fremont County, Wyoming, where the commission threatened to replace the board chair if she did not “fulfill a list of ultimatums” within one month.<sup>205</sup> Commissions have also threatened to remove all members from a library board, at times with the stated purpose of dissolving the board and terminating the library district altogether.<sup>206</sup>

Library boards capitulate to these threats.<sup>207</sup> Understandably so. While federal courts have developed a strong norm of executive branch independence, state courts have not developed a similar body of law, as Miriam Seifter has argued, which complicates efforts by local bodies to vindicate their independence.<sup>208</sup> Instead, state courts tend to approach questions of intergovernmental design by focusing narrowly on statutory interpretation and deferring often to the political process.<sup>209</sup> Acting with this mindset, a state court might determine that a county commission's express appointment power carries the implied power of removal.<sup>210</sup> Or the court might decline to intercede in what it perceives as a political dispute, mirroring the judicial responses to disagreements over a sheriff's budget.<sup>211</sup> In either case, no matter how strong their claim of institutional

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<sup>203</sup> See Marit Gookin, *Fremont County Commission Tells Library Board Chair to Make Changes or Face Removal*, GILLETTE NEWS RECORD (Apr. 23, 2024), [https://www.gillette-news-record.com/news/wyoming/article\\_9b068541-9456-53f5-b269-ec25382997fa.html](https://www.gillette-news-record.com/news/wyoming/article_9b068541-9456-53f5-b269-ec25382997fa.html) (reporting on instance in Wyoming, where a library board treasurer claimed that county commissioners could not remove library board members without cause of malfeasance).

<sup>204</sup> In Wyoming, for example, threats to remove library board members materialized despite a 2010 opinion from the Wyoming Attorney General stating that county commissions lack such power. Clair McFarland, *Former AG Says County Can't Replace Library Board Chief with a Commissioner*, COWBOY STATE DAILY (Apr. 30, 2024) <https://cowboystatedaily.com/2024/04/30/former-ag-says-county-cant-replace-library-board-chief-with-a-commissioner/>.

<sup>205</sup> *Id.*

<sup>206</sup> For a recent example, see, e.g., ADA COUNTY, 2nd Public Hearing on Petition to Dissolve the Meridian Library District (Mar. 21, 2023), <https://adacounty.id.gov/blog/news/2nd-public-hearing-on-petition-to-dissolve-the-meridian-library-district/> (reporting petition to dissolve the Meridian Library District in Ada County, Idaho).

<sup>207</sup> See, e.g., Clair McFarland, *Under Threat of Takeover, Fremont County Library Changes Sex Book Policies*, COWBOY STATE DAILY (Apr. 18, 2024) <https://cowboystatedaily.com/2024/04/18/under-threat-of-takeover-fremont-county-library-tweaks-sex-book-policies/> (reporting that “[u]nder pressure from local elected officials . . . the Fremont County Library Board approved a handful of changes Wednesday during an emergency session.”).

<sup>208</sup> Seifter, *supra* note 49, at 1543–44.

<sup>209</sup> *Id.*

<sup>210</sup> While there appears to be no published case law to this effect, the argument was made by the Nevada Attorney General. Nev. Att'y Gen., Opinion Letter (Dec. 10, 1999).

<sup>211</sup> See *supra* Part II.A (discussing judicial treatment of conflicts over sheriffs' budgets).

independence, library districts risk their protestations of county meddling ringing hollow in litigation. Ceding to the pressures of a county commission offers the path of far less resistance.

### B. *Domino Administrative Powers*

A county's voice in the funding, appointment, and removal of separately elected officials and boards is perhaps the most prominent example of the influence it can wield over other regional actors. Yet as much as these functions are canonical in administrative law, they paint an incomplete picture of a county commission's tentacles in its local ecosystem. As this Section explores, counties are afforded additional powers in their role as state-local intermediaries—the power to own property, administer grants, and manage personnel—that each grant a toehold into the day-to-day governance of sheriff's offices, library districts, and other local entities.

These basic powers are important. But perhaps more impactful are the secondary powers that they generate. By virtue of owning property, administering grants, and managing personnel, a county inevitably enters into contracts with sheriffs and library districts. Counties hold the upper hand in these contractual relationships and can insert favorable provisions into the agreements. Through interlocal contract, a sheriff or library district might agree to follow county policies, take specified actions, or permit other, additional forms of county control, such as submitting to the county's auditing power. In this manner, what might appear an insubstantial administrative duty, taken alone, intersects and snowballs with other similar administrative grants, creating on balance a multifaceted apparatus of county power that is far more than the mere sum of its parts.

This Section does not claim to offer a comprehensive account of a county's administrative powers. Nor does it provide a unitary description of how these powers cascade and build upon each other. Rather, this Section sets forth an illustrative account that appears common, if not prevalent, across the sheriff's offices and library districts studied for this Article. The account begins with three state-agent duties that are assigned by default to counties: ownership of public property, management of public personnel, and serving as an intermediary for federal and state grants. Counties are natural institutional homes for each of these functions, as this Section will discuss. The Section then explores how these functions translate into subsequent domino powers.

#### 1. *State-Agent Functions*

First, take public property. Even though municipalities own significant amounts of property, the ubiquitous jurisdictional coverage of counties makes them an obvious choice whenever a state legislature selects a single custodian for the management of public land. Legislatures know that a given parcel of property will always come under the jurisdiction of a county, even

if no municipality or special district operates in that same space.<sup>212</sup> Therefore, when a property comes into public ownership—for example, via tax foreclosure—state law assigns counties a default status in the process, frequently as owners of last resort for properties not otherwise acquired by another public or private actor.<sup>213</sup> County land ownership also has deep historical roots. In the early decades of the United States, counties emerged out of a national project of land settlement, with the creation of counties associated with control and sovereignty over contested native lands.<sup>214</sup> In many states, moreover, counties predate the incorporation of municipalities, making them the organic choice for public land owned at the local level.<sup>215</sup>

For these and other reasons of convenience and historical accident, counties are the go-to local body for property management; they often own the offices and facilities used by a wide variety of other actors, including sheriffs and library districts.<sup>216</sup> In Riverside County, California, for example, the sheriff's office lists 226 distinct county-owned office spaces that it occupies in some capacity.<sup>217</sup> In Michigan, two large library districts—the Genesee District Library and Muskegon Area District Library—operate branch libraries on land owned by the local county.<sup>218</sup> And in Florida, where sheriff's offices cannot hold title in their own name, county commissions are involved in all facets of a sheriff's property use.<sup>219</sup> Florida counties own

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<sup>212</sup> *Supra* note 22 and accompanying text.

<sup>213</sup> *See, e.g.*, MICH. COMP. LAWS ANN. § 211.78m (West 2025) (setting forth the process for unsold foreclosed property in Michigan, with the foreclosing governmental unit, often a county government or county treasurer, serving as the default owner).

<sup>214</sup> *See generally* K-Sue Park, *Property and Sovereignty in America: A History of Title Registries & Jurisdictional Power*, 133 YALE L.J. 1487 (2024) (mapping how colonial governments employed counties as a means of extending territorial control).

<sup>215</sup> Daniel Farbman has written about the early role of county governments in southern states. To learn more about this history, *see generally* Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413 (2017); Daniel Farbman, *Redemption Localism*, 100 N.C. L. REV. 1527 (2022).

<sup>216</sup> Non-municipal local bodies frequently use county office space. For example, some counties are required to provide office space to public defender offices in a number of states. *See, e.g.*, WYO. STAT. ANN. § 7-6-111 (West 2025); S.C. CODE ANN. § 17-3-590 (West 2025); WASH. REV. CODE ANN. § 36.26.060(b) (West 2025); 16 PA. CONS. STAT. ANN. § 9960.9 (West 2025); NEV. REV. STAT. ANN. § 260.040 (West 2025). As another example of counties that also provide office space to local judges and courts, *see, e.g.*, S.C. CODE ANN. § 14-23-1130 (West 2025); MISS. A.G., Opinion Letter regarding Courtroom for Justice Court (Aug. 1, 1997).

<sup>217</sup> RIVERSIDE CNTY. SHERIFF'S OFF., FY 24/25 Space Occupancy Certification (Aug. 29, 2024) (on file with author).

<sup>218</sup> GENESEE DIST. LIBR., FIRST AMENDED AND RESTATED DISTRICT LIBRARY ORGANIZATIONAL PLAN AND AGREEMENT 3 (June 4, 1997) (on file with author); AGREEMENT FOR REIMBURSEMENT OF MOVING COSTS BETWEEN THE MUSKEGON AREA DISTRICT LIBRARY AND THE COUNTY OF MUSKEGON., (Jan. 1, 2007), <https://co.muskegon.mi.us/DocumentCenter/View/120/Muskegon-Area-District-Library-Agreement-PDF>.

<sup>219</sup> *See* Interview with Kathy Ruby, Div. Manager, Palm Beach County Sheriff Office (Sept. 5, 2024). *See also* HILLSBOROUGH CNTY. SHERIFF OFF., INTERLOCAL AGREEMENT RELATING TO THE FACILITIES OF THE HILLSBOROUGH COUNTY IN THE COUNTY WAREHOUSE CENTER COMPLEX (Dec. 17, 1997) (on file with author). Similar schemes exist in other states. *See, e.g.*, Carver v. Sheriff of La Salle

the jail facilities that sheriffs are independently entrusted with operating.<sup>220</sup> They also enter into leases on behalf of sheriffs, and they grant licenses for sheriffs to install GPS antennas, wash vehicles, and carry out a host of other seemingly routine actions on property the county owns.<sup>221</sup> Florida's decision to consolidate ownership under the county is understandable. Public land is already highly fractured between governmental entities; in theory, creating additional titleholders threatens only to increase transaction costs and reduce efficiencies.<sup>222</sup>

A similar rationale underpins counties' role in personnel management. By nature, special districts and separately elected officials exist to accomplish a narrow public purpose, not to carry out general government functions.<sup>223</sup> They are designed without the same institutional machinery of a city or county bureaucracy.<sup>224</sup> Over time, of course, a sheriff's office may balloon in size—the Los Angeles County Sheriff, for example, has 17,085 employees—and to a lesser degree, library districts in urban areas can grow significantly too.<sup>225</sup> But most such entities begin and remain small.<sup>226</sup> They are obligated by law and market pressures to offer benefits packages, pay into pension funds, address workplace harassment and discrimination claims, and perform many more tasks that large organizations assign to

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Cnty., 787 N.E.2d 127, 137 (Ill. 2003) (discussing how counties “provide proper rooms and offices for the accommodation of the sheriff”) (quoting 55 ILL. COMP. STAT. ANN.5/5-1106 (West 2025)).

<sup>220</sup> Compare Fla. Att’y Gen., Opinion Letter (Apr. 18, 1991) (stating that counties provide the jail facilities), with Fla. Att’y Gen., Opinion Letter (Dec. 24, 1997) (stating that “it is the sheriff, not the board of county commissioners, who is responsible for the operation of the county jail”).

<sup>221</sup> SACRAMENTO CNTY. SHERIFF’S OFF., LEASE 1896 (June 12, 2023) (on file with author); PALM BEACH CNTY., LICENSE AGREEMENT, AIRPORT CENTER 2 (Aug. 5, 2021) (on file with author); PALM BEACH CNTY., STANDARD LICENSE AGREEMENT FOR USE OF COUNTY-OWNED PROPERTY (Aug. 30, 2023) (on file with author).

<sup>222</sup> See Daniel B. Rosenbaum, *Confronting the Local Land Checkerboard*, 56 U. RICH. L. REV. 665, 680–87 (2022) (discussing land fragmentation and the governance issues it presents). Florida is far from the only state where sheriff’s offices are obligated to use county-owned property. See, e.g., Interview with Will Seastrom, *supra* note 140 (sheriffs are “forced to use [county] space” in Montana).

<sup>223</sup> See *supra* notes 51–54 and accompanying text (discussing special districts).

<sup>224</sup> Cf. Suzuki & Koizumi, *supra* note 86, at 502–03 (regarding the administrative burden placed upon library districts).

<sup>225</sup> Letter from Oscar Valdez, Cnty. of L.A. Dep’t. of Auditor-Controller, Sheriff’s Department – Report on Operational Reviews (June 30, 2023). Among urban library districts, the King County Library System in Seattle offers an outlier example. See INST. OF MUSEUM AND LIBR. SERVS., *supra* note 159 (showing that the district operates forty-nine library branches and reports an annual operating revenue of \$133,100,960, indicating it as a large local governmental organization).

<sup>226</sup> See INST. OF MUSEUM AND LIBR. SERVS., *supra* note 159 (demonstrating that of the 1,402 library districts included in the Institute of Museum and Library Services’ database, over half (863) have ten or fewer employees). Meanwhile, data on sheriffs’ offices indicates that as of 2018, there were 765 offices with ten or fewer officers and forty-five offices with 500 or more officers. See INTER-UNIV. CONSORTIUM FOR POL. AND SOC. RSCH., CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES 2018, <https://www.icpsr.umich.edu/cgi-bin/SDA/NACJD/hsda?nacjd+38771-0001> (filtering based on “FTSWORN” (full-time sworn officers for “AGENCYSAMPTYPE(1)” (sheriff’s offices)).

human resource offices.<sup>227</sup> Rather than providing these tasks in-house (and creating more fracture and redundancy with other localities in the region) or outsourcing them to private companies (and incurring private sector costs), sheriffs and library districts pursue a third way: outsourcing personnel management to county government. Sometimes they are required to do so; in other cases, they likely face strong fiscal or political incentives.<sup>228</sup> The two stimuli yield functionally similar outcomes. By mandate or by pressure, counties assume a management role in the employees of ostensibly independent local actors.<sup>229</sup>

Finally, consider grant administration. For the same reasons that counties own property and manage local personnel, they also serve as intermediaries in the disbursement of grant funding between state and local governments. As with property ownership, counties' jurisdictional coverage makes them the obvious choice when states delegate grant management to the local level. Rather than working directly with cities and special districts, a far more cluttered institutional understory, states can appoint counties as their local-level representative.<sup>230</sup> Counties serve as the central clearinghouse for many grants awarded to local public entities—for those awarded to cities, districts, and sub-local agencies, as well as for grants awarded to counties themselves—which places them at the procedural heart of notable programs such as CDBG (Community Development Block Grants) and ARPA (the American Rescue Plan Act).<sup>231</sup> Grant administration requires bureaucratic capacity. Local entities that lack

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<sup>227</sup> For an example regarding “personnel,” “retirement/pension, insurance,” and “related functions,” see Brawner, *supra* note 88, at 60. See also Suzuki & Koizumi, *supra* note 86, at 503 (citing “payroll, personnel, legal costs, medical benefits and technical systems”).

<sup>228</sup> See, e.g., N.M. Att’y Gen., *supra* note 59 (observing “that a county commission could enact a personnel ordinance governing the terms and conditions of employment of persons hired by other elected county officials”). See also ALA. CODE § 40-6A-1 (2025) (indicating a financial motive). Audit documents reviewed for this Article indicate that sheriffs and library districts rely reluctantly on county human relations offices, although it is often unclear whether such reliance is created by legal, fiscal, or political pressures. See, e.g., CNTY. OF KERN, AUDITOR-CONTROLLER-COUNTY CLERK, AUDIT OF KERN COUNTY SHERIFF-CORONER’S OFFICE FOR FISCAL YEARS ENDED JUNE 30, 2017 AND 2016 10–11 (July 24, 2018) (on file with author). But not all independent entities are reluctant partners. See, e.g., YAKIMA VALLEY LIBRS., INTERGOVERNMENTAL COOPERATION AGREEMENT 1 (July 1, 2008) (on file with author) (finding combined procurement “in the public interest”).

<sup>229</sup> See, e.g., *Merritt v. Casto*, No. 2:22-CV-00556, 2023 WL 2589679, at \*6 (S.D. W.Va. Mar. 21, 2023) (demonstrating a county’s power to terminate employees); N.M. Att’y. Gen., *supra* note 59 (showing a county’s authority to regulate procedural terms of employment); *Maat v. County of Ottawa, Michigan*, 657 F. App’x 404, 406 (6th Cir. 2016) (showing a state district court’s reliance on county benefits, human resources, and employment bargaining).

<sup>230</sup> For a clear description of this cluttered understory, see Dave Owen, *Cooperative Subfederalism*, 9 UC IRVINE L. REV. 177, 198 (2018).

<sup>231</sup> See, e.g., LAS VEGAS-CLARK CNTTY. LIBR. DIST., COOPERATIVE AGREEMENT FOR THE CONSTRUCTION AND OPERATION OF BUNKERVILLE COMMUNITY CENTER AND LIBRARY (Aug. 4, 1987) (on file with author) (regarding CDBG); Jennifer Bertino-Tarrant, Will County Executive to Paul Mills, Fountaindale Public Library District (Nov. 2, 2022) (on file with author) (regarding ARPA); SPRINGFIELD GREENE CNTY. LIBR. DIST., Subrecipient Award (Apr. 24, 2023) (on file with author) (same).

such capacity can outsource the work to county governments rather than duplicating it themselves.

## 2. *Imbedded Powers*

None of the functions discussed above—owning property, managing employees, or administering grants—constitute pure county power. They are first and foremost *obligations*, imposed upon counties by state actors who are interested in public efficiency and predictability, but who are also motivated to maximize the state’s convenience and minimize its cost.<sup>232</sup> Yet even before considering their domino effects, the administrative functions assigned to counties afford them a degree of control over local actors.

Property ownership offers the most salient example of these imbedded powers. As much as counties are disempowered in other ways, state law gives them significant control over the real and personal property they own.<sup>233</sup> Counties can employ this power to dictate how public property is used, an opportunity that arises frequently in a county’s state-agent role. For instance, simply by owning the underlying parcel of land, counties are necessary partners whenever sign-off is needed for a construction permit or grant application.<sup>234</sup> More crucially, when a sheriff or library district operates on county land, the county holds a measure of leverage over the operation—over when it begins, when it might end, and even over its substantive terms and purposes.<sup>235</sup> Prompted by shifting political winds, a county might decide to begin charging rent on property that an independent local government had long used for free, such as in Josephine County, Oregon, where the commission voted to begin charging rent to the local library—and threatened the library with eviction in thirty days if it failed to comply.<sup>236</sup> Some lease agreements memorialize these risks by granting a county unilateral termination power.<sup>237</sup> Other leases guarantee an initial term

<sup>232</sup> See *supra* note 29 and accompanying text (discussing legal obligations delegated to counties).

<sup>233</sup> See, e.g., N.M. Att’y. Gen., *supra* note 59 (noting “county boards have broad authority to control county property”). On local governments having significant authority over property they own, see Rosenbaum, *supra* note 55, at 743.

<sup>234</sup> See, e.g., Interview with Connie Baele, Director, Mineral-Gold Public Library (Sept. 11, 2024) (notes on file with author) (commenting the library district “can’t do a whole lot of things” without owning the property); Interview with Bart Miller, *supra* note 94 (discussing reliance on city and county governments); Interview with Jeana Houf, Librarian, Wellsville Public Library (Sept. 4, 2024) (notes on file with author) (same); BREVARD CNTY. SHERIFF’S OFF., “Live Fire Shoot House” Agreement 5 (Jan. 12, 2022) (on file with author) (explaining county has authority to review property improvements).

<sup>235</sup> In addition to the examples provided in this paragraph, see also VENTURA CNTY. SHERIFF’S OFF., MEMORANDUM OF UNDERSTANDING - CAMARILLO AIRPORT §28 (July 13, 2023) (on file with author) (explaining sheriff must “adher[e] to County requirements” as part of a lease).

<sup>236</sup> John Oliver, *Residents Protest County Commissioner’s Decision to Evict Library: Tensions Rise Over Rent Dispute*, GRANTS PASS TRIBUNE (Jan. 10, 2025), <https://www.grantspasstribune.com/residents-protest-county-commissioners-decision-to-evict-library-tensions-rise-over-rent-dispute/>.

<sup>237</sup> HILLSBOROUGH CNTY. SHERIFF’S OFF., FIRST AMENDMENT TO INTERLOCAL LEASE AGREEMENT 2 (July 20, 2005) (on file with author); PALM BEACH CNTY. SHERIFF’S OFF., AMENDMENT

of years, yet require regular county reapprovals thereafter, such as a library lease in Nevada that begins with a forty-year term but then requires county authorization every subsequent five years.<sup>238</sup>

County commissions also employ lease arrangements to specify exactly how a property must be used. In Sacramento, California, the sheriff's office operates pursuant to dozens of county leases, many of which detail a particular purpose—canine training, work release programs, evidence storage, a “toy project,” and more—to which the property is expressly tied.<sup>239</sup> In Suffolk County, New York, a library lease was approved by the county commission despite vocal resident opposition, in part because the commission connected the lease to purposes it found salient: the goals of economic revitalization and “bring[ing] family friendly services” to the community.<sup>240</sup> Moreover, if a sheriff or library ever endeavors to purchase a county-owned property, the county may still demand concessions as part of the transaction, either political concessions in exchange for a below-market purchase price or by inserting a restrictive covenant into the deed.<sup>241</sup> Library districts are often on the receiving end of such restrictions. Deeds transferring library properties regularly stipulate that a property must forever be used for “library purposes” only—a limitation that can prove problematic when a library district's community mission evolves down the road.<sup>242</sup>

As demonstrated in the above examples from Nevada, California, and New York, counties can use written lease agreements to memorialize their expectations for a given parcel of property. But the formal nature of these

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NUMBER NINE TO LEASE AGREEMENT 2 (Nov. 16, 2021) (on file with author); PALM BEACH CNTY., LEASE AGREEMENT BETWEEN PALM BEACH COUNTY AND SHERIFF'S OFFICE 10 (July 11, 2023) (on file with author).

<sup>238</sup> LAS VEGAS-CLARK CNTY. LIBR. DIST., LEASE AGREEMENT WITH CLARK COUNTY (Jan. 21, 1986), at 2 (on file with author).

<sup>239</sup> See SACRAMENTO CNTY. SHERIFF, Response to Public Records Request (Sept. 17, 2024) (on file with author) (providing a number of such documents).

<sup>240</sup> SUFFOLK CNTY. LEGISLATURE, AUTHORIZING LEASE OF A PARCEL TO BE UTILIZED BY THE MASTIC MORICHES SHIRLEY COMMUNITY LIBRARY, RESOLUTION NO. 1118-2019 (Nov. 26, 2019) (on file with author). Regarding community opposition, see SUFFOLK CNTY. LEGISLATURE, General Meeting Minutes Dec. 17, 2019, at 32–37. For other examples of purpose-limited leases, see VENTURA CNTY. SHERIFF'S OFF., Memorandum of Understanding for Ordnance Range, at 1 (July 14, 2017) (on file with author); BREVARD CNTY. SHERIFF'S OFF., AGREEMENT 1 (Jan. 28, 2014) (on file with author).

<sup>241</sup> Counties can also demand a continued seat at the governance table. See, e.g., KITSAP CNTY. RURAL LIBR. DIST., PROPERTY TRANSFER AGREEMENT 1 (Oct. 15, 2018) (on file with author) (setting forth the “parties’ long-term cooperation”). This is assuming the county is willing to sell the property, which it has no obligation to do. Cf. MINERAL GOLD PUB. LIBR., RESPONSE TO PUBLIC RECORDS REQUEST 3 (received Sept. 24, 2024) (on file with author) (discussing a city ignoring a library's requests to purchase the property).

<sup>242</sup> See MULTNOMAH CNTY. LIBR., RESPONSE TO PUBLIC RECORDS REQUEST, BRANCH B&S DEEDS (Sept. 18, 2024) (on file with author); CNTY. OF INGHAM, DISTRICT LIBRARY AGREEMENT 7 (Mar. 10, 1997) (on file with author). On the challenge of defining “library purposes,” see *Walton v. City of Red Bluff*, 3 Cal. Rptr. 2d 275, 286 (Cal. Ct. App. 1991); *City of Cleveland v. Pub. Libr. Bd. of City Sch. Dist. of City of Cleveland*, 114 N.E. 247, 250 (Ohio 1916). On evolving library missions, see *infra* Part IV.B.

examples does not appear universal; interlocal relationships are often conducted informally, absent any lease agreement or other explicit provisions.<sup>243</sup> Both sheriff's offices and library districts report using county property without any accompanying written terms.<sup>244</sup> Such arrangements promote collaboration and flexibility; however, they also breed a natural power imbalance. Because the county commission holds ultimate proprietary control, other local officials are encouraged to defer to the commission's preferences and strive, when possible, to cultivate an amicable working relationship between the two entities.<sup>245</sup> Sheriffs and libraries are given yet another reason to stay in a county commission's good graces. They must also contend with each other.<sup>246</sup> In an environment where multiple agencies compete for limited resources, including limited office space, counties are positioned to select winners and losers when competition inevitably spills into conflict.<sup>247</sup>

In sum, through the mere act of owning property, counties are given a foothold to influence how that property is governed. The *opportunity* for influence does not mean that counties always aim to micromanage properties that other entities use. Just as easily, counties can take a hands-off approach to their proprietary powers, choosing to defer strongly or absolutely to a partner government. The same can be said of the other administrative powers highlighted in this Section. When it comes to personnel management and grant administration, counties can assume a facially neutral intermediary position by performing their baseline obligations (training employees, providing mandatory reports to federal and state governments, managing funds and investments) without asserting an element of meaningful control in the process.<sup>248</sup> Here, indeed, a county's dominant posture is presumably

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<sup>243</sup> See Daniel B. Rosenbaum, *Interlocal Power Roulette*, 99 IND. L.J. 417, 433–36 (2024) (discussing informal interlocal relations).

<sup>244</sup> For a library example, see Interview with Jeana Houf, *supra* note 234 (discussing an informal property arrangement). For a sheriff example, see Email from Erica Duarte, Administrative Analyst, San Diego County Sheriff (Oct. 7, 2024) (on file with author) (explaining that “[f]acilities occupied by the San Diego County Sheriff's Office are owned by or leased through the County” but the “County does not typically use leases or MOUs to grant occupancy of these spaces”).

<sup>245</sup> Cf., e.g., ASHLEY PUB. LIBR. DIST., Minutes of the Board of Directors (June 27, 2023), <https://ashleypubliclibrary.org/wp-content/uploads/2023/08/Minutes-June-2023.pdf> (deferring to the preferences of the township, which owns the facility). On the effort to cultivate good working relationships, see Interview with Bart Miller, *supra* note 94.

<sup>246</sup> See Michael McCardel, *Dallas City Council Member Says Parks Department, Libraries are Threatened by Propositions*, WFAA NEWS (Nov. 10, 2024, 7:42 AM), <https://www.wfaa.com/article/news/politics/inside-politics/texas-politics/dallas-city-council-member-says-parks-department-and-libraries-threatened-by-propositions/287-dee67e52-0442-4d95-8f0f-ada13394d9b5> (showing how initiatives prompting more sheriff's office hiring may divert resources from libraries).

<sup>247</sup> See, e.g., *Wade v. The County of Pike*, 244 N.E.2d 209, 212 (Ill. Ct. App. 1969) (finding board has the power to allocate building use); *Knuepfer v. Fawell*, 449 N.E.2d 1312, 1317–18 (Ill. 1983) (Simon, J., dissenting) (discussing conflict between circuit courts and county boards). See also Interview with Will Seastrom, *supra* note 140 (discussing that “[w]e're forced to use same space [and] resources that the county is using . . . so we work closely with [county departments]”).

<sup>248</sup> For further discussion of county inaction, see *infra* Part IV.



one of disinterested neutrality. While local governments have long wielded property ownership as a source of both responsibility *and* power,<sup>249</sup> the bureaucratic work of managing grants and pension funds sounds in the driest corners of public administration.

Even so, for two broad reasons, these dry administrative functions can still operate as tools of county control. The first is that even when counties approach them as mere obligations—that is, as tasks to narrowly accomplish without regard for their interlocal power—personnel and grant management are not quite as siloed from political decisions as they may initially appear. When a county assumes responsibility for the staff of another local body, its employee-facing internal policies might now apply to the conduct of these individuals.<sup>250</sup> Indirectly, therefore, a sheriff’s office or library district can find itself subject to policies—regarding procurement rules, fraud and abuse investigations, and travel reimbursements, among others—that they did not themselves adopt, even as the sheriff or library retains autonomy over other policies that govern its operations.<sup>251</sup>

The situation is rife for confusion. There is rarely a firm line between policies that apply to individual staff and policies that apply to an organization as a whole.<sup>252</sup> Accordingly, local officials and those who monitor them can grow confused, unsure exactly how far a county’s internal policies should creep into the activities of another government and err

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<sup>249</sup> See Gerald E. Frug, *Property and Power: Hartog on the Legal History of New York City*, 1984 AM. BAR FOUND. RSCH. J. 673, 675 (1984) (stating that the cities can exert influence through property holdings and private property rights).

<sup>250</sup> Acting on the assumption that a sheriff is subject to county policy, auditors often note when county policies have been violated. See, e.g., Fohner, *supra* note 155 (regarding a sheriff’s office that “has not been following county policy”); RIVERSIDE CNTY., OFF. OF AUDITOR-CONTROLLER, INTERNAL AUDIT REPORT 2022-018 17 (July 12, 2022) (showing that auditors rely on the county purchasing manual when auditing the sheriff and coroner departments). In doing so, auditors push non-county officials to follow these policies, even if it is unclear whether they are obligated to do so.

<sup>251</sup> See, e.g., *Cyberbest Tech., Inc. v. Little*, No. 6:03-cv-1525-Orl-22KRS, 2005 WL 8158917, at \*3 (M.D. Fla. Feb. 17, 2005) (discussing the procurement and contract associated with an integrated law enforcement system); “We’ll See Them in Court:” *Sheriff Clarke Defiant After County Board Authorizes \$35K to Sue Him for Blocking Investigation*, FOX 6 NOW MILWAUKEE (Apr. 20, 2017, 5:44 PM), <https://www.fox6now.com/news/we-ll-see-them-in-court-sheriff-clarke-defiant-after-county-board-authorizes-35k-to-sue-him-for-blocking-investigation> (describing a 2015 county ordinance granting auditors broad discretion to investigate fraud and abuse); Cory McCoy, *Franklin Sheriff Threatens to Sue County for \$500k Over Auditor’s Spending ‘Harassment,’* TRICITY HERALD (Dec. 2, 2023, 5:00 AM), <https://www.tri-cityherald.com/news/local/article282577898.html> (showing how a sheriff’s office can be subject to county travel policies and auditorial scrutiny). Indeed, sometimes the sheriff or library district might object to the policy yet find themselves powerless to resist it. See, e.g., *id.*; *Erdreich v. Bailey*, 333 So. 2d 810, 811 (Ala. 1976) (illustrating a situation where a county commission implemented policy over the objection of the sheriff).

<sup>252</sup> See, e.g., McCoy, *supra* note 251 (regarding a dispute over travel policies). See also Interview with Will Seastrom, *supra* note 140 (noting that the sheriff follows some but not all county policies).

ultimately towards an overbroad application of county-made law.<sup>253</sup> A county also operates in a constrained resource environment.<sup>254</sup> Necessarily, the county must set priorities and place certain hiring, training, retention, and reporting obligations above others. To the frustration of sheriffs and libraries alike, counties can play an outsized role in determining which grant applications are submitted, which open positions are filled, and which positions are not, with the unintended consequence of crippling an understaffed program or function that a sheriff or library would have prioritized differently.<sup>255</sup>

The second reason is that counties do, at times, go beyond their core obligations and use even their dry administrative responsibilities to advance supplemental policy goals. At times, counties will understaff an initiative that does not advance their political agenda, or resist approving staff salaries as part of a larger political disagreement.<sup>256</sup> Counties also enlist the staff of other local bodies to perform county projects, sometimes with payment to

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<sup>253</sup> See, e.g., RIVERSIDE CNTY. SHERIFF'S OFF., INTERNAL AUDIT REPORT 7 (Aug. 20, 2014) (on file with author) (regarding a record retention policy). Michigan offers a prominent example of the thin line between personnel and non-personnel policies. In Michigan, counties serve as funding units for non-county operations, including the operations of local courts, which has led to disputes about how far a county's personnel control extends into a court's functions. For specific examples of these non-county operations, see *Turppa v. County of Montmorency*, 710 F. Supp. 2d 619, 627–28 (E.D. Mich. 2010); OKLA. STAT. ANN. tit. 19, § 40 (West 2025); MICH. SUP. CT., Admin. Order 2001-1 (Mar. 27, 2001); Adam D. Pavlik, *Concurrent Jurisdiction and 50 Years of Michigan's "One Court of Justice"*, 92 MICH. B.J., 16, 18 (2013).

<sup>254</sup> See *supra* notes 29–32 and accompanying text (discussing counties' difficulty in sourcing funding).

<sup>255</sup> See *Merritt v. Casto*, No. 2:22-cv-00556, 2023 WL 2589679, at \*6 (S.D. W. Va. Mar. 21, 2023) (regarding a county's personnel powers). See also Taylor W. Anderson, *Davis County Sheriff's Office Business Manager on Paid Leave Amid Another Audit into the Office*, SALT LAKE TRIBUNE (Apr. 6, 2018, 6:40 PM), <https://www.sltrib.com/news/politics/2018/04/06/davis-county-sheriffs-office-business-manager-on-paid-leave-amid-another-audit-into-the-office/> (discussing the county "shift[ing]" three sheriff employees into a different office). Counties' control over hiring has assumed added importance in recent years as historic rates of public sector turnover have left some independent local entities with dozens if not hundreds of positions to fill. See, e.g., BREVARD CNTY. SHERIFF, INTERLOCAL AGREEMENT WITH COUNTY FOR FIRE RESCUE DISPATCH SERVICES AND UTILIZATION OF THE COMBINED COMMUNICATIONS CENTER 2, 3–4, 6, 8 (Mar. 1, 2024) (on file with author). Complicating matters, bottlenecks caused by human resources offices have impeded their efforts to fill positions. See CNTY. OF KERN, *supra* note 228, at 11, 14.

<sup>256</sup> See Kelly Kaczala, *Impasse Remains After Factfinder's Report in Contract Dispute Between Sheriff's Department, Commissioners*, TOLEDO BLADE (Jan. 13, 2025, 5:44 PM), <https://www.toledoblade.com/local/police-fire/2025/01/13/lucas-county-sheriff-factfinder-report-rejected/stories/20250113106> (highlighting a recent dispute between the sheriff and commission in Toledo, Ohio over staff salaries). For more examples of political disagreements, see *Lucas County Sheriff Walks out on Budget Hearing After Dispute with County Commissioner*, WTOL 11 (Nov. 13, 2024, 4:44 PM), <https://www.wtol.com/article/news/local/lucas-county-sheriff-walks-out-budget-hearing-dispute-county-commissioner/512-c4807768-7667-4246-9e9f-154a81ee46b>; *Commissioner Gerken Says Lucas County Sheriff to Blame for Stalled Jail Project*, WTOL 11 (Oct. 18, 2024, 6:18 PM), <https://www.wtol.com/video/news/local/512-1f2d19d4-81b7-476a-8797-7a2a9e9cd437>; Kelly Kaczala, *Lucas County Commissioners Reject New Contract with Sheriff's Office*, TOLEDO BLADE (Nov. 11, 2024, 7:31 PM), <https://www.toledoblade.com/local/politics/2024/11/11/lucas-county-commissioners-reject-new-contract-sheriff-office/stories/20241111101>.

the partner government but often on an unrecompensed basis.<sup>257</sup> Both tactics pose the same risk: that by diverting or reducing staff numbers, a county's personnel decisions can squeeze the capacity of independent local entities caught in their wake. Grant management comes with similar risks. When a county provides grant funds to a local subrecipient, it might ask nothing of the subrecipient beyond what the grant itself requires. For instance, if a federal grant comes with certain spending and reporting obligations, the county could simply pass those obligations along to the subrecipient without imposing any demands of its own.<sup>258</sup> But counties also use their intermediary role to set forth additional requirements. A couple recent examples are illustrative. In 2022, a subrecipient agreement in Porter County, Indiana specified that a library district must expend federal American Recovery Plan Act funds for purposes limited by federal law, and, as well, for purposes further dictated by the county itself.<sup>259</sup> A year later, in order to secure state funds for a marine patrol project, the sheriff's office in Manatee County, Florida made several interlocal promises to the local county, including that it would follow certain provisions of county code and transfer equipment purchased with the grant to county ownership when the project was complete.<sup>260</sup> In both of these cases, a county's intermediary position afforded it an interlocal toehold, one capable of expanding an administrative obligation into an exercise of administrative power.

### 3. *Domino Powers*

When viewed systematically, a county's administrative toeholds trigger a domino effect. The responsibilities and attendant powers discussed above—of managing property, staff, and grants on behalf of other entities—do not

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<sup>257</sup> For an example of non-county staff being compensated for performing county work, see ARAPAHOE LIBR. DIST., INTERGOVERNMENTAL AGREEMENT FOR VSPC USE AND BALLOT DROP DOX INSTALLATION 4 (Aug. 3, 2020) (on file with author); MANATEE CNTY. SHERIFF'S OFF., INTERLOCAL AGREEMENT REGARDING AUTOMATED SCHOOL SPEED ZONE ENFORCEMENT SYSTEM 3-4 (Feb. 13, 2024) (on file with author). But it appears that many such arrangements are without compensation. *See, e.g.*, MULTNOMAH CNTY. LIBR., MEMORANDUM OF UNDERSTANDING WITH MULTNOMAH COUNTY HEALTH DEPARTMENT, WOMEN INFANTS AND CHILDREN (June 22, 2023) (on file with author) (discussing county literacy program); MANATEE CNTY. SHERIFF'S OFF., INTERLOCAL AGREEMENT REGARDING THE COMMUNITY POLICING INITIATIVE 2 (2024) (on file with author) (explaining community policing initiative).

<sup>258</sup> For a generic grant agreement, see SPRINGFIELD GREENE CNTY. LIBR. DIST., SUBRECIPIENT AWARD (Apr. 24, 2023) (on file with author).

<sup>259</sup> *See* PORTER CNTY. LIBR. SYS., AMERICAN RECOVERY PLAN FISCAL RECOVERY FUNDS AGREEMENT 2 (Nov. 16, 2022) (on file with author) (setting forth the purpose and limiting the funds' use). The agreement also gave the county commission sole discretion to resolve procedural disputes. *Id.*

<sup>260</sup> MANATEE CNTY., SUBRECIPIENT AGREEMENT FOR WEST COAST INLAND NAVIGATION DISTRICT WATERWAY DEVELOPMENT PROGRAM 2 (Nov. 11, 2023) (on file with author). *See also* WILL CNTY., SUBRECIPIENT AWARD AGREEMENT BETWEEN WILL COUNTY AND FOUNTAINDALE PUBLIC LIBRARY DISTRICT 19 (Nov. 2, 2022) (on file with author) (“[t]he Subrecipient shall comply with all . . . County policies and regulations”).

exist in a vacuum. Rather, they together construct a longitudinal interlocal scheme, a regional reality where county commissions are regular actors, not merely sporadic visitors, in the lifecycle of sheriffs and library districts. A sheriff does not only interact with the commission when receiving a grant, refurbishing office space, or hiring new employees, but will very likely interact with the commission for all of these purposes and more. The sum of these administrative parts gives counties an umbrella governance role. From there, dominos begin to fall in other areas of local administration, creating new, second-degree fora for interlocal dependence and influence. This Section will explore two such secondary tools of county power: the power to *contract* with regional entities on favorable terms and the power to review, criticize, and fashion their conduct through *audit* engagements.

First, as indicated by the examples from Porter and Manatee Counties, intermediary county functions share a procedural commonality: all necessarily require a contract between the county and an independent local entity. These agreements may assume various labels—e.g. leases, appointment letters, or subrecipient awards—but they are functionally all interlocal contracts. That is, they are bilateral governance documents negotiated and executed between two or more government bodies.<sup>261</sup> Interlocal contracts are powerful yet inconspicuous sources of regional lawmaking. Operating through them, local governments make and exchange powers, create new governance frameworks, and negotiate policy priorities.<sup>262</sup> In this manner, interlocal contracts are normatively valuable tools, employed by public officials to collaborate with each other and respond nimbly to changing circumstances.<sup>263</sup> At the same time, among other critiques, these contracts are susceptible to power imbalances. Where two governments begin from an uneven bargaining baseline, the one holding an upper hand can exploit the process to extract concessions above and beyond what might be expected of an arms-length political negotiation.<sup>264</sup>

Sheriffs and library districts are no strangers to this imbalance. When contracting with a county government, they are often operating from a place of reliance: they rely upon counties for office space and federal grant money, among other needs, and executing a contract might be the only way to receive sought-after resources.<sup>265</sup> A contract might also be the best way to

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<sup>261</sup> See Daniel B. Rosenbaum, *The Local Lawmaking Loophole*, 133 YALE L.J. 2613, 2618 (2024) (defining interlocal agreements).

<sup>262</sup> See *Id.* (noting that interlocal agreements can be used to pool resources yet can also be employed as formal lawmaking documents).

<sup>263</sup> See *Id.* at 2630 (explaining the virtues of collaboration that interlocal agreements can promote).

<sup>264</sup> See *Id.* at 2653 (stating that relatively powerful governments can pressure the passage and content of an interlocal agreement).

<sup>265</sup> CDBG awards offer a clear case of mandatory contracting because subrecipient agreements are required by federal regulation. 24 C.F.R. § 570.503 (1988). Beyond those discussed in this Article, a number of other factors prompt independent entities to rely upon county contracts. In the case of libraries,

protect a sheriff's or library's interests. When sheriffs use county space without signing a formal lease agreement, they must trust counties to continue honoring their informal arrangement, a trust that sometimes proves misplaced.<sup>266</sup> In each of these scenarios, sheriffs and library districts face strong incentives to negotiate contracts with their local county commissioners, who face no similar incentives to reciprocate. What follows is predictable: counties can exercise their leverage and insist on contractual terms that partner entities are powerless to resist. These terms run the gamut. They include stipulations that a sheriff's office must report quarterly to the county commission and that a library district must "operate in accordance with past practices" as part of an asset transfer agreement.<sup>267</sup> Together, they germinate an interlocal relationship whose rules are open for debate—and are often subject to the county commission's agenda.

One particular term appears repeatedly in interlocal county contracts. Across contracts of varying topics and forms, sheriffs and library districts grant counties the authority to audit their operations. The county is empowered "to monitor and audit . . . the [library district]," as one contract states,<sup>268</sup> or to "audit, investigate, monitor, and inspect the activities of entities contracting with the County," according to a contract with a sheriff's office in Florida.<sup>269</sup> Sometimes these terms are included to satisfy a county's administrative obligations, as when counties are required to monitor a program under federal or state law.<sup>270</sup> Yet audit provisions are also common in contracts that lack a mandatory tether, which affords counties yet another toehold for exercising administrative power.<sup>271</sup> Although public auditing is

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newly created library districts usually execute transition agreements with the local county. *See* E-mail from Jamie LaRue, Exec. Dir., Garfield Cnty. Libs. (Aug. 30, 2024) (on file with author). While envisioned as temporary, these agreements can continue for substantial lengths of time. *E.g.*, MULTNOMAH CNTY. LIBR. DIST., LIBRARY ASSETS TRANSFER AGREEMENT (2014), [https://multnomah.granicus.com/MetaViewer.php?view\\_id=3&clip\\_id=1050&meta\\_id=66080](https://multnomah.granicus.com/MetaViewer.php?view_id=3&clip_id=1050&meta_id=66080) (agreeing to a 100 year term). In the case of sheriffs, counties serve as intermediaries for a wide variety of contracting purposes. *See, e.g.*, Taylor, *supra* note 67, at 1079 (discussing how contracting authority is "often vested in a local official[, or board,] other than the sheriff.").

<sup>266</sup> *See, e.g.*, HILLSBOROUGH COUNTY, INTERLOCAL AGREEMENT RELATING TO THE FACILITIES OF THE HILLSBOROUGH COUNTY SHERIFF IN THE COUNTY WAREHOUSE CENTER COMPLEX 1 (1997) (on file with author) (agreeing to relocate a warehouse because the county "expressed its desire" that it be housed in a different facility).

<sup>267</sup> HILLSBOROUGH COUNTY SHERIFF'S OFFICE, INTERLOCAL AGREEMENT WITH HILLSBOROUGH COUNTY FOR PINEBROOKE BUILDING IV 3 (2017) (on file with author); MULTNOMAH CNTY. LIBR. DIST., *supra* note 265, at 5.

<sup>268</sup> CONTRACT BETWEEN ORANGE COUNTY, Florida and Orange County Library Board of Trustees, Contract Y19-2059 (Sep. 30, 2019), at 3 (on file with author).

<sup>269</sup> PALM BEACH COUNTY, AMENDMENT NUMBER EIGHT TO LEASE AGREEMENT 3 (2018) (on file with author).

<sup>270</sup> *See, e.g.*, TIMBERLAND REGIONAL LIBRARY, INTERAGENCY AGREEMENT 1 (2016) (on file with author) (requiring audit authority to "allow the County to meet its annual reporting requirements").

<sup>271</sup> Counties also employ their budget authority as a gateway to auditing power. *See, e.g.*, COOK COUNTY, ILL., CODE OF ORDINANCES § 2-311.7 (2011) (empowering audits of "any government entity

primarily the domain of state-level audit offices—which conduct audits of state agencies, state officials, and a range of local entities—city and county governments perform audit functions too, whether by creating a formal position within the local bureaucracy (e.g., a city auditor) or by assigning a department to monitor the operations of other public actors, usually by enlisting an auditing firm from the private sector.<sup>272</sup>

These local audits can be powerful governance instruments. Certain audit varieties—notably performance audits, by which an auditor interrogates the “effectiveness” of an organization’s programs and operations—can delve deep into the policymaking decisions of a governmental body.<sup>273</sup> When subject to performance audits, an entity must participate broadly in the process by responding to questions posed by the auditor, providing copies of requested documents, and explaining practices and policies. The audit culminates in a written report, accompanied generally by the auditor’s findings or recommendations. Only rarely are governments mandated to adopt a report’s recommendations, but many do so anyways, pressured by the soft power of the public spotlight.<sup>274</sup> In practice, therefore, the process gives audit institutions a direct role in the adoption and modification of local policy.<sup>275</sup>

Counties are not deliberately pursuing such influence each and every time they insert audit provisions into their contracts with sheriffs and library districts. In many cases, in all likelihood, they are employing standard template documents that function as contracts of adhesion.<sup>276</sup> Nevertheless, once the contract is executed, counties do not leave their auditing powers unexercised.<sup>277</sup> They conduct performance-style audits that interrogate core governance functions of independent local entities, often touching upon flashpoint political issues in the process.<sup>278</sup> Recent sheriff audits have

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that is funded in whole or in part by the County”). Some state statutes also give counties audit power over independent bodies. For an example, see CAL. GOV’T CODE § 26909(a)(1) (West 2020) (mandating the county auditor to “make an annual audit of the accounts and records of every special district within the county”).

<sup>272</sup> Daniel B. Rosenbaum, *Local Oversight by State Audit 16–24* (unpublished manuscript) (on file with author).

<sup>273</sup> *Id.* at 9–16.

<sup>274</sup> *Id.* at 33. The account offered here is a simplified version of the pressures that motivate audit adoption. For the fuller discussion, see *id.*

<sup>275</sup> *Id.*

<sup>276</sup> This inference is drawn from the structure of county contracts, which often place audit provisions under a “Miscellaneous” section alongside boilerplate clauses. See, e.g., Lease Agreement Between Palm Beach County and Ric Bradshaw, Sheriff of Palm Beach County (July 11, 2023), at 11, 13 (on file with author).

<sup>277</sup> In Montgomery County, Texas, the sheriff’s office has been audited 66 times by the county since 2015. Response to Public Records Request, Open Records Division, Montgomery County Attorney (Nov. 12, 2024) (on file with author).

<sup>278</sup> For examples of flashpoint issues addressed by an audit, see, e.g., Mariya Murrow, Tim Darnell & Patrick Quinn, *Atlanta City Council OKs Audit into Billion-Dollar MARTA Program*, ATLANTA NEWS

examined racial disparities in use-of-force cases, critiqued deficient jail conditions, and questioned the quality of medical care provided to incarcerated persons.<sup>279</sup> Recent library district audits, meanwhile, have also engaged with prominent governance issues, ranging from an audit in Portland that lambasted the district's security policies amidst a surge in crime and drug use to an audit in Baltimore that questioned a district's use of its facilities.<sup>280</sup>

These audits can stir tension and sometimes animosity between governments.<sup>281</sup> Even so, they prove influential on the ground, as demonstrated by the high adoption rate of their recommendations. One follow-up report from Los Angeles concluded that of ninety-five original recommendations, seventy-seven had been fully implemented and eleven partially implemented, leaving only five recommendations on which the sheriff's office had taken no action.<sup>282</sup> In Oregon, within a year of a damning audit that documented alarming conduct by sheriff's deputies—regarding, in part, jail isolation and use-of-force practices—the sheriff's office had adopted or was implementing a majority of the audit recommendations.<sup>283</sup> While many recommendations urge compliance with state and federal laws, others urge

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FIRST (Mar. 21, 2023, 6:56 PM), <https://www.atlantaneWSfirst.com/2023/03/21/atlanta-city-council-oks-audit-into-billion-dollar-marta-expansion-program/> (reporting on the City of Atlanta's push to review how tax payers' dollars were being spent on the MARTA transit program).

<sup>279</sup> E.g., BRIAN CRIST, GRANT DAILEY, PETER HEINECCIUS & BROOKE LEARY, KING CNTY. AUDITOR'S OFF., SHERIFF'S OFFICE DATA SHOWS RACIAL DISPARITIES, POTENTIAL TO EXPAND ALTERNATIVE POLICING (2022); Vanessa Swales, *Here's What We Know so far About a Review into Deaths at the Milwaukee County Jail*, MILWAUKEE J. SENTINEL (Jan. 23, 2024, 6:35 AM), <https://www.jsonline.com/story/news/local/milwaukee/2024/01/23/heres-what-to-know-about-the-long-awaited-milwaukee-county-jail-audit/72312469007/>; Vince Briga, *Audit: Medical Provider Overcharged Broome County Jail by \$250,000*, SPECTRUM NEWS (Jan. 12, 2024, 5:19 AM), <https://spectrumlocalnews.com/nys/central-ny/public-safety/2024/01/12/audit--broome-county-jail-overcharged--250-000>.

<sup>280</sup> See Nicole Dewees, *Multnomah County Library Employees Raise Serious Concerns with Security, Workforce Equity, and Staffing*, MULTNOMAH CNTY. AUDITOR'S OFF. (Nov. 21, 2024), <https://multco.us/info/multnomah-county-library-employees-raise-serious-concerns-security-workforce-equity-and> (discussing criticisms of the district's security policies); HOWARD CNTY. LIBR. SYS., REPORT TO THE BOARD OF TRUSTEES (2023) (reporting an anonymous allegation that library facilities were being misused).

<sup>281</sup> See, e.g., Vockrodt, *supra* note 129 (regarding animosity between a sheriff and county following a county audit).

<sup>282</sup> Two recommendations were determined “no longer applicable.” Letter from Oscar Valdez, L. A. Dep't. of Auditor-Controller, Sheriff's Department - Report on Prior Audit/Report Follow-Ups 2 (June 17, 2024). See also Letter from Arlene Barrera, Cnty. of L.A. Dep't of Auditor-Controller, Sheriff's Department - Vehicle Theft Prevention Fund Fiscal Review (Jan. 24, 2023) (indicating most of the priority recommendations were adopted); SF. SHERIFF'S OFF., RESPONSE TO AUDIT FINDINGS OF INTERGOVERNMENTAL PARTNERSHIP GRANT 27 (2009) (on file with author) (agreeing to adopt recommendations).

<sup>283</sup> *Recommendation Status Evaluation: Sheriff's Office iis in the Process of Implementing About Half of the Recommendations from the 2022 Audit*, MULTNOMAH CNTY.: AUDITOR'S OFF. (Dec. 21, 2023), <https://multco.us/info/recommendation-status-evaluation-sheriffs-office-process-implementing-about-half#section-5>.

independent entities to comply with county policy.<sup>284</sup> Local bodies take even these policy recommendations seriously.<sup>285</sup> Further, in responding to them, they generally provide a written comment on each finding, a public form of reason-giving that brings internal practices into the public spotlight regardless of whatever policy changes they ultimately adopt.<sup>286</sup>

Audits thus offer a potent example of the domino effect of county administrative powers. They are the end result of an assortment of obligations, delegations, and systems of convenience that build inadvertently upon each other, ultimately expanding an intended county responsibility (i.e., owning property on behalf of a sheriff's office) into an arsenal of unanticipated powers that imbue interlocal functions, many of a far more substantive nature than a county's state-agent hat would initially suggest. This sweeping understory of county power operates mostly in the weeds of local governance; it stands in stark contrast with the formalist account of how local bodies operate in a regional system. Outside of a county's budget oversight and appointment authority—powers both of which are addressed by formal legal structures, albeit incompletely<sup>287</sup>—only rarely are additional administrative responsibilities recognized as potential levers of control.<sup>288</sup>

#### IV. INSTITUTIONAL CONSEQUENCES OF COUNTY POWER

The prior parts of this Article have highlighted a gap in local governance, one between a county's formal powers and how those powers manifest in practice. Formally, counties are passive and feeble institutions, in part due to the administrative burdens placed upon them. Functionally, however, counties are surprisingly influential, thanks largely to these very

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<sup>284</sup> See COUNTY OF KERN, SHERIFF-CORONER'S OFFICE, COMPLIANCE AND INTERNAL CONTROLS AUDIT 1 (2018) (on file with author) (seeking compliance with "the county's policies and procedures"); MICHAEL POST, HARRIS CNTY. AUDITOR'S OFF., INTERNAL AUDIT REPORT: INMATE TRUST BANKING CONTROLS 2 (Apr. 21, 2023) (expecting the sheriff's office to comply with "County Accounting Procedure C.8"). For state law compliance, see, e.g., BEN LAMERA, SACRAMENTO CNTY. DEP'T OF FIN., INTERNAL AUDIT REPORT: COMPLIANCE WITH SENATE BILL 978 (2021) (on file with author).

<sup>285</sup> See, e.g., ARLENE BARRERA, CNTY. OF L.A. DEP'T OF AUDITOR-CONTROLLER, SHERIFF'S DEPARTMENT – CARRY CONCEALED WEAPON PROCESS REVIEW 1 (2022) (noting how the Los Angeles Sheriff's department agreed to strengthen its Carry Concealed Weapons processes based on several improvement opportunities identified by the county auditor).

<sup>286</sup> See, e.g., Letter from Jessica Vega Pederson, Multnomah Cnty. Chair, to Nicole Dewees, Multnomah Cnty. Auditor's Off. (Dec. 4, 2023) (detailing Multnomah County Chair's response to ten different recommendations from county's audit director). For a case where the audit and its response captured public attention, see Nick Gerda, *Why LA County Supervisors Want to Make Jail Phone Calls Free*, LAIST (July 25, 2023, 4:02 PM), <https://laist.com/news/criminal-justice/la-county-jail-phone-calls-fees-board-of-supervisors-inmate-welfare-fund-recidivism-public-safety>.

<sup>287</sup> See *supra* Parts II and III.A (discussing sheriff and library budgeting control).

<sup>288</sup> For a rare example, see *Easley v. Lowndes County, Miss.*, No. 1:18-CV-139-SA-DAS, 2021 WL 431742, at \*4 (N.D. Miss. Feb. 2, 2021), explaining that a county's obligation to "furnish and fund the equipment necessary for the public defenders' office" is a factor weighing in favor of the county exercising control.



same administrative burdens. The core observation here—that counties are more powerful than they appear—is not, in itself, a cause for alarm. Indeed, many commentators would welcome a local ecosystem where counties play more muscular roles.<sup>289</sup> Many would also agree that sheriffs’ offices and special districts operate without adequate local oversight.<sup>290</sup> From a normative perspective, therefore, it might be unalarming—or even heartening—that counties can exercise this oversight through tools already at their disposal.

Yet there is another way to characterize the observations made in this Article. Counties are more powerful than they appear *because* the formal limits of their powers—i.e., the formal lines that separate a county commission’s domain from those of other regional entities—are easily eroded and incredibly porous.<sup>291</sup> Counties do not stay in their lanes, legally speaking. They can, through a variety of administrative levers, influence the governance and policy of ostensibly independent entities. Frequently they exercise these levers. But just as often they do not. When a county holds express or indirect power to approve a library district’s budget, for example, we might expect it to weaponize that power only sparingly, choosing instead to rubberstamp the vast majority of budgets that come the county’s way.<sup>292</sup> This oversight power lies dormant until the county commission has some reason to animate it. In the words of one library official interviewed for this Article, counties tend to stay out of library governance “unless they want to be involved.”<sup>293</sup>

What motivates a county’s involvement can run the gamut, spurred by a variety of political reasons that bear little connection to the merits of a given library budget. A county commission—or an individual commissioner—might use the county’s administrative perch to score political points by criticizing policies that have already angered residents in the community.<sup>294</sup> Or similarly, a commissioner might view decisions made by the library district as useful political foil, an opportunity to carve out a position on a polarizing national issue. Taking a position on library book bans, for example, might endear a commissioner to a mobilized local constituency, one likely to vote in force in an upcoming election. It might also draw attention across the state and beyond, an appealing prospect for a commissioner who aspires to higher office. Whatever the driving

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<sup>289</sup> Indeed, this Article’s recommendations will build upon this perspective. *Infra* Conclusion.

<sup>290</sup> *Supra* note 81 and accompanying text.

<sup>291</sup> Similar observations have been made about the formal distinctions between general and special-purpose local governments. Shoked, *supra* note 52, at 2000.

<sup>292</sup> The funds in question do not affect the county’s coffers, after all, and the library’s staff and directors—both of whom have more expertise in library operations—have already blessed the choices underlying the budget proposal.

<sup>293</sup> Interview with Bart Miller, *supra* note 94.

<sup>294</sup> See, e.g., Stephens, *supra* note 39, at 61 (discussing how a county commission began to scrutinize the library district after its director became a polarizing local figure).

motivation, a county's administrative powers can be weaponized selectively. And when they are, the choice might reflect a one-off incursion into the library district's governance—a singular moment in a dynamic interlocal scheme—or indicate the beginning of a larger realignment, an assertion of county authority that will manifest for some time to come.

Porous boundaries operate as well in the opposite direction. A county might exercise some degree of continuing control over an independent local entity, yet face incentives to *depart* from this status quo and retrench behind formal boundaries. A clear example arises in litigation: when counties face liability on behalf of independent entities, premised on a principal-agent theory of control, they predictably argue that they exercise no such control and take steps to create firewalls afterwards, designed to ward off similar arguments in the future.<sup>295</sup> Short of litigation, political considerations also compel counties to avoid, deflect, and deny responsibility for other regional actors. In recent years, for example, as library districts have been strained by mental health and homelessness challenges, some county governments—including those with a long history of involvement in library affairs—have been slow to lend support.<sup>296</sup>

Their recalcitrance might reflect a calculated effort to skirt political responsibility on a sensitive issue. Or it might be less volitional. Notwithstanding their significant administrative voice, counties still face fiscal and capacity limitations.<sup>297</sup> Many are governed by part-time elected officials who must choose which administrative levers to pull (and which to ignore) with their limited bandwidth.<sup>298</sup> The plain reality of a county's state-agent powers is not that these powers saturate every corner of local governance, but that they apply unevenly across a region and prove consequential when exercised. A single county may well assert control over a sheriff's office while completely ignoring its local library district.<sup>299</sup> Just

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<sup>295</sup> For case law regarding the county-sheriff relationship, see Joanne Eldridge, *County Sheriffs in Colorado: Beyond the Myth*, 38 COLO. LAW. 19, 23–24 (2009).

<sup>296</sup> In Nevada, the Las Vegas Clark County District Library has struggled to receive County assistance with homelessness challenges. *See, e.g.*, LAS VEGAS-CLARK COUNTY LIBR. DIST., Board of Trustees' Meeting Minutes December 14, 2023, at 3–4 (awaiting official notification from the County on a \$10 million funding appropriation submittal for mobile phones for people experiencing homelessness); LAS VEGAS-CLARK COUNTY LIBR. DIST., Board of Trustees' Meeting Minutes March 14, 2024, at 2; LAS VEGAS-CLARK COUNTY LIBR. DIST., Board of Trustees' Meeting Minutes July 11, 2024, at 82 (describing the “convoluted mechanism” the library district was required to use to secure funding through “New Market Tax Credits”). This is despite a history of county involvement. *See also supra* note 171 and accompanying text (discussing Oregon, Washington, and California).

<sup>297</sup> *See supra* notes 31–32 and accompanying text (discussing county fiscal challenges).

<sup>298</sup> On the limited powers of part-time elected officials, see generally Kellen Zale, *Part-Time Government*, 80 OHIO ST. L.J. 987 (2019).

<sup>299</sup> *Cf.* Kaitlyn Hart, *Clark County Library Board Member Pleads Guilty to Embezzling Over \$226,000*, E. ID. NEWS (Apr. 3, 2024, 11:54 AM) (describing a library district board member arrested for embezzling district money, indicating that the board member made budget decisions without county oversight).

as plausibly, though, it might later reverse this approach and place the library district in its crosshairs instead.<sup>300</sup>

For local officials, porous governance boundaries can be vexing. They are a source of confusion and competition between local entities, which may prompt officials to duplicate resources across an already fragmented local government system.<sup>301</sup> Porous boundaries are no less problematic from the perspective of local residents. Most fundamentally, they complicate democratic precepts of local government law. The remainder of this Part will explore two such complications: first, porous boundaries between counties and independent local entities can obscure channels of accountability, leaving residents unsure who to hold accountable for policies they dislike and unable to participate in governance decisions that are made interlocally, outside of the democratic process. Second, relatedly, porous boundaries necessarily blur institutional lines, which can subvert the purposes of discrete local entities and call into question why we have separate counties, sheriffs, and libraries in the first place.

#### A. *Accountability*

Accountability is a central precept of local democracy. As traditionally imagined, local government's smaller scale gives rise to a uniquely participatory politic. What cities and counties may lack in efficiency, they compensate in the accessibility of their leaders and governance decisions: residents live and work in proximity to their elected officials, who are products of the same community and share similar values.<sup>302</sup> Residents thus have opportunities to influence policy that would not exist at the national level. Likewise, although local officials might not possess the expertise of their state and national counterparts, they claim legitimacy because they are drawn from, and embedded within, a given local community.<sup>303</sup> Local officials and local residents are one and the same, per the traditional account. Conceptually, a city or county is merely the institutionalized outgrowth of iterative, participatory dialogues within and between these nearly interchangeable stakeholders.

This theoretical view of local government rests upon an important assumption. For residents to truly have voice in governance decisions, they must be able to hold local officials accountable. A locality's small scale means little if residents cannot actually participate in public processes and

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<sup>300</sup> *Id.*

<sup>301</sup> See Rosenbaum, *supra* note 243, at 429 (discussing competition, confusion, and duplication in fragmented local systems).

<sup>302</sup> Rosenbaum, *supra* note 272, at 38.

<sup>303</sup> *Id.* at 38–39, 42–43. Regarding lack of local expertise, see Richard C. Schragger, *Reclaiming the Canvassing Board: Bush v. Gore and the Political Currency of Local Government*, 50 BUFF. L. REV. 393, 404 (2002).

influence policy outcomes.<sup>304</sup> Small-scale accountability demands that when residents are upset with a policy decision, they must be able to identify, approach, and meaningfully engage with the decisionmaker in question.<sup>305</sup> Porous institutional lines complicate these prerequisites of accountability. When the local sheriff adopts a body camera policy, what actor should receive political credit—or political blame? When the local library bans a controversial book, who should residents approach if they wish to challenge (or lend support to) the decision? Local government operates with low salience under the best of circumstances.<sup>306</sup> When a single policy choice can be made by any one of several regional entities, savvy private parties—generally, those with more resources and political capital—might still be able to trace the threads of political influence, but many residents will struggle to identify accountable actors.<sup>307</sup> A local entity can easily be overlooked by the public, even if it pulls important levers.<sup>308</sup> Conversely, residents might also believe an entity more accountable than it truly is.<sup>309</sup> Both misunderstandings place barriers between a community and its policy desires.

Furthermore, a county's administrative powers can muddy chains of accountability even where a political dispute is highly visible in the community. For example, in one bitter budget fight in Escambia County, Florida, an outspoken sheriff told residents that the county commission was dangerously underfunding his office, jeopardizing his ability to keep the community safe.<sup>310</sup> County commissioners saw things differently. In their view, the sheriff had mismanaged his office's funds and was actually demanding a budget increase, which the county needed to raise taxes to

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<sup>304</sup> See Rosenbaum, *supra* note 261, at 2623 (stating that local government gains legitimacy from the access it grants citizens). Of course, this traditional assumption has not been accepted blithely by legal commentators. See, e.g., K. Sabeel Rahman, *Constructing Citizenship: Exclusion and Inclusion Through the Governance of Basic Necessities*, 118 COLUM. L. REV. 2447, 2493 (2018) (“Conventional approaches to participation and accountability have had mixed results in the context of public goods provision.”).

<sup>305</sup> See *Id.* (stating that the electoral process promotes accountability). See also Briffault, *supra* note 51, at 1146 (regarding special district governance).

<sup>306</sup> See generally Zoltan L. Hajnal & Paul G. Lewis, *Municipal Institutions and Voter Turnout in Local Elections*, 38 URB. AFFS. REV. 645 (2003) (discussing low voter involvement in local government).

<sup>307</sup> See Rosenbaum, *supra* note 243, at 437 (“Stakeholders with disproportionate ties to the levers of local power can also claim disproportionate access to, and influence over, the interlocal mechanisms by which it is distributed.”).

<sup>308</sup> See, e.g., K. Sabeel Rahman, *Infrastructural Exclusion and the Fight for the City: Power, Democracy, and the Case of America's Water Crisis*, 53 HARV. C.R.-C.L. L. REV. 533, 553 (2018) (describing an “opaque” water district). This reflects a larger problem of visibility and engagement at the local level. See Davidson, *supra* note 52, at 976 (“[T]here can be a decided lack of democratic engagement at the local level.”); Schleicher & Hills, *supra* note 184, at 534 (“City council members . . . languish in obscurity that defies their efforts to raise their profiles through innovative policymaking.”).

<sup>309</sup> As one example, county prosecutors have acquired increased salience in recent years, even as the potential for other local stakeholders to hold them accountable remains underappreciated. Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. REV. 1544, 1575–76 (2022).

<sup>310</sup> See Letter Escambia Cnty. Comm'r Jeff Bergosh to Sheriff David Morgan (Aug. 21, 2017) (on file with author) (discussing a commercial the sheriff disseminated to the public regarding the budget issues).

finance.<sup>311</sup> The political story here—that elected officials might offer contrasting narratives—comes as little surprise. But when hierarchies of legal authority are unclear, as they are with sheriff’s budgets,<sup>312</sup> it can prove challenging to hold local officials accountable for consequences that stem from their policy decisions, such as tax increases or safety concerns that might arise down the road.<sup>313</sup>

It bears noting that indeterminate local hierarchies, however opaque, can still carry a silver lining for mobilized residents. When two or more governments *might* hold authority over a given issue, residents are given a participatory choice: they can approach whichever government is most transparent, responsive, or receptive to their voices. If a sheriff resists calls to require body-worn cameras for all deputies, residents can ask their county commissioners to pressure the policy through the budgeting process. If a library board resists calls to remove LGBTQ+ materials, residents can seek to push this outcome indirectly, by lobbying their commissioners to wield their appointment or removal powers over the library board.<sup>314</sup> As these two examples suggest, the normative value of having multiple entry-points to the local political process turns, to a degree, on the substance of the underlying policy goal and whether its realization reflects community will. On the whole, however, it can be argued that having multiple empowered actors provides outlets from undesirable governance bottlenecks and serves ultimately to boost public responsiveness.<sup>315</sup> Multiple actors can also bring multiple perspectives to a given policy issue, an intergovernmental friction

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<sup>311</sup> Response for Respondent at 2, *David Morgan v. The Bd. of Cnty. Comm’rs of Escambia Cnty, Fla.* (on file with author).

<sup>312</sup> *Supra* Part II.A.

<sup>313</sup> See Cory McCoy, *Franklin Co. Strips Sheriff of Jail Control. ‘Your Actions Are Negligent’*, TRI-CITY HERALD (May 4, 2025, 12:34 AM), <https://www.tri-cityherald.com/news/local/article304873011.html> (regarding fallout from an audit that identified issues at a county jail but left local officials unsure, and contesting, who should take blame and have oversight going forward). An inverse consequence of murky hierarchies is that chains of authority that *should* be clear might get flattened and contorted. Cf. Brenner M. Fissell, *Police-Made Law*, 108 MINN. L. REV. 2561, 2604 (2024) (regarding police chiefs that “become more like quasi-legislators”); Bernadette Atuahene, *Predatory Cities*, 108 CAL. L. REV. 107, 167–68 (2020) (discussing power over a fund technically controlled by a separately elected official).

<sup>314</sup> For one such story from Christian County, Missouri, see Chris Drew, *A Rural Missouri Library Director Resigns After Years of Pressure to Ban LGBTQ+ Books*, NPR NEWS (Dec. 19, 2024, 10:48 AM), <https://www.kcur.org/education/2024-12-19/a-rural-missouri-library-director-resigns-after-years-of-pressure-to-ban-lgbtq-books>; Joe Hadsall, *Christian County Commission Takes More Active Role in Choosing Library Board Members*, SPRINGFIELD DAILY CITIZEN (June 27, 2023), <https://sgfcitizen.org/government/social-issues/christian-county-commission-takes-more-active-role-in-choosing-library-board-members/>.

<sup>315</sup> Cf. Nicole Stelle Garnett, *Unsubsidizing Suburbia*, 90 MINN. L. REV. 459, 462–63 (2005) (“[F]ragmentation may increase governmental responsiveness and efficiency by subjecting local authorities to some approximation of market forces.”). Relatedly, overlapping actors may also be more responsive because, in sum, they bring more resources to bear than if just one actor alone held authority over the matter. Cf. Joshua S. Sellers & Roger Michalski, *Democracy on a Shoestring*, 74 VAND. L. REV. 1079, 1101 (2021) (“The multiple and overlapping government layers in one part of a state might have many multiple times the resources of those in other parts of a state.”).

that might produce better governance outcomes.<sup>316</sup> A sheriff might listen more readily to community concerns—and might collaborate with the county to jointly address these concerns—when he knows that residents will take their grievance to the county commission regardless.

But indeterminate hierarchies of authority also influence local behavior in other, less accountable ways. Public entities are not static participants in their regional ecosystem; when governance boundaries are porous, local officials adjust their behavior accordingly. They learn that their legal powers are shared with, influenced by, and subject to the powers of other actors, which counsels a governance approach that prioritizes external relationships (with other local governments) over internal ones (with residents and other stakeholders within a community). As explored in Part III, counties employ contracts and other interlocal documents to guide the conduct of independent local entities and make regional policy.<sup>317</sup> When they do so, they are often acting outside of the traditional legislative process—that is, without acting by ordinance or resolution in an open public setting.<sup>318</sup> Interlocal agreements lack many of the trappings of formal legislative action. They are difficult to access, scrutinize, challenge, and enforce.<sup>319</sup> Their terms might be negotiated in a closed-door mediation, memorialized in a contract that residents cannot find online, and subject to future modification by unelected officials acting outside of the legislative process.<sup>320</sup> In short, each phase of an interlocal agreement’s lifecycle might occur away from sites of deliberative democracy.<sup>321</sup> Porous boundaries push local officials towards these bilateral governance tools, with the effect of sidelining other tools and reducing public participation to a secondary institutional value.

The budget dispute in Escambia County was ultimately resolved along these very lines. Through mediation, the sheriff and county commission reached a negotiated settlement, later implemented through an interlocal agreement, by which the county agreed to progressively increase the sheriff’s budget for the following three fiscal years.<sup>322</sup> The settlement

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<sup>316</sup> See, e.g., Ashley Deeks & Kristen E. Eichensehr, *Frictionless Government and Foreign Relations*, 110 VA. L. REV. 1815, 1818–19 (2024) (arguing for the virtues of friction in foreign affairs); Alexandra Klass, Joshua Macey, Shelley Welton & Hannah Wiseman, *Grid Reliability Through Clean Energy*, 74 STAN. L. REV. 969, 998 (2022) (regarding friction in the federal administrative state); Sharon B. Jacobs, *The Statutory Separation of Powers*, 129 YALE L.J. 378, 394 (2019) (same). On the value of conflict between public bodies, see, e.g., Daniel A. Farber & Anne Joseph O’Connell, *Agencies as Adversaries*, 105 CAL. L. REV. 1375, 1379 (2017).

<sup>317</sup> *Supra* Part III.

<sup>318</sup> Rosenbaum, *supra* note 261, at 2651–58.

<sup>319</sup> *Id.* at 2666–75.

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

<sup>321</sup> This larger problem has been recently explored by administrative law scholars. See Anya Bernstein & Glen Staszewski, *Populist Constitutionalism*, 101 N.C. L. REV. 1763, 1818 (2023) (discussing the “shifting [of] power from contestatory institutions like Congress and agencies to less contestatory ones like Presidents and judges”).

<sup>322</sup> Response to Public Records Request, *supra* note 134, at 1949, 1953–54.

represented a victory for the sheriff, an assertion of his formal independence notwithstanding the commission's central role in the regional budget process. Yet local residents—who would, ordinarily, be able to participate in open budget hearings<sup>323</sup>—were left firmly outside the discussion and eventually subjected to a policy decision that bound their leaders for three funding cycles to come.

### B. *Blurred Institutional Lines*

When porous boundaries cause officials to change their behavior, their choices affect not only how local entities govern and are held accountable by residents; they can also fundamentally transform an institution itself. When boundaries are porous, they inevitably blur and become frayed, which in turn raises the real risk of institutional mission creep: the risk that sheriffs or libraries (or counties themselves) begin to drift from their organic missions over time because they answer to a separate local entity, one that operates with a divergent mission.<sup>324</sup>

Local institutions are structurally insulated from each other for a reason. We expect that counties, library districts, and sheriff's offices all operate with different constitutional purposes, which leads them to acquire different forms of expertise and assume different functions in the composite governance of a local region.<sup>325</sup> Traditionally, a library district manages and provides informational materials, namely books, to residents of a local community.<sup>326</sup> A sheriff provides law enforcement to residents of unincorporated areas.<sup>327</sup> And counties traditionally provide basic services to these same unincorporated places.<sup>328</sup> Institutions evolve over time, of course, with local governments being no exception. Libraries have adopted digital materials and assumed more “holistic” roles in their communities, such as by providing healthcare services and offering programming for children and senior citizens.<sup>329</sup> Sheriff's offices have expanded into new areas of

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<sup>323</sup> FLA. STAT. ANN. § 200.065(2)(c) (West 2025).

<sup>324</sup> On the concept of local mission creep, see generally Daniel B. Rosenbaum, *Towards Mission Creep: Fragmented Local Governance in the Face of Crisis*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 229 (2020).

<sup>325</sup> *C.f.* Shoked, *supra* note 48, at 36 (advancing, in a discussion of conflicts between separately elected officials and other local bodies, the proposition that “entities and officials should stick to their designated lanes”).

<sup>326</sup> See *Save the Welwood Murray Mem'l Libr. Comm. v. City Council of the City of Palm Springs*, 263 Cal. Rptr. 896, 903 (Cal. Ct. App. 1989) (applying this traditional view).

<sup>327</sup> See *supra* note 22 and accompanying text (discussing sheriffs as providing law enforcement for unincorporated areas).

<sup>328</sup> See *supra* note 26 and accompanying text (discussing the role of counties).

<sup>329</sup> Interview with Bart Miller, *supra* note 94 (regarding holistic missions, including healthcare). See, e.g., Catalina Gaitán, *Multnomah County Library Employees Feel Unsafe at Work, Audit Finds*, THE OREGONIAN (Mar. 26, 2024, 12:10 PM), <https://www.oregonlive.com/books/2023/12/multnomah-county-library-employees-feel-unsafe-at-work-audit-finds.html> (showing a library offering digital

enforcement—for example, by providing security at public schools<sup>330</sup>—and some offices have revisited their historical emphasis on policing and incarceration, both targets of sustained criticism across the country in recent years, by creating outreach and engagement programs designed to interact with members of the public on less violent terms.<sup>331</sup> Many of these shifts can be said to occur organically, in the sense that they reflect evolving desires of an entity’s constituents and the evolving capacities and resources of its leadership.<sup>332</sup> To the extent that a library district changes over time, we could presume that these changes, so long as they fall within a district’s sphere of legal authority, do not ameliorate the core reasons for its existence or its structural independence.<sup>333</sup>

But porous local boundaries empower an exogenous source of mission creep: the evolution of one local government at the behest of another. The interests of a library district and a county might not always align, after all, and a power imbalance between the two can subvert one mission in the service of the other. Library districts have been enlisted to aid counties and other regional entities with a host of ancillary functions. They manage food pantries, assist with economic development efforts, and conduct outreach

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materials); Minutes, Kan. City Pub. Libr. Bd. of Trs., Minutes of Regular Meeting June 18, 2024 3–4 (June 18, 2024), <https://kclibrary.org/sites/default/files/2024-07/Regular%20Meeting%20-%20June%2018%2C%202024.pdf> (demonstrating that a library offers youth programs); MO. H. R., *supra* note 102 (demonstrating a library’s available senior citizen services). The evolution of libraries has prompted legal disputes over what constitutes “library purposes” under a law, contract, or deed restriction. *See, e.g.*, Myrtle Rebekah Lodge No. 6 of Proctorsville v. Cavendish Libr. Trs., 726 A.2d 86, 87–88 (Vt. 1999) (emphasizing that libraries are now “more than simply a place where books circulate.”).

<sup>330</sup> *See, e.g.*, Stewart v. Knox Cnty., No. 3:18-CV-381, 2020 WL 13443415, at \*2 (E. D. Tenn. May 27, 2020) (discussing “an agreement between the Knoxville Police Department, the Knox County Sheriff’s Office, and Knox County Schools for the assignment of law-enforcement officers to Knox County Schools.”).

<sup>331</sup> *See* CITY & CNTY. OF S.F. OFF. OF THE CONTROLLER, *supra* note 17, at 13 (regarding criticism of policing); SACRAMENTO COUNTY., *supra* note 144, at 3–4 (regarding homeless outreach). Regarding the historical emphasis on policing and incarceration and the criticism of sheriff violence, *see* Pishko, *supra* note 16, at 4–5.

<sup>332</sup> For example, libraries shifted programmatic focus during the COVID-19 pandemic in response to community demand for digital resources. *E.g.*, Francisco Garcia-Ortiz, *How Yakima Valley Libraries Took on COVID-19 and the Digital Divide*, 41 COMPUTS. LIBRS. 16, 17 (2021). Library districts also evolve in response to changing demographics, as seen in rural communities with aging populations. *See* Interview with Connie Baele, *supra* note 234 (regarding how changing demographics influence change in libraries).

<sup>333</sup> As a notable counterpoint to this benign assumption, legal scholars have shown that local entities, particularly special purpose local entities, are prone to mission creep as a consequence of private capture. *See* Naccarato, *supra* note 54, at 496–97 (regarding a business district that funds a privately contracted police force); Galvan, *supra* note 182, at 3058 (discussing the trend of municipal utility districts functioning beyond their organic purpose); Emerson, *supra* note 56, at 181–82 (discussing the broad powers exercised by the Reedy Creek Improvement District in Florida). In this vein, this Article raises the distinct yet related risk that local entities might also be captured by other *public* actors.



and promotion on behalf of regional transit initiatives.<sup>334</sup> They lend employees to work on county projects and support recurring county obligations, such as assisting in the administration of elections.<sup>335</sup> Similarly, at the behest of county commissions, sheriff's offices regularly accept new duties that fall outside their core missions. In 2022, for example, a commission in Florida imposed several new obligations upon its local sheriff's office, among them that the office conduct inspections of animal care facilities—a task previously assigned to the county's department of health.<sup>336</sup> More recently, in California, a county transferred to the sheriff its park ranger program, which “protects and manages natural and cultural resources”—a mission that focuses foremost on conservation in regional parks rather than law enforcement in unincorporated areas.<sup>337</sup>

No doubt, many of these decisions reflect reasoned policy choices. Due to their public-facing status, libraries might be optimal sites for food pantries; library districts may be valuable contributors to regional advocacy efforts. Sheriff's offices, criticized for their narrow law-and-order focus, might benefit from diversifying their efforts into parkland conservation. However laudable the reason, though, a new obligation places strain upon finite resources. Counties do not always provide additional funding when they assign new duties, which necessarily forces sheriffs and libraries to identify resources elsewhere in their budgets—budgets that are ostensibly insulated from county control—and pull staff away from other priorities.<sup>338</sup> Even salutary or innocuous mission creep raises existential questions. Why have an independent sheriff or library district at all? Why give these entities independent budgets and funding sources? If counties can engineer how independent local entities evolve, it is a misnomer to treat them as static, structurally insulated, purpose-driven institutions.

More troublesome is that mission creep might *not* be the result of innocuous policy choices. In recent years, legal scholars have explored how once-settled norms—informal practices and rules of governmental conduct—

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<sup>334</sup> See ASHLEY PUB. LIBR. DIST., Minutes of the Board of Directors (May 28, 2024), <https://ashleypubliclibrary.org/wp-content/uploads/2024/06/Minutes-May-2024.pdf> (discussing the status of the food pantry); Letter, Timberland Reg'l Libr., Response to Public Records Request (Oct. 3, 2024) (on file with author); Letter, Timberland Reg'l Libr., Letter in Support of Continued Funding for the Rural & Tribal Transportation Program (Oct. 10, 2016) (on file with author).

<sup>335</sup> See Memorandum, Hamilton East Pub. Libr., Memorandum of Understanding with Hamilton County Historical Society (2022) (on file with author); Minutes, Fulton Cnty. Libr. Sys., Board of Trustees Meeting Minutes Jan. 27, 2021, at 7 (on file with author).

<sup>336</sup> See BREVARD CNTY. SHERIFF'S OFF., *supra* note 142 (regarding the inspection of animal care facilities).

<sup>337</sup> County of Kern, *Recommended Budget Fiscal Year 202-25* (Aug. 2024), <https://www.kerncounty.com/home/showpublisheddocument/16964/638593939249870000>.

<sup>338</sup> See CITY & CNTY. OF S.F. OFF. OF THE CONTROLLER, *supra* note 17, at 12–13 (listing unfunded mandates).

have become neglected, coopted, and contested.<sup>339</sup> Public officials have been emboldened to cross once-respected informal boundaries, as traditional principles of cross-institutional restraint have given way, increasingly, to a new ethos: one that elevates political aims over fidelity to unwritten rules.<sup>340</sup> In this environment, when it furthers political goals, dormant sources of authority can be harnessed to overcome unwritten strictures that previously guarded institutional independence.<sup>341</sup> An atmosphere of norm erosion thus heightens the risk of exogenous mission creep.

Commentary on norm erosion has focused on federal and state actors; local government regimes have not yet received the same academic attention.<sup>342</sup> But local institutions are no less exposed to informal norms and the risk of their erosion.<sup>343</sup> Moreover, local officials are no less susceptible to the prevailing political forces—an increase in incivility, polarization, and democratic skepticism—that commentators have associated with the national trend.<sup>344</sup> Drawing upon existing powers, local clerks have asserted newfound, more muscular roles in election administration.<sup>345</sup> So have local auditors.<sup>346</sup> Meanwhile, elected local officials—including county commissioners—have taken maximalist, scorched-earth approaches to governance disputes, for instance by trying to incapacitate a governing body over a single policy disagreement.<sup>347</sup>

And of particular relevance to this Article, a county's administrative powers can be readily weaponized against other local institutions. Rather

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<sup>339</sup> See Benjamin Plener Cover & David Niven, *Geographic Gerrymandering*, 16 HARV. L. & POL'Y REV. 159, 160 (2021) (regarding gerrymandering); Anthony J. Gaughan, *Illiberal Democracy: The Toxic Mix of Fake News, Hyperpolarization, and Partisan Election Administration*, 12 DUKE J. CONST. L. & PUB. POL'Y 57, 83 (2017) (discussing partisan election administration); James A. Gardner, *Illiberalism and Authoritarianism in the American States*, 70 AM. U. L. REV. 829, 873 (2021) (explaining democratic backsliding); Jed Handelsman Shugerman, *Hardball Vs. Beanball: Identifying Fundamentally Antidemocratic Tactics*, 119 COLUM. L. REV. ONLINE 85, 86 (2019) (examining partisan policy tactics that depart from prior norms); Jonathan S. Gould, *Codifying Constitutional Norms*, 109 GEO. L.J. 703, 705 (2021) (noting that norms have unraveled in state and local governments); Eli Lehrer & Daniel Semelsberger, *Our Eroding Norms*, R ST. INST. (Mar. 22, 2018), <https://www.rstreet.org/research/our-eroding-norms/> (discussing norm erosion).

<sup>340</sup> See Gould, *supra* note 339, at 705 (discussing norm erosion); Shugerman, *supra* note 339, at 86 (discussing the concept of “hardball” political tactics).

<sup>341</sup> Cf. Seifter, *supra* note 49, at 1546 (discussing the risk that “agency independence might arguably become too democratic, driven by raw partisanship rather than deliberation or good government.”).

<sup>342</sup> Although, Jonathan Gould has observed that “[n]orms have also frayed in state and local governments.” Gould, *supra* note 339, at 705 (citing Miriam Seifter, *Judging Power Plays in the American States*, 97 TEX. L. REV. 1217, 1223–24 (2019)), Miriam Seifter's discussion of “power plays” focuses only on state institutions, but nevertheless speaks squarely to local conditions explored in this Article.

<sup>343</sup> See Rosenbaum, *supra* note 55, at 738–39 (discussing informality in local governance systems).

<sup>344</sup> See Gaughan, *supra* note 339, at 83 (discussing rising mistrust of democratic institutions).

<sup>345</sup> See, e.g., *Mitchell v. Norris*, 698 S.W.3d 361 (Ark. 2024) (reviewing the County Clerk's rejection of a countywide ballot initiative).

<sup>346</sup> See, e.g., *Miller v. Iowa Voter Registration Comm'n*, 13 N.W.3d 1 (Iowa 2024) (reviewing a county auditor's complaint against the Secretary of State regarding election security).

<sup>347</sup> See, e.g., *Jackson v. Harvey*, 908 S.E.2d 458 (W. Va. 2024) (reviewing actions taken by commissioners to prevent a county commission from conducting business).

than implementing a fee pooling system only with the sheriff's consent—the unwritten norm in many communities—county commissions have recently chosen to impose the system unilaterally as a mechanism of fiscal control.<sup>348</sup> Rather than deferring to a library district's recommendation when appointing new board members—the “standing courtesy” in many jurisdictions<sup>349</sup>, as discussed in Part III—examples abound of commissions revisiting and reasserting their appointment prerogative. In recent cases from Georgia, Colorado, and Alabama, for instance, county commissions departed from a prior norm of deference to appoint board members who shared particular ideological views.<sup>350</sup> Other counties have gone even further. In Florida, Idaho, and Texas, county commissions intentionally kept board seats unfilled to prevent a library district from operating—or else threatened to do so as part of a larger ultimatum.<sup>351</sup> Research suggests that library districts historically operated with low levels of influence by outside local governments.<sup>352</sup> Today however, libraries have become sites of contestation, a prominent flashpoint set against broader polarizations.<sup>353</sup>

These norm erosions raise the same risk of mission creep described above. Yet they arise out of a far more volatile stew. Where the right conditions exist, a local institution can change suddenly and in unpredictable ways, as political actors pull administrative levers that had previously lay fallow, and assert powers that had, formerly, operated towards less disruptive ends. Such epochal moments are still relatively rare, of course. Counties still have good reasons to ignore and neglect local entities rather than seeking to transform them.<sup>354</sup> Contentious moments of scorched-earth

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<sup>348</sup> See Evans, *supra* note 137 (regarding the traditional “gentleman’s agreement” by which fee pooling was established); Bourne, *supra* note 137 (framing fee pooling as “under-handed politics”); Atwill, *supra* note 139 (reporting an attempt to implement fee pooling before a new sheriff can object); *Byars Feels Sheriff’s Office is Being “Singled Out” in Fee Pooling Ordinance*, *supra* note 137 (reporting an attempt to pass a fee pooling ordinance over the sheriff’s objections).

<sup>349</sup> Chapoco, *supra* note 195.

<sup>350</sup> MONROE CNTY. BD. OF COMM’RS, *supra* note 174; Chapoco, *supra* note 195; Caroline Llanes, *Garfield County Library Board Appointments Draw a Crowd, After County Commissioners Take Over Process*, ASPEN PUB. RADIO (May 3, 2024, 1:54 PM), <https://www.aspenpublicradio.org/government/2024-05-03/garfield-county-library-board-appointments-draw-a-crowd-after-county-commissioners-take-over-process>.

<sup>351</sup> ANN MARIA ISLAND SUN, *supra* note 197; ADA CNTY., *supra* note 206; William Melhado, *Llano County Library Supporters Declare Victory as Officials Decide Not to Close All Branches*, TEX. TRIBUNE (Apr. 13, 2023, 7:00 PM), <https://www.texastribune.org/2023/04/13/llano-county-library-books/>. Needless to say, these examples are not limited to sheriffs and library districts. County commissions have also exercised administrative levers towards partisan goals in other recent contexts. See, e.g., *State ex rel. Stark Cnty. Bd. of Elections v. Stark Cnty. Bd. of Comm’rs*, 177 N.E.3d 232, 234–35 (Ohio 2021) (discussing a board of commissioners’ refusal to acquire new voting machines, a ministerial task that, the court found, the commission had a clear legal duty to perform.)

<sup>352</sup> Ahn, *supra* note 85, at 92–93.

<sup>353</sup> See Sutherland, *supra* note 82, at 84 (situating controversy over libraries “amongst broader, ongoing efforts to polarize local institutions.”).

<sup>354</sup> See *supra* notes 292–300 and accompanying text (discussing mixed and shifting county motivations to exercise control over regional peers).

partisanship, while headline-grabbing, are not stitched to the day-to-day fabric of local government.<sup>355</sup>

Even so, a climate that values political goals over institutional norms gives rise to other, more diffuse consequences. An entity's political identity can become increasingly central to its mission, particularly as its legal boundaries and controlling purpose remain fluid.<sup>356</sup> Relatedly, a climate of unsettled norms also opens the door for a new form of local mythmaking. Across the country, sheriffs and their supporters have embraced the "constitutional sheriff" movement, which argues that sheriffs hold ultimate authority within their jurisdictions to interpret and apply the U.S. Constitution, a power that supersedes any federal, state, or local claim to the contrary.<sup>357</sup> A parallel ideology at the county level—the constitutional county movement—has ascribed the same supremacy to county commissions.<sup>358</sup> Both movements share overlapping ideologies that commentators associate with the far right of the political spectrum.<sup>359</sup> The two movements also rely upon a shared veneer of institutional power. Because the boundaries of local institutions are so porous, the scope of their powers are *potentially* quite vast. This indeterminacy allows new narratives to take hold. In this vein, as formal strictures of local independence continue to prove ineffective, opportunistic narratives of power will increasingly gain salience—both in rhetoric and in practice.

#### CONCLUSION

Local governments are not siloed institutions. As much as formal sources of law—statutes, state constitutions, and judicial doctrine—often treat them as distinct and inviolable objects, local governments are inherently intertwined. They inhabit an interstitial space marked by nodes of collaboration and competition, set against ever-evolving norms and subject to shared constraints and instruments of mutual reliance. Two separate entities may operate with different purposes and under different enabling authorities. Even so, these formal silos break down upon closer examination,

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<sup>355</sup> Notwithstanding a trend towards unilateral fee pooling schemes, for example, some counties and sheriffs have recommitted to "civility and working together" in this space. Roberts, *supra* note 139.

<sup>356</sup> Cf. Pishko, *supra* note 16, at 371 (criticizing politics' impact on sheriffs' boundaries).

<sup>357</sup> Fairley, *supra* note 11, at 816. See *supra* note 72 and accompanying text (discussing sheriff's offices proclaiming they are superior to country governments).

<sup>358</sup> See, e.g., Michael Kransz, *Ottawa County Becomes 'Constitutional County'*, MLIVE (May 24, 2023, 11:01 AM) (discussing a board adopted resolution which prohibited the use of "any funds or resources [for] enforcing any law or rule that 'restricts the rights of any law-abiding citizen[.]'"). See also Ella Wind, Jessica Kalbfeld, Sara Moore & Carolyn Reyes, *Is the Constitutional County Movement the Newest Threat to Democracy?*, PUB. WISE 2 (June 2024), <https://publicwise.org/wp-content/uploads/2024/09/Constitutional-County-Movement.pdf> (describing the constitutional county movement).

<sup>359</sup> See, e.g., Pishko, *supra* note 16, at 10, 69 (discussing sheriff associations with "far-right" movements).

as this Article has explored, revealing an ecosystem where no single local entity can be truly understood in a vacuum.

County governments are emblematic of this local regime. Considered in a vacuum, counties are weak local polities. They lack the power and salience of cities, the resources of state agencies, and the expertise and relatively unencumbered portfolio of special districts. But a county's local-polity role should not be considered siloed from its state-agent role. Nor should its powers and duties be considered separate from those of other entities operating in the same territorial space. When we excavate beyond these paper distinctions, we can begin to understand counties as they actually operate in regional systems: as governments that are both weak and powerful, both limited and expansive in their jurisdictional reach.

Due to their state-agent role, counties are convenient administrators for a variety of state and regional obligations. Carrying out these obligations makes counties pivotal intermediaries—between states and local entities, between local entities and crucial sources of funding, and between local entities and each other. By intent and by accident, counties get drawn into interstitial governance projects that cannot be carried out by a state, city, or special district acting alone, but rather require an on-the-ground public actor with greater territorial coverage than a city and more parochial focus than the state. In this manner, counties' dual state and local identities are fitting scaffolding for their unique interstitial role. They need not mimic cities and assert identical regulatory powers. Nor need they be treated as state agencies and subsumed by the state apparatus. Counties' true virtue lies somewhere in between: as state-local conduits in a messy sub-federal system that would be far more fractious without them.<sup>360</sup>

Counties navigate their dual roles in a challenging, ever-evolving local environment. Placed in an intermediary position between state and municipal government, a county might choose the path of least resistance. It might rubberstamp budget requests, delegate appointment decisions, and employ template agreements for federal grant passthroughs. But it can also choose a path of engagement. As a county commission grows more active in its administrative duties, these duties become levers that reach across formal institutional lines and influence the governance of independent local entities. In some areas, counties cross institutional lines in ways not contemplated by state law. In other areas, however, counties cross—and to a degree, corrode and blur—institutional lines that state law has directly aimed to insulate. Under both scenarios, counties can become iterative

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<sup>360</sup> As a notable illustration, some counties are tasked by states to coordinate land use policies between local governments, arguably the most volatile inter-jurisdictional issue in local law. See Linda Lobao & David S. Kraybill, *The Emerging Roles of County Governments in Metropolitan and Nonmetropolitan Areas: Findings from a National Survey*, 19 ECON. DEV. Q. 245, 246 (2005) (stating that counties play a coordinating role between lower and higher levels of government on matters of regional planning).

participants in the lifecycle of sheriffs, library districts, and other local bodies. Their ultimate role in these snowballing regional relationships may be greater than the sum of its parts.

In mapping this interlocal system of county influence, this Article has argued that whatever the normative value of empowered county governments (and whatever the normative value of disempowered sheriffs or libraries), porous legal boundaries raise serious accountability and institutional concerns. In an era of civic mistrust and eroding norms, administrative powers can be weaponized towards partisan ends. Institutional missions can evolve quickly, perhaps beyond their organic purposes. And the boundaries between local entities can prove more aspirational than authentic. To mitigate against these risks, state legislatures could reconfigure local government wholesale, replacing fractured local regions with unitary regional governments that exercise formal power over the entirety of a metropolitan-level territory. County governments could be the vehicles of such reconfigurations, with all separately elected officials, regional districts, and municipalities within a county territory getting consolidated under its commission's express authority. Legal scholars have long advocated for this model—or similar regional models—as a remedy to the current fracture of local government.<sup>361</sup>

This Article joins that chorus. It acknowledges, however, that in many places the wholesale restructuring of fractured local regions might be neither politically viable nor normatively desirable.<sup>362</sup> Yet institutional challenges still can (and should) be met with other measures. Given that counties will continue to hold a crucial administrative position in fractured regions, county officials—and residents who hold them accountable—should think deliberatively about how they wish to exercise administrative powers. Other local stakeholders should rely upon formal assurances of independence with caution. And state governments, in particular, should be motivated to bring counties' administrative powers into the sunlight. After all, counties are valuable state agents; they assume state constitutional mandates and perform a range of state bureaucratic functions. How counties exercise their state duties impacts not only the policies of other local governments, but also the policies of the state. Rather than leaving the contours of county authority indeterminate, states should aim to solidify them. In equal measure, however, rather than letting counties operate through interlocal channels

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<sup>361</sup> See Rosenbaum, *supra* note 261, at 2633 (discussing regionalism debates in local government literature).

<sup>362</sup> In this vein, legal commentators have noted a shift in focus from regional government (the structural consolidation of local entities) to regional governance—systems and mechanisms by which local entities can realize benefits of regionalization in a manner short of full consolidation. *E.g.*, Reynolds, *supra* note 51, at 112–13 (noting such a shift).

shaped by oscillating norms, states should assert more oversight over their regional agents.

This dual-edged approach—strengthening counties while demanding vertical accountability from them—could take a variety of forms. To promote vertical accountability, for example, states could build upon Florida’s process for sheriff budgeting disputes. As noted in Part II, Florida offers what appears the only administrative adjudicatory scheme for conflicts between counties and their regional peers.<sup>363</sup> Rather than letting the local political process determine the boundaries between local bodies, a state can police this institutional line by mediating issues when they arise. State officials are not necessarily neutral or optimal mediators, of course, but their involvement would add a relatively objective third party to the mix. Moreover, if implemented with global transparency safeguards, such as adherence to open meetings and public records laws, the scheme could bring deliberations between counties and independent local entities firmly into the public spotlight. And while Florida’s process currently results in few formal appeals, even the prospect of state-level adjudication can impact the conduct of officials on the ground.<sup>364</sup>

Yet any effort to bolster vertical accountability must rest upon an important predicate. States must recognize counties’ important interstitial role in the sub-federal system by formalizing counties’ intermediary administrative powers. One way to formalize these powers is to designate counties as default arbiters in otherwise ill-defined interlocal schemes. As a baseline presumption, delegations made generically to local governments could be considered delegations to counties,<sup>365</sup> and counties could hold presumptive authority to resolve interlocal disputes—over budgets, appointments, audits, and more. Such an approach would fill gaps in patchwork states schemes while recognizing the default functions that counties already exercise.

At the same time, states must empower counties in their local-polity role to regulate and raise revenue on a basis equal to municipalities. Empowering county commissions demands bringing *some* separately elected officials and regional districts under formal county control—even if the measure falls short of full regionalization—thus reducing, to a degree, the existing disparity between a county’s relatively expansive territory and the comparatively narrow jurisdictions of its governing body.<sup>366</sup> We could

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<sup>363</sup> See *supra* notes 133–134 and accompanying text (discussing the administrative appeals process for conflicts in the state of Florida).

<sup>364</sup> See Response to Public Records Request, *supra* note 134, at 1445 (regarding a sheriff’s threat to employ the process as part of a budget negotiation).

<sup>365</sup> Regarding generic local delegations, see Rosenbaum, *supra* note 243, at 448 (citing Richard A. Bierschbach & Stephanos Bibas, *Rationing Criminal Justice*, 116 MICH. L. REV. 187, 190 (2017)).

<sup>366</sup> Cf. Dave Owen, *The Water District and the State*, 134 YALE L.J. 1, 63 (2024) (positing that “states might consolidate water governance in districts that operate as subdivisions of county governments.”).

imagine an ecosystem where clerks and sheriffs report to the county commission, or where airports and hospital systems are managed by county departments and subject directly to the commission's political oversight. In addition, mirroring a process undertaken sporadically in some jurisdictions, states could reevaluate the alphabet soup of special purpose districts, with an eye towards consolidating some or many of these districts under county control.<sup>367</sup> Such changes can promote local accountability.<sup>368</sup> They could give counties added salience and visibility in their regions.<sup>369</sup> And in the process, they can bring new public attention to the important role these institutions already play.<sup>370</sup>

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<sup>367</sup> Cf. Conor Clarke, Comment, *Merging and Dissolving Special Districts*, 31 YALE J. ON REGUL. 493, 494 (2014) (discussing the concept of special district consolidation).

<sup>368</sup> Commentators have critiqued special purpose governments for operating beyond the tethers of popular oversight and absent the legitimacy associated with general-purpose bodies. See Galvan, *supra* note 182, at 3046–58 (discussing democratic deficits of municipal utility districts); Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564, 603–04 (2017) (discussing the lack of accountability for special-purpose districts). Regarding accountability concerns and the risk of private capture, see Briffault, *supra* note 54, at 430. Regarding special districts acting like general-purpose bodies, see Shoked, *supra* note 52, at 2000.

<sup>369</sup> Michelle Anderson and others have advocated for stronger county governments, in particular for counties to be more unitary in structure—e.g., by employing a strong county executive model—which improves the visibility of counties and, therefore, the accountability of their actions. *Mapped Out*, *supra* note 1, at 935; Ostrow, *supra* note 21, at 199; Schleicher & Hills, *supra* note 184, at 501–03. These arguments mirror debates over unitary governments in state governance schemes. See, e.g., Seifter, *supra* note 49, at 1590 (regarding independent governance); see also Christopher R. Berry & Jacob E. Gersen, *The Unbundled Executive*, 75 U. CHI. L. REV. 1385, 1396 (2008) (regarding executive authority); Ganesh Sitaraman & Ariel Dobkin, *The Choice Between Single Director Agencies and Multimember Commissions*, 71 ADMIN. L. REV. 719, 233–23 (2019) (regarding single-director agencies).

<sup>370</sup> On the formation of county-wide political coalitions emerging from added visibility, see Schleicher & Hills, *supra* note 184, at 520–21.