PREDICTORS OF MUNICIPAL BANKRUPTCIES AND STATE INTERVENTION PROGRAMS: AN EXPLORATORY STUDY

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Why do some struggling cities file for bankruptcy while others, facing similar circumstances, do not? This Article builds on the literature examining the causes and consequences of municipal fiscal distress by exploring specific factors that lead municipalities to seek help from the state and federal government. Viewing municipal opportunities and constraints through political, economic, and legal lenses, this Article helps to explain the nuances of municipal decision making.

After identifying eight factors that may serve as predictors of municipal insolvency, we studied cities in fiscal distress with an eye toward uncovering the circumstances that led each of these cities into and, if applicable, out of, their financial predicaments. Union density, unfunded pension liability, and financial mismanagement were the three most prevalent factors in our sample population. Our analysis suggests that scholars and policymakers should focus their efforts on using bankruptcy relief in conjunction with state aid programs in order to address these primary sources of municipal distress more comprehensively.

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INTRODUCTION

Chicago and Detroit are alike in many ways. Both iconic Midwestern cities have publicly struggled with crime, corruption, and financial instability. In recent years, ratings agencies have downgraded the credit ratings for both cities.[3] And, although quite different in terms of size and industry concentration, both cities share many of the same financial problems, including mismanagement of finances and high unfunded pension liabilities.[4] Yet, Detroit chose to address its problems through bankruptcy, while Chicago, at least so far, has not. Why do some cities file for bankruptcy while others, facing similar financial problems, do not?

This question has many possible answers. One reason that municipal bankruptcy is not utilized consistently across cities is that access to bankruptcy relief differs across the fifty states. Although federal law allows any entity meeting the definition of a "municipality" to seek bankruptcy protection using chapter 9 of the U.S. Bankruptcy Code, municipalities also need specific authorization from the states in which they are located before they can file for relief.[5] Only twelve states unconditionally authorize municipal bankruptcy access; another twelve provide conditional authorization, two prohibit the practice outright, and the remainder provide no express authorization.[6] This patchwork of access provisions, combined with fear about the municipal bankruptcy process itself, leads many municipalities to utilize alternative fiscal relief remedies, even if their state does provide them with access to bankruptcy.

A related reason is that municipal bankruptcy, generally speaking, is rare and therefore somewhat of an unknown quantity. Between 1980 and 2012, fewer than 250 chapter 9 cases were filed.[7] Even during the Great Recession, when bankruptcy filings as a whole rose, municipal bankruptcies remained scarce: from 2008 to 2012, only one out of every 1,668 local

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[3] *Fitch cuts Chicago credit rating in wake of pension ruling*, REUTERS (Mar. 28, 2016), http://www.reuters.com/article/chicago-ratings-outlook-idUSL2N170121; *Detroit Credit Rating Downgraded Again, S&P Cuts General Obligation Debt Further into Junk Status*, REUTERS (Jul. 19, 2013), http://www.huffingtonpost.com/2013/07/19/detroit-credit-rating-downgrade-sp-debt-junk_n_3622643.html.

[4] *See* case studies in Part II, *infra*.

[5] 11 U.S.C. § 109(c) (providing for state authorization).

[6] Cory Eucalitto, Kristen De Pena & Shannan Younger, *Municipal Bankruptcy: An Overview for Local Officials*, STATE BUDGET SOLUTIONS (2013), https://www.alec.org/article/municipal-bankruptcy-an-overview-for-local-officials/.

[7] Keren Deal, Judith Kaminkar & Edward Kamnikar, *A descriptive case study of the Greene County, Alabama bankruptcy* 21(3) J. of Pub. Budgeting, Acct. & Fin. Mgmt., 337, 338 (2009).

governments filed for bankruptcy, and most of these filings were small utility authorities and special taxing districts rather than cities and towns.[8] Still, a small yet significant wave of high-profile filings occurred on the heels of the Great Recession, testing municipal bankruptcy's efficacy and bringing more attention to the process. If cities and towns continue to utilize chapter 9 in the wake of the recession, municipal bankruptcy may begin to offer more predictability and consistency than an ad hoc state program hastily created to address municipal distress.

Studying how municipalities choose to overcome distress, whether through bankruptcy or otherwise, is further complicated by the vast array of different state laws that impact a municipality's fiscal health. To date, the municipal decision-making process has remained largely inaccessible. To gain a better understanding of this process, this Article presents a novel framework for studying municipal choices relating to fiscal distress. Through case studies of 19 cities that have experienced distress over the past eight years, it examines factors that contribute to a municipality's fiscal health, as well as factors that influence a municipality's options when it comes to distress relief. In doing so, this Article contributes both to the literature focusing on the use and efficacy of municipal bankruptcy[9] and to the literature studying how fiscal crises have led municipalities to seek relief in the first place.[10]

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[8] Governing, *Bankrupt cities, municipalities list and map*, GOVERNING DATA (2014), http://www.governing.com/gov-data/municipal-cities-counties-bankruptcies-and-defaults.html.

[9] *See, e.g.,* Michael W. McConnell & Randal C. Picker, *When cities go broke: A conceptual introduction to municipal bankruptcy*, 60 U. Chi. L. Rev. 425 (1993) (describing how municipal bankruptcy could be used by courts to force prudent yet politically unpopular decisions on local officials); Omer Kimhi, *Chapter 9 of the Bankruptcy Code: A solution in search of a problem*, 27 Yale J. Reg. 351 (2010) (observing some of bankruptcy's harmful effects and advocating for proactive state oversight in lieu of bankruptcy); Clayton P. Gillette, *Fiscal federalism, political will, and strategic use of municipal bankruptcy,* 79 U. Chi. L. Rev. 281 (2012) (studying the power of bankruptcy courts and arguing that they should be allowed to impose resource adjustments on municipalities); David A. Skeel & Clayton P. Gillette, *Governance reform and the judicial role in municipal bankruptcy*, 125 Yale L.J. 1150 (2016) (contending that bankruptcy must also address governance dysfunction within the municipality to be effective as a long-term remedy); Laura Napoli Coordes, *Restructuring municipal bankruptcy*, 2016 Utah L.R. 307 (2016) (expressing concerns that municipal bankruptcy law in practice is out of touch with the broader goals of the bankruptcy system).

[10] Keeok Park, *To file or not to file: The causes of municipal bankruptcy in the United States*, 16(2) J. Pub. Budgeting, Acct. & Fin. Mgmt., 228 (2004) (developing a theory as to why municipalities file for bankruptcy and suggesting that governments in municipal bankruptcy be explored separately from those in severe fiscal distress); Jamie Peck, *Pushing austerity: State failure, municipal bankruptcy and the crises of fiscal federalism in the USA*, 7(1) Cambridge J. of Regions, Econ. & Soc'y, 17 (2013) (studying this area after

Studying municipal decision-making is critical to determining what types of fiscal relief will be effective for any given municipality. Using the framework developed in this Article, scholars and policymakers can better understand and identify the relative strengths and weaknesses of chapter 9 relief vis-à-vis various state programs for each particular municipality. Importantly, this Article's case studies and findings provide strong evidentiary support for the notion that chapter 9 municipal bankruptcy and state relief can work together and need not be viewed as mutually exclusive or as working at cross purposes.

This Article proceeds in four parts. Part I traces the historical development of chapter 9 bankruptcy and state programs and provides an overview of our methodology and approach to the issues raised in this Introduction. Part II is this Article's analytical heart, presenting case studies that showcase key examples of the various city-state interactions that influence municipal decision-making. Part III puts our findings into context and discusses their implications. Part IV concludes by emphasizing how this Article's framework will contribute to future research in this area. Finally, an Appendix describes the case studies not discussed in Part II.

I. BACKGROUND

This Part begins by outlining the historical development of chapter 9 of the U.S. Bankruptcy Code and the concurrent rise in state relief programs. We then describe our approach and methodology to examining predictors of both municipal distress and distress relief. An understanding of these background elements paves the way for the analysis in the subsequent Parts.

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the 2008 financial crisis); Richard Callahan & Mark Pisano, *Bankruptcy: The divergent cases of the city and the county of San Bernardino*, 14(1), Pub. Fin. and Mgmt., 84 (2014) (examining municipal bankruptcy's effects); Deal, *supra* note 7 (same); Reynolds Farley, *The bankruptcy of Detroit: What role did race play?* 14(2), City & Community, 118 (2015) (same); Rebecca Hendrick & Andrew Crosby, *Does bankruptcy really matter? The solvency of municipal governments in the Chicago metropolitan region*, 14(1), Pub. Fin. & Mgmt., 48 (2014) (acknowledging the benefits that a holistic study of insolvent governments can provide in understanding the differences between fiscal crises that result in bankruptcy and those that do not); Akheil Singla, James Comeaux, & Charlotte L. Kirschner, *Blind, broke, and bedlam: Differentiating fiscal stress from bankruptcy in California*, 14(3) Pub. Fin. & Mgmt., 306 (2014) (finding that the fiscal stress in California cities that filed for bankruptcy was not demonstrably more extreme than conditions found in similar California cities that did not file); Stefano Rossi & Hayong Yun, *What drives financial reform? Economics and politics of the state-level adoption of municipal bankruptcy laws*, CEPR Discussion Paper No. DP10984 (2015), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2698665 (analyzing state adoption of municipal bankruptcy laws through the lenses of economic and political theories of financial reform).

A. Chapter 9's Historical Development

In response to lawsuits filed against municipal officials during the Great Depression, Congress amended the Bankruptcy Act in the early 1930s to allow cities and towns to adjust their debts.[11] To overcome the problem of a "holdout" creditor—one who refused to agree to an otherwise consensual debt adjustment—Congress permitted a judge to approve a bankruptcy plan as long as a super-majority of creditors agreed to it.[12] Because contracts cannot be modified on a non-consensual basis under state law, Congress implemented this change using its powers to create bankruptcy laws, and thus, chapter 9 of the Bankruptcy Code was born.[13] Bankruptcy was a desirable solution because it offered a streamlined mechanism for debt resolution. Outside of bankruptcy, creditors are free to pursue their individual interests without thinking about the creditor group as a whole, which can be detrimental to all parties.[14]

Despite bankruptcy's benefits, Congress's first attempt at a municipal bankruptcy law was unsuccessful, as the U.S. Supreme Court declared the first iteration of municipal bankruptcy laws unconstitutional in 1936.[15] Specifically, the Court held that the amendments contravened the Tenth Amendment, which reserves undelegated powers to the states, because they allowed a federal judge to interfere with municipalities' contractual obligations.[16]

In response, Congress passed a revised set of amendments providing for more limited powers for the bankruptcy court. This time, the Supreme Court upheld the amendments, noting that Congress had successfully balanced the need for federal relief with protections for state sovereignty.[17]

Although these Bankruptcy Act amendments were originally intended to be temporary, in 1946, Congress made them permanent.[18] In subsequent years, Congress continued to revise chapter 9: once in the 1970s, during New York City's fiscal crisis; once in the 1980s; and most recently, in

[11] Anna Gelpern, *Bankruptcy, backwards: The problem of quasi-sovereign debt,* 121 Yale L.J. 888, 923 (2012).

[12] Vincent S.J. Buccola, *Who does bankruptcy? Mapping pension impairment in chapter 9*, 33 Rev. Banking & Fin. L. 585, 593-94 (2014).

[13] McConnell & Picker, *supra* note 9 at 427-28.

[14] David A. Skeel, *When should bankruptcy be an option (for people, places, or things)?*, 55 Wm & Mary L. Rev. 2217, 2235-36 (2014).

[15] Ashton v. Cameron Cty. Water Improvement Dst. No. 1, 298 U.S. 513 (1936).

[16] *Id.* at 530-31.

[17] United States v. Bekins, 304 U.S. 27 (1938).

[18] In re Las Vegas Monorail Co., 429 B.R. 770, 778 (Bankr. D. Nev. 2010).

1994.[19] The 1994 amendments are particularly significant because they require states to specifically authorize their municipalities to file for bankruptcy. These amendments effectively reversed the baseline for state authorization: prior to the amendments, silence in the law constituted assent to filing; now, anything less than explicit authorization is deemed to prohibit a bankruptcy filing.[20]

Structurally, chapter 9 of the Bankruptcy Code borrows heavily from chapter 11, the chapter typically used to reorganize businesses. Today, chapter 9 is used to adjust the debts of general purpose municipalities, such as cities and towns, as well as special purpose districts, such as hospitals or water authorities.[21]

B. State Programs and Their Limitations

Not all states permit their municipalities to utilize chapter 9, and even those that do often also have alternative, state-designed intervention or rescue programs available. Such programs vary widely from state to state and may include characteristics such as provision of state aid to the municipality, the appointment of an emergency manager to temporarily run a city or town, or the creation of a state-run board to oversee the municipality's finances. To the extent that a state in our sample has a developed, alternative system available for its municipalities, we have described that system in the case studies below.

Although the quality and composition of state programs varies considerably, all state programs are somewhat limited in their ability to address municipal fiscal crises. The Contracts Clause of the United States Constitution prohibits states from impairing contractual obligations on a non-consensual basis, and the Bankruptcy Clause similarly prohibits states from effectuating a comprehensive debt composition.[22] Thus, as the Supreme Court has recently confirmed, states cannot enact their own bankruptcy law.[23] In addition to legal limitations, states often encounter practical difficulties in managing intervention programs due to their own fiscal limitations.

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[19] M. Heith Frost, *States as Chapter 9 bankruptcy gatekeepers: Federalism, specific authorization, and protection of municipal economic health*, 84 Miss. L.J. 817, 829-33 (2015).

[20] *Id.* at 831-33.

[21] Skeel, *supra* note 14 at 2220.

[22] *See* U.S. Constitution, Art. I, §10; U.S. Constitution, Art. I, §8 cl. 4.

[23] *See generally* Puerto Rico v. Franklin California Tax-Free Trust, 136 S. Ct. 1938 (Jun. 13, 2016) (holding that Puerto Rico is a "State" for purposes of bankruptcy preemption).

C. Approach and Methodology

We began our study of municipal fiscal distress by identifying a set of factors that we hypothesized would serve as key predictors of municipal behavior. We then created a sample of municipalities to study by identifying cities with a population greater than 50,000 that had encountered fiscal distress. We chose the population floor in order to increase our chances of access to publicly available information about the cities, as well as to be able to focus our study on the effects of fiscal distress on cities with a significant population. To isolate those cities that had experienced fiscal distress, we examined the credit ratings of municipal bond issuances, as well as municipalities that had either filed for bankruptcy or utilized a state intervention program.

We began by acquiring a list of U.S. cities with a population of at least 50,000 from the U.S. Census Bureau's population estimate.[24] The 752 cities that fit this criterion formed our initial sample. Separately, we identified the thirteen municipalities that had filed for bankruptcy during and after the 2008 financial crisis.[25] Of these, four cities with populations of 50,000 or higher had filed.

We next accessed municipal bond rating data for each of the cities from the Electronic Municipal Market Access (EMMA) web database provided by the Municipal Securities Rulemaking Board (MSRB).[26] To encompass the timing of the Great Recession and its aftermath, we gathered data for each of the cities in our sample using the time frame of 01/01/2007 to 12/01/2015. After pulling the database records from the website, we manually examined each record to observe the ratings corresponding to the municipal bonds issued by each city in our sample. We consulted ratings from each of the four ratings agencies whenever applicable: Fitch, the Kroll Bond Rating Agency (KBRA), Moody's, and Standard & Poor (S&P). We noted bond issuances with below investment grade ratings for each of the cities, including the four that had filed for bankruptcy since 2008. We also noted occurrences of long-term debt ratings on bonds at or lower than BBB+ or Baa1 on the applicable scale. This yielded a list of 19 cities with populations greater than 50,000 that have either filed for bankruptcy during the time period in question, issued below investment grade rated bonds during the time period, or both.

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[24] U.S. Census Bureau, *Annual estimates of the resident population for incorporated places of 50,000 or more*, FACTFINDER (2015), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2015_PEPANNRES&src=pt.

[25] Governing, *supra* note 8.

[26] www.emma.msrb.org.

This list of 19 cities, located within 13 states, formed our new sample:

Table I – Population and Bankruptcy Status

City Name	State	Population Estimate (as of July 1 2014)	Bankruptcy Since 2008 Y or N
Glendale	Arizona	237,517	N
Irvine	California	248,531	N
San Bernardino	California	215,213	Y
Stockton	California	302,389	Y
Vallejo	California	120,228	Y
New Britain	Connecticut	72,878	N
West Haven	Connecticut	54,905	N
Chicago	Illinois	2,722,389	N
Hammond	Indiana	78,384	N
New Orleans	Louisiana	384,320	N
Baltimore	Maryland	622,793	N
Detroit	Michigan	680,250	Y
North Las Vegas	Nevada	230,788	N
Bayonne	New Jersey	65,975	N
Jersey City	New Jersey	262,146	N
Niagara Falls	New York	49,219	N
Utica	New York	61,332	N
Scranton	Pennsylvania	75,281	N
Providence	Rhode Island	179,154	N

We next sought to create a comprehensive picture of each of the sample cities' financial status before, during, and, if applicable, after financial distress. To do so, we examined bond issuance reports and supplemented these reports with other publicly available information, such as published studies and news articles, from the relevant time period. We also undertook a comprehensive review of the laws applicable to each municipality to identify laws that could impact a municipality's fiscal stability.

To better organize our research, we centered our analysis on eight factors that we predicted would shape both municipal fiscal distress and the municipality's ability to respond to it. These factors are commonly discussed in the literature on municipal fiscal health;[27] however, the relative

[2727] *See, e.g.,* Skeel & Gillette, *supra* note 9 (discussing financial mismanagement and home rule); Park, *supra* note 10 (discussing municipal bankruptcy access).

importance of these factors and the extent to which they interact to impact municipal fiscal health in particular cases has not been comprehensively documented. We coded each factor's prevalence within each municipality by developing a three-point scale of high, moderate, and low. "High" represented a high impact on municipal fiscal distress, "moderate" a moderate impact, and "low" a low impact.

The following provides a brief description of the eight factors chosen and the reasoning behind our choices.

1. Fiscal Home Rule

Home rule refers to a municipality's ability to pass laws to govern itself without seeking state authorization.[28] Fiscal home rule is home rule authority over monetary affairs. Whether a municipality has been granted home rule powers naturally affects the amount of discretion the entity has to structure itself. Many states provide some form of home rule to their municipal entities.[29] Yet, the degree of home rule powers varies considerably across jurisdictions: some municipalities have the ability to legislate in almost any area without fear of state intervention, while others are subject to rigorous state oversight and approval, even though they retain some freedom to act autonomously in discrete matters.[30] The degree to which a particular municipal entity is granted fiscal home rule authority does not bear on whether that entity is authorized to file for bankruptcy. Nevertheless, we predicted that those municipalities experiencing a greater degree of fiscal home rule authority would have more options at their disposal for dealing with fiscal distress on their own. Thus, these municipalities may not need to turn to federal or even state solutions for fiscal relief.

To ascertain whether a state provided home rule authority, we searched through state statutes and constitutional provisions using the online legal research platform Westlaw. To determine practical limitations on home rule authority, we examined publicly available reports from sources such as municipal leagues and state websites. When fiscal home rule or the ability to raise taxes independently of state approval was available to the municipality, we coded this factor as having a low impact on fiscal distress.[31] When minimal restraints on fiscal home rule authority were present, such as constitutional constraints on home rule powers, borrowing

[28] Skeel & Gillette, *supra* note 9 at 1222.

[29] Lyle Kossis, Note, *Examining the conflict between municipal receivership and local autonomy*, 98 Virginia L. Rev. 1109, 1114-15 (2012).

[30] Skeel & Gillette, *supra* note 9 at 1226.

[31] All coding results appear in Table X, *infra*.

constraints, balanced budget requirements, or significant tax caps, we coded the impact as moderate. Where extensive restraints, such as no local taxing authority or explicit fiscal carve-outs in home rule grants were present, or where no fiscal home rule authority was available, we coded the impact as high.

Table II – Fiscal Home Rule[32]

City	**State**	**Fiscal Home Rule?**
Glendale	Arizona	Yes
Irvine	California	Yes
San Bernardino	California	Yes
Stockton	California	Yes
Vallejo	California	Yes
New Britain	Connecticut	No
West Haven	Connecticut	No
Chicago	Illinois	Yes
Hammond	Indiana	No
New Orleans	Louisiana	Yes, but some restrictions
Baltimore	Maryland	Yes
Detroit	Michigan	Yes, but some restrictions
North Las Vegas	Nevada	No
Bayonne	New Jersey	Yes, but some restrictions
Jersey City	New Jersey	Yes, but some restrictions
Niagara Falls	New York	No
Utica	New York	No
Scranton	Pennsylvania	Yes
Providence	Rhode Island	No

2. Intergovernmental Aid

The extent of aid that cities receive from states necessarily affects the municipality's ability to offer services to residents. Increasingly, cities are experiencing cuts to intergovernmental aid and must look to other revenue sources to make up the difference.[33] We predicted that cities receiving

[32] Detailed research for each of the cities' fiscal home rule status is on file with the authors; significant fiscal home rule information is also described in the case studies in Part II and in the Appendix, *infra*.

[33] Erin A. Scharff, *Powerful cities: Limits on municipal taxing authority and what to do about them*, 91 NYU L. Rev. (forthcoming 2016); *see also* Frank Shafroth, *Any Hope*

relatively low amounts of intergovernmental aid would, in the absence of alternative revenue-generating options, struggle to fill budget shortfalls in the wake of a fiscal crisis.[34]

Where possible, we determined parameters for the provision of state aid through state law research on Westlaw. We also obtained information on state aid expressed as a proportion of total general state revenues from a 2015 report on fiscal structure compiled by the National League of Cities.[35] When possible, we confirmed this data via publicly accessible reports.[36] Intergovernmental aid for the states in our sample ranged from a low of 8% to a high of 39%. When intergovernmental aid as a proportion of state general revenue was equal to or greater than 30%, we coded this factor as low impact; between 20-29%, moderate; and below 20%, high.

Table III – Intergovernmental Aid (as a percentage of state general revenue)		
City	**State**	**Intergovernmental Aid**
Glendale	Arizona	21%
Irvine	California	8%
San Bernardino	California	8%
Stockton	California	8%
Vallejo	California	8%
New Britain	Connecticut	39%
West Haven	Connecticut	39%
Chicago	Illinois	24%
Hammond	Indiana	19%
New Orleans	Louisiana	13%
Baltimore	Maryland	32%

for a Municipality's Fiscal Future?, The GMU Municipal Sustainability Project, Jun. 9, 2016, https://fiscalbankruptcy.wordpress.com/2016/06/09/any-hope-for-a-municipalitys-fiscal-future/ (describing the negative impact on East Cleveland when Ohio took away revenue streams, including shared revenue from taxes).

[34] *See* C. Hoene & M.A. Pagano, *Cities & State Fiscal Structure*, NATIONAL LEAGUE OF CITIES (2008), http://www.nlc.org/documents/Find%20City%20Solutions/Research%20Innovation/Finance/cities-state-fiscal-structure-2008-rpt.pdf ("[G]enerally, well-structured state aid increases the overall capacity of municipal governments and in many instances provides a level of equalization and base support for municipalities that may lack other resources.").

[35] National League of Cities, Cities and State Fiscal Structure 2015, NLC.org, http://www.nlc.org/find-city-solutions/city-solutions-and-applied-research/finance/cities-and-state-fiscal-structure. Accessed: 6/14/2016.

[36] Detailed research results are on file with the authors. Specific information on intergovernmental aid is described in Part II and in the Appendix, *infra*.

Detroit	Michigan	16%
North Las Vegas	Nevada	26%
Bayonne	New Jersey	24%
Jersey City	New Jersey	24%
Niagara Falls	New York	30%
Utica	New York	30%
Scranton	Pennsylvania	22%
Providence	Rhode Island	29%

3. Tax and Expenditure Limits

State tax and expenditure limits, commonly known as TELs, tie restrictions on government revenues or spending to either a fixed numerical target or to increases in an index such as population or inflation.[37] Additionally, states may require voter approval or a legislative supermajority before a municipality can pass new taxes.[38] In some cases, local governments can impose their own TELs.[39] As of 2015, 41 states impose some type of TEL on their municipalities.[40]

TELs can constrain state expenditures, particularly when combined with a supermajority requirement to raise taxes.[41] Although empirical evidence on the extent to which TELs limit state and local spending has been mixed,[42] we predicted that municipalities subject to TELs would have a greater need for federal and state assistance with fiscal crises, particularly when TELs are coupled with other restraints, such as limited intergovernmental aid and minimal home rule authority. TELs restrain fiscal federalism by interfering with the choices available to localities.[43] Logically, then, states with more binding TELs will have municipalities more reliant upon state aid.

To ascertain the existence of TELs, we examined state statutes and

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[37] Tax Policy Center, *State and local tax policy: What are tax and expenditure limits?*, THE TAX POLICY BRIEFING BOOK (2009), http://www.taxpolicycenter.org/briefing-book/what-are-tax-and-expenditure-limits.

[38] *Id.*

[39] *Id.*

[40] National League of Cities, *supra* note 35.

[41] Brian G. Knight, *Supermajority voting requirements for tax increases*, 76 J. Pub. Econ. 41 (2000).

[42] *See, e.g.,* Tracy M. Gordon, *The Calculus of Constraint: A critical review of state fiscal institutions*, FISCAL CHALLENGES: AN INTERDISCIPLINARY APPROACH TO BUDGET POLICY (Cambridge University Press, E. Garrett, E. Graddy & H. Jackson eds., 2008).

[43] Leah Brooks & Justin H. Phillips, *An Institutional Explanation for the Stickiness of Federal Grants,* JLEO (2010) 26(2): 243 (Aug. 2010).

constitutional provisions using Westlaw and confirmed the existence of limitations by examining state Department of Revenue websites.[44] We also utilized data on TELs from the National League of Cities report.[45] Following the authors' practice in the report, we distinguished between binding TELs and TELs that could potentially be circumvented by other measures, which we labeled "semi-binding TELs."[46] Whether a TEL is binding or not is important because the more binding a TEL is, the more it limits the fiscal autonomy of the municipalities it impacts. When a state had no TELs or non-binding TELs, we coded the impact as low; states with semi-binding TELS were coded as moderate; and states with binding TELs were coded as high.

Table IV – Tax & Expenditure Limits

City	**State**	**Tax & Expenditure Limits**
Glendale	Arizona	Binding property tax limit; general expenditure limit
Irvine	California	Binding property tax limit; general expenditure limit
San Bernardino	California	Binding property tax limit; general expenditure limit
Stockton	California	Binding property tax limit; general expenditure limit
Vallejo	California	Binding property tax limit; general expenditure limit
New Britain	Connecticut	No TELs
West Haven	Connecticut	No TELs
Chicago	Illinois	Semi binding property tax limit; no expenditure limit
Hammond	Indiana	Semi binding property tax limit; no expenditure limit
New Orleans	Louisiana	Semi binding property tax limit; no expenditure limit
Baltimore	Maryland	Semi binding property tax limit; no expenditure limit[47]
Detroit	Michigan	Semi binding property tax limit; no expenditure limit
North Las Vegas	Nevada	Binding property tax limit; general expenditure limit
Bayonne	New Jersey	Binding property tax limit; general expenditure limit
Jersey City	New Jersey	Binding property tax limit; general expenditure limit
Niagara Falls	New York	Semi binding property tax limit; no expenditure limit

[44] Detailed research results are on file with the authors. Specific information on TELs is described in Part II and in the Appendix, *infra*.

[45] Hoene & Pagano, *supra* note 34.

[46] *See, e.g., id.* (providing the examples of a lone rate limit that might be circumvented by raising assessments, and a lone assessment limit that might be circumvented by raising property tax rates).

[47] Baltimore's property tax limit can be circumvented at the municipality's discretion and is effectively non-binding. For this reason, we have designated this factor as "low risk" for Baltimore in Table X.

Utica	New York	Semi binding property tax limit; no expenditure limit
Scranton	Pennsylvania	Semi binding property tax limit; no expenditure limit
Providence	Rhode Island	Semi binding property tax limit; no expenditure limit

4. Access to Municipal Bankruptcy

As previously discussed, local governments may only file for chapter 9 municipal bankruptcy relief if the state in which they are located explicitly authorizes them to do so. Although about half of the states have specific authorization for chapter 9 filings, many condition access to chapter 9 on a municipality meeting particular qualifying criteria. Other states have no laws governing chapter 9 filings; this silence in the law is deemed to prohibit bankruptcy access.[48] Accordingly, we predicted that municipalities located in states with restrictive or no authorization for chapter 9 would be more likely to utilize a state receivership program or, to the extent possible, enact reforms locally instead of taking advantage of the federal bankruptcy system when available to them.

We used Westlaw to locate state laws granting municipalities access to chapter 9 bankruptcy. In addition to scrutinizing state laws explicitly relating to municipal bankruptcy, we examined other laws regarding state financial policies and practices to obtain a fuller picture of a municipality's likelihood of accessing bankruptcy in any given state. We then scaled the states according to the ease with which their municipalities may access bankruptcy. When states had no preconditions to accessing municipal bankruptcy, we coded this factor as low impact; when states had preconditioned authorization, moderate; and when states had no authorization, high.

Table V – Access to Municipal Bankruptcy		
City	**State**	**Access to Municipal Bankruptcy**
Glendale	Arizona	Express authorization; no preconditions
Irvine	California	Authorization with preconditions
San Bernardino	California	Authorization with preconditions
Stockton	California	Authorization with preconditions
Vallejo	California	Authorization with preconditions
New Britain	Connecticut	Authorization with preconditions
West Haven	Connecticut	Authorization with preconditions

[48] *See generally* Governing, *Municipal bankruptcy state laws*, GOVERNING DATA (2012), http://www.governing.com/gov-data/state-municipal-bankruptcy-laws-policies-map.html.

Chicago	Illinois	Authorization with preconditions
Hammond	Indiana	No authorization/silent
New Orleans	Louisiana	Authorization with preconditions
Baltimore	Maryland	No authorization/silent
Detroit	Michigan	Authorization with preconditions
North Las Vegas	Nevada	No authorization/silent
Bayonne	New Jersey	Authorization with preconditions
Jersey City	New Jersey	Authorization with preconditions
Niagara Falls	New York	Authorization with preconditions
Utica	New York	Authorization with preconditions
Scranton	Pennsylvania	Authorization with preconditions
Providence	Rhode Island	No authorization[49]

5. Unfunded Pension Liability

Nationwide unfunded liabilities for pensions and retiree health care range anywhere from $1.4 to over $4 trillion, depending on the assumptions used in the calculation.[50] Scholars have been able to link large unfunded pension liabilities and unfunded retiree health benefits to the likelihood that a municipality will become insolvent.[51]

We developed a measure accounting for the unfunded pension liability ratio of each of the 19 cities using data presented in the Pew Charitable Trusts' report *The State Pensions Funding Gap*.[52] The most recent year for

[49] Although Rhode Island technically authorizes chapter 9 filing upon the municipality meeting certain conditions and approvals, the state's financial policies effectively prohibit the practice such that municipal bankruptcy is unauthorized in effect, if not in the law. For a fuller discussion, see Frost, *supra* note 19 at 837 n.93.

[50] *See,* C. Eucalitto, *State budget solutions' third annual state debt report shows total state debt over 4 trillion (Report),* REUTERS (Aug. 28, 2012), http://www.reuters.com/article/usa-states-debt-idUSL2E8JS6ZT20120828; Robert Novy-Marx & Joshua D. Rauh, *Public pension promises: How big are they and what are they worth?* 66 J. Fin. 1211 (2011); The Pew Center on the States, *The widening gap update*, PewTrusts.org (Jun 19, 2012), http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpensionsupdatepdf.pdf.

[51] *See, e.g.,* Thom Reilly, RETHINKING PUBLIC SECTOR COMPENSATION: WHATEVER HAPPENED TO THE PUBLIC INTEREST? (Routledge 2012); Wayne H. Winegarden, *Going broke one city at a time: Municipal bankruptcies in America*, PACIFIC RESEARCH INSTITUTE (Jan. 2014), https://www.pacificresearch.org/fileadmin/documents/Studies/PDFs/2013-2015/MunicipalBankruptcy2014_F.pdf.

[52] The Pew Charitable Trusts, *The state pensions funding gap: Challenges persist New reporting standards may offer more guidance to policymakers*, PewTrusts.org (Jul. 2015).

which data is available is 2013. The percentages found in Table VI provide the ratio of public sector pension liability in each state that was funded in 2013. States with lower funded ratios have greater amounts of unfunded pension liability and present a greater risk of financial instability. Because funding at or above 80% is considered the mark of a "healthy" fund,[53] we coded states with a pension funded liability ratio of 80% and above as low impact; those with ratios between 70% and 79% as moderate; and those with ratios below 70% as high.

Table VI – Unfunded Pension Liability		
City	**State**	**Pension Liability Funded ratio (2013)**
Chicago	Illinois	39%
New Britain	Connecticut	48%
West Haven	Connecticut	48%
New Orleans	Louisiana	58%
Providence	Rhode Island	58%
Detroit	Michigan	60%
Scranton	Pennsylvania	62%
Bayonne	New Jersey	63%
Jersey City	New Jersey	63%
Hammond	Indiana	65%
Baltimore	Maryland	65%
North Las Vegas	Nevada	69%
Glendale	Arizona	72%
Irvine	California	72%
San Bernardino	California	72%
Stockton	California	72%
Vallejo	California	72%
Niagara Falls	New York	89%
Utica	New York	89%

6. Public Sector Union Density

A broad collection of studies links unionism and collective bargaining with higher costs of government.[54] Several scholars suggest that the

[53] *Public Pensions*, Ballotpedia, https://ballotpedia.org/Public_pensions.
[54] *See, e.g.,* Sarah F. Anzia & Terry M. Moe, *Public Sector Unions and the Cost of*

political power of public sector unions has a greater impact on fringe benefits than on wages, and collectively bargained environments have been associated with enhanced pension coverage for employees.[55] As such, we surmised that municipal governments with a higher density of public sector union membership would have more challenges with unsustainable wages and benefits as well as the ability to renegotiate collective bargaining agreements.

We explored this factor by researching the percentage of unionized government employees in local areas. We obtained data from the most recent year Current Population Survey produced by the U.S. Census Bureau and the U.S. Bureau of Labor Statistics. We also obtained data from 2014 from UnionStats.com; this data was organized according to Metropolitan Statistical Area (MSA).[56] After narrowing the 2014 data to include only the relevant MSAs for our 19 cities, we sorted and ranked the data from greatest to least by the percentage of government workers in unions to produce an index of public sector union density for each MSA that includes the 19 cities in our sample.[57] We calculated the percentage for each area by taking the total number of public sector union members in each MSA and dividing by the total amount of public sector workers in the same MSA. When union membership among public sector workers was less than 30%, we coded this factor as low impact; between 31% and 50% as moderate; and above 50% as high.

Table VII – Public Sector Union Density (Metropolitan Statistical Area)

Density Rank	**City**	**State**	**Union Membership Among Public Sector Workers**
1**	North Las Vegas	Nevada	78.62%
2	Niagara Falls	New York	76.73%
3	Utica	New York	73.12%

Government, 77 J. of Politics 114 (2015); Olle Folke, Shigeo Hirano & James M. Snyder, *Patronage and elections in U.S. states*, 105 American Pol. Sci. Rev., 567 (2011); Robert G. Valletta, *The impact of unionism on municipal expenditures and revenues*, 42 Industrial and Lab. Rel. Rev. 430 (1989).

[55] *See* Richard B. Freeman, *Unions, pensions, and union pension funds, in* PENSIONS, LABOR, AND INDIVIDUAL CHOICE, 89-121 (University of Chicago Press, D. A. Wise ed., 1985); Eileen Norcross, *Public sector unionism: A review* (Working Paper No. 11-26) (May 2011), http://mercatus.org/sites/default/files/WP1126-Public-Sector-Unionism.pdf.

[56] Barry T. Hirsch & David A. Macpherson, *Union Membership and Coverage Database from the Current Population Survey*, UNIONSTATS.COM (2014), http://unionstats.com/.

[57] Data for union membership in North Las Vegas was provided separately. Personal communication from Ryann Juden, Assistant City Manager, North Las Vegas (on file with authors).

4	Stockton	California	72.83%
5*	Bayonne	New Jersey	67.86%
6*	Jersey City	New Jersey	67.86%
7	Providence	Rhode Island	64.11%
8	West Haven	Connecticut	62.74%
9	Vallejo	California	58.49%
10	New Britain	Connecticut	56.56%
11*	Chicago	Illinois	56.34%
12*	Hammond	Indiana	56.34%
13	Irvine	California	55.80%
14	Detroit	Michigan	55.00%
15	Scranton	Pennsylvania	54.79%
16	San Bernardino	California	54.61%
17	Baltimore	Maryland	34.01%
18	Glendale	Arizona	19.75%
19	New Orleans	Louisiana	9.40%

** Shared Metropolitan Statistical Area*
***Data for union membership in North Las Vegas was provided by Ryann Juden, Assistant City Manager, North Las Vegas (detailed data on file with the authors).*

7. Financial Mismanagement

Financial mismanagement has been linked to municipal fiscal insolvency and is often exposed when the town, municipality, or special district issues too much debt.[58] Fiscal instability may come to light after years of financial mismanagement and economic decline. We therefore studied documentation of poor financial management of a municipality's fiscal resources as a contributing factor to municipal distress.

To study financial mismanagement, we reviewed bond reports issued by Fitch, KBRA, Moody's and S&P for any relevant documentation. We also sought information from journal articles, government reports, and news articles. When we found no documentation, we coded this factor as low impact; when we found some evidence, such as budgeting practices that consistently fell short of targeted goals or a tendency to look to short-term remedies, moderate; and when there was an indication that financial mismanagement was a major contributor to distress, as when mismanagement resulted in purchases or practices that saddled the city with debt for years to come, high.[59]

[58] Winegarden, *supra* note 51.

[59] A fuller discussion of financial mismanagement in specific cities is found in Part II and the Appendix, *infra*.

Table VIII – Financial Mismanagement		
City	**State**	**Financial Mismanagement**
Glendale	Arizona	Major factor
Irvine	California	Major factor
San Bernardino	California	Major factor
Stockton	California	Major factor
Vallejo	California	Some evidence
New Britain	Connecticut	No documentation
West Haven	Connecticut	No documentation
Chicago	Illinois	Major factor
Hammond	Indiana	No documentation
New Orleans	Louisiana	Major factor
Baltimore	Maryland	No documentation
Detroit	Michigan	Major factor
North Las Vegas	Nevada	Major factor
Bayonne	New Jersey	No documentation
Jersey City	New Jersey	Major factor
Niagara Falls	New York	No documentation
Utica	New York	Major factor
Scranton	Pennsylvania	Some evidence
Providence	Rhode Island	Major factor

8. Triggering Event

A significant triggering event can lead directly to fiscal distress. One well-publicized example is the decision by public officials in Orange County, California to engage in a highly leveraged strategy of derivatives-based speculation. When interest rates rose, these investments turned into "losers" for the county, precipitating a loss of $1.7 billion in the county's portfolio and leading to the county's decision to file for bankruptcy.[60] As another example, Boise County, Idaho's 2011 bankruptcy filing was primarily caused by the county's inability to pay a multimillion dollar judgment to a developer.[61] We therefore studied documentation of internal

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[60]Floyd Norris, *Orange County's Bankruptcy: The Overview; Orange County Crisis Jolts Bond Market*, N.Y. TIMES (Dec. 8, 1994), http://www.nytimes.com/1994/12/08/business/orange-county-s-bankruptcy-the-overview-orange-county-crisis-jolts-bond-market.html.

[61] Marc Fudge, *The varied and diverse predictors of local government bankruptcy*, PA

and external triggering events that contributed to municipal distress.

Similar to the approach used with respect to financial mismanagement, we reviewed bond issuance reports, journal articles, government reports, and news articles to determine whether an internal or external triggering event contributed to a municipality's fiscal distress. If we found no triggering event, we coded the factor as low impact; if we found that an event was a contributing factor, such as a court decision that impacted the municipality's fiscal health, moderate; and if we found a major triggering event that directly contributed to municipal insolvency and financial instability, such as the natural disasters that occurred in New Orleans, high.[62]

Table IX – Triggering Event

City	**State**	**Triggering Event**
Glendale	Arizona	Major event- Stadiums
Irvine	California	Major event- Park
San Bernardino	California	No triggering event
Stockton	California	Major event- Ill-timed bond offering
Vallejo	California	No triggering event
New Britain	Connecticut	No triggering event
West Haven	Connecticut	No triggering event
Chicago	Illinois	Contributing factor – pension ruling from Il. Sup. Ct.
Hammond	Indiana	No triggering event
New Orleans	Louisiana	Major event- Hurricane / Gulf Oil Spill
Baltimore	Maryland	No triggering event
Detroit	Michigan	Contributing factor- Auto industry
North Las Vegas	Nevada	Major event- City Hall / Water treatment facility
Bayonne	New Jersey	No triggering event
Jersey City	New Jersey	No triggering event
Niagara Falls	New York	No triggering event
Utica	New York	No triggering event
Scranton	Pennsylvania	Contributing factor
Providence	Rhode Island	No triggering event

TIMES (2014), http://patimes.org/varied-diverse-predictors-local-government-bankruptcy/.

[62] A fuller discussion of triggering events that occurred in specific cities is found in Part II and the Appendix, *infra*.

9. Other Factors

Other factors, including other municipal revenue sources, political preferences within local government, and employer or industry concentration within a municipality, are possible contributors to municipal fiscal distress. Although we acknowledged these factors where documentation was available, we chose to focus on the above eight factors as those that both the scholarly literature and industry reports point to as being the most significant for the greatest number of municipalities in our sample.

After identifying the eight factors and analyzing their impact on the fiscal health of the municipalities in our sample, we compiled a detailed case study for each municipality. These case studies demonstrate the various ways in which the factors identified interact to produce different effects in individual municipalities. As discussed more fully below, certain combinations of factors, such as high pension burdens, a large union presence, and fiscal mismanagement, tended to produce high levels of fiscal distress. Yet, the case studies also demonstrate how such distress is either mitigated or exacerbated by the presence of other factors, such as home rule authority and intergovernmental aid.

II. CASE STUDIES: STATES AND CITIES

State involvement in municipal fiscal affairs entails much more than the dollar amount states allocate to their local governments. This Part examines the states in which our sample cities are located in an effort to capture the key components of the state's relationship with its localities. In addition, this Part paints a detailed picture of some of the sample cities to identify combinations of factors that led to municipal distress.

Studying the relationship between each state and city in our sample helps uncover the key reasons behind the path a city will ultimately choose in order to manage its fiscal stress. Scholars have acknowledged that a municipality's ability to deal with problems is strongly connected with its relationship to its state.[63] Sometimes, a city will be forced to choose a particular path because all others are closed to it; other times, the city may have a range of options at its disposal but will be guided to a particular path because of its legal, political, and historical relationship with the state. Clearly, state policies and laws have a substantial impact on a city's financial position and on that city's ability to access various fiscal relief

[63] Gerald E. Frug & David J. Barron, City Bound: How States Stifle Urban Innovation, CORNELL UNIVERSITY PRESS 2008; Coordes, *supra* note 9.

mechanisms.

The following case studies provide examples of cities embarking on a multitude of different pathways into and out of fiscal distress. The case studies featured in this Article represent a spectrum of cities that receive varying amounts of intergovernmental assistance. Because of the importance of a city's relationship with its state, we present these case studies in order of relative state assistance or involvement in municipal fiscal affairs, with those states being the most involved presented first. Case studies for the following cities are presented below to provide the most vivid illustration of the variance in state-city relationships: Detroit, Michigan; Chicago, Illinois; Scranton, Pennsylvania; Bayonne, New Jersey; West Haven, Connecticut; Glendale, Arizona; and Irvine, Stockton, San Bernardino, and Vallejo, California. Additional case studies for the remainder of the states and cities in our sample can be found in the Appendix: New Britain, Connecticut; Hammond, Indiana; New Orleans, Louisiana; Baltimore, Maryland; North Las Vegas, Nevada; Jersey City, New Jersey; Niagara Falls and Utica, New York; and Providence, Rhode Island.

A. Michigan

Michigan has extensive intervention and aid mechanisms for its municipalities, to the point that several cities, notably Detroit, have begun to push back on the state's interference. Indeed, in the period leading up to Detroit's bankruptcy, city leaders actively resisted state intervention, fearing that it would lead to long-term state control of the city.[64] Michigan's extensive assistance program for municipalities allows for the appointment of an emergency manager who can take over city operations, restructure finances, request emergency relief, provide technical assistance, and even dis-incorporate or dissolve a city entirely.[65] Emergency managers have played a significant role in Michigan's history, running seven cities in the state from 1990 to 2010.[66]

Michigan has also recently begun taking more proactive measures to monitor and evaluate its municipalities' fiscal health. State officials now must create a "stress" score for each municipality based on nine categories,

[64] The Pew Charitable Trusts, *The state role in local government financial distress*, PEWTRUSTS.ORG (Jul. 23, 2013), http://www.pewtrusts.org/~/media/assets/2013/07/23/pew_state_role_in%09_local_government_financial_distress.pdf.

[65] *Id.*

[66] *Id.*

and the scores are posted on the Treasury Department's website.[67] State officials can then intervene if the score indicates that a municipality may become insolvent. The exact manner of intervention is determined by the municipalities themselves, which can choose among four options, including the appointment of an emergency manager.[68]

Despite Michigan's extensive options and mechanisms for intervention, some critics have noted that Michigan's response to local distress very often amounts to tightening fiscal controls, without offering additional aid for the labor and service obligations the state continues to impose on its municipalities.[69]

Michigan's constitution contains explicit protections for public pensions. Article IX, Section 24 provides that the accrued financial benefits of each public pension plan "shall be a contractual obligation…which shall not be diminished or impaired."

Home rule authority in Michigan is also provided for by the state constitution, which prohibits Michigan from imposing unfunded mandates on local governments.[70] Most Michigan cities derive most of their revenue from property taxes, although the property tax rate for cities is capped.[71] Cities may also levy an income tax of up to 1%.[72] At the state level, Michigan shares a percentage of its sales tax revenue with local governments, distributing the revenue based on population.[73] Cities may also incur general obligation debt up to a limit of 10%.[74] All Michigan local governments must further adopt an annual balanced budget.[75]

1. Detroit
   Population 688,701; Annual budget: $1 billion[76]

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[67] *Id.*

[68] *Experts examine current Chapter 9 cases and what lies ahead for municipal distress in 2013*, (2013), http://www.abi.org/educational-brief/experts-examine-current-chapter-9-cases-and-what-lies-ahead-for-municipal-distress.

[69] Joshua Sapotichne et. Al., *Beyond state takeovers: Reconsidering the role of state government in local financial distress, with important lessons for Michigan and its embattled cities*, MSU EXTENSION WHITE PAPER (Aug. 31, 2015), http://msue.anr.msu.edu/uploads/resources/pdfs/beyond_state_takeovers.pdf.

[70] Samuel B. Stone, *Home rule in the Midwest*, POLICY CHOICES FOR INDIANA'S FUTURE (2010), http://policyinstitute.iu.edu/uploads/PublicationFiles/PC_HmRules_Web.pdf.

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id*.

[76] Joe Guillen, *Benefits for council staff included in state budget*, Detroit Free Press, Mar. 11, 2016, http://www.freep.com/story/news/2016/03/11/detroit-city-council-approves-

Detroit, Michigan's largest municipality, filed for bankruptcy on July 18, 2013 to restructure approximately $18 billion in outstanding debt.[77] Of this, $3.5 billion was comprised of pensions, and another $6.4 billion constituted other employee benefits such as retiree healthcare.[78] In the years before the bankruptcy, Detroit lost 1 million residents and three quarters of its retail business.[79] The city's poverty stands in stark contrast to the wealth of its surrounding suburbs, and some even believed that Michigan would dissolve the boundaries between Detroit and its suburbs to force the suburbs to help address Detroit's financial condition.[80]

Although pension debt, and the ability of a bankruptcy court to reduce it, was a focal point in Detroit's bankruptcy, the bankruptcy as a whole was caused by numerous other factors, including poor development decisions, suburban flight, employment loss, and risky financial ventures.[81] Thus, although pension mismanagement was certainly present, some observers view it as a symptom of the real problem: Detroit officials' irresponsible fiscal behavior.[82] In its bankruptcy plan, Detroit cut pensions by approximately 18%.[83] One report described the city as the "poster-child" for poor fiscal management practices, noting that city officials repeatedly "kicked the can down the road" rather than addressing problems as they arose.[84] Other studies blame union influence for making the Detroit auto industry less competitive and for driving up costs for retirees, many of which Detroit was ultimately unable to pay.[85]

1-billion-budget/81638852/. Population numbers are taken from the United States Census Bureau (2013). When possible, annual budget numbers are given for the current fiscal year; otherwise, they are given for the most recent year for which data is publicly available. Budget information is designed to provide the reader with a general context for how badly distressed the city is.

[77] Frost, *supra* note 19.

[78] *Id.*

[79] *Id.*

[80] *See generally* Christopher J. Tyson, *Municipal Identity as Property*, 118 Penn St. L. Rev. 647 (2014) (discussing municipal boundaries in the context of Detroit's bankruptcy and financial woes).

[81] V. Chintamaneni, *The unraveling of an American city: Pensions, Municipal Debt, and Chapter 9 Bankruptcy*, 22 Elder L.J. 523, 532 (2015).

[82] *Id.*

[83] Frank Shafroth, *Protecting the ability to provide essential public services*, THE GMU MUNICIPAL SUSTAINABILITY PROJECT (Jul. 1, 2015), https://fiscalbankruptcy.wordpress.com/2015/07/01/protecting-the-ability-to-provide-essential-public-services/..

[84] Fudge, *supra* note 61.

[85] J. Hawkins, *5 ways liberalism destroyed Detroit*, TOWNHALL.COM (2013), http://townhall.com/columnists/johnhawkins/2013/07/30/5-ways-liberalism-destroyed-detroit-n1651524.

Post-bankruptcy, Detroit's governance structure remains fragmented and redundant, impairing the city's ability to adjust to challenges.[86] Examples of this fragmentation include separate planning departments, which report separately to the mayor's office and the city council; separate auditors for the mayor's office and the city council; and separate attorneys for different facets of city government.[87] Even the feasibility expert in Detroit's bankruptcy, who ultimately concluded that the bankruptcy plan was feasible, expressed significant concern that the bankruptcy did not include governance reforms.[88]

Another lingering challenge for Detroit is how to address its failing public school system; although the system is a separate entity from the city, the two are "integrally related," such that the school district's distress affects the city's financial health, and vice versa.[89]

Several philanthropic foundations stepped in to assist with Detroit's bankruptcy emergence, including the Kresge Foundation and the Ford Foundation.[90] Michigan's cooperation was also essential to Detroit's ability to exit bankruptcy. Michigan assisted with Detroit's first post-bankruptcy bond issuance, and during the bankruptcy itself, Michigan agreed to provide some funding.[91]

Thus, some intervention on the state's behalf was necessary in Detroit's bankruptcy; however, bankruptcy also left many critical problems in Detroit untouched, particularly poor governance and mismanagement by local officials. Detroit thus provides a vivid example of the limitations of municipal bankruptcy. Chapter 9 does not provide governance reform, nor can it fix the problems of unrelated entities, such as a municipality's school districts. Given the limitations of chapter 9 relief, perhaps it is not surprising that Chicago, which faces governance and school district problems of its own, has not chosen to file for bankruptcy. Yet, Detroit also illustrates some of the ways municipal bankruptcy can be effective, too. The city is now on firmer financial footing and has a plan for financing its

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[86] Skeel & Gillette, *surpra* note 9 at 1187.

[87] *Id.* 1187-88.

[88] *Id* at 1198.

[89] Frank Shafroth, *Twin Miracles?*, The GMU Fiscal Sustainability Project, May 3, 2016, https://fiscalbankruptcy.wordpress.com/2016/05/03/twin-miracles/ (noting that the quality of the school system is essential to attracting families and employees to the city).

[90] *See, e.g.,* Cristy Lytal & Nicholas Williams, *CPPP teams up with Kresge Foundation to 'Draw on Detroit,'* USC Price, Mar. 23, 2016, https://priceschool.usc.edu/cppp-teams-up-with-kresge-foundation-to-draw-on-detroit/ (describing the role the philanthropic .sector played in Detroit).

[91] Frank Shafroth, *Can default be contagious?*, THE GMU MUNICIPAL SUSTAINABILITY PROJECT (Aug. 7, 2015), https://fiscalbankruptcy.wordpress.com/2015/08/10/can-default-be-contagious/.

pensions and other commitments that city officials, so far, have been able and willing to commit to.

B. Illinois

Illinois has a comprehensive state intervention program and has sometimes actively rescued troubled municipalities by increasing state aid in times of fiscal distress. For example, in 1990, the state legislature provided a loan package for the city of East St. Louis and also installed an advisory board and financial manager for the city.[92] Illinois law allows the state to designate a local government as being in a state of fiscal distress or emergency once a municipality petitions the governor to establish an advisory committee. The governor has 60 days from the date of the petition to determine whether in fact an emergency exists and, if so, whether to establish the committee.[93] During this time, the government must provide notice and an opportunity to be heard to all of the municipality's creditors.[94] If the governor forms a committee, he may give it oversight powers and the ability to recommend that the municipality file for bankruptcy.[95] The committee may also review the municipality's financial decisions and order the municipality to negotiate with creditors.[96]

The Illinois Constitution contains explicit protections for public pensions. Article XIII, Section 5 provides that membership in any public pension or retirement system is "an enforceable contractual relationship, the benefits of which shall not be diminished or impaired." Nevertheless, among all 50 states, Illinois has the second highest level of per capita pension debt, with $28,880 in unfunded pension liabilities per person.[97]

The Illinois Constitution also requires that home rule powers be construed liberally. Consequently, home rule units may increase property taxes beyond the state statutory "tax cap" and may also creatively use their taxing power to resolve local issues.[98] Home rule units have taxing authority over anything except income, occupations, and earnings.[99] Home rule units typically do not need to ask for voter approval when instituting

[92] Pew, *supra* note 66.
[93] Frost, *supra* note 19 at 881.
[94] *Id.*
[95] *Id.*
[96] *Id.* at 883.
[97] Chuck DeVore, *Puerto Rico, Illinois and California: Public Pension Dominoes*, Forbes, May 31, 2016, http://www.forbes.com/sites/chuckdevore/2016/05/31/puerto-rico-illinois-california-public-pension-dominoes/#7a3cf22e2f86.
[98] *Home Rule and You*, CITIZEN ADVOCACY CENTER (2004), http://www.citizenadvocacycenter.org/uploads/8/8/4/0/8840743/homerulebrochure.pdf.
[99] *Id.*

permissible taxes.[100] Illinois home rule cities have no debt limits.[101]

1. Chicago
   Population: 2.7 million; Annual budget: $7.84 billion[102]

Chicago is a home rule unit under the Illinois Constitution.[103] The city, a municipal corporation, is governed by a mayor and a city council.[104]

All four of Chicago's defined-benefit retirement funds are significantly underfunded (having a combined $20 billion shortfall) and have low funding ratios (the combined funding ratio is 35.5%).[105] Recent legislation passed by the Illinois General Assembly has dramatically increased Chicago's retirement contribution obligations. Accordingly, the city's supplemental FY 2015 budget and FY 2016 budget both provided for significantly increased pension contributions.[106] Chicago and its four retirement funds share the cost of post-employment healthcare benefits for some retired city employees; however, Chicago is planning to phase out such benefits by 2017.[107] Chicago's high outstanding pension obligations have caused the city's debt to rise substantially over the last ten years.[108] In September 2015, Mayor Emanuel proposed a $600 million property tax increase to help the city start making required pension payments.[109]

Over the past 10 years, Chicago has experienced operating budget gaps due to an imbalance of tax revenues relative to expenditures, and those gaps

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[100] *Id.*

[101] Stone, *supra* note 75.

[102] City of Chicago 2016 Budget Overview, http://www.cityofchicago.org/content/dam/city/depts/obm/supp_info/2016Budget/2016BudgetOverviewCoC.pdf.

[103] Jon C. Teaford, *Home Rule*, ENCYLCLOPEDIA OF CHICAGO (2005), http://www.encyclopedia.chicagohistory.org/pages/595.html.

[104] City of Chicago, *Official Statement $500,000,000 city of Chicago, Illinois general obligation refunding bonds series 2015c*, EMMA.MSRB.ORG (2016), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ES360135.

[105] *Id*

[106] In May 2016, the Illinois legislature overrode a veto from the governor and provided financial relief to Chicago with respect to its police and fire pension systems. Consequently, the mayor of Chicago was able to avoid a significant tax increase. Frank Shafroth, *Hard Choices about a city's future*, The GMU Municipal Sustainability Project, Jun. 1, 2016, https://fiscalbankruptcy.wordpress.com/2016/05/31/hard-choices-about-a-citys-future/

[107] City of Chicago, *supra* note 104.

[108] Ted Dabrowski, *Chicago slides toward bankruptcy*, HUFFPOST POLITICS (2015), http://www.huffingtonpost.com/ted-dabrowski/chicago-slides-toward-ban_b_7287366.html.

[109] Aaron M. Renn, *Beneath Chicago's Gloss*, CITY JOURNAL (Sept. 24, 2015), http://www.city-journal.org/html/beneath-chicago%E2%80%99s-gloss-11673.html.

are predicted to continue in FYs 2016-2018 due to continued operating budget shortfalls and increased pension obligations.[110] The governor of Illinois has accused Chicago officials of financial mismanagement, citing the budget impasse and disagreements with the state over pension and union reforms.[111]

Chicago is also affected by the budget deficits experienced by the Chicago Public Schools (CPS).[112] CPS has a $500 million budget gap.[113] This is due in large part to pension "holidays;" for example, in 2010, city politicians passed a three-year pension holiday that allowed CPS to avoid making $1.2 billion in contributions to the teacher pension system.[114] Union pressure on politicians has also resulted in generous salary and pension benefits, meaning that city government costs have risen despite CPS reducing total employment by 14% since 2004.[115] After a teachers' strike in 2012, Mayor Emanuel signed a large salary increase even though the school district was already underfunded by $1 billion.[116] The governor has threatened a state takeover of CPS.[117]

Chicago is also affected by the financial health of the state of Illinois. Illinois has often delayed its distribution of Chicago's share of Illinois state taxes, due in part to the state's own budget problems.[118] A 2015 report ranked Illinois among the bottom five least financially healthy states, primarily due to low amounts of cash on hand and significant debt obligations.[119] Nearly a quarter of the money in Illinois' budget goes to pension payments for its municipalities, meaning that when Illinois experiences budget difficulties, these challenges directly affect the state's municipalities.[120]

Although Chicago remains a popular city for both tourists and businesses, the city is still in substantial debt and suffers from a largely dysfunctional government, complicated by pension underfunding challenges and union pressures. After the Illinois Supreme Court ruled in 2015 that

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[110] City of Chicago, *supra* note 104.

[111] K. Bauer, *Rauner's State of the State: Chicago Strangled by "Financial Mismanagement,"* DNA INFO (2016), https://www.dnainfo.com/chicago/20160127/downtown/rauners-state-of-state- chicago-strangled-by-financial-mismanagement.

[112] City of Chicago, *supra* note 104.

[113] Renn, *supra* note 109.

[114] Dabrowski, *supra* note 108.

[115] *Id.*

[116] *Id.*

[117] Bauer, *supra* note 111.

[118] City of Chicago, *supra* note 104.

[119] *Ranking the States by Fiscal Condition*, Mercatus Center, http://mercatus.org/sites/default/files/Norcross-State-Fiscal-Condition-summary.pdf.

[120] Bauer, *supra* note 111.

reforms to Illinois' state pension plans were unconstitutional, Moody's downgraded the city's credit rating by two notches, meaning that Chicago's bonds are now rated "junk."[121] Although Chicago may attempt to seek more formal state assistance, Illinois' own financial woes are likely to prevent the state from being of much help to the city. Chicago thus illustrates the overlapping effects of crises at multiple levels of government (state, city, and school district) on a municipality's financial health and stability. In essence, Chicago is proof that cities do not exist in a vacuum.

C. Pennsylvania

Pennsylvania authorizes its municipalities to file for bankruptcy, but other state laws make clear that access to chapter 9 will be granted only as a last resort. Under the state's Municipalities Financial Recovery Act, the Department of Community Affairs of the Commonwealth (DCAC) monitors municipal financial affairs for distress.[122] The DCAC is empowered to compile and analyze financial data, develop warning systems for municipalities, and distribute grants and loans to municipalities in need.[123] To assist the DCAC with its analysis, all municipalities must complete and submit a yearly financial conditions survey.[124] If a municipality seeks to file for chapter 9 bankruptcy, prior approval from the State Department of Internal Affairs is required.[125] This department must also ultimately approve any plan of debt adjustment the municipality creates while in chapter 9.[126]

Pennsylvania also has a complex receivership program designed to be utilized in lieu of chapter 9. This program was created by the Financially Distressed Municipalities Act, commonly called Act 47. Under Act 47, the Pennsylvania Department of Community and Economic Development may declare municipalities to be financially distressed.[127] These municipalities restructure their debt under the supervision of a financial manager and may file for bankruptcy if necessary. Although several Pennsylvania cities have been placed under Act 47's protection, they typically remain in the program for decades rather than working their way out of it.[128] Scranton, for

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[121] Dabrowski, *supra* note 108.
[122] Frost, *supra* note 19 at 877.
[123] *Id.*
[124] *Id.* at 879.
[125] *Id.*
[126] *Id.* at 880.
[127] D. Dekok, *Broke Shamokin, Pennsylvania, seeks state crutch that few cast off*, REUTERS (May 2, 2014), http://www.reuters.com/article/2014/05/02/usa-pennsylvania-municipals-idUSL2N0N91ZV20140502.
[128] *Id.*

example, has been designated as distressed under Act 47 since 1992.[129]

Although Pennsylvania officials may be content to let cities remain in the state's own Act 47 program,[130] they seem to work hard to ensure that Pennsylvania municipalities stay out of the federal bankruptcy system. For example, state officials' reaction to the city of Harrisburg's 2011 bankruptcy filing illustrates the drastic measures the state took to impede a bankruptcy filing at any cost. Harrisburg had been authorized to file for bankruptcy, but when the state legislature enacted last-minute laws removing that authorization, the bankruptcy court dismissed Harrisburg's case.[131] Pennsylvania's reaction in the wake of Harrisburg's filing may deter other Pennsylvania cities from considering chapter 9 relief in the future.

All of Pennsylvania's municipalities and counties may enact home rule charters, which allow them to set property and personal tax rates for their residents.[132] Some cities, such as Altoona, are seeking home rule designations, and the financial flexibility that comes with them, as a possible way out of Act 47.[133] The State of Pennsylvania as a whole lost 40% of its manufacturing jobs between 1990 and 2009, meaning that many cities are struggling with financial difficulties and may be closely studying their options for fiscal relief.[134]

1. Scranton
   Population: 75,806; Annual budget: $132 million[135]

Scranton, the 6th most populated city in Pennsylvania, is a home rule city and has had a charter in effect since 1976.[136] Situated in the northeast

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[129] S. McConnell, *Westfall Twp.'s first-in-the-state bankruptcy may not be Pennsylvania's last*, THE TIMES-TRIBUNE (2010), http://thetimes-tribune.com/news/westfall-twp-s-first-in-the-state-bankruptcy-may-not-be-pennsylvania-s-last-1.695242.

[130] For example, the state allows distressed municipalities to request a tax increase above the maximum legal rates. Frost, *supra* note 19 at 879.

[131] Juliet M. Moringiello, *Specific authorization to file under Chapter 9: Lessons from Harrisburg*, 32 Cal. Bankr. J. 237, 250 (2012).

[132] T. Ooms, S. Tracewsky & P. Lizasoanin, *A primer on home rule*, THE INSTITUTE FOR PUBLIC POLICY & ECONOMIC DEVELOPMENT (2009), http://www.institutepa.org/PDF/Research/APrimeronHomeRule0809.pdf.

[133] K.L. Shaffner, *What is home rule?*, KEYSTONE CROSSROADS (2014), http://crossroads.newsworks.org/index.php/local/keystone-crossroads/70767-what-is-home-rule/.

[134] Pew, *supra* note 66.

[135] *2016 Operating Budget*, http://www.scrantonpa.gov/business_admin_docs/2016%20Operating%20Budget.pdf.

[136] *Home Rule Charter*, SCRANTON, PA,

corner of the state, the city is the county seat of Lackawanna County and is part of the larger Scranton-Wilkes-Barre metropolitan region. For decades, Scranton was a major regional coal center, and the city's economy was largely tied to coal-related industries, including steel mills and electrical energy production [137] In fact, Scranton earned the nickname the "Electric City," as one of the first cities to have electric lighting installed in many of its buildings.[138] Scranton was also the first U.S. city to operate a completely electric streetcar system.[139]

Since the Second World War, Scranton's major industries have withered away, and many have departed entirely. Shrinking industry prospects drove a population decline in the late 1970s and early 1980s, when many buildings in the city's historic downtown began to sit vacant.[140] With its population in freefall, the city faced reduced revenues, and city leadership had difficulty managing Scranton's finances. Consequently, in 1992, Scranton entered Act 47.[141]

Despite the Act 47 protection, Scranton has continued to experience financial difficulties and has been on the verge of bankruptcy for the past several years. Some degree of financial mismanagement has likely contributed to Scranton's distress, particularly in the years following the 2008 financial crisis. The city has had a budget deficit ranging from $17 million in 2012 to $21 million in 2013.[142] Although Scranton has attempted to increase revenue through greater efforts at tax collection and rate increase proposals, the city has been unable to bring in nearly enough money to cover its debt obligations. City leadership has consistently turned to short term fixes, becoming dependent on a strategy of "borrowing, asset sales, and one-time funding sources."[143] In a desperate attempt to bring in revenue, Scranton began selling off city property it later discovered it did

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http://www.scrantonpa.gov/home_rule_charter.html.

[137] *The Sadness of Scranton: Yet Another American City Struggles to Stay Solvent*, The Economist, Jul. 21, 2012, http://www.economist.com/node/21559382.

[138] C.A. Kashuba, *Scranton gained fame as the Electric City, thanks to the region's innovative spirit*, THE SCRANTON TIMES-TRIBUNE (Aug. 22, 2010), https://www.google.com/search?q=http%3A%2F%2Fthetimes+tribune.com%2Fnews%2Fscranton-gained-fame-as-the-electric-city-thanks-to-the-region-s-innovative-spirit-1.965641&oq=http%3A%2F%2Fthetimes+tribune.com%2Fnews%2Fscranton-gained-fame-as-the-electric-city-thanks-to-the-region-s-innovative-spirit-1.965641

[139] *Id*.

[140] *Sadness*, *supra* note 137.

[141] *Id.*

[142] Winegarden, *supra* note 51.

[143] J. Barro, Scranton: When Your City Needs to Go Bankrupt, Bloomberg (June 19, 2012), http://www.bloomberg.com/news/2012-07-19/scranton-when-your-city-needs-to-go bankrupt.html.

not even own.[144] City officials' strategies are designed to generate quick and volatile short-term revenues while ignoring the need to create long-term, stable revenue sources for the future. In 2012, the city's funds reached a low of $5,000.[145] Borrowing is no longer an option in Scranton, as the city's credit rating has remained in the BB and BBB range for the last decade. The city has essentially abandoned efforts to seek a credit rating until its finances improve and a higher than junk rating can be pursued. Faced with no other options to pay employees, in July 2012 former mayor Chris Doherty instituted across the board salary cuts for all city employees to the minimum wage.[146] Overnight, workers such as firemen saw their pay cut by more than half. These workers sued, and a judge held that the mayor's actions were unlawful; the mayor subsequently reinstituted full pay to employees.[147] Adding to its already severe financial situation, in October 2011, the Pennsylvania Supreme Court ordered Scranton to pay back-pay amounting to $20.9 million to the police and fire unions as part of an arbitration case that was ultimately decided in the unions' favor.[148]

Scranton is a city that has not fared well despite the state's intervention and assistance. It therefore illustrates the limitations of state aid programs and should serve as a cautionary tale for those, especially in Pennsylvania, who would deny cities the opportunity to seek chapter 9 relief. Scranton demonstrates the limitations of Act 47's effectiveness. Thus, instead of pushing for Act 47 relief at all costs, state officials could instead focus on how state relief might work well in conjunction with other options, including chapter 9.

D. New Jersey

New Jersey's willingness and ability to assist its distressed municipalities has varied over the years, depending on the financial health of both the state and the city involved. In the past, New Jersey state intervention has often taken the form of provision of modest amounts of "transitional aid" money.[149] Recently, however, Governor Chris Christie has contracted this program, saying that cities can become too dependent on state money and expressing a desire for municipalities to become more self-sufficient.[150] The state has also created an agency, the Division of Local

[144] *Id.*
[145] *Sadness, supra* note 137.
[146] *Id.*
[147] *Id.*
[148] Barro, *supra* note 143.
[149] Pew, *supra* note 66.
[150] *Id.*

Government Services, to proactively monitor local finances and approve budgets.[151] The agency must also approve a municipality's request to file for bankruptcy; however, to date, no city in the state has yet filed for chapter 9.[152]

Atlantic City has recently been the focus of much attention in New Jersey. Governor Christie appointed an emergency manager for the city in 2015 and has also asked the city to consider a consensual debt restructuring.[153] State lawmakers proposed a "Municipal Stabilization and Recovery Act," which would empower the state to renegotiate Atlantic City's outstanding debt and contracts for up to five years and enable the state to leverage city assets and make staff cuts.[154] City officials, however, have criticized the act, saying that it threatens the city's "sovereignty."[155]

Such "sovereignty" is important to New Jersey municipalities, which are widely viewed as having broad home rule protections. Yet, these powers do not extend to fiscal home rule: many New Jersey statutes contain detailed requirements that affect all aspects of budgeting and revenue generation. For example, every New Jersey municipality is subject to spending caps.[156] Yet, nearly all of New Jersey's 566 municipalities have their own governing body and planning board, indicating at least some measure of local autonomy.[157]

New Jersey has also recently received national attention due to the state's large funding gap for public worker pensions. Although New Jersey's pension system is among the largest in the country, it is one of the least healthy as well. The state has more debt per capita owed to just its pension systems than the entire territory of Puerto Rico owes on its bond

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[151] *Id.*

[152] *Id.*

[153] M. Friedman, *Sweeney slams Christie's Atlantic City plan, says governor plans bankruptcy for city,* NJ.COM (2015); H. Russ, *Moody's slashes Atlantic City rating on bankruptcy potential*, REUTERS (2015), http://www.reuters.com/article/atlantic-city-ratings-idUSL4N0V255X20150123.

[154] Frank Shafroth, *Michigan's Role in Municipal Fiscal Fates*, The GMU Municipal Sustainability Project, Feb. 23, 2016, https://fiscalbankruptcy.wordpress.com/2016/02/23/michigans-role-in-municipal-fiscal-fates/.

[155] *Id.*

[156] J.E. Trafford, *Home rule in the '90s: Is it alive or dead?*, NEW JERSEY STATE LEAGUE OF MUNICIPALITIES (1995), http://www.njslom.org/homerule.html.

[157] Gloucester County Times Editorial Board*, Home rule gives N.J. costly culture*, NJ.com (2011), http://www.nj.com/gloucester/voices/index.ssf/2011/11/home_rule_gives_nj_costly_cult.html; C.H. Harrison, *Taking a bite out of home rule,* AMERICAN PLANNING ASSOCIATION (2007), https://www.planning.org/planning/2007/dec/homerule.htm.

debt.[158] Governor Christie cut the state's payment in 2014, leading to a battle with labor unions that the unions ultimately lost.[159] New Jersey's unfunded pension liability is also caused by "investment losses, increased benefits, and chronic underfunding."[160] Two of the state's largest funds are projected to run out of money within 12 years.[161]

1. Bayonne
   Population: 65,028; Annual Budget: $135 million[162]

Bayonne, a city situated near both New York City and Newark, New Jersey, became a township in 1861 and was incorporated as a city on March 10, 1869.[163] A mayor and a city council run the city.[164]

Bayonne's financial history is inextricably intertwined with state finances and politics. In June 2010, the city faced a shortfall of approximately $33 million after several consecutive years of budget deficits.[165] Although a state agency was preparing to take over the city's finances, New Jersey itself was facing a significant budget deficit, and Governor Christie had campaigned on a promise not to raise taxes. The Port Authority of New York and New Jersey stepped in instead, purchasing a 131-acre tract of land on the Bayonne waterfront for $235 million.[166] At the time, Bayonne's mayor stated that there was no way to avoid a takeover other than to sell off this land. An internal Port Authority memo warned that the property's sale price was substantially above its appraised value; nevertheless, officials pushed for approval for the sale to avoid the takeover prospect. Pursuant to the purchase contract, the Port Authority's 24-year payment schedule was front-loaded to help Bayonne combat its budget

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[158] DeVore, *supra* note 97.

[159] S. Marcus, *N.J. public worker pension fund gap widens to $40B*, NJ.COM (Apr. 2015), http://www.nj.com/politics/index.ssf/2015/04/nj_pension_fund_gap_widens_to_40b.html.

[160] *Id.*

[161] *Id.*

[162] Jeannette Josue, *Bayonne opts for 30-day hiring freeze to fill $15M gap in $135M budget*, Hudson County View, Apr. 21, 2016, http://hudsoncountyview.com/bayonne-opts-30-day-hiring-freeze-fill-15m-gap-135m-budget/.

[163] City of Bayonne, *Official Statement of the city of Jersey City in the county of Hudson, state of New Jersey*, EMMA.MSRB.ORG (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER369156.

[164] *Id.*

[165] Russ Buettner, *Port Authority land purchase is boon to Bayonne, and Christie*, THE NEW YORK TIMES (June 9, 2014), http://www.nytimes.com/2014/06/09/nyregion/port-authority-land-purchase-is-boon-to-bayonne-and-chris-christie.html?_r=0.

[166] *Id.*

woes.[167] In fact, the first payment to the city was enough to cover the city's entire budget shortfall. The Port Authority's purchase came under scrutiny in 2014, as the waterfront property remained barren and had not been developed.[168]

Although Bayonne has benefitted from state aid in the past, New Jersey has fallen short in providing promised funding for the Bayonne school board, and city taxpayers have borne the brunt of this $2.9 million shortfall.[169] Officials have suggested varying reasons for the shortfall, including that the board may not have provided required documentation to the state; that cost over-runs or under-runs would have impacted the state's payments; or that the board had had management problems with respect to its funding structure.[170]

In May 2015, Moody's gave Bayonne's bond rating a "positive outlook," citing the city's improving financial position and reduced reliance on one-time revenues.[171] The Moody's report also noted the city's sizable tax base and wealth levels. The city's $25 million structural deficit dropped by $4 million in 2015 alone.[172] And although Bayonne has unfunded pension liabilities, Moody's considers these "manageable" in light of Bayonne's tax base and improved cash position.[173]

Bayonne's financial situation illustrates the politics sometimes inherent in state aid and fiscal reform, as state politicians pressured regional authorities to assist the struggling city. At this time, the city appears to be recovering from its prior fiscal distress, and further monitoring by both the state and the city may help ensure that the city remains on a path to fiscal stability. Thus, although Bayonne's rescue may well have involved fiscal mismanagement, in this case, political maneuverings benefitted, rather than harmed, the city.

E. Connecticut

Connecticut's involvement in municipal affairs varies depending on the

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[167] *Id.*

[168] *Id.*

[169] Jonathan Lin, *$2.9M shortfall in state funding fell on Bayonne taxpayers' backs, says city CFO*, NJ.com (Nov., 29, 2015).

[170] *Id.*

[171] Jonathan Lin, *Bayonne's bond rating upgraded from 'stable' to 'positive' by Moody*, NJ.com, May 2015.

[172] *Id.*

[173] J.G. Yousef & M. Thompson, *Moody's assigns underlying Baa1 to Bayonne, NJ's 2014A, B & C GO bonds and enhanced Aa3 to series 2014 B & C,* MOODY'S INVESTORS SERVICE (2014), https://www.moodys.com/research/Moodys-assigns-underlying-Baa1-to-Bayonne-NJs-2014-A-B--PR_311226.

degree of distress the municipality is experiencing. Connecticut has a formal state intervention program, which allows for the appointment of a financial control board that can supervise and restructure local finances.[174] If a municipality continues to experience distress, Connecticut law authorizes municipal bankruptcy; however, any chapter 9 filing is contingent upon the governor's approval.[175] In practice, Connecticut has proven wary of allowing its municipalities to file for bankruptcy: in 1991, for example, the state successfully challenged the city of Bridgeport's chapter 9 filing, forcing the city to abandon its attempt to seek federal assistance.[176]

Connecticut towns generally have broad home rule powers, and the state's Home Rule Act permits any town to adopt its own charter and choose its government structure. Both Connecticut towns in our sample have home rule charters.[177] Nevertheless, Connecticut's General Assembly has preempted local control in areas involving fiscal matters, and Connecticut courts have upheld these preemption measures. In cases of fiscal instability, the state may even impose financial controls on municipalities.[178]

1. West Haven
   Population: 55,046; Annual Budget: $151 million[179]

Originally settled in the 17th century, West Haven became a bedroom community due to its location along the major transportation corridor between Boston and New York. Despite its promising location, West Haven has struggled since its incorporation. Although the city collaborates with state and regional transit corporations to develop projects increasing the city's accessibility for transit riders, West Haven has little industry of its own and has struggled to raise revenue.[180] City leaders have largely ignored

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[174] Pew, *supra* note 66.

[175] Henry C. Kevane, *Chapter 9 Municipal Bankruptcy: The New "New Thing"? Part I*, American Bar Association, May 19, 2011, http://apps.americanbar.org/buslaw/blt/content/2011/05/article-kevane.shtml.

[176] James E. Spiotto, *Primer on municipal debt*, (2012), http://www.afgi.org/resources/Bankruptcy_Primer.pdf.

[177] F.B. Connolly, LOCAL GOVERNMENT IN CONNECTICUT (Wesleyan University Press 3rd ed., 2013).

[178] *See generally* J.C. Griffith, *Connecticut's home rule: The judicial resolution of state and local conflicts*, 4 U. Bridgeport L. Rev. 177 (1983).

[179] *FY2014-15 Approved Operating Budget – West Haven*, http://www.cityofwesthaven.com/pdfs%5Cfy15%20approved%20budget.pdf.

[180] City of West Haven, *Official statement city of West Haven, Connecticut $38,715,000 general obligation bonds*, EMMA.MSRB.ORG (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EP365618.

West Haven's cash flow problem, preferring instead to invest in schools and infrastructure projects that West Haven may ultimately have trouble paying for.[181]

Due to this imbalance between revenues and spending, the city is facing a deficit of approximately $750,000.[182] To rectify this problem, West Haven has re-focused on infrastructure and transportation developments. The city has partnered with local, state, and private enterprises to take advantage of a newly constructed rail station from New York City, using the station as a focal point for transit-oriented development (TOD) that the city hopes will give it a college town feel and encourage travelers to visit the downtown area.[183] In the past, TODs have proven to be lucrative concepts for other cities, combining increased transit accessibility with attractive destinations; generally speaking, a community that focuses on TOD tends to increase its property values.[184]

Poor governmental decision-making and lack of a concrete industry base have resulted in budget imbalances for West Haven. Yet, the city's location has given it the opportunity to remake itself through transit-oriented infrastructure developments. In addition, although Connecticut has not itself provided direct financial assistance to the city, it has been willing to work with West Haven to encourage development that may ultimately benefit the state and region as well as the city itself. Thus, West Haven provides an example of a city taking advantage of regional development and coordination opportunities, even though Connecticut's policy with respect to state intervention is relatively hands-off.

F. Arizona

Arizona gives its local governments a large amount of autonomy. Although Arizona law unconditionally allows the state's distressed municipalities to file for federal bankruptcy relief, the law does not provide for any alternative forms of relief for local governments, such as state intervention programs, with the exception of programs for school districts.[185]

Arizona has some of the most stringent TELs in the country. It is one of only six states in the US with both a binding property tax limit and a general

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[181] J. M. Zaretsky, *West Haven in dire fiscal situation: general fund deficit grows by $750K, cash flow a problem*, MIDDLETOWN PRESS (Apr. 14, 2015), http://www.middletownpress.com/article/NH/20150414/NEWS/150419737.

[182] City of West Haven, *supra* note 180.

[183] *Id.*

[184] J.L. Renne, *From transit-adjacent to transit-oriented development*, 14(1) Loc. Env't., 1-15 (2009).

[185] Pew, *supra* note 66.

expenditure limit imposed on its municipalities.[186]

As a right-to-work state, Arizona is not generally considered to be union-friendly, but the state does have strong constitutional protections for public pensions. In 1998, voters passed a constitutional amendment stating that "public retirement benefits shall not be diminished or impaired."[187]

The Arizona Constitution imposes a formula-based spending limit on cities and towns; however, the constitution also provides that municipal voters can approve a so-called "Home Rule" Option, in which a municipality adopts its own budget limits based on local needs, service levels, and available resources.[188] In the case of the city of Glendale, voters initially approved a rule requiring voter approval of expenditure limits based on the city's actual revenues. In 2000, however, Glendale voters approved a permanent base adjustment, eliminating the need for further approval of expenditure limits.[189]

1. Glendale
Population: 234,632; Annual budget: $632 million[190]

Glendale is a suburban city bordering the Arizona state capital, Phoenix.[191] From 2003 to 2009, Glendale made aggressive infrastructure investments to market itself as a destination city.[192] During this time, the city built three new sports venues intended to bring economic development benefits to the area.[193] Unfortunately, Glendale neglected to focus on development outside of the context of sports venues. This mistake became apparent in 2011, when stadium investors defaulted, lenders began foreclosure proceedings on one of the stadiums, and the city as a whole

[186] National League of Cities, *Cities and State Fiscal Structure 2015*, NLC.org.

[187] Craig Harris & Beth Duckett, *Arizona pensions not easily reined in*, THE ARIZONA REPUBLIC (May 8, 2013), http://www.azcentral.com/news/politics/articles/20130425arizona-pensions-not-easily-reined.html.

[188] *What is Home Rule?*, ORO VALLEY (2016), https://www.orovalleyaz.gov/town/departments/town-clerk/what-home-rule.

[189] Glendale, AZ, *Budget FAQs,* (2015) http://www.glendaleaz.com/budget/faqs.cfm.

[190] *City of Glendale Final Budget Adoption,* http://www.glendaleaz.com/budget/documents/FinalBudgetAdoption.pdf.

[191] City of Glendale, *Official Statement $38,300,000 city of Glendale, Arizona general obligation refunding bonds series 2010*, EMMA.MSRB.ORG (2010), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EA340274.

[192] C. Leonard, *West Valley Sound Off: Investing in Sports Tourism*, ARIZONA CENTRAL (Apr. 15, 2014), http://www.azcentral.com/story/news/local/glendale/2014/04/15/west-valley-sound-off-sports-tourism/7738621/.

[193] *Id.*

began an economic decline.[194]

Glendale's woes worsened when an investigation into financial mismanagement regarding pension liability uncovered an illegal scheme to make up a $14.4 million budget shortfall in 2008 and resulted in the firing of four city officials and the implication of a former city manager.[195] The financial problems stemmed from a vaguely analyzed and grossly misrepresented early retirement program the city council had approved.[196]

Despite these setbacks, Glendale was able to manage many of its difficulties by adopting cost-saving measures, including a hiring freeze, mandatory furloughs, and budget reductions.[197] In 2015, ratings agencies upgraded the city's bond rating, attributing the improvement to Glendale's moderate economic rebound, growth in the city's tax base, the regional housing recovery, and prudent budget management by city officials. The city also negotiated a cut in arena management fees for one of the city-owned arenas, thereby reducing its financial exposure to the professional sports market.[198]

Arizona's hands-off approach to local government distress does not seem to have harmed Glendale's prospects for fiscal stability. Although city officials in Glendale had substantial autonomy to propose and invest in infrastructure development, they were also able to take steps to rectify problems that arose from this development without the need to turn to the state for assistance. Thus, Glendale illustrates how municipal autonomy may work both to a city's detriment and to its benefit.

G. California

California has long resisted state intervention for its distressed municipalities, even when those municipalities are in bankruptcy.[199] Over

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[194] Rebekah Sanders, *Foreclosures expected to put Glendale Westgate City Center on new track,* AZ CENTRAL (Oct. 26, 2011), http://www.azcentral.com/news/articles/2011/10/26/20111026glendale-westgate-foreclosures-new-track.html.

[195] Caitlin McGlade, *Glendale audit fallout: 4 officials on leave*, THE ARIZONA REPUBLIC (Aug. 24, 2013), http://archive.azcentral.com/community/glendale/articles/20130824audit-fallout-officials-leave-prog.html.

[196] City of Glendale, *Special project: Summary of findings and conclusions* (2013) https://www.glendaleaz.com/documents/SpecialProject-SummaryofFindingsandConclusions.pdf.

[197] City of Glendale, *supra* note 191.

[198] Paul Giblin, *Glendale's bond rating improves after years of turmoil*, AZ Central (Feb. 3, 2016), http://www.azcentral.com/story/news/local/glendale/2016/02/03/glendales-bond-rating-improves-after-years-turmoil/79648828/.

[199] Shafroth, *supra* note 83.

the past ten years, the California cities of Vallejo, Stockton, and San Bernardino have all filed for chapter 9 relief, but the state government has offered no help to any of these cities. Indeed, California has no formal state assistance or intervention mechanism for its municipalities, although the state does place conditions on their ability to utilize the federal bankruptcy system.[200] In contrast to its treatment of local governments, California does intervene when its school districts exhibit distress, most notably through the extension of emergency loans.[201]

Local officials and residents do not appear to resent the state's lack of intervention, and some have even expressed their preference that the state not become involved in local affairs. A few years ago, when then-State Treasurer Bill Lockyer pushed for a system that would allow state officials to proactively examine municipal finances and offer technical assistance, the state's municipalities resisted these reforms out of concern that they would enable the state to encroach on home rule powers and to provide assistance that would ultimately favor employee unions, whose representatives were seen as having close ties with state lawmakers.[202] Lockyer's proposal is reminiscent of an earlier bill state lawmakers passed in 1995, which sought to create a Local Area Bankruptcy Committee to proactively monitor municipalities. Then-Governor Pete Wilson vetoed the bill out of concern that it would inappropriately provide the state with the ability to infringe on local authority.[203]

Consistent with its hands-off approach, California grants home rule powers to its charter cities. All four of the California cities in our sample are charter cities, meaning that voters can determine how their city government is organized and that these cities have supreme authority over "municipal affairs."[204] Charter cities generally have more power to assess and levy taxes than other California cities; however, the imposition of taxes and assessments is still subject to Proposition 218, which requires voter approval before certain tax increases, including service charges and assessments, can take effect,[205] and any limitations the charter city may

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[200] Specifically, California requires municipalities to engage in a 60-day "neutral evaluation process" with local unions and creditors prior to receiving authorization to file. The Pew Charitable Trusts, *The State Role in Local Government Financial Distress*, PEW CHARITABLE TRUSTS (Jul. 2013).

[201] Pew, *supra* note 66.

[202] *Id.*

[203] Frederick Tung, *After Orange County: Reforming California municipal bankruptcy law,* 53 Hastings L.J. 885, 903 (2002).

[204] *Charter Cities* (2016), http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter_Cities-List; CAL. CONST. art. 11, § 5(b) (1879).

[205] *What is Proposition 218?*, http://www.californiataxdata.com/pdf/proposition218.pdf.

choose to impose itself. Charter cities may impose business license taxes unless limited by the state or federal constitutions, and they may also impose a real property transfer tax.[206] Courts in California have consistently held that how a city spends its tax dollars is a "municipal affair," meaning that California charter cities have considerable authority over expenditures.[207]

The combination of minimal state assistance with financial affairs and significant home rule authority has largely allowed California cities to determine their own paths for relief. Although the state has placed conditions on municipalities' ability to file for bankruptcy relief, these barriers are far from insurmountable, as demonstrated by the three California cities in our sample that have recently filed for bankruptcy.

1. Irvine
   Population: 236,716; Annual budget: $172 million[208]

Irvine was one of California's earliest planned cities. Originally intended for agriculture and ranching, the city was subdivided for residential use in the 1960s. Irvine has an affluent population, reflected in real estate prices that are high even by California's standards.[209] Despite Irvine's stable tax base and valuable real estate, the city has had difficulty raising tax revenue.[210] Irvine's revenue difficulties are likely linked to Proposition 13, a state law that, since 1978, has limited the property tax rate to 1% of the property's full cash value.[211] Irvine is also located within Orange County, which filed for bankruptcy in the 1990s; Proposition 13 similarly limited Orange County's ability to rectify its fiscal distress.[212]

In addition to its difficulty with tax revenue, Irvine struggles to access the debt markets. Irvine is planning to reassess its properties so that it can

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206 *General Law City v. Charter City* (2016), http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Chart_General_Law_v-_Charter_Cities-07-26-11.

207 Charter Cities, *supra* note 204.

208 *City of Irvine FY 2015-16 Budget*, http://legacy.cityofirvine.org/civica/filebank/blobdload.asp?BlobID=27428.

209 *See* City of Irvine, *Official Statement $126,220,000 city of Irvine limited obligation improvement bonds reassessment district no. 12-1*, EMMA.MSRB.ORG (2012) http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EP354809.

210 *Id.*

211 Daniel R. Mullins & Bruce A. Wallin, *Tax and Expenditure Limitations: Introduction and Overview*, Pub. Budgeting & Fin. (Winter 2004), at 2.

212 Floyd Norris, *ORANGE COUNTY'S BANKRUPTCY: THE OVERVIEW; Orange County Crisis Jolts Bond Market*, NEW YORK TIMES (Dec. 18, 1994), http://www.nytimes.com/1994/12/08/business/orange-county-s-bankruptcy-the-overview-orange-county-crisis-jolts-bond-market.html.

issue more debt. Elsewhere, several groups have lobbied to amend or change Proposition 13 to allow California cities more access to property tax revenue.[213] In short, California's property tax limitations have hindered Irvine, an otherwise affluent city, from being able to take maximum advantage of the potential revenue sources available to it. The city would have much greater fiscal potential if it could adjust the property tax to better capture the wealth of its residents. Of course, raising property taxes also comes with a cost: the threat of driving residents away. Nevertheless, in contrast to some of the cities in our sample, such as Detroit, with a relatively poor population base, Irvine is an example of a city with a rich resource that it simply cannot tap into, for either revenue or debt generating purposes.

Irvine has also exhibited strong evidence of fiscal mismanagement. The city channeled a large amount of funds toward creating the Great Orange County Park,[214] a park that was financially infeasible and rife with unethical—and possibly illegal—business deals and spending.[215] Former Mayor Larry Agran has primarily been implicated in decisions that ultimately led to spending over $350 million on a park that cost $65 million to build.[216] The governor of California eventually ordered that development on the park be stopped.

2. Stockton
   Population: 298,118; Annual budget: $610 million[217]

Stockton filed for bankruptcy on June 28, 2012.[218] Although the judge in Stockton's bankruptcy ruled that pension obligations could be modified, the city elected not to impair its obligations in the bankruptcy.[219] The 2008 recession and the resulting housing and financial collapse significantly contributed to Stockton's financial woes, but the city's unaffordable

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[213] Close the Loophole, *Prop 13: The Building-Sized Loopholes Corporations Exploit*, SF WEEKLY (2012), http://closetheloophole.com/sf-weekly-prop-13.

[214] Matt Morrison, *Final Great Park audit report cites mismanagement, financial waste*, LOS ANGELES TIMES (Mar. 24, 2015), http://www.latimes.com/tn-dpt-me-0327-great-park-audit-20150324-story.html.

[215] City of Irvine, *Great park audit: Report of special counsel March 24, 2015* (2015) http://agranaudit.com/wp-content/uploads/greatparkaudit_specialreport.pdf.

[216] *Id.*

[217] Stockton Adopted Budget (2015-16), http://www.stocktongov.com/files/2015-16_Adopted_Budget_394_pages.pdf.

[218] Stockton Public Financing Authority, *$13,020,000 Stockton public financing authority limited obligation revenue bonds (Mosher reassessment district 2014-1), series 2014,* emma.msrb.org (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER363200.

[219] Shafroth, *supra* note 83.

pensions and benefits and an ill-timed bond offering played a significant role as well.[220]

Stockton struggled in the period leading up to its bankruptcy as well as during the bankruptcy proceedings themselves. During the bankruptcy, the city reduced its workforce by 30% and cut its budget by $90 million.[221] After Stockton emerged from bankruptcy, it still owed approximately $48 million in settlements and other obligations.[222]

Clearly, bankruptcy did not resolve many of Stockton's key problems, including the city's unfunded pension liability, which could have been addressed in the bankruptcy case, but was not due to political pressures.

3. San Bernardino
   Population: 213,708; Annual budget: $28 million[223]

San Bernardino filed for bankruptcy in 2012 and has remained in bankruptcy for nearly four years. Rising pension costs, growing unemployment, and declining property and sales tax revenues all contributed to the city's fiscal decline, though poor governmental decision-making in better economic cycles also played a role.[224] The city's charter was considered "dysfunctional" and "a barrier to efficient, effective government, because it is overly complex, hard to understand, and contains elements that are inconsistent with best practices for modern municipal government."[225] The city's precarious fiscal condition was further exacerbated by the 2008 recession, as San Bernardino was particularly hard-hit by the housing bust and declining state revenues. Even without the recession, however, observers believe that San Bernardino was on an unstoppable path to insolvency, due to unfunded pension liabilities and retirement benefits for city workers.[226] In particular, San Bernardino has

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[220] Fudge, *supra* note 61; Winegarden, *supra* note 51.

[221] Robin Respaut, *Trial starts Monday to determine if Stockton can exit bankruptcy*, REUTERS (May 11, 2014), http://www.reuters.com/article/2014/05/11/municipals-stockton-preview-idUSL2N0NV1BO20140511.

[222] R. Phillips, *Stockton bankruptcy cost: More than $41 million*, STOCKTON RECORD (Oct. 28, 2014), http://www.recordnet.com/article/20141028/NEWS/141029525

[223] San Bernardino Annual Budget, http://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?BlobID=17311.

[224] Steven Church, Dawn McCarty & Michael Bathon, *San Bernardino, California Files Chapter 9 Bankruptcy*, BLOOMBERG BUSINESS (Aug. 2, 2012), http://www.bloomberg.com/news/articles/2012-08-02/san-bernardino-california-files-for-bankruptcy-protection-2-.

[225] Frank Shafroth, *Schooling on Municipal Solvency*, The GMU Municipal Sustainability Project Feb. 16, 2016, https://fiscalbankruptcy.wordpress.com/2016/02/16/schooling-on-municipal-solvency/.

[226] Winegarden *supra* note 51.

struggled with costly police and fire union contracts,[227] and the city is of course subject to the same property tax limitations as every other California municipality.[228]

Since filing for bankruptcy, San Bernardino has continued to default on payments and has had difficulty coming up with a viable plan of debt adjustment.[229] As it engaged in legal battles with several of its creditors, San Bernardino saw its agreements with other public organizations take a hit. For example, S&P recently downgraded its rating on bonds issued to the San Bernardino Joint Powers Financing Authority, noting that even though the bonds' pledged revenues did not come from the city's general fund, the city's actions nevertheless evinced a general unwillingness to pay debt service.[230] Notably, despite its precarious financial situation, San Bernardino has continued to make payments to Calpers, its largest pension creditor, to the dismay of the city's bondholders, who may be paid cents on the dollar upon San Bernardino's exit from bankruptcy.[231]

In San Bernardino, government mismanagement, a strong union presence, high pension costs, restraints on taxing power, and a lack of concrete aid from the state have all combined to mire the city in financial woes, only some of which bankruptcy will be able to address.

4. Vallejo
Population: 118,837; Annual budget: $185 million[232]

Vallejo, a chartered city governed by a mayor and a city council, filed for bankruptcy in May of 2008, citing exorbitant salaries and benefits for its unionized firefighters and police officers as some of the principal causes.[233] Three consecutive years of budget shortfalls also contributed to Vallejo's

[227] *Id.*

[228] Norris, *supra* note 212.

[229] Reuters, *San Bernardino has defaulted on $10 million in bond payments*, CNBC BANKRUPTCY (Mar. 18, 2015), http://www.cnbc.com/2015/03/18/san-bernardino-has-defaulted-on-10-million-in-bond-payments.html; Keeley Webster, *Insurer, Bondholders Slam San Bernardino on Financials*, THE BOND BUYER (Dec. 18, 2015), http://www.bondbuyer.com/news/regionalnews/insurer-bondholders-slam-san-bernardino-on-financials-1092159-1.html.

[230] San Bernardino Joint Powers Financing Authority, *Official Statement*, emma.msrb.org (2010), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER340026.

[231] Reuters, *supra* note 229; Webster, *supra* note 229.

[232] City of Vallejo, http://www.ci.vallejo.ca.us/common/pages/DisplayFile.aspx?itemId=285861.

[233] City of Vallejo, *Official Statement city of Vallejo, California water revenue refunding bonds, series 2013 $18,080,000*, EMMA.MSRB.ORG (2013), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EP362385.

financial position.[234] At the time Vallejo's city council voted to enter bankruptcy, the city faced a $16 million deficit with no money in reserve for the following fiscal year.[235] Other contributors to Vallejo's decline included the city's weak housing market, overly optimistic budgeting, worse than expected transportation deficits, and mandated pension increases.[236]

Vallejo used bankruptcy to restructure its general fund obligations, including certain certificates of participation. The city also renegotiated collective bargaining agreements with employee unions and reduced services.[237] Labor costs were the largest piece of the city's pre-bankruptcy budget.[238] Vallejo emerged from bankruptcy in November of 2011.[239] Union leaders played a powerful role in the city's bankruptcy, opposing the city's actions at nearly every step in the bankruptcy process and running up litigation costs that ultimately diminished the city's ability to repay its creditors, including union members themselves.[240]

Vallejo's bankruptcy is thus somewhat of a mixed success. Since exiting bankruptcy, the city has continued to struggle with pension debt and the provision of basic public services. Vallejo's city manager has remarked that the police department is still "woefully understaffed."[241] The city also struggled to access the debt markets upon emergence from bankruptcy. One post-bankruptcy analysis concluded that because Vallejo could not meaningfully reduce labor costs, the bankruptcy had been unsuccessful.[242]

These case studies (and the additional studies in the Appendix) illustrate the diverse approaches states take toward municipal control and fiscal distress. They shed light on the benefits and drawbacks of various levels of state intervention and constraints. Importantly, these studies demonstrate that the question of how much money, freedom, or resources a state

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[234] Bobby White, *Bankruptcy exit approved for city,* THE WALL STREET JOURNAL (Aug. 6, 2011), http://www.wsj.com/news/articles/SB10001424053111903885604576486402778541450.

[235] Carolyn Jones, *Financially ailing Vallejo files bankruptcy*, SF GATE (2008), http://www.sfgate.com/bayarea/article/Financially-ailing-Vallejo-files-bankruptcy-3283300.php.

[236] Fudge, *supra* note 61.

[237] City of Vallejo, *supra* note 233.

[238] *Id.*

[239] *Id.*

[240] Karol K. Denniston, *Neutral evaluation in Chapter 9 bankruptcies: Mitigating municipal distress*, 32 Cal. Bankr. J. 261, 274 (2012).

[241] Melanie Hicken, *Once bankrupt, Vallejo still can't afford its pricey pensions*, CNN MONEY (Mar. 10, 2014), http://money.cnn.com/2014/03/10/pf/vallejo-pensions/.

[242] Jane Wells, *A New Chapter for Vallejo*, CNBC (Jul. 28 2011), http://www.cnbc.com/id/43932782.

provides its municipalities cannot be viewed in isolation. Instead, these questions must be examined within the entire framework of the legal, economic, and political constraints that shape the municipality's ability to anticipate and respond to fiscal distress.

III. DISCUSSION

A. Our Findings

Table X – Consolidated Table

City	State	Population Estimate (July 1, 2014)	Bankruptcy Status (2008 Y or N)	[1] Fiscal Home Rule	[2] Intergovernmental Aid (as a proportion of total state revenues)	[3] Tax & Expenditure Limits	[4] Municipal Bankruptcy Access	[5] Unfunded Pension Liability Fund Ratio	[6] Union Membership Among Public Service Workers (MSA Density)	[7] Financial Mis-management	[8] Triggering Event
Glendale	Arizona	237517	N	*Low*	*Moderate*	**High**	*Low*	*Moderate*	*Low*	**High**	**High**
Irvine	California	248531	N	*Low*	**High**	**High**	*Moderate*	*Moderate*	**High**	**High**	**High**
San Bernardino	California	215213	Y	*Low*	**High**	**High**	*Moderate*	*Moderate*	**High**	**High**	*Low*
Stockton	California	302389	Y	*Low*	**High**	**High**	*Moderate*	*Moderate*	**High**	**High**	**High**
Vallejo	California	120228	Y	*Low*	**High**	**High**	*Moderate*	*Moderate*	**High**	*Moderate*	*Low*
New Britain	Connecticut	72878	N	**High**	*Low*	*Low*	*Moderate*	**High**	**High**	*Low*	*Low*
West Haven	Connecticut	54905	N	**High**	*Low*	*Low*	*Moderate*	**High**	**High**	*Low*	*Low*
Chicago	Illinois	2722389	N	*Low*	*Moderate*	*Moderate*	*Moderate*	**High**	**High**	**High**	*Moderate*
Hammond	Indiana	78384	N	**High**	**High**	*Moderate*	**High**	**High**	**High**	*Low*	*Low*
New Orleans	Louisiana	384320	N	*Moderate*	**High**	*Moderate*	*Moderate*	**High**	*Low*	**High**	**High**
Baltimore	Maryland	622793	N	*Low*	*Low*	*Low*	**High**	**High**	*Moderate*	*Low*	*Low*
Detroit	Michigan	680250	Y	*Moderate*	High	*Moderate*	*Moderate*	**High**	**High**	**High**	*Moderate*
North Las Vegas	Nevada	230788	N	**High**	*Moderate*	**High**	**High**	**High**	**High***	**High**	**High**
Bayonne	New Jersey	65975	N	*Moderate*	*Moderate*	**High**	*Moderate*	**High**	**High**	*Low*	*Low*
Jersey City	New Jersey	262146	N	*Moderate*	*Moderate*	**High**	*Moderate*	**High**	**High**	**High**	*Low*
Niagara Falls	New York	49219	N	**High**	*Low*	*Moderate*	*Moderate*	*Low*	**High**	*Low*	*Low*
Utica	New York	61332	N	**High**	*Low*	*Moderate*	*Moderate*	*Low*	**High**	**High**	*Low*
Scranton	Pennsylvania	75,281	N	*Low*	*Moderate*	*Moderate*	*Moderate*	**High**	**High**	*Moderate*	*Moderate*
Providence	Rhode Island	179154	N	**High**	*Moderate*	*Moderate*	**High**	**High**	**High**	**High**	*Low*

Key to Table X – Risk Grading Scale								
Level of Risk	**[1]**	**[2]**	**[3]**	**[4]**	**[5]**	**[6]**	**[7]**	**[8]**
High	No Fiscal Home Rule	< 20 %	Binding	No Authorization	< 70 %	> 50 %	Major Factor	Major Event
Moderate	Minimal Restrictions	20 – 30 %	Semi-binding	Preconditions	70 – 79 %	31 – 50 %	Some Evidence	Contributing Factor
Low	Can Raise Taxes	> 30 %	No TELs	No Preconditions	> 80 %	< 30 %	No Documentation	No Triggering Event

Table X summarizes our findings regarding the most prevalent factors influencing municipal behavior toward fiscal distress. Union density, unfunded pension liability, and financial mismanagement had the greatest impact, occurring with a "high" coding in 16, 12, and 11, respectively, of the 19 cities in our sample. Furthermore, at least one of these three factors had a "high" impact in every city in the sample. Our findings therefore suggest that state and local governments should be proactive in monitoring these three factors and their relationship to fiscal distress. To the extent that distress has already occurred in a municipality, leaders should focus heavily on resolving the issues raised by these factors.

How exactly should political leaders address these issues? Although there are no easy answers, our research raises several points worthy of consideration.

First, the case studies reinforce the notion that municipalities truly are creatures of the state in which they are located. The relationship between state and municipality, particularly with respect to laws and policies impacting fiscal home rule, has a direct impact on the freedom municipalities have to devise creative solutions to the problems they face. For example, despite being broadly viewed as having substantial home rule authority, New Jersey municipalities lack *fiscal* home rule authority and therefore often find themselves at the mercy of the state to provide aid or devise creative solutions to their problems. Thus, awareness of a particular municipality's fiscal home rule status will be critical to establishing the parameters within which the municipality can act autonomously.

Further to this point, our case studies indicate the need to address failing municipal health at least somewhat on a case-by-case basis. In addition to being shaped by state-level policies, municipalities may also be constrained (or supported) in their actions by regional authorities, as seen in the city of West Haven's coordination with regional transit authorities, and by the fiscal stability of nongovernmental entities, such as schools and stadiums. Taking a holistic view of the municipality and its position within its region and state will be necessary to maximize the options for fiscal relief.

Our research also illustrates the firm link between union influence and pension policies. Ten of the cities in our sample had both high unfunded pension liabilities and high public sector union membership density, and our analysis of these cities uncovered many instances of union influence on fiscal policy. Although union politics can be difficult for municipalities to maneuver, our research nevertheless suggests that a focus on unions will be key to overcoming fiscal distress. Neither municipal bankruptcy nor state intervention programs have yet proven consistently effective in addressing union politics or offering governance reforms. Yet, our research strongly suggests that recognizing the role politics plays in fiscal decision-making and being cognizant of the extent to which political decisions are truly reflective of public sentiment is necessary to devising effective fiscal relief.

To the extent that a municipality is locked into a union contract that no longer makes economic sense, chapter 9 municipal bankruptcy may provide some assistance. One of the key benefits of federal bankruptcy is the ability to break contracts, meaning that chapter 9, or the threat of it, may be used to help municipalities reject or renegotiate contracts with influential players such as unions. Indeed, all four of the cities that filed for bankruptcy in our sample had high union density. Yet, several of our case studies have indicated that unions continue to resist changes even once a municipality is in bankruptcy, and the politics and special interests that may be plaguing cities outside of bankruptcy do not disappear once the chapter 9 case is filed. To the extent that the chapter 9 process can be disentangled from political interests, it is therefore likely to become a more effective tool for responsibly examining union relationships.

Our analysis also shows that unfunded pension liabilities substantially contribute to many municipalities' fiscal woes. Although recent chapter 9 proceedings have indicated that bankruptcy can be used to reduce even constitutionally protected pension obligations, as with union contracts, a municipality's ability to cut pensions is likely hampered by state and local politics.

Nevertheless, it is critical to address pensions and their contribution to municipal fiscal distress because the pension and retiree health care crisis has ballooned in recent years. Retirees are living longer, and low interest rates have diminished the returns on pension funds. To the extent municipalities are required to meet pension funding obligations, they necessarily have less money each year to spend on other critical governmental services, such as education, public safety, park maintenance, and road repairs. The Great Recession further exacerbated the pension problem by diminishing the value of pension investments. Although some governments have diverted funds away from paying their share of pension costs in order to address more pressing concerns, this does not alleviate the obligation of providing the funding at some point, meaning that governments must come up with more money in future years to make up any shortfall.[243]

The pension crisis has also become more visible due to new requirements from the Government Accounting Standards Board (GASB), which sets the accounting standards for the public sector. The GASB now requires municipalities to include the unfunded actuarial accrued liability of their defined-benefit pension plans in their annual financial reports. Prior to

[243] Reilly, *supra* note 51.

2015, public agencies could exclude these liabilities from their official accounting statements due to a loophole in the accounting standards. Under the new rules, state and local governments must now post their "pension liability," or the difference between projected benefits payments and the assets set aside to cover those payments, clearly on financial statements.[244] Beginning in 2017, these governments must also begin posting liabilities relating to retiree health care and "other post employment benefits" (commonly known as OPEB) as well.[245] By requiring public agencies to fully account for their unfunded liabilities, the new rules should make the extent of the pension crisis more transparent and hopefully spur public officials to act to address the problems in this area.

Given the prominence of pension struggles, it is perhaps not surprising that five of the states in our sample—Arizona, Illinois, Louisiana (Appendix), Michigan, and New York (Appendix)—are among the seven states with constitutional protections for public pensions.[246] Indeed, Arizona, New York, and Illinois have the strongest public pension protections in the country. Illinois' protections were recently reinforced when the state supreme court in March 2016 held that a Chicago law reducing benefits and requiring workers to pay more toward retirement was unconstitutional.[247] As a result of the decision, Moody's, which had previously lowered Chicago's bond rating to junk status, threatened further downgrades.[248] When mandated pension funding and labor pressures create obligations that city revenues cannot support, fiscal distress is a nearly inevitable result. Poor financial management may also become more common in these situations, as public leaders struggle to come up with creative ways to meet or shirk these increasingly unsustainable obligations. Thus, although our analysis indicates variance in the forms municipal fiscal distress can take, the common themes of union presence, pension liabilities, and financial mismanagement play a central role.

A handful of the cities in our sample turned to bankruptcy to address

[244] Nanette Byrnes & Lisa Lambert, *New Rules May Make Public Pensions Appear Weaker*, REUTERS (Jun. 25, 2012), http://www.reuters.com/article/us-usa-pensions-standards-idUSBRE85O01Z20120625.

[245] *See generally* Accounting and Financial Reporting for Pensions, GOVERNMENTAL ACCOUNTING STANDARDS BOARD, http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176163527868.

[246] Alaska and Hawaii are the other two. *See* Stephen Eide, *Constitutional Public Pension Guarantees: Unfair, Unaffordable, and Bad Policy*, MANHATTAN INSTITUTE (Aug. 20, 2013), http://www.manhattan-institute.org/html/constitutional-public-pension-guarantees-unfair-unaffordable-and-bad-policy-5718.html.

[247] Hal Dardick, *Illinois Supreme Court ruling forces city to fund next fix for 2 pension funds*, CHICAGO TRIBUNE (2016), http://www.chicagotribune.com/news/local/politics/ct-chicago-pension-law-ruling-0325-20160323-story.html.

[248] *Id.*

problems with pensions and financial mismanagement, but once again, bankruptcy did not always work well. As evident in Detroit's case, bankruptcy tools do not provide solutions to underlying problems of governance and fiscal mismanagement. Furthermore, although some judges have ruled that unsustainable pension obligations may be modified in bankruptcy, most municipalities, even those in bankruptcy already, have hesitated to radically reform their pension obligations using this tool.

If municipalities cannot effectively utilize bankruptcy to address their fiscal problems, they may turn to state intervention programs to fill the gaps. Yet, our analysis indicates that the efficacy of state options may also be constrained by numerous factors, including citizen receptiveness to state involvement, the state's own fiscal health, and the historical relationship between the state and its local governments. A state such as Illinois, which struggles considerably with pension liabilities and financial mismanagement in its own right, may not be a useful source of assistance to a city like Chicago, which is experiencing similar problems on a local level. Other state programs, such as Pennsylvania's Act 47, have not proven effective at addressing fiscal crises, as cities can stagnate in these programs for decades. While the limitations of municipal bankruptcy have been well-studied, it is similarly worth acknowledging the limitations of state receiverships and intervention programs.

Given the shortcomings of both chapter 9 and various state intervention programs, our research provides strong evidentiary support for theoretical arguments that municipal bankruptcy likely works best in combination with a supportive or complementary state program, rather than in lieu of it.[249] Going forward, policymakers should design comprehensive relief mechanisms that focus on the relative strengths of both mechanisms working together, instead of encouraging the pursuit of one relief mechanism to the exclusion of another.

Finally, although unfunded pension liabilities, union density, and financial mismanagement emerged as the three most prominent factors contributing to municipal behavior and distress, our research suggests many other factors worthy of further study. We predict that an examination of the extent to which the factors we have identified interact in any given municipality will help guide municipal officials to an appropriate path toward addressing fiscal distress. As an example, consider Atlantic City, a

[249] *See, e.g.,* Juliet M. Moringiello, *Goals and Governance in Municipal Bankruptcy*, 71 Wash & Lee L. Rev. 403 (2014) (discussing chapter 9 bankruptcy's design and the intent that states and the federal government cooperate to resolve municipal fiscal distress); Laura N. Coordes, *Gatekeepers Gone Wrong: Reforming the Chapter 9 Eligibility Rules*, 94 Wash. U. L. Rev. (forthcoming 2017) (noting distinct, complementary roles for state and federal relief in the context of municipal bankruptcy).

city below our population threshold, but one in considerable distress nonetheless. New Jersey's history of providing strong state oversight for distressed municipalities may suggest that Atlantic City will attempt to exhaust all state options before considering a bankruptcy filing. Yet, an analysis of the particular problems Atlantic City is facing with respect to unions,[250] pensions,[251] and mismanagement[252] indicates that federal bankruptcy could help the city avoid some of the concerns officials have expressed about losing autonomy in the face of a comprehensive state takeover.

In short, there is a critical need to assess and design fiscal relief mechanisms that harness the strengths of both state and federal programs. Focusing exclusively on improving either municipal bankruptcy or state intervention will not be nearly as effective as designing ways for the two forms of relief to work together. The three most prevalent factors our research has identified should become the focal points when broad reforms are designed. In addition to focusing on relief that could help many municipalities, however, there is a critical need to respond to every city crisis in a tailored way. Combining the relative uniformity and predictability of municipal bankruptcy with the more targeted relief a supportive state program could provide may be the best remedy a distressed municipality could hope for.

No two cities are alike; therefore, no two paths into or out of municipal fiscal distress will be exactly the same either. For this reason, policymakers designing relief mechanisms will need to carefully study the effects of the interactions of various state and federal relief programs to see what is helping and where more work needs to be done. Although such "fiscal compounding" may require substantial time and effort, our analysis suggests that such an investment is necessary to tackle problems that could otherwise overwhelm municipalities. The framework provided in this Article gives policymakers the tools to engage in exactly this kind of analysis by identifying the factors most likely to influence municipal fiscal

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[250] *See, e.g.,* Jack Tomczuk, *Unions hit back at Christie over executive order*, PressofAtlanticCity.com, Jul. 1, 2016, http://www.pressofatlanticcity.com/news/unions-hit-back-at-christie-over-executive-order/article_6719753a-3fda-11e6-b000-e7f67e986cb1.html (describing union objections after Governor Christie withheld money from Atlantic City and other parts of New Jersey until cutbacks can be made in public employee spending).

[251] Patrick McGeehan, *Pensions for Lifeguards? Officials Say Atlantic City Can't Afford Them Anymore*, N.Y. Times, May 6, 2016 at A15 (noting objections to Atlantic City's payment of approximately $1 million a year for pensions for retired lifeguards).

[252] Kate King, *Atlantic City's Financial Problems Widen*, The Wall Street Journal, Feb. 12, 2016, http://www.wsj.com/articles/atlantic-citys-financial-problems-widen-1455322210 (discussing the possibility of a state takeover of Atlantic City's finances).

behavior.

B. Limitations

Although our analysis has sought to be as comprehensive as possible, like any study, it is subject to limitations. First, by narrowing our survey sample to cities with populations over 50,000, we have necessarily excluded many cities, including many that have experienced distress. The extent to which smaller municipalities and other forms of local governments, including counties, towns, and special districts, have similar or different experiences is therefore less certain. Additionally, by using bond reports, government analyses, and news articles to ascertain information about financial mismanagement and triggering events, we incurred the risk that these publicly available resources did not provide a complete picture of how these factors may have contributed to a municipality's financial distress. Indeed, it is nearly impossible to determine the intricacies of "behind the scenes" politics by examining publicly available reports. Finally, although we have attempted to account for a wide variety of factors that we observed in many municipalities, it is of course possible and even likely that other, unstudied factors are playing a role in municipal distress, a role that we have not been able to document on a larger scale.

These limitations, however, do not diminish the strength of this Article's core claim: that state and federal relief programs must be used together instead of separately to address the unique circumstances present in each municipality. Furthermore, this research has produced a valuable framework that will allow policymakers to design the necessary comprehensive relief. By evaluating prevalent predictors of fiscal distress and municipal fiscal behavior, relief can be tailored to address the particular needs of individual municipalities. Notably, our case studies have demonstrated the strengths and limitations of many of the options currently available to municipalities, suggesting that these options should be utilized in a targeted fashion for municipalities experiencing fiscal distress. Although no one-size-fits-all solution for resolving municipal fiscal crises exists, this Article has nevertheless successfully identified key areas of focus common to most municipalities.

IV. CONCLUSION

This Article pinpoints specific economic, political, and legal factors contributing to municipal fiscal distress and illustrates how many of these factors are not adequately addressed by existing state and federal relief mechanisms. It therefore provides a jumping-off point for further empirical research into the connections among the factors and the roles they play in specific municipalities. Furthermore, using the factors and case studies this Article provides, scholars and policymakers should design relief mechanisms that allow state programs to work in conjunction with municipal bankruptcy, in order to address the varied sources of municipal distress more comprehensively. The factors and case studies identified here should serve as a framework to help policymakers craft targeted, focused solutions for the myriad ways fiscal problems can manifest in U.S. municipalities.

APPENDIX: ADDITIONAL CASE STUDIES

Additional case studies for the remaining cities are provided here. To the extent that we have not previously discussed the state backdrop for each remaining municipality, we do so briefly at the beginning of the relevant case study.

1. New Britain, Connecticut[253]

New Britain, Connecticut's seventh largest municipality, is known as the "Hardware City" due to its rich manufacturing history, and the city retains a strong manufacturing base today.[254] New Britain has never defaulted on the payment of principal or interest on its bonds or notes; however, in 2014, both S&P and Moody's downgraded the city's rating, citing concerns over its budget.[255] Some observers, including the city's former mayor, pinned this budgetary stress on union troubles, noting that the unions had often refused to give concessions.[256] In 2012, the unions called for a forensic audit of the city's books.[257] In 2015, S&P reversed course, upgrading the city's bond rating after Mayor Erin Stewart raised

[253] Population: 72,939. Incorporated 1870. Annual Budget: $224 million. *See* Erin E. Stewart, *Investing in a Stronger Tomorrow*, Mayor's Budget, FY 2016, file:///Users/Coordes/Downloads/FY%202016%20Mayors%20Budget%20Proposal%204-16-2015.pdf.

[254] City of New Britain, *Official Statement city of New Britain, Connecticut $29,000,000 general obligation bonds*, EMMA.MSRB.ORG (2015), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EP367100.

[255] *Id.*

[256] R. Storace, *unions want forensic audit*, NEW BRITAIN HERALD (2012), http://www.centralctcommunications.com/newbritainherald/news/article_d60491d%092-2424-5084-917d-53fb88e8ac2c.html.

[257] *Id.*

taxes by 11% and made additional spending cuts to rein in the city's finances.[258] Moody's, however, has not raised its rating.[259]

New Britain's pensions are relatively well-funded, with the firemen's fund and the policemen's fund funded at 89.2% and 82.1%, respectively.[260] In recent years, the city has undertaken several economic development initiatives aimed at diversifying its tax base and shedding its image as a worn-down industrial city. Nevertheless, S&P has observed that New Britain's economy is weak and needs further development.[261] Thanks to significant local authority to raise taxes and cut spending, however, New Britain has not needed state assistance to resolve its financial difficulties.

2. Hammond, Indiana[262]

Indiana has a state intervention program for its distressed municipalities, which allows for a receiver or other financial manager to supervise the entity in distress and restructure labor finances, request emergency funding, and provide the municipality with technical assistance.[263] Indiana also seeks to be proactive in preventing municipal distress: the state constitution limits municipal debt levels to 2% of the value of taxable property within the area.[264] This limitation is subject to override by petition from a majority of property owners in cases where excess debt is necessary for public protection and defense.[265]

Indiana's Home Rule Act of 1980 allows for municipal home rule; however, practically speaking, the Act also subjects municipalities to numerous prohibitions, such that the exceptions may swallow the rule.[266] Indiana local governments may not impose taxes, licenses, or fees, nor invest money without an affirmative vote from the state legislature.[267]

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[258] Don Stacom, *After a fall, New Britain's bond rating gets a boost*, HARTFORD COURANT (Jan. 21, 2015), http://www.courant.com/community/new-britain/hc-new-britain-bonds-0127-20150121-story.html.

[259] *Id*.

[260] R. Pinho, *Municipal pension obligations* (2015-R-0249) (2015), https://www.cga.ct.gov/2015/rpt/pdf/2015-R-0249.pdf.

[261] P. Burton, *Youthful mayor steers New Britain turnaround*, BOND BUYER (2016), http://www.stewartfornb.com/youthful-mayor-steers-new-britain-turnaround-bond-buyer/.

[262] Population 78,967. Incorporated 1884. Annual Budget: $131 million. *See* Chelsea Schneider Kirk, *Hammond City Council weighs 2014 budget*, NWI.com, Sept. 21, 2013, http://www.nwitimes.com/news/local/lake/hammond/hammond-city-council-weighs-budget/article_fdf37f38-89a0-5abc-a9be-f51455611438.html.

[263] Pew, *supra* note 66.

[264] Frost, *supra* note 19 at 849 n.170.

[265] *Id.*

[266] Stone, *supra* note 75.

[267] *Id.*

Indiana home rule governments are also subject to strict property tax limits, and all Indiana municipal budgets must be approved by the relevant county.[268]

In 2014, S&P lowered Hammond's issuer credit rating to BBB+.[269] The downgrade was a consequence of prolonged structural imbalance in the city's operating funds, which have constricted the city's budgetary flexibility.[270] City management has primarily relied on gaming fund revenues and has been seeking to issue bonds to fill the budget gap.[271] S&P's outlook was stable, reflecting its expectation that Hammond's structural imbalance will continue during the next two years.[272]

Hammond has overall weak budgetary performance, with a deficit of 17.8% for the general fund and 10.5% for total funds as of 2013.[273] At least one councilman has suggested that bankruptcy could be in the city's near future; however, the city controller has begun taking steps to help reduce long-term expenses, including combining departments to save money.[274]

Hammond is yet another example of a city where local officials have substantial autonomy to structure finances and spending. This autonomy can, however, work in two ways, and as seen in Hammond, local officials may take advantage of their relative flexibility to both create fiscal distress and alleviate it.

3. New Orleans, Louisiana[275]

Louisiana does not have a formal state intervention program for its municipalities; however, it does allow its distressed municipalities to file for bankruptcy.[276] In order to file, the municipality must receive approval from the state's elected Bond Commission.[277] In addition, the municipality must

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[268] *Id.*

[269] Hammond, *IN Go bond rating lowered two notches to 'BBB+' based on local GO criteria*, BONDSONLINE (2014), http://www.bondsonline.com/Todays_Market/Credit_Rating_News_.php?DA=view&RID=38262.

[270] *Id.*

[271] *Id.*

[272] *Id.*

[273] Ed Bierschenk, *Despite red ink criticism, Hammond defends bond sale*, NWI.com (2015), http://www.nwitimes.com/news/local/lake/despite-red-ink-criticism-hammond-defends-bond-sale/article_31c60fe8-f10b-5b56-9460-91fa1e75812a.html.

[274] *Id.*

[275] Population 378,715. Founded 1718. Annual budget: $601 million. *See* City of New Orleans 2016 Annual Operating Budget, http://www.nola.gov/mayor/budget/documents/2016-adopted-budget-book-file/.

[276] Pew, *supra* note 66.

[277] Lauren M. Wolfe, *The next financial hurricane? Rethinking municipal bankruptcy*

acquire written approval from the governor and attorney general prior to filing.[278]

Louisiana has a specific clause in its constitution protecting public employee pensions.[279] Despite this protection, recent estimates suggest that Louisiana has nearly $16.6 billion in pension liabilities, representing $3,570 for every person in the state.[280]

New Orleans is Louisiana's largest city by population. It has a home rule form of government run by a mayor and a city council. New Orleans' home rule charter allows the city council to levy all classes of taxes, excises, licenses, liens, and fees necessary to operate the municipality, to pay debt, and to make capital improvements.[281] Property taxes are subject to voter approval.[282] The City Council may also borrow money, subject to a cap of 75% of the amount of that year's uncollected taxes.[283]

New Orleans has four separate pension systems but has experienced some difficulty funding them. In FY 2011, for example, New Orleans made no contributions to its post-employment benefits plan.[284] Although environmental events, such as Hurricanes Katrina and Isaac, and the Deepwater Horizon spill, have had negative repercussions on New Orleans' finances and population, the city has shown signs of economic recovery.[285] As of March 2015, the city's credit risk was better than it was before Katrina, thanks in part to a ratings bump from S&P.[286] Still, pension costs in New Orleans are chipping away at the city's budget, and officials have faced pressure to make changes, such as raising the retirement age and increasing employee contributions.[287]

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in Louisiana, 72 La. L. Rev. 555, 556 (2012).

[278] Frost, *supra* note 19 at 839.

[279] Stephen D. Eide & Dean Ball, *Constitutional public pension guarantees: Unfair, unaffordable, and bad policy,* MANHATTAN INSTITUTE FOR POLICY RESEARCH (2013), http://www.manhattan-institute.org/pdf/ib_25.pdf.

[280] Robert McClendon, *Louisiana's $16 billion retirement liabilities mostly "hidden," report says*, NOLA.COM (Mar. 2015), http://www.nola.com/politics/index.ssf/2015/03/louisiana_unfunded_retirement.html.

[281] *Home Rule Charter of the City of New Orleans* (2014), http://www.nolacitycouncil.com/docs/resources/2014HomeRuleCharter.pdf.

[282] *Id.*

[283] *Id.*

[284] City of New Orleans, *Official Statement $195,885,000 city of New Orleans, Louisiana taxable limited tax refunding bonds, series 2012*, EMMA.MSRB.ORG (2012), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EA343534.

[285] *Id*.

[286] Robert McClendon, *New Orleans' credit rating surpasses pre-Katrina level as local economy improves*, NOLA.COM (Mar. 2015), http://www.nola.com/politics/index.ssf/2015/03/new_orleans.html.

[287] Robert McClendon, *Amid rising costs, New Orleans employee pension fund under pressure to trim benefits*, NOLA.COM (Feb. 2015),

After Katrina, New Orleans moved to an all-charter school system, meaning that the city has nearly no teachers unions.[288] Nevertheless, New Orleans has publicly struggled with its firefighters over control of their pension fund, and in 2015, the state Supreme Court ruled that the city's finance director could sue pension board members for financial mismanagement.[289] The mayor has also pushed for city control of the fund.[290]

In 2014, former New Orleans mayor Ray Nagin, who was in office from 2002 to 2010, was convicted on 20 counts of bribery, fraud, and money laundering.[291] Officials claimed that Nagin took $500,000 in under-the-table money in exchange for awarding millions of dollars of city contracts to several contractors and that he had received over $200,000 in bribes.[292]

New Orleans has not demonstrated a need to file for municipal bankruptcy, though it has received external aid to recover from unforeseeable, devastating events. Although the destruction and displacement caused by natural disasters in the area created a fiscal crisis for the city, which relied on sales and property tax revenues to provide services and repair damaged infrastructure, New Orleans has been able to stage a recovery in the years since the hurricanes.[293] If officials continue to disregard pension underfunding, however, the city may find that its struggles are far from over.

4. Baltimore, Maryland[294]

Maryland has no formal state intervention mechanism, nor does it allow its municipalities to file for bankruptcy.[295] The primary source of municipal

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http://www.nola.com/politics/index.ssf/2015/03/new_orleans.html.

[288] C. Kimmett, *10 years after Katrina, New Orleans' all-charter school system has proven a failure*, IN THESE TIMES (2015), http://inthesetimes.com/article/18352/10-years-after-katrina-new-orleans-all-charter-district-has-proven-a-failur.

[289] R. Rainey, *New Orleans finance director can sue over firefighters pension losses, La. Supreme Court rules*, NOLA.COM (2015), http://www.nola.com/politics/index.ssf/2015/02/new_orleans_finance_director_c.html.

[290] *Id.*

[291] Jeffery Young, *Ex-New Orleans mayor starts long jail term for corruption*, VOICE OF AMERICA (Sept. 15, 2014), http://www.voanews.com/content/ex-new-orleans-mayor-starts-long-jail-term-for-corruption-convictions/2449928.html.

[292] *Id.*

[293] The Bureau of Governmental Research and the Public Affairs Research Council of Louisiana, *Municipal Bankruptcy in Perspective* (2006), http://parlouisiana.org/s3web/1002087/docs/Publications/Municipal%20Bankruptcy.pdf.

[294] Population 622,104. Founded 1729. Annual Budget: $2.64 billion. City of Baltimore, *Open Budget Baltimore*, http://openbudget.baltimorecity.gov/#/.

[295] Pew, *supra* note 66.

intergovernmental aid in the state stems from the array of aid distribution and revenue sharing programs the state has with its counties, municipalities, and Baltimore City. The state's FY 2017 budget includes approximately $6.5 billion in direct aid to local governments.[296] Maryland also takes preventative measures with respect to its municipalities, requiring any local government authorized to incur debt to file a detailed financial report annually with the State Treasurer.[297]

Baltimore is governed by an elected mayor, a comptroller, and a city council.[298] The city has a home rule charter, which the Maryland Constitution grants Baltimore the power to amend. Per the charter, Baltimore can issue general obligation debt, and the state General Assembly may not enact local laws for the city if the charter has granted the city jurisdiction in a particular area.[299]

In 2013, Baltimore commissioned a 10-year financial forecast from Public Financial Management, Inc. The forecast showed that the city's government was headed toward financial ruin and predicted that the city would accumulate $745 million in budget deficits over the next decade due to a widening gap between projected recurring revenues and expenditures.[300] Including infrastructure needs and liabilities for retiree health care benefits, the total shortfall was predicted to reach $2 billion over 10 years, despite city officials' previous efforts to close budget gaps.[301]

Baltimore has long suffered demographic challenges, including a 36% population decline since 1980.[302] At least one report attributes this problem to the city's labor and taxation policies, the former of which have historically been union-friendly.[303] Problems with the city's school district may also be contributing to the population drain. A 2012 audit of the school system indicated lapses in financial management, particularly with respect

[296] Maryland General Assembly, *State aid to local governments*, DEPARTMENT OF LEGISLATIVE SERVICES (2016), http://dls.state.md.us/Content.aspx?page=658.

[297] Frost, *supra* note 19 at 849 n. 170.

[298] City of Baltimore, *Mayor and city council of Baltimore (city of Baltimore, Maryland) consolidated special obligation refunding bonds (tax increment financing projects) $20,195,000 series 2015,* EMMA.MSRB.ORG (2015), HTTP://EMMA.MSRB.ORG/ISSUEVIEW/ISSUEDETAILS.ASPX?ID=ER369334.

[299] *Maryland Local Law*, THURGOOD MARSHALL LAW LIBRARY (2016), https://www.law.umaryland.edu/marshall/researchguides/TMLLguide/9sec3.html.

[300] *City of Baltimore is on a path to financial ruin, report says*, FOX NEWS POLITICS (Feb. 6, 2013), http://www.foxnews.com/politics/2013/02/06/city-baltimore-is-on-path-to-financial-ruin-report-says.html.

[301] *Id.*

[302] Richard A. Epstein, *Baltimore's real police problem: unions*, THE FEDERALIST (May 12, 2015), http://thefederalist.com/2015/05/12/baltimores-real-police-problem-unions/.

[303] *Id.*

to managing overtime and other contractual matters.[304]

Although Baltimore has been fully funding its annual required pension contributions, its pension burden is still quite high, amounting to $3.8 billion, or about 2.33 times its operating revenues.[305] Thus, Baltimore represents a city on the edge, which could tumble into insolvency if it hits a "tipping point." Proactive monitoring by both the state of Maryland and the city itself to ensure continued adequate funding of pension obligations may help Baltimore prevent its problems from becoming unmanageable in the future.

5. North Las Vegas, Nevada[306]

Nevada does not authorize its municipalities to file for bankruptcy, but it does have a state intervention program coordinated by the state's Department of Taxation. After weighing 27 conditions to determine whether a local government is in "severe financial emergency," the Department may appoint a manager to negotiate and approve collective bargaining agreements for the locality.[307] Nevada law also permits the manager to dis-incorporate or dissolve a distressed city.[308] The Department of Taxation may undertake this inquiry on its own or at a municipality's request. Regardless of how the process begins, both the Department and the Nevada Tax Commission play key roles in determining the facts surrounding a municipality's distress and in providing expertise regarding the municipality's available options.[309]

Prior to 2015, Nevada functioned under Dillon's Rule, which says that the state exercises control over the powers that are granted to local jurisdictions.[310] However, Nevada recently passed a home rule statute.

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[304] E.L. Green & L. Broadwater, *Mayor calls on Alonso, school board to fix broken financial management*, THE BALTIMORE SUN (Oct. 11, 2012), http://articles.baltimoresun.com/2012-10-11/news/bal-mayor-calls-on-alonso-school-board-to-fix-broken-financial-management-20121010_1_alonso-school-board-school-construction.

[305] Carrie Sheffield, *Baltimore paradox: City finances strong, anti-poverty policies weak*, FORBES (May 1, 2015), http://www.forbes.com/forbes/welcome/#2715e4857a0b3fdd3c6f1cf7.

[306] Population 226,877. Incorporated 1946. Annual Budget: $451 million. City of North Las Vegas, *Adopted Budget 2015-2016*, http://www.cityofnorthlasvegas.com/docs/Finance/BudgetBooks/Complete_Budget_Book_2015-2016_FINAL.pdf.

[307] Pew, *supra* note 66.

[308] *Id.*

[309] Frost, *supra* note 19 at 864.

[310] *Local Government Authority*, National League of Cities, http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/local-government-authority (accessed

Despite this change, Nevada's home rule statute does not provide fiscal home rule authority to local governments. Under the statute, home rule entities may not impose a tax without the Legislature's approval, and no new taxing powers are provided to local jurisdictions.[311]

North Las Vegas has few of the attractions of neighboring Las Vegas. The city has several small casinos and hotels but primarily functions as a bedroom community serving the larger employment center of Las Vegas.[312] The population in North Las Vegas is generally younger and less affluent than its neighboring city, and buying income declined sharply during the great recession relative to the surrounding area. This resulted in the city losing both sales and property tax revenue and led to a pension crisis.[313] Although the city eventually negotiated settlements with its police and fire unions, Moody's, S&P, and Fitch all downgraded it in 2011.[314]

The lack of a significant commercial sector, coupled with years of mismanagement by city officials that included overly generous pay and benefit packages for municipal workers and expensive, questionable capital projects such as a new city hall and a new water treatment facility, likely contributed to the city's vulnerable financial situation.[315] The city's incoming chief financial manager noted in 2014 that city officials had engaged in a number of poor financial practices, including "hiding the facts from policymakers, concealing rates in financial models, taxing without properly informing ratepayers and dishonestly representing [the city's] financial condition."[316]

Nevertheless, employment prospects have somewhat brightened for North Las Vegas: both Tesla Motors and Farraday Future have begun constructing plants in the area, and regional planners are seeking to leverage this opportunity to designate the area as a hub for electric car

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Sept. 5, 2016).

311 S. Chereb, *Lawmakers talk "home rule" for jurisdictions*, LAS VEGAS REVIEW-JOURNAL (2015), http://www.reviewjournal.com/news/nevada-legislature/lawmakers-talk-home-rule-jurisdictions.

312 City of North Las Vegas, *Official statement $27,070,000 city of North Las Vegas, Nevada general obligation (limited tax) refunding bonds (additionally secured by pledged revenues) series 2011*, EMMA.MSRB.ORG (2011), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER344495.

313 *Id.*

314 *Id.*

315 R. Lang, *A High Stakes gamble in North Las Vegas*, THE LINCY INSTITUTE (Apr. 2012), https://www.unlv.edu/sites/default/files/24/Brief-High-Stakes-Gamble-April2012.pdf.

316 Andrew Doughman, *North Las Vegas officials paint grim picture of city's finances*, LAS VEGAS SUN (Jan. 8, 2014), http://lasvegassun.com/news/2014/jan/08/north-las-vegas-officials-paint-grim-picture-citys/.

manufacturing.[317] Regional planners are seeking additional partnerships with private corporations to achieve this result.

North Las Vegas is a city that has taken advantage of the state's intervention mechanisms and, using state resources in combination with changes to local governance practices and infrastructure development, seems to be creating new hope for its fiscal future.

6. Jersey City, New Jersey[318]

Jersey City is New Jersey's second-largest municipality. The city's history has been characterized by political corruption, crime, financial mismanagement and industrial pollution, but in recent years, it has begun to gentrify.[319] Although Jersey City historically faced some economic difficulties, its financial condition also has improved in recent years due to balanced operations and strong prospects for continued tax base growth. The 2013 calendar year resulted in an excess of $12,410,182 in operations.[320] Jersey City restructured its debt in early 2006. This restructuring provided millions of dollars of debt service relief in FY 2006 and in several future years.[321]

In November 2014, Moody's upgraded Jersey City's bond rating to A1, citing the city's large tax base and rising income levels.[322] Jersey City's financial health has improved significantly since facing a structural budget gap of $51.4 million in 2009.[323] The gap has since been reduced to about $16 million as of 2014.[324] Jersey City has the highest municipal tax base in

[317] Megan Messerly & Daniel Rothberg, *Hyperloop test track to come to North Las Vegas*, Las Vegas Sun, Dec. 8, 2015, http://lasvegassun.com/news/2015/dec/08/hyperloop-test-track-to-come-to-north-las-vegas/.

[318] Population 257,342. Incorporated 1838. Annual Budget: $553 million. Terrence T. McDonald, *10 things you should know about this year's Jersey City budget*, NJ.com, Mar. 1, 2016, http://www.nj.com/hudson/index.ssf/2016/03/10_things_you_should_know_about_this_years_jersey.html.

[319] *Jersey City, northern New Jersey, an example of gentrification going on in communities nationwide*, Lehigh Valley Live, http://www.lehighvalleylive.com/breaking-news/index.ssf/2013/04/jersey_city_northern_new_jerse.html.

[320] City of Jersey City, *Official Statement of the city of Jersey City in the county of Hudson, state of New Jersey*, EMMA.MSRB.ORG (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER364729.

[321] *Id.*

[322] Terrence McDonald, *Moody's upgrades Jersey City bond rating, citing 'rising income levels*,' NJ.COM (Nov. 13, 2014), http://www.nj.com/hudson/index.ssf/2014/11/moodys_upgrades_jersey_city_bond_rating_citing_rising_income_levels.html.

[323] *Id.*

[324] *Id.*

the state.[325]

Jersey City was able to avoid municipal bankruptcy or a state takeover by effectuating its own consensual debt restructuring in the mid-2000s. The city's proximity to New York City has allowed it to develop a large tax base, which the city should be able to leverage to further improve its economic condition.

7. Niagara Falls[326] and Utica,[327] New York

New York has in the past intervened in the affairs of its distressed municipalities; however, the level of intervention depends on the severity of the emergency, and New York officials have demonstrated a preference for proactive monitoring of local government finances instead of provision of direct aid.[328] New York's monitoring system requires cities and school districts to send financial data to the state comptroller throughout the year.[329] The comptroller then scores the entities in terms of their distress levels. If a city is shown to be experiencing distress, the comptroller's office can offer technical assistance, including budgeting and long-term planning services, to the distressed city.[330]

In terms of actual intervention, state lawmakers have twice set up corporations to sell bonds for cities in distress: once in New York City in 1975, and once in the city of Troy in 1995.[331] Yet, New York largely eschews standardized intervention programs, preferring instead to give lawmakers the freedom to prescribe different roles and powers for financial control boards and other ways to respond directly to specific instances of city distress.[332] Once a financial control board or emergency manager is appointed, that authority can recommend that the local government be authorized to file for municipal bankruptcy.[333]

New York's constitution explicitly protects public employee pensions,

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[325] *Id.*

[326] Population 49,468. Incorporated 1892. Annual Budget: $95 million. City of Niagara Falls, New York, 2014 Adopted Budget, http://www.egovlink.com/public_documents300/niagarafalls/published_documents/Administration/Adopted%20Budget%202014.pdf.

[327] Population 61,808. Incorporated 1832. Annual Budget: $68.4 million. City of Utica, New York, 2016-2016 Council Amended Final Budget, Mar. 16, 2016, http://www.cityofutica.com/Assets/Departments/Budget/City-Budget/2016-2017%20Final.pdf.

[328] Pew, *supra* note 57.

[329] *Id.*

[330] *Id.*

[331] *Id.*

[332] *Id.*

[333] Skeel & Gillette, *supra* note 9 at 1220.

including future pension accruals. This essentially confers constitutional protection on compensation for as-yet unperformed work, making New York's protections among the strongest in the country.[334]

New York has also granted constitutional home rule powers to all counties outside of New York City, and to all cities, towns, and villages. New York's Municipal Home Rule Law provides home rule entities with the power to collect local taxes authorized by the State Legislature, as well as assessments for local improvements.[335] Nevertheless, courts have long construed matters of taxation and indebtedness as matters of "state concern" that may not be managed by home rule entities.[336] All local laws relating to debt, taxes, and assessments must thus be consistent with laws enacted by the State Legislature.[337]

The city of Niagara Falls is in western New York State, near the famous landmark of the same name. Niagara Falls is an old industrial city that has declined significantly over the years: the city's population has been reduced by 9% since 2000, and the number of city residents living in poverty has grown by 2% over the same time period.[338]

The poverty and population loss Niagara Falls is experiencing can be attributed to the decline of the city's major industry. Newer technology has surpassed the generating power of Niagara's own plant, and the last major business in the area, a casino operated by the Seneca Nation, opened in 2002.[339] Although the casino generated revenue, legal battles over the revenue sharing program impeded the city's ability to reap the benefits of that revenue for many years.[340] In June 2013, New York State and the Seneca Nation reached a landmark agreement that resolved the long-running dispute. Under this agreement, Niagara Falls received a 25% share of (pro-rated) local impact payments from the casino, which amounted to $89 million, as well as a say in future revenue-sharing percentages.[341]

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[334] Eide & Ball, *supra* note 279.

[335] New York State Department, *Adopting local laws in New York State* (2015), https://www.dos.ny.gov/lg/publications/Adopting_Local_Laws_in_New.

[336] *Id*.

[337] *Id*.

[338] Justin Sondel, *POVRETY IN NIAGARA: 'Culture of poverty' impacting significant number of residents in the Falls*, NIAGARA GAZETTE (Mar. 2, 2014), http://www.niagara-gazette.com/news/local_news/poverty-in-niagara-culture-of-poverty-impacting-significant-number-of/article_d1437341-9708-5256-8105-b8c983142e36.html.

[339] City of Niagara Falls, *Official statement city of Niagara Falls, Niagara County, New York $7,437,000 general obligation (serial) bonds 2011*, EMMA.MSRB.ORG (2011), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER343680.

[340] Dave McKinley, *Fix the Falls: Casino Impact After more than a dozen years, has the gamble paid off?* (Jul. 24, 2015), http://legacy.wgrz.com/story/news/2015/07/22/after-more-than-a-dozen-years-has-the-gamble-paid-off/30515961/.

[341] City of Niagara Falls *Official statement relating to the issuance of city of Niagara*

Despite this recent reversal in fortune, Niagara Falls' continued struggle with poverty and population loss has in essence forced the city to focus on reactive problem solving rather than proactive future planning and development.[342] City officials hope that more reliable casino revenue, along with a recently developed plan to link the downtown area with the waterfront, will benefit the city.[343] These developments contributed to decisions from Moody's and S&P to raise their ratings outlook from "negative" to "stable."[344]

Niagara Falls demonstrates some of the difficulties cities face when dealing with long-term problems like poverty and population loss caused by industry decline. Although the city has struggled in the past, recent state-level legal successes have given it the money it needs to begin engaging in needed infrastructure improvements to reverse the problems it has long faced.

Like Niagara Falls, the city of Utica was once an industrial powerhouse. Located in upstate New York along the Erie Canal, the city was an ideal location for the manufacture and transport of goods for sale.[345] Nowadays, however, the city's population has dwindled and the prominence of its location diminished as rail transit and interstate trucking have replaced the Canal as the predominant method of moving goods and supplies. Little industry remains in Utica itself to employ citizens.[346] Utica has also struggled with aging infrastructure, high poverty levels, economic disinvestment, changing demographics, and a lack of long-range planning.[347]

Recently, Utica has been at the forefront of a regional movement seeking to develop the area as a destination for culture, arts, and outdoor activity. An influx of foreign refugees over the past few decades has brought challenges and benefits to the city.[348] Utica has sought to harness

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Falls, Niagara County, New York $7,920,000 refunding (serial) bonds 2014 emma.msrb.org (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EA352282.

[342] Mike Hudson, *Poverty Industry Provides Growth Sector for Struggling Falls Economy*, NIAGARA FALLS REPORTER (Dec. 17, 2015), http://niagarafallsreporter.com/Stories/2015/DEC17/PovertyIndustry.html.

[343] Mark Belcher, *City plans to remove Robert Moses Parkway*, (Feb. 19, 2015), http://wivb.com/2015/02/19/city-plans-to-remove-robert-moses-parkway/.

[344] City of Niagara Falls, *supra* note 339; City of Niagara Falls, *Official statement relating to the issuance of city of Niagara Falls, Niagara County, New York $7,920,000 refunding (serial) bonds 2014*, EMMA.MSRB.ORG (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EA352282.

[345] Rust 2 Green, *Greening the Rust Belt: R2G Utica*, RUST 2 GREEN (2015), http://www.rust2green.org/utica.php.

[346] *Id.*

[347] *Id.*

[348] Jennifer S. Vey, *Restoring Prosperity: The State Role in Revitalizing America's*

the distinct cultures of the Burmese, Sudanese, and Bosnian members of its population and distinguish itself as a multicultural activity hub.[349] The arrival of refugees has also brought the assistance of non-profits to the region, which help with job placement and other projects.[350]

The benefits of regional coordination in Utica are reflected in the jobs that have been created and in the ratings upgrades the city has received in recent years. In 2014, Moody's and S&P gave Utica a "stable" rating, and both agencies upgraded their outlooks to "positive" in 2015.[351]

Utica has rebounded well from previous financial mismanagement. A 2013 fiscal profile paints a bleak picture of a city with almost no money in any fund balance, a low credit rating, and few overall options.[352] The mayor's 2016-2017 budget emphasized that previous administrations spent the capital improvement fund to make up budget shortfalls, a practice that, while not illegal, drained the city's reserves and left Utica with "nothing to show for it."[353] Using regional coordination mechanisms, however, Utica has begun to experience a turnaround that may benefit the city for years to come.

8. Providence, Rhode Island[354]

Rhode Island has become substantially involved with its distressed municipalities in the past, most notably in the aftermath of Central Falls' 2011 bankruptcy filing. In the wake of that filing, state officials appointed a receiver to monitor the city's actions, and legislators passed a law designed to protect the city's bond investors from taking a hit.[355] More generally,

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Older Industrial Cities, BROOKINGS INSTITUTION METROPOLITAN POLICY PROGRAM (2007), http://www.achp.gov/docs/RestoringProsperity_BrookingsInstitutionreport.pdf.

[349] A. Jenkins, *What About Those Jobs?*, UTICA PHOENIX: UTICA'S INDEPENDENT NEWSPAPER (2014), http://uticaphoenix.net/jobs/.

[350] *Id.*

[351] City of Utica, *Official statement of the city of Uitca, Oneida County, New York, relating to $2,424,000 public improvement (serial) bonds, 2014,* EMMA.MSRB.ORG (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EA351523; City of Utica, *Official statement of the city of Utica, Oneida County, New York relating to $3,887,600 public improvement (serial) bonds, 2015*, EMMA.MSRB.ORG (2015), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER367903.

[352] Office of the New York State Comptroller, *2013 Fiscal profile: City of Utica* (2013), http://www.osc.state.ny.us/localgov/pubs/fiscalprofiles/utica.pdf.

[353] City of Utica, *2016-2017 Mayor's proposed budget* (2016), http://www.cityofutica.com/Assets/Departments/Budget/City-Budget/2016_2017%20Budget%20Complete%20With%20Tabs.pdf.

[354] Population 177,994. Incorporated 1832. Annual Budget: $696 million. City of Providence, Approved Budget for the Fiscal Year Ending June 30, 2016, https://www.providenceri.com/efile/6252.

[355] Pew, *supra* note 66.

Rhode Island law allows receivers to negotiate new union contracts, approve or issue debt, and supervise municipal finances.[356] In addition, Rhode Island can bail out financially distressed municipalities using state funds.[357] To determine whether a bailout is necessary, Rhode Island has set up monitoring mechanisms that trigger state action whenever a municipality indicates that it cannot pay its debts.[358]

Providence is one of the oldest cities in the United States.[359] The city has had a home rule charter since 1980; however, Rhode Island's constitution makes clear that home rule entities do not have the powers to levy, assess and collect taxes or to borrow money, except as authorized by the state's General Assembly.[360]

Providence's age is reflected in its local economy, which is based on shipping of petroleum products, cement, and timber, as well as manufacturing.[361] Providence has experienced similar challenges as many of the older industrial cities across the United States, including Utica and Niagara Falls.[362] Providence has been shedding manufacturing jobs in recent years, although the city has increased employment in certain other sectors.[363] Still, Providence's population remains predominantly low-income, and declining real estate values have made it difficult for city leaders to increase revenue based on taxes and fees alone.

Poor decision-making from city officials has also contributed to Providence's problems. One analysis suggests that officials needed to cut spending and make other budget adjustments years ago to avoid the current pension underfunding problems that plague the city.[364] Yet, Providence's government has engaged in largely unchecked spending, and corruption among local officials has been rampant.[365] Thus, in 2013, Providence faced a nearly $1 billion shortfall in funding pensions and other post-employment

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356 *Id.*

357 *Id.*

358 Frost, *supra* note 19 at 837 n.93.

359 J. Elorza, *Welcome to Providence!*, PROVIDENCE A CITY THAT WORKS (2016), https://www.providenceri.com/.

360 Charter Review Commission, *City of Providence* (2016), https://www.providenceri.com/city-clerk/charter-review-commission; R.I. CONST. art. 13, § 5 (1986).

361 City of Providence, *Official statement of the city of Providence, Rhode Island relating to $39,345,000 general obligation bonds, series 2013a*, EMMA.MSRB.ORG (2013), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER353910.

362 Vey, *supra* note 348.

363 City of Providence, *supra* note 361.

364 Michael G. Riley, *Riley: Leaders Silent on "Enron-esque" Providence Pension Debacle*, GOLOCALPROVNEWS (May 12, 2015), http://www.golocalprov.com/news/riley-leaders-silent-on-enron-esque-providence-pension-debacle.

365 *Id.*

benefits, combined with a $31 million deficit in education funding.[366] Recent litigation has brought newfound attention to the pension system, attention that some consider to be welcome to the extent closer monitoring reduces incentives for corruption.[367]

Since the 2013 events, Providence has been able to reach a pension reform agreement and has reduced its unfunded pension liability to $831 million.[368] The city has met about 97% of its required contribution, and the mayor has introduced a new plan for economic development.[369]

In 2012, the Providence Housing Authority was the subject of a scandal. The former executive director offered no-bid contracts and mismanaged payroll funds on top of sexual harassment charges.[370] Although the Housing Authority is a city department, it receives federal funding.[371]

Governance issues were a primary contributor to Providence's pension crisis, and although reforms have allowed the city to stand on firmer financial footing, it remains to be seen whether Providence will someday need more concrete assistance from the state of Rhode Island.

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[366] City of Providence, *supra* note 361.

[367] R. Moore, *City's Retirement Plan Claims Against Buck Dismissed*, PLANSPONSOR (2015), http://www.plansponsor.com/Citys-Retirement-Plan-Claims-Against-Buck-Dismissed/?fullstory=true; Stephen Beale, *EXCLUSIVE: Providence Unfunded Pension Liability Now at Least $831M,* GOLOCALPROV (2014), http://www.golocalprov.com/news/exclusive-providence-unfunded-pension-liability-now-at-least-831m/.

[368] City of Providence, *Official statement of the city of Providence, Rhode Island relating to $17,480,000 general obligation refunding bonds, series 2014a*, EMMA.MSRB.ORG (2014), http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EA351523.

[369] *Id.*

[370] D. McGowan, *EXCLUSIVE: Feds Question Jobs & No-Bid Contracts at Providence Housing*, GOLOCALPROV (2012), http://www.goloprov.com/news/pha2.

[371] *Id.*