



2017

Predictors of Municipal Bankruptcies and State Intervention Programs: An Exploratory Study


Laura N. Coordes

Arizona State University Sandra Day O'Connor College of Law

Thom Reilly

Arizona State University

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Bankruptcy Law Commons](#), and the [State and Local Government Law Commons](#)
Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Coordes, Laura N. and Reilly, Thom (2017) "Predictors of Municipal Bankruptcies and State Intervention Programs: An Exploratory Study," *Kentucky Law Journal*: Vol. 105 : Iss. 3 , Article 4.

Available at: <https://uknowledge.uky.edu/klj/vol105/iss3/4>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

Predictors of Municipal Bankruptcies and State Intervention Programs: An Exploratory Study

Laura N. Coordes¹ & Thom Reilly^{II}

ABSTRACT

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, the authors 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 the authors' sample population. The 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 in a more comprehensive manner.

¹ Associate Professor, Arizona State University Sandra Day O'Connor College of Law. Many thanks to Karen Bradshaw, Kaipo Matsumura, Troy Rule, Erin Scharff, Cathy Hwang, and Juliet Moringiello for their advice and suggestions on previous drafts. Special thanks to Madison Levine for research assistance.

^{II} Director, Morrison Institute for Public Policy and Professor, School of Public Affairs, Arizona State University. Many thanks to my research assistant, Larry Gulliford, for his work on this manuscript.

TABLE OF CONTENTS

ABSTRACT.....	493
TABLE OF CONTENTS.....	494
INTRODUCTION.....	496
I. BACKGROUND.....	499
A. <i>Chapter 9's Historical Development</i>	499
B. <i>State Programs and Their Limitations</i>	500
C. <i>Approach and Methodology</i>	501
i. Fiscal Home Rule.....	503
ii. Intergovernmental Aid.....	505
iii. Tax and Expenditure Limits.....	506
iv. Access to Municipal Bankruptcy.....	508
v. Unfunded Pension Liability.....	510
vi. Public Sector Union Density.....	511
vii. Financial Mismanagement.....	513
viii. Triggering Event.....	514
ix. Other Factors.....	516
II. CASE STUDIES: STATES AND CITIES.....	516
A. <i>Michigan</i>	517
i. Detroit; Population: 677,116; Annual Budget: \$1 billion.....	519
B. <i>Illinois</i>	521
i. Chicago; Population: 2.7 million; Annual Budget: \$7.84 billion.....	522
C. <i>Pennsylvania</i>	524
i. Scranton; Population: 77,118; Annual Budget: \$132 million.....	525
D. <i>New Jersey</i>	527
i. Bayonne; Population: 66,311; Annual Budget: \$135.5 million.....	529
E. <i>Connecticut</i>	530
i. West Haven; Population: 54,927; Annual Budget: \$151 million.....	531
F. <i>Arizona</i>	532
i. Glendale; Population: 240,126; Annual Budget: \$632 million.....	533
G. <i>California</i>	535
i. Irvine; Population: 256,927; Annual Budget: \$172 million.....	536
ii. Stockton; Population: 305,658; Annual Budget: \$610 million.....	537
iii. San Bernardino; Population: 215,108; Annual Budget: \$28 million.....	538

iv. Vallejo; Population: 121,253; Annual Budget:
 \$185 million539

III. DISCUSSION.....541

 A. *Findings*.....541

 B. *Limitations*546

CONCLUSION 547

APPENDIX: ADDITIONAL CASE STUDIES..... 547

KEY TO TABLE X..... 562

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.¹ 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.² Detroit chose to address its problems through bankruptcy, while Chicago—at least so far—has not. This prompts the following question: why do some cities file for bankruptcy, while others, facing similar financial problems, do not?

This question has multiple potential 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 such relief.³ Twenty-four states conditionally or unconditionally authorize municipal bankruptcy access, three provide limited authorization, two prohibit the practice outright, and the remainder provide no express authorization.⁴ This patchwork of access provisions, combined with concerns about the municipal bankruptcy process itself,⁵ leads many municipalities to utilize alternative fiscal relief remedies, even if their state does provide them with access to bankruptcy.

Another reason is that municipal bankruptcy is rare, and therefore somewhat of an unthinkable event. Between 1980 and 2008, only 216 Chapter 9 cases were filed.⁶ 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 governments filed for bankruptcy, and most of these filings were small

¹ *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 [<https://perma.cc/R4EA-54ZM>]; *Fitch Cuts Chicago Credit Rating in Wake of Pension Ruling*, REUTERS (Mar. 28, 2016, 5:23 PM), <http://www.reuters.com/article/chicago-ratings-outlook-idUSL2N170121> [<https://perma.cc/R9RU-JEMG>].

² See case studies *infra* Part II.

³ 11 U.S.C. § 109(c) (2016) (providing for state authorization).

⁴ Cory Eucalitto et al., *Municipal Bankruptcy: An Overview for Local Officials*, AM. LEGIS. EXCHANGE COUNCIL (Feb. 26, 2013), <https://www.alec.org/article/municipal-bankruptcy-an-overview-for-local-officials/> [<https://perma.cc/K8FM-Y2C4>].

⁵ See John Gramlich, *Municipal Bankruptcy Explained: What it Means to File for Chapter 9*, PEW CHARITABLE TR. (Nov. 22, 2011), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2011/11/22/municipal-bankruptcy-explained-what-it-means-to-file-for-chapter-9> [<https://perma.cc/2L6L-U3R5>].

⁶ Keren Deal et al., *A Descriptive Case Study of the Greene County, Alabama Bankruptcy*, 21 J. PUB. BUDGETING, ACCT. & FIN. MGMT., 337, 338 (2009).

utility authorities and special taxing districts, rather than cities and towns.⁷ 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, for example, an ad hoc state program hastily created to address municipal distress.

Studying how municipalities choose to overcome distress, whether through bankruptcy or otherwise, however, is complicated. Indeed, a vast array of different state laws impact a municipality's fiscal health. And, to date, the municipal decision-making process has remained largely inaccessible. Thus, 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 nineteen cities that have experienced distress over the past eight years, this Article 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 so doing, this Article contributes both to the literature focusing on the use and efficacy of

⁷ *Bankrupt Cities, Municipalities List and Map*, GOVERNING (Nov. 7 2014), <http://www.governing.com/gov-data/municipal-cities-counties-bankruptcies-and-defaults.html> [<https://perma.cc/B29M-U8FC>].

municipal bankruptcy⁸ and to the literature studying how fiscal crises have led municipalities to seek relief in the first place.⁹

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.

Part I of this Article traces the historical development of Chapter 9 bankruptcy and state programs and provides an overview of the authors' 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

⁸ See generally Laura Napoli Coordes, *Restructuring Municipal Bankruptcy*, 2016 UTAH L. REV. 307 (2016) (expressing concerns that municipal bankruptcy law in practice is out of touch with the broader goals of the bankruptcy system); 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); Clayton P. Gillette & David A. Skeel, Jr., *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); 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); 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).

⁹ See generally, Richard F. Callahan & Mark Pisano, *Bankruptcy: The Divergent Cases of the City and the County of San Bernardino*, 14 PUB. FIN. & MGMT. 84, 84 (2014) (examining municipal bankruptcy's effects); Deal, *supra* note 6 (examining municipal bankruptcy effects); Reynolds Farley, *The Bankruptcy of Detroit: What Role Did Race Play?*, 14 CITY & COMMUNITY 118 (2015) (examining municipal bankruptcy effects); Rebecca Hendrick & Andrew Crosby, *Does Bankruptcy Really Matter? The Solvency of Municipal Governments in the Chicago Metropolitan Region*, 14 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); Keeok Park, *To File or Not to File: The Causes of Municipal Bankruptcy in the United States*, 16 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 CAMBRIDGE J. REGIONS, ECON. & SOC'Y 17 (2013) (studying this area after the 2008 financial crisis); Stefano Rossi & Hayong Yun, *What Drives Financial Reform? Economics and Politics of the State-Level Adoption of Municipal Bankruptcy Laws*, (Dec. 2015) (unpublished paper) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2698665 [<https://perma.cc/6668-RQEB>]) (analyzing state adoption of municipal bankruptcy laws through the lenses of economic and political theories of financial reform); Akheil Singla et al., *Blind, Broke, and Bedlam: Differentiating Fiscal Stress from Bankruptcy in California*, 14 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).

interactions that influence municipal decision-making. Part III puts the authors' 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 of this Article begins by outlining the historical development of Chapter 9 of the U.S. Bankruptcy Code and the concurrent rise in state relief programs. The authors then describe their 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 of this Article.

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.¹⁰ 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 supermajority of creditors agreed to it.¹¹ Because contracts cannot be modified on a non-consensual basis under state law, Congress implemented its powers to create bankruptcy laws, and, thus, created Chapter 9 of the Bankruptcy Code.¹² Bankruptcy was a desirable solution because it offered a streamlined mechanism for debt resolution. Outside of bankruptcy, however, creditors remained free to pursue their individual interests without thinking about the creditor group as a whole, which could be detrimental to parties.¹³

But, despite bankruptcy's benefits, Congress' first attempt at a municipal bankruptcy law was unsuccessful, and the United States Supreme Court declared the first iteration of municipal bankruptcy laws unconstitutional in 1936.¹⁴ Specifically, the Court held that the amendments contravened the Tenth Amendment, which reserves undelegated powers to the states, because the amendments allowed federal judges to interfere with municipalities' contractual obligations.¹⁵ In response, Congress passed a revised set of amendments providing

¹⁰ Anna Gelpern, *Bankruptcy, Backwards: The Problem of Quasi-Sovereign Debt*, 121 YALE L.J. 888, 923 (2012).

¹¹ Vincent S. J. Buccola, *Who Does Bankruptcy? Mapping Pension Impairment in Chapter 9*, 33 REV. BANKING & FIN. L. 585, 592–93 (2014).

¹² McConnell & Picker, *supra* note 8, at 427–28.

¹³ David A. Skeel, Jr., *When Should Bankruptcy Be an Option (for People, Places, or Things)?*, 55 WM. & MARY L. REV. 2217, 2235–36 (2014).

¹⁴ *Ashton v. Cameron County Water Improvement Dist. No. One*, 298 U.S. 513, 532 (1936).

¹⁵ *Id.* at 530–32.

more limited powers to the bankruptcy court.¹⁶ 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, Congress made them permanent in 1946.¹⁸ In subsequent years, Congress continued to revise Chapter 9: once in the 1970s, during New York City's fiscal crisis, and most recently in 1994.¹⁹ The 1994 amendments, however, are significant—they require states to specifically authorize their municipalities to file for bankruptcy.²⁰ The 1994 amendments effectively reversed the baseline for state authorization: prior to the amendments, silence in the law constituted assent to filing; following the amendments, however, anything less than explicit authorization is deemed to prohibit a municipal bankruptcy filing.²¹

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.²²

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. General characteristics, however, may include provisions of state aid to the municipality,²³ the appointment of an emergency manager to temporarily run a city or town,²⁴ or the creation of a state-run board to oversee the municipality's finances.²⁵ To the extent a state in this Article's sample has a developed, alternative system available for its municipalities, this Article describes that system in the case studies below.

Although the quality and composition of state programs vary considerably, all state programs are somewhat limited in their ability to address municipal fiscal crises. For example, states are generally viewed as prohibited from impairing

¹⁶ Act of Aug. 16, 1937, 50 Stat. 653.

¹⁷ *United States v. Bekins*, 304 U.S. 27, 51 (1938).

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

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 *Id.*

²² Skeel, *supra* note 13, at 2220.

²³ See, e.g., *The State Role in Local Government Financial Distress*, PEW CHARITABLE TR. (Jul. 2013), http://www.pewtrusts.org/~media/assets/2013/07/23/pew_state_role_in_local_government_financial_distress.pdf [<https://perma.cc/2ZDZ-QF7F>].

²⁴ See, e.g., *id.* (describing Michigan's emergency manager system).

²⁵ See, e.g., *id.* (describing New Hampshire's financial control board for the city of Manchester in 1921).

contractual obligations on a non-consensual basis,²⁶ and Section 903 of the Bankruptcy Code similarly prohibits states from effectuating a comprehensive debt composition.²⁷ Thus, as the Supreme Court has recently confirmed, states cannot enact their own bankruptcy law.²⁸ In addition to legal limitations, however, states also often encounter practical difficulties in managing intervention programs due to their own fiscal limitations. If a state, for example, is struggling with its own pension burdens or cannot pay its own debts, such state may not have the funds to provide additional assistance to cities in fiscal distress.

C. Approach and Methodology

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

Thus, the authors 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.²⁹ The 601 cities that fit this criterion formed the authors' initial sample. Separately, the authors identified the thirteen municipalities that had filed for bankruptcy during and after the 2008 financial crisis.³⁰ Of these, only four cities with populations of 50,000 or higher had filed.

The authors 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").³¹ To encompass the timing of the Great Recession and its aftermath, the authors gathered data for each of the cities in their sample using the time frame of 01/01/2007 to 12/01/2015.

²⁶ See U.S. CONST. art. I, § 10, cl. 1.

²⁷ See 11 U.S.C. § 903 (2016).

²⁸ See generally *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938 (2016) (holding that Puerto Rico is a "State" for purposes of bankruptcy preemption).

²⁹ 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 [https://perma.cc/C5SY-G8GH].

³⁰ Mike Maciag, *How Rare are Municipal Bankruptcies?*, GOVERNING (Jan. 24, 2013), <http://www.governing.com/blogs/by-the-numbers/municipal-bankruptcy-rate-and-state-law-limitations.html> [https://perma.cc/7XVD-NNUC].

³¹ *Electronic Municipal Market Access*, MUN. SEC. RULEMAKING BD., <http://www.emma.msrb.org> [https://perma.cc/BEY3-WUU8] (last visited Jan. 23, 2017).

After pulling the database records from the website, the authors manually examined each record to observe the ratings corresponding to the municipal bonds issued by each city in the sample. The authors 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”). The authors noted bond issuances with below investment grade ratings for each of the cities, including the four that had filed for bankruptcy since 2008. The authors 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 nineteen cities with populations greater than 50,000 that have either filed for bankruptcy during the period of time in question, issued below investment grade rated bonds during the period of time in question, or both. This list of nineteen cities, located within thirteen states, formed the authors’ new sample:

Table 1: 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

The authors next sought to create a comprehensive picture of each of the sample cities' financial statuses before, during, and—if applicable—after financial distress. To do so, the authors examined bond issuance reports and supplemented these reports with other publicly available information, such as published studies and news articles, from the relevant period of time. The authors 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 their research, the authors centered their analysis on eight factors that they 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;³² the relative importance of these factors, however—and the extent to which these factors interact to impact municipal fiscal health in particular cases—has not been comprehensively documented. The authors 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 the authors' choices.

i. Fiscal Home Rule

Home rule refers to a municipality's ability to pass laws to govern itself without seeking state authorization.³³ Fiscal home rule is home rule authority over monetary affairs.³⁴ Whether a municipality has been granted home rule powers naturally affects the amount of discretion the entity has to structure itself.³⁵ Many states provide some form of home rule to their municipal entities.³⁶ 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.³⁷ 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.³⁸ Nevertheless, the authors 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

³² See, e.g., Park, *supra* note 9, at 234–37 (discussing municipal bankruptcy access); Gillette & Skeel, *supra* note 8, at 1222–23, 1226–27 (discussing financial mismanagement and home rule).

³³ Gillette & Skeel, *supra* note 8, at 1226–27.

³⁴ See Clayton P. Gillette, *Fiscal Home Rule*, 86 DENV. U.L. REV. 1241, 1245 (2009) (discussing the scope of fiscal home rule).

³⁵ Gillette & Skeel, *supra* note 8 at 1226–27.

³⁶ Lyle Kossis, Note, *Examining the Conflict Between Municipal Receivership and Local Autonomy*, 98 VA. L. REV. 1109, 1114 (2012).

³⁷ Gillette & Skeel, *supra* note 8, at 1226.

³⁸ *The State Role in Local Government Financial Distress*, *supra* note 23, at 6–7.

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, the authors searched through state statutes and constitutional provisions. To determine practical limitations on home rule authority, the authors 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, the authors coded this factor as having a low impact on fiscal distress.³⁹ When minimal restraints on fiscal home rule authority were present, such as constitutional constraints on home rule powers, borrowing constraints, balanced budget requirements, or significant tax caps, the authors 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, the authors coded the impact as high.

Table 2: Fiscal Home Rule⁴⁰

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

³⁹ All coding results appear in Table X, *infra*.

⁴⁰ 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*.

Niagara Falls	New York	No
Utica	New York	No
Scranton	Pennsylvania	Yes
Providence	Rhode Island	No

ii. Intergovernmental Aid

The extent of aid that cities receive from states necessarily affects such municipalities' 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.⁴¹ The authors predicted that cities receiving 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.⁴²

Where possible, the authors determined parameters for the provision of state aid through state law research. The authors 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.⁴³ When possible, the authors confirmed this data via publicly accessible reports.⁴⁴ Intergovernmental aid for the states in the authors' 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%, the authors coded this factor as low impact; between 20–29%, moderate; and below 20%, high.

Table 3: Intergovernmental Aid⁴⁵

City	State	Intergovernmental Aid
------	-------	-----------------------

⁴¹ Erin Adele Scharff, *Powerful Cities?: Limits on Municipal Taxing Authority and What to do About Them*, 91 N.Y.U. L. REV. 292, 341 (2016); see also Frank Shafron, *Any Hope for a Municipality's Fiscal Future?*, GMU MUN. SUSTAINABILITY PROJECT (June 9, 2016), <https://fiscalbankruptcy.wordpress.com/2016/06/09/any-hope-for-a-municipalities-fiscal-future/> [<https://perma.cc/VGB5-29AB>] (describing the negative impact on East Cleveland when Ohio took away revenue streams, including shared revenue from taxes).

⁴² See Christopher Hoene & Michael A. Pagano, *Cities & State Fiscal Structure*, NAT'L LEAGUE CITIES, 11–12 (2008), <http://www.nlc.org/documents/Find%20City%20Solutions/Research%20Innovation/Finance/cities-state-fiscal-structure-2008-rpt.pdf> [<https://perma.cc/RG9K-DGR7>] (“[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.”).

⁴³ *Cities & State Fiscal Structure 2015*, NAT'L LEAGUE CITIES, <http://www.nlc.org/find-city-solutions/city-solutions-and-applied-research/finance/cities-and-state-fiscal-structure> [<https://perma.cc/9T4L-4WWM>] (last visited Jan. 23, 2017).

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

⁴⁵ As a percentage of state general revenue. See *Cities & State Fiscal Structure 2015*, *supra* note 43.

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%
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%

iii. 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.⁴⁶ Additionally, states may require voter approval or a legislative supermajority before a municipality can pass new taxes.⁴⁷ In some cases, states can impose their own TELs.⁴⁸ As of 2015, “41 states impose some form of a TEL on their municipalities.”⁴⁹

TELs can constrain state expenditures, particularly when combined with a supermajority requirement to raise taxes.⁵⁰ Although empirical evidence on the

⁴⁶ *Briefing Book: The State of State (and Local) Tax Policy*, TAX POL’Y CTR., <http://www.taxpolicycenter.org/briefing-book/what-are-tax-and-expenditure-limits> [<https://perma.cc/JU5M-JGHM>] (last visited Jan. 23, 2017).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Cities & State Fiscal Structure 2015*, *supra* note 43.

⁵⁰ See Brian G. Knight, *Supermajority Voting Requirements for Tax Increases: Evidence from the States*, 76 J. PUB. ECON. 41, 61–62 (2000).

extent to which TELs limit state and local spending has been mixed,⁵¹ the authors 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.⁵² Logically, then, states with more binding TELs will have municipalities more reliant upon state aid.

To ascertain the existence of TELs, the authors examined state statutes and constitutional provisions and confirmed the existence of limitations by examining state Department of Revenue websites.⁵³ The authors also utilized data on TELs from the National League of Cities report.⁵⁴ Following the authors' practice in the report, they distinguished between binding TELs and TELs that could potentially be circumvented by other measures,⁵⁵ which they labeled "semi-binding TELs." 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, the authors coded the impact as low; states with semi-binding TELs were coded as moderate; and states with binding TELs were coded as high.

Table 4: Tax and Expenditure Limits⁵⁶

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

⁵¹ See, e.g., Tracy M. Gordon, *The Calculus of Constraint: A Critical Review of State Fiscal Institutions*, in FISCAL CHALLENGES: AN INTERDISCIPLINARY APPROACH TO BUDGET POLICY 271, 277–78 (Elizabeth Garrett, Elizabeth A. Graddy, & Howell E. Jackson eds., 2008).

⁵² Leah Brooks & Justin H. Phillips, *An Institutional Explanation for the Stickiness of Federal Grants*, 26 J.L. ECON. & ORG. 243, 246 (2010).

⁵³ Detailed research results are on file with the authors. Specific information on TELs is described in Part II and in the Appendix, *infra*.

⁵⁴ Hoene & Pagano, *supra* note 42, at 13–14.

⁵⁵ See, e.g., *id.* at 13–15 (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).

⁵⁶ See *Cities & State Fiscal Structure 2015*, *supra* note 43.

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 ⁵⁷
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
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

iv. 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.⁵⁸ Other states have no laws governing Chapter 9 filings; this silence in the law is deemed to prohibit

⁵⁷ Baltimore's property tax limit can be circumvented at the municipality's discretion and is effectively non-binding. For this reason, the authors have designated this factor as "low risk" for Baltimore in Table X, *infra*.

⁵⁸ See, e.g., A.B. 506, 2011-12 Leg., Reg. Sess. (Ca. 2011) (conditioning access to chapter 9 on participation in a neutral evaluation process).

bankruptcy access.⁵⁹ Accordingly, the authors 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.

The authors located state laws that grant municipalities access to Chapter 9 bankruptcy. In addition to scrutinizing state laws explicitly relating to municipal bankruptcy, the authors examined other laws with regard to state financial policies and practices to obtain a fuller picture of a municipality’s likelihood of accessing bankruptcy in any given state. The authors then scaled the states according to the ease with which their municipalities may access bankruptcy. When states had no preconditions to accessing municipal bankruptcy, the authors coded this factor as low impact; when states had preconditioned authorization, moderate; and when states had no authorization, high.

Table 5: Access to Municipal Bankruptcy⁶⁰

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
Chicago	Illinois	No authorization/silent
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

⁵⁹ See *Municipal Bankruptcy State Laws*, GOVERNING, <http://www.governing.com/gov-data/state-municipal-bankruptcy-laws-policies-map.html> [<https://perma.cc/LSZ4-FFD4>] (last visited Jan. 24, 2017).

⁶⁰ Detailed research results are on file with the authors. Specific information on access to municipal bankruptcy is described in Part II and in the Appendix, *infra*.

Niagara Falls	New York	Authorization with preconditions
Utica	New York	Authorization with preconditions
Scranton	Pennsylvania	Authorization with preconditions
Providence	Rhode Island	No authorization ⁶¹

v. 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.⁶² Scholars have been able to link large unfunded pension liabilities and unfunded retiree health benefits to the likelihood that a municipality will become insolvent.⁶³

The authors developed a measure accounting for the unfunded pension liability ratio of each of the nineteen cities using data presented in the Pew Charitable Trusts' report *The State Pensions Funding Gap*.⁶⁴ The most recent year for 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,⁶⁵ the authors 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.

⁶¹ 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.

⁶² See Robert Novy-Marx & Joshua Rauh, *Public Pension Promises: How Big Are They and What Are They Worth?*, 66 J. FIN. 1211, 1211–13, 1231 (2011); Cory Eucalitto, *State Budget Solutions' Third Annual State Debt Report Shows Total State Debt Over \$4 Trillion*, AM. LEGIS. EXCH. COUNCIL (Aug. 28, 2012), <https://www.alec.org/article/state-budget-solutions-third-annual-state-debt-report-shows-total-state-debt-over-4-trillion/> [<https://perma.cc/3CS6-NGVV>]; *The Widening Gap Update*, PEW CHARITABLE TR. 1 (June 2012), http://www.pewtrusts.org/-/media/legacy/uploadedfiles/pes_assets/2012/pewpensionsupdatepdf.pdf [<https://perma.cc/A2QV-X6VZ>]; *U.S. States' Debt Tops \$4 Trillion-Report*, REUTERS (Aug. 28, 2012, 12:09 PM), <http://www.reuters.com/article/usa-states-debt-idUSL2E8JS6ZT20120828> [<https://perma.cc/WBW7-LZ6V>].

⁶³ See THOM REILLY, *RETHINKING PUBLIC SECTOR COMPENSATION: WHAT EVER HAPPENED TO THE PUBLIC INTEREST?* 112–16 (2012); Wayne H. Winegarden, *Going Broke One City at a Time: Municipal Bankruptcies in America*, PAC. RES. INST., 4, 6 (Jan. 2014), https://www.pacificresearch.org/fileadmin/documents/Studies/PDFs/2013-2015/MunicipalBankruptcy2014_F.pdf [<https://perma.cc/M7VF-PTG9>].

⁶⁴ See generally *The State Pensions Funding Gap: Challenges Persist*, PEW CHARITABLE TR. (July 14, 2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/07/the-state-pensions-funding-gap-challenges-persist> [<https://perma.cc/2D3C-QPXE>].

⁶⁵ *Public Pensions*, BALLOTPEdia, https://ballotpedia.org/Public_pensions [<https://perma.cc/9FQJ-PQBB>] (last visited Jan. 24, 2017).

Table 6: Unfunded Pension Liability⁶⁶

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%

vi. Public Sector Union Density

A broad collection of studies links unionism and collective bargaining with higher costs of government.⁶⁷ Several scholars suggest that the 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

⁶⁶ Detailed research results are on file with the authors. Specific information on unfunded pension liability is described in Part II and in the Appendix, *infra*.

⁶⁷ See Sarah F. Anzia & Terry M. Moe, *Public Sector Unions and the Costs of Government*, 77 J. POL. 114, 115, 124–25 (2015); Robert G. Valletta, *The Impact of Unionism on Municipal Expenditures and Revenues*, 42 INDUS. & LAB. REL. REV. 430, 435, 438–39 (1989) (finding that collective bargaining increases government spending in departments covered by contract).

coverage for employees.⁶⁸ As such, the authors 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.

The authors explored this factor by researching the percentage of unionized government employees in local areas. The authors obtained data from the most recent Current Population Survey produced by the U.S. Census Bureau and the U.S. Bureau of Labor Statistics. The authors also obtained data from 2014 from UnionStats.com; this data was organized according to Metropolitan Statistical Area (“MSA”).⁶⁹ After narrowing the 2014 data to include only the relevant MSAs for the author’s nineteen selected cities, the authors 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 nineteen cities in the author’s sample.⁷⁰ The authors then 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%, the authors coded this factor as low impact; between 31% and 50% as moderate; and above 50% as high.

Table 6: Public Sector Union Density (Metropolitan Statistical Area)⁷¹

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%
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%

⁶⁸ See Richard B. Freeman, *Unions, Pensions, and Union Pension Funds*, in PENSIONS, LABOR, AND INDIVIDUAL CHOICE, 89, 90–104 (David A. Wise ed., 1985); Eileen Norcross, *Public Sector Unionism: A Review* 13, 16–17 (Mercatus Ctr. Geo. Mason Univ., Working Paper No. 11-26, 2011), <http://mercatus.org/sites/default/files/WP1126-Public-Sector-Unionism.pdf> [<https://perma.cc/TW6E-XZCC>].

⁶⁹ Barry T. Hirsch & David A. Macpherson, *Union Membership and Coverage Database From the CPS*, UNIONSTATS.COM, <http://unionstats.com/> (last visited Jan. 31, 2017).

⁷⁰ 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).

⁷¹ Detailed research results are on file with the authors. Specific information on public sector union density is described in Part II and in the Appendix, *infra*.

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%
* <i>Shared Metropolitan Statistical Area</i>			
** <i>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).</i>			

vii. Financial Mismanagement

Financial mismanagement is linked to municipal fiscal insolvency and is often exposed when the town, municipality, or special district issues too much debt.⁷² Fiscal instability may come to light after years of financial mismanagement and economic decline. The authors therefore studied documentation of poor financial management of a municipality's fiscal resources as a contributing factor to municipal distress.

To study financial mismanagement, the authors reviewed bond reports issued by Fitch, KBRA, Moody's and S&P for any relevant documentation. The authors also sought information from journal articles, government reports, and newspaper articles. When the authors found no documentation, the authors coded this factor as low impact; when the authors found some evidence, such as budgeting practices that consistently fell short of targeted goals or a tendency to look to short-term remedies, the authors coded this factor as moderate impact; 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, the authors coded this factor as high impact.⁷³

⁷² Winegarden, *supra* note 63.

⁷³ See generally *infra* Part II and Appendix for a fuller discussion of financial mismanagement in specific cities.

Table 8: Financial Mismanagement⁷⁴

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

viii. 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.⁷⁵ When interest rates rose, these investments turned into “losers” for the county, precipitating a loss of \$1.5 billion in the county’s portfolio and leading to the

⁷⁴ Detailed research results are on file with the authors. Specific information on financial mismanagement is described in Part II and in the Appendix, *infra*.

⁷⁵ Floyd Norris, *Orange County’s Bankruptcy: The Overview; Orange County Crisis Jolts Bond Market*,

N.Y. TIMES, Dec. 8, 1994 at D17, <http://www.nytimes.com/1994/12/08/business/orange-county-s-bankruptcy-the-overview-orange-county-crisis-jolts-bond-market.html> [<https://perma.cc/N5M3-BAQ9>].

county’s decision to file for bankruptcy.⁷⁶ 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.⁷⁷ The authors therefore studied documentation of internal and external triggering events that contributed to municipal distress.

Similar to the approach used with respect to financial mismanagement, the authors reviewed bond issuance reports, journal articles, government reports, and newspaper articles to determine whether an internal or external triggering event contributed to a municipality’s fiscal distress. If the authors found no triggering event, the authors coded the factor as low impact; if the authors found that an event was a contributing factor, such as a court decision that impacted the municipality’s fiscal health, the authors coded the factor as moderate impact; and if the authors found a major triggering event that directly contributed to municipal insolvency and financial instability, such as the natural disasters that occurred in New Orleans, the authors coded the factor as high impact.⁷⁸

Table 9: Triggering Event⁷⁹

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

⁷⁶ *Id.*

⁷⁷ Marc Fudge, *The Varied and Diverse Predictors of Local Government Bankruptcy*, PA TIMES, <http://patimes.org/varied-diverse-predictors-local-government-bankruptcy/> [https://perma.cc/3DAG-X79Z] (last visited Jan. 24, 2017).

⁷⁸ See generally *infra* Part II and Appendix for a fuller discussion of triggering events that occurred in specific cities.

⁷⁹ Detailed research results are on file with the authors. Specific information on triggering events is described in Part II and in the Appendix, *infra*.

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

ix. 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 the authors acknowledged these factors where documentation was available, they 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 their sample.

After identifying the eight factors and analyzing their impact on the fiscal health of the municipalities in their sample, the authors 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 the authors' 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 the authors' 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.⁸⁰ Sometimes, a city will be forced to choose a particular path because all other paths 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 its ability to access various fiscal relief 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, the authors 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 the authors' 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 “resist[ed] state intervention, fearing it could lead to long-term state control” of the city.⁸¹ 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.⁸² Emergency managers have played a significant role in Michigan's history, being sent to seven cities in the state from 1990 to 2010.⁸³

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, which are then are

⁸⁰ See, e.g., GERALD E. FRUG & DAVID J. BARRON, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION 4 (2008).

⁸¹ *The State Role in Local Government Financial Distress*, supra note 23, at 3.

⁸² *Id.* at 16–17.

⁸³ *Id.* at 42.

posted on the Treasury Department's website.⁸⁴ 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.⁸⁵

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.⁸⁶

Michigan's constitution contains explicit protections for public pensions. Article IX, Section 24 provides that the "accrued financial benefits of each pension plan . . . shall be a contractual obligation thereof which shall not be diminished or impaired."⁸⁷

Home rule authority in Michigan is also provided for by the state constitution, which prohibits Michigan from imposing unfunded mandates on local governments.⁸⁸ Most Michigan cities derive a significant portion of their revenue from property taxes, although the property tax rate for cities is capped.⁸⁹ Cities may also levy an income tax of up to 1%.⁹⁰ At the state level, Michigan shares a percentage of its sales tax revenue with local governments, distributing the revenue based on population.⁹¹ Cities may also incur general obligation debt up to a limit of 10%.⁹² All Michigan local governments must further adopt an annual balanced budget.⁹³

⁸⁴ *Id.* at 9.

⁸⁵ *Experts Examine Current Chapter 9 Cases and What Lies Ahead for Municipal Distress in 2013*, AM. BANKR. INST., 12:00–13:05 (Jan. 22, 2013), <http://www.abi.org/educational-brief/experts-examine-current-chapter-9-cases-and-what-lies-ahead-for-municipal-distress> [https://perma.cc/E5S4-PT1U].

⁸⁶ 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*, MICH. ST. U. EXTENSION 3 (Aug. 31, 2015), http://msue.anr.msu.edu/uploads/resources/pdfs/beyond_state_takeovers.pdf [https://perma.cc/7BM5-4FCR].

⁸⁷ MICH. CONST. art. IX, § 24.

⁸⁸ Samuel B. Stone, *Home Rule in the Midwest*, IND. U. PUB. POL'Y INST. 3 (Jul. 2010), http://policyinstitute.iu.edu/uploads/PublicationFiles/PC_HmRules_Web.pdf [https://perma.cc/BS8K-E5BH].

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

i. Detroit, Population: 677,116;⁹⁴ Annual Budget: \$1 billion⁹⁵

Detroit, Michigan's largest municipality, filed for bankruptcy on July 18, 2013 to restructure approximately \$18 billion in outstanding debt.⁹⁶ Of this, "\$3.5 billion [was] comprised of pensions while another \$6.4 billion encompass[ed] other employee benefits like retiree healthcare."⁹⁷ In the years before the bankruptcy, Detroit lost one million residents and three fourths of its retail business.⁹⁸ The city's poverty stands in stark contrast to the wealth of its surrounding suburbs, so one considered solution was to dissolve the boundaries between Detroit and its suburbs, forcing the suburbs to help address Detroit's financial condition.⁹⁹

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, risky financial ventures, and Detroit officials' generally irresponsible fiscal behavior.¹⁰⁰ In its bankruptcy plan, Detroit cut pensions by approximately 18%.¹⁰¹ 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.¹⁰² Other studies blame union influence for making the Detroit auto industry less competitive and

⁹⁴ *Detroit City, Michigan*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/2622000> [<https://perma.cc/2KXJ-29GS>] (last visited Jan. 24, 2017).

⁹⁵ Joe Guillen, *Benefits for Council Staff Included in Detroit Budget*, DETROIT FREE PRESS (Mar. 11, 2016 7:28 PM), <http://www.freep.com/story/news/2016/03/11/detroit-city-council-approves-1-billion-budget/81638852/> [<https://perma.cc/THU9-TMWR>]. 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.

⁹⁶ Chris Isidore, *Detroit Files for Bankruptcy*, CNN MONEY (Jul. 18, 2013, 7:25 PM), <http://money.cnn.com/2013/07/18/news/economy/detroit-bankruptcy/> [<https://perma.cc/4C98-LN4X>].

⁹⁷ Frost, *supra* note 19, at 819.

⁹⁸ Todd Shields, *Comcast to Follow 1 Million Who've Fled Bankrupt Detroit*, BLOOMBERG TECH. (Oct. 1, 2014, 5:00 AM), <https://www.bloomberg.com/news/articles/2014-10-01/comcast-to-follow-1-million-who-ve-fled-bankrupt-detroit> [<https://perma.cc/2JN3-QAPD>].

⁹⁹ 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).

¹⁰⁰ See Vaneeta Chintamaneni, *The Unraveling of an American City: Pensions, Municipal Debt, and Chapter 9 Bankruptcy*, 22 ELDER L.J. 523, 532–34 (2015).

¹⁰¹ Frank Shafroth, *Protecting the Ability to Provide Essential Public Services*, GMU MUN. SUSTAINABILITY PROJECT (Jul. 1, 2015), <https://fiscalbankruptcy.wordpress.com/2015/07/01/protecting-the-ability-to-provide-essential-public-services/> [<https://perma.cc/SM59-567F>] [hereinafter Shafroth, *Protecting the Ability to Provide Essential Public Services*].

¹⁰² Fudge, *supra* note 77.

for driving up costs for retirees, many of which Detroit was ultimately unable to pay.¹⁰³

Post-bankruptcy, Detroit's governance structure remains fragmented and redundant, impairing the city's ability to adjust to challenges.¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶

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.¹⁰⁷

Several philanthropic foundations stepped in to assist with Detroit's bankruptcy emergence, including the Kresge Foundation and the Ford Foundation.¹⁰⁸ 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.¹⁰⁹

Thus, some intervention on the state's behalf was necessary in Detroit's bankruptcy; but bankruptcy also left many critical problems in Detroit untouched, particularly mismanagement and poor governance 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 sought to file for bankruptcy. Yet, Detroit also illustrates some of the ways municipal bankruptcy can be effective, too. The city is

¹⁰³ John Hawkins, *5 Ways Liberalism Destroyed Detroit*, TOWNHALL.COM (Jul. 30, 2013 12:01 AM), <http://townhall.com/columnists/johnhawkins/2013/07/30/5-ways-liberalism-destroyed-detroit-n1651524> [<https://perma.cc/86YC-XHTX>].

¹⁰⁴ Gillette & Skeel, *supra* note 8, at 1187.

¹⁰⁵ *Id.* at 1187–88.

¹⁰⁶ *Id.* at 1198.

¹⁰⁷ Frank Shafroth, *Twin Miracles?*, GMU MUN. SUSTAINABILITY PROJECT (May 3, 2016), <https://fiscalbankruptcy.wordpress.com/2016/05/03/twin-miracles/> [<https://perma.cc/R44C-E4P2>] (noting that the quality of the school system is essential to attracting families and employees to the city).

¹⁰⁸ 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/> [<https://perma.cc/6QS7-9NNM>] (describing the role the philanthropic sector played in Detroit).

¹⁰⁹ Frank Shafroth, *Can Default Be Contagious?*, GMU MUN. SUSTAINABILITY PROJECT (Aug. 7, 2015), <https://fiscalbankruptcy.wordpress.com/2015/08/10/can-default-be-contagious/> [<https://perma.cc/S6GW-G82F>].

now on firmer financial footing and has a plan for financing its pensions and other commitments that city officials, so far, have been able and willing to commit to.¹¹⁰

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.¹¹¹ 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 commission.¹¹² The governor has sixty days from the date of the petition to determine whether in fact an emergency exists and, if so, whether to establish the commission.¹¹³ During this time, the government must provide notice and an opportunity to be heard to all of the municipality's creditors.¹¹⁴ If the governor forms a commission, he may give it oversight powers and the ability to recommend that the municipality file for bankruptcy.¹¹⁵ The commission may also review the municipality's financial decisions and order the municipality to negotiate with creditors.¹¹⁶

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.”¹¹⁷ Nevertheless, among all fifty states, Illinois has the second highest level of per capita pension debt, with \$28,880 in unfunded pension liabilities per person.¹¹⁸

The Illinois Constitution also requires that home rule powers be construed liberally.¹¹⁹ Consequently, home rule units may “increase property taxes beyond the state statutory ‘tax cap,’” and may also creatively use their taxing power to resolve

¹¹⁰ Matthew Dolan, et al., *Detroit Rising: Life After Bankruptcy*, Detroit Free Press (Nov. 8, 2015, 12:03 AM), <http://www.freep.com/story/news/local/detroit-reborn/2015/11/08/detroit-rising-life-after-bankruptcy/75085252/> [<https://perma.cc/7DQL-CCCS>].

¹¹¹ *The State Role in Local Government Financial Distress*, *supra* note 23, at 19.

¹¹² Local Government Financial Planning and Supervision Act, 50 ILL. COMP. STAT. ANN. 320/5 (West 2016).

¹¹³ Frost, *supra* note 19, at 881.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 883.

¹¹⁷ ILL. CONST. art. XIII, § 5.

¹¹⁸ Chuck DeVore, *Puerto Rico, Illinois and California: Public Pension Dominoes*, FORBES (May 31, 2016, 6:28 PM), <http://www.forbes.com/sites/chuckdevore/2016/05/31/puerto-rico-illinois-california-public-pension-dominoes/#7a3cf22e2f86> [<https://perma.cc/AUN4-KJYR>].

¹¹⁹ ILL. CONST. art. VII, § 6(m).

local issues.¹²⁰ Home rule units have taxing authority over anything except income, occupations, and earnings.¹²¹ Home rule units typically do not need to ask for voter approval when instituting permissible taxes.¹²² Illinois home rule cities have no debt limits.¹²³

i. Chicago; Population: 2.7 million; Annual Budget: \$7.84 billion¹²⁴

Chicago is a home rule unit under the Illinois Constitution.¹²⁵ The city, a municipal corporation, is governed by a mayor and a city council.¹²⁶

All four of Chicago's defined-benefit retirement funds are significantly underfunded (having a combined nearly \$20 billion shortfall) and have low funding ratios (the combined funding ratio is 35.5%).¹²⁷ 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.¹²⁸ 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 2017.¹²⁹ Chicago's high outstanding pension obligations have caused the city's debt to rise substantially over the last ten years.¹³⁰

¹²⁰ *Home Rule and You*, CITIZEN ADVOC. CTR., 1 (2004), <http://www.citizenadvocacycenter.org/uploads/8/8/4/0/8840743/homerulebrochure.pdf> [<https://perma.cc/EL9N-PX9D>].

¹²¹ *Id.* at 3.

¹²² *Id.*

¹²³ Stone, *supra* note 88, at 2.

¹²⁴ MAYOR RAHM EMANUEL, CITY OF CHICAGO, 2016 BUDGET OVERVIEW 21, 158, http://www.cityofchicago.org/content/dam/city/depts/obm/supp_info/2016Budget/2016BudgetOverviewCoC.pdf [<https://perma.cc/ZGS3-RE2L>].

¹²⁵ Jon C. Teaford, *Home Rule*, ENCYCLOPEDIA CHL., <http://www.encyclopedia.chicagohistory.org/pages/595.html> [<https://perma.cc/BDE5-DL38>] (last visited Jan. 25, 2017).

¹²⁶ CITY OF CHICAGO, GENERAL OBLIGATION REFUNDING BONDS, SERIES 2015C, OFFICIAL STATEMENT 2 (2016), emma.msrb.org/ES756441-ES593475-ES989195.pdf [<https://perma.cc/EC8K-8TF8>] [hereinafter CITY OF CHICAGO, OFFICIAL STATEMENT].

¹²⁷ *Id.* at S-2.

¹²⁸ 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. Frank Shaforth, *Hard Choices About a City's Future*, GMU MUN. SUSTAINABILITY PROJECT (Jun. 1, 2016), <https://fiscallbankruptcy.wordpress.com/2016/05/31/hard-choices-about-a-citys-future/> [<https://perma.cc/M77G-KEAP>]. Consequently, the mayor of Chicago was able to avoid a significant tax increase. *Id.*

¹²⁹ CITY OF CHICAGO, OFFICIAL STATEMENT, *supra* note 126, at S-2.

¹³⁰ See Ted Dabrowski, *Chicago Slides Toward Bankruptcy*, HUFFINGTON POST (May 15, 2015, 4:12 PM), http://www.huffingtonpost.com/ted-dabrowski/chicago-slides-toward-ban_b_7287366.html [<https://perma.cc/F5EQ-WJK7>].

In September 2015, Mayor Emanuel proposed a \$600 million property tax increase to help the city start making required pension payments.¹³¹

Over the past ten years, Chicago has experienced operating budget gaps due to an imbalance of tax revenues relative to expenditures, which are predicted to continue in FYs 2016–2018 due to continued “operating budget shortfalls and increased pension obligations.”¹³² 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.¹³³

Chicago is also affected by the budget deficits experienced by the Chicago Public Schools (“CPS”).¹³⁴ CPS has a \$500 million budget gap.¹³⁵ This is due in large part to pension “holiday[s]”: for example, in 2010, city politicians “passed a three-year pension ‘holiday’ that allowed [CPS] to skip \$1.2 billion in contributions to the teacher pension system.”¹³⁶ 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 2004.¹³⁷ After a teachers’ strike in 2012, Mayor Emanuel signed a large salary increase even though the school district was already underfunded by \$1 billion.¹³⁸ The governor has threatened a state takeover of CPS.¹³⁹

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.¹⁴⁰ A 2015 report ranked Illinois among the bottom five least financially- healthy states, primarily due to low amounts of cash on hand coupled with significant debt obligations.¹⁴¹ Nearly a quarter of the money in Illinois’s budget goes to pension payments for its municipalities, meaning that when Illinois experiences budget difficulties, these challenges directly affect the state’s municipalities.¹⁴²

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,

¹³¹ Aaron M. Renn, *Beneath Chicago’s Gloss*, CITY J. (Sept. 24, 2015), <http://www.city-journal.org/html/beneath-chicago%E2%80%99s-gloss-11673.html> [<https://perma.cc/TAW7-XPSX>].

¹³² CITY OF CHICAGO, OFFICIAL STATEMENT, *supra* note 126, at 61.

¹³³ Kelly Bauer, *Rauner’s State of the State: Chicago Strangled by Financial Mismanagement*, DNA INFO (Jan. 27, 2016, 1:52 PM), <https://www.dnainfo.com/chicago/20160127/downtown/rauners-state-of-state-chicago-strangled-by-financial-mismanagement> [<https://perma.cc/2SVU-CXWH>].

¹³⁴ CITY OF CHICAGO, OFFICIAL STATEMENT, *supra* note 126, at 62.

¹³⁵ Renn, *supra* note 131.

¹³⁶ Dabrowski, *supra* note 130.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Bauer, *supra* note 133.

¹⁴⁰ CITY OF CHICAGO, OFFICIAL STATEMENT, *supra* note 126, at 62–63.

¹⁴¹ *Ranking the States by Fiscal Condition*, MERCATUS CTR. GEO. MASON U. 2, <http://mercatus.org/sites/default/files/Norcross-State-Fiscal-Condition-summary.pdf> [<https://perma.cc/WE48-SDVQ>] (last visited Jan. 25, 2017).

¹⁴² Bauer, *supra* note 133.

complicated by pension underfunding challenges and union pressures. After the Illinois Supreme Court ruled in 2015 that reforms to Illinois's 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."¹⁴³ Although Chicago may attempt to seek more formal state assistance, Illinois's 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. The state's Municipalities Financial Recovery Act, commonly called Act 47, allows the state to declare municipalities to be financially distressed.¹⁴⁴ These municipalities restructure their debt under the supervision of a financial manager or receiver and may file for bankruptcy if necessary.¹⁴⁵ Although several Pennsylvania cities have been placed under Act 47's protection, they typically remain in the program for years rather than working their way out of it.¹⁴⁶ Scranton, for example, has been designated as distressed under Act 47 since 1992.¹⁴⁷

Although cities may remain in the state's own Act 47 program,¹⁴⁸ Pennsylvania officials seem to discourage municipalities from using 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.¹⁴⁹ Pennsylvania's reaction in the wake of Harrisburg's filing may deter other Pennsylvania cities from considering Chapter 9 relief in the future.

¹⁴³ Dabrowski, *supra* note 130; *In re Pension Reform Litig.*, 32 N.E.3d 1, 28–29 (Ill. 2015).

¹⁴⁴ Municipalities Financial Recovery Act, Pub. L. No. 246, No. 47 (1987).

¹⁴⁵ *Id.*

¹⁴⁶ David DeKok, *Broke, Shamokin, Pennsylvania, Seeks State Crutch That Few Cast Off*, REUTERS (May 2, 2014, 7:00 AM), <http://www.reuters.com/article/2014/05/02/usa-pennsylvania-municipals-idUSL2N0N91ZV20140502> [<https://perma.cc/492W-2ZH7>].

¹⁴⁷ Steve McConnell, *Westfall Twp.'s First-in-the-State Bankruptcy May Not Be Pennsylvania's Last*, TIMES-TRIB. (Mar. 22, 2010), <http://thetimes-tribune.com/news/westfall-twp-s-first-in-the-state-bankruptcy-may-not-be-pennsylvania-s-last-1.695242> [<https://perma.cc/GRM7-P652>].

¹⁴⁸ For example, the state allows distressed municipalities to "request a tax increase above the maximum rates allowed by law." Frost, *supra* note 19, at 879.

¹⁴⁹ Juliet M. Moringiello, *Specific Authorization to File under Chapter 9: Lessons from Harrisburg*, 32 CAL. BANKR. J. 237, 250 (2012).

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.¹⁵⁰ 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 47.¹⁵¹ 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.¹⁵²

i. Scranton; Population: 77,118;¹⁵³ Annual Budget: \$132 million¹⁵⁴

Scranton, the sixth most populated city in Pennsylvania, is a home rule city and has had a charter in effect since 1976.¹⁵⁵ Situated in the northeast 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.¹⁵⁶ In fact, Scranton earned the nickname the "Electric City," as it was one of the first cities to have electric lighting installed in many of its buildings.¹⁵⁷ Scranton was also the first U.S. city to operate a completely electric streetcar system.¹⁵⁸

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

¹⁵⁰ See *A Primer on Home Rule*, INST. FOR PUB. POL'Y & ECON. DEV. 3–4 (Aug. 2009), <http://www.institutepa.org/PDF/Research/APrimeronHomeRule0809.pdf> [<https://perma.cc/JEK2-QC32>]; Kate Lao Shaffner, *What is Home Rule?*, KEYSTONE CROSSROADS (July 24, 2014), <http://crossroads.newsworks.org/index.php/local/keystone-crossroads/70767-what-is-home-rule/> [<https://perma.cc/2STD-2UXC>].

¹⁵¹ Shaffner, *supra* note 150.

¹⁵² *The State Role in Local Government Financial Distress*, *supra* note 23, at 30.

¹⁵³ *Scranton City, Pennsylvania*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/4269000> [<https://perma.cc/FCK9-6T24>] (last visited Jan. 26, 2017).

¹⁵⁴ CITY OF SCRANTON, 2016 OPERATING BUDGET, http://www.scrantonpa.gov/business_admin_docs/2016%20Operating%20Budget.pdf [<https://perma.cc/PN6W-QHJ2>].

¹⁵⁵ *City of Scranton, Home Rule Charter*, SCRANTONPA.GOV, http://www.scrantonpa.gov/home_rule_charter.html [<https://perma.cc/3AWS-2JWF>] (last visited Jan. 26, 2017).

¹⁵⁶ *The Sadness of Scranton: Yet Another American City Struggles to Stay Solvent*, ECONOMIST (Jul. 21, 2012), <http://www.economist.com/node/21559382> [<https://perma.cc/98Z2-5LY7>] [hereinafter *The Sadness of Scranton*].

¹⁵⁷ Cheryl A. Kashuba, *Scranton Gained Fame as the Electric City, Thanks to the Region's Innovative Spirit*, SCRANTON TIMES-TRIB. (Aug. 22, 2010), <http://thetimes-tribune.com/news/scranton-gained-fame-as-the-electric-city-thanks-to-the-region-s-innovative-spirit-1.965641> [<https://perma.cc/52ES-VPYB>].

¹⁵⁸ Cheryl A. Kashuba, *Local History: How Scranton Became Electric*, TIMES-TRIB. (May 5, 2013), <http://thetimes-tribune.com/news/local-history-how-scranton-became-electric-1.1484082> [<https://perma.cc/C5T3-WPFV>].

downtown began to sit vacant.¹⁵⁹ With its population in freefall, the city faced reduced revenues and city leadership had difficulty managing Scranton's finances.¹⁶⁰ Consequently, in 1992, Scranton entered Act 47.¹⁶¹

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 had a budget deficit of \$21 million in 2013.¹⁶² 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.¹⁶³ City leadership has consistently turned to short term fixes, becoming dependent on a strategy of "borrowing, asset sales and one-time funding sources."¹⁶⁴ In a desperate attempt to bring in revenue, Scranton began selling off city property that it later discovered it did not even own.¹⁶⁵ 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 \$5,000.¹⁶⁶ Borrowing is not a palatable option in Scranton, as the city just recently received its first credit rating of BB.¹⁶⁷ 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.¹⁶⁸ Overnight, workers such as firemen saw their pay cut by more than half.¹⁶⁹ These workers sued, and a judge held that the mayor's actions were unlawful; the mayor subsequently reinstated full pay to employees.¹⁷⁰ Adding to its already severe financial situation, in October 2011 the Pennsylvania Supreme Court ordered Scranton to pay back-pay amounting to \$30.9 million to

¹⁵⁹ *The Sadness of Scranton*, *supra* note 156.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Winegarden, *supra* note 63, at 17.

¹⁶³ *See id.*

¹⁶⁴ Josh Barro, *Scranton: When Your City Needs to Go Bankrupt*, BLOOMBERGVIEW (July 19, 2012, 12:34 PM), <https://www.bloomberg.com/view/articles/2012-07-19/scranton-when-your-city-needs-to-go-bankrupt> [<https://perma.cc/XL28-M2AE>].

¹⁶⁵ *Id.*

¹⁶⁶ *The Sadness of Scranton*, *supra* note 156.

¹⁶⁷ *See* Jim Lockwood, *Scranton Gets a Bond Rating, but Rating Agency Critique is Stark*, TIMES-TRIB. (Jun. 17, 2016), <http://thetimes-tribune.com/news/scranton-gets-a-bond-rating-but-rating-agency-critique-is-stark-1.2056455> [<https://perma.cc/98C5-CN7C>] (describing how S&P rated an upcoming Scranton bond issuance as BB, which is a poor rating, but better than the city's prior situation of not having a credit rating).

¹⁶⁸ *See The Sadness of Scranton*, *supra* note 156.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*; *see also* Hilary Russ, *Scranton, Pa., Workers Will Get Paid in Full, For Now*, NBC NEWS (Jul. 24, 2012 5:06 AM), http://business.nbcnews.com/_news/2012/07/24/12924619-scranton-pa-workers-will-get-paid-in-full-for-now [<https://perma.cc/4MCJ-JDZU>].

the police and fire unions as part of an arbitration case that was ultimately decided in the unions' favor.¹⁷¹

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 dissuade cities from seeking Chapter 9 relief. Scranton demonstrates that Act 47's effectiveness may be limited. Thus, state officials could instead focus on how Act 47 relief might work well in conjunction with other options, including Chapter 9. Pennsylvania seems to be heading in this direction already, as the state's Local Government Commission has become concerned about cities that languish in Act 47 for years.¹⁷² Now, all Act 47 municipalities can have a receiver appointed, and municipalities may remain in Act 47 for only five years.¹⁷³

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.¹⁷⁴ 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.¹⁷⁵ The state has also created an agency, the Division of Local Government Services, to proactively monitor local finances and approve budgets.¹⁷⁶ The agency must also approve a municipality's request to file for bankruptcy; however, to date, no city in the state has been approved to file for Chapter 9.¹⁷⁷

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

¹⁷¹ See *City of Scranton v. Firefighters Local Union No. 60*, 29 A.3d 773, 789 (Pa. 2011); Jim Lockwood, *Scranton Back-Pay Settlement Individual Payouts, Interest Staggering*, TIMES-TRIB. (Aug. 14, 2016), <http://thetimes-tribune.com/news/scranton-back-pay-settlement-individual-payouts-interest-staggering-1.2078152> [<https://perma.cc/B49S-A39K>] ("Scranton cut 848 checks totaling about \$30.9 million to resolve a 13-year fight over back pay owed to Scranton firefighters and police officers . . .").

¹⁷² See *2013 Task Force Report, Local Government Commission*, (Oct. 16, 2013), <http://www.lgc.state.pa.us/download.cfm?file=/Reports/act47/101713/Act%2047-of-1987-2013-Task-Force-Report-FINAL-10-16-2013.pdf> [<https://perma.cc/4LR3-LPTZ>] (identifying issues with Act 47 and proposing corrective legislation).

¹⁷³ *Id.*

¹⁷⁴ *Atlantic City's Watchdogs: How Strong State Oversight Helps New Jersey Municipalities Avoid Bankruptcy*, PEW CHARITABLE TR. (Aug. 26, 2015), <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/08/atlantic-citys-watchdogs> [<https://perma.cc/4SY4-7ZFU>].

¹⁷⁵ *See id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

also asked the city to consider a consensual debt restructuring.¹⁷⁸ 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.¹⁷⁹ City officials, however, have criticized the act, saying that it threatens the city’s “sovereignty.”¹⁸⁰

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 budgeting and revenue generation.¹⁸¹ For example, every New Jersey municipality is subject to spending caps.¹⁸² 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.¹⁸³

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 debt.¹⁸⁴ Governor Christie cut the state’s payment in 2014, leading to a battle with labor unions that the unions ultimately lost.¹⁸⁵ New Jersey’s unfunded-pension liability is also caused by “investment losses, increased benefits and chronic underfunding.”¹⁸⁶ Two of the state’s largest funds are projected to run out of money within twelve years.¹⁸⁷

¹⁷⁸ Matt Friedman, *Sweeney Slams Christie’s Atlantic City Plan, Says Governor Plans Bankruptcy for City*, NJ.COM (Jan. 29, 2015, 11:39 AM), http://www.nj.com/politics/index.ssf/2015/01/sweeney_slams_christies_atlantic_city_plan.html [<https://perma.cc/P5FD-8ESF>]; Hilary Russ, *Moody’s Slashes Atlantic City Rating on Bankruptcy Potential*, REUTERS (Jan. 23, 2015, 3:32 PM), <http://www.reuters.com/article/atlantic-city-ratings-idUSL4N0V255X20150123> [<https://perma.cc/TA9E-UV46>].

¹⁷⁹ Frank Shafroth, *Michigan’s Role in Municipal Fiscal Fates*, GMU MUN. SUSTAINABILITY PROJECT (Feb. 23, 2016), <https://fiscalbankruptcy.wordpress.com/2016/02/23/michigans-role-in-municipal-fiscal-fates/> [<https://perma.cc/B36K-X3EE>].

¹⁸⁰ *Id.*

¹⁸¹ See John E. Trafford, *Home Rule in the ‘90s: Is it Alive or Dead?*, N.J. ST. LEAGUE MUNICIPALITIES (1995), <http://www.njslom.org/homerule.html> [<https://perma.cc/X36M-FP4V>] (citing numerous examples of state laws that constrain fiscal home rule, including the New Jersey Municipal Budget Act, the Local Bond Law, and the Fiscal Affairs Law).

¹⁸² *Id.*

¹⁸³ Gloucester Cty. Times Editorial Bd., *Home Rule Gives N.J. Costly Culture*, NJ.COM (Nov. 6, 2011, 3:00 AM), http://www.nj.com/gloucester/voices/index.ssf/2011/11/home_rule_gives_nj_costly_cult.html [<https://perma.cc/7TM5-Y47D>].

¹⁸⁴ DeVore, *supra* note 118.

¹⁸⁵ Samantha Marcus, *N.J. Public Worker Pension Fund Gap Widens to \$40B*, NJ.COM (Apr. 23, 2015, 5:40 PM), http://www.nj.com/politics/index.ssf/2015/04/nj_pension_fund_gap_widens_to_40b.html [<https://perma.cc/GS3Y-U7F5>].

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

i. Bayonne; Population: 66,311;¹⁸⁸ Annual Budget: \$135.5 million¹⁸⁹

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, 1869.¹⁹⁰ A mayor and a city council run the city.¹⁹¹

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.¹⁹² 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.¹⁹³ 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.¹⁹⁴ At the time, Bayonne's mayor stated that there was "no way to avoid a takeover other than selling off [this] land."¹⁹⁵ An internal Port Authority memo warned that the property's sale price was substantially above its appraised value; nevertheless, officials pushed for approval of the sale to avoid the takeover prospect.¹⁹⁶ Pursuant to the purchase contract, the Port Authority's 24-year payment schedule was front-loaded to help Bayonne combat its budget woes.¹⁹⁷ In fact, the first payment to the city was enough to cover the city's entire budget shortfall.¹⁹⁸ The Port Authority's purchase came under scrutiny in 2014, as the waterfront property remained barren and had not been developed.¹⁹⁹

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.²⁰⁰ Officials have

¹⁸⁸ *Bayonne City, New Jersey*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk [<https://perma.cc/8PMW-HFQ9>] (last visited Jan. 26, 2017).

¹⁸⁹ 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/> [<https://perma.cc/87AB-7TXT>].

¹⁹⁰ CITY OF BAYONNE, \$17,305,000 GENERAL OBLIGATION REFUNDING BONDS, OFFICIAL STATEMENT, A-1 (2015), emma.msrb.org/ER891732-EP667464-EP1069240.pdf [<https://perma.cc/X3J4-6RJN>].

¹⁹¹ *Id.*

¹⁹² Russ Buettner, *Port Authority Land Purchase is Boon to Bayonne, and Christie*, N.Y. TIMES (June 8, 2014), http://www.nytimes.com/2014/06/09/nyregion/port-authority-land-purchase-is-boon-to-bayonne-and-chris-christie.html?_r=0 [<https://perma.cc/SRC2-9492>].

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* The mayor also stated: "In my opinion, it was desperate." *Id.*

¹⁹⁶ *Id.* (noting that the memo was excerpted in court records).

¹⁹⁷ *Id.*

¹⁹⁸ *See id.*

¹⁹⁹ *Id.*

²⁰⁰ Jonathan Lin, *\$2.9M Shortfall in State Funding Fell on Bayonne Taxpayers' Backs, Says City CFO*, NJ.COM (Nov. 26, 2015, 6:27 PM), http://www.nj.com/hudson/index.ssf/2015/11/29m_shortfall_in_state_funding_fell_on_bayonne_tax.html [<https://perma.cc/7SHU-ECQ3>].

suggested varying reasons for the shortfall: 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 management problems with respect to its funding structure.²⁰¹

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."²⁰² The Moody's report also noted the "city's substantial tax base and average wealth levels."²⁰³ The city's \$25 million structural deficit dropped by \$4 million in 2015 alone.²⁰⁴ And although Bayonne has unfunded pension liabilities, Moody's considers these "manageable" in light of Bayonne's tax base and improved cash position.²⁰⁵

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 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.²⁰⁶ If a municipality continues to experience distress, Connecticut law authorizes municipal bankruptcy; however, any Chapter 9 filing is contingent upon the governor's approval.²⁰⁷ 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

²⁰¹ *Id.*

²⁰² Jonathan Lin, *Bayonne's Bond Rating Upgraded from 'Stable' to 'Positive' by Moody's*, NJ.COM (May 13, 2015, 8:53 PM), http://www.nj.com/hudson/index.ssf/2015/05/bayonnes_bond_rating_upgraded_from_stable_to_posit.html (quoting Moody's Investor Service).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Joselyn Gozalez Yousef & Malcolm Thompson, *Moody's Assigns Underlying Baa1 to Bayonne, NJ's 2014 A, B & C GO Bonds and Enhanced Aa3 to Series 2014 B&C*, MOODY'S INV. SERV. (Oct. 24, 2014), https://www.moody.com/research/Moodys-assigns-underlying-Baa1-to-Bayonne-NJ-s-2014-A-B-PR_311226 [<https://perma.cc/Z9B4-9GJC>].

²⁰⁶ See *The State Role in Local Government Financial Distress*, *supra* note 23, at 7, 9, 21–22.

²⁰⁷ Henry C. Kevane, *Chapter 9 Municipal Bankruptcy: The New "New Thing"? Part I*, A.B.A. BUS. L. TODAY (May 19, 2011), <http://apps.americanbar.org/buslaw/blt/content/2011/05/article-kevane.shtml> [<https://perma.cc/VR9V-CG7Y>].

Bridgeport's Chapter 9 filing, forcing the city to abandon its attempt to seek federal assistance.²⁰⁸

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.²⁰⁹ Both Connecticut towns in the authors' sample have home rule charters.²¹⁰ Nevertheless, Connecticut's "General Assembly has preempted local control in areas involving . . . fiscal matters,"²¹¹ and Connecticut courts have upheld these preemption measures.²¹² In cases of fiscal instability, the state may even impose financial controls on municipalities.²¹³

i. West Haven; Population: 54,927;²¹⁴ Annual Budget: \$151 million²¹⁵

Originally settled in the seventeenth century, West Haven became a bedroom community due to its location along the major transportation corridor between Boston and New York.²¹⁶ 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.²¹⁷ City leaders have largely ignored West Haven's cash flow problem, preferring instead to invest in schools and infrastructure projects that West Haven may ultimately have trouble paying for.²¹⁸

²⁰⁸ George Judson, *U.S. Judge Blocks Bridgeport from Bankruptcy Court*, N.Y. TIMES (Aug. 2, 1991), <http://www.nytimes.com/1991/08/02/nyregion/us-judge-blocks-bridgeport-from-bankruptcy-court.html> [<https://perma.cc/ATE9-HQ5C>].

²⁰⁹ An Act Concerning the Home Rule, 1957 Conn. Pub. Acts 671, 672.

²¹⁰ See FRANK B. CONNOLLY, LOCAL GOVERNMENT IN CONNECTICUT (3d ed. 2013) (ebook).

²¹¹ Janice C. Griffith, *Connecticut's Home Rule: The Judicial Resolution of State and Local Conflicts*, 4 U. BRIDGEPORT L. REV. 177, 226 (1983).

²¹² *E.g.*, Larke v. Morrissey, 230 A.2d 562, 567 (Conn. 1967) (noting that Municipal Auditing Act preempts city charter provision authorizing city council to designate an auditor).

²¹³ See Griffith, *supra* note 211, at 226–27.

²¹⁴ *West Haven Town, New Haven County, Connecticut*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045214/0900982870/embed/accessible> [<https://perma.cc/4N84-HTSC>].

²¹⁵ CITY OF WEST HAVEN, APPROVED OPERATING BUDGET FISCAL YEAR 2014–15 (2014), <http://www.cityofwesthaven.com/ArchiveCenter/ViewFile/Item/47> [<https://perma.cc/E8FC-M5R7>] [hereinafter WEST HAVEN, APPROVED OPERATING BUDGET 2014–2015].

²¹⁶ See CITY OF WEST HAVEN, CONNECTICUT, GENERAL OBLIGATION BONDS COMPRISED OF: \$38,715,000 GENERAL OBLIGATION BONDS (FEDERALLY TAXABLE), ISSUE OF 2014, SERIES A, OFFICIAL STATEMENT, 16 (Aug. 20, 2014), emma.msrb.org/EA635169-EA497012-EA893445.pdf [<https://perma.cc/MA3M-NP77>].

²¹⁷ See *id.* at 22–23.

²¹⁸ See *West Haven in Dire Fiscal Situation; General Fund Deficit Grows by \$750K, Cash Flow a Problem*, MIDDLETOWN PRESS (Apr. 14, 2015, 6:32 PM), <http://www.middletownpress.com/article/NH/20150414/NEWS/150419737> [<https://perma.cc/BJ6T-TXJA>].

Due to this imbalance between revenues and spending, the city is facing a deficit of approximately \$7,500,000.²¹⁹ 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.²²⁰ 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.²²¹

Poor governmental decision-making and a 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.²²²

Arizona has some of the most stringent TELs in the country. It is one of only six states in the U.S. with both a binding property tax limit and a general expenditure limit imposed on its municipalities.²²³

As a right-to-work state,²²⁴ Arizona is not generally considered to be union-friendly, but the state does have strong constitutional protections for public

²¹⁹ WEST HAVEN, APPROVED OPERATING BUDGET 2014–2015, *supra* note 215.

²²⁰ See UNION STATION TRANSP. CTR.: TRANSIT-ORIENTED DEV. PLAN (2013), <http://www.cityofnewhaven.com/uploads/UnionStationTODPlan-Sep2013.pdf> [<https://perma.cc/TWV5-R4JT>].

²²¹ See John L. Renne, *From Transit-Adjacent to Transit-Oriented Development*, 14 *LOC. ENV’T* 1, 4–5 (2009).

²²² *The State Role in Local Government Financial Distress*, *supra* note 23, at 8.

²²³ See *Cities & State Fiscal Structure 2015*, *supra* note 43, at 11–12.

²²⁴ Right to work laws allow employees to decide individually whether or not to join or financially support a union. Currently, 28 states have right to work laws. *Right to Work States*, NAT’L RIGHT TO WORK LEGAL DEF. FOUND., (2017), www.nrtw.org/right-to-work-states [<https://perma.cc/S23L-WV8N>].

pensions. In 1998, voters passed a constitutional amendment stating that “public retirement benefits shall not be diminished or impaired.”²²⁵

“The . . . Arizona Constitution imposes a formula-based spending limit on Arizona cities and towns;” however, the constitution also provides that municipal voters can approve a so-called “Home Rule” Option, in which a municipality “adopt[s] its own budget limits . . . based on local needs, service levels and available resources.”²²⁶ 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.²²⁷ In 2000, however, Glendale voters approved a permanent base adjustment, removing the need for further approval of expenditure limits.²²⁸

i. Glendale; Population: 240,126;²²⁹ Annual Budget: \$632 million²³⁰

Glendale is a suburban city bordering the Arizona state capital, Phoenix.²³¹ From 2003 to 2009, Glendale made aggressive infrastructure investments to market itself as a destination city.²³² During this time, the city built three new sports venues intended to bring economic development benefits to the area.²³³ 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 began an economic decline.²³⁴

²²⁵ Craig Harris & Beth Duckett, *Arizona Pensions Not Easily Reined In*, ARIZ. REPUBLIC (May 8, 2013, 10:00 AM), <http://www.azcentral.com/news/politics/articles/20130425arizona-pensions-not-easily-reined.html> [<https://perma.cc/CDD4-F9F2>].

²²⁶ *What is “Home Rule?”* ORO VALLEY, <https://www.orovalleyaz.gov/town/departments/town-clerk/what-home-rule> [<https://perma.cc/S9VQ-75DK>] (last visited Jan. 27, 2017).

²²⁷ *Budget FAQs*, GLENDALEAZ.COM, <http://www.glendaleaz.com/budget/faqs.cfm> [<https://perma.cc/6843-8ZE7>] (last visited Jan. 27, 2017) (describing how voters approved this requirement via approval of Home Rule).

²²⁸ *Id.*

²²⁹ *Glendale City, Arizona*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/0427820> [<https://perma.cc/P8DN-WX3R>] (last visited Jan. 27, 2017).

²³⁰ *Voting Meeting Agenda*, GLENDALEAZ.COM 2 (Jun. 9, 2015), <http://www.glendaleaz.com/budget/documents/FinalBudgetAdoption.pdf> [<https://perma.cc/9WH2-742S>].

²³¹ CITY OF GLENDALE, ARIZONA, \$38,300,000 GENERAL OBLIGATION REFUNDING BONDS, SERIES 2010, OFFICIAL STATEMENT, A-1 (2010), emma.msrb.org/EA436666-EA339652-EA735495.pdf [<https://perma.cc/FBB8-ZDF6>] [hereinafter CITY OF GLENDALE, OFFICIAL STATEMENT].

²³² *See West Valley Sound Off: Investing in Sports Tourism*, ARIZ. REPUBLIC (Apr. 15, 2014, 9:49 AM), <http://www.azcentral.com/story/news/local/glendale/2014/04/15/west-valley-sound-off-sports-tourism/7738621/> [<https://perma.cc/4V5F-47HB>].

²³³ *See id.*

²³⁴ *See* Rebekah L. Sanders, *Foreclosures Expected to Put Glendale Westgate City Center on New Track*, ARIZ. REPUBLIC (Oct. 26, 2011, 9:02 AM), <http://www.azcentral.com/news/articles/2011/10/26/20111026glendale-westgate-foreclosures-new-track.html> [<https://perma.cc/7YHW-C73S>].

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.²³⁵ The financial problems stemmed from a vaguely analyzed and grossly misrepresented early retirement program the city council had approved.²³⁶ Despite these setbacks, Glendale was able to manage many of its difficulties by adopting cost-saving measures including a "hiring freeze, mandatory furloughs, [and] ongoing base budget reductions."²³⁷ 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.²³⁸ 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.²³⁹

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.²⁴⁰ Over 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.²⁴¹

²³⁵ Caitlin McGlade, *Glendale Audit Fallout: 4 Officials on Leave*, ARIZ. REPUBLIC (Aug. 26, 2013, 10:29 AM), <http://archive.azcentral.com/community/glendale/articles/20130824audit-fallout-officials-leave-prog.html> [<https://perma.cc/J9FD-KHFU>]; CITY OF GLENDALE, ARIZ., SPECIAL PROJECT: SUMMARY OF FINDINGS AND CONCLUSIONS 4 (Aug. 20, 2013), <http://www.glendaleaz.com/documents/SpecialProject-SummaryofFindingsandConclusions.pdf> [<https://perma.cc/AM93-ABHJ>].

²³⁶ See Haralson, Miller, Pitt, Feldman & McAnally, PLC, et al, *Special Project: Summary of Findings and Conclusions*, GLENDALEAZ.COM 6 (Aug. 20, 2013), <https://www.glendaleaz.com/documents/SpecialProject-SummaryofFindingsandConclusions.pdf> [<https://perma.cc/6JN8-XNH3>].

²³⁷ CITY OF GLENDALE, OFFICIAL STATEMENT, *supra* note 231, at A-7.

²³⁸ Paul Giblin, *Glendale's Bond Rating Improves After Years of Turmoil*, ARIZ. REPUBLIC (Feb. 3, 2016, 10:24 AM), <http://www.azcentral.com/story/news/local/glendale/2016/02/03/glendales-bond-rating-improves-after-years-turmoil/79648828/> [<https://perma.cc/ER6R-NUTS>].

²³⁹ *Id.*

²⁴⁰ See *The State Role in Local Government Financial Distress*, *supra* note 23, at 39–41 (discussing California's belief that its cities should operate independently from the state); Shafroth, *Protecting the Ability to Provide Essential Public Services*, *supra* note 101 (discussing bankrupt California municipalities of Vallejo, Stockton, and San Bernardino and state intervention).

²⁴¹ Shafroth, *Protecting the Ability to Provide Essential Public Services*, *supra* note 101.

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.²⁴² 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.²⁴³

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.²⁴⁴ 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.²⁴⁵ 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.²⁴⁶ 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.²⁴⁷

Consistent with its hands-off approach, California grants home rule powers to its charter cities. All three of the California cities in this 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.²⁴⁸ 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 can take effect, including service charges, assessments,²⁴⁹ and any limitations the charter city may 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.²⁵⁰

²⁴² Specifically, California requires municipalities to engage in a sixty day "neutral evaluation process" with local unions and creditors prior to receiving authorization to file. *The State Role in Local Government Financial Distress*, *supra* note 23, at 40.

²⁴³ *Id.* at 39–41.

²⁴⁴ *Id.* at 20–23.

²⁴⁵ *Id.* at 39–41.

²⁴⁶ S.B. 349, 1995–96 Sess. (Cal. 1995).

²⁴⁷ Frederick Tung, *After Orange County: Reforming California Municipal Bankruptcy Law*, 53 HASTINGS L.J. 885, 903 (2002).

²⁴⁸ *Charter Cities*, LEAGUE CAL. CITIES, http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Charter_Cities-List [<https://perma.cc/QBW6-8VPH>] (last visited Jan. 27, 2017); *see generally* CAL. CONST. art. XI, § 5(b) (delineating authority cities have over municipal affairs).

²⁴⁹ *What is Proposition 218?*, CAL. TAX DATA, <http://www.californiataxdata.com/pdf/proposition218.pdf> [<https://perma.cc/QSH7-SQAG>] (last visited Jan. 19, 2017).

²⁵⁰ *General Law City v. Charter City*, LEAGUE CAL. CITIES, http://www.cacities.org/Resources-Documents/Resources-Section/Charter-Cities/Chart_General_Law_v_-_Charter_Cities-07-26-11 [<https://perma.cc/N9CW-VXFM>] (last visited Jan. 27, 2017).

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.²⁵¹

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 the sample that have recently filed for bankruptcy.

i. Irvine; Population: 256,927;²⁵² Annual Budget: \$172 million²⁵³

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.²⁵⁴ Irvine has an affluent population, reflected in real estate prices that are high even by California’s standards.²⁵⁵ Despite Irvine’s stable tax base and valuable real estate, the city has had difficulty raising tax revenue.²⁵⁶ 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.²⁵⁷ Irvine is also located within Orange County, which filed for bankruptcy in the 1990s.²⁵⁸ Proposition 13 similarly limited Orange County’s ability to rectify its fiscal distress.²⁵⁹

Several groups have lobbied to amend or change Proposition 13 to allow California cities more access to property tax revenue.²⁶⁰ California’s property tax limitations have hindered Irvine, an otherwise affluent city, from being able to take

²⁵¹ See *Johnson v. Bradley*, 841 P.2d 990, 1002 (Cal. 1992).

²⁵² Irvine City, California, U.S. Census Bureau, <http://www.census.gov/quickfacts/table/PST045216/0636770> [https://perma.cc/J8CA-HSEB] (last visited Jan. 27, 2017).

²⁵³ *City of Irvine, California: 2015–16 Budget*, CITY IRVINE, <http://legacy.cityofirvine.org/civica/filebank/blobdload.asp?BlobID=27428> [https://perma.cc/Q3YH-6EL3] (last visited Jan. 27, 2017).

²⁵⁴ Ellen Bell, *Irvine was Biggest ‘New Town’ Experiment*, IRVINE CO., (Feb. 11, 2014), <http://150.irvinecompany.com/irvine-biggest-new-town-experiment/> [https://perma.cc/N297-9QMF].

²⁵⁵ See generally CITY OF IRVINE, \$126,220,000 LIMITED OBLIGATION IMPROVEMENT BONDS REASSESSMENT DISTRICT NO. 12-1, OFFICIAL STATEMENT (Jul. 11, 2012), <http://emma.msrb.org/ER611647-ER474950-ER877960.pdf> [https://perma.cc/YP4G-FCGN].

²⁵⁶ *Id.*

²⁵⁷ Michael Gervais & Dontae Rayford, *In Pursuit of Equity in Property Tax Allocation: Discussing the Flawed Implementation of Proposition 13*, 30 VA. TAX REV. 761, 764 (2011).

²⁵⁸ Floyd Norris, *Orange County’s Bankruptcy: The Overview; Orange County Crisis Jolts Bond Market*, N.Y. 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> [https://perma.cc/BH6P-XJKZ].

²⁵⁹ *Id.*

²⁶⁰ Joe Eskenazi, *Prop 13: The Building-Sized Loopholes Corporations Exploit*, CLOSE LOOPHOLE (Jan. 4, 2012), <http://closethe loophole.com/sf-weekly-prop-13> [https://perma.cc/7A9H-8YW3].

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. To overcome its difficulty with tax revenue, Irvine recently approved proposals to issue special tax bonds to fund infrastructure in certain neighborhoods and formed a special district where residents pay extra taxes for certain services.²⁶¹ Critics have decried these moves as “maneuver[s] around Proposition 13,” and it remains to be seen whether these efforts will be effective in enabling Irvine to tap into more resources from its residents.²⁶²

Irvine has also exhibited strong evidence of fiscal mismanagement. The city channeled a large amount of funds toward creating the Great Orange County Park,²⁶³ a park that was financially infeasible and rife with unethical—and possibly illegal—business deals and spending.²⁶⁴ 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.²⁶⁵ The governor of California eventually ordered that development on the park be stopped.²⁶⁶

ii. Stockton; Population: 305,658;²⁶⁷ Annual Budget: \$610 million²⁶⁸

Stockton filed for bankruptcy on June 28, 2012.²⁶⁹ 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.²⁷⁰ The 2008 recession and the resulting housing and financial collapse significantly contributed to Stockton’s

²⁶¹ Tomoya Shimura, *Homeowners in Irvine’s Beacon Park Face Between \$4,455 and \$14,387 in Extra Taxes*, THE ORANGE CTY. REGISTER (Aug. 6, 2016 4:42 PM), www.ocregister.com/articles/park-724359-great-property.html [<https://perma.cc/G4HZ-J6YH>].

²⁶² *Id.*

²⁶³ Matt Morrison, *Final Great Park Audit Report Cites Mismanagement, Financial Waste*, L.A. TIMES (Mar. 24, 2015, 7:02 PM), <http://www.latimes.com/tn-dpt-me-0327-great-park-audit-20150324-story.html> [<https://perma.cc/XUA4-K88M>].

²⁶⁴ See generally CITY OF IRVINE, GREAT PARK AUDIT: REPORT OF SPECIAL COUNSEL (Mar. 24, 2015), http://agranaudit.com/wp-content/uploads/greatparkaudit_specialreport.pdf [<https://perma.cc/WJF9-2FX5>] (discussing the financial feasibility of creating Great Orange County Park).

²⁶⁵ *Id.* at 114.

²⁶⁶ *Id.* at 7, 11, 30, 48.

²⁶⁷ *Stockton City, California*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/PST045215/0675000> [<https://perma.cc/G346-W2XE>] (last visited Jan. 28, 2017).

²⁶⁸ CITY OF STOCKTON FY 2015–2016 ANNUAL BUDGET A-3 (2015–16), http://www.stocktongov.com/files/2015-16_Adopted_Budget_394_pages.pdf [<https://perma.cc/6C5A-55Z7>].

²⁶⁹ STOCKTON PUBLIC FINANCING AUTHORITY, \$13,020,000 LIMITED OBLIGATION REVENUE BONDS (MOSHER REASSESSMENT DISTRICT 2014-1), SERIES 2014, at 3 (Aug. 13, 2014), <http://emma.msrb.org/EA633310-EA495523-EA891972.pdf> [<https://perma.cc/TP3G-GLQ7>].

²⁷⁰ See Shafroth, *Protecting the Ability to Provide Essential Public Services*, *supra* note 101.

financial woes, but the city's unaffordable pensions and benefits and an ill-timed bond offering played a significant role as well.²⁷¹

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.²⁷² After Stockton emerged from bankruptcy, it still owed approximately \$48 million in settlements and other obligations.²⁷³

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.

iii. San Bernardino; Population: 215,108;²⁷⁴ Annual Budget: \$28 million²⁷⁵

San Bernardino filed for bankruptcy in 2012 and has remained in bankruptcy for over four years.²⁷⁶ 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.²⁷⁷ 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."²⁷⁸ 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

²⁷¹ See Fudge, *supra* note 77; Winegarden, *supra* note 63, at 12–13.

²⁷² Robin Respaut, *Trial Starts Monday to Determine if Stockton Can Exit Bankruptcy*, REUTERS (May 11, 2014, 7:00 AM), <http://www.reuters.com/article/2014/05/11/municipals-stockton-preview-idUSL2N0NV1BO20140511> [<https://perma.cc/2QEL-TEMP>].

²⁷³ Roger Phillips, *Stockton Bankruptcy Cost: More than \$41 Million*, RECORDNET.COM (Oct. 28, 2014, 7:57 PM), <http://www.recordnet.com/article/20141028/NEWS/141029525> [<https://perma.cc/4W6A-C4GE>].

²⁷⁴ *San Bernardino City, California*, U.S. CENSUS BUREAU, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkml [<https://perma.cc/42XL-LCQ9>] (last visited Jan. 28, 2017).

²⁷⁵ CITY OF SAN BERNARDINO, CIP BUDGET, FY 2014–15, <http://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?BlobID=17311> [<https://perma.cc/JZ9P-KFM6>].

²⁷⁶ See Ryan Hagen, *'Major Step Forward' for San Bernardino Bankruptcy*, SUN (Apr. 1, 2016, 5:48 PM), <http://www.sbsun.com/government-and-politics/20160401/major-step-forward-for-san-bernardino-bankruptcy> [<https://perma.cc/KER4-J37U>].

²⁷⁷ See Steven Church et al., *San Bernardino Files Chapter 9 Bankruptcy Early*, BLOOMBERG (Aug. 3, 2012), <http://fixpacific.blogspost.com/2012/08/san-bernardino-files-chapter-9.html> [<https://perma.cc/5NGE-8BUJ>].

²⁷⁸ PROGRESS REPORT OF THE CHARTER REVIEW COMMITTEE, CITY SAN BERNARDINO (Feb. 16, 2016), http://sanbernardinocityca.iqm2.com/citizens/Detail_LegiFile.aspx?MeetingID=1746&ID=4312 [<https://perma.cc/W4XU-33SW>]; see also Frank Shafroth, *Schooling on Municipal Solvency*, GMU MUN. SUSTAINABILITY PROJECT (Feb. 16, 2016), <https://fiscalbankruptcy.wordpress.com/2016/02/16/schooling-on-municipal-solvency/> [<https://perma.cc/3LRD-VWE3>].

believe that San Bernardino was on an unstoppable path to insolvency, due to unfunded pension liabilities and retirement benefits for city workers.²⁷⁹ In particular, San Bernardino has struggled with costly police and fire union contracts,²⁸⁰ and the city is of course subject to the same property tax limitations as every other California municipality.²⁸¹

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.²⁸² 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.²⁸³ 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.²⁸⁴

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.

iv. Vallejo; Population: 121,253;²⁸⁵ Annual Budget: \$185 million²⁸⁶

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

²⁷⁹ Winegarden, *supra* note 63, at 12.

²⁸⁰ See *id.* (explaining that the money owed to CALPERS, the California Public Employees' Retirement System, increased by \$17 million since filing for bankruptcy).

²⁸¹ Norris, *supra* note 258.

²⁸² *San Bernardino Has Defaulted on \$10 Million in Bond Payments*, CNBC (Mar. 18, 2015, 8:14 AM), <http://www.cnbc.com/2015/03/18/san-bernardino-has-defaulted-on-10-million-in-bond-payments.html> [<https://perma.cc/5K5D-T242>]; Keeley Webster, *Insurer, Bondholders Slam San Bernardino on Financials*, BOND BUYER (Dec. 18, 2015), <http://www.bondbuyer.com/news/regionalnews/insurer-bondholders-slam-san-bernardino-on-financials-1092159-1.html>.

²⁸³ See SAN BERNARDINO JOINT POWERS FINANCING AUTHORITY TAX ALLOCATION BONDS, FINAL SCALE (2010), <http://emma.msrb.org/IssueView/IssueDetails.aspx?id=ER340026> [<https://perma.cc/TG6N-5XE2>] (last visited Jan. 28, 2017).

²⁸⁴ *San Bernardino Has Defaulted on \$10 Million in Bond Payments*, *supra* note 282; see also Webster, *supra* note 282.

²⁸⁵ *Vallejo City, California*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/0681666/accessible> [<https://perma.cc/KQ3L-WSQG>] (last visited Jan. 28, 2017).

²⁸⁶ CITY OF VALLEJO, ADOPTED BUDGET: FISCAL YEAR 2015–2016 (June 9, 2015), <http://www.ci.vallejo.ca.us/common/pages/DisplayFile.aspx?itemId=285861> [<https://perma.cc/JP2C-BFFQ>] [hereinafter CITY OF VALLEJO, ADOPTED BUDGET].

firefighters and police officers as some of the principal causes.²⁸⁷ Three consecutive years of budget shortfalls also contributed to Vallejo's financial position.²⁸⁸ 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.²⁸⁹ Other contributors to Vallejo's decline included the city's "weak housing market, overly optimistic budget savings estimates, worse than expected transportation deficits, [and] mandated pension increases."²⁹⁰

Vallejo used bankruptcy to restructure its general fund obligations, including certain certificates of participation. In addition, Vallejo reduced services and renegotiated with employee unions regarding collective bargaining agreements.²⁹¹ Labor costs were the largest piece of the city's pre-bankruptcy budget.²⁹² Vallejo emerged from bankruptcy in November of 2011.²⁹³ 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.²⁹⁴

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."²⁹⁵ 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.²⁹⁶

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

²⁸⁷ CITY OF VALLEJO, CALIFORNIA, \$18,080,000 WATER REVENUE REFUNDING BONDS, SERIES 2013, at 9 (2013), <http://emma.msrb.org/EP770913-EP597624-EP999001.pdf> [<https://perma.cc/55S3-YQ8N>] [hereinafter VALLEJO \$18,080,000 WATER REVENUE REFUNDING BONDS].

²⁸⁸ Bobby White, *Bankruptcy Exit Approved for City*, WALL STREET J. (Aug. 6, 2011), <http://www.wsj.com/news/articles/SB10001424053111903885604576486402778541450> [<https://perma.cc/FFP7-UW4W>].

²⁸⁹ Carolyn Jones, *Financially Ailing Vallejo Files Bankruptcy*, SF GATE (May 24, 2008, 4:00 AM), <http://www.sfgate.com/bayarea/article/Financially-ailing-Vallejo-files-bankruptcy-3283300.php> [<https://perma.cc/V2H8-DTEN>].

²⁹⁰ Fudge, *supra* note 77.

²⁹¹ VALLEJO \$18,080,000 WATER REVENUE REFUNDING BONDS, *supra* note 287, at 3.

²⁹² *Id.* at 8.

²⁹³ *Id.* at 3.

²⁹⁴ See Karol K. Denniston, *Neutral Evaluation in Chapter 9 Bankruptcies: Mitigating Municipal Distress*, 32 CAL. BANKR. J. 261, 274 (2012).

²⁹⁵ Melanie Hicken, *Once Bankrupt, Vallejo Still Can't Afford its Pricey Pensions*, CNN MONEY (Mar. 10, 2014, 10:44 AM), <http://money.cnn.com/2014/03/10/pf/vallejo-pensions/> [<https://perma.cc/53M7-T83F>].

²⁹⁶ Jane Wells, *A New Chapter for Vallejo*, CNBC (Jul. 28, 2011, 5:05 PM), <http://www.cnbc.com/id/43932782> [<https://perma.cc/2TNE-PLSU>].

money, freedom, or resources a state 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. Findings²⁹⁷

Table X – Consolidated Table

City	State	Population Estimate (July 1, 2014)	Bankruptcy Status (2008 Y or N)	(I) Fiscal Health Rating	(II) State Government Aid (as a proportion of total state revenue)	(III) Tax & Expenditure Limits	(IV) Municipal Bankruptcy Access	(V) Unfunded Pension Liability Fund Ratio	(VI) Union Membership Among Public Service Workers (MSA Density)	(VII) Fiscal Mismanagement	(VIII) Triggering Event
Glenéide	Arizona	23,7517	N	Low	Moderate	High	Low	Moderate	Low	High	High
Indhe	California	248,931	N	Low	High	High	Moderate	Moderate	High	High	High
San Bernardino	California	21,8311	Y	Low	High	High	Moderate	Moderate	High	High	Low
Stockton	California	302,889	Y	Low	High	High	Moderate	Moderate	High	High	High
Vallejo	California	120,238	Y	Low	High	High	Moderate	Moderate	High	Moderate	Low
New Britain	Connecticut	728,788	N	High	Low	Low	Moderate	High	High	Low	Low
West Haven	Connecticut	54,625	N	High	Low	Low	Moderate	High	High	Low	Low
Chicago	Illinois	2,722,380	N	Low	Moderate	Moderate	Moderate	High	High	High	Moderate
Hammond	Indiana	78,894	N	High	High	Moderate	High	High	High	Low	Low
New Orleans	Louisiana	384,420	N	Moderate	High	Moderate	Moderate	High	Low	High	High
Baltimore	Maryland	812,793	N	Low	Low	Low	High	High	Moderate	Low	Low
Detroit	Michigan	680,230	Y	Moderate	High	Moderate	Moderate	High	High	High	Moderate
North Las Vegas	Nevada	230,788	N	High	Moderate	High	High	High	High*	High	High
Bayonne	New Jersey	68,978	N	Moderate	Moderate	High	Moderate	High	High	Low	Low
Jersey City	New Jersey	262,144	N	Moderate	Moderate	High	Moderate	High	High	High	Low
Hagerstown	New York	482,121	N	High	Low	Moderate	Moderate	Low	High	Low	Low
Utica	New York	61,932	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	179,134	N	High	Moderate	Moderate	High	High	High	High	Low

Table 10 summarizes the authors' 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 sixteen, twelve, and eleven, respectively, of the nineteen cities in the authors' sample. Furthermore, at least one of these three factors had a "high" impact in every city in the sample. The authors' 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, the 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,

²⁹⁷ See *infra* Key to Table X.

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, the authors' 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.

The authors' research also illustrates the firm link between union influence and pension policies. Ten of the cities in the authors' sample had both high unfunded pension liabilities and high public sector union membership density, and their analysis of these cities uncovered many instances of union influence on fiscal policy. Although union politics can be difficult for municipalities to maneuver, the authors' 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, the authors' 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.²⁹⁸ Indeed, all four of the cities that filed for bankruptcy in the sample had high union density. Yet, several of the 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.

²⁹⁸ See 11 U.S.C. § 365 (2012) (allowing for the assumption, assignment, and rejection of executory contracts and unexpired leases); Nat'l Labor Relations Bd. v. Bildisco, 465 U.S. 513, 516 (1984) (giving debtors discretion to reject collective bargaining obligations).

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.²⁹⁹ 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.

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 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.³⁰⁰ 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.³⁰¹ 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.

²⁹⁹ See Richard Dobbs et al., *Why Investors May Need to Lower Their Expectations*, MCKINSEY GLOBAL INST. (Apr. 2016), <http://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/why-investors-may-need-to-lower-their-sights> [https://perma.cc/3MSS-BT4M] (describing repercussions for pensions and other funds due to lowered returns from stocks and bonds).

³⁰⁰ Lisa Lambert & Nanette Byrnes, *New Rules May Make Public Pensions Appear Weaker*, REUTERS (Jun. 25, 2012, 6:29 PM), <http://www.reuters.com/article/us-usa-pensions-standards-idUSBRE85O01Z20120625> [https://perma.cc/J249-TNPQ].

³⁰¹ See generally *Accounting and Financial Reporting for Pensions*, GOVERNMENTAL ACCT. STANDARDS BOARD, <http://www.gasb.org/jsp/GASB/Page/GASBSectionPage&ccid=1176163527868> [https://perma.cc/U32B-SHDX] (last visited Jan. 28, 2017); *GASB Approves Other Post-Employment Benefits Exposure Drafts*, EXPERIENCE BKD (June 2014), <http://www.bkd.com/articles/2014/gasb-approves-other-postemployment-benefits-exposure-drafts.htm> [https://perma.cc/3VXZ-YULP].

Given the prominence of pension struggles, it is perhaps not surprising that five of the states in the authors' sample—Arizona, Illinois, Louisiana (Appendix), Michigan, and New York (Appendix)—are among the seven states with constitutional protections for public pensions.³⁰² Indeed, Arizona, New York, and Illinois have the strongest public pension protections in the country. Illinois's protections were recently reinforced when the state's supreme court held in March 2016 that a Chicago law reducing benefits and requiring workers to pay more toward retirement was unconstitutional.³⁰³ As a result of the decision, Moody's, which had previously lowered Chicago's bond rating to junk status, threatened further downgrades.³⁰⁴ 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 the 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 the sample turned to bankruptcy to address 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,³⁰⁵ 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, the authors' 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

³⁰² Stephen D. Eide, *Constitutional Public Pension Guarantees: Unfair, Unaffordable, and Bad Policy*, MANHATTAN INST. POL'Y RES. 1 (Aug. 2013), http://www.manhattan-institute.org/pdf/ib_25.pdf [<https://perma.cc/6EWD-MXSW>]. Alaska and Hawaii are the other two. *Id.*

³⁰³ Hal Dardick, *Illinois Supreme Court Ruling Forces City to Fund New Fix for 2 Pension Funds*, CHI. TRIB. (Mar. 24, 2016, 6:26 PM), <http://www.chicagotribune.com/news/local/politics/ct-chicago-pension-law-ruling-0325-20160323-story.html> [<https://perma.cc/7CGG-NUSA>].

³⁰⁴ *Id.*

³⁰⁵ *In re City of Detroit*, Mich., 504 B.R. 97, 161 (Bankr. E.D. Mich. 2013); *In re City of Stockton*, Cal., 526 B.R. 35, 62 (Bankr. E.D. Cal. 2015).

programs for years. 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, the authors' 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.³⁰⁶ 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, the research suggests many other factors worthy of further study. The authors predict that an examination of the extent to which the factors they 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 city below the authors' 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,³⁰⁷ pensions,³⁰⁸ and mismanagement³⁰⁹ 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

³⁰⁶ See 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 Napoli 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), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2721876.

³⁰⁷ See, e.g., Jack Tomczuk, *Unions Hit Back at Christie over Executive Order*, PRESS ATLANTIC CITY (Jul. 1, 2016), http://www.pressofatlanticcity.com/news/unions-hit-back-at-christie-over-executive-order/article_6719753a-3fda-11e6-b000-e7f67e986cb1.html [<https://perma.cc/RPG7-ANZZ>] (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).

³⁰⁸ Patrick McGeehan, *Pensions for Lifeguards? Officials Say Atlantic City Can't Afford Them Anymore*, N.Y. TIMES (May 6, 2016), https://www.nytimes.com/2016/05/07/nyregion/lifeguard-pensions-questioned-as-atlantic-citys-finances-falter.html?_r=0 [<https://perma.cc/6SJT-9RPC>] (noting objections to Atlantic City's payment of approximately \$1 million a year for pensions for retired lifeguards).

³⁰⁹ Kate King, *Atlantic City's Financial Problems Widen*, WALL STREET J. (Feb. 12, 2016, 7:10 PM), <http://www.wsj.com/articles/atlantic-citys-financial-problems-widen-1455322210> [<https://perma.cc/HWX7-BE4X>] (discussing the possibility of a state takeover of Atlantic City's finances).

effective as designing ways for the two forms of relief to work together. The three most prevalent factors the authors' 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, the authors' 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 behavior.

B. Limitations

Although the authors' analysis has sought to be as comprehensive as possible, like any study, it is subject to limitations. First, by narrowing the survey sample to cities with populations over 50,000, the authors 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, the authors 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 the authors attempted to account for a wide variety of factors that they 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 the authors 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, the authors' case studies demonstrate 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.

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 the authors have not previously discussed the state backdrop for each remaining municipality, the authors do so briefly at the beginning of the relevant case study.

*A. New Britain, Connecticut*³¹⁰

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.³¹¹ New Britain has never defaulted on the payment of principal or interest on its bonds or notes;³¹² however, in 2014, both S&P and Moody's downgraded the city's rating, citing concerns over its budget.³¹³ Some

³¹⁰ Population: 73,122; incorporated 1870; annual budget: \$224 million. Erin E. Stewart, *Investing in a Stronger Tomorrow*, NEWBRITAINCT.GOV (Apr. 16, 2015), <http://www.newbritainct.gov/index.php/119-government/mayoroffice/budget-proposal/388-new-britain-s-2016-budget-f.html>.

³¹¹ CITY OF NEW BRITAIN, CONNECTICUT, \$29,000,000 GENERAL OBLIGATION BONDS, 2015 SERIES A, at 17 (2015), https://s3-us-west-1.amazonaws.com/munihub/wp-content/uploads/354_354_OS_FINAL.pdf [<https://perma.cc/B9X3-AE3S>].

³¹² *Id.* at 6, 12, A-9.

³¹³ Don Stacom, *After A Fall, New Britain's Bond Rating Gets a Boost*, HARTFORD COURANT (Jan. 21, 2015, 10:05 PM), <http://www.courant.com/community/new-britain/hc-new-britain-bonds-0127-20150121-story.html> [<https://perma.cc/U6QC-9WRR>] [hereinafter Stacom, *After A Fall*].

observers, including the city's former mayor, pinned this budgetary stress on union troubles, noting that the unions had often refused to give concessions.³¹⁴ In 2012, the unions called for a forensic audit of the city's books.³¹⁵ In 2015, S&P reversed course, upgrading the city's bond rating after Mayor Erin Stewart raised taxes by 11% and made additional spending cuts to rein in the city's finances.³¹⁶ Moody's, however, has not raised its rating.³¹⁷

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.³¹⁸ 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.³¹⁹ Thanks to significant local authority to raise taxes and cut spending, however, New Britain has not needed state assistance to resolve its financial difficulties.

*B. Hammond, Indiana*³²⁰

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.³²¹ 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.³²² This limitation is subject to

³¹⁴ Don Stacom, *New Britain Unions: It's Time to Audit the Books*, 'HARTFORD COURANT' (Apr. 18, 2012), http://articles.courant.com/2012-04-18/community/hc-new-britain-labor-0418-20120417_1_independent-audit-new-britain-unions-three-municipal-unions [https://perma.cc/887T-ELKD].

³¹⁵ *Id.*

³¹⁶ Stacom, *After A Fall*, *supra* note 313.

³¹⁷ *Id.*

³¹⁸ RUTE PINHO, MUNICIPAL PENSION OBLIGATIONS, CONN. GEN. ASSEMB., RES. REP. 2015-R-0249, at 3 (2015), <https://www.cga.ct.gov/2015/rpt/pdf/2015-R-0249.pdf> [https://perma.cc/KKH2-SK3Y].

³¹⁹ See Paul Burton, "Youthful Mayor Steers New Britain Turnaround" (*Bond Buyer*), STEWARTFORNB.COM (Feb. 9, 2016), <http://www.stewartfornb.com/youthful-mayor-steers-new-britain-turnaround-bond-buyer/> [https://perma.cc/CC2H-2F8E].

³²⁰ Population 78,384; incorporated 1884; annual budget: \$131 million. 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_fde37f38-89a0-5abc-a9be-f51455611438.html [https://perma.cc/4UT6-2ARW] (indicating budget); *Hammond, Indiana*, CITY-DATA.COM, <http://www.city-data.com/city/Hammond-Indiana.html> [https://perma.cc/3CEW-JCGL] (last visited Jan. 29, 2017) (indicating population and incorporation date).

³²¹ *The State Role in Local Government Financial Distress*, *supra* note 23, at 6.

³²² Frost, *supra* note 19, at 849 n.170.

override by petition from a majority of property owners in cases where excess debt is necessary for public protection and defense.³²³

Indiana's Home Rule Act of 1980 allows for municipal home rule; however, the Act also subjects municipalities to numerous prohibitions, such that the exceptions may swallow the rule.³²⁴ Indiana local governments may not impose taxes, licenses, or fees, nor may they invest money without an affirmative vote from the state legislature.³²⁵ Indiana home rule governments are also subject to strict property tax limits, and all Indiana municipal budgets must be approved by the relevant county.³²⁶

In 2014, S&P lowered Hammond's issuer credit rating to BBB+.³²⁷ The downgrade was a consequence of prolonged structural imbalance in the city's operating funds, which have constricted the city's budgetary flexibility.³²⁸ City management has primarily relied on gaming fund revenues and has been seeking to issue bonds to fill the budget gap.³²⁹ S&P's outlook was stable, reflecting its expectation that Hammond's structural imbalance will continue during the next two years.³³⁰

Hammond has an overall weak budgetary performance, with a deficit of 17.8% for the general fund and 10.5% for total funds as of 2013.³³¹ 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.³³²

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.

³²³ *Id.*

³²⁴ See Stone, *supra* note 88, at 2.

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ Elizabeth Campbell, *Fading Casino Revenue Has Indiana Town Selling Debt: Muni Credit*, BLOOMBERG (Oct. 21, 2014, 8:00 PM), <http://www.bloomberg.com/news/articles/2014-10-22/fading-casino-revenue-has-indiana-town-selling-debt-muni-credit> [https://perma.cc/4UVX-5S3U].

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ Ed Bierschenk, *Despite Red Ink Criticism, Hammond Defends Bond Sale*, NWL.COM (Mar. 10, 2015), http://www.nwltimes.com/news/local/lake/despite-red-ink-criticism-hammond-defends-bond-sale/article_31c60fe8-f10b-5b56-9460-91fa1e75812a.html [https://perma.cc/V8T5-VVTA].

³³² *Id.*

*C. New Orleans, Louisiana*³³³

Louisiana does not have a formal state intervention program for its municipalities; it does, however, allow its distressed municipalities to file for bankruptcy.³³⁴ In order to file, the municipality must receive approval from the state's elected Bond Commission.³³⁵ In addition, the municipality must acquire written approval from the governor and attorney general prior to filing.³³⁶

Louisiana has a specific clause in its constitution that protects public employee pensions.³³⁷ 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.³³⁸

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.³³⁹ 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.³⁴⁰ Property taxes are subject to voter approval.³⁴¹ The City Council may also borrow money, subject to a cap of 75% of the amount of that year's uncollected taxes.³⁴²

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.³⁴³ 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.³⁴⁴ As of March 2015, the city's credit risk was better than it was before Katrina, thanks in part to a ratings bump from

³³³ Population 384,320; founded 1718; annual budget: \$601 million. See CITY OF NEW ORLEANS, 2016 ANNUAL OPERATING BUDGET 17, 18, 34 (2015), <http://www.nola.gov/mayor/budget/documents/2016-adopted-budget-book-file/> [<https://perma.cc/KF99-22HY>].

³³⁴ *The State Role in Local Government Financial Distress*, *supra* note 23, at 6.

³³⁵ Lauren M. Wolfe, *The Next Financial Hurricane? Rethinking Municipal Bankruptcy in Louisiana*, 72 LA. L. REV. 555, 556 (2012).

³³⁶ Frost, *supra* note 19, at 839.

³³⁷ Eide, *supra* note 302, at 1, 2 (citing LA. CONST. art. X, § 29, cl. A, B).

³³⁸ Robert McClendon, *Louisiana's \$16 Billion Retirement Liabilities Mostly 'Hidden,' Report Says*, TIMES-PICAYUNE (Mar. 27, 2015, 8:54 AM), http://www.nola.com/politics/index.ssf/2015/03/louisiana_unfunded_retirement.html [<https://perma.cc/R9WU-D2NS>].

³³⁹ NEW ORLEANS, LA., CODE art. I, § 1-102 (2014).

³⁴⁰ See *id.* art. III, § 3-101(2).

³⁴¹ *Id.*

³⁴² *Id.* art. III, § 3-121.

³⁴³ CITY OF NEW ORLEANS, LOUISIANA, \$195,885,000 TAXABLE LIMITED TAX REFUNDING BONDS, SERIES 2012, OFFICIAL STATEMENT 27 (2012), <http://emma.msrb.org/IssueView/IssueDetails.aspx?id=EA343534> [<https://perma.cc/738T-UG2C>].

³⁴⁴ See *id.* at 35-38.

S&P.³⁴⁵ 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.³⁴⁶

After Katrina, New Orleans moved to an all-charter school system, meaning that the city has nearly no teachers unions.³⁴⁷ 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.³⁴⁸ The mayor has also pushed for city control of the fund.³⁴⁹

In 2014, former New Orleans mayor Ray Nagin, who was in office from 2002 to 2010, was convicted on twenty counts of bribery, fraud, and money laundering.³⁵⁰ 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.³⁵¹

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.³⁵² If officials continue to disregard pension underfunding, however, the city may find that its struggles are far from over.

³⁴⁵ Robert McClendon, *New Orleans' Credit Rating Surpasses Pre-Katrina Level as Local Economy Improves*, TIMES-PICAYUNE (Mar. 10, 2015, 9:10 PM), http://www.nola.com/politics/index.ssf/2015/03/new_orleans.html [<https://perma.cc/ZDD9-PH4Y>].

³⁴⁶ Robert McClendon, *Amid Rising Costs, New Orleans Employee Pension Fund Under Pressure to Trim Benefits*, TIMES-PICAYUNE (Feb. 2, 2015, 9:56 AM), http://www.nola.com/politics/index.ssf/2015/02/amid_rising_costs_new_orleans.html [<https://perma.cc/3YFX-WE7G>].

³⁴⁷ Colleen Kimmett, *10 Years After Katrina, New Orleans' All-Charter School System Has Proven a Failure*, IN THESE TIMES (Aug. 28, 2015), <http://inthesetimes.com/article/18352/10-years-after-katrina-new-orleans-all-charter-district-has-proven-a-failur> [<https://perma.cc/AFF3-SNSM>].

³⁴⁸ Richard Rainey, *New Orleans Finance Director Can Sue Over Firefighters Pension Losses, La. Supreme Court Rules*, TIMES-PICAYUNE (Feb. 13, 2015, 4:14 PM), http://www.nola.com/politics/index.ssf/2015/02/new_orleans_finance_director_c.html [<https://perma.cc/7GYV-P7TL>].

³⁴⁹ *Id.*

³⁵⁰ Jeffrey Young, *Ex-New Orleans Mayor Starts Long Jail Term for Corruption*, VOICE AM. (Sept. 15, 2014, 6:28 AM), <http://www.voanews.com/content/ex-new-orleans-mayor-starts-long-jail-term-for-corruption-convictions/2449928.html> [<https://perma.cc/7K9P-JHQV>].

³⁵¹ *Id.*

³⁵² See THE BUREAU OF GOVERNMENTAL RESEARCH & THE PUB. AFFAIRS RESEARCH COUNCIL OF LA., MUNICIPAL BANKRUPTCY IN PERSPECTIVE 1, 3 (2006), <http://parlouisiana.org/wp-content/uploads/2016/03/Municipal-Bankruptcy-in-Perspective-April-2006-1.pdf> [<https://perma.cc/V4KK-KUZP>].

*D. Baltimore, Maryland*³⁵³

Maryland has no formal state intervention mechanism, nor does it allow its municipalities to file for bankruptcy.³⁵⁴ The primary source of municipal 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.³⁵⁵ 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.³⁵⁶

Baltimore is governed by an elected mayor, a comptroller, and a city council.³⁵⁷ The city has a home rule charter, which the Maryland Constitution grants Baltimore the power to amend.³⁵⁸ 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.³⁵⁹

In 2013, Baltimore commissioned a ten-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.³⁶⁰ Including infrastructure needs and liabilities for retiree health care benefits, the total shortfall was predicted to reach \$2 billion over ten years, despite city officials' previous efforts to close budget gaps.³⁶¹

Baltimore has long suffered demographic challenges, including a roughly 36% population decline since 1980.³⁶² At least one report attributes this problem to the

³⁵³ *Open Budget Baltimore*, CITY BALTIMORE, <http://openbudget.baltimorecity.gov/#/> [<https://perma.cc/R84Q-UNDS>] (last visited Jan. 30, 2017).

³⁵⁴ *The State Role in Local Government Financial Distress*, *supra* note 23, at 6.

³⁵⁵ *State Aid to Local Governments*, MD. DEP'T. LEGIS. SERVS., <http://dls.state.md.us/Content.aspx?page=658> [<https://perma.cc/MF9G-MESK>] (last visited Jan. 30, 2017).

³⁵⁶ Frost, *supra* note 19, at 31–32 n.185.

³⁵⁷ MAYOR AND CITY COUNCIL OF BALTIMORE (CITY OF BALTIMORE, MARYLAND) CONSOLIDATED SPECIAL OBLIGATION REFUNDING BONDS (TAX INCREMENT FINANCING PROJECTS) \$20,195,000 SERIES 2015, at 7, <https://emma.msrb.org/ER886793-ER692774-ER1094369.pdf> [<https://perma.cc/LR7U-QF2D>].

³⁵⁸ MD. CONST. art. XI-A, § 5.

³⁵⁹ *Researching a Maryland Law Problem*, T. MARSHALL L. LIBR. 9-14 <https://www.law.umaryland.edu/marshall/researchguides/tmllguide/chapter9.pdf> [<https://perma.cc/UF6D-FDQX>] (last visited Jan. 30, 2017).

³⁶⁰ Associated Press, *City of Baltimore is on a Path to Financial Ruin, Report Says*, FOX NEWS POL. (Feb. 6, 2013), <http://www.foxnews.com/politics/2013/02/06/city-baltimore-is-on-path-to-financial-ruin-report-says.html> [<https://perma.cc/8MVS-RVP3>].

³⁶¹ *Id.*

³⁶² Richard A. Epstein, *Baltimore's Real Police Problem: Unions*, FEDERALIST (May 12, 2015), <http://thefederalist.com/2015/05/12/baltimores-real-police-problem-unions/> [<https://perma.cc/J2W5-3WFZ>].

city's labor and taxation policies, the former of which have historically been union-friendly.³⁶³ 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 to managing overtime and other contractual matters.³⁶⁴

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.³⁶⁵ 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.

*E. North Las Vegas, Nevada*³⁶⁶

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.³⁶⁷ After weighing twenty-seven 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.³⁶⁸ Nevada law also permits the manager to dis-incorporate or dissolve a distressed city.³⁶⁹ 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.³⁷⁰

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.³⁷¹ However,

³⁶³ *See id.*

³⁶⁴ Erica L. Green & Luke Broadwater, *Mayor Calls on Alonso, School Board to Fix Broken Financial Management*, BALT. 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 [<https://perma.cc/3KQD-XLMY>].

³⁶⁵ Carrie Sheffield, *Baltimore Paradox: City Finances Strong, Anti-Poverty Policies Weak*, FORBES (May 1, 2015, 9:43 AM), <http://www.forbes.com/sites/carriesheffield/2015/05/01/baltimore-paradox-city-finances-strong-anti-poverty-policies-weak/> [<https://perma.cc/RV8M-J44X>].

³⁶⁶ CITY OF NORTH LAS VEGAS, ADOPTED BUDGET 2015–2016 (2015), http://www.cityofnorthlasvegas.com/docs/Finance/BudgetBooks/Complete_Budget_Book_2015-2016_FINAL.pdf [<https://perma.cc/4QVJ-68ES>].

³⁶⁷ *See* NEV. REV. STAT. ANN. § 354.685 (West 2015).

³⁶⁸ *The State Role in Local Government Financial Distress*, *supra* note 23, at 8.

³⁶⁹ *Id.* at 19.

³⁷⁰ Frost, *supra* note 19, at 45.

³⁷¹ *Local Government Authority*, NAT'L LEAGUE CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/local-government-authority> [<https://perma.cc/9YSN-5U9K>] (last visited Jan. 30, 2017).

Nevada recently passed a home rule statute. 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.³⁷²

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.³⁷³ 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.³⁷⁴ This resulted in the city losing both sales and property tax revenue and led to a pension crisis.³⁷⁵ Although the city eventually negotiated settlements with its police and fire unions, Moody's, S&P, and Fitch all downgraded it in 2011.³⁷⁶

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.³⁷⁷ 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."³⁷⁸

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

³⁷² Sandra Chereb, *Lawmakers Talk "Home Rule" for Jurisdictions*, LAS VEGAS REV.-J. (Feb. 9, 2015, 1:11 PM), <http://www.reviewjournal.com/news/nevada-legislature/lawmakers-talk-home-rule-jurisdictions> [<https://perma.cc/R9VF-LGD3>].

³⁷³ See Derek Prall, *Municipal Leader of the Year: Going All In*, AM. CITY & COUNTY (Oct. 28, 2016), <http://americancityandcounty.com/economic-development/municipal-leader-year-going-all> [<https://perma.cc/RHY2-TEKX>].

³⁷⁴ CITY OF NORTH LAS VEGAS, NEVADA, \$27,070,000, GENERAL OBLIGATION (LIMITED TAX) REFUNDING BONDS, SERIES 2011, OFFICIAL STATEMENT, 19, 36-37, 56 (Oct. 19, 2011), emma.msrb.org/ER514697-ER398930-ER800512.pdf [<https://perma.cc/776P-PA3F>].

³⁷⁵ *Id.*

³⁷⁶ *Id.* at 69-69.

³⁷⁷ Robert E. Lang, *A High Stakes Gamble in North Las Vegas*, LINCY INST., May 2012, at 2-3, <https://www.unlv.edu/sites/default/files/24/Brief-High-Stakes-Gamble-April2012.pdf> [<https://perma.cc/3HRP-FHAP>].

³⁷⁸ Andrew Doughman, *North Las Vegas Officials Paint Grim Picture of City's Finances*, LAS VEGAS SUN (Jan. 8, 2014, 2:00 AM), <http://lasvegassun.com/news/2014/jan/08/north-las-vegas-officials-paint-grim-picture-city/> [<https://perma.cc/8Q26-B6GP>] (quoting North Las Vegas Mayor John Lee).

the area as a hub for electric car manufacturing.³⁷⁹ 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.

F. Jersey City, New Jersey³⁸⁰

Jersey City is New Jersey's second-largest municipality.³⁸¹ 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.³⁸² 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.³⁸³ Jersey City restructured its debt in early 2006.³⁸⁴ This restructuring provided millions of dollars of debt service relief in FY 2006 and in several future years.³⁸⁵

In November 2014, Moody's upgraded Jersey City's bond rating to A1, citing the city's large tax base and rising income levels.³⁸⁶ Jersey City's financial health has improved significantly since facing a gap of \$51.4 million in 2009 in their structural budget.³⁸⁷ The gap has since been reduced to approximately \$16 million as of 2014.³⁸⁸ Jersey City has the highest municipal tax base in the state.³⁸⁹

³⁷⁹ Megan Messerly & Daniel Rothberg, *Hyperloop Test Track to Come to North Las Vegas*, LAS VEGAS SUN (Dec. 8, 2015, 9:15 AM), <http://lasvegassun.com/news/2015/dec/08/hyperloop-test-track-to-come-to-north-las-vegas/> [https://perma.cc/HT2L-V436].

³⁸⁰ See Terrence T. McDonald, *10 Things You Should Know About This Year's Jersey City Budget*, NJ.COM (Mar. 1, 2016, 2:59 PM), http://www.nj.com/hudson/index.ssf/2016/03/10_things_you_should_know_about_this_years_jersey.html [https://perma.cc/283G-JX9F].

³⁸¹ Meir Rinde, *The List: The Top 10 Multilingual Municipalities in New Jersey*, NJSPOTLIGHT.COM (Apr. 27, 2015), <http://www.njspotlight.com/stories/15/04/26/the-list-the-top-10-multilingual-municipalities-in-new-jersey/> [https://perma.cc/A2GB-JSHG].

³⁸² Associated Press, *Jersey City, Northern New Jersey, An Example of Gentrification Going on in Communities Nationwide*, LEHIGH VALLEY LIVE (Apr. 15, 2013, 5:30 AM), http://www.lehighvalleylive.com/breaking-news/index.ssf/2013/04/jersey_city_northern_new_jerse.html [https://perma.cc/3FBQ-Z8TA].

³⁸³ CITY OF JERSEY CITY IN THE COUNTY OF HUDSON, STATE OF NEW JERSEY OFFICIAL STATEMENT 13 (Nov. 20, 2014), <http://emma.msrb.org/EA670384-EA525110-EA921306.pdf> [https://perma.cc/6RNV-LDPW].

³⁸⁴ *Id.* at 14.

³⁸⁵ *Id.*

³⁸⁶ Terrence T. McDonald, *Moody's Upgrades Jersey City Bond Rating, Citing 'Rising Income Levels'*, NJ.COM (Nov. 13, 2014, 5:00 PM), http://www.nj.com/hudson/index.ssf/2014/11/moodys_upgrades_jersey_city_bond_rating_citing_rising_income_levels.html [https://perma.cc/JD94-CV6B].

³⁸⁷ *Id.*

³⁸⁸ *Id.*

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.

G. Niagara Falls³⁹⁰ and Utica,³⁹¹ 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.³⁹² New York's monitoring system requires cities and school districts to send financial data to the state comptroller throughout the year.³⁹³ The comptroller then scores the entities in terms of their distress levels.³⁹⁴ 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.³⁹⁵

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 1995.³⁹⁶ 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.³⁹⁷ 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.³⁹⁸

New York's constitution explicitly protects public employee pensions, including future pension accruals.³⁹⁹ This essentially confers constitutional protection on

³⁸⁹ *Id.*

³⁹⁰ Population 49,468; incorporated 1892; annual budget: \$95 million. *Niagara Falls, New York*, ALCHETRON, <https://alchetron.com/Niagara-Falls,-New-York-11447-W> [<https://perma.cc/AW7K-Z2U7>] (last visited Jan. 31, 2017) (indicating population and founding year); CITY OF NIAGARA FALLS, 2014 ADOPTED BUDGET, http://www.egovlink.com/public_documents300/niagarafalls/published_documents/Administration/Adopted%20Budget%202014.pdf [<https://perma.cc/7ZSZ-ZX6Q>] (indicating budget).

³⁹¹ Population 62,235; incorporated 1832; annual budget: \$68.4 million. *Utica, New York*, OMICSGROUP.ORG, http://research.omicsgroup.org/index.php/Utica,_New_York [<https://perma.cc/M5LH-4KP2>] (last visited Jan. 31, 2017) (indicating population and founding year); CITY OF UTICA, NEW YORK, 2015-16 COUNCIL AMENDED FINAL BUDGET (Mar. 16, 2016), <http://www.cityofutica.com/Assets/Departments/Budget/City-Budget/2016-2017%20Final.pdf> [<https://perma.cc/R95W-YEP5>] (indicating budget).

³⁹² *The State Role in Local Government Financial Distress*, *supra* note 23, at 4.

³⁹³ *Id.* at 20.

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.* at 16.

³⁹⁷ *Id.* at 21-22.

³⁹⁸ Gillette & Skeel, *supra* note 8, at 1220.

³⁹⁹ Eide, *supra* note 302.

compensation for as-yet unperformed work, making New York's protections among the strongest in the country.⁴⁰⁰

New York has also granted constitutional home rule powers to all counties outside of New York City, and to all cities, towns, and villages.⁴⁰¹ 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.⁴⁰² Nevertheless, courts have long construed matters of taxation and indebtedness as matters of "state concern" that may not be managed by home rule entities.⁴⁰³ All local laws relating to debt, taxes, and assessments must thus be consistent with laws enacted by the State Legislature.⁴⁰⁴

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: since 2000 the city's population has been reduced by 9% and the number of city residents living in poverty has grown by 2%.⁴⁰⁵

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 2002.⁴⁰⁶ 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.⁴⁰⁷ 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.⁴⁰⁸

Despite this recent reversal in fortune, Niagara Falls's continued struggle with poverty and population loss has in essence forced the city to focus on reactive

⁴⁰⁰ *See id.*

⁴⁰¹ *Adopting Local Laws in New York State*, N.Y. DEP'T ST. 1 (2015), https://www.dos.ny.gov/lg/publications/Adopting_Local_Laws_in_New_York_State.pdf [<https://perma.cc/YC5E-BZT5>].

⁴⁰² *Id.* at 2.

⁴⁰³ *Id.* at 6–10.

⁴⁰⁴ *Id.* at 4.

⁴⁰⁵ Justin Sodel, *Poverty 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 [<https://perma.cc/T2ZQ-9XMR>].

⁴⁰⁶ CITY OF NIAGARA FALLS, OFFICIAL STATEMENT SUPPLEMENT, \$7,437,000 GENERAL OBLIGATION (SERIAL) BONDS, 2011, at A-2, A-19, (2011), <http://emma.msrb.org/EP572766-EP449455-EP849390.pdf> [<https://perma.cc/BM8Z-AA4U>] [hereinafter CITY OF NIAGARA FALLS, OFFICIAL STATEMENT SUPPLEMENT].

⁴⁰⁷ *See* Dave McKinley, *Fix the Falls: Casino Impact*, WGRZ (Jul. 24, 2015, 10:55 AM), <http://legacy.wgrz.com/story/news/2015/07/22/after-more-than-a-dozen-years-has-the-gamble-paid-off/30515961/> [<https://perma.cc/6F9W-AZ7V>].

⁴⁰⁸ CITY OF NIAGARA FALLS, NIAGARA COUNTY, NEW YORK \$7,920,000 REFUNDING (SERIAL) BONDS 2014, OFFICIAL STATEMENT, at A-3, A-4 (2014), <http://emma.msrb.org/ER788884-EA488484-EA884987.pdf> [<https://perma.cc/DD3G-228W>].

problem solving rather than proactive future planning and development.⁴⁰⁹ 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.⁴¹⁰ These developments contributed to decisions from Moody's and S&P to raise their ratings outlook from "negative" to "stable."⁴¹¹

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.⁴¹² Now, 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.⁴¹³ Little industry remains in Utica itself to employ citizens.⁴¹⁴ Utica has also struggled with aging infrastructure, high poverty levels, economic disinvestment, changing demographics, and a lack of long-range planning.⁴¹⁵

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.⁴¹⁶ Utica has sought to harness the distinct cultures of the Burmese, Sudanese, and Bosnian members of its population and distinguish itself as a

⁴⁰⁹ Mike Hudson, *Poverty Industry Provides Growth Sector for Struggling Falls Economy*, NIAGARA FALLS REP. (Dec. 17, 2015), <http://niagarafallsreporter.com/Stories/2015/DEC17/PovertyIndustry.html> [https://perma.cc/CG9J-MZNK].

⁴¹⁰ Mark Belcher, *City Plans to Remove Robert Moses Parkway*, WIVB (Feb. 19, 2015, 7:22 PM), <http://wivb.com/2015/02/19/city-plans-to-remove-robert-moses-parkway/> [https://perma.cc/LL3F-5PVL].

⁴¹¹ CITY OF NIAGARA FALLS, OFFICIAL STATEMENT SUPPLEMENT, *supra* note 406; CITY OF NIAGARA FALLS, NIAGARA COUNTY, NEW YORK \$7,920,000 REFUNDING (SERIAL) BONDS 2014, OFFICIAL STATEMENT, *supra* note 408, at 5.

⁴¹² *R2G Utica, Utica: Yesterday and Today*, RUST 2 GREEN, <http://www.rust2green.org/utica.php> [https://perma.cc/F7TJ-DRT3] (last visited Jan. 31, 2017).

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

⁴¹⁶ Jennifer S. Vey, *Restoring Prosperity: The State Role in Revitalizing America's Older Industrial Cities*, BROOKINGS INSTITUTION METROPOLITAN POLY PROGRAM (2007), http://www.achp.gov/docs/RestoringProsperity_BrookingsInstitutionreport.pdf [https://perma.cc/45ND-T46H].

multicultural activity hub.⁴¹⁷ The arrival of refugees has also brought the assistance of non-profits to the region, which helps with job placement and other projects.⁴¹⁸

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 2015.⁴¹⁹

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.⁴²⁰ 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."⁴²¹ Using regional coordination mechanisms, however, Utica has begun to experience a turnaround that may benefit the city for years to come.

H. Providence, Rhode Island⁴²²

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.⁴²³ More generally, Rhode Island law allows receivers to negotiate new union contracts, approve or issue debt, and supervise municipal finances.⁴²⁴ In addition, Rhode Island can bail out financially distressed

⁴¹⁷ *E.g.*, Susan Hartman, *A New Life for Refugees, and the City they Adopted*, N.Y. Times (Aug. 10, 2014), <https://www.nytimes.com/2014/08/11/nyregion/a-new-life-for-refugees-and-the-city-they-adopted.html> [<https://perma.cc/HH6C-Q6KS>]; Amelia Rawlins, *Somali Bantu Office Opens for Business*, UTICAO (Apr. 30, 2010, 12:01 AM), <http://www.uticaod.com/x938980327/Somali-Bantu-office-opens-for-business> [<https://perma.cc/9QVT-HSB4>].

⁴¹⁸ Hartman, *supra* note 417.

⁴¹⁹ CITY OF UTICA, ONEIDA COUNTY, NEW YORK, \$2,424,000 PUBLIC IMPROVEMENT (SERIAL) BONDS, OFFICIAL STATEMENT (2014), emma.msrb.org/EA630404-EA493270-EA889719.pdf [<https://perma.cc/3Y4C-3T7A>]; CITY OF UTICA, ONEIDA COUNTY, NEW YORK, \$3,887,600 PUBLIC IMPROVEMENT (SERIAL) BONDS, OFFICIAL STATEMENT (2015), emma.msrb.org/ER870972-ER680535-ER1082260.pdf [<https://perma.cc/K6L9-YWJ7>].

⁴²⁰ THOMAS P. DiNAPOLI, 2013 FISCAL PROFILE: CITY OF UTICA (2013), <https://www.osc.state.ny.us/localgov/pubs/fiscalprofiles/utica.pdf> [<https://perma.cc/P6QB-8ELB>].

⁴²¹ MAYOR'S PROPOSED BUDGET: FY 2016–2017, 12 (2016), <http://www.cityofutica.com/Assets/Departments/Mayor/PDF-Documents/Mayor's%20Budget%20Message%20'16-'17.pdf> [<https://perma.cc/23CM-K3KK>].

⁴²² Population 179,154; incorporated 1636; annual budget: \$696 million. *Providence, Rhode Island*, CITY-DATA.COM, <http://www.city-data.com/city/Providence-Rhode-Island.html> [<https://perma.cc/QLW3-TWQE>] (last visited Jan. 31, 2017) (indicating population and founding year); APPROVED BUDGET REVENUE & EXPENDITURES OF THE CITY OF PROVIDENCE FOR THE FISCAL YEAR ENDING JUNE 30, 2016 (2016), <https://www.providenceri.com/efile/6252> [<https://perma.cc/8FEM-ECJA>] (indicating budget).

⁴²³ *The State Role in Local Government Financial Distress*, *supra* note 23, at 39.

⁴²⁴ *Id.* at 19, 39.

municipalities using state funds.⁴²⁵ 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.⁴²⁶

Providence is one of the oldest cities in the United States.⁴²⁷ 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.⁴²⁸

Providence's age is reflected in its local economy, which is based on shipping of petroleum products, cement, and timber, as well as manufacturing.⁴²⁹ Providence has experienced similar challenges as many of the older industrial cities across the United States, including Utica and Niagara Falls.⁴³⁰ Providence has been shedding manufacturing jobs in recent years, although the city has increased employment in certain other sectors.⁴³¹ 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.⁴³² Yet, Providence's government has engaged in largely unchecked spending, and corruption among local officials has been rampant.⁴³³ Thus, in 2013, Providence faced a \$900 million shortfall in funding pensions and other post-employment benefits,⁴³⁴ combined with a \$30 million deficit in education funding.⁴³⁵ Recent litigation has brought newfound attention to

⁴²⁵ *Id.*

⁴²⁶ Frost, *supra* note 19, at 837 n.93.

⁴²⁷ See Mayor Jorge O. Elorza, *Welcome to Providence!*, PROVIDENCERI.COM, <https://www.providenceri.com/> [<https://perma.cc/9B4V-YU6Y>] (last visited Jan. 31, 2017).

⁴²⁸ *Charter Review Commission*, PROVIDENCERI.COM, <https://www.providenceri.com/city-clerk/charter-review-commission> [<https://perma.cc/6JZS-DHH8>] (last visited Jan. 31, 2017); R.I. CONST. art. XIII, § 5.

⁴²⁹ OFFICIAL STATEMENT OF THE CITY OF PROVIDENCE, RHODE ISLAND, RELATING TO \$39,345,000 GENERAL OBLIGATION BONDS, SERIES 2013A, A-1 (2013), emma.msrb.org/ER656336-ER509094-ER911803.pdf [<https://perma.cc/HUY2-2L3Q>] [hereinafter OFFICIAL STATEMENT OF THE CITY OF PROVIDENCE].

⁴³⁰ Vey, *supra* note 416.

⁴³¹ OFFICIAL STATEMENT OF THE CITY OF PROVIDENCE, *supra* note 429, at A-2

⁴³² See *Taveras Announces Action Plan in Face of Fiscal Emergency*, PROVIDENCERI.COM (Mar. 3, 2011), <http://www.providenceri.com/mayor/taveras-announces-action-plan-in-face-of-fiscal> [<https://perma.cc/Y2FS-BBFH>].

⁴³³ Michael G. Riley, *Riley: Leaders Silent on "Enron-esque" Providence Pension Debacle*, GOLOCALPROV (May 12, 2015), <http://www.golocalprov.com/news/riley-leaders-silent-on-enron-esque-providence-pension-debacle> [<https://perma.cc/L64V-4QX6>].

⁴³⁴ OFFICIAL STATEMENT OF THE CITY OF PROVIDENCE, *supra* note 429, at A-23 (this shortfall was calculated as of the most recent valuation at the time, which was from June 30, 2011).

⁴³⁵ *Id.* at A-10.

the pension system, attention that some consider welcomed to the extent closer monitoring reduces incentives for corruption.⁴³⁶

Since the 2013 events, Providence has been able to reach a pension reform agreement and has reduced its unfunded pension liability to \$831 million.⁴³⁷ The city has met about 97% of its required contribution, and the mayor has introduced a new plan for economic development.⁴³⁸

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.⁴³⁹ Although the Housing Authority is a city department, it receives federal funding.⁴⁴⁰

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.

⁴³⁶ See Stephen Beale, *Exclusive: Providence Unfunded Pension Liability Now at Least \$831M*, GOLOCALPROV (Feb. 6, 2014), <http://www.golocalprov.com/news/exclusive-providence-unfunded-pension-liability-now-at-least-831m/> [<https://perma.cc/MU6B-476B>]; Rebecca Moore, *City's Retirement Plan Claims Against Buck Dismissed*, PLANSPONSOR (Nov. 18, 2015), <http://www.plansponsor.com/Citys-Retirement-Plan-Claims-Against-Buck-Dismissed/?fullstory=true> [<https://perma.cc/3NS7-3VTH>].

⁴³⁷ OFFICIAL STATEMENT OF THE CITY OF PROVIDENCE, RHODE ISLAND RELATING TO \$17,480,000 GENERAL OBLIGATION REFUNDING BONDS, SERIES 2014A, A-20 (2014), emma.msrb.org/EA612863-EA479688-EA876224.pdf [<https://perma.cc/P95D-DPJN>].

⁴³⁸ *Id.* at A-20, A-21.

⁴³⁹ Dan McGowan, *Exclusive: Feds Question Jobs & No-Bid Contracts at Providence Housing*, GOLOCALPROV (Sept. 19, 2012), <http://www.golocalprov.com/news/pha2> [<https://perma.cc/BV3W-BWU6>].

⁴⁴⁰ *Id.*

KEY TO TABLE X: RISK GRADING SCALE⁴⁴¹

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

⁴⁴¹ See *supra* Table X.