

FEELING INSECURE—A STATE VIEW OF WHETHER  
INVESTORS IN MUNICIPAL GENERAL OBLIGATION  
BONDS HAVE A MERE PROMISE TO PAY  
OR A BINDING OBLIGATION

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ABSTRACT

*The City of Detroit's filing for municipal bankruptcy in July, 2013, has added to a continuing controversy of whether general obligation bondholders have a secured lien. The City of Detroit claimed its general obligation bondholders did not have a fully secured lien because the law of the state of Michigan did not create a statutory lien. Without the creation of a lien by state law, during the insolvency or bankruptcy of municipalities, general obligation bondholders will potentially have a mere promise to pay versus a binding obligation to pay, and therefore, will not have a secured lien. Treating otherwise secured general obligation bonds as unsecured will create more risk for investors and increase the cost of borrowing for cities. This article discusses the treatment of general obligation bonds in recent municipal bankruptcies; identifies the states that create a binding obligation to pay general obligation bondholders; describes problems of not treating general obligation bonds as secured; and proposes that states create clear laws that grant statutory liens for general obligation bondholders.*

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## I. INTRODUCTION

The filing for municipal bankruptcy by the City of Detroit in July, 2013, has added to the continuing controversy of whether general obligation bondholders have a secured lien. The City of Detroit claimed its general obligation bondholders did not have a fully secured lien because the law of the state of Michigan did not create a statutory lien.<sup>1</sup> Without the creation of a lien by state law,

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<sup>1</sup> See *infra* Part III.A (detailing Detroit's claim).

during the insolvency or bankruptcy of municipalities, general obligation bondholders will have a promise to pay versus a binding obligation to pay, and therefore, will not have a secured lien.<sup>2</sup> The City of Detroit's position—along with recent municipal bankruptcies in Vallejo, California; Jefferson County, Alabama; Stockton, California; and Harrisburg, Pennsylvania—has general obligation bondholders receiving less than 100 percent of their investments and deemed as unsecured creditors.<sup>3</sup> These bankruptcies raise an important issue: how secure are general obligation pledges? General obligation bonds, like other municipal bonds, are exempt from federal taxation on the interest earned on their issuance.<sup>4</sup> However, they differ from other types of municipal bonds because they typically involve the issuing government entity pledging its "full faith and credit"—its ability to levy and collect taxes to secure and pay the debt service of the bonds.<sup>5</sup> Without the creation of a lien by state law, as the City of Detroit claimed, during a municipality's financial distress or bankruptcy, general obligation bondholders will have merely the municipality's promise to pay, rather than its binding obligation to pay.<sup>6</sup> Consequently, general obligation bondholders may only receive a percentage of their investment. Without a binding obligation to pay, investors in general obligation bonds will demand higher yields to mitigate their risk. Paying higher yields increases the cost of borrowing for municipalities and may

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<sup>2</sup> Caitlin Devitt, *When Chapter 9 and General Obligations Collide*, THE BOND BUYER, June 26, 2014, <http://www.bondbuyer.com/news/regionalnews/when-chapter-9-and-general-obligations-collide-1063845-1.html> (describing the dilemma of general obligation bondholders when they are treated as unsecured creditors in a Chapter 9 municipal bankruptcy).

<sup>3</sup> See *Bondholders Losing Ground in City Bankruptcies*, GOVERNING.COM (Oct. 24, 2013), <http://www.governing.com/news/headlines/gov-bondholders-losing-ground-in-muni-bankruptcies.html> (noting that bondholders can receive "as little as 50 cents on the dollar" and highlighting municipal bankruptcies in Alabama, California, and Harrisburg, Pennsylvania).

<sup>4</sup> See *infra* Part II.A for more information about municipal bonds and general obligation bonds.

<sup>5</sup> *Id.*

<sup>6</sup> See *id.* (detailing Detroit's claim).

jeopardize bond financing of essential public services and infrastructure.

This Article examines the treatment of general obligation bondholders during the bankruptcy of a municipality. Part II defines general obligation bonds and distinguishes characteristics of true general obligation bonds that are binding obligations to pay, from general fund securities that are tantamount to mere promises to pay the municipality's debt. Part III reviews the Detroit bankruptcy and other recent municipal bankruptcies in the context of describing the treatment of holders of general obligation bonds. Part IV contains a state by state review of a state's statutory lien provisions or relevant state constitutional protections that create secured liens for general obligation bondholders. Part V explores the reaction of the municipal bond market and municipal bond issuers to the treatment of general obligation bondholders by municipalities that recently filed bankruptcy. Lastly, this Article concludes with a discussion of the challenges of general obligation bondholders in future municipal bankruptcies and proposes that states create clear laws that grant statutory liens for general obligation bondholders.

## II. OVERVIEW OF GENERAL OBLIGATION BONDS

### *A. Definition*

Municipal bonds are debt obligations issued by a state, local government, agency, or appointed government entity granted the authority to issue debt, to finance public purpose projects.<sup>7</sup> Public purpose projects include roads, airports, hospitals, affordable housing, and public purpose programs.<sup>8</sup> The interest earned on municipal bonds is generally exempt from federal taxation.<sup>9</sup>

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<sup>7</sup> JOEL A. MINTZ, RONALD H. ROSENBEG & LARRY A. BAKKEN, *FUNDAMENTALS OF MUNICIPAL FINANCE* 1 (2010); JUDY WESALO TEMEL, *THE FUNDAMENTALS OF MUNICIPAL BONDS*, xv-xvi (5th ed. 2001).

<sup>8</sup> TEMEL, *supra* note 7, at xv.

<sup>9</sup> 28 U.S.C. § 103(a) (2012). However, certain taxpayers may be subject to alternative minimum tax based on their taxable income. 26 U.S.C. §§ 55-59 (2012).

Nonetheless, municipal bonds are not tax-exempt if the proceeds from the issuance are used for private, non-governmental uses or are used by the issuer to invest in higher yielding securities.<sup>10</sup> Thus state and local governments can borrow money at lower interest rates because exempting interest on state and local bonds increases the after-tax yield on the bonds,<sup>11</sup> allowing state and local bond issuers to pay lower interest rates to bondholders.<sup>12</sup>

There are several types of municipal bonds; however, the two most common are revenue and general obligation bonds.<sup>13</sup> These types of bonds are distinguishable by how the repayment of principal and interest of the bonds is secured by the issuer.<sup>14</sup> Revenue bonds are bonds secured by a specific revenue stream aside from *ad valorem* taxes and do not involve the issuer pledging its "full faith and credit" power.<sup>15</sup> General obligations are payable and secured by the general funds of the government entity issuer.<sup>16</sup>

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<sup>10</sup> 28 U.S.C. § 103(b)(1)-(2). Private activity bonds are bonds where more than 10% of the bond proceeds are used by a non-governmental person in a trade or business and either more than 10% of the payment on the debt service is derived from a private trade or business or more than 10% of the security for the payment of the bonds is private property. Arbitrage bonds are bonds where the proceeds of the issuance are used by the issuer to invest in higher yielding bonds.

<sup>11</sup> See generally TEMEL, *supra* note 7, at 27, 133 (discussing the advantages of tax exemption, which allows investors to accept lower yields); see also ROBERT DOTY, BLOOMBERG VISUAL GUIDE TO MUNICIPAL BONDS, Ch. 1 (Bloomberg Press 2012), available at <http://my.safaribooksonline.com/book/personal-investing/9781118152553>.

<sup>12</sup> See generally TEMEL, *supra* note 7, at 27, 133; see also DOTY, *supra* note 11, at Ch. 9 (providing an example of how state and local governments issue tax exempt bonds at lower yields than taxable securities).

<sup>13</sup> TEMEL, *supra* note 7, at 33.

<sup>14</sup> *Id.*

<sup>15</sup> See *id.* at 58-59 (discussing *ad valorem* taxes as property taxes and the six types of revenue bonds: utilities, health care, higher education, housing, transportation, and industrial development); see also *Glossary of Municipal Securities Terms: Revenue Bond*, MSRB.ORG, <http://www.msrb.org/Glossary/Definition/revenue-bond.aspx> (last accessed Jan. 20, 2015).

<sup>16</sup> TEMEL, *supra* note 7, at 33; *Glossary of Municipal Securities Terms: General Obligation Bond or GO Bond*, MSRB.ORG, <http://www.msrb.org/Glossary/Definition/general-obligation-bond-or-GO-bond.aspx> (last accessed Jan. 20, 2015).

Most general obligation bonds entail a pledge of the issuer's "full faith and credit" for the payment of the principal and interest on the bonds.<sup>17</sup> A pledge of an issuer's full faith and credit requires the issuer to seek repayment of the bonds from all sources of revenue that the state and local government entity is entitled to receive.<sup>18</sup> This pledge of the issuer's full faith and credit, however, may be an unlimited or limited pledge.<sup>19</sup> Unlimited tax general obligation bonds, known as UTGO bonds, require the issuer to levy and collect *ad valorem* taxes to pay the debt service.<sup>20</sup> Limited tax general obligation bonds, known as LTGO bonds, limit the obligation of the issuer—generally through the bond terms, state statute, or state constitution—in order to levy taxes and pay the bond.<sup>21</sup> Both LTGO and UTGO bonds are generally considered safe and secure investments by investors.<sup>22</sup>

### *B. General Obligation Bonds vs. General Fund Securities*

What type of municipal debt is a bond, and further, what type of bond is considered a general obligation bond? The question is relevant to understanding the potential treatment of bondholders and investors in general fund securities during a municipal bankruptcy. It is easy to confuse general obligation bonds with general fund securities since both use the word "general" in their titles,<sup>23</sup> and both involve debt issued by a state or local government entity.<sup>24</sup> Nonetheless, that is where the similarities end. To

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<sup>17</sup> TEMEL, *supra* note 7, at 33.

<sup>18</sup> *Id.* at 55-56.

<sup>19</sup> *Id.* (discussing the distinction between "full faith and credit" and "faith and credit").

<sup>20</sup> *Id.* at 56 (unlimited refers to the tax rate or the amount); DOTY, *supra* note 11, at Ch. 3.

<sup>21</sup> TEMEL, *supra* note 7, at 56.

<sup>22</sup> Robert Doty, *The Diversity of Municipal Bonds and What You Need to Know About Risks*, AAIJ JOURNAL (May 2012), <http://www.aaii.com/journal/article/the-diversity-of-municipal-bonds-and-what-you-need-to-know-about-risks?adv=yes> (referring to Municipal Market Advisor data that states the recent default rate of traditional general obligation bonds is only 0.01%).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

illustrate the difference, the key characteristics are grouped as followed:<sup>25</sup>

### 1. Structure

Municipal bonds are typically structured as bonds—a debt of state and local governments.<sup>26</sup> General securities typically are participations in financing such as lease obligations and certificates of participation.<sup>27</sup>

### 2. Security

General obligation bonds are secured by a pledge of taxes; levy and collection of *ad valorem* taxes or state legislature appropriations.<sup>28</sup> General securities are simply payable from a state or local government's general fund.<sup>29</sup> The general fund of a state local government is an unrestricted fund used to pay certain obligations.<sup>30</sup>

### 3. Debt Repayment

Debt repayment on general obligation bonds is made by the issuer levying and collecting taxes to pay the debt service, in accordance with the issuer's pledge to do so.<sup>31</sup> For general securities, the issuer appropriates money from general fund to make payments on the debt.<sup>32</sup>

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<sup>25</sup> *Id.*; see generally, DOTY, *supra* note 11, at Ch. 4 (comparing and contrasting the differences between general obligation bonds and general obligation securities).

<sup>26</sup> Doty, *supra* note 22.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> DOTY, *supra* note 11, at 44.

<sup>31</sup> Doty, *supra* note 22.

<sup>32</sup> *Id.*

#### 4. Public Role

General obligation bonds require voter approval, whereas general securities do not require public approval.<sup>33</sup>

#### 5. State Enforcement

The payment of general obligation bonds is enforceable by tax levy.<sup>34</sup> State courts can enforce the issuers' obligations to raise, levy, and collect obligated taxes through a writ of mandamus or other pleading.<sup>35</sup> State law enforcement for general securities is limited to specific terms of agreement to pay and appropriate funds.<sup>36</sup>

#### 6. Bankruptcy Protection

The treatment of general obligation bondholders depends on whether the state grants a statutory lien or state constitutional protection.<sup>37</sup> General security holders have no special creditor status and are treated as unsecured creditors.<sup>38</sup>

### III. MUNICIPAL BANKRUPTCIES AND GENERAL OBLIGATION BONDS

#### A. Detroit

For several years the City of Detroit ( the "City" or "Detroit") dealt with a declining population, a high unemployment rate, and a shrinking tax base.<sup>39</sup> In May 2013, Detroit "deferred approximately

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> DOTY, *supra* note 11, at 46.

<sup>36</sup> Doty, *supra* note 22.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Yu Peng Lin, *The Fall of Detroit: A Financial Economist's Point of View*, 6 INT'L J. ECON. & FIN. 43, 43 (2014) (providing an economic history of Detroit that resulted in its current bankruptcy); *In re City of Detroit*, Mich. (*In re Detroit*), 504 B.R. 97, 119 (Bankr. E.D. Mich. 2013). In ruling on Detroit's ability to file Chapter 9 Bankruptcy under Michigan law, U.S. Bankruptcy Judge Steven Rhodes reviewed "*The Causes and Consequences of the City's Financial Distress.*" *Id.*



\$54 million in pension contributions" and planned to defer another \$50 million by the end of June.<sup>40</sup> On June 13, 2013, Kevyn Orr, the City's state appointed emergency manager, met with approximately 150 of the City's major creditors, including bondholders and union representatives of City employees and retirees, to propose a restructuring plan of debt estimated at over \$18 billion.<sup>41</sup> At the meeting Mr. Orr presented a 134-page restructuring proposal to assist the City in meeting its debt obligations and avoid bankruptcy.<sup>42</sup> The proposal would pay secured creditors based on the value of the collateral securing the debt, the terms to be negotiated later.<sup>43</sup> It would also pay unsecured creditors, including underfunded pension liabilities, with a share in the proceeds of a new \$10 billion bond issuance based on each creditor's pro rata share of the total debt.<sup>44</sup> After several unsuccessful meetings with creditors<sup>45</sup> and with the approval of Michigan Governor Rick Snyder, Kevyn Orr filed a petition for Chapter 9 bankruptcy on behalf of the City on July 18, 2013.<sup>46</sup>

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<sup>40</sup> CITY OF DETROIT, PROPOSAL FOR CREDITORS, EMERGENCY MANAGER REPORTS 8 (June 14, 2013), *available at* <http://www.detroitmi.gov/Portals/0/docs/em/Reports/City%20of%20Detroit%20Proposal%20for%20Creditors1.pdf>.

<sup>41</sup> Sarah Cwiek & Mark Brush, *Orr's Restructuring Plan Released, Historic Meeting with Detroit's Creditors is Underway*, MICHIGANRADIO.ORG (June 14, 2013), <http://michiganradio.org/post/orrs-restructuring-plan-released-historic-meeting-detroits-creditors-underway>; *'We're Tapped Out': Detroit Emergency Manager Proposes Plan To Creditors*, CBS DETROIT (June 14, 2013, 4:01 PM), <http://detroit.cbslocal.com/2013/06/14/detroit-emergency-manager-proposes-plan-to-creditors/>.

<sup>42</sup> CITY OF DETROIT, *supra* note 40.

<sup>43</sup> *Id.* at 101-06.

<sup>44</sup> *Id.* at 106-09; Mike Cherney, *Pension Bonds Raise Red Flags on Munis*, WALL ST. J. (July 24, 2013, 4:51 PM), <http://blogs.wsj.com/moneybeat/2013/07/24/pension-bonds-raise-red-flags-on-munis/>.

<sup>45</sup> See Bankruptcy Petition at 15, *In re Detroit*, 504 B.R. 97 (July 18, 2013) (No. 13-53846) (written approval of bankruptcy filing from Michigan Governor, Rick Snyder, noting the failure to reach a restructuring agreement with creditors "[d]espite Mr. Orr's best efforts"), *available at* <http://www.freep.com/assets/freep/pdf/C4208687718.pdf>.

<sup>46</sup> *Supra* note 45; *Detroit Bankruptcy Time Line*, DETROIT FREE PRESS (July 14, 2014, 2:36 PM), <http://www.freep.com/article/20140713/NEWS01/307130100>.

In its petition, Detroit claimed to have over 100,000 creditors, and estimated unsecured debt of \$11.9 billion and secured debt of \$6.4 billion, totaling over \$18 billion.<sup>47</sup> The \$18 billion of debt is comprised of \$5.7 billion of pension benefits for public employee retirees, \$3.5 billion in unfunded pension liabilities, approximately \$2 billion in certificate of participation (COP)<sup>48</sup> financing for pension liability, \$1.01 billion of general fund obligations, \$6.4 billion of obligations secured by special revenue or assets, and \$300 million in other debt.<sup>49</sup> The City included \$469.1 million general obligation bonds and \$5.7 billion of pension benefit liability as unsecured debt.<sup>50</sup> The \$18 billion of debt denotes Detroit's bankruptcy as the largest municipal bankruptcy in U.S. history.<sup>51</sup>

The filing of the petition for bankruptcy did not occur without controversy, and many creditors filed objections on several grounds.<sup>52</sup> On December 3, 2013, U.S. Bankruptcy Judge Steven Rhodes ruled that Detroit was eligible for Chapter 9 bankruptcy.<sup>53</sup>

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<sup>47</sup> *In re Detroit* 504 B.R. at 113.

<sup>48</sup> *Id.* at 113-14. A certificate of participation (COP) is an arrangement among investors, by which they purchase certificates entitling them to a share of incoming revenue, typically revenue generated by lease payments. JUDY WESALO TEMEL, *THE BOND MKT. ASS'N, THE FUNDAMENTALS OF MUNICIPAL BONDS* 57 (5th ed. 2001).

<sup>49</sup> CITY OF DETROIT, *supra* note 40, at 23, 25-26.

<sup>50</sup> *Id.* at 23-26. (detailing that as of 2011, pension benefits to the Health and Life Insurance Benefit Plan and the Supplemental Death Benefit Plan for retirees totaled \$5.7 billion; unfunded pension obligations \$3.5 billion; general obligation bonds \$651 million; COP related to pensions \$1.43 billion; swap contract liabilities related to the COPs \$346.6 million; and other liabilities \$300 million).

<sup>51</sup> *In re Detroit*, 504 B.R. at 178; Lin, *supra* note 39.

<sup>52</sup> *In re Detroit*, 504 B.R. at 110. A full detail of the objections and motions against the bankruptcy petition is beyond the scope of this article. For such included state constitutional arguments regarding Detroit's ability to file, see *Flowers v. Snyder*, No. 13-729-CZ (Mich. Cir. Ct. filed July 3, 2013) and *Webster v. Snyder*, No. 13-734-CZ (Mich. Cir. Ct. filed July 3, 2013) (both lawsuits tried to enjoin the City from filing Chapter 9 bankruptcy and impairing pension claims). For a similar challenge to Detroit's filing for bankruptcy see *General Retirement System of the City of Detroit v. Orr*, No. 13-768-CZ (Mich. Cir. Ct. filed July 17, 2013).

<sup>53</sup> *In re Detroit*, 504 B.R. at 190.

Judge Rhodes also ruled that pension claims are unsecured debt, potentially giving the claims of general obligation bondholders priority over pension fund claims.<sup>54</sup> Shortly after Judge Rhodes' ruling, on February 21, 2014, the City filed its reorganization plan or "Plan of Adjustment" (the "Plan") to pay its creditors pursuant to the bankruptcy filing.<sup>55</sup> A major element of the Plan was to treat secured general obligation bonds as unsecured.<sup>56</sup>

With the unsecured debt classification, the City would pay a small percentage of this outstanding debt, potentially twenty cents per dollar of the debt.<sup>57</sup> By declaring the UTGO bonds as unsecured in its Plan,<sup>58</sup> the City could use revenues currently pledged to these bonds to secured newly issued water and sewer

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<sup>54</sup> *Id.* at 149-51 ("[C]hapter 9 permits the State of Michigan to authorize a city to file a petition for chapter 9 relief without explicitly providing for the protection of accrued pension benefits."); *see also* Daniel Fisher, *Detroit Bankruptcy Ruling Good News For Muni Bonds, Insurers*, FORBES (Dec. 4, 2013, 3:20 PM), <http://www.forbes.com/sites/danielfisher/2013/12/04/detroit-bankruptcy-ruling-good-news-for-muni-bonds-insurers/>. For a discussion about whether pension fund claims should have greater priority than municipal bonds, *see* Adam Santeusano, *Developments in Banking and Financial Law: 2014: II. In re Detroit: Consequences of Detroit's Bankruptcy for Pensioners*, 33 REV. BANKING & FIN. L. 430, 433-34 (Spring 2014) (discussing potential strategies for Detroit pensioners and the impact of Judge Rhode's ruling on pensioners in other municipalities). For a discussion about Judge Rhodes ruling's impact on Detroit pensions and reforms to municipal financing and debt to prevent future municipal bankruptcies *see* Christine Sgarlata Chung, *Zombieland / The Detroit Bankruptcy: Why Debts Associated with Pensions, Benefits, and Municipal Securities Never Die . . . and How They are Killing Cities Like Detroit*, 41 FORDHAM URB. L.J. 771, 817, 842 (Mar. 2014).

<sup>55</sup> Plan for the Adjustment of Debts of the City of Detroit, *In re Detroit*, 504 B.R. 97 (Feb. 21, 2014) [hereinafter Detroit Plan], *available at* <http://www.freep.com/assets/freep/pdf/C4218951221.PDF>.

<sup>56</sup> *Id.* at 30-31, 97. Note however, that the Plan did not address the City's shrinking tax base with regard to general obligation bonds.

<sup>57</sup> Anne VanderMey & Nicolas Rapp, *Detroit Proposes a Lose-Lose Bankruptcy Plan*, FORTUNE (Feb. 22, 2014, 3:36 AM), <http://fortune.com/2014/02/22/detroit-proposes-a-lose-lose-bankruptcy-plan/>.

<sup>58</sup> Detroit Plan, *supra* note 55, at 28.

bonds, the proceeds of which would be used to pay all unsecured creditors.<sup>59</sup>

The outstanding general obligation bond debt is comprised of \$469.1 million of unlimited tax general obligation bonds and \$540.3 million are limited tax general obligation bonds.<sup>60</sup> In the defined terms section of the Plan, the Plan treats an "Allowed"<sup>61</sup> UTGO bonds as follows:

[E]ach Holder of an Allowed Unlimited Tax General Obligation Bond Claim, in full satisfaction of such Allowed Claim, shall receive its Pro Rata share of Plan . . . . The Plan UTGO Notes shall contain such other terms as will result in each Holder of an Allowed Unlimited Tax General Obligation Bond Claim receiving a payment stream the present value of which is equal to approximately 20% of such Holder's Allowed Unlimited Tax General Obligation Bond Claim as of the Effective Date.<sup>62</sup>

The Plan treats LTGO bonds and UTGO bonds the same as unsecured debt and offers holders of both 20 percent recovery of their outstanding claims.<sup>63</sup> In line with its unsecured treatment of the UTGO bonds, on October 1, 2013, the City failed to pay a \$9.4 million interest payment to bondholders.<sup>64</sup> The missed interest payment put the UTGO bonds in default. If UTGO bondholders failed to receive their quarterly interest payments, the issuance is in

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<sup>59</sup> Matt Wirz & Emily Glazer, *Detroit Bankruptcy: Bond Insurers Made Last Ditch Counterproposal to No Avail*, WALL ST. J. (June 19, 2013, 6:20 PM) <http://blogs.wsj.com/moneybeat/2013/07/19/detroit-bankruptcy-bond-insurers-made-last-ditch-counterproposal-to-no-avail/>.

<sup>60</sup> CITY OF DETROIT, *supra* note 40, at 26.

<sup>61</sup> Detroit Plan, *supra* note 55, at 2 ("Allowed" is defined as "a Claim, proof of which has been timely Filed.").

<sup>62</sup> *Id.* at 28.

<sup>63</sup> Michael Ide, *The Upside to Detroit Muni Bonds*, VALUEWALK (Mar. 11, 2014), <http://www.valuwalk.com/2014/03/upside-detroit-muni-bonds/>.

<sup>64</sup> Karen Pierog & Tom Hals, *Detroit Bankruptcy Bond Fight a Watershed for Municipal Market*, REUTERS (Feb. 17, 2014), <http://www.reuters.com/article/2014/02/17/us-usa-detroit-bankruptcy-bonds-idUSBREA1G00J20140217>.

default, requiring insurers of the bond issuances to make the interest payments. Nationally, only 2 percent of \$5 trillion general obligation bonds issued have ever defaulted.<sup>65</sup> After Detroit defaulted on the UTGO bonds, bond insurers National Public Finance Guarantee Corp., the public finance subsidiary of MBIA Inc., and Assured Guaranty Municipal Corp. together filed a lawsuit, and Ambac Assurance Corp. also filed a separate suit.<sup>66</sup> Both lawsuits claimed that the City violated Michigan law by using property taxes pledged to secure the bonds for its operating expenses.<sup>67</sup> The bond insurers sought summary judgment from Judge Rhodes to force the City to (1) set aside property tax revenue to make the bond payments and, (2) restrict the City from using tax revenue earmarked for the payment of the bonds for future financing.<sup>68</sup> Detroit responded to the lawsuits by claiming its pledge to repay the bonds was a promise under state law, and likened it to a " 'promise,' as in 'I pledge allegiance to the flag.' "<sup>69</sup>

For several weeks Judge Rhodes considered the issue of treating UTGO bonds as unsecured debt.<sup>70</sup> In the meantime, the City and the bond insurers were able to mediate a settlement before Judge Rhodes ruled on the issue.<sup>71</sup> The parties agreed the UTGO bondholders' claim would be secured and paid in the amount of \$388 million, of which \$287.5 million (approximately 74 percent)

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<sup>65</sup> Arthur R. O'Keefe, *Muni Bond Defaults, Bankruptcies and Bondholder Protections*, BNY MELLON (June 30, 2013), <http://www.bnymellonwealthmanagement.com/our-views/perspectives/muni-bond-defaults.html>.

<sup>66</sup> Complaint for Declaratory Judgment & Order, *In re Detroit*, 504 B.R. 97 (Nov. 13, 2013) (No. 13-53846) 2013 WL 6331931 [hereinafter Joint Compliant]; Complaint of Ambac Assurance Corp. for Declaratory Judgment & Order *In re Detroit*, 504 B.R. 97 (Nov. 8, 2014) (No. 13-53846).

<sup>67</sup> Joint Compliant, *supra* note 66, ¶6.

<sup>68</sup> *See id.* at 26-28; *see also* Pierog & Hals, *supra* note 64.

<sup>69</sup> Pierog & Hals, *supra* note 64.

<sup>70</sup> *Detroit Bankruptcy Time Line*, *supra* note 46.

<sup>71</sup> *See* Nathan Bomey, *Detroit Bankruptcy Bond Deal Frees up \$56M for Pensioners*, *Orr Says*, DETROIT FREE PRESS (Apr. 9, 2014), <http://www.freep.com/article/20140409/NEWS01/304090081/Detroit-bondholders-bankruptcy-settlement-Kevyn-Orr-Gerald-Rosen>.

would be treated as secured debt.<sup>72</sup> The City's Plan and its amended disclosure statement were further amended to reflect the mediated agreement.<sup>73</sup> The underlying legal arguments of the parties were not addressed in the mediation.<sup>74</sup>

### *B. Other Recent Municipal Bankruptcies*

Prior to Detroit, recent municipal bankruptcies have had similar issues regarding the priority rights of municipal bondholders.<sup>75</sup> Municipal bondholders in bankruptcies in Vallejo and Stockton, California; Jefferson County, Alabama; and Harrisburg, Pennsylvania were all treated as having unsecured debt in bankruptcy restructuring plans.<sup>76</sup> However, only the City of Harrisburg, whose bankruptcy petition was dismissed and restructured its debt outside of bankruptcy, involved UTGO bonds.<sup>77</sup> In the remaining bankruptcies, bondholders held general fund securities.<sup>78</sup> General fund securities, unlike LTGO and UTGO bonds, do not involve a pledge of specific tax revenue and are treated as unsecured creditors in bankruptcy.<sup>79</sup>

#### 1. Vallejo

Since the early 2000s, the City of Vallejo had struggled to maintain a balanced budget in part due to lavish salaries and

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<sup>72</sup> Third Amended Disclosure Statement with Respect to Third Amended Plan for the Adjustment of Debts of the City of Detroit at 32, 98, *In re Detroit*, 504 B.R. 97 (filed April 25, 2014) [hereinafter Third Amended Disclosure].

<sup>73</sup> *Id.* at 61, 98; see also Chad Halcom, *Detroit Agrees to Pay Bondholders 74% on \$388M Claim in Bankruptcy*, CRAIN'S DETROIT BUSINESS (Apr. 9, 2014), <http://www.craindetroit.com/article/20140409/news/140409839/detroit-agrees-to-pay-bondholders-74-on-388m-claim-in-bankruptcy>.

<sup>74</sup> Third Amended Disclosure, *supra* note 72, at i-vii; see also *In re Detroit*, 504 B.R. at 108-10.

<sup>75</sup> See *Bondholders Losing Ground in City Bankruptcies*, *supra* note 3 (noting that bondholders can receive "as little as 50 cents on the dollar" and highlighting municipal bankruptcies in Alabama, California, and Harrisburg, Pennsylvania).

<sup>76</sup> *Id.*

<sup>77</sup> See *infra* notes 97-100 and accompanying text.

<sup>78</sup> See *infra* notes 81-100 and accompanying text.

<sup>79</sup> See *supra* notes 20-38 and accompanying text.

pension benefits paid to police and firefighters, which led to a \$16 million shortfall.<sup>80</sup> The City spent 74 percent of its \$80 million general fund budget on public safety employee salaries and benefits.<sup>81</sup> The City filed bankruptcy on May 23, 2008.<sup>82</sup> In its bankruptcy restructuring plan, the City defaulted on general fund lease securities and holders of these securities received 25 percent of their investment.<sup>83</sup>

## 2. Jefferson County

Jefferson County, Alabama, the county for which the City of Birmingham is the county seat, filed for bankruptcy on November 9, 2011.<sup>84</sup> Jefferson County's \$4.2 billion in debt made it the largest municipal bankruptcy prior to Detroit's bankruptcy.<sup>85</sup> The majority of the debt, \$3.14 billion, was for sewer revenue bonds and included general obligation bonds.<sup>86</sup> In April, 2012, the County defaulted on the general obligation bonds,<sup>87</sup> but unlike the general obligation bonds in the Detroit bankruptcy, these bonds were not UTGO bonds but constituted general obligation

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<sup>80</sup> Carolyn Jones, *Vallejo Votes to Declare Chapter 9 Bankruptcy*, SAN FRANCISCO CHRONICLE (May 7, 2008), <http://www.sfgate.com/bayarea/article/Vallejo-votes-to-declare-Chapter-9-bankruptcy-3285168.php>; see also Steven Greenhut, *Vallejo's Painful Lessons in Municipal Bankruptcy*, WALL ST. J. (Mar. 26, 2010), <http://online.wsj.com/articles/SB10001424052748703625304575115551578762006>.

<sup>81</sup> Jones, *supra* note 80.

<sup>82</sup> City of Vallejo, Cal., Voluntary Petition for Bankruptcy, *In re City of Vallejo*, 408 B.R. 280 (Bankr. E.D. Cal. 2009).

<sup>83</sup> CITY OF VALLEJO BANKRUPTCY WORKOUT PLAN at B-9, I-5 (Dec. 22, 2009); Doty, *supra* note 22.

<sup>84</sup> Jefferson County, Ala., Voluntary Petition for Bankruptcy, *In re Jefferson County, Ala.*, 484 B.R. 427 (Nov. 9, 2011).

<sup>85</sup> See Martin Z. Braun, *Jefferson County's Bankruptcy Left Few Winners*, BLOOMBERG (Nov. 23, 2013), <http://www.bloomberg.com/news/print/2013-11-22/jefferson-county-s-bankruptcy-left-few-winners-as-debt-forgiven.html>.

<sup>86</sup> MICHAEL MARZ & ANGELA KUKODA, FIRSTSOUTHWEST (WHITE PAPER), RECENT BANKRUPTCIES AND DEFAULTS RAISE CONCERNS OVER GENERAL OBLIGATION BONDS 1 (June 2012), available at <http://www.munibondsforamerica.org/cms/wp-content/uploads/2012/11/First-SW-White-Paper-Muni-Bankruptcies-and-GO-Bonds-June-2012.pdf>.

<sup>87</sup> *Id.*

warrants.<sup>88</sup> The warrants were payable out of the County's general fund, and there was "no specific lien on an asset or tax revenue stream."<sup>89</sup>

### 3. Stockton

In 2012, the City of Stockton owed \$700 million to over fifty creditors due to high pension retiree costs, a failed downtown revitalization project, and reduced property tax revenue because of a real estate downturn.<sup>90</sup> The City filed bankruptcy on June 28, 2012.<sup>91</sup> Holders of general fund securities received 45 percent of their investment in the bankruptcy restructuring.<sup>92</sup> The largest creditor was Assured Guaranty, the bond insurer of the general fund securities.<sup>93</sup>

### 4. Harrisburg

In 2004, the City of Harrisburg issued a series of UTGO bonds to retrofit a trash incinerator that had been closed by federal environmental regulators.<sup>94</sup> By the end of 2006, the renovation had failed, and the facility was losing approximately \$1 million a

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Bobby White, *Stockton Files for Bankruptcy Protection*, WALL ST. J. (June 29, 2012), <http://online.wsj.com/news/articles/SB10001424052702304058404577495412282335228>; see also Scott C. Pryor, *Fairness and Risk in Stockton: Pensions, Bonds, and Taxes—When Doing Nothing is Doing Well*, at 6-8 (July 23, 2013) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2297478](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2297478).

<sup>91</sup> *In re* City of Stockton, Cal. (*In re Stockton*), 478 B.R. 8, 14 (Bankr. E.D. Cal. 2012).

<sup>92</sup> *Bondholders Losing Ground in City Bankruptcies*, *supra* note 3.

<sup>93</sup> *Id.*

<sup>94</sup> See generally John Buntin, *Harrisburg's Failed Infrastructure Project*, GOVERNING.COM (Nov. 2010), <http://www.governing.com/topics/transportation-infrastructure/Harrisburgs-failed-infrastructure-project.html> (discussing how in 2004 Harrisburg issued \$120 million in new debt in order to retrofit its incinerator facility for environmental purposes, rather than choosing to sell the incinerator and take a loss on a facility for which the city still owed \$104 million).



month.<sup>95</sup> The City had over \$280 million in outstanding UTGO bonds, and by December of 2010, the City had failed to pay debt service on the bonds.<sup>96</sup> The City petitioned the state for a designation of "financial distress" and subsequently filed Chapter 9 bankruptcy on October 8, 2011.<sup>97</sup> The City failed to make a \$5.3 million debt service payment on the UTGO bonds on March 15, 2012, and the bond insurer Assured sued.<sup>98</sup> The City's bankruptcy petition was dismissed by the federal bankruptcy court.<sup>99</sup> The City restructured its debt, which led UTGO bondholders to take a "haircut" of approximately 40 percent.<sup>100</sup>

#### IV. AFTER DETROIT—PROMISE VERSES OBLIGATION

##### A. *Are General Obligation Bonds Secured by Lien?*

The mediated settlement between the City of Detroit and bond insurers has not resolved the issue of whether Michigan law creates a pledge of the full faith and credit of municipality issuing UTGO bonds and not merely a promise to pay. Further, the lack of a ruling on Michigan law leaves open the pledge or promise issue

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<sup>95</sup> *Id.*

<sup>96</sup> Cate Long, *A Harrisburg Scorecard*, REUTERS (Oct 14, 2011), <http://blogs.reuters.com/muniland/2011/10/14/a-harrisburg-scorecard/>; Romy Varghese, *Assured Guaranty, TD Bank Slap Harrisburg With Suit*, WALL ST. J., Sept 14, 2010, at C4 (describing the lawsuit against Harrisburg initiated by Assured Guaranty, the bond insurer).

<sup>97</sup> *In re City of Harrisburg (In re Harrisburg)*, 465 B.R. 744, 749-50, 752 (Bankr. M.D. Pa. 2011); see Juliet M. Moringiello, *Goals and Governance in Municipal Bankruptcy*, 71 WASH. & LEE. L. REV. 403, 474 (2014) (discussing the events leading up to Harrisburg's filing for bankruptcy).

<sup>98</sup> MARZ & KUKODA, *supra* note 86, at 3; Nick Malawskey, *Harrisburg Incinerator Contractors Haven't Been Paid*, PENNLIVE (July 20, 2012, 5:48 AM), [http://www.pennlive.com/midstate/index.ssf/2012/07/harrisburg\\_incinerator\\_contrac.html](http://www.pennlive.com/midstate/index.ssf/2012/07/harrisburg_incinerator_contrac.html).

<sup>99</sup> Mary Walsh Williams & Jon Hurdle, *Harrisburg Sees Path to Restructuring Debts Without Bankruptcy Filing*, N.Y. TIMES, July 25, 2013, at A12.

<sup>100</sup> See generally *Bondholders Losing Ground in City Bankruptcies*, *supra* note 3 (explaining that in bankruptcy trials bondholders could recover as little as 50 cents on the dollar for defaulted municipal bonds in cities such as Harrisburg).

unresolved. Regardless of the interpretation of Michigan law, the City of Detroit was still able to force bond issuers to negotiate concessions on the debt owed to UTGO bondholders by treating UTGO bonds as unsecured debt.<sup>101</sup> Will UTGO bondholders ever feel really secure when buying debt of economically distressed cities, especially when state law regarding the establishment of a lien is unclear?<sup>102</sup>

Notwithstanding the negotiating techniques of an economically distressed city during a municipal bankruptcy, bondholders must determine if state law, either implied or expressly, created a statutory lien, or if a lien was created in the enacting legislation that authorized the bond issuance, or lastly if the state's constitution created a lien.<sup>103</sup> Without such assurance, investors will ask for higher yields on the investments to counter the increased risk.<sup>104</sup> James E. Spiotto, a bankruptcy attorney with Chapman and Cutler LLP and coauthor of a book entitled *Municipalities in Distress?*,<sup>105</sup> stated that "whether general-obligation bonds or other types of muni debt are protected depends on the language of the state law."<sup>106</sup>

<sup>101</sup> See Steven Malanga, *Detroit's Message to Investors: There Will be Blood*, CITY JOURNAL (Spring 2014), [http://www.city-journal.org/2014/24\\_2\\_snd-detroit-bankruptcy.html](http://www.city-journal.org/2014/24_2_snd-detroit-bankruptcy.html) ("Orr used the unprecedented threat of treating general obligation bonds like unsecured debt . . . which prompted the backers of those bonds to agree to significant concessions . . .").

<sup>102</sup> Coming to a reasonable conclusion, this author answers in the negative. *Id.* ("[G]eneral-obligation municipal bonds will never quite feel as secure as they once were . . .").

<sup>103</sup> See PETER HAYES & JAMES SCHWARTZ, BLACKROCK INC., *DISTRESS IN DETROIT: A BLACKROCK ANALYSIS 3* (2013) ("[A lien] effectively provides GO bondholders a priority lien on revenues for the full and timely payment of debt service in cases of local government distress, including bankruptcy."), available at <https://www.blackrock.com/cash/literature/whitepaper/distress-in-detroit-a-blackrock-analysis.pdf>.

<sup>104</sup> MARZ & KUKODA, *supra* note 86, at 7.

<sup>105</sup> JAMES E. SPIOTTO, ANN E. ACKER & LAURA E. APPLEBY, *MUNICIPALITIES IN DISTRESS? HOW STATES AND INVESTORS DEAL WITH LOCAL GOVERNMENT FINANCIAL EMERGENCIES* (1st ed. 2012).

<sup>106</sup> Kelley Nolan, *On 'General Obligation' Munis, Investors Advise Caution*, WALL. ST. J. (May 17, 2012) (featuring Mr. Spiotto's response when asked about the protection afforded to holders of general obligation bonds

### B. State by State Review of Statutory Liens

Determining whether an issuer of general obligation bonds has a binding obligation to repay the debt service on the bonds would appear to be simply a matter of a reviewing state statute. However, only five states—California,<sup>107</sup> Colorado,<sup>108</sup> Florida,<sup>109</sup> Louisiana,<sup>110</sup> and Rhode Island<sup>111</sup>—have state laws that expressly grant general obligation bondholders a statutory lien with a binding obligation. A statutory lien grants the bondholders of UTGO bonds a first priority to *ad valorem* taxes and other tax revenues.<sup>112</sup> Analysts of Moody's Investor Service are currently doing a fifty-state analysis of state government general obligation pledges.<sup>113</sup> Their analysis also distinguishes states with UTGOs and LTGOs.<sup>114</sup> In the attached Appendix A, a chart of all fifty states provides how each state treats a general obligation bond and whether it is a secured lien or not.

## V. EFFECT OF REQUIRING STATUTORY LIENS ON GENERAL OBLIGATION BONDS

### A. State Reaction

Even before the Detroit bankruptcy, the rights of municipal bondholders in a municipal financial crisis were put into doubt.<sup>115</sup> For instance, in 2010 the City of Central Falls, Rhode Island, declared insolvency due to \$80 million in unfunded pension liabilities that far exceeded the City's annual budget of \$17

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during bankruptcy), *available at* <http://online.wsj.com/news/articles/SB10001424052702303360504577410230458546046>.

<sup>107</sup> CAL. GOV'T CODE § 8878.25 (West 2014).

<sup>108</sup> COLO. REV. STAT. ANN. § 11-57-208 (West 2014).

<sup>109</sup> FLA. STAT. § 132.43 (West 2014).

<sup>110</sup> LA. REV. STAT. ANN. § 39:1402 (2014).

<sup>111</sup> R.I. GEN. LAWS ANN. § 45-12-1 (West 2014).

<sup>112</sup> MARZ & KUKODA, *supra* note 86, at 1.

<sup>113</sup> See MOODY'S INVESTORS SERVICES, MUNICIPAL BANKRUPTCY: UPDATE AND INSIGHTS – GENERAL OBLIGATION SPOTLIGHT (Dec. 5, 2013; Jan. 9, 2014; Feb. 6, 2014; Mar. 7, 2014; Apr. 4, 2014).

<sup>114</sup> *Id.* at 6.

<sup>115</sup> See *supra* Part III.B.

million.<sup>116</sup> Central Falls filed Chapter 9 bankruptcy on August 1, 2011.<sup>117</sup> Before the bankruptcy was completed, the Rhode Island state legislature hastily passed legislation to protect municipal bondholders by providing them with a statutory lien that gave them preference over all other creditors and guaranteeing their repayment from *ad valorem* taxes and general municipal revenues in the event of bankruptcy.<sup>118</sup> This legislation was enacted to protect Rhode Island municipalities' ability to issue debt to finance projects and to maintain low borrowing costs.<sup>119</sup>

Municipalities have an interest in maintaining low borrowing rates and in state laws that strengthen and clarify the rights of bondholders in a bankruptcy—statutes like that of California, Colorado, Florida, Louisiana, and Rhode Island—which help foster low borrowing rates.<sup>120</sup> The Detroit bankruptcy filing and the City's challenging its pledge of full faith and credit for the security of UTGO bonds should cause other states to pass similar legislation that creates clear statutory liens.

#### *B. Reaction by the Bond Market and Investors*

The Detroit bankruptcy called into question the priority of payments to creditors during municipal debt restructuring from municipal bankruptcy.<sup>121</sup> Historically, investors generally assumed that UTGO bonds investors and pension benefits received the highest priority treatment, followed by LTGO bonds, pension

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<sup>116</sup> See Maria O'Brien Hylton, *Central Falls Retirees v. Bondholders: Assessing Fear of Contagion in Chapter 9 Proceedings*, 59 WAYNE L. REV. 525, 525-26 (Fall 2013); see also MARZ & KUKODA, *supra* note 86, at 4.

<sup>117</sup> Hylton, *supra* note 116, at 525.

<sup>118</sup> *Id.* at 526-27; see also James E. Spiotto, *The Role of the State in Supervising and Assisting Municipalities, Especially in Times of Financial Distress*, MUN. FIN. J., Winter/Spring 2013, at 12-13 (describing the enactment of Rhode Island's statutory lien statute).

<sup>119</sup> Hylton *supra* note 116, at 527, 559-60 (concluding that municipal bondholders should not be granted a priority lien that excludes them from the cost of restructuring municipal debt).

<sup>120</sup> See *supra* notes 107-11 and accompanying text.

<sup>121</sup> PIMCO, *After Detroit: Rigorous Research and Credit Selection Is the Key to Investing in Municipal Bonds*, MINYANVILLE.COM (Oct. 3, 2013), available at <http://www.minyanville.com/articles/print.php?a=52073>

obligations investment instruments, other general fund claims, and lastly retiree healthcare obligations.<sup>122</sup> Nevertheless, Detroit's challenging the meaning of "pledge" within Michigan's statute has caused investment asset managers to recommend that investors rethink the assumed priority of debts.<sup>123</sup> BlackRock, one of the world's largest investment asset managers,<sup>124</sup> recently advised investors in municipal bonds to consider investing in municipal bonds that have dedicated revenue streams, like water and sewer revenue bonds.<sup>125</sup> Other recommendations advise investors to gain awareness of how state law treats UTGO bondholders during economic distress or bankruptcy of the local governmental issuer, allowing investors to understand the credit risk of a local general obligation bond issuance.<sup>126</sup>

Preferences for state and local government debt include state and local government debt that is issued by states, "high grade" local government general obligation debt, local governments in state with statutory liens, debt secured by sales or gas tax, and essential service revenue-secured debt.<sup>127</sup> As stated in Part IV.B, five states unquestionably offer statutory liens to UTGO bondholders. To determine if a statutory lien is granted in other states, an investor will need to review state statutes and constitutions.<sup>128</sup> It is also important that investors carefully review the description of the security of their investment that appears in the offering documentation, also known as the official statement, to "determine whether a statutory lien is present."<sup>129</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> See generally HAYES & SCHWARTZ, *supra* note 103 (discussing how Detroit's proposal to treat obligations to all bondholders equally shocked bondholders and called into question the value of the "full faith and credit" pledge bestowed to holders of GO bonds).

<sup>124</sup> Susanne Craig, *The Giant of Shareholders, Quietly Stirring*, N.Y. TIMES (May 18, 2013), <http://www.nytimes.com/2013/05/19/business/blackrock-a-shareholding-giant-is-quietly-stirring.html?pagewanted=all>

<sup>125</sup> HAYES & SCHWARTZ, *supra* note 103

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> See Appendix A for references to all fifty states.

<sup>129</sup> Doty, *supra* note 22.

If investors are uncertain of the security of UTGO bonds, they are likely to demand a greater yield on their investment to compensate for the increased risk due to the possibility of having an investment that is unsecured.<sup>130</sup> Higher yields on UTGO bonds will increase a state and local government's cost of borrowing. Increased borrowing costs may require higher taxes to repay the debt, which affects the general public, especially at the local government level.<sup>131</sup>

## VI. CONCLUSION

The Detroit bankruptcy has not resolved the issue of whether UTGO bonds in Michigan are secured by pledge of the issuer's full faith and credit and not merely a simple promise to pay if state law or a state constitution creates a secured lien. Judge Rhodes did not rule on this issue, and the matter was resolved through mediation between the City of Detroit and bond insurers.<sup>132</sup> A ruling by Judge Rhodes would have provided an example to other states on how to treat future municipal bond issuance subject to municipal bankruptcy. In future municipal bankruptcies, UTGO bondholders should argue that state law creates a secured lien. If bankruptcy courts begin treating UTGO bondholders as unsecured creditors, bond issuers may incur more cost in issuance, such as paying higher yields on UTGO bonds to mitigate the risk of loss to bondholders. Following the lead of the five states that have clear statutory lien laws, other states should create statutory liens for UTGO bonds to help shield bondholders from losses in potential municipal bankruptcies. UTGO bond issuers should be reassured that their UTGO issuance is indeed secured by the full faith and credit of the state and local government issuer.

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<sup>130</sup> MARZ & KUKODA, *supra* note 86, at 7.

<sup>131</sup> HAYES & SCHWARTZ, *supra* note 103, at 4.

<sup>132</sup> *See supra* note 71 and accompanying text.

### Appendix A

State	General Bond Protection	Code Section
Alabama	no	ALA. CODE § 11-81-16 (1975)
Alaska	yes	ALASKA STAT. § 37.15.180
Arizona	no	ARIZ. REV. STAT. ANN. § 35-429
Arkansas	no	ARK. CONST. amend . 20
California	yes	CAL. GOV. CODE § 5450
Colorado	yes	COLO. REV. STAT. § 31-21-106
Connecticut	yes	CONN. GEN. STAT. § 3-20h
Delaware	yes	DEL. CODE ANN. tit. 29 § 7417
Florida	yes	FLA. STAT. ANN. § 215.70 (West 2014)
Georgia	yes	GA. CONST. art. VII, § IV, ¶ 3
Hawaii	no	HAW. CONST. art. VII, § 11
Idaho	no	ID. CONST. art. VIII, § 1
Illinois	no	65 ILL. COMP. STAT. ANN. 85/2
Indiana	no	IND. CODE § 5-1.5-4-2
Iowa	no	IOWA CODE ANN. § 8.57F
Kansas	yes	KAN. STAT. ANN. § 10-1001
Kentucky	no	KY. REV. STAT. ANN. § 45.800 (West 2009)
Louisiana	yes	LA. REV. STAT. ANN. § 39:1402
Maine	yes	ME. CONST. art. V, Pt. 3, § 5.
Maryland	no	MD. CODE ANN., Fin. & Procurement, § 8-132
Massachusetts	no	MASS. GEN. LAWS, ch. 29 § 60A
Michigan	yes	MICH. CONST. art. IX § 15
Minnesota	no	MINN. STAT. § 475A.03
Mississippi	no	MISS. CODE ANN. § 31-19-13
Missouri	no	MO. CONST. art. 3, § 37
Montana	no	MONT. CODE ANN. § 7-7-4262
Nebraska	yes	NEB. REV. ST. § 18-2607
Nevada	no	NEV. REV. STAT. § 349.072
New Hampshire	yes	N.H. REV. STAT. § 33-B:6
New Jersey	yes	N.J. STAT .ANN. § 52:27-23.3 (West)

New Mexico	yes	N.M. STAT. ANN. § 6-12-12
New York	no, but statute states this does not apply to NYC	N.Y. LOCAL FINANCE LAW § 85.40, 85.30 (McKinney)
North Carolina	no	N.C. GEN. STAT. ANN. § 159-176
North Dakota	yes, but only up to the amount of debt the municipality is constitutionally authorized to incur	N.D. CONST. art. X, § 15; N.D. CENT. CODE § 40-35-15
Ohio	no	OH CONST. art. VIII, § 3
Oklahoma	no	OKLA. CONST. art. 10, § 23a
Oregon	yes	OR. REV. STAT. § 223.235
Pennsylvania	no	72 PA. STAT. ANN. § 3919.311 (West)
Rhode Island	yes	R.I. GEN. LAWS § 45-12-1
South Carolina	no, but there are a few projects which qualify for the protection such as schools	S.C. CODE ANN. § 11-23-10
South Dakota	yes	S.D. CODIFIED LAWS § 10-12-35
Tennessee	yes	TENN. CODE ANN. § 9-9-202
Texas	no	TEX. CONST. art. 3, § 49-j
Utah	yes	UTAH CODE ANN. § 11-14-310
Vermont	no	VT. STAT. ANN. tit 32, § 951a
Virginia	default is yes, but can be changed in the security instrument	VA. CODE ANN. § 2.2-4902.1
Washington	yes	WASH. REV. CODE ANN. § 43.991.060 (West)
West Virginia	yes	W. VA. CODE, § 13-2A-15
Wisconsin	yes	WIS. STAT. ANN. § 18.12
Wyoming	yes but only if the city and/or town has had the bonds guaranteed by the state	WYO. STAT. ANN. § 9-4-1002