I. INTRODUCTION

Certainly more than any other year in recent memory, 2014 raised a profound constitutional question of whether federal laws may preempt state constitutions with regard to municipal authority to address unsustainable pension obligations. Amid this federalism debate, is a standing question of whether our system, in which the federal government offers inequitable protections for less sophisticated municipal debt issuers than for banks, can persist.1 It was a year of

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1. In one of Congress’ final actions of 2014, the Continuing Appropriations Act of 2015, includes a provision to “push out” or reverse/undo a provision of the 2010 Dodd-Frank law which prohibited banks from trading some of their most exotic financial instruments in units covered by the Federal Deposit Insurance Corporation (FDIC) or the Federal Reserve Board. The intent was to make sure trades in derivatives, credit-deferred swaps and other instruments that helped spark the financial crisis of 2008 would not be insured by taxpayers if they went bad. The action, with support from the White House, effectively reversed a critical protection adopted by Congress in the wake of deals in Jefferson County and Detroit involving swaps and derivatives that contributed to their record municipal bankruptcies. See Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, 128 Stat. 2130 (2014); see also Alert Memorandum: Amendments to Dodd-Frank Swaps Push-Out Provision Passed in Omnibus Spending Bill, CLEARY GOTTLIEB (Dec. 17, 2014), http://www.cgsh.com/files/News/05c69b62-
governmental transformation, as the Census counted special districts to be the largest kind of governmental entities in the U.S.—forcing the Internal Revenue Service to try to determine what, exactly, a municipality is. It was a year in which some local governments sought to secede from their own states—but also in which Michigan trumped partisanship and delved into fiscal innovation that became a key to helping Detroit emerge from the largest municipal bankruptcy in the nation’s history. It was a year when the Pennsylvania Legislature broke new ground, enacting legislation, which would encourage local governments to share services—and allow for the dissolution of a municipality. In short, for local leaders, it was a profound year of challenge, risk, innovation, and leadership.

Mayhap, most of all, it was a year of testing the unique federal law enacted to provide municipalities an opportunity to avoid insolvency. Municipal bankruptcy is unique in that it is authorized in federal law—but only if a state enacts legislation providing the right for a municipality to seek federal bankruptcy protection through the federal court system. Unsurprisingly, between the twelve states that specifically authorize

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2. Special districts are defined by the Census Bureau as “independent, special-purpose governmental units (other than school district governments), that exist as separate entities with substantial administrative and fiscal independence from general-purpose local governments.” See Lists & Structure of Governments, United States Census Bureau, https://www.census.gov/govs/go/special_district_governments.html (last visited Feb. 2, 2016).


5. See 11 U.S.C.A. § 109(c) (West2014) (“An entity may be a debtor under chapter 9 of this title if and only if such entity – (1) is a municipality”). See also 11. U.S.C.A. § 901 – 946 (West 2014).

municipal bankruptcies, the twelve states that conditionally authorize municipal bankruptcies and the three states with limited authorization, each state has created a very different model. This paper explores the role of states in municipal bankruptcy processes: Do state policies precipitate municipal bankruptcy? Can state aid prevent bankruptcy? How do states authorize or govern municipal bankruptcy? How can states help municipalities emerge from bankruptcy?

II. 2014: THE YEAR OF MUNICIPAL BANKRUPTCY

The year of 2014 saw significant changes in the relation of states to municipalities, as many prominent municipalities faced bankruptcy. The following explores the role of states in precipitating, preventing, and governing municipal bankruptcy.

Can States Play a Precipitating Role in Municipal Bankruptcy?

As noted by Chris McKenzi, the Executive Director of the California League of Cities:

In our federalism system—and under the current version of Chapter 9 municipal bankruptcy signed into law by the former Governor of California, former President Ronald Reagan, states play a unique role. No municipality, after all, may even file for federal bankruptcy protection—unlike any other corporation—unless authorized by state law. But states also play a role in either helping municipalities not to need access to federal bankruptcy protection—or, sometimes the opposite as U.S. Bankruptcy Judge Thomas Bennett wrote in the case of the nation’s second largest municipal bankruptcy: ‘The loss of this unencumbered revenue source was rooted in the inability of the state of Alabama and its Legislature to properly enact a statute… All those who attribute Jefferson County’s bankruptcy case and Cooper Green’s plight only to conduct and actions by the county are ill-informed… The state of Alabama and its legislators are a significant, precipitating cause. Both before and after filing its Chapter 9 case, the county’s revenue-seeking activities with

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7. See Municipal Bankruptcy State Laws, GOVERNING, http://www.governing.com/gov-data/state-municipal-bankruptcy-laws-policies-map.html (last visited Feb. 5, 2016) (mapping state laws governing municipal bankruptcy; in Michigan, the municipality can only file for bankruptcy if condition are met and the state, official or entity engages in further action).
Alabama have been to no avail.’ (In Re Jefferson County, United States Bankruptcy Court, N.D. Alabama, Southern Division, December 19, 2012).  

Beyond the issue of whether municipalities are eligible for bankruptcy:

As Judge Bennett noted in the case of Alabama—and now a new study from the Chicago Federal Reserve finds, states can have precipitating roles as well as preventative roles. In the study, the Windy City Fed determined that Michigan’s decade-long policy of repeatedly cutting local aid to help deal with its own fiscal problems has helped drive some of its local governments into fiscal crisis, the Chicago Fed says in a new report:

While economic downturns clearly put pressure on state and local governments alike, in Michigan’s case they have also added volatility and uncertainty into the revenue relationships between state and local governments. Because of changes to Michigan’s statutory revenue sharing program and tax code, local government officials have become increasingly uncertain that statutory revenue sharing will reach pre-2003 levels. Local governments in Michigan may be forced to adjust what their services programs can deliver because of expected lower amounts of state aid over the medium term and possibly the long term. Meanwhile, Michigan localities’ latitude to maintain their own programs with their own revenue sources is seemingly limited by law.

As evidenced in Michigan, state policies can have a detrimental effect on municipalities’ ability to maintain financial solvency. State austerity policies can strangle municipalities trying to balance their own budgets—by reducing state aid and further destabilizing municipal budgets. These policies can ultimately have a precipitating effect on municipalities, pushing them into bankruptcy.


9. Id.
Can States Prevent Municipal Bankruptcy?

Two years ago, Wells Fargo noted that “[d]espite a tough environment, we believe the nearly 90,000 state and local governments’ efforts to tackle critical financial issues is light years ahead of their brethren in Washington, D.C.”

But how the interplay between states and local governments worked in the wake of this mortgage/property Great Recession raised unprecedented state-local challenges and credit risks—and it displayed stark differences in the roles states chose to play—including the potential credit risks state leaders were willing to confront. In looking at the municipal bankruptcies—(or near bankruptcy in Harrisburg)—in California, Rhode Island, Alabama (Jefferson County), Pennsylvania, and Michigan, the roles of the respective states ranged from adverse (Alabama—as specifically noted by U.S. Bankruptcy Judge Thomas Bennett), to seemingly irrelevant (California), to positively reactive (Rhode Island, Maryland, and Michigan).

As intertwined as state and local governments are, the Great Recession demarcated states into several categories. These categories included those states which had state oversight programs that either protected against, or offered good support to help, troubled communities. States—such as Rhode Island, Michigan, and Pennsylvania (which acted on landmark legislation this year)—accepted risks and reacted to change state laws. States such as California and Alabama, appeared to contribute to the distress and avoid the acceptance of any risk. The hard issue for state leaders was—and is—a fear of credit risk contagion.


12. See, e.g., Gray, supra note 3; Varghese, supra note 4; Fehr, supra note 11; and Walsh & Hurdle, supra note 11.

13. Credit risk contagion is the phenomenon where a default of one party causes the default of subsequent parties, or changes the risk of default of other parties. In the wake of the unprecedented municipal bankruptcies, especially in Detroit, Stockton, and San Bernardino, there is a greater risk that every city and county will be impacted by higher borrowing costs. There is also a greater likelihood that the new Congress will consider new barriers to municipal access to credit markets. See Mark H.A. Davis, Contagion Models in Credit Risk, in THE OXFORD HANDBOOK OF CREDIT DERIVATIVES 1-33.
The federal municipal bankruptcy law is a unique aspect of American federalism. The role of the federal bankruptcy court is restricted by the U.S. Constitution to mainly administering and shepherding a plan proposed by a municipality. In contrast, states can exercise significant control over a local government’s spending, whether to dissolve a municipality, or to consolidate it with other local units. Indeed, where state programs include involvement before a municipality becomes insolvent, insolvency is an entry criterion for Chapter 9, requiring that state law provide authority for a municipality before it can even file for federal bankruptcy protection. But, beyond that, the potential risk of involvement encompasses fiscal risk, not to mention political risks.

In a sense, the question for states is how to balance the credit risk of non-involvement versus involvement. In some states—especially smaller states such as Rhode Island or Maryland—where a default by Providence

(Alexander Lipton et al. Eds. 2010), http://wwwf.imperial.ac.uk/~mdavis/docs/CMCR.PDF.
15. See, e.g., Varghese, supra note 4.
17. For instance, the truly extraordinary and bipartisan involvement taken by Michigan Gov. Rick Snyder and the state’s legislative leaders involved significant risk. See Gray, supra note 3. So, in a sense, it should not have come as a surprise when Standard and Poor’s (S&P) revised its outlook on Michigan from positive to stable this year, noting that its revision was due to several economic and fiscal factors, including softening revenue. See Update 1-S&P revises Michigan’s credit rating outlook to stable, REUTERS (June 17, 2014; 4:42 P.M.), http://www.reuters.com/article/2014/06/17/usa-michigan-ratings-outlook-idUSL2N0OY1OU20140617. But the rating agency noted another factor: Michigan’s decision to dip into its rainy day fund to appropriate a $195 million contribution to the Motor City’s retirees as a critical part of the so-called “grand bargain” critical to Detroit’s bankruptcy exit plan. Id. In its rating, S&P wrote that the state action “raises questions as to potential future state contributions to other distressed localities and school districts, and we will monitor the uniqueness of this event.” Id.

In a statement to the Bond Buyer, a spokesperson for the Governor’s office wrote: ‘We knew the Detroit settlement package and [budget stabilization fund] was a concern with the rating agencies, which is why the Governor felt it was important to address head on and show why the package was a financially responsible, smart way for the state to address Detroit, with benefits not only to Detroit and Detroiter but to the entire state and Michiganders,’ adding that the contribution was unlikely to set a precedent for other distressed local governments: ‘The Detroit situation is an incredibly unique situation that really can’t and shouldn’t be used to draw any broader parallels,’ adding that that earlier Fitch Ratings had affirmed its AA rating and stable outlook on the state’s general obligation bonds, and Moody’s affirmed its Aa2 rating with a positive outlook.

Frank Shafroth, GMU MUN. SUSTAINABILITY PROJECT (June 19, 2014), https://fiscalbankruptcy.wordpress.com/2014/06/19/06-19-14/.
or Baltimore would have led to significant repercussions to the respective state’s economy and credit ratings; whether the state needed to establish a proactive role could not really be in question. In a similar sense, state leaders in Albany and Lansing have clearly recognized the critical role of New York City and Detroit to their respective state economies—as Brooking’s notes:

Nearly 10 percent of the Detroit metropolitan area’s workforce is employed in R&D intensive, STEM-oriented “advanced industries”—one of the highest concentrations in the nation. Auto manufacturing is one of these industries, but there is also a strong education and health care sector, and a burgeoning digital and creative sector, both concentrated in the Midtown and Downtown neighborhoods that comprise Detroit’s proposed innovation district.¹⁸

The far greater potential credit risk to Michigan state leaders was not to act, rather than to act.

Cities’ and counties’ fiscal distress or bankruptcy cannot be isolated—as much as legislators in Springfield or Montgomery might wish they could isolate distressed cities. Thus, statutory “emergency rooms” of some sort—or a “pre-emergency rooms,” such as long-established programs in New Jersey and North Carolina that have worked to prevent municipal bankruptcy filings... prevent potential credit infestation and save the potential costs of intervention.¹⁹

These programs have “demonstrated efficient means to provide state oversight without debt adjustment.”²⁰ Many states require municipalities to regularly submit audit reports and budgets to a state division of local government. These oversight programs allow intervention when budgets are out of balance—instead of waiting until the calamity of bankruptcy arrives.²¹ Some states may also offer temporary assistance through loans

²⁰. Id.
²¹. See, e.g., CONN. GEN. STAT. ANN. § 7-392 (West 2013) (requiring all municipalities to have their financial statements audited at least once a year).
or emergency grants, a solution that is not available to the federal courts. More importantly, the focus of state oversight programs is to maintain or improve fiscal and managerial functionality. After all, if—or when—those fail, it will be state taxpayers and the state’s credit rating that will be at risk.

However, there are potential credit risks to the state, such as setting a precedent that would trigger comparable assistance to other distressed communities; forgoing investments in infrastructure or education in order to prop up a city or county’s pensions; and creating an impression that a state will weigh in against its investors in favor of its poorly managed municipalities. In contrast, a state takes a risk in opting that its constructive role will not just cure a cancer and prevent its spread, but more importantly, lay the foundation for more prosperous accruing economic benefits to the region/state that outweigh any capital markets costs and for creating a more constructive state/local relationship for the future.

III. STATE APPROACHES TO GOVERNING MUNICIPAL BANKRUPTCY

Unlike other kinds of corporate bankruptcies, the purpose of a municipal bankruptcy is, after all, to ensure there is no interruption of public services—especially those affecting health and public safety. But municipal bankruptcy is a microcosm of our intergovernmental system—it involves every level of government in our country. Most fascinating too are some significant differences in the way states have fashioned the rules through which those cities may have access to federal protection and the U.S. Bankruptcy courts: some, for instance, such as Michigan and Rhode Island, empower the respective governors to appoint receivers (R.I.) or Emergency Managers (Michigan) —in effect imposing a state takeover, preempting all municipal authority.


23. Frank Shafroth, What are the Implications of Stockton for State & Local Leaders?, GMU MUN. SUSTAINABILITY PROJECT (Nov. 3, 2014), https://fiscalbankruptcy.wordpress.com/2014/11/03/what-are-the-implications-of-stockton-for-state-local-leaders/. See, e.g., MICH. COMP. LAWS ANN. § 141.1549(10) (West 2013) (“Notwithstanding any other provision of this act, the governor may appoint a person who was appointed as an emergency manager under former 2011 PA 4 or an emergency
But in Alabama and California, it is municipal elected officials
who are responsible for putting together their respective plans of
debt adjustment and blueprints for their post-bankruptcy
municipal futures—even as they continue to bear the
responsibility for the day-to-day governance and oversight of
their respective municipal corporations—and participate, both
winning and losing—in municipal elections.24

[Twenty-one] states do not provide access to Chapter 9
Bankruptcy, and [sixteen] states set conditions for eligibility; and
[twelve] states provide blanket authorization: Georgia explicitly
denies access to municipal bankruptcy (GA Code 36—80-5); the
following states do not authorize municipal bankruptcy: Alaska,
Delaware, Hawaii, Indiana, Kansas, Maine, Maryland,
Massachusetts, Mississippi, New Hampshire, New Mexico,
North Dakota, South Dakota, Tennessee, Utah, Vermont,
Virginia, West Virginia, Wisconsin, and Wyoming.25

IV. WHAT ROLE DO STATES PLAY IN DISTRESSED MUNICIPALITY
RECOVERY?

There are potentially many roles that states can play in supporting
municipalities exiting bankruptcy, including continued state aid,
increasing municipal revenue, among many others. Pennsylvania’s
attempt to restore authority to distressed municipalities represents one
potential avenue available to state governments. Similarly, the rise of
special districts represents another approach to addressing the tax and
debt limitations of municipal governments.

_Pennsylvania Act 47_

In late October 2014, Pennsylvania House lawmakers passed the
Municipalities Financial Recovery Act to provide tax and revenue
authority to the state’s distressed cities and to set timelines for
communities to exit the state’s program for distressed municipalities.26
As adopted, the new legislation offers the first opportunity in nearly three

financial manager under former 1988 PA 101 or former 1990 PA 72 to serve as an
emergency manager under this act.”).

0/0047..HTM.
decades for the state’s municipalities to gain new revenues and tax authority as means to get back on their own two feet. The remarkable action by the state legislature could well mean that Pittsburgh, along with 20 other fiscally distressed, or municipalities in Pennsylvania currently under Act 47, could recover significant tax authority—and escape from the prison of the former Act 47. While these 20 municipalities are a…

miniscule share of the state’s 2,562 municipalities, it is worth noting that 14 of these municipalities have been under Act 47 for more than a decade—with ten of those for more than 20 years. In fact, only seven municipalities have ever exited the program—raising questions from many about the law’s effectiveness in returning localities to fiscal sustainability.

Under the new legislation, distressed municipalities must exit the state’s oversight program known as Act 47 within eight years or risk receivership or even dissolution. The new legislation adds extensive procedures for the disincorporation of non-viable municipalities and creates unincorporated service districts to provide essential services to the residents. Act 47 municipalities, except those that provide police and fire services through their own employees, could be subject to disincorporation (this procedure would not apply to Philadelphia.). An administrator appointed by the state’s department for Community & Economic Development provides the procedure for disincorporation, including development of an essential services plan. After the Secretary determines that disincorporation is appropriate, the governing body or the voters of the municipality could initiate the process of disincorporation by petitioning the Court of Common Pleas. Disincorporation would be subject to a judicial procedure through which the court must find by clear and convincing evidence that the municipality is viable and can sustain itself in order to avoid disincorporation. An unincorporated district covering the geographical area of the former municipality would be established as an entity of the Commonwealth. The Commonwealth would hold assets of the district not disposed of in trust until the district were reincorporated, merged, or consolidated with a neighboring municipality.

Certain former ordinances of the municipality would be part of governing standards established for the district. Enforcement of land use ordinances would become the responsibility of the surrounding or

27. Id.
adjacent county. An unincorporated service district trust fund and restricted accounts for each unincorporated district are established in the state Treasury for each district. All expenses and obligations of the service district will be paid from the account, which is funded by the assessments against benefitted property.\footnote{See Romy Varghese, Zombie Cities Targeted in Pending Pennsylvania Bill: Muni Credit, BLOOMBERG (Oct. 6, 2014), http://www.bloomberg.com/news/articles/2014-10-07/zombie-cities-targeted-in-pending-pennsylvania-bill-muni-credit.}

*Special Districts*

The structure of local government in America is changing. In the last half century, the number of school districts has declined by more than 80 percent and the number of counties and municipalities has either declined or barely budged. There has, however, been an explosion in special-purpose districts. A whole new kind of government is now the most prevalent form of government in the U.S.—and that’s raising all sorts of taxing questions.

The extraordinary growth in special districts appears to be a response, at least in part, to the spread of tax and debt limitations, as well as popular resistance to general tax increases. In Colorado, for instance, in the wake of the 1992 adoption of its Taxpayer Bill of Rights, there was a proliferation of new quasi-governments. By 2005, special districts accounted for 87 percent of all local governments in Colorado. The irony: a citizens’ initiative to reduce the size and role of government achieved the obverse. The increase in special-purpose districts is due to local governments’ seeking budget relief, while still desiring to maintain services.

Special districts, which generally provide services not being supplied by existing general-purpose governments, may serve multiple states or counties—or be as small as one person. In Texas, for example, it only took one person to create a utility district out of 1,000 acres of Shiney Hiney Ranch. A former Dallas medical student, who’d moved to a trailer home on Shiney Hiney a month before an election, voted to create “a special district with rights to invoke eminent domain and to issue $400 million in bonds, along with setting a $1 property tax rate
(per $100 of assessed value), according to the *Denton Record-Chronicle*.

The upsurge in special districts has meant an explosion of new taxes. Ironically, this is happening in states that are often perceived as anti-tax. This unprecedented growth in special districts is leading to a showdown with the federal government over the ability of local governments to issue public capital debt and could preempt the authority of many states and localities.\(^{30}\)

Modern-day secession movements suggest that what might be more pressing is rethinking fiscal relations among states and their rural and urban components.

V. CONCLUSION

The year of 2014 brought about unprecedented challenges in the relation of states and municipalities. The rise and scale of distressed municipalities throughout the country reflects trends in decreased state aid and shrinking local revenues. While states may precipitate municipal bankruptcy, states also have significant ability to support distressed municipalities in avoiding, managing and emerging from bankruptcy. It does appear that 2014 marked a seminal year.

Indeed, 2015 saw only one city, Hillview, Kentucky, file for municipal bankruptcy\(^{31}\)—a filing yet to be accepted by the U.S. Bankruptcy Court. While it is unlikely that 2014 marked the last of the kinds of severe distress that led to chapter 9 bankruptcy filings, it does seem clear that the wake of the Great Recession has perhaps exhausted it greatest impact. Atlantic City, New Jersey and Puerto Rico are very much at the fiscal edge as this is written—with the latter awaiting a March 31st deadline set by the Speaker of the U.S. House of Representatives, Rep, Paul Ryan (R-Wisc.) to determine whether the U.S. Territory of Puerto Rico ought to be eligible for chapter 9 municipal bankruptcy or rather ought to be fiscally addressed in some other manner.

Still, the events and decisions of 2014-2015 have left unanswered one of the greatest federalism challenges in regards to the Tenth Amendment. The Tenth Amendment to the Constitution explicitly sets


forth our country’s constitutional principle of federalism as defined by the framers meeting in Philadelphia. It states that powers not granted to the Federal Government nor prohibited to the States by the Constitution are reserved to the States. Ergo, even though Article I of the Constitution authorizes Congress to “establish uniform laws on the subject of bankruptcies throughout the United States,” said power may not interfere with the power reserved to the States by the Tenth Amendment—the most unique dual sovereignty which so distinguishes our nation from every other. That unique American attribute now creates exceptional challenges for fashioning a constructive constitutional and legal outcome. As noted bankruptcy expert James Spiotto writes: “While there may be precedent for the Federal preemption of bankruptcy law for corporations and individuals, there was, at our Nation’s founding, no precedent for a dual sovereign passing a law regulating the bankruptcy of the other.” If anything, that challenge is made even more difficult because the term “state” is defined in the U.S. bankruptcy code as including Puerto Rico—except with regard to defining who may be a debtor. In fact, chapter 9 municipal bankruptcy, as amended and signed into law by former President Reagan in 1988, was not created to deal with sovereign states and is not presently drafted to be helpful to the Commonwealth of Puerto Rico.

Moody’s Investors Service, at the beginning of the year, noted that while municipal bankruptcies would remain rare, they would not be unthinkable. As other cities—and states—examine the terrible costs of bankruptcy, chapter 9 could become a tool for distressed entities, if permitted by state law, to deleverage and reorganize liabilities. Especially so in the face of a pending service insolvency.

Indeed, in an uncharacteristically upbeat tone, the rating agency added that Detroit’s “ability to enter and exit bankruptcy within 16 months with dramatically reduced liabilities and a path forward may be the template for future bankruptcies,” adding that the mere consideration of chapter 9 municipal bankruptcy by Detroit’s surrounding county, Wayne County, and Atlantic City,

32. James E. Spiotto, Testimony before the U.S. Senate Judiciary Committee (December 1, 2015) (“Is Chapter 9 Bankruptcy the Ultimate Remedy for Financially Distressed Territories and Sovereigns Such as Puerto Rico: Are there Better Resolution Mechanisms?”).


New Jersey appear to have triggered “state support and oversight” which have forestalled actual Chapter 9 filings.  

Part of the issue stems from what might be termed the irresolution in both the Stockton and Detroit municipal bankruptcies when appeals of the respective U.S. Bankruptcy court decisions approving Stockton’s and Detroit’s plans of debt adjustment and exits from chapter 9 municipal bankruptcy effectively overrode provisions in California’s and Michigan’s state constitutions that ensured the sanctity of contracts. But in the end, when neither state opted to go forward with a challenge to either the Sixth or Ninth U.S. Circuits Courts of Appeal, U.S. Bankruptcy Judge Steven Rhodes’ decisions, which provided for reductions in pensions and reductions notwithstanding provisions in California and Michigan’s constitutions protecting contracts, one cannot help but note a fundamental chapter in our history of federalism.  

Municipal bankruptcies, in some sense, have pit cities’ taxpayers and retirees against cities’ municipal bondholders. Of the recent municipal bankruptcies, municipal bondholders have only come out ahead of pensioners in Central Falls, Rhode Island. San Bernardino, which currently holds the record for the longest period in municipal bankruptcy of any city in U.S. history, has been challenged for seeking, in its evolving plan of debt adjustment before U.S. Bankruptcy Judge Meredith Jury, to substantially impair unsecured bondholder claims while leaving accrued pension liabilities untouched.  

That is, the proverbial jury remains out with regard to the long-term outcome of these chapter 9 resolutions—resolutions in which, after thousands and thousands of court-supervised negotiations with thousands of creditors, we cannot yet be sure whether the balance of retiree benefits remaining and reduced pensions will suffice to provide for the long-term fiscal sustainability of these post-bankrupt municipalities. Nor can we be sure whether or not the debt critical to their future will be attractive to investors. Given the rise of preferential treatment for pension, Detroit’s bondholders, for instance, are likely to experience recovery rates below historical levels, and took deep losses during its bankruptcy. Holders of the city’s certificates of participation recovered a very low 12% and overall recovery was only 25%.  

What we do know is that the nation experienced a hiatus of municipal bankruptcies in 2015. It enters 2016 with Atlantic City, New Jersey likely to file for municipal bankruptcy; with San Bernardino, California—now in municipal bankruptcy longer than any other city in

35. Shafroth, supra note 33.
U.S. history—but appearing, even in the wake of its horrifying terrorist attack—poised to emerge from bankruptcy late in 2016.

Perhaps, then, it is appropriate that for the first time in a decade and a half, no city in Michigan is under the state’s emergency financial management, leading Michigan Governor Rick Snyder early this year to note: “This is a great day, not only for the City of Lincoln Park, but for the entire State of Michigan.”36 In his statement, Gov. Snyder praised the leadership of Emergency Manager Brad Coulter, who the Gov. had designated as the EM in July of 2014: “Brad has provided a shining example of how the system can work; first, collaborating with local leaders to address the city’s financial emergency, then working to enhance economic development to help ensure continued financial stability for Lincoln Park.”37 Lincoln Park, a municipality of 38,000, is one of 34 cities and 9 townships in Wayne County—the county which includes Detroit, and was, itself, on the verge of bankruptcy. The successful exit yesterday means that the state’s fiscal emergency oversight is now narrowed to three school districts: Detroit, Muskegon Heights, and Highland Park.

But, lest such enthusiasm be unbridled, the fiscal fates of Flint, Michigan; the Detroit Public Schools System; and Ferguson, Missouri will be markers to determine what lessons we have learned.

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37. Id.