Polluted Politics

Lora Krsulich*

When cities approach financial distress, creditors take notice. Looking for someone to right the city’s financial course, creditors largely expect that the state will intervene to bring the city back to good financial standing. Often, the state will appoint an emergency manager—a person designated by the state’s governor to return the city to balance. Emergency managers have a great deal of power. Michigan’s emergency takeover law, for example, allows a state-appointed emergency manager to subject the city’s elected officials to “any condition” the manager wishes. To date, legal scholars have largely failed to realize just how damaging these measures are.

Emergency managers are problematic for a number of reasons. As appointed officials charged with the narrow task of balancing the city’s revenues and expenditures, emergency managers take a myopic view of systemic financial problems, prioritizing short-term financial solutions over the long-term interests of local residents. Further, emergency managers may not perform as well as expected, in part because resources are limited and in part because their decisions do not account for the city’s long-term financial interests. In the worst cases, emergency managers and the governors that appoint them are driven by political gamesmanship or impermissible racial bias, further undermining public confidence in government officials.

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Flint’s poisoned water and Detroit’s abandoned buildings are all-too-visible examples of emergency manager systems gone awry.

Given the failures of emergency managers, states should consider alternatives. Though judicial supervision may provide a remedy, other more permanent structures—like notice-and-comment periods, citizen commissions, and legislative reviews—could enable local residents to retain a voice in their community, even through financial crises.

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The restructuring and rebirth of Detroit will not be delivered by a state-imposed emergency manager, nor through Chapter 9 bankruptcy proceedings, foundation contributions, closed door deals, or other devious and misleading corporate schemes. Detroit’s rebirth will be the result of the people’s unrelenting demand for democratic self-governance, equal access to and management of the natural and economic resources of the city.

—Detroiters Resisting Emergency Management
If that whole city could be poisoned, it could happen to any of us.
—Jan BenDor, rally organizer, Flint, Michigan

INTRODUCTION

In April 2014, Flint’s state-appointed emergency manager decided to switch the source of Flint’s water supply from Lake Huron to the Flint River. The emergency manager believed that the city would save $12 million a year by switching to the Flint River and treating the water locally, rather than relying on Detroit’s water treatment facilities near Lake Huron. Almost immediately, Flint residents noticed a change in the water’s color and odor; some reported rashes and others had clumps of their hair fall out. But it was not until October 2, 2015, that state authorities decided to test the water. Seven days later, state officials decided to switch the water supply back to Lake Huron.

The initial choice to switch the source of Flint’s water to the Flint River caused devastating results. Health officials tested thousands of Flint children and found elevated levels of lead in their blood stream, which could lead to long-term learning disabilities or behavioral issues. And a Legionnaire’s outbreak potentially linked to bacteria in the new water supply sickened at least eighty-seven people and resulted in nine deaths. In February 2016, Governor

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3. Id.
4. Id.
Rick Snyder pledged $195 million to help residents cope with the water crisis; but even that pledge will not be enough to replace the city’s underground system of lead pipes, a long-term solution to ensuring that lead does not continue to seep into Flint’s water supply. In the meantime, residents have filed a class action suit to recover damages, nine state employees have been criminally charged for concealing urgent information and failing to respond to the crisis, and editorial boards and political commentators have accused the State of environmental racism and depraved indifference toward Flint’s largely black population.

What has largely gone unnoticed in the media coverage, however, is that the Flint water crisis is a product of Michigan’s emergency manager system, governed by Public Act 436, a law known as the Local Financial Stability and Choice Act (PA 436). Michigan had appointed an emergency manager for Flint in 2011, before PA 436 took effect. Once in effect, however, PA 436 automatically converted those emergency managers in place before the act to emergency managers under PA 436, who had broader powers than the emergency managers under prior regimes, including the ability to exercise the power of the local government.

Public Act 436 ushered in a new era of emergency manager regimes in Michigan. By late 2012, Michigan state officials had used the emergency take-over system so regularly that more than 50 percent of the State’s black population lived under some form of state receivership.

9.  Id. To clarify, it was not the water from the Flint River alone that resulted in the lead contamination, but Michigan’s failure to provide any means to treat the Flint River water with anti-corrosive chemicals. Because the Flint River water was not properly treated, it eroded Flint’s lead pipes as it passed through them and caused the pipes to leach lead into the water. Thus, so long as the city retains its lead pipe water-delivery system, there is a possibility of lead contamination. This is why I factor in the cost of replacing the lead pipes as a long-term need for Flint.


15.  MICH. COMP. LAWS § 141.1549(2); see also Phillips v. Snyder, 836 F.3d 707, 718 (6th Cir. 2016) (recognizing that emergency managers under PA 436 have “new, broad powers”).

city. Detroit, fell under state receivership in the fall of 2012 after it had lost nearly half of its population\(^{17}\) and a risky debt swap landed the city’s mayor in federal prison and left the city with an annual bill of nearly $50 million.\(^{18}\) The state appointed an emergency manager to lead the city through municipal bankruptcy proceedings.\(^{19}\) But before bankruptcy proceedings even began, the emergency manager attempted a number of what many would characterize as extreme moves to right the city’s finances: shutting off the water of customers who were more than two months late on their water bill,\(^{20}\) freezing pensions to current workers and retirees,\(^{21}\) and attempting a settlement on the debt swap deal that a federal bankruptcy judge deemed “hasty.”\(^{22}\) Despite these moves, the day after Detroit emerged from the largest municipal bankruptcy in

Michigan’s takeover law, violated the Due Process and Equal Protection guarantees of the Fourteenth Amendment; Article IV, Section 4 of the Constitution, which provides for a republican form of government; the Voting Rights Act; the First Amendment rights of free speech and to petition the government; and the Thirteenth Amendment. \(^{17}\) See Amy Padnani, *Anatomy of Detroit’s Decline*, N.Y. TIMES (Dec. 8, 2013), http://www.nytimes.com/interactive/2013/08/17/us/detroit-decline.html [https://perma.cc/8SP9-C8QX] (a five-part series that describes how “Detroit went from one of America’s most prosperous cities to one of its most distressed”).

18. \(\text{Id.}\)


20. John Gramlich, *Detroit’s Drought of Democracy*, N.Y. TIMES (July 9, 2014), http://opinionator.blogs.nytimes.com/2014/07/29/detroits-drought-of-democracy [https://perma.cc/E3WY-DJMQ]. In 2013, customers of the Detroit Water and Sewage Department (DWSD) filed a lawsuit about the DWSD’s termination of water service to thousands of residential consumers. See *In re City of Detroit, Mich.*, No. 15-2236, slip op. at 1 (6th Cir. Nov. 14, 2016). The customers sought “‘preliminary and permanent injunctive relief stopping water shut offs and restor[ing] service,’ and an order directing DWSD ‘to implement a water and affordability plan with income based payments’ for residential consumers.” \(\text{Id.}\) In an interesting move—given the Sixth Circuit’s prior order in *Phillips* that appeared to strip the city of any semblance of sovereignty—the panel concluded that a bankruptcy order requiring DWSD to provide water service at a specific price or to refrain from terminating service would “‘interfere’ with the City’s ‘political [and] governmental powers,’ its ‘property and revenues,’ and its ‘use [and] enjoyment of . . . income-producing property.’” \(\text{Id.}\)


American history, Detroit’s Mayor Mike Duggan announced on the courthouse steps, “The reality is tomorrow is not any different from today.”

In the five years between 2008 and 2013, more than twenty-eight U.S. cities fell under emergency manager control. Although cities now routinely look to the state for assistance with financial distress or other municipal challenges, an emergency manager “solution” is far from the only available option. Although emergency managers have become more popular, their history is relatively limited. States have historically used the courts and other strategies to address municipal distress. States can also provide grants and loans, or leave the city to fend for itself.

Before 1988, for example, the courts, not the state legislature or the executive branch, placed struggling municipalities in Michigan into receivership, during which time a court-appointed “receiver” would oversee the finances of municipal debtors. The only exception to this general rule was when the State would authorize a city to file for Chapter 9 bankruptcy; but the bankruptcy process still remained largely in the hands of the courts. Under this regime of addressing municipal distress in Michigan, only two cities defaulted on bond payments or were placed under a court-imposed state.


27. See, e.g., id. ¶¶ 34–47.

28. Id. ¶ 32.

29. Id. ¶ 33–34.
receivership due to insolvency.\textsuperscript{30} Since Michigan first imposed its emergency manager system in 1990, however, it has continued to grant more power to the emergency managers and, by proxy, to the governors that appoint them.\textsuperscript{31} In the year after PA 436 took effect, Michigan placed ten cities under the control of an emergency manager or a consent decree.\textsuperscript{32}

Before the recent images of contaminated water in Flint, Michigan, emergency takeover laws did not raise eyebrows with creditors or the general public. Some legal scholars encouraged deference to governors who, they believed, would protect the due process rights of local residents while resetting the cities’ financial problems.\textsuperscript{33} Financial proponents of takeovers focused on the need to maintain the creditworthiness of other municipalities, to bring in financial expertise, and to override a malfunctioning, and sometimes corrupt, local political system.\textsuperscript{34} These voices dominated the debate in the \textit{Wall Street Journal} and \textit{Financial Times}.\textsuperscript{35}

But the outcomes in Flint and Detroit require a closer look at the underpinnings of emergency manager systems. Michigan’s emergency manager law is an example of a particularly severe strain of such laws. In Flint, PA 436 gave the emergency manager the authority to reject and terminate collective bargaining agreements, strip local officials of duties and pay, and sell off local assets.\textsuperscript{36} It forced local elected leaders to abide by “any conditions” imposed by the emergency manager. This resulted in disaster—contaminated drinking water poisoned children and lead to the deaths of nine people. Now, local residents bear the brunt of repairing the city.\textsuperscript{37}

Although Flint may be an extreme example, four problems plague nearly all emergency manager systems: (1) the little evidence of their efficiency; (2)
the limited flexibility of city budgeting, and thus the limited marginal benefit of external financial assistance; (3) the potential to exacerbate racial inequalities; and (4) political gamesmanship. Given these concerns, this Note argues that emergency managers are more harmful than helpful and that states should look for alternative solutions to municipal financial distress, such as administrative law principles.

To briefly review the concerns: First, there is little evidence that emergency manager laws effectively address the underlying financial troubles of distressed cities. Detroit, for example, emerged from bankruptcy without addressing the infirmities in the auto industry or the deteriorating housing stock that lead to the financial crisis in the first place. Addressing such larger structural problems is exactly what the appointment of an emergency manager purports to do—right the city’s financial wrongs. Yet, as even takeover proponent Professor Clayton Gillette admits, cities are occasionally “recidivists,” meaning that they will go through takeover or even bankruptcy multiple times. Still other cities remain under an emergency manager regime for many years—longer than would be expected if the emergency manager were narrowly addressing a financial crisis. At the time of the 2015 crisis, Flint, for example, had been in state receivership since 2011, cycling through multiple emergency managers. Other cities harbored emergency managers for even longer than that.

Second, city budgets tend to be less flexible than the outside observer might believe. City budgets, especially in the largest, poorest cities, are dominated by “economic imperatives, institutional constraints, and bureaucratic needs.” States already exert a great deal of indirect control over these budgets through restricted grants and funding streams for dedicated

38. See, e.g., Pete Saunders, Detroit After Bankruptcy, FORBES (Apr. 24, 2016), http://www.forbes.com/sites/petesaunders1/2016/04/24/detroit-after-bankruptcy/#5b14157d38e4 [https://perma.cc/9SQL-NTXM]; Brian J. O’Connor, Detroit Facing Challenges One-Year After Bankruptcy, DET. NEWS (Nov. 10, 2016), http://www.detroitnews.com/story/news/local/detroit-city/2015/12/09/detroit-city-finances-one-year-bankruptcy/77063402 [https://perma.cc/2MDS-SXAA] (recognizing that, although Detroit was making financial progress after bankruptcy, projections estimate that the city’s pensions will add $83.4 million to the city’s budget, and that “[w]hile the city is out from under its old debt, it still faces the challenge of finding a way to run and rebuild a city that’s lost 1.1 million residents since 1950”).


40. Smith, supra note 2.

41. Ras J. Baraka, Editorial, A New Start for Newark Schools, N.Y. TIMES (Oct. 19, 2014), http://www.nytimes.com/2014/10/20/opinion/a-new-start-for-newark-schools.html [https://perma.cc/EGV5-G9RG] (“Successive state-mandated initiatives came and went. Occasionally, there were useful ideas that yielded results. . . . But when there was no dramatic breakthrough, programs were withdrawn, and some new plan hatched. Over time, the cycle hurt teachers’ morale and bred cynicism among parents.”).

Those that expect a financially skilled emergency manager to right the city’s financial wrongs are bound to be disappointed at just how little flexibility the city budget allows.

Third, emergency manager laws exacerbate existing racial inequalities. In Michigan, for example, the American Civil Liberties Union (ACLU) filed suit against the State after the announcement of Detroit’s takeover. The suit—Phillips v. Snyder—alleged that Michigan’s emergency manager law allowed the State to appoint an emergency manager without reliance on objective criteria. Plaintiffs argued that the law’s wide zone of discretion allowed impermissible racial biases to factor into the governor’s decision to takeover a city. As one observer pointed out, “[t]here are plenty of near broke towns in Michigan,” but black cities, like Flint and Detroit, seemed to get taken over at much higher rates.

Emergency manager laws also exacerbate the ongoing problem of disenfranchisement among the poor and people of color. Nationally, only two of the 340 American cities with substantial black populations had city councils on which African Americans were overrepresented compared to their population. In a third of the cities with substantial black populations, African Americans were underrepresented by more than one seat. In Ferguson, Missouri, for example—where, in August 2014, a white officer shot an unarmed, black teenager, spurring a national response—black residents made up 63 percent of the city’s population but only 14 percent of local council seats. Taken together with felon disenfranchisement laws and voter identification requirements, takeover practices only further marginalize communities of color.

43. Id.; see also H. JUDICIARY COMM. DEMOCRATIC STAFF, DEMOCRACY FOR SALE: SUBVERTING VOTING RIGHTS, COLLECTIVE BARGAINING AND ACCOUNTABILITY UNDER MICHIGAN’S EMERGENCY MANAGER LAW: INTERIM REPORT AND RECOMMENDATIONS 6 (2012) (“[T]here are serious concerns that the State of Michigan may itself be contributing to the financial distress of certain municipalities by withholding long-promised payments.”); Anderson, infra note 80, at 581 (pointing out that bailout funding had traditionally been part of any state takeover program).


45. See, e.g., Complaint, supra note 26, ¶ 49.

46. Mahler, supra note 44; see also Phillips, 2014 WL 6474344, at *3.

47. Of the 340 cities that were more than 20 percent black, only 129 (about a third) had elected a black representative to fill more than one city council seat. Richard Fausset, Mostly Black Cities, Mostly White City Halls, N.Y. TIMES (Sept. 28, 2014), http://www.nytimes.com/2014/09/29/us/mostly-black-cities-mostly-white-city-halls.html [https://perma.cc/G9UZ-QA8S] (reporting data from the International City/County Management Association).

48. Id.

49. Id.

50. Id.
Fourth, emergency manager systems are subject to political manipulation. Often, the prime political challenger to a governor is the mayor of one of the state’s large cities. Although a governor might be motivated by concern for the city’s residents, it would be naïve to think that political gamesmanship does not play a role in the decision to intervene.

Given these concerns and the outcome of emergency manager systems in cities like Flint and Detroit, now may be an opportune time for states and creditors to rethink their willingness to abandon democratically elected leaders in favor of autocratic solutions like emergency managers. To the extent current events signal a new path forward, this Note proposes alternative solutions.

Part I describes trends in municipal distress and compares current takeover regimes in Michigan and elsewhere to the regime that governed New York City’s proposed bankruptcy in the 1970s. It aims to show that state takeovers are more extreme today than they were in the past.

Next, Part II addresses why emergency manager regimes have become so popular and ultimately rebuts the most common arguments for takeovers by highlighting some of their most serious problems.

Finally, Part III considers two avenues by which states may replace emergency manager systems, ultimately concluding that administrative law principles reveal the best solution. First, by examining a history of civil rights injunctions and court-supervised bankruptcy proceedings, this Note finds courts ill-equipped to offer the creative, locally tailored solutions needed to help cities in financial distress. Second, borrowing from administrative law principles, this Note recommends tools that local communities can use to address their own problems. Though not entirely democratic, certain administrative solutions—notice-and-comment periods, citizen commissions, and opportunities for legislative review—provide for local input and procedural checks. Because they are less expensive and less disruptive than emergency manager systems, they offer states a more manageable way to think about addressing municipal crises.

I. CITIES IN DISTRESS: PERENNIAL ROOTS AND EMERGENCY SOLUTIONS

This Section provides historical context for current emergency manager systems. Part I.A explains how decades of white flight from American cities and the 2008 financial crisis affected cities’ ability to raise revenues and control costs. Part I.B then compares the emergency manager systems of today to one of the largest and well-known examples of city distress: New York City’s financial crisis in the 1970s and the resulting development of the Municipal Assistance Corporation (MAC). This Section seeks to establish that today’s emergency manager systems are a disproportionate and irrational response to financial problems that have plagued cities for several decades. Such systemic problems deserve more long-term, process-based solutions.
A. Cities in Financial Distress

The story of declining revenues in cities is tied closely to the history of American industry. In the last half century, “white flight” led many families to leave cities for the surrounding suburbs. When businesses followed, city revenues declined substantially. The trend away from cities was compounded in former manufacturing centers, as automation resulted in fewer jobs in city centers. Unions, once a stronghold in manufacturing cities, then fell apart as corporations moved elsewhere seeking to avoid them. Each lost job took away disposable income and reinforced the flight away. Further, as property owners moved away and renters moved in, owners had fewer incentives to maintain housing stock. Inadequate budgetary or financial controls, and dysfunctional political dynamics only exacerbated these issues.

The 2008 financial crisis magnified the financial stress that many cities felt. Historically, local governments derived approximately 33 percent of their revenues from state aid, 25 percent from property taxes, 10 percent from sales and other taxes, and most of the remainder from fees and miscellaneous revenues. But the 2008 financial crisis placed a great deal of stress on city property tax revenues as it led to even more foreclosures and declines in property values than prior recessions. The Brookings Institute estimated that state and local “own source” receipts (not including federal grants) fell by roughly $100 billion from 2007 to 2009. Given the steep decline, the credit rating agency Moody’s assigned a “negative outlook” to the creditworthiness of

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55. Anderson, supra note 24, at 1134.
56. FISCAL STRESS FACED BY LOCAL GOVERNMENTS, supra note 52, at 1.
all U.S. local government bonds in 2009, an unprecedented move for the agency.  

Yet, city expenditures only continued to increase throughout the financial crisis. For instance, the U.S. Conference of Mayors reported a 9 percent increase in the number of pounds of emergency food distributed in twenty-five member cities in 2014. In addition to trash pick-up, water and sewer treatment, and a host of routine but infrastructure-intensive tasks, cities bear primary responsibility for key public investments, from law enforcement to education, public transportation, public health, and local parks. Because the poor rely on city services to a greater extent than the wealthy—who can, for example, afford to drive rather than commute—public spending cuts harm the poor more than the wealthy. This also means that public spending increases during economic crises, as more people rely on government services to fill in gaps in income. Because reliance on public services continued to increase throughout the financial crisis, cities were reluctant to cut back on such services even as revenues declined.

Between 2007 and 2013, twenty-eight municipalities declared bankruptcy in federal court or had a state appoint someone to manage the city’s finances, Detroit’s bankruptcy in 2013, resolving $13 billion in claims, was the largest bankruptcy in U.S. history. While other cities have not breached the point of bankruptcy, they have experienced fiscal distress as a chronic ailment. These


62. Anderson, supra note 24, at 1118.


64. Liz Farmer, Bankrupt Cities? What About Distressed Cities?, GOVERNING (Mar. 2014), http://www.governing.com/finance101/gov-bankrupt-cities-overshadow-distressed.html [https://perma.cc/553Z-QN9X]. Although school takeovers are not within the scope of this Note, the expansion of school takeovers is linked to the overarching trend to look beyond city personnel for solutions to city problems. As the plaintiffs in Phillips v. Snyder pointed out, the change in Michigan from a system of “emergency financial managers” to a system of “emergency managers” and the overall broadening of an emergency manager’s powers suggest that emergency managers will soon have the ability to control all of local government. See Complaint, supra note 26, ¶ 74.
trends suggest that cities will continue to face financial stress. However, this Note argues that the most extreme response to that stress—a municipal takeover—need not remain the only viable response. The next Section discusses New York City’s financial crisis in the 1970s and how the emergency takeovers today are more dramatic than they have historically been.

B.  Everything Old is New Again: Rhetoric and Emergency in City Takeovers

States have a great deal of control over how they respond to municipal distress. Cities cannot declare bankruptcy unless state law authorizes them to do so.65 Similarly, the state decides whether it will have an emergency manager program at all, and it selects the cities for participation.66 It is the state that appoints a receiver and determines the ultimate scope of the receivership. It is also the state that chooses to bail out its largest cities through grants and loans. It alone decides when it will “let them reach or publicly admit insolvency.”67

Michigan has set up its emergency manager law so that eighteen different scenarios can trigger the installation of an emergency manager.68 If one of the scenarios is triggered, the “state financial authority” (typically the state treasurer) and a local emergency financial assistance loan board (a statutorily created entity) review the city’s finances and determine whether the city is under “probable financial distress.”69 From there, another team prepares a report for the governor detailing the city’s financial condition, and then the governor ultimately determines whether a financial emergency exists.70 The city has one opportunity to appeal the determination to the Michigan court of claims.71 It is worth noting that Detroit’s City Council voted against the state’s plan to assign it an emergency manager.72 Michigan voters also repealed an earlier version of the emergency manager system, claiming that the law went too far to usurp local control and break collective bargaining agreements.73

65. Anderson, supra note 24, at 1132.
66. Id.
67. Id.
68. See Mich. Comp. Laws § 141.1544(1)(a)-(r) (2012); see also Phillips v. Snyder, 836 F.3d 707, 711 (6th Cir. 2016) (detailing PA 436 and its interaction with the earlier emergency manager system).
70. Id. § 141.1546(1).
71. Id. § 141.1546(4).
Michigan’s takeover system is symptomatic of a broader, national trend of states intervening in the affairs of their cities. The best, and perhaps only, historical comparison to today’s municipal financial crises is that of New York City in 1975, during which time the City had $14 billion in debt outstanding, of which almost $6 billion was due within six months. Its chief underwriters, Merrill Lynch and the six largest New York banks, refused to issue additional securities. President Gerald Ford famously told the city to “drop dead.”

Using New York City as an example, the remainder of this Section briefly highlights how Michigan’s emergency manager system (1) increases the scope of control of the emergency manager, (2) decreases the extent of municipal participation, and (3) reduces the amount of financial and administrative support that the state provides to the distressed city.

First, Michigan’s emergency managers have significant leeway to enact legislation that both resolves the existing financial emergency and affects the long-term financial stability of the municipality. Public Act 436 allows an emergency manager to reject and terminate collective bargaining agreements, strip local officials of duties and pay, sell off local assets, and subject local officials to “any conditions required by the emergency manager.” Professor Michelle Wilde Anderson recounted the effect of a similar law in Central Falls, Rhode Island; within three days of his appointment, the Central Falls emergency manager wrote to the elected mayor: “Effective immediately, I have assumed the duties and functions of the Office of the Mayor. As a result of my role, your responsibility will be limited to serving in an advisory capacity, on such occasions as my office may seek input from you.” As the district court pointed out in Phillips, Michigan’s emergency manager law “confers enormous discretion to state decision makers and creates a significant potential for discriminatory decisions.”

74. Anderson, supra note 24, at 1118.
77. DUNSTAN, supra note 76, at 3.
78. Van Riper, supra note 75; see also Gerald Ford, Remarks and a Question-and-Answer Session at the National Press Club on the Subject of Financial Assistance to New York City (Oct. 29, 1975), http://www.presidency.ucsb.edu/ws/?pid=5344 [https://perma.cc/9KFD-S8HJ] (“The people of this country will not be stampeded . . . . What we need now is a calm, rational decision as to what is the right solution . . . .”).
79. EM Lawsuit Documents, supra note 36; MICL. COMP. LAWS § 141.1549(2).
In the 1970s, New York State took a more advisory role to the city’s financial crisis. Although macroeconomic conditions have changed since the 1970s and the demographic, political, and economic conditions of Michigan and New York are quite different, New York State’s approach shows an important alternative to today’s takeover systems. When New York City ran out of money, the State first advanced revenue sharing funds to the city.\(^{82}\) New York’s governor then appointed an advisory committee to monitor the city’s finances.\(^{83}\) Later, the advisory committee recommended that the State create the Municipal Assistance Corporation (MAC), an independent corporation authorized to sell bonds to meet the borrowing needs of the city.\(^{84}\) In addition to creating the MAC, the State also advanced additional funds to the city in the form of prepaid state aid for the next fiscal year.\(^{85}\) Not until the financial crisis continued to worsen did the State create the Emergency Financial Control Board (EFCB) to review and reject the city’s financial plans, operating and capital budgets, contracts with unions, and municipal borrowing.\(^{86}\) Although it had the authority to press charges against city officials, the EFCB’s authorities were narrowly tailored and directed at returning the city to sound financial health.\(^{87}\) By appointing only one emergency manager and granting that person power over all aspects of a local government, Michigan’s emergency manager system exceeds even the broadest authority of the EFCB.

Second, Michigan’s current emergency manager laws provide little room for local participation. Unlike New York City’s MAC or the EFCB, which built in a specific role for stakeholders like the mayor and the local unions, PA 436 offers no such built-in option.\(^{88}\) In Michigan’s takeover cities, local elections still take place, but the emergency manager law strips elected leaders of any authority.\(^{89}\)

This is partly the result of a deep-seated skepticism of local officials’ culpability for the financial distress and, perhaps, a desire to blame someone for the state of the city. As Professor Gillette acknowledged, the premise moving into an emergency takeover is often that the municipal leaders are part

\(^{82}\) DUNSTAN, supra note 76, at 3–4.
\(^{83}\) Id. at 4.
\(^{84}\) Id.
\(^{85}\) Id.
\(^{86}\) Id.
\(^{87}\) Id.
\(^{88}\) Editorial Board, When State Control Damages a City, N.Y. TIMES (Feb. 4, 2016), http://www.nytimes.com/2016/02/04/opinion/when-state-control-damages-a-city.html [https://perma.cc/73DR-5338] (“Unlike the financial control boards in New York and Washington, which included people who had a stake in those cities, Michigan’s emergency managers answer only to the governor and the Legislature, which is controlled by Republicans.”).
of the problem, not the solution. The Sixth Circuit echoed this conclusion in Phillips, observing: “The emergency manager’s powers may be vast, but so are the problems in financially distressed localities, and the elected officials of those localities are most often the ones who—through the exercise of their powers—led the localities into their difficult situations.”

Although political science literature supports the view that interest group politics may bias municipal leaders toward approving harmful spending, I argue later that such a view of local officials is misplaced. Forces beyond the control of local officials, such as the condition of the global economy and the amount of state aid provided to the city, often limit those officials’ culpability for the financial distress.

Third, and relatedly, unlike state takeovers in the past, the states in today’s takeovers do not have the same obligation to provide loans or financial support to the cities that they take over. Michigan’s law does not require the State to provide any financial support to the failing municipality; in fact, Michigan did the exact opposite, pulling financial support from Detroit when the city needed it most. The 2011–2012 Michigan state budget, which overhauled the revenue sharing regime between the State and its cities, cut Detroit’s share of state revenue by $67 million. This move stands in stark contrast to the more than $10 billion in bonds loaned by New York State to New York City in the 1970s.

These three differences between today’s emergency manager laws and those of the past suggest that states have gone quite far in punishing their cities for municipal distress. The next Section turns to the justifications for these measures and a number of counterarguments.

II.

FLAWED LOGIC: WHY EMERGENCY SOLUTIONS ARE A POOR RESPONSE TO PERENNIAL PROBLEMS

Having discussed how Michigan’s emergency manager law breaks from earlier systems that provided more financial support for distressed cities, this Note now discusses the flaws of the current system. Part II.A discusses the reasons typically put forth in favor of an emergency manager and debunks

90. Gillette, supra note 33, at 1423–27.
92. Gillette, supra note 33, at 1419, 1423 (leaving interest groups to “divid[e] an expanded pie in which each group receives an enlarged slice”); see also Hajnal & Trounstine, supra note 42, at 1133, 1151.
some of these arguments by pointing to both historical and modern examples. Part II.B then brings forth some of the problems with an emergency manager, including efficacy, legitimacy, and political concerns.

A. Arguments for Emergency Solutions

Emergency manager proponents insist that the democratic process cannot be a priority when a city is in a financial emergency. They argue that states take such extreme measures only when all other steps have failed. In addition to this overarching point, proponents offer three additional reasons for emergency managers: (1) circumventing interest groups, (2) recruiting expertise, and (3) maintaining the state’s credit rating in municipal bond markets. In the next Sections, I discuss these virtues of emergency manager systems, and offer critiques where appropriate.

1. Interest Groups

Emergency managers are most needed, according to proponents, when interest groups have “captured” a city, encouraging increased expenditures for their own projects without offsetting revenues. This theory hypothesizes that those interest groups are aptly positioned to pressure local elected officials into adopting their preferred agenda because local governments are smaller and more accessible than states or the federal government. The classic municipal examples of this problem, which Professor Gillette deems “Madison’s nightmare,” are (1) a developer seeking support for a proposed project from the local council member in the targeted district and (2) parents who lobby for a better playground in their district when other areas are less well-served. As these examples demonstrate, interest group dynamics may incentivize local leaders to propose projects that are more costly than the median voter would prefer. And, as Gillette argues, it harms those residents that are least able to “vote with their feet” by moving to a jurisdiction with more fiscal responsibility.

Implicit in “Madison’s nightmare” is the idea that state officials can represent city residents better than local elected leaders who are more likely to be captured by interest groups. This logic also appears in *Phillips*, where the

95. Gillette, *supra* note 33, at 1386 (noting that states routinely monitor and provide assistance to localities without formally interfering with the substantive fiscal decisions made by local officials).
96. *Id.* at 1419, 1423 (leaving interest groups “dividing an expanded pie in which each group receives an enlarged slice”); see also Hajnal & Trounstine, *supra* note 42, at 1133, 1151.
98. *Id.* at 1424.
99. *Id.* at 1429. Corruption is just one, particularly crass flavor of this “nightmare.”
100. *Id.* at 1375, 1402 (noting deteriorating public services, high crime rates, and high levels of blighted and abandoned property in cities with majority factions). *But see* Hajnal & Trounstine, *supra* note 42, at 1133, 1151 (pointing out that central cities can afford to spend more on redistributive programs because they are less likely to compete with other cities).
Sixth Circuit determined that it was the local elected officials—not the state emergency manager system or broader economic conditions—that led Flint and other Michigan cities into its “difficult situations.”\textsuperscript{101} The Sixth Circuit reinforced the principle that states have “absolute discretion” in controlling the political subdivisions within their jurisdiction.\textsuperscript{102}

Although local interest group politics are a central reason behind emergency manager systems, courts and legal scholars have not adequately examined the argument’s basic assumption: whether state elected officials can actually represent local residents as well as local elected officials. Some have assumed that state officials are adequate representatives of local residents because city residents vote in gubernatorial elections and have their voice heard through that broader electoral process.\textsuperscript{103} But this theory does not match with the reality on the ground. Distinct from the rest of the state population, the people living in cities are more likely to be poor, or people of color, or liberal; their voting in state elections with suburban voters dilutes the power of the city residents’ vote.\textsuperscript{104} As scholars H.V. Savitch and Ronal Vogel demonstrated, when states consolidate municipalities with surrounding suburbs, the suburbs “shift existing alignments to render the city a mere appendage in the larger scheme of metropolitan politics.”\textsuperscript{105} Because mayors, unlike governors, are only responsible to city residents, the likelihood that the city becomes a “mere appendage” to the suburbs decreases and city residents are more likely to be able to express their distinct preferences.\textsuperscript{106}

\begin{itemize}
\item \textsuperscript{101} Phillips v. Snyder, 836 F.3d 707, 718 (6th Cir. 2016).
\item \textsuperscript{102} Id. at 715.
\item \textsuperscript{103} See, e.g., Gillette, supra note 33, at 1400.
\item \textsuperscript{104} See, e.g., H.V. Savitch & Ronald K. Vogel, Suburbs Without a City: Power and City Consolidation, 39 URB. AFF. REV. 758, 759 (2004) (describing the city-county consolidation of Louisville and Jefferson County, Kentucky, and concluding that the merger changed the kinds of issues that were relative to decision makers as well as the relative power of different populations) (“Yet as others and we suggest, changes in local governance are often about power not bureaucratic efficiency or effectiveness.”).
\item \textsuperscript{105} Id. at 761 (emphasis added).
\item \textsuperscript{106} In 2005, scholars documented a demographic shift in the country that saw the presence of low income people in suburbs surpass urban low income concentrations for the first time. See Michelle Wilde Anderson, Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe, 55 UCLA L. REV. 1095, 1122 (2008) (“The year 2005 marked the first time that American history has recorded more poverty in the suburbs than in the cities.”). While these studies challenge the old paradigm that suburbs tend to be more affluent than the cities, the demographics in Michigan largely still abide by the old rules. See Niraj Warikoo, Detroit Has Highest Concentrated Poverty Rate Among Top 25 Metro Areas, DET. FREE PRESS (Apr. 26, 2016), http://www.freep.com/story/news/local/michigan/2016/04/26/detroit-has-highest-concentrated-poverty-rate/83395596 (observing that the poor live in census tracts where at least 40 percent of the population is below the poverty line). Moreover, scholars continue to recognize that, it is concentrated poverty, and not just poverty itself, that leads to the most direct public policy concerns and the worsening in economic segregation that drives cities into distress. See Richard Florida, America’s Biggest Problem Is Concentrated Poverty, Not Inequality, CITYLAB (Aug. 10, 2015), http://www.citylab.com/housing/2015/08/americas-biggest-problem-is-concentrated-poverty-not-inequality/400892 [https://perma.cc/PG6W-XZAB].
\end{itemize}
elections are often nonpartisan, governors are beholden to partisan campaign donors whose interests diverge from the city’s interests. There is reason to be concerned that substituting a state official for a local one decreases government responsiveness and the “know your leader” ideal that often characterizes local elections. As the Phillips district court noted, “Voters are still likely to know their local representatives, who are their neighbors, who hold town meetings, and who have a unique understanding of the views of their constituents.” Professor Bertrall Ross and others have described how this appearance of responsiveness or lack thereof can effect public participation in elections. Because this public participation is critical to checking the power of interest groups, reducing participatory processes only compounds “Madison’s nightmare.”

2. Recruiting Expertise

The second hope for municipal takeovers is that the state will bring more expertise to bear on the city’s problems than city administrators could do alone. Research suggests that states do, in fact, attract talent from a broader geographic area. By concentrating power in a centralized person or agency (like a takeover board), state takeovers draw experts that seek more challenging problems and the ability to implement a chosen, and perhaps new, policy, as well as the prestige of working for a larger governmental body. Takeovers may also attract experts that perceive the emergency manager as “apolitical.” The appearance of neutrality may lure public policy experts seeking to experiment with untested, promising solutions, like the use of cost-benefit analysis for budgeting or pay-for-performance of teacher pay. Finally, the drama of a takeover also attracts national media attention. This attention is not undesirable, especially if the city’s problems derive from corruption that city leaders would prefer to keep hidden.

But if expertise is a key benefit of an emergency takeover, then the solution is not sufficiently tailored. As discussed in Part III.B, states could still

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108. Id.
110. Gillette, supra note 33, at 1387.
111. Id.
112. Id. at 1388; see also id. (reporting recent statistics from the Advisory Commission of Intergovernmental Relations, which blamed much of the municipal financial distress on “unsound financial management” of various municipalities).
bring their expertise to bear on a problem without going through the extreme step of municipal takeover.

3. Maintaining the State’s Credit in Municipal Bond Markets

Proponents urge states to appoint emergency managers quickly and decisively in order to prevent one municipality from imposing costs on other localities through capital markets.\footnote{114} To understand this argument, one must understand municipal bonds. They are debt obligations issued by local governments to fund capital projects like infrastructure improvements for schools and public utilities. Investors loan money to the local government in exchange for receiving a set number of interest payments over the life of the loan (a predefined period of time).\footnote{115} The interest rate on those payments reflects the riskiness of the bond. So, the more likely that a credit rating agency thinks a city is to default on a bond or file for bankruptcy, the higher the market will set the interest rate. Higher interest rates make it more expensive for a city to fund capital projects in the future. If the system works correctly, it will be harder for cities to obtain credit after significant financial distress. This is because, much like personal credit, once a city fails to make timely payments on its debt, creditors treat that city as a riskier investment and raise interest rates to reflect the increased risk that the city will not repay its debt.\footnote{116}

But does it necessarily follow that other cities in the same state will suffer increased interest rates when one city is financially distressed? President Ford did not think so. At his presidential address in the face of New York City’s financial distress, he placed his faith in investors (and credit agencies) to distinguish between New York City’s financial mismanagement and the financial management of the rest of the State.\footnote{117} To be sure, though, cities in the same region do share certain characteristics that make them vulnerable to distress. In 2009, for example, Moody’s worried that local governments in New York, New Jersey, and Connecticut would lose revenue because of their reliance on the banking and financial service sectors for their tax base.\footnote{118} Moody’s similarly worried that local governments in Michigan, Indiana, and Ohio would lose revenue in the wake of the auto industry collapse.\footnote{119} However, as discussed in Part II.B, an emergency manager with authority over only one

\begin{footnotes}
\footnote{114} Gillette, supra note 33, at 1383.
\footnote{116} See Barry Nielsen, Understanding Interest Rates, Inflation and Bonds, INVESTOPEDIA (Mar. 17, 2016), http://www.investopedia.com/articles/bonds/09/bond-market-interest-rates.asp [https://perma.cc/28RW-3QAD] (“The probability of a negative credit event or default affects a bond’s price—the higher the risk of a negative credit event occurring, the higher the interest rate investors will demand for assuming that risk.”).
\footnote{117} See Ford, supra note 78.
\footnote{118} Walsh, supra note 59.
\footnote{119} Id.
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city cannot fix the types of structural problems endemic to an entire region, and so this argument in favor of emergency managers too is lacking in some respects.

B. Arguments Against Emergency Solutions

Whereas the previous Section unearthed some of the arguments in favor of emergency managers, this Section presents four primary arguments against emergency takeovers. First, there is a lack of evidence to support the long-term efficacy of state takeovers. Second, city officials do not have as much control over municipal budgets as some may believe, so in many cases states may be punishing inculpable parties. Third, racial bias may be present in city takeovers due to the implicit bias of state elected officials, who are beholden to voters throughout the state. Fourth, state takeovers are often used as a political device to weaken gubernatorial candidates rather than to truly help cities in crisis.

1. Long-Term Results Not Guaranteed

Perhaps the strongest evidence against state takeovers is the lack of evidence supporting them: the data on the efficacy of state takeovers is equivocal at best. These equivocal results largely arise for two reasons. First, emergency managers are often focused on short-term goals that do not have the city’s or the city residents’ long-term interest in mind. Second, emergency managers often lack the support of community members and organizers, who could assure the long-term success of any solutions that the emergency manager implements.

Turning to executive-managed emergency managers in the late 1980s, states may have believed that the independent manager could provide a more agile and structured recovery for a city than the prior regime of court-appointed receivers. However, in many cities, emergency managers have been able to achieve little more than short-term fixes like taking a city through Chapter 9 bankruptcy. In Central Falls, Rhode Island, for example, the city paid the state-appointed emergency manager approximately $1.4 million to file for Chapter 9 bankruptcy at the end of the receivership. Similarly, in Detroit, bankruptcy seemed a foregone conclusion; there was nothing that the emergency manager

120. Gillette, supra note 33, at 1381. In the context of school takeovers, research suggests that it is far easier to fix district-level finances and management practices than it is to have an effect on student achievement. Kenneth K. Wong & Francis X. Shen, City and State Takeover as a School Reform Strategy, ERIC Dig., July 2002, at 3, http://www.gpo.gov/fdsys/pkg/ERIC-ED467111/pdf/ERIC-ED467111.pdf [https://perma.cc/ZH9E-4CYX]. Other studies indicate that mayoral takeovers may have more of an impact on schools than state takeovers. Kenneth K. Wong & Francis X. Shen, Measuring the Effectiveness of City and State Takeover as a School Reform Strategy, 78 PEABODY J. EDUC. 89, 117 (2003).

121. See, e.g., Complaint, supra note 26, ¶¶ 34–47.

122. Anderson, supra note 80, at 596–97.
could have done to prevent it.\textsuperscript{123} Plus, as mentioned above, many municipalities are repeat offenders, meaning that they have cycled through many different emergency managers.

State goals may also diverge from the long-term goals of the city’s residents. As Professor Anderson points out, this idea takes its most visible form in the short sale of the city’s financial assets.\textsuperscript{124} In Detroit, for example, the emergency manager turned over twenty-two acres of lakeshore and dunes to a private golf course in exchange for annual payments to the city.\textsuperscript{125} In Newark, New Jersey, Mayor Cory Booker, under pressure from Governor Chris Christie’s administration, sold sixteen city buildings, including the city’s historic Newark Symphony Hall, in return for the $80 million needed to plug the city’s deficit.\textsuperscript{126} But it will ultimately cost Newark $125 million to lease back those buildings over the next twenty-five years.\textsuperscript{127} As one commentator put it, the “most draconian” measures are carried out when “the goal is to maximize profit, and the mechanism for public accountability is lifted.”\textsuperscript{128}

Heartbreakingly, Flint’s city manager transferred the source of the city’s water to the Flint River—a move that costs city residents’ dramatically—just to save $12 million per year.\textsuperscript{129} Governor Snyder has now pledged more than $195 million to stabilize Flint, though this cannot account for the human toll of the initial decision to transfer the source of city’s water supply.\textsuperscript{130} Given that a state takeover is a radical, antidemocratic measure, these equivocal results are far from validating and signal that more must be done to hold emergency managers accountable to their mandate.

Furthermore, emergency managers, as interventions outside of the traditional democratic process, often do not have the support of locally elected representatives or community members who can ensure that the changes last over the long term. Because emergency managers are not elected, they are less likely to look like local residents or, assuming that local elected leaders act in the best interest of their residents, pursue the policies that residents would have


\textsuperscript{124} Anderson, supra note 80, at 596–97.

\textsuperscript{125} Anderson, supra note 24, at 1121–22.


\textsuperscript{127} Id.

\textsuperscript{128} Stanley, supra note 20. The concept of profitability here is interesting, but probably not the idea that the speaker had in mind. Essentially, the emergency manager would take any measure necessary to increase revenues and get the city out of the red.

\textsuperscript{129} Smith, supra note 2.

\textsuperscript{130} Goodnough, supra note 8.
As a result, residents are less likely to see emergency managers as legitimate and more likely to defy orders. Recognizing as much, Professor Gillette argues that emergency managers simply have not gone far enough to overcome this problem. He would encourage state receivers to adopt structural reforms before handing over authority. But this is not a workable solution.

The takeover of the public school system in Newark, New Jersey, is an example of why local community buy-in is so important if an emergency manager is to have a long-term impact on a city. In Newark, a “State-Operation Law” allowed the State Board of Education to take over the operation of chronically failing public school districts. Applying this law, an administrative law judge put Newark’s schools under state receivership in 1995, and the schools have been governed by the State ever since. In 2011, Governor Christie appointed Cami Anderson, former superintendent of the New York City Department of Education, to run the Newark School District. In 2012, she was named one of Time’s “100 Most Influential People” in the world. And yet, she faced an extraordinary level of resistance in her efforts to reform Newark’s school system.

Shortly after taking over the post as head of Newark schools, Anderson proposed the “100 Excellent Schools” plan, which would entail closing and consolidating several Newark schools while expanding charter school influence in the district. But the community strongly objected. In Newark, students staged an all-night sit-in to protest the school reform plan. A coalition of seventy-seven clergy members called on Anderson to stop her “disruptive and divisive” plan. And, the president of Newark’s teachers union remarked:

132. Gillette, supra note 33, at 1383.
133. Id.
134. I allow myself one digression into the school takeover context here, partly because of my familiarity with this particular takeover (I was a senior policy advisor in the Booker administration at the time) and partly because of the level of community mobilization and the racial issues involved. Although school takeovers differ in a number of ways from financial takeovers, I use this example from Newark here for the limited purpose of showing how important it is to obtain community support for any solution. Battles over schools have proven to be particularly personal, but financial problems can present the same dilemmas, especially if targeted at organized groups like municipal employee unions.
“Why should Newark be singled out as a district where tenure doesn’t matter? Because most people are black? Because most of us are poor?” In November 2014, Anderson cancelled a scheduled speech at the American Enterprise Institute in Washington, D.C., after a busload of forty students, parents, and community residents showed up at the event, claiming that Anderson had not attended a public board meeting in Newark since January 2014. Even before these more extreme measures, many of Anderson’s attempts to convene community meetings were cut down by local protestors.

Although the level of resistance in Newark may have been particularly severe, there have been other protests against emergency managers across the country, including in Detroit and Flint, Michigan, Philadelphia, Pennsylvania; and Memphis, Tennessee. Of course, the images of emergency managers that emerge from these protests are, in many respects, unfair; it is, after all, extremely difficult to be solely responsible for turning around a vital public institution that has regularly failed to meet expectations. Nonetheless, the breadth and intensity of these protests show that the dynamics of an intervention change when the state appoints an unelected “expert” to govern the city’s affairs.

In short, though an emergency manager may be able to get a city through bankruptcy, long-term results are not guaranteed. Because emergency managers often focus on short-term results (i.e., filing for bankruptcy or balancing the city’s budget), they may not be able to restore the city to long-term financial health. Moreover, because emergency managers often lack the

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support of the communities in which they work, they may not be able to build the local momentum that they need to carry out reforms in the long-term.

2. Blaming the Victim: Lack of Control Over City Budgets

The second reason emergency managers are not the solution to financial distress is that municipal budgets are not flexible. Contrary to popular belief, city officials have relatively little control over modern municipal budgets. City budgets, especially in the largest, poorest cities, are largely dominated by “economic imperatives, institutional constraints, and bureaucratic needs.”

Though some research suggests that mayors and legislators in small congressional districts can control the economic distribution of the pie (i.e., whether government spending is targeted at the poor or the wealthy), this distributional influence does not affect the city’s financial health because mayors still have little control over the city’s receipts or costs.

In fact, city budgets tend to be state-dependent and relatively stagnant, so the belief that an emergency manager can turn around the city’s finances is likely misplaced. This misunderstanding played itself out in Detroit. As state officials blamed local leaders for mismanagement of the city’s budget, city leaders turned the blame on the State. Former Detroit mayor David Bing pointed out that Detroit’s ongoing financial crises was largely attributable to the State, which cut back revenue sharing in Detroit by more than $700 million in the decade before the takeover. The mayor’s concerns were echoed by the House Committee on the Judiciary, which recognized “serious concerns that the State of Michigan may itself be contributing to the financial distress of certain municipalities by withholding long-promised payments.”

Because states exert a great deal of indirect control over city budgets through restricted grants and funding streams for dedicated programs, it is insincere for the

143. Chris Tausanovitch & Christopher Warshaw, Representation in Municipal Government, 108 AM. POL. SCI. REV. 605, 606 (2014); see also Hajnal & Trounstine, supra note 42, at 1145 (reporting a standard deviation of just 10.2 percent for redistributal spending in municipalities located within the same state).
144. Hajnal & Trounstine, supra note 42, at 1132.
145. Anderson, supra note 80, at 581 (observing that cities with strong mayors spend a disproportionate share of the city’s budget on members of their governing coalition at the expense of the general public); Gillette, supra note 33, at 1427 (pointing out that legislators in small congressional districts have incentives to follow the reciprocity rule when voting for local projects).
147. Id.
148. H. JUDICIARY COMM. DEMOCRATIC STAFF, supra note 43, at 6 (“[T]here are serious concerns that the State of Michigan may itself be contributing to the financial distress of certain municipalities by withholding long-promised payments.”).
149. Id.; see also Anderson, supra note 80, at 581 (pointing out that bailout funding had traditionally been part of any state takeover program).
state to claim responsibility for “fixing” an emergency that it was largely responsible for creating.

In sum, the realities of city budgets suggest that pluralist politics are less responsible for a city’s fiscal crisis than macroeconomic conditions like the national housing market or capital markets. Accordingly, it makes little sense to punish the city’s elected officials through a takeover for a “crime” that they did not commit. Since cities are required to pay the salaries of the emergency manager and their staff, the appointment of an emergency manager makes the financial predicament of cities in receivership even worse.150

3. Implicit Bias and Self-Determination

When emergency powers are used to take over communities of color, as they were in Detroit, Michigan, and Central Falls, Rhode Island, we must concern ourselves with both how the takeover decision is made and the effect of the decision on the ability of the city’s residents to elect leaders of their choice. If not made by using purely objective criteria, the state’s decision to take over a city can be flooded with implicit bias and racial stereotypes about which groups can and should be trusted to deal with the city’s financial troubles. Considering the racial disparity between cities that are often subject to takeovers (which tend to be dominated by black and Latino residents) and the surrounding suburban neighborhoods (which tend to be dominated by white residents),151 there is a possibility that improper motives will play a role in the state’s decision.

The concept that implicit bias is pervasive in state takeover decisions is at the core of the recent legal challenge to Michigan’s emergency takeover law.152 Plaintiffs, which included advocacy groups like Detroit’s Sugar Law Center, pointed out that after Detroit’s takeover, more than 52 percent of Michigan’s African American population effectively lost their right to vote for local leaders, compared to just 2 percent of the white population.153 As Michelle

152. Specifically, the plaintiffs claimed that the State had violated (1) the Due Process and Equal Protection Clauses of the Fourteenth Amendment; (2) Article IV, Section 4 of the Constitution, which provides for a Republican Form of Government; (3) the Voting Rights Act; (4) the First Amendment rights of free speech and to petition the government; and (5) the Thirteenth Amendment. See Phillips v. Snyder, No. 2:13-CV-11370, 2014 WL 6474344, at *3 (E.D. Mich. Nov. 19, 2014). The district court dismissed all but one of the plaintiffs’ claims, and after the plaintiffs voluntarily dismissed their remaining claim to seek an appeal with the Sixth Circuit, the Sixth Circuit panel recently affirmed the district court’s decision. See generally Phillips v. Snyder, 836 F.3d 707 (6th Cir. 2016).
Wilde Anderson points out, the Michigan law does not require an objective triggering mechanism. The possibility of implicit bias seeping into the takeover decision should at least militate in favor of extreme caution when making the decision of whether or not to appoint an emergency manager.

Part of the problem with a race-based challenge to takeover systems is the lack of precedent for the extensive use of state takeover systems. That is, figuring out how to protect the minority vote in an emergency takeover situation is a challenge largely unaddressed by current legal frameworks. Historically, debates about how best to protect the “minority” vote have focused on redistricting and the choice between substantive and descriptive representation. Proponents of substantive representation argue that if marginalized voters have a meaningful, if not dominant, voice in as many districts as possible, then election officials will be more responsive to their concerns. Proponents of descriptive representation believe that states ought to create districts concentrated with minority voters so that they can elect the candidate of their choice. Although the concepts of substantive and descriptive representation have been helpful in understanding minority voting power in national and state elections, they are wholly unhelpful in takeover scenarios where voters can vote for the candidate of their choice, but that candidate is stripped of all power to act.

However, because so few elected positions today have as great an influence on fundamental public policy as elected mayors, a takeover’s interference with the local vote is problematic. Not only do mayors assure that the trash is picked up, the traffic lights work, and the water is clean, but they, along with officials at other levels of government, decide policing strategy, welfare policy, and school financing and reform. Residents who engage with smaller units of local government—such as a mayor’s or councilmember’s office—are more likely to believe that their vote is effective and their voice is heard. Given these facts, the Sixth Circuit’s holding in Phillips, that there is “no fundamental right to have local officials elected,” is particularly troubling.

Even more, the takeover laws only add to the litany of threats on minority self-determination. Many racially gerrymandered cities—first challenged in

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154. Id.
156. See, e.g., id.
159. 836 F.3d at 715.
Gomillion v. Lightfoot—remain unchallenged under the Voting Rights Act. Add to that a confluence of felon disenfranchisement laws, low-visibility local elections, inadequate engagement of the public by local governments, and low financial rewards for local office holders, and you get absurd results. Nationally, 129 out of 340 cities that were more than 20 percent black had councils that underrepresented blacks by more than one seat. As a result, it is nearly always noteworthy when low-income people of color in inner cities elect local officials—but particularly mayors—of their choice. Yet in cities like Detroit, Michigan, and Newark, New Jersey, where people of color have elected mayors of color, the state has stepped in and stripped the mayors of their power. Such an ill-conceived outcome warrants a different path forward.

4. Political Gamesmanship

Municipal takeovers do not happen in a political bubble. Indeed, when governors look out across their state for the candidates most likely to challenge them in the next election, big city mayors often top the list. Takeover laws provide a means for governors to seriously weaken that threat by casting a mayor as inept or indecisive. This concern rings especially true in states that

160. 364 U.S. 339, 341 (1960) (striking down an Alabama redistricting law that removed 400 black voters from Tuskegee’s boundaries without removing a single white voter).

161. Fausset, supra note 47. Of course, the race of the elected official cannot be the only measure of whether the official is a strong representative of his constituency. For a full analysis, we would have to look not only to descriptive representation, but to the candidate’s position on relevant issues, like mass transportation, public employee pensions, business subsidies, and subsidized housing. See Tausanovitch & Warshaw, supra note 143, at 627. But, since this type of analysis is beyond the scope of this Note, race will suffice as a proxy.

162. Fausset, supra note 47.


164. See Anderson, supra note 24, at 1133 (“[T]he choice of which cities to select for state intervention may reflect local or state politics in addition to objective criteria . . . .”). Anderson notes that some small-government states may even opt to stay out of the city’s distress entirely, allowing creditors to decide when the city should be taken to court. Id.


166. See, e.g., John Mooney, Democratic Rivals for U.S. Senate Seat Gang Up on Booker During Debate, NJ SPOTLIGHT (Aug. 6, 2013), http://www.njspotlight.com/stories/13/08/05/democratic-rivals-for-u-s-senate-seat-gang-up-on-booker-during-debate [%https://perma.cc/NB7S-QCC3] (showing that Mayor Booker could become politically vulnerable because of his lack of control over public schools) (“Under the state’s auspices, we have seen no improvement in the schools whatsoever.”).
do not require an objective trigger for a takeover and in states where the governor has significant control over the grant aid package offered to cities.\footnote{167}

In Newark, New Jersey, in 2013, for example, the city and State signed a memorandum of understanding (MOU) that provided the city with $32 million in state funds to fill the city’s budget gap and simultaneously placed significant restrictions on the flexibility of the mayor’s office.\footnote{168} Indeed, for more than half of Cory Booker’s tenure as Newark mayor, the State directly controlled the city’s finances.\footnote{169} The MOU stationed two state officials in City Hall and required state approval for everything from hiring consultants to promoting or replacing department directors.\footnote{170} In January 2013, just weeks before Mayor Booker was set to deliver a decision on whether he would run for governor, the reins on state aid got even tighter.\footnote{171} Though Newark requested only $10 million to fill its budget, the State punished the city by reducing personnel costs and outsourcing municipal court collections, among other reductions.\footnote{172} One commentator noted the inauspicious timing of the new cuts: “[I]t is telling given the fact that Mayor Booker is often talked about as a potential opponent of the governor’s. . . . This would certainly harm the mayor’s ability to govern effectively and therefore bring a successful record to the state’s voting population.”\footnote{173}

Though governors have a fiduciary obligation to their states and act under a presumption of regularity, commentators would be naïve to think that political gamesmanship does not factor into governors’ decision making. At the very least, such gubernatorial arrangements suggest unsavory motives and add

\footnote{167. Michelle Wilde Anderson suggests that more robust triggering requirements and objective criteria for determining when a city should be taken over could address some of the implicit bias and political gamesmanship inherent in taking over a city. Anderson, supra note 80, at 615–21. Though these recommendations would largely protect against bias, this Note prefers administrative law solutions for two reasons. First, as a practical matter, identifying objective criteria for when a state should take over a city may prove a challenging task where both financial problems and the goals of an emergency manager vary from city to city. Second, this Note aims to rebut the premise that some outside entity must come in to “save” a city. As municipal distress becomes more common, cities will need to learn to respond to problems on their own. Without a homegrown solution, cities will lose too much autonomy.  
169. Id.  
173. Giambusso, supra note 172.}
to the numerous reasons for preserving local decision making when possible. As Part III suggests, there is more than one way of moving forward.

III.

ALTERNATIVES: JUDICIAL INTERVENTION AND ADMINISTRATIVE LAW

This Section proceeds on the assumption that I have at least convinced the reader to revisit whether emergency takeovers are an ideal response to municipal distress. Now, having concluded that the net harms from emergency manager systems outweigh the net benefits, this Note suggests strategies for rethinking how states address municipal distress. In particular, this Section proposes two alternative governance structures to emergency takeovers that may address the flaws inherent in emergency manager systems: the courts and administrative law principles. Ultimately, this Note asserts that administrative law principles will provide the best solution.

First, looking backward to the structural injunctions that characterized the Civil Rights Era, Part III.A asks whether the courts, rather than the state, could and should intervene to stabilize municipal finances and protect voting rights in takeover cities. For cities that end up filing for Chapter 9 bankruptcy, judges largely play this role. But Article III courts may be able to play the additional role of activist when ruling on a challenge to an emergency takeover law on equal protection grounds. However, given the difficulty of meeting the discriminatory intent standard and modern courts’ unwillingness to extend their jurisdiction beyond the controversy before it, this alternative to emergency managers is not likely to succeed. Plus, in the worst case, this alternative would merely substitute one unelected sovereign for another.

As a second (and more promising) alternative, Part III.B turns to an unlikely legal analog: administrative law—the body of law that governs federal administrative agencies. Admittedly, cities, as independent sovereigns, are not in the same position as administrative agencies. Because city officials are elected, not appointed or hired like agency staff, they do not have the same need to balance a statutory mandate against the realities of rulemaking and bureaucracy. But like agencies, cities must act (i.e., to ensure the streets are cleaned, the trash is picked up, and that the police continue working)—and often in a politically charged environment with multiple, divergent constituencies. To that end, agencies have developed tools, like notice-comment periods, independent commissions, and legislative review processes, that help them make tough decisions. Because these tools are simultaneously less disruptive and more democratic than emergency takeovers, they warrant a close review by both state governments and courts seeking alternative remedies to municipal distress.
A. Litigation and Judicial Intervention

Advocates from Detroit’s Sugar Law Center, the National Lawyers Guild, the Center for Constitutional Rights and other organizations are attempting to build a new legal doctrine to protect the votes of poor people of color in takeover cities.\textsuperscript{174} In Phillips, the ACLU challenged the legality of Michigan’s Public Act 436, arguing that the “sweeping” powers given to the emergency manager violated the Equal Protection Clause of the U.S. Constitution.\textsuperscript{175} Plaintiffs asserted that 52 percent of Michigan’s African American population had effectively lost their right to vote for local leaders, compared to just 2 percent of the white population.\textsuperscript{176} However, the plaintiffs found little legal precedent to support their claims. While courts had provided remedies when laws significantly burdened the right to vote,\textsuperscript{177} Michigan’s law did not fall into that legal framework since the law did not affect voters’ ability to elect their candidate of choice. Rather, the law only affected the ability of the elected candidate to get something done once in office.\textsuperscript{178} From the start, the case faced an uphill battle. Although the district court permitted one of the plaintiffs’ claims to proceed past the State’s motion to dismiss, the plaintiffs voluntarily dismissed that remaining claim in order to mount an appeal to the Sixth Circuit.\textsuperscript{179} In September 2016, the Sixth Circuit affirmed the district court’s decision and rejected all of the plaintiffs’ claims.\textsuperscript{180}

There is little doubt that judicial interventions like the one the plaintiffs sought in Phillips played a prominent role in the Civil Rights Era. At that time, federal courts supervised school assignment lotteries in Charlotte, North Carolina; banned anti-busing meetings in Denver, Colorado; and instituted “ethnic quotas” for selective secondary schools in Boston, Massachusetts.\textsuperscript{181} These courts went beyond “fix it” orders to intervene with specific remedies.\textsuperscript{182} The federal courts of the 1960s and 1970s were both lauded and sharply criticized for taking a stand when the legislature and executive would not act. As Nathan Glazer put it, “How does one create that permanently racially balanced community . . . ?”\textsuperscript{183} Indeed, from today’s perspective, the Warren and Burger Courts left a great deal of unfinished business. And courts today—perhaps with the exception of the federal bankruptcy courts, which take a

\textsuperscript{174} Complaint, supra note 26. \\
\textsuperscript{175} See supra note 152. \\
\textsuperscript{177} See Burdick v. Takushi, 504 U.S. 428 (1992). \\
\textsuperscript{178} Phillips, 2014 WL 6474344, at *14. \\
\textsuperscript{179} See generally Phillips v. Snyder, 836 F.3d 707 (6th Cir. 2016). \\
\textsuperscript{180} Id. \\
\textsuperscript{181} Nathan Glazer, Towards an Imperial Judiciary?, NAT’L AFF., Fall 1975, at 104, 115. \\
\textsuperscript{182} Id. at 117–18. \\
\textsuperscript{183} Id. at 109.
hands-on approach to structuring debts—have taken a step back from the grand vision of the Civil Rights Era.

Because of this realignment, the case for the judiciary policing emergency takeovers is limited. As an initial matter, the intent standard required for any discrimination claim makes it difficult for plaintiffs to hold lawmakers accountable for the type of implicit bias described here. Absent a “smoking gun,” moving past the motion to dismiss phase is exceedingly difficult, as Phillips demonstrated. Even if the claims were to proceed, the remedy would likely be unsatisfying. Courts are ill-equipped to fashion remedies that would account for both the city’s financial distress and the need to ensure democratic accountability. Courts have also been wary of challenges to how states manage their “political subdivisions,” finding such questions more properly reserved for the state executive and legislative branches.184 Moreover, because courts must wait for cases to come before them, there would be little opportunity for judicial officers to supervise the takeover process. Even then, many residents may see judges as just a substitution of one “sovereign” for another.

B. Building an Infrastructure: The Promise of Administrative Law

As an alternative to judicial intervention, this Section provides three reasons why administrative law can be particularly useful to legislators trying to craft solutions to address municipal underperformance. The administrative law principles of notice and comment, citizen commissions, and legislative review processes could be incorporated into state takeover regimes to ensure more efficiency, or at the very least, transparency with the local community.

First, administrative agencies recognize that, though experts may be better equipped to address certain problems, elected officials must check the experts’ conduct to ensure that the experts adhere to due process principles.185 Accordingly, Congress and the courts have instituted procedural safeguards like notice-and-comment periods and formal hearing requirements to protect due process. These strategies should be adapted to municipal takeovers to create more protections for city residents when the state has decided that more “expertise” is needed.

Second, administrative agencies have found ways to tap into the collective knowledge bank of the constituencies that they serve. Agencies use regional offices, notice-and-comment periods, and informal information gathering to stay abreast of real world problems. Legislators should borrow these strategies for takeover situations when the need for input from local residents and public policy experts is at its highest. If the city could leverage local expertise without

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184. Phillips, 836 F.3d at 707 (“The Court has recognized that ‘[h]ow power shall be distributed by a state among its governmental organs, is commonly, if not always, a question for the state itself.’”) (citing Highland Farms Dairy v. Agnew, 300 U.S. 608, 612 (1937)).

giving away too much power, the quality and legitimacy of local interventions could improve.

Third, administrative bodies have built accountability into their governance models. The heads of administrative agencies are appointed by the President and confirmed by the Senate, and, as such, these agency heads report to an elected official. Further, Congress oversees the agencies and retains the option to legislate, influence, and convene oversight hearings to ensure that constituents are represented. The lack of accountability among emergency managers is one of the most troubling aspects of any state takeover.

Guided by these principles, this Note argues that state takeovers are not the best way of “getting things done” in struggling municipal governments. Lacking in legitimacy, accountability, and occasionally even efficacy, takeovers are a dramatic, unnecessary affront to democratic government. Instead, this Note proposes administrative solutions that states and cities could use to infuse more democracy into times of crises.

1. Notice and Comment

In the administrative state, one of the ways that administrators account for a deficiency of legitimacy is through reliance on “notice-and-comment rulemaking.” These procedures require that administrators provide (1) published notice of proposed rulemaking; (2) the opportunity for public comment; (3) after consideration of comment, publication of final rules; and (4) a concise general statement of the rule’s basis and purpose. At first blush, the Administrative Procedure Act (APA) requirements may seem too sanitary for local politics and the quid pro quo schemes that are often part of that system. But, there are important democratic principles at play.

Though the administrator need not be neutral, notice-and-comment processes prioritize legitimacy by trying to ensure that all parties involved feel as if their views are considered. Indeed, the results of notice-and-comment rulemaking by federal agencies are not necessarily any less controversial than the local actions discussed in this Note. While the problems may hit further away from home, regulations often cost billions and can threaten to put companies out of business. Despite the end result, notice and comment may help residents feel that their voices are heard and that the officials in charge are responding to their concerns.

Notice-and-comment rulemaking is a process by which administrative agencies give regulated parties notice of an upcoming regulation and solicit written feedback. The APA requires that agencies remain open to persuasion based on the written comments received during the notice-and-comment

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187. Id. § 553(b).
To comply, agencies must respond to a substantial amount of comments in its final rule; agencies pass nearly eight thousand regulations and receive more than seven hundred thousand public submissions per year. And, though the rulemaking process can take several years from start to finish, agencies have started to develop fast track procedures—like the Notice of Direct Final Rulemaking and Negotiated Rulemaking—that achieve the same goals in a shorter period of time.

This Note proposes that cities in distress adopt some form of notice-and-comment rulemaking to infuse expertise and legitimacy into the municipal system. Even without fast track procedures, there are alternative strategies, like state funding to the municipality or a court-appointed receiver, that would ensure that the city has more time to respond to some of its structural problems without autocratic measures by the state. Such a system would be a welcome alternative to the emergency dictatorships proposed by states today.

Many municipalities are already benefiting from similar models. Nonprofit organizations like the Ash Center for Democratic Governance and Innovation at the Harvard Kennedy School and IDEO.org are currently using crowd-sourcing technology—which acts akin to a notice-and-comment procedure—to collect ideas from a wide variety of contributors. These examples show how local governments might be able to bring a broader array of people to the table to resolve the city’s financial problems. For example, the Ash Center currently hosts an award competition soliciting creative innovations in the public sector. Since it started in 1985, the program has received over twenty-seven thousand applications and recognized nearly five hundred government initiatives. With the help of the Ford Foundation, the Ash Center prepares case studies on the winners, which it then makes publicly available on its website. The Ash Center collects submissions from people working in city government and others interested in how city government works. Many of the innovations focus on local management of criminal justice systems, but one could imagine such an award program targeted to the specific needs of a local jurisdiction.

Similarly, IDEO.org, a nonprofit offshoot of the global design and innovation firm IDEO, recently initiated the Amplify project—a series of ten

188. Ass’n of Nat’l Advertisers v. FTC, 627 F.2d 1151, 1173 (D.C. Cir. 1979).
design and innovation challenges aimed at addressing extreme poverty across the globe. The project uses open source technology to solicit solutions from designers and social sector professionals around the world, as well as local people that have ideas for how to resolve local problems. The firm has promised to provide a select set of ideas with the seed money to get started in the real world.

Indeed, cities are, in many ways, already set up for notice-and-comment rulemaking. Many states have sunshine laws that require municipalities to hold open meetings where the public has advance notice and may submit comments. Other cities have sophisticated public bidding systems—some online—where contractors can submit applications in response to the city’s requests for proposals. The success of any notice-and-comment proposal will turn on the city’s ability to leverage existing systems and to solicit comments from a broader array of audiences—like community based organizations, faith-based groups, and local activists. Indeed, one of the most significant procedural hurdles to municipalities adopting notice-and-comment procedures is an antiquated idea about power and who can contribute to municipal management.

Another problem with instituting any notice-and-comment rulemaking procedure—particularly one that encourages participation from local residents—is likely to be a collective action problem. Volunteers may have little incentive to research policy proposals and draft thorough recommendations. But, this difficulty would not be fatal to this proposed solution to emergency manager systems. Cities may solicit guidance from local universities, who often attract students from the surrounding area, and local non-profit organizations, who can mobilize community members for letter-writing campaigns or other public actions. For example, Detroit’s Sugar Law Center, a local nonprofit, mounted the legal challenge to the emergency manager law. As an incentive for would-be contributors, cities may also offer to advertise the most helpful advice or make an award for the best contribution, similar to the Ash Center awards or IDEO.org’s funding of the most viable projects. If tailored to local resources and institutions, modified notice-and-comment structures could provide an alternative avenue for collecting ideas about how to reverse the city’s financial difficulties.

2. **Citizen Commissions**

Citizen commissions are commissions made up of a group of concerned, informed citizens that help legislators identify bipartisan solutions to pressing public policy problems. Most recently, states have used citizen commissions in the context of redistricting to improve the politics associated with drawing new district boundaries.\(^{197}\) In some cities, Business Improvement Districts (BID) have also relied on commissions made up of representatives from firms (neighborhood businesses) and community groups (residential or political organizations) within the zones.\(^{198}\) These BID Commissions have tremendous power, including the ability to tax and use the proceeds to provide additional resources within the designated zone.\(^{199}\)

Newark, New Jersey, has experimented with a citizen commission model in its effort to develop sustainable housing for frequent users of the county’s jails, emergency rooms, and homeless shelters. Members of the mayor’s staff assembled the commission, made up of professors from Rutgers-Newark, local advocates from groups like Project Live Inc. and the Center for Supportive Housing, the warden from the local jail, and county health officials. The group convened over three roundtables. Then, the mayor’s staff assembled their recommendations into an implementation plan for a sustainable housing project. A similar structure could be followed in response to poor performance in nearly any municipal field—from finance to failing schools.

For citizen commissions to be effective, a public body must recognize when it needs help from outside city hall or the capitol building. Professor Gillette argued that cities could not be trusted to seek outside help because elected officials will not give up power.\(^ {200}\) But cities have proven time and again that such an assumption is not always accurate. In Los Angeles, for example, the city itself petitioned the court for a court-appointed receiver to manage its nonprofits affiliated with its Department of Water and Power.\(^ {201}\) For municipalities faced with imminent state takeover, input from a citizen...

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\(^{197}\) Bruce E. Cain, *Redistricting Commissions: A Better Political Buffer?*, 121 YALE L.J. 1808, 1808 (2012). The Arizona and California independent redistricting commissions are the “boldest departures” from traditional redistricting models as they guarantee “greater transparency, options for third-party map submissions, citizen approval through direct democracy, careful vetting for conflict of interest,” among others. *Id.* at 1812.

\(^{198}\) Briffault, *supra* note 158, at 507.

\(^{199}\) *Id.*

\(^{200}\) Gillette, *supra* note 33, at 1433 (“It is not in the interest of agencies or elected representatives from discrete districts to abdicate their authority to more centralized entities; nor is it in the interest of those groups that benefit from having access to a point in the budgetary process to see that point eliminated. The result is that, just as political actors may become entrenched in particular offices, so may the structure of their offices.”).

commission may be a more palatable resolution than takeover by a competing government.

As with notice-and-comment periods, the collective action problem is ever present because a volunteer commission may have little incentive to make the tough decisions often needed from such boards and may not have the time to delve into the complex issues at stake. But, both municipalities and states already employ experts—in education, it’s the teachers, principals, and parents (admittedly, not employed) and in finance, it’s the procurement specialists, Office of Management and Budget staff, grant writers—that bring a great deal to bear on the problem. Cities may also use the money that they would have spent on a state receiver to attract local university professors or experts from neighboring municipalities to add expertise to the board or to facilitate smaller meetings of commissioners. Though untested in this context and potentially lacking in incentive to make the “tough” choices, citizen commissions offer a great deal of promise to municipalities struggling to avoid or to cope with state takeover.

3. Legislative Review

One of the problems with any receivership is that the decisions of the receiver are not immediately reviewable. It could take years to challenge an emergency manager’s directive and the costs could run into the millions of dollars. Meanwhile, city residents are subject to antidemocratic and potentially unconstitutional legislation. A number of court opinions in administrative law have required agencies to hold regular hearings—even if relatively small and informal—to ensure that all due process requirements are satisfied. But, recently, Congress has also deliberated over another solution—Regulations from the Executive in Need of Scrutiny (REINS) Act, H.R. 10 (112th Cong.) (Geoff Davis, R-KY). The REINS Act would require that Congress pass a joint resolution of approval before any administrative regulation above a certain size could become effective. It is an interesting response to a familiar critique that federal agencies make too many large public policy decisions without guidance from Congress.

A similar approval process could also work well in the context of a municipal takeover. The city’s legislative body could retain the authority to veto any resolution proposed by the emergency manager. This structure largely diminishes the problems associated with pluralism because a single legislator would not be able to hold up the vote. If the city truly needs reform, even a malfunctioning legislature should have a hard time disapproving of a plan if it is well-researched, justified, and developed with public input. Such an effort

could ensure that an emergency manager’s actions are immediately reviewable by a democratic body elected by city residents. If successful, it would be an improvement over the antidemocratic takeover regimes currently in place.

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This Section has asserted that administrative law staples, like notice-and-comment periods, citizen commissions, and legislative review, could be modified to give cities a greater voice in controlling and resolving their own problems. Although far from perfect and certainly requiring imagination, these proposals hope to offer a new way of thinking about municipal distress and the proper response.

CONCLUSION

Municipal fiscal distress is here to stay, but emergency manager takeovers do not have to be. Today, as a city approaches financial insolvency, state takeover is all but assumed, with creditors clamoring in the Wall Street Journal and Financial Times for an autocrat that will swoop down and impart a sense of order. But states have failed to recognize just how dramatic a measure this is. Emergency takeovers transform elections—the bedrock of our democracy—into a farce, where local residents elect leaders with no real power; such transformation strips local voters of any voice in self-governance. We need not look farther than Flint’s polluted waters or Detroit’s abandoned buildings to understand the serious consequences of these policies. This Note argues that the low-income communities of color that are most impacted by emergency takeovers deserve a voice too. Often, emergency managers do not perform as well as expected, and their decisions do not focus on the long-term financial health of the city. In the worst cases, the decision to take over a city is motivated by political gamesmanship or impermissible racial biases about who should control in distress and what “emergency” looks like. Given these failures, states should consider alternatives. Though judicial supervision may provide some remedy, administrative law structures, like notice-and-comment periods, citizen commissions, and legislative review, are an even more promising compromise because they integrate a community voice while still forcing the tough decisions. With any luck, it is the cities, not the emergency managers, that will be on the rise in the years to come.