



NOTE

Local Government Design, Mayoral Leadership, and Law Enforcement Reform

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Abstract. American cities have become a battleground for civil rights struggles between law enforcement officials and the residents they are sworn to protect. A number of voices have emerged from this conflict, calling for reform of local policing and strategies for litigation-based measures for restitution and deterrence. And yet relatively unnoticed are the very local governments meant to secure, support, and protect the safety and interests of their residents. This inattention is especially troubling given the barriers to litigation alone as a solution. And this challenge is exacerbated by the latent, systemic, and structural defects that give rise to civil rights violations and minority underrepresentation in our cities. This Note seeks to shift our attention to institutional reform of local government. Particularly, it asks us to revisit the ways in which we have constrained our cities' mayors and, in doing so, proposes a cautious return to empowered municipal executives as instigators, allies, and advocates for civil rights.

This Note presents a novel, close examination of executive mayoral governance. It explains how shifting the balance and separation of powers in local government can prove a measure of self-help for cities. Drawing upon jurisprudence, legal theory, case studies, and political science, this Note explains how a strong executive in cities can harness and strengthen traditional tools for reform—from Department of Justice § 14141 litigation and settlements to greater racial diversity in law enforcement to civil disobedience. Though neither a panacea for all ills nor a fit for all instances, a strong mayor can serve as an elemental lynchpin for legal improvements in how our cities prevent, handle, and heal from law enforcement violations of civil rights.

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Introduction

It has been a punishing past few years for American cities. Economic collapse became kindling for conflict between residents and law enforcement. Again and again tragedy ensued, often in the very public deaths of minority residents at the hands of public safety officials.¹ On other occasions, the roles were reversed, as law enforcement officials became victims.² But the disheartening constant is that city governments have provided few heroes to step in and mitigate the damage.³ The paucity of leadership may be attributable less to the shortcomings of individual leaders and more to institutional constraints. It is the aim of this Note to investigate, analyze, and explore means to circumvent those barriers.

Take, for instance, the stories of two beleaguered cities and the mayors who purport to lead them. James Knowles, mayor of Ferguson, Missouri during the recent period of civil unrest, rued his relatively powerless role as his city's leader. The position of mayor in Ferguson, he remarked, is "mostly ceremonial."⁴ One of the most difficult parts of trying to lead the city, he

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1. The most prominent examples being: Michael Brown, Ferguson (2014); Eric Garner, New York City (2014); Laquan McDonald, Chicago (2014); Tamir Rice, Cleveland (2014); Walter Scott, North Charleston (2015); Freddie Gray, Baltimore (2015); Philando Castile, St. Paul (2016); and Alton Sterling, Baton Rouge (2016). See, e.g., WSJ News Graphics, *From Ferguson to Dallas: A Recent History of Deaths Involving Police*, WALL ST. J. (July 8, 2016, 3:30 PM ET), <http://graphics.wsj.com/dallas-police-involved-deaths>. This Note does not explore the culpability of law enforcement officials in these incidents. Its intent is to examine systemic problems and solutions in order to reduce violence, give proper recourse to victims, and create democratic responsiveness in city government.
 2. These include the ambush by a Dallas gunman in 2016 that left five law enforcement officers dead, see Faith Karimi et al., *Dallas Sniper Attack: 5 Officers Killed, Suspect Identified*, CNN (July 9, 2016, 1:37 AM ET), <http://cnn.it/29CSWVU>, and the murders of three Baton Rouge police officers, see Steve Visser, *Baton Rouge Shooting: 3 Officers Dead; Shooter Was Missouri Man, Sources Say*, CNN (July 18, 2016, 7:15 PM ET), <http://cnn.it/29QPNmX>.
 3. It was F. Scott Fitzgerald who wrote, "Show me a hero and I will write you a tragedy." F. SCOTT FITZGERALD, THE NOTEBOOKS OF F. SCOTT FITZGERALD 51 (Matthew J. Bruccoli ed., Harcourt Brace Jovanovich 1978) (1945). Fittingly, the phrase was later appropriated for an investigation of mayoral heroics. See LISA BELKIN, SHOW ME A HERO: A TALE OF MURDER, SUICIDE, RACE, AND REDEMPTION, at xi (1999). For indictments of the lack of leadership in Detroit—in addition to the stories of Ferguson and Stockton that follow—see, for example, Jena McGregor, *What Killed Detroit?: Let's Not Forget the 'Who'*, WASH. POST (July 19, 2013), <http://wpo.st/NXEC2>, which asserts that "Detroit also failed as a city because of the leaders who failed Detroit." See also, e.g., Amy Padnani, *Anatomy of Detroit's Decline*, N.Y. TIMES (Dec. 8, 2013), <http://nyti.ms/1f0mB5O>.
 4. Stephen Deere, *Ferguson Mayor James Knowles Faces Recall Effort*, ST. LOUIS POST-DISPATCH (Mar. 17, 2015), http://www.stltoday.com/news/local/crime-and-courts/ferguson-mayor-james-knowles-faces-recall-effort/article_f50361e0-bbac-53ba-9d0a-b01c500c8ddc.html.

continued, “was that people assumed he has more power than he actually does.”⁵ As a “part-time, weak-mayor,” he was mostly powerless to deliver the active leadership expected of him.⁶

Stockton, California represents a less explosive but similarly ineffective situation. The 2008 recession led to an unemployment rate of more than 20%, and the police department was forced to lay off a quarter of its officers.⁷ Since the recession, Stockton has ranked as one of America’s most violent cities.⁸ In 2013, surveying the damage, Stockton Mayor Anthony Silva bemoaned, “People think I can be their savior and help them Under different circumstances, I can do that. Now, I can forward an email on.”⁹ As the city dealt with economic downturn and violence, Silva was sidelined. He was unable to appoint the city’s police chief¹⁰ and was not invited to an unveiling of the new body cameras that the city’s police officers were to begin wearing.¹¹ Unlike Ferguson, other distressed cities like Stockton are resigned to drinking “a

5. *Id.* For example, in the wake of the Ferguson violence, law professors urged Knowles to provide amnesty to nonviolent criminals as an olive branch toward reconciliation. Jason Rosenbaum, *Attorneys Ask Ferguson’s Mayor to Commute Non-Violent Ordinance Offenses*, KBIA (Aug. 27, 2014, 9:07 PM), <http://kbia.org/post/attorneys-ask-fergusons-mayor-commute-non-violent-ordinance-offenses>. Yet because of the present limitations on mayoral power, Knowles may actually have no authority to commute municipal sentences. *Id.* Knowles has seen his limitations reflected in his treatment by state officials:

That’s been one of the most frustrating aspects of dealing with th[e] crisis [surrounding Michael Brown’s death] Governor (Jay) Nixon showed up in Ferguson before he contacted us or let us know. There were people who helped me, some legislators in the region who helped me reach out to the governor’s office when we couldn’t get through to say we believe that me [sic]—as the local municipal official, the person who is on the ground being assumed to have control even though as a part-time, weak-mayor form of government I did not have that control—that I should be kept in the loop on some of these issues.

Erica Smith, *Ferguson Mayor Says He Considered Resigning, Is Now Working to Unite Community*, ST. LOUIS PUB. RADIO (Dec. 2, 2014), <http://news.stlpublicradio.org/post/ferguson-mayor-says-he-considered-resigning-now-working-unite-community>.

6. Smith, *supra* note 5.

7. Tina Rosenberg, Opinion, *A Strategy to Build Police-Citizen Trust*, N.Y. TIMES (July 26, 2016), <http://nyti.ms/29WzIBX>.

8. *Id.*

9. Scott Smith, *Change to Strong Mayor System in Stockton’s Future?*, RECORDNET.COM (May 5, 2013, 12:01 AM), http://www.recordnet.com/article/20130505/A_NEWS/305050307. In another telling remark, Silva referred to himself as more of a “cheerleader” than a mayor, musing, “[W]hat’s the point of running for office when you’re trying to get things done?” Roger Phillips, *Silva Bemoans Status as ‘Cheerleader’*, RECORDNET.COM (Sept. 10, 2014, 8:30 PM), <http://www.recordnet.com/article/20140910/NEWS/140919948>.

10. See Smith, *supra* note 9 (noting that responsibility belongs to the city manager).

11. Roger Phillips, *Stockton Mayor Complains He’s out of the Loop*, RECORDNET.COM (Jan. 15, 2015, 12:01 AM), <http://www.recordnet.com/article/20150115/News/150119805>.

quieter, more final poison.¹² The entrenchment of systemic unemployment and collapsed housing prices lead to government cutbacks of essential services and slower-burning tensions.¹³

Whether with a bang or a whimper,¹⁴ cities are giving in to the twin burdens of economic insecurity and social inequality. And their elected leaders are left unequipped to stand up for their constituents.

This inefficacy is the shared experience of many American mayors, who live a bit of a political paradox. They are clothed in the aspirations of their friends, neighbors, and peers, nominated from within their ranks to fix the problems that matter most in day-to-day life. Yet their place at the dais is more prison than pedestal. Many modern mayors are equipped with only weak, ceremonial powers¹⁵ and saddled with high expectations and mounting challenges. These mayors are nothing if not primed to disappoint.

The impotence of many American mayors is punishment for the sins of their predecessors. Metropolises were once governed by “unwise and extravagant” mayors touched by greed and gross incompetence.¹⁶ In response, mayors saw their power shifted away, either vertically to ostensibly more capable state leaders¹⁷ or horizontally to technocratic city managers.¹⁸

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12. Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364, 1366 (2012).
 13. For background on Stockton’s bankruptcy and economic struggle, see Malia Wollan, *Years of Unraveling, Then Bankruptcy for a City*, N.Y. TIMES (July 18, 2012), <http://nyti.ms/NAGTEH>.
 14. T.S. ELIOT, *The Hollow Men*, in THE COMPLETE POEMS AND PLAYS, 1909-1950, at 56, 59 (1971). Or, to draw from other Eliot, “Unreal City, / . . . I had not thought death had undone so many.” T.S. ELIOT, *The Waste Land*, in THE WASTE LAND AND OTHER POEMS 59, 66-67 (George Stade ed., Barnes & Noble Classics 2005) (1922).
 15. E.g., Perry Hiott, *Georgia’s City Governments*, NEW GA. ENCYCLOPEDIA (Aug. 3, 2016), <http://www.georgiaencyclopedia.org/articles/government-politics/georgias-city-governments>. Standard ceremonial duties of a mayor include presiding at council meetings, signing proclamations, and making ceremonial presentations. E.g., *Responsibilities and Roles of Mayors and Councilmembers (Commissioners) in Florida*, FLA. LEAGUE CITIES, INC., <http://www.floridaleagueofcities.com/News.aspx?CNID=4376> (last visited Feb. 2, 2017).
 16. See GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 46-47 (1999) (emphasis omitted) (quoting JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS 22 (Chicago, James Cockcroft & Co. 1872)) (discussing the views of Judge John Dillon, who advocated for state control over cities to achieve “a fully public city government dedicated to the common good”).
 17. See 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 237 (5th ed. 1911) (stating that municipal corporate powers are narrowly construed to those expressly granted by state governments, those necessary or incident to the powers expressly granted, and those essential to the accomplishment of the corporation’s purposes); Nestor M. Davidson, *Cooperative Localism: Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959, 979-90 (2007) (analyzing the judiciary’s developing view in the twentieth century of municipal governments as entities indistinguishable from states).

The latter reform became institutionalized in council-manager government, a Progressive solution in which the city manager controlled major decisions without the influence of politics.¹⁹ The mayor and city council were formally combined into a reduced body of informal political actors, confined to neighborhood-based administrative minutiae.²⁰ Both in the scholarship²¹ and on the ground,²² council-manager government became the model of good city government.

But as American cities have succumbed to violence and economic depression, legal scholars have stepped in to explore ways in which the design and governance of municipalities as institutions can shape legal outcomes. Some writers focus on municipal dissolution or reorganization in the wake of city insolvency.²³ Others attend to municipal unincorporation and consolidation to

18. See COMM. ON MUN. PROGRAM, NAT'L MUN. LEAGUE, A MODEL CITY CHARTER AND MUNICIPAL HOME RULE §§ 3-6 (1916) (outlining and encouraging council-manager governance, with a mayor drawn from councilmembership, on behalf of the National Municipal League); Richard C. Schragger, *Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System*, 115 YALE L.J. 2542, 2548-49 (2006). A city manager is a municipal official usually appointed by the city council. *Id.* at 2548. She is the administrative manager of the city in a council-manager form of government, analogous to a chief executive officer or chief administrative officer of a corporation (this analogy being drawn explicitly by the fact that cities were initially conceived as municipal corporations). *See id.* She is typically in charge of proposing the city's budget and overseeing the administrative bureaucratic functions of city government. *See, e.g.*, Ga. Mun. Ass'n, Handbook for Georgia Mayors and Councilmembers: Municipal Government Structure 3-4 (5th ed. 2012), <http://www.gmanet.com/GMASite/media/PDF/handbook/structure.pdf>. For additional background, see RICHARD J. STILLMAN II, THE RISE OF THE CITY MANAGER: A PUBLIC PROFESSIONAL IN LOCAL GOVERNMENT 8 (1974); and Schragger, *supra*, at 2548-49. *See also infra* Part I.A.

19. *See infra* Part I.A.

20. *See infra* Part I.A.

21. See Kent Mathewson, *Democracy in Council-Manager Government*, 19 PUB. ADMIN. REV. 183, 184 (1959) ("[S]upporters and detractors alike agree that [council-manager government] . . . worked the most significant advance in government in the twentieth century."); *see also* John E. Bebout, *Management for Large Cities*, 15 PUB. ADMIN. REV. 188, 192 (1955) ("[O]n the whole, the council-manager plan has certain positive advantages It is the simplest available structural arrangement for obtaining representative decisions on policy and competent execution of those decisions."); John A. Perkins, Editorial Comment, *Council-Manager Government: Efficiency for Good*, 21 PUB. ADMIN. REV. 180, 180 (1961) ("Today, critics . . . might with confidence . . . declare that municipal government during the last fifty years has exhibited more 'efficiency for good' than almost any other institution in the United States. This is so owing to the spread of council-manager government" (quoting Charles W. Eliot, President, Harvard Univ.)).

22. *See infra* Part I.

23. E.g., Anderson, *supra* note 12, at 1419-43; Michelle Wilde Anderson, *Who Needs Local Government Anyway?: Dissolution in Pennsylvania's Distressed Cities*, 24 WIDENER L.J. 149 (2015); Michael W. McConnell & Randal C. Picker, *When Cities Go Broke: A Conceptual Introduction to Municipal Bankruptcy*, 60 U. CHI. L. REV. 425 (1993); cf. Clayton P. Gillette,

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promote service provision to our most impoverished citizens.²⁴ Another group turns its focus to urban planning as a mechanism of discriminatory regulation against minority and marginalized populations.²⁵ And a fourth group has keyed in on unleashing social innovation by decreasing state regulation of cities.²⁶ Regardless of the particular perspective, focus has turned to ways in which we can redraw the blueprints of our cities, with a particular emphasis on civil rights protection. At the same time, attention is turning, swiftly but not swiftly enough, toward new strategies for policing and addressing police misconduct in America in the wake of recent events.²⁷

This Note seeks to weave together these two threads of inquiry: legal changes to municipal design and reformation of local law enforcement to protect minority populations. In doing so, it seeks to push against three broader dogmas sometimes treated as gospel. First, it questions whether conventional post hoc litigation and remedies can prove effective without accompanying prophylactic improvements to city institutions and government.²⁸ Second, it suggests that solutions to municipal strife might be better instituted through internal evolution rather than the imposition of external, piecemeal reform by state and federal actors. And third, it contends that diffuse executive authority in cities diminishes rather than enhances oversight of law enforcement and responsiveness to residents.

Dictatorships for Democracy: Takeovers of Financially Failed Cities, 114 COLUM. L. REV. 1373, 1418, 1449-50 (2014) (discussing emergency takeover laws and other mechanisms used to respond to municipal financial problems); Omer Kimhi, *Reviving Cities: Legal Remedies to Municipal Financial Crises*, 88 B.U. L. REV. 633, 664-84 (2008) (discussing the same).

24. E.g., Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931 (2010); Kristen Clarke, *Voting Rights & City-County Consolidations*, 43 Hous. L. REV. 621 (2006); Annette Steinacker, *Prospects for Regional Governance: Lessons from the Miami Abolition Vote*, 37 URB. AFF. REV. 100 (2001).

25. E.g., Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934 (2015); see also, e.g., Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699 (1993).

26. E.g., Anderson, *supra* note 24, at 934 n.3.

27. See, e.g., Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. REV. 885 (2014); Tom R. Tyler & Jeffrey A. Fagan, *American Policing in the 21st Century: Legitimacy as a Key Concern*, FORDHAM URB. L.J. CITY SQUARE (May 5, 2015), <http://urbanlawjournal.com/american-policing-in-the-21st-century-legitimacy-as-a-key-concern>; Steven Zeidman, *Due Process and the Failure of the Criminal Court*, FORDHAM URB. L.J. CITY SQUARE (May 5, 2015), <http://urbanlawjournal.com/due-process-and-the-failure-of-the-criminal-court>; see also, e.g., *Developments in the Law—Policing*, 128 HARV. L. REV. 1706, 1723, 1794 (2015); Alec Karakatsanis, *Policing, Mass Imprisonment, and the Failure of American Lawyers*, 128 HARV. L. REV. F. 253 (2015).

28. See *infra* Part II.A.1.

In challenging these dogmas, this Note advocates for the role of the American mayor. It explains how a so-called “strong mayor” can serve as an elemental linchpin for legal improvements in how our cities prevent, handle, and heal from law enforcement violations of civil rights. Whether as an internal ally for Department of Justice (DOJ) investigations, a reliable negotiator for consent decree impositions, or an active embodiment of shared values in a racially divided city, the mayor as executive can step into the present power vacuum as “the vanguard, taking trailblazing steps towards transforming how police departments interact with their communities.”²⁹ This Note does not suggest that this type of charter reform is a panacea—it explains such reform’s limitations and ideal conditions and suggests ways to empower mayors without structural reform—but neither does it view this reform as a nostrum.

Part I presents the basic structure of municipal governance. Particularly, it explains the various ways in which cities inhibit or empower municipal executives, either in the form of a mayor or an appointed city manager. This taxonomy will provide a common language for what is to follow. Part I also presents a brief discussion of trends in municipal policing, with the aim of situating this Note’s analysis within the context of on-the-ground realities. In doing so, it underscores the ways in which police malfeasance is the result of growing systemic problems rather than individual improprieties.

Part II is the heart of the argument for mayoral empowerment. It demonstrates three ways in which structural reform of city executive power can combine with other existing elements of legal reform to produce more meaningful results. First, this Part argues that stronger mayors play an indispensable role in structural litigation efforts, primarily those instigated by the DOJ through its authority pursuant to 42 U.S.C. § 14141.³⁰ This is especially critical given that other avenues to civil rights litigation are increasingly fraught with obstacles. Second, Part II speaks more broadly about minority representation and voice in local democracy, explaining how an empowered mayor can mitigate underrepresentation. Third, the Part returns to municipal identity and the role of the mayor as a leader of the local in the federal system.

29. Angela Glover Blackwell & Andrew Friedman, *Calling All Mayors: This Is What Police Reform Should Look Like*, HILL (Sept. 9, 2015, 1:00 PM), <http://thehill.com/blogs/congress-blog/civil-rights/252969-calling-all-mayors-this-is-what-police-reform-should-look>.

30. Section 14141, passed as part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of the U.S. Code), prohibits police agencies from engaging “in a pattern or practice of unconstitutional misconduct,” Stephen Rushin, *Federal Enforcement of Police Reform*, 82 FORDHAM L. REV. 3189, 3191 (2014). Enforcement is carried out by the DOJ, and the statute aims to curb misconduct by improving organizational policies and procedures and providing widespread adoption of national policing standards. *Id.* at 3191-92.

Part III describes the legal and prudential bounds of charter reform. Reforming municipal governance is a large task and should not be taken lightly. Accordingly, this Note explains both the legal barriers to mayoral empowerment and the type of underlying municipal demographics and city profile key to effectively transitioning from council-manager to mayor-council governance.

Regardless of whether formal changes are made, however, the lessons of this Note extend beyond the confines of the executive mayor. Indeed, mayoral empowerment is a story of local empowerment. In concluding, this Note provides parting examples of further policy options to empower our cities and final thoughts on the role of cities both in protecting public safety and civil rights and in American governance as a whole.

I. A Primer on City Governance

City governments are the site of constant experimentation and reformation. These individualized calibrations make it difficult to cleanly categorize municipal governance. As this Note discusses charter and municipal governance reform, then, it behooves us to ground the analysis in some type of shared vocabulary of local government actors and an understanding of the broad categories of local government design. And because the division of power in local governments is more fluid and reactive than at the state or federal level, it is also worth understanding the historical background that has prompted broad shifts in the favored design of city government. This Part provides a brief introduction to these structural choices and their historical contexts.

This Part also briefly explores the complicated relationship between local government and law enforcement. It helps to unpack the trends that have led to some of the pressing problems of modern policing. And it explains the developments that situate local law enforcement as the servant of both city and federal government. By implication, this Part presents law enforcement overreach as a systemic, rather than individualized, problem in need of systemic solutions.

A. Local Government Structures

As one court has remarked, “the separation of powers doctrine is a concept foreign to municipal governance.”³¹ Executive, legislative, and administrative

31. Moreau v. Flanders, 15 A.3d 565, 579 (R.I. 2011); *see also* People v. Provines, 34 Cal. 520, 533-34, 538, 540 (1868) (noting that executive officials of a municipal corporation may exercise judicial powers and that executive powers and their limits at the municipal level are not analogous to the constraints on state and federal executives to not

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functions are often intermingled in city governments.³² Local governmental design is therefore often a choice about allocating these governing responsibilities among three sets of actors: a city council, a mayor, and a city manager.³³

Though each city's government is unique in its allocation choices, the structure of city government generally fits into one of five categories: the political city, the adapted political city, the fully adapted city, the adapted administrative city, and the administrative city.³⁴ Urban studies scholars will often group these into more generalized buckets: the "administrative city" is known as a pure council-manager government (a weak mayoralty), the "political city" as a pure mayor-council government (a strong mayoralty), and the "adapted city" as borrowing from these two ends of the spectrum to various degrees.³⁵

A pure council-manager system of government allocates legislative power to the council, administrative power to the city manager, and executive power to both.³⁶ The city chooses its mayor from within the council, either on a rotating basis or by a vote from the council.³⁷ In a more adapted city, the

impinge on other branches of government); *Santo v. State*, 2 Iowa 165, 220 (1855) (noting the same). *But see Broidrick v. Lindsay*, 350 N.E.2d 595, 598 (N.Y. 1976) (determining that a certain mayoral action was "an impermissible exercise of legislative power vested by the New York City Charter in the city council"); *see also La Guardia v. Smith*, 41 N.E.2d 153, 158 (N.Y. 1942) (Lehman, C.J., dissenting) ("[I]f in the charter the Legislature has provided a form of government in which executive powers vested in the Mayor and legislative powers vested in the Council are intended to be kept separate, distinct and independent, that intention must be given effect."). For general background on municipal separation of powers, see Bradley E. Morris, Comment, *Separation of Powers in Municipal Government: Division of Executive and Legislative Authority*, 1978 BYU L. REV. 961, 961-66 (1978).

32. Morris, *supra* note 31, at 963-64 ("All of these forms [of city government] involve[] extensive mingling of functions, with little or no concern for the separation of powers.").

33. For an explanation of city managers, see note 18 above.

34. H. George Frederickson & Gary Alan Johnson, *The Adapted American City: A Study of Institutional Dynamics*, 36 URB. AFF. REV. 872, 877-79, 879 tbl.3 (2001).

35. *See id.* at 873-74, 877-78.

36. See Schragger, *supra* note 18, at 2544 (noting that the council-manager form of government vests "legislative authority in an elected council and administrative authority in a professional city manager"); *id.* at 2549 ("A weak . . . mayoralty means that executive power in municipalities tends to be fragmented, either among council members, between the council and city manager, or among the council and other administrative officials who also exercise executive power.").

37. *Elected Officials*, NAT'L LEAGUE CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-officials/elected-officials> (last visited Feb. 2, 2017); *Forms of Municipal Government*, NAT'L LEAGUE CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-structures/forms-of-municipal-government> (last visited Feb. 2, 2017). Tim Kaine was selected as mayor of Richmond, Virginia under this method of city-council election. *See Amy Biegelson, What's a Nice Guy Like Tim Kaine*

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mayor may be elected by the city at large. But in both circumstances, the mayor is simply a de facto councilmember and “share[s] a range of legislative and administrative powers” with the council.³⁸ She usually has no independent executive authority, independent staff, or veto power. The mayor’s major responsibility above her legislative duties is to act as a ceremonial figure for the city.³⁹ Council-manager cities are much more prevalent among cities on the West Coast or in the Southeast.⁴⁰ Some of the largest cities to employ this system of governance are Phoenix, San Antonio, Dallas, and San Jose.⁴¹

A pure mayor-council, or strong mayor, system of government directly elects its mayor citywide.⁴² Councilmembers are elected on a district basis, and there is usually no city manager or chief administrative officer.⁴³ The mayor serves as chief executive officer, appoints and removes department heads, and has veto power over council decisions.⁴⁴ He does not sit on the council and has no formal legislative power.⁴⁵ Mayor-council cities include twenty of the thirty most populous cities, including New York City, Los Angeles, Chicago, Houston, and Philadelphia.⁴⁶

Doing in a Job Like This?, STYLE WKLY. (Feb. 25, 2009), <http://www.styleweekly.com/richmond/whatandaposs-a-nice-guy-like-tim-kaine-doing-in-a-job-like-this/Content?oid=1383040>. For the most straightforward examples of this procedure in action, see cities like Beverly Hills and Malibu. *About the City Council*, CITY BEVERLY HILLS, <http://www.beverlyhills.org/citygovernment/mayorandcouncilmembers/aboutthe citycouncil> (last visited Feb. 2, 2017) (“From within their membership, the Council then appoints a mayor and vice mayor, with both positions rotating each year. The mayor acts as the presiding officer at meetings and the Council’s ceremonial representative at public events.”); *City Council*, CITY MALIBU, <http://www.malibucity.org/index.aspx?NID=207> (last visited Feb. 2, 2017) (“The City of Malibu . . . operates under the council-manager form of government. . . . The Mayor’s Office is rotated annually among all councilmembers.”).

38. Morris, *supra* note 31, at 963 n.18 (quoting Robert P. Boynton, *City Councils: Their Role in the Legislative System*, in THE MUNICIPAL YEAR BOOK 67, 67 (1976)).
39. Curtis Wood, *Voter Turnout in City Elections*, 38 URB. AFF. REV. 209, 216 (2002).
40. *Forms of Municipal Government*, *supra* note 37.
41. *Id.*
42. See, e.g., Member Res. Servs., Mich. Mun. League, *Structure of Local Government*, in CHARTER COMMISSIONERS HANDBOOK 8, 15 (2003) (“Mayors in about half of Michigan’s home rule cities are chosen directly by the people, in at-large, city-wide elections (including all strong mayor communities.”), https://www.mml.org/pdf/charter_revision/charter_handbook.pdf.
43. See Kathy Hayes & Semoon Chang, *The Relative Efficiency of City Manager and Mayor-Council Forms of Government*, 57 S. ECON. J. 167, 167 (1990); Wood, *supra* note 39, at 215.
44. See *Mayoral Powers*, NAT’L LEAGUE CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-officials/mayoral-powers> (last visited Feb. 2, 2017).
45. See Wood, *supra* note 39, at 215.
46. *Forms of Municipal Government*, *supra* note 37.

While the weak mayoralty predominated in the early nineteenth century, the mayor's powers increased during the late industrial era in the United States.⁴⁷ As cities became more populated and their dynamics more complex, a strong central executive was needed to corral the municipality.⁴⁸ Within a few decades, however, the mayor-council government had fallen out of favor in response to the rise of Progressivism and charges of municipal corruption.⁴⁹ The Progressive ideal of administration by objective experts was embodied in the formation of the council-manager government. This government would become a "great business enterprise," its people its "stockholders," and its leaders "not . . . partisan[] . . . but . . . men who are skilled in business management and social science."⁵⁰

This rosier view of city governance found an unlikely ally in the urban elite, whose rationale for reform was a bit less optimistic. City elites joined with Progressives to weaken mayoralties, likely for one of two reasons. First, "Anglo, middleclass neighborhoods" tended to be the "good government's beneficiaries" over lower-income ethnic and minority groups.⁵¹ Second, more elite residents may have harbored "paternalistic and nativist sentiments."⁵² Such reformers sought to stymie the will of urban voters who, by percentage, were increasingly newly arrived immigrant populations.⁵³ They set toward this goal by fragmenting the authority of elected officials and increasing the authority of commissions and city managers—technocratic positions subject to appointment and shielded from the whims of voters.⁵⁴

Whether the result of good governance supporters or antimajoritarian adherents, council-manager governments have weakened the office of the mayor. A significant percentage of cities have a council-manager system of government. In 2006, 55% of city governments were council-manager, an increase of seven percentage points from 1996.⁵⁵ Thirty-four percent of cities were mayor-council.⁵⁶ Even cities that have a strong mayor government have

47. See Morris, *supra* note 31, at 963.

48. Schragger, *supra* note 18, at 2547-48.

49. See *supra* Introduction.

50. Schragger, *supra* note 18, at 2548 (quoting Harold Wolman, *Local Government Institutions and Democratic Governance*, in THEORIES OF URBAN POLITICS 135, 138-39 (David Judge et al. eds., 1995)).

51. Wood, *supra* note 39, at 216 (quoting AMY BRIDGES, MORNING GLORIES: MUNICIPAL REFORM IN THE SOUTHWEST 11 (1997)).

52. Schragger, *supra* note 18, at 2571.

53. See *id.*

54. See *id.*

55. *Forms of Municipal Government*, *supra* note 37.

56. *Id.*

often undercut the powers of the mayor.⁵⁷ The governing structures of cities often reflect strong and weak mayor governments “structurally drift[ing] toward one another” to form the hybrid adapted cities.⁵⁸

B. Trends in, and Federalization of, Local Law Enforcement

Recent events have focused a great deal of attention on policing and law enforcement oversight. Much has been written, and much more will be, on the relationship between minority populations and police officers. The tragedies of the past few years are exemplars of larger trends in the practices of policing. Each year, millions of people are arrested or pulled over in traffic stops or frisked, and hundreds of these people are killed during their encounters with police.⁵⁹ The latter number has not fallen even in the wake of increased attention in the aftermath of the Ferguson violence and protests.⁶⁰ And members of minority populations—particularly African Americans—continue to die from police violence at a disproportionately high level.⁶¹ But these incidents, tragic exemplars that they may be, beg to be contextualized within a number of other dramatic developments in municipal governance.

First, as cities have increasingly entered bankruptcy and state receivership or otherwise endured financial stress, they have increasingly stretched thin their law enforcement resources.⁶² Poorer cities with the highest crime rates are also the most underpoliced cities.⁶³ What’s more, underpoliced—and often more dangerous—cities pay their law enforcement officers less in salary, benefits, and pension contributions than do overpoliced or stable cities.⁶⁴ And cities like Camden, New Jersey and Stockton have even cut the size of their

57. Schragger, *supra* note 18, at 2549.

58. Wood, *supra* note 39, at 216; see also Carol Ebdon & Peter F. Brucato, Jr., *Government Structure in Large U.S. Cities: Are Forms Converging?*, 23 INT'L J. PUB. ADMIN. 2209, 2211 (2000).

59. Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 911 (2015).

60. Carl Bialik, *The Police Are Killing People as Often as They Were Before Ferguson*, FIVETHIRTYEIGHT (July 7, 2016, 7:02 PM), <http://53eig.ht/29qlb9m>.

61. *Id.* African Americans make up approximately 30% of victims of fatal police violence in the United States and 13% of the U.S. population. *Id.*

62. The relationship between municipal insolvency and law enforcement deficiencies is a close one. As the San Bernardino city attorney warned residents after cuts to police department funding: “Lock your doors and load your guns.” Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1120 (2014) (quoting Ian Lovett, *A Poorer San Bernardino, and a More Dangerous One, Too*, N.Y. TIMES (Jan. 14, 2013), <http://nyti.ms/11vGhdL>).

63. See *id.* at 1161.

64. *Id.* at 1162.

police forces in the face of insolvency over the past few years despite the fact that violent crime rates have risen.⁶⁵ As a result, police departments in our most dangerous and impoverished cities tend to be disproportionately overworked, underpaid, inexperienced, and concentrated on emergency response instead of prevention and community policing.⁶⁶ It is likely no coincidence that, when officers describe their daily life as a “war zone,”⁶⁷ they are primed to respond dramatically when on the job.

Next, as cities face economic struggles, “cash-strapped municipalities” have sought to increase revenue through policing.⁶⁸ In particular, municipalities raise funds by imposing fees on arrestees, privatizing probation services, and using extensive civil forfeiture practices.⁶⁹ Accordingly, law enforcement officers are expected to carry out the same public safety functions with fewer resources while also being encouraged to make additional arrests and seizures to mitigate shortfalls in the city budget.

Perhaps just as important a development, however, is the degree to which control over local law enforcement has been removed from local hands. Of course, policing has been a quintessentially local matter since the Founding,⁷⁰ and this understanding has largely persevered.⁷¹ Public safety represents one of the highest expenditures for municipalities. The average municipal police

65. *Id.* at 1163. For an extensive documentation of the effect of the recession and economic downturn on city police staffing, see U.S. DEP’T OF JUSTICE, THE IMPACT OF THE ECONOMIC DOWNTURN ON AMERICAN POLICE AGENCIES (2011), http://www.ncdsv.org/images/COPS_ImpactOfTheEconomicDownturnOnAmericanPoliceAgencies_10-2011.pdf.

66. Anderson, *supra* note 62, at 1163.

67. *Id.* (quoting John Rudolf, *Chris Christie Pushes Camden Police to Disband, Despite Questions over New Plan’s Finances*, HUFFINGTON POST (Nov. 19, 2012, 2:38 AM ET), http://www.huffingtonpost.com/2012/11/19/chris-christie-camden-police_n_2025372.html).

68. *Developments in the Law—Policing*, *supra* note 27, at 1714.

69. *See id.* at 1726-33 (exploring each of these three phenomena in more detail).

70. Alexander Hamilton once remarked that Congress may not “superintend[] the police of the city of Philadelphia because they are not authorised to regulate the police of that city.” ALEXANDER HAMILTON, *Opinion on the Constitutionality of an Act to Establish a National Bank* (Feb. 23, 1791), in SELECTED WRITINGS AND SPEECHES OF ALEXANDER HAMILTON 248, 251 (Morton J. Frisch ed., 1985) (emphasis omitted).

71. *See Printz v. United States*, 521 U.S. 898, 933 (1997) (prohibiting the federal government from commandeering state and local law enforcement); *United States v. Lopez*, 514 U.S. 549, 564 (1995) (defending traditional state and local control of criminal law enforcement against federal overreach); *All. to End Repression v. City of Chicago*, 237 F.3d 799, 802 (7th Cir. 2001) (criticizing “federal judicial micromanagement of local investigations” as undermining federalism and infringing on “the prerogatives of local government”). *See generally* John S. Baker, Jr., *State Police Powers and the Federalization of Local Crime*, 72 TEMP. L. REV. 673, 690-94, 712-13 (1999) (explaining the historical and pragmatic bases for local control over law enforcement).

department has an operating budget of approximately \$4.4 million, with a nationwide aggregate of more than \$50 billion spent annually.⁷²

But the federal government has increasingly found subtle ways to commandeer local law enforcement, most of which are being used to further increase the number of arrests carried out.⁷³ Community Oriented Policing Services (COPS) federal grants allow local law enforcement to purchase additional equipment or hire more personnel.⁷⁴ The Violence Against Women Act's Grants to Encourage Arrest Policies and Enforcement of Protection Orders encourage implementation of "pro-arrest programs and policies" in order to fight domestic violence.⁷⁵ Section 287(g) of the Immigration and Nationality Act allows the Secretary of Homeland Security to deputize local law enforcement personnel to act as federal immigration officials.⁷⁶ And the Homeland Security Grant Program allocates hundreds of millions of federal dollars to state and local governments to fight terrorism, often in the form of militarized weapons and resources.⁷⁷

The upshot is that, as cities develop more incentives to rely upon policing and the federal government continues to find subtle ways to exert control over

72. Harmon, *supra* note 59, at 937 (citing BRIAN A. REAVES, U.S. DEP'T OF JUSTICE, NCJ 231174, LOCAL POLICE DEPARTMENTS, 2007, at 10 (2010)). These numbers do not include capital expenditures. *Id.* at 937 n.271.

73. *Id.* at 912 ("[F]ederal public safety programs . . . seek to expand and shape police conduct. . . . Such programs affect coercion costs because they increase local policing, and that policing involves coercion."); *id.* at 913 ("Several federal programs promote arrests, sometimes expressly.").

74. See *id.* at 898-99 (citing William N. Evans & Emily G. Owens, *COPS and Crime*, 91 J. PUB. ECON. 181, 193 (2007), which concludes that COPS grants led to an increase in the size of police forces, though not to the degree intended). The COPS program was created in 1994, with the passage of the Violent Crime Control and Law Enforcement Act. For background, see *Organization, Mission and Functions Manual Office of Community Oriented Policing Services*, U.S. DEP'T JUST., <https://www.justice.gov/jmd/organization-mission-and-functions-manual-office-community-oriented-policing-services> (last visited Feb. 2, 2017).

75. Harmon, *supra* note 59, at 913-14 (quoting 42 U.S.C. § 3796hh(b)(1) (2012)). For a critique of this program, see Benjamin P. Foster, *Norms and Costs of Government Domestic Violence Policies: A Critical Review*, 32 J. FAM. & ECON. ISSUES 140, 147-48 (2011).

76. Harmon, *supra* note 59, at 915 (citing 8 U.S.C. § 1357(g) (2012)). For a general look at local law enforcement and immigration in the midst of federalism concerns, see Huyen Pham, *The Constitutional Right Not to Cooperate?: Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373 (2006).

77. Harmon, *supra* note 59, at 918-19 (citing 6 U.S.C. §§ 604-605 (2012)); see also Stephen A. Morreale & David E. Lambert, *Homeland Security and the Police Mission*, 6 J. HOMELAND SECURITY & EMERGENCY MGMT. 1, 13 (2009); Matthew C. Waxman, *Police and National Security: American Local Law Enforcement and Counterterrorism After 9/11*, 3 J. NAT'L SECURITY L. & POL'Y 377, 388 (2009). For a breakdown of overall federal funding, see Alicia Parlapiano, *The Flow of Money and Equipment to Local Police*, N.Y. TIMES (Dec. 1, 2014), <http://nyti.ms/1AlzaOq>.

local law enforcement,⁷⁸ the number of interactions between police and citizen populations will increase, as will the number of potential civil rights violations. Perhaps more importantly, however, the mechanisms for oversight and accountability become contorted as multiple actors seize control over the same police departments.

II. Mayoral Power and Redesigning Law Enforcement Oversight

Part I provided the raw materials of local governmental design and a broad survey of the problems facing law enforcement. This Part shows how governmental design choices—particularly strengthening mayoral power—can mitigate such problems. It explains how centralized executive power can provide relief in three ways: by supporting the efficacy of litigation efforts, by improving the representation of minority populations in positions of municipal leadership and law enforcement, and by increasing democratic dynamism and helping cities find their voices in the midst of high rates of violence and explosive interactions between citizens and police.

Before examining each of these design choices in detail, it is worth exploring the primary counterargument to this Note's suggestion: that remedies to civil rights violations can be pursued effectively independent of structural changes in city government. Bringing a lawsuit seems ostensibly easier than altering a city charter.⁷⁹ But individual litigation efforts are ill suited for the task of preventing or remedying civil rights violations by local law enforcement.

Take, for instance, post-injury civil suits for damages.⁸⁰ In the wake of *Monell v. Department of Social Services*,⁸¹ § 1983 claims against municipalities and

78. For an extensive investigation into how federal involvement in law enforcement priorities and funding alters the behavior of local police, see generally INIMAI CHETTIAR ET AL., BRENNAN CTR. FOR JUSTICE, REFORMING FUNDING TO REDUCE MASS INCARCERATION (2013).

79. Though the process of charter amendment is difficult, it is by no means impossible. Amendments are made more probable by the fact that they can often be pursued through a variety of methods. Take cities in Minnesota as an example. Charter cities can amend their governing documents through amendments proposed by a charter commission, MINN. STAT. § 410.12(1) (2015), a citizen petition, *id.* § 410.12(1)-(3), or an ordinance that originates in the city council, *id.* § 410.12(5). See also LEAGUE OF MINN. CITIES, HANDBOOK FOR MINNESOTA CITIES ch. 4, at 15-18 (2015), www.lmc.org/media/document/1/chapter04.pdf.

80. For a survey of the various remedies available via litigation, see Matthew V. Hess, Comment, *Good Cop-Bad Cop: Reassessing the Legal Remedies for Police Misconduct*, 1993 UTAH L. REV. 149. Those remedies include: civil actions under Title 42 of the U.S. Code, including § 1983 (actions for deprivation of civil rights), § 1985(3) (actions for conspiracy to deprive of civil rights), and § 1988(b) (attorney's fees in civil rights claims); federal criminal actions under Title 18, including § 242 (penalties for federal civil rights violations) and § 241 (penalties for conspiracies to violate federal civil rights); various

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police departments for officer misconduct are technically possible but such claims are beset by practical obstacles.

First, civil suits against institutional actors often require plaintiffs to make out a number of difficult elements. There are, doctrinally speaking, a number of potential ways to make out a *Monell* claim.⁸² A plaintiff may (1) identify an unconstitutional officially promulgated policy⁸³—a fairly rare occurrence,⁸⁴ (2) point to an unwritten but pervasive and established custom or practice or a “gap in expressed policies”;⁸⁵ (3) describe a failure on the part of the entity to train, supervise, discipline, or screen its employees;⁸⁶ or (4) identify a decision made by a final policymaker for the department or municipality.⁸⁷

In practice, many of these routes are closed off for plaintiffs. “It has been roughly three decades since the [Supreme] Court has ruled that a municipal policy caused a constitutional violation,” notes Fred Smith in a 2016 exploration of local sovereign immunity’s impact on remedies for constitutional violations.⁸⁸ And no municipal custom has been found by the Court to have caused a constitutional violation since *Monell*.⁸⁹

Accordingly, the only type of *Monell* suit with any traction has been one for an entity’s failure to train or supervise, especially in the wake of *City of Canton v. Harris*.⁹⁰ There, the Supreme Court considered the claim of an arrestee who, when brought to a police station, repeatedly collapsed to the

state law criminal actions; and state law civil remedies, including tort claims for assault, battery, false arrest, and false imprisonment. Hess, *supra*.

81. 436 U.S. 658, 695-701 (1978) (holding that a “person” for the purposes of § 1983 includes municipalities and city departments).
82. For the framework, see *City of Canton v. Harris*, 489 U.S. 378, 388-92 (1989); and Karen M. Blum, *Making Out the Monell Claim Under Section 1983*, 25 TOURO L. REV. 829, 829-30 (2009).
83. Blum, *supra* note 82, at 829 (citing David Jacks Achtenberg, *Taking History Seriously: Municipal Liability Under 42 U.S.C. § 1983 and the Debate over Respondeat Superior*, 73 FORDHAM L. REV. 2183, 2188 (2005)).
84. See Blum, *supra* note 82, at 830 (“There are not many newly written policies that are unconstitutional on their face....”).
85. *Dixon v. County of Cook*, 819 F.3d 343, 348 (7th Cir. 2016) (quoting *Thomas v. Cook Cty. Sheriff’s Dep’t*, 604 F.3d 293, 303 (7th Cir. 2010)).
86. Blum, *supra* note 82, at 830 (citing *Harris*, 489 U.S. 378).
87. *Id.* (citing *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988)).
88. Fred Smith, *Local Sovereign Immunity*, 116 COLUM. L. REV. 409, 414 (2016) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 485 (1986), as the last instance of a successful suit).
89. *Id.* (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 173-74 (1970), as a pre-*Monell* case remanded to the district court to evaluate the existence of a state-enforced custom).
90. 489 U.S. at 387.

floor.⁹¹ Officers responded by leaving her lying on the ground to prevent further falls until she was later released from custody, taken to a nearby hospital, and diagnosed with severe emotional ailments.⁹² Though the city's policies posed no constitutional issue—they mandated that law enforcement hospitalize an arrestee in need of medical attention—the Court held that a failure to train an officer to respond expeditiously in such situations could also be the basis of a § 1983 suit.⁹³ But, and this is critical, the city or department must have displayed *deliberate indifference* to arrestees' rights in its failure to train employees.⁹⁴ Such a showing, as many have noted, is incredibly difficult.⁹⁵

Second, post-injury suits for damages will often become intractably ensnared in the web of constructive local sovereign immunity.⁹⁶ Local governments do not officially receive the same sovereign immunity under the Eleventh Amendment as the states.⁹⁷ But as Smith has noted, the combination of *Monell*'s restrictions with the lack of vicarious liability of local governments for their agents⁹⁸ and the broad prosecutorial, judicial, legislative, and qualified immunities granted to local government officials in their individual capacities⁹⁹ "render[s] specific classes of [local] governmental defendants insusceptible to suit."¹⁰⁰

Appeals to equitable relief nudge us little further. The Supreme Court has placed prophylactic injunctive relief against municipal policing policy beyond the reach of litigants; as one commentator has noted, there is a "de facto

91. *Id.* at 381.

92. *Id.*

93. *Id.* at 386-87.

94. *Id.* at 388.

95. For an interesting introduction to this issue, see Rosalie Berger Levinson, *Who Will Supervise the Supervisors?: Establishing Liability for Failure to Train, Supervise, or Discipline Subordinates in a Post-Iqbal/Connick World*, 47 HARV. C.R.-C.L. L. REV. 273 (2012). As Levinson notes by reference to case law, perhaps the best chance of imposing supervisory liability for police brutality comes when there is direct failure by superiors to intervene contemporaneously with the violation. See *id.* at 278-79, 279 n.36 (citing Krout v. Goemmer, 583 F.3d 557, 565-66 (8th Cir. 2009); Fogarty v. Gallegos, 523 F.3d 1147, 1162 (10th Cir. 2008); and Velazquez v. City of Hialeah, 484 F.3d 1340, 1342 (11th Cir. 2007)).

96. See generally Smith, *supra* note 88 (making the case that various factors align to generally shield local governments and officials from civil liability).

97. *Id.* at 412 & n.12 (collecting cases and sources).

98. *Id.* at 411.

99. *Id.* at 411, 415 n.23.

100. *Id.* at 416.

prohibition against injunctive relief in police abuse cases.”¹⁰¹ This famously includes attempts to prohibit police from using the chokehold as a law enforcement tactic.¹⁰² In *City of Los Angeles v. Lyons*, African American victim Adolph Lyons was placed in a chokehold by police officers after a traffic stop.¹⁰³ The maneuver eventually caused him to pass out; when he awoke, he was lying face down and spitting up blood.¹⁰⁴ Lyons discovered that sixteen suspects had died as a result of the Los Angeles Police Department’s chokehold practice.¹⁰⁵ But when he brought suit to enjoin the practice, the Supreme Court denied the injunction, holding that Lyons would not only need to allege that he would encounter the police again but would also need to show either that police officers always choked any citizen during an encounter or that the city had ordered or authorized in that instance the use of the chokehold.¹⁰⁶ *Lyons*’s insurmountably high bar has stood through time to victims like Eric Garner, who died in Staten Island in 2014 after he was placed in a chokehold by police during an arrest on suspicion of selling loose cigarettes.¹⁰⁷

The DOJ may criminally prosecute under 18 U.S.C. § 242. This provision makes it a federal crime for a police officer to unconstitutionally inflict bodily injury or death.¹⁰⁸ But the conversion of complaints into criminal charges has

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101. G. Flint Taylor, *A Litigator’s View of Discovery and Proof in Police Misconduct Policy and Practice Cases*, 48 DEPAUL L. REV. 747, 772 (1999).
 102. *City of Los Angeles v. Lyons*, 461 U.S. 95, 111-13 (1983) (denying an injunction on standing grounds). While this is not to say that *Lyons* barred victims of police misconduct from pursuing damages, the chilling temporal ripples stretching from *Lyons* to Eric Garner have not gone unnoticed. See, e.g., Ian Millhiser, *How the Supreme Court Helped Make It Possible for Police to Kill by Chokehold*, THINKPROGRESS (Dec. 4, 2014, 2:09 PM), <http://thinkprogress.org/justice/2014/12f/04/3599605/how-the-supreme-court-helped-make-it-possible-for-police-to-kill-by-chokehold>. See generally ERWIN CHEMERINSKY, THE CASE AGAINST THE SUPREME COURT 225-27 (2014) (raising a general critique of *Lyons* and its effect on civil rights remedies).
 103. *Lyons*, 461 U.S. at 97-98; Millhiser, *supra* note 102.
 104. Millhiser, *supra* note 102.
 105. *Id.*
 106. *Lyons*, 461 U.S. at 105-06.
 107. Millhiser, *supra* note 102.
 108. Section 242 requires that such a deprivation be “willful[],” 18 U.S.C. § 242 (2015), which can be an especially high bar given that officers may also enjoy qualified immunity. See *Wilson v. Layne*, 526 U.S. 603, 605-06, 615-16 (1999); see also Paul Hoffman, *The Feds, Lies, and Videotape: The Need for an Effective Federal Role in Controlling Police Abuse in Urban America*, 66 S. CAL. L. REV. 1453, 1506-07 (1993). And the degree of force necessary to violate the Fourth Amendment is itself fairly high under Supreme Court precedent. See *Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (noting that deference is given to officers due to the “split-second judgments” that need to be made in “tense, uncertain, and rapidly evolving” situations and stating that “[n]ot every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, . . . violates the Fourth Amendment” (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973))).

historically hovered at or below 1%.¹⁰⁹ What's more, law enforcement officials are protected during criminal prosecutions by a number of procedural advantages.¹¹⁰ In particular, many state and local governments have enacted Law Enforcement Officers' Bills of Rights, which provide affirmative interrogation protections for law enforcement officers, including limits on the time of day officers may be questioned, the number of interrogators that may be present, and the use of certain threatening or abusive language.¹¹¹

All of these difficulties are not to deny the importance of continued efforts on the part of lawyers to engage in what one commentator has called "structural reform litigation."¹¹² One important success is the litigation challenging the stop-and-frisk policy employed by the New York City Police Department (NYPD). In *Floyd v. City of New York*, Judge Shira A. Scheindlin determined that local law enforcement practices violated both the Fourth Amendment and the Fourteenth Amendment rights of residents.¹¹³ This result was certainly contrary to then-Mayor Michael Bloomberg's view of NYPD tactics, which he defended as reasonable and necessary to provide a safer city.¹¹⁴

But while *Floyd* was a large victory, it is a unique case and likely outlier. First, much of Judge Scheindlin's decision was based upon extensive data and statistics put forward during litigation that proved the equal protection violation at the center of the suit.¹¹⁵ It is difficult to imagine that most litigants, even in public cases, will be able to summon the type of extensive, convincing evidence at issue in *Floyd*. Second, *Floyd* was a substantial class action that grew out of a decade of litigation by the Center for Constitutional Rights—litigation beginning with a prior case¹¹⁶ that led to extensive documentation of stop-and-

109. Rushin, *supra* note 30, at 3203 & fig.1. This draws from data gathered during the 1980s. *Id.* With the passage of structural reform in the 1990s, see *infra* Part II.B, the use of this cause of action likely became even less common, see Rushin, *supra* note 30, at 3203-04.

110. Kate Levine, *Police Suspects*, 116 COLUM. L. REV. 1197, 1200 (2016).

111. *Id.*

112. Rachel A. Harmon, *Promoting Civil Rights Through Proactive Policing Reform*, 62 STAN. L. REV. 1, 3 (2009) (describing the relative inefficacy of such litigation "in promoting reform in law enforcement agencies"). It has been posited, for instance, that civil rights lawyers and advocates' flooding the DOJ's mailboxes with complaints has been one of the more effective tools in sparking DOJ investigations under § 14141. See Rushin, *supra* note 30, at 3219.

113. 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013).

114. See *id.* at 606; see also Jessica L. Fangman, *Stop the "Stop and Frisk?": How Floyd v. City of New York Will Limit the Power of Law Enforcement Across the Nation*, 19 LOY. PUB. INT. L. REP. 50, 52 (2013) (detailing Bloomberg's response to the criticism of stop-and-frisk).

115. See *Floyd*, 959 F. Supp. 2d at 589-624 (analyzing the relevant evidence).

116. This case was *Daniels v. City of New York*, No. 99 Civ. 1695(SAS), 2007 WL 2077150 (S.D.N.Y July 16, 2007). See *Daniels, et al. v. the City of New York*, CTR. FOR CONST. RTS.

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frisk data.¹¹⁷ This is not to push back against *Floyd's* success but rather to point out how many moving parts must align to make an otherwise Sisyphean bit of lawyering a practicable route to real civil rights reform. The more realistic and repeatable route to preserving civil rights at the municipal level is a matter of institutional design: how municipal power is divided and how municipal leadership is determined.¹¹⁸

A. Litigation and Remedial Control

The primary mechanism of structural litigation against law enforcement is a provision already mentioned earlier in this Note: 42 U.S.C. § 14141, which allows the DOJ to “bring suits for equitable remedies against police departments that engage in a pattern or practice of unconstitutional police misconduct.”¹¹⁹ Political support for § 14141 grew in the wake of the Rodney King beating;¹²⁰ the measure was pursued especially by the combined efforts of Democratic representatives and the American Civil Liberties Union of Southern California as a means of structural police reform.¹²¹ Though the

(Oct. 1, 2012), <http://ccrjustice.org/home/what-we-do/our-cases/daniels-et-al-v-city-new-york>.

117. *Floyd, et al. v. City of New York, et al.*, CTR. FOR CONST. RTS. (Nov. 18, 2016), <http://ccrjustice.org/home/what-we-do/our-cases/floyd-et-al-v-city-new-york-et-al>.
118. For surveys of institutional-design-based approaches to local government reform, see, for example, Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095 (2008); and Michelle Wilde Anderson, *Democratic Dissolution: Radical Experimentation in State Takeovers of Local Governments*, 39 FORDHAM URB. L.J. 577 (2012) [hereinafter Anderson, *Democratic Dissolution*]. This general debate harkens to a larger discussion about problem-solving, through either litigation or institutional design. Cf., e.g., Michael C. Dorf, *Legal Indeterminacy and Institutional Design*, 78 N.Y.U. L. REV. 875, 965-70 (2003) (explaining the general tradeoff between and debate about protecting rights on the back end through judicial review or prophylactically through changes in front-end regulation).
119. Harmon, *supra* note 112, at 3. The full toolkit of the DOJ’s enforcement power includes 18 U.S.C. § 242 (2015) (making it a crime for an agent acting under color of law to deprive a person of constitutional or federal statutory rights); 42 U.S.C. § 14141 (2015) (the “police misconduct provision”); Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (prohibiting patterns of discrimination on the basis of race, color, national origin, sex, or religion, including use of racial slurs, unjustified arrests, and discriminatory traffic stops); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12165 (prohibiting discrimination in interrogation or law enforcement practices on the basis of physical or mental impairment); and section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (2015) (prohibiting the same). See *Addressing Police Misconduct Laws Enforced by the Department of Justice*, U.S. DEP’T JUST., <http://www.justice.gov/crt/addressing-police-misconduct-laws-enforced-department-justice> (last updated Aug. 6, 2015).
120. See DARRELL L. ROSS, CIVIL LIABILITY IN CRIMINAL JUSTICE 183-85 (6th ed. 2013).
121. Rushin, *supra* note 30, at 3213 (citing *Police Brutality: Hearings Before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary*, 102d Cong. 27, 61 (1991))

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passage of § 14141 has been hailed as “the most important legal initiative of the past twenty years in the sphere of police regulation,”¹²² it has a somewhat spotty record in practice.¹²³ Nonetheless, for better or for worse, § 14141 is our “new paradigm of police accountability.”¹²⁴ Strong mayors are indispensable in avoiding toothless enforcement efforts, particularly in the ways in which they can both initiate and guide such structural reform litigation.

1. Initiation

Despite the potential of § 14141 to induce change, the mechanism is rarely used. One estimate finds that approximately 1% of all large police departments have been investigated under the statutory authority, to say nothing of actual subsequent enforcement action.¹²⁵ This low investigation rate is exacerbated by the lack of cohesion in the metrics the DOJ uses in the cities that it selects¹²⁶ and the absence of any clear guidance on how investigation determinations are made. Particularly with respect to the latter, the DOJ has previously described its selection process as such:

We exercise our discretion to prioritize certain investigations or certain types of allegations. In general, we consider a variety of factors, including the seriousness of the alleged misconduct, the type of misconduct alleged, the size and type of

(statements of Rep. Craig A. Washington, Member, Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary; and Paul Hoffman, Legal Director, ACLU Foundation of Southern California)).

122. William J. Stuntz, *The Political Constitution of Criminal Justice*, 119 HARV. L. REV. 780, 798 (2006); *see also* SAMUEL WALKER, THE NEW WORLD OF POLICE ACCOUNTABILITY 33 (2005) (noting that by 2004, the DOJ “had reached settlements with 19 law enforcement agencies, either through consent decrees, memoranda of understanding, or settlement letters”).
123. *See* Harmon, *supra* note 112, at 21. As of the time of the publication of this Note, Alabama Senator Jeff Sessions has been nominated but not confirmed to be U.S. Attorney General under President Donald Trump. Senator Sessions’s leadership of the DOJ may fundamentally change the department’s willingness to engage in oversight of and investigation into policing practices and substantially reduce the use of § 14141. Senator Sessions admitted as much during his confirmation hearing, noting that consent decrees “undermine the respect for police officers and create an impression that the entire department is not doing their work consistent with fidelity to law and fairness, and we need to be careful before we do that.” John Fritze, *Jeff Sessions Voices Concern About Use of Consent Decrees for Police*, BALT. SUN (Jan. 10, 2017, 6:40 PM), <http://fw.to/mjiR5lL>. Such a move would unfortunately undercut the accountability and reform of local police forces.
124. Samuel Walker, *The New Paradigm of Police Accountability: The U.S. Justice Department “Pattern or Practice” Suits in Context*, 22 ST. LOUIS U. PUB. L. REV. 3, 6 (2003).
125. Harmon, *supra* note 112, at 52.
126. *Id.* at 53 (noting that cities under investigation tend to vary by size, type, and geographic region).

[the] law enforcement agency, the amount of detailed, credible information available and the potential precedential impact.¹²⁷

This type of general language provides little incentive for compliance given the lack of predictability of enforcement. Accordingly, § 14141 has little power as a front-end inducement for noncompliant cities to adopt better practices and policies.¹²⁸

This type of uncertainty is nothing new to government-initiated enforcement regimes. Resources are scarce, and political pressures are high. Accordingly, relying on the government as the litigation gatekeeper might produce situations where the government rejects meritorious cases simply by underlitigating them.¹²⁹ One of the critical differences between other enforcement regimes—like the False Claims Act or employment discrimination laws—and § 14141, however, is that the latter does not contain a private right of action.¹³⁰ Accordingly, the primary role mayors can play in helping initiate these investigations is that of a centralized bully pulpit to capture the attention of the DOJ.

In fact, this method has been the choice of a few executive mayors who have used their authority to willingly initiate DOJ investigations into their own police departments. In Cleveland, policing violations had become so rampant that the Ohio Attorney General remarked, “[W]e are dealing with a systemic failure in the Cleveland Police Department. Command failed.

127. U.S. Dep't of Justice, Police Misconduct Pattern or Practice Program 3 (2001), <http://web.law.columbia.edu/sites/default/files/microsites/contract-economic-organization/files/10-SPL-Pattern%20or%20Practice%20Program%20FAQ.pdf>.

128. See Harmon, *supra* note 112, at 54.

129. An easy analogy is to the False Claims Act (FCA). Similar to § 14141 suits, the DOJ controls much of the gatekeeping function of bringing FCA claims. In the context of the FCA, there are prevalent “concerns about the capacity and will of agencies to optimally perform gatekeeper duties, whether because of limited ability to gauge case merit, pursuit of political rewards, or imperfect managerial control over line-level personnel.” David Freeman Engstrom, *Public Regulation of Private Enforcement: Empirical Analysis of DOJ Oversight of Qui Tam Litigation Under the False Claims Act*, 107 NW. U. L. REV. 1689, 1692 (2013). The result, critics allege, is a seemingly random enforcement regime. *Id.* at 1694-95.

130. Compare Myriam E. Gilles, *Reinventing Structural Reform Litigation: Deputizing Private Citizens in the Enforcement of Civil Rights*, 100 COLUM. L. REV. 1384, 1386-87, 1389 (2000) (advocating for a private right of action to supplement § 14141 enforcement), and Kami Chavis Simmons, *Cooperative Federalism and Police Reform: Using Congressional Spending Power to Promote Police Accountability*, 62 ALA. L. REV. 351, 373-74 (2011) (summarizing criticisms of § 14141’s lack of a private right of action), with David Freeman Engstrom, *Agencies as Litigation Gatekeepers*, 123 YALE L.J. 616, 629 (2013) (noting private rights of action in securities, antitrust, and job discrimination litigation), and David Freeman Engstrom, *Harnessing the Private Attorney General: Evidence from Qui Tam Litigation*, 112 COLUM. L. REV. 1244, 1253-56, 1270-72 (2012) (discussing features of legal frameworks, including FCA *qui tam* provisions, that provide for private rights of action).

Communications failed.”¹³¹ The official request for DOJ review of Cleveland policing policies, however, came from the city’s executive, Mayor Frank Jackson.¹³² Moreover, the finalized consent decree centered a great deal on the participation and leadership of the Mayor’s Office. The agreement tasked the Mayor’s Office with, among other roles, working with the DOJ to appoint a compliance monitor, proposing a charter amendment for voter approval, and establishing a municipal system of complaint tracking.¹³³

In Baltimore, resolution after a § 14141 action is following a similar path. In the wake of the death of Freddie Gray, Mayor Stephanie Rawlings-Blake formally requested DOJ intervention pursuant to § 14141.¹³⁴ She noted, “I needed to look for any and all resources I could bring to my city to get this right for my community.”¹³⁵ Particularly helpful in the case of Baltimore is that the Mayor’s Office has used its authority to develop a repeat-player relationship with the DOJ, including past collaborations in reform efforts with the DOJ’s COPS program.¹³⁶ Moreover, the Mayor’s Office leveraged its extensive information network and bureaucratic control to engage in public safety town halls.¹³⁷ It also eliminated a controversial police unit repeatedly accused in citizen complaints of harassment and use of force, and it developed additional steps for improvement in municipal policing.¹³⁸ This development of collaboration and trust, along with the lowering of potential investigation costs due to the centralization of information in the Mayor’s Office, has

131. CIVIL RIGHTS DIV. & N. DIST. OF OHIO U.S. ATT’Y’S OFFICE, U.S. DEP’T OF JUSTICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE (2014), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/04/cleveland_division_of_police_findings_letter.pdf (quoting Mike DeWine, Ohio Att’y Gen., Statement on Officer-Involved Shooting of Timothy Russell and Malissa Williams (Feb. 5, 2013), <http://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/Cleveland-Officer-Involved-Shooting-Investigation/Officer-Involved-Shooting-Statement-Morning-02-05.aspx>).

132. *Id.* at 8-9 (citing Leila Atassi, *Cleveland Mayor Frank Jackson Seeks Outside Review of All Future Use of Deadly Force Cases*, CLEVELAND.COM (Dec. 27, 2012, 2:40 PM), <http://s.cleveland.com/YMyIXAm>).

133. See Patrick Cooley, *DOJ Consent Decree: How Long Does the Cleveland Police Department Have to Implement Changes?*, CLEVELAND.COM (May 26, 2015, 4:59 PM), <http://s.cleveland.com/wKrqjVg>.

134. Lynh Bui & Dana Hedgpeth, *Baltimore Mayor Seeks Justice Review for Police Dept.; State of Emergency Lifted*, WASH. POST (May 6, 2015), http://wpo.st/j_mD2.

135. *Id.*

136. See Press Release, Office of the Mayor, City of Balt., Mayor Rawlings-Blake Requests Federal Investigation of Baltimore Police Department (May 6, 2015), <http://mayor.baltimorecity.gov/news/press-releases/2015-05-06-mayor-rawlings-blake-requests-federal-investigation-baltimore-police>.

137. *See id.*

138. *Id.*

rendered DOJ intervention likelier in cases where it may be warranted. This latter point is particularly salient, as the DOJ is often influenced by the “expenses of initiating and executing a full investigation” in making intervention determinations.¹³⁹

2. Resolution

Following through on a § 14141 consent decree poses its own set of problems, with serious questions remaining about the sustainability of consent decree-ordered reforms.¹⁴⁰ Once a § 14141 suit begins, a strong mayor can act with greater expedience and effectiveness to resolve law enforcement problems identified by the DOJ. In a mayor-council government, the authority to “appoint and dismiss the police chief” as well as the power to “prepare the police department’s budget” is usually lodged in the single personage of the mayor as chief executive.¹⁴¹ Compare this to a council-manager government, where personnel decisions are severed from budgetary decisionmaking regarding law enforcement: the former lies with the city manager, the latter with the council.¹⁴² Centralization of reform efforts helps solve what Rachel Harmon has identified as a false “unified rational actor” assumption.¹⁴³ Reform decisions, she notes, are usually diffuse across a range of “several important individuals, institutions, and constituencies.”¹⁴⁴ Cities have more legitimacy in reform commitments if the number of actors making such commitments can be reduced.¹⁴⁵

139. See Harmon, *supra* note 112, at 43.

140. Kami Chavis Simmons, *The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies*, 98 J. CRIM. L. & CRIMINOLOGY 489, 519 (2008); Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Police Misconduct: A Model State “Pattern or Practice” Statute*, 19 GEO. MASON U. C.R.L.J. 479, 481 (2009) (“Serious questions remain about whether reforms effected through litigation will be sustained once the consent decree or [memorandum of agreement] is terminated.”).

141. Harmon, *supra* note 112, at 45 n.136; accord Clayton P. Gillette & David A. Skeel, Jr., *Governance Reform and the Judicial Role in Municipal Bankruptcy*, 125 YALE L.J. 1150, 1188 & n.173 (2016).

142. Harmon, *supra* note 112, at 45 n.136.

143. *Id.* at 45.

144. *Id.*; see also Walker & Macdonald, *supra* note 140, at 495 (noting that fractured and splintered municipal departmentalism undercuts any force of incentives).

145. Ferguson has been a particularly stark example of this problem. In early 2016, Ferguson’s city council rejected a previously negotiated consent decree with the DOJ, voting instead to call for the DOJ to back down on several key provisions. In the wake of this move, the DOJ decried the action and began exploring legal actions to compel compliance. Aamer Madhani & Kevin Johnson, *Justice Department Threatens Legal Action Against Ferguson*, USA TODAY (Feb. 10, 2016, 12:48 PM EST), <http://usat.ly/1TbFSIf>; see also Complaint at 2, United States v. City of Ferguson, No. 4:16-cv-00180-CDP (E.D. Mo.

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Moreover, mayors already have incentives to lead the charge for reform in the wake of § 14141 consent decrees. “Section 14141 suits impose professional and political costs directly on those who have the most power to reshape a department: police chiefs and mayors.”¹⁴⁶ This is because mayors internalize the costs of this litigation, as a civil settlement may force a mayor to make the politically unpopular proposal of raising taxes or cutting services.¹⁴⁷

A city manager with decisionmaking authority over police reform increases agency costs. In a city, “citizens are a collective principal,” and elected officials, like mayors, are their agents.¹⁴⁸ Appointed officials, like city managers, are one step further afield, shielded from immediate control by the citizenry as the collective principal. The theory of incentivizing political actors through § 14141 liability is undercut in the case of city managers because, as bureaucratic actors, they are not subject to control by the voting public.

3. Words of caution

This is not to say that empowered mayors present a panacea for § 14141 enforcement. One of the largest issues with reform is the lack of information available to police and municipal leaders concerning the frequency and quality of civil rights suits lodged against law enforcement.¹⁴⁹ Police departments rarely have the resources to track lawsuits made against them, review litigation files, or implement subsequent reform.¹⁵⁰

Executive mayors have often stood against such information-gathering reform; the reforms can prove costly (and executive mayors usually propose the city’s budget) and electorally unpopular. Los Angeles, for instance, has been criticized on multiple occasions for its police department’s failure to implement data reforms.¹⁵¹ Michael Bloomberg, former mayor of New York City, resisted information-gathering efforts in the wake of settlements and

Feb. 10, 2016), <http://www.moed.uscourts.gov/sites/default/files/mdl/16-0180/0001.pdf> (alleging the city was unlikely to remedy police misconduct without judicial relief). Because authority in Ferguson is diffuse, no single member bears the electoral brunt of resident dissatisfaction with the broken deal.

146. Harmon, *supra* note 112, at 67. Rushin notes the natural converse: that civil litigation “only works if aggrieved parties regularly litigate and departments feel the financial consequences of this litigation, thus motivating them to change behaviors and policies.” Rushin, *supra* note 30, at 3202.

147. Harmon, *supra* note 112, at 46.

148. *Id.*

149. Joanna C. Schwartz, *Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking*, 57 UCLA L. REV. 1023, 1028 (2010).

150. *Id.*

151. *Id.* at 1057 & n.207.

likely did so for political reasons.¹⁵² And in one particularly clever bit of sidestepping, the mayor of Portland argued that such reform would be “a violation of . . . fiduciary responsibility’ to the city’s taxpayers because the findings of these investigations might result in higher settlements.”¹⁵³

That politicians tend toward politics is no shock. As disheartening as these lapses are, they should be considered final challenges to overcome in the effort toward stronger mayoral leadership, not fatal strikes against it. Moreover, the current lodging of police oversight in the federal system poses its own data-gathering problems, as the “federal model of promoting police accountability fails to encourage experimentation and information sharing among jurisdictions.”¹⁵⁴ While local governments may be imperfect sources of information and data reform, there is good reason to prefer the original laboratories of democracy¹⁵⁵—able to produce a patchwork of innovative, nimble solutions that can be tested and then replicated—to the sclerotic federal model.

B. Civic Engagement and Representativeness

Local governments in America are the country’s fundamental schools of democracy. They are where citizens learn to petition and vote, where neophytes first run for office and develop their political acumen. As Alexis de Tocqueville remarked, the local town meeting “bring[s] [liberty] within the people’s reach.”¹⁵⁶ At its core, the city is the stage for a population’s “democratic energy” and development of political life.¹⁵⁷

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152. Joanna C. Schwartz, *What Police Learn from Lawsuits*, 33 CARDozo L. REV. 841, 874 n.184 (2012); *see also* Schwartz, *supra* note 149, at 1057 n.209 (discussing similar considerations by the mayor of Portland).
153. Schwartz, *supra* note 149, at 1057 n.209 (alteration in original) (quoting Letter from Vera Katz, Mayor of Portland, to Gary Blackmer, City Auditor, Portland (Aug. 26, 2004)).
154. Simmons, *supra* note 130, at 376; *cf.* Kami Chavis Simmons, *New Governance and the “New Paradigm” of Police Accountability: A Democratic Approach to Police Reform*, 59 CATH. U. L. REV. 373, 405 (2010) (explaining a bottom-up and localized, democratic model of policing in contrast to a statist regulatory approach).
155. *See* New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (noting that states and local governments may “serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country”).
156. Frank M. Bryan, *Direct Democracy and Civic Competence: The Case of Town Meeting*, in CITIZEN COMPETENCE AND DEMOCRATIC INSTITUTIONS 195, 195 (Stephen L. Elkin & Karol Edward Soltan eds., 1999) (explaining de Tocqueville’s view that “[t]own-meetings are to liberty what primary schools are to science; they bring it within the people’s reach, they teach men how to use and how to enjoy it” (quoting 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 76 (Francis Bowen ed., Henry Reeve trans., Cambridge, Sever & Francis 1862))). As James Bryce noted, “[t]he town meeting has been not only the source but the school of democracy.” *Id.* (quoting 1 JAMES BRYCE, THE
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Yet the promise of local governments as the crucible of American democratic conscience is no longer matched by the reality of municipal democracies. Consider the case of Benton Harbor, Michigan. Once a thriving industrial city on the shores of Lake Michigan, the town has fallen victim to the Rust Belt decline, reduced to a “grim grid of housing projects, shuttered storefronts, boarded-up homes and junk-laden yards.”¹⁵⁸ The per capita income of Benton Harbor sits around \$10,000, and, like other poverty-stricken municipalities in Michigan, its population is dwindling.¹⁵⁹ The state’s governor appointed an emergency manager to help solve the city’s struggling conditions.¹⁶⁰ This appointment in turn stripped the Benton Harbor City Council (including the weak mayor) of all but three roles: gaveling in council meetings, gaveling out council meetings, and approving the minutes from the meeting.¹⁶¹ It should come as little surprise that, in November of that year, the winning mayoral candidate carried 681 votes to his opponent’s 673—in a city of about 10,000 people.¹⁶²

Benton Harbor is but one example of a state’s fundamental lack of faith in local government’s ability to raise itself from its own state of disrepair, in turn catalyzing an increase of democratic apathy. And apathy toward local government is no mere isolated incident. Low turnout in city elections represents a “crisis in American democracy.”¹⁶³ Recent estimates among large cities put the voting turnout rate at about 34%.¹⁶⁴ The number drops even lower when dealing with mayor-only elections.¹⁶⁵ Such low voter turnout has

AMERICAN COMMONWEALTH 626 (new ed. 1912). John Stuart Mill called the town meeting a “school of public spirit.” *Id.* (quoting JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 73 (Henry Regnery Co. 1962) (1861)).

157. Schragger, *supra* note 18, at 2571; see also 1 ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 318-21 (Francis Bowen ed., Henry Reeve trans., Cambridge, Sever & Francis 2d ed. 1863).

158. Jonathan Mahler, *Now That the Factories Are Closed, It's Tee Time in Benton Harbor, Mich.*, N.Y. TIMES MAG. (Dec. 15, 2011), <http://nyti.ms/1OXU6XK>.

159. *Id.*

160. *See id.*

161. Anderson, *Democratic Dissolution*, *supra* note 118, at 580; *The Rachel Maddow Show* (MSNBC television broadcast Apr. 19, 2011).

162. Stephanie Stang, *James Hightower Wins Benton Harbor Mayors Race, Incumbent Asks for Recount*, WNDU (Nov. 9, 2011, 6:32 PM), http://www.wndu.com/home/headlines/Cooke_Hightower_vying_for_mayors_office_in_Benton_Harbor_133493273.html.

163. See Zoltan L. Hajnal & Paul G. Lewis, *Municipal Institutions and Voter Turnout in Local Elections*, 38 URB. AFF. REV. 645, 645 (2003).

164. Wood, *supra* note 39, at 223. The highest turnout rate among all the cities surveyed was 67.5%. *Id.* at 223 tbl.2.

165. Neal Caren, *Big City, Big Turnout?: Electoral Participation in American Cities*, 29 J. URB. AFF. 31, 33 (2007). One study puts turnout in concurrent election jurisdictions at 55.73%
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a profound effect on municipal policy. Most salient for our discussion, low city election turnouts are directly correlated with the election of fewer minority politicians.¹⁶⁶

In this Subpart, this Note seeks to tease out the ways in which disempowerment of minority citizens and conflict with police and law enforcement officials is a story of political underrepresentation. And it also seeks to draw a line between that systemic underrepresentation problem and the more robust democratic responsiveness that can be embodied in the vigor of a democratically elected executive official.

1. Exit

Apathy's practical disenfranchisement of minority residents in cities has led some to give up the cause of a fix and focus attention elsewhere. This is what we might call the "exit" strategy of minority influence through democratic representation. Where turnout is low due to apathy fostered by structural barriers and perpetual defeatism, exit calls for voters to find submunicipal modes of political participation instead.

Erwin Chemerinsky and Sam Kleiner have noted that traditional citywide governance makes it "difficult for minorities to gain significant political representation."¹⁶⁷ Accordingly, minority representation in proportion to its majority population status must sometimes cede to "minority rule without sovereignty."¹⁶⁸ That is to say, when minority populations cannot elect members to City Hall in proportions equal to their representation in the general population, they must turn to neighborhood-based associations to discuss and petition.

Recognizing the same phenomenon, Heather Gerken has called for submunicipal "[s]pecial purpose institutions" as a way to impact municipal policy when representation by voting in city elections is such a lost cause.¹⁶⁹ The goal, suggests Gerken, is to provide localized institutions that "provide minorities with a chance to exercise voice inside the system, [even if they

and nonconcurrent (unaligned with state and federal elections) at 28.56%. Wood, *supra* note 39, at 224-25.

166. Zoltan Hajnal & Jessica Trounstine, *Where Turnout Matters: The Consequences of Uneven Turnout in City Politics*, 67 J. POL. 515, 518 (2005).

167. Erwin Chemerinsky & Sam Kleiner, *Federalism from the Neighborhood up: Los Angeles's Neighborhood Councils, Minority Representation, and Democratic Legitimacy*, 32 YALE L. & POL'Y REV. 569, 576 (2014).

168. *Id.* (quoting Heather K. Gerken, *Foreword: Federalism All the Way down*, 124 HARV. L. REV. 4, 45 (2010)).

169. Gerken, *supra* note 168, at 26-27.

cannot] set policy outside of it.”¹⁷⁰ For Gerken, this comes in the form of nonsovereign institutions that nonetheless wield immense power: “juries, school committees, zoning commissions, administrative agencies, local prosecutors’ offices, and the like.”¹⁷¹

In a sense, meaningful minority participation in government might require what one commentator has called a “polycentric [city] government.”¹⁷² In this formulation, Gerken’s institutions can take form in more autonomous “school boards, water districts, utility districts, and transit commissions.”¹⁷³ And these submunicipal institutions can also be divided on a geographic basis, whether in the form of neighborhood councils¹⁷⁴ or “enterprise zones, tax increment finance districts, special zoning districts, and business improvement districts.”¹⁷⁵ But adopting this model of minority participation as a replacement rather than a supplement to meaningful participation in higher levels of local government is largely unhelpful, as a good deal of public safety and policing policy is tasked to those higher levels.

2. Structural reform

In contrast, we might attempt to overcome minority underrepresentation through structural changes to either municipal elections or governance. The challenges and potential solutions become clear in a case like Ferguson, Missouri. The population of Ferguson is almost 70% African American.¹⁷⁶ In the last mayoral election,¹⁷⁷ 11.7% of the city’s eligible population voted—17% of white eligible voters and 6% of African American eligible voters.¹⁷⁸ At that time, five of Ferguson’s six city councilmembers, its mayor, and fifty of its

170. *Id.* at 27.

171. *Id.* at 26.

172. Clarke, *supra* note 24, at 631 n.37 (citing G. ROSS STEPHENS & NELSON WIKSTROM, METROPOLITAN GOVERNMENT AND GOVERNANCE: THEORETICAL PERSPECTIVES, EMPIRICAL ANALYSIS, AND THE FUTURE 117 (2000)).

173. *Id.* at 631.

174. Chemerinsky & Kleiner, *supra* note 167, at 577-79.

175. Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 508 (1997) (discussing the rise of “submunicipal political institutions”).

176. Ian Millhiser, *This Is the Most Important Reform Ferguson Can Enact to Give Its Black Residents a Voice*, THINKPROGRESS (Aug. 18, 2014, 9:00 AM), <http://thinkprogress.org/justice/2014/08/18/3472278/this-is-the-most-important-reform-ferguson-can-enact-to-prevent-another-standoff/>.

177. As of the publication of this Note, the most recent mayoral election in Ferguson took place in April 2014.

178. Millhiser, *supra* note 176.

fifty-three police officers were white.¹⁷⁹ In responding to this disjunction, commentators have suggested that electoral reform is needed.¹⁸⁰ Their focus has been on moving city elections on cycle with national elections, where turnout—especially among minority voters—is likely to be higher.¹⁸¹

The data bear out the wisdom of this switch but also suggest an addition: switching to a mayor-council governance structure. As one study determined, only two factors independently increased election turnout: holding local elections concurrent with national elections and the empowerment of the city mayor.¹⁸² Controlling for several salient variables such as African American population percentage, voter turnout was predicted to be highest in mayor-council cities (34.68%); this was about nine percentage points higher than in council-manager cities with an independently elected mayor (25.89%) and more than eleven percentage points higher than in strict council-manager cities (22.96%).¹⁸³ However intuitive the result—a centralized figure with increased visibility and accountability will energize an electorate—the link between turnout numbers and mayoralty has evaded scrutiny in the wake of recent events.

This is all the more worrisome given that minority voting turnout may itself be the single largest driver of the social and civil rights improvements of minority populations. As Pamela Karlan and Samuel Issacharoff have explained, it was “business set-asides, affirmative action, and government employment,” not civil rights litigation, that proved the turning point in minority empowerment during the later portions of the civil rights movement.¹⁸⁴ These were gains won “precisely because blacks were able to elect their candidates of choice in majority-minority districts.”¹⁸⁵ In short, it was the “vigilance of a black political class” that led to the “creation of a black middle class.”¹⁸⁶ As Heather Gerken also notes, pulling from a recent study, the

179. *Id.* The next year, African American candidates won two of the three open seats on the city council, resulting in a six-member council that includes three African American members. See Moni Basu, *Ferguson Election Makes History, Adds More Blacks to City Council*, CNN (Apr. 8, 2015, 4:15 PM ET), <http://cnn.it/1c6lTHj>.

180. Millhiser, *supra* note 176.

181. *Id.*

182. Wood, *supra* note 39, at 225-27.

183. *Id.* at 225.

184. Gerken, *supra* note 168, at 53 (citing Samuel Issacharoff & Pamela S. Karlan, *Groups, Politics, and the Equal Protection Clause*, 58 U. MIAMI L. REV. 35, 47-50 (2003)).

185. *Id.*

186. Issacharoff & Karlan, *supra* note 184, at 49. Justice Souter noted in *Bush v. Vera*, 517 U.S. 952, 1060-76 (1996) (Souter, J., dissenting), that election of minority Irish and Italian politicians in Boston similarly helped to legitimize ethnic minorities and cool ethnic tensions, perhaps more than any strictly legalistic protections for those minorities. See also Gerken, *supra* note 168, at 53 (discussing Justice Souter’s dissent in *Vera*).

election of African American mayors correlates with the number of African American municipal employees, including in public safety and law enforcement divisions.¹⁸⁷

It is possible that a greater number of African American police officers may not lead to less violence and tension between law enforcement officers and city residents.¹⁸⁸ But there are good reasons to cautiously draw a connection. David Sklansky points to three possible benefits of greater diversity in law enforcement: *competency effects*, *community effects*, and *organizational effects*.¹⁸⁹ While the competency effects might be low—that is, some studies have shown that black officers fire their weapons and are subject to disciplinary actions at the same rate as white officers¹⁹⁰—the latter two effects may be stronger.

Community effects materialize on both the micro and macro levels. On the micro level, a black officer may have more credibility than a white colleague in a predominantly black neighborhood.¹⁹¹ And on a larger scale, “a department that recruits, retains, and promotes a significant number of black officers may find the credibility of its entire force enhanced in black neighborhoods.”¹⁹² Finally, the largest impact may be at the organizational level, in the interactions within police departments between diverse officers.¹⁹³ Sklansky notes that there is both anecdotal and statistical evidence that contact between partners of diverse backgrounds—white and minority, male and female,

187. Gerken, *supra* note 168, at 53 n.190 (citing John C. Nye et al., *Do Black Mayors Improve Black Employment Outcomes?: Evidence from Large U.S. Cities* (Apr. 6, 2010) (unpublished manuscript) (on file with the Harvard Law School Library)). The Author commends the reader to Gerken’s groundbreaking work, in toto, on this topic. See generally Gerken, *supra* note 168 (explaining how minority groups can exercise power through state and local institutions even absent formal sovereignty in the federal system).

188. And, as some have pointed out, there may be no relationship between the two at all. Jamelle Bouie, *Black and Blue: Why More Diverse Police Departments Won’t Put an End to Police Misconduct*, SLATE (Oct. 13, 2014, 7:12 PM), http://www.slate.com/articles/news_and_politics/politics/2014/10/diversity_won_t_solve_police_misconduct_black_cops_don_t_reduce_violence.html (citing Brad W. Smith, *The Impact of Police Officer Diversity on Police-Caused Homicides*, 31 POL’Y STUD. J. 147, 158–59 (2003)).

189. David Alan Sklansky, *Not Your Father’s Police Department: Making Sense of the New Demographics of Law Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 1209, 1223 (2006). Sklansky’s work has been revisited in the wake of Ferguson. See, e.g., Batya Ungar-Sargon, *Lessons for Ferguson in Creating a Diverse Police Department*, FIVETHIRTYEIGHT (Jan. 5, 2015, 7:19 AM), <http://53eig.ht/1DS3Y44>.

190. Sklansky, *supra* note 189, at 1224.

191. *Id.* at 1228.

192. *Id.*

193. *Id.* at 1229–30.

straight and openly gay—can change attitudes and lead to diminished use of force and better response to minority populations.¹⁹⁴

3. Litigation

There is a third strategy to consider: combating underrepresentation through litigation. Where barriers to minority representation in cities are compounded by institutional choices, a cognizable claim may emerge under either the Constitution or a statute.¹⁹⁵ Of course, with the Supreme Court's recent neutering of the Voting Rights Act (VRA) in *Shelby County v. Holder*,¹⁹⁶ the efficacy of such a strategy is unclear. There are articles to be written, studies to be conducted, and arguments to be made on the effect of *Shelby County* on our cities moving forward.¹⁹⁷ At bottom, the use of litigation on its own as a strategy to mitigate civil rights issues is increasingly difficult, with institutional and governmental design choices moving to the forefront.

It should also be noted that the move to a strong mayor system could itself implicate potential VRA challenges. VRA claims have been made on the basis of a number of local governmental design choices, including the debate between at-large and ward system elections and the annexation of suburban districts into city limits.¹⁹⁸ A strong mayor system presents at least potential

194. *Id.* at 1230.

195. See *City of Rome v. United States*, 446 U.S. 156, 183-84 (1980) (affirming the district court's findings that the city's annexations and switch from plurality-win to majority-win elections with staggered terms violated the Voting Rights Act); *White v. Regester*, 412 U.S. 755, 765 (1973) (upholding the viability of a constitutional challenge where multimember districts were being used to dilute the voting strength of racial groups).

196. 133 S. Ct. 2612 (2013).

197. We have certainly started to see reporting of some of the early effects. Cities, after all, were “where 85 percent of the DOJ’s Section 5 objections have been under the Voting Rights Act since it was passed,” reports one recent account. Sarah Childress, *After Shelby, Voting-Law Changes Come One Town at a Time*, FRONTLINE (Aug. 8, 2013), <http://www.pbs.org/wgbh/frontline/article/after-shelby-voting-law-changes-come-one-town-at-a-time>. “And that’s where legal challenges, the only remaining remedy to fight voter discrimination, are likely to take place,” notes Dale Ho, the head of the ACLU’s Voting Rights Project. *Id.*

198. For a somewhat antiquated but still well-wrought account, see Joseph F. Zimmerman, *The Federal Voting Rights Act and Alternative Election Systems*, 19 W.M. & MARY L. REV. 621, 631-32 (1978), which states that “[t]he causes of . . . dilution include such subtle discriminatory actions as the replacement of a municipality’s ward system with at-large elections, a city’s annexation of a predominantly white area, or the adoption of a redistricting plan calculated to minimize the political influence of racial minorities.” See also, e.g., *Regester*, 412 U.S. at 756 (confronting a challenge to an at-large scheme at the county level); *Whitcomb v. Chavis*, 403 U.S. 124, 127 (1971) (examining a similar scheme); Paul W. Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 GA. L. REV. 353 (1976); Note, *The Voting Rights Act and Local At-Large Elections*, 67 VA. L. REV. 1011 (1981) (discussing a challenge to an at-large electoral

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intersections with the VRA because it will likely require the move to an at-large election, which might raise vote dilution claims under section 2 of the VRA.¹⁹⁹ And this is to say nothing of the collection of state voting rights acts, like the 2002 California Voting Rights Act, which makes vote dilution suits in at-large elections potentially easier to win than they would be under federal law.²⁰⁰ Accordingly, a switch to an at-large mayoral election could face challenges under state and federal law if designed to consolidate executive power in an official that minority residents have no chance at influencing.

4. Aligning expectations and power

Increasing voter turnout among minority populations is a necessary, but not sufficient, step. After all, voting only carries the full force of accountability if voters' beliefs as to which actors hold which powers align with the reality of power distribution.²⁰¹ And the ways in which executives—be they at the federal, state, or local level—struggle with power deficits in the face of overwhelming responsibilities has been well documented since Richard Neustadt famously observed that presidential power needs to expand informally to meet outsized voter expectations.²⁰²

system in a local school district election in *United States v. Uvalde Consol. Indep. Sch. Dist.*, 625 F.2d 547 (5th Cir. 1980)).

199. See Voting Rights Act of 1965, Pub. L. No. 89-110, § 2, 79 Stat. 437, 437 (codified as amended at 52 U.S.C. § 10301 (2015)) (formerly codified at 42 U.S.C. § 1973). A variety of lawsuits have made this claim. See, e.g., *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1385, 1414 (E.D. Wash. 2014) (holding that Yakima's at-large system of electing members of the city council violated section 2 of the VRA); Complaint at 1, *United States v. Town of Lake Park*, No. 09-80507 (S.D. Fla. Mar. 31, 2009), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/lakepark_comp.pdf (alleging that Lake Park's at-large system of electing city commissioners violates section 2 of the VRA by denying African American voters an equal opportunity to elect representatives of their choice); Complaint at 1-2, *United States v. Euclid City Sch. Dist. Bd. of Educ.*, No. 1:08-cv-02832-KMO (N.D. Ohio Dec. 2, 2008), https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/euclid_school_complaint.pdf (alleging that Euclid City's at-large system of electing school board members violates section 2 of the VRA by diluting the voting strength of African American residents).
200. David Garrick, *Election Lawsuits Spreading Across State*, SAN DIEGO UNION-TRIB. (Aug. 5, 2013, 10:05 AM), <http://fw.to/g2HR9KN> (pointing out that a number of California cities—including Oceanside and El Cajon—are vulnerable to this type of suit due to their at-large voting schemes and that Escondido has already been required to change its voting scheme).
201. See *Printz v. United States*, 521 U.S. 898, 930 (1997) (addressing the worry of state and local officials taking the blame for a defective federal policy enacted by commandeering those officials).
202. See RICHARD E. NEUSTADT, PRESIDENTIAL POWER AND THE MODERN PRESIDENTS: THE POLITICS OF LEADERSHIP FROM ROOSEVELT TO REAGAN 11 (1990) (promulgating that idiom most engrained in political science students: “[p]residential power is the power to

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However, council-manager government—and especially adapted government—tends to exacerbate voter malfunction by confusing voters as to the extent of the mayor’s powers and responsibilities. The error for voters thinking about their mayor in this system comes in the mayor’s decreased official capacity, far below that of voter expectations. Voters tend to overestimate the powers and responsibilities of mayors in adapted cities and, to a lesser extent, council-manager cities, thus leading to voter malfunction.²⁰³

Particularly, the powers and stature of federal, state, and local executives from other cities can imprint on citizens of an adapted city and skew their beliefs of what their mayor *can* and *should* do.²⁰⁴ “The notion of the strong executive is deeply embedded in American political culture,” writes Richard Schragger.²⁰⁵ Yet while this impression of an inherently strong executive matches actual political powers to some degree at the federal and state levels, it departs from reality at the local level.²⁰⁶ While the U.S. President and state governors sit at “the peak of a pyramid” in terms of governmental hierarchy and power, mayors sit amidst the fray “at the center of intersecting circles.”²⁰⁷ The American mythos of a strong federal and state executive primes voters to expect a similar figure to run the community closest to them.

One case study helps to illustrate just how dramatic this gap can be on the ground. Sacramento, California has recently discussed, debated, and rejected

persuade”); see also Steven G. Calabresi, “*The Era of Big Government Is Over*,” 50 STAN. L. REV. 1015, 1040 (1998) (reviewing ALAN BRINKLEY ET AL., NEW FEDERALIST PAPERS: ESSAYS IN DEFENSE OF THE CONSTITUTION (1997)) (“One of the biggest problems American democracy faces today is that the presidency is too weak an office, constitutionally, to fulfill the expectations that voters have for it.”).

203. This is a fairly novel description of the problem, but it is by no means an utterly new idea. See James H. Svara, *Institutional Powers and Mayoral Leadership*, 27 ST. & LOC. GOVT REV. 71, 71 (1995) (“The position of mayor is a classic impossible job. It comes with both great expectations and inherent constraints that limit the ability of the mayor to fulfill those expectations.”); James H. Svara, *Mayoral Leadership in Council-Manager Cities: Preconditions Versus Preconceptions*, 49 J. POL. 207, 207 (1987) [hereinafter Svara, *Preconditions Versus Preconceptions*] (“[N]onexecutive mayors are commonly perceived to be doing less than they are or capable of doing more than they can.”).
204. This is a common and longstanding problem. See Svara, *Preconditions Versus Preconceptions*, *supra* note 203, at 207 (“A shortcoming in much of the limited literature on council-manager mayors is a tendency to measure the office and performance in terms of the executive mayor.”).
205. Schragger, *supra* note 18, at 2547.
206. One is reminded of President Lyndon B. Johnson’s famous remark in the midst of a terrible crisis: “Things could be worse.... I could be a mayor.” Edward Kosner, *Troubled Cities—and Their Mayors*, NEWSWEEK, Mar. 13, 1967, at 38.
207. DAVID L. MARTIN, *RUNNING CITY HALL: MUNICIPAL ADMINISTRATION IN AMERICA* 86 (2d ed. 1990) (quoting ROBERT A. DAHL, *WHO GOVERNS?: DEMOCRACY AND POWER IN AN AMERICAN CITY* 204 (1961)).

proposals for increased mayoral power on numerous occasions.²⁰⁸ The dialogue surrounding these efforts is particularly revealing. As one longtime journalist noted, Sacramento possesses the “worst of all municipal worlds.”²⁰⁹ Sacramento’s mayor “has almost no real authority,” even though it “ostensibly” appears to most of the voting public that he is clothed in far greater power.²¹⁰ Exacerbating this problem is the fact that similarly situated California cities—Fresno, Los Angeles, Oakland, and San Diego—have either maintained or switched to the strong mayor model,²¹¹ increasing the likelihood that Sacramento voters will assume the same of their city. The problem is one familiar to mayors in council-manager cities, who, “confused with mayors in cities where the position is a true executive office, . . . are commonly perceived to be doing less than they are or capable of doing more than they can.”²¹²

This matching of power to expectation for mayors helps counter one of the lingering doubts of an empowered mayoralty: that elected mayors may simply not want to wield their power in pursuit of reform. For instance, Mayor Rahm Emanuel of Chicago has faced extensive backlash for his failure to reform his city’s police department in the wake of the shooting of Laquan McDonald.²¹³ But the point is precisely that he has faced a backlash. His

208. Sacramento’s flirtation with strong mayor governance, led by Mayor Kevin Johnson, was a long, protracted fight with voters repeatedly rejecting a sensible plan to reform the city’s provincial governance structure. The first proposal came in 2008, but the ballot measure was “tossed” by a judge who held that a “revision of the city charter . . . could be placed on the ballot only by an elected body.” Ryan Lillis, *Sacramento’s Strong-Mayor Measure Defeated*, SACRAMENTO BEE (Nov. 4, 2014, 8:21 PM), <http://sacb.ee/5GDa> [hereinafter Lillis, *Measure Defeated*]. Johnson went to the City Council in 2010 to ask that the strong mayor proposal be placed on the ballot; it refused. *Id.* (In the interest of disclosure, the Author was a policy intern in the Mayor’s office during the lead-up to and vote on this proposal.) In 2012, the City Council again rejected a vote on the strong mayor proposal, deferring the plan to a hypothetical elected charter commission. *Id.* And despite overwhelming support by civic and business leaders, *see id.*, Johnson’s 2014 ballot measure was defeated by voters, Ryan Lillis, *Strong-Mayor Plan Defeated, Kevin Johnson Concedes*, SACRAMENTO BEE (Nov. 5, 2014, 12:36 PM), <http://sacb.ee/1RZP>. Johnson decided not to run for a third term as mayor, likely due to the defeat and the continued limitations on his power. *See id.* His successor, California Senator Darrell Steinberg, *see* Ryan Lillis, *Steinberg Wins Sacramento Mayor’s Race by Wide Margin*, SACRAMENTO BEE (June 7, 2016, 8:15 PM), <http://sacb.ee/6wyp>, was a supporter of the 2014 strong mayor ballot proposal, Lillis, *Measure Defeated*, *supra*.

209. Dan Walters, *California City’s with Strong Mayors Thrive*, DAILY REPUBLIC (Jan. 17, 2012), <http://www.dailypress.com/opinion/statenationalcolumnists/california-citys-with-strong-mayors-thrive>.

210. *Id.*

211. *Id.*

212. Svara, *Preconditions Versus Preconceptions*, *supra* note 203, at 207.

213. Rick Perlstein, *The Sudden but Well-Deserved Fall of Rahm Emanuel*, NEW YORKER (Dec. 31, 2015), <http://www.newyorker.com/news/daily-comment/the-sudden-but-well-deserved-fall-of-rahm-emmanuel>.

political incentives to make reforms were able to meet his enumerated power to remove his superintendent of police and hire a special advisor to help select a replacement.²¹⁴ The rationale for empowering mayors is not that they are purer of heart than city managers or city councils but rather that they have an electoral impetus to make substantive reforms within their capability.

C. Unifying Cosmopolitan Municipalities

As Gerald Frug has noted, “[o]n a local level, democracy can be a lived experience—it enables engagement in public issues that goes far beyond voting,”²¹⁵ spilling over into identity in a way less possible at a state or federal level. And the powerful, popularly elected mayor represents the symbol of municipal democratic dynamism. When a city is viewed “as a polity with a collective identity . . . , then the embodiment of those interests in one executive office becomes more attractive.”²¹⁶ A popularly elected mayor who has a citywide constituency and is removed from the day-to-day minutiae of municipal bureaucracy can be an outlet for democratic beliefs and articulate a clear vision of the city and its core tenets, empowering the city to become a “distinct and independent portion[]”²¹⁷ of the constitutional order.

There have been many strong mayors who embody the values of their cities’ voters. Mayor Rudolph Giuliani’s leadership in the wake of the September 11 attacks fostered “collective feelings of ownership” among New Yorkers over their city, helping to clarify the “city’s civic identity.”²¹⁸ A similar civic embodiment took place in San Francisco in 2004. Mayor Gavin Newsom’s decision to issue marriage licenses to same-sex couples challenged interpretations of the state and federal constitutions, sparked a national debate, and “asserted a populist vision of the mayoralty that did not accept its relatively weak constitutional status.”²¹⁹ Finally, as Cristina Rodríguez has noted, mayors of cosmopolitan “global cities” have been among the strongest advocates of immigration reform on the national stage.²²⁰ The “cosmopolitan zeitgeist” and “concept of citizenship disassociated from thick forms of cultural identity” in

214. Aamer Madhani, *Mayor Rahm Emanuel Taps High-Profile Officer to Advise Chicago Police*, USA TODAY (Jan. 24, 2016, 5:53 PM EST), <http://usat.ly/1RHbc16>.

215. Gerald E. Frug, *The Central-Local Relationship*, 25 STAN. L. & POL’Y REV. 1, 2 (2014).

216. Schragger, *supra* note 18, at 2575-76.

217. THE FEDERALIST NO. 39, at 245 (James Madison) (Clinton Rossiter ed., 1961).

218. Schragger, *supra* note 18, at 2573.

219. *Id.* at 2573-74; cf. Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745, 1764-65 (2005) (describing Newsom’s decision as “generat[ing] ripple effects that conventional expressions of dissent had never generated”).

220. See Cristina M. Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 577 (2008).

these cities are expressed in the zealous advocacy of their mayors, empowered by their offices and their constituencies.²²¹

By way of illustration, then, consider a tale of two cities. On the one hand is Mayor Knowles of Ferguson. As touched upon above, he is one such “weak mayor without veto power,” unable to advocate for his city to state and federal officials or speak to his diverse electorate with any authority.²²²

Compare the ineffectuality of Knowles’s response with the powerfully wrought words of Baltimore’s (strong) Mayor Rawlings-Blake in the wake of racial unrest in her city:

I worked with the police and instructed them to do everything that they could to make sure that the protesters were able to exercise their right to free speech. It’s a very delicate balancing act. Because while we try to make sure that they were protected from the cars and the other things that were going on, we also gave those who wished to destroy space to do that as well.²²³

In the midst of chaos, her statements gestured toward the watchwords of municipal crisis management: accountability, centralization, and democratic expression. Her words were also no doubt controversial, and she was forced to clarify her comments after a subsequent outcry that she was encouraging rioters in her city.²²⁴ But whether these statements should be condoned or condemned, there is inherent value in adding a mayoral viewpoint to the discourse, especially in giving voice to those who might not otherwise have one.

Rawlings-Blake was recently elevated to the nationally influential position of president of the U.S. Conference of Mayors.²²⁵ Her first remarks as president focused with unrelenting clarity on the continued civil unrest in America’s cities.²²⁶ Particularly, she has already started development of a “Baltimore

221. *See id.* at 577-78.

222. Deere, *supra* note 4.

223. ABC7 WJLA, *Baltimore Mayor Press Conference on Protest Violence*, YOUTUBE (Apr. 25, 2015), <https://www.youtube.com/watch?v=nHv7N8H4bwk#t=450>.

224. Elizabeth Chuck, *Baltimore Mayor Stephanie Rawlings-Blake Under Fire for ‘Space’ to Destroy Comment*, NBC NEWS (Apr. 28, 2015, 1:59 PM ET), <http://nbcnews.to/1ENz7Xl>.

225. Luke Broadwater, *Rawlings-Blake to Call for America’s Mayors to Create ‘Baltimore Compact,’* BALT. SUN (June 22, 2015, 6:00 AM), <http://fw.to/wy7yKNV>.

226. She specifically stated,

What we experienced in Baltimore City was the result of polices [sic] that failed communities for generations. Despite reforms to our police department, historic investments in education and a one-third reduction in our city’s unemployment rate, we saw just how much work is left to be done in order to end the pain so many communities are facing while we work to improve police-community relations The tensions we saw, and the challenges we still face can be seen in other urban centers across the country. As we continue the process of healing our city, I hope that Mayors across the country use this moment to begin attacking the systemic inequalities that their cities have faced for decades. I will continue this fight in Baltimore and together we can all be stronger.

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Compact,” promising to serve as a mouthpiece in calming the violence and tension in her city and other municipalities facing similar challenges.²²⁷

This is not necessarily to say that Rawlings-Blake is a better mayor than Knowles. But it is to say that, when they possess such divergent sets of tools and embody such divergent conceptions of executive power at the municipal level, the term “mayor” cannot serve to accurately describe both positions. This is not a question of mere academic theory. Early in 2015, before the Freddie Gray riots, the Baltimore City Council called for a weakening of its mayor’s executive power.²²⁸ As of May 2016, the potential weakening of the mayoralty was still the subject of heated debate.²²⁹ The debate rages on in our cities over which conception of the mayor is best. As a matter of speaking up and speaking out on behalf of the citizenry, a stronger view of the mayoralty may shine far brighter than the alternative.

III. Barriers and Considerations in Charter Reform

The benefits of the mayor-council system for civil rights reform may make it attractive, but they do not make it inevitable or even probable. Stated more particularly, the empowerment of mayors as executives is a question of can, should, and will. *Can* a city legally amend its charter to shift municipal powers under both long-established precedents and modern trends? *Should* a city move to a strong mayoralty given some of the policy drawbacks associated with the governance structure?²³⁰ And even so, in which type of political climate *will* a city be able to unstick established municipal governance from negative inertia? This Part addresses each query in turn.

Press Release, Office of the Mayor, City of Balt., Mayor Rawlings-Blake to Call for Creation of “Baltimore Compact” During Inaugural Address as National President of U.S. Conference of Mayors (June 22, 2015), <http://mayor.baltimorecity.gov/news/press-releases/2015-06-22-mayor-rawlings-blake-call-creation-baltimore-compact-during-inaugural>.

227. *Id.*

228. Luke Broadwater, *City Council Revives Bills Aimed at Weakening Mayor’s Power*, BALT. SUN (Jan. 16, 2015, 9:35 PM), <http://fw.to/iNea6hH>.

229. Compare Editorial, *Baltimore’s Big Bait-and-Switch*, BALT. SUN (May 9, 2016, 2:13 PM), <http://fw.to/eroTZNI> (opposing charter amendments weakening the mayoralty), with Bernard C. “Jack” Young, Opinion, *Young: What Has the Strong Mayor System Achieved?*, BALT. SUN (May 13, 2016, 4:10 PM), <http://fw.to/CB4r66Z> (criticizing opposition to the charter amendments). The Baltimore City Council voted to strip what was essentially the strong mayor framework from Baltimore, but it was unable to get past the mayor’s veto. See Edward Ericson Jr., *Baltimore’s Strong Mayor Remains Stronger than the City Council*, CITY PAPER (Balt.) (May 16, 2016, 7:03 PM), <http://fw.to/6FAjI5g>.

230. See *supra* Part I.A.

A. Legal Rules and Trends Constraining Local Empowerment

Given the shift away from executive mayoral governance early in the twentieth century,²³¹ it should come as little surprise that suspicion of local empowerment has endured. This worry holds that local government is “too parochial, too small to grapple with the scale of urban problems.”²³² Accordingly, many have advocated for “increas[ing] state power or [developing] a national urban policy,” as well as “embrac[ing] a particular version of the idea of regionalism.”²³³ These calls have sometimes been translated into legal rules and machinations—both long-established and modern—that might restrict a potential move to a strong mayor system (or even informal empowerment of the mayor). This Subpart sets these legal barriers out in two troughs: first, the existing legal framework constricting municipal self-governance determinations and second, modern trends that countervail against mayoral and even municipal power.

1. Rules: home rule and Dillon’s Rule

States have plenary power under the Tenth Amendment to the U.S. Constitution,²³⁴ but nowhere in the Constitution are the inherent powers of cities for self-governance established. And so it follows, even though those of the Founding era viewed cities and towns as essential to the constitutional order,²³⁵ these local governments exist only as an elective choice by the state and are therefore revocable by the state at legislative whim.²³⁶

231. *See supra* Introduction, Part I.A.

232. Frug, *supra* note 215, at 1 (“[E]nhancing state power need not injure all localities. . . . [S]tates have the potential to regulate interlocal competition, address interlocal inequality and promote local interests on a state-wide basis” (alterations in original) (quoting Richard Briffault, *Our Localism: Part II—Localism and Legal Theory*, 90 COLUM. L. REV. 346, 356 (1990))); *see also* DAVID RUSK, *CITIES WITHOUT SUBURBS* (1993); Daniel P. Moynihan, *Toward a National Urban Policy*, 17 PUB. INT. 3, 3 (1969).

233. Frug, *supra* note 215, at 1.

234. U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

235. 1 DE TOCQUEVILLE, *supra* note 157, at 74-75, 81 (“It is not undesignedly that I begin this subject with the Township. The village or township is the only association which is so perfectly natural, that, wherever a number of men are collected, it seems to constitute itself. The town or tithing, then, exists in all nations . . . [;] it is man who makes monarchies and establishes republics, but the township seems to come directly from the hand of God. . . . Municipal independence in the United States is, therefore, a natural consequence of this very principle of the sovereignty of the people. . . . [P]olitical life had its origin in the townships”).

236. “[I]t has long been recognized in most states that municipal corporations are creatures of the state, exist only at the discretion of the state, have only those powers given by the state, and have no inherent powers to act absent specific statutory authorization.”

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This default state of affairs is the so-called “Dillon’s Rule,” named after its proponent, Judge John Dillon. Stated in its nascent form in *City of Clinton v. Cedar Rapids & Missouri River Railroad Co.*,²³⁷ the view holds that a city is a “public municipal corporation, created for public purposes only, and can exercise no powers but such as are expressly granted by law, or such as are incidental to those expressly granted, and is always subject to legislative control.”²³⁸ In the event that the powers of municipalities were ambiguous under state statute, the statutory power grant was to be construed as narrowly as possible.²³⁹ Dillon’s Rule competed for acceptance with the doctrine espoused by Michigan Supreme Court Justice Thomas M. Cooley: “[L]ocal government is matter [sic] of absolute right; and the state cannot take it away.”²⁴⁰

The U.S. Supreme Court resolved the debate conclusively in Dillon’s favor in *Merrill v. Monticello*.²⁴¹ Quoting Dillon, the Court noted that “[a]ny fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.”²⁴² The Court reaffirmed this view in *Hunter v. City of Pittsburgh*,²⁴³ holding that “[m]unicipal corporations are political subdivisions of the State, created as convenient agencies for exercising [given] governmental powers of the State.”²⁴⁴ The state “may modify or withdraw all such powers” of the municipal corporation.²⁴⁵

Kenneth D. Dean, *The Dillon Rule: A Limit on Local Government Powers*, 41 Mo. L. REV. 546, 546 (1976).

237. 24 Iowa 455 (1868) (per curiam).

238. *Id.* at 461. This view was subsequently memorialized in what would become its most cited form. See 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 108 (Little, Brown & Co. 5th ed. 1911) (1872) (noting the “supremacy of the legislative authority over municipal corporations” (emphasis omitted)).

239. See *Merriam v. Moody’s Ex’rs*, 25 Iowa 163, 170 (1868) (“[A] municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation—against the existence of the power.”). For subsequent revisions of this view, see Dean, *supra* note 236, at 547. For another state analogue, see *Ruggles v. Collier*, 43 Mo. 353, 375 (1869), which held that “all statutes or charters creating corporations are to be strictly construed.”

240. *People ex rel. Le Roy v. Hurlbut*, 24 Mich. 44, 108 (1871) (Cooley, J., concurring).

241. 138 U.S. 673 (1891).

242. *Id.* at 681 (quoting 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 89 (Boston, Little, Brown & Co. 3d ed. 1881) (1872)).

243. 207 U.S. 161 (1907).

244. *Id.* at 178.

245. *Id.*

If the default for cities is limited power under Dillon's Rule, then constitutional home rule provisions provide an alternative means by which to define cities' powers. Under home rule, cities may "administer [their] own affairs to the maximum degree," including, importantly, "the right to determine the form of government" and the right "to define the nature and scope of municipal services involving matters of purely local concern."²⁴⁶ Again, home rule is a product of state governmental legislation. So technically, it is less an alternative to Dillon's Rule and more a manifestation of the state's elective grant of power to municipal corporations.

In practice, some states have crafted home rule amendments, but others continue to adhere to the Dillon default.²⁴⁷ Accordingly, many cities have not been granted the right to self-governance by states. And this lack of control includes the governance structure of the city, meaning that it might well be impossible to change from council-manager government (which is typically the default) to mayor-council government without the explicit imprimatur of the state.

2. Trends: emergency managers and state receivership

Modern legal trends and reforms have moved governance away from cities and toward other entities, rendering the executive mayor model potentially impossible in particular cities. First, as mentioned above in the case of Benton Harbor, states have stepped in to appoint emergency managers over troubled local governments.²⁴⁸ Between 2008 and 2013, emergency managers were put in place in twenty-eight cities.²⁴⁹ These managers have broad authority to run the affairs, finances, and service provisions of cities.²⁵⁰ Conversely, mayors and

246. Hugh Spitzer, "*Home Rule*" vs. "*Dillon's Rule*" for Washington Cities, 38 SEATTLE U. L. REV. 809, 810 (2015) (alteration in original) (quoting Ernest H. Campbell, *Municipal Home Rule* 1 (1958)).

247. For a comprehensive list of states and their statuses on this issue, see *Local Government Authority*, NAT'L LEAGUE CITIES, <http://www.nlc.org/build-skills-and-networks/resources/cities-101/city-powers/local-government-authority> (last visited Feb. 2, 2017). This Note will leave aside the distinction between general cities and charter cities, which adds another layer of complexity to the decisionmaking tree.

248. For a further discussion of the trends discussed in this Subpart, see Anderson, *Democratic Dissolution*, *supra* note 118; and Anderson, *supra* note 62.

249. See Anderson, *supra* note 62, at 1120.

250. For instance, the Detroit emergency manager had works from the Detroit Institute of Arts appraised for potential creditor payoffs, see Chris Christoff, *Christie's Will Appraise Detroit Art Institute Collection*, BLOOMBERG (Aug. 6, 2013, 6:22 PM EDT), <http://www.bloomberg.com/news/2013-08-06/christie-s-to-appraise-detroit-art-institute-s-holdings.html>; froze pensions, see Sarah Cwiek, *Detroit Emergency Manager "Freezes" Pension Benefits, Then Backs Off—Temporarily*, MICH. RADIO (Jan. 7, 2014), <http://www.j.mp/1yNmrP>; and settled a debt swap deal, see Steven Raphael & Steven Church, *Detroit Judge Rejects \$165 Million Swaps Deal as Too High*, BLOOMBERG (Jan. 16, 2014).

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city councils are generally restricted to mostly ceremonial functions until the emergency manager and state government have deemed the crisis over.²⁵¹ In Central Falls, Rhode Island, for instance, the emergency manager wrote to the city's elected mayor shortly upon arrival: "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."²⁵²

Second, cities facing financial crisis or bankruptcy often must enter into state receivership that dictates how creditors are to be paid and how services are to be provided (and in what priority). In short, formal state receivership "captures cities that have formally declared a fiscal emergency under state law, or otherwise have been placed under the jurisdiction of a formal state receivership in which the state is not merely monitoring a vulnerable city's finances, but has actually stepped in to manage or co-manage its finances."²⁵³ The powers of the state in oversight of the city can include gathering information about the city's finances, managing the city's debt and finances, and guaranteeing the city's loans.²⁵⁴ Such a system obviously constricts the discretion of a city and significantly diminishes the powers and possibilities of mayoral governance.

Third, and relatedly, municipal bankruptcy reorganization plans can limit the ability of cities to choose their governance structures. Upon a city's consent during a Chapter 9 bankruptcy filing, a bankruptcy court may alter a municipality's political or governmental powers.²⁵⁵ And a bankruptcy judge may withhold consent for a bankruptcy plan if he or she concludes "that continuing the existing municipal governance structure substantially increase[s] the probability of recidivism or impede[s] the delivery of services."²⁵⁶

What both of these developments instruct is that there is a window of opportunity for strong mayoral government: cities must endure some strife to make a government changeover seem organic.²⁵⁷ However, where a city's

2014, 11:39 AM PST), <http://bloom.bg/1L9OfuV>. For background on emergency managers, see Lora Krsulich, Note, *Polluted Politics*, 105 CALIF. L. REV. (forthcoming Apr. 2017), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2766635.

251. See *supra* Part II.B (discussing Benton Harbor as an example of local officials' roles being reduced after the arrival of an emergency manager).

252. Krsulich, *supra* note 250 (manuscript at 13-14) (quoting Anderson, *Democratic Dissolution*, *supra* note 118, at 596).

253. Anderson, *supra* note 62, at 1131.

254. *Id.* at 1154.

255. See Gillette & Skeel, *supra* note 141, at 1203 (citing 11 U.S.C. § 904 (2012)).

256. *Id.* at 1206.

257. See *infra* Part III.C.

financial situation deteriorates to such an extent that the state intervenes, municipal self-determination and the ability to empower a local executive may disappear entirely.

B. Municipal Demographics

Larger cities are more likely to have a strong mayor form of government. Indeed, the size of a city and its form of government appear to be correlated—the five largest U.S. cities are mayor-council, seventeen of the top twenty-five largest cities are mayor-council,²⁵⁸ and three of the four most populous California cities are mayor-council.²⁵⁹ Furthermore, of cities with 500,000 or more residents, most have mayor-council governments, and the likelihood of this government form increases linearly the larger the city becomes.²⁶⁰

Some have suggested a causal relationship between population size and governance structure: “City size seems to have some effect on the form of municipal government that works best.”²⁶¹ It appears this is true, but why? In what follows, this Note draws out some of the preconditions that underlie this causal relationship.

It is likely not a city’s size, standing alone, that makes for a better fit with mayor-council governance but rather independent factors that are more likely to exist in a larger city. This Note offers two potential drivers: talent encouragement and the ability to assume increased governmental costs.

1. Talent development

One of the major concerns regarding strong mayoral government is that the system requires an incredibly talented and rare mayor. She must possess both the political talent to defeat opponents in a contested election as well as the administrative and executive talent to manage the intricacies of a complex bureaucratic government.²⁶² The worry is that such high demands will not be

258. Strong Mayor-Council Inst., Top 25 Cities (2012), http://strongmayorcouncil.org/images/City_List_Top_25_2011_Publication.pdf.

259. *Forms of Municipal Government*, *supra* note 37.

260. See James H. Svara & Douglas J. Watson, *Introduction to MORE THAN MAYOR OR MANAGER: CAMPAIGNS TO CHANGE FORM OF GOVERNMENT IN AMERICA'S LARGEST CITIES* 1, 11 (James H. Svara & Douglas J. Watson eds., 2010).

261. KENNETH DAUTRICH ET AL., *AMERICAN GOVERNMENT: HISTORICAL, POPULAR, AND GLOBAL PERSPECTIVES* 822 (Texas ed. 2010).

262. See Svara & Watson, *supra* note 260, at 15 (“Performance of [the mayor-council] form is too dependent on one person . . . Mayors lack equal levels of political and executive skills.”); see also TERRY CHRISTENSEN & TOM HOGEN-ESCH, *LOCAL POLITICS: A PRACTICAL GUIDE TO GOVERNING AT THE GRASSROOTS* 123 (2d ed. 2006) (“Another common concern about the strong mayor system has been that although the chief executive must be a

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met, leading to incompetency.²⁶³ In a council-manager city, this problem might be avoided because the political and administrative functions are split among the mayor, city council, and city manager. In short, where power is diffuse, the effect of power and its potential attendant problems of corruption or misgoverning are diffused.

The likelihood of finding the rare individuals who are (1) native to a city, (2) politically savvy and electable, and (3) able to effectively run a city's administration is likely to increase the larger the city is. When 160 urban scholars were asked to name the most influential mayors since 1960, *no* mayors of mid-sized cities made the list.²⁶⁴ But many large-city mayors were identified.²⁶⁵

There are a few reasons why this might be. First, and most obviously, the odds of finding a talented mayor are going to be better given a larger population to draw from. Second, larger cities tend to be more politically vibrant and diverse, leading its citizens—and potential homegrown politicians—to have better understandings of political issues and campaigns.²⁶⁶

2. Expense assumption

Critics of mayor-council government commonly contend that strong mayors cost cities more than weak mayors and city managers do.²⁶⁷ This argument has come under some scrutiny in light of recent studies, which found that the average council-manager city spends \$54 *more* per citizen on city government (including public services) and about 0.3% more of the total city budget on administrative costs than do cities with strong mayors.²⁶⁸

The *transition* from council-manager to mayor-council, however, may itself be responsible for increasing costs, including those associated with new

skilled politician to get elected, there is no guarantee that he or she will have the management skills to run a highly complex administrative apparatus....").

263. See Svara & Watson, *supra* note 260, at 15.

264. James R. Bowers & Wilbur C. Rich, *Introduction to GOVERNING MIDDLE-SIZED CITIES: STUDIES IN MAYORAL LEADERSHIP* 1, 2 (James R. Bowers & Wilbur C. Rich eds., 2000). While the urban scholars were asked to name both the best and the worst mayors since 1960, one can assume that at least some of the named mayors were considered the "best."

265. See *id.*

266. See EUGENE C. LEE, *THE POLITICS OF NONPARTISANSHIP: A STUDY OF CALIFORNIA CITY ELECTIONS* 148-50 (1960).

267. See ICMA, *Council-Manager Form of Government: Frequently Asked Questions* 5 (2007), <http://icma.org/Documents/Document/Document/2705>.

268. Terry Waterfield, Managerial Effect: Comparing Forms of Local Government 3 tbl.2 (2010) (unpublished M.P.A. paper, University of North Carolina at Chapel Hill), <http://www.mpa.unc.edu/sites/www.mpa.unc.edu/files/TerryWaterfield.pdf>.

mayoral staff.²⁶⁹ And social science predicts that if this new councilmember means the creation of a new district, city expenditures per capita will increase given the increased fragmentation of interests.²⁷⁰ In addition, the mayor's staff will usually also require additional salary expenditures.²⁷¹

In general, larger cities tend to be better equipped than smaller cities to defray these costs through economies of scale, as fixed transition costs can be spread over a larger population.²⁷² While being a larger city certainly helps deal with strong mayor expenses and overruns, smaller cities might nonetheless be in a better position to afford the transition if they are in a healthy fiscal state. A wealthy suburb of 100,000 people can arguably assume the costs of mayor-council government better than a larger, troubled city like Stockton given the larger tax base and the ability of residents to cover expenses normally provided by government.²⁷³

Finally, it is important to note that though executive mayor governance may produce increased costs in the short term (though, again, this may not

269. For a fairly politicized but nonetheless relevant fight over these new costs, see *Strong Mayor: Opponents Decry Ballooning Mayor's Staff Costs*, VOICE SAN DIEGO (June 3, 2010) [hereinafter *Strong Mayor*], <http://voiceofsandiego.org/2010/06/03/strong-mayor-opponents-decrys-balloonings-mayors-staff-costs>.

270. The research is summarized in Gillette & Skeel, *supra* note 141, at 1186 nn.158-62. The primary study demonstrating this effect was Barry R. Weingast et al., *The Political Economy of Benefits and Costs: A Neoclassical Approach to Distributive Politics*, 89 J. POL. ECON. 642, 654 (1981). Further studies generally confirmed this result. See, e.g., Reza Baqir, *Districting and Government Overspending*, 110 J. POL. ECON. 1318, 1336 (2002); John Charles Bradbury & E. Frank Stephenson, *Local Government Structure and Public Expenditures*, 115 PUB. CHOICE 185, 196 (2003); Laura I. Langbein et al., *Rethinking Ward and At-Large Elections in Cities: Total Spending, the Number of Locations of Selected City Services, and Policy Types*, 88 PUB. CHOICE 275, 285 (1996). But see Lynn MacDonald, *The Impact of Government Structure on Local Public Expenditures*, 136 PUB. CHOICE 457, 470 (2008).

271. See *Strong Mayor*, *supra* note 269.

272. This Note is not arguing for the more controversial notion, however, that larger cities in general have a direct correlation with economies of scale. This notion has come under some scrutiny, especially in the city-county consolidation literature. See, e.g., Lawrence Southwick, *Economies of Scale in Local Government: General Government Spending*, 4 iBUSINESS 265, 275-76 (2012). This Note simply contends that the fairly constant fixed cost of a transition is more efficient when spread over a larger population.

273. This is a standard problem of “the separation of needs and resources.” CHRISTENSEN & HOGEN-ESCH, *supra* note 262, at 56. “[S]uburbanites are generally economically secure and need fewer public services. They buy their own homes and cars and some join private clubs for recreation and even employ private security.” *Id.* But poorer urban populations require “government services such as welfare, health care, transportation, housing, education, and police.” *Id.* The disconnect is that “while the need is in the central city, the tax resources that might pay for the services are greater in the suburbs.” *Id.*

actually be the case), it may increase economic vitality in the long term.²⁷⁴ As intimated earlier, a more prosperous city may be able to afford a more robust

274. A full discussion is beyond the scope of this Note, but a quick explanation is warranted.

Coming out of the recession, cities have begun to explicitly compete with one another for resources, employers, businesses, and development, making streamlined development, fiscal solvency, and clear leadership essential for municipal survival. See Jean-Jacques Dethier & Curtis Morrill, *The Great Recession and the Future of Cities* 9 (World Bank Dev. Econ. Dep't, Working Paper No. 6256, 2012), <http://documents.worldbank.org/curated/en/743951468163152528/pdf/NonAsciiFileName0.pdf>. And because the “homevoter” model—which holds that homeowners use their political power primarily to maximize the value of their home as an asset, *see Lee Anne Fennell, Homes Rule*, 112 YALE L.J. 617, 617-18 (2002) (reviewing WILLIAM A. FISCHER, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES (2001))—predicts that higher taxes and redistribution will be difficult to implement for cities, cities must “actively encourage [the] inward flow” of private capital as their way out, Schragger, *supra* note 18, at 2559. A mayor’s efforts to attract capital are most likely to bear fruit in a mayor-council government. The reasoning is simple for a business looking to set up shop in a city: as with buying a car, you would prefer to deal with the salesperson who can cut a deal, not the lackey who must run back to his superiors to ask permission.

For those cities on the margin, strong mayor governance may be enough to make a difference when a business or developer is choosing between two similarly situated cities. The pace of dealmaking, for instance, is sped up in a mayor-council municipality. A few quick examples include:

Kansas City Mayor Emanuel Cleaver noted that getting companies to sit down is not necessarily the hardest part. Rather, when he, as a weak mayor, “sits around with the president and CEO of a major corporation trying to get them to relocate here, [he] is at a disadvantage, because other mayors can cut the deal at the table.” BERNARD H. ROSS & MYRON A. LEVINE, URBAN POLITICS: CITIES AND SUBURBS IN A GLOBAL AGE 147 (8th ed. 2012) (quoting Rob Gurwitt, *Nobody in Charge*, GOVERNING, Sept. 1997, at 20, 21). Instead, weak mayors must take vague terms of bargaining back to the city manager and the city planning staff and then fade into darkness while the wheels of bureaucracy turn.

In the strong mayor city of Baltimore, mayors have been able to harness the speed brought by their institutional position to partner with local business institutions to “get[] things done” in redeveloping the downtown region. Antònia Casellas, Moving from Decline to Revival in Post-Industrial Cities: An Examination of Why Baltimore’s Tourism Strategies Do Not Work 37 (2000) (unpublished Ph.D. dissertation, Rutgers University), http://www.academia.edu/1480433/Casellas_A_2000.

Within a decade of moving to strong mayor government, St. Petersburg Mayor Rick Baker was able to rapidly reach his stated goal of encouraging private development in the midtown area by combining his formal and informal powers: for example, by persuading businesses to relocate and bundling parcels of land for construction projects. J. Edwin Benton et al., *St. Petersburg: Easing into a Strong-Mayor Government*, in MORE THAN MAYOR OR MANAGER, *supra* note 260, at 25, 42.

And because a mayor sits at the juncture of policy and politics, she is able to anticipate political challenges and realities that will need to be assuaged or considered in making promises to developers that a city manager is not able to foresee. This was particularly true during the wildly successful redevelopment of Indianapolis, in which strong

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police department staff and therefore reduce the potential for overextended policing and violence.²⁷⁵

C. Charter Moments and Punctuated Equilibria

Cities transitioning from council-manager to mayor-council government do not do so without some significant provocation. The famous federal analogue to this theory is Bruce Ackerman's theory of constitutional moments: that evolutions in constitutional interpretation and the identity of the U.S. government occur in sudden, public changes.²⁷⁶ These rapid changes are the result of a collision of public, political, and legal evolutions that cause "high-temperature, high-pressure bursts of energy that sweep across the whole political system."²⁷⁷ The public "becomes proactive," moving ahead of its leaders in response to some type of crisis that alters its perception about the place of government or policy.²⁷⁸ This ground-up movement pressures the existing framework to alter its basic identity to conform to these punctuations.²⁷⁹

If this is true of the federal government, it is perhaps even truer of municipal government, where politics are fought in the trenches.²⁸⁰ The municipal parallel to the federal and state constitutions is the city charter, which strikes

mayor William H. Hudnut was able to "vigorously pursue numerous partnerships to accomplish his goals for local economic development while avoiding" political gridlock and always keeping his eye on "building consensus" politically. David W. Swindell & Roger Parks, *Neighborhoods and Unigou, in WILLIAM H. HUDNUT III, THE HUDNUT YEARS IN INDIANAPOLIS, 1976-1991*, at 153, 155 (1995).

275. *See supra* Part I.B.

276. 2 BRUCE ACKERMAN, *WE THE PEOPLE: TRANSFORMATIONS* 266-94 (1998) (describing the departure at key moments from normal politics into a form of higher lawmaking).

277. Walter Dean Burnham, *Constitutional Moments and Punctuated Equilibria: A Political Scientist Confronts Bruce Ackerman's We the People*, 108 YALE L.J. 2237, 2239 (1999).

278. *Id.* Technically speaking, Ackerman proposes that these moments tend to occur in five stages: (1) signaling by one of the branches of government for change, (2) a subsequent proposal in the constitutional order, (3) proponents triggering a conflict by pursuing the proposal, (4) ratification by the electorate over the course of successive elections, and (5) consolidation of the change through public acceptance. Bruce Ackerman, *The Living Constitution*, 2006 Oliver Wendell Holmes Lectures at Harvard Law School (Oct. 3-5, 2006), *in*: 120 HARV. L. REV. 1737, 1762-85 (2007); *see also* David A. Super, *The Modernization of American Public Law: Health Care Reform and Popular Constitutionalism*, 66 STAN. L. REV. 873, 889-90 (2014). This Note speaks by analogy, and so it has simplified this framework a bit.

279. Perhaps the most recent iteration of this process is the debate over healthcare, the Affordable Care Act, and the scope of the federal government's power over public law. *See Super, supra* note 278, at 889-90.

280. For the uniquely grassroots nature of local government and politics, see J. ERIC OLIVER ET AL., *LOCAL ELECTIONS AND THE POLITICS OF SMALL-SCALE DEMOCRACY* (2012).

the processes of governance and balance of powers in much the same way as the former documents do. The transition to mayor-council government usually requires what this Note calls a “municipal charter moment”: a time or set of circumstances in which events conspire to change the way that a city’s residents view the obligation, role, and scope of the city government and its actors.

These municipal charter moments typically take one of two forms: severe economic collapse or some impropriety or vast ineffectiveness on the part of the current city government. This pattern is borne out by the facts of the most recent transition efforts in Colorado Springs, San Diego, Richmond, Hartford, and Spokane.

Colorado Springs (2010). Colorado Springs’s charter moment was a combination of economic and governmental collapse. “Difficult financial times ha[d] exposed a system unable to react quickly and creatively” to new economic challenges.²⁸¹ The government itself had become deadlocked, with the “most recent city manager, [t]here barely two years, abandon[ing] the position in frustration.”²⁸² The city ultimately voted to switch over to a strong mayor government.

San Diego (2004). Similar to Colorado Springs’s, San Diego’s push for a strong mayor came as a result of corruption and economic downturn. In 2004, City Hall was wracked by scandals, including “three council members under criminal fraud indictment.”²⁸³ In addition, the city experienced a “financial debacle in 2004 caused by many years of underfunding the city-run retirement fund.”²⁸⁴ These factors provided the “final impetus to change.”²⁸⁵ Again, the result was a change to the fundamental charter and governance structure of the city.

Richmond (2003). The same factors were intensely present in Richmond’s decision to move to mayor-council governance. Richmond had “suffered from years of economic decline, conflict with its surrounding suburbs, [and] an adversarial relationship with the business community.”²⁸⁶ It had also experienced “ethical lapses under the council-manager system.”²⁸⁷ Virginia

281. Jane Merritt et al., *The Pros and Cons of a Strong Mayor for Colorado Springs*, COLO. SPRINGS INDEP. (Apr. 29, 2010), <http://www.csindy.com/coloradosprings/the-pros-and-cons-of-a-strong-mayor-for-colorado-springs/Content?oid=1692644>.

282. *Id.*

283. Don Bauder, *Does Big Money Doubt Murphy?*, SAN DIEGO READER (Apr. 22, 2004), <http://www.sandiegoreader.com/news/2004/apr/22/does-big-money-doubt-murphy>.

284. Svara & Watson, *supra* note 260, at 17.

285. *Id.*

286. *Id.* at 16.

287. *Id.*

Governor L. Douglas Wilder stepped in and used these factors to successfully argue for charter reform.²⁸⁸

Hartford (2002). Hartford did not have a single act of corruption that crystallized the need for a strong mayor government. But Hartford was surrounded by a similar municipal charter moment context when it transitioned to strong mayor governance. In 2002, “30 percent of the population live[d] in poverty,”²⁸⁹ and there was “extreme racial tension and violence” and rampant “partisan bickering between Democrats and Republicans” in the city.²⁹⁰

Spokane (1999). Like Hartford, the drive in Spokane to change from council-manager to mayor-council governance was not catalyzed by a single disruptive act but rather a dire business outlook. Spokane is a city of about 200,000 people in Washington State.²⁹¹ In the latter half of the 1990s, downtown Spokane suffered a battered economic climate and needed to aggressively pursue redevelopment.²⁹² The city was also plagued by “high-profile personnel problems.”²⁹³ One driver of the victory of the strong mayor movement was that the reform effort was led by both the mayor and city councilmembers.²⁹⁴

Charter reform is enacted not as a luxury but rather in response to situations so dire that they cause citizens to reflect upon the very purpose and role of local government. When cities attempt and fail to amend their charters to adopt strong mayor governance, it is usually in cases lacking any catalyzing moment.²⁹⁵ As Mayor Johnson of Sacramento put it succinctly in 2014 after the defeat of a widely hailed strong mayor plan, “[i]t’s hard to make this kind of

288. *Id.* at 16-17.

289. Stacey Stowe, *Can One Man Make a Difference?*, N.Y. TIMES (Oct. 20, 2002), <http://nyti.ms/2eRsmrP>.

290. See Svara & Watson, *supra* note 260, at 16.

291. *Id.*

292. *Id.*

293. *Id.*

294. *See id.*

295. Consider the failed attempts in Dallas and Cincinnati. In 2005, Dallas considered moving to a strong mayor system of governance after a federal court mandated that the mayor be selected at large due to Dallas’s lack of compliance with one-person, one-vote court rulings. *Id.* at 17. While the business community supported the effort, there was no catalyst for a change of governance. *See id.* at 17-18. Moreover, “minority communities strongly opposed the conversion,” and the 2005 referenda went down in defeat. *Id.* at 18. Cincinnati’s story was largely similar. In 1995, the business community in urban Cincinnati “had lost much of its clout to neighborhood interests” in the wake of white flight to the Cincinnati suburbs. *Id.* The strong mayor conversion was proposed by business interests but subsequently defeated and later replaced by a qualified “stronger mayor” proposal. *Id.*

change without a crisis.”²⁹⁶ The series of recent charter changes to strong mayor systems reflects a modern municipal charter moment that is perhaps an analogue to the great corruption of the early twentieth century and the rise of Progressive control over cities. These municipal charter moments are more likely to catalyze massive charter changes because they reflect reasoned, bottom-up reform: instead of a mayor or business community sweeping in with a power grab or self-interested proposal, respectively, the citizens are more likely to lead the charge and support the strong mayor that results when their city lies in shambles.

IV. Alternative Ways Forward

As mentioned above, municipal charter moments have historically been induced by either collapse or corruption. But it is reasonable to expect that violence, especially that sparked by a conflict with law enforcement,²⁹⁷ can prove a third legitimate rationale for pursuing charter change without the specter of an illegitimate seizing of power. The call for reform comes, like in the former two instances, from the bottom up: the dissatisfaction of municipal residents and the amplification of that discontent by the press make charter reform seem organic and inevitable.

This Note has suggested one particularly potent avenue for law enforcement reform: empowering mayors to lead this reform through strong mayoral forms of government. But as discussed above,²⁹⁸ it is not right for all instances. Municipal self-determination can manifest in a variety of other forms and is expressed in myriad solutions. This Part considers a few, particularly those based upon the relationship between local and state governments.

A. Parens Patriae

One of the best alternatives moving forward are municipal parens patriae suits brought on behalf of citizens against city law enforcement officials.²⁹⁹ Parens patriae³⁰⁰ suits allow a government (usually a state) to protect the health, safety, and well-being of its population through litigation brought on

296. Lillis, *supra* note 208.

297. *See supra* note 1.

298. *See supra* Part III.

299. For a framework for this discussion drawn from the mortgage context, see Kathleen C. Engel, *Do Cities Have Standing?: Redressing the Externalities of Predatory Lending*, 38 CONN. L. REV. 355 (2006).

300. “Parens patriae” is literally translated as “parent of the country.” *Parens Patriae*, BLACK’S LAW DICTIONARY (rev. 4th ed. 1968).

the population's behalf.³⁰¹ This tool has been used by states to help their cities keep their rivers and harbors clean,³⁰² their air free from fumes,³⁰³ and their transportation providers from colluding.³⁰⁴ It has been suggested that this may also prove a particularly tenable vehicle in police misconduct cases.³⁰⁵

Unfortunately, federal courts have made clear that they are unwilling to recognize cities as quasi-sovereigns for the purposes of these lawsuits.³⁰⁶ But cities may well have standing in state court. This is, once again, a matter of state legislative discretion. By statute, states may grant status to cities to pursue *parens patriae* suits either by a grant of home rule³⁰⁷ or by a narrower enabling statute.³⁰⁸ States may also aid cities in pursuing claims by creating new state statutory civil rights claims or articulating a broader zone of interest for preexisting statutory claims.³⁰⁹ In sum, states and cities can work together to empower municipal action and protection for residents without a formal change to mayoral powers.

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301. See Note, *State Standing in Police-Misconduct Cases: Expanding the Boundaries of Parens Patriae*, 16 GA. L. REV. 865, 874 & n.52 (1982). Note that *parens patriae* standing requires a showing not only of sovereign or quasi-sovereign interest but also “injury to a sufficiently substantial segment” of the population. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607-08 (1982).
302. *New York v. New Jersey*, 256 U.S. 296, 301-02 (1921) (holding that New York could bring suit against New Jersey to secure the “health, comfort and prosperity of the people of the State” by stopping New Jersey from dumping sewage into the New York Bay); *Missouri v. Illinois*, 180 U.S. 208, 241, 248 (1901) (holding that Missouri could bring suit against Illinois for dumping large quantities of sewage into the Mississippi River).
303. *Georgia v. Tenn. Copper Co.*, 206 U.S. 230, 237 (1907) (“This is a suit by a State for an injury to it in its capacity of quasi-sovereign. . . . It has the last word as to whether . . . its inhabitants shall breathe pure air.” (emphasis omitted)).
304. *Georgia v. Pa. R.R. Co.*, 324 U.S. 439, 450 (1945) (holding that Georgia may bring suit on behalf of its citizens to attack an alleged railroad conspiracy to stifle competitive markets and trade).
305. Note, *supra* note 301, at 866.
306. *Cmty. Commc’s Co. v. City of Boulder*, 455 U.S. 40, 53-54 (1982) (opining that the federal system “has no place for sovereign cities”); *City of Sausalito v. O’Neill*, 386 F.3d 1186, 1197 (9th Cir. 2004); cf. *Laura L. Gavioli, Who Should Pay: Obstacles to Cities in Using Affirmative Litigation as a Source of Revenue*, 78 TUL. L. REV. 941, 959-60 (2004) (arguing that “*parens patriae* suffers from vagueness problems” and so some cities have strategically avoided this argument for standing).
307. See George D. Vaubel, *Toward Principles of State Restraint upon the Exercise of Municipal Power in Home Rule*, 20 STETSON L. REV. 5, 30 (1990).
308. This latter option is quite common for public nuisance suits, for instance. See Engel, *supra* note 299, at 367, 384-86.
309. See generally *New York v. Microsoft Corp.*, 209 F. Supp. 2d 132, 149 (D.D.C. 2002) (“[T]he presence or absence of a statute authorizing *parens patriae* standing does affect whether Article III’s standing requirements have been satisfied.”).

B. Sensible State-Local Legislation

Furthermore, states could work with local governments to restructure, revise, or repeal state laws that incentivize overzealous policing.³¹⁰ These laws are, regrettably, not uncommon. At present, some states allow municipalities to charge defendants for the cost of police investigations and trials.³¹¹ Other states allow cities to charge arrestees a fee upon booking regardless of the legality of the underlying arrest.³¹² And yet other states allow cities to collect a fee if the local prosecutor's office halts prosecution.³¹³

These laws, combined with state restrictions on municipalities' discretion in how they collect and use their local tax revenue,³¹⁴ create perverse incentives for cities to rely upon mass policing for revenue, thus raising the potential for civil rights violations. State legislatures can work with local communities to create a far more sensible scheme. Or, at the very least, states can engage in conversation with local government, community leaders, and law enforcement before enacting these potentially insidious reforms.³¹⁵

310. Many of the following issues are noted in *Developments in the Law—Policing*, *supra* note 27, at 1726-33.

311. *Id.* at 1727 (citing MICH. COMP. LAWS ANN. § 769.1f(2) (West 2000); 42 PA. CONS. STAT. ANN. § 9728(g) (West 2014); WASH. REV. CODE ANN. § 10.01.160(2) (West 2002); WIS. STAT. § 973.06(1)(a) (2011)).

312. See *Developments in the Law—Policing*, *supra* note 27, at 1727 (“Some cities charge all arrestees a fee, thereby raising revenue ‘based on only the say-so and perhaps even the whim of one arresting officer, regardless of whether the arrestee was ever prosecuted or convicted, and regardless of whether the arrest was lawful in the first place.’” (quoting *Markadonatos v. Village of Woodridge*, 760 F.3d 545, 567 (7th Cir. 2014) (en banc) (Hamilton, J., dissenting))).

313. See OKLA. STAT. ANN. tit. 22, §§ 305.1, 991d(A)(1) (West 2016); Wayne A. Logan & Ronald F. Wright, *Mercenary Criminal Justice*, 2014 U. ILL. L. REV. 1175, 1188.

314. See GERALD E. FRUG & DAVID J. BARRON, CITY BOUND: HOW STATES STIFLE URBAN INNOVATION 76-90 (2008).

315. One of the lasting difficulties of this conversation is that communities are often not organized or unified, meaning that conversations will need to involve a number of stakeholders and require a higher degree of sophistication and nuance. See David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1801-02 (2005).

Conclusion

“A foolish consistency is the hobgoblin of little minds, adored by little statesmen and philosophers and divines.”

—Ralph Waldo Emerson, *Self-Reliance*³¹⁶

We have come to expect very little from city governments. There remains the temptation to fall back upon antiquated fears of widespread municipal corruption. As a result, we constrict our cities until they can do nothing but carry out basic services. But this is a consequential policy decision. And in the wake of clashes between law enforcement and city residents, the decentralization and bureaucratization of power and authority in municipal government becomes a division mirroring the divided population.

Perhaps more importantly than formal suggestions, this Note’s defense of an empowered mayor is synecdoche for a new form of empowered localism. In our haste to protect cities from themselves through increased turns to state control, dissolution, and minimalism, we have left communities with all the trappings of a municipality—buildings and borders, infrastructure and services—but a hollow one with no manner of self-governance. Urban life continues apace. It just exists increasingly without governmental accountability or responsiveness. Leadership in our cities must come from within instead of being imposed or abandoned altogether. Whether in the form of empowered executives, an increasingly vigilant and creative bureaucracy, a rallied and motivated population, or creative policy solutions imported as best practices from other municipalities, structural and substantive changes must be made. We must support our cities and allow them to survive as they always have: adapting and evolving; opening to new ideas; redrawing blueprints; and holding firm to their identities, pride, and spirit.

316. RALPH WALDO EMERSON, *Self-Reliance*, in ESSAYS: FIRST AND SECOND SERIES 30, 39 (Oxford Univ. Press 1936) (1883).