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Cities on Their Own: Local Revenue When Federalism Fails

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CITIES ON THEIR OWN: LOCAL REVENUE WHEN FEDERALISM FAILS

Erin Scharff[*]

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INTRODUCTION

As I write in the winter of 2020, the health, fiscal, and, frankly, humanitarian crises confronting U.S. cities continue unabated. The COVID-19 pandemic has required local governments to spend more to retrofit public spaces, increase cleaning frequency and protocols, and expand the work of public health departments. In addition, many local communities have allocated funds to address deepening problems of poverty and hunger and have provided cash assistance to struggling local businesses.[1] Meanwhile, local revenue collections shrank

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1. *See, e.g.*, *DHCD Tenant-Based Rental Assistance Program*, GOV'T D.C., https://coronavirus.dc.gov/page/dhcd-tenant-based-rental-assistance-program [https://perma.cc/6A3E-SV7Q] (last visited Feb. 21, 2021); *Fair Housing/COVID-19 Emergency Assistance Program*, CITY OF SAN ANTONIO,

significantly. While not as deep as predicted in March 2020, cities face considerable budget shortfalls. To take a few headline numbers, New York City faces a $3.8 billion shortfall;[2] in October 2020, Chicago predicted a $1.2 billion shortfall;[3] and as of December 2020, Los Angeles officials were struggling with a $675 million shortfall,[4] while San Diego faced an $86 million shortfall.[5]

The pandemic has been especially harsh on the economies of large urban areas. However, even smaller urban communities face significant shortfalls.[6] Meanwhile, a meaningful federal response was

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https://www.sanantonio.gov/NHSD/Programs/FairHousing [https://perma.cc/HXV6-62GY] (last visited Feb. 13, 2021); Anthony Derrick, *Mayor Jenny Durkan Announces Initial 250 Grantees of the Small Business Stabilization Fund, Calls on Private Sector and Philanthropy to Help Support Future Grants*, OFF. MAYOR (Apr. 13, 2020), https://durkan.seattle.gov/2020/04/mayor-jenny-durkan-announces-initial-250-grantees-of-the-small-business-stabilization-fund-calls-on-private-sector-and-philanthropy-to-help-support-future-grants [https://perma.cc/JPM7-A5PJ]; *Small Business Emergency Relief Fund*, DENVER, https://www.denvergov.org/Government/Departments/Economic-Development-Opportunity/Pandemic-Relief-Recovery/Small-Business-Emergency-Relief-Fund [https://perma.cc/XB4L-MY7J] (last visited Feb. 21, 2021). My research assistant, Diego Brito, put together a more comprehensive list of these programs. It is on file with the editors of the *Fordham Urban Law Journal*.

2. *See* Emma G. Fitzsimmons & Jeffery C. Mays, *Pandemic's Fiscal Toll on New York City: 5 Takeaways*, N.Y. TIMES (Nov. 24, 2020), https://www.nytimes.com/2020/11/24/nyregion/coronavirus-budget-nyc.html [https://perma.cc/X795-QXG7].

3. *See* Fran Spielman, *City's Proposed Budget Will Erase $1.2 Billion Shortfall — and Without More Federal Help, Top Mayoral Aides Say*, CHI. SUN TIMES (Sept. 3, 2020, 12:30 PM), https://chicago.suntimes.com/city-hall/2020/9/3/21420104/chicago-budget-2021-federal-strimulus-replacement-revenue-lightfoot [https://perma.cc/46SJ-Z6FP].

4. *See* David Zahniser, *L.A. Vowed to Cut Police and Help Disenfranchised Areas. Now That Plan Is Under Fire*, L.A. TIMES (Dec. 9, 2020, 6:38 PM), https://www.latimes.com/california/story/2020-12-09/lapd-funds-george-floyd-disenfranchised-areas-plan-under-fire#:~:text=Six%20months%20ago%2C%20following%20massive,police%20spending%20by%20%24150%20million [https://perma.cc/PGP2-5SQ2].

5. *See* David Garrick, *San Diego Faces Large Budget Deficits as Pandemic Shrinks Tax Revenues*, SAN DIEGO UNION-TRIB. (Nov. 18, 2020, 5:46 PM), https://www.sandiegouniontribune.com/news/politics/story/2020-11-18/san-diego-facing-large-budget-deficits-as-pandemic-shrinks-tax-revenues [https://perma.cc/5A2B-M77Q].

6. *See* Dorian Hargrove, Alexis Rivas & Tom Jones, *Small Cities with Large Budget Shortfalls Find Little Help from CARES Act*, NBC 7 SAN DIEGO (June 16, 2020, 7:53 PM), https://www.nbcsandiego.com/news/investigations/small-cities-with-large-budget-shortfalls-find-little-help-from-federal-cares-act/2348284 [https://perma.cc/LX42-LNBU] (finding National City in San Diego County has projected revenue loss of $4.8 million but only received $1 million from the CARES Act); Michael A. Pagano & Christopher W. Hoene, *City Budgets in an Era of Increased Uncertainty: Understanding the Fiscal Policy Space of Cities*, BROOKINGS

slow to materialize. In a functioning federalist system, one might expect the central state to quickly address state and local fiscal challenges that are national in scope. Not only would such funds ensure state and local governments had the money to invest in their responses to the pandemic, but they would also prevent public sector cuts that would otherwise deepen the economic recession. While Washington managed to pass one round of stimulus for U.S. workers and businesses,[7] local governments began making cuts almost immediately.[8] At least some political leaders in Washington seemed to believe that the current fiscal crisis confronting local governments is of their own making.[9] This kind of talk is obviously not grounded in reality, though budget decisions made prior to the pandemic limit local options to respond prudently. The American Rescue Plan passed in March of 2021 provides meaningful federal dollars to assist local

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INST. (July 18, 2018), https://www.brookings.edu/research/city-budgets-in-an-era-of-increased-uncertainty [https://perma.cc/489W-2C8G] (arguing that most urban areas lack the taxing authority and flexibility to respond to a financial crisis and that the size of any federal response should be based on the constraints placed on each city); Associated Press, *'We Need Help': Small Cities Face Fiscal Calamity from Coronavirus*, L.A. TIMES (June 10, 2020, 3:15 PM), https://www.latimes.com/world-nation/story/2020-06-10/we-need-help-small-cities-face-fiscal-calamity-from-virus [https://perma.cc/D2SZ-XMJZ] ("The federal CARES Act sent $150 billion to states and the nation's most populous cities and counties to help them pay for expenses related to the virus outbreak. But only 36 cities met the population threshold of 500,000 or more to qualify for the money.").

7. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 2104(b)(1), 134 Stat. 281, 318 (2020) (expanding unemployment insurance eligibility and providing an additional $600 in unemployment benefits per week); § 6428, *id.* at 335 (making immediately available a refundable tax credit termed an "Economic Impact Payment" of $1,200 for eligible adults and $500 for up to two children per household).

8. *See* David Harrison, *State, Local Governments Slashed Spending After COVID. Next Year Could Be Worse.*, WALL ST. J. (Nov. 29, 2020, 12:00 PM), https://www.wsj.com/articles/state-local-governments-slashed-spending-after-covid-next-year-could-be-worse-11606669200 [https://perma.cc/49Q6-KCPV] ("State and local government spending on public services fell at a seasonally adjusted annual rate of 3.7% in the third quarter from the second, according to the Commerce Department. That followed a 6% decline in the second quarter, the sharpest since 1952.").

9. *See* Eric Levitz, *The GOP's Big Lie About Why COVID Relief Talks Failed*, N.Y. MAG. (Aug. 11, 2020), https://nymag.com/intelligencer/2020/08/republicans-covid-stimulus-negotiations-fiscal-aid-states.html [https://perma.cc/2926-2786]; Christina Wilkie, *Trump Says Coronavirus 'Bailouts' for Blue States Are Unfair to Republicans*, CNBC (May 5, 2020, 3:56 PM), https://www.cnbc.com/2020/05/05/coronavirus-trump-says-blue-state-bailouts-unfair-to-republicans.html [https://perma.cc/X8QR-YWN5] ("'We're not interested in solving their pension problems for them, we're not interested in rescuing them from bad decisions they've made in the past,' McConnell said in a televised interview in late April.").

governments with revenue shortfalls, but delays in this assistance complicated local governments' response to the pandemic.[10]

The current recession is an unlikely place to draw meaningful lessons about local fiscal health and local financial crises. The fiscal challenges currently confronting urban areas in the United States are sui generis. We are facing a global economic contraction, unprecedented since the Great Depression, driven by public health regulation and advice that discouraged consumer spending.[11] Rebuilding the economy requires an effective public health response,[12] and the speed at which urban environments will recover will depend on how quickly residents and tourists feel it is safe to resume normal life. Scientists have produced a miracle: vaccines that are 90% effective in record time.[13] But how quickly this miracle will result in meaningful public health improvements in the United States remains to be seen, as the vaccine rollout was slow and uneven in its early days.[14]

In the fall of 2020, I flew to New York City for less than 24 hours to attend a shiva. When will I feel comfortable doing that again? When will global travelers return in large numbers to New York? When will a U.S. passport once again be a gateway to the world? These questions are beyond the scope of this Essay and this symposium, but the answers are at the heart of how long it will take for the U.S. economy (and that of its urban areas) to recover and how such recovery might look.

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10. *See* American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021). Though this Essay was published in the spring of 2021, it was written in the winter of 2020. The world changed quickly. But it remains true that the ability of the federal government to approve an aid package depended on the outcome of two Georgia run-off elections. This is not a robust system of fiscal federalism, even if the aid dollars are currently flowing.

11. *See* INT'L MONEY FUND, WORLD ECONOMIC OUTLOOK UPDATE: A CRISIS LIKE NO OTHER, AN UNCERTAIN RECOVERY 2 (2020), https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020 [https://perma.cc/PP7V-LKWP] ("Economic data available at the time of the April 2020 WEO forecast indicated an unprecedented decline in global activity due to the COVID-19 pandemic. Data releases since then suggest even deeper downturns than previously projected for several economies.").

12. *See id.* at 12.

13. *See* Katie Thomas, David Gelles & Carl Zimmer, *Pfizer Early Data Shows Vaccine Is More Than 90% Effective*, N.Y. TIMES (Feb. 26, 2021), https://www.nytimes.com/2020/11/09/health/covid-vaccine-pfizer.html [https://perma.cc/EP4W-9CFP].

14. *See* Rebecca Robbins, *U.S. Officials Say Covid-19 Vaccination Effort Has Lagged*, N.Y. TIMES (Dec. 30, 2020), https://www.nytimes.com/2020/12/30/health/covid-vaccines-slow-rollout.html [https://perma.cc/HTK5-7U9G].

Though this unique crisis is the result of public health measures, and recovery depends on the success of such measures, it has also exposed the fragility of local revenue and highlighted the fissures in the U.S. body politic. The problem of local revenue sufficiency is not new, nor is the tendency of state and national leaders to blame local fiscal problems on local choices alone rather than understand them to be the result of decisions made at the local, state, *and* national levels.[15]

This Essay proceeds in three parts. Part I describes the brokenness of U.S. fiscal federalism, which has both devolved significant responsibility to local governments and left them without the fiscal tools commensurate with this responsibility. Part II discusses the ways that local governments have sought to secure own-source revenue in the context of declining state aid and state-imposed revenue restrictions, including the choices cities have made or are considering in their fiscal year budgets for 2021. Part III argues that if localities are really on their own, they should be given the fiscal tools necessary to respond to local problems, including significantly more taxing authority.

I. FISCAL FEDERALISM IN DECLINE

A. Fiscal Federalism

Fiscal federalism is an account of how different levels of government (federal, sub-federal, and local) raise and spend revenue.[16] It cautions against redistribution at the local level for fear that such policies will drive exit, which is relatively easy at the local level.[17] (It is manifestly harder to expatriate than to move to suburbia). As a result, conventional wisdom suggests that the national government should pay for redistribution.[18]

In the United States, the federal government can also more easily spend counter-cyclically. While other countries allow sub-federal governments to borrow,[19] in the United States, balanced-budget requirements restrict state governments' ability to engage in

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15. *See infra* Part I.

16. *See* Richard M. Bird, *Fiscal Federalism*, *in* THE ENCYCLOPEDIA OF TAXATION AND TAX POLICY 146, 146–47 (Joseph J. Cordes et al. eds., 2005).

17. *See id.* at 147.

18. *See id.*

19. Canadian provinces, for example, can borrow. *See* Kyle Hanniman, *COVID-19, Fiscal Federalism and Provincial Debt: Have We Reached a Critical Juncture?*, 53 CANADIAN J. POL. SCI. 279, 279 (2020).

countercyclical spending.[20] Thus, conventional fiscal federalism assumes that a central state would lead the response both to a global public health crisis caused by an easily communicable disease and to its resulting economic crisis. A federal government can more easily coordinate the response by, for example, centralizing the purchase and distribution of personal protective equipment and testing equipment.[21] And governments with independent currencies can more easily borrow to pay the costs of such a response.

The legal authority granted to local governments by state law assumes functioning fiscal federalism. Such authority seems to contemplate that local governments are chiefly responsible for supplying local public goods and coordinating local services, including trash collection, local parks, and public safety. The local property tax imposes something akin to a benefits tax in that property values reflect the value of such services to taxpayers, implicitly limiting redistribution. But, of course, this is a vast oversimplification. In the 1950s and 1960s, policymakers called for local commuter taxes, recognizing that commuters benefit from the services a city provides.[22] The campaign for equity in education funding, including both litigation and advocacy, has shifted thinking around education. As a result,

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20. The vast majority of states have constitutional balanced budget requirements, which prevent state deficit spending. *See* NAT'L CONF. OF STATE LEGISLATURES, NCSL FISCAL BRIEF: STATE BALANCED BUDGET PROVISIONS 2 (2010), https://www.ncsl.org/documents/fiscal/StateBalancedBudgetProvisions2010.pdf [https://perma.cc/3PP9-DNBX]. Forty states place additional restrictions on borrowing. The details of these rules, and in particular what types of borrowing are subject to these rules, vary considerably. *See* Kim Rueben & Megan Randall, *Debt Limits: How States Restrict Borrowing*, URB. INST. (Nov. 2017), https://www.taxpolicycenter.org/sites/default/files/publication/149161/debt-limits_1.pdf [https://perma.cc/44ZK-4D5U]. *But see* Darien Shanske & Davide Gamage, *The Case for State Borrowing as a Response to the Current Crisis*, 97 TAX NOTES ST. 1137, 1139–41 (2020) (suggesting more room for states to borrow than has traditionally been believed).

21. *Cf.* Clary Estes, *States Are Being Forced into Bidding Wars to Get Medical Equipment to Combat Coronavirus*, FORBES (Mar. 28, 2020, 6:00 AM), https://www.forbes.com/sites/claryestes/2020/03/28/states-have-are-being-forced-into-bidding-wars-to-get-medical-equipment-to-combat-coronavirus/?sh=1eacb1ae1cde [https://perma.cc/52BU-J6FC] (describing the challenges states face vying for the same resources); Susie Neilson, *The Trump Administration Forced States to Bid eBay-Style for Masks and Ventilators, According to an Explosive New Documentary*, BUS. INSIDER (Oct. 20, 2020, 5:31 PM), https://www.businessinsider.com/documentary-trump-made-states-bid-ebay-style-ppe-masks-2020-10 [https://perma.cc/5U4Y-KKZB].

22. *See* Glenn Pasanen, *Bringing Back the Commuter Tax*, GOTHAM GAZETTE (Jan. 27, 2003), https://www.gothamgazette.com/index.php/transportation/1673-bringing-back-the-commuter-tax [https://perma.cc/9AR6-VUWH].

states now take on a much more significant role in funding what was once commonly understood to be local public goods.[23]

Over the past several decades, political trends have further undermined assumptions in the fiscal literature about the roles of federal and sub-federal entities in funding government services.[24] While the Affordable Care Act continues to be a significant, relatively new source of distributive federal spending,[25] Republican control of the Senate and the filibuster had, until 2021, otherwise limited the growth of federal anti-poverty efforts, even as the deficit grew, both during recessionary and expansionary periods.[26] Under President Obama, Republicans in the Senate stood united in opposition to giving the President any legislative victories, even for ones that involved significant compromise on their part.[27] The crowning achievement of unified Republican control in Washington was what has come to be

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23. *See* Zachary D. Liscow, *The Efficiency of Equity in Local Government Finance*, 92 N.Y.U. L. REV. 1828, 1832 (2017) ("Since the early 1970s, largely responding to state supreme court orders, legislatures have mandated vastly increased state spending in poor school districts to reduce large inequalities in spending across poor and rich locations.").

24. *See* Yunji Kim & Mildred E. Warner, *Shrinking Local Autonomy: Corporate Coalitions and Subnational State*, 11 CAMBRIDGE J. REGIONS ECON. & SOC'Y 427, 428 (2018) ("We challenge the old theories of fiscal federalism, which assumed a rational allocation of expenditure responsibilities across scales of government, with higher scales of government shouldering redistributive functions and lower scales pursuing development functions. . . . [T]he subnational state uses the federalist structure to dump fiscal responsibilities to lower levels." (citation omitted)).

25. *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010); Tara McKay, *The Social Costs of Repealing the ACA*, HEALTH AFFS. (Mar. 7, 2017), https://www.healthaffairs.org/do/10.1377/hblog20170307.059057/full/ [https://perma.cc/6YBQ-CP98] (discussing the distributive impacts of increasing insurance access). *But see* STAN DORN, BOWEN GARRETT & JOHN HOLAHAN, REDISTRIBUTION UNDER THE ACA IS MODEST IN SCOPE 1 (2014), http://webarchive.urban.org/UploadedPDF/413023-Redistribution-Under-the-ACA-is-Modest-in-Scope.pdf [https://perma.cc/8X86-HV67] (noting the modesty of the ACA's redistributive impact).

26. *See* Eduardo Porter, *The Republican Party's Strategy to Ignore Poverty*, N.Y. TIMES (Oct. 27, 2015), https://www.nytimes.com/2015/10/28/business/economy/a-strategy-to-ignore-poverty.html [https://perma.cc/2PGB-4VBS] (discussing Republican policy opposition to expanding safety net programs); David Wessel, *How Worried Should You Be About the Federal Deficit and Debt?*, BROOKINGS INST. (July 8, 2020), https://www.brookings.edu/policy2020/votervital/how-worried-should-you-be-about-the-federal-deficit-and-debt/ [https://perma.cc/BE5P-Y25J] (showing deficit growth since 2000).

27. *See generally* Michael Grunwald, *The Victory of 'No,'* POLITICO (Dec. 4, 2016), https://www.politico.com/magazine/story/2016/12/republican-party-obstructionism-victory-trump-214498 [https://perma.cc/S47D-ECWE] (discussing the "success" of this strategy).

known as the Tax Cut and Jobs Act,[28] a policy that ballooned the deficit while providing minimal benefits to low- and moderate-income Americans.[29] But how quickly things change. With the passage of the American Recovery Plan, the 117th Congress committed itself to broad-scale, anti-poverty measures, including tax provisions estimated to reduce child poverty by more than 40%.[30]

In many states, however, legislative majorities skeptical of social welfare spending remain ascendant. Republicans have a governing trifecta (control of both the governorship and the state legislature) in 23 states as of the 2020 election, while Democrats have similar control of only 15.[31] Many of these Republican trifectas began in the early 2000s or even earlier.[32] At the same time, political polarization has led to a Republican party leadership almost uniformly hostile to tax increases.[33] Of course, Kansas's bipartisan decision to roll back the deep tax cuts imposed earlier this decade suggests that there are limits to this tax-cut orthodoxy even among elected officials.[34] Republican

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28. Budget Fiscal Year, 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

29. *See* William G. Gale, *A Fixable Mistake: The Tax Cuts and Jobs Act*, BROOKINGS INST. (Sept. 25, 2019), https://www.brookings.edu/blog/up-front/2019/09/25/a-fixable-mistake-the-tax-cuts-and-jobs-act/ [https://perma.cc/7YJ6-M5WW] (discussing the deficit increase); Chye-Ching Huang, *Fundamentally Flawed 2017 Tax Law Largely Leaves Low- and Moderate-Income Americans Behind*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 27, 2019), https://www.cbpp.org/federal-tax/fundamentally-flawed-2017-tax-law-largely-leaves-low-and-moderate-income-americans [https://perma.cc/2HKA-HSKC] (discussing the distributive impact).

30. *See* CBPP Staff, *American Rescue Plan Act Will Help Millions and Bolster the Economy*, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 15, 2021), https://www.cbpp.org/research/poverty-and-inequality/american-rescue-plan-act-will-help-millions-and-bolster-the-economy [https://perma.cc/U4JY-KARB].

31. *See State Government Trifectas*, BALLOTPEDIA, https://ballotpedia.org/State_government_trifectas [https://perma.cc/YR98-CMZT] (last visited Feb. 22, 2021).

32. *See id.*

33. *See* Vanessa Williamson, *How Tax Cuts for the Wealthy Became Republican Orthodoxy*, WASH. POST (Dec. 21, 2017, 5:00 AM), https://www.washingtonpost.com/news/monkey-cage/wp/2017/12/21/how-tax-cuts-for-the-wealthy-became-republican-orthodoxy/ [https://perma.cc/3QA7-9ET6].

34. *See* Russell Berman, *The Death of Kansas's Conservative Experiment*, ATLANTIC (June 7, 2017), https://www.theatlantic.com/politics/archive/2017/06/kansass-conservative-tax-experiment-is-dead/529551/ [https://perma.cc/KMZ6-HN4G]. The tax cuts that went into effect in 2014 entirely eliminated the taxation of business income earned by partnerships and other pass-through entities. Kansas tax revenue shrank by about 10% in a single year. *See* Jeremy Hobson, Dean Russell & Samantha Raphelson, *As Trump Proposes Tax Cuts, Kansas Deals with Aftermath of Experiment*, NPR (Oct. 25, 2017, 2:55 PM), https://www.npr.org/2017/10/25/560040131/as-trump-proposes-tax-cuts-kansas-deals-with-aftermath-of-experiment [https://perma.cc/QN2N-WT8G].

voters are actually more divided on this issue. Polling suggests that a small majority of Republican registered voters support increasing taxes on the super wealthy.[35]

Meanwhile, urban areas have grown more progressive, in part as a result of a broader trend of spatialized political polarization and demographic differences between rural and urban Americans.[36] This widening gap between urban political preferences and those of the state and (and at times) national governments has meant that redistributive policies supported by potentially large national majorities and smaller state-level majorities lack support among congressional and state-level legislative leadership. As a result of these trends, it is not surprising that local leaders would be at the forefront in responding to problems that require a strong public sector response. For example, when President Trump announced he was pulling the United States out of the Paris Climate Agreement, local leaders committed themselves to implementing local policies to reduce U.S. carbon admissions.[37] Additionally, in many states, mayors and city councils implemented mask mandates. Sometimes these local leaders simply moved more quickly than state officials, but in too many cases, these local leaders faced hostility and legal challenges from the state.[38]

B. Responsibility Without Fiscal Authority

For years, local governments have faced a rescaling of state responsibility.[39] As scholars Yunji Kim and Mildred E. Warner argued in 2018, "[e]xpenditure responsibility for social welfare has shifted

35. *See* Christopher Ingraham, *Republicans Support Higher Taxes on the Super-Rich, According to a Fox News Survey*, WASH. POST (Jan. 31, 2019, 1:49 PM), https://www.washingtonpost.com/us-policy/2019/01/31/republicans-support-higher-taxes-super-rich-according-fox-news-survey/ [https://perma.cc/3TJ4-DDW4].

36. *See* KIM PARKER ET AL., PEW RSCH. CTR., WHAT UNITES AND DIVIDES URBAN, SUBURBAN AND RURAL COMMUNITIES 29–37 (2018), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2018/05/Pew-Research-Center-Community-Type-Full-Report-FINAL.pdf [https://perma.cc/S9VJ-FVS8].

37. *See* Sarah Fox, *Localizing Environmental Federalism*, 54 U.C. DAVIS L. REV. 133, 140–50 (2020).

38. *See, e.g.*, Daniel Arkin et al., *More Than Half the Country Has Issued Mask Requirements. See If There's a Mandate in Your State*, NBC NEWS (Dec. 10, 2020, 6:01 PM), https://www.nbcnews.com/health/health-news/more-half-country-has-issued-mask-requirements-see-if-there-n1234182 [https://perma.cc/K8CC-EBCS]; Max Cohen, *Georgia Governor Sues to Stop Atlanta Mask Mandate*, POLITICO (July 16, 2020, 6:41 PM), https://www.politico.com/news/2020/07/16/georgia-mayors-brian-kemp-face-masks-366497 [https://perma.cc/5TFQ-F3HY].

39. *See, e.g.*, Kim & Warner, *supra* note 24, at 427.

from the federal to the state level and increasingly to the local level."[40] This shift in responsibility has occurred as the pressures of tax and expenditure limits and more general political support for lowering taxes have shifted state spending. Even as local governments have been asked to do more, state laws have not meaningfully increased local access to revenue from the largest tax bases: property taxes, general sales taxes, and income taxes.[41]

These pressures to rescale are particularly strong during recessions, and the Great Recession accelerated this trend.[42] However, even in the most recent period of economic expansion, many local governments faced fiscal pressures, as state aid was slow to recover from Great Recession cuts.[43] Admittedly, such pressure was not universal. For example, prior to COVID-19, New York City's budget ballooned.[44]

For many years, astute policymakers and scholars have suggested that local revenue needs be met with a reinvigorated property tax.[45] Even though the property tax is the most important own-source revenue stream for local governments,[46] its share of local revenues has been declining for decades.[47] And it is far less important for large,

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40. *Id.* at 428.

41. *See generally* Erin Adele Scharff, *Powerful Cities?: Limits on Municipal Taxing Authority and What to Do About Them*, 91 N.Y.U. L. REV. 292 (2016).

42. *See* Kim & Warner, *supra* note 24, at 429 ("State rescaling theory acknowledges that power is shifted upward to international bodies, downward to subnational governments and outward to private interests, a process which has intensified with austerity since the Great Recession." (citations omitted)).

43. *See 'Lost Decade' Casts a Post-Recession Shadow on State Finances*, PEW CHARITABLE TRS. (June 4, 2019), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/06/lost-decade-casts-a-post-recession-shadow-on-state-finances [https://perma.cc/WD7M-E6YU]; *see also* Kim & Warner, *supra* note 24, at 432.

44. *See* Jeff Coltin, *What to Know About NYC's $92.2 Billion Budget*, CITY & ST. N.Y. (Feb. 7, 2019), https://www.cityandstateny.com/articles/politics/new-york-city/bill-de-blasio-2019-budget-hearing.html [https://perma.cc/36WY-2M6L] (New York's 2019 $92.2 billion budget was about $14 billion more than when Mayor deBlasio took office).

45. *See, e.g.*, DAVID BRUNORI, LOCAL TAX POLICY: A FEDERALIST PERSPECTIVE (2013); JOAN YOUNGMAN, A GOOD TAX (2018).

46. *See What Are the Sources of Revenue for Local Governments?*, TAX POL'Y CTR. (May 2020), https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-local-governments#:~:text=Local%20government%20revenue%20comes%20from,local%20general%20revenue%20in%202017 [https://perma.cc/3KGC-HAUU].

47. *See* IRIS J. LAV & MICHAEL LEACHMAN, CTR. ON BUDGET & POL'Y PRIORITIES, STATE LIMITS ON PROPERTY TAXES HAMSTRING LOCAL SERVICES AND SHOULD BE RELAXED OR REPEALED 4 (2018),

general-purpose jurisdictions.[48] Advocates of increasing local dependence on the property tax, or perhaps more accurately, returning to local dependence on the property tax, note that one of its more attractive features is its stability: revenue from the property tax does not change rapidly with corresponding changes in the economic cycle.[49] For local governments that must balance budgets each year, this stability provides a buffer to city budgets during economic downturns. Property values are a lagging indicator in most recessions; they do not fall as quickly as income or discretionary consumption.[50] Further, certain property tax assessment features reduce the impact of even falling property values on assessments for tax purposes.[51]

However, in his recent work, scholar Andrew Hayashi noted that this stability creates its own problems for homeowners, particularly low-income homeowners, who find their property taxes remain constant even as their incomes decline.[52] Hayashi's research suggested that this burden forces homeowners to sell their property or otherwise make difficult consumption choices.[53] Scholars like Bernadette Atuahene have highlighted the ways that property assessments are disproportionately high for people of color and low-income property owners.[54] In light of these interacting trends, Hayashi and scholar Ariel Jurow Kleiman have cautioned against raising property taxes as a first response to the pandemic.[55]

In the absence of meaningful control over the property tax, it is natural that local governments might turn to the other "main" tax bases on which governments rely for own-source revenue, the sales and income tax bases. While local government reliance on sales taxes has

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https://www.cbpp.org/sites/default/files/atoms/files/7-18-18sfp.pdf [https://perma.cc/T2YR-5U9W].

48. *See* Tracy Gordon, Richard C. Auxier & Aravind Boddupalli, *COVID-19 Has Turned Much of What We Thought We Knew About City Finances Upside Down*, TAX POL'Y CTR. (Sept. 29, 2020), https://www.taxpolicycenter.org/taxvox/covid-19-has-turned-much-what-we-thought-we-knew-about-city-finances-upside-down [https://perma.cc/DK5L-3LD2].

49. *See* BRUNORI, *supra* note 45, at 47–48.

50. *See id.* at 47.

51. *See* Andrew T. Hayashi, *Countercyclical Property Taxes*, 40 VA. TAX REV. 1, 29–30 (2020).

52. *See id.* at 50.

53. *See id.* at 45.

54. *See generally* Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107 (2020).

55. *See* Andrew Hayashi & Ariel Jurow Kleiman, *Property Taxes During a Pandemic*, 96 TAX NOTES ST. 1461 (2020).

increased over time,[56] local sales taxes piggyback on state sales taxes and share many of their undesirable design features, most notably a narrow base.[57] As for local income taxes, the vast majority of local governments simply do not have the authority to levy such taxes.[58]

As a result of long-term demographic trends, residents of urban jurisdictions are frequently more supportive of an active public sector than residents of states as a whole. As a result, local officials and policymakers have embraced a leadership role created in the vacuum of state and federal inaction. In taking up this mantle, however, localities often find themselves resource-constrained, as this Section discussed. As a result, local governments have turned increasingly to more limited revenue sources to make ends meet.

II. MAKING ENDS MEET

Part I described the challenges local governments face in ensuring tax revenue is adequate to fund the goods and services constituents desired. This Part considers some of the strategies local governments have adopted to keep budgets balanced. Section II.A looks at the growth of "miscellaneous" sources of revenue. Section II.B considers non-revenue budget solutions: borrowing and cutting spending.

A. Other Revenues

In the absence of meaningful control over their most significant tax bases, including property taxes, general sales taxes, and income taxes, local governments are more reliant than state and federal governments on what often appears as "miscellaneous taxes/revenue" on budget charts.[59] In 2017, "charges," "miscellaneous revenue," and "other taxes" accounted for over a quarter of local government revenues nationwide.[60] Because school districts and other special districts are more reliant on property taxes, the percentage is even greater for

56. *See What Are the Sources of Revenue for Local Governments?*, *supra* note 46.

57. *See* BRUNORI, *supra* note 45, at 76. Part III discusses this problem further. *See* text accompanying *infra* notes 152–59 (discussing problems with Philadelphia's sales tax).

58. *See* Pagano & Hoene, *supra* note 6.

59. *Compare What Are the Sources of Revenue for Local Governments?*, *supra* note 46, *with What Are the Sources of Revenue for State Governments?*, TAX POL'Y CTR. (May 2020), https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-state-governments [https://perma.cc/HHA2-2YVJ], *and What Are the Sources of Revenue for the Federal Government?*, TAX POL'Y CTR. (May 2020), https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government [https://perma.cc/W4XK-LVF7].

60. *See What Are the Sources of Revenue for Local Governments?*, *supra* note 46.

general-purpose local governments such as cities, towns, and counties.[61] According to the Tax Policy Center, in the 906 largest cities (those with populations over 50,000), 33% of local revenue comes from charges, miscellaneous revenue, and other taxes.[62] For this set of large cities, an additional 5% of revenue is generated by selective sales taxes.[63] For the 67 U.S. cities with populations over 300,000, this share is greater still: such revenue sources account for over 40% of local revenue.[64]

These miscellaneous and other sources of revenue include parking fees, business and event permits, traffic and other safety enforcement fines, and tourism taxes and fees, which include air transportation charges, hotel, and rental car taxes.[65] The combination of revenue sources is unique for every city, in part because of the choices local voters and elected officials make and in part because each state authorizes a different mix of local revenue options. Further, states sometimes authorize different revenue options for different cities within the state. In such cases, larger cities are usually given greater revenue authority.

Consider the City of Atlanta. Its fiscal year 2020 budget predicted $716.7 million in own-source revenue.[66] Of that, 32.3% came from property taxes, and 17% came from its local option sales tax.[67] The remaining 51% of Atlanta's revenue came from miscellaneous revenue sources, including public utility, alcoholic beverage, and other taxes; license and permit revenue; charges for services; fines, forfeitures, and penalties; building rentals and concessions; hotel and motel tax revenue; and pilot and franchise fees.[68] In addition, the city budget predicted 5% of revenue would come from "indirect cost recovery" and 1% from what it called "other revenue."[69] Atlanta's property tax revenue includes real property taxes, real estate transfer taxes, and

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61. *See How Do State and Local Property Taxes Work?*, TAX POL'Y CTR. (May 2020), https://www.taxpolicycenter.org/briefing-book/how-do-state-and-local-property-taxes-work [https://perma.cc/Z93R-G4FP]; *see also* Gordon et al., *supra* note 48.

62. *How Do State and Local Property Taxes Work?*, *supra* note 61.

63. *Id.*

64. *Id.*

65. *See id.*

66. *See* CITY OF ATLANTA, FISCAL YEAR 2020 ADOPTED BUDGET 89 (2020), https://www.atlantaga.gov/home/showpublisheddocument?id=43234 [https://perma.cc/7YJY-ND4S].

67. *See id.*

68. *See id.*

69. *See id.*

intangible recording taxes, not simply the ad valorem property tax.[70] The "other taxes" category includes insurance premium taxes and motor vehicle taxes. "Other revenue" includes investment income and revenue from the sale of city assets.[71] Finally, "indirect cost recovery" budgets as revenue the cost of services the city provides its own departments.[72] As the Atlanta budget document explains, this recovery "allocates a portion of general services costs such as purchasing, accounting, budgeting, personnel administration, and certain other indirect costs based on allocation methodology determined by an independent cost allocation plan."[73]

Denver, on the other hand, is far more dependent on its sales and use tax. For fiscal year 2021, the proposed budget anticipated 55% of revenue to be collected from the city's sales and use tax, with only 12% collected from its property tax.[74] This is not surprising. Colorado's Taxpayer Bill of Rights, known as TABOR, is a significant constraint on tax revenue, and the recently repealed Gallagher amendment limited property tax revenue growth by locking in an assessment ratio between commercial and residential property.[75] After sales revenue, miscellaneous revenue represents the next largest portion of Denver's budget; the city anticipates 20% of revenue coming from what the budget terms "general government," a category that includes licenses and permits, fines and forfeits, cable franchise fees, interest income, fees, charges for services, user charges, internal services and indirect

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70. *See id.* at 90.
71. *See id.* at 91–94.
72. *See id.* at 95.
73. *Id.*
74. CITY & CNTY. OF DENVER, MAYOR'S PROPOSED 2021 BUDGET 78 (2020), https://www.denvergov.org/content/dam/denvergov/Portals/344/documents/Budget/2020/2020BudgetBook_Vol1-2-3.pdf [https://perma.cc/K79W-VQJH].
75. *See* TOM BROWN, CTR. FOR COLO. POL'Y STUD., THE EFFECTS OF TABOR ON MUNICIPAL REVENUES AND SPENDING IN COLORADO (2001), http://static.uccs.edu/ccps/sites/ccps/files/inline-files/Municipal%20Article.final_.pdf [https://perma.cc/GJQ8-ND6L] (discussing the interaction of TABOR and the Gallagher Amendment on municipal revenue); Aldo Svaldi, *Colorado Homeowners Have Among the Lowest Tax Rates in the U.S., but Businesses Say They're Paying the Price*, DENVER POST (Oct. 23, 2020, 1:16 PM), www.denverpost.com/2020/10/23/colorado-amendment-b-property-tax-burden-gallagher-amendment/ [https://perma.cc/6NSA-RE8W] (discussing the impact of the Gallagher amendment on property taxes); *Gallagher Amendment Repeal and Property Tax Assessment Rates Measure (2020)*, BALLOTPEDIA, https://ballotpedia.org/Colorado_Amendment_B,_Gallagher_Amendment_Repeal_and_Property_Tax_Assessment_Rates_Measure_(2020) [https://perma.cc/VLD5-X692] (last visited Mar. 23, 2021) (reporting on repeal of the Gallagher amendment).

costs, and investment services.[76] An additional 8% of revenue is projected from the occupational privilege tax, lodgers (hotel) tax, motor vehicle taxes, and telecommunication taxes.[77]

To be sure, some cities are far less reliant on this miscellaneous revenue. For example, Nashville projected that its property tax would raise almost 60% of city revenue in the 2020–2021 budget year, and over 30% of its revenue would be generated by the sales tax and intergovernmental aid and grants.[78] As a result, miscellaneous revenue sources accounted for less than 10% of the city budget.[79]

As Tracy Gordon and her co-authors noted, prior to this recession, cities that rely on more diverse revenue streams were generally seen as winners in local fiscal policy.[80] These localities had developed revenue sources that responded to the shrinking property tax base by supplementing property tax revenue with revenue from sales taxes and other sources.[81] However, for local governments that rely on sales taxes — especially selective sales taxes — to supplement property tax revenue, 2020 revenue projections fell far short of collection as shutdown orders and consumer fear reduced consumption and tourism fell dramatically.[82]

But such revenue models were under pressure even before the pandemic. Over 15 years ago, scholar Laurie Reynolds trenchantly criticized local reliance on user fees as a "you get what you pay for" model of local government.[83] She noted that local reliance on user fees shifts both who gets local services and what kind of services local governments can deliver, making it harder to provide services that engage in redistribution or services that provide non-rival public goods.[84] Numerous challenges to local user fees have since been

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76. *See* CITY & CNTY. OF DENVER, *supra* note 74, at 78–79.

77. *See id.*

78. METRO. GOV'T OF NASHVILLE & DAVIDSON CNTY., RECOMMENDED OPERATING BUDGET FOR FISCAL YEAR 2020–2021 A-12 (2020), https://www.nashville.gov/Portals/0/SiteContent/Finance/docs/OMB/fy21_budget/Recommended/FY21RecommendedBudgetBook.pdf [https://perma.cc/D3FZ-5RG9].

79. *See id.*

80. *See* Gordon et al., *supra* note 48.

81. *See id.*

82. *See* Christiana McFarland & Brenna Rivett, *Cities Anticipate $360 Billion Revenue Shortfall*, NAT'L LEAGUE CITIES (May 14, 2020), https://www.nlc.org/article/2020/05/14/cities-anticipate-360-billion-revenue-shortfall/ [https://perma.cc/7A3Y-NTTC].

83. *See generally* Laurie Reynolds, *Taxes, Fees, Assessments, Dues, and the "Get What You Pay For" Model of Local Government*, 56 FLA. L. REV. 373 (2004).

84. *See id.* at 407–15; *see also* Michael Hiltzik, *The Next Crisis for California Will Be the Affordability of Water*, L.A. TIMES (July 7, 2017, 2:20 PM),

brought by plaintiffs alleging that the fees are taxes in disguise given that they are not calculated with the necessary precision to reflect the costs incurred in providing the good or service for which the fee was charged.[85] While not all of these challenges have been successful, such challenges collectively limit the government's ability to adopt fee schedules that fully reflect the costs borne by the city or the services the city offers.[86]

A separate and significant body of scholarship criticizes local use of and reliance on criminal justice and traffic fines and fees.[87] Such fines and fees reflect the racial disparities endemic to our criminal justice system. People of color are much more likely to face such fines and fees in part as a result of enforcement disparities.[88] However, other factors contribute to the problem as well. One study suggested that the "one demographic that was most characteristic of cities that levy large amounts of fines on their citizens [is] a large African American population."[89] According to that study, "[a]mong the fifty cities with the highest proportion of revenues from fines, the median size of the African American population — on a percentage basis — is more than five times greater than the national median."[90]

Those with low incomes face potentially significant financial obstacles due to this regressive method of raising revenue. Not only are the fines and fees a much larger share of income for those living at or close to the poverty line, those lacking the funds to immediately pay these fines must often bear high interest rates and pay fees to enter

https://www.latimes.com/business/hiltzik/la-fi-hiltzik-water-afford-20170709-story.html [https://perma.cc/Z4MT-8TSU] (discussing the way Proposition 218 limits the ability of water districts to subsidize pricing).

85. *See generally* Erin Adele Scharff, *Green Fees*, 97 NEB. L. REV. 168 (2018).

86. *See id.*; *see also* Jason Ruiz, *Tied Up in Appeals, Litigation over Water Fees Could Deepen City's Fiscal Pain*, LONG BEACH POST NEWS (July 29, 2020, 3:55 PM), https://lbpost.com/news/tied-up-in-appeals-litigation-over-water-fees-could-deepen-citys-fiscal-pain [https://perma.cc/2RKN-MAZD] (discussing challenges facing Long Beach during the pandemic because of legal challenges to its water fee structures).

87. *See, e.g.*, Ariel Jurow Kleiman, *Nonmarket Criminal Justice Fees*, 71 HASTINGS L.J. 517 (2020).

88. *See* BACK ON THE RD. CAL., STOPPED, FINED, ARRESTED: RACIAL BIAS IN POLICING AND TRAFFIC COURTS IN CALIFORNIA 21 (2016), http://ebclc.org/wp-content/uploads/2016/04/Stopped_Fined_Arrested_BOTRCA.pdf [https://perma.cc/NY6P-8LKG].

89. Dan Kopf, *The Fining of Black America*, PRICEONOMICS (June 24, 2016), https://priceonomics.com/the-fining-of-black-america/ [https://perma.cc/EM3G-GRA7].

90. *Id.*

repayment programs.[91] In far too many jurisdictions, failure to pay such fines and fees can result in the suspension of driver's licenses, making it more difficult for those individuals to commute to work.[92] In some jurisdictions, failure to pay can even result in incarceration, which in a sad irony can result in additional fines and fees.[93]

At least in some jurisdictions, enforcement priorities reflect jurisdictions' search for revenue. In the wake of the shooting of Michael Brown by a Ferguson, Missouri, police officer, the U.S. Department of Justice investigated Ferguson's Police Department. That investigation uncovered damning emails that revealed both casual racism in daily correspondence and the importance of revenue in Ferguson policing decisions.[94] But not all of this budgeting happens in secret. Chicago tried to balance its budget using additional enforcement revenue.[95]

Finally, many local governments rely on a set of selective sales taxes and user fees imposed primarily on tourists and the tourist industry.[96] The taxes include room occupancy taxes, lodging taxes, a variety of rental car fees and taxes, and taxes on restaurant meals that are also borne by locals.[97] Because such taxes are paid by non-residents, they have proven politically popular. In recent years, both state and local governments have increasingly imposed or raised tourist taxes.[98] However, this has been an especially terrible year for tourism.[99] As a

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91. *See* COUNCIL OF ECON. ADVISORS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR 3 (2015).

92. *See id.* at 4.

93. *See* U.S. COMM'N ON C.R., TARGETED FINES AND FEES AGAINST COMMUNITIES OF COLOR 38 (2017).

94. *See* C.R. DIV., U.S. DEP'T OF JUST., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 2 (2015).

95. *See Mayor Lori Lightfoot's 'Pandemic Budget' for 2021 Cleared the Chicago City Council. Here Are 5 Things to Know*, CHI. TRIB. (Nov. 24, 2020, 5:40 PM) [hereinafter *Mayor Lori Lightfoot's 'Pandemic Budget' for 2021*], https://www.chicagotribune.com/politics/ct-cb-chicago-lightfoot-city-budget-five-things-20201124-qb7kajivovf57nwjsuaj4o3l3e-story.html [https://perma.cc/L42N-SW7J].

96. *See* ADVISORY COMM'N ON INTERGOVERNMENTAL RELS., REVENUE DIVERSIFICATION: STATE AND LOCAL TRAVEL TAXES (1994), https://library.unt.edu/gpo/acir/Reports/information/M-189.pdf [https://perma.cc/K4K9-AXEZ].

97. *See id.* at 2.

98. *See* Elaine S. Povich, *States Lure Tourists, Then Tax Them*, PEW CHARITABLE TRS. (June 15, 2015), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/6/15/states-lure-tourists-then-tax-them [https://perma.cc/J8PD-8PU5].

99. *See* Barb Rosewicz & Mike Maciag, *Pandemic-Driven Declines in Tourism Take Toll on Many States' Revenues*, PEW CHARITABLE TRS. (Oct. 14, 2020),

result, jurisdictions for which out-of-town visitors play a significant role in revenue find themselves struggling with significant unemployment within the tourism industry and sharply reduced tax revenue.[100]

But local reliance on tourism taxes creates problems even when local governments are not facing a global pandemic. For one thing, tourism is quite cyclical, so revenue from tourism taxes can fall quickly in economic downturns. In the long economic expansion from the end of the Great Recession to March 2020, tourism was, of course, a growth industry;[101] however, the Great Recession was also a period of significant decline in both business and leisure travel.[102] The cyclical nature of tourism taxes is not the only problem with this revenue source. Not all jurisdictions will be able to rely (or rely to the same extent) on such revenues, and those cities without a significant tourism industry cannot rely on tourism taxes. Not only does this produce clear winners and losers, but it may also undermine potential intra-jurisdictional efforts to reform local revenue options more broadly.

Further, recent events have brought a sea change in tourist patterns to which local tax systems are only beginning to respond. The emergence of transportation networking companies and the short-term rental industry has threatened the dominance of the rental car and hotel industries[103] and the tax revenue these industries contribute to the local budget.[104] If the general sales tax was the primary mechanism

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https://www.pewtrusts.org/en/research-and-analysis/articles/2020/10/14/pandemic-driven-declines-in-tourism-take-toll-on-many-states-revenues [https://perma.cc/ME2R-VXAM] (looking at the state budget picture, although a similar analysis applies to cities).

100. *See id.*

101. *See* Hugo Martín, *Coronavirus Could Inflict Biggest Blow to Travel Industry Since Great Recession*, L.A. TIMES (Mar. 6, 2020, 5:00 AM), https://www.latimes.com/business/story/2020-03-06/coronavirus-travel-industry-great-recession [https://perma.cc/ZJP7-4ZV3].

102. *See* Geoffrey Paulin, *Travel Expenditures, 2005–2011: Spending Slows During Recent Recession*, U.S. BUREAU LAB. STAT.: BEYOND NOS. (Dec. 2012), https://www.bls.gov/opub/btn/volume-1/travel-expenditures-2005-2011-spending-slows-during-recent-recession.htm [https://perma.cc/5XRV-TSAX]; *see also* U.S. TRAVEL ASS'N, THE ROLE OF BUSINESS TRAVEL IN THE U.S. ECONOMIC RECOVERY 7 (2015), https://www.ustravel.org/sites/default/files/media_root/5.2015_BizTravel_Report.pdf [https://perma.cc/M4KF-Z3K7].

103. *See* Jiyong Park, *How the Sharing Economy Changes the Tourism Landscape: The Complementary Impacts of Airbnb and Uber/Lyft*, PAC. ASIA CONF. ON INFO. SYS. 2, 3 (2020).

104. *See* Jordan E.A. Ferguson, Christy Gunvalsen & Rebecca L. Moon, *Uber, Airbnb and Municipalities: Maximizing New Tax and Licensing Revenue Opportunities*, STRAFFORD (Oct. 5, 2016, 1:00 PM), http://media.straffordpub.com/products/uber-airbnb-and-municipalities-maximizing-

for revenue raising, this shift might have had less of a budget impact. But most tourist taxes are selective, meaning they apply only to narrowly defined bands of activity. As a result, companies like Airbnb and Uber have argued that they should not be subject to the taxes imposed on their more traditional competitors.[105] Legislation can always catch up to these changing industry dynamics. Still, the sharing economy has also proven itself adept at securing legislative victories for itself at both the state and local levels.[106] The ascendance of these industries may suggest a potential limit to growth in tourism taxes.

As this Part suggests, local governments have been adept at finding new sources of revenue to supplement traditional reliance on the property tax. However, many of these revenue sources raise serious issues of equity and stability. Of course, growth in such "miscellaneous" revenue is not the only option for cities facing fiscal constraints. As the next Section discusses, local governments can both borrow funds and cut services to make ends meet.

B. Other Budget Options: Borrowing and Shifting Funding Priorities

Raising own-source revenue via taxes and fees is not the only option cities have for balancing their budgets. Cities can consider borrowing and cutting spending as well. Cities also incur debt for capital costs, i.e., the costs of building and maintaining long-lived assets like city buildings and public roads,[107] as it makes little sense to finance such

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new-tax-and-licensing-revenue-opportunities-2016-10-05/presentation.pdf [https://perma.cc/2FEF-ULZW]; Brian Hardzinski & Adam Brooks, *'Gig Economy' Businesses Like Uber, Airbnb a Complex Revenue Source for Oklahoma City*, KGOU (Aug. 21, 2015), https://www.kgou.org/post/gig-economy-businesses-uber-airbnb-complex-revenue-source-oklahoma-city [https://perma.cc/93P8-NBSP]; Kirk Miller, *Your Uber Ride from the Airport May Get More Expensive. Here's Why.*, INSIDEHOOK (Feb. 19, 2020, 11:47 AM), https://www.insidehook.com/daily_brief/travel/lyft-uber-airport-fees [https://perma.cc/9CWV-LDLC].

105. *See* Jonathan J. Cooper, *Official Says Phoenix Airport Ride-Hailing Fee Is Illegal*, ABC NEWS (Jan. 16, 2020, 7:02 PM), https://abcnews.go.com/Business/wireStory/official-phoenix-airport-ride-hailing-fee-illegal-68340156 [https://perma.cc/BZ2Q-U7KM]; Paris Martineau, *Inside Airbnb's 'Guerilla War' Against Local Governments*, WIRED (Mar. 20, 2019, 7:00 AM), https://www.wired.com/story/inside-airbnbs-guerrilla-war-against-local-governments/ [https://perma.cc/PGC5-LLJB].

106. *See generally* Brad Stone, *The $99 Billion Idea*, BLOOMBERG BUSINESSWEEK (Jan. 26, 2017), https://www.bloomberg.com/features/2017-uber-airbnb-99-billion-idea/ [https://perma.cc/Q99L-NCVT].

107. *See Policy Basics: State and Local Borrowing*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 16, 2018), https://www.cbpp.org/research/state-budget-and-tax/policy-basics-state-and-local-borrowing [https://perma.cc/63CN-XQV9].

projects out of a single year's revenue. However, borrowing to cover operating expenses is generally viewed as a last resort of financially desperate cities.[108] Such borrowing only postpones a reckoning between fiscal capacity and service provision — a reckoning made more difficult as debt service adds additional costs but does not contribute to current city services.[109] In the context of this particular recession, however, some scholars have argued that this traditional advice should not be heeded given the pressing service needs and the likelihood that investments in human services might forestall further economic decline.[110]

Even if borrowing for operating expenses is generally controversial, it is also quite common, at least in a sense. Underfunding pensions by paying less into pension funds than a reasonable discount rate might require is also a kind of borrowing against future revenues. Pension obligations, of course, are not legal borrowing in the sense they are not secured debt.[111] Nevertheless, pensions, like borrowing to cover operating costs, allow governments to fund current services without current revenue because the full cost of providing those services is delayed by postponing a portion of municipal employee compensation into the future. This form of borrowing is common for two reasons. First, pensions are not subject to the same constitutional restrictions as traditional, secured borrowing.[112] Second, they were historically funded on a pay-as-you-go basis, i.e., local governments simply paid

108. *See* Jeff Chapman, Adam Levin & Mark Robyn, *States Contemplate Borrowing to Help Manage Pandemic's Fiscal Impact*, PEW CHARITABLE TRS. (June 9, 2020), https://www.pewtrusts.org/en/research-and-analysis/articles/2020/06/09/states-contemplate-borrowing-to-help-manage-pandemics-fiscal-impact [https://perma.cc/7DUK-C92Q]; Luis Ferré-Sadurní, Jeffery C. Mays & Jesse McKinley, *Virus Forces N.Y.C. to Consider Tactic That Nearly Led to Ruin in '75*, N.Y. TIMES (May 29, 2020), https://www.nytimes.com/2020/05/29/nyregion/budget-borrow-coronavirus-ny.html [https://perma.cc/EB5P-GHJY].

109. *See* Liz Farmer, *The 7 Deadly Sins of Public Finance*, GOVERNING (June 2014), https://www.governing.com/finance101/gov-deadly-public-finance-sins.html [https://perma.cc/AGC8-5ZXV].

110. *See* Shanske & Gamage, *supra* note 20.

111. *See* IRIS J. LAV & ELIZABETH MCNICHOL, CTR. ON BUDGET & POL'Y PRIORITIES, MISUNDERSTANDINGS REGARDING STATE DEBT, PENSIONS, AND RETIREE HEALTH COSTS CREATE UNNECESSARY ALARM 2–4 (2011), https://www.cbpp.org/sites/default/files/atoms/files/1-20-11sfp.pdf [https://perma.cc/VX3E-3R7R] (explaining the difference in pensions and municipal debt).

112. *See* KIL HUH ET AL., PEW CHARITABLE TRS., STRATEGIES FOR MANAGING STATE DEBT 2, 27 (2017), https://www.pewtrusts.org/-/media/assets/2018/04/pew_strategies_managing_state_debt_april_2018.pdf [https://perma.cc/3KKN-33SE].

their pension obligations out of their annual budgets.[113] The push to pre-fund pension obligations began only in the 1970s and 1980s, as the failure of private-sector pensions spurred regulatory reform in the private sector and put pressure on public pensions to change their practices.[114]

The scope of the municipal pension problem is a much-debated question, as measuring the extent of underfunding requires making assumptions about the future, and there is significant disagreement about what assumptions are appropriate.[115] Most analysts would agree, however, that the COVID-19 recession has exacerbated existing challenges and that there will be pressure on local governments to reduce their payments to pension funds to resolve current budget shortfalls.[116] Whether or not this strategy makes sense in the short term, existing pension liabilities certainly make additional borrowing for operating expenses even less attractive. While solutions to local pension problems are beyond the scope of this short Essay, it seems likely that they will require at least some additional budget outlays toward pension obligations.[117] Such outlays will place additional pressure on local budgets.

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113. *See State and Local Government Pensions*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-and-local-backgrounders/state-and-local-government-pensions [https://perma.cc/JD82-2AFK] (last visited Feb. 11, 2021).

114. *See id.*

115. *See* Louise Sheiner, *Are State and Local Pension Funds Really in Crisis?*, BROOKINGS INST. (July 15, 2019), https://www.brookings.edu/blog/up-front/2019/07/15/are-state-and-local-pension-funds-really-in-crisis/ [https://perma.cc/U9HK-SFEC] (discussing various ways of assessing the problem and how best to understand its magnitude).

116. *See* PEW CHARITABLE TRS., A WIDENING GAP IN CITIES: SHORTFALLS IN FUNDING FOR PENSIONS AND RETIREE HEALTH CARE 5 (2013), https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2013/pewcitypensionsreportpdf.pdf [https://perma.cc/YW4G-C3B5] (finding no city in the sample had funded more than 55% of retiree health care program, for example); Alison Felix, *Covid-19 Poses Risks for State and Local Public Pensions*, FED. RSRV. BANK KAN. CITY (Aug. 19, 2020), https://www.kansascityfed.org/publications/research/eb/articles/2020/covid-poses-risks-state-local-public-pensions [https://perma.cc/983W-LNPQ]; Girard Miller, *Public Pensions and the Covid-19 Fiscal Dilemma*, GOVERNING (July 7, 2020), https://www.governing.com/finance/Public-Pensions-and-the-COVID-19-Fiscal-Dilemma.html [https://perma.cc/S4NB-W9XW]; Mary Williams Walsh, *Coronavirus Is Making the Public Pension Crisis Even Worse*, N.Y. TIMES (Apr. 2, 2020), https://www.nytimes.com/2020/04/02/business/coronavirus-public-pension.html [https://perma.cc/CQ8M-MQVT].

117. *See* RICHARD W. JOHNSON & OWEN HAAGA, URB. INST., EVALUATING PENSION REFORM OPTIONS WITH THE PUBLIC PENSION SIMULATOR: A CASE STUDY OF PENNSYLVANIA TEACHERS 12–14 (2017),

In addition to increasing revenues and borrowing to close budget gaps, local governments can also cut spending. In fact, spending cuts are a common local response to revenue declines in a recession,[118] and at the state level, governments also often cut taxes during recessions.[119]

Even without these recessionary pressures, reductions in public sector spending have long been a goal of conservative movement activists.[120] This theory of tax cuts is often referred to as the "starve the beast" strategy.[121] Tax cuts at the federal level have not meaningfully reduced spending, as some conservatives have bemoaned.[122] At the state level, however, laws imposing restrictions on tax rate increases have succeeded in both reducing spending and shifting some costs onto local governments.[123] Another study concluded that local tax limits lead to increasing state aid; when limits are placed on state governments, public spending overall is constrained.[124] Despite their mixed record of effectiveness, such limits

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https://www.urban.org/sites/default/files/publication/89506/pension_simulator_report_1.pdf [https://perma.cc/C95C-XXTN]; ELIZABETH MCNICHOL & IRIS J. LAV, CTR. ON BUDGET & POL'Y PRIORITIES, A COMMON-SENSE STRATEGY FOR FIXING STATE PENSION PROBLEMS IN TOUGH ECONOMIC TIMES 1 (2011), https://www.cbpp.org/research/a-common-sense-strategy-for-fixing-state-pension-problems-in-tough-economic-times [https://perma.cc/B5EH-ENK8]; *4 Best Practices to Address the Pension Crisis*, GOVERNING (Oct. 2, 2019), https://www.governing.com/archive/4-Best-Practices-to-Address-the-Pension-Crisis.html [https://perma.cc/336H-85TT].

118. *See* Tracy Gordon, *State and Local Budgets and the Great Recession*, BROOKINGS INST. (Dec. 31, 2012), https://www.brookings.edu/articles/state-and-local-budgets-and-the-great-recession/ [https://perma.cc/8XBH-URPE].

119. *See id.*

120. *See generally* NANCY MACLEAN, DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT'S STEALTH PLAN FOR AMERICA (2017) (discussing efforts of conservative activists to reverse the New Deal and renegotiate the role of government in public life).

121. *See generally* Bruce Bartlett, "*Starve the Beast": Origins and Development of a Budgetary Metaphor*, 12 INDEP. REV. 5 (2007).

122. *See, e.g.*, William A. Niskanen, *"Starve the Beast" Does Not Work*, CATO POL'Y REP., Mar./Apr. 2004, at 2.

123. *See* TRACY M. GORDON, BROOKINGS INST., WHAT STATES CAN, AND CAN'T, TEACH THE FEDERAL GOVERNMENT ABOUT BUDGETS 10 (2012), https://www.brookings.edu/wp-content/uploads/2016/06/03_states_budgets_gordon.pdf [https://perma.cc/XH4U-TQHY].

124. *See* Mark Skidmore, *Tax and Expenditure Limitations and the Fiscal Relationships Between State and Local Governments*, 99 PUB. CHOICE 77–102 (1999); *see also* Joseph Mengedoth & Santiago Pinto, *Show and TEL: Are Tax Expenditure Limitations Effective?*, ECON FOCUS 36, 38 (2015), https://www.richmondfed.org/-/media/richmondfedorg/publications/research/econ_focus/2015/q2/pdf/district_digest.pdf [https://perma.cc/UU9E-E885] (discussing the difficulty of assessing TELS because of variations in design and omitted variable problems).

and associated calls for shrinking government budgets have long been associated with conservative politics.

In the summer of 2020, however, the strength of the Black Lives Matter protests amplified progressive voices urging significant reductions in public safety expenditures. In 2017, municipal governments spent 13% of their budgets on their police departments.[125] When accounting for municipal courts and municipally-funded incarceration, the criminal justice budget increases to over 15% of municipal budgets.[126] (Because counties primarily pay for incarceration, they spend almost 20% of their budgets on the criminal justice system).[127] A Bloomberg News analysis of cities suggested that many large cities spend more than a quarter of their budgets on police.[128]

Determining how much a community spends on policing compared to other priorities can be difficult to disentangle. As Richard Auxier explained, "a key challenge in translating police spending data is merely our system of governance. In short, different governments deliver different services — and it varies by state."[129] In Los Angeles, both the city and the county engage in policing, but independent school districts fund most public education,[130] while New York City itself funds both policing and schools directly.[131] Public data on police spending likely also does not account for the money local governments spend litigating, settling, and paying out damages in police misconduct cases.[132] Such expenses are not trivial. Over a ten-year period, Chicago

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125. *See Criminal Justice Expenditures: Police, Corrections, and Courts*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/criminal-justice-police-corrections-courts-expenditures [https://perma.cc/EF4L-9JNQ] (last visited Feb. 8, 2021).

126. *See id.*

127. *See id.*

128. *See* Sarah Holder, Fola Akinnibi & Christopher Cannon, *'We Have Not Defunded Anything': Big Cities Boost Police Budgets*, BLOOMBERG CITYLAB (Sept. 22, 2020), https://www.bloomberg.com/graphics/2020-city-budget-police-defunding/ [https://perma.cc/5RTX-WL7T].

129. Richard C. Auxier, *What Police Spending Data Can (and Cannot) Explain Amid Calls to Defund the Police*, URB. INST. (June 9, 2020), https://www.urban.org/urban-wire/what-police-spending-data-can-and-cannot-explain-amid-calls-defund-police [https://perma.cc/M2B3-LC99].

130. *See id.*

131. *See id.*

132. Even in Auxier's comprehensive discussion of public safety budgets, such costs do not appear to have been taken into account. *See id.*

spent over a half-*billion* dollars in damage and settlement costs, and additional money in litigation expenses.[133]

I support efforts to shift funding away from the criminal justice system and toward human services expenditures. Such a shift would both advance racial justice and local fiscal health. However, such efforts are unlikely to provide a panacea for local revenue problems. For one, such reductions remain an uphill battle. Though some cities, like Austin, have made significant cuts to their police budgets,[134] even the high-profile efforts to cut the Minneapolis Police Department in the wake of George Floyd's murder have led to only a small shift in the city's budget.[135] In many cities, police budgets have grown.[136] Such growth may represent path dependence as much as political will. Calls to shift local funding priorities happened too late in many city budget processes, and some cities had scheduled increases due to union contracts.[137]

"Public safety" spending is often spared the full impact of budget cuts that affect other city departments in times of economic decline. During the Great Recession, for example, state and local governments focused their spending reductions on education, health, and social services.[138] While there were cuts to police departments in many

133. *See* Cheryl Corley, *Police Settlements: How the Cost of Misconduct Impacts Cities and Taxpayers*, NPR (Sept. 19, 2020, 7:00 AM), https://www.npr.org/2020/09/19/914170214/police-settlements-how-the-cost-of-misconduct-impacts-cities-and-taxpayers [https://perma.cc/A6WB-FS9M].

134. *See* Leif Reigstad, *How Austin Cut One Third of Its Spending on the Police Department*, TEX. MONTHLY (Nov. 17, 2020), https://www.texasmonthly.com/politics/austin-police-department-defunding/ [https://perma.cc/C6RK-MSRV].

135. *See* Avie Schneider, *Minneapolis Shifts $8 Million in Police Funding, But Keeps Force at Current Level*, NPR (Dec. 10, 2020, 1:41 PM), https://www.npr.org/2020/12/10/944938471/minneapolis-shifts-8-million-in-police-funding-but-keeps-force-at-current-level#:~:text=DOJ%20Unveils%20New%20Initiative%20To,current%20888%2C%20starting%20in%202022 [https://perma.cc/PXX9-2WFE].

136. *See* Holder et al., *supra* note 128.

137. *See id.*

138. *See* TRACY GORDON, RUSSELL SAGE FOUND. & STANFORD CTR. ON POVERTY & INEQUALITY, STATE AND LOCAL BUDGETS AND THE GREAT RECESSION 5 (2012), https://web.stanford.edu/group/recessiontrends-dev/cgi-bin/web/sites/all/themes/barron/pdf/StateBudgets_fact_sheet.pdf [https://perma.cc/M36W-UK4L].

jurisdictions,[139] those cuts were not as deep as cuts to other programs.[140]

That the fiscal shortfalls caused by the current COVID-19 recession have not resulted in meaningful reductions in police spending suggests the magnitude of the problem. For example, Chicago, facing one of the largest shortfalls in the country, closed much of its budget gap by refinancing existing loans.[141] Chicago Mayor Lori Lightfoot rejected calls to defund the police, reaching a deal to make cuts only by attrition.[142] In fact, the ultimate budget that passed included an increase in revenue from traffic and public safety code enforcement.[143] As discussed previously, local reliance on these fines and fees is an inequitable way of raising revenue.

Further, unfunded pension obligations mean that even significant decreases in current police spending will not allow cities to quickly shift their spending priorities, as cities need revenue to pay for the already incurred pension obligations of police officers.[144] Resolving these pension problems will take creativity on the part of local elected and union officials.

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139. *See* U.S. DEP'T OF JUST., OFF. OF CMTY. ORIENTED POLICING SERVS., THE IMPACT OF THE ECONOMIC DOWNTURN ON AMERICAN POLICE AGENCIES (2011), https://cops.usdoj.gov/RIC/Publications/cops-w0713-pub.pdf [https://perma.cc/8LP9-98JU].

140. *See* Adam H. Langley, *Local Government Finances During and After the Great Recession*, *in* LAND AND THE CITY 14–15 (George W. McCarthy, Gregory K. Ingram & Samuel A. Moody eds., 2014).

141. *See* Shruti Singh, *Chicago Passes $12.8 Billion Budget with More Taxes*, BLOOMBERG (Nov. 24, 2020, 4:48 PM), https://www.bloomberg.com/news/articles/2020-11-24/chicago-passes-12-8-billion-budget-with-more-taxes-refinancing [https://perma.cc/RNW3-UKE7].

142. *See* Heather Cherone, *City Council Approves Lightfoot's $12.8 Billion Budget — with 22 'No' Votes*, WWTW (Nov. 24, 2020, 4:50 PM), https://news.wttw.com/2020/11/24/city-council-approves-lightfoots-128-billion-budget [https://perma.cc/LBQ8-YALT]; Alex V. Hernandez, Maxwell Evans & Kelly Bauer, *As Cities Across the Country Slash Police Funding, It's Unlikely to Happen in Chicago with Mayor Not on Board, Aldermen Say*, BLOCK CLUB CHI. (June 9, 2020, 8:29 AM), https://blockclubchicago.org/2020/06/09/chicago-police-budget-funding-lightfoot-progressive-caucus-cpd-defund-police/ [https://perma.cc/QR35-B4WR]; Dana Kozlov, *Mayor Lightfoot's Budget Proposal Calls for Cuts to Police Budget, but Mayor Remains Against Defunding Police*, CBS CHI. (Oct. 21, 2020, 6:24 PM), https://chicago.cbslocal.com/2020/10/21/mayor-lightfoots-budget-proposal-calls-for-cuts-to-police-budget-but-mayor-remains-against-defunding-police/ [https://perma.cc/7Z4P-V598].

143. *See Mayor Lori Lightfoot's 'Pandemic Budget' for 2021*, *supra* note 95.

144. *See* Heather Gillers & Andrea Fuller, *Cities Weigh Cutting Police Budgets and Discover How Hard That Is*, WALL ST. J. (Aug. 12, 2020, 3:38 PM), https://www.wsj.com/articles/cities-weigh-cutting-police-budgets-and-discover-how-hard-that-is-11597261079 [https://perma.cc/2ZSL-N6YH].

III. A WAY FORWARD

As cities seek options for a more stable fiscal path going forward, reforming city revenue sources should be a central part of the agenda. As discussed above, re-prioritizing local spending is an important part of the budget conversation, but it is likely that once federal aid stops flowing, cities may find themselves continuing to face fiscal challenges. What then is the path forward? Cities need access to better designed, broad-based taxes. Miscellaneous revenue is not an effective tax system, and reliance on these sources creates a host of problems and challenges.

Advocates and policymakers interested in local revenue should continue to pursue changes in the property tax that would both grant local governments more control over property tax revenue and make the property tax more efficient, but calls for such reforms should be complemented by advocacy and research focused on expanding local legal authority to impose income and sales taxes. There are currently 18 states that provide only property tax authorization for local governments and one state that authorizes only a sales tax.[145] Only one state, Alabama, authorizes all three broad-based taxes for local governments.[146]

An additional five cities have such authorization even though other local governments in their state do not: New York City, Yonkers, Philadelphia, Kansas City, and St. Louis.[147] The list of cities that provide expanded fiscal authority perhaps offers its own cautionary tale. While New York City's tax base allowed it to significantly expand its budget prior to the pandemic, the city still has unresolved pension and retirement benefits issues,[148] and Philadelphia experienced a period of significant fiscal distress that led to a nearly three-decade period of state oversight over local finances.[149] That state supervision is set to expire,[150] but even prior to the pandemic, experts at the Pew Charitable Trusts Philadelphia Research project noted that "[f]iscal

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145. *See* Pagano & Hoene, *supra* note 6.

146. *See id.*

147. *See id.*

148. *See* John Hunt, *Reforming New York City's Public Retirement System*, MANHATTAN INST. (Oct. 15, 2020), https://www.manhattan-institute.org/reforming-new-york-city-public-retirement-system [https://perma.cc/A3WT-WELR].

149. *See The Future of Fiscal Oversight in Philadelphia*, PEW CHARITABLE TRS. (Jan. 7, 2020), https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2020/01/the-future-of-fiscal-oversight-in-philadelphia [https://perma.cc/YE85-5NRV].

150. *See id.* at 2.

responsibility, spending, and taxes continue[] to be major concerns for Philadelphia's government."[151] St. Louis has authority to impose a variety of taxes, but state constitutional restrictions require the city to seek voter approval to raise tax rates, constraining revenue growth.[152] Plainly, the legal authority to impose any property, sales, or income tax is not sufficient to provide for local fiscal health; the taxes themselves (and thus their statutory authorization) must also be well-designed.

Philadelphia's story is illustrative. No one suggests Philadelphia as a model city for local budgets or revenue. Philadelphia's property tax has long been criticized for its poor design. The state's constitutional uniformity provision makes it legally impossible for the city to impose different tax rates on different classes of property.[153] Thus, homeowners and commercial property owners face the same tax rates, limiting the ability of the city to raise additional property tax revenue.[154]

State law allows Philadelphia, and no other city in the state, to impose an additional local sales tax,[155] but Philadelphia's sales tax mirrors the state's.[156] In an effort to compete with neighboring Delaware, which imposes no sales tax, Pennsylvania is one of a handful of states that exempts most clothing purchases from the sales tax, and, like in most states, the sales tax also does not apply to most services.[157] As a result of shifts in personal consumption,[158] Pennsylvania's sales tax applies to a decreasing share of consumer expenditures.

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151. PEW CHARITABLE TRS., PHILADELPHIA 2019: THE STATE OF THE CITY 57 (2019), https://www.pewtrusts.org/-/media/assets/2020/08/sotc_2019_final.pdf [https://perma.cc/L8N4-Q4AZ].

152. *See Fitch Affirms St. Louis, MO's IDR at 'A-' and Municipal Finance Corp. Lease Revenue Bonds at 'BBB+,'* FITCH RATINGS (June 5, 2020, 3:52 PM), https://www.fitchratings.com/research/us-public-finance/fitch-affirms-st-louis-mo-idr-at-a-municipal-finance-corp-lease-revenue-bonds-at-bbb-05-06-2020 [https://perma.cc/V6YY-QPE8].

153. *See* PA. CONST. art. VIII, § 1.

154. *See Property Tax Relief in Pennsylvania*, PA. BUDGET & POL'Y CTR. (May 12, 2015), https://www.pennbpc.org/property-tax-relief-pennsylvania [https://perma.cc/H7X4-XSVN].

155. *See Sales, Use and Hotel Occupancy Tax*, PA. DEP'T REVENUE, https://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/SUT/Pages/default.aspx [https://perma.cc/X38E-RB4X] (last visited Feb. 17, 2021).

156. *See id.*

157. *See Pennsylvania Sales Tax Guide for Businesses*, TAXJAR, https://www.taxjar.com/states/pennsylvania-sales-tax-online/#do-you-have-sales-tax-nexus-in-pennsylvania [https://perma.cc/7PDA-M7XU] (last visited Mar. 9, 2021).

158. *See Table 2.4.5 Personal Consumption Expenditures by Type of Product*, BUREAU ECON. ANALYSIS (July 31, 2020),

Finally, "local income taxes" in Pennsylvania are imposed on the narrow base of wage income, leading Philadelphia to impose additional business taxes to capture revenue from some pass-through businesses.[159] The narrowness of the wage tax base is criticized by progressives, and the array of small business taxes vexes business owners.[160] The system is so complicated that the tax-skeptical Tax Foundation has endorsed the city moving toward a broader, more traditional income tax base.[161] Thus, just as local reliance on the property tax has been made more difficult by state-imposed limits on assessment growth, rate changes, and revenue growth, state law also can impose poor design-choices on local general sales and local income taxes.

Further, for some jurisdictions, access to new, more reliable sources of revenue will not be enough to combat years of reduced fiscal capacity. Historian Destin Jenkins has described how, in the wake of white flight from cities, borrowing costs for these jurisdictions increased, making the cost of investing in public infrastructure much higher.[162] As a result, residents in these jurisdictions faced a greater tax burden.[163] Because the historical default rate of cities is incredibly low, these discrepancies were likely not justified by increased credit risk.[164] Concerns for city fiscal health cannot ignore the ways local fiscal health reflects longstanding racial inequities that make it impossible for even expanded local taxing authority to provide needed public services in many urban communities.

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https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=2&isuri=1&1921=survey [https://perma.cc/QQR2-ZJUW].

159. *See, e.g.*, *Business Income & Receipts Tax (BIRT)*, CITY OF PHILA. (Jan. 28, 2021), https://www.phila.gov/services/payments-assistance-taxes/business-taxes/business-income-receipts-tax-birt/ [https://perma.cc/HP78-2F7L] (discussing the Business Income and Receipts Tax); *Net Profits Tax*, CITY OF PHILA. (Mar. 12, 2021), https://www.phila.gov/services/payments-assistance-taxes/business-taxes/net-profits-tax/ [https://perma.cc/ZMX5-7MQ3] (discussing the Net Profits Tax).

160. *See* Michael S. Knoll & Ruth Mason, *Is the Philadelphia Wage Tax Unconstitutional? And If It Is, What Can and Should the City Do?*, 164 U. PA. L. REV. 163 (2016).

161. *See* Jared Walczak, Nicole Kaeding & Scott Drenkard, *Pennsylvania: A 21st Century Tax Code for the Commonwealth*, TAX FOUND. 1–2 (2018), https://files.taxfoundation.org/20180904165153/PA_RB_final.pdf [https://perma.cc/E27B-MCNV].

162. *See* Destin Jenkins, *The Fed Could Undo Decades of Damage to Cities. Here's How.*, WASH. POST (Apr. 27, 2020, 6:00 AM), https://www.washingtonpost.com/outlook/2020/04/27/fed-could-undo-decades-damage-cities-heres-how/ [https://perma.cc/R5EM-RUMN].

163. *See id.*

164. *See id.*

Other historic and continuing inequities are reflected in the high poverty rates in many of the United States' urban areas. For example, the poverty rate in Flint, Michigan, is almost 40%;[165] in 2018, the poverty rate in Shreveport-Bossier (the third-largest metro area in Louisiana) was 22.2%.[166] In these communities, poverty both creates a need for significant public investment in social services *and* limits the ability of the city to raise own-source revenue. Where property values are low, communities must impose high property tax rates to raise revenue. Such high tax rates can result in foreclosures of owner-occupied housing in low-income communities, further eroding the tax base and increasing economic instability in these communities.[167] Such poverty rates also limit the revenue potential of local sales and income taxes.

For these jurisdictions, increased state and federal spending is necessary. Only a portion of this investment would need to be in the form of intragovernmental aid. The expanded federal funding of anti-poverty programs contained in the American Recovery Plan is an important first step toward address the human services needs in these communities; reducing poverty would go a long way to improving fiscal outcomes in many areas, both urban *and* rural. At the same time, ensuring the equitable provision of basic local services, such as water and fire services, likely requires intra-government aid to supplement locally raised revenue.

CONCLUSION

The National League of City's 21st Century Home Rule project, on which I am a co-author, recommends states provide a fiscal equity provision to home rule law that guarantees state support to provide a minimal level of local services.[168] Whether or not such a legal guarantee is enacted, some urban areas will need additional investment in one form or another. Thus, this Essay ends where it begins. While some urban areas can survive and thrive in an era of unreliable

165. *See Flint City, Michigan*, U.S. CENSUS BUREAU, https://data.census.gov/cedsci/profile?g=1600000US2629000 [https://perma.cc/CM8L-CEGW] (last visited Feb. 7, 2021).

166. *See Shreveport-Bossier City, LA: Metro Area*, CENSUS REP., https://censusreporter.org/profiles/31000US43340-shreveport-bossier-city-la-metro-area/ [https://perma.cc/KTX5-XC6E] (last visited Feb. 7, 2021).

167. *See* Atuahene, *supra* note 54, at 114–15.

168. *See* NAT'L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY 37 (2020), https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf [https://perma.cc/7J2N-RN6L].

federalism, many other urban communities need investments that likely can only be made by state and federal governments. Reforms to local revenue authority and a reinvigorated system of fiscal federalism will be necessary to help all communities thrive. Hopefully we are at the precipice of such changes.