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BANKRUPTCY AS PRESIDENTIAL RESISTANCE

Alvin Velazquez[*]

Litigation against President Trump for withholding federal funds from cities in his "war on woke" and sanctuary cities has taken place either in Article III courts under the Administrative Procedure Act or in the Court of Federal Claims under the Tucker Act. However, there is a third place to resolve these disputes and allocate who bears the consequences of Presidential action that no one has yet discussed: bankruptcy courts. Federal grants make up about one-third of the average city's budget, and the President could render a city insolvent by swiftly cutting off a city's federal grants, through a process scholars call "appropriations presidentialism," before a city could seek to enjoin such an action. When federal grants are cut off, thousands of workers, vendors, and creditors who rely on those funds as a source of payment would most likely file suit against these cities within weeks to seek payment. In other words, without federal grants, a city's financial position would be like an "ice cube" rapidly melting away in the hot summer sun. This Essay argues that cities facing "governance by extortion" can use the filing of bankruptcy as an act of political resistance to manage a city's presidentially induced bankruptcy. In many ways, bankruptcy courts are in a better position than Article III courts to provide relief in this situation. Bankruptcy courts have expertise that Article III courts lack and that indebted cities will need to handle, including creditor coordination problems that are likely to occur when federal grant funds run out. This Essay's exploration of bankruptcy's relationship with administrative law expands conversations about the institutional capacity of the judicial system to manage the effects of appropriations presidentialism. Additionally, this Essay situates bankruptcy as a device for coordinating political resistance to governance by extortion.

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INTRODUCTION

Imagine the following hypothetical scenario occurring in the cities of San Francisco and Chicago. President Donald Trump declares that the cities of Chicago and San Francisco are "woke" cities located in "woke" states because they defy his administration's policies, and he wishes to punish them.[1] As a result of that declaration, the President immediately cuts those cities off from receiving federal grant funding just as a disbursement is about to occur, and the cities are now low on cash. Both cities are currently in extreme financial distress.[2] The cutoff has a cascading effect upon the cities and their workforce. The cities stop paying special education teachers paid out of federal funds and will also need to issue a stop work order to vendors paid for with federal funds, such as community policing programs. The affected vendors and employees would most likely bring suit against the cities for unpaid wages and invoices. Chaos most likely ensues. Or perhaps these cities tackle the issue in a different manner by delaying repayment on their debt to bondholders so that they can continue to provide services to their residents and make pension contributions.[3] Inevitably, the bondholders sue for repayment. Chaos ensues. Either way, the cities will be functionally

1. *See* Eloise Pasachoff, *Executive Branch Control of Federal Grants: Policy, Pork and Punishment*, 83 OHIO ST. L.J. 1113, 1183–87 (2022) [hereinafter *Policy, Pork and Punishment*] (discussing how President Trump used grant policy as a tool for political payback).

2. *See* Carlos Waters, *Many Large U.S. Cities Are in Deep Financial Trouble. Here's Why.*, CNBC (Apr. 25, 2024, at 06:04 ET), https://www.cnbc.com/2024/04/25/many-large-us-cities-are-in-deep-financial-trouble-heres-why.html [https://perma.cc/8FGH-PVU3]; *see also Budget Information 2025 to 2026*, CITY & CNTY. OF S.F., https://sfbos.org/budget-information-2025-2026 [https://perma.cc/M5YY-4TMG] (last visited Apr. 19, 2026); *City of Chicago FY2025 Roadmap: Key Financial Challenges, Options and Recommendations*, CIVIC FED'N (Oct. 16, 2024), https://www.civicfed.org/ChicagoFY2025Roadmap [https://perma.cc/S4GG-ZAHW].

3. *See* Diane Lourdes Dick, *Bondholders vs. Retirees in Municipal Bankruptcies: The Political Economy of Chapter 9*, 92 AM. BANKR. L.J. 73, 77–78 (2018) [hereinafter *Bondholders vs. Retirees*] (describing how Chapter 9 disputes break down into battles between creditors and retirees, with rhetoric taking a moral dimension).

insolvent, and their quickly deteriorating financial position will render them "melting ice cubes."[4] Luckily, San Francisco has authorization to declare bankruptcy;[5] however, Chicago does not.[6] In this scenario, San Francisco fares better because it can use the Bankruptcy Code (the "Code") as bargaining leverage against the President. Specifically, San Francisco would be able to pause all collection efforts against it with bankruptcy law's automatic stay on all litigations upon the filing of a bankruptcy petition.[7] With all collections stayed, San Francisco could file a lawsuit against the administration and leverage the collective financial distress to build a political coalition of financially affected creditors, investors, and workers.[8] San Francisco would get the benefit of bankruptcy as a "renegotiation framework designed to minimize the parties' ability and incentives to hold each other up."[9] Chicago would not get that benefit.

For now, the scenario outlined above is only hypothetical. However, in reality, cities and states need to prepare for such a scenario when budget planning. President Donald Trump has threatened to cut federal grant funding to "sanctuary cities," such as Minneapolis, on multiple occasions, and Governor Tim Walz has accused the President of ulterior motives in withholding $259 billion in Medicaid funds from the State of Minnesota after the killing of activists who protested ICE activities.[10] An important part of

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4. Melissa B. Jacoby & Edward J. Janger, *Ice Cube Bonds: Allocating the Price of Process in Chapter 11 Bankruptcy*, 123 YALE L.J. 862, 865 (2014) ("Financially distressed companies can melt like ice cubes: every day that a company burns through more cash than it earns, it loses value.").

5. *See* CAL. GOV'T CODE § 53760 (West 2025) ("A local public entity in this state may file a petition and exercise powers pursuant to applicable federal bankruptcy law if either of the following apply: (a) The local public entity has participated in a neutral evaluation process pursuant to Section 53760.3; (b) The local public entity declares a fiscal emergency and adopts a resolution by a majority vote of the governing board pursuant to Section 53760.5.").

6. *In re* Slocum Lake Drainage Dist., 336 B.R. 387, 390–91 (N.D. Ill. 2006) (holding that Illinois General Assembly did not authorize its municipalities to file for bankruptcy). *But see* 20 ILL. COMP. STAT. 3855/1-20(b)(15) (allowing Illinois Power Authority to file for bankruptcy).

7. *See* 11 U.S.C. § 922(a).

8. *See* Diane Lourdes Dick, *Alliance Politics in Corporate Debt Restructurings*, 39 EMORY BANKR. DEV. J. 285, 307–20 (2023) [hereinafter *Alliance Politics in Corporate Debt Restructurings*] (exploring divide and conquer as well as wedge strategies in corporate bankruptcies).

9. Anthony J. Casey, *Chapter 11's Renegotiation Framework and the Purpose of Corporate Bankruptcy*, 120 COLUM. L. REV. 1709, 1716 (2020).

10. *See* Chris Cameron, *Trump Administration Withholds $259 Million in Medicaid Funds From Minnesota*, N.Y. TIMES (Feb. 25, 2026), https://www.nytimes.com/2026/02/25/us/politics/medicaid-funds-minnesota.html [https://perma.cc/78AS-RBK2]. At one point President Trump also threated to cut New York's federal grant funding. CBC. *See Trump Threatened to Cut Funding If New Yorkers Voted for Mamdani. They Did It Anyway*, CBC (Nov. 5, 2025, at 13:11 ET), https://www.cbc.ca/news/world/mamdani-trump-9.6967833 [https://perma.cc/MR3B-

the President's agenda is his so-called "war on woke" and sanctuary cities. In particular, he has weaponized federal grant administration to fight that war.[11] On August 7, 2025, the President operationalized his war on woke when he issued an executive order titled, "Improving Oversight of Federal Grant Making."[12] That Order states that grant awards "shall not be used to fund, promote, encourage, subsidize, or facilitate . . . racial preferences," "the notion that sex is a chosen or mutable characteristic," illegal immigration, or "any other initiatives that compromise public safety or promote anti-American values."[13] Jacob Hamburger describes the President's *modus operandi* as "governance by extortion."[14]

The Order has real teeth to it and could significantly impact the operations of America's cities. For example, the President recently stopped federal funds destined for the renovation of the Hudson Tunnel because of "unconstitutional DEI principles."[15] The grant cut off led to worker layoffs and may lead to increased spending to compensate for the delay even though a federal court ruled that the administration wrongfully cut off funds.[16] In 2023, the federal government spent $1.2 trillion dollars out of a total expenditure of $6.16 trillion on federal grant funds.[17] On average, these

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2K5W]. However, in recent months the President appears to respect Mamdani and signaled openness to building housing in New York City. *See* Seung Min Kim, *Mamdani Pitches Trump on Housing Investments by Mocking up Newspaper with His Name in the Headline*, ASSOCIATED PRESS (Feb. 26, 2026, at 22:15 ET), https://apnews.com/article/donald-trump-zohran-mamdani-new-york-housing-3835daca395dbe46c2f3da2433ec24f4 [https://perma.cc/PA5G-C5WT]. New York State law authorizes the City of New York to file bankruptcy unless it has ARRA bonds "purchased by the state of New York municipal bond bank agency and secured by its pledge of tax revenues pursuant to the authority of section twenty-four hundred thirty-six-b of the public authorities law remain outstanding." N.Y. LOCAL FIN. LAW § 85.80 (McKinney 2014). New York City still has ARRA bonds outstanding and cannot declare bankruptcy as of April 2026.

11. The word "woke" has always been a normatively laced word. Before it became a pejorative term to describe left of center politics, it simply meant that someone was awakened and aware of social justice matters. *See Stay Woke: Tracing the History of 'Woke',* MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/wordplay/woke-meaning-origin [https://perma.cc/6Z88-2VFL] (last visited Apr. 16, 2026).

12. Exec. Order No. 14332, 90 Fed. Reg. 38929 (Aug. 7, 2025).

13. *Id.* § 4(b)(ii).

14. Jacob Hamburger, *Federalism by Extortion*, PUBLIUS: J. FEDERALISM (forthcoming 2026) (manuscript at 1) (on file with Fordham Urban Law Journal).

15. Ry Rivard et al., *Trump to Withhold Billions of Dollars from Gateway Tunnel and Second Ave. Subway Projects*, POLITICO (Oct 1, 2025, at 02:59 PM EDT), https://www.politico.com/news/2025/10/01/trump-to-withhold-billions-of-dollars-from-gateway-tunnel-and-second-ave-subway-projects-00589772 [https://perma.cc/RD7F-XYJ3].

16. *See* Matthew Fazelpoor, *Work Restarting as Hudson Tunnel Project Funding Fight Intensifies*, NJBIZ (Feb. 26, 2026), https://njbiz.com/hudson-tunnel-project-funding-trump-sherrill/ [https://perma.cc/B6Z7-64S2].

17. *See* Jeff Arkin & Kimberly Gianopoulos, *Communities Rely on Federal Grants, But May Have Challenges Accessing Them*, U.S. GOV'T ACCOUNTABILITY OFF. WATCHBLOG

funds make up about one-third of most states' and cities' budgets.[18] With billions at stake, the fiscal solvency of many American cities that vote for elected officials who "promote anti-American values" could be threatened. As the Congressional Budget office observed, "[i]ntentionally or not, federal grants may help address unexpected revenue shortfalls when states with unpredictable revenue experience sudden budget shortfalls, thereby allowing those states to potentially avoid fiscal actions such as tax increases or budget cuts."[19] For example, the City of Chicago, already in a financially precarious position, is at risk of losing $3.5 billion in federal dollars due to its status as a sanctuary city.[20] The loss of these funds would put Chicago into deeper distress, possibly risk insolvency, and possibly violate constitutional anti-commandeering principles.[21] Even financially solvent cities would be forced into a state of fiscal precarity if they lost one-third of their budget.[22] Some cities and public agencies such as the Gateway Development Commission building overseeing the expansion of the Hudson Tunnel have had success in court detaining federal grant cuts. However, other cities may need additional leverage against the President should he cut federal grant access

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(June 7, 2023), https://www.gao.gov/blog/communities-rely-federal-grants-may-have-challenges-accessing-them [https://perma.cc/2FV7-9UD7]; *see also The Federal Budget: An Overview*, USAFACTS (Aug. 1, 2024), https://usafacts.org/articles/the-federal-budget-an-overview/ [https://perma.cc/5N48-8JFR].

18. *See* Rebecca Theis, Laura Pontari & Justin Theal, *Pandemic Drives Federal Share of State Revenue to Record High*, PEW CHARITABLE TR. (Nov. 4, 2022), https://www.pew.org/en/research-and-analysis/articles/2022/10/18/pandemic-drives-federal-share-of-state-revenue-to-record-high [https://perma.cc/E722-UWHS]; *see also* Nestor M. Davidson, *Cooperative Localism, Federal-Local Collaboration in an Era of State Sovereignty*, 93 VA. L. REV. 959, 973 (2007). Some federal grant money goes directly to cities or their subdivisions. Some goes to states as bloc grants for them to disburse to its subdivisions.

19. ADAM G. LEVIN, CONG. RSCH. SERV., R40638, FEDERAL GRANTS TO STATE & LOCAL GOVERNMENTS: TRENDS AND ISSUES (2025).

20. *See* Mitchell Armentrout, *Chicago Braces for Trump's Latest Threat to cut 'All Federal Funding' to Sanctuary Cities*, CHI. SUN TIMES (Apr. 10, 2025, at 16:35 ET), https://chicago.suntimes.com/city-hall/2025/04/10/trump-chicago-federal-funding-threat-sanctuary-cities [https://perma.cc/6JKH-PHR4].

21. *See* Austin Berg, *Chicago Is on The Verge of Fiscal Collapse*, CITY J. (Aug. 25, 2025), https://www.city-journal.org/article/chicago-illinois-governor-jb-pritzker-pension-police-fire [https://perma.cc/KN43-YS3E].

22. The Executive Order is of questionable constitutionality. In one case, a federal district court has enjoined the federal government from withholding funds from the City of San Francisco due to its status as a sanctuary city because doing so violated the anti-commandeering principle, amongst other things. *See* San Francisco v. Trump, No. 25-CV-01350-WHO, 2025 WL 1282637, at *27 (N.D. Cal. May 3, 2025). That ruling was extended and is under appeal. *See Judge Blocks Trump From Cutting Funding from 34 Cities and Counties over 'Sanctuary' Policies*, NBC NEWS (Aug. 22, 2025, at 23:14 ET), https://www.nbcnews.com/politics/trump-administration/judge-blocks-trump-cutting-funding-34-cities-counties-sanctuary-polici-rcna226730 [https://perma.cc/2VX6-9YA4].

off, and the threat of filing for bankruptcy could give cities the leverage it needs to make a deal.[23] The reality is that grant cut offs are incredibly costly and disruptive even when a city successfully challenges them. A credible threat to file bankruptcy could help deter such behavior in the first place.[24]

This Essay initiates a conversation that urges cities to shift their view of bankruptcy. Instead of thinking of it as a measure to avoid at all costs, perhaps cities can think of it as a powerful tool to combat the negative effects of the President's actions. There is a "misfit" between the standards that the Code sets out for cities seeking to exit bankruptcy who have had their grants summarily cutoff because public bankruptcy law lacks tools that account for the impact of governmental grants on the ability of a city to pay back its creditors.[25] Despite that misfit, this Essay encourages cities to view bankruptcy courts as a potential locus for political resistance against the President's cancellation of their federal grants in retaliation of policies he disagrees with, and to garner leverage for political advantage.[26] This Essay engages with Anthony Casey's previous work examining bankruptcy as a renegotiation framework in corporate bankruptcy under Chapter 11 of the Code and applies it to municipal bankruptcies. It builds off Alvin Velazquez's recent work arguing that public bankruptcy law does not provide judges with the tools needed to incorporate grant administration into public sector bankruptcy proceedings. It also engages with recent scholarship examining the President's recent actions affecting federal grants.[27]

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23. *See generally* David Skeel, *State Bankruptcy from the Ground Up, in* WHEN STATES GO BROKE (Peter Conti Brown & David Skeel eds., 2012) (noting that bankruptcy would provide leverage to states even if they do not file for bankruptcy protection).

24. *See* David Sherpardson, *Trump Funding Freeze Added Millions to Cost of NY Tunnel Project, Manager Says*, REUTERS (Feb. 23, 2026, at 15:22 ET), https://www.reuters.com/world/us/trump-new-york-tunnel-funding-freeze-cost-project-millions-dollars-manager-says-2026-02-23/ [https://perma.cc/8CA2-FA8U].

25. *See* Laura N. Coordes, *Bankruptcy and the Public-Private Divide*, 43 YALE L. & POL. REV. 418, 423 (2025) [hereinafter *Bankruptcy and the Public-Private Divide*]; Laura N. Coordes, *Reorganizing Healthcare Bankruptcy*, 61 B.C. L. REV. 419, 423 (2020) [hereinafter *Reorganizing Healthcare Bankruptcy*] (describing health care providers and blended private/public entities as "bankruptcy misfits" because the tools available under the Code and the nature of the debtor do not align); *see also* Laura N. Coordes, *Bespoke Bankruptcy*, 73 FLA. L. REV. 359, 361, 397 (2021) [hereinafter *Bespoke Bankruptcy*] (defining bespoke bankruptcy "customized debt relief designed for a particular group of debtors" and arguing that it may be appropriate for dealing with "bankruptcy misfits"). *See generally* Hamburger, *supra* note 14.

26. *See* Casey, *supra* note 9, at 1716 (noting that bankruptcy facilitates bargaining by setting up judicially supervised guardrails).

27. *See* Alvin Velazquez, *Reconciling Bankruptcy and Federal Grants*, 2026 ILL. L. REV. 649, 658–675 (2026) [hereinafter *Reconciling Bankruptcy and Federal Grants*]; *see also* Matthew B. Lawrence, Eloise Pasachoff & Zachary S. Price, *Appropriations Presidentialism,*

Cities that file for bankruptcy after having their federal grant funding cut off are a misfit under the Code because debtors' needs do not align with the tools available.[28] Despite that misfit, the Code would provide several benefits to cities that suffer grant loss. First, cities and their creditors who rely on federal funds would benefit from that the fact that bankruptcy courts are uniquely designed to coordinate the collection efforts of a vast group of dispersed creditors.[29] Second, the bankruptcy-mandated automatic stay under § 362(a) of the Code would stop collection efforts and act as a coerced loan by paralyzing the ability of a creditor to collect money that the debtor owes them on a judgment while courts resolve legal disputes over the availability of particular grant funds.[30] Third, the bankruptcy filing could motivate businesses that otherwise have sought to avoid the President's ire to form alliances and engage in acts of political resistance alongside bankrupt municipalities as affected creditors.[31]

It is important for cities whose policies offend the President to begin preparing for a tactical restructuring in an era where "appropriations presidentialism" manifests as governance by extortion—even if the mayor of a city has a good relationship with the President, as New York City Mayor Mamdani has at the moment.[32] Eloise Pasachoff, Matthew Lawrence, and Zachary Price coined the term "appropriations presidentialism" to describe what they observe as "the new threat of unilateral, centralized executive

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14 GEO. L.J. ONLINE 1, 5 (2025) [hereinafter *Appropriations Presidentialism*]; Hamburger, *supra* note 14 (manuscript at 2).

28. *See Bankruptcy and the Public-Private Divide*, *supra* note 25, at 423 (noting hybrid bankruptcies as having a misfit between the for of the entity and the Code).

29. *See, e.g.*, Kenneth Ayotte & David A. Skeel, Jr., *Bankruptcy Law as a Liquidity Provider*, 80 U. CHI. L. REV. 1557, 1561, 1563–67 (2013) (explaining how bankruptcy law exists in order to solve problems that arise from multiple creditors seek to enforce a judgment on a debtor who does not have enough money to pay them all, but that bankruptcy should be seen as providing a debtor with liquidity to solve debt-overhang problems).

30. *See id.* at 1623 ("The automatic stay on ordinary creditors functions as a coerced loan, for instance, as does the debtor's ability to halt payments to its creditors"); *see also* 11 U.S.C. § 362(a).

31. *See Alliance Politics in Corporate Debt Restructurings*, *supra* note 8, at 317–20 (2023) (observing how Chapter 11 restructurings are driven by alliances and how debtors engage in wedge as well as divide and conquer strategies with lower priority creditors to obtain consent from more dominant creditors); *see also* Daniel J. Bussel, *Coalition Building Through Bankruptcy Creditors' Committees*, 43 UCLA L. REV. 1547, 1597–99 (1996) (discussing how coalition building is a key way in which creditor committees facilitate a successful restructuring).

32. *See* Diane Lourdes Dick, *Tactical Restructurings*, 93 FORDHAM L. REV. 1, 5 (2024) [hereinafter *Tactical Restructurings*] (explaining that debtors in Chapter 11 business bankruptcies can manipulate inputs years ahead of time to maximize results once they file for bankruptcy); *see also* Hamburger, *supra* note 14 (manuscript at 1) (describing the President's behavior withholding grant funds against sanctuary cities as governance by extortion).

disruption in federal spending."[33] While federal grant administration has always been rooted in the distribution of presidential favor, or "presidential pork," the current administration has weaponized it to a previously unseen degree. Pasachoff correctly observes that "presidential pork is dangerous when it is rooted in an invidious desire to harm those who are denied funding."[34] As cities start planning for a future in which a President may withhold federal funds over virtually any policy disagreement, filing for bankruptcy as a nuclear response to this type of behavior puts political pressure on the federal government's actions and may deter such behavior.

To help cities plan for such scenarios through their budgetary and political planning processes, Part I of this Essay examines how initiating a Chapter 9 proceeding may be tactically beneficial to a municipal debtor. Part II will discuss the politics and law involved in determining a city's Chapter 9 eligibility. Part III will draw on existing scholarship concerning grant administration to demonstrate how the President's transactional behavior could tax bankruptcy courts' institutional capacity to handle the hypothetical set out above.[35] Part IV will then examine the court's near-impossible task of balancing creditor interests and grant making intent with the political realities of confirming a debt repayment plan for a city whose finances have been rendered asunder by executive actions. Part V will present legislative and political prescriptions that states can undertake now. This Essay will take no position on the wisdom or constitutionality of the current administration's policies. Rather, the focus of this Essay is on the effects of such actions, their impact on governmental bankruptcies, and how cities can prepare to minimize the impact of such actions.

I. BANKRUPTCY PROTECTION FROM GRANT CUTOFFS

To begin, bankruptcy law could offer a city, such as San Francisco, three key benefits in the hypothetical discussed above: an automatic stay, time for political coalition-building, and a structured process for repayment distribution.

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33. *Appropriations Presidentialism*, *supra* note 27, at 5.

34. *Policy, Pork and Punishment*, *supra* note 1, at 1155.

35. *See* Eloise Pasachoff, *Federal Grant Rules and Realities in the Intergovernmental Administrative State: Compliance, Performance, and Politics*, 37 YALE J. ON REGUL. 573, 580 (2020) [hereinafter *Federal Grant Rules and Realities*] (examining agencies as rational and self-interested administrators of congressionally appropriated funds); Eloise Pasachoff, *Agency Enforcement of Spending Clause Statutes: A Defense of the Funding Cut-Off*, 124 YALE L.J. 248, 254 (2014) [hereinafter *Agency Enforcement of Spending Clause Statutes*] (advocating for federal agencies to use funding cutoffs to ensure grantee compliance); *Policy, Pork and Punishment*, *supra* note 1, at 1117 (noting that grant administration has three stages: policy, award, and enforcement).

First, bankruptcy law provides a city with the benefit of the automatic stay against lawsuits brought by creditors. Only available under the Bankruptcy Code,[36] the automatic stay is a foundational part of the Code that can act as an immediate, automatically executing, nationwide injunction against anyone trying to bring a claim against a city.[37] In addition to providing the city with breathing room to reorganize its affairs, the automatic stay also has two practical effects. First, the automatic stay provides additional time for the bankruptcy courts to consider whether there are sufficient resources to repay creditors.[38] The stay would protect the city from the expected onslaught of claims brought by vendors, contractors, and employees who are paid out of federal grant accounts, effectively acting as a coerced loan to the city because parties with claims to payment are forced to wait to get paid until a bankruptcy court lifts the stay as applied to them.[39]

Second, the automatic stay would also provide additional time for the bankruptcy courts to resolve questions about whether the President properly withheld or cut off grant funds, or for the parties to negotiate a resolution. In constructing his New Bargaining Theory of Chapter 11 bankruptcy law, Anthony Casey makes several claims that are also relevant to Chapter 9 bankruptcies and federal grants. Casey makes the descriptive claim that bankruptcy creates a renegotiation framework to facilitate ex post bargaining.[40] Specifically, he argues that bankruptcy law is not about facilitating the parties' contract pre-bankruptcy; instead, it relies on judicial discretion and procedural measures to facilitate ex post bargaining.[41] To Casey, bankruptcy exists to fill in incomplete contracts that have two features: missing terms that the parties did not execute or decide on ex ante, and are contingently incomplete.[42] A contingently incomplete contract has 1) complete instructions, but 2) misfire in action or application.[43] As Casey

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36. *See* 11 U.S.C. § 922(a). The Supreme Court has not yet limited the scope of the automatic stay in bankruptcy. *See* Trump v. CASA, Inc., 606 U.S. 831, 837 (2025) (holding that universal injunctions likely exceed authority that Congress delegated to courts). Congress has shaped the automatic stay as an auto-executable universal injunction that goes into place upon filing of a bankruptcy petition.

37. *See* Tom D. Hoffmann, Comment, *Municipal Bankruptcy Authorization Under Chapter 9: A Call for Uniformity Among States*, 34 ST. LOUIS U. PUB. L. REV. 215, 228–29 (2014) ("noting that the breathing space provided by the automatic stay is "crucial for the municipality, as raising new revenues, renegotiating contracts, and restructuring debts are all time-consuming endeavors").

38. *See id.*

39. Ayotte & Skeel, *supra* note 29, at 1566–67 (explaining that the automatic stay acts as a forced loan by creditors to the debtor).

40. Casey, *supra* note 9, at 1716.

41. Casey, *supra* note 9, at 1734.

42. Casey, *supra* note 9, at 1734–35.

43. Casey, *supra* note 9, at 1734–35.

says, "when an incomplete contract governs a relationship, the parties evade the spirit of their initial agreements and take advantage of unforeseen contingencies or misfiring terms to extract value from each other," hereby creating "the hold-up problem."[44]

Federal grants are incomplete contracts that meet both of Casey's criteria. As Pasachoff notes, Congress legislates federal grants with substantive requirements as goals but frames administrative requirements as inputs and leaves most of the work administering the funds to the Office of Management and Budget.[45] Congress provides money with incomplete instructions or terms that the Executive Branch then has to fill in.[46] The Executive Branch fills in the missing instructions from Congress through the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.[47] The President's refusal to allocate money to cities with policies he does not like requires post hoc rationalizations for doing so, resulting in a misfire in action.[48] By withholding federal grants under these circumstances, the President extracts value from a city under the guise of policy reform.[49] This Essay's proposal for cities to file for bankruptcy is one way for cities to use its guardrails to engage in ex post bargaining with the President's hold up behavior.

The stay ensures that cities can negotiate without the immediate threat of collection actions from creditors who are reliant on federal funds for repayment. Once a city files for bankruptcy, it can make progress outside of the courtroom through coalition building, negotiations, and dealmaking.[50] The President's actions being the proximate cause of the city's potential insolvency in this hypothetical may help cities garner support from creditors and build a political coalition.

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44. Casey, *supra* note 9, at 1735.

45. *Federal Grant Rules and Realities, supra* note 35, at 584.

46. *See Federal Grant Rules and Realities, supra* note 35, at 599 ("When Congress sends billions of dollars to state and local education agencies intending that the money be spent in the classroom, someone ought to see to it that swimming pools aren't built instead.").

47. 2 C.F.R. § 200.100 (2024).

48. *See* Casey, *supra* note 9, at 1735 (likening a scenario in which two parties enter into bargaining without necessary terms and may find contingency-triggered terms enforceable, to one in which a president threatens to cut funding without sufficient legal authority and must therefore justify the action retroactively).

49. *See* Casey, *supra* note 9, at 1735 (applying a scenario in which two parties enter into an incomplete contract to what occurs when a president threatens to cut funding from a city unless the city defers to his political agenda).

50. Laura N. Coordes, *Bankruptcy Overload*, 57 GEO. L. REV. 1133, 1150 (2023) [hereinafter *Bankruptcy Overload*] (noting that flexibility is a keynote feature of the bankruptcy system and facilitates deal-making); *see also* Bussel, *supra* note 31, 1597–99 (discussing how creditor committees facilitate coalition building in bankruptcy).

The third benefit of cities filing for bankruptcy is that they would access a forum that turns a chaotic creditor rush to the courthouse into an orderly repayment line.[51] Whereas Article III courts have the ability to handle bankruptcy cases and controversies and may withdraw referrals to bankruptcy courts, they do not regularly apply the Bankruptcy Code to resolve payment priority among claims with different underlying liability bases when there is insufficient cash and creditor coordination.[52] These are issues that bankruptcy judges are accustomed to handling.[53] Additionally, the breathing room provided by the automatic stay would provide municipal debtors with time to form tactical alliances. Specifically, cities could work to form alliances with self-interested parties who might be interested in resisting the administration.[54] During the stay, actions in bankruptcy courts also provide time and space for parties to negotiate and construct potential political coalitions with creditors. In other words, filing for bankruptcy creates a space for all parties, public and private, to engage in the normal back-and-forth endemic to grant administration.[55]

An objector could point out that cities do not need the automatic stay to fight against governance by extortion because they can simply seek piecemeal injunction through Article III courts, and because governments have protections that are unique to them. For example, the creditors of a city would have more serious difficulty collecting judgments against governmental debtors due to state anti-attachment laws that prevent creditors from foreclosing on a judgment lien by selling off government property.[56] While that may be true if the only actors involved in a bankruptcy are private

51. Ayotte & Skeel, *supra* note 29, at 1560 (noting link between liquidity problems and creditor coordination problems); *see also* Vince S.J. Buccola, *The Logic and Limits of Municipal Bankruptcy Law,* 86 U. CHI. L. REV. 817, 833–34 (explaining how bankruptcy law protects municipalities from creditor coordination problems, but noting limits to bankruptcy when there is insufficient revenue to pay for services).

52. 28 U.S.C. § 157(d).

53. *Compare* 11 U.S.C. § 101(10), *and* 11 U.S.C. § 1109 (defining a creditor as anyone who has a claim regardless of whether in tort or contract, and allowing them to participate and be heard as a party in interest on any matter pertaining to a debtor), *with* FED. R. CIV. P. 23(a) (allowing for class treatment only if claims meet numerosity, commonality, typicality, and adequacy standards). *See also* 11 U.S.C. § 1129(b)(2) (providing payment priority between secured claims, unsecured claims, and equity holders).

54. *See Alliance Politics in Corporate Debt Restructurings*, *supra* note 8, at 307–20.

55. *See* Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. L. REV. 543, 548 (2000) (characterizing public administration as a series of negotiations between the government and private parties).

56. *See, e.g.*, Skeel, *supra* note 23, at 194 (noting that bankruptcy's ability to slow down a "grab race" for assets does not apply to states or government debtors as it does to private entities); Michael A. Francus, *Too Essential to Fail: Lessons from County Fiscal Crises*, 42 YALE J. ON REGUL. 529, 584–85 (2025) (concluding that state anti-attachment laws are strong).

sector creditors, employees, and retirees, the automatic stay still provides a benefit to a debtor in Chapter 9 who is facing claims from the federal government.[57]

The federal government's central role as a creditor changes the calculus for a bankrupt city in two ways: one doctrinal and one tactical. Doctrinally, the stay would restrain the federal government from initiating agency action or a lawsuit to claw back federal funds for refusing to comply with the administration's policy. That alone is a benefit if the administration seeks to take further action to punish a city for daring to resist it. Tactically, the stay on claim payments provides a mechanism for shifting political blame to the President. Cities could argue that but for the President's actions, they would have paid out claims to their creditors and build a coalition around that argument to lobby for political action releasing federal grant funds. Therefore, bankruptcy provides an opportunity for politically marginalized cities to marshal support from unlikely allies to arrive at a deal centered around the release of federal funds and their disbursement by cities to creditors. This dynamic could incentivize a business that normally would stay silent in a dispute with the President because they wish to avoid alienating their customers to ally with a city in political actions.

II. THE POLITICAL QUESTIONS OF BANKRUPTCY COURT JURISDICTION

Of course, cities seeking to use bankruptcy to resist appropriations presidentialism must first demonstrate their eligibility, which is determined by a two-prong test.[58] In the above hypothetical, San Francisco would have to meet both prongs of this eligibility test, likely against contestation, if it files for bankruptcy.

First, City of San Francisco must demonstrate that it has authorization from the State of California to file for bankruptcy. The question of authorization comes with a rich history steeped in hardball politics and theoretical conversations about the nature of fiscal federalism. Congress enacted a predecessor to Chapter 9 of the Code during the throes of the Great Depression to allow municipalities to restructure their indebtedness. The Supreme Court struck down that predecessor law in *Ashton v. Cameron County Water Improvement District No. 1*, because the law encroached on the sovereign authority of states.[59] Congress then amended that law and specifically allowed municipalities access to Chapter 9 of the Code only if

57. Francus, *supra* note 56, at 584–85.
58. 11 U.S.C. § 109(c).
59. 298 U.S. 513, 531–32 (1936).

the state authorized the municipality to file.[60] The Court upheld that arrangement as being sufficiently protective of the relationship between states and the federal government in *United States v. Bekins*.[61] The Court's decision in *Bekins* was silent about the role of the federal Executive Branch in bankruptcy.[62] Subsequent scholarly literature exploring Chapter 9's federalism scheme has examined both the relationship between federal courts and local governments and whether courts could exercise their power to impose resource adjustments on fiscally wayward local governments. In these scholars' view, once a municipality seeks bankruptcy protection, it has exchanged its sovereign rights for a federally supervised restructuring program that may include governance reforms.[63]

The question of state authorization is a political question that state legislature, governors, and elected city officials must answer. Twenty-four states across the political spectrum allow their cities to file for bankruptcy.[64] These hardball political battles over eligibility frequently spill over from the political arena into bankruptcy courts for resolution. For example, the City of Harrisburg, Pennsylvania's city council tried to authorize it to file for bankruptcy, but the mayor and the State of Pennsylvania rebuffed that attempt.[65] Currently, the State of California has authorized San Francisco to file for bankruptcy, but the State of Illinois has not done so for Chicago.[66] Given current law, San Francisco could take advantage of bankruptcy protections, but Chicago could not.[67] The State of Illinois and New York State legislatures could consider whether to authorize Chicago and New

60. 11 U.S.C. § 109(c)(2).

61. 304 U.S. 27, 49–52 (1938).

62. *See id.* at 54 (the Supreme Court concluding that the amended law passed by Congress, which underscored states' autonomy in the bankruptcy processes, was constitutionality adequate without examining the role of the Executive Branch).

63. Clayton P. Gillette & David A. Skeel, Jr, *Governance Reform and the Judicial Role in Municipal Bankruptcy,* 125 YALE L.J. 1150, 1153 (2016).

64. Lilly Rossi, *Half the States Let Their Cities Declare Bankruptcy, Here Is Why Illinois Might Want To*, ILL. POL'Y INST. (Mar. 5, 2025), https://www.illinoispolicy.org/half-of-states-let-cities-declare-bankruptcy-heres-why-illinois-might-want-to/ [https://perma.cc/8532-5TGW].

65. *In re* City of Harrisburg, 465 B.R. 744, 754–65 (Bankr. M.D. Pa. 2011).

66. *Compare* CAL. GOV'T CODE § 53760 (authorizing cities in California to declare bankruptcy upon declaration of an emergency), *with In re* Slocum Lake Drainage Dist., 336 B.R. 387, 390–91 (N.D. Ill. 2006) (noting that municipalities in Illinois do not have authorization to file for bankruptcy).

67. The discussion about politics raising interesting questions about whether a Republican-majority legislature would block a Democrat-led city from seeking bankruptcy protection. For example, could the State of Texas block the City of Houston from seeking bankruptcy, and what would the effects of that be? This type of political science exercise is beyond the scope of this Essay, but the issue of how states could encourage, or preempt access to bankruptcy in reaction to the President's behavior certainly merits further discussion.

York City to file bankruptcy, but may want to set out restrictions on conditions for doing so to maximize the fiscal autonomy granted under the eligibility provision of Chapter 9[68] and the Court's decision in *Bekins*.[69] Even though cities and states must decide through their own political processes whether to authorize bankruptcy, the question of eligibility to enter bankruptcy does not end there.

Second, to demonstrate eligibility for bankruptcy protection, a city would have to demonstrate that it is insolvent. Typically, cities must demonstrate that they are actually insolvent to enter into Chapter 9.[70] Several scholars of Chapter 9 bankruptcies have observed that the insolvency requirements for relief have prevented cities from seeking bankruptcy protection, and may indeed limit strategic filings such as the one this Essay suggests.[71] This is a serious constraint for even the most financially distressed cities. Bankruptcy courts have dismissed the bankruptcy petitions of severely fiscally distressed cities. For example, a bankruptcy court dismissed the petition for Bridgeport, Connecticut because it could not meet the insolvency requirement.[72] Chicago, for all its financial woes, may not pass an eligibility test because courts may not consider it to be actually insolvent.[73]

In the above hypothetical, insolvency is assumed. However, cities could work with creditors to form a political resistance against federal grant funding cuts off *while the automatic stay is in effect* and therefore enjoin the administration for taking actions that would further cause a city's financial situation to deteriorate. The hypothetical assumes that the President's action would have rendered San Francisco and Chicago insolvent. However, there is the antecedent question of whether the President actions pass

68. 11 U.S.C. § 109(c)(3).

69. 304 U.S. 27, 54 (1938).

70. 11 U.S.C. § 109(c)(3).

71. *See* Laura N. Coordes, *Gatekeepers Gone Wrong: Reforming the Chapter 9 Eligibility Rules*, 94 WASH. U. L. REV. 1191, 1232–33 (2017) [hereinafter *Gatekeepers Gone Wrong*] (critiquing the insolvency requirement as unnecessary); Laura N. Coordes, *Restructuring Municipal Bankruptcy,* 2016 UTAH L. REV. 307, 323–34 (2016) [hereinafter *Restructuring Municipal Bankruptcy*] (noting difficulty of proving insolvency and gaining access to bankruptcy protection); Vince Buccola, *supra* note 51, at 825, 864 (noting that the insolvency requirement in Ch. 9 is too restricted and also limits far-sighted bankruptcy planning); Clayton P. Gillette, *How Cities Fail: Service Delivery Insolvency and Municipal Bankruptcy*, 2019 MICH. ST. L. REV. 1211, 1211–12 (2019) (noting that the insolvency requirement is subject to controversy); Skeel, *supra* note 29, at 204 (calling the insolvency requirement "nettlesome"); Michael A. Francus, *Disaggregating State Bankruptcy*, 171 U. PA. L. REV. 1589, 1604 (2023) (noting that the insolvency requirement limits strategic filings).

72. *See In re* City of Bridgeport, 129 B.R. 332, 339 (Bankr. D. Conn. 1991) (dismissing bankruptcy petition because the City of Bridgeport was no longer insolvent as it would be able to pay its debts as they become due in its current fiscal year or, "based on an adopted budget, in its next fiscal year").

73. *See* Berg, *supra* note 21.

constitutional or statutory muster.[74] If the President's decision to cut off funds either fails constitutional scrutiny or violates underlying legislation, then the Court must dismiss the bankruptcy filing because even if the city may be in financial precarity, it might not be insolvent.[75] If the bankruptcy court determines that the President acted appropriately in cutting off grants, then the bankruptcy court would have to retain jurisdiction and administer the matter.[76] In other words, grant administration becomes the threshold issue in determining bankruptcy court jurisdiction and therefore must be resolved.

Once resolved, bankruptcy moves from the eligibility phase to the case administration phase. Not all is smooth sailing. It is in this next phase that the President's view of himself as the "dealmaker-in-chief" when administering grant funds may come into play and tax the institutional capacity of not just the courts, but of bankruptcy law.[77]

III. TAXING THE INSTITUTIONAL COMPETENCE OF BANKRUPTCY COURTS

Even though bankruptcy courts would most likely assume jurisdiction over a case involving San Francisco in the scenario outlined above, there is no doubt that the weaponization of federal grant administration would tax the institutional competence of bankruptcy courts. Lawrence, Price, and

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74. For example, one issue a bankruptcy court sitting in Chapter 9 might face is whether the President's action violate anti-commandeering principles.

75. *See* In re *City of Bridgeport*, 129 B.R. at 339 ("The fact is that Bridgeport was not insolvent when it filed, and therefore has no choice but to continue with the budget and collective bargaining processes.").

76. Congress did not give bankruptcy courts the power to abstain from hearing the petition of a government debtor. *See* 11 U.S.C. § 103(f); *see also In re* Jefferson Cnty., 474 B.R. 228, 277 (Bankr. N.D. Ala. 2012) (explaining that judicial abstention by a bankruptcy court is not required as a condition of respecting the government's sovereignty); 28 U.S.C. § 158(a), (b)(4)–(5), (d); Christopher D. Hampson, *Bankruptcy Abstention*, 106 B.U. L. REV. (forthcoming 2026) (explaining how bankruptcy courts abstain from exercising jurisdiction). It is likely that a party may move for an Article III court to withdraw a referral from it to a bankruptcy court under 28 U.S.C. § 157(d) in the hypothetical described above. An Article III district court is unlikely to take away jurisdiction from a bankruptcy court on a matter referred to it. Article I courts such as bankruptcy courts are allowed to hear cases having to do with "public rights," and disputes over Congressional allocations are clearly public rights because, as the Court has held, "it is still the case that what makes a right "public" rather than private is that the right is integrally related to particular Federal Government action." *See* Stern v. Marshall, 564 U.S. 462, 490–91 (2011) (recognizing that bankruptcy courts may adjudicate public rights disputes as core bankruptcy proceedings under 28 U.S.C § 157).

77. Anne Gearan & David Lynch, *Trump Hays he's the Dealmaker in Chief, but His Record Lists Mostly Incompletes*, WASH. POST (Oct. 22, 2019); *see also Dealmaker-in-Chief, President Trump Secures Landmark Peace, Trade Deals*, WHITE HOUSE (July 28, 2025), https://www.whitehouse.gov/releases/2025/07/dealmaker-in-chief-president-trump-secures-landmark-peace-trade-deals/ [https://perma.cc/JK8P-NLTV].

Pasachoff believe as much and urge federal courts to proceed with caution and limited involvement.[78] Further, they call for federal courts to act with precision in adjudicating disputes concerning federal grants due to the complicated interplay of Congressional authorization and presidential tools involved in managing that authorization.[79] Bankruptcy scholars have raised similar concerns over the capacity of bankruptcy courts; for example, Laura Coordes has coined the term "bankruptcy overload" to describe the phenomenon of how government actors (amongst others) overload the bankruptcy system by using it to address non-bankruptcy related policy goals.[80] The proposal set forth in this Essay may raise concerns that cities responding to the President's actions through bankruptcy petitions will overload an already overloaded legal regime, suggesting that bankruptcy courts should refrain from exercising jurisdiction over a city's Chapter 9 petition.

Bankruptcy courts do not have the option to abstain from petitions from a municipal debtor for the purpose of caseload management: The Code specifically forbids them from doing so.[81] The fact that bankruptcy judges cannot abstain has three implications when one considers the intersection of bankruptcy and federal grant administration. First, if Article III courts lack institutional competence to answer these questions, so do bankruptcy judges, because they look to Article III courts for guidance on matters outside of bankruptcy law.[82] Second, as Velazquez observes: "[B]oth the judicial and executive branch recognize that bankruptcy courts should treat federal funds in a distinct matter from other funds in a bankruptcy, but they do not . . . . Part of the reason that these complex areas of the law clash is that they use different jargons or terms to talk about money."[83] As a result, the regime that governs grant administration does not neatly fit into the bankruptcy law regime, thus making a bankruptcy judge's life difficult. Third, as Adam Feibelman explains, "bankruptcy judges are generally not good arbiters of complex policymaking, [and] that seems to be a good reason for the bankruptcy process to generally yield to the actors who are."[84]

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78. *Appropriations Presidentialism*, *supra* note 27, at 24.

79. *Appropriations Presidentialism*, *supra* note 27, at 24.

80. *Bankruptcy Overload*, *supra* note 50, at 1152–54.

81. 11 U.S.C. § 103(f).

82. *See Reconciling Bankruptcy and Federal Grants*, *supra* note 27, at 658–75. Bankruptcy courts accommodate state and other federal law until it conflicts with bankruptcy law. For example, bankruptcy courts would attempt to reconcile federal grant mandates with bankruptcy law by complying with Congressional mandates in the appropriation, but only until they run into one of the Code's mandates.

83. *Reconciling Bankruptcy and Federal Grants*, *supra* note 27, at 656.

84. Adam Feibelman, *Bankruptcy and the State*, 38 EMORY BANKR. DEV. J 1, 7–8 (2022).

The bankruptcy judges must soldier on and must address the executive branch's behavior whether as creditor, regulator, or dealmaker. The rise of appropriations presidentialism transforms the Executive Branch from a grant regulator or regulatory creditor, whose financial stake is secondary to a regulatory function, into the "dealmaker-in-chief."[85] To be fair, President Trump would not be the first president to use bankruptcy petitions to push their own policy goals, as precedented in the Obama administration's behavior as an activist investor.[86] The President must spend the allocated amounts but may also behave as an activist investor who is using Congress's money to demand governance and policy changes in a city.[87]

Traditionally, the executive branch as either grant administrator or investor has not played much of a role in bankruptcies.[88] However, as Jared Ellias and George Triantis describe, starting around 2009, President Barack Obama inserted the executive branch into the bankruptcies of the Detroit-based auto manufacturers as a way of supporting the United Auto Workers and keeping those manufacturing jobs in the United States.[89] In other words, the executive branch under President Obama started acting like an activist investor who used the money that it controlled to advance policy goals in line with the administration.[90] Trump is actively *disinvesting* from "woke" cities by removing grant funding and in that way behaving like an activist

85. WHITE HOUSE, *supra* note 77.

86. *See* Jared A. Ellias & George Triantis, *Government Activism in Bankruptcy*, 37 EMORY BANKR. DEV. J. 509, 523–30 (2021) (detailing how the Obama Administration leveraged bankruptcy proceedings to intervene in auto bankruptcies in 2009 and further its political goals).

87. *Policy, Pork and Punishment*, *supra* note 1, at 1173 (observing that "Punishment" is a particular variety of the more neutral grant enforcement stage, which includes a range of options for securing grantee compliance with grant conditions once funding has been awarded . . . . Many of the instances of grant enforcement abuse turn on motive, which administrative law has a difficult time cabining. Nonjudicial cabining depends on contingent political alignments that are increasingly out of reach in a divided America. Because of these difficulties, the opportunities for using grant enforcement as improper punishment makes it the most worrisome category of Executive Branch control of grants.").

88. *See, e.g.*, Melissa Jacoby, *Federalism Form and Function in the Detroit Bankruptcy*, 33 YALE J. ON REGUL. 55, 104–05 (2016) (federal grants not once mentioned in the recordings of the City of Detroit's bankruptcy proceedings).

89. Ellias & Triantis, *supra* note 86, at 525.

90. Adam Feibelman, *supra* note 84, at 7–8 (explaining that the advancement of the governments' policies in these cases was "arguably at odds with the bankruptcy goal of maximizing the return to claimholders" (quoting Jared Ellias & George Triantis, *Government Activism in Bankruptcy*, 37 EMORY BANKR. DEV. J. 509, 545 (2021))). *See generally* Robert Kenneth Rasmussen, *Bankruptcy and the Administrative State*, 42 HASTING L.J. 1567 (1991) (in favor of bankruptcy courts respecting agency decisions). The Obama administration's intervention in the Chrysler bankruptcy also drew serious criticism. *See, e.g.*, Mark J. Roe & David A. Skeel, *Assessing the Chrysler Bankruptcy*, 108 MICH. L. REV. 727, 760–63 (2010) (criticizing Treasury's involvement in Chrysler's rescue).

investors who pressure oil and gas companies to ditch long term green energy investments.[91] .

Bankruptcy scholars have debated how the U.S. federal government, and specifically how agencies that can disburse money such as the Treasury, should behave. For example, Mark Roe and David Skeel criticize the federal government's intervention in the car manufacturer's bankruptcy and its implications for bankruptcy law going forward.[92] Jared Ellias and George Triantis call for governments to use bankruptcy more proactively to meet their policy goals, but they note how the U.S. federal government behaving as an activist investor in shaping policy may act as an "end-run" around democratic norms.[93] These concerns have serious weight. However, these concerns do not apply when municipal governments seek bankruptcy protection because municipal governmental bankruptcies themselves require democratic participation, and therefore are political in nature.[94] When it comes to using grant funding in a Chapter 9 bankruptcy for political ends, bankruptcy scholarship will need to borrow more from administrative law literature to adequately theorize about the rise of appropriations presidentialism.[95] Lindsey Simon has previously described how governmental agencies manipulate the Chapter 11 bankruptcy process by shapeshifting between their roles as regulator and creditor.[96] Even though it is beyond the scope of this Essay, there is a dynamic worth noting for the purposes of merging theoretical silos and building off of the work of the scholars' previous work discussed in this paragraph. The insights drawn from administrative law literature examining the expanding exercise of presidential power, such as the unitary executive theory, may expand thinking about not only how scholars think about grant administration, but

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91. *See* Tom Wilson, *BP Faces Activist Investor Pressure to Ditch Clean Energy Pledges*, FIN. TIMES (Jan. 29, 2024), https://www.ft.com/content/626e344c-e266-4a70-b947-f122aa2fe65b?syn-25a6b1a6=1 [https://perma.cc/V83E-ALNW].

92. Roe & Skeel, *supra* note 90, at 760–63.

93. Jared A. Ellias & George Triantis, *The Administrative State in Bankruptcy*, 72 DEPAUL L. REV. 323, 360 (2023) (arguing that "administrative agencies are missing opportunities to leverage the bankruptcy process to achieve policy"); *see also* Ellias & Triantis, *supra* note 86, at 550 (advocating for the government to start thinking of the bankruptcy process as a policymaking tool).

94. The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) and the Bankruptcy Code both require that elected legislatures enact all needful laws before, or as a condition of, a court confirming a plan of adjustment. *See* 48 U.S.C. §§ 2121(b)(2), 2174(b)(5); 11 U.S.C. § 943(b)(6).

95. *See Appropriations Presidentialism*, *supra* at note 27.

96. Lindsey Simon, *Chapter 11 Shapeshifters*, 68 ADMIN. L. REV. 233, 236 (2016).

also how the President could shapeshift between their role as both dealmaker-in-chief and grant administrator-in-chief.[97]

Even though the executive branch has a major role in bankruptcy proceedings, the Code forces everyone, including the federal government, to sit at the table and eat their soup with a fork. In other words, there is a misfit between the needs of municipal debtors and the federal government both as a grant administrator and a dealmaker because the Code does not provide the right tools for either party to meet their ends.[98] There are two examples that illustrate this dynamic as applied to a situation in which the President seeks to cut off or claw back federal grant money: 1) a bankruptcy court's jurisdiction, and 2) the exception to the automatic stay for governmental action.

At first blush, bankruptcy courts sitting in Chapter 9 do not have jurisdiction to interfere with the property of the debtor.[99] That usually means creditors, including the federal government, cannot attach the assets of a bankrupt local government seeking protection under Chapter 9 of the Code. However, federal grant funds are not funds of a city per se, rather they are held in trust for a Congressional purpose.[100] A federal bankruptcy court likely has jurisdiction over *federal funds* in a scenario in which a city seeks bankruptcy protection while it attempts to recover federal funds that have been improperly cut off. That result makes sense from a bankruptcy design standpoint. A bankruptcy judge overseeing a massive municipal case would want to hold onto any matter that affects the amount of money that is available to creditors even if they cannot directly manage or interfere with a local city's property.[101]

Having answered that a bankruptcy court would most likely have jurisdiction in a dispute between the President and a city in the affirmative, the question about the applicability of the stay against the federal government comes into the fore. The exception to the stay under the Code is another example of the misfit between the tools currently contained in the

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97. *See, e.g.*, Cass R. Sunstein & Adrian Vermeule, *The Unitary Executive: Past, Present, Future*, 2020 SUP. CT. REV. 83 (2020); Peter M. Shane, *The Unbearable Lightness of the Unitary Executive Theory*, REGUL. REV. (Mar. 3, 2025), https://www.theregreview.org/2025/03/03/shane-the-unbearable-lightness-of-the-unitary-executive-theory/ [https://perma.cc/EC8C-9GUD].

98. *See supra* discussion accompanying note 25.

99. 11 U.S.C. § 904.

100. *In Re* Joliet–Will Cnty. Cmty. Action Agency, 847 F.2d 430, 432 (7th Cir. 1988).

101. *See* Jacoby, *supra* note 88, at 104–05. Jacoby describes the proactive management of Detroit's bankruptcy by the court. She argues that the court aggressively managed the Detroit case because it viewed the city as having implicitly consented to court jurisdiction over its property. In that way, Jacoby observes that 11 U.S.C. § 904 does not serve as a strong restraint on bankruptcy court jurisdiction.

Code and the facts outlined in the hypothetical motivating this Essay. The Code does not provide courts facing a lift stay motion concerning federal grant money with much guidance because it is a hybrid between the exercise of federal regulatory power and a monetary-like judgment.[102] As previously explained, when a debtor files a bankruptcy petition, the Code automatically provides a stay which protects debtors from collection efforts.[103] Courts can impose significant compensatory and punitive damages on those creditors that violate the stay without leave of the court.[104] The Code enumerates the basis on which a creditor can ask a court to lift the stay and continue litigating without being held liable for violating the automatic stay.[105] For purposes of this Essay, the most salient exception has to do with the claims brought by a governmental unit, a provision that recognizes governments will inevitably bring claims against debtors.[106] The provision allows the government to move forward with the use of its police powers and enforce any judgment except for a money judgment.[107]

Courts evaluate governmental lift stay motions by determining whether the government is seeking to enforce a claim that is primarily regulatory in nature or primarily monetary in nature. The Seventh Circuit in *In re Fulton* addressed that issue in the context of a crowded city's most hated role—that of a parking enforcer.[108] Exacerbating the matter, Chicago was a financially challenged municipality that had experienced years of persistent budget deficits and engaged in more aggressive traffic enforcement measures to cover those deficits, or borrowed from financial markets at increasingly higher interest rates.[109]

The City of Chicago's saga with parking tickets provides a prism through which to observe the lengths to which cities will go to collect revenue to plug budget deficits and their interplay with § 362(a)'s automatic stay provisions. In *Fulton*, a consolidated appeal of four Chapter 13 bankruptcies involving impounded vehicles, Robbin Fulton appealed the City of Chicago's decision to impound her car after several unpaid parking tickets.[110] In response to the City towing her car, Fulton filed for bankruptcy; after the bankruptcy court

102. *Reconciling Bankruptcy and Federal Grants*, *supra* note 27.
103. 11 U.S.C. § 362(a).
104. *Id.* § 362(k)(1).
105. *Id.* § 362(b)(1)–(29).
106. *Id.* § 362(b)(4).
107. *Id.*
108. 926 F.3d 916 (7th Cir. 2019), *rev'd on other grounds*, Chicago v. Fulton, 592 U.S. 154 (2021).
109. *See* CIVIC FED'N, *supra* note 2, at 4 (describing Chicago facing a $982 million budget gap for FY 2025, with budget deficits projected to grow in the coming years without interventions).
110. In re *Fulton*, 926 F.3d at 920–21.

confirmed Fulton's plan of adjustment under Chapter 13 of the Code, the court ordered the City to return Fulton's car.[111] However, the City held onto the car claiming that it had a lien on the car to secure repayment of impound fees.[112] Additionally, the City argued that under § 362(b)(4), the filing of the bankruptcy did not act as a stay in the exercise of its police power to enforce traffic regulations as a matter of public safety.[113] Collectively, the debtors argued in their appeal to the Seventh Circuit that the impoundment of vehicles augmented the City's revenue collection rather than protected public safety.[114] The Seventh Circuit agreed with the debtors and held that "on balance, this [was] an exercise of revenue collection more so than police power" because "a not insignificant portion of the City's annual operating fund comes from its collection of parking and traffic tickets."[115] The Supreme Court reversed on other grounds, specifically ruling that the passive holding of the debtor's property did not violate the stay.[116] The Court did not address whether the Seventh Circuit correctly interpreted and applied § 362(b)(4).[117] Lawrence Ponoroff lamented that, "[p]redictably, the Court gave little heed to the policy-based considerations that weighed so heavily with the Seventh Circuit panel."[118] The Court could have used this case to discuss the issue of whether cities that engage in aggressive parking enforcement were properly exercising their police power, pursuing their pecuniary interests, or both.

Nevertheless, the Supreme Court's decision in *Chicago v. Fulton*[119] leaves an open question for purposes of this Essay: if the Trump administration seeks to lift a stay so that it can claw back already allocated funds, is the motion motivated by a pecuniary purpose or a regulatory purpose? Neither the Seventh Circuit's decision in *Fulton* nor bankruptcy case law interpreting the stay provide an easy answer to whether the Executive Branch's claw back action is pecuniary in nature or based on its police powers. For example, the federal government has regularly and successfully sought to lift the stay and bring suits to enforce the National Labor Relations Act (NLRA)[120] or the Comprehensive Environmental Response, Compensation, and Liability Act

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111. *Id.*
112. *Id.*
113. *Id.* at 929.
114. *Id.*
115. *Id.* at 930.
116. Chicago v. Fulton, 592 U.S. 154, 158–59 (2021).
117. *Id.*
118. Lawrence Ponoroff, *Let's Stay Together*, 72 U. KAN. L. REV. 51, 73 (2023).
119. 592 U.S. 154.
120. *See, e.g.*, NLRB v. 15th Ave. Iron Works, Inc., 964 F.2d 1336, 1337 (2d Cir. 1992) (collecting cases); NLRB v. Ctr. Constr. Co., Inc., No. 11-MC-51480, 2013 WL 1858213 (E.D. Mich. May 2, 2013).

(CERCLA).[121] In those cases, the nexus between the interests of the federal government and the actions taken is clear. The problem with the current administration's weaponization of federal grants is that canceling grants based on whether a policy or city is considered "woke" is, at best, a loose nexus between agency actions and the underlying law. For example, when President Trump designated Chicago a sanctuary city and cut it off from receiving education grant funds, the President used immigration policy to punish Chicago's education system.[122] Even though it is not clear from the lawsuits which funds President Trump is clawing back, it is clear that the nexus between threatening to withhold education or highway funding and Chicago's sanctuary status is loose.[123]

That loose nexus complicates a court's ability to determine whether to lift the stay because the President is engaging in a regulatory act, a financially interested action, or opportunistically shapeshifting between both. Courts interpreting § 362(b)(4) have held that they must determine the government's *primary* purpose.[124] When an administrative action punishes a city as part of its "war on woke" policies, and the resulting grant cancellation leads the city to file bankruptcy, it is reasonable to conclude that the federal government's action is policy-based, and a court should allow it to go forward. However, this essay argues that when an administrative action is the cause of the insolvency—as in, the city is insolvent involuntarily before it even files for bankruptcy—and the administration is using federal funds it controls to advance policy goals that have a loose nexus to the purpose that Congress appropriated those funds, the federal government is acting like a creditor who files a petition to force a debtor into an involuntary bankruptcy proceeding in the private sector.[125] In this situation, the Code provides certain protections to debtors who are forced by creditors into bankruptcy in a private sector bankruptcy but not in a public sector bankruptcy.[126] When the nexus between a Congressional appropriation and the policy justification

121. *See* United States v. Jones & Laughlin Steel Corp., 804 F.2d 348 (6th Cir. 1986).

122. *Policy, Pork and Punishment*, *supra* note 1, at 1114–17.

123. This Essay assumes that this Administration would not seek to claw back money being used on immigration enforcement.

124. *See In re* Commonwealth Cos., Inc., 913 F.2d 518, 523 (8th Cir. 1990); Safety-Kleen, Inc. (Pinewood) v. Wyche, 274 F.3d 846, 865 (4th Cir. 2001) ("many laws have a dual purpose of promoting the public welfare as well as protecting the state's pecuniary interest. The fact that one purpose of the law is to protect the state's pecuniary interest does not necessarily mean that the exception is inapplicable. Rather, we must determine the primary purpose of the law that the state is attempting to enforce.").

125. 11 U.S.C. § 303(a)–(b)(1) allows for three or more creditors to force a debtor who refuses to declare bankruptcy into restructuring proceedings involuntarily. The Code bars creditors from forcing cities to enter bankruptcy by excluding Chapter 9 of the Code from the coverage of § 303. It also bars creditors from forcing a non-profit entity to file for bankruptcy.

126. *See, e.g.*, 11 U.S.C. § 303(e)–(f).

for cutting off a grant is loose (such as cutting off highway funds to punish a city for its position on immigration), the federal government is therefore acting not as a regulator, but as a financially motivated creditor who can make deals with the debtor. As a result, the federal government should not get the benefit of lifting the automatic stay to pursue further litigation outside of bankruptcy court or take further administrative action. While bankruptcy courts are not as institutionally competent to handle disputes about grant administration, they are skilled at distinguishing whether the government is acting as a creditor or as a regulator. The President's propensity to see himself as a "dealmaker" may help bankruptcy courts puzzle through the knotty question of whether to treat the federal government as a financial creditor or regulator, should the President's action cause a city to file for bankruptcy.[127]

IV. THE CHALLENGE OF EXITING A BANKRUPTCY

The interposition of executive authority into the bankruptcy process raises significant questions about whether the President himself (through counsel) must brief his position in a municipal bankruptcy proceeding when the administration cuts off federal funding. In order for a court to confirm a plan of adjustment, a court must conclude "that the debtor is not prohibited by law from taking any action necessary to carry out the plan,"[128] and that the debtor has obtained "any regulatory or electoral approval necessary under applicable non-bankruptcy law in order to carry out any provision of the plan . . . or such provision is expressly conditioned on such approval."[129] Bankruptcy scholars and Chapter 9 courts have not delved in-depth into what these requirements mean.[130] Should a court overseeing a municipal bankruptcy demand a letter from each grant making agency opining on whether a so-called "woke" municipality has complied with the President's conditions for the grant? Similarly, suppose the President posts on Truth Social or X commenting on grant funds for San Francisco or Chicago, should a court take that statement as evidence that a debtor has obtained all legal permissions needed to effectuate a plan of adjustment when the plan relies on federal grants to help them provide services to their citizens?

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127. Brenden McFadden, *Trump Gives Himself Gloating New Nickname . . . Before Immediately Contradicting Himself*, IRISH STAR (July 31, 2025), https://www.msn.com/en-us/news/politics/trump-gives-himself-gloating-new-nicknamebefore-immediately-contradicting-himself/ar-AA1JDWY8 [https://perma.cc/EB9T-4TRZ].

128. 11 U.S.C. § 943(b)(3).

129. *Id.*

130. Alvin Velazquez, *Lucha Si, Entrega No: "How an Awkward Power Sharing Arrangement" Enabled Retirees to Upend a Plan of Adjustment*, 97 AM. BANKR. L.J. 836, 842–46 (2023) [hereinafter *Lucha Si, Entrega No*]. In Detroit's bankruptcy, Judge Rhodes noted that both the city and state supported the plan of adjustment.

Another reason why the weaponization of federal grants poses a challenge for debtors is that sudden changes in grant making policy could make calculating available cash flow to satisfy the claims of creditors and the claims of residents nearly impossible. A court overseeing a hypothetical bankruptcy for the City of San Francisco must make this determination only if 1) the city is insolvent, and 2) the bankruptcy court has ruled that the President has the authority to withhold grant funds in such a blunderbuss manner. If the city has access to those grant funds, then it is no longer insolvent, and the court must dismiss the bankruptcy. If the court rules that the administration properly withheld grant funds, then it must determine two aspects to confirm a plan of adjustment and allow a municipality to exit bankruptcy. First, the court must determine that a plan of adjustment is in the best interests of creditors.[131] Then, it must determine that the plan is feasible.[132] Both prongs must be met.[133]

The "best interests of creditors" test requires that courts evaluate whether creditors can collect as much in bankruptcy as they could out of the bankruptcy process exercising their state law remedies.[134] Courts make this determination by examining the ability of a municipality to pay back creditors using already existing taxing authorities. Seasoned bankruptcy law practitioners would most likely point out that the Code provides all of the tools needed to manage contingent cash flows in bankruptcy if municipal debtors use contingent value instruments or payback mechanisms that allow creditors to recover more when a city is flush with cash and beating tax projections.[135] In fact, courts have approved these plans of adjustments for bankrupt municipal governments.[136] However, such an objection misses an important point about federal grant funds.

Federal grant funds are not available as a source of repayment, but federal spending has a significant impact on the economic activity of a financially distressed municipality.[137] Bankruptcy law treats federal funds as unavailable for the general repayment to creditors.[138] The reason for that treatment is rooted in Congressional purpose. Federal grant funds are only

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131. 11 U.S.C. § 943(b)(7).

132. *Id.*

133. *Id.*

134. *In re* City of Detroit, 524 B.R. 147, 213 (Bankr. E.D. Mich. 2014).

135. Seasoned bankruptcy law practitioners would most likely also point to the court's equitable powers to do so. *See* 11 U.S.C. § 105(a).

136. *See, e.g.*, *In re* Fin. Oversight & Mgmt. Bd., 637 B.R. 223, 305 (D.P.R. 2022).

137. *Reconciling Bankruptcy and Federal Grants*, *supra* note 27, at 655, 657 (discussing effects of federal grant spending on poorer jurisdictions because of economic multipliers).

138. 48 U.S.C. § 2150(c); *see also In re* Lan Tamers, Inc. 281 B.R. 782, 796 (Bankr. D. Mass. 2002) (holding that federal funds "merit special consideration" and thus are not part of the estate and subject to general creditor repayment).

intended for grantees to use in alignment with Congress's stated purpose in making those funds available. When cities spend federal dollars, these dollars have a significant positive effect on the economic activity of a municipality and, as a consequence, on the tax revenues available for repayment to creditors.[139] In previous work, Alvin Velazquez argued that the economic stimulus that federal grant funds create for financially distressed cities should not be available for the repayment of creditors.[140] In the San Francisco scenario, if a court at some point reinstates all previously cut federal grants and disburses them, the court would most likely dismiss the bankruptcy petition too because the city is no longer insolvent.

However, imagine a different scenario involving contingent value instruments (CVI)—one in which courts take a piecemeal approach and hold that the President had the authority to cut off some grants, but not others. "A CVI is an instrument that gives the holder the right to receive additional debt service payments from the debtor if certain growth-linked triggers, such as increases in gross domestic product or government revenues, are met."[141] If a court sitting in bankruptcy were to reinstate some grants, but not all, and tie creditor recoveries to the collection of such funds, then the court would, in a way, be turning federal funds *and* the economic stimulus they create into assets that are recoverable by creditors against Congress's will. The fact that creditor recoveries could be tied to federal grants in a hypothetical San Francisco bankruptcy makes determining feasibility in that scenario, and confirming a plan of adjustment, very difficult for a bankruptcy court.

A court presented with a plan based on a contingency of a city recovering federal dollars would have trouble approving it not only because federal grant law interferes with the creditor best interest test, but also because courts must find that a plan is "feasible" as well.[142] The Code provides no guidance as to whether a plan of adjustment is feasible; courts must make their own determinations. In general, courts examine a plan of adjustment to determine whether a municipality can afford to pay back its debts without seeking bankruptcy protection again in the foreseeable future and still provide essential services to its citizens.[143] For a judge to perform this function, they must know what cash flow the city is relying on to make payments. If a President can cut off grants at any point for non-compliance with their policies (and does so unless enjoined by the automatic stay), it makes

139. *Reconciling Bankruptcy and Federal Grants*, *supra* note 27, at 27.

140. *Reconciling Bankruptcy and Federal Grants*, *supra* note 27, at 27.

141. *CVI Could Be Used to Break PREPA Impasse*, SAN JUAN DAILY STAR (July 12, 2024), https://www.sanjuandailystar.com/post/cvi-could-be-used-to-break-prepa-impasse [https://perma.cc/R67L-HJNA].

142. 11 U.S.C. § 943(b)(7).

143. *In re* City of Detroit, 524 B.R. 147, 220–22 (Bankr. E.D. Mich. 2014).

confirming a plan of adjustment near-impossible and compromises a bankruptcy judge's ability to shepherd a matter through to plan confirmation. In this situation, a court does not have the option to abstain; rather, it must either dismiss the petition or proceed to plan confirmation, contingent on funds being available.

V. PRESCRIPTIVE PRE-BANKRUPTCY TACTICS

This Part sets out two prescriptions for maximizing a city government's success should they choose to file bankruptcy as a political resistance tactic against the President's termination of federal grants. First, states could enact limited authorizations for cities to file bankruptcy in response to the loss of federal grant funds as a result of presidential action. Second, mayors should begin the political work of forming coalitions by mimicking the corporate behavior leading up to a prepackaged bankruptcy. Specifically, they can signal ahead of time which constituencies will feel the impact of non-payment during the pendency of a bankruptcy should the President take such action.

First, state legislatures should consider revising their state laws governing a city's authorization to file bankruptcy. Passing legislation would reduce a city's litigation costs by clearing a major doctrinal hurdle to Chapter 9—whether a state has authorized the city to file for bankruptcy.[144] A city or political subdivision of a state cannot file for bankruptcy unless the state has authorized it to do so.[145] Parties frequently litigate whether a city is authorized to file bankruptcy.[146] As noted, not every state has authorized its cities and subdivisions to do so.[147] While the State of California has granted its cities a relatively wide berth to file for bankruptcy, other states with cities that the President has deemed "woke" or declared to be sanctuary cities, such as Chicago, have not done so.[148] That is a tactical mistake that a state legislature can easily remedy without federal intervention.

Even states that have thus far refused to grant their cities the power to file for bankruptcy could draft a narrowly tailored statute that authorizes cities to file for bankruptcy in response to a withdrawal of federal grants. Drafting narrow legislation that can only come into effect in response to the President's actions provides states with another tool for governing the finances of their municipalities. If a city were to lose federal funding, states might be tempted to bail out or otherwise supplement lost spending with their

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144. 11 U.S.C. § 109(c)(2).
145. *Id.*
146. *See supra* notes 64–67 and accompanying text.
147. *See supra* notes 6–7 and accompanying text.
148. *See supra* notes 6–7 and accompanying text.

own funding in the absence of an authorization to file bankruptcy. This legislation would allow states to use bankruptcy proactively. Such a tool could be useful should circumstances change between the President Trump and Mayor Mamdani. The President threatened to cut off NYC's federal grant funds if its electorate selected Mamdani, an avowed socialist, as its mayor.[149] Currently, the two leaders seem to enjoy an amicable working relationship. However, the situation could change quickly. After all, New York has faced its "drop dead" moment from sitting presidents in the past.[150] Having the ability to declare bankruptcy could provide NYC with negotiating leverage against both the President and its creditors.

Additionally, if written in a narrow manner, statutory authorization could act as an emergency first-aid kit, only meant to be opened in case of a statutorily specified emergency. Even the fact that a state legislature is seriously deliberating over such a bill would send a major signal to the administration, debt markets, and a city's residents regarding the extent to which a local government will go to protect its constituents from the President's rogue actions. Indeed, cities hinting at their inclination to file for bankruptcy are in a difficult position. By choosing to file for bankruptcy, those cities are essentially saying that the harm of losing federal grants outweighs the harm that a negative credit market reaction could have on the city, including the suspension of credit.[151] Or, as this Essay argues, the action could lead to a coalition of creditors forming to lobby the President for the release of grant funds, as occurred in Puerto Rico after Hurricane Maria caused significant damage to the island's power grid.[152]

This Essay now turns to discuss the second tactical prescription—political preparation for a tactical bankruptcy. Mayors around the country who have

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149. Khaleda Rahman & Shane Croucher, *Donald Trump Suggests He Will Cut Down Funding to New York if Mamdani Wins*, NEWSWEEK (Nov. 3, 2025, at 02:38 ET), https://www.newsweek.com/donald-trump-zohran-mamdani-nyc-funding-election-10980020 [https://perma.cc/WD6F-VGLK].

150. Tim Balk, *New York Survived Its 1975 Crisis. Will Trump Push It Back to the Brink?*, N.Y. TIMES (Oct. 30, 2025), https://www.nytimes.com/2025/10/30/nyregion/ford-nyc-financial-crisis-trump.html [https://perma.cc/963S-6Z7R]. When New York was on the verge of filing for bankruptcy in 1975, then President Gerald Ford vowed to veto any federal assistance to the financially struggling city. The New York Post characterized his actions with a famous headline, "Ford to City: Drop Dead." Even though President Ford never used those exact words, the headline captured the basic sentiment the administration conveyed to the city. Such a dynamic could recur if Mamdani and Trump find themselves at odds.

151. DEVIN S. BRENNAN, PREETHA GIST & MARC A. LEVINSON, MUNICIPAL BANKRUPTCY: AVOIDING AND USING CHAPTER 9 IN TIMES OF FISCAL STRESS 9 (Orrick, Herrington & Sutcliffe LLP ed., 3d ed. 2025).

152. *Puerto Rico Creditors Call for 'Necessary' Government Assistance After Hurricane*, REUTERS (Sep. 27, 2017), https://www.reuters.com/article/business/environment/puerto-rico-creditors-call-for-necessary-government-assistance-after-hurricane-idUSKCN1C22TJ/ [https://perma.cc/ZMP5-QLX3].

drawn the President's ire should begin building a political coalition of creditors to quickly confirm a plan of adjustment. To enter Chapter 9, a city must show that it has met with creditors who may be impaired and tried to negotiate a plan of adjustment, or that such negotiation would be futile.[153] That requirement provides municipal debtors with a framework for outlining what they would do in the event that the President cuts off grant funding. Interestingly, the Bankruptcy Code does not set out a time period for when such communications must occur. A city could begin planning for such a bankruptcy and use the run-up to address yet another eligibility barrier that exists to Chapter 9 of the Code, so that it can move as quickly as possible to litigate the gating question of whether the municipality is insolvent. These meetings could take place at the same time as educating the general public about the possibility of the city entering bankruptcy and framing such an exercise as community protection from the President's actions.

In a way, this paper is calling for the creation of alliances and, where possible, mimicking a prepack strategy.[154] A prepackaged bankruptcy is one in which a debtor reaches an agreement with creditors outside of bankruptcy court.[155] The debtor then files for bankruptcy with a plan of adjustment ready, specifying the treatment that creditors will receive.[156] The goal of the parties is to shorten and simplify the amount of time the debtor spends in bankruptcy proceedings by pre-negotiating a confirmable plan of adjustment outside of court.[157] After that, the debtor asks the bankruptcy court to approve its plan of adjustment over the objections of creditors who do not consent to an impairment of their claims.[158] To be sure, scholars have examined the prepack strategy and come to different conclusions. For example, Lynn LoPucki contends that prepacks are part of Chapter 11's descent into lawlessness because they circumvent procedural protections for unsecured claimants.[159] On the other hand, Christopher Hampson and Jeffrey Katz believe that the procedure aligns well with subchapter V of the Bankruptcy Code governing small businesses and are not susceptible to the

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153. 11 U.S.C. § 109(c)(5).

154. Adam Hayes, *Prepackaged Bankruptcy: Meaning, Pros and Cons, Examples*, INVESTOPEDIA (Sep. 29, 2021), https://www.investopedia.com/terms/p/prepackagedbankruptcy.asp [https://perma.cc/4YPY-PPWN]; *see also supra* text accompanying note 31 (discussing academic commentary on coalition building in Chapter 11 bankruptcies).

155. *See* Hayes, *supra* note 154.

156. Hayes, *supra* note 154.

157. Hayes, *supra* note 154.

158. Hayes, *supra* note 154.

159. *See* Lynn M. LoPucki, *Chapter 11's Descent into Lawlessness*, 96 AM. BANKR. L.J. 247, 247 (2022); *see also* Adam J. Levitin, *Purdue's Poison Pill: The Breakdown of Chapter 11's Checks and Balances*, 100 TEX. L. REV. 1079, 1099–1103 (2022).

same abuses as larger companies such as forum and judge shopping that corporate conglomerates engage in.[160]

Chapter 9 makes a prepack difficult because so much of municipal bankruptcy takes place in the public eye and requires legislative approval. Nevertheless, municipal government leaders should use the prepack as a framework for thinking about the alliance politics needed to conduct a successful bankruptcy and arrive at a confirmable plan of adjustment should the President take action. For example, the Code allows courts to confirm a plan of adjustment in a municipal bankruptcy over the objection of creditors only if at least one class of creditors accepts an impairment.[161] Such a tool could encourage a mayor to reach a prepackaged deal with a group of creditors willing to accept an impairment in exchange for impairing a group of creditors the President favors more deeply.

CONCLUSION

This Essay urges cities to use bankruptcy as a forum for political resistance and ex post bargaining over federal grants. It encourages cities to explore tactical bankruptcies, despite the misfit between the Code and administrative law. It makes the descriptive claim that Chapter 9 of the bankruptcy code lacks the tools to easily manage exogenous financial shocks caused by governance through extortion. Bankruptcy also has ill-fitting tools for dealing with a President who may approach their power over the purse as both regulator-in-chief and "dealmaker-in-chief".

Despite being cognizant of that tension, this Essay still advocates that cities consider filing for bankruptcy as leverage in dealing with the President's behavior, given the benefits that the automatic stay provides and a bankruptcy court's competency in handling creditor coordination.[162] It also advocates that local government take two tactical steps to prepare for bankruptcy. First, the Essay argues that states could enact limited authorizations for cities to file for bankruptcy in response to the loss of federal grant funds resulting from presidential actions. Second, the Essay argues that city mayors should begin the political work of forming coalitions. Specifically, they can do so by signaling in advance which constituencies will feel the impact of non-payment during the pendency of a bankruptcy, should the President take such action.

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160. Christopher D. Hampson & Jeffrey A. Katz, *The Small Business Prepack, The Small Business Prepack: How Subchapter V Paves the Way for Bankruptcy's Fastest Cases*, 92 GEO. WASH. L. REV. 851, 856–57 (2024).

161. 11 U.S.C. §§ 901(a), 1129(a)(10).

162. *Bankruptcy and the Public-Private Divide*, *supra* note 25, at 420.

President Trump's grant-making activities may inadvertently stress-test the bankruptcy system, especially if the funding cut-offs his administration has implemented as part of its "war on woke" leave cities insolvent. In this scenario, the Essay argues cities and states can make tactical decisions that optimize their chances at success, even if bankruptcy courts have to muddle through with the statutory tools, they have to shepherd a matter through and confirm a plan of adjustment. By proposing bankruptcy as a tool for creating creditor coalitions to resist the President's punitive agenda, this Essay is the first to begin exploring the myriad issues that may arise at the intersection of bankruptcy law and political resistance, but hopefully not last.