A RISING TIDE LIFTS ALL BOATS: THE MRERA'S APPROACH TO SAVING CAMDEN'S SCHOOLS BY SAVING CAMDEN ITSELF

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I. INTRODUCTION

In 2002, the State of New Jersey took control of the operation of the City of Camden. That process included a takeover of management of the city's school district. While state disestablishment of underperforming school districts is not a new idea, New Jersey's all-encompassing approach marks a radical change in the way such an action is undertaken. This Note will explore the circumstances that spurred the state to take control of Camden's government and school district and the method by which the takeover was accomplished. It will compare New Jersey's school takeover legislation with that of other states, and will discuss the ramifications and justification of such a radical approach.

II. BACKGROUND OF CAMDEN, THE SCHOOL DISTRICT, AND THE "TAKEOVER"

Incorporated in 1828[2], Camden claims a history that has been a study in contrasts, from the city's height as a manufacturing and cultural powerhouse to its low as an abandoned, dying metropolis.[3] The latter half of the nineteenth

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[2] City of Camden, New Jersey, *Consolidation of Three Settlements*, *at* http://www.ci.camden.nj.us/history/threesettlement.html.

[3] For example, Camden's population declined by almost 9% between 1990 and 2000, with an 11% decrease in the number of residents under age 18. CAMConnect, *Camden City – Camden Facts 1999-2000* (2003) *at* http://www.camconnect.org/fact/documents/camden_city.pdf at 4. The housing situation in Camden is worse: while the total number of housing units dropped by 1.2% and occupied housing units declined by 9.2% in the decade following 1990, the number of unoccupied, "not for sale/rent" units shot up from 1,756 in 1990 to 3,892 in 2000, an increase of 121.6%. *Id*. at 5. In addition, the number of units lacking complete kitchen facilities nearly quadrupled, from 577 to 2,267. *Id*. The picture drawn by these statistics is that not only did the amount of available housing shrink, what remained was increasingly vacant or barely habitable.

While the percentage of Camden residents below the poverty line fell slightly (from 35% to 33.5%) *id*. at 8 and per capita income rose from $8,392.35 to $9,815 *id*. at 9, the number of residents holding some type of college degree declined by almost a quarter, with less than 6% of the total population holding at least a Bachelor's degree in 2000. U.S. Census, http://www.camconnect.org/fact/documents/camden_city.pdf at 10.

century saw the city, boosted by its bustling ferry business, change from a community of small farms into a manufacturing powerhouse.[4] In 1899, Eldridge Johnson began producing his "talking machine," marking the birth of a company that was to become a part of the electronics giant RCA.[5] Thirty years earlier, the Campbell's Soup Company had opened its first canning shop in Camden.[6] Poet Walt Whitman and singer Enrico Caruso settled in the city in the late nineteenth and early twentieth centuries.[7] During World War II, the city's shipyards ran twenty-four hours a day, building vessels in support of the war effort.[8]

As the twentieth century progressed, however, Camden's prosperity began to fade. The Benjamin Franklin Bridge, opened in 1926,[9] effectively split Camden in two and allowed travelers who had once traveled into Camden to board the ferry to Philadelphia to instead drive through the city without stopping. Between 1960 and 1980, Camden's population dropped from 117,000 to 85,000.[10] The 1960s saw the closure of the shipyards and the departure of many of the city's major industrial citizens. The resulting need for aid forced Camden into a series of compromising deals with the state, resulting in the city's acceptance of a trash-

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4 City of Camden New Jersey, *Industrialization*, *at* http://www.ci.camden.nj.us/history/industrialization.html. The city grew in leaps and bounds through the late 1800s. Between 1860 and 1870, the number of factories in Camden grew from 70 to 125, with lumber firms, oil cloth factories, wool mills, chemical plants, and carriage factories playing prominent roles in the city's economy.

5 Johnson's company incorporated two years later as the Victor Talking Machine Co. *A Timeline of Camden's History*, PHILADELPHIA INQUIRER, April 20, 2004, *at* http://www.philly.com/mld/inquirer/news/special_packages/camden/8473879.htm ("Timeline"). In 1929, RCA purchased Johnson's company and began manufacturing radios and phonographs in Camden. *About RCA: Corporate History – The Rise of RCA Victor*, *at* http://www.rca.com/content/viewdetail/1,2811,EI99-CI263,00.html?

6 The company originally began as a canning operation called the Joseph A. Campbell Preserve Company. The company invented condensed soup in 1897, and 25 years later changed its name to the now-familiar Campbell's Soup Company. *Campbell's Soup Co. – History: Introduction*, *at* http://www.campbellsoupcompany.com/history.asp.

7 Whitman settled in Camden in 1873. Caruso moved to Camden in 1908 in order to record for Johnson's Victor Talking Machine Co. *Timeline*, *supra* note 4.

8 There were four major shipyards located in Camden: New York Shipbuilding, Mathis Yacht, Penn-Jersey Ship, and R.T.C. Ship. These yards produced minesweepers, battleships, and many other vessels during the war. The battleship New Jersey – one of the most decorated warships in U.S. history – was constructed across the river from Camden in Philadelphia, and now rests along the city's waterfront as a museum. Battleship New Jersey Official Website, http:// http://www.battleshipnewjersey.org/index.cfm?fa=facts.

9 Joseph A. Gambardello, *City Craves Its Comeback*, PHILADELPHIA INQUIRER, April 21, 2004, *at* http://www.philly.com/mld/inquirer/news/special_packages/camden/8479018.htm.

10 *Id*. As of the 2000 Census, Camden's population had dipped to 79,904. This was an 8.7% drop from the 1990 population of 87,492. CAMConnect, *supra* note 2, at 3.

to-steam incinerator, a sewage plant, and a state prison built on prime waterfront property.[11] These developments accelerated and furthered Camden's decline. By the early 1990s even Campbell's Soup, a Camden fixture for almost a century, had moved its manufacturing operations elsewhere.[12]

In recent years, however, the state of New Jersey has thrown itself into the battle to save Camden. With the departure of the manufacturers, many of their waterfront properties were cleared and made available for future development. In 1992, the New Jersey State Aquarium opened on the waterfront. A major outdoor concert venue followed three years later.[13]

Camden's recent resurgence has not gone unnoticed. *Inc. Magazine* recently included Southern New Jersey and Camden among its "Top 25 Cities for Doing Business in America."[14] Camden has been successful in luring back some businesses, such as Equity Bank, which recently agreed to relocate its headquarters to the city.[15] Camden beat out Bayonne, New Jersey for the right to serve as the permanent home for the retired battleship USS New Jersey, which has been converted into a floating World War II museum.[16] The Camden Riversharks, a minor-league baseball team, now call the waterfront Campbell's Field stadium their home,[17] and Philadelphia developer Carl Dranoff has turned the formerly-abandoned RCA Victor building into the first market-rate apartments Camden has seen in more than 30 years.[18] The Victor, along with an

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[11] Gambardello, *supra* note 8.

[12] *Id*. Campbell's Soup has kept its corporate headquarters in Camden. *Campbell's Soup Company – Directions to World Headquarters*, *at* http://www.campbellsoupcompany.com/directions.asp.

[13] Timeline, *supra* note 4.

[14] Joel Kotkin, *Top 25 Cities for Doing Business in America*, INC. MAGAZINE, March 2004, at 93, *at* http://www.inc.com/magazine/20040301/top25.html.

[15] Larry Rulison, *Equity Bank Changing Name, Moving to Camden*, PHILADELPHIA BUS. J., January 23, 2004, *at* http://philadelphia.bizjournals.com/philadelphia/stories/2004/01/19/daily42.html. The bank is moving its headquarters from nearby Marlton, NJ and merging with another bank, Patriot Bank Corp. The new company, a subsidiary of Susquehanna Bancshares, Inc., will reside on the third floor of a 70,000 square foot office building currently being constructed in Camden. The building will have expansive views of the Delaware River and Philadelphia skyline, and the move is expected to take 18 months to complete. *Id*.

[16] Carol Comengo and Richard Pearsall, *We Got the Ship!*, COURIER-POST, January 2000, *at* http://www.southjerseynews.com/battleship/u012100a.htm.

[17] Official Website of the Camden Riversharks, *at* http://www.riversharks.com/campbellsfield.cfm.

[18] Gambardello, *supra* note 8. The Victor rehabilitation cost $60 million, and Dranoff, a Philadelphia-based developer who specializes in the residential conversion of commercial and industrial structures called the project, "the single most important building I've ever done." Dranoff, who's helped turn around several sections of Philadelphia, observed, "Usually, a project like this revives a neighborhood . . . [t]he Victor is reviving a city."

adjacent building Dranoff plans to turn into a rental loft building,[19] adjoins the newly-completed River Line,[20] a light rail system connecting Camden with Trenton.

Like the city itself, Camden's school district has remained in dire straits for some time, and it too has been the subject of special state attention. During the 2003-2004 school year, the Camden school district spent an average of $14,632 per pupil, exceeding the state's average per-pupil spending by almost thirty-six percent.[21]

III. BACKGROUND OF THE MRERA/CRERA

A. NEW JERSEY'S SCHOOL TAKEOVER PROVISION

1. HISTORY OF THE STATUTE

The Municipal Rehabilitation and Recovery Act traveled a long and winding road toward its initial passage in July 2002.[22] Concerns over the

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[19] *Id.*

[20] RiverLINE, *at* http://www.riverline.com.

[21] NJ Dept. of Education, *Comparative Spending Guide*, March 2003 at 137, *at* http://www.state.nj.us/njded/guide/2003/k-12.pdf. This amount was substantially higher than the state per-pupil spending average of $10,725. While Camden's per-pupil costs have tended to be higher than the state average, the district has usually spent approximately 16-15% more than the average New Jersey school district. *Id*. *See also infra* note 67 and accompanying text.

[22] Prior to July 2002, the Legislature had twice attempted to pass versions of the MRERA. The first bill, the "Municipal Rehabilitation and Economic Revitalization Act," was introduced in June 2000 and was sponsored by State Senator Martha Bark. It granted power to the New Jersey Department of Community Affairs (DCA) to "rehabilitate fiscally distressed municipalities through appointment of chief management officer." *See* S1507, 209th Leg. (N.J. 2001). The bill provided that when a municipality fell within certain state fiscal criteria for 18 months, the DCA director could recommend to the Local Finance Board (LFB) that the municipality be placed under rehabilitation. If the LFB found that the municipality was unlikely to be able to maintain financial stability without significant state aid, it could issue a rehabilitation order. Upon issuance of the order, the LFB would appoint a chief management officer to assume the powers of the mayor and council and oversee management of the city. This bill was referred to the Senate Community and Urban Affairs Committee, and it died there. *See* 2000-2001 Bill Tracking N.J. S1507.

The second attempt, entitled "Camden Rehabilitation and Economic Recovery Act," was introduced in May 2001 by State Senators Martha Bark and Wayne Bryant, whose legislative district encompassed the City of Camden. S2449, 209th Leg. (N.J. 2001). The new bill specifically targeted Camden and appropriated $173 million in state funding for the city. It was referred the Senate Economic Growth, Agriculture and Tourism Committee, where it remained until after the gubernatorial election of 2001. 2000-01 Bill Tracking N.J. S2449. After the election, it was reported out of Committee and passed by a vote of 28-3. *Id*. However, the victory was short-lived, as newly-elected Governor James McGreevey was determined not to fund the bill, citing budget shortfalls. Anne Marie Vassallo, *Solving Camden's Crisis: Makeover or Takeover?*, 33 RUTGERS L.J. 185 n.125. (2001). Its fate effectively sealed, the bill was never brought to a full vote. *Id*.

perceived destruction of New Jersey's "home rule" tradition[23] and fears of voter disenfranchisement[24] almost killed the legislation in its infancy and continued to threaten the bill.

These fears surfaced in the first challenge to the newly enacted legislation. In August 2002, the court in *Camden City Board of Education v. McGreevey* struck down the MRERA as unconstitutional "special legislation,"[25] holding that the classification used by the Act to determine its applicability resulted in applicability only to the City of Camden.[26] The court held that the classification system used by the Act bore no rational relation to the Act's goals. Because of the Act's failure to meet the rational relationship standard, the court enjoined implementation of the Act's school district takeover provisions.

In response to this ruling, the State Legislature enacted the "December 2002 amendments,"[27] broadening the categories of municipalities potentially subject to the MRERA's provisions in hopes of curing the Act's constitutional infirmities. These amendments became §§ 2.1(a), (c) of the MRERA and established different criteria for identifying municipalities subject to its provisions.[28]

2. PROS AND CONS OF THE STATUTE

The MRERA provides that, within 30 days of adoption of a municipality's budget, the Commissioner of Community Affairs shall determine whether that municipality fulfills the definition of a "qualified municipality."[29] Upon

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[23] *See* discussion *infra* notes 41-52.

[24] *See* discussion *infra* note 100.

[25] 850 A.2d 505, 510 (N.J. 2004).

[26] The MRERA applied to those school districts located entirely within a qualifying municipality, had a nine-member school board, and was already a "Type II" district. A Type II district was one that was already subject to "level II" monitoring, which was imposed when a district's deficiencies kept it from satisfying the state evaluation criteria for providing a "thorough and efficient education." Only Camden met the definition of a "qualified municipality." *Id.*

[27] Vasallo, *supra* note 21.

[28] The classification criteria in the revamped MRERA expanded the list of potentially qualifying municipalities to those with either a mayor or a chief executive officer and changed the fiscal triggering point. Under the December Amendments, the requirement that the municipality must have obtained 45% of its total budget from state funding as of a specified date was replaced by a requirement that such funding must be relied upon while the municipality was under the supervision of a financial review board and the Local Finance Board for at least one year. With respect to school districts, the amendments eliminated the requirement of a nine-member school board and included districts subject to level III monitoring. *McGreevey*, 850 A.2d at 511.

[29] N.J. STAT. ANN. § 52:27BBB-4 (2004). "Qualified municipality" is defined as a municipality that: has been subject to the supervision of a financial review board pursuant to the "Special Municipal Aid

notification by the Commissioner, the governor, in consultation with the municipality's mayor and governing body, appoints a Chief Operating Officer (COO) to assume governing power over the municipality.[30] Failure of the mayor or governing body to act upon or approve any proposal introduced by the COO is considered an impasse, which is then arbitrated before a judge appointed by the Chief Justice of the New Jersey Supreme Court.[31]

A school district that is "contiguous with"[32] a qualified municipality, and which is subject to level II or level III monitoring,[33] will have its school board

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Act," (N.J. STAT. ANN. § 52:27D-118. 24 et seq.) for at least one year; has been subject to the supervision of the Local Finance Board pursuant to the "Local Government Supervision Act (1947)," N.J. STAT. ANN. § 52:27BB-1 et seq., for at least one year; and according to its most recently adopted municipal budget is dependent upon state aid and other state revenues for not less than fifty-five percent of its total budget. N.J. STAT. ANN. § 52:27BBB-3 (2004).

[30] N.J. STAT. ANN. § 52:27BBB-7 (2004). The COO is vested with "the power to perform all acts and do all things consistent with law necessary for the proper conduct, maintenance, rehabilitation and supervision of the qualified municipality." N.J. STAT. ANN. § 52:27BBB-9(b). The COO operates with all the power previously accorded the mayor. *Id.*

[31] *Id.* The arbitrator is appointed by the Chief Justice upon notification to the governor and others that the municipality is a "qualifying municipality." N.J. STAT. ANN. § 52:27BBB-5.

[32] "Contiguous with" means "within." N.J. STAT. ANN. § 52:27BBB-3 (2004). Notwithstanding this definition, the New Jersey Assembly Republicans released a press report directly after passage of the MRERA, stating,

> "In the $175 million Camden aid bill signed Monday, sections 67 and 68 deal with a supposed state takeover of the Camden school board. However, because those sections use the word 'contiguous' instead of 'coterminous' the bill would appear to actually give the Governor control of the Pennsauken, Gloucester City, Woodlynne and Collingswood school districts, rather than Camden's.
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> Despite earlier attempts by the Assembly Democrats to dismiss this point, a review of all existing statutes confirms that the word 'contiguous' is used to refer to adjacent towns or districts, and the word 'coterminous' is used when referring to a place that lies within identical boundaries, such as the city of Camden and its school district."

N.J. Assembly Republicans, *Camden School Board Need Not File Legal Action: Aid Bill Still Doesn't Apply To Camden School District* (press release), July 24, 2002, *at* http://www.njassemblyrepublicans.com/summer02press.htm#7/24. Despite this objection, the courts have determined that the MRERA does apply to the Camden school district.

[33] Level II and Level III monitoring are procedures by which the Commissioner of Education can investigate school districts which are failing to meet the state's educational criteria. N.J. STAT. ANN. § 18A:7A-14 (2004). When a district is subject to Level II monitoring, the commissioner is charged with establishing procedures by which parents, school employees, and residents may express their

membership increased so as to ensure that both the state and the municipality participate in the activities of the board.[34] Depending on the size of the original school board in the district, the membership is increased by one to three additional members.[35] The new members are appointed by, and serve at the pleasure of, the governor or the mayor as appropriate.[36] The appointed members are full board members with all the same voting rights and privileges as the original, elected board members, and serve for three years from the date the number of board members returns to the original number.[37] The statute provides that, in the interest of maintaining substantial local representation on the board, the number of the positions appointed by the mayor and elected by the voters, combined, shall never constitute less than a majority of the total positions on the board.[38] At all times, however, the school board's decisions are subject to unilateral veto by the municipality's COO.[39]

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concerns to the commissioner. The county superintendent is charged with formation of an external review team composed of qualified members. The review team is empowered to either examine "only those aspects of the district's operations bearing on the areas of deficiency," or may choose to examine all aspects of the district's operation, including but not limited to education, governance, management and finance. The team is also charged with investigating conditions in the community which may adversely affect the ability of the pupils to learn, and the team may recommend measures to mitigate the effects of those conditions. N.J. STAT. ANN. § 18A:7A-14(b)(1).

34 N.J. STAT. ANN. § 52:27BBB-63 (2004). The December 2002 amendments to the MRERA stated:

> Given the magnitude of the State's investment in a qualified municipality, it is incumbent upon the State to take the appropriate steps necessary to ensure effective governance at the school district level in addition to effective governance at the municipal level. Not only will limited school district oversight ensure the coordinated expenditures of public funds, it will ensure that the proposed local tax levy to support the district's schools will not further burden the municipal tax base. Additionally, this oversight will assist the district in improving the quality of education provided to students in the municipality. Enhancing educational quality will, in turn, assist housing revitalization by attracting new families to the community and preventing flight of current residents. It will also serve to attract new businesses and potential employers because the community can offer better-prepared graduates to the workforce.

N.J. STAT. ANN. § 52:27BBB-2.1(d) (2004).

35 N.J. STAT. ANN. § 52:27BBB-63 (2004).

36 N.J. STAT. ANN. § 52:27BBB-63 (2004).

37 *Id*.

38 *Id*. This provision does not apply to state-operated school districts created under Article 2 of the Public School Education Act (PSEA), N.J. STAT. ANN. § 18A:7A-15 et seq. N.J. STAT. ANN. §

When Camden was classified as a Type II school district, membership of the city's nine-member school board was increased by three, with the new members appointed by then-Governor James McGreevey.[40]

B. LEGAL BACKGROUND OF THE MRERA'S ADOPTION

1. "HOME RULE" AND NEW JERSEY'S TRADITION

The question of local government has been long debated in American jurisprudence. There exists no inherent right to municipal government;[41] a state may provide power to its governmental subunits in various ways.[42] Such "home

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52:27BBB-63. The procedures for, and legality of, the creation of a State-operated school district under the PSEA was at the heart of the takeover of the Newark school district, and was explored in *Contini v. Bd. of Educ.*, 668 A.2d 434 (N.J. 1995), *infra* note 59.

[39] N.J. STAT. ANN. § 52:27BBB-7 (2004). The COO has veto power over any actions taken by the municipality's governing bodies.

[40] *McGreevey*, *supra* note 25.

[41] *City of Trenton v. New Jersey*, 262 U.S. 182 (1923), *infra* note 50. In resolving a contract dispute between the city of Trenton and the State of New Jersey, the United States Supreme Court held:

> The number, nature, and duration of the powers conferred upon these corporations [municipalities] and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither [the municipalities'] charters nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. . . . The power is in the State and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it.

Id. at 186.

[42] Kenneth E. Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. AND MARY L. REV. 269 (1968). For example, a state may provide for municipal power through its constitution. Such states are said to operate under "constitutional home rule." Other states provide municipal power

rule" has been defined as the "device for allocating power between the State and its municipalities[.]"[43] The manner in which a municipality's authority is allocated plays a large role in determining the extent to which a municipality may resist removal or reduction of its authority.[44] In "legislative home rule" states, the municipality has very little voice in fending off a legislature aiming to reduce municipal power, since that power is entirely dependent on the legislature's statutory grant. In "constitutional home rule" states, however, the municipality stands on firmer ground, since the legislature may not unilaterally revoke municipal power. In such states, a constitutional amendment is required to reduce or revoke municipal power.[45]

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statutorily, with the state legislature explicitly deciding what and how much power to give the state's municipalities. *See also infra* note 44.

43 *Id.*

44 New Jersey operates under a system known as "legislative home rule." In such states, municipalities derive their power by legislative grant. This power is purely subject to the will of the state, and may be altered or removed at any time simply by amending the law. Although New Jersey's constitution mandates that any law enacted regarding municipal powers be broadly construed in favor of the municipality, it does not directly confer any powers to those municipalities. N.J. CONST. art. IV, § 7. Municipal powers in New Jersey include: regulation of internal affairs; adoption and enforcement of local police ordinances; lawsuit, contract, property rights; and borrowing and taxation subject to State general law. N.J. STAT. ANN. § 40:69A-29 (2004). State law also adheres to state constitutional law by providing that:

> The general grant of municipal power contained in this article is intended to confer the greatest power of local self-government consistent with the Constitution of this State. Any specific enumeration of municipal powers contained in this act or in any other general law shall not be construed in any way to limit the general description of power contained in this article, and any such specifically enumerated municipal powers shall be construed as in addition and supplementary to the powers conferred in general terms by this article. All grants of municipal power to municipalities governed by an optional plan under this act, whether in the form of specific enumeration or general terms, shall be liberally construed, as required by the Constitution of this State, in favor of the municipality.

N.J. STAT. ANN. § 40:69A-30 (2004). This provision indicates a strong preference in favor of local autonomy. Another form of home rule is "constitutional home rule," in which the State's constitution provides that municipalities shall retain certain powers. In these cases, the municipal powers may not be usurped by the legislature absent a constitutional amendment. States adopting this form of home rule include Massachusetts, New Hampshire, and North Dakota. Vanlandingham, *supra* note 42, at 277.

45 *Id.*

There are two variations on the theory of local government. The first states that the municipality possesses no inherent power and is merely an arm of the state, implemented for efficiency reasons; it may only take those actions that are "authorized by the State." This theory fits well with the theory of statutory construction known as "Dillon's Rule."[46] The second, and more nuanced, theory of municipal government is based on the definition of home rule and supported by the writings of Michigan Supreme Court Justice Thomas Cooley.[47] According to this theory, the municipal corporation is an agent of its private citizens, and exists to serve their private interests.[48] One may argue that the state government

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[46] This rule, expressed by Iowa Supreme Court Chief Justice John F. Dillon, incorporates the idea that municipalities "owe their origin to, and derive their powers and rights wholly from, the legislature." City of Clinton v. Cedar Rapids & Missouri River Railroad Co., 24 Iowa 455, 475 (1868). This interpretation–that a municipal government has no inherent right of existence– was later adopted by the Supreme Court in *City of Trenton*, *supra* note 40.

Dillon's theory sprang from his fear that the greatest threat to private property sprang from municipal government. He believed that, by limiting the powers of the local government and vesting those powers in the state government, the dangers inherent in vesting power in a few individuals could be counteracted by placing ultimate authority in a larger, more centralized body. His fear of municipal misappropriation of property sprang largely from his background in railroad bonding. In such cases, municipalities issued bonds to railroad corporations in order to fund the railroads', and presumably their own, development. When the railroad corporation defaulted on the bonds, the citizens of the municipality were the ones who suffered the loss. Dillon's Rule sharply limited a municipality's powers to those "authorized by the State," and tied in with another doctrine he put forth: the "public purpose" doctrine. The "public purpose" doctrine was aimed squarely at the railroad bonding practice and forbade government (not just municipal governments) from engaging in actions undertaken for "private" benefit. Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 WIS. L. REV. 83, 94 (1986).

[47] Vassallo, *supra* note 22, at 197-99. Cooley's theory was founded in the belief that local government was inherently sovereign; that the sovereign people had delegated only a part of that sovereignty to the states and that governmental actions were subject to both written and unwritten limitations according to the sovereignty the people had reserved for themselves. Cooley's fear was that vesting all power in the state legislature would open the door for special interests to dominate the government's policy. Instead, he believed that vesting power in the people on a local level would make it difficult or impossible for one group to exert its will on the government. Dillon's theory necessarily assumed that the people had delegated all their sovereignty to the state, and therefore were dependent on the state's authorization in order to govern locally. Williams, *supra* note 46, at 88. While Dillon's approach has been accepted by the courts, Cooley's premise seems to be more in line with the aims of the drafters of the U.S. Constitution, who provided that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

[48] According to Cooley:

> The state may mould local institutions according to its views of policy and expediency; but local government is a matter of absolute right; and the state cannot take it away. It would be the boldest mockery to speak of a city as possessing municipal liberty where

is not inherently different from the municipal government; each may properly be termed "an agent" of its citizens, and each therefore exists only to serve their interests. Professor Joan Williams postulates that while Dillon and Cooley arrived at different conclusions about the authority inherent in local government, both engaged in a kind of "political forum-shifting," assigning authority to the level of government each thought was least threatening to private citizens.[49]

The U.S. Supreme Court has adopted Dillon's Rule. In *City of Trenton v. New Jersey*,[50] the Court held that, as a matter of constitutional law, a municipality has no inherent right to self-government.[51] A municipality is merely a division of the state, implemented for the convenience of supplying such public goods more efficiently than would be possible for the state.[52]

> the state not only shaped its government, *but at its discretion sent in its own agents to administer it*; or to call that system one of constitutional freedom under which it should be equally admissible to allow the people full control in their local affairs, or no control at all.

Williams, *supra* note 46, at 148 (emphasis added).

This statement clearly illustrated Cooley's feeling that citizens have an inherent right to self-government at the most local level.

[49] Williams, *supra* note 46.

[50] 262 U.S. 182 (1923). The case involved a question of whether the City of Trenton, having purchased form a private corporation the right to draw water from the Delaware River, could avoid paying usage fees imposed on it by the state under the Fourteenth Amendment and the Contracts Clause. The Court held that, while the Contracts Clause protects agreements between a private corporation and the state, a municipality, as a mere division of the state, does not enjoy the same benefit.

[51] "The. . . powers conferred upon [municipal corporations] rests in the absolute discretion of the State. [. . .] The State. . . may modify or withdraw all such powers, [confer municipal property to other corporations, expand, contract, or merge municipalities], [or] repeal the charter and destroy the corporation. *All this may be done. . . with or without the consent of its citizens, or even against their protest.*"

Id. at 186-87 (*quoting Hunter v. Pittsburgh*, 207 U.S. 161, 178-79 (1907)) (emphasis added).

[52] Williams, *supra* note 46, at 145.

2. THE HISTORY OF NJ SCHOOL TAKEOVERS

A. THE LOCAL GOVERNMENT SUPERVISION ACT

In May of 2000, the State of New Jersey took control of Camden's financial operations pursuant to the Local Government Supervision Act (LGSA).[53]

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[53] N.J. STAT. ANN. § 52:27BB-1 et. seq. (2004). The LGSA provides that the State may assume control of municipal finances when any of the following occurs:

> (1) A default exists in the payment of bonded obligations or notes for which no funds or insufficient funds are on hand and segregated in a special trust fund.
>
> (2) Payments due and owing the State, county, school district or special district, or any of them, are unpaid for the year just closed and the year next preceding that year.
>
> (3) An appropriation for "cash deficit of preceding year" in an amount in excess of 4% of the total amount of taxes levied upon real and personal property for all purposes in such preceding year, is required to be included in the next regular budget and was required to be included in the budget for the year just closed; provided, however, in establishing the excess, if any, over the 4% there shall first be deducted from such appropriation the amount, if any, that was caused by the failure to receive miscellaneous anticipated revenue from franchise and gross receipts taxes.
>
> (4) Less than 70% of the total amount of taxes levied for all purposes upon real and personal property in the taxing district, in the year just closed and in the year next preceding that year, respectively, were collected during the year of levy.
>
> (5) The appropriation required to be included in the next regular budget for the liquidation of all bonded obligations or notes exceeds 25% of the total of appropriations for operating purposes (except dedicated revenue appropriations) in the budget for the year just ended.
>
> (6) A judicial determination of gross failure to comply with provisions of the "Local Bond Law" (N.J.S. 40A:2-1 et seq.), the "Local Budget Law" (N.J.S. 40A:4-1 et seq.) or the "Local Fiscal

The aim of the LGSA is "to make provision for the imposition of special restraints upon municipalities in, or in danger of falling into, unsound financial condition and in this way to forestall serious defaults upon local obligations and demoralized finances that burden local taxpayers and destroy the efficiency of local services."[54]

In September of that year, the state appointed Norton Bonaparte, Jr. as Camden's business administrator.[55] Despite its obligation under the LGSA to enact the appointment of the state's selection, the Camden City Council instead named Heriberto Colon to the position. After the Director of the Division of Local Government Services ordered the Council to name Bonaparte to the post, the Council filed for an injunction in the New Jersey Superior Court.[56]

The LGSA paved the way for enactment of the MRERA, but it was not the first instance of the state stepping into a municipality's affairs. In 1995, the City of Newark challenged the state's removal of its school board in *Contini v. Board of Education of Newark*.[57] In that case, the state removed the entire Newark school board under the authority of the Public School Education Act (PSEA).[58] The board appealed a decision by the Office of Administrative Law, which had granted a petition filed by Peter Contini, an Assistant Commissioner of the Department of Education. Contini's petition alleged that the board had failed to

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> Affairs Law" (N.J.S 40A:5-1 et seq.) which substantially jeopardizes the fiscal integrity of the municipality.

[54] N.J. STAT. ANN. § 52:27BB-54 (2004).

[55] *City of Camden v. Kenny*, 763 A.2d 777, 778 (N.J. 2000).

[56] *Id.* at 55. The city contended that the state "[did] not have the power to appoint a business administrator for a municipality pursuant to the Supervision Act." The court disagreed, holding that the Act explicitly authorized such actions. The opinion speaks at length about the relationship between state and local government, and adopts the long-standing idea that municipalities possess no inherent power. The court further held that, "[w]here local government fails and crumbles, the state has been empowered to reassemble the pieces." *Id.* at 62. The opinion also addressed the city's contention that the LGSA was unconstitutional and that it "disenfranchised" the voters of Camden. The court held that because the LGSA did not apply specifically to Camden and could be applied to any municipality meeting its criteria, it was not "special legislation." Additionally, because the language of the LGSA was specific, it did not fall under the New Jersey Constitution's mandate that "any law concerning municipal corporations formed for local government. . . shall be liberally construed in their favor." *Id.* at 65 (*quoting* N.J. CONST. art. 4, § 7). The court also addressed the role played by New Jersey's "home rule" tradition, holding that it simply had no basis in either the Constitution or any pertinent statutory language.

[57] 668 A.2d 434 (N.J. 1995).

[58] This is in contrast to the action taken in Camden's case, wherein the city's entire operations were taken over by the state. Simply put, the PSEA is a school takeover provision and the MRERA is a municipal takeover provision.

provide a "thorough and efficient" system of public education in Newark for a period of ten years, and that the state had been monitoring the Newark schools for that period, pursuant to the PSEA.[59] The court denied the Newark board's appeal, holding that the "undisputed facts" showed that the Newark board had failed "over a substantial period of years" to provide a satisfactory educational system and had not taken any corrective action aimed at remedying the situation. The court concluded that there existed "a reasonable basis for the state board's conclusion that a state-operated school district should be created to administer the Newark school system."[60]

B. COMPARISON OF NEW JERSEY'S LAW WITH PRACTICES IN OTHER STATES

Other states have approached the process of school takeovers differently than New Jersey, with varying results. Michigan, for example, places authority over the school district in the hands of the municipality's mayor rather than the state.[61] Illinois, in reforming the Chicago school district, passed legislation similar to Michigan's, charging the mayor of Chicago with appointing a "Chicago Reform Board of Trustees," which would be responsible for governing and managing the city's school district.[62] Like Michigan's statute, the Illinois approach vests authority over the school board in the mayor rather than the governor. This approach seems to preserve the ability of the affected

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[59] *Contini, supra* note 39, at 110. The petition detailed the failings of the Newark school system, and sought removal of the board. The petition alleged that not only had the board failed to provide the constitutionally-required "thorough and efficient" system of education for its students, but that the state Board of Education had noted "rampant nepotism, . . . excessive expenditures for travel, restaurant meals, and social activities, and most significantly, [unwillingness] to assume responsibility for the deficiencies in the district's facilities and educational programs." *Id*. at 126. The court noted that the Newark board's "expenditures for travel meals, and social activities for its ten members totaled $77,412 for the period from July 1, 1989 through August 31, 1990, which was more than double the amount that the district expended for high school libraries during this same period." *Id*. at 128 n. 6.

[60] *Id*. at 129.

[61] MICH. COMP. LAWS § 380.372(2) (2004). The Michigan takeover statute provides that the mayor of the municipality in which a qualifying school district is located shall be responsible for taking over the district. The mayor is charged with appointing a seven-member "school reform board," consisting of six mayoral appointees and, for the first five years, the superintendent of the school district. After the five-year term expires, the mayor shall appoint the seventh school board member. Members of the school board serving at the time the district becomes a "qualifying district" are not eligible for appointment.

[62] 105 ILL. COMP. STAT. 5/34-3 (2004). The mayor's appointments are not subject to the consent or approval of the city council. The mayor also is responsible for appointing a compensated "chief executive officer." When the terms of the Reform Board members expire, the mayor must appoint a new seven-member school board. *Id*. The Reform Board assumes complete control over the operation of the district for a period of four years.

municipality to self-govern, as the mayor will theoretically be more responsive to the needs and will of the municipality's citizens than would a governor. The Sixth Circuit has upheld the constitutionality of Michigan's approach.[63]

Ohio further protects the citizens of a municipality from disenfranchisement by giving them a strong voice in the composition of the appointed school board. Ohio's approach gives the municipality's citizens even more of a voice in the composition of their school board. Once a school district in that state becomes the subject of a federal court order, it is deemed a "municipal" school district and subject to the new law. While the mayor appoints the new members of the nine-member board, he must choose from a slate of eighteen candidates chosen by an eleven-member "municipal school district nominating panel," comprised of a combination of mayoral appointees, parents of students, a teacher, a principal, a representative of the business community, and a president of a higher education institution located within the school district. After a period of four years, the citizens of the state vote in a referendum to decide whether to retain the appointed board or vote in a new one.[64] The Ohio legislation, like the Michigan legislation, has been unsuccessfully challenged in the Sixth Circuit.[65]

Maryland's statutory scheme for governance of the Baltimore school district reflects an approach similar to that of New Jersey, with the state and

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[63] *Moore v. School Reform Bd. of the City of Detroit*, 147 F. Supp. 2d 679 (E.D. Mich. 2000), *aff'd by Moore v. Detroit School Reform Bd.*, 293 F.3d 352 (6th Cir. 2002) *cert. denied*, 537 U.S. 1226 (2003). The statute in the *Moore* case was challenged on similar grounds to that in the *Mixon* case. *See infra* note 65. The plaintiffs claimed that the law violated Section 2 of the Voting Rights Act, the 14th and 15th Amendments to the U.S. Constitution, and similar provisions of the Michigan Constitution. As in the *Mixon* case, the court found that the statute did not violate Section 2 of the Voting Rights Act, because Section 2 applied only to elective, not appointive, systems. The court likewise found that the statute survived the equal protection challenge since it was rationally related to the purpose of improving Detroit's schools and did not infringe upon any fundamental rights. The challenge under the 15th Amendment failed because there was no evidence that the statute was enacted with any discriminatory intent.

[64] OHIO REV. CODE ANN. § 3311.71 (2004).

[65] *Mixon v. Ohio*, 193 F.3d 389 (6th Cir. 1999). The plaintiffs in *Mixon* challenged the Ohio law (H.B. 269) on several grounds, including violation of the Equal Protection Clause of the U.S. Constitution, the Voting Rights Act, and the Ohio Constitution. The plaintiffs argued that by allowing the mayor to appoint the school board members, the law unconstitutionally discriminated between residents who lived in "municipal" school districts and those who did not because the latter were able to elect their school board members, while the former could not. The court held that there exists no fundamental right to vote for non-legislative public officers, even if other cities in the state may do so. The plaintiffs further claimed that since some residents of the school district did not have the right to vote in mayoral elections, the law impermissibly deprived them of their right to representation. The court held that since the school board was not elected, there were no relevant elections from which those residents were excluded; because there existed no fundamental right to an elected school board, the court found that the statute was reasonably related to the legislature's goal of improving the educational quality of the school district in question.

municipality each having a hand in determining the composition of the school board.[66]

In evaluating the varying approaches adopted by the states, it is evident that each has its benefits and drawbacks. On one hand, systems such as those in Michigan and Illinois allow the citizens of a municipality to retain at least indirect control over the composition of the board, since it seems reasonable to assume a mayor would be more directly responsive to the desires of a municipality's citizens than a governor. The approach adopted by Ohio empowers the citizens more directly; while they are not responsible for the final appointments, the citizens select the pool. On the other hand, complete local control over the selection process may not be entirely favorable, especially given the fact that local control has led, at least in part, to a failure of the municipality's school system. Procedures such as those used in Maryland and New Jersey allow some measure of "outside" input into the selection process and may provide the opportunity for fresh perspectives and a better chance of success.[67]

New Jersey's procedure under the MRERA, however, is fundamentally different than the takeover procedures of other states (and even its own Public School Education Act) in that it embraces wholesale change on many levels of municipal government, rather than attempting to reform the school district alone. This approach recognizes the reality that a school district does not fail in isolation; therefore, its reform cannot be expected to succeed when the underlying community problems remain unaddressed.[68]

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[66] MD. CODE ANN., EDUC. § 3-108.1 (2004). Maryland's appointment statute provides for joint appointment of the nine-member school board by the mayor of Baltimore and governor. In addition, the board contains a voting student member appointed by the Associated Student Congress of Baltimore City, and one appointee must be the parent of a district student. The boards of education of districts outside Baltimore, however, are appointed solely by the governor. *Id.* at § 3-108. One notable difference between the two systems, however, is that a Maryland school board maintains its authority and is not subject to the unilateral veto of either the mayor or the governor while a board modified under the MRERA effectively loses all its decision-making power. *See supra* note 30 and accompanying text.

[67] However, it is unclear whether state control of local school districts has tended to benefit the districts in question. During the 2000-2001 school year, the Camden school district spent an average of $10,549 per pupil, 16% over the statewide average of $9,093. The next year, Camden spent $11,326 per pupil as compared to the statewide average of $9,679. That difference of 17% was similar to the difference (18%) spent during the 2002-2003 school year, during which Camden spent $12,003 per pupil versus $10,198 spent statewide. The form of the MRERA was finalized in December 2002, the middle of that school year. The next year–the first full school year under the MRERA–the district spent an average of $14,632 per pupil, 36% higher than the statewide average of $10,725. Over the last four school years, average spending per pupil in the Camden school district has grown at an average of 10.2%, outpacing the statewide increase of 5.4%. N.J. Dept. of Education, *supra* note 20.

[68] *See* Saiger, *infra* note 89 and accompanying text for a discussion of why district "disestablishment" may succeed where other remedies have failed. *See also infra* note 71 for a discussion of the *McGreevey* court's response to the claim that the MRERA is unnecessary because of the existence of the Public School Education Act.

IV. CAMDEN CITY BOARD OF EDUCATION V. MCGREEVEY

A. THE HOLDING

In 2000, the New Jersey Appellate Division affirmed the Law Division's rejection of the Camden City school board's challenge of the MRERA.[69] The Board claimed that the amended[70] sections 67 and 68 of the MRERA constituted "special legislation" because there existed no rational basis for the Act's school takeover provision.[71] The Board further argued that the December 2002 amendments were merely "cosmetic glosses" aimed at disguising the Legislature's true intent, since it was highly unlikely the Act would ever apply to another municipality.[72]

The court held that the amended sections did not unconstitutionally single out Camden for special treatment since, theoretically, other municipalities could someday become subject to the MRERA's provisions.[73] The court also held that the fact that the governor had the unilateral power to veto any board decisions did not constitute a violation of New Jersey's Open Public Meetings Act

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[69] *McGreevey*, *supra* note 25. The Law Division had previously struck down the challenged sections of the MRERA as "special legislation" because, based on the original selection criteria, only the City of Camden would qualify for takeover.

[70] After the original rejection, the legislature had amended the selection criteria of the Act. *See supra* note 34.

[71] The plaintiffs claimed that the Act is aimed at helping distressed municipalities, regardless of the state of their school systems. They claimed that a superior statutory provision for school takeovers already existed. That statute, the Public School Education Act, specifically provides for the creation of a state-operated school district and relies on educational criteria in determining when takeover of a school system is necessary. N.J. STAT. ANN. § 18A:7A-15 (2004). The Board argued that it was irrational to base takeover of a school district on the level of distress of the municipality rather than on the state of the school district within that municipality. *McGreevey*, *supra* note 25, at 512. The government responded that the state of a school system is inextricably tied to the condition of its municipality. *See also infra* note 97 and accompanying text.

[72] Indeed, the Act had at one time been titled the "*Camden* Rehabilitation and Recovery Act." *See supra* note 22 (emphasis added).

[73] *Id*. at 511-12.

(OPMA)[74] because the governor was not a "public body" within the meaning of the OPMA.[75]

The court rejected the Board's challenge on both issues. The court concluded that sections 63 and 64 of the MRERA were not "special legislation" within the meaning of the NJ Constitution[76] because the legislation could be applied to other districts besides Camden.[77] The trial court also rejected the Board's claim that the Act violated New Jersey's Open Public Meetings Act,[78] holding that the governor did not constitute a "public body" to which the OPMA would apply.[79]

B. CRITIQUE OF REASONING

1. MRERA CHALLENGE

The court's finding that the MRERA was not special legislation simply because it was amended to potentially include another school district is questionable at best. As originally drafted, the MRERA was crafted to apply specifically to Camden.[80] In response to the court's finding that the Act was special legislation, the legislature seems to have redrawn its scope to potentially

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74 The OPMA states, "in order to be covered by the provisions of this act a public body must be organized by law and be collectively empowered as a multi-member voting body to spend public funds or affect persons' rights[.]" N.J. STAT. ANN. § 10:4-7 (2004). According to the OPMA, a public body shall not hold a meeting unless "adequate notice" has been given to the public, *id*. at § 10:4-9, and that the Act's provisions should be construed liberally, *id*. at § 10:4-21, in order to effectively serve the public policy of "[ensuring] the right of [New Jersey] citizens to have adequate advance notice of and the right to attend all meetings of public bodies at which any business affecting the public is discussed or acted upon in any way." *Id*. at § 10:4-7.

75 *McGreevey*, *supra* note 25, at 512. The court held that the OPMA only applied to meetings of "public bodies," and that a single government official did not fall within the meaning of the statute.

76 N.J. CONST. art. IV, § 7.

77 The court found that the MRERA was designed to facilitate "the rehabilitation and recovery of distressed municipalities in a multi-faceted approach," which included the school system, municipal services, housing, hospitals, police, and institutions of higher learning. *McGreevey*, *supra* note 24, at 511. The court also found that the December 2002 amendments "provided for qualification of other municipalities and school districts," and that it was "of no moment" that Camden was alone in its subjection to the MRERA. *Id*. at 511-12.

78 N.J. STAT. ANN. § 10:4-6 (2004).

79 The court found that a veto by the governor would not violate the OPMA because the OPMA does not apply to an executive official acting in his official capacity. The court reasoned that, while the governor had the power to veto any decision by the Board, such action did not make him a part of the Board itself. *McGreevey*, *supra* note 24, at 511-12.

80 *See supra* note 22.

include other districts in theory, if not in practice. If the New Jersey Constitution's prohibition against special legislation[81] has any weight, it would seem that a court should consider the reality of the legislation in question, rather than merely the language. After all, the MRERA's original qualifications, while seemingly only applicable to Camden, could have at least potentially applied someday to another district. The redrawn language merely makes this "potential" easier to realize. The fact that the redrawn legislation, while seemingly evincing the same legislative intent, would merely be easier to apply to another district should not be dispositive of the legal analysis.

2. OPEN PUBLIC MEETINGS CHALLENGE

The court's holding seems to disregard the spirit, if not the letter, of the OPMA. The purpose of the OPMA, as stated by the Legislature, is to ensure that New Jersey residents have the opportunity to observe the legislative processes that affect their lives.[82] The Camden City school board is a "public body" subject to the provisions of the OPMA,[83] so logic dictates that since the governor has veto authority over the board's decisions–he is, in effect, a "super school board"–his actions should be subject to the same transparency requirement imposed on the school board over which he exercises dominion. The court's seeming reliance on the mere fact that the language of the statute does not precisely mandate such a

[81] The New Jersey Constitution states:

> Upon petition by the governing body of any municipal corporation formed for local government, or of any county, and by vote of two-thirds of all the members of each house, the Legislature may pass private, special or local laws regulating the internal affairs of the municipality or county. The petition shall be authorized in a manner to be prescribed by general law and shall specify the general nature of the law sought to be passed. Such law shall become operative only if it is adopted by ordinance of the governing body of the municipality or county or by vote of the legally qualified voters thereof. The Legislature shall prescribe in such law or by general law the method of adopting such law, and the manner in which the ordinance of adoption may be enacted or the vote taken, as the case may be.

N.J. CONST. art. IV, § 7.

[82] *See supra* note 74. It would seem logical that the point of ensuring that citizens have an opportunity to observe the governmental decision-making process is thwarted, or at least hindered, when the decision-making process of the "public body" the citizens are permitted to observe is merely a formality, subject to unreviewable and plenary veto from a different governmental source, in whose decision-making process there is none of the transparency sought by the OPMA's drafters.

[83] *Id.*

requirement seems to be more of a policy-driven conclusion than one focused on the intent behind the law. If the Legislature had intended to exempt the ultimate decision-making authority from the OPMA's inclusory effect, it conceivably would have written such an exception into the language of the MRERA or the OPMA. The fact that it did not suggests that the OPMA retains its force notwithstanding the strictures of the MRERA.

V. CONCLUSION

At first blush, the state takeover of Camden's schools appears to represent a case of a remote central government asserting control over the actions of a local populace, and all the negative connotations that calls to mind. The somewhat unconvincing logic used by the *McGreevey* court in upholding the Act does little to put a critic's mind at ease. However, on closer inspection, it appears that state control of the city's operations, and in particular its schools, may not be as invasive or inappropriate as a first reaction might indicate. New Jersey's takeover provision, while more comprehensive than similar legislation in other states, allows for a greater degree of local representation than is provided for by other states' statutes. A key factor in justifying New Jersey's takeover of Camden's schools is apparent from the state's past intervention in other districts–the New Jersey Constitution's guarantee of the right to an "efficient education."[84] If the municipality is determined to be failing in this responsibility, one could make the case that instead of justifying its intervention into the district, the state would be required to justify why it did not intervene to protect the rights of its citizens.

In many cities across the country, the public education system is in crisis, and state control of local school districts has been viewed as a radical, but valid, course of action.[85] Proponents of takeovers cite several justifications for their position. The reasons most commonly cited for removal or supervision of school

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[84] "The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years." N.J. CONST. art. VIII, § 4. It may also be argued that under the system of local control there exists a disconnect; one government (the state) has the responsibility to provide a "thorough and efficient" education, while another (the municipality) has the authority to do so. When the state takes control of a school district, the authority and responsibility become vested in the same entity.

[85] Robert L. Green and Bradley R. Carl, *A Reform for Troubled Times: Takeovers of Urban Schools*, 569 ANNALS 56, 58 (May 2000). Cleveland Mayor Michael White expressed the sentiment that radical steps may be needed to rescue failing school districts because existing governmental structures were unwilling or unable to take the necessary steps. Mayor White stated, "We have a broken system [and] we have enough guts, I think, to try some new strategies even though we may not know whether or not they'll completely work." *Id*. at 59.

boards are greater efficiency and accountability,[86] decreasing political maneuvering,[87] and promoting recognition of the problem and willingness to seek solutions.[88] Indeed, there have been several examples of improvement in school districts operating under state control.[89]

However, state takeover of any local government function is fraught with dangers, notwithstanding the support of black-letter law. This danger seems especially acute with regard to educational systems; besides the unquestionable importance of education to the future of our society, parents view the right to direct the education of their children as a fundamental right,[90] and any perceived interference with such a dearly held right ought to be handled carefully. Issues

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[86] *Id*. at 59-60. It is often suggested by takeover proponents that rather than vesting decision-making authority in a multi-member school board (often consisting of seven, nine, or even eleven members), it is more efficient to have a smaller board or even one person who makes the decisions. This would have the added benefit of assigning accountability for the success or failure of those decisions.

[87] Another justification is that removal of the local school board has the benefit of depoliticizing the management of the school system. The argument is that the composition of school boards has become too politicized to effectively run the school system. Since ever-smaller percentages of citizens are voting on school board elections, special interests run rampant and wield inordinate power over the board's decisions; since the board members' main objectives in serving lie elsewhere, those members cannot effectively manage the school district. *Id*.

[88] Perhaps the strongest argument, however, lies in the idea that opposition to a takeover amounts to a failure to recognize the existence of a problem and acquiescence to a culture of educational failure. *Id*.

[89] It has been argued that disestablishment of local school districts is a superior remedy for educational inadequacy to increased funding or implementation of performance standards, because disestablishment provides an incentive to district employees and officials to improve the condition of their district, or risk losing their jobs. Aaron Saiger, *Disestablishing Local School Districts As a Remedy for Educational Inadequacy*, 99 COLUM. L.REV. 1830, 1831 (November, 1999). Saiger argues that "in states where legislatures have authorized the practice [where the educational code may be interpreted as allowing disestablishment], courts should require states to disestablish school districts – i.e., to rescind the grant of authority to school district officials – upon determination that a district is educationally inadequate." *Id*. Saiger first examines various theories upon which citizens have sought to obtain remedies for the claimed infringement on their right to education, and explores why those theories have either failed to obtain any remedy, or why the remedy obtained has not resulted in educational improvement. He then examines why takeovers may succeed where other remedies have failed, and considers the different ways in which states have disestablished school districts, including various theories under which courts have asserted the authority to order takeovers. Saiger further argues that disestablishment is likely to succeed in helping improve the educational quality of failing school districts. Finally, Saiger puts forth the suggestion that fears of state control are overstated, and that local citizens need not lose their voice when the state takes control of the local school district. *See infra* note 100 and accompanying text.

[90] Indeed, the U.S. Supreme Court has agreed that, at least legally, parents have a fundamental Constitutional right to direct the education of their offspring. *See generally* Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923). The impact of the MRERA on that right is unclear and has yet to be explored.

range from the validity of the criteria used to trigger and end a takeover,[91] to doubts regarding the ability of politicians to effectively manage educational systems,[92] to the tensions that arise when primarily white legislators appear to attempt to deny self-governance to primarily minority populaces.[93]

Race is and will continue to be a major factor in school takeovers, mainly because of the simple fact that schools subject to takeover provisions tend to be situated in inner cities, with large minority populations.[94] The tension between minority inner-city residents and the mostly white state legislators invoking state superiority from afar appears to many city residents as merely an attempt to deny them the right of self-governance unquestionably enjoyed by their suburban neighbors.[95]

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91 Perhaps even more important than the question of how to determine when a state should take control of a school district is figuring out when and how the state should return control to the municipality. Additionally, what steps remain to be taken if the takeover fails to produce the desired improvement? Green, *supra* note 85, at 60.

92 *Id*. Green and Carl ask whether it is any less political to place a mayor, a control board appointed by the mayor or governor, or a state legislature in charge of a school district. Do politicians have any more ability to effectively manage a school system than those with educational backgrounds, or even local citizens who are at least familiar with the particular local system? Is it less politicizing to install political appointees, who may or may not be beholden to their benefactors? Green and Carl recognize that this begs the question: why are school districts special? Should cities be subject to takeovers as well, if outsiders believe them to be "poorly run and failing in their most basic duties[?]" The authors see the extent of the slippery slope– at whose discretion is the decision made? What criteria are used to make the decision?

93 The role of race in school takeovers is perhaps the most pernicious and stubborn issue to resolve. As the Reverend Michael DeBose, a black former school board candidate stated in opposing the 1996 mayoral takeover of the Cleveland Public Schools, "When you've got black people in charge and a majority-black district, people think they don't know what they're doing. . . . It's really insulting." Beth Reinhard, *Racial Issues Cloud State Takeovers*, EDUCATION WEEK ON THE WEB, Jan. 14, 1998, *at* http://www.edweek.org/ew/articles/1998/01/14/18minor.h17.html.

94 Reinhard states, "An *Education Week* survey of 21 districts that have ceded power to mayors or state agencies in recent years found that all but three have predominantly minority enrollments, and most are at least 80 percent nonwhite. Of eight districts that have been threatened with takeovers, all but two have populations that are predominantly minority, and three are at least 93 percent nonwhite." *Id*.

95 Green, *supra* note 85, at 64-65. On the other hand, Aaron Saiger argues that,

> When minority-dominated school boards and superintendents privilege power and patronage while falling spectacularly short of providing minimal educational opportunity to black and other minority students, minority control cannot be characterized as incorporation. Indeed, when autonomy collapses, state paternalism may be more responsive than local control to the needs of minority communities. In any event, in a contest between local politicians and local students, state courts, along with state legislatures, are duty-bound to choose the children.

It may be too early to judge whether the MRERA has begun to accomplish in Camden and its schools what its drafters set out to do.[96] The district's spending per pupil has increased dramatically under the Act, but whether that is a good or bad sign remains to be seen. As the *McGreevey* court stated in upholding the MRERA, the welfare of a municipality's schools is inextricably linked to the welfare of the municipality as a whole.[97]

In this, Camden is not alone. There has been little or no long-term scholarly analysis of the success of school takeovers.[98] In some cases, early academic studies have been completed, and have not shown promising results.[99]

Saiger, *supra* note 89, at 1870.

[96] The MRERA has only been in effect since 2002. *See supra* note 22.

[97] *McGreevey*, *supra* note 24, at 515. In Camden's case, resurgence undoubtedly seems to be occurring, and it may be possible for that rising tide to lift all of the city's boats.

[98] Saiger, *supra* note 89, at 1862-64. Saiger argues that while the few early academic studies that have been conducted have not found much success in improving education, unofficial reports of takeovers show improvement after the earliest years. Those reports cite improvements in management and suggest that the early years of a takeover carry heavy organizational costs as system personnel implement new ideas and procedures. These reports also show that taken-over districts seem to display improvement in educational performance after several years of state management. Saiger, *supra* note 89, at 1863-64. This result makes sense for several reasons. First, state takeover of a school district is in many ways analogous to a management change at a large corporation. As with any change in management, there is necessarily a period of transition in which improvement is not readily apparent. Second, students' educational performance cannot improve overnight, regardless of the quality of instruction they are exposed to. Proficiency on a test administered in the eleventh grade is not gained in the eleventh grade; it is built up over a period of years – so it would seem logical to conclude that any significant improvement in performance would likely take several years to become apparent.

[99] *Id*. Saiger reports on the results of studies performed on the first two school districts to be taken over – Jersey City, New Jersey and Floyd and Wheatley Counties in Kentucky. The studies characterized the results thusly:

> Takeover programs can have very little to do with long-term educational improvement. The Kentucky and New Jersey programs have operated to promote goals other than improvement. . . . In neither Kentucky nor New Jersey, was state agency presence felt in the schools. No technical assistance seemed to filter down. The states sent messages about their priorities that were received by school personnel. Whether or not they intended it, state policymakers indicated that their interest did not really lie in school-level improvement.

However, it may be argued that Camden's situation is fundamentally different from that of any other taken-over district simply because in Camden's case, not only was the school district taken over, but the entire municipality was put under state control. There are several reasons this type of approach may be more successful. First is that schools do not fail in isolation; failing schools are rarely found in prosperous towns. Educational failure can perhaps be considered as a result of a deeper problem, and it is a rare disease indeed that may be cured by treating only its symptoms. In order to truly bring about substantive, long-term improvement in a municipality's school system, it is likely necessary to address the underlying ills of the municipality. The MRERA is aimed at accomplishing exactly that. Along with greater scope necessarily comes greater risk; there is perhaps a greater danger to liberty inherent in the takeover of an entire governmental unit than in merely a seizure of the school system.[100] In the end, the tension seems to be between the quasi-constitutional value of local control[101] and the often black-letter Constitutional right to education.[102] It is entirely possible that in order to ensure the right, the traditional value may need to be set aside.

(*quoting* Susan H. Furman & Richard F. Elmore, *Takeover and Degradation: Working Models of New State and Local Regulatory Relationships 3*, (Consortium for Policy Research in Education, Eagleton Inst. of Politics at Rutgers Univ., Research Report Apr. 1992) at 27-28.)

[100] Saiger responds to this criticism by arguing first that disestablishment "does not pose a binary choice between political voice and adequate education; rather, it offers educational improvement at some cost in political autonomy." Saiger, *supra* note 89, at 1867-68.

[101] *See supra* notes 41-52 and accompanying discussion.

[102] *See supra* note 84 for New Jersey's constitutional language dealing with the duty of the State to provide education for its children.