COMMUNITY DEVELOPMENT DISTRICTS AS CREDITORS: THE ROLE OF SEPARATION OF POWERS IN PROTECTING THE DISTRICT'S FISCAL SOVEREIGNTY

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I. INTRODUCTION

Since 1980, community development districts (CDDs or "districts") have been used throughout Florida as cost-effective tools to develop, finance, and manage the infrastructure systems and services needed to support the development of new communities.[1] At present, there are nearly six hundred districts in existence across the state.[2] The recent collapse of Florida's real estate market resulted in an uptick in bankruptcy filings by some developers and investors.[3] When these developers or investors are also owners of property located within CDDs, districts have been forced into the role of creditor in the bankruptcy proceedings. With an increasing number of districts finding themselves locked in bankruptcy litigation to recover unpaid assessments, while at the same time trying to protect their financial status and avoid default on their bonds, bankruptcy courts are faced with the questions of whether they can and should restructure special assessments levied against a debtor's property by a CDD over the district's objection. This issue is of critical importance to

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1. FLA. STAT. § 190.002 (2015); *see, e.g.*, Hopping Green & Sams, P.A., *An Introduction to Community Development Districts and Stewardship Districts*, HGSLAW.COM, http://hgslaw.com/wp-content/uploads/Frequently_Asked_Questions_re_CDDs.pdf (last visited Apr. 12, 2016).

2. Fla. Dep't of Econ. Opportunity, *Special District Accountability Project, Official List of Special Districts Online*, DCA.DEO.MYFLORIDA.COM (Dec. 1, 2015), https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/downloads.cfm.

3. U.S. Dep't of Justice, *Bankruptcy Statistics—State Charts*, JUSTICE.GOV, http://www.justice.gov/ust/bankruptcy-data-statistics/bankruptcy-statistics/state-charts (last visited Apr. 12, 2016).

CDDs and municipal bondholders because of its potential impact on a CDD's ability to control its fiscal affairs, free from federal intervention.

This Article discusses whether a bankruptcy court can constitutionally direct restructuring of debt over a district's objection. Part II provides background on community development districts, including their creation, the mechanisms they can utilize to finance infrastructure, and their relationship vis-à-vis the bondholders ultimately responsible for infrastructure financing. Part III provides an overview of the bankruptcy court, focusing on the origins of the court, the reorganization procedures laid out in Chapter 11, and the inherent potential for abuse of these procedures. Part IV argues that the bankruptcy court cannot restructure assessments levied by a CDD against the district's objection without violating the United States Constitution, federal law, Florida law, and public policy. Part V provides a conclusion.

II. FLORIDA'S COMMUNITY DEVELOPMENT DISTRICTS

A. An Overview of Florida's Community Development Districts

In 1980, the Florida Legislature enacted the Uniform Community Development District Act (the Act) to provide a uniform procedure for establishing independent special districts as an alternative method for financing and maintaining basic community development services, including capital infrastructure required for the development of communities.[4] As defined by Florida Statute, a CDD is an independent special district[5] that operates as "a local unit of special-purpose government."[6]

In cases where the proposed district's boundaries cover an area of one thousand acres or more, districts are established by filing a petition with the Governor and Cabinet sitting as the Florida Land and Water Adjudicatory Commission (FLWAC).[7] In cases where the proposed district's boundaries cover less than one thousand acres of land, districts are established by filing a petition with the local county or municipal

4. FLA. STAT. § 190.002(3).

5. *Id.* §§ 189.012(3) ("'Independent special district' means a special district that is not a dependent special district . . . ."), 190.002.

6. *Id.* § 190.003(6). A special-purpose local government stands in contrast to general-purpose local governments, such as cities or counties. A main difference between the two is that CDDs do not have the regulatory powers of a city or county (e.g., zoning powers); however, as a form of government, CDDs are subject to other requirements, such as public records laws, the Sunshine Law, and competitive bidding requirements, and enjoy certain benefits, such as sovereign immunity. *Id.* § 189.012(6).

7. *Id.* § 190.005(1).

commission.[8] Florida's statutes lay out what must be included as part of the petition, such as written consent from all the owners of property to be included in the district and the names of five individuals who are to be appointed to serve as the district's initial Board of Supervisors until an election can be held.[9] Supervisors are initially elected by landowners within the district on a one-acre–one-vote basis; eventually, the ability to elect the Supervisors is transitioned to residents in the district on a one-person–one-vote basis.[10]

As independent districts, CDDs are designed to provide their own source of revenue, with no funding or subsidies required or expected by state or local government.[11] Districts provide for their ongoing operations through the development of an annual operating budget, which is often funded through the levy of annual operations and maintenance assessments.[12] While districts are required to submit their budgets to the local governing authority for comment, the authority to adopt and fund a final budget rests solely with the districts.[13]

Each district, acting through its Board of Supervisors, may exercise the general powers enumerated in Section 190.011, Florida Statutes, and certain special powers enumerated in Section 190.012, Florida Statutes. Most importantly for the purposes of this Article, a district may borrow money, issue municipal bonds,[14] and "determine, order, levy, impose, collect, and enforce special assessments" on lands within the district.[15]

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8. Whether a local county or municipal commission has establishing authority depends on the location of the proposed district. The county having jurisdiction over the majority of the area for the proposed district shall have establishing authority. *Id.* § 190.005(2). If all of the land within the proposed district is within a single municipal corporation, then such municipality shall have establishing authority. *Id.* § 190.005(2)(e). If land within a proposed district is located within the jurisdictions of both incorporated and unincorporated areas of the county, then both the county and municipality having jurisdiction must approve the establishment. *Id.* Lastly, the establishing authority for a proposed district located within two or more municipalities resides with FLWAC. *Id.*

9. *Id.* § 190.005(1), (2)(a). Each Supervisor, whether appointed or elected, is subject to the provision of Chapter 286, Florida Statutes, commonly known as Florida's Government-in-the-Sunshine law. Sunshine law requires public bodies to hold open meetings, which includes a gathering of two or more members of a district's Board of Supervisors if they meet to discuss any matter which could foreseeably come before the Board. Office of the Attorney Gen., *Open Government—Frequently Asked Questions*, MYFLSUNSHINE.COM, http://www.myflsunshine.com/pages.nsf/Main/.321B47083D80C4CD8525791B006A54E3#2 (last visited Apr. 12, 2016).

10. FLA. STAT. § 190.006(b); *see generally id.* § 190.003(17) (explaining the qualifications of a "qualified elector").

11. *Id.* § 190.021(2); *see generally id.* § 190.008 (discussing the procedure for proposing and approving a budget).

12. *Id.* §§ 190.008(1), 190.021(3), 190.022.

13. *See id.* § 190.008(b)–(c) (stating that the budget must be submitted so the local governing authority can provide comments for assistance in adopting the budget).

14. *Id.* § 190.011(9).

15. *Id.* § 190.011(14); *see also id.* § 190.011(13) (authorizing districts "[t]o assess and impose upon lands in the district ad valorem taxes").

B. Community Development Districts as a Cost-Effective Finance Tool

CDDs are a cost-effective tool to finance the development of infrastructure and services needed for new communities.[16] Through the use of long-term bonds, districts may use the powers listed above to finance all or part of the costs of construction, acquisition, operation, and maintenance of major infrastructure for community development, including—but not limited to—roads, water and sewer facilities, stormwater management facilities, the undergrounding of utilities, streetlights, and landscaping.[17] The infrastructure that districts finance through long-term bonds is the same type of infrastructure that can be funded and constructed by cities and counties. CDD bonds typically carry more favorable terms than other sources of funding, such as long-term maturities and tax-exempt bond status, which enables the district to develop infrastructure at an overall lower cost.[18] Additionally, through levying ad valorem taxes or special assessments on developable land within the district (as further discussed below), districts are able to distribute the costs of bond repayment among current and future district landowners.[19] This financing model is consistent with the long-standing public policy that the drivers of growth should fund their impacts.

Districts are authorized to issue, sell, and deliver various types of bonds provided for in the Act.[20] In practice, CDDs commonly issue revenue or assessment bonds secured by a pledge of non-ad valorem special assessments, which are then levied by the district.[21] Alternatively, districts can secure repayment of bonds through other forms of revenue, such as revenues derived from a project, project user rates or fees, any revenue-producing activity of the district, or any other source or pledged security.[22] CDDs also have the ability to issue general obligation bonds, which are secured by a pledge of ad valorem taxes, as well as the district's

16. Hopping Green & Sams, P.A., *supra* note 1.

17. FLA. STAT. § 190.012; Hopping Green & Sams, P.A., *supra* note 1.

18. Hopping Green & Sams, P.A., *supra* note 1. For state tax exemption, see FLA. STAT. § 190.021(6). As political subdivisions under the Internal Revenue Code of 1986, as amended, holders of CDD tax-exempt bonds are allowed a federal tax exemption for the interest earned on the bonds. Treas. Reg. § 1.103-1(b) (WestlawNext through Jan. 14, 2016); *see, e.g.*, Comm'r v. Shamberg's Estate, 144 F.2d 998 (2d Cir. 1944), *cert. denied*, 323 U.S. 792 (1945).

19. Hopping Green & Sams, P.A., *supra* note 1.

20. FLA. STAT. §§ 190.016, 190.023.

21. *See id.* §§ 190.016(8) (giving districts the power to issue revenue bonds), 190.023 (describing how CDDs can issue bonds under Florida law); Hopping Green & Sams, P.A., *supra* note 1 (providing an introduction to CDDs).

22. FLA. STAT. §§ 190.016(8), 190.035.

full faith and credit, but only after being approved by referendum.[23] Unlike general obligation bonds, the district's full faith and credit is not pledged to the repayment of assessment bonds or to the repayment of most revenue bonds.[24] This Article will focus on the more common types of bond financing used by districts: revenue and assessment bonds secured solely by a pledge of non-ad valorem special assessments.[25]

Prior to issuing bonds, a district is required to authorize bond issuance by resolution and, in most circumstances, is required to have the district's ability to incur the bonded debt validated and confirmed by court decree.[26] Under Florida law, circuit courts possess the jurisdiction to validate bonds by affirming the district's authority to issue bonds and the "legality of all proceedings in connection therewith, including assessment of taxes levied or to be levied, the lien thereof and proceedings or other remedies for their collection."[27] Due to the "very nature of the proceedings themselves and the fact that the public interest is involved in each case," Florida law and court procedural rules "are designed to expedite the disposition of proceedings for the validation of bonds,"[28] including a requirement that the final judgment in a bond validation hearing shall be rendered with the "least possible delay."[29] Additionally, a judgment validating bonds and corresponding pledged revenues from which no appeal has been taken provides conclusive finality "as to all matters adjudicated against plaintiff and all parties affected thereby."[30] Florida's statutes further emphasize such finality by providing that the

23. FLA. CONST. art. VII, §§ 9(b), 12; FLA. STAT. §§ 190.016(9)(a), 190.021(1). If the district chooses to secure bonds with ad valorem taxes, it is subject to certain requirements and limitations in addition to the referendum. *See* §§ 190.006(3)(a)(1) (requiring that a district choosing to use ad valorem taxes must call a special election for the members of the board of Supervisors), 190.016(9)(a) (describing the required election of a Board of Supervisors and the limitations of general obligation bonds).

24. FLA. STAT. §§ 190.003(3), (13), (19); 190.016(9)(a)–(b).

25. While CDDs possess ad valorem taxing power and the ability to secure payment of bonds through other forms of revenue, as previously discussed, it is these Authors' experience that districts most often use the imposition of non-ad valorem special assessments on district lands as pledged security for the bonds they issue.

26. FLA. STAT. §§ 75.02, 190.016(12). Districts are allowed in all circumstances to validate any potential bond issuances under Chapter 75, Florida Statutes; however, they are required to do so for any bonds that would mature over a period of more than five years. *Id.* § 190.016(12).

27. *Id.* § 75.02; *accord id.* § 190.016(12) ("The power of the district to issue bonds . . . may be determined, and any of the bonds of the district maturing over a period of more than [five] years shall be validated and confirmed, by court decree, under the provisions of [C]hapter 75 and laws amendatory thereof or supplementary thereto.").

28. State v. Fla. State Tpk. Auth., 134 So. 2d 12, 15 (Fla. 1961) (footnote omitted).

29. FLA. STAT. § 75.07.

30. *Id.* § 75.09.

validated bonds and supporting revenue "shall never be called in question in any court by any person or party."[31]

As a means for repayment of the bonds they issue, districts often use their powers under the Act to levy special assessments on benefitted properties within their boundaries and pledge those special assessments solely to the payment of the principal and interest of a specific series of bonds ("debt assessments" or "special assessments").[32] CDDs are authorized under the Act to levy debt assessments on property located within their boundaries.[33] In general, in order to impose a valid debt assessment, a district must determine that (i) the property being assessed is benefited by the improvements for which the assessment is being levied and (ii) the debt assessment imposed on each individual property is proportional to the benefit received.[34] As these determinations are based on the district's Board of Supervisors' legislative judgment, the Florida Supreme Court has ruled that courts should uphold "the legislative determination[s] as to the existence of special benefits and as to the apportionment of the costs of those benefits . . . unless the determination is arbitrary."[35]

Debt assessments constitute a lien against the property on which they are levied and enjoy first lien priority status coequal with other governmental liens, such as state, county, municipal, and school board taxes.[36] Until paid, debt assessments are superior in dignity to all other liens, including mortgages, except for other taxes, which are of equal dignity.[37]

The Act provides for several methods of collection and enforcement of debt assessments by reference to other provisions of the Florida Statutes. At the Board's discretion, a district may collect and enforce debt assessments in the same manner as county ad valorem taxes or by any

31. *Id.*

32. *Id.* §§ 190.011(13)–(14), 190.021(2), 190.022(1).

33. *Id.* §§ 190.021(1)–(3), 190.022(1) (authorizing special assessments using the procedures for collection and levy detailed under Chapter 170, Florida Statutes). The Act provides multiple avenues for levying special assessments for the repayment of debt.

34. FLA. STAT. §§ 170.01(2), 170.02, 190.021(2). Though the procedural requirements for the various methods by which districts can levy special assessments under the Act differ, both statutory methods share the same general benefit and apportionment requirements.

35. City of Winter Springs v. State, 776 So. 2d 255, 257 (Fla. 2001) (internal quotation marks omitted) (quoting Sarasota Cnty. v. Sarasota Church of Christ, Inc., 667 So. 2d 180, 184 (Fla. 1995)). The Florida Supreme Court further stated: "[T]hough a court may recognize valid alternative methods of apportionment, so long as the legislative determination . . . is not arbitrary, a court should not substitute its judgment for that of the local legislative body." *Id.* at 259.

36. FLA. STAT. §§ 170.09, 190.021(9), 190.022(1).

37. FLA. STAT. §§ 170.09, 190.021(9), 190.022(1).

other collection method provided by law.[38] In practice, the two primary methods of collection used are the "uniform method," as provided in Section 197.3632, Florida Statutes,[39] and "direct collection" by the district pursuant to the Act and Chapters 170 and 197, Florida Statutes.[40] Regardless of the collection method used by the district, the nature of the assessment lien remains the same.

C. The Master Trust Indenture: Contract Between the Bondholder and the District

CDD bonds are issued pursuant to a trust agreement, also known as a "trust indenture."[41] Typically, a trust indenture is a contract between the district and a corporate trustee[42] that pledges the security for the bonds and provides for the custody and application of all bond proceeds and pledged security (such as debt assessments).[43] Additionally, the indenture generally sets forth the rights, responsibilities, and remedies of the district, the trustee, and bondholders with regard to the bonds and the security pledged for their repayment.[44] For example, districts often covenant under the indenture to enforce collection of any pledged security, such as a debt assessment, that becomes delinquent.[45]

Another prime function of the indenture is to define and establish "events of default" and the resulting rights and remedies of the trustee

38. *Id.* §§ 190.021(9), 190.022(1).

39. *Id.* § 197.3632. Under the uniform method, annual debt assessments are recorded by the county tax collector on the county tax rolls for each parcel subject to collection and such debt assessments are collected alongside county ad valorem property taxes due on each property. *Id.*

40. *Id.* §§ 170.09, 190.021(9), 190.022(1); *see generally id.* §§ 197.102–197.603 (governing tax collections, sales, and liens). Under the direct collection method, the district directly bills property owners for their annual installments of the levied debt assessments; upon the failure of a property owner to pay a directly collected debt assessment when due, the district may enforce the payment of such delinquent debt assessments through foreclosure proceedings. *Id.* §§ 170.10, 190.021(9), 190.022(1), 190.026; *see generally id.* §§ 173.01–173.15 (governing foreclosure of municipal tax and special assessment liens). In practice, districts often use a combination of the uniform method and direct collection method, with platted lots usually collected pursuant to the uniform method, and unplatted, undeveloped lots usually collected directly.

41. *Id.* § 190.017.

42. Generally, a trustee is "[a] financial institution with trust powers, designated by the issuer or borrower, that acts, pursuant to a bond contract, . . . [and in] many cases, . . . also acts as custodian, paying agent, registrar and/or transfer agent for the bonds." Mun. Sec. Rulemaking Bd., *Glossary of Municipal Securities Terms: Trustee*, MSRB.ORG, http://www.msrb.org/glossary/definition/trustee.aspx (last visited Apr. 13, 2016).

43. FLA. STAT. §§ 190.016(11), 190.017; Mun. Sec. Rulemaking Bd., *Glossary of Municipal Securities Terms: Indenture*, MSRB.ORG, http://www.msrb.org/glossary/definition/indenture.aspx (last visited Apr. 13, 2016).

44. FLA. STAT. § 190.017; Mun. Sec. Rulemaking Bd., *supra* note 43.

45. *See* Southtrust Bank of Ala., Nat'l Ass'n v. Palms of Terra Ceia Bay Cmty. Dev. Dist., 560 So. 2d 1205, 1206 (Fla. 2d Dist. Ct. App. 1990) (examining the imposition of a tax to secure bonds that were in default).

and bondholders.[46] Events of default are typically categorized as either "monetary defaults," which mainly refers to when a district fails to pay the bond principal or interest when due, and "non-payment defaults," which include specific events defined by the indenture.[47] The failure of district landowners to pay debt assessments is not commonly included as an event of default;[48] however, a single failure by a large-scale landowner within a district to make debt assessment payments when due can often cause a district to miss principal or interest installments, resulting in a monetary default. Upon an event of default, the trustee can pursue certain remedial actions under the indenture on the bondholders' behalf—and if the trustee is unwilling or unable to act, the bondholders may be able to pursue those remedial actions themselves.[49]

III. THE BANKRUPTCY COURT

A. Origins of the Bankruptcy Court

In 1787, with the drafting of a new federal Constitution to replace the Articles of Confederation, Congress was granted the power to enact "uniform [l]aws on the subject of [b]ankruptcies throughout the United States."[50] At the outset, federal bankruptcy legislation was intended to provide a temporary and emergency solution in times of widespread economic depression, while state law would remain the primary venue for dealing with ordinary problems of debtor default.[51]

46. FLA. STAT. § 190.017; Nat'l Ass'n of Bond Lawyers, *Form Trust Indenture*, NABL.ORG, https://www.nabl.org/portals/0/documents/nablformalreportsmodeldocs-nablformtrustindenture.pdf (last visited Apr. 13, 2016).

47. Mun. Sec. Rulemaking Bd., *Glossary of Municipal Securities Terms: Default*, MSRB.ORG, http://www.msrb.org/glossary/definition/default.aspx (last visited Apr. 13, 2016).

48. *Cf.* Nat'l Ass'n of Bond Lawyers, *supra* note 46 (omitting the failure of district landowners to pay debt from listed events of default).

49. *Id.*

50. U.S. CONST. art. I, § 8, cl. 4. The Bankruptcy Clause was intended in part to resolve concerns voiced by bankers who were uncomfortable with the sufficiency of their ability to collect debts through the local court systems. JEFF FERRIELL & EDWARD J. JANGER, UNDERSTANDING BANKRUPTCY 135 (2d ed. 2007). Apparently, there was very little debate over the Bankruptcy Clause's incorporation into the United States Constitution because of predictions that states could potentially enact varying debtor-relief laws to discriminate against nonresident creditors. BRUCE H. MANN, REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE 169, 182 (2002); Marcia S. Krieger, *"The Bankruptcy Court Is a Court of Equity": What Does That Mean?*, 50 S.C. L. REV. 275, 286–87 (1999).

51. FERRIELL & JANGER, *supra* note 50, at 135–36. Congress enacted temporary bankruptcy legislation from 1800 to 1803, from 1841 to 1843, and from 1867 to 1878. *Id.* The Bankruptcy Act of 1800, ch. 19, 2 Stat. 19 (repealed 1803), provided for involuntary bankruptcy proceedings against merchants; the Bankruptcy Act of 1841, 5 Stat. 440 (repealed 1843), provided for voluntary or involuntary bankruptcy proceedings against individuals and permitted discharge of an individual's debt with consent of creditors; and the Bankruptcy Act of 1867, 14 Stat. 517 (repealed 1878),

In 1898, in the wake of the 1893 depression, Congress enacted the first permanent bankruptcy law, which provided mechanisms for both voluntary and involuntary bankruptcy filings, intending to provide protections for debtors and creditors alike.[52] The goal of this law was to provide a fresh start for the "honest but unfortunate debtor."[53] This law designated the district courts, established pursuant to Article III of the Constitution, to serve as courts of bankruptcy with the ability to appoint referees to oversee administration and exercise limited judicial responsibilities delegated by the district court judges.[54] The core substance of the 1898 Act remained in force until 1979, when, in response to a rise in consumer bankruptcy and the resulting congestion in the federal courts, it was replaced by the Bankruptcy Reform Act of 1978, which provided the framework for modern American bankruptcy law.[55]

Under current federal law, original and exclusive bankruptcy jurisdiction is conferred upon the district courts, with the authority to refer bankruptcy cases to a specialized bankruptcy court within the district.[56] Each of the federal district courts has exercised this authority, but all retain the ability to withdraw the referral on their own motion or by motion of any of the parties.[57] Withdrawal is mandatory in cases where the dispute involves "substantial and material consideration" of

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extended bankruptcy relief to corporations. *See generally* PETER J. COLEMAN, DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY 1607–1900 (1974) (describing the early history of debt, credit, and bankruptcy in America).

52. David A. Skeel, Jr., *The Genius of the 1898 Bankruptcy Act*, 15 BANKR. DEV. J. 321, 324–25 (1999).

53. Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) ("[I]t gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt."); W. HOMER DRAKE, JR. ET AL., PRACTICE AND PROCEDURE ch. 13, § 1.2 (2015).

54. Fed. Judicial Ctr., *History of the Federal Judiciary: Bankruptcy Courts*, FJC.GOV, http://www.fjc.gov/history/home.nsf/page/courts_special_bank.html (last visited Apr. 13, 2016).

55. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978). The Bankruptcy Reform Act of 1978 was in large part influenced by the recommendations of the Burdick Commission, appointed by Senator Quentin Burdick in 1971. *See generally* Report of the Commission on the Bankruptcy Laws of the United States, Rep. No. 93-137, pts. I and II (1973) (providing a transcript of the hearings before the United States House of Representatives Subcommittee on Civil and Constitutional Rights and the United States Senate's Subcommittee on Improvements in Judicial Machinery regarding the Bankruptcy Act); Kenneth N. Klee, *Legislative History of the New Bankruptcy Law*, 28 DEPAUL L. REV. 941, 942–43 (1979). Notably, unlike all bankruptcy legislation coming before it, the 1978 Act was not enacted in response to an economic depression. Harvey R. Miller & Shai Y. Waisman, *Is Chapter 11 Bankrupt?*, 47 B.C. L. REV. 129, 141–42 (2005).

56. 28 U.S.C. §§ 157(a), 1334 (2012). The Bankruptcy Reform Act of 1978 originally intended for jurisdiction over all matters connected with a bankruptcy case to be conferred directly on Article I bankruptcy courts, but the United States Supreme Court declared this statutory grant of jurisdiction unconstitutional in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 87 (1982). The jurisdictional scheme we see today is a result of the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA). Pub. L. 98-353, 98 Stat. 341 (1984).

57. 28 U.S.C. § 157(d); *see, e.g.*, *In re* A.H. Robins Co., 88 B.R. 742, 743 (E.D. Va. 1988) (explaining that a district judge withdrew referral for the entire proceeding).

federal law other than the Bankruptcy Code.[58] The bankruptcy courts are considered to be adjuncts of the district courts and are presided over by bankruptcy judges appointed by the Judicial Council for each circuit for fourteen-year terms, pursuant to Article I of the Constitution.[59]

Bankruptcy judges have the authority to "hear and determine all cases under [T]itle 11 and all core proceedings arising under [T]itle 11, or arising in a case under [T]itle 11."[60] Generally, core proceedings are those primarily involving bankruptcy law and management of the debtor's estate, though other areas of law may be secondarily involved.[61] They may also hear, although they have less authority over, civil proceedings "related to a case under [T]itle 11,"[62] which are those proceedings that "could conceivably have any effect on the estate being administered in bankruptcy."[63] Cases "related to" a bankruptcy case that are not "core proceedings" require participation of a district judge unless the parties consent to the bankruptcy court's entry of a final order.[64]

B. Chapter 11 Reorganization

As part of the Bankruptcy Reform Act of 1978, the United States Bankruptcy Code was introduced as Title 11 of the United States Code. Most importantly for purposes of this Article, Chapter 11 of the current Bankruptcy Code—entitled "Reorganization"—provides a mechanism by which a debtor may "continue operating a business and repay creditors concurrently through a court-approved plan of

58. *In re* Vicars Ins. Agency, Inc., 96 F.3d 949, 952 (7th Cir. 1996) (internal quotation marks omitted) (quoting *In re* White Motor Corp., 42 B.R. 693, 704 (N.D. Ohio 1984)).

59. 28 U.S.C. § 152. Because the United States Constitution grants the power to establish bankruptcy laws to the legislative branch, bankruptcy courts are Article I courts rather than Article III courts. Christopher F. Carlton, *Greasing the Squeaky Wheels of Justice: Designing the Bankruptcy Courts of the Twenty-First Century*, 14 BYU J. PUB. L. 37, 39 (1999).

60. 28 U.S.C. § 157(b)(1); Wood v. Wood, 825 F.2d 90, 92 (5th Cir. 1987). The result is that bankruptcy courts are only vested with the limited powers specifically granted by statute. *Id.*

61. FERRIELL & JANGER, *supra* note 50, at 168–69 ("Core proceedings . . . specifically include[d] . . . : 1. administration of the estate; 2. allowance of claims; 3. counterclaims against persons who file claims against the estate; 4. turnover of estate property; 5. the use, sale, or lease of estate property; 6. the trustee's avoiding powers; 7. dischargeability of debts and objections to discharge; 8. the validity, extent, and priority of liens; 9. the automatic stay; and 10. confirmation of plans." (footnote omitted)); Thomas S. Marrion, *Core Proceedings and the "New" Bankruptcy Jurisdiction*, 35 DEPAUL L. REV. 675, 686–87 (1986).

62. 28 U.S.C. § 157(c)(1).

63. Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984) (typeface altered). A civil proceeding is related to a Title 11 case if it "could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." *Id.*

64. 28 U.S.C. § 157(c)(2); *see generally* Stern v. Marshall, 131 S. Ct. 2594, 2606–07 (2011) (explaining that a party had consented to the bankruptcy court's adjudication of his defamation claim).

reorganization."[65] While Chapter 11 is used most often by businesses, individuals may file reorganization cases as well.[66] The logic behind the Chapter 11 process is that "[a]n ongoing business commands a greater going concern value than the piecemeal liquidation through the sale of its component parts,"[67] and the proceeding is designed to provide the debtor with an opportunity to turn its failing business into a successful operation.[68] When a debtor files under Chapter 11, the bankruptcy estate includes "all property interests of the debtor when the petition was filed, plus any proceeds, products, offspring, rents, or profits earned from property of the estate."[69]

One particularly unique feature of a Chapter 11 bankruptcy is that the debtor retains operation and control of the estate as a "debtor-in-possession," with the rights, powers, and duties of a trustee, unless the court replaces the debtor with an independent trustee upon a showing of fraud, incompetence, or gross mismanagement.[70] Most importantly, the "debtor-in-possession" retains the right to operate the debtor's business.[71] The debtor-in-possession may use the property of the bankruptcy estate and can sell or lease property of the estate in the ordinary course of business without prior approval.[72] To represent the interests of unsecured creditors, and to keep operation of the business by the debtor in check, typically an official creditors' committee, made up of willing unsecured claim holders, is appointed at the first meeting of the creditors.[73]

65. U.S. Courts, *Process—Bankruptcy Basics*, USCOURTS.GOV, www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/process-bankruptcy-basics (last visited Apr. 13, 2016).

66. Toibb v. Radloff, 501 U.S. 157, 158, 163 (1991); Michael J. Herbert, *Consumer Chapter 11 Proceedings: Abuse or Alternative?*, 91 COM. L.J. 234, 238 (1986) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 3 (1978)).

67. RICHARD I. AARON, 1 BANKRUPTCY LAW FUNDAMENTALS § 1:4 (2015).

68. Elizabeth Warren, *Bankruptcy Policy*, 54 U. CHI. L. REV. 775, 787 (1987).

69. FERRIELL & JANGER, *supra* note 50, at 713 (footnotes omitted); *accord* 11 U.S.C. § 541 (describing composition of a bankruptcy estate).

70. 11 U.S.C. §§ 1101(1), 1104(a)(1), 1107; *see, e.g.*, *In re* Bonneville Pac. Corp., 196 B.R. 868, 873, n.9 (Bankr. D. Utah 1996) (explaining that the district court had appointed an independent trustee to take control of the Chapter 11 estate). Replacement of the debtor with an independent trustee is rare because a moving party must show by clear and convincing evidence that appointment of a trustee is necessary. *See, e.g.*, *In re* G-I Holdings, Inc., 385 F.3d 313, 315 (3d Cir. 2004) (showing that neither party disputed the proposition that "the party seeking the appointment of a trustee generally bears the burden of persuasion by clear and convincing evidence"); *In re* Sharon Steel Corp., 871 F.2d 1217, 1226 (3d Cir. 1989) (stating that the movant must prove the trustee's need by clear and convincing evidence).

71. 11 U.S.C. § 1108.

72. *Id.* § 363(c)(1).

73. *Id.* § 1102. Typically, the committee is made up of the seven largest unsecured claim-holders, but this may be adjusted on a case-by-case basis. FERRIELL & JANGER, *supra* note 50, at 706. In small proceedings, it is not always possible to form a creditors' committee, and the United States Trustee will fill the committee's role. *Id.*

The end goal of a Chapter 11 proceeding is confirmation of a reorganization plan resulting from successful negotiation between the debtor and its creditors. For a period of 120 days after an order for relief is entered, the debtor has the exclusive right to propose a plan of reorganization.[74] This time period can be extended for up to eighteen months.[75] If after the expiration of 120 days, or of the specified time in the case of an extension, the debtor has not filed a plan, any party in interest can propose a plan.[76] Once a plan is proposed, creditors will vote on whether to accept or reject the proposed plan.[77] Once confirmed, in the best-case scenario, the plan will distribute the "going concern bonus" to the Chapter 11 creditors to satisfy their claims, the debtor will be rehabilitated, and business operation will continue.[78] The confirmed plan "binds each of the creditors and parties in interest, leaves the property with the debtor free of claims and interests, and effects a discharge of the unpaid portion of debts."[79]

C. Potential for Abuse

The Chapter 11 bankruptcy process can be the subject of abuse in cases where the CDD functions as creditor. While some developers filing for bankruptcy have simply fallen on hard times and seek the assistance of the bankruptcy court to revitalize their businesses as a going concern, Chapter 11 can also be used as a mechanism for the opportunistic investor to earn a quick profit by wiping secured debt off the property.[80] For example, imagine a situation where an owner of property within a district and subject to CDD debt assessments is in default and the district initiates foreclosure proceedings against that property to recover the unpaid assessments. Now imagine that an investor purchases that property, with full knowledge of the pending foreclosure action, and immediately files a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Imagine further that the investor's sole significant asset is the CDD property purchased with full knowledge of the

74. 11 U.S.C. § 1121(b). If the court has appointed an independent trustee, the debtor's right to propose a reorganization plan is extinguished. *Id.* § 1121(c)(1).

75. *Id.* § 1121(d).

76. *Id.* § 1121(c).

77. *Id.* § 1126.

78. AARON, *supra* note 67, at § 1:4.

79. *Id.*; *accord* 11 U.S.C. § 1141 (describing the effect of confirmation). In some cases, the confirmed plan will leave specific outstanding liens intact. *See, e.g.*, *In re* S. White Transp., Inc., 725 F.3d 494, 497 (5th Cir. 2013) (pointing to an Eighth Circuit holding in which a lien was "not voided by a plan confirmation").

80. *See* AARON, *supra* note 67, at § 1:4 (describing different forms of reorganization plans).

foreclosure proceedings, and that in its plan for reorganization the investor, now debtor, asks the bankruptcy court to restructure, reduce, or eliminate the special assessments levied against the property by the CDD.

In the situation described above, if the investor succeeds, he will have knowingly purchased a failed development, a development that was benefitted by construction of infrastructure and improvements funded through tax-exempt municipal bonds, and managed to earn a quick profit by flipping the property or developing it at significant profit by using the bankruptcy court to avoid assessments levied against the property to pay for its portion of the benefit received. This is not the purpose of a bankruptcy proceeding, yet it has been attempted multiple times in Florida.

IV. LIMITATIONS ON THE BANKRUPTCY POWER

While no federal bankruptcy court has yet decided whether it has the authority to restructure, reduce, or eliminate a Florida CDD's debt assessments over the district's objection,[81] this issue remains of critical importance to local governments, including CDDs, because of its potential to impact their ability to control their own fiscal affairs, free from federal intervention. The Authors argue that such a restructuring is inconsistent with the United States Constitution, with federal and Florida law, and with public policy.

A. The United States Constitution Prohibits the Bankruptcy Court from Interfering with the District's Fiscal Matters

The bankruptcy court's restructuring of a district's debt assessments over the district's objection amounts to an unconstitutional and material restriction on the district's right to control its own fiscal affairs. On

81. The United States Bankruptcy Court for the Middle District of Florida confirmed a debtor's reorganization plan that included the restructuring of CDD liens in *In re Fiddler's Creek, LLC*, Case No. 8:10-bk-03846-KRM. Memorandum Opinion & Order Confirming the Debtors' Second Amended Plans of Reorganization as Modified, Doc. 1442, *In re* Fiddler's Creek, LLC, No. 8:10-bk-03846-KRM (Bankr. M.D. Fla. Aug. 29, 2011); Laura Layden, Fiddler's Creek *Starts New Chapter: Recovery After the Bankruptcy*, NAPLESNEWS.COM (Mar. 23, 2012), http://www.naplesnews.com/business/real-estate/fiddlers-creek-lennar-dr-horton-build-bankruptcy. This case is distinct because the District supported the version of the plan that was ultimately confirmed. While the bondholders did object to the plan, the court ultimately held that they lacked standing because they are creditors of the District and not the debtor. Laura Layden, *Bankruptcy Judge Approves* Fiddler's Creek *Reorganization Plan*, NAPLESNEWS.COM (July 29, 2011), http://www.naplesnews.com/community/marco-eagle/bankruptcy-judge-approves-fiddlers-creek-reorg-pla. The Authors additionally contend the *In re Fiddler's Creek, LLC* result should not be relied upon for any reason as the facts and circumstances of the case are specific, unique, and not likely to be duplicated.

matters of financing, CDDs are a component of state government[82] similar to cities, counties, and water management districts; as such, the CDD's right to control its fiscal affairs pursuant to state law is protected by the United States Constitution.

While Article I, Section 8 of the United States Constitution grants Congress the power to establish "uniform [l]aws on the subject of [b]ankruptcies throughout the United States,"[83] the Tenth Amendment also provides that "powers not delegated to the United States by the Constitution, nor prohibited by it to the [s]tates, are reserved to the [s]tates respectively, or to the people."[84] Further, the Eleventh Amendment provides that the "[j]udicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by [c]itizens of another [s]tate, or by [c]itizens or [s]ubjects of any [f]oreign [s]tate."[85] Thus, Federal bankruptcy law cannot infringe upon the powers of a state guaranteed by these provisions.

The courts have long upheld the state's power to control its fiscal affairs. In 1936, Congress attempted to enact the Bankruptcy Act of May 24, 1934, which allowed municipalities to readjust their debts.[86] The United States Supreme Court declared the Act to be an unconstitutional infringement, reasoning that "to authorize a federal court to require objecting creditors to accept an offer by a public corporation to compromise, scale down, or repudiate its indebtedness without the surrender of any property whatsoever"[87] could not be applied so as to "materially restrict respondent's control over its fiscal affairs," where the respondent was a political subdivision of the state (a water improvement district).[88] The Court further held that the political subdivision's fiscal affairs were "not subject to control or interference by the national government, unless the right so to do is definitely accorded by the Federal Constitution,"[89] and that "[i]f obligations of states or their political

82. FLA. STAT. § 190.003(6) (2015). The fiscal affairs of a political subdivision of the state, created for the local exercise of sovereign powers, are essentially the fiscal affairs of the state itself. Ashton v. Cameron Cnty. Water Imp. Dist. No. 1, 298 U.S. 513, 527–28 (1936).

83. U.S. CONST. art. I, § 8, cl. 4.

84. *Id.* amend. X.

85. *Id.* amend. XI.

86. Bankruptcy Act of 1934, H.R. 5950, 73d Cong. §§ 78–80, 48 Stat. 798–803, 798 (1934).

87. *Ashton*, 298 U.S. at 527.

88. *Id.* at 530. The water improvement district was held to be a political subdivision of the state because it was created by a statute that allowed the creation of political subdivisions with the power to sue and be sued and to issue bonds and to levy and collect taxes, and because it was created for the local exercise of the state's sovereign power. *In re* City of Ft. Lauderdale, 23 F. Supp. 229, 231 (S.D. Fla. 1938).

89. *Ashton*, 298 U.S. at 528.

subdivisions may be subjected to the interference here attempted, they are no longer free to manage their own affairs. . . . And really the sovereignty of the state, so often declared necessary to the federal system, does not exist."[90]

When Congress enacted Chapter 10 of the Bankruptcy Act of August 16, 1937, which was its second attempt to allow municipal debt adjustment, the Supreme Court upheld the Act's constitutionality based on the Act's precondition that the state, or its political subdivision, must consent to waive sovereign immunity, thereby ensuring that it would maintain control of its own fiscal affairs.[91] Courts have specifically held with regard to municipal reorganization that "to the extent that the federal Bankruptcy Act does infringe on a state or a municipality's function it is unconstitutional."[92]

Individual states have also held that the bankruptcy court cannot interfere with the fiscal affairs of political subdivisions absent their consent. In 1944, the Supreme Court of Mississippi considered whether an insolvent state drainage district could be "subject to having its affairs administered and wound up by the [f]ederal [d]istrict [c]ourt" under Chapter 10.[93] The court determined that the drainage district was not subject to the Act absent its consent because allowing otherwise would "materially restrict the states in the control of their fiscal, as well as other governmental, affairs."[94] Therefore, the bankruptcy court may not restructure a district's debt assessments over the district's objection without violating the U.S. Constitution.

B. The Bankruptcy Court's Restructuring of District Debt Violates Federal and Florida Law

As previously discussed, before issuing any bonds districts are required to authorize issuance by resolution, and in most cases the district's ability to incur the bonded debt must be validated and confirmed by the circuit court in which the district is located.[95] The circuit court will issue a "validation judgment" confirming the bonds, and likely the authority to levy special assessments to repay the bonds, as well as the

90. *Id.* at 531. Federal courts continue to uphold the precedent set in *Ashton*. *See In re* Barnwell Cnty. Hosp., 459 B.R. 903, 910 (Bankr. D.S.C. 2011) (stating "most importantly, the [c]ourt remains mindful of its duty not to interfere with the rights and duties of the [s]tate and its subordinate political subdivisions").

91. United States v. Bekins, 304 U.S. 27, 51–52 (1938).

92. Ropico, Inc. v. City of N.Y., 425 F. Supp. 970, 983 (S.D.N.Y. 1976).

93. Evans v. Bankston, 18 So. 2d 301, 302 (Miss. 1994).

94. *Id.* at 303.

95. *See supra* Part II (discussing requirements set forth in FLA. STAT. § 190.016(12) (2015)).

methodology used to calculate those special assessments.[96] If the federal bankruptcy court wishes to restructure special assessments imposed by the district, it cannot do so without attacking the underlying validation judgment. This would constitute an improper collateral attack on a state court judgment by a federal court in violation of the *Rooker-Feldman* doctrine.[97]

The *Rooker-Feldman* doctrine limits subject matter jurisdiction of federal courts over matters related to previous state court litigation.[98] Simply put, the Supreme Court is the only federal court with jurisdiction over appeals from state court decisions.[99] According to the federal Eleventh Circuit Court of Appeals:

> The *Rooker-Feldman* doctrine provides that federal courts, other than the United States Supreme Court, have no authority to review the final judgments of state courts. The doctrine extends not only to constitutional claims presented or adjudicated by a state court, but also to claims that are "inextricably intertwined" with a state court judgment. A federal claim is inextricably intertwined with a state court judgment "if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it."[100]

In other words, jurisdiction of the lower federal courts is barred where: (1) the party in federal court is the same as the party in state court; (2) the prior state court ruling was a final or conclusive judgment on the merits; (3) the party seeking relief in federal court had a reasonable opportunity to raise its federal claims in the state court proceeding; and (4) the issue before the federal court was either adjudicated by the state court or was

96. FLA. STAT. § 75.09; *see supra* notes 26–31 (discussing how a district authorizes and validates bonded debt).

97. D.C. Court of Appeals v. Feldman, 460 U.S. 462, 462 (1983) (holding that federal district courts do not have jurisdiction "over challenges to state court decisions"); Rooker v. Fid. Trust Co., 263 U.S. 413, 415 (1923) (limiting subject matter jurisdiction of federal courts over matters related to previous state court litigation).

98. *Feldman*, 460 U.S. at 476–82; *Rooker*, 263 U.S. at 415–16.

99. Adam McLain, Comment, *The* Rooker-Feldman *Doctrine: Toward a Workable Role*, 149 U. PA. L. REV. 1555, 1555 (2001); *see also* Johnson v. De Grandy, 512 U.S. 997, 1005–06 (1994) (finding that the government's claims were properly brought before the federal courts); ASARCO Inc. v. Kadish, 490 U.S. 605, 610–12 (1989) (finding that the Supreme Court has jurisdiction to review the case because the state issue was remanded by the Arizona Supreme Court and the federal issue's judgment was final); Pennzoil Co. v. Texaco, Inc., 481 U.S. 1, 17–18 (1987) (finding that the Texas courts must render a final decision on any of the federal claims before review may be sought at the Supreme Court).

100. Siegel v. LePore, 234 F.3d 1163, 1172 (11th Cir. 2000) (citations omitted) (quoting *Pennzoil Co.*, 481 U.S. at 25 (Marshall, J., concurring)).

inextricably intertwined with the state court's judgment.[101] The state court's validation judgment meets all four of these criteria.

In addition to federal law violations, in order to restructure special assessments imposed by a CDD, a bankruptcy court would also have to make numerous legislative decisions reserved exclusively for the district, contrary to established Florida law. To begin with, the court would need to alter special assessments levied by the district, as well as the allocation of those special assessments to the debtor's specific property.[102] The court would also need to change the debtor's payment obligations vis-à-vis the district. Pursuant to Chapters 170, 190, and 197 of the Florida Statutes, only the district itself has the authority to do this.[103] If the bankruptcy court's confirmation order violates Florida law, this in itself is a violation of federal law.[104]

As previously outlined, for a special assessment to be valid: (1) the property being assessed must be benefited by the improvements for which the assessment is being levied; and (2) the debt assessment imposed on each individual property must be proportional to the benefit received.[105] In allocating special assessments to the debtor's property, the district made the legislative decision that the debtor's property derived a special benefit from the services provided. The district also made a decision that the specific portion allocated to the debtor's property represents a fair apportionment according to the special benefit received by that specific property. Restructuring these assessments would require the bankruptcy court to substitute its judgment for that of the district on legislative matters reserved exclusively for the district, contrary to Florida law.[106]

101. *See* Roe v. Alabama, 43 F.3d 574, 579–80 (11th Cir. 1995) (listing the requirements district courts must meet to have subject matter jurisdiction under the *Rooker-Feldman* doctrine); *see also* Goodman *ex rel.* Goodman v. Sipos, 259 F.3d 1327, 1332 (11th Cir. 2001) (stating that the *Rooker-Feldman* doctrine does not apply if the plaintiff did not have a reasonable opportunity to raise his federal claim in state court and that it bars all federal claims central to the state court decision, even if he seeks unique relief); David Vincent, Inc. v. Broward Cnty., 200 F.3d 1325, 1331–32 (11th Cir. 2000) (explaining that Florida case law sets out the "narrow range of circumstances" under which the findings of a preliminary injunction would be considered conclusive on the merits); Dale v. Moore, 121 F.3d 624, 626–27 (11th Cir. 1997) (explaining the requirements that must be met for a district court to hear a Florida Bar claim).

102. *See supra* Part II (discussing the requirements under the Florida statutes).

103. *Id.*

104. *See In re* New York City Off-Track Betting Corp., 434 B.R. 131, 141 (Bankr. S.D.N.Y. 2010) (stating that the bankruptcy court's power is limited where it enters an order that would violate a state law).

105. FLA. STAT. §§ 170.01, 170.02, 190.021(2) (2015); Sarasota Cnty. v. Sarasota Church of Christ, Inc., 667 So. 2d 180, 183 (Fla. 1995).

106. Atl. Coast Line R. Co. v. City of Winter Haven, 151 So. 321, 323–24 (Fla. 1933); Davis v. City of Clearwater, 139 So. 825, 827 (Fla. 1932); Atl. Coast Line R. Co. v. City of Gainesville, 91 So. 118, 123 (Fla. 1922).

C. Public Policy Requires the Bankruptcy Court to Refrain from Interfering with the District's Fiscal Affairs

Finally, as a matter of policy the bankruptcy court should refrain from restructuring special assessments levied by a CDD because the impact could be detrimental to public financing. As demonstrated by *In re Fiddler's Creek, LLC*,[107] in the scenario of municipal financing, bondholders cannot demand payment from any particular property owner, nor do they have direct access to the remedy of foreclosure afforded to the district.[108] In bankruptcy proceedings, at least one court has held that bondholders have no standing to object to the debtor's proposed plan of reorganization.[109] In this scenario, the only remedy available to the bondholder is to insist through the trustee that the district collect special assessments. This remedy is a contractual one provided by the master trust indenture.[110]

The underlying purpose of CDDs is to create an alternative means to finance public infrastructure; further, a sizeable portion of Florida's infrastructure is funded by CDDs and other municipal debt.[111] In restructuring special assessments levied by municipal entities, the bankruptcy court would inadvertently cause the cost of public infrastructure to increase dramatically. Municipal bond purchasers would not be able to rely on a predictable revenue stream from special assessments, and this increased uncertainty would lead to greater investor risk, higher interest rates, and overall higher costs which the public would be forced to shoulder.[112] It is a fundamental principal that the higher the investor risk, the higher the interest rate charged to the municipal government.[113] As the federal Ninth Circuit has explained, "[t]here are strong public policy reasons in terms of having bond financing . . . to create facilities, to create housing, [and] to create subdivisions," and "[i]t

107. Memorandum Opinion & Order Confirming the Debtors' Second Amended Plans of Reorganization as Modified, Doc. 1442, *In re* Fiddler's Creek, LLC, No. 8:10-bk-03846-KRM (Bankr. M.D. Fla. Aug. 29, 2011). For a discussion of *In re Fiddler's Creek, LLC*, see note 81, *supra*.

108. The remedies available to bondholders vary per each indenture and the district's willingness to cooperate. *See supra* Part II(C) (discussing the remedies available to bondholders under the indenture).

109. For a discussion of *In re Fiddler's Creek, LLC*, see note 81, *supra*.

110. *See supra* II (discussing the remedies under the indenture).

111. FLA. STAT. §§ 190.002, 190.012 (2015).

112. Michael J. Deitch, Note, *Time for an Update: A New Framework for Evaluating Chapter 9 Bankruptcies*, 83 FORDHAM L. REV. 2705, 2745 (2015).

113. U.S. Sec. & Exch. Comm'n, *Municipal Bonds*, INVESTOR.GOV, http://www.investor.gov/investing-basics/investment-products/municipal-bonds (last visited Apr. 12, 2016).

is not the intent of Congress to interfere with that."[114] Further, having the lowest interest rate possible is consistent with a public policy of using municipal resources in an efficient manner.

Additionally, allowing bankruptcy courts to restructure special assessments levied by the CDD puts the stability of the district at risk. Under the master indenture, bonds are often secured in part by a pledge of the district's assessment revenue, and the indenture imposes on the district the responsibility to protect the lien of the assessments and to seek collection of the pledged revenues in an amount sufficient to pay back the principal and interest of the bonds as required.[115] If the bankruptcy court alters the debtor's financial obligations to the district, and the district's financial obligations to the bondholders under the indenture remain unchanged, the district could be placed in the position of perpetual default under the indenture. Also, there could be unforeseen and permanent fiscal consequences for the CDD. For example, the district's ability to borrow money, as authorized by Section 190.011, Florida Statutes, could be severely hindered. Without the ability to borrow funds, the district's future spending and ability to provide services to its residents will also be limited. The integrity of the district's statutory finance mechanisms requires the bankruptcy court to refrain from interfering.

V. CONCLUSION

The federal bankruptcy court cannot, and should not, restructure special assessments levied by a CDD in cases where developers, large landowners, or investors file a petition for reorganization under Chapter 11 of the Bankruptcy Code. Interfering with the district's fiscal affairs is inconsistent with the Tenth and Eleventh Amendments to the United States Constitution. Further, to do so would be a violation of the federal *Rooker-Feldman* doctrine and many provisions of Florida law. Finally, and perhaps most importantly, the federal bankruptcy court's interference with the district's fiscal affairs would be detrimental to public financing, resulting in increased public costs, and would disrupt the integrity and stability of CDDs as a whole. As such, where the opportunity arises, bankruptcy courts should decline to restructure special assessments over the district's objection, out of respect for the Constitution, federal and Florida law, and public policy.

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114. *In re* Ritter Ranch Dev., LLC, 255 B.R. 760, 767 (B.A.P. 9th Cir. 2000) (quoting the bankruptcy court).

115. *See supra* Part II(c) (discussing the functions of a master trust indenture).