

**DETROIT INSTITUTE OF ARTS: A CULTURAL GEM OR  
DETROIT’S PIGGY BANK?**

BRITTNEY KOHN<sup>†</sup>

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**I. INTRODUCTION**

On July 18, 2013, Detroit etched its name into history by becoming the largest American city to file for Chapter 9 bankruptcy protection.<sup>1</sup> With \$18 billion of debt, Michigan Governor Rick Snyder and Detroit Emergency Manager Kevyn Orr struggled to determine a restructuring

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<sup>†</sup> J.D. expected 2015, Wayne State University Law School; B.S., Yeshiva University. I would like to thank Professor John Mogk, who contributed to the development of this Note with his insightful comments and suggestions.

1. Nathan Bomey, Alisa Priddle & Brent Snavely, *Detroit Becomes Largest U.S. City to Enter Bankruptcy*, USA TODAY (Dec. 3, 2013, 7:53 PM), <http://www.usatoday.com/story/news/nation/2013/12/03/detroit-bankruptcy-eligibility/3849833/>.

plan that would revitalize the once-magnificent city without imposing any more negative ramifications on its residents.<sup>2</sup>

As part of the bankruptcy proceedings, the City of Detroit cast its eye on several of the Detroit Institute of Art's (DIA) most priceless and valuable works of art in order to relieve a portion of the City's debt.<sup>3</sup> Until a final plan for the restoration of the City was decided upon, the art collection's fate remained in limbo.<sup>4</sup> Despite Detroiters' communal outrage at the notion, this Note will argue that the museum's art was not protected by any form of charitable trust as claimed by Michigan's Attorney General, Bill Schuette.<sup>5</sup> The DIA provides a glaring example for other art museums as to how to properly entrust their city-owned collections moving forward.

In order to reach this conclusion, Part II provides an overview of the growth and subsequent decline of Detroit, focusing on the past sixty years of racial tension<sup>6</sup> and poor financial management by city council members.<sup>7</sup> Next, in order to explain how the City of Detroit had the power to sell pieces of DIA art, the history of the DIA and its entangled relationship with Detroit is chronicled from the museum's establishment to its current state.<sup>8</sup> Finally, an overview of how to create a charitable trust is provided for the purpose of setting the stage for Attorney General Bill Schuette's formal opinion, which asserts that DIA art is under the protection of a charitable trust.<sup>9</sup>

Part III begins with a critique of Bill Schuette's argument and continues on to explain why there is no charitable trust protecting the DIA's art.<sup>10</sup> The Note concludes with recommendations for what museums can do to protect their city-owned art collections from future unwanted sale and how the DIA should move forward.<sup>11</sup>

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2. Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles into Insolvency*, N.Y. TIMES (July 18, 2013), [http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html?pagewanted=all&_r=0).

3. Mark Stryker, *DIA: Orr's Plan Would Protect Artwork, But It's Not a Done Deal Yet*, DETROIT FREE PRESS (Feb. 21, 2014, 9:25 PM), <http://www.freep.com/article/20140221/NEWS01/302220010/dia-detroit-institute-arts-bankruptcy-plan-adjustment>.

4. *See generally id.*

5. Attorney General Opinion No. 7272 by Bill Schuette, MICH. DEP'T OF ATT'Y GEN., (June 13, 2013), <http://www.ag.state.mi.us/opinion/datafiles/2010s/op10351.htm>.

6. *See infra* Part II.A.

7. *See infra* Part II.A.

8. *See infra* Part II.B.

9. *See infra* Part II.C.

10. *See infra* Part III.A–B.

11. *See infra* Part III.C–D.

## II. BACKGROUND

The DIA's collection is ranked among the top six in the entire United States.<sup>12</sup> The museum is 658,000 square feet and holds over 100 galleries, including art from such masters as Matisse, Rembrandt, and Van Gogh.<sup>13</sup> The following sections paint a detailed picture to better understand how Detroit transformed from the grand Motor City of the 1920s and 1930s, spending millions of dollars on acquiring art for the DIA's grand collection, to a city embroiled in the largest municipal bankruptcy in this country's history.<sup>14</sup>

*A. History of Detroit: A Meltdown Sixty Years in the Making*

Racial tensions, abandonment, and financial missteps propelled Detroit toward its current financial predicament.<sup>15</sup> In order to better comprehend how Detroit got to the point of Chapter 9 bankruptcy with approximately \$18 billion dollars of debt and long-term liabilities,<sup>16</sup> one must review the past six decades of Detroit's transformation from an "urban powerhouse" as it celebrated its 250th birthday in 1951, to a city where more than a third of its residents live in poverty.<sup>17</sup>

Detroit's financial heyday was in the 1940s and 1950s post-World War II, when factories such as the Packard Plant on East Grand Boulevard employed more than 30,000 workers each.<sup>18</sup> Between 1914

12. *About the DIA*, DETROIT INST. OF ARTS, <http://www.dia.org/about/history.aspx> (last visited Nov. 2, 2013).

13. *Id.*

14. Stryker, *supra* note 3.

15. Joel Kurth, Mike Wilkinson & Louis Aguilar, *Six Decades in Detroit: How Abandonment, Racial Tensions, and Financial Missteps Bankrupted the City*, DETROIT NEWS (Oct. 4, 2013, 9:20 AM), <http://www.detroitnews.com/article/20131004/METRO01/310040001>.

16. Jan Diehm, *Detroit Bankruptcy Infographic Breaks Down \$18 Billion Debt, Key Facts About City's Decline*, HUFFPOST DETROIT (July 22, 2013, 10:41 AM) [http://www.huffingtonpost.com/2013/07/22/detroit-bankruptcy-infographic-chart-debt\\_n\\_3625421.html](http://www.huffingtonpost.com/2013/07/22/detroit-bankruptcy-infographic-chart-debt_n_3625421.html).

17. Kurth et al., *supra* note 15. According to the United States Census Bureau, from 2008 to 2012 the median household income in Detroit was \$26,955, and 38.1% of people lived below the poverty level. *State & County QuickFacts, Detroit (City) Michigan*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/26/2622000.html> (last updated July 8, 2014). For more statistics regarding Detroit's financial standing, see *State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/26/2622000.html> (last updated July 8, 2014); *Detroit, MI (MI) Poverty Rate Data—Information About Poor and Low Income Residents*, CITY-DATA.COM, <http://www.city-data.com/poverty/poverty-Detroit-Michigan.html> (last visited Sept. 25, 2014).

18. Kurth et al., *supra* note 15.

and 1950, Detroit's population quadrupled in size, with approximately 350,000 people moving to the City seeking work.<sup>19</sup> Problems began to set in, however, with the decentralization of automobile production and the shift in the auto industry's preference for multi-story plants, such as the Packard plant, to single-story expansive factories.<sup>20</sup> This change in preference led to the building of thirty-three new plants in the Metro Detroit area from 1945 to 1960.<sup>21</sup> However, due to the lack of real estate available in Detroit, none of the new factories were located in Detroit itself, but rather in cities such as Plymouth, Madison Heights, Livonia, and Wixom.<sup>22</sup> Furthermore, more than 70,000 Detroiters lost their jobs as automakers began to merge and consolidate, such as Hudson and Packard.<sup>23</sup> New highways, growing congestion, and a failing housing system encouraged white Detroiters to move to the suburbs; yet, blacks

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19. *Id.*

20. *Id.* The increased use of the assembly line technique for constructing cars, originally pioneered in Ford's Highland Park factory, required new vast, sprawling one-story complexes, rather than the traditional brick-clad multistory plants found in Detroit, like Dodge Main and River Rouge. For more information on the decentralization of urban factories, see *Henry Ford and Innovation, Transportation in America*, THE HENRY FORD, <http://www.thehenryford.org/education/erb/HenryFordAndInnovation.pdf> (last visited Sept. 25, 2014) and Thomas J. Sugrue, *From Motor City to Motor Metropolis: How the Automobile Industry Reshaped Urban America*, AUTO. IN AM. LIFE & SOC'Y, [http://www.autolife.umd.umich.edu/Race/R\\_Overview/R\\_Overview4.htm](http://www.autolife.umd.umich.edu/Race/R_Overview/R_Overview4.htm) (last visited Jan. 12, 2014).

21. Kurth et al., *supra* note 15.

22. Sugrue, *supra* note 20 ("Ford opened new plants in such places [as] suburban Plymouth and Madison Heights, and in remote Wixom, thirty-five miles northwest of downtown. General Motors plants sprung up virtually overnight at sites in Livonia, Warren, and Romulus, all suburbs of the city. Even Chrysler, which did not have as much capital to build new plants, constructed several new suburban facilities. The new 'greenfield' plants (so named because they were usually built on old farmland, woods, or marshes) were strikingly different in their layout and architecture from the old, brick-clad, multistory plants like Highland Park, Dodge Main, or River Rouge. Sprawling single story complexes, they were often elaborately landscaped and surrounded by vast parking lots.").

23. Kurth et al., *supra* note 15. Following World War II, Hudson agreed to merge with Nash and Packard planned to merge with Studebaker with the final goal of putting all four companies together to cover all segments of the market and have the economies of size to compete with the Big Three—Ford, Chrysler, and General Motors. *Id.* Unfortunately, the companies could not compete with the rapid changes and output and the merger of the four companies did not take place. Hudson production stopped in 1957 and Packard production ceased in 1958. *Id.* For more information on the history of Packard and Hudson, see *The History of the American Automobile*, GATEWAY AUTO MUSEUM, <http://www.gatewayautomuseum.com/history/> (last visited Sept. 25, 2014); *Packard History—1945–1984*, STUDEBAKER-INFO.ORG, <http://www.studebaker-info.org/text3/pack-hist-1945.html> (last visited Sept. 25, 2014); *Hudson Motor Cars*, ALLPAR.COM, <http://www.allpar.com/cars/adopted/hudson-1936.html> (last visited Sept. 25, 2014).

were confined to only certain areas of the City due to federal housing policies and segregation rules.<sup>24</sup> By the end of the 1950s, one in four white residents had moved to the suburbs.<sup>25</sup> As the 1960s began, racial tensions were rising throughout the country, but especially in Detroit.<sup>26</sup> Under the guise of “urban renewal,” the City began demolishing historically black neighborhoods, such as Black Bottom and Paradise Valley.<sup>27</sup> By the summer of 1967, “frustration over police tactics, unemployment and the pace of the civil rights movement” led to violent riots beginning on July 23, 1967.<sup>28</sup> The riots lasted for five days and resulted in 43 dead; 1,189 injured; 7,000 people arrested; and 2,000 buildings destroyed.<sup>29</sup>

Amid the growing racial divide and escalating violence, the 1960s welcomed a new mayor to the City of Detroit—Jerome Cavanagh.<sup>30</sup> In order to combat the \$28 million budget deficit that he inherited, Cavanagh instituted the City’s first income tax on residents and commuters.<sup>31</sup> The influx in cash helped address the financial issues at the time; however, it did not resolve the larger issue facing Cavanagh and the other City officials. Detroiters continued to leave for the suburbs, but City Hall never downsized.<sup>32</sup> The City’s poor fiscal management was very apparent in the fact that it was spending money on jobs that were unnecessary given the decreasing population, and yet City management refused to eliminate the positions.<sup>33</sup> According to Edward Rago, a former Detroit budget official, “[p]eople kept leaving, but City Hall never downsized as we dropped off. Once jobs are created, they are hard to get rid of.”<sup>34</sup>

The 1970s consisted of “high-profile efforts to revitalize the city” with lackluster success and continued migration to the suburbs.<sup>35</sup> For

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24. Kurth et al., *supra* note 15. From the years 1938 to 1968, the Federal Housing Administration made it extremely difficult for blacks to move into white areas by barring loans in neighborhoods with “inharmonious racial or nationality groups.” *Id.*

25. *Id.*

26. *Id.*

27. *Id.* “The City used eminent domain powers to seize and raze whole blocks of houses and storefronts, then sold the cleared land to developers at low prices.” JC Reindl, *Detroit Planners Try a Softer Approach to Urban Renewal*, DETROIT FREE PRESS (Feb. 10, 2013), <http://www.freep.com/article/20130210/NEWS01/302100118/Detroit-planners-try-a-softer-approach-to-urban-renewal>.

28. Kurth et al., *supra* note 15.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

example, Detroit's Urban Mass Transportation Administration (UMTA) announced plans for the People Mover in 1966.<sup>36</sup> Detroit's newly elected and first black mayor, Coleman Young, intended for the People Mover to be a grand regional transit system.<sup>37</sup> Due to budget cuts, however, the attempts at producing a large-scale transportation system failed and the reduced size, three-mile loop did not open until 1987.<sup>38</sup> To illuminate the City's poor financial management, after the system's first disappointing year in service, Young proposed a \$3 million increase in the system's budget while simultaneously proposing a \$9.8 million cut to the City's police.<sup>39</sup> Considering the fact that in Young's first year in office, 1974, Detroit had 714 homicides, the decision to cut police funding in favor of the People Mover project showed Young's perverse priorities.<sup>40</sup> Aside from Young's dubious financial management, his "vitriolic media comments" in defense of Detroit and the fact that he "cussed and was black" further pushed an additional 414,000 whites out of the City, "making Detroit a majority black city."<sup>41</sup> The City's population dropped from approximately 1.5 million people in 1970 to 1.19 million in 1980,

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36. Ben Robinson, *Detroit People Mover*, ENCYCLOPEDIA OF DETROIT, <http://detroithistorical.org/learn/encyclopedia-of-detroit/detroit-people-mover> (last visited Nov. 2, 2013).

37. Ken Braun, *The Detroit People Mover Still Serves as "a Rich Folks Roller Coaster,"* MICH. CAPITOL CONFIDENTIAL, <http://www.michigancapitolconfidential.com/9137> (last visited Nov. 1, 2013). The \$210 million People Mover received 80% of its funding from the federal government as one of two People Mover projects conducted in the 1980s. James Risen, *People Mover in Detroit Seen as Transit Disaster*, L.A. TIMES (Dec. 8, 1985), [http://articles.latimes.com/1985-12-08/news/mn-14803\\_1\\_detroit-people-mover](http://articles.latimes.com/1985-12-08/news/mn-14803_1_detroit-people-mover). The other, federally-funded People Mover system was built in Miami. *Id.* The original plan for Detroit's People Mover was to provide an overhead monorail system to bring commuters from their cars to their offices and other downtown landmarks. *Id.* The intention was to connect the People Mover to a proposed light rail system that would bring suburbanites downtown. *Id.* Unfortunately, with Detroit's dwindling population and the lack of federal funding for the light rail system, the People Mover lost its original function and become a 2.9-mile loop around the downtown area. *Id.* As of 2008, despite the fact that the system can accommodate up to 15 million passengers per year and 288,000 people per day, the system has only reached 7,500 people per day—2.5% of its intended capacity. Robinson, *supra* note 36. For more information on the People Mover, see Risen, *supra*; Robinson, *supra* note 36.

38. Kurth et al., *supra* note 15.

39. Braun, *supra* note 37.

40. Kurth et al., *supra* note 15. In comparison, 375 homicides were committed in Detroit in 2012, and as of November 9, 2013, 290 homicides were committed in 2013, constituting a 16% decrease. See *Police Department Crime Statistics*, CITY OF DETROIT, <http://www.detroitmi.gov/DepartmentsandAgencies/PoliceDepartment/CrimeStatistics.aspx> (last visited Dec. 18, 2014). For detailed look at historical crime statistics for the City of Detroit, see *id.*

41. Kurth et al., *supra* note 15.

resulting in a 20% decrease in population—at the time, the largest in the City’s history.<sup>42</sup> Chrysler’s announcement that it planned to close the Dodge Main and Lynch Road factories in 1979 only added to the downhill spiral of the City.<sup>43</sup>

Despite a promising start to the 1980s with President Jimmy Carter’s Chrysler Corporation Loan Guarantee Act authorizing a \$1.5 billion bailout for Chrysler, the 1980s were plagued with further decline and the emergence of the crack wars.<sup>44</sup> Plants continued to fire workers, and while statewide unemployment rose to 17% in 1982,<sup>45</sup> the unemployment rate among blacks in Detroit was closer to 40%.<sup>46</sup> Young continued the pursuit of “urban renewal” through his partnership with General Motors and his use of eminent domain to clear the Poletown neighborhood in 1981 to make room for the new Detroit/Hamtramck Assembly Plant.<sup>47</sup> The collaboration resulted in the dislocation of 4,200 people from their homes and the destruction of 140 businesses.<sup>48</sup> The shrinking job market led to household incomes dropping 25% from 1970 to 1980.<sup>49</sup> To add to the troubles of Detroit residents, the use of crack cocaine within the City escalated substantially in the 1980s.<sup>50</sup> In 1987 alone, hospitals reported 4,500 cocaine related admissions.<sup>51</sup>

By the end of the 1990s, Detroit fell from having 20% of the jobs in the state to having only 6% of the jobs in the state.<sup>52</sup> However, the emergence of casinos provided a spark of hope for the City.<sup>53</sup> Detroit collects roughly \$11 million monthly in casino tax from the MGM Grand

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42. CITY OF DETROIT, DEMOGRAPHIC INDEX & TRENDS REPORT—JUNE 10, 2005 (2005), *available at* <https://www.detroitmi.gov/Portals/0/docs/recreation/pdf/PDF%20files/Demographic%20Report/Demographic%20Report.pdf>.

43. Kurth et al., *supra* note 15.

44. *Id.* See H.R. 5860 (96th): *Chrysler Corporation Loan Guarantee Act of 1979*, GOVTRACK.US, <https://www.govtrack.us/congress/bills/96/hr5860> (last visited Sept. 25, 2014), for more details regarding the 1979 Chrysler bailout.

45. *Databases, Tables & Calculators by Subject*, BUREAU OF LABOR & STATISTICS, [www.bls.gov/web/laus/lausth1.htm](http://www.bls.gov/web/laus/lausth1.htm) (last visited Nov. 2, 2013).

46. Kurth et al., *supra* note 15.

47. *Id.*; see *Poletown Neighborhood Council v. City of Detroit*, 304 N.W.2d 455 (Mich. 1981), *overruled by* *Cnty. of Wayne v. Hathcock*, 684 N.W.2d 765 (Mich. 2004).

48. Kurth et al., *supra* note 15.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

Detroit, MotorCity Casino Hotel, and Greektown Casino combined.<sup>54</sup> The City hosted the Super Bowl in 2006<sup>55</sup> and built both Comerica Park and Ford Field,<sup>56</sup> resulting in great excitement and revenue possibilities for the City. The stock market crash and weak housing market in 2007, however, brought Detroit back to reality, and by the end of that year, Detroit had the highest foreclosure rate in the United States with 4.9% of metropolitan Detroit households in a stage of foreclosure—4.8 times the national average at the time.<sup>57</sup> Further complicating matters were financial issues stemming from Kwame Kilpatrick's two terms as mayor.<sup>58</sup> Despite Kilpatrick's grand plans of rebuilding long distressed neighborhoods, the "city faced a \$230 million budget shortfall and had more retirees, 20,000, than workers."<sup>59</sup> In an attempt to pay the City's bills, Kilpatrick borrowed \$1.4 billion in 2005 and 2006 to supply the City's pension bills and an additional \$130 million in 2006 to pay other City debts.<sup>60</sup> Kilpatrick resigned from his position when faced with public corruption charges including racketeering, conspiracy, fraud, and extortion.<sup>61</sup> Federal judge Nancy Edmunds sentenced Kilpatrick on October 10, 2013 to 28 years in prison.<sup>62</sup> The federal court sentenced

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54. Chris Isidore, *Casinos, Not Cars, Are Keeping Detroit Afloat*, CNN MONEY (July 19, 2013, 11:42 AM), <http://money.cnn.com/2013/07/19/news/economy/detroit-bankruptcy-casino/>.

55. Tom Walsh, *Super Bowl Brought \$274M to Detroit*, USA TODAY (Mar. 16, 2006, 1:47 PM), [http://usatoday30.usatoday.com/money/2006-03-16-sb-detroit\\_x.htm](http://usatoday30.usatoday.com/money/2006-03-16-sb-detroit_x.htm).

56. Bill Shea, *10 Years Later, Innovative Ford Field Still Scores*, CRAIN'S DETROIT BUS. (Aug. 21, 2012, 11:22 AM), <http://www.crainsdetroit.com/article/20120819/FREE/308199953/10-years-later-innovative-ford-field-still-scores>.

57. *Detroit Had Top Foreclosure Rate in 2007*, USA TODAY (Feb. 13, 2008, 10:34 AM), [http://usatoday30.usatoday.com/money/economy/housing/2008-02-13-foreclosure-rates\\_N.htm](http://usatoday30.usatoday.com/money/economy/housing/2008-02-13-foreclosure-rates_N.htm). For a full chart of 2007 foreclosure rates for metropolitan areas, see *CHART: 2007 Foreclosure Rate for Metro Areas*, USA TODAY (Feb. 13, 2008, 10:30 AM), [http://usatoday30.usatoday.com/money/economy/housing/2008-02-13-foreclosure-chart\\_N.htm](http://usatoday30.usatoday.com/money/economy/housing/2008-02-13-foreclosure-chart_N.htm).

58. Kurth et al., *supra* note 15.

59. *Id.*

60. *Id.*

61. Bill Pugliano, *Kwame Kilpatrick, Former Detroit Mayor, Sentenced to 28 Years in Prison for Corruption*, CBS NEWS (Oct. 10, 2013, 1:24 PM), <http://www.cbsnews.com/news/kwame-kilpatrick-former-detroit-mayor-sentenced-to-28-years-in-prison-for-corruption/>.

62. Ann Zaniewski, *Kwame Kilpatrick's Attorney's Give Notice They'll Appeal His Corruption Conviction*, DETROIT FREE PRESS (Oct. 30, 2013, 10:54 PM), <http://www.freep.com/article/20131030/NEWS0102/310300172/Kwame-Kilpatrick-appeal>. According to the New York Times, "[Kilpatrick's] punishment ranks among the harshest major state and local public corruption cases." Steven Yaccino, *Kwame M. Kilpatrick, Former Detroit Mayor, Sentenced to 28 Years in Corruption Case*, N.Y. TIMES (Oct. 10, 2013), <http://www.nytimes.com/2013/10/11/us/former-detroit-mayor->



Kilpatrick's right-hand man, Bobby Ferguson, to 21 years in prison for charges including bid rigging, extortion, and bribery.<sup>63</sup>

On March 14, 2013, Michigan governor Rick Snyder appointed Kevyn Orr, a partner at Jones Day law firm, as Detroit's emergency manager.<sup>64</sup> Orr's role as the emergency manager was to develop a financial and operating plan for the local government with "the objectives of assuring that the local government [be] able to provide or cause to be provided governmental services essential to the public health, safety, and welfare [of the City], and assuring the fiscal accountability of the local government."<sup>65</sup> After failing to come to an agreement with creditors over the City's debts, on July 18, 2013, Detroit filed for Chapter 9 bankruptcy and became the country's largest municipal bankruptcy case in history.<sup>66</sup> With an estimated debt of \$18 billion, Orr considered all possible avenues of lowering the debt—including the possibility of selling off pieces of City-owned art currently housed in the DIA.<sup>67</sup> Considering the City's unique relationship with the museum, reviewed *infra*, all eyes fell on the museum's City-owned collections and a heated debate arose as to whether or not the art held by the museum is protected under the charitable trust doctrine from being sold by the City.<sup>68</sup>

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kware-kilpatrick-sentencing.html?\_r=0. Kilpatrick's lawyers filed a notice of appeal on October 30, 2013. Zaniewski, *supra*. For more information regarding Kwame Kilpatrick's sentencing, see Yaccino, *supra*; Tresa Baldas & Jim Schaefer, *Corruption No More! Judge Sends Message with 28 Year Sentence for Kilpatrick*, DETROIT FREE PRESS (Oct. 10, 2013, 10:49 PM), <http://www.freep.com/article/20131010/NEWS0102/310100095/Kwame-Kilpatrick-sentencing>.

63. Zaniewski, *supra* note 62.

64. Monica Davey, *Bankruptcy Lawyer is Named to Manage an Ailing Detroit*, N.Y. TIMES (Mar. 14, 2013), [http://www.nytimes.com/2013/03/15/us/gov-rick-snyder-kevyn-orr-emergency-manager-detroit.html?\\_r=0](http://www.nytimes.com/2013/03/15/us/gov-rick-snyder-kevyn-orr-emergency-manager-detroit.html?_r=0).

65. MICH. COMP. LAWS ANN. § 141.1551 (West 2014).

66. Matthew Dolan, *Record Bankruptcy for Detroit*, WALL ST. J. (July 19, 2013, 6:32 AM), <http://www.wsj.com/news/articles/SB10001424127887323993804578614144173709204>.

67. Kirk Pinho, *Bankruptcy Plan Could Open Door to Sale of DIA Collection*, CRAIN'S DETROIT BUS. (May 27, 2013, 5:34 PM), <http://www.craindetroit.com/article/20130526/NEWS/305269960>.

68. *Id.* Orr spokesman Bill Nowling made a statement explaining that the art "may face exposure to creditors should the city be forced to seek chapter 9 bankruptcy protection." *Id.*

*B. The Entangled History of the DIA and the City of Detroit*

The Detroit Museum of Art (DMA)—later to be renamed the Detroit Institute of Art—was founded on April 16, 1885 as a nonprofit, charitable corporation pursuant to the newly enacted Michigan legislation authorizing the right to create a nonprofit corporation for art.<sup>69</sup> 1885 Public Act 3 required that the corporation set forth its purpose in its articles of incorporation and stated that:

Such corporations shall have power . . . to receive, acquire, collect, and own paintings, sculpture, engravings, drawings, pictures, coins, and other works of art, and to institute, maintain, or assist schools for the teaching of art . . . . The public exhibition of its collection of works of art shall be the duty of every such corporation, and as soon as it shall be prepared to do so, it shall . . . open its buildings and art collection to the general public.<sup>70</sup>

The Act further required that “all gifts, devises, or bequests” be “faithfully used for the purposes” of the corporation and prohibited the corporation from changing its purpose or selling its general art collection.<sup>71</sup> In accordance with the Act’s requirements, the museum outlined its purpose in its articles of incorporation as “for the founding of a public art institute in the City of Detroit, which may . . . receive and use such gifts, contributions, devises and bequests as may be made for art purposes . . . and may do all things authorized by said Act.”<sup>72</sup> The funding for the museum came primarily through a \$10,000 donation from United States Senator Thomas Palmer<sup>73</sup> along with an additional 30 donations of \$1,000 each from other individuals Palmer solicited.<sup>74</sup> In accordance with the museum’s articles, an eight person board of trustees was formed with Palmer as the president.<sup>75</sup> By March 20, 1886, the

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69. Act of Feb. 16, 1885, No. 3, 1885 Mich. Pub. Acts 2.

70. *Id.*; see also Schuette, *supra* note 5.

71. Act of Feb. 16, 1885, No. 3, 1885, § 15, Mich. Pub. Acts 2.

72. BOARD OF TRUSTEES OF THE DETROIT MUSEUM OF ART, HISTORICAL REPORT 11 (1891), *available* at [http://www.dalnet.lib.mi.us/dia/collections/dma\\_annual\\_reports/1891.pdf](http://www.dalnet.lib.mi.us/dia/collections/dma_annual_reports/1891.pdf).

73. For more information about the life of Senator Thomas Palmer, see *Palmer, Thomas Witherell (1830-1930)*, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=P000044> (last visited Sept. 25, 2014).

74. BOARD OF TRUSTEES OF THE DETROIT MUSEUM OF ART, *supra* note 72, at 7.

75. *Id.* at 12, 16.

trustees raised an additional \$60,000 for a total of \$100,000 to acquire land and erect a building for the museum.<sup>76</sup> The DMA opened its doors on Jefferson Avenue and Hastings Street on September 1, 1888.<sup>77</sup>

Closely following the opening of the DMA, the Michigan Legislature passed several acts that allowed the City to appropriate money to the museum.<sup>78</sup> The City's expenditures on behalf of the museum created concerns within the state and *Detroit Museum of Art v. Engel* was filed, complaining about the spending of City money on behalf of a private nonprofit corporation.<sup>79</sup> The Michigan Supreme Court concluded that "these appropriations violated the 1908 Constitution's restrictions on a city's lending of credit to an entity other than a public or 'municipal agency.'"<sup>80</sup> Following the decision in *Engel*, the museum struggled financially to support itself based only on private donations.<sup>81</sup> In response, the Michigan Legislature amended 1885 PA 3 to allow corporations formed under that Act to convey property, thus allowing the nonprofit to convey its building and art collection to the City in July of 1919.<sup>82</sup> As a result, the museum changed its name to the Detroit Institute of Arts, ceded ownership of its building and collection to the City, became a City department, and received operating funds from the City directly.<sup>83</sup> The nonprofit corporation that once ran the museum became known as the Founders Society and continued to assist the museum with "gifts of art and with support of museum operations and their costs."<sup>84</sup>

With Detroit's financial backing, the DIA spent the 1920s and 1930s spending public money in order to build its collection.<sup>85</sup> In 1927 alone, the museum spent approximately \$431,000 on art—\$5.8 million today,

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76. *Id.* at 16; see also Mark Stryker, *DIA in Peril: A Look at the Museum's Long, Tangled Relationship with Detroit Politics and Finances*, DETROIT FREE PRESS (Sept. 8, 2013, 1:05 AM), <http://www.freep.com/interactive/article/20130908/ENT05/130905007/DIA-in-peril-museum-s-relationship-Detroit-politics-finance>.

77. Stryker, *supra* note 76.

78. Schuette, *supra* note 5.

79. *Detroit Museum of Art v. Engel*, 153 N.W. 700, 702–03 (Mich. 1915).

80. Schuette, *supra* note 5.

81. *Id.*

82. *Id.*; see Act of May 7, 1913, No. 245, 1913 Mich. Pub. Acts 466; Act of Apr. 15, 1919, No. 67, 1919 Mich. Pub. Acts 125 (providing that a "corporation organized under [Act of Feb. 16, 1885, No. 3, 1885 Mich. Pub. Acts 2-4]) situated in a city empowered to maintain a public art institute . . . may convey all or any of its property to said city . . . and said property so conveyed shall . . . be faithfully used for the purposes for which such corporation was organized").

83. Schuette, *supra* note 5.

84. *Id.*

85. Stryker, *supra* note 76.

adjusted for inflation.<sup>86</sup> This sum included \$170,000 from the City, and \$261,000 donated by the Founders Society and other individuals.<sup>87</sup> The museum bought its most valuable art at this time, including Van Gogh's "Self Portrait," Rembrandt's "The Visitation," Tintoretto's "The Dreams of Men," Bruegel's "The Wedding Dance," Matisse's "The Window," Bellini's "Madonna and Child," and Van Eyck's "Saint Jerome in His Study."<sup>88</sup> Considering these pieces of art were bought with public money, they are the most vulnerable in the City's bankruptcy proceedings.<sup>89</sup> Their current values range from an estimated \$30 million for Poussin's "Selene and Endymion" to \$150 million for Matisse's "The Window."<sup>90</sup>

The DIA moved to its new building on Woodward Avenue in October of 1927.<sup>91</sup> The new building cost the City \$4 million, but it was needed in order to house the museum's growing collection.<sup>92</sup> The Great Depression in the 1930s severely cut the City's funding for the museum, but the Founders Society continued to provide acquisitions and supplementary funding.<sup>93</sup> By 1953, City-funded acquisitions stopped completely.<sup>94</sup> Following World War II, the museum's collection began to

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86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* Despite the fact that the museum is managed by the nonprofit DIA per the 1998 operating agreement with the City of Detroit, certain pieces of art—which also happen to be the most valuable pieces—held in the DIA are City-owned. Mark Stryker, *Are DIA Works More at Risk with Bankruptcy?*, DETROIT FREE PRESS (July 20, 2013, 12:58 AM), <http://www.freep.com/article/20130718/NEWS/307180160/Are-DIA-works-more-risk-bankruptcy->. Therefore, these pieces are considered assets belonging to the City. *Id.* In a Chapter 9 municipal bankruptcy, judges and creditors cannot force the sale of any asset. *Id.* However, creditors can object before the court to an emergency manager's recovery plan if they believe that legitimate sources of cash are not being utilized. *Id.* If the judge agrees with the creditors' objection, he can recommend the sale of the asset. *Id.*

90. Mark Stryker, *The DIA's Priceless Art: What Some of Their Most Valuable Pieces Could Be Worth*, DETROIT FREE PRESS (May 26, 2013, 1:52 PM), <http://www.freep.com/interactive/article/20130526/ENT05/305260067/DIA-sale-arts-Detroit-bankruptcy>. According to Stryker's article, additional value estimates are as follows: Bruegel's "The Wedding Dance" is worth \$100 million; Van Gogh's "Self Portrait" is worth \$60 million; Tintoretto's "The Dreams of Men" is worth \$100 million; Rembrandt's "The Visitation" is worth \$60 million; Church's "Cotopaxi" is worth \$70 million; Matisse's "The Window" is worth \$150 million; Rothko's "Orange Brown" is worth \$70 million; Eyck's "Saint Jerome in His Study" is worth \$50 million; Poussin's "Selene and Endymion" is worth \$30 million; and Warhol's "Double Self Portrait" is worth \$80 million. *Id.*

91. Stryker, *supra* note 76.

92. *Id.*

93. *Id.*

94. *Id.*

expand once again and the museum's building expanded as well, including a \$3.8 million south wing (opened in 1966) and a \$7.5 million north wing (opened in 1971).<sup>95</sup>

Due to the accelerating decline in Detroit's population in the 1960s and 1970s coupled with rising inflation rates, Detroit cut its funding for the museum by 40% by 1972.<sup>96</sup> While the museum reduced hours and staff, and instituted a voluntary admission charge, the Founders Society continued to acquire new pieces of art.<sup>97</sup> In 1973, the State of Michigan pledged \$25,000 to assist with the museum's rising and unfunded operating costs.<sup>98</sup> By 1975, Mayor Coleman Young decreased City funding by an additional 44% compared to the previous year, but the state legislature once again came to the museum's aid with an additional \$500,000 pledge.<sup>99</sup> Despite state financial involvement, the museum and Mayor Young had regular conflicts.<sup>100</sup> For example, "Young began charging the museum for services like electricity and neighborhood police patrols and deducting the funds from the museum's state appropriation."<sup>101</sup>

In 1991, the newly-elected governor John Engler cut the DIA's state appropriation from \$16 million to \$9.6 million.<sup>102</sup> With the continued spiraling decline of Detroit's economic power and the subsequent shift in power to the west side of the state, over the following twenty years, state funding for the DIA continued to be cut, and by 2012, the museum no longer received any funding from the state.<sup>103</sup> To add to the museum's troubles, City funding continued to decrease as well, and by 2012, City funding accounted for only 2% of the DIA's annual budget.<sup>104</sup> In an attempt to combat the sharp cut in state and City funds, the Founders Society raised more than \$25 million between 1992 and 1994 for operations and endowment.<sup>105</sup>

In 1997, the Founders Society, by then simply called the DIA, created a new operating agreement with the City of Detroit to transfer all museum operations back to the Society.<sup>106</sup> According to the agreement,

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95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. CITY OF DETROIT & FOUNDERS SOC'Y DETROIT INST. OF ARTS, CITY CONTRACT No. 77009, OPERATING AGREEMENT 10 (2007), *available at*

the City retained ownership of the art and building while the DIA managed the operations of the museum and appointed its own director and CEO.<sup>107</sup> Under the supervision of newly-appointed director Graham Beal, the museum raised more than \$330 million by 2008.<sup>108</sup> Beal's vision to reinvigorate the museum and transform it to be more accessible to "everyday visitors rather than art connoisseurs" was highly regarded.<sup>109</sup> However, due to continued cuts in state funding and necessary renovations, the museum's endowment stood at only \$100 million—low in comparison to art museums in other metropolitan areas of the United States, such as Chicago, New York, and Cleveland.<sup>110</sup>

The nationwide recession in 2008 led to a further 20% budget cut for the DIA in 2009, resulting in the elimination of 60 jobs, reduction of benefits, and cutting of exhibits and programs.<sup>111</sup> In a major show of support for the arts and the DIA specifically, on August 7, 2012, voters in Wayne, Oakland, and Macomb Counties voted to approve the Art Institute Authorities Act, an annual property tax millage to fund the DIA for the next 10 years.<sup>112</sup> Under the Act, "an authority may levy a tax of not more than 0.2 mill for a period of not more than 20 years on all of the taxable property within the county for the purpose of providing revenue to an art institute . . . ."<sup>113</sup> The tax represents the museum's first stable public funding since Governor Engler's 1991 cuts and is estimated to

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<http://www.scribd.com/doc/144896834/Detroit-Institute-s-Operating-Agreement-with-City#download>.

107. Stryker, *supra* note 76.

108. *Id.* DIA director Graham Beal served as director of the Los Angeles County Museum of Art prior to joining the DIA team. *Biographies*, DETROIT INST. OF ARTS, <http://www.dia.org/about/bios.aspx> (last visited Sept. 25, 2014). Since being appointed director of the DIA, Beal has overseen two major capital campaigns, guided the reinstallation of the museum's collection, and overseen the museum's renovation and expansion, which will display the collection in supposedly new and exciting ways. *Id.*

109. Stryker, *supra* note 76.

110. *Id.* An example of operational costs included a \$40 million clean-up to remove asbestos found during renovations. *Id.*

111. *Id.*

112. MICH. COMP. LAWS ANN. §§ 123.1201–29 (West 2014); *see also* Ryan Felton & John Turk, *Oakland County Art Authority Will Pull DIA Millage if Detroit Sells Artwork*, OAKLAND PRESS (Aug. 15, 2013, 12:00 AM), <http://www.theoaklandpress.com/general-news/20130815/oakland-county-art-authority-will-pull-dia-millage-if-detroit-sells-artwork>.

113. MICH. COMP. LAWS ANN. §§ 123.1217. Millage rates are expressed in tenths of a penny. Tony Moreno, *Millage Rate*, ABOUTMONEY.COM, <http://taxes.about.com/od/statetaxes/a/Millage.htm> (last visited Sept. 25, 2014). Therefore, a 0.2 millage would be equal to 2 tenths of a penny. *Id.*

provide \$22 million annually to the museum, constituting approximately 70% of the museum's budget.<sup>114</sup>

Following Detroit's filing for Chapter 9 bankruptcy on July 18, 2013, all City assets were vulnerable to sale to help repay the City's debts.<sup>115</sup> Emergency Manager Kevyn Orr hired New York-based Christie's Appraisals Inc. to appraise the museum's 2,773 pieces<sup>116</sup> bought directly by the City, largely in the 1920s and 1930s.<sup>117</sup> According to Christie's official report, "the aggregate worth of the appraised art is \$454 million to \$867 million."<sup>118</sup> In response to the bankruptcy, the Oakland County Art Institute threatened to repeal the millage if any DIA art was sold to fund the bankruptcy.<sup>119</sup> On a similar note, DIA director Graham Beal stated in an open letter to the public that selling art to decrease Detroit's debt "would threaten the millage proceeds upon which [the museum] now rel[ies] to operate . . . selling any art would be tantamount to closing the museum, hardly an outcome in keeping with the [emergency manager's] mission of putting Detroit back on the road to prosperity."<sup>120</sup>

Michigan's attorney general, Bill Schuette, issued an official opinion on June 13, 2013, stating that none of the museum's art can be sold because it is protected by a charitable trust.<sup>121</sup> The issue of this Note is whether or not the museum's art is in fact protected by a charitable trust as Bill Schuette claimed, and, if not, what the City (and other cities in similar situations) could have done to better protect its cultural treasures. In order to fully understand an analysis of Schuette's opinion, a brief overview of charitable trusts is provided in the following section.

114. Stryker, *supra* note 76.

115. *Id.*

116. Mostafa Heddaya, *Christie's Detroit Institute of Arts Appraisal Released*, HYPERALLERGIC (Dec. 19, 2013), <http://hyperallergic.com/99486/christies-detroit-institute-of-art-appraisal-released/>.

117. Kirk Pinho, *Christies to Finish First DIA Appraisal This Month; Museum Concerned*, CRAIN'S DETROIT BUS. (Oct. 4, 2013, 2:35 PM), <http://www.crainsdetroit.com/article/20131003/NEWS/131009939/>.

118. Mark Stryker, *What's DIA Artwork Worth? New Christie's Report Has the Numbers*, DETROIT FREE PRESS (Dec. 19, 2013), <http://www.freep.com/article/20131219/ENT05/312190142/detroit-dia-christies-report>.

119. Felton & Turk, *supra* note 112.

120. Graham Beal, *Director's Letter: Will the DIA Have to Sell Its Art?*, DETROIT INST. OF ARTS, <http://archive.constantcontact.com/fs100/1102135368424/archive/1114686318864.html> (last visited Sept. 25, 2014).

121. Schuette, *supra* note 5.

*C. The Creation of a Charitable Trust*

The history and current state of charitable trust law is essential to understanding the DIA's dilemma and how Michigan's attorney general suggested protecting the art. Historically, a trust includes, but is not limited to, "an express trust, private or *charitable*."<sup>122</sup> A trust is ordinarily made up of three parties: the settlor, the trustee, and the beneficiary.<sup>123</sup> The settlor is the person who creates the trust.<sup>124</sup> The trustee holds legal title to the trust property and "manages that property as a fiduciary for one or more beneficiaries."<sup>125</sup> Unless provided otherwise, under the duty of loyalty, imposed by MCL section 700.7802, "the trustee is responsible for administering the trust in the interest of the beneficiaries."<sup>126</sup>

The codification of charitable trusts began in 1601 with the enactment of the Statute of Charitable Uses.<sup>127</sup> By definition, a charitable trust is a subset of trusts and is a "fiduciary relationship with respect to property arising as a result of a *manifestation* of an intention to create it, and subjecting the person by whom the property is held to equitable duties to deal with the property for a charitable purpose."<sup>128</sup> The concept of charitable trusts is derived from British common law and upon introduction to America, charity was generally associated with so-called un-American ideals of "established churches and massive wealth in perpetuity."<sup>129</sup> Therefore, due to charity's negative correlation to colonial law, many states early on in the formation of the United States adopted highly restrictive laws regulating charitable trusts.<sup>130</sup> However, with the emergence of great philanthropists such as Andrew Carnegie and John D. Rockefeller in the late nineteenth century, public perception of charity shifted to believe that "private wealth could be a 'public trust' benefitting all society, rather than simply a marker of elite privilege."<sup>131</sup> This change of perception toward wealth, in addition to greater reverence for "private

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122. MICH. COMP. LAWS ANN. § 700.1107(n) (West 2014) (emphasis added).

123. JESSE DUKEMINIER, JAMES LINDGREN & ROBERT H. SITKOFF, WILLS, TRUSTS, AND ESTATES 547 (8th ed. 2009).

124. *Id.* at 547.

125. *Id.* at 541.

126. *Id.* at 550.

127. The Statute of Charitable Uses Act, 1601, 43 Eliz., c. 4 (Eng.).

128. RESTATEMENT (SECOND) OF TRUSTS § 348 (1959) (emphasis added).

129. Mary Kay Lundwall, *Inconsistency and Uncertainty in the Charitable Purposes Doctrine*, 41 WAYNE L. REV. 1341, 1346 (1995).

130. Ilana H. Eisenstein, *Keeping Charity in Charitable Trust Law: The Barnes Foundation and the Case for Consideration of Public Interest in Administration of Charitable Trusts*, 151 U. PA. L. REV. 1747, 1756 (2003).

131. *Id.* (citing Lundwall, *supra* note 129, at 1347–48).



property and individualism” led to more favorable treatment and greater respect for philanthropists, their intent, and charitable trusts.<sup>132</sup> Therefore, since the late nineteenth century, the overriding requirement for charitable trusts is compliance with donor intent. However, several other requirements remain as noted below.

### *1. Charitable Purpose Requirement*

There is no fixed standard to determine what is a charitable purpose,<sup>133</sup> but under common law, charitable purposes include the “relief of property; the advancement of education; the advancement of religion; the promotion of health; governmental or municipal purposes; [and] other purposes the accomplishment of which is beneficial to the community.”<sup>134</sup>

Although no act expressly states that art museums fall under the umbrella of charitable purposes, sources contend that “gifts and trusts to establish and support an art gallery . . . for the benefit of the public and to advance education in art have a charitable purpose.”<sup>135</sup> Commentators, as well, “have long argued that the public has a strong interest in the collections management policies of museums,” noting that “[i]f one accepts the theory that the collections of a museum are owned by the ‘public’ . . . and that museums exist for the public benefit, then it could be argued that once such items are in the ‘public’ domain they cannot be removed for sale.”<sup>136</sup> In exchange for their nonprofit status, “museums owe an obligation to the public,” which they fulfill by “preserv[ing] and display[ing] works of art for scholars, the public and future generations . . . ; educat[ing] and inform[ing] the broader public about other cultures and ideas . . . ; and inspir[ing] and promot[ing] civic pride and economic investment.”<sup>137</sup>

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132. Eisenstein, *supra* note 130, at 1756.

133. RESTATEMENT (SECOND) OF TRUSTS § 368 cmt. b (1959).

134. RESTATEMENT (SECOND) OF TRUSTS § 368 (1959); *see also* RESTATEMENT (THIRD) OF TRUSTS §§ 27–28 (2003); 15 AM. JUR. 2D *Charities* §§ 5, 32 (2002); MICH. COMP. LAWS ANN. § 700.7405 (West 2014).

135. 15 AM. JUR. 2D *Charities* § 49 (2002); *see also* Hardman v. Feinstein, 240 Cal. Rptr. 438, 486 (Cal. Ct. App. 1987) (“Art museums advance education and therefore serve a charitable purpose.”).

136. Derek Fincham, *Deaccession of Art from the Public Trust*, 16 J. ART, ANTIQUITY & LAW 1, 18 (2011) (quoting ALFRED KNOLL, MUSEUMS—A GUNSLINGER’S DREAM 10 (1975)).

137. Fincham, *supra* note 136.

## 2. *Manifestation of Intent Requirement*

Aside from the requirement of a charitable purpose, more importantly, charitable trusts require a manifestation of intent by the settlor to impose enforceable duties.<sup>138</sup> Federal requirements do not include a set mode of manifestation of intent, and the words “trust” or “trustee” need not be used.<sup>139</sup> However, the settlor must properly convey a clear manifestation of intent to create the trust.<sup>140</sup> The question in determining whether a charitable trust is made is “whether the settlor not only *expressed a desire* that the recipient of the property use it in a certain way but whether he expressed an *intention to impose a duty* upon the recipient to so use it.”<sup>141</sup> Therefore, if a settlor merely expresses a suggestion or preference that the property be used for charitable purposes, but leaves the decision whether or not to comply with the trustee, a charitable trust is not created. As will be shown in Part II of this Note, by reviewing the operating agreement between the City of Detroit and the DIA, there was no manifestation of intent to protect the DIA art purchased with City funds under a charitable trust.

## 3. *Who Can Be the Trustee?*

Historically, an individual, the United States, a corporation, or an unincorporated association can act as trustee for a charitable trust.<sup>142</sup> Trustee is defined as “any individual, group of individuals, association, foundation, trustee corporation, or other legal entity holding property for any charitable purpose.”<sup>143</sup> Further, under the Restatement (Second) of Trusts, property can be devoted to a charitable purpose and protected under the doctrine of charitable trusts even if transferred to a charitable corporation as opposed to an individual trustee.<sup>144</sup> Therefore, under the Restatement and Michigan law, Detroit can act as the trustee of a charitable trust established for the purpose of operating the DIA. However, under the laws governing charitable trusts, the trustee holds only legal title to the assets and must administer the charitable trust in

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138. RESTATEMENT (SECOND) OF TRUSTS § 351 (1959).

139. RESTATEMENT (SECOND) OF TRUSTS § 351 cmt. b (1959).

140. Eisenstein, *supra* note 130, at 1755–56.

141. Hunter v. St. Vincent Med. Ctr. (*In re Parkview Hosp.*), 211 B.R. 619, 630–31 (Bankr. N.D. Ohio 1997) (quoting Ohio Soc’y for Crippled Children and Adults, Inc. v. McElroy, 191 N.E.2d 543, 545 (Ohio 1962)); *see also* Brown v. Concerned Citizens for Sickle Cell Anemia, Inc., 382 N.E.2d 1155 (Ohio 1978).

142. RESTATEMENT (SECOND) OF TRUSTS § 378 (1959).

143. MICH. COMP. LAWS ANN. § 14.252(a) (West 2014).

144. RESTATEMENT (SECOND) OF TRUSTS § 348 cmt. f (1959).

“good faith,” in accordance with the terms of the trust, and for the benefit of the trust’s beneficiaries, which in this case is the general public of Michigan.<sup>145</sup> Therefore, when analyzing whether or not there is a charitable trust in this situation, one must consider whether in fact a trust was established by looking to see if there was a manifestation of intent, and if so, to see whether the trust was conducted in the interest of the citizens of Michigan, the ultimate beneficiaries of the museum’s charitable purpose.

#### 4. *Beneficiaries in a Charitable Trust*

In charitable trusts, the beneficiary of the trust is not any one person in particular, but rather the property is given to benefit the community as a whole.<sup>146</sup> Unlike private trusts, in charitable trusts, the future beneficiary is “undetermined and unknown, and while such a trust need not be for the benefit of the entire public, . . . it must be public in nature and for unascertained beneficiaries.”<sup>147</sup> A question then arises in regards to charitable trusts as to who enforces and protects the trust when the beneficiary is not one person in particular, but the entire community, ostensibly with no voice of its own other than the trustee’s.

The attorney general of the state in which the charitable trust is administered has the right to bring a lawsuit for the enforcement of said charitable trust.<sup>148</sup> The attorney general acts under the *parens patriae*<sup>149</sup> power, which stems from the “ancient powers of guardianship over persons under disability and of protectorship of the public interest.”<sup>150</sup> Therefore, when the question arose as to whether Detroit could sell pieces of art bought with City money, Michigan’s attorney general Bill

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145. MICH. COMP. LAWS ANN. § 700.7801.

146. RESTATEMENT (SECOND) OF TRUSTS § 364 (1959); *see also* *Scamey v. Clarke*, 275 N.W. 765 (Mich. 1937).

147. Schuette, *supra* note 5; *see also* *Scudder v. Sec. Trust Co.*, 213 N.W. 131 (Mich. 1927) (holding that if beneficiaries are uncertain, a trustee can designate beneficiaries from a general class named by decedent).

148. RESTATEMENT (SECOND) OF TRUSTS § 391 (1959).

149. *Parens patriae* is Latin for “parent of his or her country.” *Parens patriae*, CORNELL UNIV. LAW SCH.: LEGAL INFO. INST., [http://www.law.cornell.edu/wex/parens\\_patriae](http://www.law.cornell.edu/wex/parens_patriae) (last visited Sept. 25, 2014). According to Cornell University Law School’s Legal Information Institute, the *parens patriae* doctrine is defined as “the power of the state to act as guardian for those who are unable to care for themselves, such as children or disabled individuals.” *Id.* For an in depth analysis on the *parens patriae* doctrine, see Laurence B. Custer, *The Origins of the Doctrine of Parens Patriae*, 27 EMORY L.J. 195 (1978).

150. *In re Estate of Pruner*, 136 A.2d 107, 109 (Pa. 1957).

Schuette issued an official opinion claiming that the art was protected by a charitable trust for the citizens of metropolitan Detroit.<sup>151</sup>

In reality, however, any attorney general's insight in this regard must be taken with a grain of salt, as the attorney general has very little ability to provide truly objective oversight for a charitable trust.<sup>152</sup> A recent study of the Hershey Trust showed how political considerations may influence an attorney general's options.<sup>153</sup> The study revolved around an incident with the Pennsylvania attorney general in July 2002.<sup>154</sup> The attorney general, who was running for governor at the time, filed a preliminary injunction opposing the sale of the Milton Hershey School Trust's interest in the Hershey Company.<sup>155</sup> Following the injunction, the trust abandoned the sale.<sup>156</sup> The study argues that "instead of improving the welfare of the needy children who are the Trust's main beneficiaries, the Attorney General's intervention preserved charitable trust agency costs of roughly \$850 million and foreclosed salutary portfolio diversification."<sup>157</sup> Additionally, "blocking the sale destroyed roughly \$2.7 billion in shareholder wealth, reducing aggregate social welfare by preserving a suboptimal ownership structure of the Company."<sup>158</sup>

The issue moving forward is whether Bill Schuette's opinion was correct in finding a manifestation of intent sufficient enough to create a charitable trust for the entire DIA collection, or whether his political hopes to garner public favor by protecting the City's cultural treasures tainted his views.

Part III.A, *infra*, critiques Bill Schuette's argument of finding a charitable trust to protect the DIA's art. Part B explains why there is no charitable trust protecting the art due to a lack of a manifestation of intent to create a trust. Part C advises what museums can do to protect their art collections from future, unwanted sale. Finally, Part D suggests how the DIA can successfully move forward.

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151. Schuette, *supra* note 5.

152. Fincham, *supra* note 136, at 10.

153. Jonathan Klick & Robert H. Sitkoff, *Agency Costs, Charitable Trusts, and Corporate Control: Evidence from Hershey's Kiss-Off*, 108 COLUM. L. REV. 749 (2008).

154. *Id.* at 756.

155. *Id.* (citations omitted).

156. *Id.*

157. *Id.* at 749.

158. *Id.*

## III. ANALYSIS

*A. Critique of the Michigan Attorney General's Official Opinion*

On June 13, 2013, Michigan's attorney general, Bill Schuette, published an official opinion titled "Conveyance of Transfer of Detroit Institute of Arts Collection."<sup>159</sup> Schuette wrote the opinion in response to the escalating concern that the City of Detroit plans to sell DIA artwork in order to satisfy a portion of the City's \$18 billion debt in its ongoing bankruptcy proceeding.<sup>160</sup> The opinion reviewed the legal history of Detroit and concluded that the DIA's collection is "held by the City of Detroit in charitable trust for the people of Michigan, and no piece in the collection may thus be sold, conveyed, or transferred to satisfy City debts or obligations."<sup>161</sup> That conclusion derives in large measure from the nature of the DIA's predecessor, the Detroit Museum of Art, which was founded in 1885 as a private, not-for-profit charitable corporation.<sup>162</sup>

Schuette restated that the original purpose of the Detroit Museum of Arts, as written in its articles of incorporation, is for the public exhibition of its art collection,<sup>163</sup> and under Michigan law, the museum is prohibited from changing its official purpose and is disallowed from selling art from its general collection.<sup>164</sup> The benefits that the museum offers to the public and the City of Detroit are clear: the art exposes Michigan residents to one-of-a-kind pieces of art from world-renowned artists with the added benefit of attracting tourists to the City.<sup>165</sup> For example, in the fiscal year of 2013, a total of 594,267 visitors walked through the DIA's doors.<sup>166</sup> Considering the museum's charitable purpose (providing art for public consumption), Schuette claims that the museum was founded as a charitable trust and that the art collection is the protected asset of the trust.<sup>167</sup> Therefore, in accordance with the laws governing charitable trusts, the trustee, which at the time of incorporation was the Detroit Museum of Art, is limited to using the assets of the trust for the designated purposes of the trust.<sup>168</sup> Schuette alleges that when the

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159. Schuette, *supra* note 5.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*; see also Act of Feb. 16, 1885, No. 3, 1885 Mich. Pub. Acts 2-3.

164. Act of Feb. 16, 1885, No. 3, 1885 Mich. Pub. Acts 4.

165. For more museum information, see *Just the Facts*, DETROIT INST. OF ARTS, <http://www.dia.org/about/facts.aspx> (last visited Sept. 25, 2014).

166. *Id.*

167. Schuette, *supra* note 5.

168. *Id.*

museum conveyed all of its property, including the entire collection, to the City in 1919, the role of trustee transferred from the museum's not-for-profit corporation, renamed the Founders Society, to the City of Detroit.<sup>169</sup> As such, Schuette explains that when the City agreed to receive the museum's collection, the City agreed, under the authorizing statute, to be bound by the museum's charitable purpose.<sup>170</sup>

During the 1920s and 1930s, the City continued to grow the museum's collection, and in 1927 alone, the museum spent approximately \$431,000 on art—including \$170,000 of money from the City.<sup>171</sup> Schuette argues that as the City added new pieces to the collection, whether through private donation or acquisition using City funds, the art continued to be dedicated to the museum's original purpose and was, therefore, protected as part of the charitable trust.<sup>172</sup>

When the City and the Founders Society signed their new operating agreement in 1997, the City retained control of the art and the DIA building itself, while the DIA managed the museum's day-to-day operations.<sup>173</sup> Schuette writes that regardless of the fact that the City retained title to assets under the new agreement, the art is protected as assets of the trust.<sup>174</sup>

Schuette claims that his conclusion is consistent with Michigan trust law, which favors the creation of charitable trusts.<sup>175</sup> For example, in *In re Rood's Estate*, the Michigan Court of Appeals held that “[c]haritable gifts and trusts are favorites of the law and of the courts, and the courts will declare valid, and give effect to, such gifts and trusts where it is possible to do so . . . .”<sup>176</sup> Further, the Michigan Legislature demonstrated its high regard for charitable trusts in the passing of the Supervision of Trustees for Charitable Purposes Act, which provides: “It is hereby declared to be the policy of the state that the people of the state are interested in the administration, operation, and disposition of the assets of all charitable trusts in the state . . . .”<sup>177</sup> Further, Schuette provides Michigan case law holding that it is considered sufficient to

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169. *Id.*

170. *Id.*

171. *Id.*

172. See MICH. COMP. LAWS ANN. § 700.1107(n) (West 2014) (“‘Trust’ includes, but is not limited to, an express trust, private or charitable, with additions to the trust, wherever and however created.”).

173. Stryker, *supra* note 76.

174. Schuette, *supra* note 5.

175. *Id.*

176. *In re Rood's Estate*, 200 N.W.2d 728, 738 (Mich. Ct. App. 1972) (quoting 14 C.J.S. *Charities* § 6 (1972)).

177. MICH. COMP. LAWS ANN. § 14.251.

simply “show[] an intention that the property should be held subject to a legal obligation to devote it to purposes which are charitable.”<sup>178</sup> Under Michigan law, every trust will be “liberally construed by the court so that the intentions of the creators thereof shall be carried out whenever possible.”<sup>179</sup> Therefore, although there may not be explicit manifestation of intent, Schuette states that the Court is allowed to construe the DIA’s situation into one involving a charitable trust.<sup>180</sup>

Aside from case law and legislation, Schuette claims support of his theory based on several other sources. First, the American Alliance of Museum’s (AAM) Code of Ethics<sup>181</sup> states:

Museums in the United States . . . are organized as public trusts, holding their collections and information as a benefit for those they were established to serve.

....

. . . [D]isposal of collections through sale, trade or research activities is solely for the advancement of the museum’s mission. Proceeds from the sale of nonliving collections are to be used consistent with the established standards of the museum’s discipline, but in no event shall they be used for anything other than acquisition or direct care of collections.<sup>182</sup>

The AAM restricts the use of deaccession<sup>183</sup> proceeds and holds that once an object enters a museum collection, it becomes part of the public trust.<sup>184</sup> Museum’s directors, who act as trustees of the trust, have an

178. Schuette, *supra* note 5 (quoting Knights of Equity Memorial Scholarships Comm. v. Univ. of Detroit, 103 N.W.2d 463, 467 (Mich. 1960)).

179. MICH. COMP. LAWS ANN. § 554.352 (West 2014).

180. Schuette, *supra* note 5.

181. Adopted 1991, amended 2000. The American Alliance of Museums’ mission is to “nurture excellence in museums through advocacy and service.” *About Us*, AM. ALLIANCE OF MUSEUMS, <http://www.aam-us.org/about-us> (last visited Sept. 25, 2014).

182. *Code of Ethics for Museums*, AM. ALLIANCE OF MUSEUMS, <http://www.aam-us.org/resources/ethics-standards-and-best-practices/code-of-ethics> (last visited Nov. 11, 2013).

183. The AAM defines “deaccession” as “the process by which a work of art or other object (collectively a ‘work’), wholly or in part, is permanently removed from a museum’s collection.” ASS’N OF ART MUSEUM DIRS., AAMD POLICY ON DEACCESSIONING, JUNE 09, 2010 (2010), available at <https://aamd.org/sites/default/files/document/AAMD%20Policy%20on%20Deaccessioning%20website.pdf>.

184. See Sara Tam, *In Museums We Trust: Analyzing the Mission of Museums, Deaccessioning Policies, and the Public Trust*, 39 FORDHAM URB. L.J. 849, 860–64 (2012).

obligation to protect and maintain the collection for the public's benefit.<sup>185</sup> The International Council of Museums<sup>186</sup> Code of Ethics similarly holds that museum collections are held in public trust and that compensation received from the deaccession of any piece of a museum collection can only be used for the benefit of the collection.<sup>187</sup> Finally, the Federal Accounting Standards Board<sup>188</sup> holds that museum collections should not be viewed as assets on a balance sheet because they are held in private trust.<sup>189</sup>

*B. Due to the Lack of Expressly Manifested Intent, the City-Purchased DIA Art is Not Protected as Assets of a Charitable Trust*

While Schuette's opinion complies with the general preference of the public,<sup>190</sup> which is that the cultural gems contained within the DIA must remain within the DIA, there is one significant flaw to his analysis. As noted *supra*, in order to create a charitable trust, the settlor must *manifest an intention* to create a charitable trust.<sup>191</sup> Upon review of the operating agreement,<sup>192</sup> there is *no* clear language demonstrating a manifestation of intent that any DIA art is protected by a charitable trust. More specifically, no charitable trust was created or maintained upon the 1997

185. *Id.* at 864.

186. The International Council of Museums (ICOM) was established in 1946 with the mission to "preserve, conserve, and share cultural heritage." *The Organisation*, INT'L COUNCIL OF MUSEUMS, <http://icom.museum/the-organisation/> (last visited Sept. 25, 2014). The ICOM is the only international organization representing museums and museum professionals. *Id.* For more information on the ICOM, see *id.*

187. *Code of Ethics*, INT'L COUNCIL OF MUSEUMS, <http://icom.museum/the-vision/code-of-ethics/> (last visited Nov. 11, 2013).

188. The Federal Accounting Standards Board (FASB) "serves the public interest by improving federal financial reporting through issuing federal financial accounting standards and providing guidance after considering the needs of external and internal users of federal financial information." *Our Mission*, FED. ACCT. STANDARDS BOARD, <http://www.fasab.gov/about/mission-objectives/> (last visited Sept. 25, 2014). For more information on the FASB, see *id.*

189. FASB, STATEMENT OF FINANCIAL ACCOUNTING STANDARDS NO. 116 (1993), available at <http://www.fasb.org/cs/BlobServer?blobkey=id&blobwhere=1175820922799&blobheader=application/pdf&blobcol=urldata&blobtable=MungoBlobs>.

190. Joe Guillen & Brent Snively, *Hands Off DIA, Pensions, Detroiters Say in Poll*, DETROIT FREE PRESS (Sept. 22, 2013, 9:02 AM), <http://www.freep.com/article/20130922/NEWS15/309220066/detroit-bankruptcy-pension-poll-DIA-art> ("78% of respondents said they oppose a possible plan to sell DIA art to help resolve the financial crisis.").

191. RESTATEMENT (SECOND) OF TRUSTS § 351 (1959).

192. See generally CITY OF DETROIT & FOUNDERS SOC'Y DETROIT INST. OF ARTS, *supra* note 106.



transfer of museum management from the City to the Society.<sup>193</sup> The operating agreement clearly states that “[t]he *City* shall retain title to and ownership of the (a) *City art collection* and (b) the *DIA properties* . . . . [T]he city shall also have title to all works of art acquired . . . during the *contract term*.”<sup>194</sup> Per the terms of the 1997 agreement, even if the Society acquisitioned *new* art, title and interest of the art must be transferred to the City.<sup>195</sup> The only exception is in the case of a gift or bequest that specifically mandates the Society retain title and ownership.<sup>196</sup>

To further the argument that there is no charitable trust protecting the art, while detailing the Society’s duties regarding the management of the art collection, the operating agreement explicitly states that “[t]itle to the *City art collection* remains with the City.”<sup>197</sup> While the Society has the “right to acquire and dispose” of pieces from the collection, the title firmly remains under the control of the City.<sup>198</sup> Therefore, when disagreement arises regarding a piece of the museum’s collection, the City’s decision trumps the will of the Society.<sup>199</sup>

The attorney general relies on Michigan law to support his argument that a charitable trust protects the DIA’s art collection from being sold in Detroit’s bankruptcy proceedings. However, there are limits to the extent that one can stretch and interpret an agreement. The operating agreement clearly provides the *City* with the title and ownership of all DIA artwork.<sup>200</sup> There are no words suggesting or indicating any form of trust, charitable or otherwise, protecting the art in question.<sup>201</sup> Therefore, while a DIA fire sale was the last thing that supporters of the museum wanted, Kevyn Orr certainly, and with every right to do so, “raised the possibility of a ‘DIA yard sale.’”<sup>202</sup>

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193. *Id.*

194. *Id.* at 8.

195. *Id.*

196. *Id.*

197. *Id.* at 10.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. Joe Guillen, *Kevyn Orr: We Kept ‘Russian Oligarchs, Brazilian Millionaires’ from Grabbing DIA Treasures*, DETROIT FREE PRESS (Mar. 25, 2014, 8:24 PM), <http://www.freep.com/article/20140325/NEWS05/303250103/Kevyn-Orr-UM-urban-governance>.

*C. How to Better Protect Museum Art: Lessons from the DIA*

The divisive conflict between the City of Detroit and the DIA is one that could have been avoided. Moving forward, other city or university owned art museums must learn from the DIA's current predicament in order to avoid their own forced sales resulting from financial struggles they did not create. The most important step is to revise donor policies to provide that gifts can only be used to benefit the *museum's mission* rather than the mission of the parent institution.<sup>203</sup> Deaccession issues are best addressed at the time of acquisition when museum officials have the best leverage to negotiate the terms of the bequest.<sup>204</sup> If the museum wishes to protect the art by a charitable trust, a clear manifestation of intent to create a charitable trust must be made.

For example, the recession in 2009 left Brandeis University with "a 25 percent decline in its endowment" and a "\$10 million deficit in the year's budget."<sup>205</sup> In an attempt to raise funds, the university looked to its own Rose Art Museum.<sup>206</sup> The museum left itself vulnerable to deaccession because it, similarly to the DIA, did not protect its collection with a donor policy that included an express manifestation of intent to create a public trust to protect the collection from deaccession.<sup>207</sup> Luckily for the museum, the Massachusetts attorney general involved himself by

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203. Julia Halperin & Helen Stoilas, *Detroit Institute of Arts Amends Donor Policy to Protect Future Gifts*, ART NEWSPAPER (Sept. 4, 2013), <http://www.theartnewspaper.com/articles/Detroit-Institute-of-Arts-amends-donor-policy-to-protect-future-gifts/30396>.

204. Fincham, *supra* note 136, at 14.

205. Roberta Smith, *In the Closing of Brandeis Museum, A Stark Statement of Priorities*, N.Y. TIMES (Feb. 1, 2009), [http://www.nytimes.com/2009/02/02/arts/design/02rose.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2009/02/02/arts/design/02rose.html?pagewanted=all&_r=0).

206. For more information on the Rose Art Museum, see *The Rose Art Museum: Mission*, BRANDEIS UNIV., <http://www.brandeis.edu/rose/aboutus/mission.html> (last visited Sept. 25, 2014). The Rose Art Museum "is an educational and cultural institution dedicated to collecting, preserving and exhibiting the finest of modern and contemporary art . . . . An active participant in the academic, cultural and social life of Brandeis, the Rose seeks to stimulate public awareness and disseminate knowledge of modern and contemporary art to enrich educational, cultural and artistic communities regionally, nationally and internationally." *Id.*

207. Halperin & Stoilas, *supra* note 203. The American Alliance of Museums published a guide entitled *Developing a Collections Management Policy*, which aims to assist museums in the development of their collections management policies. *Alliance Reference Guide: Developing a Collections Management Policy*, AM. ALLIANCE OF MUSEUMS, <http://www.aam-us.org/docs/continuum/developing-a-cmp-final.pdf?sfvrsn=2> (last visited Sept. 25, 2014). The guide details "what a collections management policy is, why it is important and considerations for developing one. It reflects national standards and is in line with the requirements of the Alliance's Core Documents Verification and Accreditation programs." *Id.*

launching an investigation into the propriety of the proposed sale.<sup>208</sup> Fortunately, the dispute resolved itself with a settlement that prohibited Brandeis from selling the 7,500 piece collection.<sup>209</sup>

Unfortunately, not all museums are taking note of the lessons provided by the DIA and the Rose Art Museum's experiences. The Fine Arts Museums of San Francisco's collection, for example, comprised of the de Young and the Legion of Honor museums, includes city-owned art; however, its deed of gift agreement does *not* address the sale of donated art.<sup>210</sup> According to a museum spokesman, "[t]he Museums are naturally concerned about the potential threat to the DIA's collections . . . . While the Board and staff will keep a keen eye on developments in Detroit, the Museums' approach to gifts or loans has not changed."<sup>211</sup>

#### *D. DIA Moving Forward*

Despite the fact that neither state nor federal trust law provided for the protection of the DIA's art through the use of a charitable trust as Schuette claimed, throughout Detroit's bankruptcy proceedings, DIA management continued to seek an avenue to avoid the sale of the museum's beloved art. In DIA director Graham Beal's letter to the public, written in response to the potential sale of museum art, Beal proclaimed that "selling any art would be tantamount to closing the museum"<sup>212</sup> due to the fact that the local governments in Oakland, Macomb, and Wayne Counties threatened to suspend millage monies for the DIA if pieces of the museum's collection were sold to help the City resolve its debt.<sup>213</sup> The ten-year millage provides the DIA \$23 million annually toward the museum's \$31 million operating budget, and losing such financial support would essentially shut the museum's doors for good.<sup>214</sup>

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208. Mark Stryker, *Michigan AG: DIA Art Pieces Can't Be Sold to Pay Detroit Debt*, DETROIT FREE PRESS (June 13, 2013, 8:56 PM), <http://www.freep.com/article/20130613/NEWS06/306130091/bill-schuette-detroit-institute-of-arts>.

209. *Id.* For additional information on the 2009 dispute between the Rose Art Museum and Brandeis University, see Smith, *supra* note 205; Andrea Shea, *After Controversy, Brandeis Brings Back the Rose Art Museum*, 90.9 WBUR (Oct. 28, 2011), <http://www.wbur.org/2011/10/28/rose-art-museum>.

210. Halperin & Stoilas, *supra* note 203.

211. *Id.*

212. Beal, *supra* note 120.

213. Felton & Turk, *supra* note 112.

214. *Id.*

Fortunately for the DIA, on November 7, 2014, just sixteen months after Detroit filed for bankruptcy, federal judge Steven Rhodes approved Detroit's plan to wipe out seven of the eighteen billion dollars of the City's debt.<sup>215</sup> The plan was multi-faceted and included a 4.5 percent cut in City pensions, real estate and cash payments to two major bond insurers who initially objected to the plan, and a promise to spend \$1.7 billion to demolish vacant buildings within Detroit and to improve public safety.<sup>216</sup> Most importantly for the DIA, the plan included the Grand Bargain, which will raise \$816 million to essentially ransom the art collection from the City.<sup>217</sup> According to the plan, the DIA pledged to contribute \$100 million, while the State of Michigan promised \$195 million and private foundations agreed to provide an additional \$366 million.<sup>218</sup> Together, these pledges will amount to approximately \$816 million over the next twenty years.<sup>219</sup> The money will be used to assist in the payment of pension funds and to avoid further cuts to retirees, so long as the museum's ownership is transferred to an independent charitable trust in order to prevent any future liquidation of the DIA's collection to pay off City debt.<sup>220</sup>

The DIA was fortunate to have the adoration of a city that truly values its role in the community and the monetary support that it needed to survive the bankruptcy. Not all museums can be so fortunate. In the case that a Grand Bargain is unavailable to other museums, several alternatives can be pursued to prevent a liquidation of museum collections. First, a museum could organize exhibitions and rent pieces from their collection to other museums. For example, an offer was made for \$400,000 to rent the DIA's Dutch collection.<sup>221</sup> Another option is to

215. Patrick J. Rizzo, *Saved! Detroit Approved to Set Bankruptcy Plan in Action*, NBC NEWS (Nov. 7, 2014, 7:32 AM), <http://www.nbcnews.com/business/economy/saved-detroit-approved-set-bankruptcy-plan-action-n243411>.

216. Ed White, *Detroit Bankruptcy Plan Approved as Fair and Feasible*, CRAIN'S BUS. DETROIT (Nov. 7, 2014, 3:03 PM), <http://www.craindetroit.com/article/20141107/NEWS01/141109883/detroit-bankruptcy-plan-approved-as-fair-and-feasible>.

217. *Id.*

218. Sherri Welch, *How Detroit's "Grand Bargain" Will Be Managed*, CRAIN'S BUS. DETROIT (Nov. 7, 2014, 4:24 PM), <http://www.craindetroit.com/article/20141107/NEWS/141109884/how-detroits-grand-bargain-will-be-managed>.

219. *Id.*

220. *Id.*

221. Annmarie Erickson, *The DIA Here to Help Detroit—But It's Not Here to Be Raided*, FREE PRESS (Nov. 17, 2013), [www.freep.com/article/20131117/OPINION05/311170064/detroit-bankruptcy-kevyn-orr-dia-institute-of-arts](http://www.freep.com/article/20131117/OPINION05/311170064/detroit-bankruptcy-kevyn-orr-dia-institute-of-arts).

sell art currently held in storage.<sup>222</sup> A third possibility is to sell art to other American or foreign museums in order to at least keep the art in public view.<sup>223</sup> Critics, however, doubt the plausibility of this approach.<sup>224</sup> American museums do not have the acquisition funds to purchase other museums' more expensive pieces, and even if they did, they would likely refuse based on ethical reasons.<sup>225</sup> For example, Walter A. Liedtke, a curator at the Metropolitan Museum of Art, recently said that "his curatorial staff would quit if the Met bid on anything from the DIA . . . ."<sup>226</sup>

Finally, some suggest monetizing art by using it as collateral.<sup>227</sup> However, critics ask where cities going through bankruptcy will find the money to repay the loans and argue that such a proposal would place collections in a deal over which the museum will have "no control of the outcome—and that's a bad deal."<sup>228</sup>

#### IV. CONCLUSION

The 128-year-old DIA reminds Detroiters—and Michiganders as a whole—of the cultural and financial glory that Detroit once had, and is now striving to reclaim. Selling pieces from the museum's world-renowned collection would not only have been a blow to the museum specifically, but would have been a cultural set-back for the City and the entire state as a whole. Thanks to the Grand Bargain and the City's ability to come to a settlement with its creditors, the DIA is now removed from the City of Detroit's management and the art collection is safe. However, museums must take heed from the mistakes of the DIA and other city-owned museums. The DIA's entangled business relationship with the City of Detroit and its complicated operation agreement with the City provides a glaring example to other museums for how *not* to protect a collection properly. Moving forward, museums must provide a clear manifestation of intent to create a charitable trust when drafting

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222. *Id.*

223. Judith H. Dobrzynski, *Delusions in Detroit*, WALL ST. J. (Dec. 9, 2013, 5:40 PM), <http://online.wsj.com/news/articles/SB1000142405270230409610457924249096824858>.

224. *Id.*

225. *Id.*

226. *Id.*

227. Mark Stryker & John Gallagher, *The Art of the DIA Deal: Orr Must Get Cash Out of Collection Without Selling It*, DETROIT FREE PRESS (Oct. 14, 2013, 1:53 PM), <http://www.freep.com/article/20131013/OPINION05/310130052/Detroit-bankruptcy-art-Detroit-Institute-of-Arts-DIA>.

228. Dobrzynski, *supra* note 223.

operating agreements in order to protect art for future generations to come.