

Local Oversight by State Audit

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The relationship between state and local governments stands at a crossroads. In recent years, state legislatures across the country have intervened aggressively in local affairs, part of a broader wave of preemption that has upended traditional norms of local autonomy. At the same time, legislatures have disregarded other areas of local regulation—including areas where state intervention might be welcomed by local residents—and are frequently inattentive to existential challenges affecting local governments. Cities and counties face intersecting resource, capacity, and turnover crises. They struggle to raise revenue, retain employees, and provide bare services. And they operate in an environment of heightened institutional mistrust. Against this backdrop, local communities veer between seeking support and fearing retribution from their state governments.

Yet this narrative tells only part of a larger story. State governments are diffuse institutions, and other state-level actors have quietly come to play increasingly influential roles in the subfederal system. One such actor is the state auditor, an independent executive official who has assumed a position of relative trust at a time of widespread institutional suspicion. State auditors are granted vast powers to interrogate local-government affairs. Through a particular type of audit—performance audits, which examine the effectiveness of local practice—the state auditor can pull back the veil of local administration by reviewing local policies, scrutinizing local decisions, and suggesting governance reforms to cities, counties, and local agencies.

In this manner, performance audits are conduits of state-local policy-making that differ in important ways from traditional modes of state oversight. In contrast with legislative preemption, performance audits enable individualized state interventions into the weeds of local governance. They are, perhaps, just another threat to local autonomy. Or perhaps they represent something entirely different: a more nuanced, targeted method for state and local officials to communicate, a mechanism by which state auditors—who promise the transparency, vision, and expertise that local bodies often lack—

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assist those struggling local governments so often ignored by other state actors.

This Article is the first to explore the local-audit regime that operates across the United States today. Drawing upon an original dataset of hundreds of audit documents, it argues that performance audits may offer a profitable balance between the virtues and vices of localism, thus forging a system by which states can meaningfully shape local policy without infringing upon local democracy. Yet audits are more impactful in some communities than they are in others, a reminder that governance problems do not afflict local institutions equally and that one-size-fits-all solutions might neglect realities on the ground.

The Article concludes with concrete suggestions for reform, each drawn from an approach already tested elsewhere in the audit ecosystem. In doing so, it calls for deeper engagement with public auditing regimes—an opportunity, more broadly, to explore diverse local entities and the heterogeneous world of state oversight they inhabit.

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Introduction

How do states speak to local governments? By most accounts, the question begs an obvious answer: a state speaks to subordinate local governments through its legislature, the mouthpiece by which a state empowers, directs, advises, and constricts local action. Legislatures command a prominent historical position in the realm of local government law.¹ Today as well, a local community’s legal force is viewed predominantly through a lens of state legislative oversight.² Indeed, given that state legislatures have in recent years unleashed a wave of partisan, arguably punitive exercises of local preemption—dubbed “the new preemption” by legal scholars³—it would seem that their voice in local affairs has never been stronger.

1. The canonical local-government case, for example, involved an act of the Pennsylvania legislature. See *Hunter v. City of Pittsburgh*, 207 U.S. 161, 174 (1907).

2. See *infra* Section III.A.

3. See Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997 (2018); see also Richard C. Schragger, *The Attack on American Cities*, 96 TEX. L. REV. 1163,

The conventional view is not strictly wrong. But it is incomplete. As legislatures have assumed a more partisan and erratic role in the subfederal system, other state institutions have risen to fill the void.⁴ Sometimes it is the governor herself who directly modulates local behavior.⁵ More often, however, other actors within the executive branch serve informally as the state’s local-level emissaries.⁶ This Article focuses on one such actor: the office of the state auditor, a relatively trusted broker in an era of widespread institutional suspicion who plays an increasingly significant role in the life of cities, counties, and other local government bodies.⁷ State auditors make under-the-radar decisions that can enhance (or diminish) a locality’s autonomy.⁸ They interrogate foundational structures of local government.⁹ And they evaluate, critique, and influence the exercise of local policy, in large part by employing *performance audits*, a tool that positions state auditors as frontline arbiters of local administration.

Performance audits animate local policy in ways big and small. One story comes from the city of Fairview, a small community in southwestern Missouri. Until 2022, Fairview managed and maintained its streets without any formal policy. Whenever issues arose and to the extent funding allowed, streets were patched by the city’s self-styled “maintenance man,” a part-time worker who also happened to be the city’s former mayor. This arrangement may not appear at all unusual for a local government of Fairview’s size. However, as the city clerk would later recall, a complicating factor soon entered the equation: the maintenance man held a number of personal grudges. As a byproduct of these grudges, he decided not to

1163-64 (2018) (discussing the rise of preemptive state legislation that constrains local government authority); Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 963-66 (2019) (same); Erin Adele Scharff, *Hyper Preemption: A Reordering of the State-Local Relationship?*, 106 GEO. L.J. 1469, 1473-74 (2018); Kellen Zale, *Part-Time Government*, 80 OHIO ST. L.J. 987, 1052 (2019) (noting this rise in state preemption).

4. See Jessica Bulman-Pozen, *Executive Federalism Comes to America*, 102 VA. L. REV. 953, 954, 963-65 (2016) (discussing empowered executives in state government as legislatures grow polarized). Bulman-Pozen is among a small number of legal scholars who have recently shed light on state executive branches. See *infra* note 194 and accompanying text.

5. See *infra* notes 195-198 and accompanying text.

6. For a parallel example, see Dave Owen, *Cooperative Subfederalism*, 9 U.C. IRVINE L. REV. 177, 186 (2018), which discusses state administrative agencies. See also *infra* notes 199-200 and accompanying text (explaining how state executive agencies encourage localities to adopt particular policies).

7. See *infra* notes 125-126 and accompanying text.

8. See, e.g., *Lucas v. Ashcroft*, 688 S.W.3d 204, 225-26 (Mo. 2024) (discussing the state auditor’s discretion in preparing and summarizing a fiscal note on a politically charged ballot measure designed to limit a city’s budgeting powers).

9. See, e.g., *Sand v. An Unnamed Loc. Gov’t Risk Pool*, 988 N.W.2d 705, 710 (Iowa 2023) (contesting and debating the governmental nature of a local entity); Keith Faber, *What Is a Performance Audit?*, OHIO AUDITOR OF STATE, https://ohioauditor.gov/performance/_docs/_OPT_FactSheet.pdf [https://perma.cc/37A9-G35A] (listing among the office’s focuses “analyz[ing] public . . . policy . . . to transform government entities of all shapes and sizes”); see also *infra* Part I.B (mapping the goals of performance-audit regimes across states).

maintain streets on the city’s east side. And so those streets were not maintained.¹⁰

In 2022, the Missouri State Auditor conducted a performance audit of Fairview. Broadly defined, performance audits evaluate the efficiency and effectiveness of government programs, policies, and operations. In contrast with financial audits, which are more widely known and employed, performance audits are not limited to a review of an entity’s financial statements, but rather, in fact, can venture far deeper into qualitative questions of governance.¹¹

The audit in Fairview took this approach. It looked at a number of the city’s administrative functions, examining over the course of months the city’s staffing, procurement, utility services, record retention, and more. At the conclusion of this process, the State Auditor issued a report in November 2022 that gave the city a report-card-style grade (“poor”) and provided a number of recommendations, among them that the city “[e]stablish a formal annual street maintenance plan.”¹² The recommendations were not binding; the city faced no direct penalties for ignoring them. Yet nevertheless, in early 2023, the city unveiled its first ever written maintenance policy. The policy set forth monthly repair priorities for city streets, along with a detailed four-year plan for future street projects. In the eyes of the city administration, the policy has proven a success. The maintenance man accepted the plan as “law” and began to operate in accordance with its terms, which kept him on the “straight and narrow,” as the city clerk would later recall.¹³

The following Article argues that this vignette from Fairview speaks to an important instrument of the subfederal system. Performance audits are not simply administrative tools; they are also vehicles of state power, fora for state-local conversations, and sources of local lawmaking. A performance audit can probe nearly any aspect of a local institution. It can scrutinize a government’s land-use planning,¹⁴ highlight deficits in local transparency and accountability,¹⁵ and dissect how cities manage a host of

10. Interview with Chelsie Dick, Clerk, City of Fairview (Aug. 21, 2023) (notes on file with author).

11. See *infra* Section I.A (defining performance audits in greater detail).

12. NICOLE GALLOWAY, MO. STATE AUDITOR, REP. NO. 2022-099, CITY OF FAIRVIEW MANAGEMENT ADVISORY REPORT 25 (2022), <https://auditor.mo.gov/AuditReport/ViewReport?report=2022099> [<https://perma.cc/MT5B-SWTE>].

13. Interview with Chelsie Dick, *supra* note 10.

14. See, e.g., Dave Yost, *Jefferson Township: Performance Audit*, OHIO AUDITOR OF STATE 10-11 (Sep. 29, 2015), https://ohioauditor.gov/auditsearch/Reports/2015/Jefferson_Township_15_Performance-Franklin.pdf [<https://perma.cc/K2W5-PL5D>].

15. See, e.g., SHERRILL F. NORMAN, FL. AUDITOR GEN., REP. NO. 2022-087, CITY OF GAINESVILLE REPORT: OPERATIONAL AUDIT 28-29 (Jan. 2022), https://flauditor.gov/pages/pdf_files/2022-087.pdf [<https://perma.cc/7YJV-VACH>].

public assets and services.¹⁶ It can challenge how local officials pursue development plans and how they create new regional districts and authorities.¹⁷ And it can criticize governance decisions at the forefront of public consciousness.¹⁸ In short, through a performance audit, a state-level auditor can interrogate quintessential functions of local government—those powers traditionally held and exercised at the local level.¹⁹

Quietly, performance auditing has gained a toehold in jurisdictions across the country. Public audit offices have steadily amassed authority in recent years, part of an international “audit explosion” identified in public-administration scholarship.²⁰ State auditors are broadly empowered by state constitutions, statutes, and courts to conduct performance audits.²¹ They hold vast discretion to define the scope and focus of audit engagements.²² And auditors are increasingly occupying positions of prominence in state government, sometimes in lockstep with a governor’s agenda and sometimes in opposition to it.²³ Performance audits are themselves also growing in purview and political hue. Recently, legislatures have enlisted them to carry out a variety of hot-button political assignments, from monitoring the accuracy of ballot machines in Tennessee to reviewing DEI (Diversity, Equity, and Inclusion) initiatives in Wisconsin.²⁴ Within this context, when a state auditor enters the realm of local government, she comes

16. See, e.g., NICOLE GALLOWAY, MO. STATE AUDITOR, REPORT NO. 2020-029, CITY OF MONROE CITY 15-16 (June 2020), <https://auditor.mo.gov/AuditReport/ViewReport?report=2020029> [<https://perma.cc/BJ2L-9X5Y>] (regarding policies on sale and development of city property); NICOLE GALLOWAY, MO. STATE AUDITOR, REPORT NO. 2019-019, VILLAGE OF FERRELVUE 24 (Mar. 2019), <https://auditor.mo.gov/AuditReport/ViewReport?report=2019019> [<https://perma.cc/Z84P-V6GK>] (regarding sale of village assets); SHERRILL F. NORMAN, FL. AUDITOR GEN., REP. NO. 2021-030, CITY OF GULF BREEZE: TIGER POINT GOLF CLUB ACQUISITION AND MANAGEMENT AND OTHER ACTIVITIES 9 (Sep. 2021), https://flauditor.gov/pages/pdf_files/2021-030.pdf [<https://perma.cc/QDN9-K9ES>] (regarding property acquisition); SHERRILL F. NORMAN, FL. AUDITOR GEN., REP. NO. 2017-198, PUTMAN COUNTY BOARD OF COMMISSIONERS, CLERK OF THE CIRCUIT COURT, AND SHERIFF’S OFFICE 9 (Apr. 2017), https://flauditor.gov/pages/pdf_files/2017-198.pdf [<https://perma.cc/6CPC-MWS3>] (discussing culvert installation and management).

17. See, e.g., NICOLE GALLOWAY, MO. STATE AUDITOR, REP. NO. 2019-114, CITY OF ST. LOUIS 11-12 (Nov. 2019), <https://auditor.mo.gov/AuditReport/ViewReport?report=2019114> [<https://perma.cc/CH6U-JPHU>] (recommending “a comprehensive economic development plan” and purpose-setting requirements “when evaluating the merits of [a community improvement] district”).

18. See, e.g., SHERRILL F. NORMAN, FL. AUDITOR GEN., REP. NO. 2018-038, CITY OF NORTH MIAMI 26 (Nov. 2017), https://flauditor.gov/pages/pdf_files/2018-038.pdf [<https://perma.cc/SC8T-27HY>] (recommending that the city establish certain housing-program policies and procedures).

19. See *infra* note 191 and accompanying text.

20. See *infra* Section I.B.

21. See *infra* Part I.

22. See *infra* Part I.

23. See *infra* Section III.A.

24. See TENN. CODE ANN. § 2-20-103 (2025); Joe Chrisman, *Letter to Joint Legislative Audit Committee, Proposed Audit of Diversity, Equity, and Inclusion Activities—Background Information*, STATE OF WIS. LEGIS. AUDIT BUREAU 1-2 (Apr. 2024), https://legis.wisconsin.gov/LAB/media/3745/043024_jac_dei_scope.pdf [<https://perma.cc/3556-SNU6>].

not as a wholly neutral observer, one divorced from the apparatus of state bureaucracy, but rather as a rare state actor granted tools to pull back the veil of local administration.

Behind the veil, as the auditor may discover, lies an institution in transition. The latest audit explosion comes at a time of widespread local unease. Local governments face intersecting resource, capacity, and turnover crises.²⁵ Many localities, rural ones in particular, struggle to provide basic services to their residents.²⁶ Some lack even the semblance of institutional structure.²⁷ Local officials report that their communities have been “abandoned to their own devices” and openly wonder what happens when a city can no longer raise revenue, retain employees, and provide bare services.²⁸ Yet at the same time, even as local governments are ignored by state actors, they have also been subject to invasive “new preemption” measures.²⁹ Local officials thus operate in a subfederal environment that lurches between state absenteeism and obstructionism.³⁰

Enter performance auditing. In contrast with legislative preemption, performance audits are individualized, executive-branch interventions into the weeds of local governance. They are, perhaps, just another threat to local autonomy. Or perhaps they represent something entirely different: a more nuanced, targeted way to advise and assist those struggling local governments so often ignored by state actors. As this Article will explore, performance audits pose both tangible risks and profound opportunities for local entities, with core tenets of localism implicated either way.

Yet audits in general—and performance audits in particular—are all but invisible in local-government literature. In focusing its attention predominantly upon national-level audit regimes, public-administration scholarship has overlooked the role of auditing in local government.³¹ Legal scholarship on local auditing is even slimmer; as a system, performance

25. See *infra* Section III.D; *infra* notes 244-246 and accompanying text.

26. See Ann M. Eisenberg, *Rural Blight*, 13 HARV. L. & POL’Y REV. 187, 209 (2018) (“Today’s rural America is characterized by minimally functioning rural local governments.”).

27. See, e.g., Interview with Wayne Sisseck, Mayor, Village of Deerfield (Sep. 21, 2023) (notes on file with author) (describing a municipality governed by a board made up of a resident, his daughter-in-law, and his friend, that meets irregularly on a neighbor’s porch, rarely creates or follows laws or policies, and performs most maintenance work through volunteer labor).

28. Interview with Brian Hattery, Auditor, City of Kenton (Apr. 14, 2023) (notes on file with author).

29. See *supra* note 3 and accompanying text.

30. See Daniel B. Rosenbaum, *Interlocal Power Roulette*, 99 IND. L.J. 417, 468 (2024).

31. See Laurence Ferry, Henry Midgley & Pasquale Ruggiero, *Regulatory Space in Local Government Audit: An International Comparative Study of 20 Countries*, 43 PUB. MONEY & MGMT. 233, 233 (2023) (“Studies have been undertaken of Supreme Audit Institutions, but there is a recognized gap . . . at the local government level.”); Laurence Ferry, Pasquale Ruggiero & Henry Midgley, *The Why, Who, and What of Public Sector Auditing*, in AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON 1, 3 (Laurence Ferry & Pasquale Ruggiero eds., 2022). A notable exception is the work of Professor Laurence Ferry, a British scholar who has been a leading voice on the major changes affecting local performance auditing in the United Kingdom.

auditing has been largely unexplored by commentators on local government law.³² Even so, performance and other nonfinancial audit types are often proposed as *solutions* to local problems. Scholars have suggested a variety of performance-style audits of local government, including “race audits,” “equity audits,” and “citizen audits.”³³ Audits have been recommended as oversight mechanisms for local prosecutors, drug courts, traffic courts, and police agencies.³⁴ These varied proposals all position auditing as a legal tool of governance, one capable of monitoring and influencing behavior outside of the traditional, perhaps blunter models of legislative control and judicial review.³⁵ Yet in floating audits as a possible tonic, legal scholarship has not yet considered how subfederal audit institutions are structured, empowered, and operated.

This Article begins that task. It draws upon comparative international research, local-government theory, interviews with forty-four local officials, and an original dataset of hundreds of primary documents to construct what is believed to be the largest study of local performance auditing and its institutional outcomes to date. The Article begins in Part I with a thorny foundational question: what is a performance audit, exactly, and what are the contours of a performance-auditing scheme? In answering this question, Part I aims to capture how performance audits are conceived and employed in jurisdictions across the United States today. While varied in nature and difficult to quantify, it appears that auditors in many states, if not in most states, hold broad authority to conduct local audits, including

32. From a review of published secondary sources, it appears that only a 1993 report on joint service delivery raised the concept of local performance auditing. See Larry A. Bakken, *Joint Delivery of Services*, 25 URB. L. 935, 938 (1993).

33. R.A. Lenhardt, *Race Audits*, 62 HASTINGS L.J. 1527, 1534 (2011) (explaining “race audit[s]”); Christopher J. Tyson, *From Ferguson to Flint: In Search of an Antisubordination Principle for Local Government Law*, 34 HARV. J. RACIAL & ETHNIC JUST. 1, 51-52 (2018) (same); K. Sabeel Rahman, *Policymaking as Power-Building*, 27 S. CAL. INTERDISC. L.J. 315, 364-65 (2018) (considering “citizen auditing”). A variety of performance-style audits have also been advanced in scholarship on the federal administrative state. See, e.g., Cass R. Sunstein, *Sludge and Ordeals*, 68 DUKE L.J. 1843, 1881-82 (2019) (proposing “sludge audits”).

34. Max Deitchler, *You Can't Manage What You Don't Measure: An Evaluation of Arkansas's Drug Courts*, 64 ARK. L. REV. 715, 743 (2011) (regarding drug courts in Arkansas); Maria Ponomarenko, *The Small Agency Problem in American Policing*, 99 N.Y.U. L. REV. 202, 276 (2024) (advocating for expanded state audit oversight of local police); Justin Weinstein-Tull, *Traffic Courts*, 112 CAL. L. REV. 1183, 1223-24 (2024) (advocating for audit and other state oversight of local traffic courts); Christina Parajon, *Discovery Audits: Model Rule 3.8(d) and the Prosecutor's Duty to Disclose*, 119 YALE L.J. 1339, 1344-45 (2010) (considering prosecutorial discretion).

35. See, e.g., Lenhardt, *supra* note 33, at 1534 (describing audit as valuable, in part, because it operates “completely independent of courts”); Weinstein-Tull, *supra* note 34, at 53 (describing audit as useful where judicial review is unfeasible). Similarly, legal scholarship that advocates for more auditing in federal government also situates audits within and against formal governance structures. See, e.g., David Ames, Cassandra Handan-Nader, Daniel E. Ho & David Marcus *Due Process and Mass Adjudication: Crisis and Reform*, 72 STAN. L. REV. 1, 70 (2020); Mariano-Florentino Cuéllar, *Auditing Executive Discretion*, 82 NOTRE DAME L. REV. 227, 231-32 (2006); Rachel E. Barkow, *Overseeing Agency Enforcement*, 84 GEO. WASH. L. REV. 1129, 1176 (2016).

those that push at the outer reaches of performance auditing's theoretical tether.

As Part II demonstrates, these broad auditor powers do not exist in a vacuum but instead have real impact on the governance decisions of local communities. Part II employs an original dataset of 231 audit recommendations, derived from hundreds of public-records requests, to scrutinize what happens after an auditor has issued her recommendations or findings. As in Fairview's case, local governments are rarely mandated by law to implement these conclusions.³⁶ Do they actually take seriously and consider the auditor's recommendations nevertheless? Or alternatively, are an auditor's findings more performative than consequential?³⁷ Public-administration literature does not tackle these questions.³⁸ Local-government scholarship fares no better, a reflection on the discipline's inattention to governance outcomes in the auditing arena and beyond.³⁹

Part II reveals that local governments *do* adopt a majority of audit recommendations, thereby translating state auditors' policy positions into local action. Yet localities of all shapes and sizes also decline to adopt recommendations, indicating, plainly, that the state auditor's word is not gospel in this vertical relationship. Taken together, as Part II argues, the data indicates a throughline of local deliberation at the end of the audit process. Local officials seem to take audit recommendations seriously, whether they ultimately implement them or not. They do not view recommendations as bluntly mandatory or as purely performative. They position recommendations instead somewhere between these bimodal poles and often,

36. Colin Scott, *Speaking Softly Without Big Sticks: Meta-Regulation and Public Sector Audit*, 25 LAW & POL'Y 203, 211 (2003); see also Interview with April Baxter, Clerk, Village of Ferrelview (April 6, 2023) (notes on file with author) (regarding nonmandatory recommendations in Missouri); Interview with Linda Haffecke, Clerk, City of Huntsville (March 30, 2023) (same).

37. See *infra* note 149 and accompanying text.

38. Public-administration scholarship considers auditee perceptions of the audit process, but only rarely asks how these perceptions translate into action once an audit is complete. See Haslida Abu Hasan, Jane Frecknall-Hughes, David Heald & Ron Hodges, *Auditee Perceptions of External Evaluations of the Use of Resources by Local Authorities*, 29 FIN. ACCT. & MGMT. 291, 292-93 (2013) (citing Michael Power, *Evaluating the Audit Explosion*, 25 LAW & POL'Y 185, 199 (2003)) ("Power . . . explicitly called for more empirical research on auditees."). Regarding auditee perceptions, see Dennis de Widt, Iolo Llewelyn & Tim Thorogood, *Stakeholder Attitudes Towards Audit Credibility in English Local Government: A Post-Audit Commission Analysis*, 38 FIN. ACCT. & MGMT. 29, 30 (2022); and Age Johnsen, *Public Sector Audit in Contemporary Society: A Short Review and Introduction*, 35 FIN. ACCT. & MGMT. 121, 123 (2019). Regarding implementation of audit recommendations, see Johnsen, *supra*, at 123, which notes that "[t]here has been, and still is, a need for more evidence on the workings and impacts of audit in the public sector"; and Stephen Aikins, *Determinants of Auditee Adoption of Audit Recommendations: Local Government Auditors' Perspective*, 24 J. PUB. BUDGETING, ACCT. & FIN. MGMT. 195, 198 (2012), which notes a lack of research on "auditee adoption of audit recommendations").

39. Studying outcomes poses particular challenges in local government, where legal regimes fail to account for how the impacts of their policies can be later assessed. See, e.g., Barkow, *supra* note 35, at 1171. Moreover, local researchers face a daunting challenge in excavating generalizable data. See, e.g., Ava Ayers, *The Impossibility of Local Police Reform*, 50 FORDHAM URB. L.J. 609, 643-44 (2023) (discussing policing data).

although not always, consider recommendations on their own merits and within the context of local needs.

After Part II constructs the modern regime of local performance auditing, Part III turns to its normative stakes. For local institutions living under the shadow of state authority, performance auditors are unique executive actors within the familiar narrative of state control. This Part positions performance auditing against this backdrop of state executive power. It then draws upon audit theory, local-government theory, and interviews with local officials to reveal that performance audits are procedurally invasive yet also capable of delivering substantive local benefits. Part III posits that performance auditing might offer a profitable balance between the virtues and vices of localism. Audits can thread a needle between local parochialism and top-down state managerialism through a softer preemption model, one that nudges rather than mandates local action. But Part III ends with a word of caution: while communities large and small adopt audit recommendations at similar rates, those with more resources are significantly more likely to adopt recommendations than those facing resource constraints. The distinction highlights profound differences between local institutions, a reminder that governance problems do not afflict them equally and that one-size-fits-all solutions might neglect realities on the ground.

Based on these findings, Part IV offers discrete suggestions for reform. It proposes structural changes designed to expand and institutionalize performance-audit regimes, but it aims to do so conscientiously, with an eye towards refining places where the practice is opaque, ineffective, politicized, and inequitable. The Article concludes in Part V by raising several pressing yet unsettled questions—both for policymakers who shape evolving audit systems and for scholars of local government, for whom auditing can serve as a gateway for deeper engagement with diverse local entities and the heterogeneous world of state oversight they inhabit.

I. Performance Audits in Theory and Practice

This Article begins with a central descriptive question: what, exactly, is a performance audit? And how do performance-auditing systems manifest on the ground? This Part endeavors to answer these questions, first by canvassing how performance audits are understood in theory and in law, and second by sketching a snapshot of existing performance-auditing regimes in jurisdictions across the United States today.

A. Defining Performance Audits

To a degree, the term “performance audit” is an easy one to define. It connotes an audit—a formal, independent examination of internal controls

against a set of established standards⁴⁰—that evaluates the “three Es” of an organization’s programs and operations: their economy, efficiency, and effectiveness.⁴¹ This definition has become canonical in recent decades. It was coined by the U.S. Government Accountability Office, which introduced the modern auditing regime in the early 1970s, and it has since made its way around the world, where the definition has entered the lexicon of audit schemes across international jurisdictions.⁴² Unlike a financial audit, which assesses the quality of an entity’s financial reports,⁴³ or a compliance audit, which verifies adherence to formal rules,⁴⁴ a performance audit theoretically focuses less on numbers and rules and more on internal programs, processes, and controls.⁴⁵ In theory, a performance audit assesses these programs, processes, and controls against objective evaluative

40. See *Sand v. Doe*, 959 N.W.2d 99, 107 (Iowa 2021) (quoting *Audit*, BLACK’S LAW DICTIONARY (11th ed. 2019)); see also Carlos Mendez & John Bachtler, *Administrative Reform and Unintended Consequences: An Assessment of the EU Cohesion Policy ‘Audit Explosion’*, 18 J. EUR. PUB. POL’Y 746, 748 (2011) (describing performance auditing as complementing “quantifiable, numerical indicators employed in financial accounting” with “output-oriented, qualitative indicators”); Fla. Att’y Gen. Op. No. 2004-33 (July 2, 2004), 2004 WL 1490188 at *2 (describing an audit as “an examination” and “verification of the accuracy of an accounting or inventory”); Cuéllar, *supra* note 35, at 252 (describing an audit as “using an explicit standard fixed in advance, with the results announced to the public”).

41. See Tarek Rana, Ileana Steccolini, Enrico Bracci & Dessalegn Getie Mihret, *Performance Auditing in the Public Sector: A Systematic Literature Review and Future Research Avenues*, 38 FIN. ACCT. & MGMT. 337, 338, 345 (2022); Lee Parker, Kerry Jacobs & Jana Schmitz, *New Public Management and the Rise of Public Sector Performance Audit*, 32 ACCT., AUDITING, & ACCOUNTABILITY J. 280, 281 (2019); Mouna Hazgui, Petra Triantafyllou & Signe Elmer Christensen, *On the Legitimacy and Apoliticality of Public Sector Performance Audit: Exploratory Evidence from Canada and Denmark*, 35 ACCT., AUDITING & ACCOUNTABILITY J. 1375, 1376 (2022); Ferry et al., *supra* note 31, at 8.

42. See Sarowar Hossain, *From Project Audit to Performance Audit: Evolution of Performance Auditing in Australia*, 9 J. ACCT. RSCH. & AUDIT PRAC. 20, 21 (2010). The Government Accountability Office publishes the Yellow Book, which sets forth standards for performance and other auditing types. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-24-106786, GOVERNMENT AUDITING STANDARDS (2024); see also Donald Samelson, Suzanne Lowensohn & Laurence E. Johnson, *The Determinants of Perceived Audit Quality and Auditee Satisfaction in Local Government*, 18 J. PUB. BUDGETING, ACCT., & FIN. MGMT. 139, 143 (2006) (discussing the ubiquity of the Yellow Book standards). In 1986, “performance audit” was chosen by the International Congress of Supreme Audit Institutions as the term for audits of economy, efficiency, and effectiveness of government operations. Hossain, *supra*, at 22.

43. Sandra Tillema & Henk J. ter Bogt, *Does an Agency-Type of Audit Model Fit a Stewardship Context? Evidence from Performance Auditing in Dutch Municipalities*, 32 FIN. ACCT. & MGMT. 135, 135 (2016).

44. Angela Hecimovic & Nonna Martinov-Bennie, *Audit Report Construction: Public Sector Organisation Perspectives Within a Non-Financial Information Context*, 35 J. PUB. BUDGETING, ACCT., & FIN. MGMT. 172, 173 (2023); see also Mendez & Bachtler, *supra* note 40, at 748 (describing compliance audits as focusing on “legal and administrative compliance”); Miri Berlin, Student Article, *Environmental Auditing: Entering the Eco-Information Highway*, 6 N.Y.U. ENV’T. L.J. 618, 620 (1998) (comparing performance and compliance audits).

45. Financial, compliance, and performance are considered the three main types of auditing. See Laurence Ferry, Pasquale Ruggiero & Henry Midgley, *Where Is Public Sector Auditing: A Comparative Analysis*, in AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON, *supra* note 31, at 149, 154.

metrics and offers a set of neutral findings and recommendations that helps the audited entity implement sound managerial reforms.⁴⁶

In practice, a performance audit plays out much the same as any other audit modality. It begins with the engagement of an auditor, a trained and often certified professional who is tasked with investigating an organization's conduct in a particular area (say, financial management) over a particular period of time (e.g., the prior fiscal year).⁴⁷ Typically, the auditor will first provide the organization an engagement letter that sets forth the audit's parameters—how the audit will proceed, what information might be requested, and most crucially, what issues the audit will explore and seek to appraise.⁴⁸ An engagement letter also starts the clock; it initiates the interactive, back-and-forth process of an external investigation. Over a period of weeks or months (or sometimes, years), the auditor interviews the organization's staff, requests documents, and poses questions to its leadership.⁴⁹ The audit process might be brief, even perfunctory. But some audits dive deep into an organization's operations, coloring the process with a reciprocal hue: auditors seek to understand intricacies of the organization, a task that requires longitudinal conversations with the organization's leadership, who, through these conversations, are motivated to explain their unique challenges and justify their governance decisions—even as they are also given an opportunity to learn from the auditor's generalized body of knowledge.⁵⁰

However an audit proceeds, the process usually ends with the auditor producing a formal report, which is designed with two audiences in mind: both an internal audience (i.e., the organization's leadership) and an external one (investors, interested stakeholders, and members of the public).⁵¹ The report will often contain a descriptive component that explains how the organization functions and that contextualizes the legal and financial environment in which it operates.⁵² The heart of the report consists of a prescriptive discussion, however, organized around a one-two punch of

46. See Tillema & ter Bogt, *supra* note 43, at 137; Hecimovic & Martinov-Bennie, *supra* note 44, at 173.

47. See, e.g., Michael Ray Harris, *Promoting Corporate Self-Compliance: An Examination of the Debate over Legal Protection for Environmental Audits*, 23 *ECOLOGY L.Q.* 663, 675-76 (1996) (discussing the selection of an auditor); William McLucas & Paul Eckert, *The Securities and Exchange Commission's Revised Auditor Independence Rules*, 56 *BUS. L.* 877, 907 n.169 (2001) (regarding scope setting in internal audits).

48. See, e.g., Letter from Michael J. Gomez, Audit Manager, Off. of the Fla. Auditor Gen. to Joseph Abruzzo, Clerk of the Cir. Ct. and Comptroller, Palm Beach Cnty. (Mar. 25, 2021) (on file with author).

49. This is a simplified account, of which a fuller picture can be drawn from the U.S. Government Accountability Office's Yellow Book. Regarding fieldwork guidance that speaks to an audit's investigative process, see U.S. GOVT ACCOUNTABILITY OFF., *supra* note 42, at 182-220.

50. See, e.g., Lenhardt, *supra* note 33, at 1551 (discussing the concept of parties to an audit process being part of a shared "community of inquiry").

51. For performance audit reporting standards, see U.S. GOVT ACCOUNTABILITY OFF., *supra* note 42, at 222-238.

52. See *id.* at 229 (discussing "[a]ppropriate background information").

findings and recommendations.⁵³ Findings highlight areas of weakness or deficiency, as measured against objective metrics.⁵⁴ Recommendations build upon these findings by suggesting how the organization might go about correcting them.⁵⁵

Despite following this general model, however, local performance audits are unique in four important ways. *First*, these audits are conducted not by a private accounting firm but rather by a purely public agency: the office of the state auditor, which is considered in many states an independent agency within the executive branch.⁵⁶ State auditors are often elected statewide and constitutionally enshrined.⁵⁷ Their independence is further secured by a tenet central to public auditing: that audit offices must be allowed to operate autonomously, free of political influence, in order to safeguard the legitimacy and credibility of their work.⁵⁸ Threats to an auditor's independence are viewed with alarm. For this reason, while other political actors can (and do) encroach upon an auditor's turf, such encroachments are considered manifest departures from the accepted norm.⁵⁹ State auditors operate on a day-to-day basis with a sphere of autonomy that other public offices lack, which grants them a unique oversight pedestal within the executive branch of state government.

Second, while performance audits sometimes begin for reasons that a locality can anticipate—for instance, they are sometimes compelled by law

53. See *id.* at 227-229. The Yellow Book also discusses “conclusions,” which are “logical inferences about the program based on the auditors’ findings, not merely a summary of the findings.” *Id.* at 229.

54. See *id.* at 228.

55. See *id.* at 228-29; see also Vincent J. Napoleon & Shanelle Henry, *Defense Contract Audit Agency’s Access to Contractor Internal Audit Reports: Is Newport News Still the Standard?*, 42 PUB. CONT. L.J. 517, 543 (2013) (discussing internal audits); Kerry E. Rodgers, *The Iso Environmental Standards Initiative*, 5 N.Y.U. ENV’T L.J. 181, 184-85 (1996) (discussing private environmental auditing); William Fields & Thomas Robinson, *Legal and Functional Influences on the Objectivity of the Inspector General Audit Process*, 2 GEO. MASON INDEP. L. REV. 97, 106-07 (1993) (discussing inspector general auditing); Dan Stengle & James Rhea, *Putting the Genie Back in the Bottle: The Legislative Struggle to Contain Rulemaking by Executive Agencies*, 21 FLA. ST. U. L. REV. 415, 422 (1993) (regarding public financial audits in Florida); Mendez & Bachtler, *supra* note 40, at 748 (discussing the “core functional properties of audit”).

56. See, e.g., *Hudson v. Kelly*, 263 P.2d 362, 366 (Ariz. 1953) (noting and affirming this status).

57. See, e.g., WASH. CONST. art. III, § 20; IDAHO CONST. art. IV, § 1; MINN. CONST. art. V, § 1.

58. Ferry et al., *supra* note 31, at 235 (noting independence as the “cardinal value within democratic jurisdictions”); see also Sheila Ellwood & Javier Garcia-Lacalle, *New Development: Local Public Audit—The Changing Landscape*, 32 PUB. MONEY & MGMT. 389, 390 (2012) (“The independence of the auditor is seen as the cornerstone of auditing theory.”).

59. See Patricia Salkin & Zachary Kansler, *Ensuring Public Trust at the Municipal Level: Inspectors General Enter the Mix*, 75 ALBANY L. REV. 95, 107 (2012) (“Ensuring independence is the cornerstone consideration of the [audit] appointment process.”). When Iowa’s legislature passed a law to restrict the state auditor’s independence, see *infra* note 142 and accompanying text, a majority of auditors across the country—representing both political parties and diverse audit regimes—came out in opposition to the bill. See Letter from John C. Geragosian, President, Nat’l State Auditor’s Assoc. (Mar. 8, 2023) (on file with author).

or requested by the local government itself⁶⁰—these audits are more frequently instigated by varied and unpredictable forces. Audits are initiated by the governor, the state legislature, and even by local residents, who in some jurisdictions can kickstart the process by submitting a petition with signatures from as few as five percent of local voters.⁶¹ Nevertheless, at baseline, state auditors generally hold discretion

to select their audit targets and questions, a role that ultimately gives them the loudest generative voice in defining where performance-audit regimes focus their attention.⁶² The state auditor can decide which governmental body to audit, when the audit will begin, and what programs and practices will come within the audit's scope.⁶³

Third, local governments are usually obligated to pay for an audit engagement—even if the audit is sprung upon them suddenly and spurred by political forces outside of their control.⁶⁴ These costs are assessed at an hourly rate and difficult to anticipate in advance, which can pose real strain on a smaller government's budget.⁶⁵ An extreme example comes from Clay

60. For example, several local officials interviewed for this Article discussed audits initiated at the request of the municipality. *See* Interview with Sam Sutherland, Manager, City of Portsmouth (May 1, 2023) (notes on file with author); Interview with Patrick Ginnetti, Eng'r, Mahoning Cnty. (Apr. 27, 2023) (notes on file with author); Interview with Nancy Nix, Auditor, Butler Cnty. (Mar. 30, 2023) (notes on file with author).

61. For an example from Florida law, see FLA. STAT. ANN. § 11.45(3) (West 2025), regarding audits requested by the legislature; and *id.* § 11.45(5), regarding resident petition audits. *See also infra* note 209 and accompanying text (regarding governor-requested audits). Regarding petition audits, see Interview with Kristy Keithley, Clerk, City of Clever (Apr. 4, 2023) (notes on file with author); Email from Mary Lou Hildreth, Clerk, City of Hampton to Deborah Boxerman (March 31, 2023) (on file with author); *Petition Audits*, OFF. OF THE MO. STATE AUDITOR, <https://auditor.mo.gov/petition-audits#O6> [<https://perma.cc/GJV4-9UJP>] (discussing signature requirements); and *Requirements and Process for Citizen-Petition Audits*, OK. OFF. OF THE STATE AUDITOR & INSPECTOR (2024), <https://www.sai.ok.gov/wp-content/uploads/2024/01/Special-Audit-Petition-Information.pdf> [<https://perma.cc/RT86-G4WY>] (same).

62. *Cf.* Stengle & Rhea, *supra* note 55, at 422 (“[T]he Auditor General may, at any time, conduct a performance or financial audit of any governmental entity, including all units of local government.”).

63. *See* Zahirul Hoque & Thiru Thiagarajah, *Local Government Auditing in Australia, in* AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON, *supra* note 31, at 13, 19 (“The Auditor-General can decide what to audit, how to conduct the audit, and when to do it.”); Hecimovic & Martinov-Bennie, *supra* note 44, at 182-83. But not all auditors can select audit targets with unfettered discretion. Some audit regimes specify what programs and entities can come within the office's purview and what circumstances can trigger an audit engagement. *See, e.g.*, N.J. STAT. ANN. § 52:15C-8 (West 2025).

64. *See* FLA. STAT. ANN. § 11.45 (West 2025); OHIO REV. CODE ANN. § 117.13(C) (West 2025) (localities pay audit costs in Ohio, yet a support fund exists to reduce hourly rates). At times, moreover, localities are obligated to pay for the audit of independent local bodies that it created or over which it exercises control. *See, e.g.*, Mo. Att'y Gen. Op. No. 53-91 (Aug. 5, 1991), 1991 WL 574295 at *1.

65. *See, e.g.*, KENTON CITY COUNCIL, RECORD OF PROCEEDINGS 5 (Nov. 24, 2014) (on file with author) (questioning whether a locality can afford a \$35,000 audit while running a budget deficit); Interview with Edward Sluys, City Att'y, City of Kimmswick (Aug. 7, 2023) (notes on file with author) (commenting that some governments need to enter into payment plans for audit charges). However, some local officials report that a performance audit actually yielded significant cost savings. *See* Interview with Ben Garlich, Mayor, City of Middlefield (May 25, 2023) (notes on

County, Missouri, where a performance audit took four years and cost \$230,000 to complete.⁶⁶ Another sizeable bill was paid by Gulf Breeze, Florida, where a 2018 audit cost the city \$108,722 by the time it finished in 2020.⁶⁷ While the underlying rate is often established by state law, an audit's ultimate cost is determined by the auditor's office, which holds discretion to choose how long an audit engagement lasts and how many staff are assigned to it.⁶⁸ Together, these first three distinguishing elements share a core commonality: each situates performance auditing as a uniquely public oversight institution that places the auditor, not the auditee, at its operative core.

Fourth, the final unique element of performance auditing returns us to its canonical definition. Substantively, a performance audit can direct its attention almost anywhere within an auditee's system of government because its definitional three Es—economy, efficiency, and effectiveness—do not limit auditors to particular public functions or norms.⁶⁹ By way of comparison, consider the archetypal auditing form, financial audits, which are tied inherently to a quantitative tether: they focus generally on an entity's financial statements, which comprise a limited set of written documents that can be evaluated against well-established accounting principles.⁷⁰ In contrast, a performance audit can examine any program or practice, written or unwritten, with the potential to range far afield from any quantitative metric.⁷¹ Especially elusive is its definitional third E, effectiveness, which inevitably poses tricky implementation challenges.⁷²

file with author) (reporting that a performance audit cost \$50,000 but later saved the municipality \$400,000 annually).

66. Interview with Victor Hurlbert, Auditor, Clay Cnty. (Apr. 25, 2023) (notes on file with author).

67. Letter from Cherry Fitch, *infra* note 89.

68. *See, e.g.*, Interview with Leslie Guyer, Clerk, City of Gulf Breeze (March 30, 2023) (notes on file with author); Email from Leslie Guyer, Clerk, City of Gulf Breeze to Daniel Rosenbaum, Assistant Professor, Mich. State Univ. Coll. of L. (March 30, 2023) (on file with author).

69. *See* Hossain, *supra* note 42, at 21 (performance audits “lack the specific, well-defined boundaries of financial statement audits”); Mendez & Bachtler, *supra* note 40, at 748 (performance accounting trades “[t]he easily quantifiable, numerical indicators employed in financial auditing” for “output-oriented, qualitative indicators”).

70. *See* René Geissler, *Local Government Auditing in Germany*, in AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON, *supra* note 31, at 73, 77 (describing the core scope of a financial audit).

71. *See infra* notes 324-328 and accompanying text (on the ability of audits to uncover unwritten and informal systems); *cf.* Scott, *supra* note 36, at 204 (audit institutions “continue to struggle to specify what performance audit is supposed to assess”).

72. *See* Hossain, *supra* note 42, at 35 (arguing that “the evaluation of effectiveness is an inherently subjective process”).

What constitutes an effective policy?⁷³ Who makes this determination?⁷⁴ And for purposes of an audit, how can an outside observer truly assess the effectiveness of an internal government practice?⁷⁵

These questions yield a range of answers and a wide variety of performance-auditing schemes.⁷⁶ By virtue of its indeterminacy, the effectiveness inquiry serves as a blank canvas upon which auditors and legislators can paint their own measurement criteria and governance goals. In Utah, for example, performance audits assess values such as “honesty,” “integrity,” and “adherence to statute.”⁷⁷ Montana law directs auditors to “emphasi[ze] . . . public health, safety, and welfare.”⁷⁸ Performance audits in Arizona ask whether “desired results are being achieved.”⁷⁹ And Wyoming instructs auditors to consider a variety of broad factors, including whether the agency is duplicating services, acting in accordance with legislative intent, and operating programs where the same results could be reached through alternative means.⁸⁰ Each of these state regimes arguably shares a common goal, rooted in performance auditing’s canonical definition: to evaluate the effectiveness of a government program, process, or operation. Yet each locates its approach in differing qualitative metrics.

As these examples only begin to illustrate, performance auditing is a far more heterogenous concept than its core definition might initially imply.⁸¹ Audit regimes do not place shared definitional guardrails around the “effectiveness” inquiry. Indeed, the above examples notwithstanding, most states do not define the term at all.⁸² The end result is a constellation of approaches to the canonical three Es that vary based on state statutory language, and, more commonly, on the prerogative of the individual state auditor. Likewise, as a consequence, the potential reach of a performance

73. Cf. *Hearing on Financial Report and Audit in Local Authorities Before the House of Commons Comm. on Levelling Up, Hous., and Cmty.*, May 15, 2023, at 9 (statement of Sarah Rapson, Deputy Chief Exec. and Exec. Dir. Supervision, Fin. Reporting Council), <https://committees.parliament.uk/oralevidence/13153/pdf/> [<https://perma.cc/RSF6-2JL4>] (criticizing the lack of a “common view as to the purpose of local audit”).

74. If not otherwise guided by the law, the auditor presumably makes such determinations, yet in doing so calls into question the traditionally envisioned role of an auditor as an “independent watchdog.” See Tillema & ter Bogt, *supra* note 43, at 135-36.

75. Cf. William S. Fields, *The Enigma of Bureaucratic Accountability; Monitoring Government Inspectors General and the Search for Accountability*, 43 CATH. U. L. REV. 505, 518 (1994) (noting that objectively evaluating performance in the public sector is difficult because, “with respect to government goods and services, there is considerable variance in their perceived value” depending on an individual’s “political persuasion”).

76. See Tillema & ter Bogt, *supra* note 43, at 136; Rana, *supra* note 41, at 346 (regarding differences between performance-audit regimes); Ferry et al., *supra* note 45, at 156 (providing a comparative table).

77. UTAH CODE ANN. § 17-19A-206 (West 2025).

78. MONT. CODE ANN. § 2-8-112 (2025).

79. ARIZ. REV. STAT. ANN. § 41-1278 (2025).

80. WYO. STAT. ANN. § 28-8-107 (2025).

81. See Parker et al., *supra* note 41, at 285; Rana, *supra* note 41, at 338 (describing the effectiveness of performance auditing as “chameleon-like” and “diffus[e] . . . in practice”).

82. Illustrative are the statutory schemes explored in Section I.B.1, *infra*.

audit can differ between states and also across audit administrations, as different auditors place their own interpretive marks on the concept. Yet such definitional muddles should not be confused for legal insignificance. Even as its exact contours remain subject to interpretation, the label itself—“performance audit”—nevertheless appears regularly in public records, as a term of art in statutes, budgets, guidelines, and reports.⁸³ Legislatures expressly empower performance audits, executives promote them, auditors conduct them, and auditees are impacted by them. These institutional actors all consider performance auditing a distinctive system of managerial evaluation. Therefore, as much as its outer limits might be hazy in theory, performance auditing is an established intergovernmental feature of administrative law.⁸⁴

The above examples suggest another first-order lesson that can be drawn from performance auditing’s hazy conceptual core. Once freed from verifiable metrics, performance audits can expand beyond a purely administrative focus—for example, criticizing weak management practices or offering technical assistance—to performing a policymaking function: recommending, on normative grounds, a policy that has governance impact upon residents in a community.⁸⁵ Public-administration scholars roundly agree that performance auditors should not be policymakers.⁸⁶ Yet many scholars also realize that this line is crossed with regularity.⁸⁷ For example,

83. See *Dep’t of Auditor Gen. v. State Emps.’ Ret. Sys.*, 836 A.2d 1053, 1061 (Pa. Commw. Ct. 2003) (noting that a “special performance audit[]” is an “accepted government auditing term and should be the recognized terminology”); *Dep’t of Auditor Gen. v. State Emps.’ Ret. Sys.*, 860 A.2d 206, 214 (Pa. Commw. Ct. 2004) (agreeing that what constitutes a performance audit can be determined by a court as a matter of law). This is not to say that *other* terms are not also used to describe systems that closely mirror our core understanding of performance auditing. See Rana, *supra* note 41, at 346.

84. Indeed, some scholars see performance auditing as the new central focus of international audit institutions. See Ferry et al., *supra* note 31, at 8.

85. See de Widt et al., *supra* note 38, at 33 (on the line between “administrative effectiveness” and “policy effectiveness”); *Hearing on Financial Report and Audit in Local Authorities Before the House of Commons Comm. on Levelling Up, Hous. and Cmty.*, June 26, 2023, at 29 [hereinafter *June 26 Hearing on Fin. Rep. & Audit*] (statement of Richard Wenham, Councillor, Cent. Bedfordshire Council), <https://committees.parliament.uk/oralevidence/13385/pdf> [<https://perma.cc/J834-K57N>] (depicting this transition as a fine line).

86. See *Hearing on Financial Report and Audit in Local Authorities Before the House of Commons Comm. on Levelling Up, Hous., and Cmty.*, June 5, 2023, at 14 [hereinafter *June 5 Hearing on Fin. Rep. & Audit*] (statement of Mike Newbury, Dir., Code of Audit Prac., Nat’l Audit Off.), <https://committees.parliament.uk/oralevidence/13246/pdf> [<https://perma.cc/E53Z-2MDQ>] (“commenting upon policy . . . is not the proper province of auditors”); Michael Power, *Making Things Auditable*, 21 ACCT. ORGS. & SOC’Y 289, 290 (1996) (audits in theory “do not disrupt or transform the operations of the audited organization”); see also de Widt et al., *supra* note 38, at 32 (describing this risk).

87. Hazgui et al., *supra* note 41, at 1386 (conveying the belief that auditors “simply cannot audit the effectiveness of the outcomes because it would mean going [] into policy making”); Laurence Ferry, *Audit and Inspection of Local Authorities in England: Five Years After the Local Audit and Accountability Act 2014*, Hous., Cmty. & Loc. Gov’t SELECT COMM. 14 (July 3, 2019), <https://www.parliament.uk/globalassets/documents/commons-committees/communities-and-local-government/Correspondence/Ferry-local-authorities-audit-report.pdf>

federal auditors influence policies on interrogation, cybersecurity, detainee abuse, and civil protests.⁸⁸ State auditors suggest policies on a host of issues that require officials to weigh competing values, such as how to handle public-records requests swiftly yet economically in Washington or how to balance wastewater demands and future carrying costs when deciding to purchase a golf course in Florida.⁸⁹ State audit offices can thus become “de facto policymakers.”⁹⁰ In conducting a performance audit, an auditor announces their policy perspective and encourages the audited entity to implement it. An “effective” program might be one that comports with legislative intent, as in Utah and Wyoming.⁹¹ Or it might advance public safety or welfare, as desired in Montana.⁹² Or it may promote any number of other values held by the auditor or another state stakeholder with influence over the process.⁹³

This Article embraces both the theory and the reality of performance auditing as the system operates today. A performance audit, at its core, is a managerial evaluation of the traditional “three Es.” It *also* embodies a set of loosely related oversight mechanisms with sometimes ill-defined unifying principles.⁹⁴ And most saliently, a performance audit is a tool empowered by statutes and employed by auditors, even if those statutes and auditors are not completely clear on what that tool precisely is.⁹⁵ Under each definition, performance audits operate in practice as channels of intergovernmental communication, as a way for auditors to convey state policy preferences to an audited entity.⁹⁶ This conversation functions not with the blunt force of preemption or the gentle nudge of a grant or incentive

[<https://perma.cc/4SUE-S5MS>]; Hossain, *supra* note 42, at 21, 24 (discussing the case of Australia); Mendez & Bachtler, *supra* note 40, at 762 (noting this phenomenon in the European Union); Amy C. Gaudion, *Recognizing the Role of Inspectors General in the U.S. Government’s Cybersecurity Restructuring Task*, 9 BELMONT L. REV. 180, 212–14 (2021) (noting this phenomenon among inspectors general in the U.S. federal government); Fernando R. Laguarda, *Challenges to the Independence of Inspectors General in Robust Congressional Oversight*, 19 GEO. J.L. & PUB. POL’Y, 211, 238, 240–54 (2021) (noting the same phenomenon in the U.S. and providing examples).

88. See Gaudion, *supra* note 87, at 213–15.

89. See WASH. STATE AUDITOR’S OFF., REPORT NO. 1017396, PERFORMANCE AUDIT: THE EFFECT OF PUBLIC RECORDS REQUESTS ON STATE AND LOCAL GOVERNMENTS 6 (2016); Letter from Cherry Fitch, Mayor, City of Gulf Breeze, to Sherrill Norman, Auditor Gen., State of Florida (Sep. 8, 2020) (on file with author).

90. Hasan et al., *supra* note 38, at 294; Mendez & Bachtler, *supra* note 40, at 749.

91. See *supra* notes 77, 80 and accompanying text.

92. See *supra* note 78 and accompanying text.

93. Hasan et al., *supra* note 38, at 299 (discussing “preferred national policy perspectives” being pushed through performance audits); Hazgui et al., *supra* note 41, at 1392.

94. One study described performance auditing as “a malleable social construct . . . part of a dramatic play combining actors, scripts, and social settings.” Parker et al., *supra* note 41, at 281.

95. See, e.g., *Sand v. Doe*, 959 N.W.2d 99, 106 (Iowa 2021) (discussing how Iowa law empowers auditing but does not define the term); Fla. Att’y Gen. Op. No. 2004-33 (July 2, 2004), 2004 WL 1490188 at *2 (discussing how Florida law uses the term “audit” as distinct from “review,” but does not offer a statutory definition).

96. On audit processes as conversations or “negotiations” between auditor and auditee, see Power, *supra* note 86, at 293.

program, but rather through more mixed means—through a process envisioned as both blunt and gentle, both critical and supportive.⁹⁷

B. Mapping State Audit Regimes

Performance audits have witnessed a tremendous boom in popularity over recent decades, a key driver of what some scholars term an international “audit explosion.”⁹⁸ Audit institutions around the world have introduced or expanded their use of performance auditing since the 1990s.⁹⁹ In many countries, as a byproduct of the audit explosion, performance auditing has percolated through the administrative state and become a popular tool of subnational oversight—of evaluating and guiding the actions of local government bodies.¹⁰⁰ Even so, local performance auditing has received limited academic attention, particularly in the United States.¹⁰¹

Inattention to the practice should not be taken as evidence of its insignificance. To the contrary, performance audits appear a feature of many public managerial schemes across the United States today. Every state government has a state auditor or similar official, most of whom are

97. Public administration scholarship has grappled with the dual role played by auditors, who must “walk[] a tightrope” between disciplining and educating the governments they evaluate. Hecimovic & Martinov-Bennie, *supra* note 44, at 179-80; *see also* Hazgui et al., *supra* note 41, at 1376 (discussing the various cooperative and non-cooperative approaches, as well as the ramifications of both).

98. The term was coined by Michael Power in 1994. *See* Patrizio Monfardini & Patrick von Maravic, *Municipal Auditing in Germany and Italy: Explosion, Change, or Recalcitrance?*, 28 FIN. ACCT. & MGMT. 52, 55 (2012); *see also* Ferry, Ruggiero & Midgley, AUDITING PRACTICES IN LOCAL GOVERNMENTS, *supra* note 31, at 1 (citing Power for the proposition that an “audit explosion” is “taken for granted”); Hossain, *supra* note 42, at 20 (noting that performance auditing has seen “increasing experimentation, application, and debate” in recent years).

99. *See* Monfardini & von Maravic, *supra* note 98, at 61 (describing Italy’s institutions); Tjerk Budding, Herman van Brenk, Remko Renes & Rein-Aart van Vugt, *Local Government Auditing in the Netherlands*, in AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON, *supra* note 31, at 93, 95 (describing the Netherlands’); Tobias Polzer, *Local Government Auditing in Austria*, in AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON, *supra* note 31, at 27, 27 (describing Austria’s); Parker et. al. *supra* note 41, at 280; Hoque & Thiagarajah, *supra* note 63, at 13 (describing Australia’s); Andre Feliciano Lino, Ricardo Rocha de Azevedo, Ismar Viana & André Carlos Busanelli de Aquino, *Local Government Auditing in Brazil*, in AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON, *supra* note 31, at 39, 43 (describing Brazil); Hossain, *supra* note 42, at 40, 42; Scott, *supra* note 36, at 203; Ferry et al., *supra* note 45, at 155; Gabriele Cipriani, *Improving the Accountability of the EU Budget’s Multi-Level Implementation: Strengthening the Contribution of the European Court of Auditors*, 22 GER. L.J. 466, 476–77 (2021) (tracing the audit explosion to the 1990s).

100. *See* Monfardini & von Maravic, *supra* note 98, at 61 (discussing the audit explosion at the municipal government level in Italy); Laurence Ferry & Thomas Aherns, *The Future of the Regulatory Space in Local Government Audit: A Comparative Study of the Four Countries of the United Kingdom*, 38 FIN. ACCT. & MGMT. 376, 382-83, 387-88 (2022) (describing auditing in Scotland and Wales); Tillema & ter Bogt, *supra* note 43, at 136 (in the Netherlands); Ferry et al., *supra* note 31, at 238-39 (listing countries that conduct performance audits of local government).

101. *See* Ferry, Ruggiero & Midgley, AUDITING PRACTICES IN LOCAL GOVERNMENTS, *supra* note 31, at 3; Ferry, Midgley & Ruggiero, *supra* note 31, at 233. However, scholars have examined performance-style auditing in the U.S. federal government. *See* Laguarda, *supra* note 87, at 219-35; Cuéllar, *supra* note 35, at 268, 290-98; Salkin & Kansler, *supra* note 59, at 96-101.

empowered to conduct audits of local entities.¹⁰² Ascertaining exactly how many states actually enable local *performance* auditing is not an easy task, however, because the contours of a performance audit can be difficult to pin down.¹⁰³ Financial audits may bleed into performance; a generic grant of power to “audit” local governments may or may not contemplate engagements beyond the financial scope.¹⁰⁴ Yet as a conservative estimate, it appears that a majority of states—thirty-one in total—expressly authorize the performance auditing of some or all local government bodies.¹⁰⁵ State auditors in several additional states—five in total—conduct performance audits of local government, at least periodically, despite lacking an express grant for doing so.¹⁰⁶ Of the remaining fourteen states, a few still elude

102. See THE COUNCIL OF STATE GOV'TS, THE BOOK OF THE STATES 174-175, 180 (2021), https://issuu.com/csg.publications/docs/bos_2021_issuu [<https://perma.cc/F7WB-ANTV>]. While “state auditor” or “auditor of state” is a common term that will be used colloquially in this article, some states employ different terminology. See, e.g., N.Y. CONST. art. V, § 1 (establishing a “comptroller” as the primary audit official). It should be noted that state auditors are not the only state-level officials empowered with conducting local performance audits. See, e.g., KY. REV. STAT. ANN. § 131.140 (West 2025) (requiring the Kentucky Department of Revenue to conduct certain local performance audits); WIS. STAT. ANN. § 295.18 (West 2025) (establishing that the Wisconsin Department of Natural Resources can conduct performance audits of particular local programs). Such audit arrangements implicate many of the same themes and issues raised in this article but are not squarely within its scope.

103. See *supra* Section I.A.

104. See *id.*

105. For states that appear to expressly permit performance auditing of all (or effectively all) local governments. See CONN. GEN. STAT. ANN. § 2-90 (West 2025); FLA. STAT. ANN. § 11.45 (West 2025); IDAHO CODE ANN. § 67-458 (West 2025); ME. REV. STAT. tit. 3, § 992 (West 2025); MISS. CODE ANN. § 7-7-81 (2025); MO. ANN. STAT. § 29.185 (West 2025); NEB. REV. STAT. ANN. § 84-304.01 (West 2025); N.J. STAT. ANN. § 52:15C-8 (West 2025); N.J. STAT. ANN. § 52:24-4 (West 2025); N.Y. GEN. MUN. LAW § 34 (McKinney 2025); OHIO REV. CODE ANN. § 117.09 (West 2025); OKLA. STAT. ANN. tit. 74, § 213.2 (West 2025); OKLA. STAT. ANN. tit. 19, § 71 (West 2025); 4 PA. CODE § 501.2 (2025); 72 PA. STAT. AND CONS. STAT. ANN. § 403 (West 2025); 22 R.I. GEN. LAWS ANN. § 22-13-4 (West 2025). For examples of statutes limiting local performance audits to particular entities, programs, or other criteria, see ARIZ. REV. STAT. ANN. § 5-1111 (2025); ARK. CODE ANN. § 10-3-402 (2025); CAL. GOV'T CODE § 64824 (West 2025); CAL. GOV'T CODE § 53398.88 (West 2025); CAL. GOV'T CODE § 64634 (West 2025); COLO. REV. STAT. ANN. § 32-9-115 (West 2025); GA. CODE ANN. § 50-6-10 (2025); 30 ILL. COMP. STAT. ANN. 5/3-1 (2025); IND. CODE ANN. § 6-1.1-35-1 (West 2025); KAN. STAT. ANN. § 72-5173 (2025); 2024 MD. LAWS Ch. 39 (H.B. 760); MICH. COMP. LAWS ANN. § 388.1820 (West 2025); NEV. REV. STAT. ANN. § 218G.570 (West 2025); NEV. REV. STAT. ANN. § 218G.605 (West 2025); NEV. REV. STAT. ANN. § 218G.600 (West 2025); 1999 Or. LAWS Ch. 1053 (S.B. 555); TEX. GOV'T CODE ANN. § 403.0221 (West 2025); TEX. TAX CODE ANN. § 5.12 (West 2025); UTAH CODE ANN. § 36-12-15.1 (West 2025); VT. STAT. ANN. tit. 32, § 5404A (2025); WASH. REV. CODE ANN. § 28A.657.040 (West 2025); W. VA. CODE ANN. § 18-2E-5 (West 2025); WYO. STAT. ANN. § 9-1-513 (2025); WASH. REV. CODE ANN. § 43.09.470 (West 2025). This survey is considered conservative and underinclusive because it looked only for express references to performance or operational audits in state law. Some statutory schemes are silent on the matter of local performance auditing, leaving open the real possibility that an auditor (1) is empowered to conduct performance audits using different terminology or (2) carries implied or assume powers to conduct performance audits, notwithstanding whether the office has received an express statutory grant.

106. The states are Delaware, Kentucky, Massachusetts, and arguably Minnesota. Delaware has recently conducted performance audits of school districts. See Lydia York, *Fiscal Year 2022*, DEL. STATE AUDITOR, <https://auditor.delaware.gov/reports/archived-audit-reports/fiscal-year-2022/> [<https://perma.cc/GS56-JN3S>]. Kentucky conducts “special examinations” of local

straightforward categorization. For example, the auditor’s office in Louisiana occasionally conducts local performance audits despite state law ostensibly foreclosing the practice, while conversely, in Hawaii, the audit office almost never conducts performance-style local audits despite believing that it possesses constitutional authority to employ them.¹⁰⁷ One-off audits of specific local governments and programs also occur in states that otherwise lack an evident local auditing regime.¹⁰⁸

All this is to say that, however delineated and defined, local performance auditing enjoys widespread salience across the United States, whether as a matter of law or practice. Significant diversity exists across

government that closely resemble performance audits. *See, e.g.* Letter from Mike Harmon, Auditor of Pub. Accounts, Commw. of Ky. to Jeff Wilder, Dist. Mngr., Cumberland Falls Hwy. Water Dist. (Sep. 16, 2020), <https://www.auditor.ky.gov/Auditreports/Special%20Exams%20%20Performance%20Documents/2020cumberlandfalls Hwywaterdistrictexam.pdf> [<https://perma.cc/YR5Z-43Z4>]; Letter from Mike Harmon, Auditor of Pub. Accounts, Commw. of Ky. to Layne Wilkerson, City of Frankfort (May 18, 2022), <https://www.auditor.ky.gov/Auditreports/Special%20Exams%20%20Performance%20Documents/2022CityofFrankfortExam.pdf> [<https://perma.cc/8S2C-HSJP>]; Letter from Mike Harmon, Auditor of Pub. Accounts, Commw. of Ky. to Mike Denham, Mayor, City of Bromley (Jan. 20, 2022), <https://www.auditor.ky.gov/Auditreports/Special%20Exams%20%20Performance%20Documents/2022CityofBromleyExam.pdf> [<https://perma.cc/FP5D-RJF7>]. Likewise, audits in Minnesota contain elements of performance. *See, e.g.*, Letter from Julie Blaha, State Auditor, State of Minn. to David Lucas, Mayor, City of Kettle River, <https://www.osa.state.mn.us/media/zs2d2bss/kettle-river-city-of-review-letter.pdf> [<https://perma.cc/RD5R-5RQD>]. And audits of local performance appear unremarkable in Massachusetts. *See, e.g.*, SUZANNE BUMP, MASS. OFF. OF THE STATE AUDITOR, REP. NO. 2017-2133-3C, BARNSTABLE COUNTY 1 (Aug. 2017), <https://www.mass.gov/doc/barnstable-county/download> [<https://perma.cc/NU2W-KLAL>]; SUZANNE BUMP, MASS. OFF. OF THE STATE AUDITOR, REP. NO. 2021-4612-3O, BAKER HILL ROAD DIST. 1 (Mar. 2022), <https://www.mass.gov/doc/audit-of-the-baker-hill-road-district/download> [<https://perma.cc/KH4T-6F2Q>]; SUZANNE BUMP, MASS. OFF. OF THE STATE AUDITOR, NO. 2020-1445-3J, NANTUCKET COUNTY SHERIFF’S DEPT. REPORT 1 (Dec. 2021), <https://www.mass.gov/doc/nantucket-sheriffs-department/download> [<https://perma.cc/P4YM-QZ4J>].

107. The relevant Louisiana statute is LA. STAT. ANN. § 24:522 (2025). Even so, in recent years the Legislative Auditor has conducted performance audits that partially or exclusively focused on local entities. *See, e.g.*, DARYL PURPERA LA. LEGIS. AUDITOR, REP. NO. 40180010, ANALYSIS OF STUDENT PLACEMENT UNIFIED ENROLLMENT SYSTEM ORLEANS PARISH 1-2 (2018), [https://app2.la.state.la.us/publicreports.nsf/0/78b7fe1324c538b6862582e9006e3a0c/\\$file/0001a452.pdf](https://app2.la.state.la.us/publicreports.nsf/0/78b7fe1324c538b6862582e9006e3a0c/$file/0001a452.pdf) [<https://perma.cc/2ZXA-EEHU>]; DARYL PURPERA, LA. LEGIS. AUDITOR, REP. NO. 40180013, EVALUATION OF THE REC. AND PARK COMMISSION FOR THE PARISH OF EAST BATON ROUGE 1-3 (2019), [https://app2.la.state.la.us/publicreports.nsf/0/d934183b46c451fd8625844f00596f1b/\\$file/0001dcad.pdf](https://app2.la.state.la.us/publicreports.nsf/0/d934183b46c451fd8625844f00596f1b/$file/0001dcad.pdf) [<https://perma.cc/W25C-YXEQ>]; *see also* State v. Thompson, 233 So. 3d 529, 541 (La. 2017) (discussing a “compliance and investigative” audit conducted of a local government). Regarding Hawaii, see LESLIE KONDO, OFF. OF THE HAW. STATE AUDITOR, REP. NO. 19-03, AUDIT OF THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION 3 (2019), <https://files.hawaii.gov/auditor/Reports/2019/19-03.pdf> [<https://perma.cc/A9RE-JSLG>] (“This audit was somewhat unique for us in that [the audited entity] is a quasi-independent agency of the City and County of Honolulu and not an agency of the State of Hawai’i. However, the State Constitution . . . empowers the Auditor to conduct audits of . . . political subdivisions.”).

108. For discussions of one-off local performance audits in Wisconsin, for example, see Catharine V. Ewing, *Constitutional Law: Vouchers, Sectarian Schools, and Constitutional Uncertainty: Choices for the United States Supreme Court and the States*, 53 OKLA. L. REV. 437, 453 (2000); Katherine Hanson, *The Great Lakes Compact and Transboundary Water Agreements*, 34 WIS. INT’L L.J. 668, 684 (2017); and James B. Egle, *The Constitutional Implications of School Choice*, 1992 WIS. L. REV. 459, 508 (1992).

these audit regimes.¹⁰⁹ A common characteristic, however, is that state auditors generally hold wide discretion in the audit process.¹¹⁰ As the remainder of this Section will catalog, broadly empowered auditing regimes arise in two general, seemingly incongruous ways: first, when auditors are directly granted vast powers under state statute, and second, when state law is *silent* on the matter of local performance audits, leaving it unclear whether the auditor's office holds any authority to conduct them. Taken in sum, as dissimilar as these enabling frameworks may sound, they together anchor performance auditing as a feasible if not actualized tool of expansive state oversight in most jurisdictions.

1. Direct Statutory Grants

In many states, audit offices enjoy an explicit grant of performance auditing power.¹¹¹ By way of illustrating the often-expansive nature of these grants, we can look to the schemes employed in those three states—Missouri, Florida, and Ohio—that are the subject of the quantitative project discussed in Part II below.¹¹²

Two of these states, Missouri and Florida, authorize performance audits by reference to the conventional three Es. Missouri's auditor can evaluate the “[e]ffectiveness” and “[e]conomy and efficiency” of governmental units,¹¹³ while in Florida, a performance audit is defined foremost to “include an examination of issues related to . . . [e]conomy, efficiency, or effectiveness.”¹¹⁴ Neither statutory scheme stops there, however. Missouri's law extends performance auditing into domains that scholars associate with financial and compliance audit types.¹¹⁵ It further authorizes the auditor to consider the “performance . . . of government policies,” an explicit acknowledgment of the blur between performance and policy that evades the theoretical guardrails touted in public-administration literature.¹¹⁶

Florida law similarly pushes the bounds of performance auditing's academic core. Notably, when considering the effectiveness of a

109. A comparative account of each jurisdiction would be valuable to policymakers and researchers but is beyond the scope of this Article.

110. Notwithstanding this general observation, some states do not grant auditors discretion to determine what entities to audit, although this approach appears rare and more prevalent in states without local-government auditing. *See, e.g.*, N.D. CENT. CODE ANN. § 54-10-01.

111. *See supra* note 105 and accompanying text.

112. *See infra* Part II.

113. MO. ANN. STAT. § 29.005(6) (West 2025).

114. FLA. STAT. ANN. § 11.45(1)(j) (2025).

115. MO. ANN. STAT. § 29.005(7)(d) (West 2025) (discussing “assess[ing] compliance with . . . laws”); MO. ANN. STAT. § 29.185 (West 2025) (providing that a performance audit can include a mix of both performance and financial components and that “[n]either the audit type nor the audit objectives shall be mutually exclusive”).

116. MO. ANN. STAT. § 29.005(2) (West 2025); *see also supra* notes 86-87 and accompanying text (regarding the blur into policymaking).

government's operations, Florida's Auditor General is encouraged to take both descriptive and proscriptive approaches—to opine not only on the effectiveness of an existing program or policy, but also to examine alternative methods that a government might adopt instead.¹¹⁷ In doing so, the statute invites the Auditor to engage directly in local policymaking,¹¹⁸ risking an erosion, as in Missouri, of performance auditing's conceptual reach. Auditors in both Missouri and Florida have employed their broad statutory grants to explore wide-ranging matters of local policy, at times, arguably, overstepping constitutional limits on their offices in the process.¹¹⁹ Yet courts have relied on the permissive plain language of their statutory schemes in endorsing such audits as unremarkable.¹²⁰

Ohio's scheme takes a different tack to reach the same outcome. Rather than invoking the three Es, Ohio law merely defines the term “audit” broadly, as any “examination, analysis, or inspection of a public office” conducted “according to generally accepted *or* governmental auditing standards.”¹²¹ In its reference to governmental auditing standards, the provision incorporates the terms of the federal government's Yellow Book, a manual first published in 1972 that embraces performance auditing as a distinctive audit form.¹²² Moreover, in its reference to “generally accepted . . . standards,” Ohio law incorporates longitudinal flexibility: it enables the Auditor of State's practices to evolve and expand alongside those of other jurisdictions.¹²³ Ohio courts have predictably read this scheme broadly. They have declined to limit the state auditor's powers to matters of purely financial concern, including in situations where a statutory provision has arguably connoted otherwise.¹²⁴

117. FLA. STAT. ANN. § 11.45(1)(j) (discussing “[a]lternative methods of providing program services or products”).

118. *See id.* The Auditor General is also authorized to conduct “operational audits” of government entities. *See id.* The distinction between performance and operational audits in Florida is not completely clear. In defining the latter, Florida code describes an audit process that, in part, evaluates performance and efficiency, *id.*, concepts that overlap with the performance auditing model. Meanwhile, the statutory definition of “performance audit” *also* includes examinations of “[c]ompliance . . . with . . . laws.” *Id.* Rather than trying to draw artificial distinctions between these terms, this Article will understand both “performance audit” and “operational audit” to describe nonfinancial, performance-style auditing in Florida and in the interest of consistency will employ the term “performance audit” to describe both.

119. *See, e.g.,* Galloway, v. Clay Cnty., 2020 WL 8408128, at *20 (arguing that performance audits are prohibited in Missouri under MO. CONST. ART. IV, § 13). Clay County had publicly contended that the State Auditor was “trying to take over the management decisions for Clay County.” Press Release, Clay Cnty. Comm'n., Statement for Immediate Release (Sep. 16, 2019) (on file with author).

120. *See, e.g.,* Clay Cnty. Comm'n v. Galloway, 2020 WL 5868731, at *1 (Mo. Cir. July 02, 2020), *aff'd*, 615 S.W.3d 856, 861 (Mo. Ct. App. 2020)).

121. OHIO REV. CODE ANN. § 117.01 (West 2025) (emphasis added).

122. *See supra* note 42 and accompanying text.

123. State courts have additionally interpreted this language in broad terms. *See, e.g., Dep't of Auditor Gen.*, 836 A.2d at 1063 n.2 (Pa. Commw. Ct. 2003).

124. *See, e.g.,* Oriana House, Inc. v. Montgomery, 844 N.E.2d 323, 327 (Ohio 2006) (“The use of the term ‘financial audit’ . . . does not indicate that the General Assembly intended to limit the scope of the State Auditor's authority.”)

The political cultures in Missouri, Florida, and Ohio mirror larger public trends—surging institutional mistrust, partisanship, and a desire to scrutinize government action—that have helped fuel the international audit explosion.¹²⁵ Each of these states has placed unique confidence in its audit office, even as other state and local institutions face increased partisan scrutiny.¹²⁶ The breadth of statutory auditing schemes is viewed as unexceptional within this political climate.

2. Statutory Silence

Despite its prevalence, many statutory schemes do not employ the three-E paradigm. Nor, indeed, do statutes and constitutional provisions necessarily mention or reference performance auditing. Yet the absence of such indicators is not the end of the story. Even in jurisdictions where auditors seemingly lack authority to conduct nonfinancial audits, state courts have nonetheless construed their powers broadly, sanctioning audits that carry a thin or nonexistent tether to a financial auditing core.

Their reasoning traces to an influential New York case, *McCall v. Barrios-Paoli*.¹²⁷ *McCall* arose after New York City refused to comply with a series of performance audits initiated by the state auditor. The city argued that the audits were politically motivated and that the auditor, in any event, had no authority to conduct them.¹²⁸ Under the state constitution, the auditor is authorized to “supervise[] . . . the accounts” of local governments—which in the city’s view did not extend beyond oversight activities of a narrowly financial nature.¹²⁹ The state appellate court disagreed. Although no other provision or law explicitly sanctioned performance audits, the court reviewed the history of auditing in New York and concluded that because the constitution’s drafters had not intended to limit the auditor’s

125. See Hoque & Thiagarajah, *supra* note 63, at 15; Salkin & Kansler, *supra* note 59, at 96-97; Rana, *supra* note 41, at 347.

126. In 2023, for example, a bill introduced in the Missouri House, H.B. 1175, proposed assigning a new function to the State Auditor’s office: investigating reports of governmental impropriety, a task previously handled by other state and local actors. See 2023 H.B. 1175, 102nd Gen. Assemb., Reg. Sess. (Mo. 2023); MO. ANN. STAT. § 29.221(1) (West 2025) (regarding the Auditor’s prior role of referring such reports elsewhere). A version of H.B. 1175 was later passed by the Missouri House in 2024. See Kurt Erickson, *Plan to Expand Power of Missouri’s Auditor Sent to Governor*, ST. LOUIS POST-DISPATCH (May 8, 2024). In Ohio, meanwhile, a contentious budget bill passed in 2023 nevertheless evinced a clear throughline—of amendments to the state’s public auditing scheme, most designed to expand the Auditor of State’s powers and promote the use of performance auditing. See 2023 OHIO LAWS FILE 8 (H.B. 33); *id.* (amending OHIO REV. CODE ANN. § 3316.042 (West 2025)); *id.* (amending OHIO REV. CODE ANN. § 3316.042 (West 2025)); *id.* (amending OHIO REV. CODE ANN. § 117.473 (West 2025)). The bill also contained funding for hiring more performance auditors. See OHIO SENATE FINANCE COMMITTEE, Budget Testimony (Apr. 19, 2023) (statement of Auditor Keith Faber) (on file with author).

127. 93 N.Y.2d 99 (N.Y. Ct. App. 1999).

128. *Id.* at 104.

129. *Id.* at 106. For the constitutional provision, see N.Y. CONST. art. V, § 1.

powers, an authority to “supervise accounts” can “include[] the broader inquiry contemplated by performance audits.”¹³⁰

Courts in other states would later cite *McCall* to reach the same outcome. In Pennsylvania, a similar dispute over the state auditor’s powers yielded a similarly expansive reading of the Pennsylvania Constitution, which empowers the auditor to evaluate the “financial affairs” of government entities.¹³¹ After quoting at length from *McCall*, an appellate court concluded that “an audit of an agency’s financial affairs connotes something more than mere examination of financial accounts or records,” leading the court to endorse a “broader inquiry as contemplated by performance audits.”¹³² This holding was reaffirmed by subsequent decisions in Pennsylvania and signifies a broader one-way ratchet towards expansive performance-auditing power.¹³³ Because the distinction between financial and performance auditing is fluid, courts reason that an express grant to conduct the former carries an implied grant to pursue the latter.¹³⁴ Moreover, because performance auditing is neither expressly authorized nor restricted under many state laws, courts *also* conclude, perhaps counterintuitively, that performance audits can operate without the same limitations of a financial engagement.¹³⁵ Indeed, courts find these cases unremarkable. As they reason, if auditors are granted broad power to conduct financial audits, why should this power not extend to engagements of the performance variety too?¹³⁶

Therefore, almost by virtue of their *absence* from otherwise powerful constitutional and statutory schemes, performance audits are potentially powerful tools in a state auditor’s toolkit. Some auditors have been particularly aggressive in asserting their performance auditing powers. Robert Casey, who served as Pennsylvania’s auditor general from 1997 to 2005, argued that taking a stand on matters of policy—on issues ranging from childcare to healthcare—fell within the scope of his office’s mission.¹³⁷

130. See *McCall*, 93 N.Y.2d at 106.

131. PA. CONST. art. VIII, § 10.

132. *Dep’t of Auditor Gen. v. State Emps.’ Ret. Sys.*, 836 A.2d at 1067 (Pa. Commw. Ct. 2003).

133. See *Dep’t of Auditor Gen. v. State Emps.’ Ret. Sys.*, 860 A.2d 206, 214 (Pa. Commw. Ct. 2004).

134. See, e.g., *Sand v. Doe*, 959 N.W.2d 99, 110 (Iowa 2021) (finding that the district court did not err in considering a subpoena part of an authorized performance audit because the distinctions between financial and performance auditing are fluid); see also Robert Casey, *Fighting for Those in the “Dawn of Life”—A Study of the Reversal of Increased Child Care Costs in Pennsylvania*, 74 TEMP. L. REV. 633, 635 n.13 (2001) (arguing that because the term “audit” has come to encompass performance auditing, a grant to conduct audits implies a grant to conduct both financial and performance engagements).

135. See, e.g., *Larkins v. Solter*, 163 A.3d 941, 946 (N.J. App. Div. 2017) (rejecting an argument that the auditor’s powers were implicitly limited by a provision of New Jersey law; the court noted that this provision “pertains to financial audits, not performance audits”).

136. Cf. Power, *supra* note 86, at 289 (discussing the flawed concept of auditing as a “quasi-scientific practice”).

137. See Casey, *supra* note 134, at 633, 635.

Casey employed performance audits as a tool for furthering these policy objectives, even as his power to conduct performance audits remained unsettled under Pennsylvania law.¹³⁸ More recently, Iowa's state auditor, Rob Sand, has used performance auditing to advance a new, more muscular vision for his office. He has asserted authority to evaluate local entities not previously subject to performance audits.¹³⁹ In addition, Sand has litigated his power to audit otherwise confidential public projects.¹⁴⁰ And he has waded headlong into politically charged issues, most notably by conducting audits of Governor Kim Reynolds, a political rival.¹⁴¹

Indeed, as Iowa's only statewide-elected Democrat, Rob Sand has found himself in the crosshairs of Republicans in the Iowa Legislature, who passed a bill in 2023 to curtail the auditor's ability to subpoena records from state agencies.¹⁴² Sand's experience reflects perhaps the greatest risk currently faced by auditors: that as their office becomes more politicized, whether by their own actions or by the actions of others, the office's legitimacy comes into question and its broadly-construed powers receive new-found scrutiny.¹⁴³ Yet state auditors can also embrace political roles to reach the opposite outcome, one where a brighter political spotlight translates into increased resources and influence for their office.¹⁴⁴

138. See *id.* On the power to conduct performance audits remaining unsettled under state law, see *Dep't of Aud. Gen.*, 860 A.2d at 213, *Dep't of the Auditor Gen. v. Pa. State Police*, 844 A.2d 78, 80 (Pa. Commw. Ct. 2003), and *Dep't of Auditor Gen.*, 836 A.2d at 1055-56. (Pa. Commw. Ct. 2003).

139. *Sand v. An Unnamed Loc. Gov't Risk Pool*, 988 N.W.2d 705, 707-08 (Iowa 2023).

140. *Sand v. Doe*, 959 N.W.2d 99, 108 (Iowa 2021).

141. See Elaine Godfrey, *The Most Dangerous Democrat in Iowa*, ATLANTIC (May 19, 2023); see e.g., *Kirkwood Inst. Inc. v. Sand*, 6 N.W.3d 1 (Iowa 2024).

142. S. 478, 90th Gen. Assemb., Reg. Sess. (Iowa 2023); see also Stephen Gruber-Miller, *Gov. Kim Reynolds Signs Law Restricting Iowa State Auditor Rob Sand's Powers. Here's How*, DES MOINES REG. (June 1, 2023) (providing context behind the law's passage), <https://www.desmoinesregister.com/story/news/politics/2023/06/01/iowa-gov-kim-reynolds-signs-law-restricting-auditor-rob-sand-access-to-personal-information-courts/70203728007/> [<https://perma.cc/B5ZY-M9QW>].

143. Cf. Salkin & Kansler, *supra* note 59, at 121-22 (on political turf battles limiting auditor power). With respect to auditees decrying audits as political, thereby calling into question an auditor's legitimacy, see de Widt et al., *supra* note 38, at 33; Parker et al., *supra* note 41, at 284; and Brief for Plaintiff-Appellant at 13, *Kirkwood Institute*, 6 N.W.3d 1 (No. 23-0201), 2023 WL 8457331, at *13 (arguing that "the Auditor's open political ambitions . . . raise[s] the real prospect that the Auditor had misused his office's resources to pursue private political gain").

144. A prominent example of an auditor embracing the spotlight comes from Mississippi, where Auditor Shad White has claimed a prominent state-political role. See, e.g., Michael Goldberg, *Mississippi Auditor Says Several College Majors Indoctrinate Students and Should be Defunded*, A.P. NEWS (Sep. 21, 2023), <https://apnews.com/article/mississippi-college-majors-funding-cuts-aad5a0d5c7ab013d6c5489fd41e4dc54> [<https://perma.cc/EL3Y-C4TS>]; Emily Wagster Pettus, *Who Has the Power to Sue Brett Favre Over Welfare Money? 1 Mississippi Republican Sues Another*, A.P. NEWS (Feb. 22, 2024), <https://apnews.com/article/mississippi-welfare-favre-auditor-attorney-general-53bd7c243e115f37dff2c41a171e25f8> [<https://perma.cc/TRT8-A5Q4>]; Geoff Pender & Anna Wolfe, *Former Auditors Question Whether Shad White Was too Close to Investigate Phil Bryant*, MISS. TODAY (May 12, 2022), <https://mississippitoday.org/2022/05/12/shad-white-phil-bryant-welfare-investigation/> [<https://perma.cc/9EKS-XWR8>]; *supra* note 126 and accompanying text.

II. Dissecting Performance Audit Outcomes

The prior Part establishes performance auditing as a widespread system of state oversight. Despite its proliferation, however, we know only anecdotally whether these audits actually prove impactful in local communities. Research shows that auditees sometimes reject audit findings, thus consigning the process to the dustbin of subfederal bureaucracy.¹⁴⁵ In addition, there is anecdotal evidence of auditees implementing recommendations, including recommendations that extend firmly into the policymaking sphere.¹⁴⁶ And while some research has been conducted on the impact of federal-level audits, these studies paint a wholly mixed picture; some estimate that performance audits have only “modest impact” while others find that auditor recommendations are “regularly” acted upon.¹⁴⁷ On the whole, public-administration scholars fundamentally disagree whether performance audits are impactful or insignificant for audited governments.¹⁴⁸

This Part analyzes an original dataset of audit recommendations in an initial attempt to complete the story and demonstrate how state auditing power translates into local policy and practice. First, however, it begins by considering why a locality’s decisions at the end of the process matters for how we value performance-audit regimes.

A. *The Importance of Audit Outcomes*

Regardless of its outcome, the mere process of conducting a performance audit and issuing recommendations carries symbolic value. It signals to local officials, members of the public, courts, and other governmental bodies that a managerial oversight authority has shed a spotlight on the locality’s operations.¹⁴⁹ Yet by proceeding to adopt a recommendation, a local government crystalizes the audit’s signaling power: implementation lends credence to the auditor’s finding and might contribute to a larger

145. See, e.g., Hecimovic & Martinov-Bennie, *supra* note 44, at 184; Blake Frye, *Review, Continuation, Re-Establishment, or Termination of Regulatory Agencies: End Mandatory Sunset Audits*, 9 GA. ST. U. L. REV. 319, 320 (1992).

146. See, e.g., Scott, *supra* note 36, at 216 (regarding an audit that prompted “a significant change in policy”); Salkin & Kansler, *supra* note 59, at 127-28, 130 (offering examples); cf. Gaudion, *supra* note 87, at 213-14 (offering examples of inspectors general influencing policy).

147. Compare Johnsen, *supra* note 38, at 123 (citing studies finding a “modest impact of performance audit on public administration” in the European context), with Jesse Cross & Abbe Gluck, *The Congressional Bureaucracy*, 168 U. PA. L. REV. 1541, 1592 (2020) (noting that “Congress regularly acts on GAO’s recommendations”). See also Mendez & Bachtler, *supra* note 40, at 746 (examining policy impacts of EU Cohesion compliance auditing); Cuéllar, *supra* note 35, at 296 (noting that 79% of GAO recommendations were implemented between 1989 and 2005).

148. Hazgui et al., *supra* note 41, at 1376 (“While some research concludes that [performance auditing] is fragile and has no significant value for the audited administrations, others maintain that [it] can lead the audited administrations to act based on the state auditors’ recommendations.”) (citations omitted).

149. See Cuéllar, *supra* note 35, at 303. Regarding the role of courts, see *id.* at 289.

culture of audit compliance.¹⁵⁰ It also makes an audit more longitudinally robust, capable of exerting influence over an extended period of time. Even after the individuals involved in the process have left for other jobs, taking the experience of the audit with them, its lessons can live on in local practice. The audit's lasting legacy becomes the practices and policies that it influences.

In this vein, as some scholars have argued, auditing institutions can assume a distinctly *regulatory* function; they can fashion local behavior in a manner not dissimilar from an enabling or preemptive legislative law.¹⁵¹ An audit can be a tool of metaregulation—a means of indirect control over local bodies, or, in the words of one scholar, a mechanism for the “regulation of self-regulation.”¹⁵² It can allocate resources and power in a local community, announce and set governance priorities, and determine the package of public goods that residents receive.¹⁵³ But crucially, audits function as regulatory devices *only* if their recommendations indeed prove influential on the ground.

In addition, whether a locality adopts an audit recommendation also has important implications for local governance more broadly. We can envision here two extreme polarities. At one extreme, in a universe where localities adopt every single audit recommendation, we could readily conclude that state auditors exercise tremendous soft power over local institutions—a power more akin to a legislative mandate than an administrative nudge.¹⁵⁴ At the other extreme, if local governments reject every audit recommendation, we could reach opposite conclusions: that states exercise no power over local entities, at least through the instrument of an audit, and that local officials prize their individualism, even if it means governing in ways that depart from best practices and expert advice.

Local implementation rates fall surely somewhere between these polarities. But where exactly they fall speaks to balancing acts that cut to the heart of local government: how to weigh local democracy against state authority; how and where states should interfere with local action; and when should local officials, who live and work closer to the people they govern, yield to the greater resources and capacity of other political voices. The

150. Cf. Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 157 (2020) (suggesting that local governments are aware of audit findings of peer local entities). Conversely, a locality's rejection of audit recommendations can trigger a culture of audit skepticism in the surrounding area. See, e.g., KENTON CITY COUNCIL, *supra* note 65, at 5 (questioning the value of a performance audit because a peer community didn't adopt any recommendations).

151. See Lenhardt, *supra* note 33, at 1553 (characterizing a race audit as an “innovative regulatory device”); Scott, *supra* note 36, at 205 (“Auditors might be effective as meta-regulators even though they speak softly and carry no big sticks.”).

152. Scott, *supra* note 36, at 213.

153. James Guthrie, *The Contested Nature of Performance Auditing in Australia*, INTL. J. OF PUB. SECTOR MGMT. 56, 59 (2007) (“Resources, technology or power for programmes and policy action may be given, rejected or continued on the basis of an assessment of one or a combination of [audit and related] activities.”).

154. See Scott, *supra* note 98, at 368 (discussing auditing's “soft power”).

salience of audit recommendations speaks to the role that performance auditing plays—and can play—within this delicate ecosystem.

B. Framing the Research Question

The above discussion returns us to the base question: how impactful are performance audits? Answering this question is no easy task; local governments are notoriously difficult to study. There exist over 89,000 local entities across the United States, which operate across variegated legal and political landscapes.¹⁵⁵ Primary data on these localities—particularly the smallest ones—is often sparse or nonexistent.¹⁵⁶ Comparative data proves no less elusive.¹⁵⁷ And because local governments routinely operate informally, absent the written reports, laws, and orders produced by federal institutions, local action regularly occurs through purely informal governance structures that are especially challenging to excavate.¹⁵⁸ In interrogating local audit outcomes, this Article confronts and attempts to navigate these barriers. It aims to provide a *relatively* expansive snapshot of audit responses across local governments, with the goal of imperfectly demonstrating how localities respond to state performance audits and what their response can teach us about auditing, state oversight, and local institutions at large.

To provide such a snapshot, the three states explored in Part I.B.1—Missouri, Florida, and Ohio—were selected as representative examples.¹⁵⁹ Each local performance audit conducted since 2010 in these states, a total of 523 engagements, was reviewed to identify recommendations that encroached clearly into the realm of local performance.¹⁶⁰ Due to the blur between auditing types, even engagements labeled as “performance audits” routinely contained elements of financial and compliance-style evaluations.¹⁶¹ Interspersed within the 523 audits were recommendations that

155. See Maria Ponomarenko, *Substance and Procedure in Local Administrative Law*, 170 U. PA. L. REV. 1527, 1534 (2022).

156. See Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564, 587 (2017); Ponomarenko, *supra* note 34, at 208 (observing that “smaller government entities tend to be especially opaque”).

157. Cf. Ayers, *supra* note 39, at 643-44.

158. Cf. Stephen R. Miller, Jaap Vos & Eric Lindquist, *Informal Governance Structures and Disaster Planning: The Case of Wildfire*, 40 U. ARK. LITTLE ROCK L. REV. 633, 655-57 (2018). On informality in local government, see *infra* notes 315-323 and accompanying text.

159. See *supra* Section I.B.1. These states were specifically selected because their audit reports are searchable such that a researcher can segregate with confidence each performance audit of a local government from other audit types and from audits of other governmental entities.

160. For purposes of this study, “local government” was limited to general purpose municipalities, townships, and counties. Some audits, however, focused primarily or exclusively upon non- or semi-independent local agencies for which a general purpose government was responsible. Cf. *supra* note 64 and accompanying text (regarding general-purpose governments being responsible for audits of semi-independent agencies).

161. See *supra* Section I.A.

spoke solely or predominantly to matters of financial management.¹⁶² In addition, a number of recommendations were best characterized as compliance style in focus, commonly because they identified areas where local governments were not following federal or state laws.¹⁶³ These recommendations were all removed from the study. While no doubt they also have import for local governance, financial and compliance recommendations are less products of state-level policy judgments and more so a reaffirmation of exogenous standards and laws with which a locality should already be complying. Capturing the true impact of performance audits—in particular, of audits that touch upon the effectiveness of local action—counsels removing from the analysis those recommendations that hew closer to auditing’s traditional core.

Another type of recommendation was removed for more practical reasons. Frequently, recommendations made by a state auditor can be implemented without any paper trail—without an ordinance, written policy or procedure, or formal action by a local council.¹⁶⁴ Some of these recommendations can still be excavated through follow-up audit reports. Yet for the most part, there is no systematic way to assess whether a locality has adopted a recommendation that did not expressly demand a formal, written action as part of its implementation. While written documents can be unearthed through public-records requests, unwritten practices are accessible only in piecemeal fashion and do not lend themselves to quantitative study.¹⁶⁵

Ultimately, at the conclusion of this exercise, a total of 231 discrete audit recommendations were identified, a dataset reflecting all findings in Missouri, Ohio, and Florida that (1) extend beyond financial and compliance auditing into the realm of performance, (2) expressly call for local action,¹⁶⁶ and (3) if implemented, would necessarily create a paper trail that

162. For example, financial recommendations included findings about budget accuracy standards, fund allocation methodologies, and issues monitoring and adjusting accounts.

163. See, e.g., NICOLE GALLOWAY, MO. STATE AUDITOR, REP. NO. 2022-088, DENT COUNTY 7 (Oct. 2022), <https://auditor.mo.gov/AuditReport/ViewReport?report=2022088> [<https://perma.cc/VA9B-LKYY>] (finding that “the county has not developed a records-management and retention policy in compliance with the Missouri Secretary of State Records Services Division guidance”).

164. For example, the recommendation that “[t]he City should reevaluate the practice of leasing light vehicles” does not necessarily require an element of formality that can later demonstrate local adoption. Keith Faber, *City of Upper Arlington Performance Audit*, OHIO AUDITOR OF STATE 20 (2020), https://ohioauditor.gov/auditsearch/Reports/2020/City_of_Upper_Arlington_2020_Performance_Report.pdf [<https://perma.cc/UM7Z-8LKN>].

165. See *infra* note 318 and accompanying text.

166. Some recommendations were not directly actionable and therefore difficult to measure. See, e.g., NICOLE GALLOWAY, MO. STATE AUDITOR, REPORT NO. 2020-038, CITY OF PARMA 33 (July 2020), <https://auditor.mo.gov/AuditReport/ViewReport?report=2020038> [<https://perma.cc/ZNS5-PFKV>] (“Update city code as procedures change.”). Also omitted from the final list were recommendations that advocated for studies or plans. See, e.g., Dave Yost, *City of Massillon Performance Audit*, OHIO AUDITOR OF STATE 15 (Apr. 2014), https://ohioauditor.gov/auditsearch/Reports/2014/City_of_Massillon_14_Performance-Stark.pdf [<https://perma.cc/LB7H-HEUL>].

can be located in the public record.¹⁶⁷ This dataset is deliberately limited and conservatively drawn; it almost certainly is underinclusive of the full breadth of performance-style audit recommendations in these three states since 2010. Even so, it appears to constitute the largest primary source study of local audits to date.¹⁶⁸ And because it looks only at performance recommendations that call for observable local action, the list excludes measures that might be easier to implement (such as via purely informal action), as well as compliance-style findings that local officials might feel reasonably *compelled* to correct, such as an identified violation of federal law. Left standing are the recommendations that local officials are presumably more hesitant to adopt, all else being equal. If choosing to implement them anyways, their decision speaks to the influence of performance auditing on their governance choices.

To ascertain whether these 231 recommendations were indeed adopted, freedom of information law (FOIL) requests were submitted to each associated local entity. The requests sought all records, if any, stemming out of the recommendations in question. The FOIL process ultimately took two years to complete. At the conclusion of the process, after responses had been received for each of the 231 recommendations, a total of 473 documents had been collected and reviewed. These documents enable a cautious answer to our question of what happens after the dust of the audit has settled—whether localities tend to adopt audit recommendations or elect to sweep them aside.

C. Assessing the Results

As a core takeaway, it appears that local governments indeed adopt a significant number of performance-audit recommendations. Of the 231 recommendations, a total of 132 were fully adopted (a rate of 57%) and an additional eight were partially adopted, bringing to 61% the number of recommendations that translated into written local action in whole or in part.¹⁶⁹ A few examples are illustrative. A straightforward audit-adoption

167. For a reproduction of the dataset, see *infra* Table 1, available in this Article's accompanying online Methodological Appendix. When this Article refers to Tables 1-4, it refers to those online appendix tables.

168. It should be stressed, however, that this statement cannot be made categorically. While most public-administration studies employ surveys and interviews, see Johnson, *supra* note 38, at 123, a number evaluate primary audit reports. See *id.* at 124-25 (summarizing some of these). A few large empirical studies of audit reports exist, yet they do not appear limited to local-government auditees. See, e.g., Hazgui et al., *supra* note 41, at 1382 (analyzing 337 reports). Moreover, the pathbreaking research of Laurence Ferry in the local-government space has drawn upon audit documents in addition to interviews and other research methods. See, e.g., Ferry, *supra* note 87, at 382 (stating that interview questions “came out of extensive documentation reviews”).

169. See *infra* Table 1. As the data indicate, most local responses to audit recommendations were bimodal: either the locality “fully adopted” the recommendation (by acting upon all of its prescriptive terms) or otherwise the locality did not implement the recommendation at all (by

story comes from Ohio, where a performance audit encouraged the City of Cincinnati to implement a snow and ice control plan.¹⁷⁰ Sure enough, following the audit, the city created a formal “Snow and Ice Control Plan” that touches upon all facets of Cincinnati’s approach to winter weather: it sets priority plowing routes, establishes maintenance procedures, and determines how the Department of Public Services should respond to a variety of weather events.¹⁷¹ Moreover, the plan is posted on the city’s website and referenced in internal documents,¹⁷² leaving little doubt that Cincinnati has institutionalized the audit recommendation.

Adoption is also easy to trace where a locality has passed an ordinance squarely within the crosshairs of an audit finding, such as the case in Harrisonville, Missouri, where the auditor’s recommendation—that the city create a policy for selecting professional services—was soon followed by an ordinance that speaks in detail to how different professional services are solicited and selected.¹⁷³ Other localities directly credited the audit for spurring subsequent action, as in North Miami, Florida, where the city’s guidelines for its housing development program were expressly amended to “address[] the recommendations of the State of Florida Auditor General.”¹⁷⁴

taking no documented action). The eight “partially adopted” recommendations reflect the middle-ground exceptions that fell between these poles. For purposes of the discussion in this Part, a “partially adopted” recommendation indicates that the locality either (a) took partial yet incomplete steps to adopt an audit recommendation or (b) adopted a portion of the recommendation but left another portion unaddressed. For example, the 2020 performance audit of Monroe City, Missouri recommended that the municipality “adopt an ordinance detailing economic incentives offered to businesses located in or relocating to the city.” NICOLE GALLOWAY, MO. STATE AUDITOR, REP. NO. 2020-029, CITY OF MONROE CITY 20 (June 2020), <https://auditor.mo.gov/AuditReport/ViewReport?report=2020029> [<https://perma.cc/K5W5-F6Q3>]. Following the audit, the city adopted an ordinance with respect to *one* of its incentive programs—its program for utility incentives—but not for other incentives, including incentives offered to businesses in the local industrial park. See NICOLE GALLOWAY, MO. STATE AUDITOR, REP. NO. 2021-072, FOLLOW-UP REPORT ON AUDIT FINDINGS, CITY OF MONROE CITY 7 (2021) (on file with author). In such cases, the local government has plainly taken action in response to the audit, thus demonstrating the audit’s impact on local policy and its capacity to spur local deliberation. Nevertheless, it would be inaccurate to classify these and similar responses as “fully adopted” (or even as “adopted”) recommendations.

170. Dave Yost, *City of Cincinnati Performance Audit*, OHIO AUDITOR OF STATE 17 (July, 2012), https://ohioauditor.gov/auditsearch/Reports/2012/City_of_Cincinnati_Hamilton-11_Performance.pdf [<https://perma.cc/VH7R-VG2L>].

171. Jerry L. Wilkerson Jr., *City of Cincinnati, Snow and Ice Control Plan*, CITY OF CINCINNATI DEP’T PUB. SERVS. 9, 11, 23 (2022), <https://www.cincinnati-oh.gov/public-services/winter-operations/snow-removal-and-ice-control-plan1> [<https://perma.cc/4S2L-Z8UF>].

172. See *Winter Operations FAQs*, CITY OF CINCINNATI DEP’T PUB. SERVS., <https://www.cincinnati-oh.gov/public-services/winter-operations/winter-operations-faqs> [<https://perma.cc/73PE-SX8D>]; Memorandum from Paul Muething, City Manager to Cincinnati Mayor and City Council (Feb. 18, 2021), <https://www.cincinnati-oh.gov/noncms/cmgr/memo/index.cfm?action=public.viewpdf&name=41901.pdf> [<https://perma.cc/94HH-S68U>].

173. CITY OF HARRISONVILLE, MO., GOV. CODE ch. 135 (2025) (effective Mar. 16, 2020).

174. City of North Miami, Fl., Res. No. 2020-R-127 (Nov. 24, 2020), <https://www.northmiamifl.gov/DocumentCenter/View/9754/Resolution-2020-R-127--11-24-2020-PDF> [<https://perma.cc/9Q9V-QUB5>].

Not all adoption stories are so routine. A more serpentine example comes from Edgar Springs, Missouri, where the auditor's recommendation (to create a public-access policy) was eventually adopted.¹⁷⁵ Yet the policy proved nearly impossible to locate; it was only provided by local officials after nearly a year of record requests. Moreover, the policy appeared spurred, at least in part, by a parallel cascade of litigation and negative media coverage.¹⁷⁶ Edgar Springs offers a reminder that the 231 data points do not reflect identical narratives. That a locality ultimately implemented a recommendation does not prove causation, nor does it guarantee that local practices on the ground are always in lockstep with the ordinances, procedures, and regulations that governments put into writing.¹⁷⁷ Taking the data as a whole, however, as seen in localities ranging from Cincinnati to Edgar Springs, local officials are actually creating written policies in places where a state auditor has urged them to take action.

But the dataset also reveals a converse storyline—that of the 39% of recommendations not implemented. A 61% adoption rate is not an overwhelming figure. Plainly, localities are not carrying out *all* performance changes suggested by the state auditor. Perhaps more illuminating than the 140 recommendations adopted are the remaining 91 that went unheeded. What of these recommendations? Why did local officials take no apparent action on them? While understanding governmental inaction is, at best, an imperfect science, there are a couple ways to conceptualize the local choices that led to this outcome.

First, a number of officials affirmatively offered reasons for their localities' decisions. Not all proffered rationales carry the same significance; some may be unverifiable, for example when an official argues that an audit finding was driven by political animus and therefore summarily ignored.¹⁷⁸ Repeatedly, however, officials put forward the same few rationales, each of which rested on more verifiable grounds. The first and most common explanation is that the issue identified by the auditor no longer exists. For example, an audit of Gentry County, Missouri criticized the

175. CITY OF EDGAR SPRINGS, MO., RULES FOR PERSONS ENTERING CITY HALL (on file with author).

176. See Tony Messenger, *Missouri City Puts Stop Sign in Watchdog's Way, but She Plows Through It*, ST. LOUIS POST-DISPATCH (Nov. 29, 2019), https://www.stltoday.com/news/local/crime-courts/article_e14af2fe-5b3b-5ccb-9b62-81b7cbe54e53.html [https://perma.cc/N6NU-ASR8]; Rudi Keller, *Phelps County Standoff: Woman Fights Order Banning Her from Missouri City Hall*, MO. INDEP. (Nov. 20, 2020), <https://missouriindependent.com/2020/11/20/phelps-county-standoff-woman-fights-order-banning-her-from-missouri-city-hall> [https://perma.cc/8YP7-85PZ].

177. See Miller et al., *supra* note 158, at 654; Interview with Tim Person, Human Resources Manager, St. Louis Recorder of Deeds (Sep. 27, 2023) (notes on file with author); State of Louisiana v. Thompson, 233 So.3d 529, 545 (2017). Of the audits reviewed for this Article, however, only one case was identified where a locality adopted a recommendation but subsequently ignored the adopted measure. See Interview with Deanna Burns, Clerk, City of Dixon (Apr. 27, 2023) (notes on file with author).

178. See, e.g., Interview with Wayne Sisseck, *supra* note 27 (offering this perspective).

county's practice of selling culverts to local residents. It recommended that the county reevaluate the practice and "develop formal policies and procedures" should it decide to continue these culvert sales.¹⁷⁹ Yet the practice had been discontinued by the time the audit was complete.¹⁸⁰ Unsurprisingly, the county commission neither evaluated nor developed policies for culvert sales in response to the auditor's recommendation.

As a second rationale for nonadoption, local officials sometimes considered a recommendation but ultimately decided it was a poor idea. Some officials concluded that the policy in question was best operated informally; others elected to leave the matter within the ongoing discretion of the city council or county commission. Operating on this reasoning, Napoleon, Ohio, chose to give its council free reign to make future decisions about how to allocate a local income tax, notwithstanding the state auditor's advice that it adopt a formal policy.¹⁸¹ Meanwhile, an independent agency in St. Louis disregarded a recommendation that it maintain a formal policy for pricing public land, choosing instead to informally follow the pricing policies of a separate city agency.¹⁸²

Each of these decisions can be criticized on normative grounds. Arguably, local governments should adopt formal policies for practices they conducted in the recent past and might reexplore in the future. As well, in the interest of accountability and transparency, perhaps localities should give formal guidance to their legislative bodies, even if that guidance still permits significant discretion. Normative quibbles aside, however, these rationales may nevertheless indicate that local governments took audit recommendations seriously—that they afforded them deliberate thought, even if no action came out of the exercise. A total of twenty-nine recommendations in the dataset were disregarded for one of the above-stated reasons.¹⁸³ Accordingly, if accepting such reasons at face value, a sum of 169 recommendations were affirmatively adopted or deliberately considered by local officials, a rate of 73%, leaving sixty-two recommendations for which no action was taken and no explanation for nonaction offered. Of these sixty-two, we know that some were intentionally ignored by local officials who dismissed the audit wholesale and paid its findings no heed.¹⁸⁴ But there is good reason to theorize that many of these sixty-two

179. THOMAS SCHWEICH, MO. STATE AUDITOR REP. NO. 2013-131, GENTRY COUNTY 7 (Nov. 2013), <https://auditor.mo.gov/AuditReport/ViewReport?report=2013131> [<https://perma.cc/A5ZT-WNYE>].

180. Email from Shelia Clark, Clerk, Gentry County to Deborah Boxerman (June 21, 2023) (on file with author).

181. See Interview with Kevin Garringer, Finance Director, City of Napoleon (May 8, 2023) (notes on file with author) (discussing impact of audit in Napoleon, Ohio).

182. See Interview with Lance Knuckles, Director of Strategic Development, St. Louis Development Corp. (Dec. 4, 2023) (notes on file with author) (discussing audit recommendations in St. Louis, Missouri).

183. See Table 1 *infra*.

184. Interview with Wayne Sisseck, *supra* note 27.

recommendations were considered in good faith, even if no outward rationale for their rejection was ever offered.¹⁸⁵

In sum, local responses to audit recommendations suggest that localities are adopting, considering, *and* deliberately rejecting audit recommendations at appreciable rates. Local officials plainly do not view audit recommendations as mandatory; they are not adopting these recommendations at the rate we would expect them to implement an express mandate of the state legislature. On the other hand, officials seem to take audit recommendations seriously, whether they ultimately implement them or not. Most do not view these recommendations as legally, politically, and administratively meaningless, as purely a form of hollow performative signaling by the state audit office.

These findings help complete the descriptive project begun in Part I. They demonstrate that state auditors do not merely possess expansive authority to evaluate local performance, but that this power can also have real governance impact on the ground. Left unaddressed is the question to which the next Part turns: what does the rise of performance auditing mean for local governments—and should local residents and scholars embrace or decry this model of state oversight?

III. Performance Auditing's Local Stakes

Having established that state auditors exercise broad and amorphous performance auditing powers that can—but do not always—influence local decision-making, this Part considers the normative stakes of this uncharted regime. It begins in Section III.A by locating the auditing regime within the larger subfederal ecosystem. The vertical relationship between state legislatures and local governments is fundamental to the latter's existence, character, and powers, as legal commentators have long understood.¹⁸⁶ State statutes form the scaffolding upon which much of local law and theory is constructed. Performance-audit regimes speak to a parallel yet distinct relationship: the relationship between the state executive branch—in particular, that of the state auditor's office, a unique executive actor—with local government institutions. Section III.A introduces this vertical relationship and explains how it differs from the conventional, legislation-centric model.

185. Localities associated with these recommendations are far smaller (47,282 versus 69,404 average residents) and have lower median incomes (\$29,600 versus \$30,801) when compared with the dataset as a whole. *See* Table 1 *infra*. Such governments might be less likely to produce detailed minutes and memos that describe policy decisions and lack the same degree of resources and capacity when responding to FOIL requests and considering outside interviews. *See infra* Sections III.D.2, III.D.3. Therefore, our lack of clarity on these sixty-two recommendations seems to track other institutional factors and does not necessarily indicate that the recommendations were ignored.

186. Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 7 (1990).

Part III's remaining sections consider the normative stakes of performance auditing within this state-local framework. By way of grounding the discussion, Section III.B begins by canvassing existing theory. It draws upon public-administration literature and local-government theory to outline performance auditing's academic merit. Public-administration scholarship has debated the virtues of performance audits in recent decades, a conversation that began in earnest following the 'audit explosion' of the 1990s.¹⁸⁷ These debates have produced several normative themes that speak specifically to local governance. Understanding the formative literature is valuable because it paints a compelling picture of localism's *why*—why performance audits advance values of localism, why they can mitigate localism's shortcomings, and why, conversely, performance audits might equally pose unintended or adverse consequences for local democracy. In short, existing theory explains why those who study local government might advocate for, and caution against, the use of performance audits as a tool of subfederal intervention.

Yet by focusing on auditing's existential merit, academic theory overlooks important operative questions, such as (1) *how* performance audits can prove valuable (or detrimental) for local institutions on the ground and (2) *where* a community is more likely (or less likely) to benefit from a state audit engagement in the first place. Asking these questions helps set the stage for actionable reform. By examining the "how" and "where" of a performance audit's normative consequences, scholars can profitably consider how the audit regime should be reformed and where in the heterogeneous world of local government its promised remedies are most salient.

Sections III.C and III.D build upon the theoretical framework in assuming this task. First, Section III.C analyzes forty-four interviews of local officials conducted for this Article. A relatively consistent theme emerges from this study: performance audits can be both substantively valuable for local communities and procedurally problematic, a novel observation that suggests points of intervention in contemporary audit regimes. Second, Section III.D applies these lessons to local-government practice. It posits that performance audits may offer a productive conduit for state-local conversations. As oversight tools, audits can thread the needle between competing subfederal tradeoffs—between local parochialism and top-down state managerialism, between local autonomy and state fiat—that blunt oversight mechanisms are ill-equipped to navigate. Finally, by melding academic theory with primary data collected for this Article, Section III.D argues that audits may also push localities to operate with more formality, a departure from the informal systems that tend to define local governance. Audits might also help level the uneven playing field between large and small localities. Yet Section III.D ends on a note of concern: performance

187. See *supra* notes 98-100 and accompanying text.

audits may be more harmful than helpful for the most resource-constrained local communities, a prospect that calls for targeted efforts at reform.

A. A Local Lens on State Executive Power

A state auditor's broad and expanding powers operate against a familiar backdrop: the subfederal system of state and local governments, a vertical relationship existential to local government law. Even the most autonomous local entities exist under a pervasive shadow of state authority.¹⁸⁸ State law creates and empowers local institutions; it also dissolves and enfeebles them.¹⁸⁹ In recent years, state legislatures have intervened aggressively in local governance, in particular by preempting local action in politically charged regulatory spaces, an evolving trend that has captured popular attention and raised the alarm of legal commentators.¹⁹⁰ At the same time, however, state legislatures also defer to local decision making in a number of traditional regulatory fields—perhaps most notably, land use and education¹⁹¹—and are inattentive towards other important areas of local governance, including areas where, arguably, *more* state oversight would be welcome.¹⁹² Exactly how much power state legislatures should wield over local governments is a point of academic debate and source of whiplash for practitioners navigating on the ground.¹⁹³

Lost amidst the alarm over legislative preemption is the role of state *executive* branches in the province of local government. State governors

188. See Daniel B. Rosenbaum, *The Local Lawmaking Loophole*, 133 YALE L.J. 2613, 2675 (2024); Daniel B. Rosenbaum, *A Legal Map of New Local Parkland*, 105 MARQ. L. REV. 721, 744 (2022); see also Noah M. Kazis, *American Unicameralism: The Structure of Local Legislatures*, 69 HASTINGS L.J. 1147, 1184-85 (2018) (observing state power to limit local governments and their practice of intervening).

189. Daniel Rodriguez & Nadav Shoked, *Comparative Local Government Law in Motion: How Different Local Government Law Regimes Affect Global Cities' Bike Share Plans*, 42 FORDHAM URB. L.J. 123, 144 (2014) (regarding the ability of state government “to create, empower, and abolish the local level”).

190. See *supra* note 3 and accompanying text.

191. Briffault, *supra* note 186, at 3 (“[E]ducation and zoning are the principal operations of local governments.”); Christian J. Ascunce, *Incentivizing Local Reform and Urban Renewal During an Economic Crisis*, 88 NOTRE DAME L. REV. 1491 (2013) (“Local governments control three major policy areas: education, land use, and law enforcement.”); Garrick Pursley & Hannah Wiseman, *Local Energy*, 60 EMORY L.J. 877, 939 (2011).

192. See Rosenbaum, *supra* note 30, at 449-53 (arguing that states are inattentive to areas of redundant local power).

193. For insight into the modern academic debate over local-government power, see generally National League of Cities, *Principles of Home Rule for the 21st Century*, 100 N.C. L. REV. 1329 (2022), which champions a system under which cities, towns, and villages could and should more actively self-govern; David Schleicher, *Constitutional Law for Nimby's: A Review of “Principles of Home Rule for the 21st Century” by the National League of Cities*, 81 OHIO ST. L.J. 883 (2020), which critiques the National League of Cities's proposal; and Nestor M. Davidson & Richard C. Schragger, *Do Local Governments Really Have Too Much Power? Understanding the National League of Cities' Principles of Home Rule for the 21st Century*, 100 N.C. L. REV. 1385 (2022), which responds to Schleicher's critique.

infrequently appear in accounts of subfederal power dynamics.¹⁹⁴ When they do, they often appear at epochal and relatively rare moments, for instance when a municipality is experiencing acute fiscal distress or when a governor issues executive orders during a national emergency. In an extreme example of the first case, Michigan governors can hand-select unelected officials to replace the city councils and elected mayors of insolvent local entities.¹⁹⁵ These appointees are granted vast power to make “dramatic local policy changes” and at times hold authority to dissolve a distressed government entirely.¹⁹⁶ In the second case, famously, governors issued orders to limit local health measures in response to the COVID-19 pandemic.¹⁹⁷

Both examples underscore the potentially vast power of local oversight at a governor’s fingertips. Yet these powers are only the tip of the iceberg; governors and their executive agencies indirectly empower, impede, prod, and incentivize local actors in a host of other ways. Governors work sometimes to constrict local power and at other times to enhance it.¹⁹⁸ Executive state agencies encourage localities to adopt particular policies—such as smoking-cessation regulations, sexual-harassment procedures, and sustainable-development plans—through their allocation of grant and incentive funding, or, more bluntly, by using their pulpit to pressure a policy’s adoption.¹⁹⁹ Agencies also push local behavior through more subtle means, for example by disseminating model ordinances and best-practice guides, offering technical assistance and legal research in focused areas, publicizing a community’s fiscal condition, and holding workshops to train

194. Professor Miriam Seifter has pointedly noted this deficiency. See Miriam Seifter, *Gubernatorial Administration*, 131 HARV. L. REV. 483, 538-39 (2017) (observing that “[e]ven within the valuable work shedding new light on state-local relations . . . there is seldom much discussion of the role of governors”). For a rare exception to this prevailing oversight, see Kellen Zale, “Preemption by Executive Order,” STATE & LOC. GOV’T L. BLOG (Sep. 7, 2021), <https://www.sloglaw.org/post/preemption-by-executive-order> [<https://perma.cc/TX7K-5DN8>].

195. See Clayton P. Gillette, *Dictatorships for Democracy: Takeovers of Financially Failed Cities*, 114 COLUM. L. REV. 1373, 1395-96 & n.120 (2014); Michelle Wilde-Anderson, *Democratic Dissolution: Radical Experimentation in State Takeovers of Local Governments*, 39 FORDHAM URB. L.J. 577, 588-89 (2012) (discussing the Michigan governor’s discretion over an emergency manager’s appointment and gubernatorial power more broadly). Rhode Island features a similar scheme. See Gillette, *supra*, at 1391; Anderson, *supra*, at 593-99.

196. Anderson, *supra* note 195, at 588, 608-10.

197. See Yanbai Andrea Wang & Justin Weinstein-Tull, *Pandemic Governance*, 63 B.C. L. REV. 1949, 1960-61 (2022).

198. Seifter, *supra* note 194, at 538-39.

199. See Katie Wood, *Holding School Systems Liable for Peer Sexual Harassment*, 14 GA. ST. U. L. REV. 695, 698 n.26 (1998); Alejandro Camacho, Melissa L. Kelly, Nicholas J. Marantz, & Gabriel Weil, *Mitigating Climate Change Through Transportation and Land Use Policy*, 49 ENV’T L. REP. NEWS & ANALYSIS 10473, 10481 (2019); Katherine Florey & Andrew Doan, *A Successful Experiment: California’s Local Laboratories of Regulatory Innovation*, UCLA L. REV. DISCOURSE (May 18, 2018), <https://www.uclalawreview.org/successful-experiment> [<https://perma.cc/U2NE-QWWU>].

local officials on how to implement desired policies.²⁰⁰ These interventions lack the force of a legislative-preemption scheme. Even so, in an ecosystem where state agencies tend to operate with more resources and expertise than their local counterparts,²⁰¹ subtle technocratic interventions can nevertheless prove impactful.²⁰² A model ordinance pushed by a state agency can soon find itself replicated in local codes across the state.²⁰³

A powerful state auditor is a discrete executive actor in this ecosystem. In many states, audit offices are conceived as independent agencies, often with an elected auditor whose position is enshrined in the state constitution.²⁰⁴ Along with elected attorneys general and comptrollers, auditors in these states occupy individual nodes of executive authority. They can carry out an agenda that is separate from—and at times, in conflict with—the governor’s prerogative.²⁰⁵ An independently elected auditor acts in theory with few constraints when intervening in local affairs: he or she is not beholden to the governor, nor directly to the legislature.

From this institutional perch, an auditor’s oversight departs in important ways from the more prominent model of legislative control and preemption. When a state legislature engages with local power, it acts as the representative governing body of the state as a whole; it presumably includes among its ranks politicians from different parties and different geographic corners of the jurisdiction. Therefore, should the legislature choose to preempt local power, it must act over the intense interests of not only affected local officials but also their state representatives. An audit, by contrast, reflects a far more centralized exercise of state oversight.²⁰⁶ It is conducted by an individual actor who does not generally report to the

200. See e.g., Florey & Doan, *supra* note 199, at 90 (discussing information sharing, legal research, and model ordinances); Camacho et al., *supra* note 199, at 10482-83 (discussing technical assistance and best-practice guidance); Wood, *supra* note 199, at 698 n.26 (discussing policy drafting workshops); TAYLOR L. CURTIS, LAUREN DAVIS & JESSE CAREY, POLICY CONSIDERATIONS FOR SOLAR PHOTOVOLTAIC SYSTEM DECOMMISSIONING AND CIRCULAR ECONOMY FOR THE SOLAR INDUSTRY, *12 (2022), LEXIS 4 [Fdn. For Nat. Res. & Energy L. 2023 12-1](#) (discussing model ordinances and templates); Leslie Zellers & Ian McLaughlin, *State and Local Policy as a Tool to Complement and Supplement the FDA Law*, 2 HASTINGS SCI. & TECH. L.J. 117, 123 (2010) (discussing technical assistance, legal research, and model policies); Gillette, *supra* note 195, at 1385 (discussing a “fiscal stress” score).

201. See Camacho et al., *supra* note 199, at 10482-83; see *infra* notes 244-247 and accompanying text.

202. See e.g., Florey & Doan, *supra* note 199; cf. Scott, *supra* note 98, at 353 (arguing that even “apparently technical regulation” is still “necessarily political”). It bears noting that while intervening agencies may sit structurally within the executive branch, their powers are often enabled by legislative act. To be sure, the state legislature sits in the background of most executive forays into local affairs. Although the role played by legislatures in this sort of state-local scheme should not be wholly discounted, ultimate discretion here still lies with the executive branch (in sharp contrast with a legislative-preemption framework).

203. See, e.g., Zellers & McLaughlin, *supra* note 200, at 123.

204. See *supra* note 57 and accompanying text.

205. Seifter, *supra* note 194, at 526.

206. Cf. Anderson, *supra* note 195, at 602 (discussing how state receivership laws “confine all oversight authority within the state executive branch rather than the state representative government as a whole”).

legislature.²⁰⁷ At the same time, audits are not directly carried out by the governor, whose position commands public scrutiny, but by an official who sits removed from the heart of state bureaucracy and often operates below the radar.²⁰⁸

State auditors therefore occupy a unique node within state government. Their actions should not be inherently conflated with those of the governor or of the legislature. But there is reason to think that the decisions of a state auditor *often* reflect the prerogative of the executive branch and the governor who controls it. Even elected state auditors may look to the governor for guidance and endeavor to work in lockstep with the governor's agenda, usually, but not exclusively, under circumstances where the two officers share a partisan affiliation.²⁰⁹ Moreover, where the governor and auditor are *not* operating in concert, an auditor risks the sort of political pushback seen in Iowa, a situation where governors have powerful tools at their disposal.²¹⁰ Sometimes governors still control and remove even ostensibly independent state officials, as Professor Miriam Seifter has observed.²¹¹ They can also work with a friendly state legislature to constrict or redirect an auditor's powers.²¹²

Local governments are frontline bystanders in such intrastate disputes.²¹³ Just as commentators have characterized state legislatures as increasingly assertive and politically fractious, willing to venture into realms they previously had not entered,²¹⁴ so too can the politicization of state audit offices embolden auditors, governors, and others in the executive branch to exercise power in a way that departs from the approach of their predecessors.

207. Cf. Scott, *supra* note 36, at 217 (State auditors “are of the state but do not deploy the paradigm control techniques of contemporary states”).

208. See Godfrey, *supra* note 141 (describing the Iowa State Auditor as “a man whose office most . . . constituents don’t even know exists”); see also Scott, *supra* note 36, at 217 (arguing that audit regimes counsel “reconsideration of the centrality of hierarchical control to conceptions of regulation” because audit offices “are central state institutions, but to the extent their practices have regulatory or meta-regulatory effects this is not a product of ‘command and control’ techniques”).

209. Seifter, *supra* note 194, at 526-27. In addition, in some jurisdictions, auditors are mandated to conduct audits requested by the governor. See MO. ANN. STAT. § 26.060 (West 2025).

210. See *supra* notes 140-144.

211. *Id.* at 527.

212. See Miriam Seifter, *State Institutions and Democratic Opportunity*, 72 DUKE L.J. 275, 322 (2022); see also Seifter, *supra* note 194, at 502, 521-22 (discussing the power of governors over state agencies).

213. Cf. Seifter, *supra* note 194, at 538-39 (“[G]overnors may sometimes try to stamp out local control, but they may do so for predominantly political reasons, and may reverse themselves as the political context changes. Perhaps more surprisingly, governors may sometimes choose to *enhance* local power as a means of advancing a substantive policy agenda.”).

214. See *supra* note 3 and accompanying text.

B. Theoretical Values of Performance Auditing

What does this all mean for local government? If performance audits reflect an exercise of state executive power over local bodies, one separate and distinct from legislative preemption, we must independently theorize the local impacts of such schemes—those virtues, flaws, and complications that are unique to performance auditing. Should local-government scholars welcome or discourage the audit explosion?

To date, debates over the value of performance auditing have occurred primarily in public administration literature, which has largely applauded the audit explosion. Indeed, per one commentator, it is accepted as “orthodoxy” that performance audits are valuable tools of public management,²¹⁵ a consensus drawn predominantly from studies that survey public officials to test auditing’s virtues.²¹⁶ These and other studies reveal a few broad themes that apply to local institutions. First, academic literature highlights the ability of auditing to promote transparency and accountability in government, which can boost public trust in governmental leaders and institutions. Second, audits can serve a prophylactic function: they can identify deficiencies before a problem balloons into an open crisis. And third, auditors possess expertise, information, and tools that other oversight stakeholders might lack. As explored below, these virtues build upon and reinforce each other, in concert making a strong case for performance auditing as a valuable tool of local oversight. Although this theoretical model falls short when the virtues of local auditing are not prioritized or realized in practice, as other Sections in this Part will demonstrate, it offers an apt jumping-off point for interrogating why performance auditing works and what principles should guide future reform.

1. Transparency

The clearest overlap between audit theory and local theory is a shared commitment to transparency as a necessary agent of accountability. In their fundamental role of generating public-facing information, performance audits promote public accountability by shining a spotlight on a government’s decisions, actions, and operations. Accountability is also a central tenet of local democracy.²¹⁷ As compared with state and federal institutions, local government derives legitimacy from its relatively smaller

215. Scott, *supra* note 36, at 216.

216. Johnsen, *supra* note 38, at 123 (citing studies and noting that “[m]ost studies have used surveys of auditees . . . measuring perceived impacts”).

217. Rosenbaum, *The Local Lawmaking Loophole*, *supra* note 188, at 2619; *see also* Laurence Ferry, Peter Eckersley & Zamzulaila Zakaria, *Accountability and Transparency in English Local Government: Moving from ‘Matching Parts’ to ‘Awkward Couple’?*, 31 FIN. ACCT. & MGMT. 345, 348 (2015) (explaining that accountability mechanisms are necessary “to ensure democratic control of public institutions, to prevent corruption and abuse of power and to improve public confidence in governance arrangements”).

jurisdictional scale. The smaller the scale, the greater the proximity between politicians and residents. According to the classic Tocquevillian account, small-scale proximity promotes shared values and allows residents to access, participate in, and hold accountable the exercise of local power.²¹⁸ But this classical account assumes a culture of transparency. If residents do not know or cannot understand *what* decisions their leaders are making, they cannot assess the desirability of these decisions and ensure political accountability.²¹⁹

While the classical account of local democracy does, to a degree, play out in practice—residents can attend meetings, speak directly with elected officials, read local ordinances, and more—much of the work of local government is carried out via less transparent mechanisms. Notably, local officials routinely govern through informal practices and non-legislative documents that are not readily accessible to the average voter.²²⁰ Their policies change with new staff, directors, and officials.²²¹ And they make decisions that do not necessarily map onto national political issues; these decisions can get easily lost in an environment of withered local media.²²²

Enter performance auditors. As a product of their mission and enabling laws, auditors are empowered to request—and to compel—the release of governmental information.²²³ Even if they cannot mandate local officials to act on their final recommendations,²²⁴ they can require officials to answer their questions, account for deficiencies, explain and justify local thinking, and participate broadly in the audit process itself.²²⁵ Auditors are also empowered to compile and release a public-facing final report that will likely receive local attention.²²⁶ These powers are significant. In exercising them, an auditor can expose the day-to-day workings of local

218. See ALEXIS DE TOCQUEVILLE, 1 DEMOCRACY IN AMERICA 117-18 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund, Inc. 2012) (1835).

219. See Rosenbaum, *supra* note 188, at 2619-21; Anna Thomasson, *Politicisation of the Audit Process: the Case of Politically Affiliated Auditors in Swedish Local Governments*, 34 FIN. ACCT. & MGMT. 380, 380 (2018); Ferry et al., *supra* note 217, at 355; see also Cuéllar, *supra* note 35, at 255 (advocating for auditing where “[e]xisting knowledge about where problems lie may prove deficient or outdated”).

220. See *infra* notes 315-322 and accompanying text.

221. See *infra* note 323 and accompanying text.

222. See Christina Koningisor, *Transparency Deserts*, 114 NW. U. L. REV. 1461, 1522-23 (2020).

223. Auditors are granted (or assumed to hold) subpoena power as a core tool of their offices. See, e.g., LA. STAT. ANN. § 24:513 (2025); Clay Cnty. Comm’n v. Galloway, 615 S.W.3d 856, 857 (Mo. Ct. App. 2020); Off. of Hawaiian Affs. v. Kondo, 528 P.3d 243, 247 (Haw. 2023); State *ex rel.* Uguru v. Palaibis, No. 81061, 2002 WL 984794, at *2 (Ohio Ct. App. May 3, 2002); see also *Dep’t of Auditor Gen.*, 836 A.2d at 1063 (Pa. Commw. Ct. 2003) (placing performance auditing in Pennsylvania within a “constitutional system . . . designed to promote public accountability”); Gaudion, *supra* note 87, at 209 (describing an inspector general’s “unparalleled access” to agency information).

224. See *supra* note 36 and accompanying text.

225. See, e.g., N.J. STAT. ANN. § 52:24-4 (West 2025); WASH. REV. CODE ANN. § 43.09.470 (West 2025).

226. See *infra* note 271 and accompanying text.

government, i.e., the formal and informal policies that actually guide official conduct.²²⁷ Performance audits can surface arbitrary decision making, corrosive personality disputes, and biased, inconsistent policy choices.²²⁸ At the same time, an audit can reveal that officials acted with deliberation and sober judgment on an issue facing their community, even if the outcome proved controversial.²²⁹

An audit's findings can speak volumes to a locality's institutional culture. These findings might provoke outrage among local residents, prompting efforts at accountability that would not have taken flight otherwise.²³⁰ But they can also promote trust.²³¹ By offering a behind-the-scenes snapshot of local conduct, a performance audit can reassure onlookers that the reality is not quite what skeptical residents fear.²³² Engagement with local government may increase, bringing a community closer to the classical democratic ideal.²³³ Whatever its outcome, an audit theoretically leaves residents more informed than they were beforehand, a knowledge expansion that signals the state's baseline commitment to local transparency.²³⁴

227. See Johnsen, *supra* note 38, at 125 (noting performance audits can surface “issues that may otherwise have been ignored”); Lenhardt, *supra* note 33, at 1548 (discussing how auditing places focus on “unseen, but nevertheless operationalized, background rules and systems”); Hossain, *supra* note 42, at 41 (noting that performance audits have been found to be “good at working out what is happening in a field” in the Australian context).

228. See Gaudion, *supra* note 87, at 209 (noting the purpose of inspectors general in “identifying wasteful, wrongful, and illegal activities . . .”); *Hearing on Financial Report and Audit in Local Authorities Before the House of Commons Comm. on Levelling Up, Hous., and Cmty.*, July 17, 2023, at 5 [hereinafter *July 17 Hearing on Fin. Rep. & Audit*] (statement of Lee Rowley, Member of Parliament), <https://committees.parliament.uk/oralevidence/13520/pdf> [<https://perma.cc/69BJ-Z6KU>] (describing situations where “auditors were quite instrumental in bringing forward concerns about issues”); Ferry et al., *supra* note 217, at 346.

229. See, e.g., Interview with Rhonda Shouse, Clerk, City of Rockville (Nov. 14, 2023) (notes on file with author) (recounting an audit spurred by allegations of embezzlement, found untrue); Interview with Lance Rains, City Adm’r, City of Gallatin (April 27, 2023) (notes on file with author) (recounting an audit spurred by allegations of corruption; found untrue).

230. See Ferry et al., *supra* note 31, at 5 (citing a study on auditing’s ability to reduce public corruption).

231. See *id.*; Thomasson, *supra* note 219, at 380; Ferry & Aherns, *supra* note 100, at 380; *June 5 Hearing on Fin. Rep. & Audit*, *supra* note 86 (Statements of Gareth Davies, Comptroller & Auditor Gen., Nat’l Audit Off., and Conrad Hall, Chair, Chartered Inst. of Pub. Fin. & Acct. (CIPFA) & the Loc. Auth. (Scotland) Accts. Advisory Comm. (LASAAC) Loc. Auth. Code Bd.); *June 26 Hearing on Fin. Rep. & Audit*, *supra* note 85 (statement of Gerald Almeroth, Exec. Dir. Fin. & Res., Westminster City Council); see also Ferry, *supra* note 87, at 5 (regarding trust and democratic accountability in public auditing).

232. See *June 5 Hearing on Fin. Rep. & Audit*, *supra* note 86, at 6 (stating that auditing is “absolutely fundamental” because “trust in political is at an all-time low”).

233. Lenhardt, *supra* note 33, at 1544 (describing auditing processes as “vehicles for democratic engagement”).

234. Hazgui, et al., *supra* note 41, at 1376 (citing literature that performance auditing “contributes to the quality of the political and democratic process by keeping citizens well informed”); see Hossain, *supra* note 42, at 22 (highlighting the widely adopted expectation that audit outputs improve the quality of information that is available to the public); Letter from Lee Rowley, Member of Parliament to Clive Betts, Chair, Levelling Up, Hous. & Cmty. Comm. (July 14, 2023) (on file with author).

2. Prophylactic Function

Performance auditing's second theoretical local virtue is its prophylactic function. The above points notwithstanding, auditing is not the only tool of transparency in the public arsenal. A variety of other mechanisms, ranging from open meetings acts to judicial review, can also make government decisions more transparent and promote public trust in democratic institutions. Yet uniquely, auditing can combine strengths from these other transparency models: it can expose information before the point of liability or illegality (and thus at an earlier stage than judicial review) and it can accompany this information with credible, neutral commentary (in contrast with the unfiltered data generated by open meetings, public-records laws, and other pure transparency models).²³⁵ While audits are not the only mechanisms of transparency in public administration, nor the only conduits of expertise, they are uniquely designed to assess governance risks prospectively—before a poor policy decision is made, an illegal act occurs, or a political crisis materializes.

Auditing thus comes with the promise of preemptive reform.²³⁶ For example, when a local government is told that its procurement policy departs from best practices, its leaders might take action to align its policy with those of peer communities.²³⁷ Officials in *other* localities might be motivated to do the same. In the process, these localities have engaged in a rare exercise: they have thought introspectively about an existing practice and considered whether it should be reformed.²³⁸ Perhaps officials ultimately decide to change the practice; perhaps they elect to maintain it. Or maybe they feel emboldened to implement a difficult reform, one that the audit has provided them political cover to consider.²³⁹ Whatever the

235. Regarding judicial review, see Cuéllar, *supra* note 35, at 234; and Lenhardt, *supra* note 33, at 1534. Regarding other transparency models, see Ferry et al., *supra* note 217, at 350, 356, which notes that large sets of raw data are “inaccessible and meaningless to most members of the public”; and Ferry et al., *supra* note 31, at 239.

236. Stengle & Rhea, *supra* note 55, at 423 (discussing performance auditing’s “prophylactic function”); Frank Shafroth, 2014: *The Year of Walking the Fiscal Tightrope*, 17 J.L. SOC’Y 49, 55 (2015). Audits can therefore be categorized as forms of “police patrol” oversight. *See generally* Matthew McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols versus Fire Alarms*, 28 AM. J. POL. SCI. 165 (1984) (differentiating between two forms of oversight, “police patrols” and “fire alarms,” and explicating each).

237. *See, e.g.*, CITY OF PALM BAY, OPERATIONAL AUDIT UPDATE (Oct. 22, 2020) (on file with author); Letter from Walton County Board of Commissions to Sherill Norman, Auditor General, State of Florida (Feb. 28, 2017) (on file with author); Palm Beach County, FL, Administrative Policy No. 08-05 (July 25, 2018) (on file with author). While not considered in all performance audits, evaluating and comparing a local entity against an auditor’s conception of best practices is a core performance auditing feature. *See* Hossain, *supra* note 42, at 22.

238. *Cf.* Guthrie, *supra* note 153, at 59 (observing that performance auditing “may be beneficial to decision makers”); Cuéllar, *supra* note 35, at 234 (signaling that audits help executive bureaucracies “learn from their mistakes”).

239. *See* de Widt et al., *supra* note 38, at 48 (discussing that “auditors have helped . . . convey difficult messages to elected councillors”).

outcome, the audit challenges local officials' acceptance of the status quo, thereby offering the possibility of proactive reform.²⁴⁰

3. Expertise Sharing

Finally, a third theoretical virtue of performance auditing is the auditor's ability to share state expertise with local officials. Auditor offices are expert institutions. While staff might lack formal training in local-government performance, their positions generally require a professional certification, background training in public-auditing standards, and ongoing professional education.²⁴¹ Audit staff are also well-positioned to accumulate knowledge and skill over time. When conducting performance audits, audit teams are often encouraged by law to compare data and policies across local entities, which provides them an on-the-job education as to best practices (or at least, "common practices") across communities and establishes the auditor as a rare stakeholder with comparative local knowledge.²⁴² Auditors in some jurisdictions are even delegated educational duties, as in Ohio, where they offer training programs for local officials. Such obligations thrust auditors into positions of local expertise.²⁴³

Underpinning auditors' claim to local expertise is a basic reality: in many fields of governance, local bodies struggle to develop subject-matter expertise on their own. Plagued by years of eroding revenue sources, depressed wages, and high rates of staff turnover, localities often lack the resources to attract and retain skilled employees.²⁴⁴ More frequently, overburdened city clerks and other administrative staff are responsible for juggling an expansive array of duties; they are tasked with running programs, implementing laws, managing other public workers, complying with

240. Regarding reactive local governance, see Rosenbaum, *supra* note 188, at 762, 777, 782.

241. Aikins, *supra* note 38, at 202.

242. Regarding the accumulation of auditor expertise over time, see Hecimovic & Martinov-Bennie, *supra* note 44, at 180. Regarding best and common practices, see WASHINGTON STATE AUDITOR'S OFFICE, *supra* note 89, at 7 (noting that the state auditor develops model rules for governments); and David Zaring, *Best Practices*, 81 N.Y.U. L. REV. 294, 298 (2006) (describing best-practice rulemaking in administrative law as "a way of obtaining common practices, not ideal ones").

243. See *July 17 Hearing on Fin. Rep. & Audit*, *supra* note 228, at 3 (statement of Rowley, Member of Parliament) (describing performance auditors as "experts who have knowledge in [an] area").

244. See *supra* notes 25-28 and accompanying text; see also MO. HOUSE OF REPS., COMM. ON GOV. EFFICIENCY & DOWNSIZING, (Jan. 17, 2024) (statement of Darvin Schildknecht), <https://documents.house.mo.gov/billtracking/bills241/witnesses/HB2111Testimony.pdf> [<https://perma.cc/Q2XC-DJTS>] (testifying in support of a bill to expand auditor power because "[o]ur fire district has struggled for many many years to find qualified . . . people willing to serve on the board of directors. We often have people who have served on the board that have no experience serving on boards or even with running a fire district. Our budget is small, and most people have no understanding of the laws of how to run a taxpayer funded entity.").

state and federal mandates, addressing constituent concerns, and more.²⁴⁵ Some localities are effectively run by one person, working part-time, who operates without any of the institutional trappings we might expect of even a small local body.²⁴⁶ By virtue of the time and resources at their disposal, if nothing else, a state auditor enters this stressed local environment with a skillset that no local actor might otherwise possess.²⁴⁷ Auditors are not unerring authorities on local government. But they offer *relative* expertise nonetheless.

4. Assessing Auditing's Theoretical Values

Taken together, the theoretical virtues raised in this section—transparency, prophylactic action, and expertise—can and do manifest in practice. A 2016 performance audit from Ohio offers a case in point. The audit looked broadly at the operations of Great Parks of Hamilton County, the largest park agency in the Cincinnati region. Among other areas of review, it examined the agency's natural-resource management practices, which guide how the agency acquires, maintains, and governs its land inventory. First, the audit enhanced local transparency by revealing information about these practices. The audit found, for instance, that the division spends less money on land management than peer agencies and relies more on unpaid volunteers; that it interprets a policy about undeveloped park acreage in a manner inconsistent with its express language; and that it operates under a land-management policy that had not been revised in forty years, even as its mission and purpose had evolved in the interim.²⁴⁸ These findings brought governmental actions into the open and placed them within a context digestible to local officials and residents alike.

The audit did not stop there. Next, drawing upon comparative data and third-party research, the audit brought external expertise to bear. It recommended specific policy changes, foremost among them that the park

245. Cf. Interview with Tamatha Ague, Adm'r, City of Monroe City (June 21, 2023) (notes on file with author) (“[W]e are so far out of compliance with so many things . . . , it’s amazing how they even function [I]t’s a disaster . . . , people’s timecards are getting fudged; half the police force just quit; employees not given benefits, no files kept [I] don’t know how they’ve functioned all these years.”).

246. See, e.g., Email from McCord Bend Village to Daniel Rosenbaum, Assistant Professor, Mich. State Univ. Coll. of L. (April 18, 2023) (on file with author) (describing the situation in McCord Bend, Missouri); see also Ponomarenko, *supra* note 34, at 210 (outlining the need for state intervention in small localities).

247. See Gillette, *supra* note 195, at 1387-88 (discussing the view that “more centralized governments attract greater administrative expertise and thus are in a position to provide technical assistance that local governments could not employ on their own”); Casey Adams, *Home Rules: The Case for Local Administrative Procedure*, 87 FORDHAM L. REV. 629, 661 (2018) (“Local governments typically have access to fewer resources . . . than their state counterparts.”).

248. DAVE YOST, OHIO AUDITOR OF STATE, GREAT PARKS OF HAMILTON COUNTY 33-34, 37-39, 42-44 (2016), https://ohioauditor.gov/auditsearch/Reports/2016/Corrected-Great_Parks_of_Hamilton_County_16_Performance-Hamilton-2.pdf [<https://perma.cc/GJB9-BRT3>].

agency adopt a comprehensive natural-resources management plan.²⁴⁹ This recommendation prompted local deliberation and ultimately translated into reform. Local officials promised to adopt, and soon did adopt, a comprehensive plan responsive to the audit's findings.²⁵⁰ According to Bret Henninger, the park agency's chief operating officer, the process of creating a management plan helped employees set priorities, drive decision-making, and identify problems before they became critical.²⁵¹ For example, the agency learned from the audit that its existing resources were not adequate for its present and future land-management demands.²⁵² Ultimately, Great Parks's audit succeeded because it brought together three phenomena that do not arise readily in local government, let alone in concert: detailed transparency, expert advice, and proactive deliberation. Thanks to the audit, an opportunity window emerged for the agency to consider long-needed reforms.

Yet Hamilton County's rosy experience is not universal. Rather than enhancing trust in democratic institutions, some commentators argue that performance audits do not actually promote trust—or worse, that they can contribute to its erosion.²⁵³ Where residents lack trust in state actors, such as the governor or the state auditor, a performance audit that identifies problems in local government can be dismissed as a petty squabble between elected officials, heightening residents' sense of institutional mistrust across the board.²⁵⁴ Moreover, rather than serving as a mechanism for prophylactic reform, some commentators view performance auditing as a pure mechanism of state control, a way to advance particular outcomes notwithstanding whether those outcomes reflect good governance or are normatively desirable for the locality in question.²⁵⁵ Audits may push statewide uniformity to the detriment of local experimentation, inhibiting rather than promoting the exercise of local democracy.²⁵⁶ And although an

249. *Id.* at 26.

250. Interview with Bret Henninger, Chief Operating Officer, Great Parks of Hamilton County (Apr. 27, 2023) (notes on file with author).

251. *Id.*

252. *Id.*

253. *See, e.g.,* Monfardini & von Maravic, *supra* note 98, at 56, 71 (discussing the contention that auditing “does not lead to an increase in trust in government”); Mendez & Bachtler, *supra* note 40, at 749 (discussing the risk that audits “may exacerbate distrust”).

254. The audit explosion has also been associated with increased mistrust between local and state bodies. *See* Mendez & Bachtler, *supra* note 40, at 749, 759.

255. *See* Pasquale Ruggiero et al., *Local Government Auditing in Italy*, in *AUDITING PRACTICES IN LOCAL GOVERNMENTS: AN INTERNATIONAL COMPARISON*, *supra* note 31, at 83, 91; Mendez & Bachtler, *supra* note 40, at 762 (describing audit as a way to exert subnational policy influence); *July 17 Hearing on Fin. Rep. & Audit*, *supra* note 228, at 3 (statement of Rowley, Member of Parliament) (mentioning that “central government [is] always going to have a view about some of the things that local government does” in explaining the purpose of auditing).

256. *See* Hasan et al., *supra* note 38, at 304 (showing 60% agreement with the proposition that auditing “reduced my local authority’s freedom in deciding what is best for local citizens” in a survey of English auditees); Hecimovic & Martinov-Bennie, *supra* note 44, at 175 (discussing “the need for greater community input”).

auditor's intervention in local government might be partially guided by relatively 'neutral' managerial values,²⁵⁷ it could also be driven by substantive policy agendas and self-interested careerist goals that might not align with a community's best interests.²⁵⁸ A performance auditor may seek to enhance the legitimacy of her office,²⁵⁹ further personal political ambitions,²⁶⁰ demonstrate a muscular response to issues in the public eye,²⁶¹ cast aspersions on audited officials,²⁶² and lend administrative cover to exercises of political control.²⁶³ Anecdotal stories abound of audits beginning for bare political reasons.²⁶⁴ Regardless of the true motives at play, if the audited local government believes that an audit is politically driven, it may resist collaboration with the state audit office from the onset, creating a stressed relationship that grows only more contentious as the process drags out and costs begin to rise.²⁶⁵

Critical accounts of performance auditing focus on these cross-purposes and cross-motives, a perspective that has appeared to gain momentum in recent years.²⁶⁶ Yet strikingly, even academic commentators who question the pro-audit consensus still often conclude, on balance, that performance auditing's benefits are nevertheless worth its drawbacks.²⁶⁷ As applied to local government, their perspective is tenable if not persuasive. As Hamilton County illustrates, some audit regimes can actualize the theoretical virtues sketched above.

257. See Hazgui et al., *supra* note 41, at 1393.

258. See Rana, *supra* note 41, at 349 (listing "headline hunting" and being a "lapdog" as two of the "seven deadly sins" of performance auditing); Hecimovic & Martinov-Bennie, *supra* note 44, at 175 (discussing political agendas); de Widt et al., *supra* note 38, at 32 (discussing these risks).

259. Rana, *supra* note 41, at 347; Hazgui et al., *supra* note 41, at 1378.

260. Auditors are often former politicians or have future political aspirations. See, e.g., Ferry et al., *supra* note 45, at 153 (discussing auditors in Brazil). In the domestic context, see, for example, notes 141 and 144 and accompanying text, *supra*.

261. Hazgui et al., *supra* note 41, at 1377-78; see also Brief for Plaintiff-Appellant at 13, *Sand v. An Unnamed Loc. Gov't Risk Pool*, 988 N.W.2d 705, 710 (Iowa 2023) (No. 21-1765), 2022 WL 17961587, at *13 (discussing a local audit that began following media coverage).

262. Research indicates that negative audits can have electoral consequences, which might nudge auditors to pursue audits of officials who they do not want reelected. See Thomasson, *supra* note 219, at 381; Ferry & Ahrens, *supra* note 100, at 380; Parker et al., *supra* note 41, at 294.

263. See Monfardini & von Maravic, *supra* note 98, at 70; Hecimovic & Martinov-Bennie, *supra* note 44, at 176, 186.

264. In one case, a former alderwoman went door-to-door collecting signatures for a petition audit, hoping to uncover corruption by a political enemy. Interview with Bob Shelton, City Adm'r, City of Town and Country (Mar. 31, 2023) (notes on file with author). In another, an audit was allegedly inspired by a state representative, who was angry at a city for issuing him a speeding ticket. Interview with Mary Lou Hildreth, Clerk, City of Hampton (Mar. 30, 2023) (notes on file with author).

265. See *supra* notes 65-68 and accompanying text (regarding audit costs).

266. See Rana, *supra* note 41, at 349 (citing studies, all since 2011, that offer criticisms of performance auditing); Hazgui et al., *supra* note 41, at 1376 (stating as a consensus the "nearly impossible political neutrality of [performance auditing]").

267. See, e.g., Rana, *supra* note 41, at 349 ("However, given that the negative effects of [performance auditing] are limited and overall its positive effects outweigh these negative effects . . .").

C. Perspectives of Local Officials

Local officials offer a different perspective. In parallel with the quantitative project conducted in Part II, interviews were requested from each local government with an identified audit finding since 2010 in Missouri, Ohio, and Florida. Officials from forty-four communities ultimately agreed to speak on the record.²⁶⁸ Taken together, these interviews reveal a mixed bag of auditee experiences, one that roughly tracks the viewpoints gleaned from academic literature. But on the whole, local officials appear to endorse a particular distinction that surfaces only obliquely in academic accounts: a distinction between the ordeal of being audited (i.e., the audit process itself) and the after-effects of that process (i.e., its substantive outcomes).

Widely divergent takes on substance and process emerge as a throughline in the forty-four interviews. On the one hand, local officials speak highly of auditing's substantive outcomes: the deficiencies it corrected; policies it prompted; resources it saved; information it shared; and focus it placed on targeted areas of improvement.²⁶⁹ On the other hand, the audit process is a source of considerable frustration for local officials. Auditees dispute whether the process indeed promotes accountability and trust.²⁷⁰ They bristle at an audit's stigmatizing nature.²⁷¹ And they complain that audits command significant public resources by adding to the workload of already-stretched local staff, who are tasked with answering questions and producing documents requested by the auditor.²⁷² The following discussion is not empirically grounded, but it cautiously suggests a new front in how local audits are understood, and perhaps, in how they can be reformed.

268. Therefore, the sample self-selected for officials who were willing to talk about their community's audit experience.

269. For a comparable account in academic literature, see Hasan et al., *supra* note 38, at 305.

270. *Id.* at 318.

271. Public-administration literature has touched upon the stigmatizing nature of performance audits. *See id.* at 315; Johnsen, *supra* note 38, at 125. As a result, government bodies are wary of performance audits and may respond defensively to them. *See* Parker et al., *supra* note 41, at 293. Local officials interviewed for this article expressed sentiments in line with the public-administration literature. *See* Interview with Sharon Haynes, Assistant Dir. Fin. Servs., City of Deerfield Beach (Apr. 13, 2023) (notes on file with author) (commenting that the word "audit" connotes wrongdoing); Interview with Nancy Nix, *supra* note 60 (same); Interview with Bob Shelton, *supra* note 264 (discussing the "perception that you've done something").

272. *See* Hasan et al., *supra* note 38, at 304 (showing high rates of agreement with a question asking whether a particular audit process "increased the workload of my local authority" in a survey of auditees); Mendez & Bachtler, *supra* note 40, at 759 (quoting European officials stating that "[a]udit overkill is significant"); *June 26 Hearing on Fin. Rep. & Audit*, *supra* note 85, at 13 (statement of Alison Scott, Shared Dir. of Fin., Three Rivers Dist. Council) (commenting on the length of audit processes).

1. Audit Substance

Of the forty-four officials interviewed, a total of twenty-nine commented on the substantive outcomes of their community’s performance audit—on the changes it spurred, education it imparted, and governance practices it inspired. A moderate majority of these officials, seventeen in total, expressed *positive* sentiments on their audit’s substantive outcomes.²⁷³ An additional ten interviewees expressed *mixed* sentiments, while only one official, the mayor of Deerfield, Missouri, expressed wholly *negative* sentiments.²⁷⁴ Those with sentiments labeled “mixed” touched upon tensions in the recommendations they received, with a common refrain being that some audit conclusions were unrealistic yet still spurred internal retrospection, even as other recommendations highlighted practices or policies that indeed needed to change.²⁷⁵ A typical assessment was offered by Kevin Garringer, the finance director of Napoleon, Ohio. Garringer remarked that while his community did not agree with all of the audit’s findings, the audit still inspired city leadership to think carefully about the issues it raised.²⁷⁶ A more critical take was voiced by Mary Lou Hildreth, the city clerk of Hampton, Florida, who spoke about a policy recommended by the auditor’s office that made sense in the abstract.²⁷⁷ Yet when considering her city’s priorities and capacity—she was its only employee—Hildreth dismissed the recommendation as frivolous.²⁷⁸

As Hildreth and others observed, policies that appeared reasonable from the state’s perspective did not always present as reasonable within

273. See Interview with Edward Sluys, *supra* note 65; Interview with Tamatha Ague, *supra* note 245; Interview with Deborah Lake, Mayor, City of Otterville (June 30, 2023) (notes on file with author); Interview with Ben Garlich, *supra* note 65; Interview with Suzanne Sherman, City Manager, City of Palm Bay (May 9, 2023) (notes on file with author); Interview with Bret Henninger, *supra* note 250; Interview with Cindy Riordan, Director of Info. Tech., City of St. Louis (Apr. 27, 2023) (notes on file with author); Interview with Bill Grant, General Couns., Citrus Cnty. Hosp. Bd. (Apr. 26, 2023) (notes on file with author); Interview with Patrick Ginnett, *supra* note 60; Interview with Victor Hurlbert, *supra* note 66; Interview with Sharon Haynes, *supra* note 271; Interview with April Baxter, *supra* note 36; Interview with Kristy Keithley, *supra* note 61; Interview with Andrew Frazier, City Adm’r, City of Glasgow (Apr. 30, 2023) (notes on file with author); Interview with Kerri Krumme, Clerk, Vill. of Country Club (Mar. 30, 2023) (notes on file with author); Interview with Josiah Rice, Clerk, City of Hume (Mar. 10, 2023) (notes on file with author); Interview with Lance Knuckles, *supra* note 182.

274. See Interview with Wayne Sisseck, *supra* note 27. For example of auditors expressing mixed sentiments, see Interview with Rhonda Shouse, *supra* note 229; Interview with Tim Person, *supra* note 177; Interview with Kevin Garringer, *supra* note 181; Interview with Sam Sutherland, *supra* note 60; Interview with Lance Rains, *supra* note 229; Interview with Brian Hattery, *supra* note 28; Interview with Bob Shelton, *supra* note 264; Interview with Mary Lou Hildreth, *supra* note 264; Interview with Leslie Guyer, Clerk, City of Gulf Breeze (Mar. 30, 2023) (notes on file with author); and Interview with Deanne Hufford, Clerk, City of Orrick (Mar. 30, 2023) (notes on file with author).

275. See, e.g., Interview with Rhonda Shouse, *supra* note 229; Interview with Kevin Garringer, *supra* note 274; Interview with Sam Sutherland, *supra* note 60.

276. Interview with Kevin Garringer, *supra* note 274.

277. Interview with Mary Lou Hildreth, *supra* note 264.

278. *Id.*

the context of a given local government, particularly a small one.²⁷⁹ The challenge was summarized succinctly by Brian Hattery, a former councilmember of Kenton, Ohio. In Hattery's opinion, struggling municipalities like Kenton face existential revenue and staffing crises; they are often rudderless without support from the state.²⁸⁰ An audit can offer this support. It promises the counsel of an experienced outside advisor, brought into the community to question prevailing practices.²⁸¹ Its final product can influence thinking, confirm or challenge existing practices, and ultimately become part of a community's institutional memory going forward.²⁸² At the same time, however, Hattery concluded that performance audits are not "all they were sold to be."²⁸³ Kenton's audit was ultimately derailed by political infighting and offered recommendations drawn from a large city, Columbus, that did not face the same local problems.²⁸⁴ Hattery concluded his "mixed" assessment of the audit's outcome by cautioning that audits must strike a delicate balancing act: a successful performance audit must balance between "too much state meddling" and "too much local autonomy."²⁸⁵

Local officials who offered "positive" sentiments on the substance of performance audits did not share the same sense of tension. Rather, they spoke in unequivocal terms, describing their communities' audits as "very valuable," "outstanding," "insightful," "reasonable," and "necessary."²⁸⁶ Some found the audit educational—a source of new ideas and directions that had not previously occurred to local officials.²⁸⁷ The City of Middlefield, Ohio, complimented the actionable proposals advanced by the state auditor's office, for example,²⁸⁸ while Suzanne Sherman, the city manager of Palm Bay, Florida, lauded the city's performance audit for identifying governance weaknesses and quipped that "what doesn't kill us makes us stronger."²⁸⁹ Other interviewees reported that their communities' audits served to reaffirm information they already knew or highlight policies that they had already identified as candidates for reform. Even so, these

279. *Id.*; Interview with Sam Sutherland, *supra* note 60.

280. Interview with Brian Hattery, *supra* note 28. Despite their wariness of state control, local governments often echo Hattery's sentiment and wish state institutions would assist more in local affairs. *See, e.g., Important Water Issues Are Discussed at Icle Meeting*, GA. ENV'T L. LETTER (Arnall Golden & Gregory, LLP, Atlanta, Ga.), Dec. 1999, at 2 (discussing a goal of county commissioners in Georgia to receive state technical assistance).

281. Interview with Brian Hattery, *supra* note 28.

282. *Id.*

283. *Id.*

284. *Id.*

285. *Id.*

286. Interview with Tamatha Ague, *supra* note 245; Interview with Deborah Lake, *supra* note 273; Interview with Suzanne Sherman, *supra* note 273; Interview with Bill Grant, *supra* note 273; Interview with April Baxter, *supra* note 36; Interview with Josiah Rice, *supra* note 273.

287. *See, e.g.,* Interview with Deborah Lake, *supra* note 273; Interview with Patrick Ginnetti, *supra* note 60; Interview with Lance Knuckles, *supra* note 182 (describing a performance audit as a "healthy part of growth and learning").

288. Interview with Ben Garlich, *supra* note 65.

289. Interview with Suzanne Sherman, *supra* note 273.

officials still found the audits valuable because they pushed *other* internal actors to prioritize policy issues that had previously been neglected.²⁹⁰

This brief snapshot of “positive” and “mixed” audit sentiments does not lend itself to unqualified conclusions. As a conservative takeaway, however, the interviews suggest that while local officials hold differing and nuanced views, many if not most of them believe that the performance audits conducted of their communities yielded at least *some* governance benefits.

2. Audit Process

By contrast, and as perhaps a more concrete takeaway, local officials’ mixed-to-positive accounts of an audit’s impact sours when these same officials are asked about the underlying audit process. A total of eighteen interviewees commented on their experience with how the audits were initiated and carried out by state auditors’ offices. Of these, only two expressed *positive* experiences, five expressed *mixed* experiences, and eleven expressed wholly *negative* experiences.²⁹¹

Those expressing negative experiences were particularly acerbic in their recollections. One interviewee believed that the auditors came into the process with a hostile posture that bled through the entire experience. The auditors “held [city officials] hostage” by assuming “guilt” from the onset, conducting a fishing expedition to validate this assumption, and creating a climate where officials were afraid to raise even minor questions of the audit team.²⁹² Another interviewee used identical language to recount a similar anecdote. The performance audit she experienced was a “hostile . . . witch hunt” driven by auditors who were “trying to find something.”²⁹³ Local employees were intimidated by the audit team, which demanded answers to questions that extended well beyond the audit’s original scope and spanned twenty years of local practice.²⁹⁴

290. See, e.g., Interview with Victor Hurlbert, *supra* note 66; Interview with Sharon Haynes, *supra* note 271 (discussing how audits identified neglected issues).

291. See Interview with Chelsie Dick, *supra* note 10; Interview with Ben Garlich, *supra* note 65 (noting positive experiences); Interview with Leslie Haase, Fin. Dir., City of Joplin (May 5, 2023) (notes on file with author); Interview with Cindy Riordan, *supra* note 273; Interview with Sharon Haynes, *supra* note 271; Interview with April Baxter, *supra* note 36; Interview with Nancy Nix, *supra* note 60 (noting mixed experiences); Interview with Rhonda Shouse, *supra* note 229; Interview with Wayne Sisseck, *supra* note 27; Interview with Deborah Lake, *supra* note 273; Interview with Bill Grant, *supra* note 273; Interview with Victor Hurlbert, *supra* note 66; Interview with Kristy Keithley, *supra* note 61; Interview with Bob Shelton, *supra* note 264; Interview with Leslie Guyer, *supra* note 274; Interview with Deanne Hufford, *supra* note 274; Interview with Shannon Chessman, Deputy Clerk, Palm Beach Cnty. Clerk’s Off. (Mar. 23, 2023) (notes on file with author); Interview with Lance Knuckles, *supra* note 182 (noting negative experiences).

292. Interview with Deanne Hufford, *supra* note 274.

293. Interview with Shannon Chessman, *supra* note 291.

294. *Id.*

Such comments highlight the resentment some local officials hold for the audit process, even if, as a number of them did, they ultimately found value in the final audit report. Indeed, five interviewees reported positive sentiments on the substance of their audit’s recommendations despite holding negative sentiments regarding the process.²⁹⁵ One of these interviewees described the audit process as a “pain in the ass” yet its result as “necessary” and “outstanding.”²⁹⁶ Another characterized the process as antagonistic, even though the locality later embraced the audit’s recommendations by implementing wholesale changes.²⁹⁷ Finally, a third local official, a mayor from Missouri, found the audit they experienced “very valuable” despite also questioning the political motives of the state auditor’s team.²⁹⁸ These views are not necessarily contradictory. Rather, they offer a new view of the public-administration consensus: performance auditing, notwithstanding real challenges and likely flaws, can still serve as a normatively valuable tool of government.

D. Distilling the Localism Stakes

The inference that local audits might be *both* valuable and invasive has important ramifications for practitioners and scholars of local government law. The normative tensions inherent in performance auditing—whether audits assist local officials or aim to control them, offer best practices or push statewide uniformity, convey sorely needed expertise or constitute political meddling²⁹⁹—speak to fundamental debates over the role of local governments in the federal system. Scholars of localism ground its virtues in the principles of participatory democracy.³⁰⁰ In theory, local governments are receptive to the parochial preferences of their residents, delivering a bundle of local regulations and services that reflect a community’s values and that are tailored towards its unique needs.³⁰¹ Residents who dislike the bundle of regulations and services in their community can

295. See Interview with Deborah Lake, *supra* note 273; Interview with Bill Grant, *supra* note 273; Interview with Victor Hurlbert, *supra* note 66; Interview with Kristy Keithley, *supra* note 61; Interview with Lance Knuckles, *supra* note 182.

296. Interview with Bill Grant, *supra* note 273.

297. Interview with Victor Hurlbert, *supra* note 66.

298. Interview with Deborah Lake, *supra* note 273 (rhetorically asking, “[W]ho does the auditor work for[?] [T]hat’s all I’m going to say,” when questioned about her experience with the state-auditor staff).

299. See *supra* Part III.B.

300. See Richard Briffault, *Localism and Regionalism*, 48 *BUFF. L. REV.* 1, 16 (2000); Rosenbaum, *supra* note 30, at 436. Localism is also grounded in the belief that local governments are not (or should not be) considered mere agencies of the state but, rather, are body politics with a claim to autonomy and self-governance. See Gillette, *supra* note 195, at 1380-81.

301. Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 *J. POL. ECON.* 416, 422 (1956); see also Daniel E. Ho, *Does Peer Review Work? An Experiment of Experimentalism*, 69 *STAN. L. REV.* 1, 17-18 (2017) (summarizing the view that decentralized decision-making promotes “democratic experimentalism”).

advocate for change or move elsewhere.³⁰² Nonresidents who share the community's values can take their place. From this vantage point, performance audits are a threat to localism. They suggest reforms that do not necessarily reflect (and indeed, might run counter to) the preferences of local residents.³⁰³ What constitutes best practices in the opinion of an expert does not always comport with community desires, and indeed, might serve only to stifle local experimentation.³⁰⁴ Even light-touch measures, such as offering guidance and training to local officials, can be perceived as paternalistic and can diminish—or appear to diminish—local agency.³⁰⁵

Skeptics of localism can point to a number of flaws in this theoretical account. Core among them is that local governments are sometimes *too* parochial. They pursue policies of exclusion, generate negative externalities in surrounding communities, and fail to attract talented officials capable of effective leadership.³⁰⁶ To skeptics, performance auditing mitigates the problems of localism. It does not offer radical remedies; no borders are reconfigured or local bodies dissolved by the direct operation of an audit. Yet a performance audit can nudge local officials away from policies that pose negative externalities and towards those backed by data and proven experience.³⁰⁷

When should local democracy give way to state fiat? How should states strike a balance between deference and paternalism when engaging with local bodies?³⁰⁸ When should local desires yield to best practices?³⁰⁹ These are bedrock questions in local government law—and performance auditing *might* offer a middle-path mechanism for juggling them. A

302. Tiebout, *supra* note 301, at 422.

303. See CLAY COUNTY COMMISSION, STATEMENT FOR IMMEDIATE RELEASE (Sep. 16, 2019) (on file with author) (arguing that the state auditor has encroached too far into the domain of local control).

304. See Maria Ponomarenko, *Legislative Administration*, 2021 WIS. L. REV. 1231, 1240-41 (discussing a divergence between local residents and experts); Florey & Doan, *supra* note 199, at 99-100 (arguing that statewide policy convergence might impair local experimentation); Mendez & Bachtler, *supra* note 40, at 758 (arguing that audits may stifle innovation).

305. See *July 17 Hearing on Fin. Rep. & Audit*, *supra* note 228, at 23 (debating this issue).

306. Regarding interlocal externalities, see Sarah L. Swan, *Constitutional Off-Loading at the City Limits*, 135 HARV. L. REV. 831, 874-77 (2022); Clayton P. Gillette, *Regionalization and Interlocal Bargains*, 76 N.Y.U. L. REV. 190, 209 (2001); and Jonathan Rosenbloom, *New Day at the Pool: State Preemption, Common Pool Resources, and Non-Place Based Municipal Collaborations*, 36 HARV. ENV'T L. REV. 445, 454 (2012). See also Williams, *supra* note 301, at 637, referencing the argument that local officials can be “so incompetent that they routinely enact bad policy, or, worse still, actively seek to oppress local minorities.”

307. See *June 5 Hearing on Fin. Rep. & Audit*, *supra* note 86, at 15 (statement of Gareth Davies, Comptroller & Auditor Gen., Nat'l Audit Off.) (arguing that state auditors are better positioned than local-level auditors to conduct comparative studies).

308. Cf. Ann M. Eisenberg, *Power and Powerlessness in Local Government: A Response to Professor Swan*, 135 HARV. L. REV. F. 173, 177 (2022) (discussing tradeoffs between “unmitigated localism” and “paternalistic mandates”).

309. Cf. *June 26 Hearing on Fin. Rep. & Audit*, *supra* note 85, at 22-23 (statement of Scott, Shared Dir. of Fin., Three Rivers Dist. Council) (discussing tradeoffs between “comparative data” and “local democracy”); Hasan et al., *supra* note 38, at 292 (regarding tension between standardization and local decision-making).

performance audit falls somewhere between the bimodal poles of mandatory state preemption and absentee state authority. In conducting a performance audit, the state auditor is plainly intervening in local affairs, but importantly, the intervention can play a principally educational function, and it need not deprive the local government of its agency.³¹⁰ The intervention can also substitute for more invasive measures. For example, rather than taking control over an underperforming school district, a state can first conduct performance audits as an interim measure—as a way to evaluate the district’s challenges and offer recommendations before advancing to a takeover.³¹¹

Public-administration literature hints at performance auditing’s ability to play such a middle-ground role.³¹² So do Part II’s quantitative study and the interviews with local officials examined above.³¹³ Performance audits might therefore fill an important gap in the state-local continuum: they may occupy a middle ground between state mandates and state nudges, between the poles of states being too intrusive and too absent in local affairs. Audits accomplish this balancing act when they are grounded in matters of epistemic, prophylactic, and educational value. On the other hand, audits jeopardize this delicate equilibrium when their distinct take on collaborative federalism—which uniquely brings state and local officials into direct conversation—fractures under the weight of partisan motives or spiraling costs.

The cautious promise of performance auditing also faces a blunter local threat: even where they optimize state-local deliberation, an audit’s recommendations might not translate into quality outcomes. Auditors might make poor recommendations; city councils and county commissions might not adopt the normatively strongest ones. While local officials believe that audits serve an ameliorative function,³¹⁴ we otherwise lack empirical support that audits indeed leave a community and its residents better off than they had been beforehand. However, even setting aside the individual merits of an audit’s induced reforms, local-government theory and the data collected for this Article together suggest that audit recommendations can

310. See Gillette, *supra* note 195, at 1388 (discussing the educational function of state expertise); *July 17 Hearing on Fin. Rep. & Audit*, *supra* note 228, at 26 (statement of Rowley, Member of Parliament) (discussing the importance of auditing regimes that “ensur[e] local authorities have the space for their own agency”). On the value of vertical learning, see Ho, *supra* note 301, at 75-76.

311. See, e.g., Jonathan R. Werner, *No Knight in Shining Armor: Why Courts Alone, Absent Public Engagement, Could Not Achieve Successful Public School Finance Reform in West Virginia*, 35 COLUM. J.L. & SOC. PROBS. 61, 80 (2002) (discussing such a scheme).

312. See *June 26 Hearing on Fin. Rep. & Audit*, *supra* note 85, at 12 (statement of Michael Hudson, Exec. Dir. Fin. & Res., Cambridgeshire Cnty. Council) (arguing that performance auditors can serve as a “critical friend” to auditees); Rana, *supra* note 41, at 348 (discussing the importance of auditors’ independence); Hasan et al., *supra* note 38, at 299 (discussing the value of auditors’ feedback to local authorities).

313. See *supra* Section III.C.

314. *Id.*

impact local institutions in important but heterogenous ways. First, audits can nudge local officials towards more formality in their governance practices. Second, the data suggests audits can offer profitable instruction for even the smallest of localities. Third, however, audits' effects aren't uniform, and recommendations appear to impact wealthy communities more than poorer ones.

Below, each of these three implications will be considered in turn. Together, they provide a reminder for policymakers: just as local governments are not monolithic entities, the virtues of performance auditing might not apply with equal force in every community.

1. Formality

First, audits push localities towards formal practices and away from informal ones. Commentators have observed that local governments often operate informally. As compared to their state and federal counterparts, localities, especially the smallest ones, govern through unwritten practices and in accordance with contextual local norms.³¹⁵ Their policies are shaped by frontline bureaucrats. These bureaucrats hold discretion to channel local knowledge and mold institutional cultures over time, in ways that may or may not reflect written strictures of law.³¹⁶ Informality has its virtues, as scholars of local government have explored at some length. It enables local entities to operate nimbly and efficiently; they can make decisions that are responsive to local concerns, free of cumbersome procedures and rigid requirements more befitting of a large government bureaucracy.³¹⁷ But as much as informality can serve a democracy-enhancing value, it can also promote ad hoc and obscure decision-making.³¹⁸ Officials might abuse

315. See Miller et al., *supra* note 158, at 634-35, 643 (discussing the importance of informal governance structures in local communities); Carol M. Rose, *New Models for Local Land Use Decisions*, 79 NW. U. L. REV. 1155, 1171 (1985); Nestor M. Davidson & David Fagundes, *Law and Neighborhood Names*, 72 VAND. L. REV. 757, 812 (2019); Ponomarenko, *supra* note 155, at 1558.

316. See Ho, *supra* note 301, at 10 (discussing the role of frontline bureaucrats); Ames et al., *supra* note 35, at 59 (discussing the divergence between written law and informal practice); Interview with Deborah Lake, *supra* note 273 (same).

317. See Miller et al., *supra* note 158, at 635-36 (discussing efficiency and democratic legitimacy); Rahman, *supra* note 33, at 345 (discussing participation); Ponomarenko, *supra* note 155, at 1532-33 (same); Davidson, *supra* note 156, at 572 (same); Davidson, *supra* note 156, at 573, 604-05, 616 (discussing discretion in response to community norms); Ellen Kirtner, *Interrupting the Blight Cycle: Managing the Future of Properties in Tax Foreclosure Sales Through Pre- and Post-Sale Initiatives*, 66 CASE W. RES. L. REV. 1083, 1092-93 (2016) (discussing flexibility). For discussions on participation in informal local regimes, see Nadav Shoked, *Local in a Peculiar Way: The Police Force in American Law*, 172 U. PA. L. REV. 1291, 1342-47 (2024).

318. Ponomarenko, *supra* note 155, at 1567-68 (discussing both sides); see also Kreisner v. City of San Diego, 1 F.3d 775, 807-08 (9th Cir. 1993) (Boochever, J., dissenting) (discussing inconsistent and obscure decision-making); Anthony v. State, 209 S.W.3d 296, 303, 306 (Tex. App. 2006) (same). For a rare survey of informal local law, see Miller et al., *supra* note 158, at 635-36.

their discretion or misunderstand their powers and obligations.³¹⁹ And while facially responsive to local residents, informality is susceptible to inequitable private ordering: parties with more resources and connections can influence policy through informal governance networks, leaving disadvantaged groups on the outside of the political process.³²⁰ Informality—replete with all its clashing benefits and flaws—is deeply ingrained in local government.³²¹ But because they lean heavily on institutional knowledge, informal systems are subject to upheaval when entities go through periods of accelerated turnover.³²² Unwritten practices are difficult to learn, transfer, and maintain where there exists a revolving door of frontline officials. The issue is a timely one. Local governments have faced unprecedented rates of turnover in recent years, a trend with downstream consequences for the unwritten practices traditionally safeguarded by long-tenured bureaucrats.³²³

Audits can play an impactful role in this space. Performance auditors regularly ask local officials to *explain* their day-to-day practices, not simply to produce documents, which positions the auditors to uncover informal local systems.³²⁴ Once uncovered, moreover, audit recommendations push localities to inject elements of formality into these systems by, for instance, memorializing a policy in writing or creating a standard procedure for decisions formerly made on an ad hoc basis.³²⁵ In this manner, whatever the optimal degree of informality in local government, audits can cause local officials to think about informal institutions they had previously taken for granted.³²⁶ If local officials are considering audit recommendations deliberately, as the data from Part II seem to suggest, then they are prompted

319. *Niemotko v. Maryland*, 340 U.S. 268, 271-72 (1951) (discussing abuse); *Kreisner*, 1 F.3d at 806-07 (discussing confusion); *see also* Ponomarenko, *supra* note 34, at 215 (providing an example of abuse).

320. *See* Ponomarenko, *supra* note 155, at 1561-62 (discussing capture); *Kreisner*, 1 F.3d at 807 (discussing participation defects); *Anthony*, 209 S.W.3d at 306 (same). Informal policies can also be difficult for citizens to challenge. *See, e.g.*, *Myers v. City of Charleston*, No. 2:19-cv-00757, 2020 WL 4195005, at *16 (S.D. W. Va. July 21, 2020); *Ellis v. Off. of S.F. Sheriff*, A151542, 2019 WL 4727557, at *6 (Cal. Ct. App. Sep. 27, 2019).

321. *Cf.* Interview with Joe Neill, Couns., St. Louis Sheriff's Off. (Jan. 29, 2024) (notes on file with author) (observing that institutional inertia maintains systems of informality).

322. *See* Interview with Daniel Pate (April 20, 2023) (notes on file with author) (commenting that the city would shut down if a plane crashed carrying key holders of local institutional knowledge); *see also* Miller et al., *supra* note 158, at 657-59 (arguing that localities “cannot simply forsake the formalities of government entirely”).

323. *See June 5 Hearing on Fin. Rep. & Audit*, *supra* note 86, at 17 (statement of Davies, Comptroller & Auditor Gen., Nat'l Audit Off.) (“Does [the locality] rely on the knowledge of one person . . . ? If that person gets a new job, you have lost all of your corporate knowledge.”); Email from McCord Bend Village, *supra* note 246 (describing the challenge of reviewing records left behind by the prior village chair).

324. *See* Lenhardt, *supra* note 33, at 1548 (noting “unseen, but nevertheless operationalized, background rules and systems that support segregation across multiple life domains,” which audits can help uncover).

325. *See supra* Section II.C.

326. *See, e.g.*, Interview with Cindy Riordan, *supra* note 273 (noting her audit experience encouraged retrospection on issues officials had never considered, including informal policies).

to appraise their practices with fresh eyes and confront, perhaps for the first time, what degree of informality is optimal for their institutions.³²⁷ While the local officials interviewed for this Article held differing views on how much formality should be expected of local governments, interviewees on both sides of this debate credited their communities' performance audits with raising the issue and placing neglected questions of informal governance on their radars.³²⁸

2. Small Localities

Second, the dataset explored in Part II suggests that large and small local governments adopt audit recommendations at similar rates, with no statistically significant difference observed based on their populations.³²⁹ The 231 recommendations studied for this Article were associated with localities of all shapes and sizes, ranging from Palm Beach County, Florida, (population 1,494,805) to Deerfield, Missouri (population forty-seven).³³⁰ Notably, forty-three of the recommendations came from the smallest of local entities, those with populations below five-hundred residents.³³¹

Despite constituting the majority of local governments across the United States, small local entities are understudied in legal literature.³³² But scholars have identified some unique challenges faced by small institutions. Small localities struggle to attract and retain qualified officials, so

327. On the concept that informal decision-making might signal that agencies are less deliberative (thereby affecting the level of deference owed to their decisions), see Davidson, *supra* note 156, at 615.

328. Compare Interview with Lance Knuckles, *supra* note 182 (explaining that the audit prompted consideration of an informal pricing policy, but ultimately officials decided that a written policy would be "cumbersome"), with Interview with Deborah Lake, *supra* note 273 (explaining that the audit prompted consideration of informal practices, many of which were formalized in response to the audit).

329. After controlling for each entity's state and median income. See *infra* Table 3 (available in this Article's accompanying online Methodological Appendix). For purposes of statistical analyses in this Article, a multivariable generalized linear mixed model accounting for clustering by local government was constructed to assess the association between local-jurisdiction characteristics and recommendation implementation, whether complete or partial. All statistical analyses were conducted by Bethany J. Simard, MPH, using Stata/SE 17.0.

330. See Table 1 *infra*.

331. Data on population size was drawn from U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY TABLE S0601 (2022), <https://data.census.gov/table/ACSST1Y2022.S0601?y=2022> [<https://perma.cc/UJX5-6AUC>]. Nationally, 12,358 of 38,736 general-purpose local governments have populations below five-hundred. See *2022 Government Units Listing*, U.S. CENSUS BUREAU (Jan. 2022), <https://www.census.gov/data/datasets/2022/econ/gus/public-use-files.html> [<https://perma.cc/36XZ-KSJ8>].

332. 17,811 of 38,736 general-purpose localities have populations below one thousand, while 28,857 have populations below five thousand. See *2022 Government Units Listing*, U.S. CENSUS BUREAU (Jan. 2022), <https://www.census.gov/data/datasets/2022/econ/gus/public-use-files.html> [<https://perma.cc/36XZ-KSJ8>]; Zale, *supra* note 3, at 1016. Regarding gaps in legal literature, see Ponomarenko, *supra* note 34, at 208.

many operate without the expertise of their larger peers.³³³ Some even rely on one part-time employee to perform all critical functions.³³⁴ In this environment, small localities struggle to reform, to implement good governance practices, and to understand and comply with existing law, including their own municipal codes.³³⁵

In light of these challenges, state governments are necessary and undesirable partners for small localities. The state is a crucial source of expertise, funding, and education for small local institutions and at times commands an active role in bringing about vital reforms.³³⁶ The importance of state government can be equally evidenced in its absence: sometimes a small community is in dire need of outside support and the state is nowhere to be found.³³⁷ Nevertheless, perhaps paradoxically, small localities have long been disempowered by state law. As their larger peers gained expansive home-rule powers, small communities in many places have witnessed—or at minimum, have perceived—a persistent constriction of their ability to self-govern.³³⁸ State agencies increasingly assert administrative control over them, arguably eroding local democratic institutions and norms in the process.³³⁹

Performance audits might help thread this needle of reliance and aversion. To the extent they offer a lighter-touch mechanism for stimulating local action, performance audits are a rare opportunity for small communities to receive formal feedback on their governance practices—feedback that *pressures* introspection but does not *compel* small communities to adopt one-size-fits-all reforms. Through auditing, for example, local officials who might never have received formal training can learn how to

333. See Miller et al., *supra* note 158, at 634-35, 646 (discussing expertise and capacity); Ayers, *supra* note 39, at 626-28 (same); Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837, 883 (2020) (same); WASH. STATE AUDITOR'S OFF., *supra* note 89, at 5 (discussing capacity); Ponomarenko, *supra* note 34, at 243 (discussing a lack of qualified officials); Carissa Byrne Hessick & Michael Morse, *Picking Prosecutors*, 105 IOWA L. REV. 1537, 1576 (2020) (same); Ponomarenko, *supra* note 155, at 1567-68 (same).

334. See WASH. STATE AUDITOR'S OFF., *supra* note 89, at 20; Miller et al., *supra* note 158, at 647.

335. Ponomarenko, *supra* note 34, at 244 (on the challenge of keeping pace with best practices); Carissa Byrne Hessick, Michael Morse & Nathan Pinnell, *Donating to the District Attorney*, 56 U.C. DAVIS L. REV. 1769, 1825 (2023) (discussing state-law confusion); Miller et al., *supra* note 158, at 648-49 (providing an example of a city clerk with no knowledge of the city's comprehensive plan). *But see* Davidson, *supra* note 156, at 595 (noting that most small towns have internal agencies or departments).

336. *Cf.* Ayers, *supra* note 39, at 632 (discussing deficits in local expertise and listing state governments as a primary source of expertise); Interview with James Krischke, Acting Manager, City of Maywood (May 8, 2023) (notes on file with author) (providing an example of untrained local officials and arguing for a regular state role).

337. See Interview with Brian Hattery, *supra* note 28; *see also* Ponomarenko, *supra* note 34, at 210 (arguing for state intervention to address problems unique to small police jurisdictions).

338. See Su, *supra* note 333, at 863, 868-71; Eisenberg, *supra* note 308, at 182-83.

339. See Su, *supra* note 333, at 882.

maintain records and operate administrative software.³⁴⁰ At the same time, officials can consider but ultimately disregard a recommendation that “makes no sense” for a community of their size.³⁴¹ If small localities are indeed adopting recommendations at similar rates as their larger peers, as the data suggests, we can cautiously presume that their unique challenges do not render performance audits more illusory than valuable for these oft-ignored institutions.

3. Resource Constraints

Although large and small localities respond to audits similarly, a cleavage emerges in the dataset where resources are concerned. When controlling for other variables, wealthier local governments are more likely to adopt audit recommendations than poorer locales.³⁴² Across all three states in the study, a positive, statistically significant association emerges between a locality’s median income and its rate of adoption, which tentatively suggests that audit recommendations are more likely to translate into policy change in wealthier communities.³⁴³

That wealthier localities more frequently realize tangible outcomes from the audit process may not come as a surprise. It also bolsters the theory that local officials take audit recommendations seriously. In all likelihood, poorer communities are less likely to adopt recommendations because resource constraints prevent them from doing so, not because they disproportionately dismiss these recommendations as worthless. Yet for this very reason, the income-driven adoption gap counsels restraint in our assessment of performance audits. Income disparity is a reminder that just as local governments vary tremendously in size, they operate in widely varied resource environments.³⁴⁴ Localities face different resource constraints than their state and federal counterparts,³⁴⁵ but wide variations exist between local bodies, with fiscal challenges particularly acute in rural communities.³⁴⁶

340. *Cf.* Louisiana v. Thompson, 233 So.3d 529, 543 (2017) (discussing a case where local officials lack such training).

341. Interview with Sam Sutherland, *supra* note 60.

342. *See* Table 4 *infra* (available in this Article’s accompanying online Methodological Appendix).

343. *Id.* Accordingly, in all likelihood, recommendations are more likely to yield policy change in places where local officials operate with more resources. *See* Ponomarenko, *supra* note 34, at 249-50 (citing MICHELLE WILDE ANDERSON, THE FIGHT TO SAVE THE TOWN: REIMAGINING DISCARDED AMERICA 5 (2022)) (discussing the connection between income and local revenue).

344. Indeed, resource distinctions might matter more than size distinctions when studying local institutions. *See* Davidson, *supra* note 156, at 595 n.141.

345. *See* Adams, *supra* note 247, at 661-62.

346. Eisenberg, *supra* note 26, at 209; *see also* Hessick & Morse, *supra* note 333, at 1572 (discussing the connection between population size and resources in prosecutor offices).

The consequences cut to the heart of local governance. With fewer resources, local entities struggle to recruit, train, and retain talented officials.³⁴⁷ Nor, in all likelihood, do they have the funds necessary to adopt policy changes that come with new public costs. And because localities are generally charged for the state auditor's staff time, an unanticipated performance audit might itself wreak havoc on a government's budget. A prescriptive and forward-looking approach to performance auditing should build upon what generates real on-the-ground value today. Yet in doing so, it must also account for ways that the regime may be failing communities that most need intervention and outside support.³⁴⁸

IV. Recommendations

The performance-audit explosion offers real promise for local governments. In contrast to the prevailing depiction of state-local affairs, where the state legislature alternatively ignores or pointedly preempts local authority, performance audits portend a collaborative and expert-driven middle path, one where state actors can provide an external source of information and education—a welcome resource for overstretched local bureaucracies—and champion desirable local policy. More performance auditing might yield better local governance. It might also promote cooperative relationships between state and local officials. The state audit office and its staff, ostensibly apolitical actors who come into local communities to facilitate institutional learning, can replace the distant, absentee, and sometimes hostile state legislature as conduits of state-local discourse.³⁴⁹ In turn, audit offices acquire a front-row perspective on local challenges, and they can employ their swelling political salience to push for state-legislative solutions to these problems. As it has been embraced in academic literature, in international jurisdictions, and increasingly in states like Ohio and Missouri, performance auditing can likewise be embraced by scholars and practitioners of local government law.

Yet two related challenges threaten this optimistic perspective. First, state auditors are not wholly apolitical actors. Indeed, as they continue to accumulate responsibilities and expand their performance-auditing power, auditors have increasingly waded into political debates and asserted their offices' political prerogative.³⁵⁰ Auditors risk jeopardizing their credibility and corrupting auditing's theoretical local virtues as the political spotlight brightens. Second, local officials commonly hold negative views of auditors and the audit process; they question—and at times resent—how audits are

347. See Miller et al., *supra* note 158, at 648; Ponomarenko, *supra* note 34, at 249.

348. Cf. Eisenberg, *supra* note 26, at 191-92 (arguing that “rural communities need tailored attention in law”).

349. Cf. Parajon, *supra* note 34, at 1350 (advocating for audit offices to focus on “institutional learning”).

350. See *supra* notes 142-144 and accompanying text.

selected, started, and carried out.³⁵¹ Any effort to embrace the audit explosion must also aim to curb its operative ethos.

This Part confronts these challenges by offering actionable measures to reform the existing local-audit regime. It advances three interrelated proposals: (1) audits should begin for predictable reasons and occur with regularity, a departure from the present ad hoc system; (2) local governments should be obligated to provide reasons for their nonadoption of audit recommendations; and (3) audit regimes should not treat local governments as an undifferentiated mass but, rather, must recognize differences between localities, in particular the inequity between a community that can afford to pay the costs of an audit engagement and a community that cannot. These reforms—all of which should be politically palatable, as this Part will argue—can together address procedural and practical deficits in the audit ecosystem without compromising the local benefits that performance audits already offer.

To begin with the first reform, state statutes should be updated to simultaneously expand and narrow the reach of performance auditing. Performance audits begin for a variety of reasons. Yet the current system for initiating an audit disproportionately rewards politically motivated actors—among them, small groups of disaffected residents and state-level political adversaries, not to mention politically driven auditors themselves.³⁵² A politically motivated initiation leads local officials to mistrust the audit process from its onset.³⁵³ State law should put an end to this free-for-all of audit origins. Resident audits need not be wholly eliminated, but the signature-requirement threshold could be raised to reduce the number of these audits overall. Likewise, auditors could still make unilateral decisions to initiate audits, but with an added obligation that they provide written reasons for their choice to engage a particular local government. Requiring reasoning would bring much needed transparency into the initiation phase of an audit engagement. It might also reduce the number of auditor-initiated engagements in the first place. With fewer one-off audits commanding the audit office's resources, the state legislature could add a new mandate to its performance auditing portfolio: a requirement that every local government, or perhaps every general-purpose local government, be audited on a regular basis, say once every decade. Regular mandatory audits would take precedence over political audits. Necessarily, they would limit the auditor's discretion while bringing more local governments within performance auditing's purview.

Such mandates have a long track record. They are already commonplace in financial auditing. They also apply to performance audits of state

351. See *supra* Part III.C.

352. See *supra* notes 61-63, 257-264 and accompanying text; see also Interview with James Krishke, *supra* note 336 (describing an audit initiated by political opponents).

353. See, e.g., Email from Leslie Guyer, *supra* note 68 (conveying this sentiment).

agencies in some jurisdictions.³⁵⁴ And, counterintuitively, a system that mandates periodic local audits might even be politically desirable to the two entities it would most adversely impact: state auditors and local governments. From the state auditor's perspective, while a mandatory system would no doubt constrict their discretion, it would be accompanied by an institutionalization of their performance-auditing authority and in the long run, in all likelihood, an increase in their influence and resources. On the other side of the equation, a surprisingly popular refrain of local officials interviewed for this Article was that performance audits should indeed occur with periodic regularity, with some even stressing that these audits should be compulsory.³⁵⁵ Their perspective is understandable; regular auditing offers local entities distinct advantages over the current ad hoc system. It carries less stigma and less risk of politicized origins—in a compulsory system, *all* localities would experience performance audits—and therefore it may reduce the resentment many local officials hold for audit engagements.³⁵⁶

Regular audits also add a longitudinal dimension to the process. If audits occur with some degree of regularity, officials can prepare for them and may be more motivated to learn from them.³⁵⁷ The audit office becomes a repeat player in the lifecycle of local government, which could promote more collaborative and less antagonistic relationships between state and local actors.³⁵⁸ More recommendations might get adopted. Additionally, localities might increasingly explain their deliberative reasons for *not* implementing a given recommendation, with an eye towards warding off an adverse finding when the next performance audit comes around. In this manner, by virtue of a longitudinal relationship, the audit office can learn from local entities too, potentially prompting future recommendations that are more sensitive to unique local challenges.

This proposal comes with a risk, however: as performance auditing becomes normalized and sheds its stigma among local governments, officials might lose, not gain, motivation to actively consider audit recommendations. The perceived notoriety of a performance audit might partially explain why local actors seem to take recommendations seriously. Therefore, by way of a second reform, some of the opacity should be removed from the final stage of the process, when local entities either adopt or

354. See, e.g., *Petro v. Stoldt*, 739 N.E.2d 13, 13 (Ohio Ct. App. 2000); ARIZ. REV. STAT. ANN. § 5-1433 (2025) (providing for regular audits of state authorities); GA. CODE ANN. § 50-8-38 (2025) (providing for regular audits of regional commission).

355. See, e.g., Interview with Chelsie Dick, *supra* note 10; Interview with Suzanne Sherman, *supra* note 273; Interview with Leslie Haase, *supra* note 291; Interview with Bill Grant, *supra* note 273; Interview with James Krischke, *supra* note 336; Interview with Kristy Keithley, *supra* note 61; Interview with April Baxter, *supra* note 36; Interview with Victor Hurlbert, *supra* note 66.

356. See *supra* note 271 and accompanying text (discussing stigma).

357. See Interview with Tim Person, *supra* note 177.

358. See *id.*

disregard each of the recommendations placed before them. In Ohio, state agencies that decline to implement recommendations are required to provide written reasons for their inaction.³⁵⁹ Why not ask local governments to do the same? Adding this procedural step need not undercut local autonomy. Rather, it can improve local decision-making and encourage transparency.³⁶⁰ Learning what recommendations were rejected—and why—will no longer require an amautotic excavation of public records.³⁶¹ These important decisions might instead be made legible to local residents.

A third reform brings us back to the resource constraints and inequities that characterize local government. Despite its light touch, a reason-giving requirement still demands action of local officials, who might simply lack the tools necessary to adopt a recommended change. Asking these officials to explain their reasons may bring attention to their locality's fundamental fiscal challenges, but it requires them to spin their wheels fruitlessly nevertheless—to deliberate upon an idea they cannot afford to implement. Performance auditing regimes need not and should not treat all local governments as an undifferentiated mass. Instead, auditors should recognize that distinctions between localities have governance salience, both when considering how a community should govern and also when asking whether desirable policies are actually feasible.³⁶² This is not a novel concept. In both England and Austria, for example, performance-audit regimes differ based on the size of the municipality in question.³⁶³

Practically, U.S. audit regimes could take a number of approaches to recognize resource inequities. For example, auditors could aim whenever possible to conduct apples-to-apples assessments of local communities—to evaluate programs or policies against communities with comparable tax bases and funding environments.³⁶⁴ As another approach, audit offices could employ programs that incentivize and pressure governments to engage with state auditors. Mirroring an innovative program in Minnesota, local governments could be encouraged to enroll in voluntary, performance-style studies that offer comparative data, benchmarking, and template documents across enrolled jurisdictions.³⁶⁵ A program along these

359. OHIO REV. CODE ANN. § 117.462 (West 2025).

360. See Ponomarenko, *supra* note 155, at 1558 (“In the rough-and-tumble world of local administration . . . it is more plausible to think that reason-giving requirements could in fact prompt decisionmakers to think through their decisions in ways that they otherwise might not.”).

361. See *supra* Section II.B.

362. Cf. Miller et al., *supra* note 158, at 646 (arguing that “the laws for local governments are written primarily to fit—and circumscribe—the powers of the largest cities”).

363. Polzer et al., *supra* note 99, at 30 (detailing the performance-audit regime in Austria); *June 5 Hearing on Fin. Rep. & Audit*, *supra* note 86, at 14 (statement of Newbury, Dir., Code of Audit Prac., Nat’l Audit Off.) (detailing the performance-audit regime in England).

364. See Interview with Brian Hattery, *supra* note 28 (advocating for this approach).

365. See *Council on Local Results and Innovation*, MINN. OFF. OF THE STATE AUDITOR, <https://www.osa.state.mn.us/about/about-us/councils-groups-sub-pages/council-on-local-results-and-innovation> [<https://perma.cc/SN2V-ZLFX>].

lines offers under-resourced governments a no-cost and low-consequence way to access state audit-office expertise.

To start, however, audit systems must reform how state audit offices are compensated. The current method of charging local entities a per-hour rate for the cost of an audit—a method without regard for institutional capacity—renders performance auditing a punitive exercise for distressed communities. If performance audits were conducted with some regularity, local actors could anticipate and budget for this cost. Replacing hourly rates with flat fees can make budgeting more predictable for localities. Even so, the poorest local governments should not bear the same cost burden as the wealthiest ones. Short of a wholesale change in the way audit offices are presently funded, audit costs for poorer localities could be eliminated or heavily subsidized through the expanded use of revolving funds, a mechanism that has already been explored to reduce audit costs in some states.³⁶⁶ Local governments in healthier fiscal shapes—e.g., those with per capita incomes or tax revenues above the state median—could be asked to pay into the revolving fund when they are audited, which in turn would finance future audits for peer entities. With this change, the performance auditing regime would be a measure fairer and more valuable for communities that are presently burdened by it. And in a small way, the regime could moderate larger issues of jurisdictional inequity that plague the world of local government today.

These three suggestions—predictability and regularity, reason-giving, and institutional equity—all offer low-hanging structural reforms, each drawn from practices already tested elsewhere in the audit ecosystem. They aim to ameliorate areas where performance auditing is opaque, ineffective, politicized, and inequitable. In furthering these goals, the suggestions share two other unifying features. First, they are designed to make performance audits more accessible to residents of local communities, who often stand conspicuously outside of a process that operates ostensibly for their benefit. Second, the suggestions strive to balance several tensions surfaced by this Article: tensions between an audit’s useful recommendations and its fractious process; tensions between elemental auditor independence and unconstrained auditor fiat; and tensions between state prerogative and local democracy.

When balancing these tensions, it should be emphasized that audit regimes can evolve without compromising any constituent actor’s core autonomy. Audits can ask more of local governments—for instance, to provide reasons when dismissing a recommendation—without vitiating residents’ democratic choice. Similarly, audit regimes can place some guardrails around a state auditor’s power without undermining the

366. Here as well, Ohio has been at the forefront of these efforts. *See* OHIO REV. CODE ANN. § 3316.042 (West 2025) (paying audit costs for school districts in fiscal distress); OHIO REV. CODE ANN. § 117.131 (West 2025) (creating a “local government audit support fund”).

auditor's canonical freedom to operate unhampered by the governor or legislature. Any change to the vertical relationship between states and localities demands a give-and-take of powers and principles. Audit reform is no different. Any reform effort will ask policymakers to confront tensions inherent in the existing regime—an opportunity, in turn, to recognize and contextualize performance auditing's role within the larger subfederal system.

Conclusion

Performance audits play many roles in the state-local ecosystem. They are tools of assessment, guidance, oversight, and influence. And their reach is potentially formidable. Without much fanfare, state auditors have been granted nearly unchecked powers to define the scope of performance auditing and select its targets and goals. Auditors are increasingly asserting these powers, moreover, mirroring the international “audit explosion” identified by public-administration scholars. The growth of performance auditing comes against a tumultuous backdrop: local governments are confronting new internal crises while also facing unpredictable, often punitive, exercises of state legislative oversight. Against this backdrop, other, non-legislative sources of oversight assume greater salience. Notable among them is the office of the state auditor, a rare state agency that provides wide-ranging and individualized feedback to local officials through its audit mandate.

Performance-auditing regimes therefore demand our belated attention. In shining a spotlight upon them, we can begin to address key points of legal uncertainty in this space, such as how to define and place guardrails around a system that evaluates the *effectiveness* of local programs and operations.³⁶⁷ We can also acknowledge what appears borne out by practice: whatever the academic line between auditing and policymaking, performance audits indeed cross that line and influence the exercise of local policy.³⁶⁸ The three suggestions sketched in Part IV offer actionable reforms that begin to approach auditing as a dynamic system of subfederal governance. Yet they do not broach some questions that will grow more pressing as the audit explosion continues. How institutionalized should performance auditing become? Where exactly should its recommendations fall on the continuum of state-local power? How broadly or narrowly should hazy concepts like “effectiveness” be defined? And how should the whole exercise be funded? In all likelihood, different states will reach different answers to these questions, mirroring the wide diversity of audit regimes seen internationally. Different local governments—and indeed, different voices within a given local body—will also surely have varying perspectives

367. See *supra* Section I.A.

368. See *supra* Section I.B.

on performance auditing's place and purpose within the subfederal ecosystem. But even by asking these questions and prompting this discourse, the system of performance auditing, which currently operates mostly in the shadows, moves towards the foreground of the state-local relationship.

In a similar manner, Part IV's suggestions also implicate larger questions of local government law. They push us, for example, to consider how executive state agencies modulate local action, a process distinct from the more familiar interventions made by legislators and governors. What other channels of oversight and influence guide local behavior? How do these channels affect local power and expand our understanding of local governments in a subfederal system? Moreover, operating as they do in environments of turnover and scarcity, how do local institutions actually create, formalize, and evaluate their governance practices, particularly in an era of unpredictable state oversight?

Answering these questions requires attention to the profound distinctions that characterize local governments today. There is little doubt that the municipality of Monroe City, Missouri—where a city clerk described an operational mess of ad hoc regulation, disregarded ordinances, en masse employee turnover, and a complete lack of recordkeeping³⁶⁹—faces a set of governance challenges wholly apart from those that confront New York City or Oklahoma City. Diversity and variability are inherent to the study of local institutions.³⁷⁰ Extra-legislative state-oversight regimes, audit systems included, offer insight into this heterogenous world, and they may suggest avenues for regulating localities in a more tailored and collaborative way in the future.

369. Interview with Tamatha Ague, *supra* note 245.

370. Indeed, another finding from Part II's quantitative study is that regardless of a local government's size and resources, localities in Florida are significantly more likely to adopt audit recommendations than those in Ohio. *See infra* Table 2 (available in this Article's accompanying online Methodological Appendix). There is no evident legal basis for this distinction, which this Article will leave as a question for future research.