

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re

CITY OF DETROIT, MICHIGAN,

Debtor.

No. 13-53846

Chapter 9

HON. STEVEN W. RHODES

**STATE OF MICHIGAN'S SUPPLEMENT TO  
THE RECORD REGARDING ELIGIBILITY**

Per the Court's request during the October 15, 2013, hearing to determine the City's eligibility to be a debtor under Chapter 9, the State of Michigan supplements the record with the attached documents regarding the State court case of *Gracie Webster v State of Michigan*, Court of Claims Case No. 13-734-CZ, Court of Appeal Nos 317286 & 317292.

Respectfully submitted,

/s/ Steven B. Flancher

Steven B. Flancher (P47894)  
Assistant Attorney General  
Attorney for State of Michigan  
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(517) 373-3203  
flanchers@michigan.gov

Dated: October 17, 2013

## **CERTIFICATE OF SERVICE**

I hereby certify that on October 17, 2013, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Steven B. Flancher

Steven B. Flancher (P47894)  
Assistant Attorney General  
Attorney for State of Michigan  
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Detail

INGHAM COUNTY 30TH CIRCUIT  
313 W. Kalamazoo St.

LANSING, MICHIGAN 48933

<u>Case Number</u>	<u>Status</u>	<u>Judge</u>
13-000734-CZ-C30	OPEN	AQUILINA, ROSEMARIE E.
<u>In The Matter Of</u>		<u>Action</u>
WEBSTER, GRACIE et al VS DEFENDANT: MI STATE OF et al		COMPLAINT W/ SUMMONS

<u>Party</u>	<u>Type</u>	<u>Attorneys</u>
THOMAS, VERONICA	PLNTF	CANZANO, JOHN R. 400 GALLERIA OFFICENTER #117 SOUTHFIELD, MI 48034
WEBSTER, GRACIE	PLNTF	CANZANO, JOHN R. 400 GALLERIA OFFICENTER #117 SOUTHFIELD, MI 48034
GOV MI	DFNDT	
MI STATE OF	DFNDT	
TREASURER MI	DFNDT	

<u>Opened</u>	<u>Judgment Date</u>	<u>Case Type</u>
07/03/2013		CZ - OTHER GENERAL CIVIL

Comments:

No.	Date of Filing	Operator	Pleadings and Actions	Original Amt Due/ Amt Dismissed	Balance Due
			Journal Book-Page-Nbr Ref Nbr		
1	07/03/13	ATIMMER	COMPLAINT FILED Receipt: 322485 Date: 07/03/2013	150.00	0.00
2	07/03/13	ATIMMER	SUMMONS ISSUED	0.00	0.00
3	07/03/13	MKAHARI	MISCELLANEOUS MOTION FOR DECLARATORY JUDGMENT AND EXPEDITED HEARING OR IN THE ALT FOR PRELIM INJUNCTION	0.00	0.00
4	07/03/13	MKAHARI	BRIEF IN SUPPORT OF MOTION FOR DECLARATORY JUDGMENT AND EXPEDITED HEARING OR IN THE ALT FOR PRELIM INJUNCTION	0.00	0.00
5	07/03/13	KAMILTON 1	ORDER OF REASSIGNMENT FROM JUDGE CANADY TO JUDGE AQUILINA	0.00	0.00
6	07/05/13	MKAHARI	ORDER TO SHOW CAUSE ON JULY 22, 2013 AT 9	0.00	0.00
7	07/05/13	MKAHARI	SUMMONS ISSUED	0.00	0.00
8	07/09/13	KAMILTON 1	CASE REASSIGNED FROM TO The judge was changed from CANADY III, CLINTON	0.00	0.00

Date: 07/19/2013 09:17:55.2  
MIJR5926

Register of A ct ions

Page:

Detail

INGHAM COUNTY 30TH CIRCUIT  
313 W. Kalamazoo St.

LANSING, MICHIGAN 48933

13-000734-CZ-C30 WEBSTER, GRACIE et al VS DEFENDANT: MI STATE OF et al  
\*\*\* End of Report \*\*\*

Detail

INGHAM COUNTY 30TH CIRCUIT  
313 W. Kalamazoo St.

LANSING, MICHIGAN 48933

13-000734-CZ-C30 WEBSTER, GRACIE et al VS DEFENDANT: MI STATE OF et al

No.	Date of Filing	Operator	Pleadings and Actions	Journal Book-Page-Nbr	Ref Nbr	Original Amt Due/ Amt Dismissed	Balance Due
9	07/09/13	DCLINE	HEARING SET: Event: SHOW CAUSE HEARING Date: 07/22/2013 Time: 9:00 am Judge: AQUILINA, ROSEMARIE E. Location: COURTROOM 5 - VETERANS MEMORIAL			0.00	0.00
10	07/11/13	KAMILTON 1	PROOF OF SERVICE ON 070513 A COPY OF SUMMONS & COMPLAINT PERSONALLY SERVED UPON GOVERNOR SYNDER; STATE OF MICHIGAN; DEPT OF TREASURY			0.00	0.00
11	07/16/13	KAMILTON 1	REQUEST FOR FILM AND ELECTRONIC MEDIA COVERAGE OF COURT PROCEEDINGS / DETROIT NEWS PHOTOGRAPHER TO APPEAR ON 7/22/13 @ 9AM			0.00	0.00
Totals By: COURT COSTS						150.00	0.00
INFORMATION						0.00	0.00

STATE OF MICHIGAN JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO.  13-734-CZ
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Court address

313 W. Kalamazoo, Lansing MI 48901

Court telephone no.

(517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s). Gracie Webster and Veronica Thomas
Plaintiff's attorney, bar no., address, and telephone no. John R. Canzano (P30417) McKnight, McClow, Canzano, Smith & Radtke, P.C. 400 Galleria Officecentre, Suite 117 Southfield MI 48034 248-354-9650

v

Defendant's name(s), address(es), and telephone no(s). The State of Michigan, Richard Snyder, Governor of the The State of Michigan, and Andy Dillon, Treasurer of the State of Michigan
H.D. JUL 05 2013 Tax Policy Division

**SUMMONS** NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111[C])
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <b>JUL 03 2013</b>	This summons expires <b>OCT 02 2013</b>	Court clerk <b>ELIZABETH ROBERTSON</b>
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\*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.**Family Division Cases**

- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

**General Civil Cases**

- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☒ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this Court \_\_\_\_\_ Court.
- The action ☒ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no. 13-729-CZ	Judge Aquilina	Bar no. P37670
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Detroit MI, Wayne County	Defendant(s) residence (include city, township, or village) Lansing, MI, Ingham County
Place where action arose or business conducted Ingham County	

07/05/2013

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

**PROOF OF SERVICE****SUMMONS AND COMPLAINT**  
Case No. \_\_\_\_\_

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**☐ **OFFICER CERTIFICATE**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,  
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,  
together with \_\_\_\_\_

List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_  
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_  
Attachments

on \_\_\_\_\_

Day, date, time

on behalf of \_\_\_\_\_

Signature \_\_\_\_\_

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. CLINTON CANADY III

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

---

JOHN R. CANZANO (P30417)  
McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

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A civil action between these parties or  
other parties arising out of the transaction  
or occurrence alleged in the Complaint has  
been previously filed in this Court,  
where it was given docket number 13-729-CA  
and was assigned to Judge Aquilina.  
The action remains pending.

**VERIFIED COMPLAINT FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

**NATURE OF ACTION**

1. This action seeks a declaratory judgment that the "Local Financial Stability and  
Choice Act," 2012 PA 436, MCL 141.1541 *et seq* ("PA 436") is unconstitutional and in violation of



Article IX Section 24 of the Michigan Constitution because PA 436 permits accrued pension benefits to be diminished or impaired by bankruptcy proceedings in direct contravention of the Constitution. This action also seeks a preliminary and/or final injunction enjoining the Governor and/or the State Treasurer from authorizing a bankruptcy proceeding permitting an unconstitutional diminishment or impairment of accrued pension benefits under PA 436.

### **PARTIES, JURISDICTION AND VENUE**

2. Plaintiff Gracie Webster is a retiree from the City of Detroit. She retired in 2000 and is receiving a pension benefit under the City of Detroit's General Retirement System Pension Plan. She resides in Detroit and is a citizen of the State of Michigan.

3. Plaintiff Veronica Thomas is an employee of the City of Detroit. She has worked for the City for 17 years. She is a participant in the City of Detroit's General Retirement System Pension Plan. Although she has not yet retired, based on her years of service Plaintiff Thomas has earned the right to an accrued vested pension benefit under the terms of the pension plan.

4. Defendant State of Michigan is a governmental entity and sovereign state of the United States, retaining all powers reserved to it under the 10<sup>th</sup> Amendment to the United States Constitution.

5. Defendant Richard Snyder is the Governor of the State of Michigan acting in his official capacity.

6. Defendant Andy Dillon is Treasurer of the State of Michigan acting in his official capacity.

7. The Governor may delegate his duties under Section 9 of PA 436, MCL 141.1549 to the State Treasurer.

8. This court has jurisdiction under MCL 600.6419(4), which provides for the jurisdiction of circuit courts in proceedings for declaratory or equitable relief against the State, and

MCL 600.605, which provides original jurisdiction in the circuit courts.

9. Venue is proper in this court under MCL 600.1621(a), because Defendants conduct business in Ingham County.

### **COUNT I: DECLARATORY JUDGMENT**

#### **PA 436 Is Unconstitutional Because It Permits Accrued Pension Benefits To Be Diminished Or Impaired In Direct Violation Of Article IX, Section 24 Of The Michigan Constitution**

10. Article IX Section 24 of the Michigan Constitution provides in pertinent part:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof **which shall not be diminished or impaired** thereby.

11. PA 436 was enacted by the Michigan Legislature on December 28, 2012 and became effective March 28, 2013.

12. Among the purposes of PA 436, as stated in its preamble, are to "prescribe remedial measures to address a financial emergency within a local unit of government;" "to prescribe the powers and duties of an emergency manager for a local unit of government;" and "to provide a process by which a local unit of government . . . may file for bankruptcy."

13. On March 14, 2013, Defendant Snyder appointed Kevyn Orr as Emergency Financial Manager for the City of Detroit, pursuant to 1990 PA 72, MCL 141.1201 *et seq* ("PA 72"). PA 436 is a successor statute to, and expressly repeals, PA 72.

14. Pursuant to Sec 9(10) of PA 436, MCL 141.1549(10), Kevyn Orr, as an emergency financial manager appointed under former 1990 PA 72 "and serving immediately prior to the effective date of this act, shall be considered an emergency manager under this act [PA 436] and shall continue under this act to fulfill his or her powers and duties."

15. Chapter 9 of the U.S. Bankruptcy Code, 11 USC §§901 *et seq*, provides a process by

which a municipality may file for bankruptcy and become a debtor under Chapter 9 in federal bankruptcy court.

16. However, in order to protect state sovereignty and in recognition of federalism principles under the 10<sup>th</sup> Amendment to the U.S. Constitution, Chapter 9 of the Bankruptcy Code prohibits municipalities from filing for bankruptcy unless the municipality “is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter.” Absent such authorization, federal bankruptcy courts have no jurisdiction under Chapter 9 over a municipality as a debtor. 11 USC §109(c)(2). See *Ashton v Cameron County Water Improvement Dist No 1*, 298 US 513; 56 S Ct 892; 80 L Ed 1309 (1936); and *United States v Bekins*, 304 US 27, 58 S Ct 811; 82 L Ed 1137 (1938).

17. Section 18 of PA 436, MCL 141.1558, specifically authorizes a local unit of government to become a debtor in a Chapter 9 bankruptcy proceeding if the emergency manager for the local government recommends to the Governor and the State Treasurer that the local government be authorized to proceed under Chapter 9, and if the Governor approves the recommendation by informing the emergency manager and State Treasurer in writing of his decision.

18. PA 436 nowhere requires that in considering whether to approve an emergency manager’s recommendation to proceed under Chapter 9, the Governor shall not approve such recommendation if accrued pension benefits may be diminished or impaired in violation of Article IX Section 24 of the Michigan Constitution.

19. Accordingly, because PA 436 does not prohibit a municipality from proceeding under Chapter 9 of the U.S. Bankruptcy Code if accrued pension benefits may be unconstitutionally diminished or impaired, PA 436 is unconstitutional on its face in violation of Article IX Section 24 of the Michigan Constitution.

20. Section 11 of PA 436, MCL 141.1551, provides that “an emergency manager shall develop and may amend a written financial operating plan for the local government [and that] [t]he financial and operating plan shall provide for . . . [t]he timely deposit of required payments to the pension fund for the local government or in which the local government participates.”

21. On May 12, 2013, Emergency Manager Orr issued a financial and operating plan pursuant to Section 11 of PA 436. (Available at [www.freep.com/assets/freep/pdf/C4205233512.pdf](http://www.freep.com/assets/freep/pdf/C4205233512.pdf).) The plan does not schedule the “timely deposit of required payments” to the pension funds as required by Section 11 of PA 436, but instead notes that payments have been deferred to manage a liquidity crisis.

22. On June 14, 2013, Emergency Manager Orr issued a “Proposal for Creditors” in which he presents various restructuring options. (Available at <http://www.freep.com/assets/freep/pdf/C4206913614.pdf>.) Nowhere in this document does Emergency Manager Orr indicate any intent to comply with Article IX Sec 24 of the Michigan Constitution. Instead, in direct contravention of the Michigan Constitution, the proposal expressly states that “*there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.*”

23. Emergency Manager Orr has publicly threatened, in a June 14 interview with the Detroit Free Press Editorial Board, that vested pension benefits will be abrogated in a Chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state law protecting vested pension benefits is “not going to protect” retirees or employees with vested pension benefits in bankruptcy court. (See [www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis](http://www.freep.com/article/20130616/OPINION05/306160052/kevyn-orr-detroit-emergency-manager-creditors-fiscal-crisis).)

24. Article IX Section 24 of the Michigan Constitution is such a state law, which Emergency Manager Orr has asserted will “not . . . protect” vested pension benefits.

25. Under PA 436, the only way Emergency Manager Orr could impose his desired "significant cuts in accrued, vested pension amounts for both active and currently retired persons" is through a Chapter 9 bankruptcy filing.

26. Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional under Article IX Section 24 of the Michigan Constitution because PA 436 does not prohibit the Governor from authorizing a Chapter 9 bankruptcy filing which threatens to unconstitutionally diminish or impair the Plaintiffs' accrued pension benefits, and a final judgment ordering that Defendant Snyder and/or Defendant Dillon not authorize a Chapter 9 filing which threatens to diminish or impair accrued pension benefits in violation of the Michigan Constitution.

27. This case presents an actual controversy entitling Plaintiffs to a declaratory judgment because the facts stated above indicate "an adverse interest necessitating the sharpening of the issues raised." *Lansing School Education Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372 n20; 792 NW2d 686 (2010), quoting *Associated Builders and Contractors v Dep't of Consumer and Indus Servs Dir*, 472 Mich 117, 126; 693 NW2d 374 (2005). Plaintiffs are entitled to a declaratory judgment here "to obtain adjudication of rights before an actual injury occurs [and] to settle a matter before it ripens into a violation of the law . . ." *Rose v State Farm Mut Auto Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006).

28. Plaintiff's need for a Declaratory Judgment is urgent. Based on the above facts, a request by the Emergency Manager to proceed under Chapter 9 is imminent, because he has credibly threatened – indeed, has given every indication – that he intends to impair or diminish accrued pension benefits in contravention of Article IX Section 24 of the Michigan Constitution, and that Chapter 9 bankruptcy proceedings are the mechanism by which he can do so. Thus Plaintiffs' rights under the Michigan Constitution not to have their pension benefits "diminished or impaired" can

only be guaranteed if this Court acts *before* the Governor approves a request to proceed under Chapter 9. Moreover, Emergency Manager Orr's threats that he will unconstitutionally diminish or impair Plaintiffs' vested pension rights have themselves harmed Plaintiffs by instilling in Plaintiffs a reasonable fear that their constitutional rights will be trampled upon and, in the process, their future source of income drastically eroded.

29. Accordingly, Plaintiffs are entitled to a speedy hearing under MCR 2.605(D) on their request for declaratory relief.

## **COUNT II: PRELIMINARY INJUNCTION**

30. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 29 above.

31. Plaintiffs will suffer irreparable harm if Defendants Snyder and Dillon are not enjoined from authorizing the Emergency Manager to proceed under Chapter 9 of the U.S. Bankruptcy Code and thereby seeking to abrogate Plaintiffs' rights under the Michigan Constitution and the source of livelihood it guarantees them in a forum which the Emergency Manager contends does not protect those rights.

32. The harm to Plaintiffs absent injunctive relief outweighs the harm to Defendants if an injunction is granted because the Governor and Treasurer will not be harmed if they are enjoined from authorizing the Emergency Manager to file under Chapter 9.

33. Plaintiffs are likely to succeed on the merits.

34. There will be harm to the public interest absent an injunction, as the accrued vested pension rights of thousands of City of Detroit retirees and employees will be threatened with abrogation in violation of the Michigan Constitution.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant the following relief:

- A. A declaratory judgment that PA 436 is unconstitutional in violation of Article IX Section 24 of the Michigan Constitution.
- B. A preliminary and/or permanent injunction enjoining Defendant Snyder and Defendant Dillon from authorizing the Detroit Emergency Manager to commence proceedings under Chapter 9 of the U.S. Bankruptcy Code.
- C. An award to Plaintiffs of their costs and expenses, including attorneys' fees, incurred in this action.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: \_\_\_\_\_

John R. Canzano (P30417)  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
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Date: July 3, 2013

**VERIFICATION**

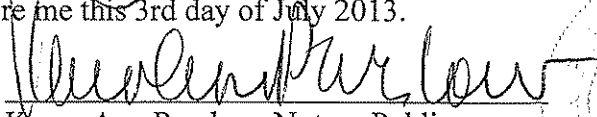
STATE OF MICHIGAN     )  
                                      )ss  
COUNTY OF OAKLAND    )

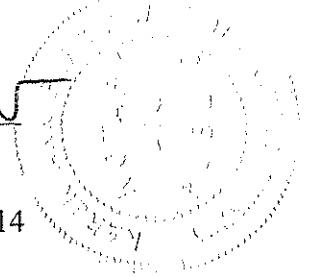
John R. Canzano, being first duly sworn, deposes and states he is the attorney representing Plaintiffs herein; that he has read the foregoing verified complaint by him subscribed for and on

behalf of Plaintiffs; that he knows the contents thereof to be true except as to those matters stated upon information and belief, and as to those matters, he believes them to be true, and he is authorized to sign said Verified Complaint on behalf of Plaintiffs.

  
\_\_\_\_\_  
John R. Canzano

Subscribed and sworn to before me this 3rd day of July 2013.

  
\_\_\_\_\_  
Karen Ann Purslow, Notary Public  
County of Oakland, State of Michigan  
My Commission Expires: April 19, 2014





STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No.  
Hon.

13-734-CZ  
CANADY

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

---

JOHN R. CANZANO (P30417)  
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jcanzano@michworklaw.com

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**MOTION FOR DECLARATORY JUDGMENT**  
**AND EXPEDITED HEARING PURSUANT TO MCR 2.605(D),**  
**OR IN THE ALTERNATIVE FOR PRELIMINARY INJUNCTION.**

For the reasons stated in the attached brief, Plaintiffs request that this Court order an expedited hearing and grant a declaratory judgment and permanent injunction, or, in the alternative, a preliminary injunction in their favor.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: 

John R. Canzano (P30417)  
Attorneys for Plaintiffs  
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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. CANADY

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
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the State of Michigan,

Defendants.

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**BRIEF IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND EXPEDITED  
HEARING PURSUANT TO MCR 2.605(D), OR  
IN THE ALTERNATIVE FOR PRELIMINARY INJUNCTION.**

This action seeks a declaratory judgment that the “Local Financial Stability and Choice Act,” 2012 PA 436, MCL 141.1541 *et seq.* (“PA 436”) is unconstitutional in violation of Article IX Section 24 of the Michigan Constitution, which expressly protects vested pension rights by requiring that “[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions . . . *shall not be diminished or impaired* . . .”

Pursuant to MCR 2.605(D), “[t]he court may order a speedy hearing of an action for declaratory relief and may advance it on the calendar” in appropriate cases. This is such a case. Plaintiffs, a City of Detroit pensioner who retired 13 years ago, and a City of Detroit employee with 17 years of accrued vested service, are facing an imminent threat that their vested pension rights will be irreparably and permanently diminished and impaired in a Chapter 9 bankruptcy proceeding authorized by PA 436, in direct violation of Article IX Section 24 of the Michigan Constitution. In the alternative, Plaintiffs are seeking a preliminary injunction enjoining Defendant Governor Snyder and Defendant State Treasurer Dillon from authorizing a Chapter 9 bankruptcy under PA 436.

### FACTS

Plaintiffs incorporate herein the facts stated in the Verified Complaint. This case presents essentially a pure question of law. The pertinent facts are not in dispute.

Kevyn Orr currently serves as the Emergency Manager of the City of Detroit under PA 436. Under Section 18 of PA 436, Defendant Governor Snyder is empowered to authorize Orr to file for Chapter 9 bankruptcy on behalf of the City if the Governor approves the Emergency Manager’s recommendation to do so.

On June 14, 2013, Emergency Manager Orr issued a “Proposal for Creditors” which expressly states that *“there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.”* The same day, Emergency Manager Orr publicly threatened, in an interview with the Detroit Free Press Editorial Board, that vested pension benefits will not be protected in a Chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state laws protecting vested pension benefits will “not . . . protect” retirees in bankruptcy court. As the Emergency Manager stated in the interview:

- Q. You said in this report that you don't believe there is an obligation under our state constitution to pay pensions if the city can't afford it?
- A. The reason we said it that way is to quantify the bankruptcy question. We think federal supremacy trumps state law.
- Q. Which the Ninth Circuit agrees with for now.
- A. It is what it is - so we said that in a soft way of saying, "Don't make us go into bankruptcy." **If you think your state-vested pension rights, either as an employee or a retiree - that's not going to protect you. If we don't reach an agreement one way or the other, we feel fairly confident that the state federal law, federalism, will trump state law or negotiate.** The irony of the situation is we might reach a deal with creditors quicker because employees and retirees think there is some benefit and that might force our hand. That might force a bankruptcy. (Emphasis added.)

### LAW

Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional in violation of Article IX Section 24 of the Michigan Constitution, because PA 436 permits accrued pension benefits to be diminished or impaired in direct contravention of the Constitution. Article IX Section 24 provides that "[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof *which shall not be diminished or impaired* thereby." There could not be a more clear and plain constitutional mandate. Article IX Section 24 means what it says: *accrued pension benefits "shall not be diminished or impaired."* See, *AFT Michigan v State of Michigan*, 297 Mich App 597, 610; 825 NW2d 595 (2012); *Mt Clemens Firefighters Union, Local 838, IAFF v City of Mt Clemens*, 58 Mich App 635, 644; 228 NW2d 500 (1975). The Official Record of the 1963 Constitutional Convention further supports that no governmental entity or its officials can do anything to diminish or impair vested pension benefits:

This is a new section that requires that accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions be a

contractual obligation which **cannot diminished or impaired by the action of its officials or governing body.**

2 Official Record, Constitutional Convention 1961, p. 3402 (emphasis added).

Chapter 9 of the U.S. Bankruptcy Code, 11 USC §§901 *et seq.*, provides a process by which a municipality may file for bankruptcy. However, because of federalism concerns and to protect the states' sovereignty, Chapter 9 prohibits a municipality from filing for bankruptcy unless "specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter." 11 USC §109(c)(2). Indeed, many states simply do not authorize their municipalities to file for bankruptcy at all. Absent such authorization, federal bankruptcy courts have no jurisdiction under Chapter 9 over a municipality as a debtor. See *Ashton v Cameron County Water District No 1*, 298 US 513; 56 S Ct 892; 80 L Ed 1309 (1936); and *United States v Bekins*, 304 US 27; 58 S Ct 811; 82 L Ed 1137 (1938).

Section 18 of PA 436 authorizes a municipality to commence Chapter 9 bankruptcy proceedings if the emergency manager appointed under PA 436 recommends, and the Governor authorizes, that the municipality file for bankruptcy under Chapter 9.

Notably, PA 436 explicitly recognizes that accrued pension benefits shall not be diminished or impaired outside the bankruptcy context. But PA 436 nowhere requires that the Governor shall not authorize a Chapter 9 bankruptcy filing if accrued pension benefits may be diminished or impaired thereby in violation of Article IX Section 24. *For example*, Section 11 of PA 436 requires that an emergency manager develop a written financial and operating plan for the local government and that such plan "shall provide" for "the timely deposit of required payments to the pension fund for the local government." *For example*, Section 13 of PA 436 authorizes the emergency manager to eliminate the salary, wages or other compensation and

benefits of the chief administrative officer and members of the governing body of the local government, but expressly provides that “[t]his section does not authorize the impairment of vested pension benefits.” *For example*, Section 12(m) of PA 436 authorizes an emergency manager under certain circumstances to be appointed as the sole trustee of a local pension board and to replace the existing trustees, and requires that “the emergency manager shall fully comply with . . . Section 24 of Article IX of the state constitution . . .” when acting as the sole trustee.

By contrast, Section 18 of PA 436, which empowers the Governor to authorize a municipality to file for bankruptcy under Chapter 9, *nowhere* requires that the Governor shall not authorize such filing if accrued pension benefits may be unconstitutionally diminished or impaired. Clearly, the Legislature understood and honored the constitutional mandate not to diminish or impair accrued pension benefits outside of bankruptcy. Just as clearly, the Legislature *omitted* any constitutional protection against the impairment or diminishment of accrued pension benefits when the Governor authorizes a Chapter 9 bankruptcy filing under Section 18 of PA 436. In other words, by expressly *including* the protection of Article IX Section 24 in various sections of the law, but not Section 18, PA 436 plainly *excludes* those protections from Section 18.<sup>1</sup> Accordingly, PA 436 is unconstitutional on its face because it does not prohibit a municipality from proceeding under Chapter 9 if accrued pension benefits may be unconstitutionally diminished or impaired, in violation of Article IX Section 24 of the Michigan Constitution.

Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional under Article IX Section 24 of the Michigan Constitution because PA 436 does not prohibit the

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<sup>1</sup> This conclusion is supported by the traditional maxim “*expressio unius est exclusio alterius*” (to express one thing is to exclude another). *See, e.g., Smitter v Thornapple Twp*, \_\_\_\_ Mich \_\_\_\_, 2013 Mich Lexis 912, \*19, n 34 (June 19, 2013); *Johnson v Recca*, 492 Mich 169, 176, n 4; 821 NW2d 520 (2012).

Governor from authorizing a Chapter 9 bankruptcy filing which threatens to unconstitutionally diminish or impair the Plaintiffs' accrued pension benefits.

Plaintiffs' need for a Declaratory Judgment is urgent. The facts show that a request by the Emergency Manager to proceed under Chapter 9 is imminent, because he has given every indication that he intends to impair or diminish accrued pension benefits in contravention of Article IX Section 24 of the Michigan Constitution. Plaintiffs' rights under the Michigan Constitution not to have their pension benefits "diminished or impaired" can only be guaranteed if this Court acts *before* the Governor approves a request to proceed under Chapter 9.

This case presents an actual controversy entitling Plaintiffs to a declaratory judgment because the facts indicate "an adverse interest necessitating the sharpening of the issues raised." *Lansing School Education Ass'n v Lansing Bd of Educ*, 487 Mich 349, 372 n20; 792 NW2d 686 (2010), quoting *Associated Builders and Contractors v Wilbur*, 472 Mich 117, 126; 693 NW2d 374 (2005). Plaintiffs are entitled to a declaratory judgment here "to obtain adjudication of rights *before* an actual injury occurs [and] to settle a matter *before* it ripens into a violation of the law . . ." *Rose v State Farm Mutual Auto Insurance Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006). (emphasis supplied)

This case presents the classic case for declaratory relief. Plaintiffs cannot wait to protect their constitutional rights until after the Governor authorizes a Chapter 9 filing. "Declaratory relief is designed to give litigants access to courts to preliminarily determine their rights. . . . the court is not precluded from reaching issues before actual injuries or losses have occurred." *City of Detroit v State of Michigan*, 262 Mich App 542, 550-551; 686 NW2d 514 (2004), citing *Shavers v Attorney General*, 402 Mich 554, 588-589; 267 NW2d 72 (1978) (explaining that plaintiff's request for declaratory relief "does not rely on the state having already violated the zoning ordinance [but] rather properly requests a determination whether the state had the

authority to proceed as planned”). Moreover, the Emergency Manager is admittedly using the threat of bankruptcy to force vested pensioners and employees to accede to his attempts to diminish and impair their accrued benefits **now**. Thus the harm to Plaintiffs is both imminent and actual.

Under MCR 2.605(D), this Court can and should order a speedy hearing and advance this case on the calendar. The need is urgent. *See*, Longhofer, 3 *Michigan Court Rules Practice* §2605.7 at 390. (Speedy hearing under 2.605(D) “will be done most frequently in actions involving clear-cut legal issues of public importance, with no factual issues to be tried”). *See also*, *Kuhn v Department of Treasury*, 384 Mich 378, 386-387; 183 NW2d 796 (1971) (“moving party is entitled to an expeditious disposition by the courts so that the right . . . guaranteed by the constitution is not jeopardized.”); *State Farm v Savickas*, 1998 Mich App Lexis 984 (1998) (trial court accelerated trial and entered judgment, as authorized by MCR 2.605(D)).

In the alternative, Plaintiffs are entitled to a preliminary injunction. In deciding whether to issue a preliminary injunction, the court must weigh the following factors:

Whether (1) the moving party made [a] required demonstration of irreparable harm, (2) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, (3) the moving party showed that it is likely to prevail on the merits, and (4) there will be harm to the public interest if an injunction is not issued.

First, Plaintiffs will be irreparably harmed if the Governor authorizes a Chapter 9 filing in which the Emergency Manager has stated he intends to diminish or impair vested pension benefits in violation of Article IX Section 24. Because bankruptcy may foreclose further options or financial relief, this is not a case where money damages could remedy the constitutional impairment of Plaintiff's pension rights. Second, the Governor and Treasurer will not suffer any harm if they are enjoined from authorizing a Chapter 9 bankruptcy that would violate the Constitution's protection for Detroit's vested pensioners and employees. “[I]f the plaintiff shows



a substantial likelihood that the challenged law is unconstitutional, no substantial harm to others can be said to inhere its enjoinderment." *Déjà vu of Nashville v Metro Gov't of Nashville and Davidson City*, 274 F3d 377, 400 (CA6, 2001). Third, for all the reasons stated above in support of a declaratory judgment, Plaintiffs are likely to succeed on the merits. Fourth, the public interest will be saved by upholding the Constitution's protection for thousands of long term City of Detroit retirees.

### CONCLUSION

Plaintiffs respectfully request that this Court grant a declaratory judgment and permanent injunction and/or preliminary injunction in their favor, as specified in the Verified Complaint.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: 

John R. Canzano (P30417)  
Attorneys for Plaintiffs  
400 Galleria Officentre, Suite 117  
Southfield, MI 48034  
248-354-9650  
jcanzano@michworklaw.com

Date: July 3, 2013

STATE OF MICHIGAN  
JUDICIAL DISTRICT  
30th JUDICIAL CIRCUIT  
COUNTY PROBATE

## SUMMONS AND COMPLAINT

CASE NO.

13-734-CZ

Court address

313 W. Kalamazoo, Lansing MI 48901

Court telephone no.

(517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s).

Gracie Webster and  
Veronica Thomas

v

Defendant's name(s), address(es), and telephone no(s).

The State of Michigan,  
Richard Snyder, Governor of the The State of Michigan, and  
Andy Dillon, Treasurer of the State of Michigan

Plaintiff's attorney, bar no., address, and telephone no.

John R. Canzano (P30417)  
McKnight, McClow, Canzano, Smith & Radtke, P.C.  
400 Galleria Officecentre, Suite 117  
Southfield MI 48034  
248-354-9650**SUMMONS** NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). (MCR 2.111(c))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued

JUL 03 2013

This summons expires

OCT 02 2013

Court clerk

ELIZABETH ROBERTSON

\*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

**COMPLAINT***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***Family Division Cases**

- ☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- ☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.
- The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

Judge

Bar no.

**General Civil Cases**

- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☒ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this Court \_\_\_\_\_ Court.
- The action ☒ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.

13-729-CZ

Judge

Aquilina

Bar no.

P37670

**VENUE**

Plaintiff(s) residence (include city, township, or village)

Detroit MI, Wayne County

Defendant(s) residence (include city, township, or village)

Lansing, MI, Ingham County

Place where action arose or business conducted

Ingham County

07/05/2013

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

**PROOF OF SERVICE****SUMMONS AND COMPLAINT**  
Case No. \_\_\_\_\_

**TO PROCESS SERVER:** You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE/AFFIDAVIT OF SERVICE/NONSERVICE**☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint,  
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint,  
 together with \_\_\_\_\_  
 List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Mileage fee	Total fee
\$		\$	\$

Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
 Date

My commission expires: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_

Attachments

on July 5 2013  
 Day, date, time

on behalf of

Treasurer Andy Dillon

Signature

13-53846-SW Doc 12193

STATE OF MICHIGAN  
JUDICIAL DISTRICT  
30th JUDICIAL CIRCUIT  
COUNTY PROBATE

## SUMMONS AND COMPLAINT

CASE NO.

13-734-CZ

Court address

313 W. Kalamazoo, Lansing MI 48901

Court telephone no.

(517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s).

Gracie Webster and  
Veronica Thomas

v

Defendant's name(s), address(es), and telephone no(s).

The State of Michigan,  
Richard Snyder, Governor of the The State of Michigan, and  
Andy Dillon, Treasurer of the State of Michigan

Plaintiff's attorney, bar no., address, and telephone no.

John R. Canzano (P30417)  
McKnight, McClow, Canzano, Smith & Radtke, P.C.  
400 Galleria Officentre, Suite 117  
Southfield MI 48034  
248-354-9650**SUMMONS** NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

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3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued

JUL 03 2013

This summons expires

OCT 02 2013

Court clerk

ELIZABETH ROBERTSON

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**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.**Family Division Cases**

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Docket no.	Judge	Bar no.
13-729-CZ	Aquilina	P37670

**VENUE**

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Detroit MI, Wayne County	Lansing, MI, Ingham County
Place where action arose or business conducted	
Ingham County	

07/05/2013

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

**PROOF OF SERVICE****SUMMONS AND COMPLAINT**

Case No. \_\_\_\_\_

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OR

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Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_ Date \_\_\_\_\_ County, Michigan.

My commission expires: \_\_\_\_\_ Date \_\_\_\_\_ Signature: \_\_\_\_\_  
 Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_

*Motion & Brief in Support*  
 Attachments

on July 5, 2013  
 Day, date, time

on behalf of State of Michigan

Signature \_\_\_\_\_

STATE OF MICHIGAN JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS AND COMPLAINT	CASE NO.  13-734-CZ
---	-----------------------	---------------------------

Court address

313 W. Kalamazoo, Lansing MI 48901

Court telephone no.

(517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s).

Gracie Webster and  
Veronica Thomas

v

Defendant's name(s), address(es), and telephone no(s).

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Richard Snyder, Governor of the The State of Michigan, and  
Andy Dillon, Treasurer of the State of Michigan

Plaintiff's attorney, bar no., address, and telephone no.

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Issued <b>JUL 03 2013</b>	This summons expires <b>OCT 02 2013</b>	Court clerk <b>ELIZABETH ROBERTSON</b>
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Docket no. 13-729-CZ	Judge Aquilina	Bar no. P37670
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**VENUE**

Plaintiff(s) residence (include city, township, or village) Detroit MI, Wayne County	Defendant(s) residence (include city, township, or village) Lansing, MI, Ingham County
Place where action arose or business conducted Ingham County	

07/05/2013

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

**PROOF OF SERVICE****SUMMONS AND COMPLAINT**  
Case No.

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OR

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Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_ Date \_\_\_\_\_ County, Michigan.

My commission expires: \_\_\_\_\_ Date \_\_\_\_\_ Signature: \_\_\_\_\_ Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with Motion & Brief in Support Attachments

\_\_\_\_\_ on July 5, 2013 Day, date, time  
 \_\_\_\_\_ on behalf of Governor Snyder

Signature

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No.  
Hon.

13-734-CZ

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

Dept of Attorney General

JUL 09 2013 /

State of Michigan  
RECEIVED  
Clerk's Division

**ORDER TO SHOW CAUSE**

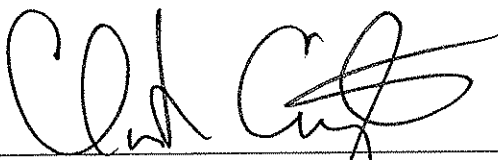
At a session of said Court held in Ingham County Circuit Court,  
State of Michigan, this 5 day of July, 2013.

PRESENT: \_\_\_\_\_  
Circuit Court Judge

The Court reviewed Plaintiffs' Verified Complaint, Motion for Declaratory Judgment and Expedited Hearing Pursuant to MCR 2.605(D), or in the Alternative for Preliminary Injunction and Brief in support thereof, and being otherwise fully advised in the premises.

**IT IS HEREBY ORDERED:**

1. Defendants shall file and serve their Answer and any other responses to Plaintiffs' Motion on or before July 15, 2013.
2. Defendants shall show cause on July 22, 2013 at 9 o'clock in the fore noon why the declaratory judgment and permanent and/or preliminary injunction sought by Plaintiffs should not be granted.

  
Circuit Court Judge



STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No.  
Hon.

13-734-CZ

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

Dept of Attorney General

JUL 09 2013

State Courtroom Division  
RECEIVED

**ORDER TO SHOW CAUSE**

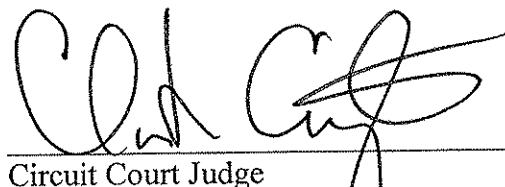
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Circuit Court Judge

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Circuit Court Judge

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

JUL 08 2013

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No.  
Hon.

13-734-CZ

THE STATE OF MICHIGAN;  
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Defendants.

**ORDER TO SHOW CAUSE**

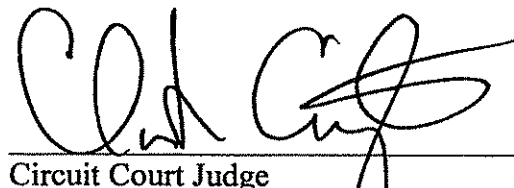
At a session of said Court held in Ingham County Circuit Court,  
State of Michigan, this 5 day of July, 2013.

PRESENT: \_\_\_\_\_  
Circuit Court Judge

The Court reviewed Plaintiffs' Verified Complaint, Motion for Declaratory Judgment and Expedited Hearing Pursuant to MCR 2.605(D), or in the Alternative for Preliminary Injunction and Brief in support thereof, and being otherwise fully advised in the premises.

**IT IS HEREBY ORDERED:**

1. Defendants shall file and serve their Answer and any other responses to Plaintiffs' Motion on or before July 15, 2013.
2. Defendants shall show cause on July 22, 2013 at 9 o'clock in the forenoon why the declaratory judgment and permanent and/or preliminary injunction sought by Plaintiffs should not be granted.

  
Circuit Court Judge

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE  
ATTORNEY GENERAL

P.O. Box 30754  
LANSING, MICHIGAN 48909

July 15, 2013

Clerk of the Court  
Ingham County Circuit Court  
313 W. Kalamazoo  
Lansing, MI 48901-7971

Dear Clerk:

Re: *Gracie Webster, et al v The State of Michigan, et al*  
Ingham Circuit Docket No. 13-734-CZ

Enclosed for filing in the above entitled matter, please find the Defendants' Response to Plaintiffs' Motion for Declaratory Judgment or Preliminary Injunction and Brief in Support of Defendants' Motion for Summary Disposition along with Proof of Service upon Plaintiff's attorney.

Sincerely,

A handwritten signature in cursive script that reads "Thomas Quasarano".

Thomas Quasarano  
Assistant Attorney General  
State Operations Division  
(517) 373-1162

TQ/llw  
Enc.

c: John R. Canzano  
Hon. Rosemarie Aquilina

AG# 2013-0048624-A - Webster v SOM, et al /clerk ltr

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STATE OF MICHIGAN

DEPARTMENT OF ATTORNEY GENERAL

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PAY TO THE ORDER OF:

INGHAM COUNTY CIRCUIT COURT

MOTION FEE

WEBSTER V SOM

THOMAS QUASARANO , STATE OPERATIONS

TO THE TREASURER  
STATE OF MICHIGAN  
LANSING, MICHIGAN 48922

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*[Signature]*

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THE BACKGROUND OF THIS DOCUMENT CHANGES TONE GRADUALLY FROM DARK TO LIGHT

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

No. 13-734-CZ

v

HON. ROSEMARIE AQUILINA

THE STATE OF MICHIGAN, RICHARD SNYDER,  
as Governor of the State of Michigan, and ANDY  
DILLON, as Treasurer of the State of Michigan,

**NOTICE OF HEARING**

Defendants.

---

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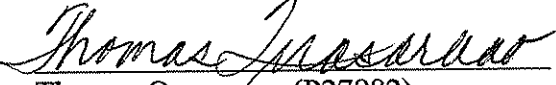
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[devlinb@michigan.gov](mailto:devlinb@michigan.gov)

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PLEASE TAKE NOTICE that Defendants' Motion For Summary Disposition under MCR 2.116(C)(4), (5), and (8), shall be brought on for hearing before the Honorable Rosemarie Aquilina in her courtroom in Lansing, Michigan, on **Monday, July 22, 2013 at 9:00 a.m.**, or as soon thereafter as counsel may be heard.

Respectfully submitted,

Bill Schuette  
Attorney General

  
Thomas Quasarano (P27982)  
Brian Devlin (P34685)  
Assistant Attorneys General

Dated: July 15, 2013

AG# 2013-0048624 - S - Webster v SOM - Notice of Hearing

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

v

THE STATE OF MICHIGAN, RICK SNYDER,  
Governor of the State of Michigan, and ANDY  
DILLON, Treasurer of the State of Michigan,

Defendants.

No. 13-734-CZ

HON. ROSEMARIE AQUILINA

**DEFENDANTS' MOTION FOR  
SUMMARY DISPOSITION**

---

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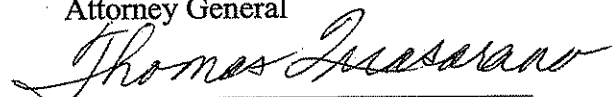
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Defendants move, under MCR 2.116(C)(4), (5), and (8), for Summary Disposition  
dismissing Plaintiffs' Complaint with prejudice, as supported by Defendants' Brief in Support.

WHEREFORE, Defendants respectfully request that this Honorable Court grant  
Defendants' Motion for Summary Disposition and dismiss Plaintiffs' Complaint with prejudice.

Respectfully submitted,

Bill Schuette  
Attorney General



Thomas Quasarano (P27982)  
Brian Devlin (P34685)  
Assistant Attorneys General  
Attorneys for Defendants  
(517) 373-1162

Dated: July 15, 2013

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

No. 13-734-CZ

v

HON. ROSEMARIE AQUILINA

THE STATE OF MICHIGAN, RICK SNYDER,  
Governor of the State of Michigan, and ANDY  
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**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR DECLARATORY  
JUDGMENT OR PRELIMINARY INJUNCTION AND BRIEF IN SUPPORT OF  
DEFENDANTS' MOTION FOR SUMMARY DISPOSITION**

**Statement of Facts**

Plaintiffs, as beneficiaries of the City of Detroit's pension system, bring a facial constitutional challenge to the Local Financial Stability and Choice Act (Act), MCL 141.1541, *et seq.*, asserting that the Act is unconstitutional because it permits the Governor to authorize a

proceeding in Chapter 9 bankruptcy, allegedly in violation of Const 1963, art 9, § 24.<sup>1</sup> They seek a declaratory judgment that the Act “is unconstitutional and in violation of [art 9, § 24] of the Michigan Constitution because [the Act] permits accrued pension benefits to be diminished or impaired by bankruptcy proceedings in direct contravention of the Constitution.” (Complaint, ¶ 1). Plaintiffs have moved for an expedited hearing on their request for declaratory relief, or request in the alternative a preliminary injunction enjoining the Governor from authorizing a bankruptcy proceeding under the Act.

Section 18(1), MCL 141.1558(1), of the Act provides, in part:

If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. The governor may place contingencies on a local government in order to proceed under chapter 9. Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9.

Plaintiffs allege they are entitled to declaratory relief and a final judgment that the Act is unconstitutional because the Act does not prohibit the Governor from authorizing a Chapter 9 bankruptcy, which threatens to diminish or impair Plaintiffs’ accrued pension benefits contrary to art 9, § 24. (Complaint, ¶26). Plaintiffs request relief and ask this Court to intrude upon the Governor’s authority and discretion based on their speculation that the Governor might exercise his authority and approve a recommendation that the City proceed in bankruptcy; and that the City’s pension funds might be detrimentally affected during a Chapter 9 proceeding in federal bankruptcy court. (Complaint, ¶27 and 28). But this Court should deny Plaintiffs’ expedited

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<sup>1</sup> Const 1963, art 9, § 24 provides, in part: “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.”



motion for declaratory relief or, alternatively, preliminary injunction and dismiss the Complaint because Plaintiffs lack standing to sue, their claim is unripe, their facial constitutional challenge fails as a matter of law, and they cannot satisfy any of the factors necessary for granting injunctive relief.

### **Argument**

**I. Plaintiffs' motion for expedited declaratory relief should be denied and their Complaint dismissed pursuant to MCR 2.116(C)(4), (C)(5), and (C)(8) because Plaintiffs' lack standing, their claim is unripe, and their facial constitutional challenge fails as a matter of law.**

**A. Standard of Review.**

A party is entitled to summary disposition under MCR 2.116(C)(4) if the lower court “lacks jurisdiction of the subject matter.” This Court must determine whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence demonstrate a lack of subject-matter jurisdiction. *Toaz v Dep't of Treasury*, 280 Mich App 457, 459, 459; 760 NW2d 325 (2008) (quotation omitted). “[S]ummary disposition [under MCR 2.116(C)(5)] is merited when the plaintiffs lack the capacity to sue. In reviewing these motions, [the] Court must consider the parties' pleadings, depositions, admissions, affidavits, and other documentary evidence to determine whether the defendant is entitled to judgment as a matter of law.” *In re Estate of Quintero*, 224 Mich App 682, 692; 569 NW2d 889 (1997). A motion brought under MCR 2.116(C)(8) tests the legal sufficiency of a claim based upon the pleadings alone. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). The motion should be granted when a plaintiff's claims are “so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Id.* (quotation omitted).

## **B. Analysis.**

Plaintiffs have requested and moved for expedited treatment of their Complaint for declaratory and injunctive relief under MCR 2.605(D). Defendants do not object and agree that the matter should be accorded expedited review with the exception that judgment for Defendants should be entered. To that end, Defendants' have also moved for summary disposition under MCR 2.116(C)(4) (subject matter jurisdiction – ripeness), (C)(5) (capacity to sue – standing), and (C)(8) (failure to state a claim). This Court should waive or adjust the customary response time for such motions, and decide Defendants' motion concurrent with Plaintiffs' motion for accelerated judgment. As demonstrated below, this Court lacks jurisdiction to entertain Plaintiffs' Complaint because their claim is unripe, they do not have standing to bring this action, and their facial challenge fails as a matter of law. Further, a speedy resolution of this action is required to avoid adversely impacting the City of Detroit Emergency Manager's current efforts to reach a consensus that could achieve some financial stability for the City without recourse to bankruptcy. Delaying a resolution of this case would certainly have a negative impact on those efforts and send the wrong message to the citizens of Detroit and Michigan.

### **1. Plaintiffs' lack standing to bring this action.**

In *Lansing School Education Ass'n v Lansing Board of Education*, 487 Mich 349, 355, 372; 792 NW2d 686 (2010), the Michigan Supreme Court reinstated Michigan's previous "prudential" standing test, which automatically conferred standing upon any party who has a "legal cause of action," regardless of whether the underlying issue is justiciable. "Under this approach, a litigant has standing whenever there is a legal cause of action" or the requirements of MCR 2.605 to seek a declaratory judgment are satisfied. *Id.* at

372. If a specific cause of action at law does not exist for the plaintiff, then the following applies:

A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [Id.]

In this case, Plaintiffs cannot meet even this liberalized standard.

**a. Plaintiffs have not pled facts sufficient to establish a legal cause of action.**

Plaintiffs have not pled facts sufficient to establish that a violation of their rights under Const 1963, art 9, § 24 has occurred or to establish that a cause of action exists under the Act; they do not even attempt to do so. Indeed, the Act expressly states that it provides no cause of action:

*A cause of action against this state or any department, agency, or entity of this state, or any officer or employee of this state acting in his or her official capacity, or any membership of a receivership transition advisory board acting in his or her official capacity, may not be maintained for any activity authorized by this act, or for the act of a local government filing under chapter 9, including any proceeding following a local government's filing. [MCL 141.1572 (emphasis added).]*

Plaintiffs further acknowledge that the Governor has not authorized a bankruptcy filing as required under the Act. MCL 141.1558(1). Moreover, there are other contingencies that would need to occur before any "threat" to Plaintiffs' pension benefits could arise because:

- Even with the filing of a bankruptcy action, the City of Detroit must meet additional requirements before the case may proceed including completing a Plan of Reorganization to adjust its debts. The City must either obtain an agreement from creditors holding a majority of the amount of claims of each class the debtor intends to impair under a plan, negotiate in good faith with creditors and fail to obtain an agreement of creditors holding a majority of the amount of claims of each class the debtor intends to impair under a plan, be unable to negotiate with creditors because it is impractical, or reasonably believe a creditor may attempt to obtain a preference. 11 USC 109(c). The plan would have to include the pension beneficiaries as a "class of creditors" and propose a reduction of benefits; and

- The plan must be confirmed by the bankruptcy court. The plan must meet seven specific criteria for confirmation, including that “the debtor is not prohibited by law from taking any action necessary to carry out the plan.” 11 USC 943(4).

No violation of art 9, § 24 could or would occur if the Governor authorizes the City of Detroit to proceed under Chapter 9 because the bankruptcy court would still have to find the City eligible for bankruptcy, and the court would have to approve a plan in bankruptcy that impairs vested pension benefits, or at least have such a plan presented to it.

Ignoring these contingencies, Plaintiffs’ fact assertions center upon their alleged apprehension as to what *might* happen. Plaintiffs contend they are entitled to a declaratory judgment that the Act is facially unconstitutional because it “nowhere requires that in considering whether to approve an emergency manager’s recommendation to proceed under Chapter 9, the Governor shall not approve such recommendation if accrued pension benefits may be diminished or impaired in violation of [art 9, § 24].” (Complaint, ¶¶ 18 and 19). Accordingly, Plaintiffs assert, “because [the Act] does not prohibit a municipality from proceeding under Chapter 9 of the US Bankruptcy Code if accrued pension benefits may be unconstitutionally diminished or impaired, [the Act] is unconstitutional on its face in violation of” art 9, § 24. *Id.* This allegation mistakes the scope of the “authorization”—it is not approval of the actual bankruptcy filing or plan—and presumes the Governor would act unconstitutionally.

Plaintiffs further allege that their:

[R]ights under the Michigan Constitution not to have their pension benefits “diminished or impaired” can only be guaranteed if this Court acts *before* the Governor approves a request to proceed under Chapter 9. Moreover, Emergency Manager Orr’s threats that he will unconstitutionally diminish or impair Plaintiffs’ vested pension rights have themselves harmed Plaintiffs by instilling in Plaintiffs a reasonable fear that their constitutional rights will be trampled upon and, in the process, their future source of income drastically eroded. [Complaint, ¶ 28.]

This Court cannot assume that there will be a Chapter 9 bankruptcy proceeding involving the City of Detroit. The Governor has not yet authorized such a proceeding at this time nor has the Governor had the opportunity to disapprove, approve, or approve and “place contingencies on a local government in order to proceed under chapter 9,” as provided for in MCL 141.1558(1). And even if the Court assumes that there will be a Chapter 9 proceeding, this Court cannot assume what the contents of the City’s plan might be, or that the federal bankruptcy court will approve a plan that will diminish or impair Plaintiffs’ pension benefits. Because Plaintiffs’ claim is based on a speculative threat of future-injury, they have failed to allege a legal cause of action for which they have standing to seek relief from this Court. *Lansing School Education Ass’n*, 487 Mich at 372.

**b. Plaintiffs do not meet the requirements of MCR 2.605.**

With respect to declaratory judgment actions, MCR 2.605(A)(1) provides:

In a case of *actual controversy* within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. [Emphasis added.]

MCR 2.605 “does not limit or expand the subject-matter jurisdiction of the courts, but instead incorporates the doctrines of standing, ripeness, and mootness.” *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012). “The existence of an ‘actual controversy’ is a condition precedent to invocation of declaratory relief.” *Shavers v Attorney General*, 402 Mich 554, 588; 267 NW2d 72 (1978); see also *Genesis Ctr, PLC v Comm’r of Financial & Ins Servs*, 246 Mich App 531, 544; 633 NW2d 834 (2001). “An ‘actual controversy’ . . . exists when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues.” *UAW*, 295 Mich App at 495 (citations omitted) (footnotes omitted). “The

essential requirement of an 'actual controversy' under the rule is that the plaintiff pleads and proves facts that demonstrate an " 'adverse interest necessitating the sharpening of the issues raised.' " " *Id.* (citations omitted) (footnotes omitted).

As discussed above, the parties are many steps away from a point at which an actual controversy will exist between them. Presently, the possibility of Chapter 9 bankruptcy represents only a possibility, and thus whether Plaintiffs' pension benefits might be impacted somewhere in the future in a bankruptcy proceeding is purely speculative. Thus, the Plaintiffs' interests and the Governor's, Treasurer's, and State's interests are not yet adverse, and therefore no sharpening of the issues through issuance of a declaratory judgment is required. Plaintiffs have failed to satisfy the requirements of MCR 2.605, and do not have standing to seek relief from this Court. *Lansing School Education Ass'n*, 487 Mich at 372.

**c. Plaintiffs have not established a special injury, right, or substantial interest that will be detrimentally affected in a manner different from that of the citizenry at large.**

Even where there is no cause of action provided at law, a court may, in its discretion, determine whether a litigant has standing. *Lansing Schools*, 487 Mich at 372. This requires a showing that the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.

Here, as noted above, the Legislature did not intend to confer standing on any person to challenge the Act. Rather, it expressly provided that there is no cause of action under the Act. MCL 141.1572. And even if Plaintiffs have a special injury, right or interest based on their participation in the City's pension plan, which Defendants do not concede, it is not at all certain that this interest will be detrimentally affected. Again, no authorization to proceed in a Chapter 9

bankruptcy with respect to the City has been made, it remains hypothetical. It is also speculative to assume that Plaintiffs' pensions will be part of any bankruptcy proceeding. Moreover, a Chapter 9 bankruptcy proceeding affords various interested parties protections under the federal Bankruptcy Code.

Bankruptcy Code provisions applicable to a Chapter 9 bankruptcy are set forth under 11 USC 901(a). For instance, § 943, 11 USC 943, of the Bankruptcy Code regulates confirmation of a debtor's plan of adjustment. Section 943(b) sets forth seven criteria that must be met before a federal Bankruptcy Court can confirm the plan. The fourth and seventh requirements are noteworthy here. The fourth criteria requires the bankruptcy court determine "the debtor is not prohibited by law from taking any action necessary to carry out the plan." 11 USC 943(b)(4). The seventh criteria requires a determination that the plan be in the best interest of creditors, and that it be feasible. 11 USC 943(b)(7).

At this time, it is purely speculative as to whether Plaintiffs' interests will be detrimentally affected should the Governor authorize the City to proceed in Chapter 9. Plaintiffs therefore do not have standing to seek relief from this Court. *Lansing School Education Ass'n*, 487 Mich at 372.

### **3. Plaintiffs' alleged constitutional claim is not ripe for review.**

While both standing and ripeness are justiciability doctrines that assess pending claims to discern whether an actual or imminent injury in fact is present, they address different underlying concerns. *Michigan Chiropractic Council v Comm'r of Ins*, 475 Mich 363, 378-379; 716 NW2d 561 (2006). The standing doctrine "is designed to determine whether a particular party may properly litigate the asserted claim for relief." *Id.*, at 379. The ripeness doctrine, on the other hand, "does not focus on the suitability of the party; rather, ripeness focuses on the *timing* of the

action.” *Id.* (emphasis in original). The ripeness doctrine precludes the adjudication of hypothetical or contingent claims before an actual injury has been sustained. An action is not ripe if it rests on contingent future events that may not occur as anticipated or may not occur at all. *Id.*, at 371 n. 14.

For the reasons already discussed above, Plaintiffs’ contention that a future Chapter 9 bankruptcy could represent what they characterize as a “threat” to their interests in their pensions is not ripe because it rests on contingent future events that may or may not occur, to wit; that the Governor will approve proceeding in Chapter 9, that the approval will be without any contingencies, and that their pensions will be impaired as a result of the federal bankruptcy proceeding. Under these circumstances, this Court should dismiss Plaintiffs’ Complaint as unripe for review. See *Strauss v Governor*, 459 Mich 526, 544, 545 n. 14; 592 NW2d 53 (1999), quoting *Straus v Governor*, 230 Mich App 222; 583 NW2d 520 (1998) (citation omitted) (“unless and until such [a constitutional] encroachment actually occurs, the issue is not ripe for adjudication,” and “[w]here a constitutional question is presented anticipatorily, the Court is required by the limits on its authority to decline to rule.”).

**4. Plaintiffs’ complaint fails to state a claim upon which this Court may grant relief.**

Plaintiffs bring a facial constitutional challenge to the Local Financial Stability and Choice Act. They broadly assert that the Act is unconstitutional under Const 1963, art 9, § 24 because it empowers the Governor to authorize a proceeding in Chapter 9. (Complaint, ¶ 19).

“A facial challenge is a claim that the law is ‘invalid *in toto* - and therefore incapable of any valid application. . . .’ ” *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11 n 20; 740 NW2d 444 (2007) (citation omitted) (emphasis in original). “A party challenging the facial constitutionality of a statute faces an extremely



rigorous standard, and must show that no set of circumstances exists under which the [a]ct would be valid.” *Id.* at 11 (internal quotation marks and citation omitted). Plaintiffs cannot satisfy this standard.

As discussed above, § 18(1) of the Act, MCL 141.1558(1), simply authorizes an emergency manager to recommend, and the Governor to authorize, proceeding under Chapter 9. It is silent with respect to what course of action an emergency manager should pursue in bankruptcy, including how a local government unit’s assets and liabilities should be treated in bankruptcy. And relevant here, it does not require any particular treatment of pension funds. Indeed, section 18 does not even mention or allude to pension funds. Compare this to section 12(1)(m), MCL 141.1552(1)(m), of the Act, which describes an emergency manager’s authority and duties with respect to a “municipal government’s pension fund.” Thus, nothing in the Act compels or requires any impairment of Plaintiffs’ pension benefits contrary to art 9, § 24. The Act is therefore not facially unconstitutional. Moreover, Plaintiffs clearly cannot establish “that no set of circumstances exists under which the [a]ct would be valid,” because the Governor could place a contingency eliminating the pension fund, payments and liabilities from a Chapter 9 proceeding. Additionally, the City may not include the pension funds, payments and liabilities in its plan; or the federal court may determine that federal bankruptcy law controls the analysis. Plaintiffs’ facial constitutional challenge to the Act thus fails as a matter of law, and should be dismissed.

**II. Plaintiffs’ alternative request for preliminary injunctive relief is premature, overbroad, and constitutionally infirm, and fails to satisfy the four requirements for issuance of a preliminary injunction.**

Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury.

MCR 3.310(A); *Davis v City of Detroit Financial Review Team*, 296 Mich App 568, 613-614; 821 NW2d 896 (2012); *Michigan Coalition of State Employee Unions, et al v Civil Service Commission*, 465 Mich 212, 226, n 11; 634 NW2d 692 (2001). In order to obtain a preliminary injunction, a plaintiff must prove that (1) he is likely to prevail on the merits; (2) he will be irreparably harmed if an injunction is not issued; (3) the harm to him absent an injunction outweighs the harm that an injunction would cause the defendants; and (4) there will be no harm to the public interest if an injunction is issued. *Detroit Fire Fighters Ass'n v Detroit*, 482 Mich 18, 34; 753 NW2d 579 (2008). A court's exercise of its discretion to consider injunctive relief may not be arbitrary, but rather must be in accordance with the fixed principles of equity jurisdiction and the evidence in the case. *Jeffrey v Clinton Twp*, 195 Mich App 260, 263; 489 NW2d 211 (1992). When seeking injunctive relief, the plaintiff has the burden of proof on each of these factors. MCR 3.310(A)(4). Plaintiffs have not met their burden here, and their motion should be denied.

**A. Plaintiffs' alternative request for preliminary injunctive relief is premature, overbroad, and constitutionally infirm.**

Plaintiffs alternatively seek a preliminary injunction. But Plaintiffs' request should be denied because it is premature, overbroad, and unsupported by precedent.

This Court "at all times is required to question sua sponte its own jurisdiction (whether over a person, the subject matter of an action, or the limits on the relief it may afford)." *Strauss*, 459 Mich at 532, quoting *Straus*, 230 Mich App 222 (citation omitted) (emphasis added). In *Strauss*, the Michigan Supreme Court, in adopting the Court of Appeals' opinion, expressed "doubt with respect to the propriety of injunctive relief against the Governor," and observed that "separation of powers principles, preclude *mandatory* injunctive relief, mandamus, against the Governor."

*Id.* (citations omitted) (emphasis added). The Court further observed that whether the same

reasoning also precludes “*prohibitory injunctive relief*” was an open question “that need not be resolved in [that] case.” *Id.* (emphasis added). However, the Court also recognized, if not emphasized that

declaratory relief normally will suffice to induce the legislative and *executive* branches, the principal members of which have taken oaths of fealty to the constitution identical to that taken by the judiciary, to conform their actions to constitutional requirements or confine them within constitutional limits. *Only when declaratory relief has failed should the courts even begin to consider additional forms of relief in these situations.* [*Id.* (emphasis added). See also *Davis v City of Detroit Financial Review Team*, 296 Mich App 568, 614, 632-635; 821 NW2d 896 (2012) (O’Connell, J., concurring).]

There is then almost a presumption that injunctive relief, of any kind, may not be entered against the Governor unless declaratory relief has failed. That has not happened here. Their request for an injunction should thus be denied as a premature.

Plaintiffs’ request for injunctive relief should also be denied because it is overbroad. Plaintiffs ask this Court to enjoin the Governor from authorizing *any* bankruptcy for the City of Detroit. (Complaint, ¶ 31-34). This would include a bankruptcy proceeding in which pension funds were *not* at issue or at risk. Additionally, the authorization Plaintiffs seek to enjoin is to proceed in Chapter 9 only, not the actual bankruptcy Petition or plan. This court cannot determine, based on the record Plaintiffs’ present, how any bankruptcy proceeding for the City of Detroit, if filed, may impact their pension benefits or if at all, until the bankruptcy plan is filed with the bankruptcy court and ultimately confirmed. 11 USC 943. Plaintiffs alleged constitutional violation and claimed injury is currently nothing more than pure speculation. Thus, Plaintiffs’ request should be denied to the extent it is overbroad and not narrowly tailored to the facts and legal arguments.

Finally, Plaintiffs’ request for injunctive relief should be denied to the extent it is a request for mandatory injunctive relief. Although Plaintiffs’ have couched their request for

injunctive relief in prohibitory language, in reality they seek to compel the Governor to exercise his discretion in a particular manner.

Under § 18(1), MCL 141.1558(1), the Governor may (1) disapprove the recommendation; (2) approve the recommendation; or (3) approve the recommendation and place contingencies on the local government in proceeding under Chapter 9. Plaintiffs' seek to have this Court compel the Governor to exercise the first option, disapproval. But it is clear that this Court cannot constitutionally issue a mandatory injunction compelling the Governor to exercise his discretion and act in a particular manner. *Strauss*, 459 Mich at 532. See also *Flint City Council v State of Michigan*, 253 Mich App 378, 387; 655 NW2d 604 (2002) (Observing that Court had previously reversed circuit court "[b]ecause the court's order . . . required the Governor to take specific, court-ordered action, . . . in the nature of mandamus and in violation of the Michigan constitution"); *Musselman v Governor*, 200 Mich App 656, 662; 505 NW2d 288 (1993) ("mandamus will not lie to compel the Governor to act, regardless of whether the actions sought to be compelled are discretionary or ministerial"). Accordingly, Plaintiffs' request for preliminary or permanent injunctive relief must be denied.

**B. Plaintiffs have failed to satisfy any of the four requirements for issuance of a preliminary injunction.**

**1. Plaintiffs are not likely to succeed on the merits.**

Plaintiffs cannot demonstrate a substantial likelihood of success on the merits of their claim that the Act is unconstitutional under art 9, § 24 because, as set-forth above in Argument I, they lack standing to sue; their claim is unripe; and their facial constitutional challenge fails as a matter of a law.

**2. Plaintiffs will not suffer irreparable harm if an injunction is not issued.**

Again, if justiciable, the underlying issue in this case is properly raised in the federal Bankruptcy Court in the context of the actual bankruptcy plan during the confirmation process and not in the state trial court. 11 USC 943. Plaintiffs' legal claims would ripen only if and when a bankruptcy proceeding includes a possible reduction or adverse impact on their pension benefits. It is in that forum, in the context of the specific bankruptcy plan, that these legal issues should be addressed and resolved. Because Plaintiffs have a legal remedy – litigation in the context of the bankruptcy action –they will not suffer irreparable harm if an injunction is not issued now. They have identified no immediate threat to their pension benefits.

**3. Defendants would be harmed more by the granting of the relief than would Plaintiffs in the absence of an injunction.**

While Plaintiffs retain their access to the remedies set forth in the federal Bankruptcy Code without need of court-granted injunctive relief, the grant of Plaintiffs' alternative motion for preliminary injunction would harm Defendants, the operation of state government, the City of Detroit and its fiscal recovery. As discussed above, the grant of such relief would require that this Court disregard the separation of powers doctrine. Const 1963, art 3, § 2. The granting of such relief also would unlawfully intrude on the Governor's executive powers to authorize a Chapter 9 bankruptcy under section 18 of the Act, MCL 141.1558, by barring him from implementing the Act. The breadth of the injunction sought would preclude the authorization of *any* bankruptcy proceeding thereby prohibiting the State, the Emergency Manager and the City of Detroit from accessing an important tool for resolution of the existing fiscal crisis. The impact on the State's and City's economy would be devastating and the consequent impact on Plaintiffs pension benefits potentially worse than any bankruptcy action would produce.

**4. The harm to the public interest if the injunction is issued is readily apparent.**

In that Defendants would be harmed more by the granting of the injunctive relief than would Plaintiffs in the absence of an injunction, likewise the public at large will be harmed for the same reasons. An affront to the separation of powers doctrine and an unlawful intrusion into the Governor's executive powers can never be in the public interest.

The administration of any statute is essentially a matter of public and not of individual concern. Accordingly, in this case, the public is not benefited by a court order that would bar the Governor from authorizing a Chapter 9 bankruptcy under section 18 of the Act, MCL 141.1558.

Furthermore, improper interference with these gubernatorial powers directly contravenes the Act's measures to "assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare." MCL 141.1549(2). An injunction would place the citizens of the City of Detroit at greater risk because it would eliminate access to an important tool to resolve the existing fiscal crisis, causing further detrimental impact to public safety, services, and welfare.

For all of these reasons, the Court's issuance of injunctive relief or other such relief would be unwarranted and inappropriate.

### **Conclusion and Relief Requested**

For the reasons stated above, Defendants respectfully request that this Honorable Court deny Plaintiffs' motion for expedited declaratory relief and/or for a preliminary injunction, and grant Defendants' motion for summary disposition dismissing Plaintiffs' Complaint under MCR 2.116(C)(4), (5), and (8) with prejudice.

Respectfully submitted,

Bill Schuette  
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Dated: July 15, 2013

AG# 2013-0048624-A – Webster-SOM – Response to Mtn Declaratory Judgment

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

No. 13-734-CZ

v

HON. ROSEMARIE AQUILINA

THE STATE OF MICHIGAN, RICHARD  
SNYDER, as Governor of the State of  
Michigan, and ANDY DILLON, as Treasurer  
of the State of Michigan,

Defendants.

---

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---


STATE OF MICHIGAN    )  
                                  ) ss  
COUNTY OF INGHAM    )

**PROOF OF SERVICE**

The undersigned certifies that on July 15, 2013 she served a copy of the Defendants' Response to Plaintiffs' Motion for Declaratory Judgment or Preliminary Injunction and Brief in Support of Defendants' Motion for Summary Disposition by e-mail and first class mail upon:



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AG# 2013-0048624-C -- Webster v SOM - POS

13

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July 18, 2013

Thomas Quasarano  
Assistant Attorney General  
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Lansing, MI 48909

**Re: Gracie Webster, et al v. The State of Michigan, et al**  
**Case No. 13-734-CZ**

Dear Mr. Quasarano:

Enclosed please find the Plaintiffs' Reply Brief in Support of Motion for Declaratory Judgment and Expedited Hearing regarding the above matter.

Sincerely,

McKNIGHT, McCLOW, CANZANO  
SMITH & RADTKE, P.C.

*John R. Canzano/sjc*  
John R. Canzano

JRC/sjc  
Enclosure

Dept of Attorney General

JUL 23 2013

State Operations Division  
RECEIVED

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-000734-CZ-C30  
Hon. Rosemarie E. Aquilina

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

---

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---

**REPLY BRIEF IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND EXPEDITED  
HEARING PURSUANT TO MCR 2.605(D), OR  
IN THE ALTERNATIVE FOR PRELIMINARY INJUNCTION**

## INTRODUCTION

The pertinent facts have already been stated in Plaintiffs' Verified Complaint, Motion, and Brief in Support filed July 3, 2013, which are incorporated herein by reference. Notably, Defendants do not contest (or even mention) the most important facts here, which bear repeating: On June 14, 2013, Emergency Manager Kevyn Orr issued a formal "Proposal for Creditors" which expressly states that "*there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons.*" The same day, the Emergency Manager -- who is himself a lawyer and bankruptcy expert -- publicly threatened that state laws -- including the Michigan Constitution -- protecting vested pension benefits will "not . . . protect" those pension rights in bankruptcy court.

Moreover, Defendants do not contest the substantive merits of Plaintiffs' claim that PA 436 is unconstitutional to the extent it allows accrued pension benefits to be "diminished or impaired" in violation of Article IX Section 24 of the Michigan Constitution. Rather, Defendants claim this case is not justiciable because the Emergency Manager has not yet actually requested and the Governor has not yet actually authorized a Chapter 9 filing pursuant to PA 436. However, as explained below and in Plaintiffs' original Brief, the instant controversy presents a classic case for declaratory relief under MCR 2.605. The need for a declaratory judgment to establish the rights and duties and to guide the conduct of all the parties here is urgent. Plaintiffs are entitled to a declaratory judgment that PA 436 is unconstitutional to the extent it allows the Governor to authorize Chapter 9 bankruptcy filing which, as the Emergency Manager has himself acknowledged, is intended to diminish or impair the accrued vested pension rights of Plaintiffs as well as thousands of their coworkers and fellow retirees. In the alternative, Plaintiffs are entitled to a preliminary injunction enjoining the Governor from authorizing such a unconstitutional bankruptcy filing.

**A. Plaintiffs have established an actual controversy entitling them to declaratory relief under MCR 2.605.**

Although Defendants couch their arguments in terms of standing and ripeness, the only real issue is whether there is an "actual controversy" under MCR 2.605, which subsumes those justiciability issues. This matter clearly presents "a case of actual controversy" empowering the Court to "declare the rights and other legal relations of an interested party seeking a declaratory judgment" under MCR 2.605(A)(1). Defendants' argument that Plaintiffs' request for declaratory relief presents speculative or hypothetical claims must be rejected. Under longstanding and well-established Michigan law, Plaintiffs are entitled to a declaratory judgment.

Defendants correctly cite *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), as the controlling law. But that case supports Plaintiffs, not Defendants. In *Lansing Schools Ed Ass'n*, the Supreme Court held that in the declaratory judgment context:

[W]henever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.

487 Mich at 372. The Court further held that the standard for whether a litigant meets the requirements of MCR 2.605 was that stated in *Associated Builders and Contractors v Wilbur*, 472 Mich 117, 126; 693 NW2d 374 (2005): "[t]he essential requirement of the term 'actual controversy' under the rule is that plaintiffs plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." *Lansing Schools Ed Ass'n*, 487 Mich at 372, n 20.<sup>1</sup>

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<sup>1</sup> Notably, although *Lansing Schools Ed Ass'n* held that "Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's longstanding historical approach to standing" and overruled the standing doctrine adopting federal Article III standing jurisprudence established in *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726; 692 NW2d 900 (2001) and *Nat'l Wildlife Federation v Cleveland Cliffs*

Defendants also cite *UAW v Central Mich Univ Trustees*, 295 Mich App 486; 815 NW2d 132 (2012). Again that case supports Plaintiffs, not Defendants. In *Central Michigan*, the plaintiff union sought a declaratory judgment that a university policy governing employees who become candidates for public office was invalid and in violation of the Political Activities by Public Employees Act, MCL 15.401 *et seq.* The defendant university claimed the plaintiff lacked standing and that there was no actual controversy because none of its members had attempted to become candidates for political office. The Court held that “by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred.” The Court held that there was an actual controversy concerning the legitimacy of the candidacy policy, because “to hold otherwise would be inconsistent with the purpose of a declaratory judgment” which is “to enable the parties to obtain adjudication of rights *before an actual injury occurs*, to settle a matter *before it ripens into a violation of the law* or a breach of contract, or to avoid a multiplicity of actions by *affording a remedy for declaring in expedient action the rights and obligations of all litigants*.” 295 Mich App at 496 (emphasis in original), quoting *Rose v State Farm Mutual Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006).

*City of Lake Angelus v Mich Aeronautics Comm*, 260 Mich App 371; 676 NW2d 642 (2004), cited in *Central Mich University*, is particularly instructive, and clearly shows that Plaintiffs are entitled to a declaratory judgment here. In *Lake Angelus*, the plaintiff city sought a declaratory judgment that the enabling legislation establishing the Michigan Aeronautics Commission, MCL 259.1 *et seq.*, did not authorize the Commission to override the city’s

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*Iron Co*, 471 Mich 608; 684 NW2d 800 (2004), *Lansing Schools* did not overrule *Associated Builders and Contractors* on this point, noting that *Associated Builders* had incorporated the pre-*Lee/Cleveland Cliffs* standard for establishing standing for a declaratory judgment under MCR 2.605. *Lansing Schools Ed Ass’n*, 487 Mich at 372, n 20. Thus Plaintiffs have established an

ordinance banning the use or docking of seaplanes on Lake Angelus. A lakefront property owner (Gustafson) had previously challenged the city ordinance in the federal courts and lost. Subsequently, the Seaplane Pilots Association requested that the Aeronautics Commission act to clarify that lakes such as Lake Angelus should be open to seaplane operations irrespective of any local ordinances. In response, the Commission promulgated a rule establishing a multistage administrative process by which local ordinances, such as the plaintiff city's ordinance, could be overridden.

The Attorney General, in defense of the Aeronautics Commission and the validity of its enabling legislation, argued that because Gustafson had not so requested, and the Aeronautics Commission had not begun an administrative process to override the city's ordinance, there was no actual controversy which would support declaratory relief under MCR 2.605. The Court of Appeals unequivocally disagreed:

Hanging over the city is the prospect of being required to respond in administrative proceedings designed to override the ordinance, pursuant to an administrative rule adopted specifically to provide a means of overriding the ordinance respecting Lake Angelus. To be sure, the commission may not drop the sword. But the commission adopted the administrative rule, the Attorney General claims that it is valid, and, perforce, at any time, the city may be called upon to respond in an administrative context at considerable cost and expense, *and in circumstances that are not predictable.*

260 Mich App at 376. (emphasis supplied) The Court concluded there was an "actual controversy" and that it was "in the public interest to declare the rights of the parties on the question of whether the Commission has the authority to override the ordinance." The Court further noted that the modern declaratory judgment rule [MCR 2.605] "was intended to 'provide for the broadest type of declaratory judgment procedure.'" *Id.*, 377, citing *Shavers v. Kelley*, 402 Mich 554; 267 NW2d 72 (1978), and Longhofer, *Courtroom Handbook on Michigan Civil*

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"actual controversy" under both *Associated Builders* as well as *Lansing Schools*.

*Procedure* (2003), §2605.6, p. 1020. *See also, City of Huntington Woods v City of Detroit*, 279 Mich App 603, 616-617; 761 NW2d 127 (2008) (finding actual controversy for a declaratory judgment concerning defendant city's authority to sell golf course property, and pursuant to what terms, even though there had been no violation of restrictive covenants and property had not yet been sold, *because city was seriously considering sale of the property* and had begun to solicit bidders; declaratory relief was "necessary in order to guide or direct future conduct" of defendant and because "courts are not precluded from reaching issues before actual injuries or losses have occurred.") (citation omitted)

The *Lake Angelus* case is on all fours with this case. There, as here, an adjudicative forum had been established which, once invoked, threatened to invalidate the plaintiff's rights. In *Lake Angelus* the forum was the Aeronautics Commission administrative procedure and the right threatened was the City's right under its local ordinance to ban seaplanes. Here, the forum is federal bankruptcy court under Chapter 9 and the rights threatened are Plaintiffs' rights under the Michigan Constitution protecting their accrued pension benefits. There, as here, an "actual controversy" existed under MCR 2.605 even though there had been no request to invoke the forum and the process which could abrogate the plaintiff's rights had not been initiated, because the process could commence at any time "in circumstances that are not predictable" and because declaratory relief was necessary in order to declare the rights of the parties as to the defendant's authority to begin proceedings which could override the plaintiff's rights.

As noted in Plaintiff's Verified Complaint and in their Brief in Support of Motion for Declaratory Judgment and Preliminary Injunction, the need for declaratory relief is urgent. Emergency Manager Orr -- himself an attorney and bankruptcy expert -- has stated in writing that "there must be significant cuts in accrued, vested pension amounts for both active and currently retired persons." He has publicly threatened that vested pension benefits will be



abrogated in a Chapter 9 proceeding authorized by the Governor pursuant to PA 436, and that any state law protecting pension benefits -- including the Michigan Constitution -- is "not going to protect" retirees or employees with vested pension benefits in bankruptcy court.<sup>2</sup> And, he is admittedly using the threat of bankruptcy in an attempt to force vested pensioners and employees to give in to his demands to diminish and impair their constitutionally protected pension rights *before* any bankruptcy filing, understandably causing Plaintiffs, and thousands of city retirees like them, great fear and anguish for their future well-being.<sup>3</sup>

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<sup>2</sup> Despite the Emergency Manager's threats, Defendants argue that Plaintiffs' pension rights under Michigan law could be protected in Chapter 9. Although Plaintiffs obviously reserve the right to argue that a federal bankruptcy court must honor Michigan's Constitutional protections for vested pension benefits, what would happen to those rights in bankruptcy is unpredictable, at best. See, e.g., Comment, *Solving Insolvent Public Pensions: The Limitations of the Current Bankruptcy Option*, 28 Emory Bankr Dev Journal 89, \* 121-122 (noting that "while some commentators and local officials have argued that state law restrictions on pension reductions or modifications may limit the bankruptcy court's ability to reduce or terminate these retirement obligations, [a decision of at least one bankruptcy court] affirmed the general proposition that, where states authorize a municipality to file bankruptcy, federal bankruptcy law is not subordinate to state law.") (citations and footnotes omitted)

<sup>3</sup> Defendants also cite to Section 32 of PA 436, MCL 141.1572, which purports to preclude causes of action under PA 436 for violation of the Act. But as Defendants correctly note, Plaintiffs are not asserting a cause of action under the Act. They are asserting a claim that PA 436 is unconstitutional to the extent it allows the Governor to authorize a bankruptcy filing which threatens to diminish or impair Plaintiffs' accrued pension rights in violation of Article IX Section 24 of the Michigan Constitution; and in the alternative for an injunction prohibiting the Governor from unconstitutionally authorizing such an unconstitutional bankruptcy filing under PA 436. It is black letter law that this court has jurisdiction over such claims, and Defendants do not contend otherwise. As the Supreme Court declared in *Diggs v State Bd of Embalmers & Funeral Directors*, 321 Mich 508, 514 (1948), "[t]his Court has repeatedly held that in cases where an irreparable injury will result from the acts of public officials in attempting to proceed under an invalid law, the jurisdiction of equity may be invoked for the purpose of obtaining injunctive relief and a determination as to the constitutionality of the statute that is involved."

Moreover, as Defendants also correctly note, a litigant also has standing in this context "if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large . . ." *Lansing Schools Ed Ass'n*, 487 Mich at 372. Plaintiffs obviously satisfy this standard. Plaintiffs are imminently threatened with the diminishment or impairment in federal bankruptcy court of their hard-earned vested pension benefits. And the threat of bankruptcy is being used *now* in an attempt to force Plaintiffs to give in to the Emergency Manager's demands to diminish or impair constitutionally protected pension

The Emergency Manager could request, and the Governor could authorize, a Chapter 9 bankruptcy filing at any moment. Plaintiffs need and are entitled to declaratory relief *now*.

**B. Plaintiffs have stated a valid claim for relief**

Defendants argue at page 10-11 of their Response Brief that Plaintiffs' Complaint fails to state a claim upon which this court may grant relief. Defendants assert that because Plaintiffs have described their claim as a "facial" challenge, it is subject to the rule stated in *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 171*, 479 Mich 1; 740 NW2d 444 (2007) that "[a] facial challenge is a claim that the law is invalid *in toto* -- and therefore incapable of any valid application," *id* at 11, n 20, i.e., that "no set of circumstances exists under which the [a]ct would be valid." *Id* at 11. This argument must be rejected for several separate and independent reasons.

*First*, as explained above and in Plaintiff's original Brief in Support, Plaintiffs *have* stated a valid claim for declaratory relief. The rule stated in *Request for Advisory Opinion* is inapplicable to requests for declaratory relief such as this. For example, in the *Lake Angelus* case discussed above, the Court of Appeals found that the enabling legislation at issue was invalid in the sense that it did not allow the Aeronautics Commission to approve the landing and takeoff of seaplanes in violation of local ordinances. The court never considered, and did not need to consider, whether there was "no set of circumstances" under which the enabling legislation would be valid. In fact, the court considered the possibility that the legislation could be validly applied in that the Aeronautics Commission might not "drop the sword" -- i.e. might not override the local ordinance -- yet still granted the requested declaratory relief.

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rights *before* a bankruptcy filing. The citizenry at large, unlike Plaintiffs, suffers no such special injury.

*Second*, Plaintiffs are not seeking to invalidate PA 436 "*in toto*" as required for application of the rule stated in *In Re Advisory Opinion*. Plaintiffs are only seeking a declaration that the provisions of PA 436 which allow a Chapter 9 bankruptcy filing are unconstitutional where, as here, such a filing threatens to impair or diminish vested pension benefits in violation of Article IX Section 24 of the Michigan Constitution. For example, in a case where a municipality had no pension plan, or a pension plan whose participants had no accrued benefits, a Chapter 9 filing would not violate Article IX Section 24.

Here, because the imminent Chapter 9 filing *does* threaten to impair or diminish vested pension benefits -- as Emergency Manager (and bankruptcy lawyer) Orr has explicitly stated -- Plaintiffs are entitled to a declaration that PA 436 is unconstitutional to the extent it allows the Governor to authorize a Chapter 9 bankruptcy filing by the Emergency Manager. This case is a challenge to the provisions of PA 436 which authorize a Chapter 9 filing in violation of Article IX Section 24 of the Michigan Constitution. Moreover, even if the Court were to find Plaintiffs' limited facial challenge somehow deficient, the Court can and should still find that the law is unconstitutional as applied, based on the particular facts here: the Emergency Manager's threat that "there must be significant cuts in accrued vested pension amounts" and that the Michigan Constitution is "not going to protect" retirees or employees with vested pension rights in bankruptcy court.

*Third*, the *In re Advisory Opinion* case was just that -- an advisory opinion. There were no facts and there were no parties. The Attorney General argued both sides of the case -- that the voter identification law in question was, and was not, constitutional. That case obviously presented a pure facial challenge to a law *in toto*. That case was nothing like this case, and the rule stated there has no application here.

**C. In the alternative, Plaintiffs are entitled to a preliminary injunction**

In support of their alternative request for a preliminary injunction, Plaintiffs incorporate the arguments previously stated in support thereof in their original July 3, 2013 Brief in Support. Plaintiffs also incorporate by reference the arguments in support of a preliminary injunction in the July 3, 2013 Brief in Support and the July 18, 2013 Reply Brief filed in this Court by the Plaintiffs in *Flowers v State of Michigan*, No. 13-729-CZ.

Plaintiffs seek in the alternative a preliminary injunction prohibiting the Governor from authorizing a Chapter 9 filing by the Emergency Manager which threatens to impair and diminish Plaintiffs' accrued vested pension benefits in violation of Article IX Section 24 of the Michigan Constitution. The Emergency Manager has given every indication that he intends to use Chapter 9 to achieve "significant cuts in accrued vested pension amounts for both active and currently retired persons," and has threatened that in his expert opinion as a bankruptcy lawyer, the Michigan Constitution is "not going to protect you" from having pension benefits diminished or impaired in bankruptcy.

Defendants argue that Plaintiffs' request for injunctive relief is overbroad because it would prohibit the Governor from authorizing a bankruptcy filing which did not threaten to impair or diminish vested pension rights. However, in his recent filings in both this case and the *Flowers* case, although he had every opportunity to do so, the Governor gave no indication whatsoever that he would authorize a Chapter 9 filing only if the filing did not threaten to diminish or impair vested pension rights and by requiring that all accrued benefits be fully funded well before any bankruptcy filing. The Governor's silence in this regard is telling. Moreover, even if the Governor were to attach such a contingency, there is no guarantee that a bankruptcy judge would honor it, although Plaintiffs of course would argue that he or she should.

(See fn 2, *supra*.) Accordingly, there is no basis for the Defendants' claim that the injunctive relief which Plaintiffs seek is overbroad.

Defendants also argue that an injunction against the Governor prohibiting him from authorizing a bankruptcy filing which threatens to unconstitutionally diminish or impair vested pension rights is precluded under separation of powers principles, citing *Strauss v Governor*, 459 Mich 526, 532; 592 NW2d 53 (1999). But *Strauss* dealt with *mandatory* injunctive relief (mandamus) and not, as here, *prohibitory* injunctive relief. As Defendants concede, the Court in *Strauss* expressly *did not* decide that prohibitory injunctive relief against the Governor is precluded. Of course, as *Strauss* notes, it is expected that the Governor -- who has taken an oath to obey the Constitution -- will obey a declaratory judgment that he not violate the Constitution by authorizing a Chapter 9 bankruptcy which threatens to impair or diminish vested pension benefits. The problem is that if he attempts to authorize bankruptcy before declaratory relief is granted, or if he fails to obey a declaratory judgment, it will be too late for Plaintiffs, absent an injunction. Once the City has entered bankruptcy, there may be no turning back, and as noted in fn. 2, *supra*, the consequences for Plaintiffs' vested pension rights will be unpredictable, at best.<sup>4</sup>

Finally, as explained in Plaintiffs' Verified Complaint and July 3 Brief, as well as the Complaint, Brief and Reply Brief in the *Flowers* case, Plaintiffs satisfy all the factors for a preliminary injunction. In particular, the public interest will be served by stopping the unconstitutional destruction of the vested pension benefits of thousands of retirees and workers

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<sup>4</sup> For the same reason, Defendants' claim that Plaintiffs will have an "adequate remedy at law" in bankruptcy court is ludicrous. As the Emergency Manager has threatened, the express purpose of a bankruptcy filing would be to abrogate pension rights, and in his professional opinion, the Michigan Constitution will "not . . . protect" retirees in bankruptcy court. While Plaintiffs would of course contest such a result, bankruptcy court proceedings are obviously not an "adequate remedy" for vindicating their rights under the Michigan Constitution.

who have planned their futures trusting that their pension benefits were constitutionally protected and that Article IX Section 24 of the Michigan Constitution means what it says.

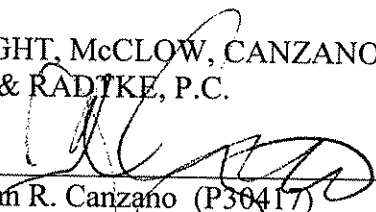
**CONCLUSION**

Wherefore, Plaintiffs respectfully request that their Motion for Declaratory Judgment and/or Preliminary Injunction be granted.

Respectfully submitted,

McKNIGHT, McCLOW, CANZANO,  
SMITH & RADTKE, P.C.

By: \_\_\_\_\_

  
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Date: July 18, 2013

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STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-000734-CZ-C30  
Hon. Rosemarie E. Aquilina

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

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**PROOF OF SERVICE**

The undersigned certifies that on July 18, 2013, he served a copy of Reply Brief in Support of Motion for Declaratory Judgment and Expedited Hearing Pursuant to MCR 2.605(D), or in the Alternative for Preliminary Injunction by email and first class mail upon:

THOMAS QUASARANO  
BRIAN DEVLIN  
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/s/ John R. Canzano  
John R. Canzano

6

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

THE GENERAL RETIREMENT SYSTEM  
OF THE CITY OF DETROIT, and THE  
POLICE AND FIRE RETIREMENT  
SYSTEM OF THE CITY OF DETROIT,

*Gracie Webster  
and Veronica Thomas*

Plaintiffs,

Case No. ~~13-768-CZ~~

*13.000734-CZ  
C30*

vs.

Hon. *Rosemarie*

*Aquilina*

*State of Michigan*  
~~KEVYN D. ORR, in his official capacity as the~~  
EMERGENCY MANAGER OF THE CITY OF  
DETROIT, and RICHARD SNYDER, in his  
official capacity as the GOVERNOR OF THE  
STATE OF MICHIGAN, *and Andy Dillon,*

Defendants.

*Treasure in his official capacity*

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Aaron O. Matthews (P64744)  
Michael J. Pattwell (P72419)  
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& Radtke PC  
400 Galleria Office Center*

TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of  
Lansing, County of Ingham, State of Michigan  
on 18 July 13

PRESENT: HON.

*Rosemarie Aquilina*  
CIRCUIT COURT JUDGE

*and having appeared  
during the hearing  
for a TRO in 13.000734*

This matter having come before the Court on Plaintiffs' Complaint with verification and  
*Declaratory Judgment and Preliminary Injunction*  
*Ex Parte* Motion for a Temporary Restraining Order; the Court being fully advised in the  
premises; Plaintiffs having shown a likelihood of success on the merits of the claims in



Plaintiffs' Complaint; Plaintiff having adequately shown that a failure to immediately issue a Temporary Restraining Order will cause irreparable injury to Plaintiffs by permitting the Governor and the Emergency Manager ("Defendants") to authorize and file a Chapter 9 bankruptcy petition wherein Plaintiffs' accrued financial benefits will be impaired prior this Court's scheduled preliminary injunction hearing on Monday, July 22, 2013; and the Court being otherwise fully informed in the premises and finding good cause:

IT IS HEREBY ORDERED that Plaintiffs' Motion is granted;

IT IS FURTHER ORDERED that Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an unconditional Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy *or taking any further action with respect to any filing* petition) that may: (i) cause the accrued financial benefits of the Retirement System *h* or their participants from in any way being diminished or impaired as mandated by Article IX, section 24, of the Michigan Constitution, or (ii) otherwise abrogate Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that the Court shall hold a hearing on July 22, 2013 at 9:00 AM *Declaratory Judgment and/or* whereby Defendants shall show cause why a Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until further order of the Court, 2013 at 5:00 p.m.

IT IS SO ORDERED.

*Rosemarie E. Aquilina*  
CIRCUIT COURT JUDGE

DATE: 18 July 13

TIME: 4:25 p.m.

*P37670*

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

Case No. 13-734-CZ

HON. ROSEMARIE AQUILINA

RECEIVED

JUL 19 2013  
Clerk of the Court  
30th Judicial Circuit

John R. Canzano (P30417)  
McKnight, McClow, Canzano,  
Smith & Radke, P.C.  
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Attorneys for Defendants

**NOTICE OF SUGGESTION OF PENDENCY OF  
BANKRUPTCY CASE AND APPLICATION OF THE AUTOMATIC STAY**

PLEASE TAKE NOTICE THAT, on July 18, 2013 (the "Petition Date"), the City of Detroit, Michigan (the "City") filed a petition for relief under chapter 9 of title 11 of the United States Code (the "Bankruptcy Code"). The City's bankruptcy case is captioned *In re City of Detroit, Michigan*, Case No. 13-53846, (Bankr. E.D. Mich.) (the "Chapter 9 Case"), and is pending in the United States Bankruptcy Court for the Eastern District of Michigan

(the "Bankruptcy Court"). A copy of the voluntary petition filed with the Bankruptcy Court commencing the Chapter 9 Case is attached hereto as Exhibit A.

**PLEASE TAKE FURTHER NOTICE THAT**, in accordance with the automatic stay imposed by operation of sections 362 and 922 of the Bankruptcy Code (the "Stay"), from and after the Petition Date, no act to (i) exercise control over property of the City or (ii) collect, assess or recover a claim against the City that arose before the commencement of the Chapter 9 Case may be commenced or continued against the City without the Bankruptcy Court first issuing an order lifting or modifying the Stay for such specific purpose.

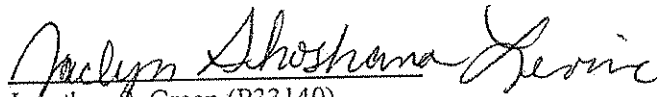
**PLEASE TAKE FURTHER NOTICE THAT**, in accordance with the Stay, from and after the Petition Date, no cause of action arising prior to, or relating to the period prior to, the Petition Date may be commenced or continued against (i) the City, in any judicial, administrative or other action or proceeding, or (ii) an officer or inhabitant of the City, in any judicial, administrative or other action or proceeding that seeks to enforce a claim against the City, and no related judgment or order may be entered or enforced against the City outside of the Bankruptcy Court without the Bankruptcy Court first issuing an order lifting or modifying the Stay for such specific purpose.

**PLEASE TAKE FURTHER NOTICE THAT** actions taken in violation of the Stay, and judgments or orders entered or enforced against the City, or its officers or inhabitants to enforce a claim against the City, while the Stay is in effect, are void and without effect.

PLEASE TAKE FURTHER NOTICE THAT the City hereby expressly reserves all rights with respect to the above-captioned proceeding, including, but not limited to, the right to move to vacate any judgment entered in the above-captioned proceeding as void.

Dated: July 19, 2013

Respectfully submitted,



Jonathan S. Green (P33140)

Stephen S. LaPlante (P48063)

Jaclyn Shoshana Levine (P58938)

MILLER, CANFIELD, PADDOCK  
AND STONE, P.L.C.

150 West Jefferson  
Suite 2500

Detroit, Michigan 48226

Telephone: (313) 963-6420

Facsimile: (313) 496-7500

[green@millercanfield.com](mailto:green@millercanfield.com)

COUNSEL FOR THE CITY



# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
Eastern District of Michigan

In re:

City of Detroit, Michigan,

Case No. 13-\_\_\_\_\_

Debtor. \_\_\_\_\_/

**BANKRUPTCY PETITION COVER SHEET**

(The debtor must complete and file this form with the petition in every bankruptcy case. Instead of filling in the boxes on the petition requiring information on prior and pending cases, the debtor may refer to this form.)

**Part I**

"Companion cases," as defined in L.B.R. 1073-1(b), are cases involving any of the following: (1) The same debtor; (2) A corporation and any majority shareholder thereof; (3) Affiliated corporations; (4) A partnership and any of its general partners; (5) An individual and his or her general partner; (6) An individual and his or her spouse; or (7) Individuals or entities with any substantial identity of financial interest or assets.

Has a "companion case" to this case ever been filed at any time in this district or any other district? Yes \_\_\_ No X  
(If yes, complete Part 2.)

**Part 2**

For each companion case, state in chronological order of cases:

*Not applicable*

If the present case is a Chapter 13 case, state for each companion case:

*Not applicable*

**Part 3 - In a Chapter 13 Case Only**

The Debtor(s) certify, re: 11 U.S.C. § 1328(f):  
[indicate which]

*Not Applicable*

- ☐ Debtor(s) received a discharge issued in a case filed under Chapter 7, 11, or 12 during the 4-years before filing this case.
- ☐ Debtor(s) did not receive a discharge issued in a case filed under Chapter 7, 11, or 12 during the 4-years before filing this case.
- ☐ Debtor(s) received a discharge in a Chapter 13 case filed during the 2-years before filing this case.
- ☐ Debtor(s) did not receive a discharge in a Chapter 13 case filed during the 2-years before filing this case.

I declare under penalty of perjury that I have read this form and that it is true and correct to the best of my information and belief.

Kevin D. Orr  
Emergency Manager  
City of Detroit

David G. Heiman (OH 0038271)  
Heather Lennox (OH 0059649)  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
dheiman@jonesday.com  
hlennox@jonesday.com

Bruce Bennett (CA 105430)  
JONES DAY  
555 South Flower Street  
Fiftieth Floor  
Los Angeles, CA 90071  
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Facsimile: (213) 243-2539  
bbennett@jonesday.com

Jonathan S. Green (MI P33140)  
Stephen S. LaPlante (MI P48063)  
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150 West Jefferson  
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Detroit, MI 48226  
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Facsimile: (313) 496-7500  
green@millercaanfield.com  
laplante@millercaanfield.com

Date: July 18, 2013

ATTORNEYS FOR THE CITY OF DETROIT, MICHIGAN

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN				VOLUNTARY PETITION	
Name of Debtor (if individual, enter Last, First, Middle): <b>City of Detroit, Michigan</b>			Name of Joint Debtor (Spouse) (Last, First, Middle):		
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):			All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):		
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all): <b>38-6004606</b>			Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN)/Complete EIN (if more than one, state all):		
Street Address of Debtor (No. and Street, City, and State): <b>2 Woodward Avenue Suite 1126 Detroit, Michigan</b>			Street Address of Joint Debtor (No. and Street, City, and State):		
ZIP CODE <b>48226</b>			ZIP CODE		
County of Residence or of the Principal Place of Business: <b>Wayne</b>			County of Residence or of the Principal Place of Business:		
Mailing Address of Debtor (if different from street address):			Mailing Address of Joint Debtor (if different from street address):		
ZIP CODE			ZIP CODE		
Location of Principal Assets of Business Debtor (if different from street address above):			ZIP CODE		
<b>Type of Debtor</b> (Form of Organization) (Check one box.) <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.) <b>Municipality</b>		<b>Nature of Business</b> (Check one box.) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other		<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box.) <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding	
<b>Chapter 15 Debtors</b> Country of debtor's center of main interests:  Each country in which a foreign proceeding by, regarding, or against debtor is pending:		<b>Tax-Exempt Entity</b> (Check box, if applicable.) <input type="checkbox"/> Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).		<b>Nature of Debts</b> (Check one box.) <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.	
<b>Filing Fee</b> (Check one box.) <input checked="" type="checkbox"/> Full Filing Fee attached. <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		<b>Chapter 11 Debtors</b> Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).  Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,490,925 (amount subject to adjustment on 4/01/16 and every three years thereafter).  Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).			
<b>Statistical/Administrative Information</b> <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.					THIS SPACE IS FOR COURT USE ONLY
<b>Estimated Number of Creditors</b> <input type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input checked="" type="checkbox"/> Over 100,000					
<b>Estimated Assets</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion					
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input checked="" type="checkbox"/> More than \$1 billion					



B1 (Official Form 1) (04/13)

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): <b>City of Detroit, Michigan</b>	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)</b>			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)</b>			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	

<p style="text-align: center;"><b>Exhibit A</b></p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p style="text-align: center;"><b>Exhibit B</b></p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I have delivered to the debtor the notice required by 11 U.S.C. § 342(b).</p> <p>X _____          Signature of Attorney for Debtor(s) (Date)</p>
---	--

**Exhibit C**

Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?

☒ Yes, and Exhibit C is attached and made a part of this petition.

☐ No.

**Exhibit D**

(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)

☐ Exhibit D, completed and signed by the debtor, is attached and made a part of this petition.

If this is a joint petition:

☐ Exhibit D, also completed and signed by the joint debtor, is attached and made a part of this petition.

**Information Regarding the Debtor - Venue**  
 (Check any applicable box.)

☒ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.

☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

☐ Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.

**Certification by a Debtor Who Resides as a Tenant of Residential Property**  
 (Check all applicable boxes.)

☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

\_\_\_\_\_  
 (Name of landlord that obtained judgment)

\_\_\_\_\_  
 (Address of landlord)

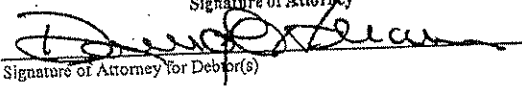
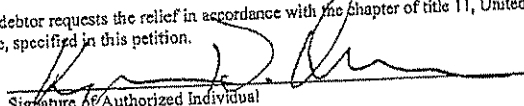
☐ Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and

☐ Debtor has included with this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.

☐ Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).

13-53846 Doc 1 Filed 07/18/13 Entered 07/18/13 16:06:22 Page 3 of 16

B1 (Official Form 1) (04/13)

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case.)</i>		<b>Name of Debtor(s):</b> City of Detroit, Michigan	
<b>Signatures</b>			
<b>Signature(s) of Debtor(s) (Individual/Joint)</b>  I declare under penalty of perjury that the information provided in this petition is true and correct. [If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).  I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.  X _____ Signature of Debtor  X _____ Signature of Joint Debtor  Telephone Number (if not represented by attorney)  Date		<b>Signature of a Foreign Representative</b>  I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.  (Check only one box.) <input type="checkbox"/> I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 are attached.  <input type="checkbox"/> Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.  X _____ (Signature of Foreign Representative)  _____ (Printed Name of Foreign Representative)	
<b>Signature of Attorney*</b> X  Signature of Attorney for Debtor(s)  <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;">           David G. Helman            Heather Lennox            JONES DAY            North Point            901 Lakeside Avenue            Cleveland, OH 44114            Tel: (216) 586-3939            Fax: (216) 579-0212  <a href="mailto:dhelman@jonesday.com">dhelman@jonesday.com</a>  <a href="mailto:hlennox@jonesday.com">hlennox@jonesday.com</a> </div> <div style="width: 30%;">           Bruce Bennett            JONES DAY            555 South Flower Street            Fiftieth Floor            Los Angeles, CA 90071            Tel: (213) 243-2382            Fax: (213) 243-2539  <a href="mailto:bbennett@jonesday.com">bbennett@jonesday.com</a> </div> <div style="width: 30%;">           Jonathan S. Green            Stephen S. LaPlante            MILLER, CANFIELD            PADDOCK AND STONE,            P.L.C.            150 West Jefferson            Suite 2500            Detroit, MI 48226            Tel: (313) 963-6420            Fax: (313) 496-7500  <a href="mailto:green@millercanfield.com">green@millercanfield.com</a>  <a href="mailto:laplante@millercanfield.com">laplante@millercanfield.com</a> </div> </div> <u>July 18, 2013</u> Date  *In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.		<b>Signature of Non-Attorney Bankruptcy Petition Preparer</b>  I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.  _____ Printed Name and title, if any, of Bankruptcy Petition Preparer  Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social-Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)  _____ Address  X _____ Signature  _____ Date  Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.  Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual.  If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.  A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.	
<b>Signature of Debtor (Corporation/Partnership)</b>  I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.  The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.  X  Signature of Authorized Individual  <u>Kevin D. Orr</u> Printed Name of Authorized Individual  <u>Emergency Manager, City of Detroit</u> Title of Authorized Individual  <u>July 18, 2013</u> Date			

*[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]*

## UNITED STATES BANKRUPTCY COURT

Eastern District of Michigan

In re City of Detroit, Michigan, ) Case No. 13-  
Debtor. )  
)  
) Chapter 9

### EXHIBIT "C" TO VOLUNTARY PETITION

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

Certain properties owned by City of Detroit, Michigan (the "City") have been (a) identified by the City as being structurally unsound and in danger of collapse and (b) scheduled for demolition (collectively, the "Demolition Properties"). The Demolition Properties may pose a threat of imminent harm to public health and/or safety. A list of the Demolition Properties is attached hereto as Schedule 1.

To its knowledge, the City currently does not own any property that is a Superfund Site as designated by the United States Environmental Protection Agency. The City currently owns (in whole or in part) various so-called "Brownfields properties" (collectively, the "Brownfields Properties") regulated by the Michigan Department of Environmental Quality. Currently, one or more private parties (rather than the City) are addressing any identified environmental conditions that might be present at the Brownfields Properties. To the City's knowledge, none of the Brownfields Properties are alleged to pose a threat of imminent and identifiable harm to the public health or safety. A representative list of certain Brownfields Properties is attached hereto as Schedule 2.

In addition to the foregoing, the City owns or is possession of approximately 60,000 parcels of land within the City's geographic boundaries and more than 7,000 vacant structures that are not designated as Demolition Properties or Brownfields Properties (collectively, the "Blighted Properties"). It is possible that some of the Blighted Properties could pose a threat to public health or safety. Although the City is not aware of any Blighted Properties currently posing a threat of "imminent and identifiable harm," the City notes the existence of these properties on this Exhibit C out of an abundance of caution.

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

See attached Schedule 1 with respect to the Demolition Properties and the attached Schedule 2 with respect to the Brownfields Properties.

# SCHEDULE 1

## City of Detroit, Michigan Demolition Properties

<u>Street Address</u>	<u>Property Type</u>
3922 14 <sup>th</sup>	Residential
3654 30 <sup>th</sup>	Residential
12032 Abington	Residential
2668 Anderdon	Residential
821 Anderson	Commercial
13501 Appoline	Residential
7593 Arcola	Residential
14125 Ardmore	Residential
13476 Arlington	Residential
13544 Arlington	Residential
10384 Aurora	Residential
2457 Beaubien	Commercial
2486 Beaubien	Residential
14371 Bentler	Residential
5317 Bewick	Residential
19411 Blake	Residential
19700 Bloom	Residential
6072 Braden	Residential
9665 Broadstreet	Residential
9616 Bryden	Residential
6810 Bulwer	Commercial
1454 Burlingame	Residential
13469 Caldwell	Residential
2009 Campbell	Residential
14203 E. Canfield	Residential
19221 Cardoni	Residential
19324 Carrie	Residential
7626 Central	Residential
2535 Chalmers	Residential
8115 Chamberlain	Residential
13199 Charest	Residential
20190 Charleston	Residential
3164 Charlevoix	Commercial
5083 Chatsworth	Residential
5717 Chene	Commercial
3636 Cicotte	Residential
3032 Clements	Residential
1117 Concord	Residential
6628 Crane	Residential
1243 Crawford	Residential
2012 Dalzelle	Residential
20258 Danbury	Residential
7787 Dayton	Residential
8475 Dearborn	Residential
1950 Dearing	Residential
1956 Dearing	Residential
1960 Dearing	Residential
2027 Dearing	Residential
8839 Dennison	Residential

<u>Street Address</u>	<u>Property Type</u>
20245 Derby	Residential
125 Dey	Residential
14190 Dolphin	Residential
229 Edmund Pl.	Commercial
3333 Edsel	Residential
203 Erskine	Residential
209 Erskine	Residential
4417 Ewers	Residential
19332 Exeter	Residential
19339 Exeter	Residential
20467 Exeter	Residential
1731 Fischer	Residential
13556 Fleming	Residential
7666 W. Fort	Commercial
5334 French Rd.	Residential
6007 Frontenac	Commercial
18627 Gable	Residential
3727 Garland	Residential
3917 Garland	Residential
4466 Garland	Residential
4470 Garland	Residential
4003 Gilbert	Residential
12511 Glenfield	Residential
14232 Goddard	Residential
14239 Goddard	Residential
11648 Grandmont	Residential
5801 Grandy [1]	Commercial
5801 Grandy [2]	Commercial
2937 Grant	Residential
5589 Guilford	Residential
222 S. Harbaugh	Residential
2900 Harding	Residential
8815 Harper	Commercial
17226 Hasse	Residential
7975 Hathon	Residential
19227 Havana	Residential
19309 Havana	Residential
19321 Havana	Residential
19397 Havana	Residential
7886 Helen	Residential
6200 Hereford	Residential
9905 Herkimer	Residential
1955 Highland	Residential
1778 Holcomb	Residential
4407 Holcomb	Residential
4412 Holcomb	Residential
7202 Holmes	Residential
9278 Holmur	Residential
19925 Hoover	Commercial

<u>Street Address</u>	<u>Property Type</u>
6360 Horatio	Residential
15518 Idaho [1]	Commercial
15518 Idaho [2]	Commercial
12748 Ilene	Residential
20136 Ilene	Residential
15778 Iliad	Residential
5290 Ivanhoe	Commercial
6435 Julian	Residential
8545 Kenney	Residential
13989 Kentucky	Commercial
13301 Kercheval	Residential
5925 Kopernick	Residential
17137 Lamont	Residential
17208 Lamont	Residential
3839 Lanman	Residential
5206 Lawndale	Residential
2194 Lemay	Residential
3958 Lemay	Residential
1601 Liddesdale	Residential
1029 Liebold	Residential
5065 Lillibridge	Commercial
15744 Livernois	Residential
12558 Longview	Residential
12767 Loretto	Residential
8881 Louis	Residential
13441 Lumpkin	Commercial
14242 Mack (a/k/a 3181 Lakewood)	Residential
12368 MacKay	Residential
12393 MacKay	Residential
12398 MacKay	Residential
13569 MacKay	Residential
13909 MacKay	Residential
13927 MacKay	Residential
13952 MacKay	Residential
13977 MacKay	Residential
13983 MacKay	Residential
459 Manistique	Residential
12000 Mansfield	Residential
8129 Marcus	Residential
4588 Marseilles	Residential
9343 N. Martindale	Residential
8320 Maxwell	Residential
8326 Maxwell	Commercial
4766 McDougall	Residential
2122 Meade	Residential
2420 Meade	Residential
3697 Medbury	Residential
11654 Meyers	Residential
8911 Milner	Residential
2652 Norman	Residential
10002 Nottingham	Residential

<u>Street Address</u>	<u>Property Type</u>
5115 Nottingham	Residential
8811 Olivet	Residential
8917 Otsego	Residential
15799 Parkside	Residential
18401 Pembroke	Residential
11172 Promenade	Commercial
2101 Puritan	Residential
5807 Renville	Residential
1957 Richton	Residential
534 W. Robinwood	Residential
6119 Rohns	Unknown
14381 Rosa Parks Blvd.	Residential
11735 Rutherford	Residential
6835 Seminole	Commercial
5737 E. Seven Mile	Residential
2008 Sharon	Residential
13422 Shields	Commercial
10201 Shoemaker	Commercial
10956 Shoemaker	Residential
6750 Sparta	Commercial
14291 Spring Garden	Residential
4467 St. Clair	Residential
6915 St. John	Residential
7180 St. John	Commercial
18805 St. Louis	Residential
1928 Stanley	Residential
12746 Strasburg	Residential
8104 Thaddeus	Residential
4832 Toledo	Residential
6195 Townsend	Residential
9778 Traverse	Residential
17231 Trinity	Residential
2634 Tuxedo	Residential
2522-4 Tyler	Residential
2660 Tyler	Commercial
9526 Van Dyke	Residential
2030 Vinewood	Commercial
5757 Vinewood	Residential
15451 Virgil	Commercial
15300 E. Warren (Bldgs. 101 & 102)	Commercial
64 Watson	Unknown
6414 Willette	Residential
4364 Woodhall	Residential
11640 Woodmont	Residential
12075 Woodmont	Residential
12136 Woodmont	Residential
12153 Woodmont	Residential
11365 Yosemite	Residential
11402 Yosemite	Residential

**SCHEDULE 2**

**City of Detroit, Michigan Brownfields Properties**

<u>Name of Site</u>	<u>Description</u>
Former Detroit Coke Site	7819 West Jefferson Avenue
Belleview Development (Uniroyal) Site	600 East Jefferson. 43-acre former Uniroyal site located in the East Riverfront District, bounded by Jefferson Avenue (to the north), MacArthur Bridge (to the east), Detroit River (to the south) and Meldrum Street (to the west).
Riverside Park Site	3085 West Jefferson Avenue. West Grand Boulevard and 24th Street along the Detroit River.



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**EMERGENCY MANAGER  
CITY OF DETROIT**

**ORDER No. 13**

**FILING OF A PETITION UNDER CHAPTER 9  
OF TITLE 11 OF THE UNITED STATES CODE**

---

BY THE AUTHORITY VESTED IN THE EMERGENCY MANAGER  
FOR THE CITY OF DETROIT  
PURSUANT TO MICHIGAN'S PUBLIC ACT 436 OF 2012,  
KEVYN D. ORR, THE EMERGENCY MANAGER,  
ISSUES THE FOLLOWING ORDER:

---

*Whereas*, on March 28, 2013, Michigan Public Act 436 of 2012 ("PA 436") became effective and Kevyn D. Orr became the Emergency Manager (the "EM") for the City of Detroit (the "City") with all the powers and duties provided under PA 436; and

Pursuant to section 9(2) of PA 436, the EM "shall act for and in the place and stead of" the Detroit Mayor and City Council; and

Section 9(2) of PA 436 also grants the EM "broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the [City] and the [City's] capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare;" and

Pursuant to section 10(1) of PA 436, the EM may "issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the [EM] considers necessary to accomplish the purposes of this act;" and

Section 18(1) of PA 436 provides that "[i]f, in the judgment of the [EM], no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the [EM] may recommend to the governor and the

state treasurer that the local government be authorized to proceed under chapter 9" of title 11 of the United States Code (the "Bankruptcy Code"); and

Section 18(1) of PA 436 further provides that "[i]f the governor approves of the [EM's] recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision.... Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9 [of the Bankruptcy Code]. This section empowers the local government for which an emergency manager has been appointed to become a debtor under [the Bankruptcy Code], as required by section 109 of [the Bankruptcy Code], and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9" of the Bankruptcy Code; and

In accordance with section 18 of PA 436, the EM has recommended to the Governor of Michigan (the "Governor") and the Michigan State Treasurer (the "State Treasurer") that the City be authorized to proceed under chapter 9 of the Bankruptcy Code (the "Recommendation"); and

The Governor has provided the State Treasurer and the EM with his written approval of the Recommendation, a true and correct copy of which is attached hereto as Exhibit A, thereby authorizing the City to proceed under chapter 9.

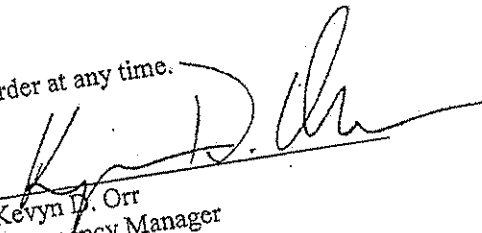
It is hereby ordered that:

1. The City shall file a petition for relief under chapter 9 of the Bankruptcy Code (the "Petition") in the United States Bankruptcy Court for the Eastern District of Michigan (the "Bankruptcy Court").
2. The City's Corporation Counsel, financial advisors, outside legal advisors and other officers and employees of the City, as applicable, are hereby authorized and directed, on behalf of and in the name of the City, to execute and verify the Petition and related Bankruptcy Court filings and perform any and all such acts as are reasonable, appropriate, advisable, expedient, convenient, proper or necessary to carry out this Order, as and to the extent directed by the EM or his designee.
3. If any component of this Order is declared illegal, unenforceable or ineffective in a legal or other forum or proceeding such component shall be deemed severable so that all other components contained in this Order shall remain valid and effective.
4. This Order is effective immediately upon the date of execution below.
5. This Order shall be distributed to the Mayor, City Council members and all department heads.



6. The EM may modify, rescind, or replace this Order at any time.

Dated: July 18, 2013

By:   
Kevyn D. Orr  
Emergency Manager  
City of Detroit

cc: State of Michigan Department of Treasury  
Mayor David Bing  
Members of Detroit City Council

## **EXHIBIT A**

### **Governor's Written Approval of Recommendation**



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

VIA HAND AND ELECTRONIC DELIVERY

July 18, 2013

Kevyn D. Orr  
Emergency Manager  
City of Detroit  
Coleman A. Young Municipal Center  
2 Woodward Ave., Suite 1126  
Detroit, MI 48226

Andrew Dillon  
State Treasurer  
Michigan Department of Treasury  
4th Floor Treasury Building  
430 W. Allegan Street  
Lansing, MI 48992

Re: Authorization to Commence Chapter 9 Bankruptcy Proceeding

Dear Mr. Orr and Mr. Dillon,

I have reviewed Mr. Orr's letter of July 16, 2013, requesting my approval of his recommendation to commence a bankruptcy proceeding for the City of Detroit under Chapter 9 of title 11 of the United States Code. As you know, state law requires that any such recommendation must first be approved by the Governor before the emergency manager may take that step. MCL 141.1558. For the reasons discussed below, I hereby approve that recommendation and authorize Mr. Orr to make such a filing.

**Current Financial Emergency**

In reviewing Mr. Orr's letter, his Financial and Operating Plan, and his report to creditors, it is clear that the financial emergency in Detroit cannot be successfully addressed outside of such a filing, and it is the only reasonable alternative that is available. In other words, the City's financial emergency cannot be satisfactorily rectified in a reasonable period of time absent this filing.

I have reached the conclusion that this step is necessary after a thorough review of all the available alternatives, and I authorize this necessary step as a last resort to return this great City to financial and civic health for its residents and taxpayers. This decision comes in the wake of 60 years of decline for the City, a period in which reality was often

July 18, 2013

ignored. I know many will see this as a low point in the City's history. If so, I think it will also be the foundation of the City's future – a statement I cannot make in confidence absent giving the City a chance for a fresh start, without burdens of debt it cannot hope to fully pay. Without this decision, the City's condition would only worsen. With this decision, we begin to provide a foundation to rebuild and grow Detroit.

Both before and after the appointment of an emergency manager, many talented individuals have put enormous energy into attempting to avoid this outcome. I knew from the outset that it would be difficult to reverse 60 years of decline in which promises were made that did not reflect the reality of the ability to deliver on those promises. I very much hoped those efforts would succeed without resorting to bankruptcy. Unfortunately, they have not. We must face the fact that the City cannot and is not paying its debts as they become due, and is insolvent.

After reading Mr. Orr's letter, the Financial and Operating Plan, and the report to creditors, I have come to four conclusions.

1. Right now, the City cannot meet its basic obligations to its citizens.
2. Right now, the City cannot meet its basic obligations to its creditors.
3. The failure of the City to meet its obligations to its citizens is the primary cause of its inability to meet its obligations to its creditors.
4. The only feasible path to ensuring the City will be able to meet obligations in the future is to have a successful restructuring via the bankruptcy process that recognizes the fundamental importance of ensuring the City can meet its basic obligations to its citizens.

I will explain how I came to each conclusion.

**Inability to Meet Obligations to Its Citizens.** As Mr. Orr's Financial and Operating Plan and the June 14 Creditor Proposal have noted, the scale and depth of Detroit's problems are unique. The City's unemployment rate has nearly tripled since 2000 and is more than double the national average. Detroit's homicide rate is at the highest level in nearly 40 years, and it has been named as one of the most dangerous cities in America for more than 20 years. Its citizens wait an average of 58 minutes for the police to respond to their calls, compared to a national average of 11 minutes. Only 8.7% of cases are solved, compared to a statewide average of 30.5%. The City's police cars, fire trucks, and ambulances are so old that breakdowns make it impossible to keep up the fleet or properly carry out their roles. For instance, only a third of the City's ambulances were in service in the first quarter of 2013. Similarly, approximately 40% of the City's street lights were not functioning in that quarter and the backlog of complaints is more than 3,300 long. Having large swaths of largely abandoned structures -- approximately 78,000 -- creates additional public safety problems and reduces the quality of life in the City. Mr. Orr is correct that meeting the obligations the City has to

its citizens to provide basic services requires more revenue devoted to services, not less.

**Inability to Meet Obligations to Its Creditors.** The City has more than \$18 billion in accrued obligations. A vital point in Mr. Orr's letter is that Detroit tax rates are at their current legal limits, and that even if the City was legally able to raise taxes, its residents cannot afford to pay additional taxes. Detroiters already have a higher tax rate than anywhere in Michigan, and even with that revenue the City has not been able to keep up with its basic obligations, both to its citizens and creditors. Detroit simply cannot raise enough revenue to meet its current obligations, and that is a situation that is only projected to get worse absent a bankruptcy filing.

**Failure to Meet Obligations to Citizens Creates Failure to Meet Obligations to Creditors.** Mr. Orr's letter and prior report put in stark reality the dramatic impact of the City's plummeting population. While many who love Detroit still live there, many other Detroiters at heart could not justify the sacrifice of adequate services. The City's population has declined 63% from its peak, including a 28% decline since 2000. That exodus has brought Detroit to the point that it cannot satisfy promises it made in the past. A decreasing tax base has made meeting obligations to creditors impossible. Mr. Orr is correct when he says the City cannot raise the necessary revenue through tax increases, and it cannot save the necessary revenue through reducing spending on basic services. Attempts to do so would only decrease the population and tax base further, making a new round of promises unfulfillable.

**Only One Feasible Path Offers a Way Out.** The citizens of Detroit need and deserve a clear road out of the cycle of ever-decreasing services. The City's creditors, as well as its many dedicated public servants, deserve to know what promises the City can and will keep. The only way to do those things is to radically restructure the City and allow it to reinvent itself without the burden of impossible obligations. Despite Mr. Orr's best efforts, he has been unable to reach a restructuring plan with the City's creditors. I therefore agree that the only feasible path to a stable and solid Detroit is to file for bankruptcy protection.

The past weeks have reaffirmed my confidence that Mr. Orr has the right priorities when it comes to the City of Detroit. I am reassured to see his prioritization of the needs of citizens to have improved services. I know we share a concern for the public employees who gave years of service to the City and now fear for their financial future in retirement, and I am confident that all of the City's creditors will be treated fairly in this process. We all believe that the City's future must allow it to make the investment it needs in talent and in infrastructure, all while making only the promises it can keep. Let us remain in close communication regarding measures Mr. Orr might take so we can discuss the possible impacts that might occur both within and outside of the City.

July 18, 2013

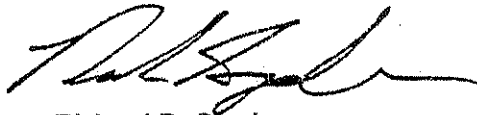
**Contingencies**

2012 PA 436 provides that my approval of the recommendation to commence a Chapter 9 proceeding may place contingencies on such a filing, MCL 141.1558(1). I am choosing not to impose any such contingencies today. Federal law already contains the most important contingency – a requirement that the plan be legally executable. 11 USC 943(b)(4).

**Conclusion**

In conclusion, I find Mr. Orr's Recommendation Letter to be persuasive, especially in conjunction with his prior reports laying out the level of services the City can provide and its financial ability to meet its obligations to creditors. I am also convinced that Mr. Orr has exercised his best efforts to arrive at a restructuring plan with the City's creditors outside of bankruptcy, to no avail. Given these facts, the only feasible path to sustainability for the City of Detroit is a filing under chapter 9 of the bankruptcy code. Therefore, I hereby approve Mr. Orr's recommendation and authorize the emergency manager to make such a filing on behalf of the City of Detroit and to take all actions that are necessary and appropriate toward that end.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Snyder', with a stylized flourish at the end.

Richard D. Snyder  
Governor  
State of Michigan

JUL 31 2013

State Operations Division  
RECEIVED

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

Case No. 13-734-CZ

vs

HON. ROSEMARIE AQUILINA

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

---

John R. Canzano (P30417)  
McKnight, McClow, Canzano,  
Smith & Radke, P.C.  
400 Galleria Officentre, Suite 117  
Southfield, Michigan 48034  
(248) 345-9650  
[jcanzano@michworklaw.com](mailto:jcanzano@michworklaw.com)  
Counsel for Plaintiffs

Thomas Quasarano (P27982)  
Brian Devlin (P34685)  
Assistant Attorneys General  
Department of Attorney General  
P.O. Box 30754  
Lansing, Michigan 48909  
(517) 373-1162  
[quasaranot@michigan.gov](mailto:quasaranot@michigan.gov)  
[devlinb@michigan.gov](mailto:devlinb@michigan.gov)  
Attorneys for Defendants

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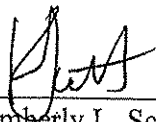
**PROOF OF SERVICE**

I certify that a copy of the Notice of Suggestion of Pendency of Bankruptcy Case and Application of the Automatic Stay and this Proof of Service were served via electronically and ordinary first class, U.S. mail, this 19<sup>th</sup> day of July 19, 2013, in a properly addressed, sealed envelope, with postage fully prepaid, upon the following:

John R. Canzano (P30417)  
McKnight, McClow, Canzano,  
Smith & Radke, P.C.  
400 Galleria Officentre, Suite 117  
Southfield, Michigan 48034  
[jcanzano@michworklaw.com](mailto:jcanzano@michworklaw.com)

Thomas Quasarano  
Brian Devlin  
Assistant Attorneys General  
Department of Attorney General  
P.O. Box 30754  
Lansing, Michigan 48909  
[quasaranot@michigan.gov](mailto:quasaranot@michigan.gov)  
[devlinb@michigan.gov](mailto:devlinb@michigan.gov)

I declare under the penalties of perjury that the foregoing statement is true and correct to  
the best of my information and belief.

  
\_\_\_\_\_  
Kimberly L. Scott (P69706)  
Miller, Canfield, Paddock and Stone, PLC  
101 N. Main Street  
Ann Arbor, MI 48104  
Phone: (734) 668-7696



HONORABLE ROSEMARIE E. AQUILINA  
INGHAM COUNTY CIRCUIT JUDGE  
GENERAL TRIAL DIVISION



313 W. KALAMAZOO STREET  
LANSING, MICHIGAN 48933  
PHONE: (517) 483-6526  
FAX: (517) 483-6534  
E-MAIL: RAQUILINA@INGHAM.ORG

**State of Michigan**  
**Ingham County Circuit Court**

**PROOF OF SERVICE**

I hereby certify I served a copy of the Order of Declaratory Judgment in case number 13-734-CZ upon Plaintiffs, Defendants, and the President of the United States, Barack Obama, by placing the Order of Declaratory Judgment in case number 13-734-CZ in sealed envelopes addressed to John R. Canzano, attorney for Plaintiffs, Thomas Quasarano and Brian Devlin, attorneys for Defendants, and President Barack Obama, and deposited for mailing with the United States Mail at Lansing, Michigan on July 23, 2013.

JOHN R. CANZANO  
McKNIGHT, McCLOW, CANZANO, SMITH & RADTKE, P.C.  
400 GALLERIA OFFICENTRE, SUITE 117  
SOUTHFIELD, MICHIGAN 48034

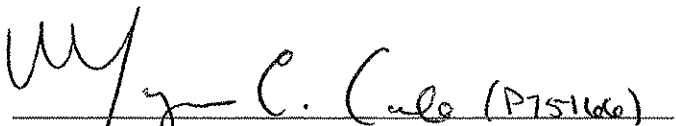
THOMAS QUASARANO  
BRIAN DEVLIN  
ASSISTANT ATTORNEY GENERAL  
STATE OPERATIONS DIVISION  
2ND FLOOR G. WILLIAMS BUILDING  
525 WEST OTTAWA STREET  
P.O. BOX 30754  
LANSING, MICHIGAN 48909

PRESIDENT BARACK OBAMA  
PRESIDENT OF THE UNITED STATES OF AMERICA  
THE WHITE HOUSE  
1600 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20500

Dept of Attorney General

AUG 06 2013

State of Michigan Division  
RECEIVED

  
Morgan E. Cole (P75166)  
Law Clerk to the Honorable Rosemarie E. Aquilina

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

---

ORDER OF DECLARATORY JUDGMENT

At a session of said Court held in Ingham County Circuit Court,  
State of Michigan, this 19<sup>th</sup> day of July, 2013.

PRESENT:

  
Circuit Court Judge

Plaintiffs request declaratory relief pursuant to MCR 2.605 concerning (1) the constitutionality under Article IX Section 24 of the Michigan Constitution of the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541, *et seq.* ("PA 436"), insofar as PA 436 permits the Governor to authorize an emergency manager to proceed under chapter 9 of the bankruptcy code, chapter 9 of title 11 of the United States Code, 29 USC 901 to 946 ("Chapter 9") in a manner which threatens to diminish or impair accrued pension benefits; and (2) the

authority of the Governor and/or State Treasurer to authorize an emergency manager to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits.

Plaintiffs have requested, and Defendants have agreed in their Response, that the hearing in this matter may be advanced pursuant to MCR 2.605(D) and the court finds that expedited treatment is appropriate and that final declaratory relief is proper at this time.

The Court having reviewed the parties filings and submissions, and having heard oral argument by counsel for the parties, and being otherwise fully advised in the premises, and for the reasons stated on the record,

**IT IS HEREBY ORDERED:**

PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect;

The Governor is prohibited by Article IX Section 24 of the Michigan Constitution from authorizing an emergency manager under PA 436 to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority and in violation of Article IX Section 24 of the Michigan Constitution.

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant

Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.

In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair accrued pension benefits.

*A copy of this Order shall be transmitted to President Obama.*

*It is so Ordered.*

*Rosemarie E. Aquilino*  
P37670

Circuit Court Judge

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STATE OF MICHIGAN  
30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM  
CIVIL DIVISION

THE GENERAL RETIREMENT SYSTEM  
OF THE CITY OF DETROIT, and THE  
POLICE AND FIRE RETIREMENT SYSTEM  
OF THE CITY OF DETROIT,

Plaintiffs,

v

Case No. 13-768-CZ  
Hon. Rosemarie Aquilina

KEVYN D. ORR, in his official capacity  
as the EMERGENCY MANAGER OF THE CITY OF  
DETROIT, and RICHARD SNYDER, in his  
official capacity as the GOVERNOR OF THE  
STATE OF MICHIGAN,

Defendants.

\_\_\_\_\_  
GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

v

Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN; RICHARD  
SNYDER, as Governor of the State  
of Michigan; and ANDY DILLON,  
as Treasurer of the State of  
Michigan,

Defendants.

\_\_\_\_\_  
ROBBIE FLOWERS, MICHAEL WELLS,  
JANET WHITSON, MARY WASHINGTON,  
and BRUCE GOLDMAN,

Plaintiffs,

v

Case No. 13-729-CZ  
Hon. Rosemarie Aquilina

RICK SNYDER, as the Governor of the  
State of Michigan; ANDY DILLON, as  
the Treasurer of the State of Michigan;  
and the STATE OF MICHIGAN,

Defendants.

\_\_\_\_\_

MOTION FOR PRELIMINARY INJUNCTION

1                   BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE  
2                   Ingham County, Michigan - Thursday, July 18, 2013  
3

4           APPEARANCES:

5           For Plaintiffs Retirement Systems:

6                   RONALD A. KING (P45088)  
7                   MICHAEL J. PATTWELL (P72419)  
8                   CLARK HILL PLC  
9                   212 East Grand River Ave.  
10                  Lansing, MI 48906

11          For Plaintiffs Webster, et al.:

12                  JOHN R. CANZANO (P30417)  
13                  Smith & Radtke, PC  
14                  400 Galleria Officentre, Ste. 117  
15                  Southfield, MI 48034

16          For Plaintiffs Flowers, et al.:

17                  WILLIAM A. WERTHEIMER (P26275)  
18                  Attorney at Law  
19                  30515 Timberbrook Lane  
20                  Bingham Farms, MI 48025

21          For the Defendants:

22                  THOMAS QUASARANO (P27982)  
23                  Assistant Attorney General  
24                  State Operations Division  
25                  P.O. Box 30754  
                  Lansing, MI 48909

26          REPORTED BY:

27                  Melinda I. Dexter, RMR, RPR, CSR-4629  
28                  Official Court Reporter  
29                  313 W. Kalamazoo  
30                  Post Office Box 40771  
31                  Lansing, MI 48901-7971

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## None

## None

1 Ingham County, Michigan  
2 Thursday, July 18, 2013 - At 4:15 p.m.  
3 MR. KING: Good afternoon.  
4 THE COURT: Good afternoon. We have everybody  
5 here?  
6 MR. KING: They are.  
7 THE COURT: All right. This is Docket  
8 13-768-CZ, the General Retirement System of the City of  
9 Detroit and the Police and Fire Retirement System of the  
10 City of Detroit versus Kevin D. Orr, in his official  
11 capacity as the Emergency Manager of the City of Detroit,  
12 and Richard Snyder, in his official capacity as the  
13 Governor of the State of Michigan.  
14 Counsel, your appearances for the record.  
15 MR. KING: Good afternoon, your Honor. Ron  
16 King with Clark Hill on behalf of the Plaintiffs, the  
17 General Retirement System of the City of Detroit and the  
18 Police and Fire Retirement System of the City of Detroit.  
19 THE COURT: Welcome.  
20 MR. KING: Thank you.  
21 MR. QUASARANO: Your Honor, if I may, Thomas  
22 Quasarano, Assistant Attorney General, that will be  
23 appearing in this case on behalf of the Defendant. I  
24 believe the Defendant was served yesterday. We have not  
25 received a request for representation, but I'm very

4

1 likely going to be asked to represent the Governor.  
2 THE COURT: Sir?  
3 MR. WERTHEIMER: Excuse me, your Honor,  
4 William Wertheimer. I apologize for my dress.  
5 THE COURT: No problem. I know it's last  
6 minute. I don't care how people are dressed. It's more  
7 important that you are here.  
8 MR. WERTHEIMER: Thank you, your Honor. I was  
9 here to file my reply brief today for the Monday hearing.  
10 I am now here knowing that this motion has been filed,  
11 and I wanted to enter my appearance.  
12 THE COURT: All right. You may have a seat.  
13 There is plenty of room for all.  
14 MR. WERTHEIMER: Thank you.  
15 MR. CANZANO: Your Honor, excuse me, John  
16 Canzano, Plaintiffs' attorney in the Webster case. Same  
17 as Mr. Wertheimer, we just found out about this. I'm  
18 here. My reply brief is being filed. I have a judge's  
19 copy here somewhere.  
20 THE COURT: All right. Have a seat.  
21 MR. KING: Your Honor --  
22 THE COURT: Anybody else?  
23 MR. PATTWELL: Your Honor, Michael Pattwell  
24 from Clark Hill on behalf of Plaintiffs.  
25 THE COURT: Thank you.

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5

1 C. ...?  
2 MR. KING: Your Honor, Ron King again on behalf  
3 of the Plaintiffs, the Detroit Retirement Systems. We  
4 might need to beg the Court's indulgence. While we  
5 appreciate that you have seen us on very short notice,  
6 we've been advised that the City has filed, and we're  
7 pulling it up on the electronic filing system, so we  
8 might need a few minutes here to figure out our very next  
9 step.  
10 THE COURT: Okay.  
11 MR. KING: Because the effect of a bankruptcy  
12 filing, if, in fact, that's -- we're trying to conform  
13 that. We think, in fact, it has been filed here within  
14 the last half hour. So we probably need about a  
15 ten-minute recess here, if the Court would indulge us. I  
16 know you have another matter.  
17 THE COURT: Do we want to make a phone call?  
18 MR. KING: Yeah. We can, but we're pretty --  
19 THE COURT: Well, here's the thing: If they  
20 haven't filed, we need to hurry up and proceed. If they  
21 have filed --  
22 MR. KING: We're pretty confident that they  
23 filed.  
24 Right?  
25 I mean, we're pulling it up. Yeah. It's been

6

1 confirmed. So I'm not sure where that leaves us with  
2 this proceeding because it's going to be pretty hard to  
3 undue. It's been done.  
4 MR. WERTHEIMER: There is no automatic stay in  
5 this.  
6 MR. KING: Yeah. What we're here for -- the  
7 really --  
8 What counsel is saying is there is no automatic  
9 stay with respect to this proceeding. So in our  
10 judgment, this matter will proceed. What you have before  
11 you, however, is a motion for temporary restraining order  
12 to enjoin certain conduct that's already occurred. So  
13 I'm not sure that we really have a lot of business in  
14 front of the Court at this moment, but I would like to  
15 just confer for about ten minutes on that issue because  
16 we will proceed in the case. And if we're here and you  
17 want to take the time to set some sort of expedited  
18 briefing schedule, we could do that also.  
19 It's quite likely that you, your Honor, will be  
20 able to make a ruling on the merits of this case in  
21 advance of whatever occurs in the context of a Chapter 9  
22 filing.  
23 THE COURT: I plan on making a ruling on  
24 Monday. I could make a ruling tomorrow, if push came to  
25 shove, but Monday would probably be soon enough. I am

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7



1 confident that the bankruptcy court won't act as quickly  
2 as I will.

3 MR. KING: Yeah. I'm not sure, but we'll see.  
4 I mean, there might -- but, nevertheless, so we should --  
5 If you're prepared to rule on the merits on  
6 Monday, again I'm not sure what -- if there is much  
7 business for us left to do before the Court today.

8 THE COURT: Unless some kind of -- I don't  
9 really have any authority over them, so.

10 MR. KING: Right.

11 THE COURT: I don't think anything --  
12 Counsel?

13 MR. WERTHEIMER: Your Honor, the motion that's  
14 up for Monday, our motion at least that's up for Monday,  
15 is a request for a preliminary injunction to enjoin the  
16 Governor. We have no evidence the Governor has  
17 authorized any bankruptcy, and we would not only want to  
18 go forward on Monday but ask that the motion for  
19 preliminary injunction be moved up to now, hopefully, to  
20 tomorrow morning if the Court will not hear it now. But  
21 I don't think there is any reason why the Court cannot  
22 hear our motion for preliminary injunction.

23 I'm not talking about in terms of the Court's  
24 preparedness but in terms of the apparent filing. They  
25 may have filed. But nobody -- I asked the Governor's

8

1 Office before we came in here -- er, the Attorney General  
2 whether they could make any representations to me that  
3 would obviate the need for me going forward, and they  
4 could not.

5 So we've got a written, fully briefed request/  
6 motion for preliminary injunction. The Attorney  
7 General's Office has briefed it. Time is obviously of  
8 the essence. I would suggest that the Court hear our  
9 motion to preliminarily enjoin the Governor authorizing a  
10 bankruptcy now.

11 MR. CANZANO: Your Honor, I would make  
12 essentially the same request except that our motion,  
13 although it seeks preliminary injunctive relief in the  
14 alternative, it primarily seeks a final declaratory  
15 judgment that what has just happened, apparently, is  
16 unconstitutional, and that is ready for a final decision  
17 we were saying on Monday. We have a reply brief that has  
18 just been filed, and we would -- we could -- this Court  
19 could issue that order immediately, and I don't know what  
20 the consequences for the bankruptcy court would be,  
21 necessarily, but I think it would -- it might make a  
22 difference.

23 MR. WERTHEIMER: I'm sorry, and I think that at  
24 a minimum, your Honor, I think we should -- I think the  
25 Court should decide the preliminary injunction now, but

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1 we should get out from the Office of the Attorney  
2 General whether the Governor has authorized a bankruptcy  
3 that has done the act that we were attempting to enjoin  
4 and that they knew we were attempting to enjoin and that  
5 they've known for the last two weeks and that they're  
6 filing briefs on saying that it's not ripe. The  
7 attorneys for the Government have represented to this  
8 Court that our motion is not ripe.

9 THE COURT: I just received a note from my law  
10 clerk that says the bankruptcy was filed at 4:06.

11 MR. KING: Right. Your Honor, so what we'd  
12 like to do here is amend our emergency motion for  
13 temporary restraining order and get it and request from  
14 this Court an order enjoining the Governor and the  
15 Emergency Manager from taking any further action in the  
16 bankruptcy proceeding, and we'll modify our order to that  
17 effect.

18 MR. WERTHEIMER: I would join that as to the  
19 Governor. We have not sued the Detroit Emergency  
20 Manager, but I would orally join in that motion as to the  
21 Governor and the Secretary of the Treasury.

22 MR. CANZANO: I would say the same in our case.  
23 We're not joining their motion but we're making a motion  
24 in our case that would be the same as theirs only against  
25 the Governor.

10

1 THE COURT: Granted, as to all of your  
2 requests.

3 How soon are you going to present me with an  
4 order?

5 MR. KING: Right now.

6 THE COURT: All right.

7 MR. KING: We just need to mark up the order  
8 that we have for the Court.

9 THE COURT: Absolutely.

10 MR. QUASARANO: Your Honor, if I may, we would  
11 ask that the Court stay enforcement of the order, and  
12 your ruling on that would be appreciated at this time.

13 THE COURT: Denied.

14 MR. QUASARANO: Thank you. We'll present an  
15 order as soon as possible.

16 THE COURT: Thank you.

17 MR. QUASARANO: Thank you, Judge.

18 MR. WERTHEIMER: Your Honor, we will need a few  
19 minutes to prepare a written order, but if we can --

20 THE COURT: Well, sir, would you like to copy  
21 that and modify what they're doing? My law clerk will be  
22 happy to help you.

23 MR. WERTHEIMER: Thank you, your Honor.

24 THE COURT: As to your stay, you'll be getting  
25 that to me in --

1 MR. QUASARANO: be I can just make a call  
2 and get an order over to you right yet today.  
3 THE COURT: Sure. You can even ~~hand~~handwrite it.  
4 I don't care how we do it. You can run it over here, fax  
5 it over here; whatever gets you the job done. Time is of  
6 the essence.  
7 MR. QUASARANO: I appreciate that.  
8 MR. KING: (Approaching the bench.)  
9 Your Honor, Ron King again on behalf of the  
10 Plaintiffs. If we could go back on the record.  
11 THE COURT: Excuse me.  
12 MR. KING: We'd like to set the sequence of  
13 events in terms of how things have transpired in the last  
14 hour, if you will. Just for the record, our motion for  
15 emergency temporary restraining order was filed at  
16 3:37 p.m.; that is, today, July 18th. We promptly, well  
17 in advance of 4 o'clock and probably within -- well,  
18 actually, we had delivered prior to the filing time at  
19 3:37 Judge's copies to chambers for your review.  
20 Then we waited for the Attorney General, who  
21 doesn't feel compelled to make an appearance here in this  
22 case because he hasn't actually been officially retained  
23 yet, but, nevertheless, as a courtesy we waited for him  
24 to appear, which he came upstairs sometime around 4:10.  
25 We understand the bankruptcy filing was at 4:05?

12

1 THE COURT: 4:06.  
2 MR. KING: 4:06. The Court took the bench at  
3 approximately 4:20. And to the extent your Honor has had  
4 an opportunity to read the papers and was inclined to  
5 make a ruling, if you'd be willing to put that on the  
6 record, then in the -- when we do seek dismissal of the  
7 bankruptcy proceeding, we'll have some clear record of  
8 the sequence of events here.  
9 MR. WERTHEIMER: Just to add, in terms of the  
10 sequence of events, I did advise by telephone  
11 Mr. Quasarano of the fact that I would be in court and  
12 that it was my understanding that Clark Hill was going to  
13 be in court seeking a temporary restraining order. I  
14 talked to him by phone before 4 this afternoon, sometime  
15 between 3:30 and 4.  
16 MR. QUASARANO: And I could confirm that  
17 Mr. Wertheimer gave me the professional curtesy of  
18 letting me know that there was a hearing being planned.  
19 I had no -- we have no personal knowledge in our division  
20 of a bankruptcy being filed any certain time or date, so  
21 there is nothing we could provide in terms of a response  
22 that there is going to be a bankruptcy filed. So we  
23 learned it as everyone else learned.

24 THE COURT: All right. And obviously I heard  
25 this was happening. I had another hearing that was

1 supposed ~~the~~ place at 4 o'clock, and I understood  
2 this was a very important issue, and we obviously have a  
3 hearing scheduled, another hearing scheduled, at  
4 9 o'clock on Monday.  
5 So I advised my law clerk that we had a  
6 4 o'clock hearing that wasn't going to take very long,  
7 and whenever you all got here and that we would wait for  
8 all of the attorneys, we would then have a hearing and to  
9 let me know when everybody was in place and then I would  
10 come out.

11 So that's exactly what happened. She let me  
12 know everybody was here, gave me the paperwork to look  
13 over, and, of course, I did just that. And we got out of  
14 here as quickly as we could, obviously not in time  
15 because 4:06 occurred and they did what they were going  
16 to do, which I know you all raised here.

17 I did have an opportunity to -- with review of  
18 what was filed, and you're asking me what I would have  
19 done, and it was my intention, after reviewing what you  
20 had filed, in addition to other research that my capable  
21 externs from Cooley and from Michigan State, as well as  
22 my very capable law clerk pulled for me, I reviewed  
23 constitutional provisions, I reviewed legislative intent,  
24 I reviewed what you all provided me, I reviewed a lot of  
25 information in the last few hours, and it was my

14

1 intention to grant you your request completely.

2 MR. KING: Thank you, your Honor. Appreciate  
3 your clarifying the record.

4 MR. WERTHEIMER: Thank you, your Honor.  
5 Your Honor, we have a proposed order.

6 THE COURT: You may approach. Thank you.

7 MR. WERTHEIMER: Thank you. It is handwritten.  
8 (Approaching the bench.)

9 THE COURT: No problem.

10 MR. WERTHEIMER: And for caption, it just says,  
11 at this point, Flowers Caption.

12 THE COURT: Okay.

13 MR. WERTHEIMER: I had some help in drafting  
14 too if you can't read the --

15 THE COURT: We'll make it work.

16 MR. WERTHEIMER: Okay. Thank you, Judge.

17 MR. KING: We may be back tomorrow, your Honor.

18 MR. WERTHEIMER: We may be back too,  
19 your Honor. And if we are, I will be in a suit.

20 THE COURT: It's okay. As long as your body is  
21 covered, I don't care what's it's covered with.

22 MR. KING: I think with respect to the present  
23 motion before you, we have an order in place and  
24 appreciate you making the accomodation and time for us  
25 today. Thank you.

1 THE COURT: No problem.  
2 Now, if you're back tomorrow, what is it going  
3 to be for?  
4 MR. KING: We might file a mandamus action  
5 requiring the EM to withdraw the Chapter 9 filing.  
6 THE COURT: Will this require time on the  
7 record?  
8 MR. KING: Yes.  
9 THE COURT: Okay. My time restriction is that  
10 I have my morning free until about 1:30. Can you get it  
11 here before 1:30?  
12 MR. PATTWELL: Yes.  
13 MR. KING: Absolutely.  
14 THE COURT: I'll make myself available all  
15 morning until 1:30.  
16 MR. KING: Thank you, your Honor.  
17 THE COURT: Okay.  
18 MR. CANZANO: May I approach, your Honor? I  
19 have an order drafted also.  
20 THE COURT: You may.  
21 MR. CANZANO: (Approaching the bench.)  
22 THE COURT: Okay. We'll make you copies, and  
23 this is our copy.  
24 Anything else for the record?  
25 MR. KING: No, your Honor. Thank you.

16

1 MR. WERTHEIMER: No, your Honor. Thank you.  
2 THE COURT: That's all for the record. Thank  
3 you.

4 (At 4:38 p.m., the matter is  
5 concluded.)  
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1 STATE OF MICHIGAN)  
2 ) SS.  
3 COUNTY OF INGHAM)

4 CERTIFICATE OF REPORTER

5  
6 I, Melinda I. Dexter, Certified Shorthand  
7 Reporter, do hereby certify that the foregoing  
8 17 pages comprise an accurate, true, and complete  
9 transcript of the proceedings and testimony taken in the  
10 case of The General Retirement System of the City of  
11 Detroit, et al., versus Kevyn D. Orr, et al., Case  
12 No. 13-768-CZ, and Gracie Webster, et al., versus the  
13 State of Michigan, et al., Case No. 13-734-CZ, and  
14 Robbie Flowers, et al., versus Rick Snyder, et al., Case  
15 No. 13-729-CZ, on Thursday, July 18, 2013.

16 I further certify that this transcript of the  
17 record of the proceedings and testimony truly and  
18 correctly reflects the exhibits, if any, offered by the  
19 respective parties. WITNESS my hand this the eighteenth  
20 day of July, 2013.

21  
22 

23 Melinda I. Dexter, RMR, RPR, CSR-4629  
24 Official Court Reporter  
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STATE OF MICHIGAN  
30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM  
CIVIL DIVISION

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

v

Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN; RICHARD  
SNYDER, as Governor of the State  
of Michigan; and ANDY DILLON,  
as Treasurer of the State of  
Michigan,

Defendants.

/   
ROBBIE FLOWERS, MICHAEL WELLS,  
JANET WHITSON, MARY WASHINGTON,  
and BRUCE GOLDMAN,

Plaintiffs,

v

Case No. 13-729-CZ  
Hon. Rosemarie Aquilina

RICK SNYDER, as the Governor of the  
State of Michigan; ANDY DILLON, as  
the Treasurer of the State of Michigan;  
and the STATE OF MICHIGAN,

Defendants.

/

MOTION TO AMEND PRELIMINARY INJUNCTION

MOTION FOR DEFAULT JUDGMENT

MOTION FOR SUMMARY DISPOSITION

BEFORE THE HON. ROSEMARIE AQUILINA, CIRCUIT JUDGE

Ingham County, Michigan - Friday, July 19, 2013

1 APPEARANCES:  
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None

EXHIBITS:

None

<p>1 Ingham County, Michigan</p> <p>2 Friday, July 19, 2013 - At 11:25 a.m.</p> <p>3 THE COURT: Okay. All right. Robert Flowers,</p> <p>4 Michael Wells, Janet Whitson, Mary Washington, and Bruce</p> <p>5 Goldman versus Rick Snyder, as the Governor of the State</p> <p>6 of Michigan; Andy Dillon, as the Treasurer of the State</p> <p>7 of Michigan; and the State of Michigan, Docket 13-729-CZ.</p> <p>8 Counsel, your appearance for the record.</p> <p>9 MR. WERTHEIMER: William Wertheimer,</p> <p>10 your Honor, on behalf of Plaintiffs.</p> <p>11 MR. CANZANO: Your Honor, John Canzano. I'm</p> <p>12 not counsel in that case. I'm here on the Webster case.</p> <p>13 THE COURT: Okay. Thank you.</p> <p>14 MR. QUASARANO: Thomas Quasarano, Assistant</p> <p>15 Attorney General on behalf of the State Defendants.</p> <p>16 MR. DEVLIN: And Brian Devlin, Assistant</p> <p>17 Attorney General.</p> <p>18 THE COURT: Thank you.</p> <p>19 Counsel?</p> <p>20 MR. WERTHEIMER: Your Honor, Plaintiffs are</p> <p>21 here today in order to request that the Court enter</p> <p>22 either a corrected or amended preliminary injunction</p> <p>23 order. The Court, I'm sure, recalls the circumstances</p> <p>24 yesterday. We have had a chance to have your order</p> <p>25 typed. We reviewed it. There were some mistakes in it.</p> <p style="text-align: center;">4</p>	<p>1 whatever the Court's preference would be.</p> <p>2 THE COURT: Well, I'm going to sign this, and I</p> <p>3 haven't compared the two. I think we probably should</p> <p>4 call it an amended order.</p> <p>5 MR. WERTHEIMER: Okay.</p> <p>6 THE COURT: But let me just say that your stay</p> <p>7 is denied.</p> <p>8 MR. QUASARANO: Thank you, your Honor.</p> <p>9 Maybe --</p> <p>10 THE COURT: Counsel?</p> <p>11 MR. QUASARANO: Maybe doing another separate</p> <p>12 order makes the most sense, and we can do that using the</p> <p>13 forms provided by the Court.</p> <p>14 THE COURT: Okay. Thank you.</p> <p>15 MR. QUASARANO: Thank you.</p> <p>16 MR. WERTHEIMER: Your Honor, one other thing</p> <p>17 that may be related to that, and that is, the order the</p> <p>18 Court is entering, consistent with the order the Court</p> <p>19 entered yesterday, provides us with the relief that we</p> <p>20 were seeking by our motion which was scheduled for</p> <p>21 hearing Monday at 9 o'clock.</p> <p>22 The Attorney General had also noticed a motion</p> <p>23 to dismiss for Monday at 9 o'clock. It was not timely in</p> <p>24 the sense that he did not give the appropriate time</p> <p>25 period for us to respond. In the reply brief I filed</p> <p style="text-align: center;">6</p>
<p>1 For example, the heading still said temporary restraining</p> <p>2 order from the other case where it was clear from the</p> <p>3 record and from the body, even, of the order that it was</p> <p>4 a preliminary injunction. So we made that change. We</p> <p>5 typed everything. We put in the attorneys' names and the</p> <p>6 case name.</p> <p>7 We made a couple of other changes, which I have</p> <p>8 indicated to the Court off the record on another copy of</p> <p>9 the injunctive order. And I would -- we would -- I'm</p> <p>10 happy to go over each of those, if the Court needs.</p> <p>11 Otherwise, I would request that the Court issue this</p> <p>12 preliminary injunction. I did not know whether the Court</p> <p>13 would want to refer to it as corrected, amended, or not</p> <p>14 refer to it at all. So I left that blank. But we would</p> <p>15 ask that the Court enter the order that we presented</p> <p>16 today to conform to the Court's ruling yesterday.</p> <p>17 THE COURT: Counsel?</p> <p>18 MR. QUASARANO: Yes, your Honor. As your Honor</p> <p>19 knows, we moved for a stay, and so I would ask either</p> <p>20 that the stay that was denied yesterday be identified in</p> <p>21 the modified order, or we can present another stay. I</p> <p>22 would assume that the Court would not grant a stay of</p> <p>23 this order consistent with yesterday. So either to</p> <p>24 identify it in this modified order as a stay was</p> <p>25 requested and denied, or we can just do another order,</p> <p>13-53846-swr Doc 1219-10 Filed 10/17/13</p>	<p>1 yesterday, we objected to that and said that we did not</p> <p>2 agree to expedited. There was no order expediting and</p> <p>3 suggested that the Court deny the -- their motion for</p> <p>4 that reason, but I raise it now just to indicate that</p> <p>5 that also is out there and that maybe we want -- we want</p> <p>6 another order dealing with that issue.</p> <p>7 Our position is that it's not timely and that</p> <p>8 it shouldn't be heard Monday-in any event. I don't know</p> <p>9 whether the Attorney General intends to proceed on Monday</p> <p>10 on it.</p> <p>11 MR. QUASARANO: Your Honor, we do understand</p> <p>12 that under MCR 2.119, the motion for summary disposition</p> <p>13 is a 21-day period. We sought stipulation of counsel.</p> <p>14 They were kind enough to look at the briefs first to</p> <p>15 decide whether they would stipulate. They chose not to.</p> <p>16 We also sought the endorsement on our notice of</p> <p>17 hearing from the Court to allow the hearing on Monday.</p> <p>18 Yesterday at bench we discussed if we needed to -- we</p> <p>19 needed to set a hearing date on the dispositive motions.</p> <p>20 The Court is at liberty to have those heard today or on</p> <p>21 Monday or at such other time. Our notice of hearing did</p> <p>22 say "or at such other time as the Court may order" on the</p> <p>23 notice of hearing itself. Thanks.</p> <p>24 MR. CANZANO: Your Honor, if I could make a</p> <p>25 point that is related to that issue?</p> <p>Entered 10/17/13 13:56:17 Page 4 of 13</p>



1 THE COURT: Yes, sir.

2 MR. CANZANO: We've -- we've presented a motion

3 this morning, an emergency motion, to advance the hearing

4 on our motion for declaratory judgment that's set for

5 Monday to today. It would be my intention to deal only

6 with the declaratory judgment part of it today, not the

7 injunction part of it. And they've already -- they've

8 agreed that that can be expedited. I don't know that

9 they've agreed that it can be expedited to today, but

10 they agree that it could be expedited to Monday.

11 So if -- that part of it, either today or

12 Monday, that would be a final declaratory judgment. My

13 preference is to do it today.

14 THE COURT: Is that correct?

15 MR. QUASARANO: Well, I believe under 2.605(D),

16 they can seek an expedited hearing, and certainly the

17 Court has the authority to issue that. I think by not

18 entertaining a dispositive motion, we're not going to

19 have a complete argument. Mr. Devlin will be arguing for

20 the State. But we do acknowledge what the court rule

21 says, that's correct.

22 THE COURT: Well, are you objecting to having

23 it heard today?

24 MR. QUASARANO: We will not object in the

25 interest of judicial economy.

8

1 THE COURT: And your motion deals with that

2 issue?

3 MR. QUASARANO: It's a (C)(8) motion that would

4 address whether there are grounds for a declaratory

5 judgment, yes.

6 THE COURT: Well, then --

7 I'm sorry?

8 MR. WERTHEIMER: I'm sorry. I may be confused

9 now. Their motion that they filed in the Flowers case to

10 dismiss deals with issues like ripeness. It's a (C)(4)

11 and (C)(8) motion. Many of the facts have changed. I

12 would think they would want to refile that, in any event.

13 I mean, you know, to make an argument based on -- based

14 on ripeness given what happened yesterday afternoon seems

15 to me to be just, to use a lawyer's word, moot at this

16 point. But I'm concerned only with their motion to

17 dismiss in the Flowers case, not with anything related to

18 Webster and whether we're to appear here Monday at 9 to

19 -- per their notice or whether they've withdrawn that

20 motion or not.

21 THE COURT: Okay. Well, let's deal with the

22 Flowers case.

23 What is your intention in regard to Monday?

24 Are you still asking the Court to hear your motion? It

25 was not timely filed. Are you still asking the Court to

9

1 that, or will you be amending that?

2 MR. QUASARANO: No. I'll speak for Mr. Devlin

3 here for a moment only. In the notice of hearing, we

4 indicated to advance it to that date because of all the

5 other activities in this case or such other time as the

6 Court may order.

7 I do point out that in the Flowers case in the

8 prayer for relief is a reference to declaratory judgment.

9 Both cases are asking for both reliefs; preliminary and

10 declaratory judgment. Preliminary injunction motions

11 were granted. Our brief talks about the alternative,

12 assuming arguendo there were a filing, a Chapter 9

13 filing, and then we go into the basis for why there are

14 grounds not to declare judgment, why there is some

15 jurisdictional grounds.

16 So I think that the brief is sufficiently

17 adequate to address all of the issues that are still at

18 issue in this case. Certainly there has been a factual

19 change and those factual changes don't need to be

20 addressed.

21 MR. WERTHEIMER: I guess I just would reiterate

22 if -- I need to know whether counsel is going forward on

23 Monday with its motion to dismiss. I still haven't heard

24 a yes or no.

25 THE COURT: His answer is yes, Counsel.

10

1 MR. WERTHEIMER: Well, okay. If the answer is

2 yes, I would just point out that it's clear under the

3 rules that it is not timely; that no order has entered

4 from this Court.

5 THE COURT: You're right.

6 MR. WERTHEIMER: Okay.

7 THE COURT: You know what we're doing? We are

8 under siege here. Well, we aren't; I'm not. Technically

9 I am through paper, but all of you are. Detroit is. The

10 State is. So I'm not going to go through the usual court

11 rules and the time and all of that. You are all going to

12 spend your weekend doing what lawyers do, and that's a

13 lot of homework because we're going to have that hearing

14 Monday unless you're asking me to do it now.

15 I'm going to hear everything because we're not

16 going to piecemeal this. You all know the case. I know

17 the case. I've done the homework. I don't think myself

18 or my staff got any sleep last night. We've been doing

19 research. I bet if I called all of your wives and asked

20 if you got any sleep, they'd be saying, "No. When is my

21 husband going to get some sleep," right? So we're going

22 to have a hearing, and I don't care if it's today or

23 Monday. I'll come here Saturday, if you would like. I

24 don't care. Let's get some answers, let's get a bottom

25 line, and let's get this moving to the Court of Appeals

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1 because that's where you all are headed. I don't care  
2 what side you're on. Someone is going up, right? So I  
3 have answers for you. Tell me your story. I've got the  
4 solution. You might not like it.  
5 Can we move on?  
6 MR. QUASARANO: We're prepared to go today, or  
7 we'll defer to brother counsel for Monday if more time is  
8 needed.  
9 MR. WERTHEIMER: I'll go today. We can go  
10 right now, I mean.  
11 THE COURT: Okay. I can go right now too.  
12 How about you, sir?  
13 MR. CANZANO: I think we already agreed that  
14 Webster could go today.  
15 MR. DEVLIN: Very well.  
16 THE COURT: We have an agreement. I think that  
17 might be the only thing you all agree on. Hallelujah.  
18 MR. QUASARANO: Other than it's very hot  
19 outside.  
20 THE COURT: Yeah. We can agree on that too.  
21 Okay.  
22 Counsel? Well, let's let these gentlemen enter  
23 so we don't make noise for the court reporter before we  
24 proceed.  
25 Anybody else need to make an appearance?

12

1 THE COURTROOM: (No verbal response.)  
2 THE COURT: No? Okay.  
3 MR. CANZANO: Which case would you like to go  
4 first; Webster or Flowers?  
5 THE COURT: Mr. --  
6 MR. WERTHEIMER: Well, he goes first on Flowers  
7 because it's his motion, so it's not my --  
8 THE COURT: Okay. Whatever you'd like.  
9 MR. DEVLIN: Thank you, your Honor. My name  
10 is Brian Devlin, Assistant Attorney General.  
11 THE COURT REPORTER: Could you approach the  
12 podium, please?  
13 THE COURT: Yeah. If everybody would speak  
14 from the podium. The mikes work better. The court  
15 reporter has better access to hear you. We'll make a  
16 better record, and obviously the Court of Appeals and the  
17 Supreme Court will need your record, please.  
18 MR. DEVLIN: Thank you, your Honor. Brian  
19 Devlin appearing on behalf of the Defendants.  
20 As Mr. Quasarano has mentioned, that obviously  
21 there's been a very dramatic change in circumstances  
22 since the brief was filed. The petition in bankruptcy  
23 has been filed as of yesterday. It changes some aspects  
24 of this case from the State's perspective, but not all.

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1 Flowers will apply to Webster as well. The fact that  
2 this case is now before the bankruptcy court means that  
3 there is a court of competent jurisdiction that can hear  
4 many of the concerns of the Plaintiffs. And that fact  
5 alone changes a lot of the ripeness arguments and things  
6 that you will see.

7 Nonetheless, it is the position of the State  
8 that there has not been harm at this point to the  
9 Plaintiffs.

10 THE COURT: Sir, there hasn't been harm because  
11 they haven't acted. What we have here, and I would like  
12 you to get to the point, because -- and you can make your  
13 record. I'm a very patient judge. I think most people  
14 will agree with that. But I have two very serious  
15 concerns because there was this rush to bankruptcy court  
16 that didn't have to occur and should not have occurred.  
17 And certainly Plaintiffs should not have been blind-  
18 sided, and this Court and this process should not have  
19 been ignored.

20 We have the Michigan Constitution Article IX, §  
21 24 that forbids the Emergency Manager to file bankruptcy  
22 if pension plans or retirement system of this State or  
23 its political subdivisions are diminished or impaired.  
24 And the Constitution states:

The accrued financial benefits of

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1 each pension plan and requirement  
2 system of the state and its  
3 political subdivisions shall be a  
4 contractual obligation thereof  
5 which shall not be diminished or  
6 impaired.

7 And the bankruptcy court will be doing exactly  
8 that in its reorganization because the pensions are an  
9 unsecured asset. And under the bankruptcy  
10 reorganization, under a reorganization Chapter 9, there  
11 is no reaffirmation of debt. If I were doing a Chapter 7  
12 and wanted to go in and reaffirm payments on my car, I  
13 could do so. But there is no way that you can go into  
14 bankruptcy court and say, "I am going to reaffirm the  
15 pension so that we don't disrupt that."

16 So what we're doing here is violating the  
17 Constitution. And then we have Michigan Compiled Law  
18 141.1552, which precludes the Emergency Manager from  
19 taking such actions. It states specifically in m -- (m)  
20 and (ii):

The emergency manager shall fully  
comply with the public employee  
retirement system investment  
act --

25 Which is --

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<p>1 -- 1965 PA 314, and § 24 of 2 Article IX of the State 3 Constitution of 1963, and any 4 actions taken shall be consistent 5 with the pension fund's qualified 6 plan status under the federal 7 internal revenue code.</p> <p>8 So tell me, sir, how do you get into bankruptcy 9 court and not violate the Constitution of Michigan and 10 not violate how the Emergency Manager is supposed to 11 operate? Haven't we jumped the gun? What are you doing 12 here, sir?</p> <p>13 MR. DEVLIN: I can understand your Honor's 14 concerns. The position of the State is that none of 15 these impairments have occurred yet.</p> <p>16 THE COURT: Only because the bankruptcy trustee 17 hasn't got his teeth into it. It will occur. It's 18 imminent, isn't it? Tell me how it's not imminent, sir?</p> <p>19 MR. DEVLIN: I can't predict the future.</p> <p>20 THE COURT: Yes, you can.</p> <p>21 MR. DEVLIN: I cannot.</p> <p>22 THE COURT: The bankruptcy court -- the 23 bankruptcy court has a certain function. You're a 24 lawyer. You understand the function of the bankruptcy 25 court. That's why you ran there yesterday not slowly but</p> <p style="text-align: center;">16</p>	<p>1 that they have the power to address under 943, is just 2 that; it's just speculation.</p> <p>3 THE COURT: It's a certainty, sir. You filed 4 in bankruptcy court, which is federal because you know 5 that certainty. I don't know how you get around it 6 because it's an unsecured asset that cannot be 7 reaffirmed, and there is no case law, and you know that 8 as well because all of us stayed up all night looking for 9 case law, and there is no case law. You can't tell me 10 that it can be segregated out and reaffirmed.</p> <p>11 So these people that have this pension where it 12 is supposed to be protected under the Constitution and 13 under the legislative intent under the emergency manager 14 legislation, it cannot survive. It cannot survive 15 federal bankruptcy, and I have no jurisdiction there, and 16 you know that. And that's why everybody made us wait as 17 -- slowly we were waiting for your office to come here 18 out of courtesy. We waited so we would have both sides 19 present, which is what we do. We honor civility, and it 20 was filed in order to bind everybody so this could occur, 21 and it's cheating, sir, and it's cheating good people who 22 worked.</p> <p>23 And so what's going to happen is we're not 24 honoring the Constitution, we're not honoring the 25 emergency manager legislation, and we're not honoring</p> <p style="text-align: center;">18</p>
<p>1 in your running shoes, right?</p> <p>2 MR. DEVLIN: I can't speak to that. I had 3 nothing to do with it. But I can tell you about § 943 of 4 the Bankruptcy Code, which affords all of the protections 5 that we discussed in the brief that I've alluded to 6 today.</p> <p>7 None of those injuries have occurred at this 8 point. For that reason, we believe the claim is still 9 speculative. Of course those are legitimate concerns, 10 but the court, the bankruptcy court can address them.</p> <p>11 I referred to -- I'd also refer to <i>Straus</i>, the 12 case cited in our brief too. If that injury has not 13 occurred, as we contend, then it's an inappropriate 14 remedy that the Plaintiffs are asking for today.</p> <p>15 Now, obviously you and I don't see this injury 16 in quite the same terms, but that is the position of the 17 State. The injury has not occurred at this point.</p> <p>18 THE COURT: That would be because the 19 bankruptcy judge has not sat at his bench like I have and 20 heard the case and started the reorganization, and that's 21 the only reason. For me to believe what you're saying 22 would be -- would make me Helen Keller who's not yet 23 learned the alphabet.</p> <p>24 MR. DEVLIN: I think anything that you and I 25 speculate about that the bankruptcy court might order,</p> <p style="text-align: center;">17</p>	<p>1 good citizens, and we're also not honoring the President 2 who took Detroit out of bankruptcy. What are we doing, 3 sir?</p> <p>4 MR. DEVLIN: Your Honor, I understand what 5 you're saying, but I would take exception to the motion 6 that somehow the Attorney General's Office delayed or 7 dragged its feet or in any way tampered with the 8 proceedings yesterday. Now, I wasn't here. I wasn't 9 part of them, but I don't believe that's the case.</p> <p>10 THE COURT: It looks that way, sir. If somehow 11 that's not the case, I apologize, but it's the old saying 12 if it looks like a duck, you know the rest.</p> <p>13 MR. DEVLIN: Well, I don't want to speculate on 14 who did what yesterday. As I said, I wasn't here.</p> <p>15 THE COURT: Thank you.</p> <p>16 MR. DEVLIN: But it is our position that until 17 that injury occurs and in light of <i>Straus</i>, in light of 18 the jurisdiction of the bankruptcy court, that this 19 motion should be -- er, the motion is inappropriate. The 20 State's motion should be granted --</p> <p>21 THE COURT: Sir --</p> <p>22 MR. DEVLIN: -- thank you.</p> <p>23 THE COURT: Let me ask you this: If the injury 24 occurs, isn't it then too late, much too late, way too 25 late for anybody to seek relief? There are people who</p> <p style="text-align: center;">19</p>

1 injury. The leg has been amputated, and we cannot fix  
2 it.

3 MR. DEVLIN: We don't know, is my position on  
4 that. We don't know, and there is opportunity for this  
5 very issue to be heard in the bankruptcy court.

6 THE COURT: But there is no opportunity in the  
7 bankruptcy court for them to fix the harm. Do you have  
8 any law that says the bankruptcy court can fix the  
9 pension fund because I haven't found that either, and  
10 I've looked?

11 MR. DEVLIN: Again, I understand the pension  
12 fund to be tremendously under funded. There are many  
13 problems here, far beyond what's gone on in the last  
14 24 hours. But the court, the bankruptcy court does have  
15 jurisdiction to hear these arguments, to note the  
16 Michigan Constitutional provisions, and to order what it  
17 feels it must order.

18 THE COURT: Okay.

19 MR. DEVLIN: Thank you.

20 THE COURT: Thank you.

21 MR. WERTHEIMER: Your Honor, I'll be brief.

22 First, I would just point out to the Court that this is a  
23 motion under C -- MCR 2.116(C)(4), (5), and (8): That  
24 is, it's a claim that there is no jurisdiction over the  
25 subject matter; it's a claim that my clients have no

20

1 capacity to sue because apparently they're not being  
2 injured; and it's a claim that we have failed to state a  
3 claim.

4 As to the law relating to those three points, I  
5 would rely upon the briefs that I have filed, including  
6 the reply brief that I filed yesterday in which I did  
7 take the position that we should not hear -- that the  
8 Court should not hear the motion to dismiss but in which  
9 I dealt with all of those issues, and I won't repeat  
10 those arguments.

11 I would just point out a couple of things:  
12 First of all, counsel says that he cannot predict the  
13 future. The Detroit Emergency Manager, who is a  
14 competent lawyer familiar with bankruptcy, has predicted  
15 the future, and we quoted him in our complaint as saying,  
16 essentially, that once he gets into bankruptcy, the  
17 constitutional rights of our clients will disappear, will  
18 be "trumped" in his words or in the words of the reporter  
19 quoting him. And I think that was -- there was an  
20 interview and there was also his statements made to the  
21 Detroit Free Press Editorial Board.

22 But the point being that the Detroit Emergency  
23 Manager has had no reluctance to predict the future, and  
24 his prediction is consistent with our claim and with the

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1 just simply is not credible for an attorney for the  
2 Governor and the State Treasurer to come here today and  
3 say he can't predict the future when we indicated in our  
4 complaint that the future could be predicted.

5 I would also point out that since we were in  
6 court yesterday, we now have not just the bankruptcy but  
7 filings related to that bankruptcy. I'm not going to  
8 introduce these documents, but I understand that counsel  
9 in the Webster case that will be argued when we're done  
10 here will be introducing them. I would simply point out  
11 that we've got correspondence back and forth between the  
12 Detroit Emergency Manager and the Governor requesting the  
13 authorization and the Governor approving the  
14 authorization, in which there is not a word mentioned  
15 about Article IX, § 24 of the Michigan State  
16 Constitution.

17 Our Governor does not feel that that's  
18 relevant. He goes on for pages in his authorization,  
19 obviously for public relation's purposes, talking about  
20 how deeply he cares about the city of Detroit, etcetera,  
21 etcetera, but not one word about Article IX, § 24 of the  
22 Constitution. And, of course, no such word from Mr. Orr  
23 in his request to the Governor.

24 So counsel's essentially saying "No harm yet."  
25 Don't worry. Maybe bankruptcy court will take care of

22

1 it." But the people who are taking it into bankruptcy,  
2 have taken it into bankruptcy have made very clear  
3 they're not going to take care of it in bankruptcy.

4 And finally just the obvious point, but I think  
5 needs to be reiterated with all the flurry going on that  
6 the whole point of injunctive relief is to prevent a harm  
7 that has not yet occurred, and that's all we're seeking  
8 with our overall lawsuit and all we were seeking with our  
9 motion for preliminary injunction, which this Court has  
10 already granted. Thank you.

11 MR. QUASARANO: Your Honor, I think that the  
12 State's briefing and argument sufficiently-presents the  
13 State's position, but I know the Court is patient, and I  
14 would ask the Court's indulgence on the one matter of my  
15 appearance here yesterday, and I would like to make this  
16 clear for the record, if I may, but for Mr. Wertheimer,  
17 who is counsel for the Flowers and others case, I would  
18 not have known that the General Retirement System of the  
19 City of Detroit, et al., even had a TRO motion scheduled.

20 The only communication I had with counsel for  
21 that, those Plaintiffs, was the night before asking if we  
22 could accept service on the Governor, which, as the Court  
23 knows, we're barred from accepting service on behalf of a  
24 State Defendant. Until the State Defendant is served, we

25 are not counsel or can become counsel of record.

23

<p>1 I was told there would not be any preliminary 2 injunction or TRO sought in that case. I do understand 3 that situation had changed in the hours after that. But, 4 but for Mr. Wertheimer calling me, counsel in another 5 case, I would not have known. When he called me, and the 6 transcript yesterday says it was around 3:30 or so, and 7 then I arrived as quickly as I could walk over here. So 8 there was no delay on behalf of the Attorney General's 9 Office to be here, to represent the State's interest, to 10 be here to answer this Court's questions. And any delay 11 at all was because we were notified by counsel for the 12 Plaintiffs yesterday that they intended to bring the 13 motion. Thank you for letting me clarify that.</p> <p>14 THE COURT: Thank you. 15 Anything further, sir? 16 MR. DEVLIN: Nothing further. Thank you. 17 THE COURT: Defendants have filed a motion for 18 summary disposition pursuant to (4), which is: 19 The Court lacks jurisdiction of 20 the subject matter. 21 This Court absolutely has jurisdiction of the 22 subject matter. It's a state question. I know they've 23 removed it to federal bankruptcy court, but we still have 24 very serious state questions. We have the State 25 Constitution, Article IX, § 24. We have an emergency</p> <p style="text-align: center;">24</p>	<p>1 The opposing party has failed to 2 state a claim on which relief can 3 be granted. 4 I see problems all over the place. I stated 5 them. I don't think I need to be redundant. Clearly 6 there are numerous claims and issues. I won't be 7 redundant. The relief requested is denied. Motion for 8 summary disposition is denied.</p> <p>9 MR. WERTHEIMER: Thank you, your Honor. 10 THE COURT: Who's preparing the order? 11 MR. QUASARANO: I'll be preparing it for you, 12 Judge. 13 THE COURT: Thank you, very much, sir. 14 MR. QUASARANO: Thank you. 15 THE COURT: Next matter? 16 MR. WERTHEIMER: We are -- I am done relative 17 to the Flowers case. 18 THE COURT: Thank you, very much, sir. 19 MR. WERTHEIMER: I'll vacate. I think there 20 are others lawyers in the room with another related case. 21 So I'll wait in the courtroom but vacate counsel table. 22 THE COURT: Thank you. 23 MR. WERTHEIMER: Thank you. 24 MR. CANZANO: Your Honor, John Canzano on 25 behalf of the Plaintiffs in the Webster case. I would</p> <p style="text-align: center;">26</p>
<p>1 manager statute, and we have a Constitution at issue. 2 State issues are within the purview of this Court. I 3 don't care that it was removed to bankruptcy court. 4 There is nothing here that tells me it was properly 5 removed to federal bankruptcy court because there is a 6 procedure in place of how it gets removed. And this 7 Court does not believe it was properly placed in the 8 hands of the bankruptcy court because it is going to 9 affect pensions. Once it affects pensions, which is 10 clearly what it's going to do, it's in violation, and the 11 Governor can't give permission for it to go to bankruptcy 12 court. It's very clear. I think a first-year law 13 student understands the concept. And I know the Governor 14 is not a lawyer, but he has very well paid lawyers who do 15 understand the concept.</p> <p>16 The party asserting the claim 17 lacks the legal capacity to sue. 18 That is MCR 2.116(5). A party asserting the 19 claim lacks the legal capacity to sue? How is that 20 possible? They're interested parties. Absolutely they 21 have capacity to sue. The pension's involved, the 22 pension related to the parties. I don't see any problems 23 there.</p> <p>24 And then we have (8), which is always a 25 catch-all.</p> <p style="text-align: center;">25</p>	<p>1 like to clarify the relief that we are seeking here 2 today. We -- our complaint sought declaratory judgment 3 and preliminary injunction. Today we are seeking only a 4 declaratory judgment. 5 I have taken the liberty of preparing an order 6 for declaratory judgment which I can present when I'm 7 done, and the Court may or may not want to say everything 8 that I've said in there, but I think we are entitled to 9 that relief. The briefs -- this has all been briefed 10 already. I don't need to go over that. 11 The State's defense to our motion did not 12 contest the facts and did not contest the substance of 13 the merits of the law, which is that the Constitution 14 prohibits diminishment of pension -- accrued pension 15 benefits. They simply -- they simply said the case is 16 not ripe, and there is not an actual controversy for a 17 declaratory judgment. 18 Now, after yesterday, it's obviously ripe. We 19 cited a case in our reply brief, <i>City of Lake Angelus</i>, 20 which amazingly is almost on all fours with this case. I 21 won't describe that case again except to say that that 22 was a case where the Attorney General made the argument 23 that there was no injury and there was no need for 24 declaratory judgment because a request to a tribunal had 25 not been made and the tribunal would not have ruled but the</p> <p style="text-align: center;">27</p>

1 court correctly ruled that the -- there is an actual  
2 controversy because the parties need the court to tell  
3 them what their rights and obligations are so they know  
4 what to do in the future; whether this tribunal could  
5 overrule a local ordinance which prohibited sea planes on  
6 Lake Angelus, even though they hadn't been asked and they  
7 hadn't ruled. So that part is exactly what we have. Now  
8 we have the bankruptcy has been filed.

9 I would like to offer a couple exhibits, which  
10 are the July 16th letter from Emergency Manager Orr  
11 requesting authorization to file for Chapter 9, which  
12 amazingly this happened on Tuesday, and none of our --  
13 none of our crack reporters knew about this. Nobody knew  
14 about this until yesterday. This was a secret letter.

15 And the July 18th letter from yesterday of the  
16 Governor authorizing Emergency Manager Orr to file for  
17 Chapter 9. And I think if you look at these two letters,  
18 it is crystal clear what the judge has already concluded  
19 in the prior case; that not only does the bankruptcy  
20 threaten to impair but that that is the goal and the  
21 intent of the emergency manager is to impair accrued  
22 pension benefits in bankruptcy.

23 I'll give these to opposing counsel. These are  
24 -- they're a matter of public record now. I just wrote  
25 Exhibit A and Exhibit B on them.

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1 (Approaching the bench.)  
2 THE COURT: All right. Thank you.  
3 MR. CANZANO: As to the merits, I think again  
4 it is very clear this isn't a case where you need case  
5 law. You just read the Constitution. It says accrued  
6 pension benefits shall not be diminished or impaired.  
7 The Constitution says that. The Emergency Manager law  
8 says the Governor can authorize the Emergency Manager to  
9 file for Chapter 9. And it doesn't prohibit that -- it  
10 doesn't require that pension benefits be protected when  
11 he files for Chapter 9. And it is, therefore,  
12 unconstitutional to that extent.

13 THE COURT: Is there any objection to the Court  
14 receiving Exhibit A and B?

15 MR. DEVLIN: No objection, your Honor.

16 THE COURT: A and B are received. Thank you.

17 (At 12:04 p.m., Exhibit A and  
18 Exhibit B is received.)

19 MR. CANZANO: So the emergency manager law is  
20 unconstitutional to the extent that it allows the  
21 Governor to authorize a Chapter 9 filing which threatens  
22 to diminish or impair pension benefits. And the Governor  
23 is prohibited by Article IX, § 24 from authorizing an  
24 emergency manager to proceed under Chapter 9 in a manner  
25 which threatened to impair accrued pension benefits. Any

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1 such action by the Governor is without authority and in  
2 violation of Article IX, § 24. And what happened  
3 yesterday was a violation of the Constitution.

4 Now, my declaratory judgment order declares  
5 these statements. It also has a paragraph at the end  
6 that says:

7 In order to rectify his  
8 unauthorized and unconstitutional  
9 actions described above, the  
10 Governor must: One, direct the  
11 Emergency Manager to immediately  
12 withdraw the Chapter 9 petition  
13 filed on July 18th. And, two,  
14 not authorize any further Chapter  
15 9 filing which threatens to  
16 diminish or impair accrued  
17 pension benefits.

18 Now, this is just a declaratory judgment. So  
19 it is my hope that if the Court is willing to enter this,  
20 that the Governor will obey his oath of office and follow  
21 what the Constitution requires. And so -- and if he does  
22 not, then we may be back here on -- with another  
23 iteration of this that requires some type of injunctive  
24 relief.

25 At this time we're not seeking injunctive

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1 relief, so I would -- I would withdraw our request for  
2 preliminary injunction without prejudice. And I'd also  
3 ask, if this order is entered, that the temporary  
4 restraining order entered yesterday be vacated or  
5 expired, and all we want is a declaratory judgment right  
6 now.

7 THE COURT: And the reason to vacate or expire  
8 the temporary-restraining order?

9 MR. CANZANO: Because now we have the default  
10 judgment and the TRO. I don't remember what the court  
11 rule says, but it cannot only exist for a short period of  
12 time on its own, and this is the tact that we would like  
13 to take because we would like to tell the Governor, "This  
14 is what you're supposed to do." And then if he doesn't  
15 do that, then we'll then -- we'll reassess our options.

16 THE COURT: Okay. Thank you.

17 MR. CANZANO: May I present my draft order?

18 THE COURT: Yes. Have you presented it to the  
19 other side?

20 MR. CANZANO: I have not.

21 THE COURT: Thank you.

22 MR. QUASARANO: We've looked at this,  
23 your Honor.

24 MR. CANZANO: Just as to the matter of the  
25 jurisdiction in the bankruptcy court, I don't think

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1 anyone is arguing -- I don't think the Attorney General  
2 is arguing that our case is stayed by the bankruptcy  
3 court because we're not suing the Emergency Manager.  
4 We're only suing the Governor and the Treasurer and the  
5 State of Michigan, and they're not -- they're not in the  
6 bankruptcy court. They're not the debtor, so that's an  
7 argument that has been raised. But, just for clarity, I  
8 wanted to point that out. That's all I have.

9 THE COURT: Thank you.  
10 Response?

11 MR. DEVLIN: Thank you, your Honor. Brian  
12 Devlin again on behalf of the Defendants. I won't repeat  
13 the discussion we had on the Flowers case. Much of that  
14 applies. The relief sought in each of these cases is the  
15 same position of the State, is that the bankruptcy court  
16 jurisdiction has a great effect on this, and that the  
17 reliefs that might be desired by the Plaintiffs are  
18 available through that court. Furthermore, we'd cite the  
19 *Straus* case as well in this reply.

20 I would like to call the Court's attention to  
21 just one other thing: There was reference made to the  
22 Governor's obligation to uphold the terms of the United  
23 States -- of the State Constitution but that also applies  
24 to the United States Constitution, and bankruptcy court  
25 is certainly someone he may have to answer to as well.

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1 So that should not be lost sight of.

2 Finally, I wanted to point out that we do have  
3 a motion for summary disposition pending in this case as  
4 well. And I would rely on the arguments in the brief.  
5 And the ones I've just restated as well to ask that that  
6 relief be granted. Thank you.

7 THE COURT: Are you asking that that be heard  
8 now, or would you like me to make a ruling on that now?

9 MR. DEVLIN: I think you could probably make a  
10 ruling on it without further argument.

11 THE COURT: I think so too.

12 MR. DEVLIN: All right.

13 THE COURT: Okay.

14 MR. DEVLIN: Thank you.

15 THE COURT: Anything further?

16 MR. CANZANO: Nothing further, your Honor.

17 THE COURT: All right.

18 As to the motion for summary disposition in  
19 regard to Defendants' motion is denied. I'm going to  
20 incorporate the transcript, the arguments of the Flowers  
21 matter into this file. I think that in order to have a  
22 complete argument, we're going to consolidate the  
23 arguments and the files for the purpose of today because  
24 they are really united. They are part and parcel of the

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1 transcript without looking at both.

2 So I'm going to direct the court reporter to  
3 treat today as one transcript despite there being two  
4 docket numbers, and I didn't even call both of them, but  
5 we just sort of started, but we're really dealing with  
6 Dockets 13-734-CZ and 13-729-CZ.

7 So the motion for summary disposition in regard  
8 to 13-734-CZ, and that's Defendants' motion for summary  
9 disposition is denied based on the same rationale the  
10 Court had and reasoning in the prior case.

11 In regard to the request for declaratory  
12 judgment, I think it is imperative that the Court sign  
13 this. It's absolutely needed. And the Governor, I have  
14 to believe, took his oath in all sincerity to uphold the  
15 United States Constitution and the State of Michigan  
16 Constitution. I hope he rereads certain sections and  
17 reconsiders his actions.

18 I am finding the actions that have been taken  
19 in regard to filing this action in the bankruptcy court  
20 as overreaching and unconstitutional as it applies to  
21 what the Detroit Emergency Manager Kevyn Orr has done in  
22 conjunction with the Governor.

23 So I find it absolutely necessary to sign this  
24 order of declaratory judgment. I am also going to order,  
25 in addition to what you have crafted here, that a copy of

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1 this order be forwarded to President Obama. I know that  
2 he's watching this, and he's bailed out Detroit. If this  
3 is going to ultimately proceed to bankruptcy without  
4 anyone paying attention to Michigan's Constitution and to  
5 what the legislature drafted and to what the Governor  
6 himself signed into law, then there will ultimately be a  
7 request that Obama will have to look at the pension, so  
8 he might as well follow this. He said in the news that  
9 he's following this. He might as well see what we've all  
10 done here. It's that important to the State of Michigan  
11 and to the thousands of people who will be affected, and  
12 ultimately all of the taxpayers of the state of Michigan  
13 are going to be affected because we will all have to pick  
14 up the tab if this is not honored as it should be.

15 Additionally, I am asked that the temporary  
16 restraining order be quashed and nullified, so that is  
17 now withdrawn, and it expires today at 12:15. And the  
18 order of declaratory judgment is being signed as that  
19 expires.

20 Is there anything else for the record?

21 MR. WERTHEIMER: Not for the Plaintiffs in  
22 Flowers, your Honor.

23 MR. QUASARANO: I'm obliged, your Honor, to  
24 move for a stay of enforcement of the order of

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1 THE COURT: You are obliged. I am obliged as  
2 well to deny.  
3 MR. QUASARANO: I'll have an order ready.  
4 Thank you, Judge.  
5 THE COURT: I look forward to signing all of  
6 those orders today. I will be in until 5 or so. And I  
7 haven't looked at Monday's docket. Have we taken care of  
8 all of Monday or not?  
9 MR. WERTHEIMER: I think, as to the Plaintiffs  
10 in Flowers, you have because our motion was for  
11 preliminary injunction, which you have granted and will  
12 be providing us with that order, and their motion was for  
13 summary disposition, which you've denied. I believe that  
14 was all that was up in Flowers. So that the Flowers case  
15 continues, but there is nothing up for Monday in Flowers.  
16 MR. QUASARANO: Defendants concur in Flowers.  
17 THE COURT: Okay. My law clerk is making  
18 copies, multiple copies, of the order I've just signed.  
19 I am here on a moment's notice as you all have  
20 become accustomed to if you need me.  
21 MR. WERTHEIMER: Thank you, your Honor.  
22 THE COURT: That's all for the record.  
23 MR. CANZANO: Thank you, your Honor.  
24 Appreciate the Court's ability and willingness to help us  
25 out on this urgent time.

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1 THE COURT: Thank you.  
2 (At 12:16 p.m., the matter is  
3 concluded.)  
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1 STATE OF MICHIGAN)  
2 ) SS.  
3 COUNTY OF INGHAM)  
4

5 CERTIFICATE OF REPORTER

6 I, Melinda I. Dexter, Certified Shorthand  
7 Reporter, do hereby certify that the foregoing  
8 **37 pages** comprise an accurate, true, and complete  
9 transcript of the proceedings and testimony taken in the  
10 case of **Gracie Webster, et al.** versus **Richard Snyder, et**  
11 **al., Case Nos. 13-734-CZ and 13-729-CZ, on Friday,**  
12 **July 19, 2013.**

13 I further certify that this transcript of the  
14 record of the proceedings and testimony truly and  
15 correctly reflects the exhibits, if any, offered by the  
16 respective parties. WITNESS my hand this the nineteenth  
17 day of July, 2013.  
18  
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Melinda I. Dexter, RMR, RPR, CSR-4629  
Official Court Reporter  
313 West Kalamazoo  
Post Office Box 40771  
Lansing, Michigan 48901-7971

STATE OF MICHIGAN  
IN THE 30<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF INGHAM

WEBSTER, ETAL

Plaintiff,

v

RICK SNYDER, ETAL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-734-C2

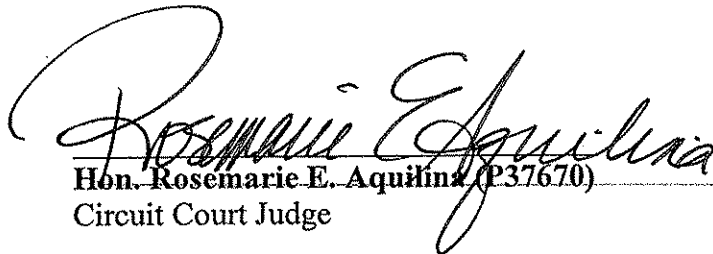
At a session of said Court in the City  
of Lansing, County of Ingham, State of Michigan,  
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina  
30<sup>th</sup> Judicial Circuit Court Judge

Upon review of motion, and a hearing being held in open court, and argument having  
been heard, and being fully apprised of the issues, states the following:

IT IS ORDERED that DEFENDANTS' MOTION FOR SUMMARY  
DISPOSITION IS DENIED FOR THE REASONS STATED  
FROM THE BENCH.

IT IS SO ORDERED.

  
Hon. Rosemarie E. Aquilina (P37670)  
Circuit Court Judge

Approved as to form: \_\_\_\_\_  
Plaintiff / Plaintiff's Attorney

\_\_\_\_\_  
Defendant / Defendant's Attorney

9

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GRACIE WEBSTER and  
VERONICA THOMAS,

Plaintiffs,

vs

Case No. 13-734-CZ  
Hon. Rosemarie Aquilina

THE STATE OF MICHIGAN;  
RICHARD SNYDER, as Governor  
of the State of Michigan; and  
ANDY DILLON, as Treasurer of  
the State of Michigan,

Defendants.

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ORDER OF DECLARATORY JUDGMENT

At a session of said Court held in Ingham County Circuit Court,  
State of Michigan, this 19<sup>th</sup> day of July, 2013.

PRESENT:

*Rosemarie E. Aquilina*  
Circuit Court Judge

Plaintiffs request declaratory relief pursuant to MCR 2.605 concerning (1) the constitutionality under Article IX Section 24 of the Michigan Constitution of the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541, *et seq.* ("PA 436"), insofar as PA 436 permits the Governor to authorize an emergency manager to proceed under chapter 9 of the bankruptcy code, chapter 9 of title 11 of the United States Code, 29 USC 901 to 946 ("Chapter 9") in a manner which threatens to diminish or impair accrued pension benefits; and (2) the

authority of the Governor and/or State Treasurer to authorize an emergency manager to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits.

Plaintiffs have requested, and Defendants have agreed in their Response, that the hearing in this matter may be advanced pursuant to MCR 2.605(D) and the court finds that expedited treatment is appropriate and that final declaratory relief is proper at this time.

The Court having reviewed the parties filings and submissions, and having heard oral argument by counsel for the parties, and being otherwise fully advised in the premises, and for the reasons stated on the record,

IT IS HEREBY ORDERED:

PA 436 is unconstitutional and in violation of Article IX Section 24 of the Michigan Constitution to the extent that it permits the Governor to authorize an emergency manager to proceed under Chapter 9 in any manner which threatens to diminish or impair accrued pension benefits; and PA 436 is to that extent of no force or effect;

The Governor is prohibited by Article IX Section 24 of the Michigan Constitution from authorizing an emergency manager under PA 436 to proceed under Chapter 9 in a manner which threatens to diminish or impair accrued pension benefits, and any such action by the Governor is without authority and in violation of Article IX Section 24 of the Michigan Constitution.

On July 16, 2013, City of Detroit Emergency Manager Kevyn Orr submitted a recommendation to Defendant Governor Snyder and Defendant Treasurer Dillon pursuant to Section 18(1) of PA 436 to proceed under Chapter 9, which together with the facts presented in Plaintiffs' filings, reflect that Emergency Manager Orr intended to diminish or impair accrued pension benefits if he were authorized to proceed under Chapter 9. On July 18, 2013, Defendant

Governor Snyder approved the Emergency Manager's recommendation without placing any contingencies on a Chapter 9 filing by the Emergency Manager; and the Emergency Manager filed a Chapter 9 petition shortly thereafter. By authorizing the Emergency Manager to proceed under Chapter 9 to diminish or impair accrued pension benefits, Defendant Snyder acted without authority under Michigan law and in violation of Article IX Section 24 of the Michigan Constitution.

In order to rectify his unauthorized and unconstitutional actions described above, the Governor must (1) direct the Emergency Manager to immediately withdraw the Chapter 9 petition filed on July 18, and (2) not authorize any further Chapter 9 filing which threatens to diminish or impair accrued pension benefits.

*A copy of this Order shall be transmitted to President Obama.*

*It is so Ordered.*

*Rosemarie E. Aquilina*  
Circuit Court Judge *P37670*

STATE OF MICHIGAN  
IN THE 30<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF INGHAM

WEBSTER, ET AL

Plaintiff,

v

RICK SNYDER, ET AL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-734-C2

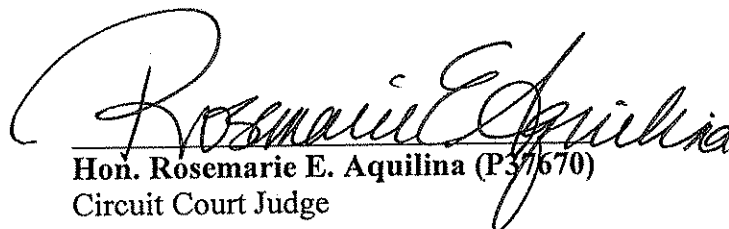
At a session of said Court in the City  
of Lansing, County of Ingham, State of Michigan,  
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina  
30<sup>th</sup> Judicial Circuit Court Judge

Upon review of motion, and a hearing being held in open court, and argument having  
been heard, and being fully apprised of the issues, states the following:

IT IS ORDERED that DEFENDANTS' MOTION TO STAY, PENDING  
APPEAL, THE ENFORCEMENT OF THE COURT'S ORDER  
GRANTING PLAINTIFFS' MOTION FOR DECLARATORY  
JUDGMENT AND THE ORDER OF DECLARATORY JUDGMENT  
IS DENIED FOR THE REASONS STATED FROM THE  
BENCH.

IT IS SO ORDERED.

  
Hon. Rosemarie E. Aquilina (P37670)  
Circuit Court Judge

Approved as to form: \_\_\_\_\_  
Plaintiff / Plaintiff's Attorney

\_\_\_\_\_  
Defendant / Defendant's Attorney