

Case Docket Number Search Results - 317286

APPELLATE DOCKET SHEET**COA Case Number: 317286**

GRACIE WEBSTER V STATE OF MICHIGAN

1	WEBSTER GRACIE	PL-AE	RET (30417) CANZANO JOHN R 400 GALLERIA OFFICENTRE SUITE 117 SOUTHFIELD MI 48034 (248) 354-9650
2	THOMAS VERONICA	PL-AE	SAM
3	MICHIGAN STATE OF	DF-AT	AG (55439) MEINGAST HEATHER S 525 W OTTAWA STREET PO BOX 30736 LANSING MI 48909 (517) 373-6889
4	GOVERNOR	DF-AT	AG
5	STATE TREASURER	DF-AT	SAM

COA Status: Case Concluded; File Archived**Case Flags:** Emergency; Closed due to Bankruptcy Stay

07/19/2013 1 App For Leave to Appeal - Civil
Proof of Service Date: 07/19/2013
Answer Due: 07/24/2013
Fee Code: STATE
Immediate Consideration: Y
Motion For Stay: Y
Attorney: 55439 - MEINGAST HEATHER S

07/18/2013 2 Order Appealed From
From: INGHAM CIRCUIT COURT
Case Number: 13-000734-CZ

Trial Court Judge: 37670 AQUILINA ROSEMARIE E

Nature of Case:

Temporary Restraining Order

07/19/2013 3 Submitted On Special Motion Docket

Event: 1 App For Leave to Appeal - Civil

District: L

Item #: 3

07/19/2013 4 LCt Order

Date: 07/18/2013

For Party: 3 MICHIGAN STATE OF DF-AT

Attorney: 55439 - MEINGAST HEATHER S

Comments: Order denying defendants' motion for stay

07/19/2013 6 Telephone Contact

For Party: 3 MICHIGAN STATE OF DF-AT

Attorney: 55439 - MEINGAST HEATHER S

Comments: When contacting Heather Meingast, if she is not available, please call / Lindstrom at 373-1124

07/19/2013 7 LCt Order

Date: 07/19/2013

For Party: 3 MICHIGAN STATE OF DF-AT

Attorney: 55439 - MEINGAST HEATHER S

Comments: lc order deny stay, lc order deny summ disposition, lc order re: declar judgment

07/19/2013 8 Correspondence Received

For Party: 3 MICHIGAN STATE OF DF-AT

Attorney: 55439 - MEINGAST HEATHER S

Comments: corresp to clerk

07/19/2013 9 Telephone Contact

For Party: 1 WEBSTER GRACIE PL-AE

Attorney: 30417 - CANZANO JOHN R

Comments: confirmed service; answers due 7/24/2013

07/22/2013 10 Telephone Contact

Comments: L. Fagins of Detroit Law Dept re: City will file Notice of Stay Due to Bi today

07/23/2013 11 Order: Stay - Grant

View document in PDF format

Event: 1 App For Leave to Appeal - Civil

Panel: MJK,PMM,SLB

Immediate Consideration Granted

Attorney: 55439 - MEINGAST HEATHER S

Comments: TRO order stayed; stay all further proceedings; answr to application du wld grant leave

07/23/2013 12 Verbal Order To Parties-Phone

07/26/2013 13 Correspondence Received

For Party: 3 MICHIGAN STATE OF DF-AT
Attorney: 55439 - MEINGAST HEATHER S
Comments: corresp from AG, copy of bankruptcy order

07/26/2013 14 Correspondence Received

For Party: 1 WEBSTER GRACIE PL-AE
Attorney: 30417 - CANZANO JOHN R
Comments: AE is advising that they will not be filing answer to the app due to the Court order

07/29/2013 15 Order: Case Closed - Bankruptcy Stay - Subject to Reopen

View document in PDF format
Event: 1 App For Leave to Appeal - Civil
Panel: MJK,PMM,SLB
Attorney: 55439 - MEINGAST HEATHER S

07/29/2013 16 Verbal Order To Parties-Phone

08/09/2013 17 Miscellaneous Receipt

Date: 08/09/2013
Check #: 78152
Fee: \$73.00
Receipt #: 3172861
Comments: 146 pgs scanned

09/16/2013 18 File Closed-Out

File Location: F

Case Listing Complete

RECEIVED by Michigan Court of Appeals 7/19/2013 2:29:26 PM

Trial Court/Tribunal Name:	Court of Appeals, State of Michigan	CASE NO. Trial Court/Tribunal: Court of Appeals:
Jurisdictional Checklist		

Case Name: Gracie Webster & Veronica Thomas v Rick Snyder, Andy Dillon, State of Michigan

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

- ☒ 1. A **signed** claim of appeal showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]
- ☒ 2. A filing fee of \$375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)
- ☒ 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)
- ☐ 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through g is required).
 - ☐ a. No transcript will be filed. [MCR 7.204(C)(2) & AO 2004-5 ¶ 8(A)(1).]
 - ☐ b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]
 - ☒ c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
 - ☐ d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
 - ☐ e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
 - ☐ f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
 - ☐ g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]
- ☒ 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (**Even if a party is not an appellee, they must be served.**)
- ☒ 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

- ☒ The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: MCR 7.202(6)(a)(i)
- ☒ The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: MCR 2.605(E)

STATE OF MICHIGAN
IN THE COURT OF APPEALS

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs-Appellees,

v

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-Appellants,

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

**Relief requested by 5:00 p.m. on
July 19, 2013, or by 9:00 a.m.,
July 22, 2013, which is the date
set for a show cause hearing in
this matter.**

**DEFENDANTS' MOTIONS FOR STAY PENDING APPEAL, STAY OF
PROCEEDINGS, AND FOR IMMEDIATE CONSIDERATION**

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Matthew Schneider (P62190)
Chief Legal Counsel

Margaret A. Nelson (P30342)
Heather S. Meingast (P55439)
Assistant Attorneys General
Attorneys for Defendants-Appellants
P.O. Box 30754
Lansing, MI 48909
(517) 373-6889

Dated: July 19, 2013.

Defendants Governor Rick Snyder, Treasurer Andy Dillon, and the State of Michigan, by and through their attorneys, Solicitor General, John J. Bursch, and Assistant Attorneys General Heather S. Meingast and Margaret A. Nelson, bring these combined motions pursuant to MCR 7.209(A)(2)-(3), (D), and MCR 7.211(C)(6). Defendants state the following in support of these motions:

1. On July 3, 2013, Plaintiffs, as beneficiaries of the City of Detroit's pension system, brought 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 section 18(1), MCL 141.1558(1), permits the Governor to authorize a proceeding in Chapter 9 bankruptcy, allegedly in violation of article 9, § 24 of the 1963 Constitution.

2. Plaintiffs alleged that their rights under article 9, § 24 were threatened, and they sought an expedited declaratory judgment and order precluding the Governor or the Treasurer from authorizing Detroit's Emergency Manager to proceed under Chapter 9 of the federal Bankruptcy Code.

3. The trial court scheduled a hearing on Plaintiffs' motion for expedited treatment of their Complaint on July 22, 2013.

4. On July 16, 2013, the Emergency Manager for the City recommended to the Governor that the City be authorized to proceed under Chapter 9 of Title 11 to the United States Code, as permitted by section 18(1) of the Act. And late in the day on July 18, 2013, the Governor approved the recommendation and authorized the Emergency Manager to proceed on behalf of the City in bankruptcy.

5. The same day, at 4:06 p.m., the Emergency Manager filed the City's petition with the United States Bankruptcy Court for the Eastern District of Michigan. Before the actual filing, however, Plaintiffs filed an ex parte motion for TRO with the trial court. Defendants were notified of the request for TRO, and appeared at the trial court to argue against its issuance. Ultimately, the trial court entered the TRO against Defendants at 4:25 p.m. despite having knowledge of the City's bankruptcy filing. Defendants' motion to stay was denied.

6. The trial court entered the following TRO:

Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an unconditional 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 which has already occurred that may:* (i) cause the accrued financial benefits of the Retirement System 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. [Exhibit 1 (emphasis added).]

7. The trial court abused its discretion in entering the TRO because this case is moot and Plaintiffs did not demonstrate a substantial likelihood of success on the merits of their claim that the Act is unconstitutional under article 9, § 24 because they lack standing to sue; their claim is unripe; and, their facial constitutional challenge fails as a matter of a law.

8. Here, Plaintiffs' Complaint asked the trial court to declare the Act unconstitutional because it permits the Governor to authorize the City to proceed in Chapter 9 bankruptcy, allegedly in violation of article 9, § 24. Plaintiffs asked the

Court to declare or prohibit the Governor and Treasurer from authorizing the bankruptcy.

9. But these requests are moot because the Governor has now authorized the Emergency Manager to proceed in bankruptcy, and the petition has been filed. The Defendants have no further duties with respect to the City's bankruptcy proceeding in federal court. Thus, there is no judgment the trial court could issue in this case that would have a practical effect on the alleged controversy. *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010). Indeed, the TRO will have no practical effect with respect to Plaintiffs' claims because, again, the Defendants have no further duties pertaining to the bankruptcy.

10. Plaintiffs' request for injunctive relief was also unwarranted because the Michigan Supreme Court has instructed that "[o]nly when declaratory relief has failed should the courts even begin to consider" injunctive relief against executive officials like the Governor and Treasurer. *Strauss v Governor*, 459 Mich 526, 532; 592 NW2d 53 (1999), quoting *Straus v Governor*, 230 Mich App 222; 583 NW2d 520 (1998) (citation omitted). That has not happened here. Their request for an injunction should have been denied as premature.

11. Plaintiffs failed to show a substantial likelihood of success because they lack standing to sue under any of the standards articulated in *Lansing School Education Ass'n v Lansing Board of Education*, 487 Mich 349, 355, 372; 792 NW2d 686 (2010). Plaintiffs' fears that their pension benefits will be detrimentally impacted by the City's bankruptcy proceeding are speculative at this time because

there is no way of knowing whether the pension funds will become part of any plan confirmed by the federal bankruptcy court. And Plaintiffs, as creditors, have an opportunity to raise their claim in the context of the bankruptcy proceeding.

12. Plaintiffs also failed to show a substantial likelihood of success on the merits because their claim is not ripe for review. *Michigan Chiropractic Council v Comm'r of Ins*, 475 Mich 363, 378-379; 716 NW2d 561 (2006). Plaintiffs' contention that a future Chapter 9 bankruptcy would present 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 their pensions will be impaired as a result of a confirmed federal bankruptcy plan.

13. Finally, Plaintiffs failed to show a substantial likelihood of success on the merits because their constitutional facial challenge fails as a matter of law. The Act does not require or compel any particular treatment of pension funds during a Chapter 9 bankruptcy. Thus, nothing in the Act compels or requires any impairment of Plaintiffs' pension benefits contrary to article 9, § 24. Moreover, Plaintiffs cannot show "that no set of circumstances exists under which the [a]ct would be valid." *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11; 740 NW2d 444 (2007), since the Governor could authorize a bankruptcy contingent upon the preservation of pension funds. MCL 141.1558(1).

14. While Plaintiffs failed in their burden, Defendants demonstrated that their harm should an injunction issue outweighed the harm to Plaintiffs absent 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 the TRO harms Defendants and the operation of state government. The grant of this relief disregarded separation of powers principles. Const 1963, art 3, § 2. The relief also unlawfully intrudes on the Governor's and Treasurer's executive powers because it is both overbroad and vague.

15. Most important, the public interest is harmed by the injunction as well. Due to the City of Detroit's unsustainable debt load (estimated at \$18-\$20 *billion*, or \$24,000 per resident, more than all but 11 *states*), the City has lost the ability to provide even the most basic services to its residents. Citizens wait an average of 58 minutes for the police to respond to their calls. Only 8.7% of criminal cases are solved. In the first quarter of 2013, 40% of the City's street lights were not functioning, and only one-third of the City's ambulances were in service. This is a city that needs and deserves a fresh start. By ignoring fundamental principles of justiciability, and the basic elements required to grant injunctive relief, the trial court jeopardizes public safety and welfare. Based on these circumstances, the trial court abused its discretion in granting the TRO, and Defendants respectfully request that the Court immediately dissolve the injunctive order.

16. Defendants also respectfully request that the trial court stay all trial court proceedings in this case and the two companion cases for the reasons set forth above.

17. Finally, Defendants' request immediate consideration of their motions under MCR 7.211(C)(6). As demonstrated above, the trial court abused its discretion in entering the TRO against Defendants, and Defendants will be harmed if the unlawful injunction is allowed to stand.¹ Furthermore, the trial court has scheduled a hearing on July 22, 2013 at 9:00 a.m., for Defendants to show cause in this case and in *The General Retirement System of the City of Detroit v Orr et al.*, 13-768-CZ, also on appeal, as to why a declaratory judgment and/or a preliminary injunction should not issue against Defendants in these matters. Therefore, Defendants request relief on their motions by 5:00 p.m. on July 19, 2013, or at the latest by 9:00 a.m. on July 22, 2013.

WHEREFORE, Defendants Governor Rick Snyder, State Treasurer Andy Dillon, and the State of Michigan, respectfully request that this Court by the close of business today or by 9:00 a.m. on July 22, 2013 (1) grant the application for leave to appeal, (2) immediately dissolve and/or stay the TRO, (3) stay all proceedings in this trial court action and its two companion cases, and (4) grant immediate consideration under MCR 7.211(C)(6). Nothing less is at stake than the future of Michigan's largest city.

¹ MCR 7.211(C)(6) allows this Court to consider the motions without waiting seven days if the Defendants serve counsel or the parties in person. Defendants have served some counsel in person, but were only able to serve others by email given the proximity of their offices.

Respectfully submitted,

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Matthew Schneider (P62190)
Chief Legal Counsel

s/Margaret A. Nelson (P30342)
s/Heather S. Meingast (P55439)
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Dated: July 19, 2013.

EXHIBIT 1

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,

Grace Webster
and *Veronica Thomas*

Plaintiffs,

Case No. ~~13-768-GZ~~ *13-000734-CZ*
C30

vs.

State of Michigan
~~KEVIN 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,*

Hon. *Rosemarie*
Aquilina

Defendants.

Treasure in his official capacity

Ronald A. King (P45088)
Aaron O. Matthews (P64744)
Michael J. Pattwell (P72419)
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
Attorneys for Plaintiffs

John R Canzano P30417
McKnight, McCloy Canzano Smith
+ 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 *and having appeared*
urging the making
CIRCUIT COURT JUDGE *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 petition) that may: (i) cause the accrued financial benefits of the Retirement Systems 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 whereby Defendants shall show cause why a Declaratory Judgment and/or 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

EXHIBIT 2

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
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
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248-354-9650
jcanzano@michworklaw.com

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 10th 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 10th 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.) 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.)

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
jcanzano@michworklaw.com

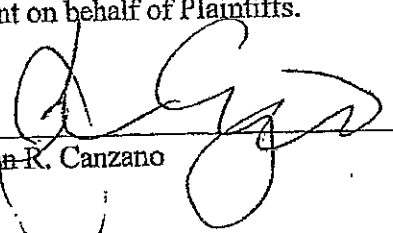
Date: July 3, 2013

VERIFICATION

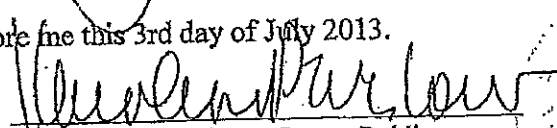
STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

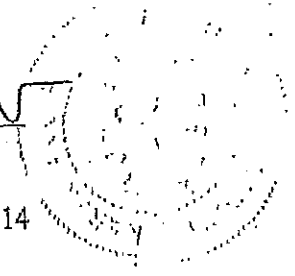
John R. Canzano, being first duly sworn, deposes and states he is the attorney representing Plaintiffs herein; that he has read the foregoing verified complaint by him subscribed for and on

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



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EXHIBIT 3



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

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July 18, 2013

Page 3 of 4

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,



Richard D. Snyder
Governor
State of Michigan

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EXHIBIT 4

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 1

"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(b):
[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. Helman (OH 0038271)
Heather Lennax (OH 0059649)
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Facsimile: (216) 579-0212
dghelman@jonesday.com
hlennax@jonesday.com

Bruce Bennett (CA 105430)
JONES DAY
555 South Flower Street
Fifteenth Floor
Los Angeles, CA 90071
Telephone: (213) 243-2382
Facsimile: (213) 243-2539
bbennett@jonesday.com

Jonathan S. Green (MI P33140)
Stephen S. LaPlante (MI P48063)
MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.
150 West Jefferson
Suite 2500
Detroit, MI 48226
Telephone: (313) 963-6420
Facsimile: (313) 496-7500
jgreen@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):
City of Detroit, Michigan

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):
38-6004606Last 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):
2 Woodward Avenue
Suite 1126
Detroit, Michigan

Street Address of Joint Debtor (No. and Street, City, and State):

48226

ZIP CODE

County of Residence or of the Principal Place of Business:
Wayne

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

Type of Debtor
(Form of Organization)
(Check one box.)

- ☐ Individual (includes Joint Debtors)
See Exhibit D on page 2 of this form.
- ☐ Corporation (includes LLC and LLP)
- ☐ Partnership
- ☒ Other (If debtor is not one of the above entities, check this box and state type of entity below.)
Municipality

Nature of Business
(Check one box.)

- ☐ Health Care Business
- ☐ Single Asset Real Estate as defined in 11 U.S.C. § 101(51B)
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank
- ☒ Other

Chapter of Bankruptcy Code Under Which
the Petition is Filed (Check one box.)

- ☐ Chapter 7
- ☒ Chapter 9
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13
- ☐ Chapter 15 Petition for Recognition of a Foreign Main Proceeding
- ☐ Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding

Chapter 15 Debtors

Country of debtor's center of main interests:

Each country in which a foreign proceeding by, regarding, or against debtor is pending:

Tax-Exempt Entity
(Check box, if applicable.)

- ☐ Debtor is a tax-exempt organization under title 26 of the United States Code (the Internal Revenue Code).

Nature of Debts
(Check one box.)

- ☐ 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."
- ☒ Debts are primarily business debts.

Filing Fee (Check one box.)

- ☒ Full Filing Fee attached.
- ☐ 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.
- ☐ Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.

Chapter 11 Debtors

Check one box:

- ☐ Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).
- ☐ Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).

Check if:

- ☐ 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:

- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).

Statistical/Administrative Information

- ☒ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors

- ☐ 1-49 ☐ 50-99 ☐ 100-199 ☐ 200-999 ☐ 1,000-5,000 ☐ 5,001-10,000 ☐ 10,001-25,000 ☐ 25,001-50,000 ☐ 50,001-100,000 ☒ Over 100,000

Estimated Assets

- ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☒ More than \$1 billion

Estimated Liabilities

- ☐ \$0 to \$50,000 ☐ \$50,001 to \$100,000 ☐ \$100,001 to \$500,000 ☐ \$500,001 to \$1 million ☐ \$1,000,001 to \$10 million ☐ \$10,000,001 to \$50 million ☐ \$50,000,001 to \$100 million ☐ \$100,000,001 to \$500 million ☐ \$500,000,001 to \$1 billion ☒ More than \$1 billion

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COURT USE ONLY

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13-5246 SW Doc 1322-12 Filed 07/16/13 Entered 07/16/13 16:08:22 Page 29 of 29

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

Exhibit A
(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.)

☐ Exhibit A is attached and made a part of this petition.

Exhibit B
(To be completed if debtor is an individual whose debts are primarily consumer debts.)

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).

X

Signature of Attorney for Debtor(s) (Date)

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.)

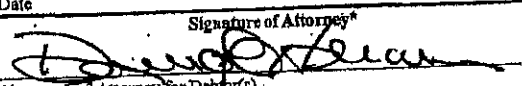
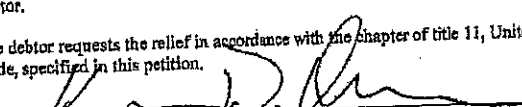
☐ Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)

(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.

B1 (Official Form 1) (04/13)

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): <u>City of Detroit, Michigan</u>	
Signature(s) of Debtor(s) (Individual/Join) 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 _____		Signature of a Foreign Representative 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)	
Signature of Attorney* 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 dghelman@jonesday.com hlennox@jonesday.com </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 bbennett@jonesday.com </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 jgreen@millercanfield.com laplante@millercanfield.com </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.		Signature of Non-Attorney Bankruptcy Petition Preparer 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.	
Signature of Debtor (Corporation/Partnership) 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 Kevin A. Orr Printed Name of Authorized Individual Emergency Manager, City of Detroit 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 th	Residential
3654 30 th	Residential
12032 Abington	Residential
2668 Anderson	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	Residential
6435 Julian	Commercial
8545 Kenney	Residential
13989 Kentucky	Residential
13301 Kercheval	Commercial
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	Residential
15744 Livernois	Commercial
12558 Longview	Residential
12767 Loretto	Residential
8881 Louis	Residential
13441 Lumpkin	Residential
14242 Mack (a/k/a 3181 Lakewood)	Commercial
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	Residential
4766 McDougall	Commercial
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	Residential
2101 Puritan	Commercial
5807 Renville	Residential
1957 Richton	Residential
534 W. Robinwood	Residential
6119 Rohns	Residential
14381 Rosa Parks Blvd.	Unknown
11735 Rutherford	Residential
6835 Seminole	Residential
5737 E. Seven Mile	Commercial
2008 Sharon	Residential
13422 Shields	Residential
10201 Shoemaker	Commercial
10956 Shoemaker	Commercial
6750 Sparta	Residential
14291 Spring Garden	Commercial
4467 St. Clair	Residential
6915 St. John	Residential
7180 St. John	Residential
18805 St. Louis	Commercial
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	Residential
9526 Van Dyke	Commercial
2030 Vinewood	Residential
5757 Vinewood	Commercial
15451 Virgil	Residential
15300 E. Warren (Bldgs. 101 & 102)	Commercial
64 Watson	Commercial
6414 Willette	Unknown
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
Bellevue 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

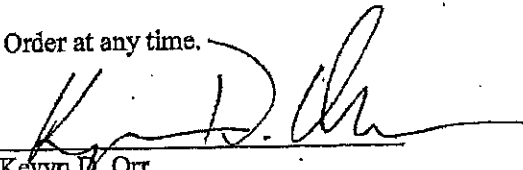
The Governor has provided the State Treasurer and the EM with his written approval of the Recommendation, a true and correct copy of which is attached hereto as Exhibit A, thereby authorizing the City to proceed under chapter 9.

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

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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

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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

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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

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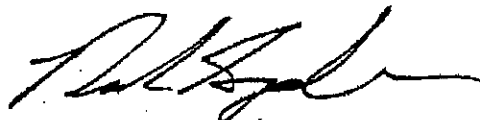
Contingencies

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,



Richard D. Snyder
Governor
State of Michigan

EXHIBIT 5

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)
McKNIGHT, McCLOW, CANZANO,
SMITH & RADTKE, P.C.
Attorneys for Plaintiffs
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Southfield, MI 48034
248-354-9650
jcanzano@michworklaw.com

**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)
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400 Galleria Officentre, Suite 117
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jcanzano@michworklaw.com

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
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.
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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 18.¹ 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

¹ 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 Plaintiffs' 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 (PB0417)
Attorneys for Plaintiffs
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Southfield, MI 48034
248-354-9650
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Date: July 3, 2013

EXHIBIT 6

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

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs,

No. 13-734-CZ

HON. ROSEMARIE AQUILINA

v

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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Thomas Quasarano (P27982)
Brian Devlin (P34685)
Assistant Attorneys General
Attorney for Defendants
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devlinb@michigan.gov

ORDER DENYING DEFENDANTS' REQUEST FOR STAY

At a session of the Circuit Court
On 18 July 13 before
HON. ROSEMARIE E. AQUILINA

Defendants having requested a Stay of Plaintiffs' request for Preliminary
Injunction and at the Show Cause Hearing having been held on July 18, 2013;

IT IS HEREBY ORDERED, for the reasons stated on the record, that

~~ORDER TO ENFORCEMENT OF ORDER GRANTING PLAINTIFFS~~
Defendants' Request for a Stay of this pending appeal is denied.
~~MOTION FOR PRELIMINARY INJUNCTION AND OTHER RELIEF DESCRIBED~~
~~IN THE ORDER IS DENIED,~~

IT IS SO ORDERED

Rosemarie E. Aquilina
HON. ROSEMARIE E. AQUILINA
COURT OF CLAIMS JUDGE
P37670

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

July 19, 2013

Ms. Kimberly S. Hauser
Michigan Court of Appeals
Hall of Justice
925 W. Ottawa St.
P.O. Box 30022
Lansing, MI 48909-7522

Re: *Webster v Snyder*, Ingham County Circuit Court No. 13-734-CZ, COA Docket Nos 317286, 317292; *Flowers v Snyder*, Ingham County Circuit Court No. 13-729-CZ, COA Docket No. 317285; *The General Retirement System of the City of Detroit v Orr*, Ingham County Circuit Court No. 13-768-CZ, COA Docket No. 317284;

Dear Clerk Hauser:

As the Court is aware from our filings on behalf of Governor Snyder, Emergency Manager Orr, Treasurer Dillon, and the State of Michigan earlier today, Judge Aquilina of the Ingham County Circuit Court issued temporary-restraining and preliminary-injunction orders yesterday after the Governor had already authorized and Emergency Manager Orr had already filed a Chapter 9 bankruptcy petition on behalf of the City of Detroit. In our three applications for leave to appeal and accompanying motions, we ask the Court to stay the effect of the orders and stay all further trial-court proceedings.

A short time ago, Judge Aquilina concluded additional proceedings in these matters. In *Webster v Snyder*, Judge Aquilina entered final judgment on plaintiffs' claim for declaratory relief, denied the State's motions for summary disposition and for stay, and directed that her orders be transmitted directly to the President of the United States. In *Flowers v Snyder*, Judge Aquilina amended her previously issued preliminary injunction, and denied the State's motions for summary disposition and again denied motions for stay.

These are extraordinary actions, because Judge Aquilina has no legal basis to enter orders of any kind. As explained in the application for leave filed in *The*

[Addressee]

Page 2

[Date]

General Retirement System of the City of Detroit v Orr, there is an automatic stay in place by virtue of the bankruptcy filing. In addition, Judge Aquilina did not even consider the factors for injunctive relief. And plaintiffs cannot show a likelihood of success on the merits (their claims are not yet ripe and can be litigated fully in the bankruptcy court), there is no danger of irreparable harm (for the same reasons), the harm to defendants' executive branch power outweighs any potential harm to plaintiffs (since they can litigate all of their claims in the bankruptcy court), and the harm to the public is immense.

These proceedings could not be more high stakes. The City of Detroit is in the most desperate financial straits, with estimated debt of \$18 to \$20 billion, roughly \$24,000 per City resident. If Detroit were a state, its debt load would exceed that of 43 other states. And due to the City of Detroit's unsustainable debt load, the City has lost the ability to provide even the most basic services to its residents. Citizens wait an average of 58 minutes for the police to respond to their calls. Only 8.7% of criminal cases are solved. In the first quarter of 2013, 40% of the City's street lights were not functioning, and only one-third of the City's ambulances were in service. The bankruptcy is essential to Detroit being able to serve the basic health and safety needs of its citizens.

Enclosed is the final judgment in the *Webster* case, as well as all other orders entered today by the trial court in these cases, and accompanying motion for emergency consideration and consolidation. Defendants seek an immediate stay of *all* trial court orders in these cases, and a stay of *all* further trial court proceedings. I am available 24-7 at 517.898.5986 if the Court would like to conduct a telephonic hearing, or requires any additional information.

Sincerely,

/s/John J. Bursch

Michigan Solicitor General
Solicitor General Bureau

[Writer/typist initials]

[Enclosure or Enclosures or Enc. or Enc. (#)]

cc: [Name]

[Tracer Line]

RECEIVED by Michigan Court of Appeals 7/19/2013 3:33:08 PM

STATE OF MICHIGAN
IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

FLOWERS, ET AL

Plaintiff,

v

RICK SNYDER, ET AL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-729-CZ

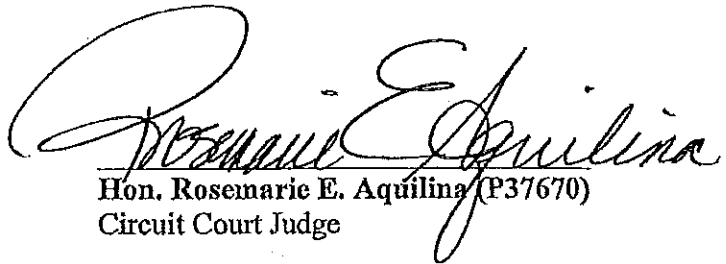
At a session of said Court in the City
of Lansing, County of Ingham, State of Michigan,
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina
30th 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
ENFORCEMENT OF
APPEAL, THE COURT'S ORDER GRANTING PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION AND THE ORDER
OF PRELIMINARY INJUNCTION 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

STATE OF MICHIGAN

IN THE 30TH CIRCUIT COURT FOR THE COUNTY OF INGHAM

FLOWERS, ET AL

Plaintiff,

v

RICK SNYDER, ET AL

Defendant.

ORDER

HON. ROSEMARIE E. AQUILINA

Docket No: 13-729-CZ

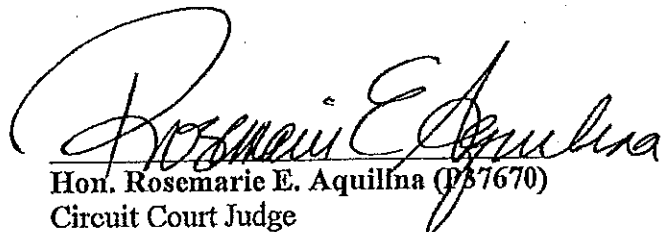
At a session of said Court in the City
of Lansing, County of Ingham, State of Michigan,
this 19 day of July, 2011.

PRESENT: The Honorable Rosemarie E. Aquilina
30th 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 (PB7670)
Circuit Court Judge

Approved as to form: _____
Plaintiff / Plaintiff's Attorney

Defendant / Defendant's Attorney

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

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

Plaintiffs,

vs.

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.

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Thomas Quasarano (P27982)
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jabritton@sachswaldman.com

Amended
PRELIMINARY INJUNCTION

At a session of the Court, held in the City of Lansing,
County of Ingham, State of Michigan

on 19 July 13

PRESENT: Hon. Rosemarie E. Aquilina
CIRCUIT COURT JUDGE

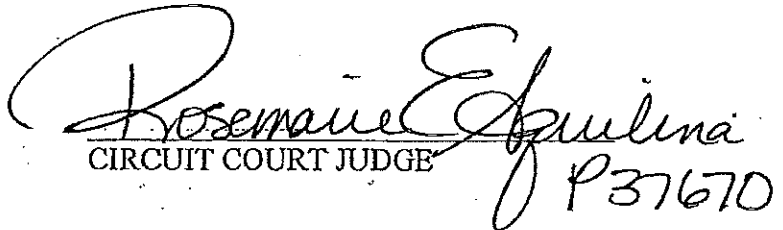
This matter having come before the Court on Plaintiffs' Amended Verified Complaint and Motion for a Preliminary Injunction; the Court being fully advised in the premises; Plaintiffs having shown a likelihood of success on the merits of the claims in Plaintiffs' Complaint; Plaintiffs having adequately shown that a failure to immediately issue a Preliminary Injunction will cause irreparable injury to Plaintiffs by permitting the Governor and the State Treasurer ("Defendants") to authorize or otherwise proceed with Chapter 9 bankruptcy petition on behalf of the City of Detroit, or to aid in such a proceeding, wherein Plaintiffs' accrued financial benefits will be impaired; 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 preliminarily enjoined and restrained from taking any action as to the authorization of a Chapter 9 bankruptcy proceeding for the City of Detroit and/or the filing of a Chapter 9 bankruptcy petition, or any action in aid and assistance as to the same;

IT IS FURTHER ORDERED that this preliminary injunction shall remain in full force and effect until further order of the Court.

IT IS SO ORDERED.


CIRCUIT COURT JUDGE P37670

DATE: 19 July 13

TIME: 11:30 a.m.

STATE OF MICHIGAN
IN THE 30TH 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

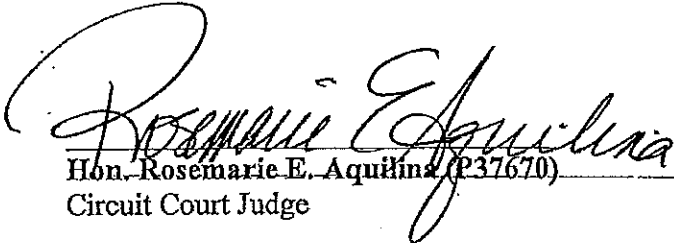
At a session of said Court in the City
of Lansing, County of Ingham, State of Michigan,
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina
30th 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

STATE OF MICHIGAN

IN THE 30TH 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

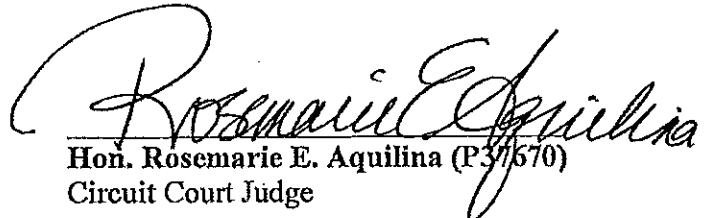
At a session of said Court in the City
of Lansing, County of Ingham, State of Michigan,
this 19 day of July, 2011

PRESENT: The Honorable Rosemarie E. Aquilina
30th 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

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 19th 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. Aquilina
P37670
Circuit Court Judge

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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,

Plaintiffs,

Case No. 13-768-CZ

vs.

Hon. Rosemarie E. 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.

Ronald A. King (P45088)
Aaron O. Matthews (P64744)
Michael J. Pattwell (P72419)
CLARK HILL PLC
212 East Grand River Avenue
Lansing, Michigan 48906
(517) 318-3100
Attorneys for Plaintiffs

AMENDED TEMPORARY RESTRAINING ORDER

At a session of said Court, held in the City of
Lansing, County of Ingham, State of Michigan
on 19 July 13

PRESENT: HON.

Rosemarie E. Aquilina
CIRCUIT COURT JUDGE

This matter having come before the Court on Plaintiffs' Complaint with verification and
Ex-Parte Motion for a Temporary Restraining Order and oral *ex-parte* motion for amendment to
the Temporary Restraining Order entered by the Court on July 18, 2013; the Court being fully

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advised in the premises; Plaintiffs having shown a likelihood of success on the merits of the claims in Plaintiffs' Complaint; Plaintiffs 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, plan of adjustment, and/or other bankruptcy filings whereby Plaintiffs' accrued financial benefits may be impaired; 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^{and their agents and representatives} are immediately and temporarily enjoined and restrained from taking any further action that may: (i) cause or further the accrued financial benefits of the Retirement Systems 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 abrogates Article IX, section 24, of the Michigan Constitution;

IT IS FURTHER ORDERED that Defendants^{and their agents and representatives} are immediately and temporarily enjoined and restrained from filing with the United States Bankruptcy Court a plan of adjustment or any other filing pursuant to Chapter 9 of the United States bankruptcy code which seeks to impair or diminish the accrued financial benefits of the Retirement Systems or their participants;

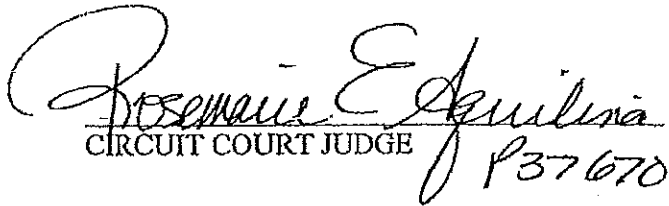
IT IS FURTHER ORDERED that the Court shall hold a hearing on July 22, 2013 at 9:00 a.m. whereby Defendants shall show cause why a Preliminary Injunction shall not issue; and

IT IS FURTHER ORDERED that this temporary restraining order shall remain in full force and effect until 22 Aug. 2013 at 5:00 p.m.

IT IS SO ORDERED.

DATE: 19 July 13

TIME: 12³⁰ PM


CIRCUIT COURT JUDGE P37670

RECEIVED by Michigan Court of Appeals 7/19/2013 12:30:05 PM

Lower Court or Tribunal Ingham Circuit Court	STATE OF MICHIGAN IN THE COURT OF APPEALS Cover Sheet	CASE NO.	Year	Number	Case Type
		CIRCUIT:	13	734	CZ
		COURT OF APPEALS:			

Filing Party Last Name or Business/Entity/Agency Name
Michigan Department of Attorney General

Filing Party First Name M.I.

Address (Street 1, Street 2, City, State, and ZIP Code)

Attorney Last Name
Meingast

Attorney First Name M.I. P Number
Heather 55439

Address (Street 1, Street 2, City, State, and ZIP Code)
525 W. Ottawa, 4th Floor

Lansing MI 48913

Attorney Telephone Number
(517)373-4875

Type	Filename/Description	Filing Fee	Doc Fee	Total This Filing
Application	Emergency Application for Leave to Appeal	\$5.00	---	\$5.00

Fee Substitute/Alternate Payment 3% Service Fee: \$0.15
Total All Filings: \$5.15

- Reason:
- ☐ Appointed Counsel
 - ☐ Motion To Waive Fee
 - ☐ Fees Waived in this Case
 - ☒ MI InterAgency Transfer
 - ☐ No Fee per MCR 7.203(F)(2)

Filer Office Use Only: 2013

RECEIVED by Michigan Court of Appeals 7/19/2013 12:30:05 PM

Lower Court or Tribunal Ingham Circuit Court	STATE OF MICHIGAN IN THE COURT OF APPEALS Proof of Service	CASE NO.		
		Year 13	Number 734	Case Type CZ
		CIRCUIT: COURT OF APPEALS:		

Case Name: Gracie Webster and Veronica Thomas v Rick Snyder, Andy Dillon, and State of Michigan

On 7/19/2013, one copy of the following documents:

Application Emergency Application for Leave to Appeal

was delivered to the persons listed below:

Date

7/19/2013

Signature

/s/Aimee L. Nelson

Bar Number	Name	Delivery Method	Service Address
P- 30417	Canzano, John R	Email	jcanzano@michworklaw.com

STATE OF MICHIGAN
IN THE COURT OF APPEALS

GRACIE WEBSTER and
VERONICA THOMAS,

Plaintiffs-Appellees,

v

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-Appellants,

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

**This appeal involves a ruling
prohibiting State governmental
action. Emergency relief
requested under MCR 7.205(E).**

ACTION REQUIRED BY THE END OF BUSINESS FRIDAY, JULY 19, 2013

**DEFENDANTS RICKY SNYDER, AND DILLON, AND THE STATE OF
MICHIGANS' EMERGENCY APPLICATION FOR LEAVE TO APPEAL**

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Matthew Schneider (P62190)
Chief Legal Counsel

Margaret A. Nelson (P30342)
Heather S. Meingast (P55439)
Assistant Attorneys General
Attorneys for Defendants-Appellants
P.O. Box 30754
Lansing, MI 48909
(517) 373-1162

Dated: July 19, 2013.

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STATEMENT OF QUESTION PRESENTED

1. Whether the trial court abused its discretion by preliminarily enjoining Defendants from taking “any action in aid and assistance” of the City of Detroit’s Chapter 9 bankruptcy proceeding, where the filing of the petition rendered Plaintiffs’ claim moot, and where Plaintiffs failed to satisfy the requirements for issuance of an injunction.

Appellants’ answer: Yes.

Appellees’ answer: No.

Trial court’s answer: No.

STATEMENT OF JURISDICTION

Defendants Governor Rick Snyder, Treasurer Andy Dillon, and the State of Michigan seek leave to appeal a July 18, 2013 temporary restraining order issued by Ingham County Circuit Court Judge Rosemarie Aquilina that enjoins Defendants from taking any actions that would threaten Plaintiffs' city pensions in relation to the City of Detroit's bankruptcy proceeding. (Exhibit 1.)

This Court has jurisdiction to grant leave to appeal under MCR 7.202(6)(a) and MCR 7.203(B)(1), and the application was timely filed under MCR 7.205(A)(1).

INTRODUCTION

At 4:06 p.m. on July 18, 2013, the Governor and the Emergency Manager for the City of Detroit gave the City a chance at a fresh start by filing a petition to initiate Chapter 9 bankruptcy proceedings in federal court. The petition is the culmination of weeks and months of careful review of the City's astonishingly poor financial condition, estimated to include \$18-\$20 *billion* in debt, more than 43 other *states*. The filing represents the City's only option for solving its longstanding fiscal crises, and it will require sacrifice.

But just minutes later, at 4:25 p.m., the trial court issued a temporary restraining order (TRO) enjoining the Governor, the Treasurer, and the State from Defendants from taking any actions that would aid the City of Detroit's Chapter 9 bankruptcy proceeding. (Exhibit 1.) This injunction is unlawful for a number of reasons.

First, Plaintiffs' complaint and request for relief, which seek to declare the Local Financial Stability and Choice Act (Act), MCL 141.1541, *et seq.* unconstitutional and prohibit the Governor from authorizing the City to proceed under Chapter 9, is now moot. The Governor has authorized the bankruptcy proceeding and the petition has been filed. Neither the Governor, nor the other Defendants, have any further role with respect to the bankruptcy proceeding.

Second, Plaintiffs failed to satisfy any of the factors for granting injunctive relief. In particular, Plaintiffs have no likelihood of success on the merits of their claims where they lack standing, their claim is not ripe, and their facial constitutional challenge to the Act fails as a matter of law. And Plaintiffs failed to

show any irreparable harm since it is entirely speculative at this time regarding whether Plaintiffs' pensions benefits will be diminished or impaired in bankruptcy.

Defendants respectfully request that this Court grant leave to appeal, dissolve the TRO, and stay all proceedings in the trial court in this and two companion cases, so that the Detroit bankruptcy may proceed and Plaintiffs' merits claims may be litigated in the proper forum—bankruptcy court.

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STATEMENT OF FACTS AND PROCEEDINGS BELOW

Plaintiffs, as beneficiaries of the City of Detroit's pension system, brought a facial constitutional challenge to the Act asserting that it is unconstitutional because it permits the Governor to authorize a proceeding in Chapter 9 bankruptcy, allegedly in violation of article 9, § 24 of the 1963 Constitution.¹ 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." (Exhibit 2, Complaint, ¶ 1.) Plaintiffs moved for an expedited hearing on their request for declaratory relief, or requested 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:

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.

¹ Article 9, § 24 of the 1963 Constitution 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."

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. (Exhibit 2, Complaint, ¶26.) Plaintiffs request relief and ask the trial court to intrude on the Governor's authority to authorize a bankruptcy proceeding; and that the City's pension funds might be detrimentally affected during a Chapter 9 proceeding in federal bankruptcy court. (Exhibit 2, Complaint, ¶27 and 28.) The trial court scheduled a hearing on Plaintiffs' motion for an expedited declaratory judgment on July 22, 2013.

But on July 16, 2013, the Emergency Manager for the City recommended to the Governor that the City be authorized to proceed under Chapter 9 of Title 11 to the United States Code, as permitted by section 18(1) of the Act. (Exhibit 3, Governor Letter.) And late in the day on July 18, 2013, the Governor approved the recommendation and authorized the Emergency Manager to proceed on behalf of the City in bankruptcy. *Id.*

At 4:06 p.m. the Emergency Manager filed the City's petition with the United States Bankruptcy Court for the Eastern District of Michigan. (Exhibit 4, Petition.) Before the actual filing, however, Plaintiffs appeared in the trial court seeking a TRO in connection with their prior motion for expedited declaratory relief and/or for a preliminary injunction. (Exhibit 5, Motion.) Defendants were notified of the request for TRO, and appeared at the trial court to argue against its issuance.

Ultimately, the trial court issued a TRO at 4:25 p.m. despite knowing that the petition had already been filed (a fact that meant the automatic stay of all state-court proceedings had already begun). The trial court denied Defendants' motion to stay. (Exhibit 6, Order.)

Because the trial court abused its discretion in issuing the TRO, Defendants file the instant emergency application for leave to appeal along with motions to stay the TRO, stay the proceedings, waive the transcript requirement, and for immediate consideration.

ARGUMENT

- I. **The trial court abused its discretion by enjoining Defendants from taking “any further action” that would diminish or impair Plaintiffs’ pension benefits where the filing of the City of Detroit’s bankruptcy petition renders their claim moot, and where Plaintiffs failed to satisfy the requirements for issuance of a TRO.**

A. **Standard of Review**

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). To obtain a temporary or 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 did not meet their burden here, and their motion should have been denied.

B. Plaintiffs' constitutional challenge to the Local Financial Stability and Choice Act and request for relief are moot.

"An issue is . . . moot when a judgment, if entered, cannot for any reason have a practical effect on the existing controversy." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010). Here, Plaintiffs' Complaint asked the trial court to declare the Act unconstitutional because it permits the Governor to authorize the City to proceed in Chapter 9 bankruptcy, allegedly in violation of article 9, § 24 of the 1963 Constitution. (Exhibit 2, Complaint.) Plaintiffs asked the Court to declare or prohibit the Governor and Treasurer from authorizing the bankruptcy. *Id.*²

These requests are moot because the Governor has now authorized the Emergency Manager to proceed in bankruptcy, and the petition has been filed. The Defendants have no further duties with respect to the City's bankruptcy proceeding in federal court. Section 18(1) of the Act, MCL 141.1558(1), expressly "empowers the emergency manager to act *exclusively* on the local government's behalf in any such case under chapter 9." (Emphasis added.) Thus, there is no judgment the trial court could issue in this case that would have a practical effect on the alleged controversy.³ Indeed, the TRO will have no practical effect with respect to

² Although Plaintiffs requested that relief be issued against Defendant Dillon, Defendant Dillon has no authority to authorize a bankruptcy, only the Governor may do so. MCL 141.1558(1).

³ Moreover, courts avoid reaching constitutional issues if alternative means are available for deciding a case. See *Stewart v Algonac Savings Bank*, 263 Mich 272, 284; 248 NW 619 (1933); *Rinaldi v Civil Service Comm*, 69 Mich App 58, 69; 244 NW2d 609 (1976) ("We will not undertake a constitutional analysis when we can avoid it.").

Plaintiffs' claims because, again, the Defendants have no further duties pertaining to the bankruptcy. Because Plaintiffs' Complaint is moot, the trial court abused its discretion in granting the TRO.

C. Plaintiffs failed to satisfy the requirements for granting injunctive relief.

1. No substantial likelihood of success on the merits.

Plaintiffs cannot demonstrate a substantial likelihood of success on the merits of their claim that the Act is unconstitutional under article 9, § 24 because their requested injunctive relief is premature and overbroad; they lack standing; their claim is unripe; and, their facial constitutional challenge fails as a matter of a law.

a. Plaintiffs' request for injunctive relief was premature and overbroad.

A court is "at all times [] 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*)." *Straus v Governor*, 459 Mich 526, 532; 592 NW2d 53 (1999), quoting *Straus v Governor*, 230 Mich App 222; 583 NW2d 520 (1998) (citation omitted) (emphasis added). In *Strauss*, the Michigan Supreme Court, in adopting this Court's 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).]

Thus, there is essentially a presumption that injunctive relief, of any kind, may not be entered against the Governor unless declaratory relief has failed. That principle controls here, because Plaintiffs did not first attempt to secure declaratory relief and, only then, seek injunctive relief. Their request for an injunction should have been denied as premature.

Plaintiffs’ request for injunctive relief should also have been denied because it was overbroad. The trial court entered the following TRO:

Defendants are immediately and temporarily enjoined and restrained from taking any action (including the authorization of an unconditional 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 which has already occurred that may:* (i) cause the accrued financial benefits of the Retirement System 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. [Exhibit 1 (emphasis added).]

As noted above, the Governor had already concluded his duty with respect to the bankruptcy filing at the time the TRO was issued and the Treasurer never had

any duties under section 18(1) to begin with. But each continue to have obligations and duties to perform with respect to the State of Michigan, its agencies, and citizens. The language of the injunction is broad (or vague) enough to encompass general actions taken by these Defendants in their executive capacities. Thus, Plaintiffs' request should have been denied to the extent it is overbroad and not narrowly tailored to the facts and legal arguments.

b. 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.

i. 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 article 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 . . . 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).

Moreover, there are other additional contingencies that would need to occur before any "threat" to Plaintiffs' pension benefits could arise. For instance:

- 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 satisfy one of four requirements: (1) obtain an agreement from creditors holding a majority of the amount of claims of each class the debtor intends to impair under a plan, (2) 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, (3) be unable to negotiate with creditors because it is impractical, or (4) reasonably believe a creditor may attempt to obtain a preference. 11 USC 109(c); 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 article 9, § 24 occurred or could have occurred when the Governor authorized the City of Detroit to proceed under Chapter 9, because the bankruptcy court will have to find the City eligible for bankruptcy, and then the court would still have to approve a plan in bankruptcy that impairs vested pension benefits, or at least have such a plan presented to it.

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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]." (Exhibit 2, 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. [Exhibit 2, Complaint, ¶ 28.]

But the trial 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. In any event, Plaintiffs will have an opportunity to fully litigate the merits of their claim in the bankruptcy proceeding itself.

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.

ii. 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).

Presently, the possibility of whether Plaintiffs' pension benefits might be

impacted somewhere in the future during the bankruptcy proceeding is purely speculative. And in any event, by authorizing the bankruptcy proceeding the Governor concluded his duties under section 18(1) of the Act. Thus, the Plaintiffs' interests and the Governor's, Treasurer's, and State's interests are no longer adverse (if they ever were), 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. *Lansing School Education Ass'n*, 487 Mich at 372.

- iii. **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 in MCL 141.1572. And any interest Plaintiffs have may not even be detrimentally affected by the bankruptcy filing. Such impact will not be

known until a plan is proposed and Plaintiffs have litigated the merits of their constitutional claim in the bankruptcy case.

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 criteria 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 a plan will be confirmed that detrimentally affects Plaintiffs' interests. Plaintiffs therefore do not have standing. *Lansing School Education Ass'n*, 487 Mich at 372.

c. 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 would present 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 their pensions will be impaired as a result of a confirmed federal bankruptcy plan. Under these circumstances, Plaintiffs’ Complaint is unripe for review. See *Straus*, 459 Mich at 544, 545 n, quoting *Straus*, 230 Mich App 222 (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.”).

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

Plaintiffs bring a facial constitutional challenge to the Act. They broadly assert that the Act is unconstitutional under article 9, § 24 of the 1963 Constitution because it empowers the Governor to authorize a proceeding in Chapter 9. (Exhibit 2, 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, § 18 does not even mention or allude to pension funds. Compare this to § 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 article 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 pension funds, payments and liabilities from a Chapter 9

proceeding, although he did not do so with respect to the City. 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.

2. Plaintiffs did not demonstrate irreparable harm.

Again, if justiciable, Plaintiffs' underlying claim in this case may be 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 absent an injunction by the trial court.

3. The injunction's harm to Defendants outweighs the harm to Plaintiffs in the absence of an injunction.

Plaintiffs retain their access to the remedies set forth in the federal Bankruptcy Code without need of court-granted injunctive relief. Conversely, the trial court's preliminary injunction would substantially harm Defendants. The entry of this injunction violates the separation of powers doctrine. Const 1963, art 3, § 2. Thus, the relief unlawfully intrudes on the Governor's executive powers to authorize a Chapter 9 bankruptcy under § 18 of the Act. The breadth of the

injunction may inhibit the Emergency Manager and the City of Detroit from properly prosecuting this bankruptcy action. A balancing of the relative harms counsels against injunctive relief, particularly where Plaintiffs can fully litigate their claims in the bankruptcy forum.

4. The TRO harms the public interest.

In most disputes involving requested injunctive relief, the parties focus on the merits of the underlying claim and the presence or absence of irreparable harm, paying only lip service to the impact on the public. This is no ordinary case. Due to the City of Detroit's unsustainable debt load, the City has lost the ability to provide even the most basic services to its residents. Citizens wait an average of 58 minutes for the police to respond to their calls. Only 8.7% of criminal cases are solved. In the first quarter of 2013, 40% of the City's street lights were not functioning, and only one-third of the City's ambulances were in service. This is a city that needs and deserves a fresh start. By ignoring fundamental principles of justiciability and the basic elements required to grant injunctive relief, the trial court jeopardizes public safety and welfare. Given the gravity of the situation, it is difficult to imagine a trial court order with more potential to harm the public interest.

5. Defendants request emergency relief under MCR 7.205(E)(2).

Given the fact that this is an injunction against the Governor and the other exigencies of the circumstances related to the City's bankruptcy proceeding,

Defendants request that this application be resolved on an emergency basis under MCR 7.205(E)(2). Specifically, Defendants request relief by 5:00 p.m. on July 19, 2013, or at the latest by 9:00 a.m. on July 22, 2013. The trial court has scheduled a hearing on July 22, 2013 at 9:00 a.m., for Defendants to show cause in this case and in *The General Retirement System of the City of Detroit v Orr et al.*, 13-768-CZ, also on appeal, as to why a declaratory judgment and/or a preliminary injunction should not issue against Defendants in these matters.

CONCLUSION AND RELIEF REQUESTED

Defendants respectfully ask this Court, by the close of business today or at the latest by 9:00 a.m. on July 22, 2013, to (1) grant the application for leave to appeal, (2) immediately dissolve the TRO, and (3) stay all proceedings in this trial court action and its two companion cases. Nothing less is at stake than the future of Michigan's largest city.

Respectfully submitted,

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Dated: July 19, 2013.

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EXHIBIT 1

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.

State of Michigan

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, and Andy Dillon,

Defendants.

Treasurer in his official capacity

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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
in 13-000734
for a TRO

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 petition) that may: (i) cause the accrued financial benefits of the Retirement Systems 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 whereby Defendants shall show cause why a Declaratory Judgment and/or 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.

DATE: 18 July 13

TIME: 4:25 p.m.

Rosemarie E. Aquilina
CIRCUIT COURT JUDGE

P37670

EXHIBIT 2

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
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

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 10th 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 10th 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.) 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.)

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. Plaintiffs 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
jcanzano@michworklaw.com

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.

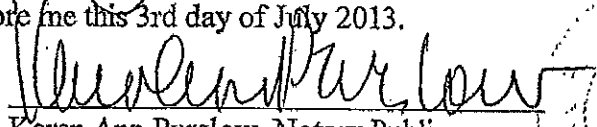

Karen Ann Purslow, Notary Public
County of Oakland, State of Michigan
My Commission Expires: April 19, 2014



EXHIBIT 3



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,



Richard D. Snyder
Governor
State of Michigan

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
Eastern District of Michigan

In re:

City of Detroit, Michigan,

Debtor.

Case No. 13-

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 1

"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.

Kevyn D. Orr
Emergency Manager
City of Detroit

David G. Helman (OH 0038271)
Heather Lennox (OH 0059649)
JONES DAY
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Telephone: (216) 586-3939
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Jonathan S. Green (MI P33140)
Stephen S. LaPlante (MI P48063)
MILLER, CANFIELD, PADDOCK
AND STONE, P.L.C.
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Suite 2500
Detroit, MI 48226
Telephone: (313) 963-6420
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): City of Detroit, Michigan	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): 38-6004606	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): 2 Woodward Avenue Suite 1126 Detroit, Michigan	Street Address of Joint Debtor (No. and Street, City, and State):
48226	ZIP CODE
County of Residence or of the Principal Place of Business: Wayne	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

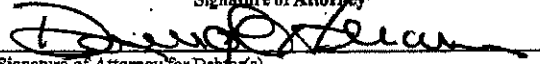
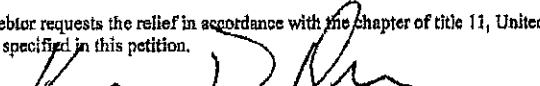
Location of Principal Assets of Business Debtor (if different from street address above):

ZIP CODE

Type of Debtor (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.) Municipality	Nature of Business (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	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box.) <input type="checkbox"/> Chapter 7 <input checked="" 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
Chapter 15 Debtors Country of debtor's center of main interests: Each country in which a foreign proceeding by, regarding, or against debtor is pending:	Tax-Exempt Entity (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).	Nature of Debts (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.
Filing Fee (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.		Chapter 11 Debtors 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).

Statistical/Administrative Information <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
Estimated Number of Creditors <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										
Estimated Assets <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										
Estimated Liabilities <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										

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): City of Detroit, Michigan	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet.)			
Location Where Filed:	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor (If more than one, attach additional sheet.)			
Name of Debtor:	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
Exhibit A (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.) <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		Exhibit B (To be completed if debtor is an individual whose debts are primarily consumer debts.) 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). X _____ Signature of Attorney for Debtor(s) (Date)	
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? <input checked="" type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input type="checkbox"/> 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.) <input type="checkbox"/> Exhibit D, completed and signed by the debtor, is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> 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.) <input checked="" type="checkbox"/> 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. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District. <input type="checkbox"/> 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.) <input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.) <div style="text-align: right; margin-right: 100px;"> _____ (Name of landlord that obtained judgment) </div> <div style="text-align: right; margin-right: 100px;"> _____ (Address of landlord) </div> <input type="checkbox"/> 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 <input type="checkbox"/> 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. <input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(f)).			

Voluntary Petition <i>(This page must be completed and filed in every case.)</i>		Name of Debtor(s): <p style="text-align: center;">City of Detroit, Michigan</p>	
Signatures			
<p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>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).</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X _____ Signature of Debtor</p> <p>X _____ Signature of Joint Debtor</p> <p>Telephone Number (if not represented by attorney)</p> <p>Date</p>		<p style="text-align: center;">Signature of a Foreign Representative</p> <p>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.</p> <p>(Check only one box.)</p> <p><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.</p> <p><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.</p> <p>X _____ (Signature of Foreign Representative)</p> <p>_____ (Printed Name of Foreign Representative)</p>	
<p style="text-align: center;">Signature of Attorney*</p> <p>X  Signature of Attorney for Debtor(s)</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <p>David G. Heiman Heather Lennox JONES DAY North Point 901 Lakeside Avenue Cleveland, OH 44114 Tel: (216) 586-3939 Fax: (216) 579-0212 dheiman@jonesday.com hlennox@jonesday.com</p> </div> <div style="width: 30%;"> <p>Bruce Bennett JONES DAY 555 South Flower Street Fiftieth Floor Los Angeles, CA 90071 Tel: (213) 243-2382 Fax: (213) 243-2539 bbennett@jonesday.com</p> </div> <div style="width: 30%;"> <p>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 green@millercanfield.com laplante@millercanfield.com</p> </div> </div> <p><u>July 18, 2013</u> Date</p> <p><small>*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.</small></p>		<p style="text-align: center;">Signature of Non-Attorney Bankruptcy Petition Preparer</p> <p>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.</p> <p>_____ Printed Name and title, if any, of Bankruptcy Petition Preparer</p> <p>_____ 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.)</p> <p>_____ Address</p> <p>X _____ Signature</p> <p>_____ Date</p> <p>Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social-Security number is provided above.</p> <p>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.</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p><small>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.</small></p>	
<p style="text-align: center;">Signature of Debtor (Corporation/Partnership)</p> <p>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.</p> <p>The debtor requests the relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X  Signature of Authorized Individual</p> <p>Kevin B. Orr Printed Name of Authorized Individual</p> <p>Emergency Manager, City of Detroit Title of Authorized Individual</p> <p><u>July 18, 2013</u> Date</p>			

[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 th	Residential
3654 30 th	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	Residential
6435 Julian	Commercial
8545 Kenney	Residential
13989 Kentucky	Residential
13301 Kercheval	Commercial
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	Residential
15744 Livernois	Commercial
12558 Longview	Residential
12767 Loretto	Residential
8881 Louis	Residential
13441 Lumpkin	Residential
14242 Mack (a/k/a 3181 Lakewood)	Commercial
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	Residential
4766 McDougall	Commercial
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	Residential
2101 Puritan	Commercial
5807 Renville	Residential
1957 Richton	Residential
534 W. Robinwood	Residential
6119 Rohns	Residential
14381 Rosa Parks Blvd.	Unknown
11735 Rutherford	Residential
6835 Seminole	Residential
5737 E. Seven Mile	Commercial
2008 Sharon	Residential
13422 Shields	Residential
10201 Shoemaker	Commercial
10956 Shoemaker	Commercial
6750 Sparta	Residential
14291 Spring Garden	Commercial
4467 St. Clair	Residential
6915 St. John	Residential
7180 St. John	Residential
18805 St. Louis	Commercial
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	Residential
9526 Van Dyke	Commercial
2030 Vinewood	Residential
5757 Vinewood	Commercial
15451 Virgil	Residential
15300 E. Warren (Bldgs. 101 & 102)	Commercial
64 Watson	Commercial
6414 Willette	Unknown
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
Bellevue 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.



**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

RECEIVED by Michigan Court of Appeals 7/19/2013 12:30:05 PM



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

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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

July 18, 2013

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,



Richard D. Snyder
Governor
State of Michigan

EXHIBIT 5

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
of the State of Michigan; and
ANDY DILLON, as Treasurer of
the State of Michigan,

Defendants.

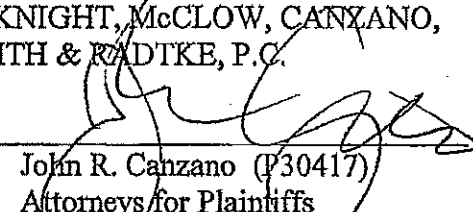
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**MOTION FOR DECLARATORY JUDGMENT
AND EXPEDITED HEARING PURSUANT TO MCR 2.605(D),
OR IN THE ALTERNATIVE FOR PRELIMINARY INJUNCTION.**

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.

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Date: July 3, 2013

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
of the State of Michigan; and
ANDY DILLON, as Treasurer of
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 18.¹ 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

¹ 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. Plaintiff's' 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,

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SMITH & RADTKE, P.C.

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Date: July 3, 2013

EXHIBIT 6

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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ORDER DENYING DEFENDANTS' REQUEST FOR STAY

At a session of the Circuit Court
On 18 July 13 before
HON. ROSEMARIE E. AQUILINA

Defendants having requested a Stay of Plaintiffs' request for Preliminary
Injunction and at the Show Cause Hearing having been held on July 18, 2013;

IT IS HEREBY ORDERED, for the reasons stated on the record, that

ORDER TO ENFORCEMENT OF ORDER GRANTING PLAINTIFFS
Defendants' Request for a Stay of this pending appeal is denied.
MOTION FOR PRELIMINARY INJUNCTION AND OTHER RELIEF DESCRIBED
IN THE ORDER IS DENIED,

IT IS SO ORDERED

Rosemarie Esquilina
HON. ROSEMARIE E. AQUILINA
COURT OF CLAIMS JUDGE
P37670

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

APPEARANCES:

For Plaintiffs Retirement Systems:
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REPORTED BY: Melinda I. Dexter, RMR, RPR, CSR-4629
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TABLE OF CONTENTS

WITNESSES:

None

EXHIBITS:

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

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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.

13-53846-swr Doc 1221-7 Filed 10/17/13

1 Counsel?
 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

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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.

1 THE COURT: I plan on making a ruling on
 2 Monday. I could make a ruling tomorrow, if push came to
 3 shove, but Monday would probably be soon enough. I am

Entered 10/17/13 14:22:01 Page 3 of 7

<p>1 confident that the bankruptcy court won't act as quickly 2 as I will.</p> <p>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.</p> <p>8 THE COURT: Unless some kind of -- I don't 9 really have any authority over them, so.</p> <p>10 MR. KING: Right.</p> <p>11 THE COURT: I don't think anything -- 12 Counsel?</p> <p>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.</p> <p>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</p> <p style="text-align: center;">8</p>	<p>1 we should find 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.</p> <p>9 THE COURT: I just received a note from my law 10 clerk that says the bankruptcy was filed at 4:06.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p style="text-align: center;">10</p>
<p>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.</p> <p>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.</p> <p>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.</p> <p>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</p> <p>13-53846-swr Doc 1221-7 Filed 10/17/13</p>	<p>1 THE COURT: Granted, as to all of your 2 requests.</p> <p>3 How soon are you going to present me with an 4 order?</p> <p>5 MR. KING: Right now.</p> <p>6 THE COURT: All right.</p> <p>7 MR. KING: We just need to mark up the order 8 that we have for the Court.</p> <p>9 THE COURT: Absolutely.</p> <p>10 MR. QUASARANO: Your Honor, if I may, we would 11 ask that the Court stays enforcement of the order, and 12 your ruling on that would be appreciated at this time.</p> <p>13 THE COURT: Denied.</p> <p>14 MR. QUASARANO: Thank you. We'll present an 15 order as soon as possible.</p> <p>16 THE COURT: Thank you.</p> <p>17 MR. QUASARANO: Thank you, Judge.</p> <p>18 MR. WERTHEIMER: Your Honor, we will need a few 19 minutes to prepare a written order, but if we can --</p> <p>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.</p> <p>23 MR. WERTHEIMER: Thank you, your Honor.</p> <p>24 THE COURT: As to your stay, you'll be getting 25 that to me in --</p> <p>Entered 10/17/13 14:22:01 Page 4 of 7</p>

1 MR. QUASARANO: Maybe I can just make a call
2 and get an order over to you right yet today.
3 THE COURT: Sure. You can even 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?

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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 courtesy 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

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1 supposed to take 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 accommodation and time for us
25 today. Thank you.

15

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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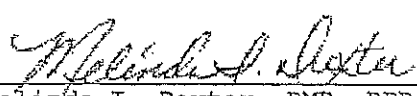
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1 STATE OF MICHIGAN)
2) SS.
3 COUNTY OF INGHAM)
4

5
6 CERTIFICATE OF REPORTER

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

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

22
23 
24 Melinda I. Dexter, RMR, RPR, CSR-4629
25 Official Court Reporter
313 West Kalamazoo
Post Office Box 40771
Lansing, Michigan 48901-7971

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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

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WITNESSES:

None

EXHIBITS:

None

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T A B L E O F C O N T E N T S

WITNESSES:

None

EXHIBITS:

None

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None

EXHIBITS:

None

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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13

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, S
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:

25 The accrued financial benefits of

14

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):

21 The emergency manager shall fully
22 comply with the public employee
23 retirement system investment
24 act --

15

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 me to hear

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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

11

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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

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

23

<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 fix it? There is no way to fix the</p> <p style="text-align: center;">19</p>

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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

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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

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<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?</p> <p>16 MR. DEVLIN: Nothing further. Thank you.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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 had not ruled. But the</p> <p style="text-align: center;">27</p>

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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 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

1353846 s.m. Doc 1221-8 Filed 10/17/13 Entered 10/17/13 14:22:01 Page 17 of 21

33

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12 MR. DEVLIN: All right.

13 THE COURT: Okay.

14 MR. DEVLIN: Thank you.

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2) SS.
3 COUNTY OF INGHAM)
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6 CERTIFICATE OF REPORTER

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

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

21
22 
23 Melinda I. Dexter, RMR, RPR, CSR-4629
24 Official Court Reporter
25 313 West Kalamazoo
Post Office Box 40771
Lansing, Michigan 48901-7971

1 STATE OF MICHIGAN)
2) SS.
3 COUNTY OF INGHAM)

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Court of Appeals, State of Michigan

ORDER

Gracie Webster v State of Michigan

Docket No. 317286

LC No. 13-000734-CZ

Michael J. Kelly
Presiding Judge

Patrick M. Meter

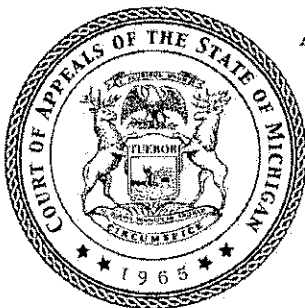
Stephen L. Borrello
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion for stay pending appeal is GRANTED. The circuit court's July 18, 2013 temporary restraining order and all further proceedings are STAYED pending resolution of this appeal or further order of this Court.

The Court orders that any answers to the pending application for leave to appeal are due by 5:00 p.m. on Friday, July 26, 2013.

Meter, J. would additionally grant leave to appeal.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 23 2013

Date

Jerome W. Zimmer Jr.
Chief Clerk

Lower Court or Tribunal Ingham Circuit Court	STATE OF MICHIGAN IN THE COURT OF APPEALS	CASE NO.			
	Cover Sheet	CIRCUIT:	Year 13	Number 734	Case Type CZ
		COURT OF APPEALS: 317286			

Filing Party

Filing Party Last Name or Business/Entity/Agency Name

WEBSTER

Filing Party First Name

GRACIE

M.I.

Address (Street 1, Street 2, City, State, and ZIP Code)

Attorney Last Name

Canzano

Attorney First Name

John

M.I. P Number

R

30417

Address(Street 1, Street 2, City, State, and ZIP Code)

400 Galleria Officentre

Suite 117

Southfield

MI

48034

Attorney Telephone Number

(248)354-9650

Summary of Items Filed

Type	Filename/Description	Filing Fee	Doc Fee	Total This Filing
Other	Plaintiffs-Appellees Statement Regarding Appeal	\$5.00	\$0.00	\$5.00

3% Service Fee:

\$0.15

Fee Substitute/Alternate Payment

Total All Filings:

\$5.15

Reason:

- ☐ Appointed Counsel
☐ Motion To Waive Fee
☐ Fees Waived in this Case
☐ MI InterAgency Transfer
☐ No Fee per MCR 7.203(F)(2)

Filer Office Use Only:

AFSCME Webster

The documents listed above were electronically filed with the Michigan Court of Appeals at the date/time stated in the left margin. As a recipient of service of these documents, you may wish to go to <https://wiznet.wiznet.com/appealsmi> to register as a user of the electronic filing system.

317286-397656 Doc 1221-10 Filed 10/17/13 Entered 10/17/13 14:22:01 Page 1 of 6

Lower Court or Tribunal Ingham Circuit Court	STATE OF MICHIGAN IN THE COURT OF APPEALS Proof of Service	CASE NO. CIRCUIT: Year <input type="text" value="13"/> Number <input type="text" value="734"/> Case Type <input type="text" value="CZ"/> COURT OF APPEALS: <input type="text" value="317286"/>
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Case Name: GRACIE WEBSTER V STATE OF MICHIGAN

On 7/26/2013, one copy of the following documents:

Other Plaintiffs-Appellees Statement Regarding Appeal

was delivered to the persons listed below:

Date

7/26/2013

Signature

/s/John R. Canzano

	Bar Number	Name	Delivery Method	Service Address
P-		Appellate, AG	E-Serve	paasdivision@michigan.gov
P-	30417	Canzano, John R	E-Serve	jcanzano@michworklaw.com
P-	72916	Lindstrom, Aaron D	E-Serve	lindstroma@michigan.gov
P-		Meingast, Heather	E-Serve	meingasth@michigan.gov

COURT OF APPEALS
STATE OF MICHIGAN

Gracie Webster, et al v. State of Michigan

Docket No. 317286

LC No. 13-000734-CZ

PLAINTIFFS-APPELLEES STATEMENT REGARDING APPEAL

On July 23, 2013, this Court entered an Order in the this matter “that any answers to the pending application for leave to appeal are due by 5:00 p.m. on Friday, July 26, 2013.” Yesterday, July 25, 2013, the United States Bankruptcy Court for the Eastern District of Michigan entered an Order (Docket #166) in *City of Detroit, Michigan*, Case No. 13-53846, that this matter “is stayed, pursuant to section 105(a) of the Bankruptcy Code, pending further Order of this Court.” (Order, ¶3 at p 2). Given this Order, it is Plaintiffs-Appellees’ understanding that they are precluded at this time from filing a response in opposition to Defendant’s Emergency Application for Leave to Appeal. Moreover, and in any event, the July 18, 2013 Temporary Restraining Order which is the subject of this Appeal was quashed by the Circuit Court and expired at 12:15 p.m. on July 19, 2013, and has not been in effect since that time. See July 19 transcript at 35 (Copy attached).

Respectfully submitted,

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

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

Date: July 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2013, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification to counsel of record.

/s/ John R. Canzano
JOHN R. CANZANO (P30417)
Attorney for Plaintiffs-Appellees
400 Galleria Officentre, Suite 117
Southfield, MI 48034-8460
(248) 354-9650
jcanzano@kmsmc.com

P:\AFSCME\Emergency Mgr Litigation\Court of Appeals\Plaintiff appellee statement.wpd

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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

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12 MR. DEVLIN: All right.

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13-53846-swr Doc 1221-10 Filed 10/17/13

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Entered 10/17/13 14:22:01 Page 6 of 6

Lower Court or Tribunal Ingham Circuit Court	STATE OF MICHIGAN IN THE COURT OF APPEALS	CASE NO.	Year	Number	Case Type
	Cover Sheet	CIRCUIT:	13	734	CZ
	COURT OF APPEALS: 317286				

Filing Party

Filing Party Last Name or Business/Entity/Agency Name

GOVERNOR OF MICHIGAN

Filing Party First Name

M.I.

Address (Street 1, Street 2, City, State, and ZIP Code)

Attorney Last Name

Lindstrom

Attorney First Name

M.I. P Number

Aaron

D.

72916

Address(Street 1, Street 2, City, State, and ZIP Code)

Solicitor General Division

P.O. Box 30212

Lansing

MI

48909

Attorney Telephone Number

(517)373-1124

Summary of Items Filed

Type	Filename/Description	Filing Fee	Doc Fee	Total This Filing
Correspondence	Letter Regarding Bankruptcy Stay	\$5.00	----	\$5.00
		3% Service Fee:		\$0.15
		Total All Filings:		\$5.15

Fee Substitute/Alternate Payment

Reason:

- ☐ Appointed Counsel
☐ Motion To Waive Fee
☐ Fees Waived in this Case
☒ MI InterAgency Transfer
☐ No Fee per MCR 7.203(F)(2)

Filer Office Use Only: 2013

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317286-937605 Doc 1221-11 Filed 10/17/13 Entered 10/17/13 14:22:01 Page 1 of 11

RECEIVED by Michigan Court of Appeals 7/26/2013 1:07:44 PM

Lower Court or Tribunal Ingham Circuit Court	STATE OF MICHIGAN IN THE COURT OF APPEALS Proof of Service	CASE NO. CIRCUIT: 13 734 CZ COURT OF APPEALS: 317286
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Case Name: GRACIE WEBSTER V STATE OF MICHIGAN

On 7/26/2013, one copy of the following documents:

Correspondence Letter Regarding Bankruptcy Stay

was delivered to the persons listed below:

Date

7/26/2013

Signature

/s/Aimee L. Nelson

Bar Number	Name	Delivery Method	Service Address
P-	Appellate, AG	E-Serve	paasdivision@michigan.gov
P- 30417	Canzano, John R	Mail	400 Galleria Officentre; Ste. 117; Southfield, MI 48034
P- 72916	Lindstrom, Aaron D	E-Serve	lindstroma@michigan.gov
P-	Meingast, Heather	E-Serve	meingasth@michigan.gov

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30212
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

July 26, 2013

Ms. Kimberly S. Hauser
Michigan Court of Appeals
Hall of Justice
925 W. Ottawa St.
P.O. Box 30022
Lansing, MI 48909-7522

Re: *Webster v Snyder*, Ingham County Circuit Court No. 13-734-CZ, COA Docket Nos. 317286, 317292; *Flowers v Snyder*, Ingham County Circuit Court No. 13-729-CZ, COA Docket No. 317285; *The General Retirement System of the City of Detroit v Orr*, Ingham County Circuit Court No. 13-768-CZ, COA Docket No. 317284;

Dear Clerk Hauser:

Yesterday the U.S. Bankruptcy Court for the Eastern District of Michigan issued two stay orders arising from the City of Detroit's Chapter 9 bankruptcy. Taken together, the orders enjoin any person from continuing judicial proceedings against the City, the Governor, the Treasurer, the State, and Emergency Manager Orr. The orders accordingly apply to the above-listed cases. Concurrently with the filing of this letter, we are also filing in each of the above-listed cases a copy of the bankruptcy court's orders.

Sincerely,

/s/Aaron D. Lindstrom

Assistant Solicitor General
Solicitor General Bureau

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

-----X	:	
In re	:	Chapter 9
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
	:	
	:	
-----X	:	

**ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE EXTENDING THE CHAPTER 9 STAY TO
CERTAIN (A) STATE ENTITIES, (B) NON OFFICER EMPLOYEES
AND (C) AGENTS AND REPRESENTATIVES OF THE DEBTOR**

This matter coming before the Court on the Motion of Debtor,

Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order,

Extending the Chapter 9 Stay to Certain (A) State Entities, (B) Non-Officer Employees and (C) Agents and Representatives of the Debtor (the "Motion"),¹

filed by the City of Detroit, Michigan (the "City"); the Court having reviewed the Motion and the Orr Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court finding that: (a) the Court has jurisdiction over this

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.



matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and the Hearing was sufficient under the circumstances, (d) the unusual circumstances present in this chapter 9 case warrant extending the Chapter 9 Stay to the State Entities, the Non-Officer Employees and the City Agents and Representatives; and the Court having determined that the legal and factual bases set forth in the Motion and the Orr Declaration and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 105(a) of the Bankruptcy Code, the Chapter 9 Stay hereby is extended to apply in all respects (to the extent not otherwise applicable) to the State Entities (defined as the Governor, the State Treasurer and the members of the Loan Board, collectively with the State Treasurer and the Governor, and together with each entity's staff, agents and representatives), the Non-Officer Employees and the City Agents and Representatives.
3. For the avoidance of doubt, each of the Prepetition Lawsuits hereby is stayed, pursuant to section 105(a) of the Bankruptcy Code, pending further order of this Court.

4. This order is entered without prejudice to the right of any creditor to file a motion for relief from the stay imposed by this order using the procedures of and under the standards of 11 U.S.C. § 362(d)-(g).

Signed on July 25, 2013

/s/ Steven Rhodes
Steven Rhodes
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

	X	
In re	:	Chapter 9
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
Debtor.	:	Hon. Steven W. Rhodes
	X	

**ORDER PURSUANT TO SECTION 105(a) OF THE
BANKRUPTCY CODE CONFIRMING THE PROTECTIONS
OF SECTIONS 362, 365 AND 922 OF THE BANKRUPTCY CODE**

This matter coming before the Court on the Motion of Debtor, Pursuant to Section 105(a) of the Bankruptcy Code, for Entry of an Order Confirming the Protections of Sections 362, 365 and 922 of the Bankruptcy Code (the "Motion"),¹ filed by the City of Detroit, Michigan (the "City"); the Court having reviewed the Motion and the Orr Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court finding that: (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and the

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.



Hearing was sufficient under the circumstances, (d) among other things, the requested relief confirms the protections of sections 362, 365 and 922 of the Bankruptcy Code and (e) the Emergency Manager is an officer of the City as that term is used in section 922(a)(1) of the Bankruptcy Code, and the Court having determined that the legal and factual bases set forth in the Motion and the Orr Declaration and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, limited liability companies and all those acting for or on their behalf), all foreign or domestic governmental units and all other entities (and all those acting for or on their behalf) are hereby stayed, restrained and enjoined from:

- (a) commencing or continuing any judicial, administrative or other proceeding against the City, including the issuance or employment of process, that was or could have been commenced before the City's chapter 9 case was commenced;
- (b) recovering a claim against the City that arose before the commencement of its chapter 9 case;
- (c) taking any action to obtain possession of property of or from the City;
- (d) taking any action to create, perfect or enforce any lien against property of the City, to the extent that such lien secures a claim that arose before the commencement of the City's chapter 9 case;

- (e) taking any action to collect, assess or recover a claim against the City that arose before the commencement of its chapter 9 case; and
- (f) offsetting any debt owing to the City that arose before the commencement of its chapter 9 case against any claim against the City.

3. All entities, including all persons and foreign and domestic governmental units, and all those acting on their behalf, including sheriffs, marshals, constables and other or similar law enforcement officers and officials are stayed, restrained and enjoined from in any way seizing, attaching, foreclosing upon, levying against or in any other way interfering with any and all property of the City, wherever located.

4. Pursuant to section 922(a) of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, limited liability companies and all those acting for or on their behalf), all foreign or domestic governmental units and all other entities (and all those acting for or on their behalf) are hereby stayed, restrained and enjoined from:

- (a) commencing or continuing a judicial, administrative, or other action or proceeding against an officer or inhabitant of the City, including the issuance or employment of process, that seeks to enforce a claim against the City; and
- (b) enforcing a lien on or arising out of taxes or assessments owed to the City.

5. For the avoidance of doubt, the protections of section 922(a)(1) of the Bankruptcy Code with respect to officers and inhabitants of the City, as set

forth in paragraph 4(a) above, apply in all respects to: (a) the Emergency Manager; and (b) the City Officers, in whatever capacity each of them may serve.

6. Pursuant to section 365 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, limited liability companies and all those acting for or on their behalf), all foreign or domestic governmental units and all other entities (and all those acting for or on their behalf) are hereby prohibited from modifying or terminating any executory contract or unexpired lease, or any right or obligation under such contract or lease, at any time after the commencement of the City's chapter 9 case solely because of a provision in such contract or lease that is conditioned on:

- (a) the insolvency or financial condition of the City at any time before the closing of the City's chapter 9 case; or
- (b) the commencement of the City's chapter 9 case.

7. Pursuant to sections 362 and 365 of the Bankruptcy Code, all parties to an executory contract or unexpired lease with the City shall continue to perform their obligations under such contract or lease until such contract or lease is assumed or rejected by the City or otherwise expires by its own terms.

Signed on July 25, 2013

/s/ Steven Rhodes
Steven Rhodes
United States Bankruptcy Judge

Court of Appeals, State of Michigan

ORDER

Gracie Webster v State of Michigan

Docket No. 317286

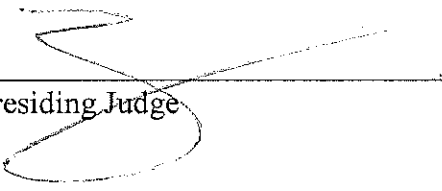
LC No. 13-000734-CZ

Michael J. Kelly
Presiding Judge

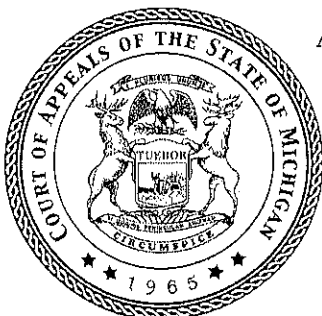
Patrick M. Meter

Stephen L. Borrello
Judges

Upon notification of a pending bankruptcy proceeding that deprives this Court of the authority to continue its review of this case, 11 USC 105(a), the Court orders that the case is CLOSED without prejudice. The closure does not constitute a dismissal or a decision on the merits. When the bankruptcy stay has been removed, the case may be reopened on motion.



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 29 2013

Date



Chief Clerk