UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

CORRECTED[1]
APPELLEES' DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Appellees, state entities Rick Snyder, Governor of the State of Michigan; Kevin Clinton, State Treasurer,[2] and Ruth Johnson, Michigan Secretary of State, by and through the undersigned attorneys and pursuant to this Court's order (Docket 1762) submit the following designation of additional items to be included in the record on appeal to

[1] This corrected version includes the designated documents as attachments.

[2] Andrew Dillon, who was named as a defendant in his official capacity as State Treasurer when this action was filed, resigned on October 11, 2013. His replacement, Kevin Clinton, assumed office on November 1, 2013. Pursuant to Fed. R. Civ. P. 25(d), Mr. Clinton is automatically substituted as a party to this action in Mr. Dillon's place.

the United States District Court for the Eastern District of Michigan from this Court's Order and Opinion denying NAACP's Motion for Relief from Stay, entered by this Court on November 6, 2013 (Docket 1536).[3]

A. Docket entries from *In Re City of Detroit*, Case No. 13-53846

Desig.	Filing Date	Docket #	Description
1.	7/13/13	53	Debtor's Stay Confirmation Motion
2.	7/24/13	2181	Transcript, hearing on motion to extend stay (Docket 128)
3.	7/25/13	167	Order Granting Stay
4.	9/23/13	1004	Phillips' motion for relief from stay
5.	9/24/13	1007	State's response to Phillips' motion for relief from stay
6.	9/24/13	1108	Debtor's objection to Phillips' motion for relief from stay

[3] This appeal relates to the entry of an order regarding notice of pendency of bankruptcy case and application of the automatic stay in *NAACP v. Snyder, et al*, Case No. 2:13-12098 (E.D., Mich)(R.27).

7.	7/20/13	1109	Debtor's brief in opposition to Phillips' motion for relief from stay
8.	12/2/13	1888	Phillips' response to State's motion for reconsideration

B. Docket entries from *NAACP v Snyder*, Case No. 13-12098 (E.D. Mich)

Desig.	Filing Date	Docket #	Description
9.	8/7/13	23	*Included in Appellants' designation but should be corrected to indicate "Notice of Pendency of Bankruptcy Proceedings and Automatic Stay" (not Application *for* Automatic Stay)
10	7/11/13	21	Defs' motion to withdraw motion to dismiss
11	7/11/13	19	*Included in Appellants' designation but should be corrected to indicate Defs.' Motion to Dismiss Amended Complaint (not Defs' Second Motion to Dismiss)

12.	6/6/13	16	Defs' motion to dismiss
13.	5/30/13	12	Order Reassigning Comp. Case
14.	5/22/13	11	Defs' Mtn to Reassign Civil Case

Respectfully submitted,

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Michigan Department of
Attorney General

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 1

From *In Re City of Detroit*, Case No. 13-53846

1.	7/13/13	53	Debtor's Stay Confirmation Motion

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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 City of Detroit, Michigan ("Detroit" or the "City"), as the debtor in the above-captioned case, hereby moves the Court, pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), for the entry of an order[1] confirming the application of (a) the automatic stay provisions of sections 362 and 922 of the Bankruptcy Code (together, the "Chapter 9 Stay") and (b) the anti-termination and anti-modification provisions of section 365 of the

[1] This Motion includes certain attachments that are labeled in accordance with Rule 9014-1(b)(1) of the Local Rules of the Bankruptcy Court for the Eastern District of Michigan (the "Local Rules"). Consistent with Local Rule 9014-1(b), a copy of the proposed form of order granting this Motion is attached hereto as Exhibit 1. A summary identifying each included attachment by exhibit number is appended to this Motion.

Bankruptcy Code (together, the "Contract Protections"). In support of this Motion, the City respectfully represents as follows:

Background

1. Incorporated in 1806, Detroit is the largest city in Michigan. As of December 2012, the City had a population of less than 685,000 (down from a peak population of nearly 2 million in 1950).

2. Over the past several decades, the City has experienced significant economic challenges that have negatively impacted employment, business conditions and quality of life. These challenges include, among other things, (a) a contraction of its historic manufacturing base, (b) a declining population, (c) high unemployment, (d) an erosion of the City's income and property tax bases, (e) a reduction in state revenue sharing and (f) a lack of adequate reinvestment in the City and its infrastructure.

3. As of June 30, 2013 — the end of the City's 2013 fiscal year — the City's liabilities exceeded $18 billion (including, among other things, general obligation and special revenue bonds, unfunded actuarially accrued pension and other postemployment benefit liabilities, pension obligation certificate liabilities and related derivative liabilities). Excluding the proceeds of debt issuances, the City has incurred large and unsustainable operating deficits for each of the past six years. As of June 30, 2013, the City's accumulated unrestricted general fund deficit

was approximately $237.0 million. Excluding the impact of a recent debt issuance, this represents an increase of approximately $47.4 million over fiscal year 2012.

4. On February 19, 2013, a review team appointed by Rick Snyder, Governor of the State of Michigan (the "Governor"), pursuant to Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, MCL § 141.1201, et seq. ("PA 72"), issued its report with respect to the City and its finances (the "Review Team Report"). The Review Team Report concluded that a local government financial emergency exists within the City.

5. On March 14, 2013, in response to the Review Team Report and the declining financial condition of the City and at the request of the Governor, the Local Emergency Financial Assistance Loan Board of the State of Michigan appointed Kevyn D. Orr as emergency financial manager with respect to the City under PA 72, effective as of March 25, 2013.

6. On March 28, 2013, upon the effectiveness of Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL § 141.1541, *et seq*. ("PA 436"), Mr. Orr became, and continues to act as, emergency manager with respect to the City under PA 436 (in such capacity, the "Emergency Manager").

7. Pursuant to PA 436, the Emergency Manager acts "for and in the place and stead of the governing body and the office of chief administrative officer" of the City. MCL § 141.1549. In addition, the Emergency Manager acts

exclusively on behalf of the City with respect to the filing of a case under chapter 9 of the Bankruptcy Code upon receiving authorization from the Governor. MCL § 141.1558.

8. On July 18, 2013, the Governor issued his written decision (the "Authorization") approving the Emergency Manager's recommendation that the City be authorized to proceed under chapter 9 of the Bankruptcy Code. Thereafter, also on July 18, 2013, the Emergency Manager issued an order approving the filing of the City's chapter 9 case consistent with the Authorization (the "Approval Order"). True and correct copies of the Approval Order and the Authorization are attached as Exhibit A to the Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 10), filed on July 18, 2013 (the "Petition Date").

9. In accordance with the Authorization and the Approval Order, on the Petition Date, the City commenced a case under chapter 9 of the Bankruptcy Code. Additional details regarding the City and the events leading to the commencement of this chapter 9 case are set forth in the Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code (Docket No. 11) (the "Orr Declaration"), filed on the Petition Date.

Jurisdiction

10. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

11. The City hereby seeks an order, pursuant to section 105(a) of the Bankruptcy Code, confirming the application of two key protections afforded to the City under the Bankruptcy Code: specifically, the Chapter 9 Stay and the Contract Protections.[2] The City seeks this relief to: (a) aid in the administration of its bankruptcy case; (b) protect and preserve its property for the benefit of citizens and stakeholders; and (c) ensure that the City is afforded the breathing space it needs to focus on developing and negotiating a plan for adjusting its debts.

[2] Contemporaneously with the filing of this Motion, the City has filed a motion requesting that the Court extend the Chapter 9 Stay to proceedings or actions asserted by parties in interest against certain state entities and non-officer employees of the City, which actions would amount (and in certain cases already have amounted) in practical effect to actions directly against the City.

Basis for Relief

The Chapter 9 Stay and the Contract Protections

12. Upon the commencement of a bankruptcy case, section 362 of the Bankruptcy Code provides for a stay of certain actions by non-debtor third parties. Subject to certain enumerated exceptions, section 362 provides as follows:

> [A] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (2) the enforcement, against the debtor or against property of the estate,[3] of a judgment obtained before the commencement of the case under this title;
>
> (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect, or enforce any lien against property of the estate;
>
> (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures

[3] In chapter 9, "property of the estate" refers to property of the debtor. See 11 U.S.C. § 902(1) ("'property of the estate,' when used in a section that is made applicable in a case under [chapter 9] by section 103(e) or 901 of this title, means property of the debtor").

> a claim that arose before the commencement of the case under this title;
>
> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
>
> (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
>
> (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

11 U.S.C. § 362(a). This "automatic stay" is made applicable in a case under chapter 9 by section 901 of the Bankruptcy Code. See 11 U.S.C. § 901(a) (providing that section 362 of the Bankruptcy Code, among other provisions, applies in a case under chapter 9).

13. As the term "automatic stay" implies, the injunction contained in section 362 of the Bankruptcy Code is self-executing. This automatic statutory injunction constitutes a fundamental debtor protection that — in combination with other provisions of the Bankruptcy Code — provides a "breathing spell" essential to (a) the preservation of the debtor's property and (b) the debtor's ability to administer its bankruptcy case and restructuring efforts without undue distraction or interference. See, e.g., Lewis v. Negri Bossi USA, Inc. (In re Mathson Indus.,

Inc.), 423 B.R. 643, 647 (E.D. Mich. 2010) (stating that the purpose of the automatic stay is that "[i]t gives the debtor a breathing spell from his creditors [and] … permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy") (quoting S. Rep. No. 95-989, at 49, 54-55 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5835, 5840-41).

14. The automatic stay is supplemented in chapter 9 by section 922(a) of the Bankruptcy Code, which provides as follows:

> A petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of—
>
> (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor; and
>
> (2) the enforcement of a lien on or arising out of taxes or assessments owed to the debtor.

11 U.S.C. § 922(a). In a chapter 9 case, therefore, section 922 of the Bankruptcy Code extends the self-executing protections of section 362 of the Bankruptcy Code to, among other things, actions against officers and inhabitants of the debtor to enforce claims against the debtor.

15. Section 365 of the Bankruptcy Code also is made applicable in chapter 9 pursuant to section 901(a) of the Bankruptcy Code. See 11 U.S.C.

§ 901(a) (specifically listing section 365 as applicable in chapter 9). Among other things, section 365 of the Bankruptcy Code prohibits all counterparties to executory contracts or unexpired leases with a debtor from modifying or terminating such contract or lease, or any right or obligation under such contract or lease, at any time after the commencement of the case, "solely because of a provision in such contract or lease that is conditioned on, [among other things,] (a) the insolvency or financial condition of the debtor at any time before the closing of the case, [or] (b) the commencement of a case under [the Bankruptcy Code.]" 11 U.S.C. § 365(e)(1).

16. The Contract Protections in section 365 also are self-executing and work hand-in-hand with the Chapter 9 Stay to protect the debtor's valuable property interests. To that end, the Chapter 9 Stay and the Contract Protections extend to protect a chapter 9 debtor's property and contracts wherever located and by whomever held. See, e.g., Underwood v. Hilliard (In re Rimsat, Ltd.), 98 F.3d 956, 961 (7th Cir. 1996) (bankruptcy court's in rem jurisdiction over property of the estate permits injunctions against foreign proceedings pursuant to the automatic stay); Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon), 153 F.3d 991, 996 (9th Cir. 1998) (bankruptcy court may protect estate property wherever located by issuing a discharge injunction under section 524 of the Bankruptcy Code). "Congress intended 'property of the estate' [i.e., property of

the debtor in chapter 9] to encompass 'all interests of a debtor, including a debtor's contract right to future, contingent property.'" Lewis v. Chappo (In re Chappo), 257 B.R. 852, 853 (E.D. Mich. 2001) (quoting Sharp v. Dery, 253 B.R. 204, 206 (E.D. Mich. 2000)).

17. Consistent with the foregoing, absent court approval, any actions by third parties to modify or terminate contracts or enforce their terms against the City are prohibited as an interference with property of the debtor. See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 532 (1984) (holding that while the debtor may enforce the terms of the contract against the creditor, the creditor is "precluded from … enforcing the contract terms" of an executory contract prior to assumption by the debtor); see also Hayes Lemmerz Int'l, Inc. v. Epilogics Grp., 531 F. Supp. 2d 789, 802 (E.D. Mich. 2007) ("Although during the Chapter 11 proceeding a prepetition executory contract remains in effect and enforceable against the nondebtor party to the contract, the contract is unenforceable against the debtor in possession unless and until the contract is assumed.") (citation omitted).

18. Thus, the non-debtor counterparty to an executory contract or unexpired lease must continue to perform until it is assumed or rejected. Krafsur v. UOP (In re El Paso Refinery, L.P.), 196 B.R. 58, 72 (Bankr. W.D. Tex. 1996) ("[T]he [Bankruptcy] Code places an independent duty on the non-debtor to

continue the performance of an executory contract until it is assumed or rejected…. Whether the debtor performs or not, the non-debtor must perform until assumption or rejection."); see also Interstate Gas Supply, Inc. v. Wheeling Pittsburgh Steel Corp. (In re Pittsburgh-Canfield Corp.), 283 B.R. 231, 238 (Bankr. N.D. Ohio 2002) ("Until an executory contract has been rejected, generally a non-debtor must continue to perform …. It follows that the non-debtor party cannot unilaterally elect to cease performance on an executory contract prior to its assumption or rejection.") (quotation marks and citation omitted).

Request to Confirm the Existence and Effect of the Chapter 9 Stay and the Contract Protections

19. Section 105(a) of the Bankruptcy Code authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Pursuant to section 105(a) of the Bankruptcy Code, the City requests an order confirming the existence and effect of the Chapter 9 Stay and the Contract Protections.

20. Notwithstanding the self-executing and global nature of the Chapter 9 Stay and the Contract Protections, not all parties affected or potentially affected by the commencement of this chapter 9 case are aware of these provisions of the Bankruptcy Code. Even parties that generally are aware of the automatic stay and contract provisions of the Bankruptcy Code may not appreciate their full significance and impact or how these provisions apply in chapter 9. Historically,

chapter 9 has been a little-used chapter of the Bankruptcy Code, particularly when compared to chapter 7 and chapter 11. Even creditors with experience in other bankruptcies may have little familiarity with chapter 9 and how (or if) the stay and contract protections apply in chapter 9.

21. Therefore, for the City to obtain the full benefit of the "breathing spell" afforded by bankruptcy, the City believes that it is necessary and appropriate to advise third parties of the existence and effect of the Chapter 9 Stay and Contract Protections through a separate court order. Such an order can be transmitted to affected parties to demonstrate the existence of the Chapter 9 Stay and the Contract Protections and their applicability in chapter 9. The City submits that this will promote prompt compliance with the Chapter 9 Stay and the Contract Protections, maximize the protections afforded by these provisions and minimize the need for future court intervention to address these issues.

22. For these reasons, it is not uncommon at the outset of a bankruptcy case for the court to issue an order embodying and restating the provisions of sections 362, 365 and (in a chapter 9 case) 922 of the Bankruptcy Code. See, e.g., In re New York City Off-Track Betting Corp., No. 09-17121 (Bankr. S.D.N.Y. Dec. 9, 2009) (order confirming the existence and effect of the Chapter 9 Stay and Contract Protections in a chapter 9 case); In re Almatis B.V., No. 10-12308 (Bankr. S.D.N.Y. May 17, 2010) (same, in a chapter 11 case); In re

PLVTZ, Inc., No. 07-13532 (Bankr. S.D.N.Y. Nov. 9, 2007) (same, in a chapter 11 case).[4]

23. The Emergency Manager. As part of this relief, the City requests that the Court expressly confirm the application of the Chapter 9 Stay to actions against the Emergency Manager. As noted above, section 922(a)(1) of the Bankruptcy Code stays actions against officers of the City (any such individual, a "City Officer") or inhabitants of the City that seek to enforce a claim against the City. Section 922(a)(1) of the Bankruptcy Code was enacted, in part, to prohibit creditors from bringing or continuing mandamus or other actions against officers of a municipality in an effort to collect prepetition debts. 6 COLLIER ON BANKRUPTCY ¶ 922.02[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.). Because the position of Emergency Manager was created by virtue of a state statute, PA 436 (see MCL § 141.1549), the City believes that there could be confusion about the applicability of section 922 to the Emergency Manager.

24. Although the Bankruptcy Code does not define the term "officer" protected by section 922(a)(1), a review of the Emergency Manager's role and the underlying authority demonstrates that actions against the Emergency Manager would be subject to the protections of the Chapter 9 Stay. Pursuant to

[4] Copies of these unreported orders are attached hereto collectively as Exhibit 6.

section 9(2) of PA 436, on appointment, the Emergency Manager assumed all powers of and acts "for and in the place and stead of" the Mayor (i.e., the chief executive officer of the City) and each of the members of the City Council (i.e., the City's governing body). MCL § 141.1549(2); see also MCL § 117.3(a) (providing that each city charter shall provide for, among other things, the election of a mayor, "who shall be the chief executive officer of the city"); Charter of the City of Detroit (the "City Charter") at § 3-107 ("The elective officers of the [C]ity are the Mayor, the nine (9) members comprising the City Council, the City Clerk and seven (7) elected Board of Police Commissioners."). Moreover, during the pendency of the Emergency Manager's appointment, "the governing body and the chief administrative officer of [the City] shall not exercise any of the powers of those offices except as may be specifically authorized in writing" by the Emergency Manager or as otherwise provided by PA 436. MCL § 141.1549(2).

25. The Emergency Manager thus has the powers of, and fulfills the roles of, the chief City Officers during his term. For the primary purpose of section 922(a)(1) of the Bankruptcy Code to be fulfilled and the Chapter 9 Stay to be effective with respect to the City, its protections must apply to the Emergency Manager. For the elimination of any doubt, the City requests that the Court enter

an order confirming that the protections of section 922(a)(1) of the Bankruptcy Code apply to the Emergency Manager.[5]

26. City Officers Serving in Any Capacity. In addition, the City requests that the Court confirm the application of the Chapter 9 Stay to any action or proceeding against a City Officer that seeks to enforce a claim against the City, in whatever capacity the applicable City Officer is serving. For example, some City Officers may serve other roles on behalf of, or at the request of, the City beyond the specific duties of their officer position. Section 922 of the Bankruptcy Code makes clear that the Chapter 9 Stay applies to actions and proceedings against officers of a municipal debtor, without regard to the capacity in which the officer is serving. See 11 U.S.C. § 922(a) (providing in part that "[a] petition filed under [chapter 9] operates as a stay … of (1) the commencement or continuation . . . of a judicial, administrative or other action or proceeding against an officer … of the debtor ….").

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[5] If the Court disagrees that the Emergency Manager automatically is entitled to the protections of the Chapter 9 Stay, the City requests that the Court extend the Chapter 9 Stay to provide such protection pursuant to section 105(a) of the Bankruptcy Code. The policy considerations that favor protecting the Mayor and City Council from lawsuits seeking to enforce claims against the City apply equally to the Emergency Manager, as he is acting in their stead. Moreover, any judgment that might be entered against the Emergency Manager in an action seeking to enforce a claim against the City would, in practical effect, be identical to a judgment against the City because the City currently acts through the Emergency Manager.

27. Notwithstanding the clear mandate of section 922 of the Bankruptcy Code, the City anticipates that creditors or other parties in interest may attempt to circumvent the protections of the Chapter 9 Stay by asserting claims against City Officers acting in other capacities. Accordingly, to effectuate the intent of section 922 of the Bankruptcy Code and minimize interference with the City's efforts to restructure its finances, the City requests that the Court's order confirming the existence and effect of the Chapter 9 Stay expressly confirm the application of the Chapter 9 Stay to the City Officers in whatever capacity they may serve.[6]

Notice

28. Notice of this Motion has been given to the following (or their counsel if known): (a) the trustees, transfer agents and/or paying agents, as applicable, for the City's secured and unsecured bonds; (b) the City's largest unsecured creditors as identified on the list filed under Bankruptcy Rule 1007(d);

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[6] If the Court disagrees that the City Officers are entitled to the protections of the Chapter 9 Stay in whatever capacity they serve, the City requests that the Court extend the Chapter 9 Stay to City Officers serving in other capacities. Exposing these City Officers to actions intended to enforce claims against the City notwithstanding the Chapter 9 Stay would permit creditors to circumvent the protections afforded to the City and the City Officers under the Bankruptcy Code. Therefore, to effectuate the intent and purposes of section 922 of the Bankruptcy Code and minimize interference with the City's efforts to restructure its finances, the City submits that an order extending the Chapter 9 Stay to City Officers acting in other capacities is appropriate to the extent that the Chapter 9 Stay does not already apply.

(c) the unions representing certain of the City's employees and retirees; (d) the four associations of which the City is aware representing certain retirees of the City; (e) the City's pension trusts; (f) the insurers of the City's bonds; (g) the insurers of the certificates of participation issued with respect to the City's pension funds (the "COPs"); (h) certain significant holders of the COPs; (i) the counterparties under the swap contracts entered into in connection with the COPs (collectively, the "Swaps"); and (j) the insurers of the Swaps. In addition, a copy of the Motion was served on the Office of the United States Trustee. The City submits that no other or further notice need be provided.

Reservation of Rights

29. The City files this Motion without prejudice to or waiver of its rights pursuant to section 904 of the Bankruptcy Code, and nothing herein is intended to, shall constitute or shall be deemed to constitute the City's consent, pursuant to section 904 of the Bankruptcy Code, to this Court's interference with (a) any of the political or governmental powers of the City, (b) any of the property or revenues of the City or (c) the City's use or enjoyment of any income-producing property.

No Prior Request

30. No prior request for the relief sought in this Motion has been made to this or any other Court.

WHEREFORE, the City respectfully requests that this Court: (a) enter an order substantially in the form attached hereto as Exhibit 1 granting the relief sought herein; and (b) grant such other and further relief to the City as the Court may deem proper.

Dated: July 19, 2013

Respectfully submitted,

/s/ David G. Heiman

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ATTORNEYS FOR THE CITY

SUMMARY OF ATTACHMENTS

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1	Proposed Form of Order
Exhibit 2	None [Separate Notice of First Day Relief Proposed]
Exhibit 3	None [Brief Not Required]
Exhibit 4	None [Separate Certificate of Service To Be Filed]
Exhibit 5	None [No Affidavits Filed Specific to This Motion]
Exhibit 6	Unreported Orders

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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.

8. Nothing herein is intended to, shall constitute or shall be deemed to constitute the City's consent pursuant to section 904 of the Bankruptcy Code to this Court's interference with (a) any of the political or governmental powers of the City, (b) any of the property or revenues of the City or (c) the City's

use or enjoyment of any income-producing property. In addition, for the avoidance of doubt, nothing herein shall, or shall be construed to, limit, modify or restrict any rights and protections afforded to the City under the Bankruptcy Code, including sections 362, 365 and 922 thereof.

9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, enforcement or interpretation of this Order.

EXHIBIT 6

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Chapter 9
NEW YORK CITY OFF-TRACK BETTING CORPORATION, Debtor.[1]	Case No. 09-17121 (MG)

ORDER CONFIRMING THE PROTECTIONS OF SECTIONS 362, 922, 365 AND 904 OF THE BANKRUPTCY CODE

Upon consideration of the motion (the "**Motion**")[2] for an order (the "**Order**") to Confirm the Protections of Sections 362, 922, 365 and 904 of the Bankruptcy Code, filed by New York City Off-Track Betting Corporation ("**NYC OTB**"), the Court, finding that proper and adequate notice of the Motion has been given and that no other or further notice is necessary, and having determined that the relief requested in the Motion is appropriate and in the best interest of the parties in interest in this case,

It is hereby **ORDERED THAT**:

1. The Motion is GRANTED.

2. NYC OTB is authorized, by virtue of the filing of its petition for relief under chapter 9 of the Bankruptcy Code, to be afforded the protections of, inter alia, sections 362, 922, 365 and 904 of the Bankruptcy Code.

[1] NYC OTB's address is 1501 Broadway, New York, NY 10036. The Debtor's tax identification number is 13-2664509.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

3. In accordance with sections 362 and 922 of the Bankruptcy Code, and except as otherwise provided in section 362 of the Bankruptcy Code, all entities (including individuals, partnerships, corporations and foreign or domestic governmental units) and all those acting for or on their behalf, including sheriffs, marshals, constables and other or similar law enforcement officers and officials, are stayed, restrained and enjoined from:

(a) commencing or continuing, including the issuance or employment of process, any judicial, administrative or other action or proceeding against NYC OTB or against an officer of NYC OTB that was or could have been commenced before the commencement of the chapter 9 case or to recover a claim against NYC OTB or an officer of NYC OTB that arose before the commencement of the chapter 9 case;

(b) the enforcement, against NYC OTB or against property of NYC OTB, of a judgment obtained before the commencement of the chapter 9 case;

(c) any act to obtain possession of property of or from NYC OTB or of property from NYC OTB or to exercise control over property of NYC OTB;

(d) any act to create, perfect or enforce any lien against property of NYC OTB;

(e) any act to collect, assess or recover a claim against NYC OTB or against an officer of NYC OTB that arose before the commencement of the chapter 9 case; or

(f) the setoff of any debt owing to NYC OTB that arose before the commencement of the chapter 9 case against any claim against NYC OTB.

4. In accordance with and to the extent provided in section 365 of the Bankruptcy Code, all entities (including individuals, partnerships, corporations and foreign or domestic governmental units), and all those acting for or on their behalf are hereby prohibited from modifying or terminating any executory contract or unexpired lease of NYC OTB, or any right or obligation under such contract or lease, at any time after the commencement of NYC OTB'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 NYC OTB at any time before the closing of the chapter 9 case; or

(b) the commencement of NYC OTB's chapter 9 case.

5. In accordance with and to the extent provided in sections 362 and 365 of the Bankruptcy Code, all parties to any executory contracts or unexpired leases with NYC OTB shall continue to perform their obligations under such contracts or leases until such contracts or leases are assumed or rejected by NYC OTB or otherwise expires by their own terms.

6. In accordance with section 904 of the Bankruptcy Code, this Court is prohibited from issuing any stay, order, or decree, in this chapter 9 case or otherwise that would interfere with (a) any of the political or governmental powers of NYC OTB; (b) any of the property or revenues of NYC OTB, or (c) NYC OTB's use or enjoyment of any income-producing property, unless NYC OTB consents or the plan so provides.

7. The terms of this Order shall be effective and enforceable immediately upon its entry, NYC OTB is not subject to any stay in the implementation, enforcement or realization of

the relief granted in this Order, and NYC OTB may, in its discretion and without further delay, take any action and perform any act authorized under this Order.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

9. Compliance with Local Rule 9013-1(b) in connection with the Motion is excused.

Dated: New York, New York
December 9, 2009

/s/ Martin Glenn
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	**Chapter 11**
ALMATIS B.V., *et al.*,	**Case No. 10-12308 (MG)**
Debtors.	**Jointly Administered**

FINAL ORDER CONFIRMING THE PROTECTIONS OF SECTIONS 362 AND 365 OF THE BANKRUPTCY CODE AND RESTRAINING ANY ACTION IN CONTRAVENTION THEREOF

Upon consideration of the motion (the "***Motion***")[1] of Almatis B.V. and certain of its subsidiaries and affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the "***Debtors***" and each, a "***Debtor***"), for entry of a final order confirming, enforcing, and restating the application of: (a) the automatic stay; and (b) the injunction preventing non-debtor counterparties to contracts with the Debtors from terminating such contracts or leases; and upon the De Jong Declaration in support thereof; and the Court having found that it has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that jurisdiction and venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Debtors' estates, their creditors, and other parties in interest; and notice of the Motion and the opportunity for a hearing on the Motion was appropriate under the particular circumstances; and the Court having reviewed the Motion and having considered the statements in support of the relief requested therein at a hearing before

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Court (the "***Hearing***"); and the Court having considered and overruled the *Limited Objection of Entergy to Debtors' Motion For Interim and Final Orders Confirming the Protections of Sections 362 and 365 of the Bankruptcy Code and Restraining Any Action In Contravention Thereof*, except to the extent provided herein; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation, and having overruled objections, if any, and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is granted to the extent set forth herein on a final basis.

2. All persons (including individuals, partnerships, corporations, and other entities and all those acting on their behalf) are hereby stayed, restrained and enjoined, pursuant to section 362(a) of the Bankruptcy Code, from:

(a) commencing or continuing (including the issuance or employment of process) any judicial, administrative, or other action or proceeding (including, but not limited to, any bankruptcy, liquidation, suspension of payments, or any and all other similar proceedings in a foreign jurisdiction) against the Debtors that was or could have been commenced before the commencement of the Chapter 11 Cases (the "***Petition Date***"), or recovering a claim against the Debtors that arose before the Petition Date;

(b) enforcing, against the Debtors or against property of their estates, a judgment or order obtained before the Petition Date;

(c) taking any action to obtain possession of property of the Debtors' estates or to exercise control over property of the estates or interfere in any way with the conduct by the Debtors of their businesses, including, without limitation, attempts to interfere with deliveries or events or attempts to seize or reclaim any equipment, supplies, or other assets the Debtors use in their businesses;

(d) taking any action to create, perfect, or enforce any lien against property of the Debtors' estates;

(e) taking any action to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose prior to the Petition Date;

(f) taking any action to collect, assess, or recover a claim against the Debtors that arose prior to the Petition Date;

(g) offsetting any debt owing to the Debtors that arose before the Petition Date against any claim against the Debtors; and

(h) commencing or continuing any proceeding before the United States Tax Court concerning the Debtors, subject to the provisions of 11 U.S.C. § 362(b);

provided, however that exceptions to automatic stay as set forth in section 362 are treated as provided therein.

3. Pursuant to sections 362 and 365 of the Bankruptcy Code, notwithstanding a provision in a contract or lease or any applicable law, all persons are hereby stayed, restrained, and enjoined from terminating or modifying any and all contracts and leases to which the Debtors are party or signatory, at any time after the Petition Date due to a provision in such contract or lease that is conditioned on the (a) insolvency or financial condition of the Debtors at any time before the closing of the Chapter 11 Cases; (b) commencement of the Chapter 11 Cases under the Bankruptcy Code; or (c) the appointment of a trustee in the Chapter 11 Cases; *provided*, *however*, that exceptions set forth in sections 362 and 365 are treated as provided therein.

4. Except as otherwise provided in the Bankruptcy Code (including section 366 of the Bankruptcy Code), pursuant to sections 362 and 365 of the Bankruptcy Code, all parties to a contract or lease with one or more of the Debtors shall continue to perform their obligations under such contract or lease until such contract or lease is assumed or rejected by the Debtors or otherwise expires by its own terms.

5. Nothing in this Order or the Motion shall constitute a rejection or assumption by

the Debtors, as debtors-in-possession, of any executory contract or unexpired lease.

6. In accordance with the Bankruptcy Code, the Bankruptcy Rules, and applicable law, upon request of a party in interest, and after notice and a hearing, the Court may grant relief from the restraints imposed herein in the event that it is necessary, appropriate, and warranted to terminate, annul, modify, or condition the injunctive relief herein.

7. The Debtors are hereby authorized to serve a copy of this entered Order upon such creditors and other parties in interests as they deem necessary, desirable, or appropriate.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

9. To the extent that any affiliates of the Debtors subsequently commence chapter 11 cases that are jointly administered with the Chapter 11 Cases, the relief granted pursuant to this Order shall apply to such debtors and their respective estates.

Dated: New York, New York
May 17, 2010

/s/Martin Glenn
THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	
	Chapter 11
PLVTZ, Inc.,[1]	
	Case No. 07-13532 (REG)
Debtor.	

ORDER CONFIRMING THE PROTECTIONS OF
SECTIONS 362 AND 525 OF THE BANKRUPTCY CODE

This matter coming before the Court on the Motion of the Debtor for an Order Confirming the Protections of Sections 362 and 525 of the Bankruptcy Code (the "Motion"),[2] filed by the above-captioned debtor (the "Debtor"); the Court having reviewed the Motion and the Affidavit of Kathleen M. Guinnessey filed in support of the Debtor's first day papers (the "Affidavit") 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 having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. § 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion and the Hearing was sufficient under the circumstances and (e) in light of the circumstances, the requirement of Local Bankruptcy Rule 9013-1(b) that a separate memorandum of law be filed in support of the Motion is deemed satisfied or otherwise waived; and the Court having determined that the legal and factual bases

1 The Debtor, PLVTZ, Inc. (Employer's Tax Identification No.: 56-2535090), is a Delaware corporation. The address of the Debtor is 233 Broadway, 23rd Floor, New York, NY 10279.

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

set forth in the Motion and the Affidavit and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. In accordance with section 362 of the Bankruptcy Code, and subject to sections 362(b), 555 through 561 and 1110 of the Bankruptcy Code, all persons (including individuals, partnerships and corporations, and all those acting for or on their behalf) and all governmental units (including the United States of America and any State, Commonwealth, District, Territory, municipality, department, agency or instrumentality of the United States, a State, a Commonwealth, a District, a Territory, a municipality, a governmentally-owned utility company, a foreign state or other foreign or domestic governments and all those acting for or on their behalf) are stayed and restrained, pursuant to, and to the extent provided in, section 362(a) of the Bankruptcy Code, from:

(a) commencing or continuing, including the issuance or employment of process, of a judicial, administrative or other action or proceeding against the Debtor, that was or could have been commenced before the commencement of the Debtor's chapter 11 case, or recovering a claim against the Debtor that arose before the commencement of this chapter 11 case;

(b) enforcing, against the Debtor or against property of any of the Debtor's estate, of a judgment obtained before the commencement of the Debtor's chapter 11 case;

(c) taking any act to obtain possession of property of any of the Debtor's estate or of property from any of the Debtor's estate or to exercise control over property of any of the Debtor's estate;

(d) taking any act to create, perfect or enforce any lien against property of any of the Debtor's estate;

(e) taking any act to create, perfect or enforce against property of the Debtor any lien to the extent that such lien secures a claim that arose before the commencement of the Debtor's chapter 11 case;

(f) taking any act to collect, assess or recover a claim against the Debtor that arose before the commencement of the Debtor's chapter 11 case;

(g) the setoff of any debt owing to the Debtor which arose before the commencement of the Debtor's chapter 11 case against any claims against such Debtor; and

(h) commencing or continuing a proceeding before the United States Tax Court concerning a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

3. In accordance with section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend or refuse to renew a license, permit, charter, franchise or other similar grant to, condition such a grant to or discriminate with respect to such a grant against the Debtor, or any other person or entity with whom the Debtor has been associated, solely because the Debtor is, or has been, a debtor under the Bankruptcy Code or has been insolvent prior to or during this chapter 11 case, or has not paid a debt that is dischargeable in the Debtor's chapter 11 case.

4. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

5. The Debtor is hereby authorized to serve a copy of this entered Order upon such creditors and other parties in interest as the Debtor, in its discretion, deems necessary or appropriate.

Dated: New York, New York
November 9, 2007

S/ Robert E. Gerber
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 2

From *In Re City of Detroit*, Case No. 13-53846

2.	7/24/13	2181	Transcript, hearing on motion to extend stay (Docket 128)

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, MICHIGAN,	.	Docket No. 13-53846
	.	Detroit, Michigan
	.	July 24, 2013
Debtor.	.	10:02 a.m.
. . . . .		

HEARING RE. 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 (DOCKET #53) AND 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 (DOCKET #56)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Jones Day By: HEATHER LENNOX North Point 901 Lakeside Avenue Cleveland, OH 44114-1190 (216) 586-3939
For AFSCME:	Lowenstein Sandler, LLP By: SHARON L. LEVINE 65 Livingston Avenue Roseland, NJ 07068 (973) 597-2374
For Syncora Guarantee and Syncora Capital Assurance:	Kirkland & Ellis, LLP By: RYAN BENNETT 300 North LaSalle Chicago, IL 60654 (312) 862-2074
For Public Safety Unions:	Erman, Teicher, Miller, Zucker & Freedman, PC By: BARBARA PATEK 400 Galleria Officentre, Suite 444 Southfield, MI 48034 (248) 827-4100

APPEARANCES (continued):

For Police and Fire Retirement System and General Retirement System of the City of Detroit:	Clark Hill, PLC By: ROBERT GORDON 151 South Old Woodward, Suite 200 Birmingham, MI 48009 (248) 988-5882
For the UAW:	Cohen, Weiss & Simon, LLP By: BABETTE CECCOTTI 330 West 42nd Street, 25th Floor New York, NY 10036 (212) 356-0227
For the Flowers Plaintiffs:	Law Offices of William A. Wertheimer By: WILLIAM WERTHEIMER 30515 Timberbrook Lane Bingham Farms, MI 48025 (248) 644-9200
For Nathaniel Brent:	In pro per NATHANIEL BRENT 538 South Livernois Detroit, MI 48209
For the Phillips Plaintiffs:	The Sanders Law Firm, PC By: HERBERT A. SANDERS 615 Griswold, Suite 913 Detroit, MI 48226 (313) 962-0099
For the State of Michigan:	Michigan Department of Attorney General By: MATTHEW SCHNEIDER 525 West Ottawa Street, Fl. 7 P.O. Box 30212 Lansing, MI 48909 (517) 241-8403
For the Webster Plaintiffs:	McKnight, McClow, Canzano, Smith & Radtke, PC By: JOHN R. CANZANO 400 Galleria Officentre, Suite 117 Southfield, MI 48034 (248) 354-9650

Court Recorder: Letrice Calloway
United States Bankruptcy Court
211 West Fort Street
21st Floor
Detroit, MI 48226-3211
(313) 234-0068

Transcribed By: Lois Garrett
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

THE CLERK: Case Number 13-53846, City of Detroit, Michigan.

THE COURT: Good morning. Stand by one moment for me, please, sir. I'd like to begin by reviewing with everyone the order of proceedings here, and then we'll get right to the arguments. The first thing I'd like to do is administer the oath to attorneys who seek to become members of the Bar of this Court, and then I will give a brief opening statement, and then we will proceed with the arguments. It is my intent to allow the city, who is the movant here, 15 minutes for its initial argument and then to allow each of those creditors who have filed objections to the motion 15 minutes each as well and then a 15-minute rebuttal for the city. Oh, actually, before that rebuttal I want to give any attorneys who would like to be heard on the record but who did not file objections to be heard as well and then a rebuttal by the city. And then we'll take a break so that I can deliberate on the motions and then after a period of time come back out and give you my decision.

So let's begin with the administration of the oath to those attorneys who need admission. Would those of you who do seek admission to the Bar of the Court step forward, please? You can actually just stand right there in front of the bench and tell me who you are.

MR. LEMKE: I'm David Lemke, your Honor, from

Nashville, Tennessee.

MR. SMITH: Bill Smith, your Honor, from Chicago.

MR. BENNETT: Ryan Bennett, your Honor, from Chicago.

THE COURT: Okay. One second, please. Here we go. And raise your right hands. Do you affirm that you will conduct yourselves as attorneys and counselors of this Court with integrity and respect for the law, that you have read and will abide by the civility principles approved by the Court, and that you will support and defend the Constitution and laws of the United States?

ATTORNEYS: I do (collectively).

THE COURT: All right. Welcome to the Bar of our Court. Counsel, we will take care of filing your papers for you.

ATTORNEYS: Thank you, your Honor (collectively).

THE COURT: One more moment, please. Okay. I'd like to begin by describing for those who may be watching or listening in what the matters are before the Court today. There are two motions before the Court today. The parties refer to one of the motions as the stay confirmation motion, and they refer to the second motion as the stay extension motion.

When anyone files bankruptcy, all of the legal proceedings against that person are stopped. We call that a

stay, a stay of proceedings. When a municipality like the City of Detroit files bankruptcy, all of the legal proceedings against the city and its officers to collect on a claim against the city are also stopped. The stay confirmation motion simply requests an order confirming these stays under the United States Bankruptcy Code are in effect. The stay extension motion requests that the Court extend or expand those statutory stays by entering an injunction to stop proceedings against other employees of the city and against the governor and the treasurer of the state. Those are the only two motions before the Court here today. Not before the Court is whether the city is eligible to file bankruptcy or whether any plan that the debtor might propose in the case is confirmable under the Bankruptcy Code. Those issues will be, I expect, fully litigated in due course in this case.

So now we are ready for arguments on these two motions first by the city, and, counsel, I need to remind you because of our equipment in this room, when you address the Court, you do need to stand at the lectern and speak into the microphone there.

MS. LENNOX: Good morning, your Honor. Heather Lennox of Jones Day on behalf of the city.

THE COURT: You may proceed.

MS. LENNOX: Thank you, your Honor. With respect to

the stay confirmation motion, your Honor, I think your Honor summarized exactly what we're looking for quite cogently and concisely. The reason we filed the motion, your Honor, as has been evident by some activity we've seen in the last week or so, is that not all people understand the concept of the stay or, frankly, how it works in Chapter 9. We have had state court orders issued against the city after the petition date. We've had some other Circuit Court judges express -- in other city litigation express some uncertainty about whether the stay applies. We've had vendors with contracts seek to stop shipping, and we have a new officer. We have an emergency manager, and we want to make it clear that the protections of the stay do apply to the emergency manager because, as your Honor indicated, under Section 922(a), the stay does apply to officers of the city for collections of claims against the city.

So I would like to address in particular, your Honor, the emergency manager. Under Section 922(a), the stay -- we believe the stay applies to the emergency manager. Under Section 9.2 of PA 436, on appointment, the emergency manager assumed all of the powers and acts for and in the place of and in the stead of the mayor and the city council, meaning the governing bodies of the city. And during the pendency of the emergency manager's appointment, the other governing bodies shall not exercise any of the powers of

their officers except as may be specifically authorized in writing by the emergency manager.

Furthermore, your Honor, Section 18(1) of PA 436 empowers the emergency manager to act exclusively on the city's behalf in this case, so we do believe that he is an officer entitled to the protections of the Chapter 9 stays.

We have also requested a clarification, your Honor, because the Code does just simply reference officers of the city, that it would be officers of the city serving in any capacity. Some city officers do serve in other roles on behalf of or at the request of or pursuant to ordinance in other manners in the performance of their duties as officers of the city. For example, Mr. Brown, who is the chief compliance officer, sits on the root cause committee. We do have a finance --

THE COURT: Sorry. Sits on what committee?

MS. LENNOX: The root cause committee, your Honor. We do have the finance director, the budget director, and corporation counsel of the city that are directors of the service corporations that are formed in connection with the pension certificates. They sit as directors of that corporation through Ordinance Number 03-05 of the City Code, so they are performing their official duties.

Finally, with respect to this motion, your Honor, the State of Michigan has asked me to confirm on the record,

which I now do, that by this motion the city does not seek to abrogate the exceptions to the stay identified in Section 362(b) of the Bankruptcy Code nor do we seek to vitiate the state's powers under Section 903 of the Bankruptcy Code.

I think this motion, your Honor, is not uncommon, is fairly straightforward, and merely seeks to confirm the protections that are already granted by the Bankruptcy Code. So with your Court's permission, unless you have questions, I would move to the motion to extend.

THE COURT: Please.

MS. LENNOX: In this motion, your Honor -- and this is a little more complicated -- the city seeks to extend the stay provisions of Section 362 and 922 of the Bankruptcy Code to certain parties that are or are likely to become targets of claims or lawsuits or other enforcement actions that would have the direct or practical effect of denying the city the protections of the automatic stay imposed by the Code or seeking to collect or enforce a claim against the city. Your Honor, as you may be aware, we have had several pre-petition lawsuits that have attempted these actions. We do describe them in the papers. Some of the objectors describe further developments in their papers. If it would aid the Court, I do have a short summary as a demonstrative exhibit that I could hand the Court that would show the Court the state of play in each of these actions. Would that be helpful to the

Court?

THE COURT: That's fine. You should assume and all of you should assume in your presentations that I have thoroughly read and reviewed all of your papers, even those that were filed last night.

MS. LENNOX: Certainly, your Honor. If your Honor does -- perhaps if your Honor would like to see it --

THE COURT: Okay.

MS. LENNOX: -- I'll hand it up. Thank you. May I approach, your Honor?

THE COURT: Please.

MS. LENNOX: Thank you, your Honor. We do have three lawsuits that attempt to prevent either the filing of this case or the conduct of the city's actions within this case. One of the suits has been filed against the governor and the emergency manager. That case -- we don't need a stay extension for the emergency manager. That case is stayed as to the emergency manager. Two other cases have been filed solely against the governor and the state treasurer that seek to prevent the authorization of the filing and to circumscribe the emergency manager's powers within this case. Those are the kinds of things, your Honor -- there's been a flurry of activity. Most of the orders entered in those three cases were entered after -- the TRO's were initially entered after this petition was filed. There were further

orders entered by the state court on the 19th of July that amended the two temporary restraining orders, and in the Webster case, which is the one case that involves only the state treasurer and the governor, there was a declaratory judgment action or a declaratory judgment that was filed declaring PA 436 unconstitutional because it could affect the city's rights within this case. Those actions have all been appealed by the state attorney general. The state court has ordered a briefing to go forward in one of the cases and had ordered that the morning of the 22nd, and yesterday the appellate court issued stays in all three of the cases.

THE COURT: If the Court grants your relief, what would be the impact on that appeal?

MS. LENNOX: We believe, your Honor, that the -- we believe that those cases should be permanently stayed, and the issues that are addressed in those cases regarding the constitutionality of PA 436, because they seek to -- the arguments about constitutionality on PA 436 aren't straight constitutionality issues. They say it's unconstitutional because of what can happen and because of the powers that may be granted under the Bankruptcy Code, and under this Court's jurisdiction and under the emergency manager's rights under Chapter 9, because that is the basis for the challenge to unconstitutionality, we believe those decisions must be made and can only be made by this Court in an action brought

before this Court under the supremacy clause and the bankruptcy clause of the United States, so we would expect those actions to be stayed, and any issues that the litigants would have, they would have to bring before this Court for a determination by a court of competent jurisdiction.

Unless your Honor has any other questions with respect to the procedural posture of some of these cases, I will move on. It's as a result of these cases -- and these are all certainly public pleadings for which your Honor may take judicial notice under Federal Rule of Evidence 201(c). It's because of these proceedings that we sought to file this motion, and I'd like to explain the -- first of all, I'd like to articulate the standard under which we're proceeding, and then I would like to explain in more detail about why and the three categories of extensions we are seeking.

First of all, the standard for a case for extending the stay is that unusual circumstances may exist, and they can exist when there is an identity between the third party and the debtor such that a judgment against the third party would, in effect, be a judgment against the debtor or that the actions taken by the third party would pose a substantial risk to the reorganization of the case. Some courts also say that such actions would significantly impair the administration of this case. So based on the backdrop of that standard, we have asked for the stay to be extended

under certain circumstances to three different categories of persons. The first, as your Honor indicated, are the state entities. We are asking the Chapter 9 stay to be extended to the governor, the state treasurer, and the members of the local Emergency Financial Assistance Loan Board for actions -- excuse me -- that seek to enforce claims against the city to interfere with the city's activities in this Chapter 9 case or otherwise deny the city the protections of the Chapter 9 stay and interfere with this Court's jurisdiction over these matters. To be clear, your Honor, because I think there was some confusion about this on the part of some parties, we are seeking to extend the stay protections that the city currently enjoys to the state officials that I identified in the context of lawsuits like the three already filed against state officials that, in substance, seek to interfere with the city's rights as a Chapter 9 debtor and that seriously jeopardize the city's rehabilitation or seek to, in a back-door way, preserve collect, and enforce claims against the city. This motion does not seek to stay state officials' actions. Rather, it seeks to stay third-party actions against state officials. The reasons and the evidence for this, your Honor, I think are well-documented in all of the flurry of activity that has taken place in the last week, and there -- that kind of activity needs to stop. This Court has jurisdiction over

this case, this Court has jurisdiction of all federal matters arising in this case, and only this Court has jurisdiction to determine them. Having widespread litigation in various state tribunals that can come to different decisions when it's doubtful that they have jurisdiction to do that can only confuse the parties, confuse the case, and create serious barriers to an efficient administration of this case.

The second request that we make for an extension, your Honor, is to extend this Chapter 9 stay to actions or proceedings against employees of the city's that are neither city officers nor inhabitants of the city because Section 922(a) refers to inhabitants. Many of our nonofficer employees are inhabitants of the city and could be covered, but many are not, and so we are seeking this extension.

Your Honor should know that by virtue of city ordinance 13-11-1, the city does indemnify its employees for lawsuits that arise from the good faith performance of their duties. The city is also self-insured for all of these actions, so the --

THE COURT: So this extension seeks -- or would only apply to claims against employees for which the city might be obligated to indemnify?

MS. LENNOX: Correct, your Honor. Because the city would be responsible for indemnification because the city is self-insured, we believe that these actions are an action to

collect from the city, and we would ask the stay to be extended in this instance.

The third request, your Honor, is tied to some of the language in Judge Aquilina's orders, and it's a little unusual, but under the circumstances, we believe it's warranted.

THE COURT: Excuse me one second. Before you move on to that, this ordinance that you mentioned --

MS. LENNOX: Yes, sir.

THE COURT: -- was that in your brief or in your motion?

MS. LENNOX: That was not in the brief and the motion, your Honor.

THE COURT: Would you give us the number again?

MS. LENNOX: Yes, sir. It is Section 13-11-1 et seq.

THE COURT: Does anyone have a copy of that?

MS. LENNOX: I do not have a copy with me, your Honor, but we can endeavor to get the Court one expeditiously. Actually, your Honor, may I check my materials? I might have a copy of it, if you'd like.

THE COURT: Why don't you do that while the creditors are arguing, and you can present it to the Court later, or actually do you know if the City of Detroit ordinances are on Westlaw?

MS. LENNOX: I do not know that, your Honor.

THE COURT: Anybody know? Somebody says no. All right. I'll need a copy then.

MS. LENNOX: Moving on to the third category, your Honor -- and, again, this is a little unusual, and it arises directly out of some of the orders that have been entered in the state court litigation. We request to extend the Chapter 9 stay to, quote, "city's" -- "the city's agents and representatives," which are the terms used in the state court orders. That would directly or indirectly seek to enforce claims against the city or, again, to interfere with the city's activities and this Court's jurisdiction in this Chapter 9 case or otherwise deny the city the protections of the Chapter 9 stay. Again, your Honor, it's unusual, but under the circumstances and what's been going on in the past week, we believe it's warranted under the circumstances and does meet the standard that I articulated earlier.

That's the extent of the relief that we seek, your Honor. If your Honor has no further questions, then I would reserve remarks for rebuttal.

THE COURT: I do have a couple of questions for you.

MS. LENNOX: Yes.

THE COURT: Can you summarize how you deal with the adversary proceeding issue, the argument that the request to extend the stay under Section 105 of the Bankruptcy Code

should have been in the form of an adversary proceeding?

MS. LENNOX: Um-hmm. Yes, your Honor. I actually don't -- first of all, in many cases, including cases before this Court in the Collins & Aikman case, the requests for extension of a stay are made by motion. The Sixth Circuit case law that we cite in our brief also suggests that extensions can be made under 105 by motion. In practice, they are often made by motion. I think it is important to make it by motion here, and it is completely impractical to try to file an adversary proceeding with respect to this because of the nature of what we are asking for. For example, with respect to the state entities, we know of three lawsuits that have been filed. We have plaintiffs that we could name in an adversary proceeding, but what we're asking for goes beyond that. We want the stay to apply to these actions or any actions somebody might think to bring in the future. I don't know how to name, you know, unknown plaintiffs in the future. The scope of what we're asking for is broader than that, which is why it makes sense when you're proceeding under Section 362 to move by motion. There's motions to lift stay even though ostensibly that would be an injunctive action, but the motions to lift and motions to extend and motions to enforce are done by motion. Certainly people have done it by the method of preliminary injunction. I don't dispute that, but usually when that happens there is

one specific lawsuit that they seek to stay, and that is the sole extension that they're asking for. We are asking for something much broader here, and I think an adversary proceeding procedurally would be improper.

We have also cited -- and we believe it to be true -- in our papers that courts often will say -- will not elevate form over substance, and there are cases that we cite in our reply, including the In re. Cannonsburg Environmental Associates case from the Sixth Circuit that says -- where very clearly the action in that case should have been filed as an adversary proceeding, and the judge said, "Look, you've had due process. You've had notice. You have an opportunity to respond. We have had a full hearing of all the views. You have not been prejudiced." That exists in this case as well, your Honor, as evidenced by the long and lengthy objections that have been filed to the motion that we ask as it stands.

THE COURT: My second question related to the requirement that the defendants -- that the creditors say apply that to issue the kind of order that you seek, the traditional four factors of a preliminary injunction need to be considered, but in light of the fact that you're over time, I will ask you to address that when you come back after.

MS. LENNOX: Thank you, your Honor.

THE COURT: All right. So I will allow 15 minutes for each of the creditors that have filed objections. These are the Michigan Council 25 of AFSCME, Syncora, the UAW together with Creditors Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington, and Bruce Goldman, the Detroit public safety unions, if I can refer them -- refer to them by that, and the General Retirement System of the City of Detroit and the Police and Fire Retirement System of the city. It doesn't matter to me, counsel, the order in which you proceed, so I will leave that to you to work out.

MS. LEVINE: I'm going to go with alphabetical.

THE COURT: Okay.

MS. LEVINE: Good morning, your Honor. Sharon Levine, Lowenstein Sandler, for Michigan Council 25 of the American Federation of State, County, and Municipal Employees or AFSCME, as it's been referred to here today.

Your Honor, very briefly, it's clear that your Honor has read all the papers, and we very much appreciate that given the short time frame that we've been before this Court. Bankruptcy Code Section 105 is extraordinary relief, extraordinary in that it's only used to enforce rights that already exist under the Bankruptcy Code, so it's not there to create new rights that don't currently exist under the Code. What we have here in a Chapter 9 case, which is more restrictive than, for example, a Chapter 11 case, is the

situation where if, in fact, the state has not properly authorized the Chapter 9 filing, there are rights that don't exist under the Bankruptcy Code. If Chapter 9, as has historically been seen through the unconstitutional finding of predecessors to Chapter 9, is really being used here to avoid state constitutional rights, then Chapter 9 in and of itself is potentially unconstitutional. If not, it has to be construed narrowly in order to read it constitutionally. We would respectfully submit that using 105 to find rights that don't otherwise exist, particularly of a constitutional nature, is an extremely broad use of 105. This isn't a situation where we're saying to the controller or the governor or Mr. Orr, you know, don't respond to discovery requests in a state court action in a foreign jurisdiction because we need your attention here. We're taking away very fundamental constitutional rights.

Secondly, your Honor, if, in fact --

THE COURT: So your argument about the narrow application of Section 105 in this case is really a result of the fact that it's a Chapter 9.

MS. LEVINE: Yes, your Honor.

THE COURT: It's not an argument that's based on Section 105, per se.

MS. LEVINE: Yes, your Honor. In a Chapter 11 you'll have circumstances, for example, where even in the

broader case of a Chapter 11, you won't use Article -- you won't use Section 105 to grant a casino license or a liquor license or tell a utility board they can't change rates, but we have an even narrower situation here because we're in Chapter 9.

Two, Chapter 9 can't be used if, in fact, the state has not authorized under its constitution and its laws the Chapter 9 filing. The Chapter 9 filing here is arguably flawed because it intends to go after the pensions. If it goes after the pensions, it arguably violates the state constitution and can't be before this Court, so, again, the issue with regard to whether or not we have an appropriate state constitutional flaw -- sorry. The issue with regard to whether or not we have an appropriate filing is necessarily limited by whether or not we have an appropriate state -- we have an inappropriate state constitutional authorization. If we have an inappropriate state constitutional authorization, that is not simply an implementation tool under 105. That is, in essence, a substantive right that's being creative -- created under 105 that does not exist in the state court.

In addition to that, your Honor, and also importantly, three, individual citizens of the City of Detroit have the absolute right to protect their own constitutional rights. If we say to them they can't go to the state courts that are there for the protection of their

constitutional rights in part, then we are -- then we're using 105 again way more broadly than it gets used in the ordinary course as simply an implementation tool. We're creating more substantive rights. And while this Court has --

THE COURT: Well, but why isn't the extended stay that the city seeks here simply a procedural mechanism to funnel such challenges to the Bankruptcy Court and, therefore, does not have the effect of denying citizens or other creditors of their rights to have their constitutional claims heard?

MS. LEVINE: Your Honor, if this Court is a court of secondary jurisdiction, no disrespect, with -- but if you look at federalism, comity, abstention, and the state courts are the courts of primary jurisdiction, we would respectfully submit that unlike, for example, determining in a Chapter 11 case that there's a validly perfected security interest because you've looked at state law and the UCC is properly filed, we have a very fundamental right here that this Court is being asked to address, so what we're saying is instead of going to the court that's primarily responsible, we're going to come into this Court instead, and it's not as if there's delay or uncertainty with regard to the fact that those matters are going to get heard and considered quickly. We already have state court litigation pending, and the state

appellate courts are poised and ready to rule, so there's no reason to divest them of that appropriate jurisdiction under concepts of federalism, comity, and abstention and move that here to a court of secondary jurisdiction on those issues.

Your Honor, fourth, with regard to the form over substance, the procedural arguments with regard to 105, in certain circumstances where 105 is being used for things like stopping discovery or minimal things like that, that's one set, but the Federal Rules of Civil Procedure are put in place in order to protect parties and provide due process. There can't be a more fundamental situation where you need to enforce those types of rights than when you're dealing with basic fundamental constitutional rights, and we respectfully submit that even though there are circumstances where expediency mandates the use of 105 quickly, this is not one of those circumstances.

Your Honor, the breathing spell under 105 -- the breathing spell under the Bankruptcy Code and the use of 105 to extend the breathing spell is only appropriate if, in fact, the underlying bankruptcy is an appropriate bankruptcy. The idea that there's a breathing spell to continue what is potentially an unconstitutional or illegal -- not intentionally, no motive or anything, your Honor, but -- proceeding is clearly not anything that 105 was designed to implement.

Your Honor, we would respectfully submit that these are very, very fundamental rights, and unlike a Chapter 11 case where you have a defined benefit plan where if, in fact, it is terminated, there's federal insurance under the PBGC up to $57,000, or if you have a multi-employer plan, even if an employer withdraws, the beneficiaries themselves are protected, here our members who participate at most are at or below $19,000 a year. Clearly there's no safety net. These issues are hard issues. The collateral advantage to sending this back to the state court for an appropriate decision is that the conversations which we believe should have been happening more robustly before the filing could happen now. We respectfully -- we thank your Honor for the time, and we appreciate your Honor's consideration.

THE COURT: Thank you. Sir.

MR. BENNETT: Good morning, your Honor. Ryan Bennett of Kirkland & Ellis on behalf of Syncora Guarantee and Syncora Capital Assurance. Your Honor, as we attempted to describe in our papers, my client insures, in some cases owns certain securities called the certificates of participation, which were taken out in 2006 to fund some of the city's pension liabilities. We also insure a swap -- four swaps related to those securities that are tied to the interest rate, the floating interest rate associated with them.

We object to the debtor's stay motions to the extent they contain broad and unqualified language that we feel will impair our client's rights against a number of nondebtor third parties under our various transactional documents, as your Honor could probably tell from --

THE COURT: Can you identify some of those parties for us?

MR. BENNETT: Yes, your Honor. So under the transactional documents, which we attempted to describe in the papers, there are parties called service corporations, which are separate stand-alone entities with their own directors to whom we believe they owe us fiduciary duties in our role as stakeholders. At very least they owe a duty to the corporations themselves, and our rights are derivative from them. We also have swap counterparties who are parties to a swap agreement and a swap insurance agreement where we've got third-party beneficiary rights to those arrangements, and the city is not even a party.

THE COURT: Well, let me ask you this question --

MR. BENNETT: Yes, sir.

THE COURT: -- about those parties.

MR. BENNETT: Um-hmm.

THE COURT: To the extent the Court agrees with you and then your client pursues those parties, to what extent, if any, would your client's success on those claims impact

claims against the city?

MR. BENNETT: Your Honor, that's unclear to us from this vantage. I mean we're still developing our litigation strategy and our claim strategy, and --

THE COURT: This is not a question of your strategy. This assumes your strategy is successful.

MR. BENNETT: Right.

THE COURT: The question then remains, though, if you are successful in your claims after being allowed to pursue them --

MR. BENNETT: Um-hmm.

THE COURT: -- to what extent would that impact claims against the city perhaps by those parties?

MR. BENNETT: Um-hmm. Yeah. That's unclear to us. I mean perhaps in the case of service corporation directors, to the extent that there's an indemnity, as Ms. Lennox pointed out -- I think that's where your Honor is going -- there may be an impact there, but, again, I haven't looked at the ordinance. I don't know if it applies to these individuals, so I'm not sure, but that could be the case.

With respect to other parties, swap counterparties, for example, I mean they're not party -- the debtor is not a party to the swap agreement. While there may be some ripple effect down the road that I'm sure counsel may try to explain -- debtor counsel may try to explain, I mean that's

unclear to us how we'd ultimately get there, sir.

THE COURT: Okay.

MR. BENNETT: Yeah. As I said, you know, really putting aside the procedural issue, which I do believe the debtor failed to comply with, you know, your Honor did -- there was discourse from the bench to the podium in Collins & Aikman where I believe my firm actually brought forward that motion, and we agreed to drop it because we did not bring it forward in the proper procedural way. We think the city should also be obligated to do that, particularly where in circumstances like this with respect to our client, you know -- and we just found this out, your Honor, when we got handed this little handout at the start of the hearing that it looks like they're trying to enjoin with -- you know, to the same standards of a preliminary injunction the suit that they brought against us prior to the petition date with probably the same amount of notice that we got here today. This suit, which is listed on here -- and, again, oddly enough it's a suit brought by Detroit against us, not like everybody else where they brought the suit against Detroit or one of the extended defendants, you know, we're just not sure what that means, and I'm sure they'll come and tell us, but, in any event, we feel like we've not received notice of this, and we're entitled to some process there to the extent they're trying to impair our rights, which I'm sure they are.

And, your Honor, that really sums it up from our point. I mean largely our filing was a reservation of rights. We wanted to make clear that to the extent this is trying to be used at some later point to prejudice my client in whatever strategies that we -- strategies we employ to exercise our property and contractual rights, we do not want to be impaired.

One final point, your Honor, is that the city has filed that motion for the investment -- or the forbearance agreement that your Honor posted up for a hearing on August 2nd. We just wanted to get a little clarity from your Honor because that does impact some rights of ours.

THE COURT: I saw your motion, and I will enter an order clarifying that for you later today or tomorrow.

MR. BENNETT: Great. Thank you, sir. Nothing further.

MS. PATEK: Good morning, your Honor. Barbara Patek appearing on behalf of the public safety unions that are comprised of the Detroit Fire Fighters Association, the Detroit Police Command Officers Association, the Detroit Police Lieutenants and Sergeants Association, and the Detroit Police Officers Association. We have filed a concurrence and a limited objection in the two motions before the Court, and I will address them serially. With respect to the stay motion, we agree that the stay applies, and we agree in

concept with the issuance of the stay order as requested by the city. We want to clarify -- and I believe the Court asked the question of the city's counsel -- that that stays all further proceedings in the state court action, including the pending application for leave to appeal that has been filed by the attorney general. And I believe the city, having submitted itself or consented to the application of 362 and 922, that the Sixth Circuit law on that issue should control.

With respect to the extension of the stay, we concur in that as well, and we have, in fact, asked for some affirmative relief, and I want to at the outset of my argument address the question raised by the Court with respect to the preliminary injunction standard. I think in this case -- I mean there obviously is some flexibility in Section 105 that the Court has, but if you look at those four factors that govern preliminary injunctions, this is a case where the public interest trumps all of them, and we, on behalf of public safety unions, strongly believe that that -- that the public interest is at stake and that the stay provided by this Court will give the parties the breathing space to perhaps have that robust discussion that was mentioned by -- in one of the earlier arguments.

We do want to make it clear that in concurring in the relief requested, the public safety unions are not

conceding that the city is eligible to be a debtor in this case. We believe there are very, very serious constitutional arguments on that issue as set forth in our papers. We simply believe that this Court is the proper forum because of the intersection of state and federal constitutional law and Bankruptcy Code issues, some of which are novel and uncharted.

The other issue that we want to address with regard to the stay extension deals -- there are three points. One, we're asking for the affirmative relief of broadening the stay to include particularly the employees and retirees of the public safety unions and some former employees who may be the subject now or in the future of lawsuits and whose only source of indemnification would be the city.

Second, we want it clarified because we do not believe that anybody is giving up any claim by coming before this Court that all claims against any nondebtor parties are preserved and, third, that to the extent that those actions are stayed, that the protections of 108(c) apply. Those are essentially the relief that we're requesting.

THE COURT: Let me ask you to go back to number one for a second. You mentioned former employees, so there are lawsuits against former employees for which the city might be liable for indemnification?

MS. PATEK: And to clarify, your Honor, I don't know

about -- I don't have a list of lawsuits, but I'm concerned with the situation, and we're really tailoring this narrowly to -- that the lawsuit relates to their employment by the city and acting, you know, within the scope of their employment with the city and --

THE COURT: Well, is it your position that under the ordinance that Ms. Lennox identified, former employees are also entitled to indemnification?

MS. PATEK: Your Honor, I'm going to be candid with you. As I have not seen that ordinance, I don't know the answer to that question, and I'd be happy --

THE COURT: All right. Well, perhaps Ms. Lennox can address that. Thank you.

MS. PATEK: Thank you, your Honor.

MR. GORDON: Good morning, your Honor. Robert Gordon of Clark Hill on behalf of the Police and Fire Retirement System and the General Retirement System of the City of Detroit.

THE COURT: Yes, sir.

MR. GORDON: Thank you, your Honor.

THE COURT: Your Honor, while many of the arguments that have been made, particularly by counsel for AFSCME, are positions that we have concurred in, the thrust of our papers I think focuses on a slightly different issue to some extent, and for purposes of this argument I'd like to focus on those

for your Honor.

It's our position that the stay motions presume facts that are not in evidence. There is a threshold issue here under Section 109(c)(2) of the Bankruptcy Code that needs to be dealt with first, 109(c)(2) requiring that in order for a municipality to avail itself of the protections of Chapter 9, it must have received valid state authorization to do so. The situation here I believe is unique. I'm not aware of any other case really on point. We have a situation where there is Michigan state constitutional protection for accrued pension benefits. We have in this state a statutory framework in which the governor is required to provide the authorization for the filing of a Chapter 9. The governor is also sworn to uphold the state constitution. So our position is, as we've indicated in our papers, that if the governor cannot directly abrogate -- unilaterally abrogate constitutional rights under Michigan's constitution, he also respectfully cannot do indirectly what he cannot do directly, so, in other words, he cannot authorize a Chapter 9 bankruptcy filing that has as an explicit stated goal, among others, to impair and diminish accrued pension benefits which are protected by the state constitution. Since he doesn't have that authority, the issue isn't one of whether there's an action that's voidable here. It is void, void ab initio, and it is as if it never occurred. So our argument is that

there isn't -- to talk about the stay and talk about the Court's jurisdiction presumes that there has been a valid state authorization, and there hasn't been any valid state authorization.

Now, as to that issue, a state court has ruled on that issue. Judge Aquilina in the Ingham County Circuit Court in the case of Webster v. Snyder ruled and issued a declaratory judgment, not an injunction, a declaratory judgment against the governor, who is a nondebtor party, and at the time and as of today there is no stay and was no stay against declaratory judgment against the governor, and the Court entered a declaratory judgment ruling along the lines of what I just argued and declaring that the governor did not have authority to authorize this Chapter 9 bankruptcy filing. To be clear, that matter has not been stayed by the Court of Appeals. The Court of Appeals stayed certain TRO orders that have been entered by Judge Aquilina, but the declaratory judgment is a final order that has not been stayed. So the question becomes where should the 109(c)(2) issue be addressed, and we have submitted that it ought to be addressed by the state courts because unlike the other eligibility requirements under Section 109(c) for determining whether a debtor is eligible to proceed under Chapter 9, Section 109(c)(2) is specifically a creature of state law, and the Bankruptcy Code and Chapter 9 evinces a deep and

abiding respect for federalism and Tenth Amendment concerns, and in that light we think it is appropriate to allow the state judiciary, which is a co-equal partner of the executive branch and of the legislative branch in this state --

THE COURT: Okay. So how do you deal with the city's argument that 28 U.S.C., Section 1334, gives this Court exclusive jurisdiction over the bankruptcy petition and, therefore, over the eligibility issues under Chapter 9?

MR. GORDON: Again, your Honor, our position would be that it presumes something that is not in evidence here. It presumes that there has been a valid petition filed, and there simply has not been a valid petition. That's our argument. Our argument as to supremacy clause --

THE COURT: But Chapter 9 makes -- Chapter 9 makes that issue an eligibility question, doesn't it?

MR. GORDON: I guess it depends on how you look at it, but from our point of view, if an action has been void ab initio, it's a circular issue to some extent. I understand your point, your Honor. It's a bit of a circular issue, but from our position, we think that to assume in the first instance that there's been valid action by the governor and that this Court should determine it presumes something that hasn't yet been established. If, however, of course, this Court feels that it has jurisdiction to address that issue, we would submit that -- again, without waiving the argument

that this really should be addressed in the state court, we would submit that the 109(c)(2) issue of whether there's been valid state authorization is the first issue this Court should address and not the stay motions and that that issue ought to be addressed upon full briefing in the context of a Section 921(c) motion to dismiss. I think that that comports with the process.

THE COURT: Let's talk about that. What's the prejudice to your client or the interest that your client seeks to vindicate by having this issue resolved before any other issue?

MR. GORDON: Having which issue resolved, your Honor?

THE COURT: This issue of whether the governor constitutionally authorized the filing. Why does your client need that to be resolved before anything else?

MR. GORDON: Well, I think as a matter of just jurisprudence to be proceeding with issues regarding a stay when there's a fundamental issue of subject matter jurisdiction, to me it would make sense to address the issue of whether there is subject matter jurisdiction before we proceed with all sorts of matters that may be of no effect. They may be completely void, so I think that we --

THE COURT: Okay. So you're not representing to the Court, for example -- and I don't mean to suggest this --

that your clients were intending to file a lawsuit against the city to enforce this constitutional right imminently, are you, or are you?

MR. GORDON: I'm sorry. Can you repeat the question, your Honor?

THE COURT: I asked you how your clients would be prejudiced by dealing with this issue of the constitutionality of this filing later in the context of eligibility, and you talked about issues of jurisprudence, just prudence, so I asked you are you, therefore, not suggesting to the Court that your client had a lawsuit against the city in mind to file imminently to enforce this constitutional right, which would be stayed if the Court granted the motion?

MR. GORDON: Understood, your Honor. No, we do not.

THE COURT: Okay.

MR. GORDON: No, we do not. So, your Honor, again, we think that this is a threshold issue that ought to be dealt with not on the fourth business day of the case but through a little bit more of a robust process if this Court is inclined to --

THE COURT: Well, let's talk about that even. If the Court grants this motion, it would be, wouldn't it, without prejudice to your right to seek relief from the stay and/or abstention?

MR. GORDON: Yes, but, again, the question is whether there's a stay at all because there's a question of the validity of the ongoing bankruptcy, so --

THE COURT: Well, but if those rights are preserved, the prejudice of which you speak is reduced, not eliminated, but reduced.

MR. GORDON: Possibly, although abstention is not as -- certainly is not the same argument, of course.

THE COURT: But I'm just asking.

MR. GORDON: Yes.

THE COURT: Yes.

MR. GORDON: I understand. Your Honor, so that is our position on that. As far as the actual request for stay relief, our papers speak for themselves to a great extent. I won't repeat what's been said here. I would say this, though. As to the stay confirmation order, I think it ought be explicit that if all they're asking -- all the city is asking for is confirmation, then it should be clear that it's not expanding anything. If it's just the confirmation, then we don't object to it because they're not doing -- by claiming that they're confirming the stay, they're stating that they are not expanding and exceeding the --

THE COURT: Right.

MR. GORDON: -- scope of the Bankruptcy Code --

THE COURT: Okay.

MR. GORDON: -- so that would be our comment on that. As far as the request to extend the stay, you know, again, on day four it's very unclear to know how far they're intending to stay this. There has been no discussion between the parties. I've now heard from another counsel, who just preceded me, that she would like to see the stay extended to other people as well. Again, I would submit that there ought to be an opportunity to discuss that. The argument has been made that an adversary proceeding is necessary to enforce a 105 stay. The arguments that say that a 105 -- that you don't need to have an adversary proceeding, that form should not rule over substance, we understand those arguments, but nothing should overrule due process, and I think it's really an issue of due process. We don't know the contours of really at the end of the day -- the papers are not clear as to what the contours are, what they're seeking to extend to, and, quite frankly, they haven't -- the papers do not establish unusual circumstances here. The Eagle-Picher case is inapposite to what is at issue here. All that's been alleged is a sort of murky mere closeness of relationship between the governor and the city, which we submit is insufficient. The declaratory judgment that was entered by Judge Aquilina has not been stayed, but this motion for stay extension is seeking to do just that, and to stay a declaratory judgment is really to essentially eviscerate the

declaratory judgment. There's no action to be taken, so to stay it is to basically vacate it. We submit that that's not appropriate under the circumstances here. And we've raised issues about Rooker-Feldman and so forth, and, again, we would submit that if the Court were going to discuss the extension of the stay, it should not extend to affect the rights of parties relative to the declaratory judgment and its winding its way through the state court system.

THE COURT: Thank you, sir.

MR. GORDON: Thank you, your Honor.

MS. CECCOTTI: Good morning, Judge Rhodes. Babette Ceccotti, Cohen, Weiss & Simon, LLP, for the UAW, and with me is Mr. Wertheimer, counsel to the Flowers plaintiffs. As your Honor is hopefully aware, the Flowers plaintiffs and the UAW filed a joint objection, and Mr. Wertheimer is here in case the Court has any questions regarding the Flowers lawsuit, and I will state the objection of the UAW from the U -- representing the UAW. Excuse me, your Honor.

As is evident from our objection, we have largely joined -- in the interest of brevity and not overwhelming the Court with duplicative papers, we have largely joined in the arguments already briefed and addressed by Ms. Levine on behalf of AFSCME. I do have a couple of other points that I would like to make but, in particular, perhaps revisit some of the ground already covered in part by other counsel in

response to Ms. Lennox's presentation on a couple of matters that I found quite extraordinary and think that it is worth focusing on again.

First, the notion that this Court could permanently, permanently stay the state court lawsuits is I would submit well beyond any power of this Court under 105 or 362 or any other ground being suggested to you by the city. These are not -- as Ms. Levine stated, we're not here about an implementation tool to keep others from diverting the city's attention and running around and trying to collect on claims. As you've heard this morning already, the issues raised by the state -- by the state court lawsuits go to -- they not only go to the eligibility of the city to file, they -- it is -- it's actually -- it's more fundamental than that. These are issues that arise under state law.

Chapter 9, of course, reflects dual sovereignty and in part reflects that most significantly in the eligibility criteria, which requires that the municipality be authorized under state law or by a governmental officer. The key here is under state law. The pre-petition lawsuits address the state law issues as to whether the state law bases under which the governor issued his authorization for the filing violate the Michigan state constitution to the extent that the authorization does not except out the pension benefits. These are totally state court issues. So if we look at 1334,

just to take that point, while this Court may have original and exclusive jurisdiction of all cases under Title 11, the use of the word "cases" must be read specific to the case that we have, and the case that we have here is a Chapter 9 case with all of the dual sovereignty attributes of that, including the eligibility criteria, which fundamentally are grounded on an authorization under state law, so I do not believe that 1334(a) can be read to simply write out of the statute the unique character, if you will, of Chapter 9 vis-a-vis the other chapters of the Bankruptcy Code, which is so dependent on the state court authorization to --

THE COURT: So is it your argument that this Court doesn't have the jurisdiction to decide this constitutional issue or that it is concurrent?

MS. CECCOTTI: Your Honor, I was getting to that when I was going to move on to 1334(b).

THE COURT: Okay.

MS. CECCOTTI: To the extent that anybody would argue or perhaps decide or say that the eligibility features and the ability to file a motion to dismiss based on those features would be a proceeding under a case, then 1334(b) makes clear that the District Courts have original but not exclusive jurisdiction on those questions so that while this Court arguably would have jurisdiction in the context of a motion under 109(c), it is not exclusive, and the state -- to

the extent the issue of the state's authorization and whether that authorization should have excepted the pensions consistent with or under -- directly covered under -- the prohibition under the Michigan state constitution, at a minimum, if we're talking about a proceeding, the state courts -- the state courts and this Court would both consider that issue, and now here we do get into important and serious questions of federalism and abstention. The state courts already have the authorization issue teed up in the three lawsuits in slightly different fashions, but the gravamen of all of them, if you boil it down, is the scope of the authorization issued by the governor and whether the failure to except the pensions -- the accrued pensions from the authorization to use Chapter 9 violated the state constitution. Therefore, the Court's prudential or juris -- the Court's prudential or discretion perhaps to take that issue up would be guided, as it is in other matters where a party comes in to lift the stay to have a state court proceed with a lawsuit perhaps of the type that Ms. Levine mentioned, perhaps a pre-petition state lawsuit having to do with a particular piece of property or a lien, those issues all come into play and, in fact, weighing the factors that apply in those cases, it is not always the case that the Bankruptcy Court keeps those matters. It depends on the issues. It depends on five or six or seven factors, depending on which

court you're in.

THE COURT: Okay. Well, let's focus on this issue and ask whether there are any cases that have addressed the argument that you make that this specific element of eligibility should be resolved in the state court rather than in the Bankruptcy Court.

MS. CECCOTTI: Your Honor, I cannot standing here today cite to a case, but I'm very confident that there are such cases, perhaps not in the -- necessarily in the Chapter 9 context given the relative paucity of jurisprudence under Chapter 9, but there are myriad cases that have arisen, for example, under Chapter 11 where by balancing the various factors, including the importance of respecting federalism and noninterference with the state court's ability to determine matters under their own laws --

THE COURT: Well, but isn't it the case that every Chapter 9 case which has been dismissed for lack of proper authorization -- and there have been a few -- have been dismissed by the Bankruptcy Court based on the Bankruptcy Court's determination of authorization.

MS. CECCOTTI: That's correct, but how many of those cases -- and we'd have to look, but I'm going to place a small bet here and say none, involved --

THE COURT: We don't permit that here.

MS. CECCOTTI: -- three lawsuits, three lawsuits

filed on -- against slightly different but all -- but theories that -- the gravamen of which are the same? So in those cases, I'm not sure they're instructive because they wouldn't say -- they wouldn't tell us that the Bankruptcy Court versus those prefiling lawsuits was the only -- the appropriate --

THE COURT: Well, but to what extent is --

MS. CECCOTTI: -- or certainly not the only place.

THE COURT: To what extent is your argument -- would your argument be diminished if there weren't such lawsuits, if the --

MS. CECCOTTI: I think -- I think --

THE COURT: -- individuals here simply requested this Court to permit the state court --

MS. CECCOTTI: Your Honor, the essence of the objection is, in fact, that these lawsuits exist and what they are based in. If the lawsuits did not exist, we would have a different argument before you today.

THE COURT: Okay.

MS. CECCOTTI: But they do exist, and the fact that they exist we think is simply -- must be the primary consideration by this Court in determining the relief and we respectfully submit denying the relief requested by the city.

I would like to make two other points, one of which I regret we didn't raise in our papers, but it struck me

reading -- when I listened to Ms. Lennox this morning articulate for the Court the relief that they are seeking with respect to matters that haven't been lodged as lawsuits. I believe she read that the -- paragraph 20 of her papers in looking for prospective relief or -- against entity -- people or entities that might become targets. I did notice that the proposed form of order merely states that the motion is granted, and I would submit to the Court that if any type of injunction is issued -- and we strongly urge the Court not to grant the motion, but to any extent any -- the Court deems any type of stay possible, any such relief should provide fair notice to parties who have not yet done anything as to the conduct that is potentially going to be covered by the order, and we submit that, at least based on the filings here, your Honor does not have sufficiently specific language to issue such an order.

Finally, the proposed relief is overly broad even with respect to the pre-petition lawsuits to the extent that they ask this Court to simply rule that those lawsuits are stayed. I wish to -- we do want to point out to the Court that the lawsuits -- the Flowers lawsuit certainly and perhaps some of the others have named the State of Michigan as defendants. We don't understand the city's request for relief in terms of a stay extension to extend to the State of Michigan; therefore, the stay -- a stay is not -- has not

been -- such a stay has not appropriately been sought and if the Court again were to grant a stay, that, again, the relief is --

THE COURT: Let's assume there --

MS. CECCOTTI: -- would be overly broad.

THE COURT: Let's assume there's no order staying a lawsuit against the state. What does that do for your clients?

MS. CECCOTTI: The State of Michigan is a defendant, and --

THE COURT: What relief can the Court order against the state that would help your clients?

MS. CECCOTTI: To permit -- the lawsuits would be able to proceed against the state.

THE COURT: Right, but what ultimate relief could the state court grant against the state that would help your clients?

MS. CECCOTTI: There I would need to ask the counsel for the Flowers plaintiffs --

THE COURT: Okay. Okay.

MS. CECCOTTI: -- if you don't mind, just because my familiarity is not primarily with those cases.

THE COURT: No, not at all.

MS. CECCOTTI: Those were my points, your Honor.

THE COURT: Thank you. Would you like to try to

address that for me, sir?

MR. WERTHEIMER: Yes, your Honor. William Wertheimer, your Honor, appearing on behalf of the Flowers plaintiffs. In answer to that last question, first of all, it is correct that the Flowers case, the state is a defendant as an entity, and the same is true of the Webster and the pension systems case. All three cases seek declaratory judgments, and a declaratory judgment can issue against the state because --

THE COURT: Right. But what does that do --

MR. WERTHEIMER: -- it's a declaratory judgment --

THE COURT: What does that do for your clients?

MR. WERTHEIMER: It depends upon what effect that judgment would have with this Court as a practical matter.

THE COURT: Oh, so you're thinking it may have some res judicata or Rooker-Feldman effect?

MR. WERTHEIMER: Well, you know, your Honor, your Honor, our basic point is that this is a state law issue that we brought to the state courts before this proceeding was brought in good faith attempting to get an order and a ruling from the state courts, and we would want to continue to do that, and we think we can do that even under the motion they filed, if it's granted, given the fact that the state as an entity remains as a defendant in the three cases.

THE COURT: All right. Thank you.

MR. WERTHEIMER: I would also reiterate that -- a point previously made, that the stays that were issued yesterday by the Court of Appeals did not cover at all the declaratory judgment, which was a final judgment, which entered in the Webster case as --

THE COURT: Someone mentioned that.

MR. WERTHEIMER: The state has not yet taken an appeal, but the activities at the Court of Appeals all have to do with the applications for leave of the nonfinal orders.

THE COURT: Thank you for clarifying that, sir.

MR. WERTHEIMER: Yes, your Honor. I have one point. We filed yesterday a brief along with a declaration from me, and that declaration dealt principally with one issue, and that is the debtor in its initial pleadings and in its motion specifically indicated that the orders issued in state court were -- all three orders were ex parte, and that is consistent with the debtor's statements today talking about target, et cetera. In other words, we're the bad guys out there as they would characterize the bad guys in a typical Chapter 11 case. We are not the bad guys. We did not do anything ex parte.

THE COURT: I have to -- I have to stop you. I didn't read anything in the city's papers that suggested your clients were the bad guys.

MR. WERTHEIMER: Well, they -- your Honor, the

city's papers stated that in all three cases we obtained ex parte injunctive relief. In none of those three cases did we obtain ex parte injunctive relief. In fact, we gave the state and its officers notice of everything we did, and the matter was fully briefed. Nothing happened ex parte. Let me leave it at that.

THE COURT: Okay.

MR. WERTHEIMER: And, finally, consistent with that, in my declaration I indicated that I was attaching the transcript from the proceedings of July 18. I neglected to do that electronically. We provided copies to everybody last night by e-mail. We will make sure that that's also done electronically, and I'd like to, if I may, approach the bench and provide a copy to the Court.

THE COURT: Yes, sir. That's fine. Thank you.

THE CLERK: Thank you.

MR. WERTHEIMER: That's all I have, your Honor. Thank you.

THE COURT: Thank you. And before we proceed with the city's rebuttal, I'd like to ask if there's anyone in the courtroom who would also like to address the Court. And briefly, please, sir.

MR. BRENT: Good morning, your Honor. My name is Nathaniel Brent. I represent myself pro se in a current lawsuit against the City of Detroit in this Eastern District

of Michigan in front of Julian Cook. One thing that I'm surprised at with all of these learned attorneys here is nobody has mentioned the issue of this declaratory judgment actually collaterally estops the City of Detroit from relitigating the issue of whether they had authority to even file this petition.

THE COURT: Actually, that is mentioned in the briefs. It's more than mentioned. It's argued forcefully in the briefs.

MR. BRENT: That's not my primary argument here, your Honor. My primary argument is regarding the stay that's been in place and the extensions they're seeking to grant a blanket stay for any Detroit employee, present or --

THE COURT: Let me ask you what is your claim and who is it against?

MR. BRENT: My claim is against the City of Detroit police officers and two police officers in both their individual and official capacity for violations of my Fourth Amendment rights. The issue here, your Honor, is this case has been pending for the last two and a half years.

THE COURT: Um-hmm.

MR. BRENT: And now that the stay is in effect and they're trying to extend this even further, the issue cannot -- of liability cannot even be litigated in order to bring it in front of this Court.

THE COURT: Um-hmm.

MR. BRENT: Granted, as for the execution of any orders to enforce any judgment entered would clearly be within the jurisdiction of this Court. I don't contest that at all. The issue of whether or not they are liable and committed the violations of the Fourth Amendment, those are issues that should be allowed to be continued to be litigated.

THE COURT: Um-hmm.

MR. BRENT: On that issue, even if an award is granted, it would not be part of the reorganization of the City of Detroit in the first place. The City of Detroit's charter -- in Chapter 9 of the City of Detroit's charter they have what is called a risk management fund, which is a dedicated fund which is required to have a minimum of $20 million in it to pay for civil lawsuits and workmen compensation claims. This isn't part of the reorganization. This is going to exist regardless.

As for their claim regarding the indemnifying employees under Chapter 13-11-1, that gives the City of Detroit the option to indemnify. It does not require that they indemnify these employees.

THE COURT: Um-hmm.

MR. BRENT: And, now, in my present case, City Council did vote to elect to indemnify the employees.

THE COURT: Um-hmm.

MR. BRENT: However, this is the city's option. This isn't a requirement of law that they indemnify these --

THE COURT: Um-hmm.

MR. BRENT: -- just as -- my lawsuit is also against various state actors within the State of Michigan, which -- but, again, their wanting to extend this to them would prevent me from litigating my claims against the state officials that have already been denied immunity, and it is currently pending. Those portions they've appealed to the Circuit Court. So now that they're trying to extend this stay, now the Sixth Circuit Court of Appeals case of Brent versus Wayne County, et al. will be stayed as well where the different state defendants -- state employees have uphill decision to deny their qualified and absolute immunity.

THE COURT: The defendants in your particular suit are both city employees and other defendants are state employees?

MR. BRENT: Yes, and there's also state contractors involved in the lawsuit.

THE COURT: Contractors also. Thank you, sir. Would anyone else like to be heard?

MR. SANDERS: Good morning, your Honor. My name is Herb Sanders, and I represent the plaintiffs in the case of Phillips versus Snyder pending before this Court, Case Number

2:13-CV-11370, before Judge Steeh. That is a case that challenges the constitutionality of PA 436. Motions for summary -- for at least one summary disposition or summary judgment argument have been scheduled. As I initially read the request for stay extension motion filed by the city, it appeared that the city was seeking an extension of stay concerning financial matters that were being litigated, but pursuant to the oral presentation of the city's attorney, it concerns me when she has indicated -- and I paraphrase -- that she seeks relief concerning any litigation that might interfere with the city's rights as a Chapter 9 debtor. And I would suggest to the Court to the extent that it might be proposed or suggested that the litigation which I have referenced in which the constitutionality of PA 436 is to be determined by another judge in this court interferes with the rights of the city as a Chapter 9 debtor, that that case not be included as part of the stay order that this Court would issue. I believe it's imperative to this community, to this state that those issues be determined and, in fact, should probably be determined before the bankruptcy proceeds, but I would encourage the Court to not give a broad order if any order were to issue that would be inclusive of matters that are not financial matters such as there are other matters that I know that the union, AFSCME, and others are a part of seeking FOIA requests from the city, injunctive relief as it

relates to these types of matters, and I would ask the Court to consider not giving such a broad order --

THE COURT: Um-hmm.

MR. SANDERS: -- that that type of information could not be obtained and we could not have a determination as to the constitutionality of PA 436 by this Court.

THE COURT: Um-hmm.

MR. SANDERS: Thank you, your Honor.

THE COURT: Thank you. Sir, can you just give me your name again, please?

MR. SANDERS: Herb Sanders.

THE COURT: Mr. Sanders. Thank you, sir.

MR. SCHNEIDER: May it please the Court, Matthew Schneider, chief legal counsel to the Attorney General. I'm here on behalf of the State of Michigan. Your Honor, I'm here for a very, very limited purpose. As counsel to the debtor has indicated, they are not seeking to abrogate the exceptions in Section 362(b), and I know that this is a motion regarding Section 362, so our position is is that if the Court is, indeed, inclined to grant the motion regarding the stay, that the Court's order reflect that nothing in the Court -- nothing what the Court is doing will actually abrogate the exceptions afforded under 362(b).

THE COURT: Is there a specific exception you're concerned about?

MR. SCHNEIDER: Well, your Honor, the state has a great interest in ensuring that our departments and agencies can continue their administrative functions, which is really not unusual, and we just want to be sure that that's the case, and that's all I have, your Honor.

THE COURT: Well, but which provision in Section 362(b) --

MR. SCHNEIDER: It's subsection (4).

THE COURT: -- is implicated? Oh, (4). Okay.

MR. SCHNEIDER: Subsection (4) --

THE COURT: Of course.

MR. SCHNEIDER: -- which indicates that, you know, commencement or continuation of an action or proceeding by a governmental unit isn't going to -- isn't going to impair a governmental unit to have its regulatory power in --

THE COURT: It's the police powers exception.

MR. SCHNEIDER: Correct.

THE COURT: Thank you, sir.

MR. SCHNEIDER: Thank you.

THE COURT: Would anyone else like to be heard? All right. Ms. Lennox.

MS. LENNOX: Thank you, your Honor.

THE COURT: And by the way, my very efficient staff provided me by computer here a copy of the ordinance.

MS. LENNOX: Oh, thank you, your Honor. I have one,

too, so that --

THE COURT: I'm all set.

MS. LENNOX: Great.

THE COURT: And it does raise a question. The language appears to be discretionary as concerns indemnity. Yes?

MS. LENNOX: It is discretionary, but it's the city's policy that if the employee is performing its duties in good faith in the scope of its employment that indemnity will issue, and that discretion now is the discretion of the emergency managers, your Honor, which I would point out I was very --

THE COURT: Well, what impact does the fact that it's discretionary rather than mandatory have on your argument that the stay should be extended to employees who might not otherwise be covered?

MS. LENNOX: I think, your Honor, it doesn't have much of an impact at all because, as I said, it's a matter of city policy that if the employee was performing his or her duties in good faith and the conduct that gave rise to the action occurred in the performance of those duties, then the indemnity will issue.

THE COURT: Is that a policy in writing that we can refer to, or is it just a matter of --

MS. LENNOX: I would have --

THE COURT: -- this is what the city always does?

MS. LENNOX: I would have -- I would have to check with corporation counsel on that, your Honor, but regardless, the extension should certainly apply to the employees for whom the city has agreed to indemnify for the reasons that I stated earlier.

I would like, your Honor, just at the outset -- I was very remiss because we didn't make opening statements to neglect to introduce to you the emergency manager, who is here in the courtroom today. Mr. Orr is here. Obviously he has a great interest in these proceedings. Okay. Thank you, your Honor.

Perhaps a couple of housekeeping matters before I get into argument. First, your Honor, I do have a copy of the order that was issued by the Court of Appeals in the State of Michigan in the Webster case in which the declaratory judgment was entered, and perhaps that order -- the declaratory judgment has been appealed, and perhaps we were misreading the order, but the order does say that the motion for stay pending appeal is granted, and the Circuit Court's July 18th, 2013, temporary restraining order and all further proceedings are stayed, so that's where we got that understanding, your Honor. I have a copy if your Honor would like to see it.

THE COURT: Please.

MS. LENNOX: May I approach?

THE COURT: Yes.

MR. CANZANO: Judge, I know it's a little bit unorthodox here, but I --

THE COURT: I have to ask you to stand by the microphone because of the limitations of our equipment here, sir. Sir, actually this microphone, and my apologies to you for that inconvenience.

MR. CANZANO: I'm the attorney that got the declaratory judgment, John Canzano, representing the --

THE COURT: Canzano?

MR. CANZANO: -- Webster plaintiffs. I can speak very briefly to why the declaratory judgment is not stayed.

THE COURT: Okay. Let me ask you --

MR. CANZANO: There's four appeals.

THE COURT: Let me ask you -- let me ask you to do that after Ms. Lennox speaks.

MS. LENNOX: As another housekeeping matter, your Honor, I believe when Mr. Bennett was speaking, he indicated that his firm in the Collins & Aikman case had filed a motion to extend the stay but then they withdrew it because it was procedurally improper. Respectfully, I would beg to differ. I have the transcript of that motion. That motion was heard. It was argued before your Honor, and it was denied. If your Honor would care to see the transcript, I do have it with me.

THE COURT: No, thanks.

MS. LENNOX: Thank you. In our colloquy, your Honor, as an initial matter, you had asked what if the preliminary injunction standards applied, and, as I indicated, if you're going to apply preliminary injunctions, you sort of have to have a matter to --

THE COURT: That wasn't exactly my question. My question was how do you deal with the argument that they should apply?

MS. LENNOX: I think, your Honor, under the Section 105 extension case law that exists out there where you extend by motion, the courts have created a standard that is different than the preliminary injunction four-part standard, and, in fact, in cases in which this is presented by motion, the preliminary injunction standards aren't even discussed, and that standard is the standard that I --

THE COURT: Well, but didn't Eagle-Picher address them?

MS. LENNOX: Eagle-Picher was brought by a preliminary injunction. That was a preliminary injunction case. It noted in dicta that many courts permit extensions of the stay by motion, but that particular case they had brought by preliminary injunction, so, therefore, they went through the standards. If we had to go through the standards here, I think we meet them, and if your Honor is interested,

I can articulate that for you.

THE COURT: Go ahead.

MS. LENNOX: But in any event, I don't think we need to go through them under the circumstances, but if we had to meet the preliminary injunction standards, I believe that there would be -- at least with respect to the three lawsuits that we have out there, I think there would be a great chance of success on the merits because by the plaintiffs attempting to condition the authorization to file a municipal bankruptcy on that municipal -- that municipality's foregoing rights under Chapter 9 once in Chapter 9 is a violation of the bankruptcy clause and the supremacy clause. I think we'd win on that, your Honor.

Secondly, with respect to irreparable harm, if these actions are not stopped, the city would be irreparably harmed. We would be preventing -- we would be prevented from accessing necessary protections that we are otherwise wholly entitled to access under Chapter 9 and under applicable law, and it would be harmed by our inability to have the appropriate forum, this forum, to decide the matter because the matter presents federal issues for federal jurisdiction. The issues that are presented have to do with can the authorization be conditioned upon limiting a municipality's rights in Chapter 9. That clearly and squarely presents federal issues of this Court's jurisdiction that can only be

decided by this Court under the supremacy and the bankruptcy clauses, so without -- an inability for us to pursue that would be irreparable harm to the city. A state court simply does not have jurisdiction to decide those.

Third, your Honor, the injunction, if one would call this an injunction, is not going to harm others because, as your Honor pointed out, they do have a forum, indeed the only appropriate forum, in which to decide the issues that can arise only in a bankruptcy case, issues like eligibility, contract rejections, what should go in a plan of adjustment, all of which are addressed by the three lawsuits that are filed. As your Honor pointed out, these litigants will have due process. They will have their day in court. They will have these issues decided, but they will have them decided in the tribunal with proper jurisdiction.

And then fourth, your Honor, public policy clearly favors the resolution of issues that exist only under the Bankruptcy Code in the Bankruptcy Courts. Any attempts to have courts that are not of competent jurisdiction determine these issues actually, your Honor, would offend public policy, so while I don't think that we need to go through the preliminary injunction standards in this case and by virtue of the relief that we asked for, if we had to, we would meet them.

Now, your Honor, I think I would like to, if it

please the Court, address sort of collectively the arguments that were made about should the state courts determine this or should the federal courts determine this, and ultimately -- certainly at least what Ms. Levine was arguing down to, they're arguing the merits of eligibility, and, as your Honor pointed out, that's not before the Court today. Nothing prevents -- as your Honor also pointed out, nothing prevents anybody from seeking to lift the stay in any particular case in any particular matter, and that's a question that can be addressed to this Court.

More particularly -- and I'd like to go into this in some detail -- the Court has jurisdiction to hear and consider state court matters in this court. Since the days of Erie versus Tompkins back in 1938, federal courts have applied state law when required to to determine the matters before them. It's very clear that now that this case is filed, this Court -- under Section 921 of the Bankruptcy Code and under its jurisdiction granted by 28 U.S.C. 1334(a) and (b), this Court is the only court that is authorized to determine eligibility issues. As part of the eligibility issues, Section 109(c)(2) necessitates the interpretation of state law, and Bankruptcy Courts have done that in virtually every Chapter 9 case that has been filed. In Jefferson County they went through the Alabama statutes for authorizing the case. In the New York City Off-Track Betting Corp. in

New York in 2010, the Bankruptcy Court found that the governor had adequate power under the state constitution to issue the order authorizing the filing. In the Suffolk County Regional Off-Track Betting Corporation case, an Eastern District of New York in 2011, the Court, interpreting state law, found that the debtor did not comply because the county resolution violated the -- Suffolk's County's authority and was unconstitutional and dismissed the petition. In the Barnwell County Hospital case in the District of South Carolina in 2012, they examined state law to determine whether the County Hospital Board had authorization to file Chapter 9, and they determined -- they did the inquiry as to whether the authorization was void in light of the state constitutional prohibition against dual office holding, and they concluded it was not. That case, along with other cases, absolutely involved an interpretation of state constitutional issues.

So given that the Bankruptcy Court's authority includes the authority to decide state law issues when required in exercising its jurisdiction under the Bankruptcy Code and it is competent to do so, there is absolutely no reason to disrupt the efficient resolution of this bankruptcy case by having the state court cases go forward.

Your Honor, if you look at PA 436, Section 18.1, nothing in that authorization statute mentions pensions. It

simply mentions a process by which the city had to go through to -- for the governor to make a determination whether we were authorized to file nor, if your Honor would read it, is anything in the governor's authorization letter conditioning the filing on taking any action, not taking any action, or it does not even mention what might happen to pensions in this case, so this Court clearly has jurisdiction to determine the state constitutionality issues.

On the other hand and respectfully, the state courts have no jurisdiction to determine the issues of authorization or eligibility under Section 109(c)(2) of the Bankruptcy Code. They have no jurisdiction to determine whether this city had the right to file this case or, more importantly, the rights that this city can exercise now that it is in bankruptcy, and that, your Honor, is exactly what the plaintiffs seek to do in their constitutionality challenges in the three actions that are pending in state court. This is not a secondary jurisdiction matter. This is a matter of primary jurisdiction under Section 1334(a), (b), and Section 921 of the Bankruptcy Code for this Court. This is the only Court competent to make those determinations.

Mr. Gordon suggested that we don't need to decide the stay issues today because the -- because we should wait to determine eligibility first. First of all, I would say that there's no prejudice to pensioners in this case because

pensions are continuing to be paid. There's no change to that, so the delay shouldn't be a factor. Secondly, eligibility has nothing to do with the fact that the automatic stay is in effect. It arose by operation of law on the day that we filed the petition on July 18th, and it is in effect. The only motions before this Court today have to do with that stay that's already in effect, so there's nothing improper about determining those matters today.

It has been suggested that Judge Aquilina's declaratory judgment in the Webster case -- remember, your Honor, the Webster case is the case in which the city is not named. The city is not a defendant. It is a case only against the governor and the state treasurer, so the city is not a party. The city didn't litigate any of the issues. Collateral estoppel, therefore, cannot apply to the city in the declaratory judgment in the Webster case. We're not bound by that. Moreover, I would suggest to your Honor that that is one trial court's view -- trial court's view -- that was issued without briefing, without argument, without reasoning, and in haste. That decision is not even binding on any other trial court in the State of Michigan let alone any courts of higher jurisdiction, and it is certainly not binding on this Court.

One other procedural issue that I would like to point out that Mr. Gordon and none of the other objectors did

point out, but it is noted on the summary sheet that I gave -- the demonstrative that I gave to your Honor earlier today. The pension funding case, the GRS and PFRS case that Mr. Gordon's firm -- in which Mr. Gordon's firm represents the plaintiffs, has been removed to federal court. The city removed it because that is the one case in which the city is the defendant. That case was removed to federal court on July 21st, and so it was removed to the Western District of Michigan, the United States District Court for the Western District of Michigan. State courts don't even have jurisdiction over this case anymore. And in that case the city moved to transfer venue to the District Court in this district so that it will eventually be moved down to your Honor.

With respect to a concern that Ms. Ceccotti raised, we are not seeking to stay the courts. We are seeking to stay the litigation by extending the stay protections to the defendants without -- the effect of that -- that that would have, your Honor, is to prevent the parties from acting. We are not seeking to do anything extraordinary under court's jurisprudence.

Finally, your Honor, with respect to the arguments that Mr. Bennett made on behalf of Syncora, I think there may be some confusion on Syncora's part. Neither of the motions seek to assert or to extend the stay in favor of the swap

counterparties, which are banks that have nothing -- no relationship with the city, or the service corporations themselves or any other party related to those entities other than a couple of city officers that serve as directors of the service corporations, and they do that because they're required to do that in the performance of their duties as city officers pursuant to a city ordinance, which is Ordinance Number 0305. We are not seeking to protect the corporations themselves. We are not seeking to protect any swap counterparties, so I want to make that clear. Syncora offers no evidence about how it will be prejudiced, particularly because, again, nothing in the motions prevents Syncora from coming in and seeking to lift the stay if one is imposed.

We also don't seek in the stay confirmation motion to seek relief behind actions to enforce a claim against the debtor. Paragraph 4 of the proposed order makes that very clear. It simply parrots the statute, and that's in the stay confirmation motion. Because the city is a party to the Syncora suit, the only stay issue that would apply to that would be the stay confirmation issue. We're not seeking any extension with respect to that lawsuit, and, frankly, counterclaims may be asserted in that case, which would be stayed, and the case started, your Honor, because Syncora was illegally attempting to trap some of the city's revenues, so,

you know, if that kind of behavior would continue, that absolutely is a stay violation.

Let me just check my notes quickly, your Honor. All right. I believe, your Honor, that that's all I wanted to address.

THE COURT: I have to ask you one additional question. How do you deal with the argument made that if your motions are granted as you have requested, lawsuits against the State of Michigan or to the extent the lawsuits are against the State of Michigan, they would not be stayed?

MS. LENNOX: The State of Michigan, your Honor, acts through its officials. The State of Michigan -- well, with respect to the three lawsuits that we are talking about right now -- and I can't talk in the -- you know, I'd have to know the facts for the other ones, but we -- again, when we tailored this relief, we tailored it narrowly to what we knew was out there and what we could anticipate coming out there. We believe and we reserve the rights in our reply to argue that the lawsuits themselves, including the ones in which the city is not a named defendant, are direct violations of the automatic stay, direct violations under 362(a)(3) and (6), and if that's the case, then those cases and any actions taken within those cases are void ab initio. So to the extent that the named parties in there are the governor and the treasurer, the state acts through those officials. Those

are the officials that were sued. That is what we're addressing. Again, we are only seeking to extend the stay to lawsuits that affect this case, not to any other actions against state entities. The State of Michigan can only act though its officials, and we believe that the relevant officials are identified in our pleading.

THE COURT: Another sort of scope question was raised by Mr. Sanders. If your motions are granted here, what impact would you argue that would have or should have on the lawsuit in which he represents parties who assert the unconstitutionality of PA 436?

MS. LENNOX: Your Honor, I don't have, as we stand here, enough facts about what Mr. Sanders' lawsuit says, the arguments that it makes, or the defendants in that case, whether the city or any city officials are defendants in that case, so I would have to reserve judgment until I knew the facts about his lawsuit.

THE COURT: He's also concerned, perhaps a bit more hypothetically, that lawsuits, for example, to seek disclosure under the Freedom of Information Act and other sorts of administrative matters should not be stayed. What's your position on that?

MS. LENNOX: Well, if I understood what Mr. Sanders said, he said those were lawsuits against the city. If they're lawsuits against the city, they're already stayed. I

don't have to extend the stay to do that. It exists. If they want to seek relief from the stay with respect to their lawsuits, they can certainly come before the Court and do it.

THE COURT: All right. Thank you.

MS. LENNOX: Thank you, your Honor.

THE COURT: All right. At this time -- oh, I want to hear from you, sir. Yes. Thank you.

MR. CANZANO: Thank you. Just a very brief point of clarification. In the -- the three orders that were entered by the Court of Appeals yesterday are in three different cases, 317286, which is Webster; 317285, which is Flowers; and 317284, which is the General Retirement System case. Each of those were emergency appeals of TRO's that were issued on last Thursday, the 18th. There was another case where there was a straight claim of appeal of the final declaratory judgment, which is 317292. There is no order in that case at all. That claim of appeal is going forward as a normal claim of appeal.

THE COURT: Um-hmm.

MR. CANZANO: So -- and if you look at the three orders, you can see that the Webster refers only to July 18th. The other two refer to July 18th and 19th actions, and the declaratory judgment was issued in Webster on the 19th. The transcript of the 19th reflects that the TRO in Webster was vacated when the declaratory judgment was entered.

THE COURT: All right. The Court -- was there something you wanted to add, sir?

UNIDENTIFIED SPEAKER: Your Honor, I would just add that counsel in her reply indicated that the state judge issued her orders with no briefing. They were fully briefed.

THE COURT: All right. The Court would propose to take a recess at this time to consider these motions and reconvene at two o'clock for a decision, so that is what we'll do, and we'll be in recess for now.

THE CLERK: All rise. Court is in recess.

(Recess at 11:47 a.m., until 2:11 p.m.)

THE CLERK: All rise. Court is in session. Please be seated. Recalling Case Number 13-53846, City of Detroit, Michigan.

THE COURT: Counsel appear to be present. As the Court explained earlier, there are two motions before it today, the stay confirmation motion and the stay extension motion. As to both motions, several creditors object and contend that the motions should be denied on the grounds that this bankruptcy case is not properly before the Court because the governor did not authorize the bankruptcy consistent with state law and the state constitution. The Court concludes that this objection to both of these motions must be overruled.

The Court concludes that the issue of eligibility

and each of the elements relating to eligibility are within this Court's exclusive jurisdiction under 28 U.S.C., Section 1334(a). Under that statute, United States District Courts have original and exclusive jurisdiction of all cases under Title 11, that original and exclusive jurisdiction referred to the Bankruptcy Courts of each jurisdiction under 28 U.S.C., Section 157. Our District Court has referred all matters relating to bankruptcy jurisdiction to the Bankruptcy Court under Local Rule 83.30. This is not a proceeding within 28 U.S.C., Section 1334, over which Bankruptcy Courts would have concurrent jurisdiction with the state courts.

I was just advised that my microphone wasn't working, but now it is; right?

THE CLERK: Yes.

THE COURT: Did we have a record of the first part of that, Letrice? I can't hear you.

THE CLERK: No.

THE COURT: We don't?

THE CLERK: No.

THE COURT: Okay. So we'll start over. Fortunately, we didn't get too far in it, and hopefully I can say the same thing twice. Okay.

So there are two motions before the Court, the stay confirmation motion and the stay extension motion. Certain creditors object to both motions on the grounds that this

bankruptcy case is not properly before the Court because the governor's authorization to file this bankruptcy case was not consistent with state law and the state constitution. The Court concludes that this objection to both motions must be overruled.

The issue of eligibility and the elements that the debtor needs to establish in order for the Court to find its eligibility are within this Court's exclusive jurisdiction under 28 U.S.C., Section 1334(a). Under that section, the District Courts have, quote, "original and exclusive jurisdiction of all cases under Title 11," close quote. The District Court's jurisdiction in bankruptcy cases can, in the District Court's discretion, be referred to the Bankruptcy Court within its jurisdiction under 28 U.S.C., Section 157, and our District Court has referred cases in its bankruptcy jurisdiction to the Bankruptcy Court under Local Rule 83.30.

The Court further concludes that this issue of eligibility would be determined in the case and not in a proceeding within Section 1134(b) of Title 28 and over which the state courts and the Bankruptcy Courts would have concurrent jurisdiction. The reference in Section 1334(b) to a proceeding is a technical reference and refers to adversary proceedings such as preference actions, fraudulent transfer actions, lien avoidance actions, et cetera. The effect of Section 1334(a) of Title 28, therefore, is that all of the

elements of eligibility in a Chapter 9 case must be decided by the Bankruptcy Court exclusively. In this regard, the Court would note that there is no case law that holds otherwise.

It has been argued here today that perhaps this exclusive grant of jurisdiction to the Bankruptcy Court to determine eligibility in the context of a Chapter 9 case is unconstitutional. However, the Court finds nothing in the Tenth Amendment or in the more ambiguous concept of federalism to support that argument, and there is no case law that holds that. Accordingly, the Court rejects that argument as well. In this regard, the Court would note, for what it's worth, that in all of the other recent Chapter 9 cases with which we are all familiar, it was the Bankruptcy Court that determined all of the eligibility issues raised by the parties there.

The Court concludes that the Congressional grant of jurisdiction to the Bankruptcy Court to determine the issue of eligibility of a municipal debtor is entirely consistent with the bankruptcy clause of the Constitution and the supremacy clause as well. In this regard, the Court would further note that there is nothing in the jurisdictional provisions of Title 28 or elsewhere that suggests that Congress intended for the state courts to have concurrent jurisdiction on the issue of eligibility to file a Chapter 9

case, so these arguments by the creditors to both motions are overruled.

Turning then to the stay confirmation order, it appears to the Court that the only potential issue -- the only other potential issue here is whether the emergency manager, Kevyn Orr, is an officer within the meaning of 11 U.S.C., Section 922, because if he is, then the stay already applies to him, and it is appropriate for the stay confirmation order to say that. If he's not an officer, then stays of action against him would be appropriate, if at all, only in the context of the stay extension motion.

The record fully establishes that Kevyn Orr is the emergency financial manager of the City of Detroit pursuant to Public Act 436 of 2012, Michigan Compiled Laws, Section 141.1541 and following. Pursuant to Section 141.159(2), quote, "Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in the receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare," close quote. It goes on to say, quote, "Following the appointment of an emergency

manager and during the pendency of the receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager," close quote.

Therefore, according to Michigan law, the emergency manager steps into the shoes of the governing body and its chief administrative officer. Accordingly, the Court readily finds that the emergency manager is an officer within the definition and scope of Section 922.

It does not appear that there are any other substantive objections -- I should say any substantive objections to this finding, and, accordingly, the Court concludes that it is appropriate to grant the stay confirmation motion and to have it state explicitly that the emergency manager, Mr. Orr, is an officer covered by the Section 922 stay.

The other motion is the stay extension motion. This motion is filed pursuant to Section 105 of the Bankruptcy Code, and it seeks an extension of the stay otherwise effective as to acts against the city under Section 362 and as to acts against the city, its officers and inhabitants, under Section 922, and it seeks the extension to the

governor, the treasurer, the loan board, and their agents and representatives. As to this motion, it is initially argued that principles of federalism, as embodied in the Tenth Amendment, require a more stringent analysis of a request for a Section 105 injunction in a Chapter 9 case compared to a Chapter 11 case. Again, the Court overrules this argument and finds nothing in either the Tenth Amendment or principles of federalism that suggests that any different or more stringent analysis should be invoked. The Court concludes, rather, that in either event, whether Chapter 9 or Chapter 11, the Court has the authority to extend the scope of the stay when necessary and appropriate. Section 105(a) of the Bankruptcy Code provides that the Bankruptcy Court may, quote, "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," close quote, and the Sixth Circuit has held that a court may utilize its equitable power under Section 105(a) to extend the automatic stay to nondebtor entities in unusual circumstances, Parry versus Mohawk Motors of Michigan, 236 F.3d 299, Sixth Circuit, 2000, and American Imaging Services, Inc. versus Eagle-Picher Industries, Inc., In re. Eagle-Picher Industries, Inc., 963 F.2d 855, Sixth Circuit, 1992. The Court also so held in Patton versus Bearden, 8 F.3d 343, Sixth Circuit, 1993.

The case law is ambiguous on the standard that the

Court should apply in evaluating a request to extend the stay under Section 105. Is it this unusual circumstances test, or is it the more traditional preliminary injunction four-factor test? The Court concludes that it is unnecessary to resolve that ambiguity in this case. Rather, the Court concludes that under either of those standards, it is appropriate to find that the stay extension motion requested by the debtor should be granted.

The case law applying the unusual circumstances test has noted that it should be and has been rare for a court to find unusual circumstances. Some courts say that the automatic stay may be extended if the unusual circumstances make the interests of the debtor and the nondebtor defendant inextricably interwoven. In this case, the Court readily finds that the debtor -- the interests of the debtor and the interests of those potential defendants to whom the debtor seeks to extend the automatic stay are so intertwined that the unusual circumstances test is met. Any attempt by really anyone to litigate the issues that the creditors have raised or might raise regarding this bankruptcy case or the debtor's eligibility to file this bankruptcy case against other nondebtor parties such as the governor or the treasurer or others may well have an ability on the debtor's -- may well have an impact -- excuse me -- on the debtor's ability to reorganize, so the Court finds that the unusual circumstances

test is met.

The Court further concludes that, to the extent it's applicable, the traditional four-factor preliminary injunction test is met as well. Traditionally those four factors are the likelihood of success on the merits of the plaintiff's claim, the extent to which the moving party will be prejudiced if the motion is denied, the extent to which the party opposing the motion will be prejudiced if the motion is granted, and any public interest considerations. The case law firmly establishes that these are not each elements that must be met. They are, rather, factors and considerations that the Court should take into account in weighing its discretion on whether to grant the requested relief.

Addressing first, therefore, the issue of the debtor's likelihood of success on the merits, in the circumstances of this case, the Court finds that it would be entirely inappropriate to comment on the likelihood of the debtor's success on the merits of any of the substantive issues relating to eligibility or plan confirmation except to say that the issues raised are very serious questions and that these questions should be addressed, to the extent that they are raised, in the context of eligibility to file this case or perhaps in the plan confirmation context. In any event, the state court proceedings that the city of court --

specifically seeks to stay and enjoin are proceedings which could conceivably have and may well have an impact on the bankruptcy case here and the administration of this case or on the debtor's assets. As the Sixth Circuit noted in Eagle-Picher, it is enough for this Court to find that there are serious questions going to the merits, and the Court certainly so finds here.

The Court further noted in that case, interestingly, the following, quote, "The bankruptcy court's primary emphasis on the last three factors," parenthetically not including the likelihood of success on the merits, "for granting a preliminary injunction was not error, especially when considering the source of its authority to grant such an injunction emanates from section 105 whose purpose is to assist the court in carrying out the provisions of the Bankruptcy Code, one of which is to oversee the reorganization of a debtor's business. In addition, as we stated in Friendship Materials, a court may, in its discretion, grant a preliminary injunction even when the plaintiff fails to show a strong or substantial probability of ultimate success on the merits of his claim, but where he at least shows serious questions going to the merits and irreparable harm which decidedly outweighs any potential harm to the defendant if an injunction is issued." As noted, the second question -- oh, first, before concluding the first

element, the Court is -- the Court would find readily that this factor, therefore, weighs in favor of granting the requested stay and injunction.

The second factor, as noted, is the extent to which the city will suffer prejudice if the requested injunction is denied. The Court readily finds that the city will suffer substantial prejudice if this stay is denied. The record reflects that the creditors have already obtained temporary restraining orders and a declaratory judgment and that the city has felt compelled to appeal those. Clearly, addressing these issues both in the state court and in this Bankruptcy Court is costly, expensive, and inefficient, and really causes prejudice not only to the debtor but to the other parties as well. There is also, of course, a danger of potentially inconsistent results. So, accordingly, again, the Court concludes that this favor -- does weigh in favor of granting the requested injunction.

The third factor is the harm to others, which will or may occur if the requested injunction is granted. Again, the Court readily finds that the creditors who have opposed this extension will not really be harmed at all if this motion is granted. There is no prejudice to the substantive rights of any party if this stay is extended, as the city has requested. All of the arguments, issues, and claims that they could and might seek to make they can raise in this

court. None of their procedural and substantive rights to make their claims and arguments in this course -- in this court in the course of this case are foreclosed by granting this motion. Further, the Court will fully retain the opportunity and right of any creditor to seek relief from this stay on an individual case-by-case basis, which, of course, if granted, will permit that creditor to litigate whatever their issues are in the appropriate court. So, again, the Court concludes that this factor weighs in favor of granting the requested injunction.

The fourth consideration is whether granting the requested injunction would serve the public interest. In normal two-party litigation or even in many bankruptcy cases, this is not a significant consideration, but in the context of a Chapter 9 case and especially this Chapter 9 case, the Court concludes that it is probably the most important factor of all. Granting this motion will, the Court readily concludes, enhance the debtor's likelihood of reorganization. It will also create efficiency. It will also assist in expediting this reorganization, and it will reduce the city's costs as well as those of other parties. Accordingly, the Court finds that this injunction is in the public interest, and for all of these reasons, the Court readily concludes in its discretion that the requested extension of the stay under Section 105 should be granted.

Now, several creditors have objected on the grounds that the debtor should have filed an adversary proceeding to obtain this relief. The Court concludes that this objection, too, should be overruled. The Court is satisfied that there was sufficient notice and opportunity to be heard, and the Court further observes that the imposition of this stay will only have the effect of requiring those parties who seek relief from it to file a motion for relief from it. And in rejecting this objection, the Court notes that there is substantial merit in the city's concern that it would be impossible for it to file an adversary proceeding naming as defendants all of the parties that might be impacted by this injunction. Indeed, it would be a procedural and administrative nightmare.

Finally, the Court rejects the argument that Section 105 cannot serve as the basis for an extended stay because it creates new rights. The Court finds that this injunction does not create any new rights. It simply assists the Court in making the bankruptcy process more efficient and gives the Court control over all of the issues that will have to be resolved through the course of the bankruptcy. In this regard, the Court would further note that no cases have rejected a Section 105 stay extension on this ground.

Before concluding, the Court would like to review and state on the record what is not being decided here today.

Perhaps this is just as important for the record to reflect as what is being decided here today.

The Court is making no ruling whatsoever on whether the City of Detroit is eligible to be a debtor in Chapter 9. The Court is making no ruling on whether the state constitution prohibited the emergency manager's appointment or prohibited the emergency -- excuse me -- prohibited the governor from authorizing this Chapter 9 filing without excepting from it the constitutionally protected pension rights of its citizens. The Court is not ruling on whether the state court orders that were entered either pre- or post-bankruptcy should be given preclusive effect under principles of res judicata, collateral estoppel, Rooker-Feldman, or any other preclusive doctrine. The Court is not ruling on whether any orders entered by the state court after this bankruptcy case was filed violated the automatic stay. The Court is not ruling on whether the City of Detroit can propose a feasible or confirmable plan in light of the state constitution or any other consideration, for that matter.

All of these issues on which the Court is not ruling today are fully preserved. Of course, when and if these issues are raised in an appropriate way, the Court will rule on them in due course with adequate notice and opportunity to be heard, and, of course, we will address the procedure for dealing with some of these issues in our status conference on

August 2nd.

The Court will, therefore, grant both of these motions. The Court wants the opportunity to review the proposed orders that were attached to the debtor's motions. In the event the Court wants to tweak or edit any of them, I would ask debtor's counsel to submit those orders in Word or WordPerfect form through the Court's order processing program. I know for sure that one of the things I want the stay extension order to do is to be sure it explicitly preserves the opportunity for parties to file motions for relief from it under Section 362(d), but we'll take care of that, so just submit the orders in the order processing program as they were attached to the motion.

That's all I have. Is there anything that anyone else would like to raise at this time?

MS. PATEK: Your Honor, on behalf of the public safety unions, we did ask to broaden --

THE COURT: You should identify yourself for the record.

MS. PATEK: I'm sorry. Barbara Patek on behalf of the public safety unions. We did make a request for affirmative relief, which was not listed among the items that your Honor did not rule on with respect --

THE COURT: Yes. Thank you for reminding me of that. In the interest of due process, the Court must

conclude that it is necessary for you to file a specific motion requesting that relief. If you think that expedited consideration is appropriate, you can request that.

MS. PATEK: Thank you, your Honor.

THE COURT: Would anyone else like to raise anything? Yes, ma'am.

MS. LENNOX: Thank you, your Honor. For the record, Heather Lennox of Jones Day on behalf of the City of Detroit. A procedural question, your Honor, about the matters that you've set for hearing on August 2nd. There was no objection deadline set for the four motions. Would your Honor wish to set one?

THE COURT: I didn't set one in light of the expedited consideration of them, so I'm really not inclined to. If a party wants me to consider a written objection, they should get it to me in time for me to consider it. There was more specifically a question about a response time on the 365 assumption motion, and we got a request -- a motion for clarification as to that. I think that was mentioned earlier today.

MS. LENNOX: Yes.

THE COURT: And I will deal with that separately in a separate order that I will enter later today or tomorrow.

MS. LENNOX: Thank you, your Honor.

THE COURT: All right. Anything further? Mr.

Gordon.

MR. GORDON: Thank you, your Honor. For the record, Robert Gordon on behalf of the Detroit pension systems. I just want one more item of clarification, if I could.

THE COURT: Sir.

MR. GORDON: You've referenced for the August 2 hearings that there's going to be a status conference, and I know that there's some procedural motions that are to be considered. I believe there's also a motion seeking to assume a forbearance agreement.

THE COURT: That's the Syncora motion that we were just talking about.

MR. GORDON: I'm sorry. I missed that. I couldn't hear her well. Is that going to be a status conference then or an actual --

THE COURT: No. I'm going to clarify that in my order that I'm going to enter this afternoon.

MR. GORDON: Very good. Thank you, your Honor. Sorry.

THE COURT: Yeah. Okay. We'll be in recess.

THE CLERK: All rise. Court is adjourned.

(Proceedings concluded at 2:48 p.m.)

INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett July 29, 2013

Lois Garrett

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 3

From *In Re City of Detroit*, Case No. 13-53846

3.	7/25/13	167	Order Granting Stay

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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.

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Signed on July 25, 2013

/s/ Steven Rhodes
Steven Rhodes
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 4

From *In Re City of Detroit*, Case No. 13-53846

4.	9/23/13	1004	Phillips' motion for relief from stay

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

_____/

CATHERINE PHILLIPS, et al.'s MOTION FOR RELIEF FROM 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

Now come Petitioners Catherine Phillips, et al. (hereafter "Petitioners") and hereby requests that this Court modify its *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* (Dkt. 166), (hereafter "*Extended Stay Order*"), to lift the Extended Stay from the matter entitled *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon*, Case No. 13-CV-11370, (Exh. 6.1, *Phillips* Complaint). In support of this Motion, Petitioners state as follows:

1. On March 27, 2013, Petitioners herein filed a Complaint in the United States District Court for the Eastern District of Michigan, naming Michigan Governor Richard D. Snyder and Michigan Treasurer Andrew Dillon (hereafter, "Defendants") as defendants, *Catherine Phillips, et al. v. Snyder and Dillon.* Case No. 13-CV-11370, (Exh. 6.1, *Phillips* Complaint), (hereafter "the *Phillips* case").

2. In their Complaint, (Exh. 6.1), Petitioners allege that Public Act 436 of 2012, M.C.L.A. §§141.1541 *et. seq.*, (hereafter "PA 436"), violates various federal statutory and

Constitutional rights. Petitioners sought declaratory and injunctive relief. The City of Detroit (hereafter, "Debtor") is not, and has never been, a party to that action.

3. On July 19, 2013, Debtor filed a motion seeking to extend the Chapter 9 stay to include certain state entities, non-officer employees and agents and representatives of the Debtor. (Dkt. 56, *Motion of Debtor For Entry of Order Extending the Chapter 9 Stay to Certain (A) State Entities, (B) Non-Officer Employees and (C) Agents and Representatives of the Debtor,* (hereafter "*Motion to Extend Stay"*) Specifically, Debtor requested

> that the Court exercise its equitable power under Section 105(a) of the Bankruptcy Code to extend the Chapter 9 stay to actions or proceedings against the Governor, the State Treasurer and the members of the Loan Board . . . **that, directly or indirectly, seek to enforce claims against the City, interfere with the City's activities in this Chapter 9 case or otherwise deny the City the protections of the Chapter 9 stay.**"

(Dkt 56, *Motion to Extend Stay*, p. 13 at ¶ 20) (emphasis added)

4. In support of its *Motion*, Debtor specifically identified and discussed at length three (3) cases, referred to as the "Prepetition Lawsuits," that had been filed in the Ingham County Circuit Court: a) *Webster v. State of Mich.*, No. 13-734-CZ (Ingham Cnty. Cir. Ct. July 3, 2013, (the "*Webster Lawsuit*;"); b) *Flowers v. Snyder*, No. 13 729-CZ (Ingham Cnty. Cir. Ct. July 3, 2013), (the "*Flowers Lawsuit*"); and c) *Gen. Ret. Sys. of the City of Detroit v. Orr,* No. 13-768-CZ (Ingham Cnty. Cir. Ct. Jul. 17, 2013), (the "*Pension Systems Lawsuit*"); and *ex parte* injunction orders that had issued against the Governor and the State Treasurer in those suits that had the express purpose and effect of enjoining the defendants in those cases from authorizing a Chapter 9 filing, from taking any further action in aid of the same, and from taking any action that might lead to the impairment of pension claims. (Dkt. 56, *Motion to Extend Stay*, pp. 5-7, 14-15, ¶¶ 10-12, 22-23)

5. Debtor's *Motion* clarified that the extension of the Stay applied specifically to the

"Prepetition Lawsuits" insofar as those lawsuits -- unlike the *Phillips* case herein – sought "…to enforce the plaintiffs' claims against the City or to exercise control over the City's property rights including its powers and rights under Chapter 9." (Dkt. 56, *Motion to Extend Stay,* p. 15, ¶23, fn 4)

6. Indeed, Debtor's *Motion* was very explicit in limiting the extension of its requested Stay to actions which "…directly or indirectly seek to enforce claims against the City, interfere with the City's activities in this chapter [sic] 9 case or otherwise deny the City the protections of the Chapter 9 Stay." (Dkt. 56, *Motion to Extend Stay,* p. 13, ¶20)

7. Debtor's *Motion* – clearly in direct response to the aforementioned "Prepetition Lawsuits" — further asked that this Court enter an Order to "provid[e] expressly, for the avoidance of doubt," that each of the identified "Prepetition Lawsuits," be stayed pending further order of the Court.

8. It is noteworthy that Petitioners' suit herein was not among those identified by Debtor, (Dkt. 56, pp. 5-6), insofar as the *Phillips* case had been filed on March27, 2013, long before the filing of this Chapter 9 bankruptcy petition, while all three of the "Prepetition Lawsuits" referred to by Debtor in its *Motion* were filed between July 3 and July 17, 2013, literally days before the filing of the Chapter 9 petition herein.

9. On July 25, 2013, this Court entered the *Extended Stay Order,* (Dkt. 166), broadly extending the Chapter 9 stay to include certain "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), Non-Officer Employees and the City Agents and Representatives," Id. at 2, without any of the aforementioned qualifying limitations specified by Debtor in its *Motion.*

10. While the *Extended Stay Order* (Dkt. 166) also expressly provides that "For the avoidance of doubt, each of the Prepetition Lawsuits hereby is stayed…," this Court did not directly incorporate the Debtor's own language, identifying the "Prepetition Lawsuits" in question, specifically, the *Webster*, *Flowers*, and *Pension Systems* lawsuits.

11. On August 7, 2013, the Michigan Attorney General's office, through Assistant Attorneys General Denise C. Barton, Ann M. Sherman and Michael F. Murphy, filed a *Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay*, (Exh. 6.2, *Phillips* case, Dkt. #29), seeking enforcement of *Extended Stay Order* (Dkt. 166) to the adjudication of the *Phillips* case. This Notice was not filed by, or on behalf of, the Debtor in this case.

12. On August 22, 2013, the United States District Court, Honorable George Steeh, entered an *Order Regarding Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay*, (Exh. 6.3, *Phillips* case, Dkt. #30) (hereafter "Steeh Order"), staying Petitioners' declaratory/injunctive relief action -- a case which challenges the constitutionality of Public Act 436 as it affects every single municipality in the State of Michigan -- despite the fact that Petitioners' suit herein, *Phillips v. Snyder*, was not one of those specifically identified by Debtor as problematic or one that sought to enforce claims against Debtor, interfere with its activities in the Chapter 9 case or otherwise deprive it of any protections of the Chapter 9 stay. (Exh. 6.3, Steeh Order).

13. In entering the aforementioned *Order*, (Exh. 6.3), the District Court expressly noted that "it is not apparent that any interests of the City of Detroit bankruptcy proceedings are implicated" in Petitioners' action. Nonetheless, the District Court concluded that it was bound by the terms of the "broadly worded Extension Order issued by the bankruptcy court," and was therefore required to stay the case "unless and until such time as an order issues lifting or

modifying the stay to permit the captioned matter to proceed." (Exh. 6.3, Steeh Order. Pp.1-2)

14. Petitioners herein, as plaintiffs in the *Phillips* case, seek an adjudication of the constitutionality of PA 436 in general, as applied to the entire State of Michigan, and not specific to any municipality, including the Debtor City of Detroit, or to the propriety or lawfulness of the Chapter 9 bankruptcy proceedings in this action. The plaintiffs in Petitioners' cause of action are comprised of persons who represent themselves and interested organizations across the State. In addition to the proposed withdrawing plaintiffs, the cause of action consists of eighteen (18) plaintiffs representing nine (9) groups. For example, those groups with whom these plaintiffs are affiliated are: the Pontiac City Council, the Benton Harbor City Commission, the Flint City Council, Rainbow Push Coalition, the National Action Network, the Council of Baptist Pastors of Detroit and Vicinity, the Detroit Public Schools, and the Detroit Library Commission.

15. Petitioners also seek to amend their Complaint, (Exh. 6.1, the *Phillips* case Dkt. #1), to withdraw the plaintiffs Phillips, Valenti and AFSCME Council 25 as plaintiffs from the underlying action and to voluntarily dismiss, without prejudice, Count I of the Complaint, which was asserted by the withdrawing plaintiffs.

16. By this *Motion*, therefore, Petitioners herein seek relief from the Extension Order so that they may proceed in their action for declaratory and injunctive relief against Defendants (who are not officers, employees, agents or representatives of Debtor) as to the remaining counts and obtain relief from the ongoing violations of constitutional and statutory rights alleged therein.

PRELIMINARY STATEMENT

17. Petitioners' pre-petition suit which is the subject of this Motion -- *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon*, Case No. 13-CV-11370 -- challenges the validity of PA 436 on a number of grounds, including the following Constitutional violations: the due-process right to elect officials who possess general legislative power (Exh. 6.1, Complaint,

Count II); the right to a republican form of government (Exh. 6.1, Complaint, Count III) ; the right to equal protection under the law with respect to race, wealth and voting rights (Exh. 6.1, Complaint, Counts IV, V and VI); the First Amendment as it pertains to freedom of speech (Exh. 6.1, Complaint, Count VIII) and the right to petition the government for redress of grievances (Exh. 6.1, Complaint, Count IX); the Thirteenth Amendment as it pertains to the vestiges of slavery with regard to voting rights (Exh. 6.1, Complaint, Count XIII) ; and the right to equal protection under the law with respect to the procedure for removing appointed emergency managers (Exh. 6.1, Complaint, Count XI). The Complaint also alleges violations of the Voting Rights Act of 1965.

18. Petitioners' suit does not seek money damages for these constitutional and statutory violations, but rather only declaratory relief finding violations of Petitioners' rights as alleged in the Complaint and injunctive relief enjoining the defendants from committing further violations of those rights. To the extent that the Complaint seeks attorney fees and costs as permitted by statute,42 U.S.C. §1988, any such award would be paid by the State of Michigan, not Debtor City of Detroit, as neither the Debtor nor any of its agents is a party to the action.

19. Debtor's only connection to Petitioners' action against the defendants in the *Phillips* case is that Debtor is currently under the control of an emergency manager appointed by the *Phillips* defendant Snyder pursuant to PA 436. But Debtor is only one of many communities or entities subject to control by a state-appointed emergency manager. Other communities and entities currently under EM control include the cities of Allen Park, Benton Harbor, Flint, Hamtramck, Pontiac, as well as Detroit Public Schools, Highland Park Public Schools, and Muskegon Heights Public Schools. Additionally, the cities of Inkster and River Rouge are currently subject to consent agreements under PA 436, and the City of Ecorse is under the

control of a PA 436 transition advisory board.

20. If not modified to permit the *Phillips* case to be adjudicated, the net effect of this Court's *Extended Stay Order* (Dkt. 166) would be that not only Petitioners, but hundreds of thousands of other individuals throughout the State of Michigan, particularly in those communities identified above currently subject to PA 436, would be deprived of any avenue by which they can vindicate their constitutional and statutory rights at issue. Instead, under the terms of the *Extended Stay Order* (Dkt. 166) -- pertaining solely to the Debtor City of Detroit -- if not clarified or modified, Petitioners and all those within the other affected communities and entities will be forced to suffer ongoing violations of those rights while waiting for Debtor's bankruptcy proceedings to conclude.

21. By this Motion, Petitioners seek to clarify, lift or modify the *Extended Stay Order* (Dkt. 166) to the extent that it purports and/or has been interpreted to stay all litigation in which the *Phillips* defendants – Richard Snyder and Andrew Dillon – are named as parties, without regard to whether or *not* "…any interests of the City of Detroit bankruptcy proceedings are implicated." (Exh. 6.3, Steeh Order, p.2)

22. Petitioners seek this relief so that Petitioners and Defendants may return to the District Court in order to permit an adjudication of the constitutional issues that have State-wide ramifications.

23. Petitioners contend that Debtor never asked for or intended so broad a stay as was actually granted. For that reason, the stay should not cover suits such as Petitioners', which does not "directly or indirectly, seek to enforce claims against the City, interfere with the City's activities in this Chapter 9 case or otherwise deny the City the protections of the Chapter 9 stay." (Dkt.56, *Debtor's Motion to Extend Stay*, p. 13, ¶ 20)

24. Petitioners reemphasize that Debtor is not a party to its suit against the *Phillips* defendants, and that the defendants cannot be party to Debtor's bankruptcy proceedings. Extension of the stay to include all State officials in all cases raises serious issues regarding the validity of the Chapter 9 proceedings, inasmuch as co-mingling the identities of Debtor and the State officials for purposes of the stay casts doubt on the ability of Debtor to satisfy the basic requirement that it be a "municipality" for the purposes of Chapter 9. This is especially so because Congress intentionally deprived states of the ability to file petitions. The State Entities should not be allowed the benefits of bankruptcy protections in clear violation of congressional intent that Chapter 9 relief is afforded only to municipalities.

25. But even if this Court determines that it was proper to issue a stay broader than that requested by Debtor, Petitioners respectfully assert that under the circumstances present here, they satisfy the standard for lifting a stay under both: 1) a simple "balancing-of-the-equities" approach; and 2) a "preliminary-injunction" analysis. (See Exh. 3, Brief in Support of Motion, pp. 8-14) Specifically, Petitioners will show that the scope of the *Extended Stay Order* (Dkt. 166) was overbroad under sections 105, 362, and 922 of the Bankruptcy Code; that the *Extended Stay Order* as applied to non-debtor defendants in other cases, i.e. the *Phillips* case, does not further the purposes of granting a stay under the Bankruptcy Code; and that where, as here, the pre-petition litigation at issue involves the vindication of Constitutional rights, enforcement of the Constitution necessarily trumps such a stay.

26. The facts and law outlined herein and in Petitioners' Brief in Support (Exh. 3, Brief in Support) provide compelling support for Petitioners' requested relief from the *Extended Stay Order* (Dkt. 166).

JURISDICTION

27. Jurisdiction over this motion is conferred upon this Court by 28 U.S.C. §§ 157

and 1334. This motion is brought pursuant to 28 U.S.C. § 157(b)(2)(G).

28. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1408 and 1409.

29. The relief requested in this Motion is predicated upon 11 U.S.C. § 362(d) and Rules 4001-1 and 9014-1 of the United States Bankruptcy Court Eastern District of Michigan Local Rules.

RELIEF REQUESTED

Relief From the Extended Stay Order is Warranted Because the Debtor Never Sought a Stay Encompassing All Actions Against Defendants

30. In its *Motion to Extend Stay* (Dkt. 56), Debtor specifically identified three lawsuits (which Debtor called the "Prepetition Lawsuits") that it claimed violated the automatic-stay protections of Chapter 9 as applied to Debtor by targeting State officials (the Governor, the State Treasurer, members of the Loan Board) to accomplish indirectly what it could no longer accomplish directly by suing Debtor. (Dkt. 56, pp. 5-8, ¶¶ 10-13; p. 13, ¶ 20; pp. 14-15, ¶¶ 22-23, including fn. 4)

31. Debtor therefore requested that the Court issue a stay covering actions against Defendants that "directly or indirectly, seek to enforce claims against the City, interfere with the City's activities in this Chapter 9 case or otherwise deny the City the protections of the Chapter 9 stay," (Dkt. 56, p. 13, ¶ 20) and furthermore, to expressly stay the three identified "Prepetition Lawsuits." (Dkt. 56, pp. 14-15, ¶ 23)

32. Despite the fact that the *Phillips* case has been pending since March, 27 2013 (Exh. 6.1, *Phillips* Complaint), and the Petitioners' claims were well known long before the filing of this bankruptcy action on July 18, 2013, the Debtor herein did not identify Petitioners' suit as one of the "Prepetition Lawsuits" it wished the Court to expressly stay, nor does Petitioners' suit fall within the scope of those contemplated by Debtor in Paragraph 20 of its motion.

33. Given the limiting language of Debtor's *Motion to Extend Stay* (Dkt. 56), it cannot be said that Debtor intended that all suits naming the Governor or the State Treasurer as defendants should be stayed pending the resolution of Debtor's bankruptcy proceedings and regardless of whether staying such suits would further the purposes of Chapter 9 protection as applied to Debtor. Clearly such a request would be unsupportable.

34. But the lack of such qualifying or limiting language in this Court's *Extended Stay Order* (Dkt. 166) has precisely that effect, such that the District Court in Petitioners' case indicated that it was bound by the language of the *Extended Stay Order* to stay Petitioners' suit even though it found that "it is not apparent that any interests of the City of Detroit bankruptcy proceedings are implicated." (Exh. 6.3, pp. 1-2)

35. The broadly worded *Extended Stay Order* is thus constitutionally problematic, inasmuch as Petitioners -- who petition for redresses of grievances on behalf of all citizens of the State of Michigan against the governor and the State Treasurer, in matters wholly outside of Debtor's bankruptcy proceedings -- are denied access to the courts. This is particularly so where, as here, the grievances involve claims of constitutional violations, because bankruptcy courts do not have any final authority to decide constitutional issues. *Farmer v. First Virginia Bank*, 22 B.R. 488 (E.D. Va. 1982). Any final decision on constitutional issues must, under the U.S. Constitution, be decided by an Article III court.

36. Without a modification of this Court's *Extended Stay Order* (Dkt. 166), therefore, Petitioners herein are deprived of a proper judicial review of their constitutional claims in an Article III court.

37. Further constitutional problems are created by the manner in which the *Extended Stay Order* (Dkt. 166), as currently worded, extends full Chapter 9 protection to state officials,

directly contrary to the congressional intent that such protections are not available to the states.

38. This Court can thus avoid this constitutional crisis by simply modifying its Extension Order to make clear that the stay only applies to claims, whether direct or indirect, against the res of the Debtor.

Relief From the Extended Stay Order is Warranted Because the Scope of the Extended Stay Order is Overly BroadWithin the Limitations of the Bankruptcy Code

39. The *Extended Stay Order* (Dkt. 166) purports to extend the "Chapter 9 stay" to cover "State Entities," including Defendants. Although the *Extended Stay Order* does not reference the statutory provisions that constitute a "Chapter 9 stay," upon information and belief, this Court was characterizing the automatic-stay provisions at 11 U.S.C. §§ 362(a) and 922 as a "Chapter 9 stay."

40. By its own terms, §362(a) of the Bankruptcy Code, 11 U.S.C. §362(a), automatically stays actions against the debtor or the debtor's property.

41. Similarly, §922 of the Code, 11 U.S.C. §922, automatically stays any action against an officer or inhabitant of the debtor to the extent that such action ultimately seeks to enforce a claim against the debtor.

42. Neither section provides a basis for staying claims against non-debtors wholly unconnected to the debtor.

43. To the extent that §105 of the Code, 11 U.S.C. §105 grants a bankruptcy court some latitude in crafting orders, including expanding the scope or duration of automatic-stay orders, such latitude is not without limits. In cases involving using section 105 to expand the scope of automatic-stay orders to non-debtors, some close nexus of identity must exist between the non-debtor and debtor (such as an agreement to indemnify) that would render an action against the non-debtor a de facto action against the debtor or its property.

44. With respect to Petitioners' District Court action, no such nexus exists or could possibly exist as between Defendants and the Debtor. Therefore, the Extension Order should be lifted as applied to the Defendants in this case.

Relief From the Extended Stay Order is Warranted Because the Extended Stay Order Fails to Further the Purposes For Which Stays are Provided in Bankruptcy Cases

45. It is well settled that the primary purposes for staying litigation against a debtor are: a) to protect all creditors by preventing financial assets or property of the debtor from being diverted to an individual creditor; and, b) to protect the debtor by preventing additional financial obligations from being imposed upon the debtor as it attempts to marshal assets and inventory obligations for the purpose of crafting a reorganization plan.

46. Moreover, such stays have the effect of preventing the debtor's limited assets from being further depleted through the expense of defending numerous suits. **[**While the above purposes are laudable, they are not furthered by staying Petitioners' action for declaratory and injunctive relief against the underlying non-debtor defendants in the *Phillips* case. Petitioners' action is not against Debtor's assets and does not involve any property of the Debtor. Debtor is not a party to Petitioners' action and therefore will not incur any expense defending against it. Lifting the stay, thereby permitting Petitioners to resume the prosecution of their claims against the *Phillips* defendants, will not interfere with the progression of Debtor's bankruptcy case. Thus, no harm will be suffered by Debtor if the stay is lifted as to this federal Constitutional litigation.

47. On the other hand, the injuries alleged by Petitioners are constitutional in nature and as such, constitute irreparable harm for the duration that they are permitted to continue. See, *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986); *Doe v. Duncanville Independent School District*, 994 F.2d 160 (5th Cir. 1993). Moreover, the scale

of the constitutional violations, when extrapolated across all of the individuals who reside within the affected communities and school districts throughout the entire State of Michigan, is simply staggering.

48. Under any of the frameworks used to analyze lift-stay motions, equity requires lifting the stay with respect to the adjudication of the *Phillips* case. Were it otherwise, the constitutional rights of citizens throughout the State -- in communities such as Allen Park, Benton Harbor, Ecorse, Flint, Hamtramck, Highland Park, Inkster, Muskegon Heights, Pontiac and River Rouge – will continue to be held hostage to the Debtor City of Detroit's progression through bankruptcy despite the lack of any connection between those communities and the Debtor. Not only is such a result absurd on its face, but it is unconstitutional and contrary to public policy, particularly where such an order sets the precedent that the constitutionality of PA 436 may never be challenged so long as some community or entity subject to the Act is in the midst of bankruptcy proceedings.

49. Because the *Extended Stay Order* (Dkt. 166), as applied to Petitioners' claims in the *Phillips* case, fails to further the purposes of the automatic stay in these Chapter 9 bankruptcy proceedings as to the Debtor and simultaneously works an irreparable harm upon the Petitioners, the *Order* (Dkt. 166) should be lifted as to the claims against the underlying defendants in the *Phillips* case.

Relief From the Extended Stay Order is Warranted Because Where the Petitioners Allege Constitutional Violations, Enforcement of the Constitution Must Take Precedence Over Staying Litigation Against the Non-Debtor Defendants

50. Petitioners' Complaint alleges numerous constitutional violations made actionable against the underlying defendants, pursuant to 42 U.S.C. § 1983, in the *Phillips* case.

51. Section 5 of 42 U.S.C. § 1983 guarantees persons the right to enforce the U.S. Constitution against those who act under color of law to deprive or cause a person to be deprived

of rights, privileges, or immunities secured by the Constitution.

52. Section 3 of 28 U.S.C. § 1343 guarantees a person the right to have a federal district court and a jury of one's peers adjudicate claims brought under 42 U.S.C. § 1983.

53. Congress has clearly demonstrated its intent that 42 U.S.C. § 1983 provides the judicial remedy when a person has suffered a violation of constitutional rights. Likewise, the Supreme Court has repeatedly recognized that the enforcement of federal rights is of the highest priority.

54. In this case, the application of this Court's *Extended Stay Order* (Dkt. 166) to include all claims against the non-debtor defendants Snyder and Dillon -- regardless of the absence of any relationship to the property rights of Debtor herein or to this bankruptcy proceeding -- contravenes the very purpose and intent of Congress and the Supreme Court. Moreover, by delaying the proceedings in the underlying *Phillips* district court action indefinitely, the *Extended Stay Order* has worked a further constitutional injury to Petitioners, inasmuch as it has operated to deprive Petitioners—without any process—of the right to have their claims of constitutional violations adjudicated by the district court and a jury of their peers.

55. To whatever extent the Bankruptcy Code in general, and Chapter 9 in particular, could be read to permit the expansion of the automatic-stay provisions to include any and all actions against non-debtors even where, as here, the particular claims against those non-debtors have no relevant connection to the Debtor, such a construction is overbroad and conflicts with 42 U.S.C. § 1983. In such a case, as here, this Honorable Court should construe the Bankruptcy Code narrowly to avoid a constitutional problem or alternatively, lift the stay which avoids the constitutional conflict altogether.

56. As required by L.B.R. 9014-1(g), Petitioners have sought concurrence in this

Motion from counsel for the Debtor on September 23, 2013, and concurrence was not obtained.

CONCLUSION

WHEREFORE, Petitioners respectfully request that the *Extended Stay Order* (Dkt. 166) be clarified, modified, or lifted with respect to Petitioners' claims against the underlying defendants in the *Phillips* case, so that: 1) the constitutionality of Public Act 436 may be properly adjudicated pursuant to 42 U.S.C. §1983 by an Article III United States District Court; and 2) Petitioners may amend their Complaint to provide for the voluntary withdrawal of individual plaintiffs Phillips, Valenti, and AFSCME Council 25 and the voluntary dismissal of Count I of their Complaint, without bearing on the Debtor's rights in this bankruptcy proceeding.

Dated: September 23, 2013

Respectfully Submitted,

By: */s/William H. Goodman*

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SUMMARY OF ATTACHED EXHIBITS

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1 Proposed Form of Order

Exhibit 2 Notice of Motion and Opportunity to Object

Exhibit 3 Brief in Support of Motion For Relief From 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

Exhibit 4 Certificate of Service

Exhibit 5 None [No Affidavits Filed Specific to This Motion]

Exhibit 6.1 Complaint filed in *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon,* Case No. 13-CV-11370

Exhibit 6.2 Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay in *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon, Case No. 13-CV-11370*

Exhibit 6.3 Order Regarding Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay, in *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon, Case No. 13-CV-11370*

EXHIBIT 1

PROPOSED FORM OF ORDER

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

_____/

ORDER GRANTING THE PETITIONERS' MOTION TO MOTION FOR RELIEF FROM 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 Petitioners *Catherine Phillips, et al.'s Motion For Relief From 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* and the Court having determined that the legal and factual bases set forth in the motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Petitioners' motion is GRANTED; and

2. The Automatic Stay of 11 USC § 362 and the *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* (Dkt. 166) entered by this Court on July 25, 2013 are found, in their entirety, not to apply to the case of *Catherine Phillips, et al. v. Snyder and Dillon*, Case No. 13-CV-11370, before the U.S. District Court, Eastern District of Michigan, and all stays are otherwise lifted to permit that case to fully proceed

without impediment before the U.S. District Court to an adjudication on the merits and to permit the parties to proceed with any concomitant appeals; and

3. As a result of this Order, Petitioners are permitted to also amend their Complaint in the case of *Catherine Phillips, et al. v. Snyder and Dillon*, Case No. 13-CV-11370 to voluntarily withdraw individual Plaintiffs Phillips, Valenti, and AFSCME Council 25 as Plaintiffs in that case and to voluntary dismiss, all without prejudice, Count I of their Complaint in that case.

Dated:_____ _____

Honorable Steven W. Rhodes
United States Bankruptcy Judge

EXHIBIT 2

Notice of Motion and Opportunity to Object

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

_____/

NOTICE UNDER LBR 9014-1 OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY & OPPORTUNITY TO OBJECT

Petitioners Catherine Phillips, etc. al. have filed papers with the court to clarify order and/or lift stay relating to the case of *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon*, Case No. 13-CV-11370 pending before the U.S. District Court, Eastern District of Michigan.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to to clarify order and/or lift stay relating to the case of Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon, Case No. 13-CV-11370 pending before the U.S. District Court, Eastern District of Michigan, or if you want the court to consider your views on the Motion, within fourteen (14) days, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:[1]

   United States Bankruptcy Court
   211 West Fort Detroit, MI 48226

   If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

[1] Response or answer must comply with F. R. Civ. P. 8(b), (c) and (e)

You must also mail a copy to:

William H. Goodman
Goodman & Hurwitz, P.C.
1394 E Jefferson Ave
Detroit, MI 48207

2. If a response or answer is timely filed and served, the clerk will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Dated: September 23, 2013

By: /s/*William H. Goodman*
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EXHIBIT 3

Brief in Support of Motion For Relief From 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

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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BRIEF IN SUPPORT OF CATHERINE PHILLIPS, et al.'S MOTION FOR RELIEF FROM 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

On March 27, 2013, Petitioners Catherine Phillips, et al. (hereafter "Petitioners") filed a civil rights action in the United States District Court for the Eastern District of Michigan, challenging the validity of PA 436 on federal statutory and constitutional grounds, pursuant to 42 U.S.C. §1983. See, *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon*, Case No. 13-CV-11370, (Exh. 6.1, *Phillips* Complaint), (hereafter, the "*Phillips* case"). Governor Richard D. Snyder and State Treasurer Andrew Dillon are the only named defendants in the suit, while Petitioners represent a cross-section of citizens from communities across the State of Michigan that are directly affected by the enactment of PA 436. On July 18, 2013, the Debtor filed for Chapter 9 bankruptcy. At that time, all litigation against the Debtor or its property was automatically stayed pursuant to 11 U.S.C. §§ 362(a) and 922. One week later, on July 25, 2013, upon Debtor's motion, (Dkt. 56, *Motion of Debtor For Entry of Order Extending the Chapter 9 Stay to Certain (A) State Entities, (B) Non-Officer Employees and (C) Agents and Representatives of the Debtor,* (hereafter *"Motion to Extend Stay"*), this Court entered an *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* (Dkt.

166), (hereafter "*Extended Stay Order*").

Among those "State Entities" were the two named defendants in the *Phillips* case, Governor Snyder and Treasurer Dillon. At issue in Petitioners' Motion herein is this Court's decision to stay all pre-petition litigation against these defendants, despite the fact that they are not officers, employees, agents, or representatives of the Debtor, and in no way otherwise share some close nexus or special relationship with the Debtor such that a suit against the Defendants would be, in effect, an action against the Debtor. Nor are the substantive issues within the *Phillips* case related in any way to the instant bankruptcy proceeding, to the enforcement of claims against Debtor, or to and of Debtor's activities in this Chapter 9 case. Petitioners seek a lift of the stay as to the *Phillips* case on several grounds: (1) that Debtor never asked for or intended that the stay order would be so broadly worded; (2) that the inclusion of the non-debtor defendants from the *Phillips* case in the *Extended Stay Order* (Dkt. 166) exceeds the permissible scope of such a stay under 11 U.S.C. §§ 105(a), 362(a), and 922; (3) that even if the Bankruptcy Code permitted the extension of automatic stays to non-debtor third parties with no connection to the Debtor, the *Extended Stay Order* (Dkt. 166) fails to further the purposes for which such stays are provided; and (4), of utmost importance, where the Petitioners allege ongoing constitutional violations, enforcement of the Constitution cannot be subjugated by the bankruptcy process.

STANDARD OF REVIEW

When a bankruptcy petition is filed, most judicial actions against the debtor that were commenced before the filing of the petition are automatically stayed during the pendency of the bankruptcy petition. 11 U.S.C. § 362(a)(1). However, this automatic stay provision was not intended to immutably relegate creditors to a world of limbo or to the resolution of the civil claims within the limitations of a bankruptcy proceeding. Instead, as Congress recognized when enacting the automatic stay provision:

> [I]t will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.

S. Rep. No. 989, 95th Cong., 2d Sess. 50, *reprinted in* 1978 U.S. Code Cong. & Admin. News 5780, 5836.

Recognizing that some actions are better suited to resolution outside the bankruptcy forum, Congress specifically granted—in the same provision establishing the automatic stay—full discretion to the bankruptcy court to lift the stay and allow litigation to go forward in another forum. Section 362(d) of the Bankruptcy Code provides:

> On request of a party in interest and after notice and a hearing, the court shall *grant relief from the stay* provided under [§ 362(a)], such as by terminating, annulling, modifying, or conditioning such stay—(1) *for cause*, including the lack of adequate protection of an interest in property of such party in interest . . . .

11 U.S.C. § 362(d)(1) (emphasis added).

To determine whether sufficient cause exists to grant relief from the stay in a non-bankruptcy forum, the bankruptcy court must scrutinize the factual circumstances of the case before it. *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990); *Pursifull v. Eakin*, 814 F.2d 1501, 1506 (10th Cir. 1987); *Sumitomo Trust & Banking Co., Ltd. v. Holly's, Inc. (In re Holly's, Inc.)*, 140 B.R. 643, 687 (Bankr. W.D. Mich. 1992). Among other factors, the Court should consider whether modifying the stay will promote judicial economy. *See, e.g.*, *Robbins*, 964 F.2d at 344; *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985); *see also* 2 Collier on Bankruptcy ¶ 362.07[3] (15th ed. 1991) (noting that relief may be granted from the automatic stay where "the liquidation of a claim may be more conveniently and speedily determined in another forum"). Another particularly compelling consideration is whether the bankruptcy petition was filed by the debtor "on the eve of the resolution of pending

prepetition litigation." *In re Wilson*, 85 B.R. 722, 728 (Bankr. E.D. Pa. 1988) (citing *Matter of Holtkamp*, 669 F.2d 505, 509 (7th Cir. 1982)); *see also, In re Castlerock Props.*, 781 F.2d 159, 163 (9th Cir. 1986); *In re Olmstead*, 608 F.2d 1365, 1368 (10th Cir. 1979); *In re Borbridge*, 81 B.R. 332, 335 (Bankr. E.D. Pa. 1988); *In re Philadelphia Athletic Club*, 9 B.R. 280, 282 (Bankr. E.D. Pa. 1981).

In the most recent large-scale municipal bankruptcy, the question of "cause" to lift a stay was framed thusly:

> To determine whether "cause" exists to lift the stay and allow a suit to proceed in a non-bankruptcy forum, a court typically analyzes whether (1) any great prejudice to either the bankrupt estate or the debtor will result from continuation of a civil suit, (2) the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor, and (3) the creditor has a probability of prevailing on the merits of its lawsuit. *Chizzali v. Gindi (In re Gindi*), 642 F.3d 865, 872 (10th Cir. 2011), *overruled on other grounds by TW Telecom Holdings Inc. v. Carolina Internet Ltd*., 661 F.3d 495 (10th Cir. 2011) (emphasis added); Caves, 309 B.R. at 80; *In re Pro Football Weekly, Inc*., 60 B.R. 824, 826 (N.D.Ill.1986).

In re Jefferson County, 484 B.R. 427, 465-466 (Bankr. N.D. Ala. 2012).

ARGUMENT

I. DEBTOR NEVER INTENDED OR ASKED FOR A STAY ORDER THAT WOULD ENCOMPASS ALL ACTIONS AGAINST THE "STATE ENTITIES," WITHOUT REFERENCE TO THE NATURE OF THE ACTION.

The simplest solution to correct the overbreadth of the *Extended Stay Order* (Dkt. 166) is to recognize that Debtor never sought so broad a stay order as that which ultimately issued from this Court; that it was never intended that the *Extended Stay Order* (Dkt. 166) should apply to actions such as Petitioners' *Phillips* case, which do not implicate any of the Debtors' interests that are protected by Chapter 9; and that the *Extended Stay Order* (Dkt. 166) does not and should not, in fact, apply to Petitioners' case.

Such a conclusion is not only supported by the plain language of the Bankruptcy Code

and its underlying intent, but also by the language of Debtor's own motion seeking extension of the Chapter 9 stay. Debtor did not ask that all actions against the non-debtor Defendants be stayed, but rather only those actions "that**,** directly or indirectly, seek to enforce claims against the City, interfere with the City's activities in this Chapter 9 case or otherwise deny the City the protections of the Chapter 9 stay." Absent such limiting language, Debtor's motion would rightly have been attacked as seeking relief that was massively overbroad and, in many instances, not even remotely related to the purposes for which Chapter 9 protections exist.

Unfortunately, the absence of such language in the *Extended Stay Order* (Dkt. 166) has created precisely such an impermissibly broad-ranging stay. In its current form and breadth, the *Extended Stay Order* (Dkt. 166) provides that "the Chapter 9 stay hereby is extended to apply **in all respects** (to the extent not otherwise applicable) to the State Entities." (Dkt. 166, *Extended Stay Order*, at p. 2) Without the modification or clarification sought by Petitioners herein, the *Extended Stay Order* therefore not only fails to limit its application in the way requested by Debtor, but instead encourages the broadest possible reading, as evidenced by the words of United States District Court, Honorable George Steeh in his *Order Regarding Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay*, (Exh. 6.3, *Phillips* case, Dkt. #30) (hereafter "Steeh Order"), staying Petitioners' declaratory/injunctive relief civil rights action that is the subject of this Motion:

> Although **it is not apparent that any interests of the City of Detroit bankruptcy proceedings are implicated in the case**, the plain language of the stay order would apply to this lawsuit.
>
> **In accordance with the broadly worded Extension Order issued by the bankruptcy court, this court will abide by the stay unless and until such time as an order issues lifting or modifying the stay** to permit the captioned matter to proceed.

(Exh. 6.3, *Phillips* case, Dkt. #30, Steeh Order) (emphasis added).

This was not the relief sought by Debtor in its *Motion to Extend Stay* (Dkt. 56), and it was

not the relief that should have been granted. Clarifying the *Extended Stay Order* to make clear that it only applies to actions against the *res* of the Debtor, or even adopting verbatim the language proposed by the Debtor in its *Motion to Extend Stay* (Dkt. 56), would permit actions against non-Debtor "State Entities" to continue in courts across the State where such actions do not defeat or frustrate the purposes of Debtor's bankruptcy proceedings.

II. THE RELEVANT PROVISIONS OF THE BANKRUPTCY CODE DO NOT AUTHORIZE EXTENDING THE AUTOMATIC STAY OF PREPETITION LITIGATION TO ALL ACTIONS AGAINST THE NON-DEBTOR STATE ENTITIES SNYDER AND DILLON.

The relevant provisions of the Bankruptcy Code providing for automatic stays of litigation in Chapter 9 bankruptcy are 11 U.S.C. §§ 362(a) and 922. Section 362(a) provides in pertinent part:

> (a) Except as provided in subsection (b) of this section, a petition filed under section 301,302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
>
> > **(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against **the debtor** that was or could have been commenced before the commencement of the case under this title, or to recover a claim against **the debtor** that arose before the commencement of the case under this title;
> >
> > **(2)** the enforcement, against **the debtor** or against property of **the estate**, of a judgment obtained before the commencement of the case under this title;
> >
> > **(3)** any act to obtain possession of property of **the estate** or of property from the estate or to exercise control over property of the estate;
> >
> > **(4)** any act to create, perfect, or enforce any lien against property of **the estate**;
> >
> > **(5)** any act to create, perfect, or enforce against property of **the debtor** any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
> >
> > **(6)** any act to collect, assess, or recover a claim against **the debtor** that arose before the commencement of the case under this title;

> **(7)** the setoff of any debt owing to **the debtor** that arose before the commencement of the case under this title against any claim against **the debtor**; …

11 U.S.C. § 362(a) (emphases added). Thus on its face, § 362(a) is concerned with preventing the initiation or continuation of any litigation against the debtor or the bankruptcy estate and therefore expressly authorizes staying litigation of claims against the debtor or the estate.

Section 922 makes several other provisions for automatic stays in the Chapter 9 context:

> **(a)** A petition filed under this chapter operates as a stay, in addition to the stay provided by section 362 of this title, applicable to all entities, of—
>
> > **(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of **the debtor** that seeks to enforce a claim against **the debtor**; and
> >
> > **(2)** the enforcement of a lien on or arising out of taxes or assessments owed to **the debtor**.

11 U.S.C. § 922(a) (emphases added). On its face, §922 is thus also concerned with preventing the initiation or continuation of any litigation *against the debtor*. Indeed, § 922 seeks to protect the municipal debtor from both direct and indirect actions against the debtor, where a creditor might sue the officers or inhabitants of a municipality in order to reach the assets of the debtor. *In re City of Stockton*, 484 B.R. 372, 378-379 (Bankr. E.D. Cal. 2012).

But there is nothing in the Code that provides for staying actions against non-debtor third parties such as the State defendants in the *Phillips* case. Indeed, with respect to §362(a), the Sixth Circuit has noted that "said provision facially stays proceedings 'against the debtor' and fails to intimate, even tangentially, that the stay could be interpreted as including any defendant other than the debtor." *Lynch v. Johns-Manville Sales Corp.,* 710 F.2d 1194, 1196 (6th Cir. 1983). In *Lynch* court further found:

> It is universally acknowledged that an automatic stay of proceeding accorded by § 362 may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the . . . debtor…The legislative history of §362 discloses a congressional intent to stay proceedings against the

debtor, and no other.

Id.

Even in cases where a broader construction to the automatic-stay provisions of §362 have been applied, the extension of a stay to non-debtor third parties typically only occurs when they are co-defendants of the debtor, and even then, only in the most unusual circumstances:

> [S]omething more than the mere fact that one of the parties to the lawsuit has filed a Chapter 11 bankruptcy must be shown in order that proceedings be stayed against non-bankrupt parties. This "unusual situation," it would seem, arises when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor. An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case.

A.H. Robins Co. v. Piccinin, 788 F.2d 994, 999 (4th Cir. 1986)

Such unusual circumstances are not present here. Petitioners have not sued Debtor; thus, the underlying defendants in the *Phillips* case -- Snyder and Dillon -- are not co-defendants with Debtor. Nor is there "such identity" between the *Phillips* defendants and Debtor that Debtor would be the real party defendant in the *Phillips* case. Likewise, the *Phillips* defendants are not officers or inhabitants of Debtor, and Petitioners' suit does not seek to enforce any claim against Debtor, rending § 922 inapplicable. As such, authority for inclusion of the *Phillips* case under the scope of the *Extended Stay Order* cannot be found in either §§362(a) or 922(a) of the Bankruptcy Code.

Nor can such authority be found in § 105(a). While it is true that a bankruptcy court is granted additional powers to issue orders that are "necessary or appropriate to carry out the provisions of this title," pursuant to 11 U.S.C. § 105(a), such powers are not without limits. As recognized in *GAF Corp. v. Johns-Manville Corp*. (*In re Johns-Manville Corp.*), 26 B.R. 405 (Bankr. S.D.N.Y. 1983), any extension of a stay made pursuant to § 105 must be carefully

circumscribed to ensure that such an extension is only used to protect the debtor.

The *GAF Corp.* plaintiffs were manufacturers that were named as co-defendants, along with Johns-Manville, in asbestos litigation. When Johns-Manville initiated bankruptcy proceedings, all actions against it were automatically stayed pursuant to §362(a). The *GAF Corp.* plaintiffs moved for an extension of the stay, pursuant to § 105(a), to include all of Johns-Manville's co-defendants in the asbestos litigation. The court rejected this invitation:

> Although Section 105 may be used to extend the stay, Section 105 does not have a life of its own and this extension may only be accomplished within the proper boundaries of Section 362. That is, unless this extension is designed to protect the debtor's interests, it cannot be granted.
>
> * * *
>
> Section 105 of the Code was not intended to grant the bankruptcy court powers without bounds, *In re Brada Miller Freight Systems, Inc.*, 16 Bankr. 1002, 6 C.B.C. 2d 375, 389 (N.D. Ala. 1981), and the court's equitable powers thereunder are not unrestricted. *In re Dunckle Associates, Inc.*, 19 Bankr. 481, 6 C.B.C. 2d 600, 605 (Bankr. E.D. Pa. 1982). *See also* 2 Collier on Bankruptcy para. 105.02 at 105-7 (15th ed. 1982). *See also In re Chanticleer Associates, Ltd.*, 592 F.2d 70 (2d Cir. 1979).
>
> The crux of the matter before this Court is whether the injunctive relief sought by the co-defendants under Section 105(a) is "necessary or appropriate" in order to achieve the goals of a Chapter 11 reorganization.

GAF Corp. v. Johns-Manville Corp. (In re Johns-Manville Corp.), at 414-415.

The court found that the asbestos litigation plaintiffs would suffer significantly greater harm if the stay was expanded to include the co-defendants than the co-defendants would suffer if the stay was denied, even though the remedy sought by the asbestos plaintiffs was limited to money damages (which meant that such plaintiffs' injuries, however grave, did not constitute "irreparable harm," under a preliminary-injunction standard because an adequate remedy existed at law to compensate the plaintiffs or their survivors):

> The asbestos victims will certainly suffer by the total frustration of their opportunity for a day in court. As Chief Judge Peckham stated in the context of

asbestos litigation:

> Such delay is not costless to these plaintiffs, many of whom are suffering financial hardships and who seek damages to redress their injuries and some of whom are dying and whose testimony must be perpetuated. The defendants may be inconvenienced by expeditious resumption of the actions against them. However, under *Landis*, the balance of hardship weighs in favor of the injured plaintiffs.

In re Related Asbestos Cases, 23 B.R. 523, 531-2 (N.D. Cal. 1982) (citing *Landis v North American Company*, 299 U.S. 248, 81 L. Ed. 153, 57 S. Ct. 163 (1936)). *Accord, Evans v. Johns-Manville Sales Corp.*, C.A. No. 80-2939, slip op. at 4-6 (D.N.J., October 5, 1982).

To the same effect, *see In re Massachusettes Asbestos Cases*,M.B.L. Nos. 1 & 2 (D. Mass. Sept. 28, 1982), in which the court denied a stay against third parties who were co-defendants of a debtor, stating:

> The suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else . . . .
>
> Here, it is not a question of a fair possibility. It is certainty that any delay in the continuing efforts to bring these cases to trial will result in continued and increased hardship to the plaintiffs. This is not to ignore the problems of the defendants, but the loss to the plaintiffs far outweighs any possible gain procedural or practical that would inure to them.

Slip Op. at 3.

GAF Corp. v. Johns-Manville Corp. (In re Johns-Manville Corp.), at 417.

Unlike the asbestos-litigation plaintiffs, for whom there existed an adequate (if imperfect) remedy at law in the form of money damages, the Petitioners in the instant case are suffering irreparable harm for which there is no adequate remedy at law as long as the violations of their constitutional rights continue. *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986); *Doe v. Duncanville Independent School District*, 994 F.2d 160 (5th Cir. 1993). As such, the equities tilt overwhelmingly against using § 105 to extend the stay to the

non-debtor defendants in the *Phillips* case.

Some courts have found that a bankruptcy court lacks the power under § 105 to issue a stay against a non-debtor party, *In re American Hardwoods, Inc.*, 885 F.2d 621, (9th Cir. 1989), while others have cautiously allowed such stays where the equities clearly favor them:

> Judicial discretion is not unlimited but is to be carefully honed in light of the facts of the case, applicable precedent and appropriate policy. *Fry v. Porter*, 1 Mod. [1607] 300, 307. The issuance of a stay by any court of equity requires a showing of serious, if not irreparable, injury and a tipping of the balance of the equities in favor of the party seeking the stay. *Landis v. North American Co.*, 299 U.S. 248, 254-55, 81 L. Ed. 153, 57 S. Ct. 163 (1936); *Commodity Futures Trading Commission v. Chilcott Portfolio Mgt. Inc.*, 713 F.2d 1477 (10th Cir. 1983).

Lesser v. A-Z Assocs. (*In re Lion Capital Group*), 44 B.R. 690, 701 (Bankr. S.D.N.Y. 1984)

In the case at bar, the *Extended Stay Order* (Dkt. 166) is overbroad as applied to the *Phillips* case because there is simply no reason to believe that Debtor would suffer any substantial harm, let alone irreparable injury, if Petitioners' injunctive action against the underlying defendants was permitted to continue. The District Court recognized as much when it noted that "it is not apparent that any interests of the City of Detroit bankruptcy proceedings are implicated" in Petitioners' action, but concluded that it nevertheless was bound by the terms of the "broadly worded Extension Order issued by the bankruptcy court," and was therefore required to stay the case "unless and until such time as an order issues lifting or modifying the stay to permit the captioned matter to proceed." (Exh. 6.3, Steeh Order, *Phillips* case)

Where, as here, Snyder and Dillon, as defendants in the *Phillips* case, are third parties to Debtor's bankruptcy proceedings and there is no close nexus of identity between them and Debtor that would otherwise justify staying litigation against the *Phillips* defendants, the Bankruptcy Code does not authorize staying Petitioners' action. For that reason, the stay as to the *Phillips* case should be lifted.

III. STAYING PETITIONERS' ACTION AGAINST DEFENDANTS DOES NOT

FURTHER THE PURPOSES OF THE BANKRUPTCY CODE.

Even assuming that the Bankruptcy Code could be read as permitting the extension of automatic-stay orders to non-debtor third parties in narrow circumstances (i.e., where an action against a non-debtor is really designed to reach the assets of the debtor/estate), such is not the case here. And in any event, when the circumstances surrounding Petitioners' litigation against the defendants Snyder and Dillon are viewed in their totality, it becomes clear that staying this particular litigation is not "necessary or appropriate to carry out the provisions" of the Code, as required by § 105.

There can be no doubt that the stay provisions of the Code are primarily intended to provide protection to the parties to a bankruptcy proceeding: the debtor and the creditors, as best explained in the legislative history of the Code:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. Rep. 95-595, at 340 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6296.

The stay of proceedings was also intended to promote an orderly reorganization or liquidation of the debtor's estate thereby benefiting, secondarily, creditors of the estate:

> The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

Id., reprinted in 1978 U.S.C.C.A.N. 5787, 6297.

Courts have been extremely reluctant to extend this protection to non-debtor third parties, recognizing that "it would distort congressional purpose to hold that a third party solvent co-

defendant should be shielded against his creditors by a device intended for the protection of the insolvent debtor and creditors thereof." *Lynch v. Johns-Manville Sales Corp.,* 710 F.2d at 1197. *See also: In re Related Asbestos Cases,* 23 B.R. 523, 527 (N.D. Cal. 1982); *In re UNR Industries, Inc.*, 23 B.R.144 (Bankr. N.D. Ill. 1982); *Ashworth v. Johns-Manville, et al.*, Nos. C78-470, C81-1545, C77-4088, C79-167 (N.D. Ohio Mar. 21, 1983) at 4.

Asbestos and other mass-tort litigation is instructive on this point, since such cases often involve numerous co-defendants, some of whom are solvent and some of whom are not. In such cases, the solvent defendants are understandably concerned about proceeding without the maximum number of co-defendants and thus prefer to wait until their insolvent co-defendants emerge from bankruptcy. Despite these concerns, where a debtor's solvent co-defendants have moved for an extension of the automatic stay to cover them, they have been routinely denied. When viewed in light of the test that is typically applied by bankruptcy courts to determine whether a stay should be extended to a non-debtor third-party, that result is hardly surprising. In *In re Family Health Servs*., 105 B.R. 937 (Bankr. C.D. Cal. 1989) the court succinctly summarized:

> Courts have applied traditional preliminary injunction tests when determining whether to stay actions against non-debtor parties. It has been held that:
>
> > In order for the Court to enjoin a creditor's action against a co-debtor or guarantor, the debtor must show: 1) irreparable harm to the bankruptcy estate if the injunction does not issue; 2) strong likelihood of success on the merits; and 3) no harm or minimal harm to the other party or parties. *In Re Otero Mills, Inc.,* 25 Bankr. 1018, 1021 (Bankr. N.M. 1982). *In Re Larmar Estates, Inc.*, 5 Bankr. 328, 331 (Bankr. E.D.N.Y. 1980); In *Otero Mills* and *Larmar* the courts determined that "likelihood of success on the merits" equates to the probability of a successful plan of reorganization. *Otero Mills,* 25 Bankr. at 1021;*Larmar,* 5 Bankr. at 331.
>
> The Ninth Circuit has stated the standard test to evaluate claims for preliminary injunctive relief as follows:

> Under the first part of this test, the movant must show 1) irreparable injury, 2) probable success on the merits, 3) a balance of hardships that tips in the movant's favor, and 4) that a preliminary injunction is in the public interest. Alternatively, a court may issue an injunction if the moving party demonstrates *either* a combination of probable success on the merits and irreparable injury *or* that serious questions are raised and the balance of hardships tips in his favor.

F.T.C. v. Evans Products Co., 775 F.2d 1084, 1088-89 (9th Cir. 1985). *See also, In re Family Health Servs*., 105 B.R. 937, 943 (Bankr. C.D. Cal. 1989)

Of course, the cases above all involved co-defendants, co-debtors, or guarantors. In this case, the *Phillips* defendants lack even that once-removed connection to the Debtor. The *Phillips* case does not name Debtor or any of its agents, employees, officers or representatives as co-defendants or parties in any capacity. But even applying the standard applicable to co-defendants, co-debtors, and guarantors, Defendants are not entitled to a stay.

There is nothing to suggest that Debtor would suffer an irreparable injury to the bankruptcy estate if Petitioners' litigation regarding the constitutionality of Public Act 426 was to proceed during the pendency of Debtor's bankruptcy proceedings. Indeed, there is nothing to suggest that the bankruptcy estate would be in any way affected, as: (1) Debtor is not a party to Petitioners' litigation; (2) Petitioners' litigation seeks no money damages; and (3) to whatever extent Petitioners may be entitled to attorney fees and costs if they prevail in the underlying matter, such an award will be the responsibility of the State of Michigan, not Debtor, as Defendants are State officials.

On the other hand, in light of the constitutional violations alleged by Petitioners in their complaint, Petitioners have suffered and will continue to suffer irreparable harm. Courts have held that the mere fact that constitutional rights are being violated is sufficient to demonstrate irreparable harm. *Doe v. Duncanville Independent School District*, 994 F.2d 160 (5th Cir. 1993).

Even a temporary loss of a constitutional right constitutes irreparable harm which cannot be adequately remedied by an action at law. *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed.2d 232 (1986). Thus, not only can Debtor not demonstrate irreparable harm to the bankruptcy state if Petitioners' claim against Defendants is not stayed, but it also cannot demonstrate "no harm or minimal harm" to Petitioners if the litigation is stayed. As a result, whether analyzed under a preliminary-injunction framework or a simple balancing of the equities, the extension of the stay to include the *Phillips* case cannot be upheld.

IV. WHERE PETITIONERS ALLEGE CONSTITUTIONAL VIOLATIONS, ENFORCEMENT OF THE CONSTITUTION MUST TAKE PRECEDENCE OVER STAYING LITIGATION AGAINST NON-DEBTOR DEFENDANTS

As explained above, it is not "necessary or appropriate" that all litigation against the non-debtor *Phillips* defendants, Snyder and Dillon, be stayed in order to carry out the purposes of the Bankruptcy Code as applied to Debtor. But as written, that is precisely what the *Extended Stay Order* does. No matter what the facts, no matter what the claims against the State, under the broad language of this Court's *Order*, no lawsuit of any kind can proceed against the Governor or the State Treasurer until one community—the City of Detroit—emerges from bankruptcy. Thus, both on its face and as applied, the *Extended Stay Order* (Dkt. 166) operates to deprive all who reside in the entire State of Michigan of their constitutional rights of access to the courts and to petition for a redress of grievances.

A court can hold a statute unconstitutional either because it is facially invalid or unconstitutional as applied in a particular set of circumstances. *See Coleman v. Ann Arbor Transp. Auth.*, 904 F. Supp. 2d 670, 682-83 (E.D. Mich. 2012) (citing *Women's Med. Prof'l Corp. v. Voinovich,* 130 F.3d 187, 193 (6th Cir. 1997)). In an 'as applied' challenge, "the plaintiff contends that application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional." *Women's Med. Prof'l Corp.*, 130 F.3d at

193 (internal citations omitted).

The stay of proceedings as applied to Petitioners' underlying case in *Phillips* violates their rights under the United States Constitution and the Civil Rights Act, 42 U.S.C. § 1983, to a full remedy for the deprivation of their constitutional rights. As such, Petitioners ask this Court to modify the stay with respect to the *Phillips* case in order to avoid such constitutional violations under the Fifth and Fourteenth Amendments.

Specifically, it violates Petitioners' right to due process in that they no longer have an avenue to vindicate the deprivation of their constitutional rights, as guaranteed by the enforcement power given to Congress by § 5 of the Fourteenth Amendment through 42 U.S.C. §1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

42 U.S.C. § 1983.

When Congress adopted the Fourteenth Amendment in 1868, it took steps to ensure that the promise of that amendment—freedom from violations of due process and equal protection by public officials—would be e. Thus, in 1871, the United States Congress first enacted § 1 of the Klu Klux Klan Act, pursuant to § 5 of the Fourteenth Amendment with the express intent to provide for enforcement of that amendment to the United States Constitution, which is specifically entitled, "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes." 17 Stat. 13 (1871).

In 1874, Congress codified the substantive portion of the 1871 Act, passing a separate section identical to the present version of the Civil Rights Act, 42 U.S.C. § 1983. The Supreme Court has broadly described the primary purpose of § 1983 as follows:

> As a result of the new structure of law that emerged in the post-Civil War era—and especially of the Fourteenth Amendment, which was its centerpiece—the role of the Federal Government as the guarantor of basic federal rights against state power was clearly established. **Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and laws of the Nation** . . . .
>
> The **very purpose of section 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights**—to protect the people from unconstitutional action under color of state law . . . .

Mitchum v. Foster, 407 U.S. 225, 238-39, 242 (1972). (emphasis added). Throughout our nation's history, therefore, the right of our citizens to enforce their rights under the U.S. Constitution in a United States District Court has been a bulwark of democratic principles. Taking away that right should not be taken lightly.

Petitioners' federal statutory right to vindicate the deprivation of their constitutional rights includes the right to have the United States District Court and a jury of Petitioners' peers adjudicate their § 1983 cause of action, as guaranteed by 28 U.S.C. § 1343(3). *See* U.S. Const. amend. VII (guaranteeing the right to trial by jury); 28 U.S.C. § 1343(3) (providing that "[t]he district courts shall have original jurisdiction of any civil action . . . [t]o redress the deprivation under color of any State law . . . of any right, privilege or immunity secured by the Constitution of the United States . . . .").

Congress enacted § 1983 with the "goal of compensating the injured" and "preventing official illegality." *Jaco v. Bloechle*, 739 F.2d 239, 244 (6th Cir. 1984) (internal quotations omitted). In doing so, it clearly established the Federal Government as the guarantor of "the basic federal rights of individuals against incursions by state power." *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 503 (1981).

The application of the automatic stay herein to Petitioners' case contravenes the very purpose and intent of Congress and the Supreme Court in enacting and enforcing § 1983, to

provide a judicial remedy for the violation of one's rights under the Constitution. *Accord Felder v. Casey*, 487 U.S. 131, 148 (1988) (recognizing that civil rights actions "belong in court") (quoting *Burnett v. Grattan*, 468 U.S. 42, 50 (1984); *Mitchum*, 407 U.S. at 242-43 (noting that the enforcement of federal rights is of the highest priority). By delaying proceedings in the underlying matter indefinitely, the stay has in essence taken from Petitioners—without any process, let alone adequate process—the opportunity to have the deprivations of their civil rights adjudicated by the district court and a jury of their peers. This stay thus precludes Petitioners from any relief for the violations of their constitutional rights wrought by PA 436. *See Felder*, 487 U.S. at 148.

In this regard, *Perez v. Campbell*, 402 U.S. 637 (1971) is noteworthy. In that case, the Court dealt with the conflict between the Bankruptcy Act and a state "financial responsibility" motorist statute. In so doing, it found that the conflicts presented by the state statute violated the Supremacy Clause. The Court also noted that the conflict was created, and the state law invalidated by the Supremacy Clause, because the state law undermined the "declared purpose" of the federal Bankruptcy Act. *Id*. at 654. In that case the court held that there was "no reason why the States should have broader power to nullify federal law." *Id*. at 652.

Here, however, the Supremacy Clause is useless to resolve statutory conflicts with other federal legislation. It is not the federal Bankruptcy Act that is being frustrated and interfered with, but rather the Civil Rights Act – i.e. the protection of individuals' rights under the United States Constitution -- that is being undermined. The exercise of this Court's discretion in staying proceedings in the *Phillips* case – as well as other § 1983 cases -- interferes with the purpose, intent, and effectiveness of the federal Civil Rights Act. As in *Perez*, in the *Phillips* case there is "no reason" justifying this Court's *Extended Stay Order*, (Dkt. 166), to "nullify federal law," (i.e., the Civil Rights Act of 1871) such that it "frustrates" its "full effectiveness." *Id*.

The constitutional conundrum caused by the application of the automatic stay to the *Phillips* case are well described in a recent opinion from the Eastern District of California, *V.W. ex rel. Barber v. City of Vallejo*, No. 12-1629, 2013 WL 3992403 (E.D. Cal. Aug. 2, 2013). In *Vallejo*, the court makes the following, highly pertinent observation with regard to the issue of a conflict between the purposes of the Bankruptcy Code and the Civil Rights Act:

> [A]larming as it is, as the bankruptcy statute appears to be written, a municipality may erase its own liability to persons whom it and its officers have willfully and maliciously deprived of their civil rights—and even their lives—by filing for bankruptcy. This extraordinary result would appear to exalt the bankruptcy laws over the civil rights laws (even though the civil rights laws, like the bankruptcy laws, are anchored in the constitution).

Id. at 4. In *Vallejo*, however, because neither party had actually raised this issue --and indeed the plaintiff had conceded the jurisdiction of the Bankruptcy Court to discharge her claims -- the Court did not decide the merits of this issue. Nonetheless, the *Vallejo* court went out of its way to identify and flag how the Bankruptcy Code, if improperly applied, may well unconstitutionally interfere with rights secured by § 1983 and the Fourteenth Amendment.

Once again, it should be noted that, unlike the *Phillips* case herein, *Vallejo* involved direct claims for money damages against the debtor municipality. In *Phillips,* the application of the stay to the non-debtor defendants is even more contrary to public policy inasmuch as it allows those defendants to perpetuate constitutional violations by attaching themselves to a third-party bankruptcy proceeding.

Rather than "exalt" the Bankruptcy Code over the Civil Rights Acts, the automatic- and equitable-stay provisions of the Code should be construed to be consistent with § 1983, thus avoiding a constitutional conflict. Where a federal statute is overbroad, as the Bankruptcy Code is here, the Court should construe the statute to avoid constitutional problems if the statute is subject to such a limiting construction. *New York v. Ferber*, 458 U.S. 747, 769 (1982).

Here, the automatic- and equitable-stay provisions can be limited through a grant of relief from the stay, which is within this Court's discretion. *In re Atl. Ambulance Assocs., Inc.*, 166 B.R. 613, 615 (Bankr. E.D. Va. 1994) (noting that the bankruptcy "code gives the court a fairly broad discretion to provide appropriate relief from the stay as may fit the facts of the case."); *Capital Commc'ns Fed. Credit Union v. Boodrow*, 197 B.R. 409, 413 (N.D.N.Y. 1996) *aff'd sub nom. In re Boodrow*, 126 F.3d 43 (2d Cir. 1997) ("[A] court has broad discretion to lift the stay in appropriate circumstances." (internal citations omitted)). Petitioners thus ask this Court to lift or modify the Stay as it applies to their case, to allow the Bankruptcy Code to be read consistently with the constitutionally imposed values and principles of § 1983 and, therefore, applied in a constitutional manner.

CONCLUSION

For all of the reasons stated above in their Motion attached hereto, and for good cause shown, Petitioners respectfully request that *Extended Stay Order* (Dkt. 166) be clarified, modified, or lifted with respect to Petitioners' claims against the underlying defendants in the *Phillips* case, so that: 1) the constitutionality of Public Act 436 may be properly adjudicated pursuant to 42 U.S.C. §1983 by an Article III United States District Court; and 2) Petitioners may amend their Complaint to provide for the voluntary withdrawal of individual plaintiffs Phillips, Valenti, and AFSCME Council 25 and the voluntary dismissal of Count I of their Complaint, without bearing on the Debtor's rights in this bankruptcy proceeding.

Dated: September 23, 2013

Respectfully Submitted,

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EXHIBIT 4

CERTIFICATE OF SERVICE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

CERTIFICATE OF SERVICE

I, WILLIAM H. GOODMAN, certify that on September 23, 2013, I electronically filed *Catherine Phillips, Et Al.'S Motion For Relief From 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*, along with a *Summary of Attached Exhibits* and *Exhibits 1-6.3* (as listed on the Summary), with the Clerk of the Court using the ECF system which will send notification of such filing to ECF participants in this matter.

*/s/William H. Goodman*_____
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EXHIBIT 5

None

[No Affidavits Filed Specific to This Motion]

EXHIBIT6.1

Complaint,
***Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon*,**
Case No.13-CV-11370
[Doc. #1]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Catherine Phillips, Staff Representative Michigan AFSCME Council 25, and Chief Negotiator with the City of Detroit; Joseph Valenti, Co-Chief Negotiator with the Coalition of Unions of the City of Detroit; Michigan AFSCME Council 25; Russ Bellant, President of the Detroit Library Commission; Tawanna Simpson, Lamar Lemmons, Elena Herrada, Detroit Public Schools Board Members; Donald Watkins, and Kermit Williams, Pontiac City Council Members; Duane Seats, Dennis Knowles, Juanita Henry, and Mary Alice Adams, Benton Harbor Commissioners; William "Scott" Kincaid, Flint City Council President; Bishop Bernadel Jefferson; Paul Jordan; Rev. Jim Holley, National Board Member, Rainbow Push Coalition; Rev. Charles E. Williams II, Michigan Chairman, National Action Network; Rev. Dr. Michael A. Owens, Rev. Lawrence Glass, Rev. Dr. Deedee Coleman, Bishop Allyson Abrams, Executive Board, Council of Baptist Pastors of Detroit and Vicinity;

Plaintiffs,

vs.

RICHARD D. SNYDER, as Governor of the State of Michigan, and ANDREW DILLON, as the Treasurer of the State of Michigan, acting in their individual and/or official capacities,

Defendants.

Case No.
Judge:

Complaint for Declaratory & Injunctive Relief

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THERE WAS ANOTHER PENDING CIVIL ACTION ARISING OUT OF THE SAME TRANSACTIONS OR OCCURRENCE AS ALLEGED IN THIS COMPLAINT, BEFORE THE HONORABLE JUDGE ARTHUR J TARNOW, THAT CIVIL ACTION BEING CASE NO. 12-11461.

COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF

NOW COME Plaintiffs, and by and through their attorneys and for their Complaint, do hereby allege as follows.

I. NATURE OF PLAINTIFFS' CLAIMS

1. This is a federal civil rights and voting rights cause of action brought pursuant to 42 USC §1983 for violations of the Plaintiffs' federal and constitutional rights under the United States Constitution, Art. 4, §4; Amend. I; Amend. XIII; Amend. XIV; and pursuant to the *Voting Rights Act of 1965*, 42 U.S.C. §§ 1973 *et. seq.*

2. The *Local Financial Stability and Choice Act*, Act No. 436, Public Acts of 2012, MCL §§ 141.1541 *et. seq.* (Public Act 436) effectively establishes a new form of government within the State of Michigan. The new form of government allows Michigan cities and other

forms of municipal corporations to be ruled by one unelected official, who is vested with broad legislative power and whose orders, appointments, expenditures, and other decisions are not reviewable by local voters.

3. Plaintiffs' rights under the United States Constitution, include:

a. A due process right to engage in collective bargaining.

b. A due process right to an elected, republican form of government;

c. A right to freedom of speech.

d. A right to petition local government.

e. A right to equal protection of laws granting Michigan citizens the right to vote in local elections and to remove emergency managers.

Each of these rights is violated by provisions of Public Act 436.

4. The Voting Rights Act of 1965 protects Plaintiffs from discriminatory laws that disenfranchise voters. Plaintiffs' voting rights are also violated by provisions of Public Act 436.

II. JURISDICTION AND VENUE

5. Federal question jurisdiction is conferred by 28 USC §§ 1331, 1343(a)(3), 1343(a)(4), 1344, 2201 and 2202 over Plaintiffs' Constitutional and Voting Rights Act claims.

6. Venue is proper pursuant to 28 USC §1391, since all Defendants reside or are located in the Eastern District of Michigan and the events giving rise to this action occurred, in part, within this District.

III. PARTIES

7. Plaintiff Catherine Phillips is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Catherine Phillips is also a Staff Representative for Michigan AFSCME Council 25, and Chief Negotiator with the City of Detroit.

8. Plaintiff Joseph Valenti is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Valenti is also Co-Chief Negotiator for the Coalition of unions of the City of Detroit.

9. Plaintiff, Michigan AFSCME Council 25 is an unincorporated, voluntary labor association certified by the Michigan Employment Relations Commission, pursuant to the Michigan Public Employee Relations Act, MCLA 432.201 *et seq*. Plaintiff Michigan AFSCME Council 25 has associational standing on behalf of its members as well as its own standing as party to collective bargaining agreements with numerous public entities that will be affected by PA 436, inclusive of, but not limited to the City of Detroit.

10. Plaintiff Russ Bellant is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Bellant is also President of the Detroit Library Commission.

11. Plaintiff Tawanna Simpson is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Simpson is also a Detroit Public Schools Board Member.

12. Plaintiff Lamar Lemmons is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Lemmons is also a Detroit Public Schools Board Member.

13. Plaintiff Elena Herrada is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Herrada is also a Detroit Public Schools Board Member.

14. Plaintiff Donald Watkins is a citizen of the United States, a resident of the City of Pontiac, County of Wayne, and the State of Michigan. Plaintiff Watkins is also a member of the Pontiac City Council.

15. Plaintiff Kermit Williams is a citizen of the United States, a resident of the City of Pontiac, County of Wayne, and the State of Michigan. Plaintiff Williams is also a member of the Pontiac City Council.

16. Plaintiff Duane Seats is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Seats is also a Benton Harbor Commissioner.

17. Plaintiff Dennis Knowles is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Knowles is also a Benton Harbor Commissioner.

18. Plaintiff Juanita Henry is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Henry is also a Benton Harbor Commissioner.

19. Plaintiff Mary Alice Adams is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Adams is also a Benton Harbor City Commissioner.

20. Plaintiff William "Scott" Kincaid is a citizen of the United States, a resident of the City of Flint Michigan, County of Genesee, and the State of Michigan. Plaintiff Kincaid is also President of the Flint City Council.

21. Bishop Bernadel Jefferson is a citizen of the United States, a resident of the City of Flint Michigan, County of Genesee, and the State of Michigan.

22. Plaintiff Paul Jordan is a citizen of the United States and a resident of the City of Flint, County of Genesee, and State of Michigan.

23. Plaintiff Rev. Jim Holley is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Holley is also a National Board Member of the Rainbow Push Coalition.

24. Rev. Charles E. Williams II is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Williams is also the Michigan Chairman of the National Action Network.

25. Plaintiff Rev. Dr. Michael A. Owens is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Dr. Michael A. Owens is also President of the Council of Baptist Pastors of Detroit and Vicinity.

26. Plaintiff Rev. Lawrence Glass is a citizen of the United States, a resident of the City of Redford, County of Wayne, and the State of Michigan. Plaintiff Rev. Lawrence Glass is also First Vice-President of the Council of Baptist Pastors of Detroit and Vicinity.

27. Plaintiff Rev. Dr. Deedee Coleman is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Dr. Deedee Coleman is also Second Vice-President of the Council of Baptist Pastors of Detroit and Vicinity.

28. Plaintiff Bishop Allyson Abrams is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Bishop Allyson Abrams is also Secretary of the Council of Baptist Pastors of Detroit and Vicinity.

29. Defendant Richard D. Snyder is the Governor of the State of Michigan. Governor Snyder maintains his principal residence in the City of Ann Arbor in Washtenaw County,

Michigan, and at all times relevant hereto was acting individually and in his official capacity as State Governor and top policymaker for the State of Michigan.

30. Defendant Andrew Dillon is the Treasurer of the State of Michigan. Treasurer Dillon maintains his principal residence in Redford Township in Wayne County, Michigan, and at all times relevant hereto was acting individually and in his official capacity as State Treasurer and as a policymaker.

IV. COMMON FACTS

31. Through its provisions, Public Act 436 establishes a new form of local government, previously unknown within the United States or the State of Michigan, where the people within local municipalities may be governed by an unelected official who establishes local law by decree.

Legislative Background Of Municipal Financial Distress In Michigan

32. During the Great Depression in the 1930s, 4,770 cities defaulted on their debt. Among all states, Michigan had the fourth highest number of defaulting municipalities throughout the depression years. At that time, creditors of defaulting cities were commonly required to file a mandamus action in state courts seeking to compel the municipality to raise taxes to pay debt obligations. Courts then appointed receivers to oversee the finances of municipal debtors.

33. To improve procedures for creditors and municipal debtors, the federal government adopted Chapter 9 of the federal bankruptcy code in 1937. Chapter 9 permits the use of federal bankruptcy procedures for debt-ridden municipalities. Under Chapter 9, elected officials remain in office and retain significant autonomy while bankruptcy procedures oversee

the development of a plan to adjust debts and pay creditors. Before a Chapter 9 petition may be filed however, the state must authorize the municipality to file for bankruptcy.

34. Prior to 1988, unless proceeding through Chapter 9, municipalities were placed into receivership by the courts, not the state legislature or executive branch. Compensation for court-appointed receivers was derived from property that the courts placed within the care of the receiver.

35. Since 1937, two Michigan cities have defaulted on bond payments or been placed under a court imposed receivership due to insolvency. Muskegon Township defaulted on revenue bond payments in the early 1960s and the City of Ecorse was placed in receivership by a Wayne County Circuit Court in 1986.

36. Neither municipality sought the protections of Chapter 9 bankruptcy. Muskegon Township entered into a settlement agreement with its creditors that resolved their defaults. Ecorse remained under court receivership through 1990 and was subject to further state oversight until the late 1990s.

37. In response to the troubled insolvency of the City of Ecorse, the state enacted Public Act 101 of 1988 (PA 101). Public Act 101 allowed the state to intervene when local municipalities were found to be in financial distress. The statute allowed the state to appoint emergency financial managers over cities experiencing a financial emergency.

38. In 1990, the legislature replaced PA 101 with the *Local Government Fiscal Responsibility Act*, Act No. 72, Public Acts of 1990 (PA 72). Public Act 72 authorizes state officials to intervene when local governments face a financial emergency. Pursuant to PA 72, Michigan's local financial emergency review board can appoint an emergency financial manager (EFM) only after the Governor declares a financial emergency within the local government.

39. Under PA 72, local elected officials are not removed from office and the EFM's powers only extended to matters of municipal finances. Their powers did not extend to purely administrative or policy matters. Furthermore, EFMs had the power to renegotiate, but not unilaterally break contracts.

40. In the late 1990s, legislation was passed to revise municipal revenue sharing laws, severely reducing the amount of funds shared by the state with local government. Local governments saw further revenue reductions when income and property tax revenues sharply declined during the recession of 2000-2003. As a result, municipalities experienced significant financial stress during the late 1990s and early 2000s.

41. During this time period, the state local financial emergency review board appointed PA 72 EFMs in the cities of Hamtramck, Highland Park, and Flint.

42. These original Public Act 72 EFMs remained in place as follows:

a. Hamtramck from 2000 until 2007 (7 years)[1];

b. Highland Park from 2001 until 2010 (9 years);[2] and

c. Flint from 2002 until 2004 (2 years)[3].

43. With the onset of the historic global recession that began in 2007 and resulted in record foreclosures and steep unemployment, cities and municipal corporations in Michigan saw further sharp reductions to income and property tax revenue. State revenue sharing laws were further amended in recent years to reduce revenue sharing with local governments and thereby balance state budgets. As a result, Michigan municipalities again faced widespread financial stress.

[1] In 2010, the City of Hamtramck requested permission from the state to file for Chapter 9 bankruptcy. The state refused.
[2] One year later, DTE Energy repossessed the City of Highland Park's street lights due to the city's inability to pay its bills
[3] The City of Flint was again declared in a financial emergency in 2011.

44. Again, the state local financial emergency review board appointed PA 72 EFMs in various cities, including Pontiac, Ecorse, and Benton Harbor. Public Act 72 EFMs were also appointed over the Village of Three Oaks (2008) and the Detroit Public Schools and the review board entered into a PA 72 consent agreement with the city of River Rogue.

45. The second wave of Public Act 72 EFMs were appointed as follows:

a. Pontiac from 2009 until the present (4+ years)

b. Ecorse from 2009 until the present (4+ years)

c. Benton Harbor from 2010 through the present (3+ years);

d. Village of Three Oaks from 2008 until 2009 (1 year); and

e. Detroit Public Schools from 2009 until the present (4+ years).

The state's consent agreement with the city of River Rouge has also remained in place from 2009 to the present. Notably, since the onset of the global recession in 2007, the Village of Three Oaks is the only municipality that has emerged from a financial emergency following the appointment of an emergency financial manager, appointment of an emergency manager, or the entering of a consent agreement.

46. Following elections in November of 2010 and the turnover of state offices in January 2011, the Michigan legislature introduced House Bill 4214 (2011) on February 9, 2011. The bill was widely seen as a response to a court ruling finding that the Detroit Public Schools' School Board, and not the EFM, possessed the power under state law to determine what curriculum would be taught and which texts would be used in the city's public schools. The decision provoked elements of the state legislature who then sought greater control over the content of the curriculum taught in Detroit's schools.

47. House Bill 4214 was rushed through the legislature and quickly presented to the Governor for signature. Defendant Governor Richard D. Snyder signed the *Local Government and School District Fiscal Accountability Act*, Act No. 4, Public Acts of 2011 (PA 4) into law on March 16, 2011. Public Act 4 repealed Public Act 72 and was given immediate effect. Public Act 4 automatically converted all EFMs to Public Act 4 Emergency Managers (EM) and greatly expanded the scope of their powers. The Act also brought all existing consent agreements under the new law.

Public Act 4's Radical Revision of State Law

48. Public Act 4 radically revised state law governing the appointment of EMs over cities and school districts during times of financial stress.

49. Public Act 4 provided that once the Governor had declared a financial emergency, the Governor could then appoint an individual to be the municipality's emergency manager. The Governor was granted broad discretion to declare a financial emergency and, in fact, a municipality was not actually required to be in a fiscal crisis before an EM could be appointed.

50. Tellingly, the Act changed the title of municipal "emergency financial managers" to "emergency managers" and expanded the scope of their powers to cover all the conduct of local government.

51. The PA 4 EM's powers extended not only to financial practices and fiscal policy, but rather permitted such managers to fully act "for and in the place of" the municipality's elected governing body. The grant of powers also included a general grant of legislative power (the power to unilaterally adopt local laws and resolutions) to PA 4 EMs.

52. Public Act 4's grant of legislative power to EMs extended to the full scope of legislative power possessed by local elected officials. In the state of Michigan, local legislative power is of the same scope and nature as the police power possessed by the state - limited only by the jurisdictional limits of the municipality and where preempted by the general laws of the state. Public Act 4's grant of general legislative power to EMs thus extended to a grant of the full of scope of the local government's police power, previously reserved to local government's elected legislative body and elected mayor.

53. Emergency managers were further granted powers to act in disregard of the local government's local laws – including city charters, ordinances, administrative regulations, school district bylaws, etc.

54. The Act further granted a state financial review team the power to enter into a consent agreement with local government, again without a finding that a financial emergency existed.

55. At the time PA 4 became law, reports from the State indicated that, based on their financial conditions, over eighty (80) municipalities and/or school systems were eligible to have emergency managers.

56. After passage of PA 4, existing EFMs in the cities of Benton Harbor, Ecorse and Pontiac and over the Detroit Public Schools were converted to EMs and vested with PA 4 powers. The state's consent agreement with the city of River Rouge was also converted to a PA 4 agreement.

57. With the continuing global economic recession and steep declines in state revenue sharing and municipal property tax and income tax revenue collection, PA 4 EMs were newly appointed as follows:

a. Flint from 2011 until the present (2+ years);

b. Highland Park Public Schools from 2012 until the present (1+ year); and

c. Muskegon Heights Public Schools until the present (1+ year).

Additionally, the state entered PA 4 consent agreements with the cities of Detroit[4] and Inkster.

58. After becoming vested with Public Act 4 powers, EMs in Benton Harbor, Ecorse, Flint, and Pontiac have all exercised general legislative power to enact, repeal and suspend local laws and resolutions and have voided various contracts.

Michigan Citizen's Rejection of Public Act 4
And the State's Resurrection of Public Act 72

59. In opposition to Public Act 4, citizens began circulating petitions in May 2011. The petitions were to place a referendum on the ballot that would reject the law. Over 200,000 signatures were gathered and the petitions were submitted to the Secretary of State in February 2012. However to prevent Michigan citizens from having the opportunity to vote on the matter, the petitions were challenged by a lobbying group.

60. The petitions were challenged on the basis that the title of the petitions were not printed in 14 point font but rather were printed in slightly smaller font of approximately 13.75 or larger.[5]

61. Along party-line votes, the members of the state Board of Canvassers deadlocked and as a result, the petitions were not certified for the ballot.

62. The matter was then appealed to the Michigan Court of Appeals. A panel of the Court of Appeals recognized and found that existing law required the referendum to be placed on

[4] The state has struggled to identify the state law(s) providing legal authority for the transfer of powers and oversight that was created by the agreement with the city of Detroit. Over time, the state seems to have settled into a belief that PA 4 provided such authority.

[5] No evidence was submitted and it was not argued that signatories of the petitions had been confused or misunderstood what they had signed. In fact, the difference in point size as argued by the challenger was invisible to the naked eye of many.

the ballot. However, the panel sought to overturn existing law, and thereby keep the referendum off the ballot. The panel requested that the full Court of Appeals be polled to convene a special panel to reconsider existing law. The full Court of Appeals however declined to convene the special panel.

63. An appeal was taken to the state Supreme Court. The Michigan Attorney General in his individual capacity and Governor in his individual and/or official capacity joined the challengers as amici at the state Supreme Court.

64. On August 3, 2012, the Michigan Supreme Court issued an opinion ordering the state Board of Canvassers certify the petitions and place the referendum on the ballot.

65. However on August 6, 2012, the state Attorney General issued a formal opinion stating that once the petitions were certified[6], PA 72 would spring back into effect and would remain in effect if voters rejected PA 4 at the November 2012 election.

66. The state Board of Canvassers certified the petitions on August 8, 2012 and by operation of Michigan law, PA 4 was then suspended until the November.

67. In response, state officials reappointed all existing PA 4EMs as PA 72 EFMs and proclaimed that all existing consent agreements would continue in place as PA 72 consent agreements.

68. After certification of the referendum, existing PA 4 EMs were converted to EFMs in the cities of:

a. Benton Harbor;

b. Ecorse;

c. Flint; and

[6] Pursuant to Michigan law, once the petitions were certified PA 4 was then suspended until the voters could decide the matter at the next general election.

d. Pontiac.

69. Additionally EMs over the following school districts were converted to Public Act 72 EFMs:

a. Detroit Public Schools;

b. Highland Park Public Schools; and

c. Muskegon Heights Public Schools.

70. Finally, the state's consent agreements with the cities of Detroit, Inkster and River Rogue were proclaimed converted to PA 72 agreements.

71. At the general election on November 6, 2012, Michigan voters overwhelmingly elected to reject PA 4.

Michigan Legislature's Attempt to Overturn Citizen's Vote to Reject Public Act 4 by Enacting Public Act 436

72. In response to the decision of Michigan voters to reject PA 4, incensed state officials and segments within the state legislature quickly moved to reenact a new law with emergency manager provisions that are substantially identical to the rejected law.

73. During the lame-duck session, the state legislature moved quickly to reenact the emergency manager provisions of Public Act 4. The new bill passed the state House and Senate on December 13, 2012 and was signed into law as the *Local Financial Stability and Choice Act*, Act No. 436, Public Acts of 2012, on December 26, 2012.

74. Public Act 436 again changes the title of existing PA 72 "emergency financial managers" to "emergency managers" and again expands the scope of their powers to cover all the conduct of local government.

75. The PA 436 EM's powers are substantially identical to the powers that had been granted under PA 4. Public Act 436 EMs are empowered to fully act "for and in the place of"

the municipality's governing body. The grant of powers again includes a general grant of legislative power to emergency managers.

76. Along with the general grant of legislative power to emergency managers, Public Act 436 exempts the EM from following existing city charters and local ordinances.

77. The new law does not provide any process that EMs must follow in the adoption or repeal of local laws, but rather permits the EM to do so by private orders, not subject to open meetings requirements.

78. Public Act 436 states that EMs appointed under PA 4 and EFMs appointed under PA 72 shall be considered EMs under PA 436 once the new law takes effect.

79. Additionally, PA 436 permits the Governor to appoint persons appointed as EMs under PA 4 and as EFMs under PA 72 to serve as PA 436 EMs under the new law.

80. Under PA 436, all EMs serve at the pleasure of the Governor and continue to serve until removed by the Governor or until the Governor finds that the financial emergency has been rectified.

81. Public Act 436 permits the Governor to delegate his powers and duties to the state treasurer and the state treasurer oversees the activities of emergency managers.

82. When PA 436 takes effect on March 28, 2013, EMs will be in place over the cities of Allen Park, Benton Harbor, Ecorse, Flint, Pontiac and Detroit and over the Detroit Public Schools, Highland Park Public Schools, and Muskegon Heights Public Schools. Finally, the state's consent agreements with Inkster and River Rouge will again be converted – now to PA 436 agreements.

83. Under PA 436, elected officials in each of these communities will be displaced and/or be divested of governing and law-making authority and citizens will have effectively lost their right to vote for their local legislative bodies, chief executive officers, and school boards.

84. Local elected officials are thereby effectively removed from office under PA 436 and this removal occurs without any showing of malfeasance or misfeasance causing or contributing to the financial circumstances faced by their municipality or school district. In so doing, the Act implicitly assumes that these local officials were guilty of corruption or gross incompetence that caused or contributed to the financial circumstances of their municipality or school district. Public Act 436 makes this assumption of guilt and removes elected officials without any finding of fault on the part of local elected officials and without any form of due process.

85. In each of these communities, citizens will have effectively lost their right to vote for local elected officials or had that right diluted so as to render it an exercise in form without substance.

86. There is no question that Michigan's emergency manager laws have disproportionately impacted the state's population of citizens from African-American descent.

87. The Black/African-American population of each of the cities where an emergency manager or consent decree will be in place when PA 436 takes effect, is as follows:

a. Benton Harbor: 8,952 persons comprising 89.2% of the city's population;

b. Ecorse: 4,315 persons comprising 46.4% of the city's population;

c. Pontiac: 30,988 persons comprising 52.1% of the city's population;

d. Flint: 57,939 persons comprising 56.6% of the city's population;

e. Inkster: 18,569 persons comprising 73.2% of the city's population;

f. River Rouge: 3,994 persons comprising 50.5% of the city's population;

g. Detroit: 590,226 persons comprising 82.7% of the city's population,

h. Highland Park: 10,906 persons comprising 93.5% of the city's population;

i. Muskegon Heights: 8,501 persons comprising 78.3% of the city's population; and

j. Allen Park: 587 persons comprising 2.1% of the city's population.

The Black/African-American population of these cities totals 734,947 persons.

88. As a result of the Defendants' actions under Public Act 436, fifty two (52%) of the state's Black/African-American population will come under the governance of an emergency manager or consent agreement. In each of these communities, citizens will have either lost or experienced severe restrictions imposed on their right to vote and to participate in public affairs.

89. There is also no question that each of the aforementioned cities is economically poor communities where significant household wealth has been lost since the onset of the current recession. In these communities, the percentage of persons living below the poverty level is:

a. Benton Harbor – 48.7%;

b. Ecorse – 32.7%;

c. Pontiac- 32%;

d. Flint – 36.6%;

e. Inkster – 33.2%;

f. River Rouge – 40.1%;

g. Detroit – 34.5%; and

h. Highland Park – 43.7%; and

i. Muskegon Heights – 45.6%.

The Michigan average is 15.7%. The City of Allen Park is thus the only city with an EM where

the poverty level is not at least double the state average.

90. Like PA 4, Public Act 436 reestablishes a new form of local government that is repugnant to the constitutional liberties of all Americans.

91. Despite a long national history of municipal financial crises following national and global economic depressions and recessions, no other state in the nation has engaged in similar experiments in undemocratic governance as a solution to economic downturns.

92. Under Public Act 436, the people become subject to government that is composed of one unelected official who wields absolute power over all aspects of local government and whose decisions are without review by either local elected officials or local voters.

Continued Frustration of Contractual Rights of City of Detroit Employees By Public Act 436 and Its Precursor Public Act 4

93. The loss of rights suffered by the citizenry and the workforce of the City of Detroit reveals how emergency manager legislation threatens basic civil rights of Michiganders.

94. In November 2011, the City of Detroit announced a financial crisis and requested that its labor unions offer wage and benefit concessions to alleviate the crisis. At that time, more than thirty of the City of Detroit's forty-eight unions banded together in a "Coalition of Unions" to jointly negotiate concessions with the City of Detroit. This Coalition represented approximately 5,000 City employees.

95. The Coalition and the City of Detroit reached a Tentative Agreement, resulting in hundreds of millions of dollars in cost savings and revenue to the City, according to accounting estimates. The City encouraged the Coalition of unions to ratify the Tentative Agreement, which they did on March 22, 2012. The City celebrated the ratification, and planned for execution and implementation of this Coalition contract.

96. Following Coalition ratification of the Tentative Agreement, the State of Michigan and its top-level agents threatened the City of Detroit's elected leadership with the appointment of an EM if City officials continued to bargain collectively with the City unions. The Defendants ordered the City Mayor and City Council not to sign the Coalition contract.

97. The Defendants' issues with the contract were not financial. Indeed, the Defendants acknowledged the significant financial concessions made within the Coalition contract. However, the Defendants wanted unspecified nonfinancial changes made to the agreement.

98. As a result of the Defendants' actions and interference, Detroit's Mayoral Administration asked the City Council not to finalize and execute the contract. To date, the Defendants have prevented the execution of the Coalition contract. Detroit's elected officials acknowledge that the State's threats caused them not to finalize contract.

99. Under state labor law, the Public Employment Relations Act (MCLA sec 423.210, 215), cities have an obligation to bargain with its unionized workforce over terms and conditions of employment. The statutory obligation to bargain includes the obligation "to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party..." MCLA sec 423.215(1).

100. At the insistence of the Defendants, the City of Detroit negotiated and signed a Consent Agreement with the state, on April 4, 2012, under Public Act 4. The consent agreement outlined various employment terms for Coalition employees.

101. Due to the existence of the consent agreement and citing PA 4, the City of Detroit claimed authority to ignore the obligation to bargain with its unions. As such, it imposed

dramatic wage and benefit concessions on the unionized workforce without bargaining, during the months following the execution of the consent agreement.

102. Following the Michigan voters' rejection of PA 4 in November 2012, the Defendants still have refused to permit the City of Detroit to execute a contract with the Coalition unions. Thus, even though the PA 4 has been rejected, the City is enjoying the consequence of this rejected and unconstitutional law by refusing to adjust the wage and benefit concessions it had imposed on the Coalition members.

103. With its continued refusal to permit the City to execute a contract with the Coalition union, the Defendants are frustrating the substantive and procedural due process of the Coalition members.

104. Public Act 436 continues Defendants violation of the due process rights through provisions that seek to retroactively validate actions taken pursuant to powers and authority granted by Public Act 4 and consent agreements entered thereunder.

V. CAUSES OF ACTION

COUNT I – 42 U.S.C. §1983 - Constitutional Violation US Const, Amend. XIV – Substantive & Procedural Due Process – Right to Collectively Bargain – City of Detroit

105. Plaintiffs incorporate by reference paragraphs 1 through 106 above as though fully stated herein.

106. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

107. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and official capacities, have engaged in conduct that violates Plaintiffs' Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 rights under Amend. XIV of the U.S. Constitution.

108. Amendment XIV of the United States Constitution holds, in pertinent part: "nor shall any state deprive any person of life, liberty, or property without due process of Law."

109. Under the Due Process Clause, each person has a property interest in their employment, in the terms of employment negotiated pursuant to contract, and in rights granted under state law and these rights may not be taken away without due process of law.

110. Under state law, Plaintiffs Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 were granted a right to collectively bargain with their employer, the City of Detroit.

111. State law provides that:

> To bargain collectively is to perform the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or to negotiate an agreement, or any question arising under the agreement, and to execute a written contract, ordinance, or resolution incorporating any agreement reached if requested by either party, but this obligation does not compel either party to agree to a proposal or make a concession.#

MCL§ 423.215(1).

112. The Defendants Snyder and Dillon, acting in their respective individual and/or official capacities, violated Plaintiff's Due Process rights protected by US Const., Amend. XIV, by acts including but not limited to:

a. Issuing threats and ultimatums to the Detroit City Council that if it approved the contract, then the State would appoint an EM to govern in the place of City Council;

b. Issuing threats and ultimatums to the Detroit City Council that if it did not approve a consent agreement, before considering the contract, then an EM would be appointed;

c. Subjecting the tentative agreement and any amended or renegotiated agreements to the approval of the Financial Advisory Board under the terms

d. Subjecting the tentative agreement and any amended or renegotiated agreements to the approval of the Project Management director under the terms of the consent agreement; and

e. Subjecting future bargaining to the terms of the consent agreement.

113. On its face, as applied, and in practice, Public Act 436 violates the Due Process Clause of US Const., Amend. XIV and rights of Plaintiffs Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 through provisions of the statute that ratify actions taken by under Public Act 4. See provisions including but not limited to MCL §141.1570.

114. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the purported government interests of achieving local government financial stability.

115. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT II – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV – Substantive Due Process –
Right to a To Elect Officials Who Possess General Legislative Power

116. Plaintiffs incorporate by reference paragraphs 1 through 115 above as though fully stated herein.

117. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

118. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities,

Defendants have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV of the U.S. Constitution.

119. Amendment XIV of the U. S. Constitution holds, in pertinent part: "nor shall any state deprive any person of life, liberty, or property without due process of Law."

120. Under the Due Process Clause, each person has a liberty interest in their right to a democratically elected from of local government.

121. Under the Due Process Clause, each person has a liberty interest in their right to elect officials of any level of government that exercise general legislative powers.

122. Under state law, Michigan cities possess local legislative power to enact make charters, adopt and repeal local laws, and pass resolutions.

123. Under state law, Michigan cities' legislative power over matters within their jurisdiction is of the same scope and nature as the police power of the state.

124. When a state establishes a local government with legislative power, it must be democratic in form and substance.

125. The right to a democratic form of government is a fundamental right afforded to all citizens in the state of Michigan through the United States Constitution.

126. The right to a vote for the officials of local government who exercise general legislative powers is a fundamental right afforded to all citizens in the state of Michigan through the United States Constitution. When a state grants general legislative power to a governmental official, the official must be democratically elected.

127. On its face, as applied, and in practice, Public Act 436 violates the Due Process Clause of US Const., Amend. XIV and disenfranchises citizens from their right to a

democratically elected form of local government and their right to elect local officials who possess general legislative power, through provisions that delegate to EMs the power to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

128. On its face, as applied, and in practice, Public Act 436 violates the Due Process Clause of US Const., Amend. XIV and disenfranchises citizens from their right to a democratically elected form of local government and their right to elect local officials who possess general legislative power, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

129. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the purported government interests of achieving local government financial stability.

130. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their

constitutionally-protected rights.

COUNT III – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Art 4, §4 – Republican Form of Government

131. Plaintiff incorporates by reference paragraphs 1 through 130 above as though fully stated herein.

132. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

133. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective official capacities, Defendants have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Art. 4, §4 of the U.S. Constitution.

134. Article 4, section 4 of the U.S. Constitution states that the "United States shall guarantee to every state in this union a republican form of government."

135. Since our nation's founding, federal, state, and local governments throughout the country have been republican forms of government – governments of representatives chosen by the people governed.

136. In the United States and in Michigan, local governments are traditionally democratically elected and republican in form.

137. Public Act 436 unconstitutionally strips local voters of their right to a republican form of government by transferring governance, including but not limited to legislative powers, from local elected officials to one unelected emergency manager.

138. On its face, as applied, and in practice, Public Act 436 violates the US Const., Art. 4, §4 through provisions of the statute that permit EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

139. On its face, as applied, and in practice, Public Act 436 violates the US Const., Art. 4, §4 through provisions of the statute that ratify the legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

140. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the governing authority and legislative powers of duly elected public officials in affected municipalities throughout the state of Michigan.

141. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT IV – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV, § 1 –Equal Protection a Fundamental Right – Voting Rights

142. Plaintiffs incorporate by reference paragraphs 1 through 141 above as though fully stated herein.

143. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

144. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violated Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution

145. Amendment XIV, § 1 states in pertinent part, "No state shall make or enforce any law which shall … deny to any person within its jurisdiction the equal protection of the laws."

146. The Equal Protection Clause protects laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

147. The right to vote in local elections is a fundamental right afforded to all citizens in the state of Michigan by the United States Constitution, the Michigan Constitution, and the Michigan Home Rule Cities Act.

148. Public Act 436's EM provisions effectively revoke the right to vote by stripping governing authority from local elected officials and transferring such authority to one unelected EM with no accountability to local citizens.

149. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

150. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly diluted by the statewide participation of the electorate, while the votes of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

151. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that unduly revoke and/or impermissibly dilute the community's right to vote for local officials. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village

charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

152. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that unduly revoke the community's right to vote for local officials, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

153. Under Public Act 436, Defendants have authority to deprive Plaintiffs of their rights to equal protection by divesting communities of their right to vote for local officials and by removing the authority of duly elected public officials in favor of an unelected EM in such communities.

154. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the authority of duly elected public officials in various municipalities with disproportionately high poverty rates.

155. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

156. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT V – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV, § 1 –Equal Protection based on Race – Voting Rights

157. Plaintiffs incorporate by reference paragraphs 1 through 156 above as though fully stated herein.

158. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

159. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution

160. Amendment XIV, § 1 states in pertinent part, "No state shall make or enforce any law which shall … deny to any person within its jurisdiction the equal protection of the laws."

161. The Equal Protection Clause protects laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

162. The right to vote in local elections is a fundamental right afforded to all citizens in the state of Michigan by the United States Constitution, the Michigan Constitution, and the Michigan Home Rule Cities Act.

163. Public Act 436's EM provisions effectively revoke the right to vote by stripping governing authority from local elected officials and transferring such authority to one unelected EM with no accountability to local citizens.

164. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing

authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

165. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly diluted by the statewide participation of the electorate, while the votes of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

166. Under Public Act 436, all stated criteria for appointing an EM are based on a community's wealth and by extension, the wealth of the persons who reside within a community.

167. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that discriminate in the appointment of an EM and revocation of the community's right to vote for local officials based on the racial composition of that community. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

168. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that discriminate in the appointment of an EM and revocation of the community's right to vote for local officials based on the racial composition of that community and that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

169. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the authority of duly elected public officials in various municipalities comprising more than 53% of the state's population of citizens who are of African American descent.

170. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

171. As a direct and proximate result of the enactment of Public Act 436 and

Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally protected rights.

COUNT VI – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV, § 1 –Equal Protection based on Wealth – Voting Rights

172. Plaintiffs incorporate by reference paragraphs 1 through 171 above as though fully stated herein.

173. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

174. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution

175. Amendment XIV, § 1 states in pertinent part, "No state shall make or enforce any law which shall … deny to any person within its jurisdiction the equal protection of the laws."

176. The Equal Protection Clause protects laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

177. The right to vote in local elections is a fundamental right afforded to all citizens in the state of Michigan by the United States Constitution, the Michigan Constitution, and the Michigan Home Rule Cities Act.

178. Public Act 436's EM provisions effectively revoke the right to vote by stripping governing authority from local elected officials and transferring such authority to one unelected EM with no accountability to local citizens.

179. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local

government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

180. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly diluted by the statewide participation of the electorate, while the votes of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

181. Under Public Act 436, all stated criteria for appointing an EM are based on a community's wealth and by extension, the wealth of the persons who reside within a community.

182. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that condition the revocation of the community's right to vote for local officials based on the wealth of that

community and the individuals who reside there. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

183. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that unduly revoke citizen's right to vote for local officials based on the wealth of their community and themselves, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

184. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the authority of duly elected public officials in various municipalities with disproportionately high poverty rates.

185. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government

interests of achieving local government financial stability.

186. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT VII– Voting Rights Act of 1965, 42 U.S.C. § 1973 *et. seq.*

187. Plaintiffs incorporate by reference paragraphs 1 through 186 above as though fully stated herein.

188. Section 2 of the Voting Rights Act of 1965, as amended, reads:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

189. Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 prohibits the abridgement or dilution of Black/African-American citizens' right to vote in state and local elections.

190. Michigan's population is estimated at 9,876,187 persons. The Black/African-American's comprise approximately 14.2% of the state's population (1,400,362 persons).

191. As a result of the passage of PA 436, once the law comes into effect more than fifty percent of the state's Black/African-American population will have had their voting rights in local elections effectively revoked.

192. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

193. Public Act 436 impermissibly dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly diluted by the statewide participation of the electorate, while the votes of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

194. On its face, as applied, and in practice, Public Act 436 violates the Voting Rights Act through provisions that provide for the appointment of EMs and entering of consent agreements that abridge and dilute the voting rights of citizens within these localities. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

195. On its face, as applied, and in practice, Public Act 436 violates the Voting Rights Act through provisions of the statute that discriminate in the appointment of an EM and revocation of the community's right to vote for local officials based on the racial composition of that community and that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

196. Under the totality of the circumstances, the application of Public Act 436 and enforcement has resulted in Black/African American citizens having dramatically less opportunity for self-governance than other members of Michigan's electorate.

197. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT VIII – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. I –Freedom of Speech & Right to Petition Government

198. Plaintiffs incorporate by reference paragraphs 1 through 197 above as though fully stated herein.

199. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

200. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. I of the U.S. Constitution.

201. Amendment I of the US Constitution states in pertinent part, "Congress shall make no law … abridging the freedom of speech … and to petition the Government for a redress of grievances."

202. Plaintiffs, as citizens of the State of Michigan, have engaged in constitutionally-protected speech on matters of public concern by voting and electing local government officials to serve as their elected representatives.

203. Plaintiffs, as citizens of the State of Michigan, have engaged in a Constitutionally protected right to petition their local governments on matters of public concern by interacting with duly elected local officials, expressing their concerns, and having them serve as their elected representatives.

204. The elected officials chosen by the Plaintiffs to serve as their representatives have been inclusive of, but not limited to, mayors, city councils, and local school board members of various municipalities.

205. Plaintiffs, as citizens of the State of Michigan, have engaged in their Constitutionally protected right to free speech and to petition their government, by repealing Public Act 4.

206. On its face, as applied, and in practice, Public Act 436 is the mirror image of Public Act 4 and its enactment contrary to the expressed will of the people through the referendum process violates the US Const., Amend. I.

207. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. I through provisions that empower EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

208. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. I through provisions that provide for the appointment of EMs with powers that strip all authority of local elected officials, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

209. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

210. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT IX – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend, I –Right to Petition Government – City of Detroit

211. Plaintiffs Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 incorporate by reference paragraphs 1 through 210 above as though fully stated herein.

212. Plaintiffs Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 bring this claim pursuant to 42 U.S.C. §1983

213. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 rights under Amend. I of the U.S. Constitution.

214. Amendment I of the US Constitution states in pertinent part, "Congress shall make no law … abridging … [right] to petition the Government for a redress of grievances."

215. Plaintiffs have a clearly established Constitutionally protected right to organize, assemble, and to engage in political, social and economic activities to advance their views and petition their local governments on matters of public concern by interacting with duly elected local officials, expressing their concerns, and having their concerns heard.

216. The state Local Emergency Financial Assistance Loan Board appointed Kevyn Orr as EFM, and by the terms of the new law, he will be made an EM under Public Act 436 on and after March 28, 2013.

217. Kevyn Orr is a partner in the Jones Day law firm and retains a financial interest in

the firm. Alternatively, Kevyn Orr nominally resigned from the Jones Day law firm at or about the time of his appointment as EFM of the City of Detroit.

218. At the same time, the Jones Day law firm has been selected as "restructuring counsel" for the City of Detroit under EM Kevyn Orr as the government of the City of Detroit. As such, the law firm is a contractual creditor to the City of Detroit.

219. Upon information and belief, the Jones Day law firm represents other financial institutions, including but not limited to the Bank of American, who are potential creditors to the City of Detroit.

220. On its face, as applied, and in practice, Public Act 436 and appointment of the City of Detroit's EFM and as EM violates the US Const., Amend. I through provisions that:

c. Permit Kevyn Orr to act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Vest the full powers of the local government of the City of Detroit, legislative, executive, administrative, police power, taxing power, powers to sue and be sued, to sell, lease, or purchase assets, to make governmental decisions regarding economic development, public safety, environmental health and, without limitation, all other powers of local government, would be concentrated and held by a single entity represented by Kevyn Orr and the Jones Day law firm;

e. Concentrate all local government powers in this way in a single entity abridges the rights of people who are citizens and residents of the City of Detroit to engage in core protected First Amendment activities to petition government, to organize, assemble, engage in political, social and economic activities to advance their views and interests;

f. Allow concentration of all local government powers in this way in a single entity offers opportunities to Defendants to exploit, profit, sell, lease, purchase, develop, contract and otherwise use their powers of local government for their own private and political as well as economic benefit, and that of their clients and associates, with no significant check or balance because of the disenfranchisement of Plaintiffs and all other residents of the

City of Detroit from participation in any of the decisions of local government, in violation of the First Amendment and the State Constitution;

g. Plaintiffs have no personal, political, commercial, economic or social connection or access to Defendants, and their fundamental First Amendment Rights to petition government, to organize, assemble, engage in political, social and economic activities to advance their views and interests, among other rights and constitutionally protected interests, are therefore violated by this new and unprecedented unitary form of local government of the City of Detroit.

221. The provisions of PA 436 and the powers granted thereby and the actions of the Defendants are not necessary, narrowly tailored, rationally or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

222. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs Catherine Phillips, Joseph Valenti, and Michigan AFSCME Council 25 have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT X – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIII, § 1 – Vestiges of Slavery – Voting Rights

223. Plaintiffs incorporate by reference paragraphs 1 through 222 above as though fully stated herein.

224. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

225. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIII of the U.S. Constitution

226. Amendment XIII, § 1 bans and form of "slavery or involuntary servitude" within the jurisdiction of the United States of America. The Thirteenth Amendment further bans acts which perpetuate the badges and incidents of servitude.

227. Systematic denial of voting rights in local elections to Michigan's Black/African-American citizens is a perpetuation of the vestiges of slavery and involuntary servitude.

228. Public Act 436 effectively revokes the right to vote by intentionally stripping governing authority from local elected officials and transferring such authority to one unelected EM who serves as the overseer of municipalities or school districts, which are overwhelming Black/African American majority communities, with no accountability to local citizens.

229. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. XIII, § 1 through provisions of the statute that perpetuate the vestiges of slavery by discriminatorily and intentionally revoking the community's right to vote for local officials based on the racial composition of that community. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

230. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. XIII, § 1 through provisions of the statute that perpetuate the vestiges of slavery by discriminatorily revoking the community's right to vote for local officials based on the racial composition of the community that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

231. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by intentionally terminating and/or removing the authority of duly elected public officials in various municipalities comprising more than fifty-two percent (52%) of the state's population of citizens who are of African American descent.

232. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

233. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT XI – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV, §1 –Equal Protection – Removal of Emergency Managers

234. Plaintiffs incorporate by reference paragraphs 1 through 233 above as though fully stated herein.

235. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

236. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities,

have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution.

237. Amendment XIV, §1 states in pertinent part, "No state shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws."

238. The Equal Protection Clause protects against laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

239. The Equal Protection Clause also protects against laws and the application of laws that discriminate among similarly situated individuals or between groups of persons when no rational basis exists for such discrimination.

240. Public Act 436 permits cities and school boards to pass a resolution by a 2/3 vote and with the approval of strong mayors thereby remove their EMs after 18 months in office.

241. At the same time, Public Act 436 converts all existing EFMs to EMs. Many of the existing managers have been in place for months and even years longer than the 18 month time period after which elected officials to pass a resolution by a 2/3 vote and the approval of strong mayors for the removal such managers.

242. Thus, the law discriminates against cities and school districts where EFMs and EM have been and are currently in place. The law discriminates against these municipalities requiring them to suffer an additional 18 months with an EM despite their having had such officials in place much longer than this time period. At the same time, municipalities that newly receive such managers will be permitted to after which elected officials to pass a resolution by a 2/3 vote and the approval of strong mayors for the removal of such officials after they have been in office for 18 months.

243. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute discriminate between cities and school boards that presently have had EMs for significantly longer than 18 months and those that will receive EMs after March 28, 2013. Such provisions include but are not limited to MCL §141.1549(11).

244. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

245. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Honorable court enter Judgment against Defendants providing:

a. For declaratory relief holding that Public Act 436 violates the United States Constitution, Art. 4, §4; Amend I; Amend XIII; and Amend. XIV; and the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et. seq.*;

b. For injunctive relief restraining the Defendants and any present and future EMs from implementing or exercising authority and powers purportedly conveyed Public Act 436;

c. For declaratory relief finding that Defendants have impaired and are impairing the rights of the Plaintiffs Catherine Phillips, Joseph Valenti, Michigan AFSCME Council 25 and their covered members in violation of their right to due process of law;

d. For injunctive relief restraining Defendants, and all persons and entities acting in concert with them, from taking any actions to oppose or frustrate the City of Detroit's recognition and ratification of the Coalition-ratified contract or encourage rejection of said contract;

e. For injunctive relief invalidating and restraining the terms of present and future consent agreements entered into under Public Act 436 that abridge or diminish powers granted to local elected officials under local charters and ordinances;

f. For liquidated, compensatory, and punitive damages in an amount fair and just under the circumstances;

g. For attorneys' fees and costs; and

h. For such further relief as is just and equitable.

March 27, 2013

Respectfully Submitted,

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EXHIBIT6.2

Notice of Pendency of Bankruptcy Case and Application of the Stay in *Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon*, Case No. 13-CV-11370 [Doc. #29]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHERINE PHILLIPS, Staff Representative Michigan AFSCME Council 25, and Chief Negotiator with the City of Detroit; JOSEPH VALENTI, Co-Chief Negotiator with the Coalition of Unions of the City of Detroit; MICHIGAN AFSCME COUNCIL 25; RUSS BELLANT, President of the Detroit Library Commission; TAWANNA SIMPSON, LAMAR LEMMONS, ELENA HERRADA, Detroit Public School Board Members; DONALD WATKINS AND KERMIT WILLIAMS, Pontiac City Council Members; DUANE SEATS, DENNIS KNOWLES, JUANITA HENRY AND MARY ALICE ADAMS, Benton Harbor Commissioners; WILLIAM "SCOTT" KINCAID, Flint City Council President; BISHOP BERNADEL JEFFERSON; PAUL JORDAN; REV. JIM HOLLEY, National Board Member, Rainbow Push Coalition; REV. CHARLES E. WILLIAMS II, Michigan Chairman, National Action Network; REV. DR. MICHAEL A. OWENS, REV. LAWRENCE GLASS, REV. DR. DEEDEE COLEMAN, BISHOP ALLYSON ABRAMS, Executive Board, Council of Baptist Pastors of Detroit and Vicinity,

Plaintiffs,

v

RICHARD D. SNYDER, as Governor of the State of Michigan, and ANDREW DILLON, as the Treasurer of the State of Michigan, acting in their individual and/or official capacities,

Defendants.

No. 2:13-cv-11370

HON. GEORGE CARAM STEEH

MAG. R. STEVEN WHALEN

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

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_____/

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

On July 18, 2013, the City of Detroit, Michigan filed a petition for relief under Chapter 9 of Title 11 of the United States Code. (Document 1, *In re City of Detroit, Michigan*, Case No. 13-53846, (Bankr. E.D. Mich.)) In accordance with the automatic stay imposed by operation of §§ 362 and 922 of the Bankruptcy Code, 11 U.S.C. §362 and 922, no cause of action filed prior to, or relating to the period prior to, the Petition Date may be continued or commenced against (i) the City and/or its employees, or (ii) an officer, employee, or inhabitant of the City, in any judicial, administrative or other court or tribunal to enforce a claim against the City without the Bankruptcy Court first issuing an order lifting or modifying the Stay for such specific purpose. Further, no related judgment or order may be entered or enforced against the City without the Bankruptcy Court first issuing an order lifting or modifying the State for such specific purpose.

On July 25, 2013, the provisions of this automatic stay were extended in all respects (to the extent not otherwise applicable) to include certain "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." (Exhibit 1). Governor Snyder and Treasurer Dillon are named Defendants in the captioned matter which was filed prior to the Petition Date and which is subject to this Bankruptcy Court Order extending the automatic stay.

Actions taken while this Stay is in effect and/or in violation of this Stay, including proceedings in this case, are void and without effect.

The Bankruptcy Court for the Eastern District of Michigan has not issued an order lifting or modifying the Stay for the specific purpose of allowing any party in the captioned case to continue this action against the Governor or Treasurer. Under these circumstance, the above-captioned proceeding may not be prosecuted, and no valid judgment or order may be entered or enforced against these "certain State Entities."

These certain "State Entities" will not defend against, or take any other action with respect to, the above-captioned proceeding while the Stay remains in effect.

These certain "State Entities" hereby expressly reserve all rights with respect to the above-captioned proceeding, including, but not limited to, the right to move to vacate any judgment entered in the above-captioned proceeding as void.

Respectfully submitted,

BILL SCHUETTE
Attorney General

s/Denise C. Barton
Denise C. Barton (P41535)
Ann M. Sherman (P67762)
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P41535

Dated: August 7, 2013

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such. I also mailed the foregoing paper via US Mail to all non-ECF participants.

s/Denise C. Barton
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EXHIBIT6.3

Order
Regarding Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay, in
Catherine Phillips, et al. v. Richard Snyder and Andrew Dillon,
Case No.13-CV-11370
[Doc. #30]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHERINE PHILLIPS, et al.,

Plaintiffs,

Case No. 2:13-CV-11370

v.

HON. GEORGE CARAM STEEH

RICHARD D. SNYDER et al.,

Defendants.
_____/

ORDER REGARDING NOTICE OF PENDENCY OF BANKRUPTCY CASE AND APPLICATION OF THE AUTOMATIC STAY [DOC. 29]

On August 7, 2013, defendants filed a Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay. The Notice references the automatic stay imposed by operation of sections 362 and 922 of the Bankruptcy Code, 11 U.S.C. §§ 362 and 922, as well as the order entered by the bankruptcy court on July 25, 2013, which extended the automatic stay to include certain "State Entities" defined as "the Governor, the State Treasurer and the members of the Loan Board . . . ." *In re City of Detroit, Michigan*, Case No. 13-53846 (Bankr. E.D. Mich.); 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 ("Extension Order"). Governor Snyder and Treasurer Dillon are named defendants in the captioned matter which was filed prior to the petition date and which defendants contend is subject to the bankruptcy court order extending the automatic stay.

Although it is not apparent that any interests of the City of Detroit bankruptcy

proceedings are implicated in the case, the plain language of the stay order would apply to this lawsuit.

In accordance with the broadly worded Extension Order issued by the bankruptcy court, this court will abide by the stay unless and until such time as an order issues lifting or modifying the stay to permit the captioned matter to proceed. Accordingly,

IT IS HEREBY ORDERED that proceedings in this case are STAYED until further order of the court.

IT IS HEREBY FURTHER ORDERED that this case is CLOSED for administrative and statistical purposes without prejudice because the defendants are covered by the bankruptcy court Extension Order. This closing does not constitute a decision on the merits.

IT IS FURTHER ORDERED that if the bankruptcy stay is removed, or a party obtains relief from the stay, then the case may be reopened upon the motion of any party.

IT IS FURTHER ORDERED that any party may apply to the bankruptcy court for relief from the automatic stay under 11 U.S.C. § 362 or for relief from the Extension Order.

So ordered.

Dated: August 22, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on August 22, 2013, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 5

From *In Re City of Detroit*, Case No. 13-53846

5.	9/24/13	1007	State's response to Phillips' motion for relief from stay

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

***EX PARTE* MOTION TO EXPEDITE HEARING ON MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, MOTION FOR ENTRY OF AN ORDER MODIFYING THE AUTOMATIC STAY SOLELY TO ALLOW ADMINSTRATIVE LAW JUDGE TO EXECUTE HIS OPINION AND LIQUIDATE DAMAGE AWARD BEFORE HE RETIRES ON OCTOBER 4, 2013**

The Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO ("**AFSCME**") by its counsel requests that this Court expedite hearing of *The Michigan Council 25 Of The American Federation Of State, County And Municipal Employees, AFL-CIO, Motion For Entry Of An Order Modifying The Automatic Stay Solely To Allow Administrative Law Judge To Execute His Opinion And Liquidate Damage Award Before He Retires on October 4, 2013* (the "**MERC Motion**"). As grounds for this motion to expedite, AFSCME states as follows:

1. AFSCME filed the MERC Motion to modify the automatic stay imposed pursuant to sections 362 and 922 of the Bankruptcy Code solely to permit Council 25 to liquidate the dollar amount of an award made pursuant to legal proceedings against the above-captioned Debtor in a matter before the Michigan Employment Relations Commission ("**MERC**"). AFSCME filed the MERC Motion in order to facilitate the liquidation of AFSCME's damages in connection with an already-issued bench decision by one of the MERC's administrative law judges ("**ALJ**"). By the MERC Motion, AFSCME requests that

the proceedings before the MERC be permitted to continue to allow the damages determination to be made by the ALJ who rendered the decision.

2. As discussed further in the MERC Motion, on February 8, 2013, ALJ Doyle O'Connor ("**ALJ O'Connor**") of the MERC heard oral argument on, and decided to recommend to the MERC for entry of a final order a resolution in AFSCME's favor of, an unfair labor practice charge (the "**ULP**") filed by AFSCME against the Debtor (Case Number C12-E-092, Docket Number 12-000777).

3. Following ALJ O'Connor's February 8 bench decision, the parties submitted supplemental briefing on the appropriate remedy to be ordered by the ALJ. As of July 18, 2013, ALJ O'Connor had not yet issued his written decision which, among other things, would have referred this matter to the MERC to liquidate the dollar amount of the award.

4. ALJ O'Connor, the judge with the institutional knowledge of the matters at hand, is scheduled to retire on October 4, 2013. It is AFSCME's understanding that ALJ O'Connor would enter the appropriate order referring the liquidation of the amount of the award, if any, to redress the unfair labor practice charge awarded in AFSCME's favor to the MERC if this Court approves the limited relief requested in the MERC Motion on or before October 4, 2013.

5. Accordingly, AFSCME respectfully requests that this Court expedite consideration of the MERC Motion which asks this Court to allow ALJ O'Connor to execute his recommended opinion and affix a dollar amount to the damages incurred in the unfair labor practice charge litigation prior to his departure on October 4, 2013.

WHEREFORE, AFSCME respectfully requests that this Court: (1) enter an order substantially in the form attached hereto as Exhibit 1, granting the relief sought herein; and (ii) grant such other and further relief to AFSCME as the Court may deem proper.

Dated: September 23, 2013

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Counsel to Michigan Council 25 of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO and Sub-Chapter 98, City of Detroit Retirees

SUMMARY OF ATTACHMENTS

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1	Proposed Form of Order
Exhibit 2	Certificate of Service

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

***EX PARTE* ORDER GRANTING MOTION TO EXPEDITE**

This matter coming before the Court on the *ex parte* motion (the "**Motion**") of the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO ("**AFSCME**") for expedited consideration of *The Michigan Council 25 Of The American Federation Of State, County And Municipal Employees, AFL-CIO, Motion For Entry Of An Order Modifying The Automatic Stay Solely To Allow Administrative Law Judge To Execute His Opinion And Liquidate Damage Award Before He Retires on October 4, 2013* (the "**MERC Motion**"), filed by AFSCME; and the Court being fully advised in the premises;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. A hearing on the MERC Motion is scheduled for _____, 2013 at ____:00 ____.m.

Signed on _____

_____
Steven Rhodes
United States Bankruptcy Judge

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

CERTIFICATE OF SERVICE

The undersigned certifies that on September 23, 2013, the *Ex Parte Motion to Expedite Hearing on The Michigan Council 25 Of The American Federation Of State, County And Municipal Employees, AFL-CIO, Motion For Entry Of An Order Modifying The Automatic Stay Solely To Allow Administrative Law Judge To Execute His Opinion And Liquidate Damage Award Before He Retires on October 4, 2013* was filed with the Clerk of the Court using the CM/ECF system, which provides electronic notification of such filing to all counsel of record.

Dated: September 23, 2013

/s/ Keara M. Waldron
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 6

From *In Re City of Detroit*, Case No. 13-53846

6.	9/24/13	1108	Debtor's objection to Phillips' motion for relief from stay

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

DEBTOR'S OBJECTION TO CATHERINE PHILLIPS, et al.'s MOTION FOR RELIEF FROM 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

The City of Detroit (the "City") objects to Catherine Phillips, et al.'s (collectively, the "Plaintiffs") Motion for Relief from the 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 [Dkt. No. 1004] (the "Stay Relief Motion") and supporting brief (the "Stay Relief Brief"). In support of this Objection, the City incorporates in their entirety the arguments set forth in the Brief in Opposition to the Stay Relief Motion, filed contemporaneously herewith (the "Brief in Opposition") and respectfully represents as follows:

Objection

For all of the reasons set forth in the Brief in Opposition, the relief requested in the Stay Relief Motion must be denied.

WHEREFORE, for the reasons set forth herein and in the Brief in Opposition, the City respectfully requests that this Court: (a) deny the Stay Relief Motion; and (b) grant such other and further relief to the City as the Court may deem proper.

Dated: October 7, 2013 Respectfully submitted,

By: /s/Stephen S. LaPlante
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ATTORNEYS FOR THE CITY OF DETROIT

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 7

From *In Re City of Detroit*, Case No. 13-53846

7.	7/20/13	1109	Debtor's brief in opposition to Phillips' motion for relief from stay

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

DEBTOR'S BRIEF IN OPPOSITION TO CATHERINE PHILLIPS, et al.'s MOTION FOR RELIEF FROM 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[1]

Two days after Mr. Orr formally took office, the Plaintiffs filed the Lawsuit seeking a judgment enjoining Mr. Orr from taking any actions under PA 436 and declaring PA 436 to be unconstitutional. Yet, the Plaintiffs somehow assert that granting them relief from stay to prosecute this Lawsuit to judgment will "not interfere with the progression of the Debtor's bankruptcy case" because the City will not be "in any way affected." Stay Relief Motion at 12; Stay Relief Brief at 14. This is not accurate nor is the timing of the Lawsuit's filing a coincidence. Although some of the Plaintiffs are citizens of municipalities other than the City --

[1] Capitalized terms not otherwise defined in this Brief in Opposition have the meanings given to them in the Debtor's Objection, filed contemporaneously herewith.

Flint, Pontiac and Benton Harbor -- as the Complaint acknowledges, these municipalities have all had emergency managers for at least two years. The fact that the Plaintiffs did not file the Lawsuit until several years after the appointment of those emergency managers while doing so just two days after Mr. Orr formally took office, cannot be dismissed as mere happenstance. Instead, it is apparent that the Lawsuit is a direct challenge to Mr. Orr's appointment as Emergency Manager and inescapably, an attack on any actions he may take, including his decision to file and prosecute this chapter 9 case.

This Lawsuit, much like the suit and stay relief motion filed by the NAACP [Dkt. No. 740], is an effort to litigate the City's eligibility before a different court in circumvention of the Court's Stay Extension Order and the process this Court adopted to resolve eligibility objections. Granting stay relief to the Plaintiffs will open the flood gates allowing other parties to file suits in different courts which, at the end of the day, would be little more than eligibility challenges to the City's chapter 9 case.[2] As this Court emphasized, litigating eligibility issues in two different courts, simultaneously "does not promote judicial or party efficiency; it is the antithesis. The most efficient way to litigate eligibility in this case is in one court – the bankruptcy court – and then on appeal in the next." Opinion and Order

[2] It would appear to be axiomatic that granting stay relief to the Plaintiffs, would also compel the Court to grant stay relief to the NAACP.

Denying Motion to Stay Proceedings Pending Determination of Motion to Withdraw the Reference at 19. [Dkt. No. 1039]. As such, the Plaintiffs have not identified any cause, much less sufficient cause, to allow them to proceed with the Lawsuit. Accordingly, the Stay Relief Motion must be denied.

I. BACKGROUND

A. Appointment of the Emergency Manager

On February 19, 2013, a review team appointed by Rick Snyder, Governor of the State of Michigan (the "Governor"), pursuant to Public Act 72 of 1990, the Local Government Fiscal Responsibility Act, MCL § 141.1201, et seq. ("PA 72"), issued its report with respect to the City and its finances (the "Review Team Report"). The Review Team Report concluded that a local government financial emergency exists within the City.

On March 14, 2013, in response to the Review Team Report and the declining financial condition of the City and at the request of the Governor, the Local Emergency Financial Assistance Loan Board of the State of Michigan appointed Kevyn D. Orr as emergency financial manager with respect to the City under PA 72, effective as of March 25, 2013.

On March 28, 2013, upon the effectiveness of Public Act 436, the Local Financial Stability and Choice Act, MCL § 141.1541, et seq. ("PA 436"), Mr. Orr

became, and continues to act as, emergency manager with respect to the City under PA 436 (in such capacity, the "Emergency Manager").

On July 18, 2013, the Governor issued his written decision (the "Authorization") approving the Emergency Manager's recommendation that the City be authorized to proceed under chapter 9 of title 11 of the United States Code (the "Bankruptcy Code"). Thereafter, also on July 18, 2013, the Emergency Manager issued an order approving the filing of the City's chapter 9 case consistent with the Authorization (the "Approval Order").

In accordance with the Authorization and Approval Order, on July 18, 2013 (the "Petition Date"), the City commenced this case under chapter 9 of the Bankruptcy Code.

B. The Plaintiffs' Lawsuit in the District Court

On March 27, 2013, the Plaintiffs filed the Complaint against the Governor and State Treasurer Andrew Dillon (collectively, the "Defendants"), commencing Case No. 13-11370 (the "Lawsuit"), in the United States District Court for the Eastern District of Michigan, Southern Division (the "District Court"). The Complaint seeks a judgment (a) declaring PA 436 unconstitutional (Prayer A); (b) enjoining and restraining the Defendants and any present and future emergency managers from implement or exercising authority and powers purportedly conveyed by PA 436 (Prayer B); and (c) invalidating and restraining the terms of

present and future consent agreements entered into under PA 436 that abridge or diminish powers granted to local elected officials under local charters and ordinances (Prayer C). Complaint at 49-50.

Approximately six weeks later, the Defendants filed their Motion to Dismiss (the "Motion to Dismiss"). The Motion to Dismiss is attached as Exhibit A. As set forth in the Motion to Dismiss, the Complaint should be dismissed because the Plaintiffs fail to assert any cognizable legal claims.

On May 30, 2013, the District Court entered an order setting June 27, 2013, as the deadline for the Plaintiffs to file a response to the Motion to Dismiss and July 22, 2013, as the Defendants' reply deadline. The order also set a hearing on the Motion to Dismiss for August 22, 2013.

On August 7, 2013, the Defendants filed a Notice of Pendency of Bankruptcy Case and Application of the Automatic Stay and on August 22, 2013, the District Court entered an order staying the Lawsuit. The order provides that the "plain language" of the Stay Extension Order applies to the Lawsuit.

C. The Stay Extension Order and Eligibility

On July 19, 2013, the City filed the Motion of Debtor for Entry of an Order (A) Directing and Approving Form of Notice of Commencement of Case and Manner of Service and Publication of Notice and (B) Establishing a Deadline for Objections to Eligibility and a Schedule for Their Consideration [Dkt. No. 18] (the

"Eligibility Objection Motion"). The Eligibility Objection Motion requested that the Court set August 19, 2013 ("Objection Deadline"), as the deadline for all parties to file objections to the City's eligibility to obtain relief under chapter 9 of the Bankruptcy Code ("Eligibility Objections"). The Eligibility Objection Motion also asked the Court to set a schedule for hearing and resolving Eligibility Objections. Eligibility Objection Motion ¶ 28. The Court granted the Eligibility Objection Motion on August 2, 2013, and entered an order setting the Objection Deadline ("Objection Order," Dkt. No. 296). The Objection Order also set a schedule for hearing and resolving Eligibility Objections.

Plaintiffs Charles E. Williams II [Dkt. No. 391], Russ Bellant [Dkt. Nos. 402 & 405], AFSCME [Dkt. No. 505], and numerous creditors and other parties in interest objected to the City's eligibility to be a debtor under chapter 9 of the Bankruptcy Code on the basis that, for one reason or another, PA 436 is unconstitutional on its face or as applied ("PA 436 Eligibility Objections"). See list of objecting parties in the First Amended Order Regarding Eligibility Objections Notices and Hearings and Certifications Pursuant to 28 U.S.C. §2403(a) & (b) [Dkt. No. 821]. The Court conducted a hearing on some of the PA 436 Eligibility Objections and the remainder are scheduled to be heard next week.

On July 19, 2013, the City filed 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 [Dkt. No. 56] (the "Stay Extension Motion"). The Stay Extension Motion requested that the Court extend the automatic stay provisions of sections 362 and 922 of the Bankruptcy Code (the "Automatic Stay") to, among others, the Governor and the Treasurer. The City requested such relief to "(a) aid in the administration of [the City's] bankruptcy case, (b) protect and preserve property for the benefit of citizens and stakeholders and (c) ensure that the City is afforded the breathing spell it needs to focus on developing and negotiating a plan for adjusting its debts." Stay Extension Motion at ¶ 15. The City specifically expressed the concern that litigation against the Governor and Treasurer could be used as a means to pursue claims against the City or interfere with the chapter 9 process. Id. at ¶ 22.

Plaintiff AFSCME objected to the Stay Extension Motion on several grounds, including those set forth in the Stay Relief Motion. See AFSCME Objection ¶¶ 45-46 [Dkt. No. 84]. The Plaintiffs and AFSCME also made these same arguments at the hearing during which this Court considered the Stay Extension Motion. See July 24, 2013, Hearing Tr. 1-2, 19-24, 52-54. Relevant portions of the July 24, 2013, Hearing Transcript are attached as Exhibit B.

On July 25, 2013, this Court overruled the objections and entered the 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 [Dkt. No. 166] (the "Stay Extension Order"). The Stay Extension Order is not subject to appeal and is a final order of the Court.

II. ARGUMENT

In support of the Stay Relief Motion, the Plaintiffs advance three arguments: (1) the Stay Extension Order does not apply to the Lawsuit; (2) the Stay Extension Order applies to the Lawsuit but this Court did not have authority to enter it either because it is impermissibly broad or it does not further the purposes of the Bankruptcy Code; and (3) cause exists to grant relief from the Stay Extension Order either because the Complaint alleged constitutional violations or a balance of the equities favors the Plaintiffs. Again, these are essentially the same arguments asserted by the NAACP in its motion for relief from stay and none have any merit.

A. The Stay Extension Order Applies to the Lawsuit

The Plaintiffs misunderstand or misconstrue the relief granted in the Stay Extension Order. The Lawsuit is precisely the type of case that the Stay Extension Order was intended to cover and, contrary to the Plaintiffs' assertions, it does not stay "all actions" against the Defendants. Stay Relief Brief at 6. The City addressed these assertions at pages two through five in its brief in response to the NAACP's motion for relief from stay and will not repeat the same arguments here. [Dkt. No. 1044]. The City's Brief in Opposition to the NAACP's motion for relief

from stay is attached as Exhibit C. Moreover, it appears that the Plaintiffs have conceded that the Stay Extension Order applies to the Lawsuit since they state that "No matter what the facts, no matter what the claims against the State, under the broad language of this Court's *Order*, no lawsuit of any kind can proceed against the Governor or the State Treasurer until one community—the City of Detroit—emerges from Bankruptcy." Stay Relief Brief at 15.

B. The Court Had Authority to Enter the Stay Extension Order

The Plaintiffs next argue, after conceding that the plain language of the Stay Extension Order applies to the Lawsuit, that this Court did not have the authority to enter the Stay Extension Order. Significantly, the Plaintiffs and AFSCME previously objected to the Stay Extension Motion on these same grounds. The Court overruled the objections and entered the Stay Extension Order. For the same reasons the Court articulated in overruling these objections, it should reject the Plaintiffs arguments here and find that the Stay Extension Order was properly entered. Furthermore, the Plaintiffs are precluded from relitigating these same issues in the context of the Stay Relief Motion. See e.g., Georgia-Pacific Consumer Products LP v. Four-U-Packaging, Inc., 701 F.3d 1093, 1098 (6th Cir. 2012) (holding that issue preclusion precludes relitigation where (1) the precise issue was raised and litigated in the prior proceeding; (2) the determination of the issue was necessary to the outcome of the prior proceedings; (3) the prior proceedings

resulted in a final judgment on the merits; and (4) the party against whom estoppel is sought had a full and fair opportunity to litigate the issue in the prior proceeding).

Moreover, as the Plaintiffs recognize, a bankruptcy court may extend the automatic stay where "there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor." In re Eagle-Picher Indus., Inc., 963 F.2d 855, 861 (6th Cir. 1992) (quoting A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 999 (4th Cir. 1986)). The Lawsuit seeks a judgment enjoining Mr. Orr from taking any actions under PA 436 and declaring PA 436 to be unconstitutional. Thus, any judgment against the Defendants would in effect be a judgment or finding against the City. As a result, under well-established Sixth Circuit precedent, this Court had the authority to enter the Stay Extension Motion. The Plaintiff's arguments to the contrary must be rejected.

C. No Cause Exists to Grant Plaintiffs Relief from the Automatic Stay

Finally, the Plaintiffs allege that relief from the Automatic Stay should be granted for "cause." Rather than addressing the concept of cause, as interpreted by courts in this circuit, the Plaintiffs primarily assert that the alleged Constitutional violations take precedence over applying the Automatic Stay to non-debtor

defendants. The Plaintiffs also seem to assert that the Constitutional violations they allege may only be determined by an Article III court and not this Court. However, as this Court recently decided, it has authority to determine constitutional questions and that referral of such questions to an Article III court is not necessary. Opinion and Order Denying Motion to Stay Proceedings Pending Determination of Motion to Withdraw the Reference at 4-12. [Dkt. No. 1039]. Further, mere allegations of Constitutional violations do not constitute a separate or independent basis to grant relief from the Automatic Stay. Accordingly, no cause (much less sufficient cause) exists to grant the Plaintiffs relief from the Automatic Stay.

1. Under Sixth Circuit Law, No Cause Exists to Grant the Plaintiffs Relief from the Automatic Stay

Although not directly discussed by the Plaintiffs, under the factors generally applied to stay motions in this circuit, there is no cause for relief from stay. Section 362(a) of the Bankruptcy Code provides in relevant part that:

> a petition filed under . . . this title . . . operates as a stay, applicable to all entities, of . . . the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case . . . .

11 U.S.C. § 362(a). The Automatic Stay "is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions." Javens v. City of Hazel Park (In re Javens), 107 F.3d 359, 363 (6th Cir. 1997) (quoting H.R. REP. NO. 95-595, at 340 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6296).

Section 362(d) of the Bankruptcy Code authorizes a bankruptcy court to grant relief from the Automatic Stay in limited circumstances. See 11 U.S.C. § 362(d). In particular, section 362(d)(1) of the Bankruptcy Code provides that a party in interest may obtain relief from the Automatic Stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. §362(d)(1).

"The Bankruptcy Code does not define 'cause' as used in [section] 362(d)(1). Therefore, under [section] 362(d), 'courts must determine whether discretionary relief is appropriate on a case by case basis.'" Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered Prods., Inc.), 382 B.R. 90, 106 (Bankr. E.D. Mich. 2008) (quoting Laguna Assocs. L.P. v. Aetna Casualty & Surety Co. (In re Laguna Assocs. L.P.), 30 F.3d 734, 737 (6th Cir. 1994)). The determination of whether to grant relief from the Automatic Stay "resides within the sound discretion of the Bankruptcy Court." Sandweiss Law Center, P.C. v.

Kozlowski (In re Bunting), No. 12-10472, 2013 WL 153309, at *17 (E.D. Mich. Jan. 15, 2013) (quoting In re Garzoni, 35 F. App'x 179, 181 (6th Cir. 2002)).

> To guide the bankruptcy court's exercise of its discretion . . . the Sixth Circuit identifies five factors for the court to consider: (1) judicial economy; (2) trial readiness; (3) the resolution of the preliminary bankruptcy issues; (4) the creditor's chance of success on the merits; and (5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.

Bunting, 2013 WL 153309, at *17 (quoting Garzoni, 35 F. App'x at 181) (internal quotation marks omitted). In determining whether cause exists, however, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." Plastech, 382 B.R. at 106 (quoting In re C & S Grain Co., 47 F.3d 233, 238 (7th Cir. 1995)).

Here, consideration of the these factors confirms that no cause (much less sufficient cause) exists to justify relief from the Automatic Stay to allow the Lawsuit to proceed. With respect to the first factor, the interests of judicial economy weigh heavily in favor of denying the Stay Relief Motion. Numerous parties, including three of the Plaintiffs, have raised similar eligibility issues in this chapter 9 case that the Plaintiffs seek to litigate in the Lawsuit in front of the District Court. As set forth above, litigating eligibility issues in two different courts, simultaneously "does not promote judicial or party efficiency; it is the antithesis." Opinion and Order Denying Motion to Stay Proceedings Pending

Determination of Motion to Withdraw the Reference at 19. [Dkt. No. 1039]. Accordingly, judicial economy dictates staying the Lawsuit so as to permit this Court to address the PA 436 Eligibility Objections in the single, unified context of the eligibility trial.

With respect to the second factor, the Lawsuit is in its preliminary stages. The Defendants' motion to dismiss remains pending. No discovery has been taken. Thus, the Lawsuit has not even advanced beyond the pleading stage and is not trial ready. The third factor also weighs in favor of denying the Stay Relief Motion as the Court has not even resolved the City's eligibility for relief in this chapter 9 case. Nothing could be more basic or preliminary to the ultimate outcome. Further, concerning the fourth factor, as set forth in the Defendants' motion to dismiss, the Plaintiffs have not demonstrated a likelihood of success on the merits.

Finally, the fifth factor weighs in favor of denying the Stay Relief Motion. Although the City is not currently a party in the Lawsuit, the impact that the Lawsuit may have on the City and its restructuring efforts may require the City to intervene or otherwise become further involved and take other actions if the Stay Relief Motion is granted. Requiring the City to defend the Lawsuit in the District Court would distract the City from its efforts to restructure, diverting its limited resources at a time when it is both working to negotiate and deliver a plan of

adjustment quickly and engaged in a substantial amount of discovery and litigation (all on its own expedited timeframe) arising in the bankruptcy case itself. The City does not need further impediments to its restructuring efforts. This Court has consistently endeavored to bring all matters which may affect the eligibility of the City before it and have the issues resolved in one forum. Allowing the Lawsuit to proceed in the District Court would cast uncertainty[3] over the eligibility and restructuring process and may chill negotiations among the parties or adversely affect the confirmation of the plan of adjustment. Further, if relief is granted here, it will likely engender further constitutional challenges by other parties in different courts.

In short, allowing the Lawsuit to proceed would undermine the protections of the Automatic Stay and interfere with the City's efforts to restructure. The City sought relief under chapter 9 in part to obtain the "breathing spell" afforded by the Automatic Stay and the consequent protection from its creditors while it restructures its affairs and prepares a plan of adjustment. The City's finances would be further depleted and its personnel distracted from their mission to operate

[3] This Court acknowledged that the uncertainty occasioned just by the eligibility objections already before it will likely slow, if not stall entirely, the "City's progress in recovering its financial, civic, commercial, and cultural life and in revitalizing itself." Opinion and Order Denying Motion to Stay Proceedings Pending Determination of Motion to Withdraw the Reference at 23. [Dkt. No. 1039]. Having the City's eligibility adjudicated simultaneously in two courts obviously compounds that uncertainty.

the City for the benefit of its citizens and restructure its affairs if it were denied this basic protection of chapter 9 and forced to defend itself against the Plaintiffs so early in the case. Accordingly, the overall goals of chapter 9 weigh largely in favor of denying stay relief to the Plaintiffs.

2. The Automatic Stay Does Not Deprive the Plaintiffs of their Constitutional Rights

The Plaintiffs also argue that the Automatic Stay, as applied to the Lawsuit, violates their Fourteenth and Fifth Amendment right to due process. This argument misses the point. The Plaintiffs day in court is not denied but only delayed. See Cont'l Ill. Nat'l Bank & Trust Co. of Chicago v. Chicago, Rock Island & Pac. Ry. Co., 294 U.S. 648, 680-81 (1935) (holding that delaying a creditor from implementing a contract remedy via a stay issued under the Bankruptcy Act did not violate the Fifth Amendment's due process requirement). Indeed, coordinating the Plaintiffs' alleged rights with those of many others is patently different from depriving the Plaintiffs of those same rights. In re Singer, 205 B.R. 355, 357 (Bankr. S.D.N.Y. 1997) (noting that the Second Circuit has held that the automatic stay does not violate due process) (citation and internal quotation marks omitted); Kagan v. St. Vincents Catholic Med. Ctrs. of N.Y. (In re St. Vincents Catholic Med. Ctrs. of N.Y.), 449 B.R. 209, 213-14 (Bankr. S.D.N.Y. 2011) (holding that 11 U.S.C. § 362 does not offend the First, Fifth, Tenth, or Fourteenth Amendments in stay of state FOIA claim) ("[I]f this claim had any

merit, every stay of a judicial proceeding imposed by a Bankruptcy Court would violate the substantive due process rights of the litigants in that proceeding. Clearly this is not the law."). Indeed, the Second Circuit determined that the automatic stay helps balance parties' rights.

> The policy considerations underlying [the automatic stay] are considerable. The automatic stay . . . is designed to prevent a chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts. The stay insures that the debtor's affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors' interests with one another.

Fid. Mortg. Invs. v. Camelia Builders, Inc. (In re Fid. Mortg. Invs.), 550 F.2d 47, 55 (2d Cir. 1977) (interpreting Bankruptcy Act). Further, the Bankruptcy Code and Rules implementing the automatic stay provide a means to ensure that the stay does not deprive parties of their due process rights, including the opportunity to obtain relief from the stay in this Court if there is sufficient cause to grant relief. Id.

The Plaintiffs argument fails to account for the City's rights, and, when these are added into the equation, the balance of harms to the City against the potential harm to the Plaintiff strongly favors leaving the stay in place at this juncture. The idea that providing the City with "breathing room" to reorganize somehow denies the Plaintiffs their Constitutional rights is simply not true. The

Automatic Stay ensures that the Plaintiff's rights are not enforced to the detriment of both the City and its creditors.

III. CONCLUSION

For the reasons set forth in this Brief in Opposition, the City respectfully requests that this Court: (a) deny the Stay Relief Motion; and (b) grant such other and further relief to the City as the Court may deem proper.

Dated: October 7, 2013 Respectfully submitted,

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ATTORNEYS FOR THE CITY OF DETROIT

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHERINE PHILLIPS, Staff Representative Michigan AFSCME Council 25, and Chief Negotiator with the City of Detroit; JOSEPH VALENTI, Co-Chief Negotiator with the Coalition of Unions of the City of Detroit; MICHIGAN AFSCME COUNCIL 25; RUSS BELLANT, President of the Detroit Library Commission; TAWANNA SIMPSON, LAMAR LEMMONS, ELENA HERRADA, Detroit Public School Board Members; DONALD WATKINS AND KERMIT WILLIAMS, Pontiac City Council Members; DUANE SEATS, DENNIS KNOWLES, JUANITA HENRY AND MARY ALICE ADAMS, Benton Harbor Commissioners; WILLIAM "SCOTT" KINCAID, Flint City Council President; BISHOP BERNADEL JEFFERSON; PAUL JORDAN; REV. JIM HOLLEY, National Board Member, Rainbow Push Coalition; REV. CHARLES E. WILLIAMS II, Michigan Chairman, National Action Network; REV. DR. MICHAEL A. OWENS, REV. LAWRENCE GLASS, REV. DR. DEEDEE COLEMAN, BISHOP ALLYSON ABRAMS, Executive Board, Council of Baptist Pastors of Detroit and Vicinity,

Plaintiffs,

v

RICHARD D. SNYDER, as Governor of the State of Michigan, and ANDREW DILLON, as the Treasurer of the State of Michigan, acting in their individual and/or official capacities,

Defendants.

No. 2:13-cv-11370

HON. GEORGE CARAM STEEH

MAG. R. STEVEN WHALEN

DEFENDANTS' MOTION TO DISMISS UNDER FED. R. CIV. P. 12(B)(1) & (6) AND BRIEF IN SUPPORT

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DEFENDANTS' MOTION TO DISMISS

Defendants Richard D. Snyder, Governor of the State of Michigan, and Andrew Dillon, Treasurer of the State of Michigan, move to dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief for the following reasons:

1. Plaintiffs lack standing to bring any of their claims.

2. 2012 Mich. Pub. Acts 436, Mich. Comp. Laws § 141.1541 *et seq.* (P.A. 436), does not violate the Due Process Clause or U.S. Const. art. IV, § 4 (Counts 1, 2, 3).

3. P.A. 436 does not violate the Equal Protection Clause (Counts 4, 5, 6, 11).

4. P.A. 436 does not violate Section 2 of the Voting Rights Act (Count 7).

5. P.A. 436 does not violate First Amendment free speech and petition rights (Count 8).

6. The City of Detroit emergency manager appointment of Kevin Orr does not violate the First Amendment right to petition (Count 9).

7. And P.A. 436 does not violate the Thirteenth Amendment (Count 10).

8. Defendants sought concurrence from Plaintiffs' counsel but concurrence was not given.

9. Under Fed. R. Civ. P. 12(b)(6), a complaint may be dismissed if no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint. *Ludwig v. Bd of Trustees*, 123 F.3d 404, 408 (6th Cir. 1997). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are not facially plausible. *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

10. Fed. R. Civ. P. 12(b)(1) allows dismissal for lack of subject-matter jurisdiction. It is a plaintiffs' burden to prove jurisdiction. *Moir v. Greater Cleveland Reg'l Transit Auth*, 895 F.2d 266, 269 (6th Cir. 1990).

Applying the standard of review set out in paragraphs 9 and 10 to each argument in the brief, and for the reasons stated in this motion, Plaintiffs' Complaint fails as a matter of law. Defendants respectfully request that this Court dismiss Plaintiffs' Complaint in its entirety and with prejudice.

Respectfully submitted,

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Dated: May 15, 2013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHERINE PHILLIPS, Staff Representative Michigan AFSCME Council 25, and Chief Negotiator with the City of Detroit; JOSEPH VALENTI, Co-Chief Negotiator with the Coalition of Unions of the City of Detroit; MICHIGAN AFSCME COUNCIL 25; RUSS BELLANT, President of the Detroit Library Commission; TAWANNA SIMPSON, LAMAR LEMMONS, ELENA HERRADA, Detroit Public School Board Members; DONALD WATKINS AND KERMIT WILLIAMS, Pontiac City Council Members; DUANE SEATS, DENNIS KNOWLES, JUANITA HENRY AND MARY ALICE ADAMS, Benton Harbor Commissioners; WILLIAM "SCOTT" KINCAID, Flint City Council President; BISHOP BERNADEL JEFFERSON; PAUL JORDAN; REV. JIM HOLLEY, National Board Member, Rainbow Push Coalition; REV. CHARLES E. WILLIAMS II, Michigan Chairman, National Action Network; REV. DR. MICHAEL A. OWENS, REV. LAWRENCE GLASS, REV. DR. DEEDEE COLEMAN, BISHOP ALLYSON ABRAMS, Executive Board, Council of Baptist Pastors of Detroit and Vicinity,

Plaintiffs,

v

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MAG. R. STEVEN WHALEN

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Should all counts be dismissed under 12(b)(1) because Plaintiffs lack standing?

2. Should the entire Complaint be dismissed under Fed. R. Civ. P. 12(b)(6) because Plaintiffs have failed to state a claim for which relief may be granted under any asserted cause of action?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority:

ACLU of Ohio Found., Inc., v. Ashbrook
Canfora v. Old
City of Cleburne v. Cleburne Living Center, Inc.
Ctr. For Bio-Ethical Reform, Inc. v. Napolitano
FCC v. Beach Commc'ns, Inc.
Holt v. City of Tuscaloosa
Home Building & Loan Ass'n v. Blaisdell
Hunter v. City of Pittsburgh
Johnson v. Harron
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Rodriguez v. Popular Democratic Party
Smith v. Arkansas State Highway Employees, Local 1315
TriHealth, Inc. v. Board of Comm'rs, Hamilton County, Ohio
Village of Arlington Heights v. Metro. Housing Dev. Corp.
Washington v. Glucksberg

INTRODUCTION

The concept of an emergency manager is not new to Michigan. Indeed, both major political parties have used such managers to solve local economic difficulties for over 20 years. But in an economic environment where a disturbingly high number of local governments and school districts are teetering on the brink of financial catastrophe, more flexibility and new tools were required. The Michigan Legislature responded with 2012 Public Act 436 (P.A. 436), which replaces Michigan's previous emergency-manager law, P.A. 72.

Having lost the political battle to stop P.A. 436 on the steps of the Lansing Capitol, Plaintiffs filed this lawsuit, an action that contains no cognizable legal claims or alternative solutions to the financial problems that have plagued many communities. Because Plaintiffs' proper remedy is the political process, not the courts, the Complaint should be dismissed in its entirety.

STATEMENT OF FACTS

Nature of the Case

Plaintiffs bring this action under 42 U.S.C. § 1983, alleging that P.A. 436 violates the U.S. Const. art. IV, § 4 (Republican Form of Government); the First Amendment (freedom of speech and the right to petition government); the Thirteenth Amendment (vestiges of slavery); the Fourteenth Amendment (due process and equal protection); and the Voting Rights Act, 42 U.S.C. § 1973, *et seq*. (R. 1, Compl., ID# 2.) Where specific factual allegations are necessary for deciding this motion, those facts have been taken from the Complaint. Although Plaintiffs allege both facial and as-applied challenges, they make no specific applications of P.A. 436 to any factual occurrence in any paragraph of the Complaint. (Id. at, ¶¶ 122, 128, 138, 139, 151, 152, 167, 168, 182, 183, 194, 195, 206, 207, 208, 220, 229, 230 and 243, ID## 25-28, 30-31, 33-

34, 36-37, 39-40, 42, 44, 46-47, 49.) Thus, this is only a facial challenge to the constitutionality of the Act. And their allegations focus exclusively on the Act's emergency-manager component.

Michigan's Emergency Financial Manager Acts

The Legislature enacted P.A. 436 in December 2012, effective March 28, 2013. P.A. 436 followed the period of time from August 6, 2012 to March 28, 2013, when the State and its political subdivisions operated under 1990 Mich. Pub. Acts 72 (P.A. 72), Mich. Comp. Laws § 141.1201, *et seq*. which, for purposes of this brief, will be referred to as the original act allowing the appointment of emergency managers. P.A. 72 was the operative statute because of the referendum and rejection of the earlier fiscal responsibility legislation, 2011 Mich. Pub. Acts 4 (P.A. 4).[1] Under P.A. 72, emergency managers had fewer powers than they previously possessed under P.A. 4, which contained more tools and authority to rectify financial emergencies in distressed local communities and school districts.

In December 2012, the Legislature passed P.A. 436—*not* to reenact P.A. 4, previously rejected by voters but to replace P.A. 72, which was in effect at the time. The Legislature reasonably determined that local fiscal stability is necessary for the State's health, welfare, and safety, and thus, P.A. 436 was necessary to protect those interests as well as the credit ratings of the State and its political subdivisions. Mich. Comp. Laws § 141.1543.

Key Features of P.A. 436

Unlike earlier laws, P.A. 436 includes two key features: expanded local government options—chosen by the local government—to address the financial emergency; a time limit for a financial manager's appointment; and, authority to petition for removal of a financial manager. Mich. Comp. Laws §§ 141.1547, 1549(2), 1549(11). The statute also builds in checks on an

[1] See OAG, 2011-2012, No 7267, p 6 (August 6, 2012), available at http://www.ag.state.mi.us/opinion/datafiles/2010s/op10346.htm.

emergency manager's authority. See, e.g., Mich. Comp. Laws §§ 141.1552(1)(k) & (u) (collective bargaining agreements and borrowing money), 1552(4) (selling or transferring public utilities), 1555(1) (selling of assets), 1559(1) (proposed contracts, sales, and leases).

ARGUMENT

I. Plaintiffs lack standing to bring any of their counts.

This Court should dismiss all counts of Plaintiffs' Complaint for lack of standing. To invoke the subject matter jurisdiction of an Article III federal court, individual plaintiffs must establish, among other things, an injury-in-fact that is concrete and particularized, not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Because injunctive and declaratory relief is sought, these Plaintiffs also have the heightened burden of showing a substantial likelihood they will be injured in the future. *City of Los Angeles,v. Lyons*, 461 U.S. 95, 105 (1983). The Organizational Plaintiffs have standing only if (a) their members otherwise have standing to sue in their own right; (b) the interests to be protected are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires participation of individual members in the lawsuit. *ACLU of Ohio Found., Inc. v. Ashbrook*, 375 F.3d 484, 489 (6th Cir. 2004). None of these requirements are met here.

A. Individual, Non-Elected Plaintiffs Bellant, Jefferson, Jordan, Holley, Williams, Owens, Glass, Coleman, and Abrams lack standing to bring Counts 2-8 and 10–11.

This group of Plaintiffs are residents of localities with emergency managers. (R. 1, Compl., at ¶10, ¶¶ 21-28, ID## 5, 6-7.) Yet, they do not allege that Defendants' actions have injured them in a manner distinguishable from the harm incurred by any resident of any locality with an emergency manager.

Rather, these Plaintiffs raise only general grievances regarding Defendants' policy choices related to fiscally distressed local governments. Their claims are strikingly similar to

those considered and rejected by the Supreme Court, the Sixth Circuit, and this Court for lack of standing. *See, e.g.*, *City of Los Angeles*, 461 U.S. at 111 (resident challenging police department's chokehold policy was "no more entitled to an injunction than any other citizen"); *Miyazawa v. City of Cincinnati*, 45 F.3d 126, 126-28 (6th Cir. 1995) (resident challenging city charter amendment suffers "no harm, nor will she suffer any greater harm than that of any other voter in the City of Cincinnati"); *Anthony v. State of Michigan*, 35 F. Supp. 2d 989, 1003 (E.D. Mich. 1999) (Detroit citizens challenging consolidation of Detroit Recorder's Court did not "articulate how they [were] *particularly* harmed as a result of the merger").

B. Individual, Elected Plaintiffs Simpson, Lemmons, Herrada, Watkins, Williams, Seats, Knowles, Henry, Adams, and Kincaid lack standing to bring Counts 2–8 and 10–11.

This group of Plaintiffs lack standing in the same manner as the Plaintiffs discussed in Section A. They have met neither the irreducible constitutional requirement of a concrete and particularized injury nor the applicable, heightened standard requiring a substantial likelihood that they will be the unique target of future harm. See *Lujan*, 504 U.S. at 560-61; *City of Los Angeles*, 461 U.S. at 105. Their identification as public officials for units of local government who are subject to P.A. 436 gives them no special status and certainly no greater claim to standing than any of the other named Plaintiffs in Section A. (R. 1, ¶ 11-20, I.D. ## 5, 6.) To the extent they may purport to bring this action in their official capacities as members of various local boards, commissions or councils, there is no indication in the Complaint that these local governmental bodies have authorized any of them to act for or on their behalf.

C. Individual Union Negotiator-Plaintiffs Phillips and Valenti lack standing.

For the same reasons, Plaintiffs Phillips and Valenti lack standing to assert Counts 1–11. While they purportedly belong to the Plaintiffs' labor organization, Plaintiff Michigan AFSCME Council 25 (Council 25), neither mere union affiliation nor the factual allegations in Plaintiffs'

Complaint suggests that Phillips and Valenti have sustained any particularized injury vis-à-vis other residents of localities with emergency managers or union members whose collective bargaining agreements or bargaining "rights" have been impacted.

Indeed, the facts related to the Count I allegations were the basis for an earlier action by Valenti and Council 25 against the City of Detroit, Governor Snyder and Treasurer Dillon. See, *Valenti, et. al. v. Snyder, et. al.*, USDC-ED No. 12-11461, R. 6, Amended Complaint. The coalition of unions, for which Valenti was a negotiator and which included Council 25, had negotiated tentative employee concessions with the City of Detroit. But these terms were never ratified by the City Council and never became effective. Detroit Charter, §6.408. The City's duty to collectively bargain was suspended effective April 4, 2012 with the approval of a consent agreement—the Financial Security Agreement—negotiated with the State under P.A. 4. Thus, the allegations here do not establish any particularized injury to Phillips or Valenti.

Further, with respect to Count 9, the right to petition government, is personal and does not extend to petitioning activity on behalf of others. C.J.S CONST. LAW § 975 (citing Const. Amend. 1 and *In re Foster*, 253 P.3d 1244 (Colo. 2011); *see also* C.J.S CONST. LAW § 973, citing *Hague v. Committee for Indus. Organization*, 307 U.S. 496 (1939). Phillip's and Valenti's positions as union negotiators do not provide standing on this claim either.

D. Council 25 lacks organizational standing to bring any claims.

Council 25 also lacks standing to bring Counts 1 – 11. None of its members have standing to sue for the alleged violations in their own right, as discussed above. *Ashbrook*, 375 F.3d at 489. And like Phillips and Valenti, Council 25 lacks standing to bring Count 9 in a representative capacity.

In sum, Plaintiffs collectively lack standing to bring Counts 1 - 11. Accordingly, this Court should dismiss these Counts with prejudice under Fed. R. Civ. P. 12(b)(1).

II. P.A. 436 does not violate the Due Process Clause or U.S. Const. art. IV, § 4 (Counts 1, 2, 3).

A. No substantively protected right to collective bargaining is violated.

To properly analyze Plaintiffs' substantive due-process claim based on collective bargaining, this Court is required to carefully identify the fundamental right or liberty interest allegedly implicated. The substantive component of the Due Process Clause protects fundamental rights and liberty interests that are so "implicit in the concept of ordered liberty" that "neither liberty nor justice would exist if they were sacrificed." *Palko v. Connecticut,* 302 U.S. 319, 326 (1937). Only when a state law infringes these fundamental rights and interests is it subject to strict scrutiny. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997).

Those fundamental rights and interests accorded substantive protection under the Due Process Clause include matters related to marriage, family, procreation, bodily integrity, and directly related privacy interests. *Id.* at 720; *Kallstrom v. City of Columbus,* 136 F.3d 1055, 1062 (6th Cir. 1998). The Supreme Court is reluctant to expand the concept of substantive due-process further "because guideposts for responsible decision making in this unchartered area are scarce and open-ended." *Glucksberg*, 521 U.S. at 720 (quotation marks and citation omitted).

Here, Plaintiffs' claim is not based on a right found within the Bill of Rights or identified by the Supreme Court as "implicit in the concept of ordered liberty" or among those narrowly drawn "liberty" and privacy interests accorded substantive protection. *Id.* at 721. It is premised on an alleged "property interest in their employment, in the terms of employment negotiated pursuant to contract, and in rights granted under state law. . . ." (R. 1, Compl., ¶ 109, ID# 23.) And while state law property interests may give rise to a procedurally protected interest, they do not create a *substantively* protected fundamental right or interest. *Glucksberg*, 521 U.S. at 720.

Their substantive claim fails because their alleged substantively protected liberty interest in employment relates only to a generalized right to choose one's field of private employment—"the right of the individual . . . to engage in any of the common occupations of life"—not an expansive right of public employment or to collectively bargain for employment terms. *Roth v. Bd. of Regents*, 408 U.S. 564, 572 (1978); *Parate v. Isibor*, 868 F.2d 821, 831 (6th Cir. 1989).

Plaintiffs fail to allege any plausible substantive due-process right, any facts indicating Defendants interfered with a substantively protected interest, or that P.A. 436 facially violates substantive due process. This claim fails as a matter of law and fact and should be dismissed.

B. No procedurally protected right to collective bargaining is violated.

Analysis of Plaintiffs' procedural due-process claim involves a dual inquiry: (1) whether a liberty or property interest exists that the State has interfered with; and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient—that is, provided at a meaningful time and in a meaningful manner. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985); *Matthew v. Eldridge*, 424 U.S. 319, 333, 349 (1976).

But no protected right or interest invoking procedural due process protection is at issue. Plaintiffs' procedural due-process claim is premised on an alleged "property interest in the terms of employment negotiated pursuant to contract, and in rights granted under state law." Plaintiffs rely on Michigan's Public Employment Relations Act (PERA) as creating this right. Mich. Comp Laws § 423.215(1). (R.1, Compl., ¶ 111, ID# 23). PERA provides, "A public employer shall bargain collectively with the representatives of its employees" and "may make and enter into collective bargaining agreements . . . ." *Id.* Yet, the Legislature has also imposed limitations on this duty to collectively bargain. Mich. Comp. Laws § 141.1567(3). See also P.A. 436 Enacting Clause 2; Mich. Comp. Laws §§ 423.215(8), 215(9).

The Michigan Legislature has the authority to define and modify the powers, duties and obligations of its local governments, which are derived from the State in the first instance. Mich. Const. 1963, art. VII, §§ 1-34; *Mack v. City of Detroit,* 467 Mich. 186, 194; 649 N.W.2d 47(2002); Michigan's Home Rule City Act reiterates this principle—all local charters, resolutions and ordinances are subject to and shall not conflict with or contravene the State's Constitution or laws. Mich. Comp. Laws. § 117.36.

State law confers a procedurally protected benefit, such as the claimed property interest here, only when it mandates specific action in a manner that constrains bureaucratic discretion. *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 463 (1989). Here, no such limitations exist. First, while a public employer "shall bargain collectively," it retains discretion: "*may* make and enter into collective bargaining agreements." Mich. Comp. Laws § 423.215(1) (emphasis added). Second, PERA does not confer a "right to bargain" that infringes the exercise of power under P.A. 436. Finally, both PERA and P.A. 436 suspend the duty to collectively bargain when the local government is in receivership. Thus, there is no protected property interest to bargain the terms of public employment and no procedural due process violation.

C. No substantive due-process right to elect officials who possess general legislative power is violated.

The "right to vote" is not expressly enumerated in the federal constitution. *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 35, n. 78 (1973). Rather, the right to vote is an implicit "fundamental political right" that is "preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964). *Yet*, the Supreme Court has repeatedly recognized that the Fourteenth Amendment does not protect this generalized "right to vote" but instead protects a citizen's right to participate in elections on equal footing with other citizens in the jurisdiction. *Rodriguez v.*

Popular Democratic Party, 457 U.S. 1, 9-10 (1982); *San Antonio*, 411 U.S. at 35. This right to equal participation is protected by the Equal Protection Clause. *Rodriguez*, 457 U.S. at 9-10.

In this context, it is perhaps easiest to understand Plaintiffs' substantive due-process claim by first determining what it is *not* about. (R. 1, Compl., ¶¶ 127, 128, ID## 25, 26.) Plaintiffs do not claim a denial or impairment of their right to vote. Nor do they claim their vote is not being counted. Rather, their claim is premised on an undefined, unrecognized right to have the elected official continue to carry out the duties of office—here, legislative powers. No federal court has ever recognized such a right. *Rodriquez*, 457 U.S. at 9-10.

Dismissal of this claim is consistent with Supreme Court precedent expressing a reluctance to expand the concept of substantive due process, *Glucksberg*, 521 U.S at 720, and determining that where a more explicit textual context than the generalized Due Process Clause exists within the federal constitution, it must guide the constitutional analysis. *Graham v. Connor*, 490 U.S. 386, 394-395 (1989). That Court has determined that the appropriate context is the Equal Protection Clause as applied to the right of equal participation in the voting process.

D. U.S. Const., art. IV, § 4 is not violated.

The United States Constitution guarantees that "every State in this Union a Republican form of government." U.S. Const., art. IV, § 4. Generally, this guarantee does not extend to local units of government. Political subdivisions of a State have never "been considered as sovereign entities." Rather, they are "traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions." *Sailors v. Bd. of Ed. of Kent County*, 387 U.S. 105, 107-108 (1967) (quoting *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907)). Any recognition of a specific form of local government ignores the nature of this traditional relationship. While the Supreme Court has clarified that a state cannot manipulate its political subdivisions to defeat a federally

protected right, the consistent theme of these court decisions is not the form of local government but protection of the "right to vote" against "dilution or debasement." *Sailors*, 387 U.S. at 108; *Hadley v. Jr. College Dist. of Metro. Kansas City, Mo.*, 397 U.S. 50, 54-55 (1970). Significantly, federal courts do not meddle in how States structure their local political subunits. Such political questions and a State's authority to define and regulate its relationship with subordinate political units are generally not justiciable. *Baker v. Carr*, 369 U.S. 186, 208-226 (1962); *Morgan v. Rhodes*, 456 F.2d 608, 618-620 (6th Cir. 1972).

In the absence of any infringement on the Plaintiffs' equal participation in the voting process, Michigan's choice to address the significant issues arising from a local government's financial distress and their temporary impact on the structure of that government do not violate any protected federal right within this Court's purview. This claim fails as a matter of law.

III. P.A. 436 does not violate the Equal Protection Clause (Counts 4, 5, 6, 11).

Counts 4, 5, 6, and 11 assert that P.A. 436 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. These claims lack merit.

A. P.A. 436 does not unconstitutionally burden Plaintiffs' fundamental right to vote.

The Equal Protection Clause states that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. The clause prevents states from making distinctions that (1) burden a fundamental right; (2) target a suspect class; or (3) intentionally treat one individual differently from others similarly situated without any rational basis. *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 312 (6th Cir. 2005).

Plaintiffs assert that P.A. 436 violates their fundamental right to vote protected by the Equal Protection Clause in two ways. First, they argue the Act "effectively revoke[s] the right to vote by stripping governing authority from local elected officials and transferring such authority

to one unelected emergency manager with no accountability to local citizens." (R. 1, Compl.,¶ 148, ID# 29.) Second, they argue the Act "impermissibly dilutes citizen's right to vote in local elections where emergency managers have been appointed" because the emergency managers become vested with all governing authority, leaving local elected officials with only conditional powers and "the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their elected officials." (*Id.* at ¶¶ 149-150, ID# 29.)

1. Plaintiffs are not similarly situated to people residing in communities that do not have an emergency manager.

As a threshold matter, Plaintiffs must demonstrate they are similarly situated to the persons allegedly receiving more favorable treatment "in all material respects." *Ctr. for Bio–Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011) (quotation marks omitted); *TriHealth, Inc. v. Board of Com'rs, Hamilton County, Ohio*, 430 F.3d 783, 790-791 (6th Cir. 2005). "Disparate treatment of persons is reasonably justified if they are dissimilar in some material respect." *Id*. In determining whether individuals are "similarly situated," a court should "not demand exact correlation, but should instead seek relevant similarity." *Perry v. McGinnis*, 209 F.3d 597, 601 (6th Cir. 2000) (citation omitted).

Here, Plaintiffs, who are residents of local units of government under the administration of an emergency manager (Detroit, Detroit Public School District, Benton Harbor, Pontiac, and Flint), allege they are being disparately treated as compared to residents of local units of government with no emergency manager. That is not true. Each of these named local units, whether under P.A. 72 or P.A. 4, underwent a rigorous review of their financial condition, as assessed against set criteria, and were determined to be in a financial emergency by the Governor

or other executive official. The serious financial problems facing these local units of government cannot be overstated and are laid bare within each letter confirming the financial emergencies.

Plaintiffs are not similarly situated to residents of local units of government that have not been declared to be in a financial emergency. The significant financial condition of their local unit of government is the whole reason an emergency manager was appointed. Thus, comparisons to residents of local units of government in better financial condition do not advance Plaintiffs' claims. Nor do Plaintiffs identify any specific local units of government whose financial conditions are the same as or are sufficiently similar to Plaintiffs' communities that were not placed under the administration of an emergency manager after financial review. As a result, Plaintiffs have failed to make the threshold "similarly situated" showing and their equal-protection claims necessarily fail. *TriHealth, Inc*, 430 F.3d at 790.

2. Plaintiffs have not been denied their fundamental right to vote.

The right to vote is a "fundamental" political right. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966), and the Equal Protection Clause applies when a state either classifies voters in disparate ways, or places restrictions on the right to vote. *League of Women Voters v. Brunner*, 548 F.3d 463, 477–78 (6th Cir. 2008) (citing *Bush v. Gore*, 531 U.S. 98, 104 (2000)). The specific character of the state's action and the nature of the burden on voters will determine the applicable equal-protection standard. See *Biener v. Calio*, 361 F.3d 206, 214 (3d Cir. 2004) ("The scrutiny test depends on the [regulation's] effect on [the plaintiff's] rights.").

If a plaintiff asserts only that a state treated the plaintiff differently than similarly situated voters, without a reciprocal burden on the fundamental right to vote, the rational basis standard of review should apply. *McDonald v. Bd. of Election Comm'rs*, 394 U.S. 802, 807-09 (1969) (applying rational basis to a state statute prohibiting plaintiffs' access to absentee ballots where no right-to-vote burden was shown); *Biener*, 361 F.3d at 214-15 (applying rational basis absent a

showing of an "infringement on the fundamental right to vote"). But when a State's classification "severely" burdens the right to vote, strict scrutiny is appropriate. *Burdick v. Takushi*, 504 U.S. 428, 434 (1992). Where the burden is somewhere in the middle, courts apply the "flexible standard" outlined in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick*. See *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 238 (6th Cir. 2011) (applying the balancing test in an equal-protection challenge to the counting of provisional ballots).

Here, there is no suspect class and P.A. 436 does not burden Plaintiffs' right to vote. Residents in local units of government under an emergency manager's administration retain all their rights to exercise the franchise and vote for the candidates of their choice, including candidates for local government, and to have those votes counted. While P.A. 436 may temporarily prohibit a local unit's chief executive officer and governing body from exercising the powers of those offices during the receivership, Mich. Comp. Laws § 141.1549(2), it does not preclude residents from voting candidates into these offices, or the candidates from continuing to hold those offices during the receivership.

Plaintiffs' complaint really is that the officials they have already elected into office are prohibited (at least temporarily) from exercising some or all of the powers and duties they were elected to do—in other words, that their candidates can no longer be effective. But this is not a recognized violation of the right to vote.

3. Plaintiffs' fundamental right to vote has not been diluted.

Plaintiffs' claim of vote dilution is that the appointment of an emergency manager in and of itself dilutes Plaintiffs' right to vote, and/or that the appointment of an emergency manager for a particular local unit of government by the Governor, who is elected by voters statewide, dilutes the right to vote of the local residents: "The vote of citizens for their local government in

affected localities is grossly diluted by the statewide participation of the electorate." (R. 1, Compl., ¶ 150, ID# 30.) These arguments are likewise without merit.

"[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. A vote-dilution claim invokes the principle of "one person, one vote," a requirement under the Fourteenth Amendment. See 16B CJS, Constitutional Law, § 1264 (explaining that each person's vote must count the same as any other person's); *see also Carlson v. Wiggins*, 675 F.3d 1134, 1139 (8th Cir. 2012).

P.A. 436 does not violate this requirement. As explained above, residents in local units of government under the administration of an emergency manager retain the same rights to vote for and elect candidates of their choosing, and their votes count the same as residents in other local units of government voting for their local officials. Again, Plaintiffs' real complaint is that their elected candidates will, on a temporary basis, no longer be effective or as effective in their offices. But this "injury," if it exists, does not stem from any recognized violation of the fundamental right to vote or the "one person, one vote" principle.

B. P.A. 436 does not discriminate based on race.

In Count 5, Plaintiffs vaguely assert that P.A. 436 discriminates based on race. They observe that the Equal Protection Clause "protects [sic] laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights." (R. 1, Compl., ¶ 161. ID# 32.) They then assert that voting in local elections is a fundamental right and that P.A. 436's provisions "effectively revoke the right to vote." *Id.*, ¶ 162, ID# 32. In paragraphs 168 and 169, Plaintiffs allege that P.A. 436 "discriminate[s] in the appointment of an EM and revocation of the community's right to vote for local officials based on the racial composition of that community" and that Defendants have

caused injury by exercising authority under the Act in "various municipalities comprising more than 53% of the State's [African American] population."

Initially, as noted above, Plaintiffs have failed to allege or show that they have been disparately treated compared to citizens of a different race in communities that are similarly situated financially to Plaintiffs' communities. *TriHealth, Inc.*, 430 F.3d at 790. Thus, this race-based equal-protection claim fails.

In addition, P.A. 436 does not embody a racial classification. Neither does it say or imply that voters are to be treated differently on account of their race. The purpose of the Act—resolving financial emergencies within local units of government—encompasses any local unit of government in financial distress, regardless of the racial makeup of its population. As a result, P.A. 436 is facially neutral.

"Where facially neutral legislation is challenged on the grounds that it discriminates on the basis of race, the enactment will be [analyzed under] strict scrutiny only if the plaintiff can prove that it 'was motivated by a racial purpose or object,' or 'is unexplainable on grounds other than race.'" *Moore v. Detroit School Reform Bd*, 293 F.3d 352, 369 (6th Cir. 2002) (internal quotation marks and citations omitted). So "[p]roving that a law has a racially disparate impact, without more, is [] insufficient to establish a violation of either the Fourteenth or the Fifteenth Amendment." *Id.* at 369, citing *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 264–65 (1977) (rejecting disproportionate impact as constitutionally infirm).

The Supreme Court has identified five factors relevant to determining whether facially neutral state action was motivated by a racially discriminatory purpose: (1) the impact on particular racial groups, (2) the historical background of the challenged decision, especially if it reveals numerous actions being taken for discriminatory purposes, (3) the sequence of events that

preceded the action, (4) procedural or substantive departures from the government's normal procedural process, and (5) the legislative or administrative history. *Village of Arlington Heights*, 429 U.S. at 266–68; see also *Moore*, 293 F.3d at 369-370 (addressing these factors in a challenge against Michigan School Reform Act and finding no equal protection violation). To the extent Plaintiffs' allegations even plead these factors, none of the allegations reveal a racially discriminatory purpose on the part of the Michigan Legislature or the Governor in enacting and signing P.A. 436. As a result, Plaintiffs fail to state a claim under a racial discrimination theory.

C. P.A. 436 does not discriminate based on wealth.

In Count 6, Plaintiffs allege that P.A. 436 violates equal-protection principles by discriminating based on wealth. They assert that "[u]nder Public Act 436, all stated criteria for appointing an EM are based on a community's wealth and by extension, the wealth of the persons who reside within a community." (R. 1, Compl., ¶ 181, ID#36.) They further allege that P.A. 436 has been implemented "in various municipalities with disproportionately high poverty rates." (*Id.*, ¶ 184, ID# 37.) Plaintiffs thus conclude that P.A. 436 violates equal protection "through provisions of the statute that unduly revoke citizen's right to vote for local officials based on the wealth of their community and themselves . . . ." (*Id.*, ¶ 183, ID# 37.)

Once again, these claims fail because Plaintiffs have failed to allege or show they have been disparately treated compared to communities or residents that are similarly situated with respect to wealth (or poverty). *TriHealth, Inc.*, 430 F.3d at 790. And P.A. 436 does not discriminate against local units of government, let alone their residents, based on wealth (or poverty). It is the overall financial condition and prognosis of a local unit of government that will subject it to review and the possible appointment of an emergency manager under P.A. 436, not its wealth or lack thereof. For example, a "wealthy" community whose financial books are in order would not be subject to review under P.A. 436, but neither would a "poor" community

whose books are also in good order. P.A. 436 is directed at rectifying financial mismanagement, which can occur in local units of government of any size and any degree of wealth.

In any event, P.A. 436 does not unconstitutionally burden the right to vote. Thus, no fundamental right is at issue. Moreover, wealth-based classifications do not discriminate against a suspect class. *Jonson v. Bredesen*, 624 F.3d 742, 746 (6th Cir. 2010) (citing *Papasan v. Allain*, 478 U.S. 265, 283-84 (1986)). So P.A. 436 is subject to rational basis review, if any review applies at all. *Bredesen*, 624 F.3d at 746. To survive rational basis scrutiny, P.A. 436 need only be "rationally related to legitimate government interests[,]" *Doe v. Mich. Dep't of State Police*, 490 F.3d 491, 501 (6th Cir. 2007) (internal quotation marks and citation omitted), and "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'ns, Inc*., 508 U.S. 307, 313 (1993). "When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985) (internal citation omitted).

Michigan has a legitimate government interest in preventing or rectifying the insolvency of its political subdivisions. The insolvency of a local unit of government threatens the health, safety, and welfare of its residents. Mich. Comp. Laws §141.1543. It also threatens the interests of the citizens of this State as a whole because it is detrimental to the State's overall economic condition and credit rating. *Id.* P.A. 436 thus survives rational basis review.

D. P.A. 436 does not discriminate against local units of government with emergency managers appointed under P.A. 72 or P.A. 4.

In Count 11, Plaintiffs assert that P.A. 436 "discriminates against cities and school districts where EFMs and EM[s] have been and are currently in place," because those

communities will not benefit from a provision in P.A. 436 that permits local units of government to vote to remove emergency managers after 18 months. (R. 1, Compl., ¶¶ 240-242, ID## 48.) "The law discriminates against these municipalities requiring them to suffer an additional 18 months with an EM despite their having had such officials in place much longer than this time period." (*Id.*, ¶ 242, ID# 48.)

The provision Plaintiffs refer to is Mich. Comp. Laws §141.1549(6)(c), which allows the emergency manager, by resolution, to be removed by a 2/3 vote of the governing body of the local government, and if the local unit has a strong mayor, with strong mayoral approval. Neither P.A. 72 nor P.A. 4 had such a provision. But P.A. 436, Mich. Comp. Laws §141.1549(10), provides that appointed emergency managers "shall be considered an emergency manager under this act [P.A. 436] and shall continue under this act to fulfill his or her powers and duties." Thus, beginning March 28, 2013, P.A. 436's effective date, all local units of government currently under the administration of an emergency manager are eligible to use this provision at the expiration of 18 months.

Plaintiffs argue that because their affected local units of government have already been under the administration of an emergency manager longer than 18 months, it is discriminatory to make these communities wait the additional 18 months to take advantage of this section. But again, as stated above, to prove an equal-protection claim Plaintiffs must demonstrate that they are being treated disparately as compared to similarly situated persons. *Ctr. for Bio–Ethical Reform, Inc.*, 648 F.3d at 379. Plaintiffs have not alleged or shown that they are similarly situated to persons in local units of government with emergency managers newly appointed under the P.A. 436 process. Moreover, there is no fundamental right involved, and Plaintiffs do

not allege discrimination against a suspect class. Again, the rational-basis standard applies to any review of this particular provision of P.A. 436. *Bredesen*, 624 F.3d at 746.

The rational-basis standard is met. The Legislature had a legitimate government interest in both setting a potential 18-month endpoint to a local unit of government's administration by an emergency manager and in not making this option immediately available to communities who have had emergency managers longer than 18 months. This is because neither P.A. 72 nor P.A. 4 had a similar time limit, and the financial plans put in place by these pre-existing emergency managers were not likely designed to resolve a financial crisis within 18 months. Thus, subjecting existing local units of government to the additional 18 months allows their emergency managers to modify or amend their plans in light of the new time limitation. Moreover, P.A. 436 expressly provides these local units of government with the interim alternative of petitioning the Governor to remove an emergency manager who has served *less* than 18 months under P.A. 72. Mich. Comp. Laws §141.1549(11). P.A. 436 survives rational basis review, and Plaintiffs have failed to state a claim for relief.

IV. P.A. 436 does not violate the Voting Rights Act (Count 7).

Count 7, an alleged violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, also fails to state a claim upon which relief may be granted. To state a claim for violation of Section 2, a minority group must demonstrate what are commonly referred to as the "*Gingles* factors": (1) "that it is sufficiently large and geographically compact to constitute a majority in a single-member district;" (compactness); (2) "that it is politically cohesive" (cohesiveness); and (3) that "the white majority votes sufficiently as a bloc to enable it – in the absence of special circumstances, such as the minority candidate running unopposed – usually to defeat the minority's preferred candidate" (white-bloc voting). *Mallory v. Ohio*, 173 F.3d 377, 381-382 (6th Cir. 1999) (internal citations omitted).

First, Plaintiffs' claims should be dismissed because they have not alleged that they constitute a "minority group" capable of bringing a Section 2 claim. *Id*. Second, Plaintiffs' vote-dilution claim—predicated on the purported "statewide participation of the electorate" in their local governance—does not implicate any of the *Gingles* factors. (R. 1, Compl., ¶ 193, ID# 39.) Indeed, their Complaint is devoid of *any* allegations related to compactness, cohesiveness, or white-bloc voting. Instead, it focuses exclusively on their disagreement with Defendants' policy choice in enacting P.A. 436. Yet, the Sixth Circuit has specifically recognized that regardless of the mechanism alleged to cause vote dilution, the *Gingles* factors *must* be satisfied *Mallory*, 173 F.3d at 386. Accordingly, this Court should dismiss Count 7.

V. P.A. 436 does not violate the First Amendment rights of free speech and petition (Count 8).

Count 8 is brought only by individual Plaintiffs, not by Council 25. (R. 1, Compl., ¶¶ 202-203, ID# 41.) The bases for this claim is that P.A. 436 strips the local officials of all authority, mirrors P.A. 4, which was rejected by voter referendum, and improperly vests P.A. 436 powers in previously appointed emergency financial managers. (*Id.* at ¶ 206-207, ID# 42.)[2]

These claims fail for two reasons. First, P.A. 436 neither abridges Plaintiffs' speech nor prohibits them from petitioning their government for the redress of grievances. They can still vote and continue to voice their concerns to their elected officials. Second, even if this Court were to determine that an emergency manager abridges these First Amendment rights, the Act is still constitutional because the abridgement is content-neutral and justified by the financial exigencies of the local governments to which it is applicable.

[2] Plaintiffs frame their First Amendment claim in part based on "speech on matters of public concern." But the "public concern" balancing test set out by the United States Supreme Court in *Pickering v. Board of Education,* 391 U.S. 563 (1968), is applicable where an public employee is being disciplined, or subjected to an adverse employment decision, for his or her speech or associations. See *Piscottano v. Town of Somers*, 396 F. Supp. 2d 187, 200 (D. Conn., 2005) (citation omitted).

A. P.A. 436 does not abridge speech or prohibit Plaintiffs from petitioning the Government.

The First Amendment provides in part that "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people . . . to petition the Government for a redress of grievances." U.S. Const., amend. I. Freedom of speech, though a fundamental right, is not absolute. *Konigsberg v State Bar of California*, 366 U.S. 36, 49 (1961). The right to petition and the right to free speech are separate guarantees, yet they are related and generally subject to the same constitutional analysis. *Thaddeus-X v. Blatter*, 175 F.3d 378, 390 (6th Cir. 1999)

A threshold issue in any First Amendment analysis is whether there has been an abridgement of First Amendment rights. Here, for four reasons, Plaintiffs' claims fail at the onset because there is no abridgement of free speech or petition rights.

1. P.A. 436 gives local officials both voice and choice.

An emergency manager is not simply thrust on local elected officials. Even before a preliminary review is conducted, the local governmental unit is notified and has an opportunity to provide comments to the state financial authority. Mich. Comp. Laws § 141.1544(2). Once the local unit is under review, it then has an opportunity to provide information concerning its financial condition. *Id*. at § 1545(2). If after review it is determined that a financial emergency exists, the local unit may appeal this determination. *Id.* at § 1546(3). Once the financial emergency is confirmed, the local government has options, including a consent agreement, an emergency manager, a neutral evaluation process option, or bankruptcy. *Id*. at § 1547(1)(a)-(d). Thus, an emergency manager is but one of the choices available to a local unit. Additionally, the process is only an interim one: an emergency manager may, by resolution, be removed after 18 months, or earlier if financial conditions are corrected. *Id.* at § 1549(6)(c), (7), (11).

2. Plaintiffs have no constitutional right to local self-government and an emergency manager is accountable to the State's elected officials.

"'Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to *meet changing urban conditions*.'" *Holt Civil Club v. City of Tuscaloosa*, 439 U.S. 60, 74-75 (1978) (quoting *Sailors*, 387 U.S. at 110-111 (emphasis added)). Moreover, "[m]unicipal corporations are political subdivisions of the [s]tate, created as convenient agencies for exercising such of the governmental powers of the [s]tate as may be entrusted to them. . . . The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the [s]tate." *Hunter*, 207 U.S. at, 178-179 (1907).

Accordingly, a state may take action including destroying the municipal corporation entirely, "conditionally or unconditionally, with or without the consent of the citizens, or even against their protest," and may do so "unrestrained by any provision of the Constitution of the United States." *Id.* Thus, the U.S. Supreme Court in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907), upheld an act authorizing city consolidation and providing for temporary government and payment of the consolidated city's debts.

Although the Supreme Court has placed limitations on this expansive power—none of which apply here[3]—*Hunter* remains good law. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47 (1994) (citing *Hunter* and affirming that "ultimate control of every state-created

[3] Neither states nor their political subdivisions may draw boundaries that discriminate on an invidious basis, such as race or sex. *See Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960) Also, equal protection prohibits states from restricting or diluting votes in violation of the "one person, one vote" principle announced in *Reynolds v. Sims*, 377 U.S. 533 (1964), and extended to local governments in *Avery v. Midland County*, 390 U.S. 474 (1968). Too, unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government. *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621, 626 (1969). But, as argued above, Plaintiffs have no valid equal protection or Voting Rights Act claims.

entity resides with the State ... [and p]olitical subdivisions exist solely at the whim and behest of their State") (internal quotation marks omitted); *Kelley v. Metropolitan County Bd. of Educ. of Nashville & Davidson County, Tenn.*, 836 F.2d 986, 994 (6th Cir. 1987).

Moreover, a State's broad authority does not leave citizens without a voice or petition rights in local government affairs. In *Holt Civil Club v. City of Tuscaloosa*, 439 U.S. at 73-74, a case upholding Alabama's decision to allow cities to exercise extraterritorial jurisdiction over nearby settlements, the Court recognized that it did not "sit to determine whether Alabama has chosen the soundest or most practical form of internal government possible." Instead, the "[a]uthority to make those judgments resides in the state legislature, and Alabama citizens are *free to urge their proposals to that body*." *Id*. (emphasis added, citation omitted).

The same is true here. As was true in *Holt Civil Club*, it is not for this Court to second-guess whether P.A. 436 is the most practical solution. And as in *Holt Civic Club*, Michigan must continue to respond to evolving economic challenges and in doing so has broad authority over local units of government. Plaintiffs are free to urge their proposals to their state elected officials—even where an emergency manager has temporarily limited the powers of their local officials. And they *still* get to vote, *still* get to voice their views about how local government is run, and *still* can seek to replace officials with whom they are dissatisfied.

Significantly too, while the local unit of government is in receivership, emergency managers are accountable to the State's *elected* officials—who, in turn, are accountable to Plaintiffs and other voters. At the six-month mark and each three months thereafter, the emergency manager must submit an accounting of expenditures, contracts, loans, new or eliminated positions, and his or her financial and operating plan to the Governor, the state treasurer, various legislative representatives of the local government, and the clerk of the local

government. Mich. Comp Laws § 141.1557 (a)-(h). The Governor ultimately determines whether the financial emergency has been rectified, *id*. at § 1562(2), and has the power to appoint a new emergency manager, *id*.. at § 141.1564.

In sum, how local government is organized is up to the State. And the way to change state law is through the political process, not the courts.

3. The Petition Clause does not guarantee a particular result.

The Petition Clause guarantees only that an individual may "speak freely and petition openly" and that he will be free from retaliation by the government for doing so. *Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463, 464–65 (1979) (per curiam). But it does not guarantee that the government will listen or respond, or that a particular petition will be effective. *Id*. (holding that the state's highway commission did not violate unions' First Amendment petition rights merely because it ignored the union, which it was free to do); *Canfora v. Old*, 562 F.2d 363, 363 (6th Cir. 1977) ("[N]either in the First Amendment [or] elsewhere in the Constitution is there a provision guaranteeing that all petitions for the redress of grievances will meet with success).

Here, Plaintiffs may exercise their petition rights by informing their state elected officials—and even their local officials during the receivership under P.A. 436—of their desires with respect to the passage or enforcement of laws such as P.A. 436. But they cannot control the outcome, and that is really the essence of their claim. If they are unhappy with the outcome of their previous attempts to petition the government, their remedy for a law they dislike is at the polls. *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271, 285 (1984) (explaining that disagreement with public policy and disapproval of officials' responsiveness is to be registered principally at the polls).

4. Rejection of P.A. 4 is not an abridgement of speech or petition and P.A. 436 is not the mirror image of P.A. 4.

Voters exercised their speech and petition rights when they rejected P.A. 4. They also exercised their speech and petition rights when their elected officials enacted P.A. 436. P.A. 436 is not a reenactment of P.A. 4.[4] It replaces P.A. 72, which was in effect at the time. And the Legislature determined that P.A. 436 was necessary to ensure local fiscal stability.

This is the political process at work. Plaintiffs may exercise their speech and petition rights to express their discontent with current elected officials and/or elect new state officials. The Legislature's decision to vest formerly appointed emergency financial managers with P.A. 436 powers represents this same political process. If Plaintiffs are unhappy with the result of the political process, they can attempt to have their current elected state officials hear and respond to them, or they can seek to elect new officials—again, all part of the political process.

B. P.A. 436 is also justified by local financial emergencies.

As courts have recognized, there are free speech compromises that are not unconstitutional. E.g., *Burson v. Freeman*, 504 U.S. 191 (1992) (upholding a law prohibiting display or distribution of campaign materials within 100 feet of a polling place); *Hill v. Colorado*, 530 U.S. 703, 725 (2000) (upholding a statute making it a misdemeanor to pass out material or counsel within 8 feet of a person entering or leaving a health care facility in order to pass out material or counsel). That is why courts routinely uphold all manner of restrictions on petitioning, including registration and disclosure requirements for lobbyists, *United States v. Harriss*, 347 U.S. 612, 625 (1954); limiting access to the courts, *Swekel v. City of River Rouge*,

[4] However, even if P.A. 436 was a mirror image of P.A. 4, there is no legal prohibition to the Michigan Legislature re-enacting a law identical or similar to one disapproved by referendum. See, e.g. *Reynolds v. Bureau of State Lottery*, 240 Mich. App. 84; 610 N.W.2d 597 (2000).

119 F.3d 1259, 1263 (6th Cir. 1997); and subjecting petitioning to neutral time, place and manner restrictions consistent with public safety and order, *Buckley v. Valeo*, 424 U.S. 1 (1976).

A free speech violation occurs only when the restricted speech is constitutionally protected and when the government's justification for the restriction is insufficient. *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). The test for whether a state actor violated a plaintiff's First Amendment right to free speech is: (1) whether plaintiff's speech is protected by the First Amendment; (2) the nature of the forum: public, designated or limited public, or nonpublic; and (3) whether the defendant's justifications for limiting the plaintiff's speech satisfy the requisite standard. *Cornelius v. NAACP Legal Defense & Educ. Fund*, 473 U.S. 788, 797 (1985).

Here, the requisite standard is intermediate scrutiny because P.A. 436 (if it abridges speech at all) is content-neutral. See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (quotation omitted) ("[T]he government may impose reasonable [content-neutral] restrictions on the time, place, or manner of protected speech, provided the restrictions: (1) 'serve a significant governmental interest;' (2) 'are narrowly tailored;' and (3) 'leave open ample alternative channels for communication of the information.'"). There is no indication that P.A. 436 was intended to suppress any ideas or that it has had that effect.

P.A. 436 satisfies intermediate scrutiny. The State has a significant and compelling interest in addressing the financial distress of local units of government. And the Act does not abridge more speech or petition rights than necessary to address that distress. It gives local elected officials options in solving its difficulties, and if locals choose an emergency manager, provides narrowly tailored procedures for the manager's removal. Again, Plaintiffs have ample channels to voice their concerns to their state elected officials. Moreover, the financial exigencies of the local units of government that are subject to the Act justify any temporary

abridgment of speech or petition rights. Indeed, governments exercise emergency powers that allow them to temporarily suspend constitutional rights.

These emergencies are often economic. As early as 1934, the Supreme Court addressed an economic emergency in *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 435 (1934), and upheld Minnesota's mortgage moratorium law in response to the Great Depression. The Court noted, "[The] principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court." *Id.* "When major emergencies strike, the 'law of necessity' is the one rule that trumps all the others." William H. Rehnquist, "All the Laws But One: Civil Liberties in Wartime" (1998).

In sum, P.A. 436 does not abridge First Amendment free-speech or petition rights, and any alleged abridgement cannot be unconstitutional. This claim fails as a matter of law.

VI. The appointment of Detroit's emergency manager does not violate the right to petition (Count 9).

Count 9 is brought by Council 25, its representative and its negotiator, and alleges abridgment of the First Amendment petition right. (R. 1, Compl., ¶ 212, 214, ID# 43.) The basis for this claim is the appointment of the City of Detroit's Emergency Manger, Kevyn Orr, formerly the City's Emergency Financial Manager under P.A. 72. (*Id.*, ¶ 220, ID# 44-45.) Plaintiffs allege that P.A. 436 allows the Governor and Treasurer to use their powers over local government for their own political and economic benefit. (*Id.*, ¶ 220(f), ID# 44-45.)

For the same reasons Count 8 fails, Count 9 fails as well. Plaintiffs have not lost the right to petition their elected state officials or even their Detroit elected officials. They simply do not have the constitutional right to a particular result.

As to the allegations that P.A. 436 provides the opportunity for Defendants to benefit privately, politically, and economically, they are wholly conclusory. The Act provides numerous

safeguards against any overreaching of power. See, e.g., Mich. Comp. Laws §§ 141.1552(1)(k) & (u) (safeguards as to collective bargaining agreements and borrowing money), 1552(4) (safeguards for selling or transferring public utilities), 1555(1) (safeguards for selling of assets), and 1559(1) (safeguards for proposed contracts, sales, and leases). Count 9 should be dismissed for failure to state a claim.

VII. P.A. 436 does not violate the Thirteenth Amendment (Count 10).

In Count 10, Plaintiffs claim that their Thirteenth Amendment rights have been violated because the communities impacted by the appointment of an emergency manager consist mostly of African-American residents. This claim should be rejected.

The Thirteenth Amendment bars slavery and involuntary servitude and gives Congress the power to impose legislation that prohibits such actions. U.S. Const. amend. XIII. As an initial matter, this claim offers no greater protection than Plaintiffs' equal-protection claim and should therefore be dismissed as redundant. See *Johnson v. Harron*, 1995 WL 319943 at 6 (N.D.NY., May 23, 1995) ("[I]n the realm of equal protection, the Thirteenth Amendment offers no protection not already provided under the Fourteenth Amendment.")

In any event, there is no violation of the Thirteenth Amendment and no legislation enacted by Congress pursuant to the Thirteenth Amendment. The official actions challenged in this case all emanate from the impact of legislation to fix financially troubled local units of government. P.A. 436 does not benefit white citizens within these communities in a way that it does not benefit black citizens. Nor does P.A. 436 "place[] a burden on black citizens as an unconstitutional 'badge of slavery.'" *City of Memphis v. N.T. Green*, 451 U.S. 100, 124 (1981). Quite the opposite, P.A. 436's purpose is to benefit all Michigan citizens, of every race and ethnicity. Count 10 should be dismissed for failure to state a claim.

CONCLUSION

For the reasons set forth above, Plaintiffs have failed to state claims upon which relief may be granted, and the Complaint should be dismissed in its entirety, with prejudice.

Respectfully submitted,

BILL SCHUETTE
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Dated: May 15, 2013

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such.

s/Denise C. Barton
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EXHIBIT B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, MICHIGAN,	.	Docket No. 13-53846
	.	Detroit, Michigan
	.	July 24, 2013
Debtor.	.	10:02 a.m.
. . . . .		

HEARING RE. 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 (DOCKET #53) AND 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 (DOCKET #56)
BEFORE THE HONORABLE STEVEN W. RHODES
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Jones Day By: HEATHER LENNOX North Point 901 Lakeside Avenue Cleveland, OH 44114-1190 (216) 586-3939
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For Syncora Guarantee and Syncora Capital Assurance:	Kirkland & Ellis, LLP By: RYAN BENNETT 300 North LaSalle Chicago, IL 60654 (312) 862-2074
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For the Flowers Plaintiffs:	Law Offices of William A. Wertheimer By: WILLIAM WERTHEIMER 30515 Timberbrook Lane Bingham Farms, MI 48025 (248) 644-9200
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For the State of Michigan:	Michigan Department of Attorney General By: MATTHEW SCHNEIDER 525 West Ottawa Street, Fl. 7 P.O. Box 30212 Lansing, MI 48909 (517) 241-8403
For the Webster Plaintiffs:	McKnight, McClow, Canzano, Smith & Radtke, PC By: JOHN R. CANZANO 400 Galleria Officentre, Suite 117 Southfield, MI 48034 (248) 354-9650

THE COURT: All right. So I will allow 15 minutes for each of the creditors that have filed objections. These are the Michigan Council 25 of AFSCME, Syncora, the UAW together with Creditors Robbie Flowers, Michael Wells, Janet Whitson, Mary Washington, and Bruce Goldman, the Detroit public safety unions, if I can refer them -- refer to them by that, and the General Retirement System of the City of Detroit and the Police and Fire Retirement System of the city. It doesn't matter to me, counsel, the order in which you proceed, so I will leave that to you to work out.

MS. LEVINE: I'm going to go with alphabetical.

THE COURT: Okay.

MS. LEVINE: Good morning, your Honor. Sharon Levine, Lowenstein Sandler, for Michigan Council 25 of the American Federation of State, County, and Municipal Employees or AFSCME, as it's been referred to here today.

Your Honor, very briefly, it's clear that your Honor has read all the papers, and we very much appreciate that given the short time frame that we've been before this Court. Bankruptcy Code Section 105 is extraordinary relief, extraordinary in that it's only used to enforce rights that already exist under the Bankruptcy Code, so it's not there to create new rights that don't currently exist under the Code. What we have here in a Chapter 9 case, which is more restrictive than, for example, a Chapter 11 case, is the

situation where if, in fact, the state has not properly authorized the Chapter 9 filing, there are rights that don't exist under the Bankruptcy Code. If Chapter 9, as has historically been seen through the unconstitutional finding of predecessors to Chapter 9, is really being used here to avoid state constitutional rights, then Chapter 9 in and of itself is potentially unconstitutional. If not, it has to be construed narrowly in order to read it constitutionally. We would respectfully submit that using 105 to find rights that don't otherwise exist, particularly of a constitutional nature, is an extremely broad use of 105. This isn't a situation where we're saying to the controller or the governor or Mr. Orr, you know, don't respond to discovery requests in a state court action in a foreign jurisdiction because we need your attention here. We're taking away very fundamental constitutional rights.

Secondly, your Honor, if, in fact --

THE COURT: So your argument about the narrow application of Section 105 in this case is really a result of the fact that it's a Chapter 9.

MS. LEVINE: Yes, your Honor.

THE COURT: It's not an argument that's based on Section 105, per se.

MS. LEVINE: Yes, your Honor. In a Chapter 11 you'll have circumstances, for example, where even in the

broader case of a Chapter 11, you won't use Article -- you won't use Section 105 to grant a casino license or a liquor license or tell a utility board they can't change rates, but we have an even narrower situation here because we're in Chapter 9.

Two, Chapter 9 can't be used if, in fact, the state has not authorized under its constitution and its laws the Chapter 9 filing. The Chapter 9 filing here is arguably flawed because it intends to go after the pensions. If it goes after the pensions, it arguably violates the state constitution and can't be before this Court, so, again, the issue with regard to whether or not we have an appropriate state constitutional flaw -- sorry. The issue with regard to whether or not we have an appropriate filing is necessarily limited by whether or not we have an appropriate state -- we have an inappropriate state constitutional authorization. If we have an inappropriate state constitutional authorization, that is not simply an implementation tool under 105. That is, in essence, a substantive right that's being creative -- created under 105 that does not exist in the state court.

In addition to that, your Honor, and also importantly, three, individual citizens of the City of Detroit have the absolute right to protect their own constitutional rights. If we say to them they can't go to the state courts that are there for the protection of their

constitutional rights in part, then we are -- then we're using 105 again way more broadly than it gets used in the ordinary course as simply an implementation tool. We're creating more substantive rights. And while this Court has --

THE COURT: Well, but why isn't the extended stay that the city seeks here simply a procedural mechanism to funnel such challenges to the Bankruptcy Court and, therefore, does not have the effect of denying citizens or other creditors of their rights to have their constitutional claims heard?

MS. LEVINE: Your Honor, if this Court is a court of secondary jurisdiction, no disrespect, with -- but if you look at federalism, comity, abstention, and the state courts are the courts of primary jurisdiction, we would respectfully submit that unlike, for example, determining in a Chapter 11 case that there's a validly perfected security interest because you've looked at state law and the UCC is properly filed, we have a very fundamental right here that this Court is being asked to address, so what we're saying is instead of going to the court that's primarily responsible, we're going to come into this Court instead, and it's not as if there's delay or uncertainty with regard to the fact that those matters are going to get heard and considered quickly. We already have state court litigation pending, and the state

appellate courts are poised and ready to rule, so there's no reason to divest them of that appropriate jurisdiction under concepts of federalism, comity, and abstention and move that here to a court of secondary jurisdiction on those issues.

Your Honor, fourth, with regard to the form over substance, the procedural arguments with regard to 105, in certain circumstances where 105 is being used for things like stopping discovery or minimal things like that, that's one set, but the Federal Rules of Civil Procedure are put in place in order to protect parties and provide due process. There can't be a more fundamental situation where you need to enforce those types of rights than when you're dealing with basic fundamental constitutional rights, and we respectfully submit that even though there are circumstances where expediency mandates the use of 105 quickly, this is not one of those circumstances.

Your Honor, the breathing spell under 105 -- the breathing spell under the Bankruptcy Code and the use of 105 to extend the breathing spell is only appropriate if, in fact, the underlying bankruptcy is an appropriate bankruptcy. The idea that there's a breathing spell to continue what is potentially an unconstitutional or illegal -- not intentionally, no motive or anything, your Honor, but -- proceeding is clearly not anything that 105 was designed to implement.

Your Honor, we would respectfully submit that these are very, very fundamental rights, and unlike a Chapter 11 case where you have a defined benefit plan where if, in fact, it is terminated, there's federal insurance under the PBGC up to $57,000, or if you have a multi-employer plan, even if an employer withdraws, the beneficiaries themselves are protected, here our members who participate at most are at or below $19,000 a year. Clearly there's no safety net. These issues are hard issues. The collateral advantage to sending this back to the state court for an appropriate decision is that the conversations which we believe should have been happening more robustly before the filing could happen now. We respectfully -- we thank your Honor for the time, and we appreciate your Honor's consideration.

THE COURT: Thank you. Sir.

MR. BENNETT: Good morning, your Honor. Ryan Bennett of Kirkland & Ellis on behalf of Syncora Guarantee and Syncora Capital Assurance. Your Honor, as we attempted to describe in our papers, my client insures, in some cases owns certain securities called the certificates of participation, which were taken out in 2006 to fund some of the city's pension liabilities. We also insure a swap -- four swaps related to those securities that are tied to the interest rate, the floating interest rate associated with them.

THE COURT: Um-hmm.

MR. BRENT: However, this is the city's option. This isn't a requirement of law that they indemnify these --

THE COURT: Um-hmm.

MR. BRENT: -- just as -- my lawsuit is also against various state actors within the State of Michigan, which -- but, again, their wanting to extend this to them would prevent me from litigating my claims against the state officials that have already been denied immunity, and it is currently pending. Those portions they've appealed to the Circuit Court. So now that they're trying to extend this stay, now the Sixth Circuit Court of Appeals case of Brent versus Wayne County, et al. will be stayed as well where the different state defendants -- state employees have uphill decision to deny their qualified and absolute immunity.

THE COURT: The defendants in your particular suit are both city employees and other defendants are state employees?

MR. BRENT: Yes, and there's also state contractors involved in the lawsuit.

THE COURT: Contractors also. Thank you, sir. Would anyone else like to be heard?

MR. SANDERS: Good morning, your Honor. My name is Herb Sanders, and I represent the plaintiffs in the case of Phillips versus Snyder pending before this Court, Case Number

2:13-CV-11370, before Judge Steeh. That is a case that challenges the constitutionality of PA 436. Motions for summary -- for at least one summary disposition or summary judgment argument have been scheduled. As I initially read the request for stay extension motion filed by the city, it appeared that the city was seeking an extension of stay concerning financial matters that were being litigated, but pursuant to the oral presentation of the city's attorney, it concerns me when she has indicated -- and I paraphrase -- that she seeks relief concerning any litigation that might interfere with the city's rights as a Chapter 9 debtor. And I would suggest to the Court to the extent that it might be proposed or suggested that the litigation which I have referenced in which the constitutionality of PA 436 is to be determined by another judge in this court interferes with the rights of the city as a Chapter 9 debtor, that that case not be included as part of the stay order that this Court would issue. I believe it's imperative to this community, to this state that those issues be determined and, in fact, should probably be determined before the bankruptcy proceeds, but I would encourage the Court to not give a broad order if any order were to issue that would be inclusive of matters that are not financial matters such as there are other matters that I know that the union, AFSCME, and others are a part of seeking FOIA requests from the city, injunctive relief as it

relates to these types of matters, and I would ask the Court to consider not giving such a broad order --

THE COURT: Um-hmm.

MR. SANDERS: -- that that type of information could not be obtained and we could not have a determination as to the constitutionality of PA 436 by this Court.

THE COURT: Um-hmm.

MR. SANDERS: Thank you, your Honor.

THE COURT: Thank you. Sir, can you just give me your name again, please?

MR. SANDERS: Herb Sanders.

THE COURT: Mr. Sanders. Thank you, sir.

MR. SCHNEIDER: May it please the Court, Matthew Schneider, chief legal counsel to the Attorney General. I'm here on behalf of the State of Michigan. Your Honor, I'm here for a very, very limited purpose. As counsel to the debtor has indicated, they are not seeking to abrogate the exceptions in Section 362(b), and I know that this is a motion regarding Section 362, so our position is is that if the Court is, indeed, inclined to grant the motion regarding the stay, that the Court's order reflect that nothing in the Court -- nothing what the Court is doing will actually abrogate the exceptions afforded under 362(b).

THE COURT: Is there a specific exception you're concerned about?

EXHIBIT C

IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

DEBTOR'S BRIEF IN OPPOSITION TO PETITION FOR ORDER LIFTING STAY[1]

Six weeks after the Emergency Manager's appointment became effective, the Plaintiffs filed the Lawsuit seeking a judgment declaring not only the Emergency Manager's appointment to be invalid, but all actions he has taken, including the filing of this chapter 9 case, to be unenforceable. Yet, the Plaintiffs somehow assert that granting them relief from stay to prosecute this Lawsuit to judgment will have "no effect whatsoever on the City's ability to reorganize" because it is "completely unrelated" to the chapter 9 case. Stay Relief Brief at 3, 8. This is not accurate nor is the timing of the Lawsuit's filing a coincidence. The Stay Relief Motion is nothing more than a thinly veiled attempt to litigate the

[1] Capitalized terms not defined in this Brief in Opposition, have the meanings given to them in the City's Objection to Petition for Order Lifting Stay, filed contemporaneously with this brief.

City's eligibility before a different court in circumvention of the Court's Stay Extension Order and the process this Court adopted to resolve eligibility objections. The Plaintiffs have not identified any cause, much less sufficient cause, to allow them to proceed with the Lawsuit. Accordingly, the Stay Relief Motion must be denied.

ARGUMENT

In support of the Stay Relief Motion, the Plaintiffs advance three arguments: (1) the Stay Extension Order does not apply to the Lawsuit, either because it did not specifically identify the Lawsuit or because it cannot be read so broadly as to include the Lawsuit; (2) the Court did not have the authority to enter the Stay Extension Order; (3) the Plaintiffs have demonstrated cause for relief from the Automatic Stay. None of these arguments have any merit.

I. The Stay Extension Order Applies to the Lawsuit

The Plaintiffs misunderstand or misconstrue the relief granted in the Stay Extension Order. The Lawsuit is precisely the type of case that the Stay Extension Order was intended to cover and, contrary to the Plaintiffs' assertions, it does not provide the Defendants "complete immunity from all litigation." Stay Relief Brief at 9.

The Plaintiffs devote much of the Stay Relief Motion in a misguided attempt to argue that only a limited set of actions within the definition of "Prepetition

Lawsuits" are covered by the Stay Extension Order. The Plaintiffs reason that, because the Lawsuit is not covered by the definition of "Prepetition Lawsuits," that case is not subject to the Stay Extension Order. Stay Relief Brief at 8.

The Plaintiffs quote only paragraph 3 of the Stay Extension Order which states: "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." This statement clarifies that a small group of three "Prepetition Lawsuits" are included in the relief granted and therefore are stayed. But nowhere does this statement limit the scope of the relief sought or obtained so that it would apply only to these three Prepetition Lawsuits.

The primary relief is granted in the prior paragraphs of the Stay Extension Order. Paragraph 1 states, without reservation or limitation of any kind, that the Stay Extension Motion is "granted." Paragraph 2 of the Stay Extension Order then states broadly that:

> Pursuant to section 105(a) of the Bankruptcy Code, the Chapter 9 stay hereby is extended 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-Office Employees and the City Agents and Representatives.

As such, the Stay Extension Order makes clear that the Automatic Stay was extended to the Governor and Treasurer to stay any and all cases that "have the

direct or practical effect of denying the City the protections of the" Automatic Stay so as to aid the City in the administration of its bankruptcy case and ensure the City is afforded the breathing spell it needs to focus on developing and negotiating a plan for adjusting its debts. See Stay Extension Motion at ¶ 15. This District Court judge in the Lawsuit agreed, finding, after review of an objection by the Plaintiffs, that "the plain language of the stay order would apply to this lawsuit."[2] Stay Relief Motion, Exhibit A.

If the Lawsuit were to continue, and if the District Court were to grant judgment in favor of the Plaintiffs, it is almost certain that the Plaintiffs (and others) would argue before this Court that the decisions and actions of the Emergency Manager – including the filing and prosecution of this chapter 9 case – are void and of no effect. Reading the prayer for relief in the Amended Complaint is all that is necessary to reach that conclusion. Reduced to its basics, the Lawsuit is yet another vehicle to challenge the City's eligibility for chapter 9 relief or otherwise attempt to interfere with the City's restructuring efforts. Such a result

[2] The Plaintiffs may not re-litigate this issue in this Court. See e.g., Georgia-Pacific Consumer Products LP v. Four-U-Packaging, Inc., 701 F.3d 1093, 1098 (6th Cir. 2012) (holding that issue preclusion precludes relitigation where (1) the precise issue was raised and litigated in the prior proceeding; (2) the determination of the issue was necessary to the outcome of the prior proceedings; (3) the prior proceedings resulted in a final judgment on the merits; and (4) the party against whom estoppel is sought had a full and fair opportunity to litigate the issue in the prior proceeding).

would have the direct and practical effect of denying the City the protections of the Automatic Stay and "interfere with the City's activities in this chapter 9 case" (Stay Extension Motion at ¶ 20) – the precise result that the Stay Extension Order was seeking to avoid. Furthermore, this Court has assiduously and correctly endeavored to consolidate all possible objections to the eligibility of the City to seek chapter 9 relief before it and to avoid the exact result that would be occasioned if stay relief were to be granted to the Plaintiffs to permit an attack on PA 436 and all that implicates. Thus, the Plaintiffs' arguments that either the Stay Extension Order does not apply to the Lawsuit or that it is too broad to be enforced, fail. Stay Relief Brief at 9. Accordingly, as the District Court has already found, the Stay Extension Order applies to the Lawsuit.

II. The Court Had Authority to Enter the Stay Extension Order

The Plaintiffs also argue that the Court did not have the authority to enter the Stay Extension Order. This is nothing more than a collateral attack upon the Stay Extension Order. Similar arguments were timely raised by other parties and rejected by this Court.[3] As the Plaintiffs recognize, a bankruptcy court may

[3] Other parties have raised similar objections to the Stay Extension Motion. See Dkt. No. 84 (the "AFSCME Objection"), ¶ 45-46 (arguing no identity of interests between the City and State Entities); Dkt. No. 141 (the "Retirement Systems Objection"), pp. 16-17 (same, and adding the argument that "[a] judgment obtained in any one of [certain pre-petition lawsuits against the Governor, the Emergency Manager, and others] will not be a judgment against the City. . . ."); see also Dkt. No. 146 (the "Flowers Objection"), ¶ 4 (arguing that "[a]t no point have the

Continued on next page.

extend the automatic stay where "there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor." In re Eagle-Picher Indus., Inc., 963 F.2d 855, 861 (6th Cir. 1992) (quoting A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 999 (4th Cir. 1986)). The Lawsuit seeks a judgment against the Defendants declaring not only the Emergency Manager's appointment to be invalid, but all actions he has taken, including the filing of this chapter 9 case, to be unenforceable. Thus, any judgment against the Defendants would in effect be a judgment or finding against the City. As a result, under well-established Sixth Circuit precedent, this Court had the authority to enter the Stay Extension Motion. The Plaintiff's arguments to the contrary must be rejected.

III. No Cause Exists to Grant Plaintiffs Relief from the Automatic Stay

Section 362(a) of the Bankruptcy Code provides in relevant part that:

> a petition filed under . . . this title . . . operates as a stay, applicable to all entities, of . . . the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the

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Continued from previous page.
Flowers plaintiffs sued . . . or sought any relief against" the City, its officials, or employees). The Debtor addressed these arguments in its reply (Dkt. No. 128, ¶¶ 6-8). The Plaintiffs add nothing to this issue by raising these same arguments again.

> debtor that arose before the commencement of the case . . . .

11 U.S.C. § 362(a). The Automatic Stay "is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions." Javens v. City of Hazel Park (In re Javens), 107 F.3d 359, 363 (6th Cir. 1997) (quoting H.R. REP. NO. 95-595, at 340 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 6296).

Section 362(d) of the Bankruptcy Code authorizes a bankruptcy court to grant relief from the Automatic Stay in limited circumstances. See 11 U.S.C. § 362(d). In particular, section 362(d)(1) of the Bankruptcy Code provides that a party in interest may obtain relief from the Automatic Stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. §362(d)(1).

"The Bankruptcy Code does not define 'cause' as used in [section] 362(d)(1). Therefore, under [section] 362(d), 'courts must determine whether discretionary relief is appropriate on a case by case basis.'" Chrysler LLC v. Plastech Engineered Prods., Inc. (In re Plastech Engineered Prods., Inc.), 382 B.R. 90, 106 (Bankr. E.D. Mich. 2008) (quoting Laguna Assocs. L.P. v. Aetna Casualty & Surety Co. (In re Laguna Assocs. L.P.), 30 F.3d 734, 737 (6th Cir. 1994)). The determination of whether to grant relief from the Automatic Stay "resides within

the sound discretion of the Bankruptcy Court." Sandweiss Law Center, P.C. v. Kozlowski (In re Bunting), No. 12-10472, 2013 WL 153309, at *17 (E.D. Mich. Jan. 15, 2013) (quoting In re Garzoni, 35 F. App'x 179, 181 (6th Cir. 2002)).

> To guide the bankruptcy court's exercise of its discretion . . . the Sixth Circuit identifies five factors for the court to consider: (1) judicial economy; (2) trial readiness; (3) the resolution of the preliminary bankruptcy issues; (4) the creditor's chance of success on the merits; and (5) the cost of defense or other potential burden to the bankruptcy estate and the impact of the litigation on other creditors.

Bunting, 2013 WL 153309, at *17 (quoting Garzoni, 35 F. App'x at 181) (internal quotation marks omitted). In determining whether cause exists, however, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." Plastech, 382 B.R. at 106 (quoting In re C & S Grain Co., 47 F.3d 233, 238 (7th Cir. 1995)).

Here, consideration of the these factors confirms that no cause (much less sufficient cause) exists to justify relief from the Automatic Stay to allow the Lawsuit to proceed. With respect to the first factor, the interests of judicial economy weigh heavily in favor of denying the Stay Relief Motion. Numerous parties have raised similar eligibility issues in this chapter 9 case[4] (the Plaintiffs not being one of them) that the Plaintiffs seek to litigate in the Lawsuit in front of

[4] See e.g., The City's Consolidated Reply to Objection to the Entry of an Order for Relief at 38-44, 89, 95-96, 98. [Dkt. No. 765].

the District Court. As this Court emphasized, litigating eligibility issues in two different courts, simultaneously "does not promote judicial or party efficiency; it is the antithesis. The most efficient way to litigate eligibility in this case is in one court – the bankruptcy court – and then on appeal in the next." Opinion and Order Denying Motion to Stay Proceedings Pending Determination of Motion to Withdraw the Reference at 19. [Dkt. No. 1039]. Accordingly, judicial economy dictates staying the Lawsuit so as to permit this Court to address the PA 436 Eligibility Objections in the single, unified context of the eligibility trial.

With respect to the second factor, the Lawsuit is in its preliminary stages. The Defendants' motion to dismiss remains pending. No discovery has been taken. Thus, the Lawsuit has not even advanced beyond the pleading stage and is not trial ready. The third factor also weighs in favor of denying the Stay Relief Motion as the Court has not even resolved the City's eligibility for relief in this chapter 9 case. Nothing could be more basic or preliminary to the ultimate outcome.

Further, concerning the fourth factor, as set forth in the Defendants' motion to dismiss and in the Defendants' Opposition to the Stay Relief Motion, the Plaintiffs have not demonstrated a likelihood of success on the merits.

Finally, the fifth factor weighs in favor of denying the Stay Relief Motion. Although the City is not currently a party in the Lawsuit, the impact that the

Lawsuit may have on the City and its restructuring efforts may require the City to intervene or otherwise become further involved and take other actions if the Stay Relief Motion is granted. Requiring the City to defend the Lawsuit in the District Court would distract the City from its efforts to restructure, diverting its limited resources at a time when it is both working to negotiate and deliver a plan of adjustment quickly and engaged in a substantial amount of discovery and litigation (all on its own expedited timeframe) arising in the bankruptcy case itself. The City does not need further impediments to its restructuring efforts. This Court has consistently endeavored to bring all matters which may affect the eligibility of the City before it and have the issues resolved in one forum. Allowing the Lawsuit to proceed in the District Court would cast uncertainty[5] over the eligibility and restructuring process and may chill negotiations among the parties or adversely affect the confirmation of the plan of adjustment.

In short, allowing the Lawsuit to proceed would undermine the protections of the Automatic Stay and interfere with the City's efforts to restructure. The City sought relief under chapter 9 in part to obtain the "breathing spell" afforded by the

[5] This Court acknowledged that the uncertainty occasioned just by the eligibility objections already before it will likely slow, if not stall entirely, the "City's progress in recovering its financial, civic, commercial, and cultural life and in revitalizing itself." Opinion and Order Denying Motion to Stay Proceedings Pending Determination of Motion to Withdraw the Reference at 23. [Dkt. No. 1039]. Having the City's eligibility adjudicated simultaneously in two courts obviously compounds that uncertainty.

Automatic Stay and the consequent protection from its creditors while it restructures its affairs and prepares a plan of adjustment. The City's finances would be further depleted and its personnel distracted from their mission to operate the City for the benefit of its citizens and restructure its affairs if it were denied this basic protection of chapter 9 and forced to defend itself against the Plaintiffs so early in the case. Accordingly, the overall goals of chapter 9 weigh largely in favor of denying stay relief to the Plaintiffs.

CONCLUSION

WHEREFORE, for the foregoing reasons, the City respectfully requests that this Court (a) deny the Stay Relief Motion; and (b) grant such other relief to the City as the Court may deem proper.

Dated: September 26, 2013 Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 8

From *In Re City of Detroit*, Case No. 13-53846

8.	12/2/13	1888	Phillips' response to State's motion for reconsideration

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 9
City of Detroit, Michigan,	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

_____/

PETITIONERS' RESPONSE TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536-1) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

NOW COME Petitioners, as Plaintiffs in the United States District Court Eastern District of Michigan Case No. 13-CV-11370, by and through their attorneys, and in response to Respondents Snyder and Dillon's Motion for Reconsideration, respectfully pray that this Honorable Court DENY Respondents' motion for the reasons set forth in the brief attached hereto as Exh. 3.

Dated: December 2, 2013

Respectfully submitted,

/s/Hugh M. Davis

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

In Re:

City of Detroit, Michigan	Chapter 9
	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

_____/

EXHIBIT LIST

Ex. 1 None

Ex. 2 None

Ex. 3 Brief in Support of Petitioners' Response to Respondent's Snyder and Dillon's Motion for Reconsideration of Opinion and Order Denying NAACP's Motion for Relief From Stay and Granting Phillips Motion for Relief From Stay.

Ex. 4 Certificate of Service

Ex. 5 None

Ex. 6.1 Proposed First Amended Complaint

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 9
City of Detroit, Michigan,	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

_____/

EXHIBIT 1 - NONE

TO:

PETITIONERS' RESPONSE TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536-1) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 9
City of Detroit, Michigan,	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes
_____/	

EXHIBIT 2 - NONE

TO:

PETITIONERS' RESPONSE TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536-1) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 9
City of Detroit, Michigan,	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

_____/

EXHIBIT 3 - BRIEF IN SUPPORT OF:

PETITIONERS' RESPONSE TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536-1) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 9
City of Detroit, Michigan,	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

_____/

BRIEF IN OPPOSITION TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

INTRODUCTION

Petitioners (Plaintiffs in *Catherine Phillips, et al. v. Snyder and Dillon*, Case No. 13-CV-11370, filed on March 27, 2013 in the United States District Court for the Eastern District of Michigan (hereinafter, "the *Phillips* case")) filed a Motion for Relief from Stay (Dkt. # 1004), seeking clarification or modification of this Court's Extended Stay Order (Dkt. # 166), offering to voluntarily withdraw several plaintiffs and amend the remaining plaintiffs' complaint by removing Count I. On November 6, 2013, this Court issued an Opinion and Order (Dkt. #1536) ruling that, in light of Petitioners' offer to withdraw those plaintiffs and amend the complaint, the Extended Stay Order did not apply to Petitioners' suit against Governor Snyder and former Treasurer Dillon.

Specifically, this Court stated:

> In contrast to the NAACP case, the *Phillips* case includes residents and officials of not only the City of Detroit but also some of the other municipalities in which

emergency managers have been appointed. Significantly, in the motion for relief from the stay that the plaintiffs in the *Phillips* case filed, they have attempted to overcome the concerns that compelled the conclusion that the NAACP case is subject to the July 25, 2013 order. The Phillips motion states:

> 15. Petitioners also seek to amend their Complaint, (Exh. 6.1, the Phillips case Dkt. #1), to withdraw the plaintiffs Phillips, Valenti and AFSCME Council 25 as plaintiffs from the underlying action and to voluntarily dismiss, without prejudice, Count I of the Complaint, which was asserted by the withdrawing plaintiffs.

(Dkt. #1004) Count I of the complaint, which the plaintiffs propose to withdraw, asserted the plaintiffs' claims in relation to the effect of P.A. 436 in Detroit.

Moreover, the conclusion of the motion reiterates that the plaintiffs intend to "amend their Complaint to provide for the voluntary withdrawal of individual plaintiffs Phillips, Valenti, and AFSCME Council 25 and the voluntary dismissal of Count I of their Complaint, without bearing on the Debtor's rights in this bankruptcy proceeding." (Dkt. #1004, at 15)

By these representations, which the Court accepts, it appears that the plaintiffs in the *Phillips* case intend to withdraw from their suit any request for relief as to the Detroit emergency manager. The Court concludes that this proposed amendment would eliminate the potential that the *Phillips* case might result in the removal of the Detroit emergency manager. Therefore, the potential amendment also removes the *Phillips* case from the effect of the July 25, 2013 order. Accordingly, subject to that condition, the Court concludes that the *Phillips* case is not subject to the July 25, 2103 order.

(Dkt. # 1536 at 8-9)

This Court's determination that the *Phillips* case is not subject to the Extended Stay Order was "conditioned on the Phillips plaintiffs' amendment of their complaint to eliminate their request for the removal of the Detroit emergency manager and for any other relief that diminishes the Detroit emergency manager's authority under P.A. 436." *Id.* at 14.

Based upon the above quoted language of the Court's order, and prior to the Respondents Snyder and Dillon filing their *Motion for Reconsideration* (Dkt. #1745), Petitioners concluded that in addition to the voluntary withdrawal of plaintiffs Phillips, Valenti, and AFSCME Council 25, and the voluntary dismissal of Count I of the Complaint, (Exh.6, *Proposed Amended*

Complaint, attached hereto) they would also voluntarily dismiss Count IX. After re-drafting their proposed Amended Complaint, but prior to the filing of their motion to re-open the case before Hon. Judge Steeh, Respondents Snyder and Dillon filed the instant *Motion for Reconsideration*, (Dkt. #1745). They seek to have this Court reconsider its *Opinion and Order*, (Dkt. #1536), based not upon the actual language of the *Order*, but rather upon Respondents' apparent belief that Petitioners would not make any other revisions to their Complaint in order to comply with this Court's Order. Indeed, rather than communicate with Petitioners' counsel to seek a cooperative approach to fulfilling this Court's *Order* while allowing Federal Judge Steeh to proceed, Respondents filed this *Motion* in an attempt to prevent the fundamental Constitutional issue from being adjudicated at all.

Respondents assert that *any* adjudication of PA 436's constitutionality by a Federal District Court would, by definition, "pose serious questions regarding the validity of Detroit's bankruptcy filing." (Dkt. #1745, Page 10). The Respondents suggest, incredibly, that so long as the City of Detroit is in the midst of this bankruptcy proceeding, the citizens of the State of Michigan have no right to seek judicial relief to ensure that the Michigan legislation – enacted by our State legislature – complies with the United States Constitution. Notably, Debtor City of Detroit does not seek reconsideration of this Court's Order. Regardless, because the Court's Order adequately protects the Debtor while also acknowledging the important constitutional rights that Petitioners must be allowed to vindicate, Respondents' Motion for Reconsideration should be DENIED in its entirety.

STANDARD OF REVIEW

As Respondents correctly conceded, a motion for reconsideration should only be granted in the rare case where the movant can meet its burden of demonstrating: (1) a palpable defect; (2)

that the palpable defect has misled the court and the parties; and (3) that the palpable defect was outcome-determinative. LR 9024-1(a)(3), *Papas v. Buchwald Capital Advisors, LLC (In re Greektown Holdings, LLC)*, 728 F.3d 567, 574 (6th Cir. Mich. 2013). "A 'palpable defect' is 'a defect that is obvious, clear, unmistakable, manifest, or plain.'" *United States v. Lockett*, 328 F. Supp. 2d 682, 684 (E.D. Mich. 2004) (quoting *United States v. Cican,* 156 F. Supp. 2d 661, 668 (E.D. Mich. 2001)). Because Respondents cannot demonstrate an outcome-determinative palpable error that misled the Court and the parties, their motion for reconsideration should be denied.

ARGUMENT

I. THE PLAIN LANGUAGE OF THIS COURT'S NOVEMBER 6, 2013 OPINION AND ORDER ADDRESSES THE ARGUMENTS RAISED BY RESPONDENTS.

The thrust of the Respondents' argument for reconsideration is that this Court erred by permitting Petitioners' suit to go forward in the District Court since the suit could potentially result in the removal of Kevin Orr because the Court's only required Petitioners to withdraw Plaintiffs Phillips, Valenti, and AFSCME Council 25 and dismiss Count I.

This Court's *Order and Opinion* however directly addressed Respondents' arguments while preserving the Constitutional rights of the Petitioners. This Court's *Order* does not state that Petitioners' suit is not subject to the Extended Stay Order if Plaintiffs Phillips, Valenti, and AFSCME Council 25 withdraw and the remaining Plaintiffs simply dismiss Count I. Rather, the *Order* states that Petitioners must amend their complaint "to eliminate their request for the removal of the Detroit Emergency Manager and for any other relief that diminishes the Detroit Emergency Manager's authority under P.A. 436." *Id.* at 14. In light of that language, Respondents are attacking a straw man. And as set forth in Section II, *infra*, Petitioners

understood the conditions set forth by this Court to encompass more than the simple dismissal of Count I and have revised their Proposed Amended Complaint (Exh. 6) to comply with this Court's directive. Because this Court's Order—as written—suffers from no palpable error, Respondents' *Motion* should be denied.

II. PETITIONERS' REVISED PROPOSED AMENDED COMPLAINT COMPLIES WITH THIS COURT'S ORDER THAT PETITIONERS NOT SEEK TO REMOVE DEBTOR'S EMERGENCY MANAGER OR DIMINISH HIS AUTHORITY.

In order to satisfy the conditions set forth by this Court in its Order provisionally finding that the Extended Stay Order does not apply to the *Phillips* case, Petitioners had already decided to make further amendments to their complaint. Specifically, and with respect to this Court's directive that Petitioners' amended complaint must not "request . . . the removal of the Detroit emergency manager," Petitioners' revised Proposed Amended Complaint thus also voluntarily dismisses Count IX. (Exh. 6). Petitioners' revised Amended Complaint also eliminates any claims for injunctive relief, which satisfies this Court's condition that Petitioners not seek relief that would "diminish the Detroit emergency manager's authority." (Dkt. #1536).

With regard to Respondents' claim that "Count XI . . . argues that all emergency managers, including Detroit's Emergency Manager, must be removed," (Dkt. #1745, Page 9), Respondents grossly misrepresent the relief sought by Petitioners in that count. Count XI (renumbered as Count IX in Petitioners' revised Proposed Amended Complaint (Exh. 6)) is, like the other remaining counts, a claim challenging the constitutionality of a provision of PA 436 (in this count challenging, on equal-protection grounds, PA 436's own provisions for the removal of an emergency manager). Like the other remaining counts in Petitioners' revised Proposed

Amended Complaint, (Exh. 6), Petitioners seek neither the removal of Debtor's emergency manager nor the diminution of his authority.

What Petitioners' revised Proposed Amended Complaint (Exh. 6) does seek is declaratory relief; specifically, Petitioners seek a declaration, from an Article III court, regarding the constitutionality of PA 436. Respondents argue that "any finding that the statute is unconstitutional would pose serious questions regarding the validity of Detroit's bankruptcy filing and its ability to move forward in the restructuring of its debts," and therefore, "Petitioners' lawsuit would unquestionably impact, directly or indirectly, bankruptcy proceedings before this Court." (Dkt. #1745 at 8). Setting aside for a moment the troubling question of whether the State has any legitimate interest in perpetuating an unconstitutional law for Debtor's benefit, Respondents' *in terrorem* argument is necessarily based on forecasting what relief might be granted by the District Court.

If Petitioners are successful, the impact of the declaratory relief on the bankruptcy is unknown because the scope of the relief granted cannot be known until such time as the District Court actually issues its findings. PA 436 could be held unconstitutional in its entirety, in part, or not at all. But until or unless an Article III court rules on the declaratory relief Petitioners seek, any argument regarding the impact on Debtor's bankruptcy is pure speculation, particularly because nothing in Petitioners' revised proposed amended complaint seeks to remove Debtor's emergency manager or put a stop to Debtor's bankruptcy proceedings.

Assuming that Petitioners succeed in obtaining a declaration that PA 436 is facially unconstitutional in its entirety, a new, separate action would be required to seek the removal of Debtor's emergency manager and/or challenge the validity of actions undertaken by him. To the extent that such an action sought to challenge the validity of Debtor's bankruptcy proceedings, it

would necessarily be heard by this Court. At that time, this Court would be able to order the necessary in-depth briefing to properly determine the impact of any declaratory judgment on the bankruptcy proceedings, based upon the actual text of the ruling. But until and unless that happens, the State is essentially arguing that the question of the constitutionality of a law with statewide effect should not be heard by any court because it might call into question the lawfulness of a chain of events that found their genesis in an unconstitutional law.

There is no question that the State recognizes this possibility—it argues that "any finding that the statute is unconstitutional would pose serious questions regarding the validity of Detroit's bankruptcy filing and its ability to move forward in the restructuring of its debts," (Dkt. #1745, Page 10), as if the importance of fidelity to our State and Federal Constitutions is somehow subordinate to Respondents' desire, now laid bare, to ensure that Debtor enjoys an untrammeled fast-track ride through bankruptcy proceedings. This kind of result-driven, ends-justify-the-means argument is repugnant to our tripartite system; indeed, it is repugnant to the integrity of our Constitutional democracy. It is true that a finding that PA 436 is unconstitutional might raise some "serious questions" regarding the validity of actions taken by emergency managers appointed pursuant to PA 436 throughout the State of Michigan. But the far more serious question is why Respondents argue that a law (and executive actions taken pursuant to that law) should be immune from judicial review for the very reason that such actions might be found to be in violation of the United States Constitution.

Put another way, it seems that Respondents would prefer that "progress" not be impeded by the inconvenience of upholding the Constitution. And to be sure, a great many things could be accomplished much faster if laws could simply be suspended or ignored whenever it was deemed "necessary." But thankfully, we are part of a system that prizes the rule of law over

speed. And if or when the time comes that PA 436 is declared unconstitutional, it will be up to this Court to deliberate and decide what impact such a finding has on Debtor's bankruptcy proceedings. In the meantime, however, the discrete question of the constitutionality of a statute that affects citizens statewide cannot be held hostage to the bankruptcy proceedings of a single municipality.

CONCLUSION AND RELIEF REQUESTD

Because this Court's November 6, 2013 *Order* (Dkt. #1536) was correctly decided and for all of the reasons stated above (as well as in Petitioner's *Motion for Relief From Stay and Brief in Support* (Dkt. #1004 and #1004-4). Petitioners respectfully request that this Honorable Court DENY *Respondents' Motion for Reconsideration*, (Dkt.#1745), thereby allowing Petitioners to file their revised Proposed Amended Complaint and a determination can be made on the merits regarding the question of PA 436's constitutionality.

Dated: December 2, 2013

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UNITED STATES BANKRUPTCY COURT
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Debtor.	Hon. Steven W. Rhodes

_____/

EXHIBIT 4 - CERTIFICATE OF SERVICE

PETITIONERS' RESPONSE TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536-1) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN

In Re:

City of Detroit, Michigan	Chapter 9
	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

/

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 2, 2013, he filed the following documents with the court, using the court's CM/ECF system, which will send notice of the filings to all registered participants in this matter.

Petitioners' Response to Respondent's Snyder and Dillon's Motion for Reconsideration of Opinion and Order Denying NAACP's Motion for Relief from Stay and Granting Phillips Motion for Relief from Stay.

And

Petitioners' Brief in Support of Response to Respondent's Snyder and Dillon's Motion for Reconsideration of Opinion and Order Denying NAACP's Motion for Relief from Stay and Granting Phillips Motion for Relief from Stay.

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 9
City of Detroit, Michigan,	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

_____/

EXHIBIT 5 - NONE

PETITIONERS' RESPONSE TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536-1) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:	Chapter 9
City of Detroit, Michigan,	Case No. 13-53846
Debtor.	Hon. Steven W. Rhodes

_____/

EXHIBIT 6 - PROPOSED FIRST AMENDED COMPLAINT

TO:

PETITIONERS' RESPONSE TO RESPONDENTS SNYDER AND DILLON'S MOTION FOR RECONSIDERATION (DKT. #1745) OF OPINION AND ORDER (DKT. # 1536-1) DENYING NAACP'S MOTION FOR RELIEF FROM STAY AND GRANTING PHILLIPS MOTION FOR RELIEF FROM STAY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Russ Bellant, President of the Detroit Library Commission; Tawanna Simpson, Lamar Lemmons, Elena Herrada, Detroit Public Schools Board Members; Donald Watkins, and Kermit Williams, Pontiac City Council Members; Duane Seats, Dennis Knowles, Juanita Henry, and Mary Alice Adams, Benton Harbor Commissioners; William "Scott" Kincaid, Flint City Council President; Bishop Bernadel Jefferson; Paul Jordan; Rev. Jim Holley, National Board Member, Rainbow Push Coalition; Rev. Charles E. Williams II, Michigan Chairman, National Action Network; Rev. Dr. Michael A. Owens, Rev. Lawrence Glass, Rev. Dr. Deedee Coleman, Bishop Allyson Abrams, Executive Board, Council of Baptist Pastors of Detroit and Vicinity;

Plaintiffs,

vs.

RICHARD D. SNYDER, as Governor of the State of Michigan, and ANDREW DILLON, as the Treasurer of the State of Michigan, acting in their individual and/or official capacities,

Defendants.

Case No.
Judge:

First Amended Complaint for Declaratory Relief

---/

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/

FIRST AMENDED COMPLAINT
FOR DECLARATORY RELIEF

NOW COME Plaintiffs, and by and through their attorneys and for their First Amended Complaint, do hereby allege as follows.

I. NATURE OF PLAINTIFFS' CLAIMS

1. This is a federal civil rights and voting rights cause of action brought pursuant to 42 USC §1983 for violations of the Plaintiffs' federal and constitutional rights under the United States Constitution, Art. 4, §4; Amend. I; Amend. XIII; Amend. XIV; and pursuant to the *Voting Rights Act of 1965*, 42 U.S.C. §§ 1973 *et. seq.*

2. The *Local Financial Stability and Choice Act*, Act No. 436, Public Acts of 2012, MCL §§ 141.1541 *et. seq.* (Public Act 436) effectively establishes a new form of government within the State of Michigan. The new form of government allows Michigan cities and other forms of municipal corporations to be ruled by one unelected official, who is vested with broad legislative power and whose orders, appointments, expenditures, and other decisions are not reviewable by local voters.

3. Plaintiffs' rights under the United States Constitution, include:

   a. A due process right to engage in collective bargaining.

   b. A due process right to an elected, republican form of government;

   c. A right to freedom of speech.

   d. A right to petition local government.

e. A right to equal protection of laws granting Michigan citizens the right to vote in local elections and to remove emergency managers.

Each of these rights is violated by provisions of Public Act 436.

4. The Voting Rights Act of 1965 protects Plaintiffs from discriminatory laws that disenfranchise voters. Plaintiffs' voting rights are also violated by provisions of Public Act 436.

II. JURISDICTION AND VENUE

5. Federal question jurisdiction is conferred by 28 USC §§ 1331, 1343(a)(3), 1343(a)(4), 1344, 2201 and 2202 over Plaintiffs' Constitutional and Voting Rights Act claims.

6. Venue is proper pursuant to 28 USC §1391, since all Defendants reside or are located in the Eastern District of Michigan and the events giving rise to this action occurred, in part, within this District.

III. PARTIES

7. Plaintiff Russ Bellant is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Bellant is also President of the Detroit Library Commission.

8. Plaintiff Tawanna Simpson is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Simpson is also a Detroit Public Schools Board Member.

9. Plaintiff Lamar Lemmons is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Lemmons is also a Detroit Public Schools Board Member.

10. Plaintiff Elena Herrada is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Herrada is also a Detroit Public Schools Board Member.

11. Plaintiff Donald Watkins is a citizen of the United States, a resident of the City of Pontiac, County of Oakland, and the State of Michigan. Plaintiff Watkins is also a member of the Pontiac City Council.

12. Plaintiff Kermit Williams is a citizen of the United States, a resident of the City of Pontiac, County of Oakland, and the State of Michigan. Plaintiff Williams is also a member of the Pontiac City Council.

13. Plaintiff Duane Seats is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Seats is also a Benton Harbor Commissioner.

14. Plaintiff Dennis Knowles is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Knowles is also a Benton Harbor Commissioner.

15. Plaintiff Juanita Henry is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Henry is also a Benton Harbor Commissioner.

16. Plaintiff Mary Alice Adams is a citizen of the United States, a resident of the City of Benton Harbor Michigan, County of Berrien, and the State of Michigan. Plaintiff Adams is also a Benton Harbor City Commissioner.

17. Plaintiff William "Scott" Kincaid is a citizen of the United States, a resident of the City of Flint Michigan, County of Genesee, and the State of Michigan. Plaintiff Kincaid is also President of the Flint City Council.

18. Bishop Bernadel Jefferson is a citizen of the United States, a resident of the City of Flint Michigan, County of Genesee, and the State of Michigan.

19. Plaintiff Paul Jordan is a citizen of the United States and a resident of the City of Flint, County of Genesee, and State of Michigan.

20. Plaintiff Rev. Jim Holley is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Holley is also a National Board Member of the Rainbow Push Coalition.

21. Rev. Charles E. Williams II is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Williams is also the Michigan Chairman of the National Action Network.

22. Plaintiff Rev. Dr. Michael A. Owens is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Dr. Michael A. Owens is also President of the Council of Baptist Pastors of Detroit and Vicinity.

23. Plaintiff Rev. Lawrence Glass is a citizen of the United States, a resident of the City of Redford, County of Wayne, and the State of Michigan. Plaintiff Rev. Lawrence Glass is also First Vice-President of the Council of Baptist Pastors of Detroit and Vicinity.

24. Plaintiff Rev. Dr. Deedee Coleman is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Rev. Dr. Deedee Coleman is also Second Vice-President of the Council of Baptist Pastors of Detroit and Vicinity.

25. Plaintiff Bishop Allyson Abrams is a citizen of the United States, a resident of the City of Detroit, County of Wayne, and the State of Michigan. Plaintiff Bishop Allyson Abrams is also Secretary of the Council of Baptist Pastors of Detroit and Vicinity.

26. Defendant Richard D. Snyder is the Governor of the State of Michigan. Governor Snyder maintains his principal residence in the City of Ann Arbor in Washtenaw County, Michigan, and at all times relevant hereto was acting individually and in his official capacity as State Governor and top policymaker for the State of Michigan.

27. Defendant Andrew Dillon is the Treasurer of the State of Michigan. Treasurer Dillon maintains his principal residence in Redford Township in Wayne County, Michigan, and at all times relevant hereto was acting individually and in his official capacity as State Treasurer and as a policymaker.

IV. COMMON FACTS

28. Through its provisions, Public Act 436 establishes a new form of local government, previously unknown within the United States or the State of Michigan, where the people within local municipalities may be governed by an unelected official who establishes local law by decree.

Legislative Background Of Municipal Financial Distress In Michigan

29. During the Great Depression in the 1930s, 4,770 cities defaulted on their debt. Among all states, Michigan had the fourth highest number of defaulting municipalities throughout the depression years. At that time, creditors of defaulting cities were commonly required to file a mandamus action in state courts seeking to compel the municipality to raise taxes to pay debt obligations. Courts then appointed receivers to oversee the finances of municipal debtors.

30. To improve procedures for creditors and municipal debtors, the federal government adopted Chapter 9 of the federal bankruptcy code in 1937. Chapter 9 permits the use of federal bankruptcy procedures for debt-ridden municipalities. Under Chapter 9, elected officials remain in office and retain significant autonomy while bankruptcy procedures oversee the development of a plan to adjust debts and pay creditors. Before a Chapter 9 petition may be filed however, the state must authorize the municipality to file for bankruptcy.

31. Prior to 1988, unless proceeding through Chapter 9, municipalities were placed into receivership by the courts, not the state legislature or executive branch. Compensation for court-appointed receivers was derived from property that the courts placed within the care of the receiver.

32. Since 1937, two Michigan cities have defaulted on bond payments or been placed under a court imposed receivership due to insolvency. Muskegon Township defaulted on revenue bond payments in the early 1960s and the City of Ecorse was placed in receivership by a Wayne County Circuit Court in 1986.

33. Neither municipality sought the protections of Chapter 9 bankruptcy. Muskegon Township entered into a settlement agreement with its creditors that resolved their defaults. Ecorse remained under court receivership through 1990 and was subject to further state oversight until the late 1990s.

34. In response to the troubled insolvency of the City of Ecorse, the state enacted Public Act 101 of 1988 (PA 101). Public Act 101 allowed the state to intervene when local municipalities were found to be in financial distress. The statute allowed the state to appoint emergency financial managers over cities experiencing a financial emergency.

35. In 1990, the legislature replaced PA 101 with the *Local Government Fiscal Responsibility Act*, Act No. 72, Public Acts of 1990 (PA 72). Public Act 72 authorizes state officials to intervene when local governments face a financial emergency. Pursuant to PA 72, Michigan's local financial emergency review board can appoint an emergency financial manager (EFM) only after the Governor declares a financial emergency within the local government.

36. Under PA 72, local elected officials are not removed from office and the EFM's powers only extended to matters of municipal finances. Their powers did not extend to purely administrative or policy matters. Furthermore, EFMs had the power to renegotiate, but not unilaterally break contracts.

37. In the late 1990s, legislation was passed to revise municipal revenue sharing laws, severely reducing the amount of funds shared by the state with local government. Local governments saw further revenue reductions when income and property tax revenues sharply declined during the recession of 2000-2003. As a result, municipalities experienced significant financial stress during the late 1990s and early 2000s.

38. During this time period, the state local financial emergency review board appointed PA 72 EFMs in the cities of Hamtramck, Highland Park, and Flint.

39. These original Public Act 72 EFMs remained in place as follows:

a. Hamtramck from 2000 until 2007 (7 years)[1];

b. Highland Park from 2001 until 2010 (9 years);[2] and

c. Flint from 2002 until 2004 (2 years)[3].

[1] In 2010, the City of Hamtramck requested permission from the state to file for Chapter 9 bankruptcy. The state refused.
[2] One year later, DTE Energy repossessed the City of Highland Park's street lights due to the city's inability to pay its bills
[3] The City of Flint was again declared in a financial emergency in 2011.

40. With the onset of the historic global recession that began in 2007 and resulted in record foreclosures and steep unemployment, cities and municipal corporations in Michigan saw further sharp reductions to income and property tax revenue. State revenue sharing laws were further amended in recent years to reduce revenue sharing with local governments and thereby balance state budgets. As a result, Michigan municipalities again faced widespread financial stress.

41. Again, the state local financial emergency review board appointed PA 72 EFMs in various cities, including Pontiac, Ecorse, and Benton Harbor. Public Act 72 EFMs were also appointed over the Village of Three Oaks (2008) and the Detroit Public Schools and the review board entered into a PA 72 consent agreement with the city of River Rogue.

42. The second wave of Public Act 72 EFMs were appointed as follows:

a. Pontiac from 2009 until the present (4+ years)

b. Ecorse from 2009 until the present (4+ years)

c. Benton Harbor from 2010 through the present (3+ years);

d. Village of Three Oaks from 2008 until 2009 (1 year); and

e. Detroit Public Schools from 2009 until the present (4+ years).

The state's consent agreement with the city of River Rouge has also remained in place from 2009 to the present. Notably, since the onset of the global recession in 2007, the Village of Three Oaks is the only municipality that has emerged from a financial emergency following the appointment of an emergency financial manager, appointment of an emergency manager, or the entering of a consent agreement.

43. Following elections in November of 2010 and the turnover of state offices in January 2011, the Michigan legislature introduced House Bill 4214 (2011) on February 9, 2011.

The bill was widely seen as a response to a court ruling finding that the Detroit Public Schools' School Board, and not the EFM, possessed the power under state law to determine what curriculum would be taught and which texts would be used in the city's public schools. The decision provoked elements of the state legislature who then sought greater control over the content of the curriculum taught in Detroit's schools.

44. House Bill 4214 was rushed through the legislature and quickly presented to the Governor for signature. Defendant Governor Richard D. Snyder signed the *Local Government and School District Fiscal Accountability Act*, Act No. 4, Public Acts of 2011 (PA 4) into law on March 16, 2011. Public Act 4 repealed Public Act 72 and was given immediate effect. Public Act 4 automatically converted all EFMs to Public Act 4 Emergency Managers (EM) and greatly expanded the scope of their powers. The Act also brought all existing consent agreements under the new law.

Public Act 4's Radical Revision of State Law

45. Public Act 4 radically revised state law governing the appointment of EMs over cities and school districts during times of financial stress.

46. Public Act 4 provided that once the Governor had declared a financial emergency, the Governor could then appoint an individual to be the municipality's emergency manager. The Governor was granted broad discretion to declare a financial emergency and, in fact, a municipality was not actually required to be in a fiscal crisis before an EM could be appointed.

47. Tellingly, the Act changed the title of municipal "emergency financial managers" to "emergency managers" and expanded the scope of their powers to cover all the conduct of local government.

48. The PA 4 EM's powers extended not only to financial practices and fiscal policy, but rather permitted such managers to fully act "for and in the place of" the municipality's elected governing body. The grant of powers also included a general grant of legislative power (the power to unilaterally adopt local laws and resolutions) to PA 4 EMs.

49. Public Act 4's grant of legislative power to EMs extended to the full scope of legislative power possessed by local elected officials. In the state of Michigan, local legislative power is of the same scope and nature as the police power possessed by the state - limited only by the jurisdictional limits of the municipality and where preempted by the general laws of the state. Public Act 4's grant of general legislative power to EMs thus extended to a grant of the full of scope of the local government's police power, previously reserved to local government's elected legislative body and elected mayor.

50. Emergency managers were further granted powers to act in disregard of the local government's local laws – including city charters, ordinances, administrative regulations, school district bylaws, etc.

51. The Act further granted a state financial review team the power to enter into a consent agreement with local government, again without a finding that a financial emergency existed.

52. At the time PA 4 became law, reports from the State indicated that, based on their financial conditions, over eighty (80) municipalities and/or school systems were eligible to have emergency managers.

53. After passage of PA 4, existing EFMs in the cities of Benton Harbor, Ecorse and Pontiac and over the Detroit Public Schools were converted to EMs and vested with PA 4

powers. The state's consent agreement with the city of River Rouge was also converted to a PA 4 agreement.

54. With the continuing global economic recession and steep declines in state revenue sharing and municipal property tax and income tax revenue collection, PA 4 EMs were newly appointed as follows:

a. Flint from 2011 until the present (2+ years);

b. Highland Park Public Schools from 2012 until the present (1+ year); and

c. Muskegon Heights Public Schools until the present (1+ year).

Additionally, the state entered PA 4 consent agreements with the cities of Detroit[4] and Inkster.

55. After becoming vested with Public Act 4 powers, EMs in Benton Harbor, Ecorse, Flint, and Pontiac have all exercised general legislative power to enact, repeal and suspend local laws and resolutions and have voided various contracts.

Michigan Citizen's Rejection of Public Act 4
And the State's Resurrection of Public Act 72

56. In opposition to Public Act 4, citizens began circulating petitions in May 2011. The petitions were to place a referendum on the ballot that would reject the law. Over 200,000 signatures were gathered and the petitions were submitted to the Secretary of State in February 2012. However to prevent Michigan citizens from having the opportunity to vote on the matter, the petitions were challenged by a lobbying group.

57. The petitions were challenged on the basis that the title of the petitions were not printed in 14 point font but rather were printed in slightly smaller font of approximately 13.75 or larger.[5]

[4] The state has struggled to identify the state law(s) providing legal authority for the transfer of powers and oversight that was created by the agreement with the city of Detroit. Over time, the state seems to have settled into a belief that PA 4 provided such authority.

58. Along party-line votes, the members of the state Board of Canvassers deadlocked and as a result, the petitions were not certified for the ballot.

59. The matter was then appealed to the Michigan Court of Appeals. A panel of the Court of Appeals recognized and found that existing law required the referendum to be placed on the ballot. However, the panel sought to overturn existing law, and thereby keep the referendum off the ballot. The panel requested that the full Court of Appeals be polled to convene a special panel to reconsider existing law. The full Court of Appeals however declined to convene the special panel.

60. An appeal was taken to the state Supreme Court. The Michigan Attorney General in his individual capacity and Governor in his individual and/or official capacity joined the challengers as amici at the state Supreme Court.

61. On August 3, 2012, the Michigan Supreme Court issued an opinion ordering the state Board of Canvassers certify the petitions and place the referendum on the ballot.

62. However on August 6, 2012, the state Attorney General issued a formal opinion stating that once the petitions were certified[6], PA 72 would spring back into effect and would remain in effect if voters rejected PA 4 at the November 2012 election.

63. The state Board of Canvassers certified the petitions on August 8, 2012 and by operation of Michigan law, PA 4 was then suspended until the November.

64. In response, state officials reappointed all existing PA 4EMs as PA 72 EFMs and proclaimed that all existing consent agreements would continue in place as PA 72 consent agreements.

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[5] No evidence was submitted and it was not argued that signatories of the petitions had been confused or misunderstood what they had signed. In fact, the difference in point size as argued by the challenger was invisible to the naked eye of many.

[6] Pursuant to Michigan law, once the petitions were certified PA 4 was then suspended until the voters could decide the matter at the next general election.

65. After certification of the referendum, existing PA 4 EMs were converted to EFMs in the cities of:

a. Benton Harbor;

b. Ecorse;

c. Flint; and

d. Pontiac.

66. Additionally EMs over the following school districts were converted to Public Act 72 EFMs:

a. Detroit Public Schools;

b. Highland Park Public Schools; and

c. Muskegon Heights Public Schools.

67. Finally, the state's consent agreements with the cities of Detroit, Inkster and River Rogue were proclaimed converted to PA 72 agreements.

68. At the general election on November 6, 2012, Michigan voters overwhelmingly elected to reject PA 4.

Michigan Legislature's Attempt to Overturn Citizen's Vote to Reject Public Act 4 by Enacting Public Act 436

69. In response to the decision of Michigan voters to reject PA 4, incensed state officials and segments within the state legislature quickly moved to reenact a new law with emergency manager provisions that are substantially identical to the rejected law.

70. During the lame-duck session, the state legislature moved quickly to reenact the emergency manager provisions of Public Act 4. The new bill passed the state House and Senate on December 13, 2012 and was signed into law as the *Local Financial Stability and Choice Act*, Act No. 436, Public Acts of 2012, on December 26, 2012.

71. Public Act 436 again changes the title of existing PA 72 "emergency financial managers" to "emergency managers" and again expands the scope of their powers to cover all the conduct of local government.

72. The PA 436 EM's powers are substantially identical to the powers that had been granted under PA 4. Public Act 436 EMs are empowered to fully act "for and in the place of" the municipality's governing body. The grant of powers again includes a general grant of legislative power to emergency managers.

73. Along with the general grant of legislative power to emergency managers, Public Act 436 exempts the EM from following existing city charters and local ordinances.

74. The new law does not provide any process that EMs must follow in the adoption or repeal of local laws, but rather permits the EM to do so by private orders, not subject to open meetings requirements.

75. Public Act 436 states that EMs appointed under PA 4 and EFMs appointed under PA 72 shall be considered EMs under PA 436 when the new law takes effect.

76. Additionally, PA 436 permits the Governor to appoint persons appointed as EMs under PA 4 and as EFMs under PA 72 to serve as PA 436 EMs under the new law.

77. Under PA 436, all EMs serve at the pleasure of the Governor and continue to serve until removed by the Governor or until the Governor finds that the financial emergency has been rectified.

78. Public Act 436 permits the Governor to delegate his powers and duties to the state treasurer and the state treasurer oversees the activities of emergency managers.

79. When PA 436 took effect on March 28, 2013, EMs were in place over the cities of Allen Park, Benton Harbor, Ecorse, Flint, Pontiac and Detroit and over the Detroit Public

Schools, Highland Park Public Schools, and Muskegon Heights Public Schools. Finally, the state's consent agreements with Inkster and River Rouge were again converted – now to PA 436 agreements.

80. Since March 28, 2013, the City of Hamtramck has had an emergency manager placed in control of the city's governance and the emergency managers in the Cities of Ecorse and Pontiac have had their emergency managers replaced by "transition advisory boards", which, under PA 436 have final say over governance matters in these communities.

81. Under PA 436, elected officials in each of these communities are displaced and/or be divested of governing and law-making authority and citizens have effectively lost their right to vote and/or saw an abridgment or dilution of their right to vote for their local legislative bodies, chief executive officers, and school boards.

82. Local elected officials are thereby effectively removed from office under PA 436 and this removal occurs without any showing of malfeasance or misfeasance causing or contributing to the financial circumstances faced by their municipality or school district. In so doing, the Act implicitly assumes that these local officials were guilty of corruption or gross incompetence that caused or contributed to the financial circumstances of their municipality or school district. Public Act 436 makes this assumption of guilt and removes elected officials without any finding of fault on the part of local elected officials and without any form of due process.

83. In each of these communities, citizens will have effectively lost their right to vote for local elected officials or had that right diluted so as to render it an exercise in form without substance.

84. There is no question that Michigan's emergency manager laws have disproportionately impacted the state's population of citizens from African-American descent.

85. The Black/African-American population of each of the cities where an emergency manager or consent decree will be in place when PA 436 takes effect, is as follows:

a. Benton Harbor: 8,952 persons comprising 89.2% of the city's population;

b. Ecorse: 4,315 persons comprising 46.4% of the city's population;

c. Pontiac: 30,988 persons comprising 52.1% of the city's population;

d. Flint: 57,939 persons comprising 56.6% of the city's population;

e. Inkster: 18,569 persons comprising 73.2% of the city's population;

f. River Rouge: 3,994 persons comprising 50.5% of the city's population;

g. Detroit: 590,226 persons comprising 82.7% of the city's population,

h. Highland Park: 10,906 persons comprising 93.5% of the city's population;

i. Muskegon Heights: 8,501 persons comprising 78.3% of the city's population;

j. Allen Park: 587 persons comprising 2.1% of the city's population; and

k. Hamtramck: 4,266 comprising 19.3% of the city's population.

The Black/African-American population of these cities totals 734,947 persons.

86. As a result of the Defendants' actions under Public Act 436, fifty two (52%) of the state's Black/African-American population are under the governance of an emergency manager, consent agreement and/or a transition advisory board. In each of these communities, citizens will have either lost or experienced severe restrictions imposed on their right to vote and to participate in public affairs.

87. There is also no question that each of the aforementioned cities are economically poor communities where significant household wealth has been lost since the onset of the current recession. In these communities, the percentage of persons living below the poverty level is:

a. Benton Harbor – 48.7%;

b. Ecorse – 32.7%;

c. Pontiac- 32%;

d. Flint – 36.6%;

e. Inkster – 33.2%;

f. River Rouge – 40.1%;

g. Detroit – 34.5%;

h. Highland Park – 43.7%;

i. Muskegon Heights – 45.6%; and

j. Hamtramck – 46.3%.

The Michigan average is 15.7%. The City of Allen Park is thus the only city with an EM where the poverty level is not at least double the state average.

88. Like PA 4, Public Act 436 reestablishes a new form of local government that is repugnant to the constitutional liberties of all Americans.

89. Despite a long national history of municipal financial crises following national and global economic depressions and recessions, no other state in the nation has engaged in similar experiments in undemocratic governance as a solution to economic downturns.

90. Under Public Act 436, the people become subject to government that is composed of one unelected official who wields absolute power over all aspects of local government and whose decisions are without review by either local elected officials or local voters.

V. CAUSES OF ACTION

COUNT I – 42 U.S.C. §1983 -- Constitutional Violation US Const, Amend. XIV – Substantive Due Process – Right to a To Elect Officials Who Possess General Legislative Power

91. Plaintiffs incorporate by reference paragraphs 1 through 90 above as though fully stated herein.

92. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

93. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, Defendants have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV of the U.S. Constitution.

94. Amendment XIV of the U. S. Constitution holds, in pertinent part: "nor shall any state deprive any person of life, liberty, or property without due process of Law."

95. Under the Due Process Clause, each person has a liberty interest in their right to a democratically elected from of local government.

96. Under the Due Process Clause, each person has a liberty interest in their right to elect officials of any level of government that exercise general legislative powers.

97. Under state law, Michigan cities possess local legislative power to enact make charters, adopt and repeal local laws, and pass resolutions.

98. Under state law, Michigan cities' legislative power over matters within their jurisdiction is of the same scope and nature as the police power of the state.

99. When a state establishes a local government with legislative power, it must be democratic in form and substance.

100. The right to a democratic form of government is a fundamental right afforded to all citizens in the state of Michigan through the United States Constitution.

101. The right to a vote for the officials of local government who exercise general legislative powers is a fundamental right afforded to all citizens in the state of Michigan through

the United States Constitution. When a state grants general legislative power to a governmental official, the official must be democratically elected.

102. On its face, as applied, and in practice, Public Act 436 violates the Due Process Clause of US Const., Amend. XIV and disenfranchises citizens from their right to a democratically elected form of local government and their right to elect local officials who possess general legislative power, through provisions that delegate to EMs the power to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

103. On its face, as applied, and in practice, Public Act 436 violates the Due Process Clause of US Const., Amend. XIV and disenfranchises citizens from their right to a democratically elected form of local government and their right to elect local officials who possess general legislative power, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

104. The provisions of PA 436 and the powers granted thereby, are not necessary,

narrowly tailored, rationally, or otherwise lawfully related to achieving the purported government interests of achieving local government financial stability.

105. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT II – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Art 4, §4 – Republican Form of Government

106. Plaintiff incorporates by reference paragraphs 1 through 105 above as though fully stated herein.

107. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

108. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective official capacities, Defendants have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Art. 4, §4 of the U.S. Constitution.

109. Article 4, section 4 of the U.S. Constitution states that the "United States shall guarantee to every state in this union a republican form of government."

110. Since our nation's founding, federal, state, and local governments throughout the country have been republican forms of government – governments of representatives chosen by the people governed.

111. In the United States and in Michigan, local governments are traditionally democratically elected and republican in form.

112. Public Act 436 unconstitutionally strips local voters of their right to a republican form of government by transferring governance, including but not limited to legislative powers, from local elected officials to one unelected emergency manager.

113. On its face, as applied, and in practice, Public Act 436 violates the US Const., Art. 4, §4 through provisions of the statute that permit EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

114. On its face, as applied, and in practice, Public Act 436 violates the US Const., Art. 4, §4 through provisions of the statute that ratify the legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

115. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the governing authority and legislative powers of duly elected public officials in affected municipalities throughout the state of Michigan.

116. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT III – 42 U.S.C. §1983 -- Constitutional Violation

US Const, Amend. XIV, § 1 –Equal Protection a Fundamental Right – Voting Rights

117. Plaintiffs incorporate by reference paragraphs 1 through 116 above as though fully stated herein.

118. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

119. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violated Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution

120. Amendment XIV, § 1 states in pertinent part, "No state shall make or enforce any law which shall … deny to any person within its jurisdiction the equal protection of the laws."

121. The Equal Protection Clause protects laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

122. The right to vote in local elections is a fundamental right afforded to all citizens in the state of Michigan by the United States Constitution, the Michigan Constitution, and the Michigan Home Rule Cities Act.

123. Public Act 436's EM provisions effectively revoke the right to vote by stripping governing authority from local elected officials and transferring such authority to one unelected EM with no accountability to local citizens.

124. Public Act 436 impermissibly denies, abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the

some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

125. Public Act 436 impermissibly abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly abridged and/or diluted by the statewide participation of the electorate, while the votes of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

126. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that unduly deny, abridge and/or impermissibly dilute the community's right to vote for local officials. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

127. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that unduly revoke the community's right to vote for local officials, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

128. Under Public Act 436, Defendants have authority to deprive Plaintiffs of their rights to equal protection by divesting communities of their right to vote for local officials and by removing the authority of duly elected public officials in favor of an unelected EM in such communities.

129. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the authority of duly elected public officials in various municipalities with disproportionately high poverty rates.

130. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

131. As a direct and proximate result of the enactment of Public Act 436 and

Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT IV – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV, § 1 –Equal Protection based on Race – Voting Rights

132. Plaintiffs incorporate by reference paragraphs 1 through 131 above as though fully stated herein.

133. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

134. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution

135. Amendment XIV, § 1 states in pertinent part, "No state shall make or enforce any law which shall … deny to any person within its jurisdiction the equal protection of the laws."

136. The Equal Protection Clause protects laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

137. The right to vote in local elections is a fundamental right afforded to all citizens in the state of Michigan by the United States Constitution, the Michigan Constitution, and the Michigan Home Rule Cities Act.

138. Public Act 436's EM provisions effectively revoke the right to vote by stripping governing authority from local elected officials and transferring such authority to one unelected EM with no accountability to local citizens.

139. Public Act 436 impermissibly denies, abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school

districts, the local government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

140. Public Act 436 impermissibly abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly abridged and/or diluted by the statewide participation of the electorate, while the votes of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

141. Under Public Act 436, all stated criteria for appointing an EM are based on a community's wealth and by extension, the wealth of the persons who reside within a community.

142. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that discriminate in the appointment of an EM and revocation of the community's right to vote for

local officials based on the racial composition of that community. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

143. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that discriminate in the appointment of an EM and revocation of the community's right to vote for local officials based on the racial composition of that community and that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

144. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the authority of duly elected public officials in various municipalities comprising more than 53% of the state's population of citizens who are of African American descent.

145. The provisions of PA 436 and the powers granted thereby, are not necessary,

narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

146. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally protected rights.

COUNT V – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV, § 1 –Equal Protection based on Wealth – Voting Rights

147. Plaintiffs incorporate by reference paragraphs 1 through 146 above as though fully stated herein.

148. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

149. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution

150. Amendment XIV, § 1 states in pertinent part, "No state shall make or enforce any law which shall … deny to any person within its jurisdiction the equal protection of the laws."

151. The Equal Protection Clause protects laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

152. The right to vote in local elections is a fundamental right afforded to all citizens in the state of Michigan by the United States Constitution, the Michigan Constitution, and the Michigan Home Rule Cities Act.

153. Public Act 436's EM provisions effectively revoke the right to vote by stripping governing authority from local elected officials and transferring such authority to one unelected EM with no accountability to local citizens.

154. Public Act 436 impermissibly denies, abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

155. Public Act 436 impermissibly abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly abridged and/or diluted by the statewide participation of the electorate, while the votes of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

156. Under Public Act 436, all stated criteria for appointing an EM are based on a community's wealth and by extension, the wealth of the persons who reside within a community.

157. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that condition the revocation of the community's right to vote for local officials based on the wealth of that community and the individuals who reside there. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

158. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute that unduly revoke citizen's right to vote for local officials based on the wealth of their community and themselves, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

159. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by terminating and/or removing the authority of duly elected public officials in various municipalities with disproportionately high poverty rates.

160. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

161. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT VI– Voting Rights Act of 1965, 42 U.S.C. § 1973 *et. seq.*

162. Plaintiffs incorporate by reference paragraphs 1 through 161 above as though fully stated herein.

163. Section 2 of the Voting Rights Act of 1965, as amended, reads:

> (a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2), as provided in subsection (b).
>
> (b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

164. Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 prohibits the denial, abridgement or dilution of Black/African-American citizens' right to vote in state and local

elections.

165. Michigan's population is estimated at 9,876,187 persons. The Black/African-American's comprise approximately 14.2% of the state's population (1,400,362 persons).

166. As a result of the passage of PA 436, once the law comes into effect more than fifty percent of the state's Black/African-American population will have had their voting rights in local elections effectively revoked.

167. Public Act 436 impermissibly denies, abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials and the EM is vested with all governing authority over the municipality and school district. While the some EMs may nominally retain elected officials in office as advisory personnel, elected officials' governing authority is substantially removed, circumscribed, and conditional – to be exercised at the sole discretion of the EM.

168. Public Act 436 impermissibly abridges and/or dilutes citizen's right to vote in local elections where EMs have been appointed. In these municipalities and school districts, the local government – in the person of the EM - is appointed by state officials who are elected by citizens across the entire state of Michigan. Through the statewide vote of state officials and their derivative appointments, the state has publicly argued that democratic election of local government is preserved in the affected municipalities and school districts. Thus, the entire state electorate participates in the selection of the local government in the affected municipalities and school districts, while in all other localities across the state, local residents alone directly vote for their local elected officials. The vote of citizens for their local government in affected localities is grossly abridged and/or diluted by the statewide participation of the electorate, while the votes

of citizens in localities without an EM are preserved for local residents alone and thereby attains greater weight.

169. On its face, as applied, and in practice, Public Act 436 violates the Voting Rights Act through provisions that provide for the appointment of Ems, entering of consent agreements and appointment of transition advisory boards that deny, abridge and dilute the voting rights of citizens within these localities. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

170. On its face, as applied, and in practice, Public Act 436 violates the Voting Rights Act through provisions of the statute that discriminate in the appointment of an EM and revocation of the community's right to vote for local officials based on the racial composition of that community and that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

171. Under the totality of the circumstances, the application of Public Act 436 and enforcement has resulted in Black/African American citizens having dramatically less

opportunity for self-governance than other members of Michigan's electorate.

172. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

173. In addition to declaratory and other relief as permitted pursuant to Section 2 of the Voting Rights Act, Plaintiffs request that this court retain jurisdiction and impose Section 3(c) preclearance since Defendants have impermissibly denied, abridged and/or diluted voting rights in violation of Section 2 of the Voting Rights Act and the Fourteenth Amendment of the U.S. Constitution.

COUNT VII – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. I –Freedom of Speech & Right to Petition Government

174. Plaintiffs incorporate by reference paragraphs 1 through 173 above as though fully stated herein.

175. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

176. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. I of the U.S. Constitution.

177. Amendment I of the US Constitution states in pertinent part, "Congress shall make no law … abridging the freedom of speech … and to petition the Government for a redress of grievances."

178. Plaintiffs, as citizens of the State of Michigan, have engaged in constitutionally-protected speech on matters of public concern by voting and electing local government officials to serve as their elected representatives.

179. Plaintiffs, as citizens of the State of Michigan, have engaged in a Constitutionally protected right to petition their local governments on matters of public concern by interacting with duly elected local officials, expressing their concerns, and having them serve as their elected representatives.

180. The elected officials chosen by the Plaintiffs to serve as their representatives have been inclusive of, but not limited to, mayors, city councils, and local school board members of various municipalities.

181. Plaintiffs, as citizens of the State of Michigan, have engaged in their Constitutionally protected right to free speech and to petition their government, by repealing Public Act 4.

182. On its face, as applied, and in practice, Public Act 436 is the mirror image of Public Act 4 and its enactment contrary to the expressed will of the people through the referendum process violates the US Const., Amend. I.

183. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. I through provisions that empower EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

184. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. I through provisions that provide for the appointment of EMs with powers that strip all authority of local elected officials, through provisions of the statute that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

185. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

186. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT VIII – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIII, § 1 – Vestiges of Slavery – Voting Rights

187. Plaintiffs incorporate by reference paragraphs 1 through 185 above as though fully stated herein.

188. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

189. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIII of the U.S. Constitution

190. Amendment XIII, § 1 bans and form of "slavery or involuntary servitude" within the jurisdiction of the United States of America. The Thirteenth Amendment further bans acts which perpetuate the badges and incidents of servitude.

191. Systematic denial of voting rights in local elections to Michigan's Black/African-American citizens is a perpetuation of the vestiges of slavery and involuntary servitude.

192. Public Act 436 effectively revokes the right to vote by intentionally stripping governing authority from local elected officials and transferring such authority to one unelected EM who serves as the overseer of municipalities or school districts, which are overwhelming Black/African American majority communities, with no accountability to local citizens.

193. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. XIII, § 1 through provisions of the statute that perpetuate the vestiges of slavery by discriminatorily and intentionally revoking the community's right to vote for local officials based on the racial composition of that community. Such provisions include those that provide for EMs to:

a. Be selected and appointed solely at the discretion of the Governor; See provisions including but not limited to MCL §141.1549;

b. Become vested with Public Act 436 EM powers for persons previously appointed or acting as EFMs under prior laws; See provisions including but not limited to MCL §141.1549;

c. Act for and in the place and stead of the local governing body of cities and villages and to assume all the powers and authority of the local governing body and local elected officials. See provisions including but not limited to MCL §141.1549, §141.1550, and §141.1552;

d. Rule by decree over cities and villages through powers that permit the EM to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1552; and

e. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1549 and §141.1552.

194. On its face, as applied, and in practice, Public Act 436 violates the US Const., Amend. XIII, § 1 through provisions of the statute that perpetuate the vestiges of slavery by discriminatorily revoking the community's right to vote for local officials based on the racial composition of the community that ratify appointments made and legislative acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570.

195. Defendants have caused injury to the Plaintiffs by exercising the authority granted under Public Act 436 by intentionally terminating and/or removing the authority of duly elected public officials in various municipalities comprising more than fifty-two percent (52%) of the state's population of citizens who are of African American descent.

196. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

197. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

COUNT IX – 42 U.S.C. §1983 -- Constitutional Violation
US Const, Amend. XIV, §1 –Equal Protection – Removal of Emergency Managers

198. Plaintiffs incorporate by reference paragraphs 1 through 196 above as though fully stated herein.

199. Plaintiffs bring this claim pursuant to 42 U.S.C. §1983.

200. Acting under color of law and pursuant to the customs, policies and practices of the State of Michigan, Defendants, acting in their respective individual and/or official capacities,

have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution.

201. Amendment XIV, §1 states in pertinent part, "No state shall make or enforce any law which shall ... deny to any person within its jurisdiction the equal protection of the laws."

202. The Equal Protection Clause protects against laws and the application of laws that invidiously discriminate between similarly situated individuals or between groups of persons in the exercise of fundamental rights.

203. The Equal Protection Clause also protects against laws and the application of laws that discriminate among similarly situated individuals or between groups of persons when no rational basis exists for such discrimination.

204. Public Act 436 permits cities and school boards to pass a resolution by a 2/3 vote and with the approval of strong mayors thereby remove their EMs after 18 months in office.

205. At the same time, Public Act 436 converts all existing EFMs to EMs. Many of the existing managers have been in place for months and even years longer than the 18 month time period after which elected officials to pass a resolution by a 2/3 vote and the approval of strong mayors for the removal such managers.

206. Thus, the law discriminates against cities and school districts where EFMs and EM have been and are currently in place. The law discriminates against these municipalities requiring them to suffer an additional 18 months with an EM despite their having had such officials in place much longer than this time period. At the same time, municipalities that newly receive such managers will be permitted to after which elected officials to pass a resolution by a 2/3 vote and the approval of strong mayors for the removal of such officials after they have been in office for 18 months.

207. On its face, as applied, and in practice, Public Act 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute discriminate between cities and school boards that presently have had EMs for significantly longer than 18 months and those that will receive EMs after March 28, 2013. Such provisions include but are not limited to MCL §141.1549(11).

208. The provisions of PA 436 and the powers granted thereby, are not necessary, narrowly tailored, rationally, or otherwise lawfully related to achieving the asserted government interests of achieving local government financial stability.

209. As a direct and proximate result of the enactment of Public Act 436 and Defendants' actions, Plaintiffs have suffered and will continue to suffer a loss of their constitutionally-protected rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray this Honorable court enter Judgment against Defendants providing:

a. For declaratory relief holding that Public Act 436 violates the United States Constitution, Art. 4, §4; Amend I; Amend XIII; and Amend. XIV; and the Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et. seq.*;

b. For liquidated, compensatory, and punitive damages in an amount fair and just under the circumstances;

c. For preclearance remedies as permitted by 42 USC § 1973a(c);

d. For attorneys' fees and costs; and

e. For such further relief as is just and equitable.

December 2, 2013

Respectfully Submitted,

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F:\Cases\DPS (P v. S)\In Re Detroit Bankruptcy\Pldgs\response to m-recon Ex. 6 Complaint-Federal-1st Amended (2).doc

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 9

From *NAACP v Snyder*, Case No. 13-12098 (E.D. Mich)

9.	8/7/13	23	*Included in Appellants' designation but should be corrected to indicate "Notice of Pendency of Bankruptcy Proceedings and Automatic Stay" (not Application *for* Automatic Stay)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

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/

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

On July 18, 2013, the City of Detroit, Michigan filed a petition for relief under Chapter 9 of Title 11 of the United States Code. (Document 1, *In re City of*

Detroit, Michigan, Case No. 13-53846, (Bankr. E.D. Mich.)) In accordance with the automatic stay imposed by operation of §§ 362 and 922 of the Bankruptcy Code, 11 U.S.C. §362 and 922, no cause of action filed prior to, or relating to the period prior to, the Petition Date may be continued or commenced against (i) the City and/or its employees, or (ii) an officer, employee, or inhabitant of the City, in any judicial, administrative or other court or tribunal to enforce a claim against the City without the Bankruptcy Court first issuing an order lifting or modifying the Stay for such specific purpose. Further, no related judgment or order may be entered or enforced against the City without the Bankruptcy Court first issuing an order lifting or modifying the State for such specific purpose.

On July 25, 2013, the provisions of this automatic stay were extended in all respects (to the extent not otherwise applicable) to include certain "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." (Exhibit 1). Governor Snyder and Treasurer Dillon are named Defendants in the captioned matter which was filed prior to the Petition Date and which is subject to this Bankruptcy Court Order extending the automatic stay.

Actions taken while this Stay is in effect and/or in violation of this Stay, including proceedings in this case, are void and without effect.

The Bankruptcy Court for the Eastern District of Michigan has not issued an order lifting or modifying the Stay for the specific purpose of allowing any party in

the captioned case to continue this action against the Governor or Treasurer. Under these circumstance, the above-captioned proceeding may not be prosecuted, and no valid judgment or order may be entered or enforced against these "certain State Entities."

These certain "State Entities" will not defend against, or take any other action with respect to, the above-captioned proceeding while the Stay remains in effect.

These certain "State Entities" hereby expressly reserve all rights with respect to the above-captioned proceeding, including, but not limited to, the right to move to vacate any judgment entered in the above-captioned proceeding as void.

Respectfully submitted,

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Attorney General

s/Denise C. Barton
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P41535

Dated: August 7, 2013

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such.

s/Denise C. Barton
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

HON. GEORGE CARAM STEEH

EXHIBIT LIST

A. 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

Exhibit 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 10

From *NAACP v Snyder*, Case No. 13-12098 (E.D. Mich)

10	7/11/13	21	Defs' motion to withdraw motion to dismiss

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

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/

NOTICE OF WITHDRAWAL OF MOTION

PLEASE TAKE NOTICE THAT Defendants' first Motion to Dismiss, R.E. 13, is hereby withdrawn.

Respectfully submitted,

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Attorney General

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Dated: July 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2013, I electronically filed the foregoing document(s) with the Clerk of the Court using the ECF system, which will provide electronic notice and copies of such filing to the parties' counsel of record.

/s/Michael F. Murphy
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2013-0044216-A\NAACP (Detroit) (EM) USDC-ED\Notice of Withdrawal Defs' #13 MTD

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 11

From *NAACP v Snyder*, Case No. 13-12098 (E.D. Mich)

11	7/11/13	19	*Included in Appellants' designation but should be corrected to indicate Defs.' Motion to Dismiss Amended Complaint (not Defs' Second Motion to Dismiss)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

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DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

Defendants Richard D. Snyder, Governor of the State of Michigan, Andrew Dillon, Treasurer of the State of Michigan, and Ruth Johnson, Secretary of State, pursuant to Fed. R. Civ. P. 12(b)(1), (6) and (7), move to dismiss Plaintiffs' Amended Complaint for the following reasons:

1. Plaintiffs lack standing to bring any of their claims.
2. This Court should abstain under the *Burford* abstention doctrine.
3. Plaintiffs have failed to meet the factors for declaratory relief.
4. 2012 Mich. Pub. Acts 436, Mich. Comp. Laws § 141.1541 *et seq.*, (P.A. 436) does not violate the Equal Protection Clause (Counts 1 and 2).
5. P.A. 436 does not violate the Due Process Clause (Counts 3 and 4).
6. P.A. 436 does not violate Section 3 of the Voting Rights Act (Count 5).
7. Plaintiffs fail to state a claim upon which relief can be granted.
8. Under Fed. R. Civ. P. 12(b)(1), (6) and (7), a complaint may be dismissed if no relief could be granted under any set of facts that could be proved consistent with the allegations of the complaint. *Ludwig v. Bd of Trustees*, 123 F.3d 404, 408 (6th Cir. 1997). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are not facially plausible. *Id.* at 678 (citing *Twombly*, 550 U.S. at 555). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).
9. Fed. R. Civ. P. 12(b)(1) allows dismissal for lack of subject-matter jurisdiction. It is Plaintiffs' burden to prove jurisdiction. *Moir v. Greater Cleveland Reg'l Transit Auth*, 895 F.2d 266, 269 (6th Cir. 1990).
10. Fed. R. Civ. P. 12(b)(7) provides that the issue of failure to join indispensable parties may properly be raised by a motion to dismiss.

Applying the standards of review set out in paragraphs 8 and 9 to each argument in the brief, and for the reasons stated in this motion, Plaintiffs' Amended Complaint fails as a matter of law. Defendants respectfully request this Court dismiss Plaintiffs' Amended Complaint in its entirety and with prejudice.

Respectfully submitted,

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Dated: July 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such.

s/Denise C. Barton
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

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DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS FIRST AMENDED COMPLAINT

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Plaintiffs lack standing because Individual Plaintiffs have not suffered concrete and particularized injuries and, in turn, Organizational Plaintiffs lack standing to sue on behalf of their members.

2. The Court should abstain from exercising jurisdiction over this action under the *Burford* abstention doctrine.

3. Plaintiffs' Complaint fails to meet the factors for declaratory relief.

4. P.A. 436 does not infringe Plaintiffs' fundamental right to vote or their equal participation in the voting process and does not otherwise discriminate based on race as applied. Plaintiffs' equal protection claims premised on racial discrimination and disparate impact fail as matter of law and should be dismissed.

5. P.A. 436 does not infringe any substantively or procedurally protected right or interest and otherwise serves a legitimate state interest. And it is the Equal Protection Clause, not due process, that protects a citizen's right to participate in elections on an equal footing with other citizens. Plaintiffs' due process claim fails in all respects and should be dismissed.

6. Plaintiffs' Voting Rights Act claim fails as a matter law because it does not set forth a distinct substantive claim, but instead, a request for a remedy that is premature, discretionary, and inappropriate without the joining of necessary parties.

CONTROLLING OR MOST APPROPRIATE AUTHORITIES

Authority:

ACLU of Ohio Found., Inc. v. Ashbrook, 375 F.3d 484 (6th Cir. 2004)

Anthony v. State of Michigan, 35 F. Supp. 2d 989 (E.D. Mich. 1999)

Ctr. for Bio–Ethical Reform, Inc. v. Napolitano, 648 F.3d 365 (6th Cir. 2011)

Hunter v. City of Pittsburgh, 207 U.S. 161 (1907)

Moore v. Detroit School Reform Board, 293 F.3d 352 (6th Cir. 2002)

New Orleans Pub. Serv. Inc. v. Council of the City of New Orleans, 491 U.S. 350 (1989)

Rodriguez v. Popular Democratic Party, 457 U.S. 1 (1982)

Sailors v. Bd. of Ed. of Kent County, 387 U.S. 105 (1967)

TriHealth, Inc. v. Board of Com'rs, Hamilton County, Ohio, 430 F.3d 783 (6 Cir., 2005)

Village of Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252 (1977)

Washington v. Glucksberg, 521 U.S. 702 (1997)

INTRODUCTION

The concept of an emergency manager and local government receivership is not new to Michigan. Indeed, both major political parties have used some form of emergency manager and receivership for over 20 years, providing wide-ranging and varied authority to address local-government fiscal emergencies. And, in the current economic environment where a high number of municipal governments and school districts are teetering on the brink of financial catastrophe, it is more than apparent that additional flexibility and new tools are required. As a result, the Michigan Legislature responded with 2012 Mich. Pub. Act 436 (P.A. 436).

Having lost the political battle to stop P.A. 436 on the steps of the State Capitol, Plaintiffs filed this lawsuit, an action that contains no cognizable legal claims or alternative solutions to the looming financial problems that local elected officials have been unable to solve. First, Plaintiffs challenge P.A. 436 with claims of discrimination and disparate impact premised on irrelevant comparisons of "fiscal health scores" that have no application to the emergency-manager review process, have not been compiled or published by the State since 2009, and do not reflect the depth of any fiscal emergency or the local government's ability to resolve the emergency on its own. Second, Plaintiffs challenge P.A. 436 as infringing on their voting rights and having a disparate impact on majority minority voting jurisdictions in violation of equal protection, substantive and

procedural due process, and § 3 of the 1965 Voting Rights Act. These overreaching claims have no support in fact or law and demonstrate only that Plaintiffs' proper remedy is the political process, not the federal courts. The Amended Complaint should be dismissed in its entirety.

STATEMENT OF FACTS

Nature of the Case

Plaintiffs originally brought this action under 42 U.S.C. § 1983, alleging that P.A. 436 violates the U.S. Const. amend XIV (due process and equal protection), and the preclearance requirements of the Voting Rights Act, 42 U.S.C. § 1973c. (RE 1, Compl., ID# 26-31.) On June 27, 2013, Plaintiffs filed their Amended Complaint, adding a procedural due process claim and dropping their claim under § 5 of the Voting Rights Act and adding a claim under § 3c of the Voting Rights Act, 42 U.S.C. § 1973a(c), presumably in response to the Supreme Court's decision in *Shelby County, Alabama v. Holder,* 570 U.S. __, Sup. Ct. Dkt. No. 12-96 (2013). (RE 16, Am. Compl., ID#202-3.) In addition, they are now pleading Plaintiffs White, Stallworth III, Tlaib and Taylor as individuals. (RE 16, Am. Compl., ID # 173, 180, 181.)

Where specific factual allegations are necessary for deciding this motion, those facts have been taken from the Amended Complaint and related documents. The Amended Complaint presents both facial and as applied challenges to P.A.

436. The facial challenges are premised on allegations that P.A. 436 violates equal protection by denying "equal dignity owed to each vote;" violates substantive and procedural due process by arbitrarily and discriminatorily "selecting jurisdictions for the imposition of an Emergency Manager;" and purportedly violates 42 U.S.C. § 1973a(c) of the Voting Rights Act by failing to comply with preclearance requirements. (RE 16, Am. Compl. ID# 204.) The as-applied challenges are premised on allegations that P.A. 436 disparately impacts the State's African-American voters, resulting in voter dilution. (RE 16, Am. Compl., ID# 190-194, 198-201.)

Michigan's Local Government Fiscal Responsibility Acts

Public Act 436 was signed into law in December of 2012. It became effective on March 28, 2013. P.A. 436 followed the period of time from August 8, 2012 to March 28, 2013, when the State and its political subdivisions operated under 1990 Mich. Pub. Acts 72 (P.A. 72). Mich. Comp. Laws § 141.1201, *et seq*. P.A. 72 established the process for appointing emergency financial managers to assist municipal governments or school districts resolve financial emergencies. An emergency financial manager's (EFM) authority was limited to only financial issues. Public Act 72 was replaced by 2011 Mich. Pub. Act 4 (P.A. 4). Under P.A. 4, emergency financial managers became emergency managers (EM) and were provided expanded authority and tools to resolve financial emergencies in fiscally

stressed municipal governments and school districts. P.A. 4 was suspended on August 8, 2012 and ultimately rejected by voters in November of 2012 under the State's referendum process. See Mich. Const. 1963, art. II, § 9 and its anti-revival statute, Mich. Comp. Laws § 8.4. The suspension and ultimate rejection of P.A. 4 revived P.A. 72 and emergency managers reverted to emergency financial managers again with reduced authority limited to only financial issues. See OAG, 2011-2012, No 7267, p 6 (August 6, 2012) (available at http://www.ag.state.mi.us/opinion/datafiles/2010s/op10346.htm.)

In December of 2012, the Legislature passed P.A. 436 to replace P.A. 72. The Legislature reasonably determined that local fiscal stability is necessary for the State's health, welfare, and safety; that P.A. 72 did not provide the necessary authority and tools to restore that fiscal stability to financially stressed local governments; and that P.A. 436 provides the tools and authority necessary to protect those interests including the credit ratings of the State and its political subdivisions. Mich. Comp. Laws § 141.1543.

Key Features of P.A. 436

Public Act 436 includes three key features that expand local government options to address the financial emergency—the ability of local government to choose the option to resolve its financial emergency (emergency manager, consent agreement, neutral mediation or Chapter 9 bankruptcy); a time limit for a financial

manager's appointment; and authority to petition for removal of a financial manager. Mich. Comp. Laws §§ 141.1547 (1), 1549(2), 1549(11). P.A. 436 also applies the same criteria for initiating a preliminary review and finding of probable financial stress for both municipal governments and school districts. The statute also builds in checks on an emergency manager's authority. See, e.g., Mich. Comp. Laws §§ 141.1552 (1)(k) & (u) (collective bargaining agreements and borrowing money), 1552(4) (selling or transferring public utilities), 1555(1) (selling of assets), 1559(1) (proposed contracts, sales, and leases).

State's Fiscal Health Scoring

Plaintiffs allege that a fiscal health scoring matrix, developed by the Department of Treasury and published between 2006 and 2010, demonstrates an arbitrary and discriminatory pattern resulting in the disproportionate appointment of EMs for majority minority communities. (RE 16, Am. Compl., ID # 195-197.) Yet, these "fiscal health scores" are not related to the financial emergency process under the predecessor statute, P.A. 72. They never had application under P.A. 4. And they do not have application under P.A. 436. The purpose of this fiscal health score was to assist municipal governments in identifying and resolving possible financial issues. (Ex. A, Fiscal Scoring Purposes.) The "fiscal health scores" were neither intended nor used to identify communities for preliminary review or a full financial review under P.A. 72. Nor were they used or referenced under P.A. 4, or

P.A. 436, which has not been fully applied and does not rely on them. Mich. Comp. Laws § 141.1212, 1214; Mich. Comp. Laws § 141.1512; Mich. Comp. Laws § 141.1544 (1), (2). In fact, the "fiscal health score" for municipal governments has not been published since 2009 or compiled since 2010. (Ex. B.)

Indeed, only the preliminary review process under P.A. 72, P.A. 4, and now P.A. 436 is used to determine the existence of probable financial stress within a local government, identifying it for further review and possible emergency management of some form. Mich. Comp. Laws §141.1212; Mich. Comp. Laws § 141.1412; Mich. Comp. Laws §141.1544 (1). For example, under P.A. 436 a preliminary review to determine the existence of probable financial stress may be conducted when one or more of 19 different triggering events occurs. Mich. Comp. Laws § 141.1544 (1)(a)-(s). These include requests from the local government, a creditor, local electors by petition, or by resolution of the senate or house, notification that a pension fund payment required by law has been missed, notice of a default on a bond or note payment, violation of orders related to revenue bonds, and numerous other events. *Id.* The preliminary review trigger events are substantially similar under P.A. 72 and P.A. 4. Mich. Comp. Laws § 141.1212 (1)(a)-(n); Mich. Comp. Laws §141.1412. The "fiscal health score" assigned to a municipal government between 2006 and 2009 is *not* identified by either P.A. 436 or it predecessors, P.A. 72 and P.A. 4, as a triggering event. *Id.*

Additionally, 5 EFMs were appointed for municipal governments before the State began compiling and publishing "fiscal health scores." (Ex. B.) Five EMs have been appointed since the "fiscal health scores" were discontinued. "Fiscal health scores" were never compiled for or applied to Michigan's school districts. (Ex. B.)

The preliminary review and review-team process for Michigan's school districts under P.A. 436 is identical to that of a municipal government with the exception that the "state financial authority" conducting the preliminary review remains the superintendent of education. Mich. Comp. Laws § 141.1542(u)(ii). This preliminary review and review team process for school districts is also substantially similar under P.A. 72 and P.A. 4. Mich. Comp. Laws §§ 141.1212, 1214, 1233(1), 1234(1), (2), (3), 1235.

Finally, the "fiscal health score" did not consider the municipal governments' ability to resolve the existing financial emergency. This is a critical factor in determining probable financial stress and the existence of a financial emergency under P.A. 72 and now P.A. 436. Mich. Comp. Laws §§ 141.1212, 1214, 1235; Mich. Comp. Laws §§ 141.1544 (2),1545(3)(f)-(l).

ARGUMENT

I. Plaintiffs lack standing

Plaintiffs' First Amended Complaint should be dismissed for lack of standing. Plaintiffs Stallworth, Tlaib, and Taylor bring suit strictly in their

individual capacities; Detroit Branch NAACP and Michigan State Conference NAACP are Organizational Plaintiffs; and White is suing individually and behalf of Organizational Plaintiffs. (RE 16, Am. Compl. ¶¶24-27, ID#180-181.)

To invoke this Court's subject-matter jurisdiction, Individual Plaintiffs White, Stallworth, Tlaib and Taylor must *each* establish for *each* claim, among other things, an injury-in-fact that is concrete and particularized, not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also American Civil Liberties Union v. Nat'l Sec. Agency*, 493 F.3d. 644, 652 (6th Cir. 2007), citing *Allen v. Wright*, 468 U.S. 737, 752 (1984) ("[T]he standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted.") Because they seek injunctive and declaratory relief, they also have the heightened burden of showing a substantial likelihood they will be injured in the future. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983).

Organizational Plaintiffs Detroit Branch NAACP and Michigan State Conference NAACP have standing only if (a) their members otherwise have standing to sue in their own right; (b) the interests to be protected are germane to the organizations' purpose; and (c) neither the claim asserted nor the relief requested requires participation of individual members in the lawsuit. *ACLU of*

Ohio Found., Inc. v. Ashbrook, 375 F.3d 484, 489 (6th Cir. 2004). Neither standard is satisfied here.

A. Individual Plaintiffs lack standing because they have not suffered a concrete and particularized injury.

Individual Plaintiffs claim they are registered voters in the City of Detroit who casted ballots for Mayor and City Council in the 2009 general election. (RE 16, Am. Compl., ¶¶ 24-27, ID# 180-819.) They are each suing because they are "strongly opposed to Public Act 436, and believe[] that [their] vote for Mayor and City Council should count equally to the vote of electors in non-Emergency Manager jurisdictions, who cast ballots for their local legislative and executive officials." (*Id*.)

Plaintiffs do not allege the enactment of P.A. 436 has injured them in a manner distinguishable from the harm purportedly incurred by residents of other localities with emergency managers. Rather, they raise only general grievances regarding Defendants' policy choices related to fiscally stressed local governments. (*Id*.) Their claims are strikingly similar to those considered and rejected in other cases by the Supreme Court, the Sixth Circuit, and this Court for lack of standing. *See, e.g.*, *City of Los Angeles*, 461 U.S. at 111 (resident challenging police department's chokehold policy was "no more entitled to an injunction than any other citizen"); *Miyazawa v. City of Cincinnati*, 45 F.3d 126, 126-128 (6th Cir. 1995) (resident challenging city charter amendment suffers "no

harm, nor will she suffer any greater harm than that of any other voter in the City of Cincinnati"); *Anthony v. State of Michigan*, 35 F. Supp. 2d 989, 1003 (E.D. Mich. 1999) (Detroit citizens challenging consolidation of Detroit Recorder's Court did not "articulate how they [were] particularly harmed as a result of the merger"). These Plaintiffs lack standing to bring their claims for the same reasons.

B. Organizational Plaintiffs lack standing, and White lacks standing to sue on their behalf, because their members do not have standing to sue in their own right.

Organizational Plaintiffs also lack standing. To invoke this Court's subject-matter jurisdiction, these Plaintiffs must show, among other things, that their members otherwise have standing to sue in their own right. *Ashbrook*, 375 F.3d at 489. For Plaintiff White to sue on behalf of Organizational Plaintiffs, Organizational Plaintiffs must have standing. Yet Organizational Plaintiffs lack this derivative standing because Individual Plaintiffs cannot establish that they have suffered a concrete and particularized injury. Organizational Plaintiffs' claims, and any claims White brings on their behalf, should likewise be dismissed.

II. This Court should abstain under the *Burford* abstention doctrine.

This Court should exercise its discretion to abstain from addressing Plaintiffs' claims for injunctive and declaratory relief. Abstention involves "careful consideration of the federal interests in retaining jurisdiction over the dispute and the competing concern for the 'independence of state action.'"

Quackenbush v. Allstate Insurance, 517 U.S. 706, 728 (1996) (citing *Burford v. Sun Oil Co.*, 319 U.S. 315, 334 (1943)). *Burford* abstention is appropriate where timely and adequate state-court review is available and a case presents "difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar," or the "exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern." *New Orleans Pub. Serv. Inc. v. Council of the City of New Orleans*, 491 U.S. 350, 361 (1989) (quotation omitted); *Adrian Energy Ass'n v. Public Service Comm'n*, 481 F.3d 414, 423 (6th Cir. 2007). These circumstances are met here.

First, timely and adequate state-law review is available. Second, in this difficult economic environment when an alarming number of Michigan's local governments and school districts are on the brink of financial catastrophe, the State's current solution to that problem—P.A. 436—is undoubtedly a difficult question of state law that bears on policy problems of significant public concern. Not only will local residents suffer if their basic services are jeopardized but all state residents stand to suffer if the State's credit rating is negatively impacted. This lawsuit strikes at the heart of this uniquely state problem and solution.

The State, as sovereign, addresses such matters of public concern and importance, in part, through legislation defining the power and authority of its local governments, which derive their power and authority only from the State. *Bivens v. Grand Rapids*, 505 N.W.2d 239, 241 (Mich. 1993). Indeed, state law generally controls over local enactments and policy. *Taunt v. General Retirement Sys.*, 233 F.3d 899, 906 (6th Cir. 2000) (citing *Rental Property Owners Ass'n of Kent Co. v. City of Grand Rapids*, 566 N.W.2d 514, 519 (Mich. 1997)). Thus, the policy challenges associated with restoring fiscal order to local entities and school districts under financial stress, counsel for state independence, not federal intervention.

Third, federal review here would disrupt the State's efforts to "establish a coherent policy" with respect to resolving the financial stress of local units of government and school districts and protecting all state residents by protecting the State's credit rating. Absent state direction, many units of local government and school districts have literally spent themselves into deficit. Fiscal crises have led to the appointment of 11 EFMs[1] and negotiation of 3 consent agreements under P.A. 72 between 1990 and 2011,[2] and one EM and one consent agreement under

[1] Nine of these EFMs (Hamtramck, City of Detroit, Pontiac, Flint, Benton Harbor, Allen Park, Muskegon Heights Schools, Detroit Public Schools, and Highland Park Public Schools) are now acting EMs under P.A. 436.
[2] Detroit, Inkster and River Rouge.

P.A. 4.[3] P.A. 436 establishes a comprehensive policy to deal with these local fiscal emergencies, addressing a broad public concern that local governments maintain fiscal integrity. Significantly, too, over the past few years a number of other Legislative Acts have been adopted to address these severe financial situations.[4] Thus, P.A. 436 is but one piece of a larger state effort to restore fiscal responsibility, reduce public spending, and redefine the obligations of contracting parties in light of current financial, economic, and business realities.

In sum, these matters are uniquely suited to state regulation and control and would be disrupted by a federal court's review and remedy. This Court should exercise its discretion to abstain under the *Burford* abstention doctrine.

III. Plaintiffs have failed to meet the factors for declaratory relief.

Plaintiffs seek an order declaring that P.A. 436 violates the Equal Protection and the Procedural and Substantive Due Process clauses of the United States Constitution. (RE 16, Am. Compl., Prayer for Relief, ¶ A.) The Declaratory Judgment Act provides that in a case of actual controversy, a competent court may "declare the rights and other legal relations" of a party "whether or not further

[3] City of Detroit.

[4] Other laws enacted include: 2011 P.A. 297, Mich. Comp. Laws 15.581, *et seq.*; 2011 P.A. 264, Mich. Comp. Laws 38.1, *et seq.*; 2010 P.A. 185, Mich. Comp. Laws 38.35; 2010 P.A. 135, Mich. Comp. Laws 38.1343e; 2011 P.A. 152, Mich. Comp. Laws 15.561; 2011 P.A. 63; 2011 P.A. 95, Mich. Comp. Laws 380.1255a; 2011 P.A. 54, Mich. Comp. Laws 423.215b; 2011 P.A. 62, Mich. Comp. Laws 388.1601, *et. seq.*

relief is or could be sought." 28 USC § 2201; *Public Service Comm. of Utah v. Wycoff*, 344 U.S. 237, 241 (1952). The granting of a declaratory judgment rests in the sound discretion of the court. *Grand Trunk Western R.R. Co. v. Consolidated Rail Corp.*, 746 F.2d 323, 326 (6th Cir. 1984) (citation omitted).

The Sixth Circuit considers the following factors in determining whether a district court should issue a declaratory ruling: (1) whether the declaratory action would settle the controversy; (2) whether the declaratory action would serve a useful purpose in clarifying the legal relations in issue; (3) whether the declaratory remedy is being used merely for the purpose of "procedural fencing" or "to provide an arena for a race for *res judicata*"; (4) whether the use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and, (5) whether there is a better or more effective alternative remedy. *Grand Trunk*, 746 F.2d at 326 (internal citation omitted).

Here, factor 4 counsels strongly, and factors 3 and 5 counsel against exercising jurisdiction over the request for declaratory relief. As to factor 4, in determining whether the exercise of jurisdiction would increase friction between federal and state courts, the Sixth Circuit considers three sub-factors, one of which is whether there is a close nexus between underlying factual and legal issues and state law and/or public policy. *Scottsdale Ins. Co. v. Flowers*, 513 F.3d 546, 559-560 (6th Cir. 2008). Here, the legal issues raised by Plaintiffs are closely

connected to the State's policy decision to handle its local financial emergencies through the options and procedures outlined in P.A. 436. That sub-factor alone is strong enough to counsel against exercising jurisdiction.

As to factor 3, an action presently pending before this Court—*Phillips, et. al. v. Snyder, et. al.*, No. 2:13-cv-11370—essentially raises these same substantive issues of equal protection based on wealth and vote dilution, and substantive and procedural due process.

Finally, as to factor 5, the alternative remedy here is for Plaintiffs to participate in the political process, because their real gripe is that they are dissatisfied with the current outcome of that process. This Court should decline to issue the requested declaratory relief.

IV. P.A. 436 does not violate the Equal Protection Clause.

As their first and second causes of action, Plaintiffs allege that P.A. 436 violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. These claims lack merit.

A. Plaintiffs' fundamental right to vote has not been diluted.

Plaintiffs first allege that P.A. 436 violates the right to vote by valuing the votes of citizens in communities without appointed emergency managers over the votes of citizens in communities with appointed emergency managers. (RE 16, Am. Compl. ¶ 76, ID# 198.)

The Equal Protection Clause states that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1. The clause prevents states from making distinctions that (1) burden a fundamental right; (2) target a suspect class; or (3) intentionally treat one individual differently from others similarly situated without any rational basis. *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 312 (6th Cir. 2005).

The right to vote is a "fundamental" political right. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966), and the Equal Protection Clause applies when a state either classifies voters in disparate ways or places restrictions on the right to vote. *League of Women Voters v. Brunner*, 548 F.3d 463, 477–78 (6th Cir. 2008) (citing *Bush v. Gore*, 531 U.S. 98, 104 (2000)). "[T]he right of suffrage can [also] be denied by a debasement or dilution of the weight of a citizen's vote . . . ." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). A vote-dilution claim invokes the principle of "one person, one vote," a requirement under the Fourteenth Amendment. See *Carlson v. Wiggins*, 675 F.3d 1134, 1139 (8th Cir. 2012).

As a threshold matter, Plaintiffs must demonstrate they are similarly situated "in all *material* respects" to the persons allegedly receiving more favorable treatment. *Ctr. for Bio–Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011) (quotation marks omitted) (emphasis added); *TriHealth, Inc. v. Bd of*

Com'rs, Hamilton County, Ohio, 430 F.3d 783, 790-791 (6th Cir. 2005). Exact correlation is not necessary. *Perry v. McGinnis*, 209 F.3d 597, 601 (6th Cir. 2000).

Here, the individual Plaintiffs, who are residents of the City of Detroit, which is under the administration of an emergency manager, allege that their votes are being diluted as compared to residents of local units of government where there is no emergency manager. But that is not true. Each local unit of government with an emergency manager, including the City of Detroit, underwent a rigorous review of its financial condition, as assessed against set criteria, and was determined to be in a financial emergency by the Governor or other executive official. The serious financial problems facing these local units of government cannot be overstated. Plaintiffs are thus not similarly situated to residents of local units of government that have not been declared to be in a financial emergency. As a result, their equal-protection claims necessarily fail at the onset.

Turning to the substance of Plaintiffs' claim, residents in communities with EMs retain all their rights to exercise the franchise and vote for the candidates of their choice, including candidates for local government, and to have those votes counted the same as any other citizen in any other municipality. While P.A. 436 may temporarily prohibit the chief executive officers and governing bodies from exercising the powers of those offices during receivership, Mich. Comp. Laws § 141.1549 (2), it does not preclude residents from voting candidates into these

offices and having their votes counted.[5] Nor does it preclude candidates from holding those offices during the receivership and performing whatever duties and functions an EM does not assume.[6]

Plaintiffs equate their right to have their votes counted equally to a "right" to have their elected candidates perform the duties of their offices. But the right to vote does not guarantee that a candidate will perform or function in office as expected. See, e.g., *Smith v. Winter*, 717 F.2d 191, 198 (5th Cir. 1983) ("[T]he right to an 'effective' vote refers to the citizen's right to make his voice heard in the electoral process, and not to the ability to command results in the public office.") If that were true, voters and candidates would have a voting rights claim against the State every time a law is passed that impacts an elected official's duties in office. That cannot be the case, and indeed Plaintiffs fail to cite any decision that has extended the right to vote in this manner.

B. P.A. 436 does not discriminate based on race as applied.

Plaintiffs next allege that, as applied, P.A. 436 has had a "disparate and discriminatory impact on voters of color" because a majority of the State's African

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[5] Local elections will be held this year in communities with EMs in accordance with Michigan's election laws. Mich. Comp. Laws § 168.642. School district elections are held in even-numbered years. Mich. Comp. Laws § 168.642c.

[6] Plaintiffs suggest their votes are now meaningless. But voting for qualified candidates while a local government is in temporary receivership under P.A. 436 is imperative to an effective transition out of receivership and to the resumption of local control.

American residents are now "ruled" by unelected EMs, compared to a small minority of the State's white residents now "ruled" by EMs. (RE 16, Am. Compl. ¶ 82, ID# 200.) They claim that this purported disparate impact "has resulted in a dilution of the individual's right to vote for locally-elected officials of their choosing." *Id*., ¶ 83.

Plaintiffs' argument appears to be that the communities identified in the Amended Complaint[7] were discriminated against when they underwent a preliminary review– the first stage of the financial review process under the emergency manager laws. They allege a racially discriminatory disparate impact because more majority minority communities than majority white communities have undergone the financial review process and subsequent EM appointment.

Before addressing the substance of Plaintiffs' claim, it must be placed in context. None of the identified communities were reviewed under P.A. 436; all were reviewed under P.A. 72 or P.A. 4. P.A. 436 is implicated only because it ratifies "[a]ll proceedings and actions taken under" P.A. 4, P.A. 101, and P.A. 72, Mich. Comp. Laws § 141.1544(6), and continues the appointments of EMs. Mich. Comp. Laws § 141.1549(10). Indeed, as of the filing of this brief, only one

[7] Benton Harbor (P.A. 72), Ecorse (P.A. 72), Flint (P.A. 72 and P.A. 4), Pontiac (P.A. 72), Highland Park School District (P.A. 4), Detroit Public Schools (P.A. 72), and City of Detroit (P.A. 4, and P.A. 72). (RE 16, Am. Compl. ¶ 49, ID# 188), and Defendants' Exhibit B. Plaintiffs also identify Muskegon Heights School District (P.A. 4), but the local government there requested a preliminary financial review, so that district's review does not support Plaintiffs' claim. *Id.*

community, the City of Hamtramck, has completed the financial review process under P.A. 436 and had an EM appointed. According to 2010 census data, this community has a white majority population.[8] So, at this point, there can be no claim of disparate treatment directed at P.A. 436.

If there is any merit to Plaintiffs' claim of disparate treatment under the prior laws, P.A. 436 could only be declared unconstitutional on an as-applied basis to the extent it ratified the prior preliminary reviews in the identified communities. Plaintiffs' generic request for a declaration that P.A. 436 violates the Equal Protection Clause is thus overbroad.[9]

Even so, their claim fails for the following reasons. P.A. 436 does not embody a racial classification and it neither says nor implies that voters should be treated differently on account of race. The purpose of the Act—resolving local financial emergencies—includes any local unit in financial distress, regardless of its racial makeup. So P.A. 436 is facially neutral.

"Where facially neutral legislation is challenged on the grounds that it discriminates on the basis of race, the enactment will be [analyzed under] strict scrutiny *only if the plaintiff can prove that it 'was motivated by a racial purpose or object,' or 'is unexplainable on grounds other than race*.'" *Moore v. Detroit*

[8] See http://quickfacts.census.gov/qfd/states/26/2636280.html.
[9] P.A. 436 has a severability clause, Mich. Comp. Laws § 141.1573, meaning that any offending provision may be struck leaving the remainder of the Act intact.

School Reform Board, 293 F.3d 352, 369 (6th Cir. 2002) (internal quotation marks and citations omitted) (emphasis added). Therefore, "[p]roving that a law has a racially disparate impact, without more, is [] insufficient to establish a violation" of the Fourteenth Amendment. *Moore*, 293 F.3d at 369 (citing *Village of Arlington Heights v. Metro. Housing Dev. Corp*., 429 U.S. 252, 264–65 (1977)).

The U.S. Supreme Court has identified five factors for determining whether facially neutral state action was motivated by a racially discriminatory purpose: (1) the impact on particular racial groups, (2) the historical background of the challenged decision, (3) the sequence of events preceding the action, (4) departures from the government's normal procedural process, and (5) the legislative history. *Village of Arlington Heights*, 429 U.S. at 266–68; see also *Moore,* 293 F.3d at 369-370 (addressing these factors in a challenge against Michigan School Reform Act and finding no equal protection violation).

While Plaintiffs recount the historical background of P.A. 436, the events leading to its passage, and its legislative history, none of that shows that the Legislature acted with a discriminatory purpose. Indeed, the fact that P.A. 436 was enacted after the referendum on P.A. 4 and during lame duck is not particularly unusual, and certainly was not unlawful. See *Reynolds v. Bureau of State Lottery*, 610 N.W.2d 597, 601-607 (Mich. Ct. App. 2000) (discussing Michigan's referendum process and ability of Legislature to reenact legislation). Even if the

emergency manager laws have had a disparate impact as alleged, without proof of these other factors, Plaintiffs cannot show a racially discriminatory purpose.

Regardless, Plaintiffs focus on the "impact" on majority minority communities. They support this allegation by reference to the Department of Treasury's fiscal health indicator scores and by asserting that majority white communities with fiscal scores similar to majority minority communities were not subject to a preliminary review under P.A. 72 or P.A. 4. But this is unpersuasive because the fiscal indicator scores were compiled for a different purpose and were never used in the preliminary review process. (Defs.' Ex. A.)

Rather, the trigger for subjecting the identified communities to preliminary review was the existence of one or more of the factors identified in P.A. 72 or P.A. 4.[10] Under these Acts, the State Treasurer or State Superintendent could conduct a preliminary review "to determine the existence of a local government financial problem" where "1 or more" of the 14 or 18 factors listed in P.A. 72 (Mich. Comp. Law. § 141.1212(a) - (n)), and P.A. 4 (Mich. Comp. Laws § 141.15.12(a) – (s)), respectively, were present. Thus, to the extent Plaintiffs draw comparisons between the majority minority communities with EMs and white communities without EMs, they must make comparisons based on the existence of the statutory

[10] While some of the factors used to compile fiscal scores overlapped with the statutory factors outlined in P.A. 72 and P.A. 4, e.g. fund deficits, the fiscal scores themselves were not used as part of the preliminary review.

preliminary review factors, not the fiscal scores. Again, it is the statutory factors that trigger the preliminary review. Moreover, fiscal scores were never compiled for school districts, so Plaintiffs have made no showing—just bare allegations—with respect to the purported disparate treatment of school districts.

Even so, the fiscal score data is unpersuasive because there is too little of it, and what exists is inconclusive. Data was only compiled and the scores reported for four years—2006, 2007, 2008, and 2009. (Defs.' Ex. B.) As shown in Defendants' Table, Exhibit B, only three communities—Three Oaks, River Rouge, and Pontiac—underwent a preliminary review during that time period. (*Id.*) In 2008, Three Oaks, which has a white majority population, had a fiscal score of 1 (a good score) but still underwent a review under P.A. 72. Pontiac and River Rouge, majority minority communities, both scored a 6 (an average to poor score, but not the worst) in 2009, and underwent review. Just comparing these three communities, the inclusion of Three Oaks undermines Plaintiffs' contention that the fiscal scores are somehow probative of whether a community was properly subject to a preliminary review. Similarly, the small number of comparables renders the fiscal scores meaningless for any year other than 2009. And to the extent there were majority white communities that scored a 6 or higher in 2009 and were not subject to a preliminary review as were Pontiac and River Rouge, again, the fiscal scores were not a trigger or considered during a preliminary review.

Plaintiffs thus fail to sufficiently plead facts supporting a determination that the preliminary reviews of the identified communities under P.A. 72 or P.A. 4 were motivated by a racially discriminatory purpose. *Moore*, 293 F.3d at 369-370. Defendants therefore need only show that P.A. 436, specifically the sections ratifying the past actions and continuing the appointments, are rationally related to a legitimate governmental interest. *Id.*

"When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude, and the Constitution presumes that even improvident decisions will eventually be rectified by the democratic processes." *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985) (internal citation omitted). Michigan has a legitimate government interest in preventing or rectifying the insolvency of its political subdivisions, which threatens the health, safety, and welfare of its residents. Mich. Comp. Laws § 141.1543. It also threatens the interests of the citizens of this State as a whole because it is detrimental to the State's overall economic condition and credit rating. *Id.* To that end, it is rational that communities that already underwent the financial review process and had EMs appointed are not required to undergo the disruption of a review under P.A. 436. This is also supported by the fact that P.A. 436 subjects an EM to potential removal after 18-months in office. See Mich. Comp. Laws §

141.1549(6)(c). P.A. 436 thus survives rational basis review, and Plaintiffs fail to state a claim under the Equal Protection Clause.

V. P.A. 436 does not violate substantive or procedural due process.

A. Substantive Due Process Claim

The substantive component of the Due Process Clause protects fundamental rights and liberty interests that are "[so] implicit in the concept of ordered liberty" that "neither liberty nor justice would exist if they were sacrificed." *Palko v. Connecticut*, 302 U.S. 319, 325-326 (1937), *overruled on other grounds*, by *Benton v. Maryland*, 395 U.S. 784 (1969). Only when a state law infringes on these fundamental rights and interests is it subject to strict scrutiny. *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). Thus, to properly analyze a substantive due process claim, the Court must first carefully identify the fundamental right or liberty interest allegedly implicated.

Here, Plaintiffs' substantive due process claim is premised on an alleged denial of the right to participate equally in the voting process in jurisdictions under emergency management resulting from the arbitrary and discriminatory application of P.S. 436 and its predecessor laws. (RE 16, Am. Compl. ¶¶ 90, 91, ID# 202.) This is essentially an equal protection claim and is not within the scope of substantively protected rights or interests.

The Equal Protection Clause, not substantive due process, protects a citizen's right to participate in elections on an equal footing with other citizens. *Rodriguez v. Popular Democratic Party,* 457 U.S. 1, 9-10 (1982); *Bush v. Gore,* 531 U.S. 98, 104 (2000). This encompasses the right to have one's vote counted on equal terms with others so that one's vote is accorded equal weight and equal dignity with other citizens in the jurisdiction. *Id.* Thus, Plaintiffs' claim is properly analyzed only under the Equal Protection Clause. *Graham v. Connor,* 490 U.S. 386, 394, 395 (1989). As argued above, under that analysis Plaintiffs' claim fails.

In the context of a voting rights claim, the Due Process Clause is implicated and relief is appropriate only "in the exceptional case where a state's *voting system* is fundamentally unfair." *League of Women Voters*, 548 F.3d at 478 (emphasis added); *Warf v. Board of Elections of Green County, Kentucky*, 619 F.3d 553, 559 (6th Cir. 2010) (internal citations omitted). Thus, a due process claim looks at the "fairness of the official terms and procedures under which the election was conducted." *League of Women Voters*, 548 F.3d at 478, citing *Griffin v. Burns*, 570 F.2d 1065, 1078 (1st Cir. 1978). In this context, courts have examined such practices as the allocation of voting; the adequacy of training for poll workers; and provisional and absentee balloting safeguards—all of which could, under certain circumstances, lead to disenfranchisement by frustrating

voters or the discounting of ballots. *League of Women Voters*, 548 F.3d at 477-478; *Warf*, 619 F.3d at 559-561.

But Plaintiffs' substantive due process claim is not premised on a purported fundamental unfairness in the State's voting system. Rather, it is premised on the same allegations underlying their equal protection claim—the alleged discriminatory dilution of their right in jurisdictions under emergency management resulting from the suspension of the elected officials' duties once in office. But again, no protected right to have one's elected officials perform the duties of the office once elected is encompassed within the "right to vote." See, e.g., *Smith*, 717 F.2d at 198. Nor should substantive due process expanded to incorporate such a right, particularly in the context of this case. *Glucksberg*, 521 U.S. at 720.

Political subdivisions of the State have never "been considered as sovereign entities." *Sailors v. Bd. of Ed. of Kent County*, 387 U.S. 105, 107 (1967). To the contrary, they are "traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental function." *Id.* at 107-108; see also *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178 (1907). Significantly, the Supreme Court recognizes that local governments may need innovations to remain viable and that nothing in the Constitution prevents such experimentation. *Sailors*, 387 U.S. at 110-111.

The application of P.A. 436 and its predecessor laws comport with the State's sovereign powers to reshape local government to address changing urban conditions and related fiscal distress. It is rationally related to a legitimate government purpose—the health, safety, and welfare of citizens through the preservation of the fiscal integrity of local governments. The Act is narrowly tailored to achieve this purpose with as little disruption to the government unit and the provision of services as possible. It prescribes specific guidelines, requirements, and procedures governing official decision making in every application. It is a valid exercise of the State's police power.

Nothing in P.A. 436 alters the State's or local government's voting system or renders the respective voting system in the jurisdiction under emergency management fundamentally unfair. Indeed, regular local government elections in several jurisdictions under emergency management are proceeding this election year. And every registered voter in these jurisdictions has the equal opportunity to vote and have their vote counted.

B. Procedural due process claim

Plaintiffs' procedural due process claim is based on a denial of a protected "right to vote" in jurisdictions under emergency management. (RE 16, Am. Compl. ¶¶ 95, 96, ID# 203.) Analysis of this procedural due-process claim involves a dual inquiry: (1) whether a liberty or property interest exists that the

State has interfered with; and (2) whether the procedures attendant upon the deprivation were constitutionally sufficient—that is, provided at a meaningful time and in meaningful manner. *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 538 (1985); *Matthew v. Eldridge*, 424 U.S. 319, 333, 349 (1976).

No protected right or interest invoking procedural due process is at issue here. As previously argued, the generalized "right to vote" on which this procedural claim is based is not encompassed within the Due Process Clause. Rather the "liberty interest" or right accorded due process protection is the fundamental fairness of the state's voting system. *League of Women Voters*, at 478; *Warf v.* 619 F.3d at 559. Plaintiffs' attempt to bootstrap a voting rights claim into the application and enforcement of P.A. 436 is without merit given the limited, and "exceptional nature" of the due process protection afforded in the voting context.

Also significant to this analysis is the fact the Michigan Legislature has the authority to define and modify the powers, duties and obligations of its local governments, which are derived from the State in the first instance. Mich. Const. 1963, art. VII, §§ 1-34; *Sailors*, 387 U.S. at 107-108; *Mack v. City of Detroit*, 649 N.W.2d 47, 52 (Mich. 2002); *Attorney General v. Flint*, 713 N.W.2d 782, 787 (Mich. App. 2005); *Bivens*; 505 N.W.2d at 241. Michigan's Home Rule City Act

reiterates this constitutional principle. Mich. Comp. Laws § 117.36. In other words, the authority the State gives a local government it may also take away.

The Court may also look to state law to determine whether a procedurally protected interest is created. But, state law confers a procedurally protected interest or benefit only when it mandates specific action in a manner that constrains bureaucratic discretion. *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 463 (1989). No such constraints are imposed under P.A. 436 or these other laws governing the relationship between the State and its local governments. And, appropriate guidelines for the exercise of discretion are imposed. Plaintiffs fail to establish the existence of a protected right or interest with which the State has interfered, and this inquiry need go no further.

The second inquiry relevant to this analysis also weighs in the State's favor, as there exist constitutionally sufficient procedures attendant to the application of P.A. 436. Because P.A. 436 accords no benefit or right to the Plaintiffs individually, no specific process need be accorded them with respect to its application. Plaintiffs are no different than any other citizen with respect to enforcement of a law of general application. Additionally, Plaintiffs have the power of the referendum to challenge the law. Plaintiffs also have the power of the vote to elect like-minded officials who might repeal or amend the law.

Accordingly, Plaintiffs' substantive and procedural due process claims fail as a matter of law and should be dismissed.

VI. Plaintiffs seek to impose preclearance as a remedy but do not set forth a separate claim in Count V for which relief may be granted.

Plaintiffs have abandoned their claim under Section 5, the preclearance provisions of the Voting Rights Act, 42 U.S.C. § 1973c ("Section 5") (RE 16, Am. Compl., ID# 180-189), presumably in light of the United States Supreme Court's recent decision in *Shelby County, Alabama*, 570 U.S. at ____, No. 12-96, Slip Opinion at 1 (issued on June 25, 2013). In that case, the United States Supreme Court held that the coverage formula under Section 4 of the Voting Rights Act for determining whether a particular jurisdiction was required to preclear any voting changes, violated the federal constitution.

A. Count V does not set forth a distinctive substantive claim.

Although Plaintiffs are now seeking to impose preclearance as a remedy under Section 3(c) of the Voting Rights Act, 42 U.S.C. Section 1973a(c), their claim incorrectly presupposes that preclearance is appropriate merely because they have pled a Fourteenth Amendment violation. (RE 16, Am. Compl., ID #204 "Plaintiffs, having pled a violation of the Fourteenth Amendment, are eligible for the Court's implementation of Section 3c of the Voting Rights Act.") Plaintiffs are putting the cart before the horse. This Court has made no finding that any violation, let alone a Fourteenth Amendment violation, has occurred. (42 U.S.C. §

1973a, "if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred…..) Also, even if such a finding were to be made, preclearance is not an automatic remedy to be imposed. (42 U.S.C. § 1973a(c), "the court, in addition to such relief as it may grant, shall retain jurisdiction for such period as it may deem appropriate…").

In this case, Count V does not set forth any distinct substantive claim at all. It is redundant of Plaintiffs' prayer for relief, seeking to impose preclearance as a prospective remedy over the voting changes in the cities of Benton Harbor, Detroit, Ecorse, Flint, Hamtramck, Highland Park, Pontiac, and the Detroit and Muskegon Heights Public School Districts. (RE 16, Am. Compl., ID #205.) Furthermore, because Plaintiffs have already pled substantive Fourteenth Amendment violations in Counts I and II of their Amended Complaint, Count V should be dismissed.

B. Plaintiffs have failed to name the necessary parties because Defendants are not required to seek preclearance under § 3.

Plaintiffs' request for equitable relief seeks to impose preclearance over future voting changes of the political subdivisions of this State identified above that are not parties to this case. Because they have failed to name necessary parties, dismissal is appropriate. The Sixth Circuit has explained that resolution of the question of joinder under Rule 19 and, thus, of dismissal for failure to join an indispensable party under Rule 12(b)(7), involves a three-step process. *Local 670 v. International Union, United Rubber, Cork, Linoleum and Plastic Workers of*

America, 822 F.2d 613, 618 (6th Cir. 1987), *cert. den'd*, 484 U.S. 1019 (1988). The court: (1) first determines whether a person is necessary to the action and should be joined if possible; 2) joins the party if personal jurisdiction is present; and 3) analyzes the factors set forth in Rule 19(b) to determine whether it must dismiss the case due to the indispensability of that party. *Id.* (internal citations omitted).

Even if this Court were to entertain issuing the requested injunctive relief, Plaintiffs' request for a preliminary and permanent order granting preclearance identifies specific cities and school districts. (RE 16, Am. Compl., Prayer for Relief, ¶ E.) Thus, these cities and school districts or their appropriate officials would be necessary to this action and would have to be joined. 42 U.S.C. 1973(a)(c) designates preclearance relief against the chief legal officer or other appropriate official of such state or subdivision.

For these reasons, Count V should be dismissed under Rule 12 (b)(7).

CONCLUSION AND RELIEF REQUESTED

For the reasons discussed above, Plaintiffs' challenge to P.A. 436 fails because they lack standing. This Court should abstain from asserting jurisdiction and Plaintiffs have not met the factors necessary for declaratory relief. On the merits, P.A. 436 does not violate equal protection, substantive or procedural due process, or Section 3 of the Voting Rights Act. Not only is the Act constitutional

on its face but to the extent its procedures for preliminary review have been applied, they do not violate any recognized constitutional rights. Plaintiffs' requested relief must be denied and the Amended Complaint dismissed in its entirety, with prejudice.

Respectfully submitted,

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Attorney General

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Dated: July 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such.

s/Denise C. Barton
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

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EXHIBIT LIST

A. Fiscal Indicator Scores
B. Treasury's Fiscal Health Indicator Scores

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

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EXHIBIT A

Department of Treasury

MICHIGAN.GOV Michigan's Official Website

close print view

FISCAL INDICATOR SCORES

How to Use These Indicators

There are many indicators that can be used to measure the financial condition of local governments. These indicators are measurements at a point in time. They are not necessarily predictors of a local government's future financial condition. Some of these measurements should be given more or less consideration in evaluating the financial condition of a local government. In evaluating the financial condition of a local government, other indicators and information may require consideration to make a complete assessment of a local government's current and future financial condition. Examples include dependence on a major taxpayer, pending litigation, ability to fund long term commitments such as retiree health care, deferred capital outlay or maintenance, millage capacity, percent developed, etc.

Fiscal Mandate

Under current law, the Michigan Department of Treasury is required to wait until units of local government show signs of severe fiscal stress before being able to directly address the local government issues. Rather than take this reactive approach, the Michigan Department of Treasury has developed a process to review certain fiscal indicators that encourage sound fiscal health for all of Michigan's 1,856 units of local government. The Department of Treasury's process also provides for guidance, upon request, for those units of local government needing it.

Purpose of the Scores

The fiscal indicator scores are intended to provide State officials, local officials, and the general public with objective, measurable, and straightforward information concerning the degree of, or absence of, fiscal health in units of local government. This information provides the public with information that may not be publicly displayed from their local officials. The most cost-effective way to accomplish this goal is to publish the fiscal indicator scores on the Michigan Department of Treasury web site. It is similar to the school district report cards available for all Michigan school districts.

Fiscal Scoring Origin

The Michigan Department of Treasury commissioned the Institute for Public Policy and Social Research at Michigan State University to evaluate local government fiscal indicators included in existing state law. As the Institute completed its evaluation of existing fiscal indicators it was asked to propose more effective fiscal indictors. To view study click here.

Fiscal Scoring Process

Key factors from nine categories are analyzed and assigned points. They include, but are not limited to:

1. Population growth
2. Real taxable valuation growth
3. Large real taxable value decrease
4. General fund expenditures as a percent of taxable valuation
5. General fund operating deficits
6. Prior general fund operating deficits
7. Size of general fund balance
8. Fund deficits in current or previous years
9. General long-term debt as a percent of taxable value.

Once the data has been collected, each local unit's score is calculated and then posted to the Department of Treasury's web site under the appropriate year.

Where the Numbers Come From

Population Growth: Information provided from the Population Estimates - U.S. Census Bureau (Note: With each new issue of July 1 estimates by the Census Bureau, the population estimates program revises estimates for years back to the last census. Previously released estimates are superseded. The scores will not be updated to reflect the revised estimates).

Real Taxable Value: Assessing Officers Report of the unit of local government filed with the Department of Treasury (includes real and personal property). As this is a measure of a two year period, the most recent year is deflated using the fiscal year Consumer Price Index published by the Senate Fiscal Agency.

General Fund Revenue and Expenditures: Annual or biennial audit report of the unit of local government filed with the Department of Treasury (the general fund operating revenues and expenditures do not include other financing sources/uses such as operating transfers in or out.)

Fund Deficit: Annual or biennial audit report of the unit of local government filed with the Department of Treasury (includes a deficit in a major fund in current year and prior year. Major fund is defined as those funds with revenues, expenditures, assets or liabilities that make up at least ten percent of the total for the fund category or type (governmental or business-type) and at least five percent of the aggregate amount of all governmental and enterprise funds. Internal service funds are excluded from the major fund reporting requirements. The general fund is always a major fund. A local unit official may make any fund major.)

General Long Term Debt: Annual or biennial audit report of the unit of local government filed with the Department of Treasury (includes long-term debt for governmental activities.)

Fiscal Health Score Significance

Points from Scale	Category	State Action
0-4	Fiscally Neutral	No State action needed.
5-7	Fiscal Watch	Unit of local government is notified of its relatively high score and is placed on a watch list for the current and following year.
8-10	Fiscal Stress	Unit of local government is notified of its high score, is placed on a watch list for the current year and following year, and receives consideration for review.

Fiscally Neutral - Local Units that score in this category are deemed to be managing its financial circumstances appropriately, but local units should not interpret a score in this category as an indicator that they are in anyway insulated from financial concerns. It is a snap shot of a local unit's financial condition. It is not an indicator of ability to pay. Local decisions that impact a local unit's finances or deviations from its current financial strategies may result in changes to future fiscal health scores.

Watch List - Local Units that score in this category are considered to be in a financial circumstance that is cause for concern, but that can still be addressed by the local unit. Governing bodies of local units on the watch list should exercise added care when making financial decisions, and formulate a financial strategy to return to the local unit to a fiscally neutral score. Local units may request assistance from the Department of Treasury in developing financial strategies that will assist in returning its score to fiscally neutral.

Fiscal Stress - Local Units that score in this category are considered to be in poor financial condition. Governing bodies of local units that score in this category should take immediate corrective actions to improve the financial health of the local unit. Assistance and potentially intervention by the Department of Treasury is expected for local units scoring in this category.

Summary

In our capacity as fiscal watchdog for Michigan Units of Local Government, the Department of Treasury has provided an objectively measurable process that calculates fiscal indicator scores for Michigan's 1,856 units of local government. By creating this process we are able to identify the fiscal health of Michigan's local units. By posting the fiscal indicator scores on our website we are discharging our duty of public disclosure to the citizens of Michigan relative to the fiscal health of their unit.

Fiscal Scores by Local Unit

NOTE: For ease of use and consistency, two changes have been made in the computation of scores: 1) use of the Consumer Price Index for deflating taxable value and; 2) inclusion of personal and real property for determining taxable value. Except for 2005, all previous years have been recalculated to reflect these changes.

Financial data for each local government is obtained from the financial audit report filed by the local government. Local governments who file biennial audits are scored accordingly for Indicators # 6 & 8.

- 2009 Cumulative Scores/Scoring Data
- 2008 Cumulative Scores/Scoring Data
- 2007 Cumulative Scores/Scoring Data
- 2006 Cumulative Scores/Scoring Data

Detailed Scores by Local Unit

- 2009
- 2008
- 2007
- 2006

Scoring Breakdown

*forthcoming

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

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EXHIBIT B

Treasury's Fiscal Health Indicator Scores[1]

Local units with EM or CA and dates appointed/entered	1990	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Royal Oak Twp. (EM 1990, CA 1989-2007)[2]	EM/CA							7	7	7	8				
Hamtramck (2001-2006, 2013)[2, 3, 5]			EM					6	4	4	6				EM
Highland Park (2001-20__)[2]			EM					8	7	6	6				
Flint (2002-2004, 2011-20__)				EM				3	5	8	8		EM		
Three Oaks (2008-2009)[3, 5]								1	4	1 EM	4				
Pontiac (2009-20__)[2, 5]								6	6	6	6 EM				
River Rouge (2009-20__)								5	6	4	6 CA				
Benton Harbor (2010-20__)								7	7	8	7	EM			
Ecorse (2010-2013)[4]								8	7	7	7	EM			
Inkster (2012-20__)[5]								4	3	2	3			CA	
Allen Park (2012-20__)[3, 5]								3	2	N/A	3			EM	
Detroit (2012-20__)[2]								7	6	5	7			CA	EM
School Districts[1]															
Hazel Park (2013 - __)[3, 6]															
Inkster (2002-2005)				EM				N/A	N/A	N/A	N/A				
Detroit (2009-20__)[2]								N/A	N/A	N/A	N/A- EM				
Highland Park (2012-20__)								N/A	N/A	N/A	N/A			EM	
Muskegon Heights (2012-20__)[5]								N/A	N/A	N/A	N/A			EM	
Example Community															
Hazel Park								4	4	5	6				
Pleasant Ridge								2	3	4	6				
Troy								3	5	5	6				
Riverview								5	6	7	7				
Van Buren Twp.								5	5	5	6				
Harper Woods								5	5	6	6				
Genesee Twp.								7	7	8	9				
Flint Twp.								5	3	4	7				
Argentine Twp.								4	4	4	6				
Davison								3	4	4	6				
Thetford Twp.								4	4	4	6				

EM = Emergency Manager, CA = Consent Agreement

[1] Fiscal score data was collected between 2005 and 2010, and scores were reported from 2006 to 2009. Scores were never compiled for school districts.

[2] These local units had earlier consent agreements under 1980 PA 101, 1990 PA 72, or 2011 PA 4.

[3] According to 2010 census data, these local units have majority white populations.

[4] No longer under an EM, Transition Advisory Board under 2012 PA 436.

[5] Local unit requested a preliminary financial review and/or appointment of an EM under 1990 PA 72, 2011 PA 4, or 2012 PA 436.

[6] Currently undergoing preliminary review instituted by State Superintendent under P.A. 436.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 12

From *NAACP v Snyder*, Case No. 13-12098 (E.D. Mich)

12.	6/6/13	16	Defs' motion to dismiss

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, individually and on behalf of Detroit Branch NAACP and Michigan State Conference NAACP, THOMAS STALLWORTH III, individually, RASHIDA TLAIB, individually, MAUREEN TAYLOR, individually,

Plaintiffs,

v.

Civil Action No. 13-12098
Hon. George C. Steeh

RICK SNYDER, in his Official Capacity as Governor of the State of Michigan, ANDREW DILLON, in his Official Capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, and in her Official Capacity as Michigan Secretary of State,

Defendants.
_____/

PLANTIFFS' FIRST AMENDED VERIFIED COMPLAINT

I.

NATURE OF THE CASE

1. This is an action brought under the Equal Protection Clause of the Fourteenth Amendment, the Substantive and Procedural Due Process Clauses of the Fourteenth Amendment (42 U.S.C. Sec. 1983, U.S. Const. Amend. XIV), and Section 3 of the Voting Rights Act of 1965 (42 U.S.C. Sec. 1973a(c)), to protect the right to vote. This action challenges Michigan's *Local Financial Stability and Choice Act*; Public Acts of 2012; MCL Sections 141.1541, *et.* seq. ("Public Act 436") [Exhibit 1], which provides that when a state municipality or school district experiences

a certain level of financial hardship, the state appoints an un-elected Emergency Manager to "rule by decree" over said jurisdiction, assuming the powers and duties of locally-elected legislative and executive officers. Presently, Emergency Managers have been appointed in the City of Allen Park, the City of Benton Harbor, the City of Detroit, the Detroit Public School System, the City of Ecorse, the City of Flint, the Highland Park School System, the Muskegon Heights School System, and the City of Pontiac.

2. Emergency Manager appointments in Michigan have, in large part, hinged on money, race, and voter nullification, resulting in an unconstitutional violation of the dignity of each vote.

3. These sweeping Michigan Emergency Manager powers and duties include, but are not limited to acting "[f]or and *in the place and stead of the governing body, . . . [ruling] by decree* over cities and villages through powers that permit the emergency manager to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances, . . . *explicitly repeal, amend, and enact local laws such as city and village ordinances*, . . . [and] sell, lease, convey, assign, or otherwise *use or transfer the assets, liabilities, functions*, or responsibilities of the local government. . ." (See, MCL 141.1549(9)(2); MCL 141.1549; MCL 141.1552; MCL 141.1552(12)(1)(r), emphasis added).

4. The Emergency Manager statute has had a disparate impact on Michigan's voters of color. A majority, 50.4%, of the state's 1,413,320 African American residents are now ruled by unelected Emergency Managers.

5. Furthermore, Public Act 436 has been applied in a discriminatory manner. The state has imposed Emergency Managers on cities with majority or near majority African-American

populations, even though there were non-African-American cities with the same or worse "Fiscal Health Score," as defined by Defendant State Treasurer. In Oakland County, the state imposed an Emergency Manager on the City of Pontiac, which has an African American population of 52.1%, but the state did not impose an Emergency Manager in the Oakland County cities of Hazel Park (9.8% African American population), and Troy (4.0% African American population), even though each of these cities had an identical Fiscal Health Score of "6." (See, http://quickfacts.census.gov; Department of State Treasurer, Fiscal Indicator Scoring Table). This discriminatory pattern in Oakland County was repeated in other counties throughout the state. This violates the Equal Protection and Substantive Due Process Clauses of the Fourteenth Amendment. (42 U.S.C. Sec. 1983, U.S. Const. Amend. XIV),

6. On April 11, 2013, the Emergency Manager in Detroit issued Order No. 3, which provides that retroactive to March 28 (the effective date of Public Act 436) the elected Mayor and City Council of the City of Detroit, America's 18th largest city, are *allowed* to meet, but any and all of their actions are deemed invalid unless "[a]pproved by the Emergency Manager or his designee, in writing." [Exhibit 2].

7. The Detroit Emergency Manager's Order No. 3 made Detroit's executive and legislative branches *advisory* notwithstanding the fact that the voters had given these branches full authority to conduct city business.

8. On April 23, 2012, Detroit's Emergency Manager issued Order No. 4, which retroactively authorized a legal services contract between the City of Detroit and his former law firm, Jones Day, for $3.35 million. Specifically, the Order provides that Jones Day "[i]s authorized

to work as restructuring counsel to the city on the terms set forth in the Jones Day contract, effective March 15, 2013." [Exhibit 3].

9. On April 25, 2013, the Emergency Manager in Detroit issued Emergency Order No. 5, which provides that the sale, lease, transfer or disposition of any real property owned by the City of Detroit "[r]equires the approval in writing of the Emergency Manager or his designee." [Exhibit 4].

10. The actions taken by Detroit's Emergency Manager in Orders 3, 4 and 5 are actions that the voters delegated to their locally-elected executive and legislative branches of city government, pursuant to the Detroit City Charter.

11. Emergency Managers in Michigan's other jurisdictions have assumed substantially similar powers.

12. The Michigan Constitution grants to its citizens the right to vote, on equal terms, to all qualified electors in local, state and Federal elections, (Const. 1963, Art. II, § 1), and proscribes an equal framework for local self-governance (Const. 1963, Art. VII, Sec. 22); and it is axiomatic that once the state grants "[t]he right to vote on equal terms, the State may not by later arbitrary and disparate treatment, value one person's vote over that of another." *League of Women Voters v. Brunner*, 548 F. 3d 616 (6th Cir. Ohio 2008)(citing headnote 4, *Bush v. Gore*, 531 U.S. 98 (2000)).

13. Emergency Managers have exercised powers and duties exclusively reserved for locally-elected branches of Michigan government, thereby degrading the electorate's right to vote, in Emergency Manager jurisdictions, where their elected officials have advisory authority, as compared to the electorate in non-Emergency Manager jurisdictions, where their officials exercise

their full powers and duties. Accordingly, the ballots cast by citizens in non-Emergency Manager jurisdictions are of a higher value than the ballots cast by citizens ruled by Emergency Managers.

14. These differing standards, which are the direct and proximate cause of Public Act 436, result in the valuing of one person's vote over that of another, which violates the Fourteenth Amendment's Equal Protection Clause. (42 U.S.C. Sec. 1983, U.S. Const., Amend. XIV; *Bush v. Gore*, 531 U.S. 98 (2000), *supra*).

15. Moreover, in its haste to approve Public Act 436 during the legislature's 2012 lame duck session, the state, upon information and belief, failed to apply for and obtain either the approval of the Attorney General of the United States, or a declaratory judgment of a panel of the United States District Court for the District of Columbia, "[p]rior to the enactment of any new voting qualification or perquisite to voting, or standard or practice" of voting, such as Public Act 436, which Michigan is required to do since Buena Vista Township and Clyde Township are covered jurisdictions within the state, subject to the preclearance requirements under Section 5 of the 1965 Voting Rights Act. (42 U.S.C. 1973c, and 42 U.S.C. 1973b(a)).

II.

JURISDICTION AND VENUE

16. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

17. Plaintiffs invoke the jurisdiction of this Court under 42 U.S.C. Sec. 1983, Equal Protection and Substantive Due Process, under U.S. Const. Amend. XIV, as well as a violation of

the preclearance provision of the 1965 Voting Rights Act under 42 U.S.C. Sec. 1973c, and 42 U.S.C. Sec. 1973b(a).

18. Venue is proper in this court under 28 U.S.C. Sec. 1392(b) because a substantial number of the events and occurrences giving rise to this action occurred in the Eastern District of Michigan and because a number of the Plaintiffs are located within the Eastern District of Michigan.

III.

PARTIES

19. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

A.

Plaintiffs

20. The National Association for the Advancement of Colored People ("NAACP"), founded in 1909, is the oldest and largest civil rights organization in the United States, with more than 500,000 members and 1,200 Branches across the country and overseas. Incorporated in 1911, the NAACP Charter provides as follows:

> "To promote equality of rights and to eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; *to secure for them impartial suffrage*; and to increase their opportunities for securing justice in the courts, education for the children, employment according to their ability and complete equality before law."
>
> NAACP National Charter (1911, emphasis added).

21. Article I, Section 3 of the NAACP constitution provides that the purpose and aim of the organization is to improve the political, education, social and economic status of minority groups, to eliminate racial prejudice, to keep the public aware of the adverse effects of racial discrimination, and to take lawful action to secure its elimination. Article IV, Section 4 of the NAACP constitution specifically establishes a Legal Redress Committee to utilize the courts to combat discrimination. Through education, advocacy, direct action, and litigation, the NAACP has been among the leading defenders of voting rights for all people in America.

22. Plaintiff Detroit Branch NAACP, chartered in 1912, is the NAACP's largest Branch in America. Plaintiff Detroit Branch NAACP has, throughout its 99 year history, fought, through the democratic process, for the cause of civil rights and equal treatment for all. Plaintiff Detroit Branch NAACP has fought in the courts to preserve and protect voting rights in the State of Michigan. See, *NAACP v Austin*, 857 F. Supp. 560 (E.D. Mich. 1994)(challenge to state Redistricting Plan); *NAACP v Michigan Republican State Committee*, No. 05-74296 (E.D. Mich., 2005)(injunction granted to halt harassment of African American voters at polling sites); *In re: Request for Advisory Opinion*, No. 130589 (Michigan Supreme Court, 2006)(*amicus curiae* opposition to photo identification requirement for voting).

23. Plaintiff Michigan State Conference NAACP is the umbrella organization for all NAACP units or branches within the State of Michigan. It is the central authority, responsible for coordinating all local NAACP branches around the State. It has been at the forefront in organizing voter protection activities throughout Michigan, and has fought for equality and access to the voting franchise. Plaintiff state conference was a litigant in the 2004 federal district court action

opposing identification for first time voters, and successfully fought the proposed closure of the Secretary of State Office in Saginaw County because of its impact on voter registration. It strongly opposes Public Act 436, Michigan's Emergency Manager statute, on behalf of all Michigan NAACP branches.

24. Plaintiff Donnell R. White, individually and on behalf of the Detroit Branch of NAACP and Michigan State Conference NAACP, serves as Executive Director of the Detroit Branch NAACP. He is a resident of the City of Detroit, a registered voter in the City of Detroit, and he cast a ballot for the offices of Mayor and City Council in the 2009 general election. He is strongly opposed to Public Act 436, and believes that his vote for Mayor and City Council should count equally to the vote of electors in non-Emergency Manager jurisdictions, who cast ballots for their local legislative and executive officials.

25. Plaintiff Thomas Stallworth, III, individually, is a Member of the Michigan House of Representatives and serves as Chair of the Michigan Legislative Black Caucus. He is a resident of the City of Detroit, a registered voter in the City of Detroit, and he cast a ballot for the offices of Mayor and City Council in the 2009 general election. He is strongly opposed to Public Act 436, and believes that his vote for Mayor and City Council should count equally to the vote of electors in non-Emergency Manager jurisdictions, who cast ballots for their local legislative and executive officials.

26. Plaintiff Rashida Tlaib, individually, is a Member of the Michigan House of Representatives. She is a resident of the City of Detroit, a registered voter in the City of Detroit,

and she cast a ballot for the offices of Mayor and City Council in the 2009 general election. She is strongly opposed to Public Act 436, and believes that her vote for Mayor and City Council should count equally to the vote of electors in non-Emergency Manager jurisdictions, who cast ballots for their Mayor and City Council.

27. Plaintiff Maureen Taylor, individually, Chair of the Michigan Welfare Rights Organization, a registered voter in the City of Detroit, and she cast a ballot for the offices of Mayor and City Council in the 2009 general election. She is strongly opposed to Public Act 436, and believes that her vote for Mayor and City Council should count equally to the vote of electors in non-Emergency Manager jurisdictions, who cast ballots for their Mayor and City Council.

B.

Defendants

28. Defendant Governor Rick Snyder, in his official capacity as Governor of the State of Michigan, is legally charged with defending and enforcing Public Act 436, and is a resident of the City of Ann Arbor, Michigan.

29. Defendant Andrew Dillon, in his official capacity as Treasurer of the State of Michigan, is central to the enforcement of Public Act 436, and is a resident of Redford Township, Michigan.

30. Defendant Ruth Johnson, in her official capacity as Michigan Secretary of State, is charged with the responsibility of seeking and obtaining preclearance of any changes in voting procedure under the 1965 Voting Rights Act, and is a resident of Holly, Michigan.

IV.

FACTUAL ALLEGATIONS

31. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

A.

Michigan Voters Directly Rejected Emergency Manager Governance at the Polls

32. Michigan's Emergency Manager law (Public Act 4), was repealed by Michigan voters in the November 6, 2012 general election. The question squarely on the ballot was whether to repeal Public Act 4, the *Local Government and School District Fiscal Accountability Act ("Public Act 4"),* the emergency manager law which preceded Public Act 436. Public Act 4 was preceded by Public Act 72, the *Local Government Fiscal Responsibility Act, Act No. 72, Public Acts of 1990 ("Public Act 72").* Both Public Acts 4 and 72 were forms of governance by Emergency Manager which diminished the authority of local officials upon a state determination of municipal financial distress.

33. The Michigan legislature passed and the Governor signed into law Public Act 4 which became effective immediately upon passage on March 16, 2011. Public Act 4 allows the state treasurer or superintendent of public instruction to conduct a financial review of a local government or school district if in his sole discretion he finds facts or circumstances indicative of financial stress. Public Act 4 allowed non-elected emergency managers to preside over local jurisdictions and to assume the powers and duties of elected officials, upon a finding of financial distress. (Public Act 4, *supra*).

34. Plaintiff NAACP was heavily engaged in the petition gathering process to repeal Public Act 4 as the NAACP has always stood for protecting the right to vote, and Public Act 4 diluted that right. For the same reasons, Plaintiff NAACP supported the legal challenge to Public Act 4, advanced by the ballot question committee *Stand Up for Democracy*, again because it offends our form of representative democracy, where governance is by the will of the people, expressed through the actions of our elected officials. Plaintiff NAACP has historically taken the position that in the event the people lose confidence in their elected leaders, the remedy is at the ballot box where voters should be free to un-elect them and elect others in their place.

35. It is not always so neat a process. But as Winston Churchill once observed, "Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time." (Churchill, W., *Hansard*, Nov. 11, 1947).

36. Democracies recoil at those dictatorial actions which substitute someone's unelected judgment for the judgment of the people. This is precisely what emergency manager laws do: substitute the judgment, the powers, of an unelected appointee of the state for the judgment and powers of the people.

37. In Michigan, the emergency manager issue was not some obscure ballot question in the November 6, 2012 general election. The issue was highly publicized by the Michigan and

national press, and well-known to the state's voters because of the fierce political and legal battle that had been waged in courts of law and in the court of public opinion. The ballot question committee known as *Stand Up for Democracy*, assisted by Plaintiff NAACP, coordinated the circulation of petitions, collecting 226,339 petition signatures and filing same in 50 boxes with the Michigan Secretary of State's Office.

http://www.freep.com/article/20120301/NEWS06/203010473/226-000-petition-signatures-for-repeal-of-emergency-manager-law-land-in-Lansing

38. The state Board of Canvassers, the body charged with reviewing the petitions, did not accept the petitions, having deadlocked by a vote of 2-2, along a straight party-lines, with the two Republican appointees to the tribunal voting to defy its own staff report, its own expert witness from Michigan State University, and sworn testimony and a printer's affidavit from one of the state's most respected printers, and in defiance of their own eyes, erroneously concluding that the type size of the petition heading was not 14-point bold type as required by statute. http://www.mlive.com/politics/index.ssf/2012/04/deadlocked_vote_on_petitions_a.html

39. *Stand Up for Democracy* filed an appeal of the Board of Canvassers' decision via a Writ of Mandamus in the Michigan Court of Appeals. The Court of Appeals heard oral argument regarding same on May 17, 2012. On June 8, 2012 the Court issued a *per curiam* ruling in this matter, stating that "Plaintiff does not have an alternate legal remedy. The elements of mandamus thus have been met and we direct the Board [of Canvassers] to certify plaintiff's petition for the ballot." *Stand Up for Democracy v. Board of State Canvassers*, MI Crt. App, No. 310047 (6/6/12, Opinion, at 18).

40. Challenger *Citizens for Fiscal Responsibility* filed for leave to appeal to the Michigan Supreme Court. Leave was granted.

41. After having heard oral argument, the Michigan Supreme Court, on August 3, 2012, in a 4 to 3 ruling, rejected the challengers' position, and held that the petitions were in *actual* compliance with state law and the issue was ordered on the ballot. The Court held, "The Board of State Canvassers shall certify the petition as sufficient because a majority of the Court concludes that plaintiff either actually complied with the law or that the Court of Appeals' original writ of mandamus was not erroneous." *Stand Up for Democracy v. Secretary of State*, Mich. S. Ct. No. 145387, at 28 (Aug. 3, 2012).

42. The Board of Canvassers thereafter unanimously (4-0) approved the petitions as ordered by the Supreme Court, and its staff developed language, in consultation with both parties, to be presented to the voters. The agreed-upon language for the state-wide ballot on whether or not to repeal Public Act 4 was as follows:

"PROPOSAL 12-1
A REFERENDUM ON PUBLIC ACT 4 OF 2011 – THE EMERGENCY MANAGER LAW

Public Act 4 of 2011 would:

- Establish criteria to assess the financial condition of local government units, including school districts.
- Authorize Governor to appoint an emergency manager (EM) upon state finding of a financial emergency, and allow the EM to act in place of local government officials.
- Require EM to develop financial and operating plans, which may include modification or termination of contracts, reorganization of government, and determination of expenditures, services, and use of assets until the emergency is resolved.

- Alternatively, authorize state-appointed review team to enter into a local government approved consent decree.

Should this law be approved?

YES__
NO ___"

43. Press coverage of the legal battle over the petitions ("Fontgate") and the Supreme Court's ultimate ruling to allow voters access to the ballot on the Emergency Manager question was intensive. http://www.freep.com/article/20120803/NEWS06/120803045/Michigan-Supreme-Court-emergency-manager-law-Public-Act-4-ballot. The voters well understood the issue.

B.

Emergency Manager (Public Act 4) is Suspended Upon Supreme Court Certification of Petitions, Public Rejects Emergency Manager Governance at Polls

44. Michigan law provides that measures certified for referendum are suspended until the outcome of the election. MCL Sec. 168.477(2). The State Attorney General issued an Opinion that while Public Act 4 was suspended pending the results of the election, Public Act 72 would take its place, even though, by its terms, Public Act 4 had expressly repealed Public Act 72. (Mich. Att'y Gen'l., Opinion No. 7267, August 6, 2012).

45. Proposal 12-1, the referendum on the emergency manager law, was decisively defeated at the polls by the Michigan electorate, by a margin of 53% (No) to 47% (Yes), with a total of 2,370,601 ballots cast in opposition. Michiganians made it plain, having been well-informed, and during a Presidential election year, when voter attentiveness and voter turnout were at their highest, that they did not want an emergency manager law.

C.

State Legislature Overrides Vote of Electorate

46. And yet, in cavalier defiance of the people, on December 13, 2012, barely five weeks after the general election, during a "lame duck" session of the State Legislature, the Michigan House and Senate passed a replacement to public Act 4. That legislation was signed into law by Defendant Governor Snyder on December 27. The new law, Public Act 436, took effect on March 28, 2013.

47. Public Act 436 provides, in pertinent part, as follows:

> "[Emergency Managers are] selected and appointed solely at the discretion of the Governor."
>
> MCL 141.1549

> "Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. . . Following appointment of an emergency manager and during the pendency of receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager."
>
> MCL 141.1549(9)(2).

> "Explicitly repeal, amend, and enact local laws such as city and village ordinances."
>
> MCL 141.1549 and 141.1552.
>
> "Rule by decree over cities and villages through powers that permit the emergency manager to contravene and thereby implicitly repeal local laws such as city and village charters and ordinances."
>
> MCL 141.1552

> "Subject to section 19, if provided in the financial and operating plan, or otherwise with the prior written approval of the governor or his or her designee, sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government. . ."
>
> MCL 141.1552(12)(1)(r).
>
> "For municipal governments, with approval of the governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law. The disincorporation or dissolution of the local government is subject to a vote of the electors of that local government if required by law."
>
> MCL 141.1552(12)(cc).
>
> "Exercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body
> concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government . . ."
>
> MCL 141.1552(12)(dd).

48. Like Public Act 4 before it, Michigan's new emergency manager law (Public Act 436), which became effective on March 28, 2013, is stunning in its evisceration of voting rights.

D.

Emergency Managers Appointed

49. Once Public Act 436 was enacted, new Emergency Managers were appointed in nine jurisdictions: Benton Harbor, Ecorse, Flint, Pontiac, Highland Park Schools, Muskegon Heights Schools, Detroit Public Schools, Allen Park, and most-recently the City of Detroit. Eight of the Nine Emergency Manager-controlled jurisdictions have majority or near-majority African American populations. The one exception is Allen Park with a 2.1% African American population

(http://quickfacts.census.gov/qfd/states/26/2601380.html). The key difference in Allen Park's case is that Allen Park *requested* an Emergency Manager. It did not have one imposed on it.

E.

Disparate Impact on Voters of Color

50. Public Act 436 has a disparate and discriminatory impact on Michigan's African-American voters: 50.4% of the state's 1,413,320 African American residents are now ruled by unelected Emergency Managers, compared to 1.3% of the state's 7,926,454 White residents now ruled by unelected Emergency Managers.

51. The following is a listing of the percentage of African Americans in Michigan living in jurisdictions ruled by Emergency Managers: Benton Harbor: 89.2%, Detroit (and Detroit Public Schools): 82.7%, Ecorse: 46.4% (the White population in Ecorse is 44%), Flint: 56.6%, Highland Park Schools: 93.5%, Muskegon Heights Schools: 78.3%, Pontiac: 52.1%, and Allen Park: 2.1%. (http://quickfacts.census.gov/qfd/states/26/2601380.html).

52. The following is a listing of the percentage of Whites in Michigan living in jurisdictions ruled by Emergency Managers: Benton Harbor: 7%, Detroit (and Detroit Public Schools): 10.6%, Ecorse: 44%, Flint: 37.4%, Highland Park Schools: 3.2%, Muskegon Heights Schools: 16%, Pontiac: 34.4%, and Allen Park: 92.9%. (http://quickfacts.census.gov/qfd/states/26/2601380.html).

F.

In its Application, Emergency Manager Law Results in Voter Inequality with Disparate Impact on Voters of Color

1.

City of Detroit

53. The Home Rule Charter of the City of Detroit sets forth the structure for self-governance and the powers and duties of its legislative and executive branches as follows:

> "We, the people of Detroit, do ordain and establish this Charter for the governance of our City."
>
> (Home Rule Charter, City of Detroit, Preamble)

> "Detroit City government is a service institution that recognizes its subordination to the people of Detroit… The people have a right to expect city government to provide for its residents."
>
> (Home Rule Charter, City of Detroit, Declaration of Rights, Sec. 1)

> "The people of Detroit, by adoption of this Home Rule Charter, create and provide for their continuing control of the municipal government of the City of Detroit."
>
> (Home Rule Charter, City of Detroit, Art. I, Sec. 1-101)

54. Article IV of the Charter provides that the City Council has legislative authority, which includes the authority to, for example, confirm department heads, approve property transfers, approve ordinances and resolutions, and approve contracts. (Home Rule Charter, City of Detroit, Art. IV, Sec's 4-101, 4-111-112, 4-114, 4-122).

55. Article V of the Charter provides that "The Mayor is the chief executive of the City and, as provided by this Charter, has control of and is accountable for the executive branch of City government. The Mayor is also directly accountable to the citizens of the City of Detroit." (Home Rule Charter, City of Detroit, Art. V, Sec. 5-101)

56. Public Act 436 removes legislative and executive authority from Detroit voters' elected representatives.

57. On April 11, 2013, the Emergency Manager in Detroit issued Emergency Order No. 3, which provides that as of April 11, 2013 and retroactive to March 28 (the effective date of Public Act 436) the elected Mayor and City Council of the City of Detroit, are *allowed* to meet, but any and all of their actions are deemed invalid unless "[a]pproved by the Emergency Manager or his designee, in writing." (Emergency Manager, City of Detroit, Order No. 3).

58. On April 23, 2013, the Emergency Manager issued Executive Order No. 4, which approved a contract to hire his former law firm, Jones Day for $3.35 million. (Emergency Manager, City of Detroit, Order No. 4; http://www.freep.com/article/20130416/NEWS01/304160075/kevyn-orr-jones-day-stephen-brogan-contract-detroit-city-council).

59. On April 25, 2013, the Emergency Manager in Detroit issued Emergency Order No. 5, which provides that the sale, lease, transfer or disposition of any real property owned by the City of Detroit requires the Emergency Manager's written approval. (Emergency Manager, City of Detroit, Order No. 5).

60. By the above-stated Emergency Manager Orders and actions, the Emergency Manager has assumed and exercised the powers and duties reserved *exclusively* for Detroit's

elected legislative and executive branches resulting in an impermissible inequality between the status of Detroit voters and voters in non-Emergency Manager jurisdictions, whose legislative and executive officials have full powers and duties under their respective charters.

2.

Actions Taken by Emergency Managers in Other Jurisdictions Reserved for Locally Elected Representatives by Charter

61. In Benton Harbor, the Emergency Manager issued Order No. 11-05, which provides that "1. Absent prior express written authorization and approval by the Emergency Manager, no City Board, Commission or Authority shall take any action for or on behalf of the City whatsoever other than: i) Call a meeting to order, ii) Approve of meeting minutes, iii) Adjourn a meeting." (Emergency Manager, City of Benton Harbor, Order No. 11-05). The Emergency Manager later removed officials from City Boards, Commissions and Committees involving the Brownfield Redevelopment Authority, the Cemetery Board, the Twin City Area Transportation Authority, the Downtown Development Authority, the Golf Course Oversight Panel, the Housing Commission, the Library Board, the Planning Commission, the Public Safety/Recreation Committee, and the Board of Review. (Emergency Manager, City of Benton Harbor, Order No. 12-6).

62. In the City of Ecorse, the Emergency Manager developed and published an "Organization Chart for City of Ecorse," which lists the Emergency Manager in a box on the same level as a box for "City of Ecorse Citizens." The city's elected officials are in boxes below that of the Emergency Manager. The Emergency Manager unilaterally approved her own budget, millage rate, and water and sewerage rate increase." (Emergency Manager, City of Ecorse, Order No. 076).

63. In the School District of the City of Muskegon Heights, the Emergency Manager issued an order "assum[ing] immediate control over all matters of the School District… [and that] the present Muskegon Heights Board of Education will serve in an *advisory capacity* during the duration of the Emergency Manager's appointment." (Emergency Manager, School District of the City of Muskegon Heights, Order No. 2012-1). Less than two months later, the Emergency Manager issued a 7-year contract to a private contractor, to operate all of the School District's public schools as charter schools. (Emergency Manager, School District of the City of Muskegon Heights, Order No. 2012-9).

64. In the School District of the City of Highland Park, the Emergency Manager unilaterally entered into a contract with the Muskegon Heights School District, and transferred funds from the Public School District to the Public School Academy System. (Emergency Manager, School District of the City of Highland Park, Order No's 2012-02, 2012-01).

65. In the City of Pontiac, the Emergency Manager dissolved the elected city council, outsourced the police department to Oakland County, dissolved the Building Authority, unilaterally enacted Ordinances and rescinded others, merged the fire department with Waterford Township - relinquishing ownership of the city's fire trucks - and sold off city assets such as the Pontiac Silverdome, and the city's wastewater treatment facility. (Emergency Manager, City of Pontiac, Order No's S-122, S-162, S-145). The Pontiac Emergency Manager sold the former home of the Detroit Lions, which cost Michigan taxpayers $55.7 million to build, at the fire sale price of $583,000, as CNN reported, "[l]ess than the price of a house," and less than a 1% return on the dollar for taxpayers. http://money.cnn.com/2009/11/17/news/economy/silverdome_buyer/. Respected real estate experts indicated that the value of the property's 127 acres alone was worth over one million dollars. http://www.businessinsider.com/pontiac-silverdome-sells-for-a-paltry-

583000-2009-11. After the sale, it was revealed that the Pontiac Emergency Manager stood to personally benefit from the sale of the Silverdome to a Canadian property speculator who is now lobbying to turn the land into a casino. http://www.nbcnews.com/id/26315908/#47395558.

66. In the City of Flint the Emergency Manager has ordered that the elected City Council has no responsibilities except to listen to public comment and act upon his instructions if called upon to do so, the Mayor given limited duties, terminated department heads, unilaterally proposed and adopted budgets (Emergency Manager, City of Flint, Order No's 1, 9, 10, 17).

67. In the Detroit Public Schools, the Emergency Manager has ordered that the elected School Board may serve "[i]n solely an advisory capacity," that charter schools are expanded, unilaterally adopted budgets, rescinded existing contracts, and authorized the levy of taxes (Emergency Manager, Detroit Public Schools, Order No's 2009-2, 2010-26, 2011-EMRR5, 2011-EMRR, 14-18).

3.

Legislative and Executive Officials in Non-Emergency Manager Jurisdictions Have Full Powers and Duties

68. Conversely, in non-Emergency Manager controlled jurisdictions across the state, voters are allowed to elect local representatives who have full powers and duties. The Royal Oak Charter contains language, typical of Michigan city charters, regarding local self-governance:

> "Section 1
>
> The form of government provided for in this Charter shall be known as the Commission-Manager form. There is hereby created a Commission, consisting of a Mayor and six Commissioners, who shall be qualified

> electors of said City, and who shall be elected in the manner hereinafter specified, shall have full power and authority, except as herein otherwise provided, to exercise all the powers conferred upon the City.
>
> Section 2
>
> The Commission shall constitute the legislative and governing body of said City,possessing all the powers herein provided for, with power and authority to pass such ordinances and adopt such resolutions as they shall deem proper in order to exercise any or all of these powers possessed by said City."
>
> (City of Royal Oak Charter, Chp. 3, Sec's 1,2)

69. See, also: City of Grand Rapids, Michigan's second largest city, voters elect a city government with full powers and duties pursuant to its City Charter. (Grand Rapids City Charter, Title II, Executive Branch, Title V. City Commission). Likewise, in the City of Warren, Michigan's third largest city, its City Charter provides that the City Council has full legislative authority, and its Mayor has full executive authority. (Warren City Charter, Chp. 5, Chp. 7).

G.

State Treasurer Process for Emergency Manager Selection was Discriminatory in its Application

70. Defendant State Treasurer's Office developed a matrix or formula for ranking the fiscal health of Michigan municipalities. Municipalities were assigned a "Fiscal Health Score" on a scale of 0 to 10, with 0 to 4 being "Fiscally Neutral," 5 to 7 being "Watch List," and 8 to 10 being "Fiscal Stress." (MI Dep't, Treas, Fiscal Indicator Scoring). The most recent year the scores were ranked on-line (2009), municipalities were broken down by county. (Exhibit 5).

71. In Oakland County, Defendant State Treasurer gave four cities an identical total score of "6:" Hazel Park (9.8% African American population), Pleasant Ridge (1.9% African American population), Troy (4.0% African American population), and Pontiac (52.1% African American population). And notwithstanding the fact that Hazel Park, Pleasant Ridge, and Troy had identical scores of 6, Pontiac, the majority African American city, was the only city of the five with a fiscal score ranking of 6 to be chosen to receive an Emergency Manager. (http://www.michigan.gov/documents/treasury/Oakland_342010_7.pdf).

72. This discriminatory pattern and practice was repeated in other counties throughout the state as well. In Wayne County, where Detroit, Detroit Schools, Highland Park Schools, and Ecorse , all majority minority communities, had Emergency Managers imposed, and all had fiscal scores of 7. But so did Riverview (3.1% African American population). It has a fiscal score of 7 and the state did not install an Emergency Manager there. Of further relevance is that Van Buren Township (12.03% African American population) and Harper Woods (45.6% African American population) had fiscal scores of 6, the same as Pontiac, but had no Emergency Managers appointed. http://www.michigan.gov/documents/treasury/Wayne_342037_7.pdf

73. In Genesee County, the City of Flint has a fiscal score of 8, and an Emergency Manager was appointed. Of further relevance is that Genesee Township (8.18% African American population) did not receive an Emergency Manager even though it had a fiscal score of 9, a *higher score than Flint*. Argentine (0.23% African American population) did not receive an Emergency Manager even though it had a fiscal score 6, equal to Pontiac's score. Davison (1.8% African American population) did not receive an Emergency Manager even though it had a fiscal score 6, equal to Pontiac's score. Flint Township (16.12% African American population) did not receive

an Emergency Manager even though it had a fiscal score 7, a *higher score than Pontiac*. And Thetford Township (2.91% African American population) did not receive an Emergency Manager even though it had a fiscal score of 7, a *higher score than Pontiac*. http://www.michigan.gov/documents/treasury/Genesee_341964_7.pdf.

74. The Walled Lake Consolidated School District, serves over 15,000 school children (compared to 980 students in Highland Park Schools and 1,112 students in the Muskegon Heights School District, both of which have Emergency Managers), in a suburban area north of Detroit. Last week, the Walled Lake District cancelled classes, and ended bus service, asking parents to transport their children to school (http://www.detroitnews.com/article/20130508/SCHOOLS/305080376), as the District confronts expenses that are projected to exceed revenues by $10,042,856, for the 2013-2014 school year. http://www.wlcsd.org/files/filesystem/March%207%202013%20Board%20of%20Ed%20meeting.pdf. This District includes the Cities of Farmington Hills (69.7% White population, 17.4% African American population), Novi, Orchard Lake, Walled Lake, Wixom, and the Townships of Wolverine Lake (95.9% White population, 0.7% African American population), White Lake (96.56% White population, 0.78% African American population), West Bloomfield (84.25% White population, 5.18% African American population), described as an "[a]ffluent charter township in the state of Michigan, within the Detroit metropolitan area. It is known for its large homes and rolling hills. West Bloomfield [Township] was named No. 37 on Money magazine's Top 100 Small Cities in 2012. West Bloomfield is also #6 on the list of 100 highest-income places with a population of at least 50,000 people." (American FactFinder, United States Census Bureau; http://en.wikipedia.org/wiki/West_Bloomfield_Township,_Michigan), and Commerce (96.73% White population, 0.50% African American population). With a $10 million deficit, class

cancellations, and disruptions in bus service, no Emergency Manager has been appointed by the State to govern the Walled Lake Consolidated School District, which has a total average White population of 85.3%.

V.

FIRST CAUSE OF ACTION

(42 U.S.C. Sec. 1983; Equal Protection, Equal Dignity Owed to Each Vote, U.S. Constitution Amend. XIV)

75. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

76. The locally-elected legislative and executive officials in non-Emergency Manager jurisdictions have full powers and duties as proscribed by their respective charters. Whereas, the locally-elected legislative and executive officials under the control of Emergency Managers do not. The more authority exercised by an Emergency Manager, the less the value of the vote that brought them to office. The Emergency Manager law is a zero sum game.

77. This valuing of one person's vote over that of another runs afoul of the Equal Protection Clause because:

> "Having once granted the right to vote on equal terms, the state may not by later arbitrary and disparate treatment, value one person's vote over that of another. It must remember that the right of suffrage can be denied by a debasement or dilution of the weight of a citizens' vote just as effectively as by wholly prohibiting the free exercise of the franchise."
>
> "[T]he right to vote as the [state] legislature has prescribed is fundamental;

> and one source of its fundamental nature lies in the *equal weight* accorded to each vote and the *equal dignity* owed to each voter."
>
> *Bush v. Gore*, 531 U.S. 98, 104 (2000)(emphasis added).

78. In *Stewart v. Blackwell*, 444 F. 3rd 843 (6th Cir. 2006), citing to *Bush v. Gore*, *supra*, the Sixth Circuit, which has cited to *Bush* as controlling authority in at least 14 cases (more than any other Federal Circuit), the court held that:

> "Echoing long-revered principles, the [*Bush*] Court emphasized that States, after granting the right to vote on equal terms, 'may not, by later arbitrary and disparate treatment, value one person's vote over that of another.' *Id*. at 104-105 (citing *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665 (1966)). That is, the right to vote encompasses 'more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise."

See also, *Hunter v. Hamilton County Bd. Of Elections*, 635 F.3d 219, 234 (6th Cir. 2011), quoting *Bush v. Gore*, 531 U.S. 98, *supra* (A state may not arbitrarily impose disparate treatment on similarly situated voters).

79. In *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) the Court likewise held that "[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

80. This Court should grant an injunction and/or issue a declaratory judgment that Public Act 436 violates the Equal Protection Clause because it results in equal weight not being afforded to each vote and equal dignity is not being afforded to each voter in Emergency Manager jurisdictions.

VI.

SECOND CAUSE OF ACTION

(42 U.S.C. Sec. 1983; Equal Protection, Disparate Impact of Statute as Applied, Resulting in Voter Dilution; U.S. Constitution Amend. XIV)

81. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

82. Public Act 436 has had a disparate and discriminatory impact on voters of color in the State of Michigan. A majority, 50.4%, of the state's 1,413,320 African American residents are now ruled by unelected Emergency Managers, compared to 1.3% of the state's 7,926,454 White residents now ruled by unelected Emergency Managers.

83. This disparate and discriminatory impact on voters of color has resulted in a dilution of the value of the individual's right to vote for locally-elected officials of their choosing. The value of the individual's right to vote for locally-elected officials is one hundred percent (100%) higher in non-Emergency Manager jurisdictions, which are predominantly White, than it is in Emergency Manager jurisdictions, which are predominantly African American.

84. Justice Douglas' dissent in *South v. Peters*, 339 U.S. 276 (1950)(adopted by the majority in *Reynolds v. Sims*, 377 U.S. 533 (1964)) provides that:

> "There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. [I]t also includes the right to have the vote counted at full value without dilution or discount."
>
> *Id*. at 279.

85. The Sixth Circuit has expressly adopted this Equal Protection voter dilution standard. *Stewart v. Blackwell*, 444 F. 3rd 843 (6th Cir. 2006), *supra*.

86. This Court should grant an injunction and/or issue a declaratory judgment that Public Act 436 violates the Equal Protection Clause because it results in voter dilution in Emergency Manager jurisdictions.

VII.

THIRD CAUSE OF ACTION

(42 U.S.C. Sec. 1983, Substantive Due Process, U.S. Constitution Amend. XIV)

87. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

88. In its application, Public Act 436 has had an injuriously disparate impact on the state's African American population. 50.4% of the state's 1,413,320 African American residents are now ruled by unelected Emergency Managers. And the state's process for selecting the jurisdictions for imposition of Emergency Managers has placed Emergency Managers in majority African American jurisdictions when non-African American jurisdictions had the same or worse fiscal indicator score.

89. In *United States v. Carolene Products Co*., 304 U.S. 144 (1938), the Court held that the liberty interest under the Fourteenth Amendment incorporates three rights under the requirement that no state shall "[d]eprive any person of life, liberty or property without due process of law:"

- the rights enumerated in and derived from the first eight amendments in the Bill of Rights
- *the right to participate in the political process* (*e.g.*, the rights of *voting*, association, and free speech); and
- *the rights of "discrete and insular minorities*."

Id. at f.n. 4 (emphasis added).

90. This right was upheld by the Sixth Circuit in *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463 (2008)(also citing to the dignity of each vote requirement in *Bush v Gore*, supra) where the right to vote was burdened through the state of Ohio's arbitrary voting standards which differed from "county to county, city to city, and precinct to precinct."

91. This Court should grant an injunction and/or issue a declaratory judgment that Public Act 436 violates the Due Process Clause because the state's process of selecting jurisdictions for the imposition of Emergency Managers was done in an arbitrary and discriminatory manner, resulting in the denial of the right to participate equally in the voting process.

VII.

FOURTH CAUSE OF ACTION

(42 U.S.C. Sec. 1983, Procedural Due Process, U.S. Constitution Amend. XIV)

92. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

93. The Due Process Clause of the Fourteenth Amendment to the United States prohibits Defendants from "depriving any person of life, liberty, or property without due process of law."

94. In *United States v. Carolene Products Co*., 304 U.S. 144 (1938), the Court included the right to participate in the political process (*e.g.*, the rights of voting, association, and free speech), as a liberty interest protected by the Fourteenth Amendment.

95. Plaintiffs have a liberty interest in their right to vote, a right granted under the U.S. Constitution, made applicable by the Fourteenth Amendment to the state.

96. These rights may not be taken away without due process of law. No such process was given to Plaintiffs. The State has not defined a clear mechanism for how it goes about selecting and enforcing the Emergency Manager law and further has not provided any mechanism for individual citizens that are effected by the implementation of the law to seek recourse to challenge the decision to be under Emergency Manager rule.

97. Because a grieved party has no recourse or protections or even safe guards to challenge the implementation of Defendants Public Act 436, the individual Plaintiffs have been deprived their due process of law pursuant to the Fourteenth Amendment of the United States Constitution.

98. This Court should grant an injunction and/or issue a declaratory judgment that Public Act 436 violates the Procedural Due Protection Clause.

IX.

FIFTH CAUSE OF ACTION

(42 U.S.C. § 1973a(c); Request for Implementation of Section 3(c) of Voting Rights Act)

99. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

100. The purpose of the 1965 Voting Rights Act is to ensure that the right of all citizens to vote, including the right to register to vote and cast meaningful votes, is preserved and protected as guaranteed by the Constitution.

101. Section 3(c) of the Voting Rights Act authorizes federal courts to place states and political subdivisions that have violated the Fourteenth or Fifteenth Amendments under preclearance, similar to Section 5 of the Act, which requires certain covered jurisdictions to preclear all voting changes with federal authorities. 42 U.S.C.§ 1973a(c) (2006).

102. Plaintiffs, having pled a violation of the Fourteenth Amendment, are eligible for the Court's implementation of Section 3(c) of the Voting Rights Act. This Court should use its discretion to retain jurisdiction and impose preclearance on the cities and school districts now having Emergency Managers in the state of Michigan.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request of this Court the following relief:

A. An order declaring that Public Act 436 violates the Equal Protection and/or the Procedural and/or Substantive Due Process Clauses of the United States Constitution;

B. A preliminary and permanent order prohibiting Defendants, their respective agents, servants, employees, attorneys, successors, and all persons acting in concert with each or any of them, from implementing or enforcing Public Act 436;

C. A preliminary and permanent order prohibiting any Emergency Managers appointed under Public Act 436 from exercising any authority over any jurisdiction and/or unit of local government, and/or over any locally elected public officials in Michigan;

D. A preliminary and permanent order that actions exercised by Emergency Managers under Public Act 436 are unenforceable;

E. A preliminary and permanent order granting preclearance of the cities and school districts currently with Emergency Managers, including the City of Benton Harbor, the City of Detroit, the Detroit Public School System, the City of Ecorse, the City of Flint, the City of Hamtramck, the City of Highland Park, the Muskegon Heights School System, and the City of Pontiac under section 3(c) of the 1965 Voting Rights Act;

F. Attorney fees and costs;

G. Such other and further relief as this Court may deem necessary or proper.

Respectfully submitted,

/s/ Melvin Butch Hollowell

_____

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/s/ Nabih H. Ayad

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ATTORNEYS FOR PLAINTIFFS

DATED: June 27, 2013

VERIFICATION OF PLAINTIFF DONNELL R. WHITE

UNDER OATH, Plaintiff DONNELL R. WHITE hereby states:

1. That he has reviewed the Complaint,

2. That regarding the allegations of which Plaintiff White has personal knowledge, he believes them to be true,

3. That regarding the allegations of which Plaintiff White does not have personal knowledge, he believes them to be true based on specified information, documents, or both.

4. That I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. Sec. 1746).

/s/ Donnell R. White

Donnell R. White

Executed on May 10, 2013

VERIFICATION OF PLAINTIFF THOMAS STALLWORTH, III

UNDER OATH, Plaintiff THOMAS STALLWORTH, III, hereby states:

1. That he has reviewed the Complaint,

2. That regarding the allegations of which Plaintiff Stallworth has personal knowledge, he believes them to be true,

3. That regarding the allegations of which Plaintiff Stallworth does not have personal knowledge, he believes them to be true based on specified information, documents, or both.

4. That I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. Sec. 1746).

/s/ Thomas Stallworth, III

_____

Thomas Stallworth, III

Executed on May 10, 2013

VERIFICATION OF PLAINTIFF RASHIDA TLAIB

UNDER Oath, Plaintiff RASHIDA TLAIB hereby states:

1. That she has reviewed the Complaint,

2. That regarding the allegations of which Plaintiff Tlaib has personal knowledge, she believes them to be true,

3. That regarding the allegations of which Plaintiff Tlaib does not have personal knowledge, she believes them to be true based on specified information, documents, or both.

4. That I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. Sec. 1746).

/s/ Rashida Tlaib

Rashida Tlaib

Executed on May 10, 2013

VERIFICATION OF PLAINTIFF MAUREEN TAYLOR

UNDER Oath, Plaintiff MAUREEN TAYLOR hereby states:

1. That she has reviewed the Complaint,

2. That regarding the allegations of which Plaintiff Taylor has personal knowledge, she believes them to be true,

3. That regarding the allegations of which Plaintiff Taylor does not have personal knowledge, she believes them to be true based on specified information, documents, or both.

4. That I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. Sec. 1746).

/s/ Maureen Taylor

_____

Maureen Taylor

Executed on May 10, 2013

EXHIBIT 1

LOCAL FINANCIAL STABILITY AND CHOICE ACT

Act 436 of 2012

AN ACT to safeguard and assure the financial accountability of local units of government and school districts; to preserve the capacity of local units of government and school districts to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of local units of government and school districts and the provision of services by local units of government and school districts; to provide criteria to be used in determining the financial condition of local units of government and school districts; to authorize a declaration of the existence of a financial emergency within a local unit of government or school district; to prescribe remedial measures to address a financial emergency within a local unit of government or school district; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager for a local unit of government or school district; to provide for the modification or termination of contracts under certain circumstances; to provide for the termination of a financial emergency within a local unit of government or school district; to provide a process by which a local unit of government or school district may file for bankruptcy; to prescribe the powers and duties of certain state agencies and officials and officials within local units of government and school districts; to provide for appropriations; and to repeal acts and parts of acts.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1541 Short title.

Sec. 1.

This act shall be known and may be cited as the "local financial stability and choice act".

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1542 Definitions.

Sec. 2.

As used in this act:

(a) "Chapter 9" means chapter 9 of title 11 of the United States Code, 11 USC 901 to 946.

(b) "Chief administrative officer" means any of the following:

(i) The manager of a village or, if a village does not employ a manager, the president of the village.

(ii) The city manager of a city or, if a city does not employ a city manager, the mayor of the city.

(iii) The manager of a township or the manager or superintendent of a charter township or, if the township does not employ a manager or superintendent, the supervisor of the township.

(iv) The elected county executive or appointed county manager of a county or, if the county has not adopted the provisions of either 1973 PA 139, MCL 45.551 to 45.573, or 1966 PA 293, MCL 45.501 to 45.521, the county's chairperson of the county board of commissioners.

(v) The chief operating officer of an authority or of a public utility owned by a city, village, township, or county.

(vi) The superintendent of a school district.

(c) "Creditor" means either of the following:

(i) An entity that has a noncontingent claim against a local government that arose at the time of or before the commencement of the neutral evaluation process and whose claim represents at least $5,000,000.00 or comprises more than 5% of the local government's debt or obligations, whichever is less.

(ii) An entity that would have a noncontingent claim against the local government upon the rejection of an executory contract or unexpired lease in a chapter 9 case and whose claim would represent at least $5,000,000.00 or would comprise more than 5% of the local government's debt or obligations, whichever is less.

(d) "Debtor" means a local government that is authorized to proceed under chapter 9 by this act and that meets the requirements of chapter 9.

(e) "Emergency manager" means an emergency manager appointed under section 9. An emergency manager includes an emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72 who was acting in that capacity on the effective date of this act.

(f) "Entity" means a partnership, nonprofit or business corporation, limited liability company, labor organization, or any other association, corporation, trust, or other legal entity.

(g) "Financial and operating plan" means a written financial and operating plan for a local government under section 11, including an educational plan for a school district.

(h) "Good faith" means participation by an interested party or a local government representative in the neutral evaluation process with the intent to negotiate a resolution of the issues that are the subject of the neutral evaluation process, including the timely provision of complete and accurate information to provide the relevant participants through the neutral evaluation process with sufficient information, in a confidential manner, to negotiate the readjustment of the local government's debt.

(i) "Interested party" means a trustee, a committee of creditors, an affected creditor, an indenture trustee, a pension fund, a bondholder, a union that under its collective bargaining agreements has standing to initiate contract negotiations with the local government, or a representative selected by an association of retired employees of the public entity who receive income or benefits from the public entity. A local government may invite holders of contingent claims to participate as interested parties in the neutral evaluation process if the local government determines that the contingency is likely to occur and the claim may represent at least $5,000,000.00 or comprise more than 5% of the local government's debt or obligations, whichever is less.

(j) "Local emergency financial assistance loan board" means the local emergency financial assistance loan board created under section 2 of the emergency municipal loan act, 1980 PA 243, MCL 141.932.

(k) "Local government" means a municipal government or a school district.

(l) "Local government representative" means the person or persons designated by the governing body of the local government with authority to make recommendations and to attend the neutral evaluation process on behalf of the governing body of the local government.

(m) "Local inspector" means a certified forensic accountant, certified public accountant, attorney, or similarly credentialed person whose responsibility it is to determine the existence of proper

internal and management controls, fraud, criminal activity, or any other accounting or management deficiencies.

(n) "Municipal government" means a city, a village, a township, a charter township, a county, a department of county government if the county has an elected county executive under 1966 PA 293, MCL 45.501 to 45.521, an authority established by law, or a public utility owned by a city, village, township, or county.

(o) "Neutral evaluation process" means a form of alternative dispute resolution or mediation between a local government and interested parties as provided for in section 25.

(p) "Neutral evaluator" means an impartial, unbiased person or entity, commonly known as a mediator, who assists local governments and interested parties in reaching their own settlement of issues under this act, who is not aligned with any party, and who has no authoritative decision-making power.

(q) "Receivership" means the process under this act by which a financial emergency is addressed through the appointment of an emergency manager. Receivership does not include chapter 9 or any provision under federal bankruptcy law.

(r) "Review team" means a review team appointed under section 4.

(s) "School board" means the governing body of a school district.

(t) "School district" means a school district as that term is defined in section 6 of the revised school code, 1976 PA 451, MCL 380.6, or an intermediate school district as that term is defined in section 4 of the revised school code, 1976 PA 451, MCL 380.4.

(u) "State financial authority" means the following:

(i) For a municipal government, the state treasurer.

(ii) For a school district, the superintendent of public instruction.

(v) "Strong mayor" means a mayor who has been granted veto power for any purpose under the charter of that local government.

(w) "Strong mayor approval" means approval of a resolution under 1 of the following conditions:

(i) The strong mayor approves the resolution.

(ii) The resolution is approved by the governing body with sufficient votes to override a veto by the strong mayor.

(iii) The strong mayor vetoes the resolution and the governing body overrides the veto.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1543 Findings; declarations.

Sec. 3.

The legislature finds and declares all of the following:

(a) That the health, safety, and welfare of the citizens of this state would be materially and adversely affected by the insolvency of local governments and that the fiscal accountability of local governments is vitally necessary to the interests of the citizens of this state to assure the provision of necessary governmental services essential to public health, safety, and welfare.

(b) That it is vitally necessary to protect the credit of this state and its political subdivisions and that it is necessary for the public good and it is a valid public purpose for this state to take action and to assist a local government in a financial emergency so as to remedy the financial emergency by requiring prudent fiscal management and efficient provision of services, permitting the restructuring of contractual obligations, and prescribing the powers and duties of state and local government officials and emergency managers.

(c) That the fiscal stability of local governments is necessary to the health, safety, and welfare of the citizens of this state and it is a valid public purpose for this state to assist a local government in a condition of financial emergency by providing for procedures of alternative dispute resolution between a local government and its creditors to resolve disputes, to determine criteria for establishing the existence of a financial emergency, and to set forth the conditions for a local government to exercise powers under federal bankruptcy law.

(d) That the authority and powers conferred by this act constitute a necessary program and serve a valid public purpose.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall

function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1544 Determination of probable financial stress; preliminary review; conditions; notification to local government; interim report of findings; final report; finding of probable financial stress; appointment of review team for municipal government; appointment of review team for local school district; staff support; duration of appointment.

Sec. 4.

(1) The state financial authority may conduct a preliminary review to determine the existence of probable financial stress within a local government if 1 or more of the following occur:

(a) The governing body or the chief administrative officer of a local government requests a preliminary review. The request shall be in writing and shall identify the existing or anticipated financial conditions or events that make the request necessary.

(b) The state financial authority receives a written request from a creditor with an undisputed claim that remains unpaid 6 months after its due date against the local government that exceeds the greater of $10,000.00 or 1% of the annual general fund budget of the local government, provided that the creditor notifies the local government in writing at least 30 days before his or her request to the state financial authority of his or her intention to submit a written request under this subdivision.

(c) The state financial authority receives a petition containing specific allegations of local government financial distress signed by a number of registered electors residing within the local government's jurisdiction equal to not less than 5% of the total vote cast for all candidates for governor within the local government's jurisdiction at the last preceding election at which a governor was elected. Petitions shall not be filed under this subdivision within 60 days before any election of the local government.

(d) The state financial authority receives written notification that a local government has not timely deposited its minimum obligation payment to the local government pension fund as required by law.

(e) The state financial authority receives written notification that the local government has failed for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(f) The state financial authority receives written notification from a trustee, paying agent, bondholder, or auditor engaged by the local government of a default in a bond or note payment or a violation of 1 or more bond or note covenants.

(g) The state financial authority of a local government receives a resolution from either the senate or the house of representatives requesting a preliminary review.

(h) The local government has violated a requirement of, or a condition of an order issued pursuant to, former 1943 PA 202, the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140, the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.

(i) The municipal government has violated the conditions of an order issued by the local emergency financial assistance loan board pursuant to the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(j) The local government has violated a requirement of sections 17 to 20 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.437 to 141.440.

(k) The local government fails to timely file an annual financial report or audit that conforms with the minimum procedures and standards of the state financial authority and is required for local governments under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55.

(l) If the local government is a school district, the school district fails to provide an annual financial report or audit that conforms with the minimum procedures and standards of the superintendent of public instruction and is required under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852, and the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

(m) The municipal government is delinquent in the distribution of tax revenues, as required by law, that it has collected for another taxing jurisdiction, and that taxing jurisdiction requests a preliminary review.

(n) The local government is in breach of its obligations under a deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(o) A court has ordered an additional tax levy without the prior approval of the governing body of the local government.

(p) The municipal government has ended a fiscal year in a deficit condition as defined in section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921, or has failed to comply with the requirements of that section for filing or instituting a financial plan to correct the deficit condition.

(q) The school district ended its most recently completed fiscal year with a deficit in 1 or more of its funds and the school district has not submitted a deficit elimination plan to the state financial

authority within 30 days after the district's deadline for submission of its annual financial statement.

(r) The local government has been assigned a long-term debt rating within or below the BBB category or its equivalent by 1 or more nationally recognized credit rating agencies.

(s) The existence of other facts or circumstances that, in the state treasurer's sole discretion for a municipal government, are indicative of probable financial stress or that, in the state treasurer's or superintendent of public instruction's sole discretion for a school district, are indicative of probable financial stress.

(2) Before commencing the preliminary review under subsection (1), the state financial authority shall provide the local government specific written notification that it intends to conduct a preliminary review. Elected and appointed officials of a local government shall promptly and fully provide the assistance and information requested by the state financial authority for that local government in conducting the preliminary review. The state financial authority shall provide an interim report of its findings to the local government within 20 days following the commencement of the preliminary review. In addition, a copy of the interim report shall be provided to each state senator and state representative who represents that local government. The local government may provide comments to the state financial authority concerning the interim report within 5 days after the interim report is provided to the local government. The state financial authority shall prepare and provide a final report detailing its preliminary review to the local emergency financial assistance loan board. In addition, a copy of the final report shall be provided to each state senator and state representative who represents that local government. The final report shall be posted on the department of treasury's website within 7 days after the final report is provided to the local emergency financial assistance loan board. The preliminary review and final report by the state financial authority shall be completed within 30 days following commencement of the preliminary review. Within 20 days after receiving the final report from the state financial authority, the local emergency financial assistance loan board shall determine if probable financial stress exists for the local government.

(3) If a finding of probable financial stress is made for a municipal government by the local emergency financial assistance loan board under subsection (2), the governor shall appoint a review team for that municipal government consisting of the state treasurer or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state officials or other persons with relevant professional experience to serve on a review team to undertake a municipal financial management review.

(4) If a finding of probable financial stress is made for a school district by the local emergency financial assistance loan board under subsection (2), the governor shall appoint a review team for that school district consisting of the state treasurer or his or her designee, the superintendent of public instruction or his or her designee, the director of the department of technology, management, and budget or his or her designee, a nominee of the senate majority leader, and a nominee of the speaker of the house of representatives. The governor may appoint other state

officials or other persons with relevant professional experience to serve on a review team to undertake a school district financial management review.

(5) The department of treasury shall provide staff support to each review team appointed under this section.

(6) A review team appointed under former 1988 PA 101 or former 1990 PA 72 and serving immediately prior to the effective date of this act shall continue under this act to fulfill its powers and duties. All proceedings and actions taken by the governor, the state treasurer, the superintendent of public instruction, the local emergency financial assistance loan board, or a review team under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 before the effective date of this act are ratified and are enforceable as if the proceedings and actions were taken under this act, and a consent agreement entered into under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72 that was in effect immediately prior to the effective date of this act is ratified and is binding and enforceable under this act.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1545 Review team; powers; meeting with local government; report; posting on department of treasury's website; contents; appointment of individual or firm to carry out review and submit report.

Sec. 5.

(1) In conducting its review, the review team may do either or both of the following:

(a) Examine the books and records of the local government.

(b) Utilize the services of other state agencies and employees.

(2) The review team shall meet with the local government as part of its review. At this meeting, the review team shall receive, discuss, and consider information provided by the local government concerning the financial condition of the local government. In addition, the review team shall hold at least 1 public information meeting in the jurisdiction of the local government at which the public may provide comment.

(3) The review team shall submit a written report of its findings to the governor within 60 days following its appointment or earlier if required by the governor. Upon request, the governor may grant one 30-day extension of this 60-day time limit. A copy of the report shall be forwarded by the state treasurer to the chief administrative officer and the governing body of the local government, the speaker of the house of representatives, the senate majority leader, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The report shall be posted on the department of treasury's website within 7 days after the report is submitted to the governor. The report shall include the existence, or an indication of the likely occurrence, of any of the following:

(a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund.

(b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency:

(i) Taxes withheld on the income of employees.

(ii) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.

(iii) Any contribution required by a pension, retirement, or benefit plan.

(c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(d) The total amount of accounts payable for the current fiscal year, as determined by the state financial authority's uniform chart of accounts, is in excess of 10% of the total expenditures of the local government in that fiscal year.

(e) Failure to eliminate an existing deficit in any fund of the local government within the 2-year period preceding the end of the local government's fiscal year during which the review team report is received.

(f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of 5% of the budgeted revenues for the general fund.

(g) Failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(h) Existence of material loans to the general fund from other local government funds that are not regularly settled between the funds or that are increasing in scope.

(i) Existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles.

(j) Existence of a structural operating deficit.

(k) Use of restricted revenues for purposes not authorized by law.

(l) The likelihood that the local government is or will be unable to pay its obligations within 60 days after the date of the review team's reporting its findings to the governor.

(m) Any other facts and circumstances indicative of local government financial emergency.

(4) The review team shall include 1 of the following conclusions in its report:

(a) A financial emergency does not exist within the local government.

(b) A financial emergency exists within the local government.

(5) The review team may, with the approval of the state financial authority, appoint an individual or firm to carry out the review and submit a report to the review team for approval. The department of treasury may enter into a contract with the individual or firm respecting the terms and conditions of the appointment.

(6) For purposes of this section:

(a) A financial emergency does not exist within a local government if the report under subsection (3) concludes that none of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year or, if they occur, do not threaten the local government's capability to provide necessary governmental services essential to public health, safety, and welfare.

(b) A financial emergency exists within a local government if any of the following occur:

(i) The report under subsection (3) concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(ii) The local government has failed to provide timely and accurate information enabling the review team to complete its report under subsection (3).

(iii) The local government has failed to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(iv) The chief administrative officer of the local government concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare, and the chief administrative officer recommends that a financial emergency be declared and the state treasurer concurs with the recommendation.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1546 Determination by governor; opportunity for local government to submit statement; determination of financial emergency; notification; hearing; findings of fact by governor; report; resolution by local government to appeal determination.

Sec. 6.

(1) Within 10 days after receipt of the report under section 5, the governor shall make 1 of the following determinations:

(a) A financial emergency does not exist within the local government.

(b) A financial emergency exists within the local government.

(2) Before making a determination under subsection (1), the governor, in his or her sole discretion, may provide officials of the local government an opportunity to submit a written statement concerning their agreement or disagreement with the findings and conclusion of the review team report under section 5. If the governor determines pursuant to subsection (1) that a financial emergency exists, the governor shall provide the governing body and chief administrative officer of the local government with a written notification of the determination, findings of fact utilized as the basis upon which this determination was made, a concise and explicit statement of the underlying facts supporting the factual findings, and notice that the chief administrative officer or the governing body of the local government has 7 days after the date of the notification to request a hearing conducted by the state financial authority or the state financial authority's designee. Following the hearing, or if no hearing is requested following the expiration of the deadline by which a hearing may be requested, the governor, in his or her sole discretion based upon the record, shall either confirm or revoke, in writing, the determination of the existence of a financial emergency. If confirmed, the governor shall provide a written report to the governing body and

chief administrative officer of the local government of the findings of fact of the continuing or newly developed conditions or events providing a basis for the confirmation of a financial emergency and a concise and explicit statement of the underlying facts supporting these factual findings. In addition, a copy of the report shall be provided to each state senator and state representative who represents that local government. The report shall be posted on the department of treasury's website within 7 days after the report is provided to the governing body and chief executive officer of the local government.

(3) A local government for which a financial emergency determination under this section has been confirmed to exist may, by resolution adopted by a vote of 2/3 of the members of its governing body elected and serving, appeal this determination within 10 business days to the Michigan court of claims. A local government may, by resolution adopted by a vote of 2/3 of the members of its governing body elected and serving, waive its right to appeal as provided in this subsection. The court shall not set aside a determination of financial emergency by the governor unless it finds that the determination is either of the following:

(a) Not supported by competent, material, and substantial evidence on the whole record.

(b) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1547 Local government options; approval of resolution by mayor or school board; failure of local governing body to pass resolution; limitation.

Sec. 7.

(1) Notwithstanding section 6(3), upon the confirmation of a finding of a financial emergency under section 6, the governing body of the local government shall, by resolution within 7 days after the confirmation of a finding of a financial emergency, select 1 of the following local government options to address the financial emergency:

(a) The consent agreement option pursuant to section 8.

(b) The emergency manager option pursuant to section 9.

(c) The neutral evaluation process option pursuant to section 25.

(d) The chapter 9 bankruptcy option pursuant to section 26.

(2) Subject to subsection (3), if the local government has a strong mayor, the resolution under subsection (1) requires strong mayor approval. If the local government is a school district, the resolution shall be approved by the school board. The resolution shall be filed with the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district.

(3) If the governing body of the local government does not pass a resolution as required under subsection (1), the local government shall proceed under the neutral evaluation process pursuant to section 25.

(4) Subject to section 9(6)(c) and (11), unless authorized by the governor, a local government shall not utilize 1 of the local options listed in subsection (1)(a) to (d) more than 1 time.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1548 Consent agreement; negotiation and signature; provisions; continuing operations plan; form; amendment of budget adopted by municipal government or school district; recovery plan; terms and provisions; powers granted to chief administrative officer, chief financial officer, governing body, or other local officers; consultant; release from requirements.

Sec. 8.

(1) The chief administrative officer of a local government may negotiate and sign a consent agreement with the state treasurer as provided for in this act. If the local government is a school district and the consent agreement contains an educational plan, the consent agreement shall also be signed by the superintendent of public instruction. The consent agreement shall provide for remedial measures considered necessary to address the financial emergency within the local government and provide for the financial stability of the local government. The consent agreement may utilize state financial management and technical assistance as necessary in order to alleviate the financial emergency. The consent agreement shall also provide for periodic financial status

reports to the state treasurer, with a copy of each report to each state senator and state representative who represents that local government. The consent agreement may provide for a board appointed by the governor to monitor the local government's compliance with the consent agreement. In order for the consent agreement to go into effect, it shall be approved, by resolution, by the governing body of the local government and shall be approved and executed by the state treasurer. Nothing in the consent agreement shall limit the ability of the state treasurer in his or her sole discretion to declare a material breach of the consent agreement. A consent agreement shall provide that in the event of a material uncured breach of the consent agreement, the governor may place the local government in receivership or in the neutral evaluation process. If within 30 days after a local government selects the consent agreement option under section 7(1)(a) or sooner in the discretion of the state treasurer, a consent agreement cannot be agreed upon, the state treasurer shall require the local government to proceed under 1 of the other local options provided for in section 7.

(2) A consent agreement as provided in subsection (1) may require a continuing operations plan or a recovery plan if required by the state treasurer.

(3) If the state treasurer requires that a consent agreement include a continuing operations plan, the local government shall prepare and file the continuing operations plan with the state treasurer as provided for in the consent agreement. The state treasurer shall approve or reject the initial continuing operations plan within 14 days of receiving it from the local government. If a continuing operations plan is rejected, the local government shall refile an amended plan within 30 days of the rejection, addressing any concerns raised by the state treasurer or the superintendent of public instruction regarding an educational plan. If the amended plan is rejected, then the local government may be considered to be in material breach of the consent agreement. The local government shall file annual updates to its continuing operations plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the continuing operations plan remains in effect.

(4) The continuing operations plan shall be in a form prescribed by the state treasurer but shall, at a minimum, include all of the following:

(a) A detailed projected budget of revenues and expenditures over not less than 3 fiscal years which demonstrates that the local government's expenditures will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.

(b) A cash flow projection for the budget period.

(c) An operating plan for the budget period that assures fiscal accountability for the local government.

(d) A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the local government's fiscal accountability.

(e) An evaluation of the costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed within the budget period.

(f) A provision for submitting quarterly compliance reports to the state treasurer demonstrating compliance with the continuing operations plan, with a copy of each report to each state senator and state representative who represents that local government. Each quarterly compliance report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(5) If a continuing operations plan is approved for a municipal government, the municipal government shall amend the budget and general appropriations ordinance adopted by the municipal government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. If a continuing operations plan is approved for a school district, the school district shall amend the budget adopted by the school district under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, to the extent necessary or advisable to give full effect to the continuing operations plan. The chief administrative officer, the chief financial officer, the governing body, and other officials of the local government shall take and direct such actions as may be necessary or advisable to maintain the local government's operations in compliance with the continuing operations plan.

(6) If the state treasurer requires that a consent agreement include a recovery plan, the state treasurer, with input from the local government, shall develop and adopt a recovery plan. If a recovery plan is developed and adopted for the local government, the local government shall file annual updates to its recovery plan. The annual updates shall be included with the annual filing of the local government's audit report with the state financial authority as long as the recovery plan remains in effect.

(7) A recovery plan may include terms and provisions as may be approved in the discretion of the state treasurer, including, but not limited to, 1 or more of the following:

(a) A detailed projected budget of revenues and expenditures over not less than 3 fiscal years that demonstrates that the local government's expenditures will not exceed its revenues and that any existing deficits will be eliminated during the projected budget period.

(b) A cash flow projection for the budget period.

(c) An operating plan for the budget period that assures fiscal accountability for the local government.

(d) A plan showing reasonable and necessary maintenance and capital expenditures so as to assure the local government's fiscal accountability.

(e) An evaluation of costs associated with pension and postemployment health care obligations for which the local government is responsible and a plan for how those costs will be addressed to assure that current obligations are met and that steps are taken to reduce future unfunded obligations.

(f) Procedures for cash control and cash management, including, but not limited to, procedures for timely collection, securing, depositing, balancing, and expending of cash. Procedures for cash control and cash management may include the designation of appropriate fiduciaries.

(g) A provision for submitting quarterly compliance reports to the state treasurer and the chief administrative officer of the local government that demonstrate compliance with the recovery plan, with a copy of each report to each state senator and state representative who represents that local government. Each quarterly compliance report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(8) The recovery plan may include the appointment of a local auditor or local inspector, or both, in accordance with section 12(1)(p).

(9) If a recovery plan is developed and adopted by the state treasurer for a local government, the recovery plan shall supersede the budget and general appropriations ordinance adopted by the local government under the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, and the budget and general appropriations ordinance is considered amended to the extent necessary or advisable to give full effect to the recovery plan. In the event of any inconsistency between the recovery plan and the budget or general appropriations ordinance, the recovery plan shall control. The chief administrative officer, the chief financial officer, the governing body, and other officers of the local government shall take and direct actions as may be necessary or advisable to bring and maintain the local government's operations in compliance with the recovery plan.

(10) Except as otherwise provided in this subsection, the consent agreement may include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government by the state treasurer of 1 or more of the powers prescribed for emergency managers as otherwise provided in this act for such periods and upon such terms and conditions as the state treasurer considers necessary or convenient, in the state treasurer's discretion to enable the local government to achieve the goals and objectives of the consent agreement. However, the consent agreement shall not include a grant to the chief administrative officer, the chief financial officer, the governing body, or other officers of the local government of the powers prescribed for emergency managers in section 12(1)(k).

(11) Unless the state treasurer determines otherwise, beginning 30 days after the date a local government enters into a consent agreement under this act, that local government is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for the remaining term of the consent agreement.

(12) The consent agreement may provide for the required retention by the local government of a consultant for the purpose of assisting the local government to achieve the goals and objectives of the consent agreement.

(13) A local government is released from the requirements under this section upon compliance with the consent agreement as determined by the state treasurer.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature

that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1549 Emergency manager; appointment by governor; powers; qualifications; compensation; private funds; additional staff and assistance; quarterly reports; service; removal of local government from receivership; delegation of duties from governor to state treasurer; applicable state laws; appointment under former act; removal.

Sec. 9.

(1) The governor may appoint an emergency manager to address a financial emergency within that local government as provided for in this act.

(2) Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government. The emergency manager shall have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Following appointment of an emergency manager and during the pendency of receivership, the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager or as otherwise provided by this act and are subject to any conditions required by the emergency manager.

(3) All of the following apply to an emergency manager:

(a) The emergency manager shall have a minimum of 5 years' experience and demonstrable expertise in business, financial, or local or state budgetary matters.

(b) The emergency manager may, but need not, be a resident of the local government.

(c) The emergency manager shall be an individual.

(d) Except as otherwise provided in this subdivision, the emergency manager shall serve at the pleasure of the governor. An emergency manager is subject to impeachment and conviction by the legislature as if he or she were a civil officer under section 7 of article XI of the state constitution

of 1963. A vacancy in the office of emergency manager shall be filled in the same manner as the original appointment.

(e) The emergency manager's compensation shall be paid by this state and shall be set forth in a contract approved by the state treasurer. The contract shall be posted on the department of treasury's website within 7 days after the contract is approved by the state treasurer.

(f) In addition to the salary provided to an emergency manager in a contract approved by the state treasurer under subdivision (e), this state may receive and distribute private funds to an emergency manager. As used in this subdivision, "private funds" means any money the state receives for the purpose of allocating additional salary to an emergency manager. Private funds distributed under this subdivision are subject to section 1 of 1901 PA 145, MCL 21.161, and section 17 of article IX of the state constitution of 1963.

(4) In addition to staff otherwise authorized by law, an emergency manager shall appoint additional staff and secure professional assistance as the emergency manager considers necessary to fulfill his or her appointment.

(5) The emergency manager shall submit quarterly reports to the state treasurer with respect to the financial condition of the local government in receivership, with a copy to the superintendent of public instruction if the local government is a school district and a copy to each state senator and state representative who represents that local government. In addition, each quarterly report shall be posted on the local government's website within 7 days after the report is submitted to the state treasurer.

(6) The emergency manager shall continue in the capacity of an emergency manager as follows:

(a) Until removed by the governor or the legislature as provided in subsection (3)(d). If an emergency manager is removed, the governor shall within 30 days of the removal appoint a new emergency manager.

(b) Until the financial emergency is rectified.

(c) If the emergency manager has served for at least 18 months after his or her appointment under this act, the emergency manager may, by resolution, be removed by a 2/3 vote of the governing body of the local government. If the local government has a strong mayor, the resolution requires strong mayor approval before the emergency manager may be removed. Notwithstanding section 7(4), if the emergency manager is removed under this subsection and the local government has not previously breached a consent agreement under this act, the local government may within 10 days negotiate a consent agreement with the state treasurer. If a consent agreement is not agreed upon within 10 days, the local government shall proceed with the neutral evaluation process pursuant to section 25.

(7) A local government shall be removed from receivership when the financial conditions are corrected in a sustainable fashion as provided in this act. In addition, the local government may be removed from receivership if an emergency manager is removed under subsection (6)(c) and the

governing body of the local government by 2/3 vote approves a resolution for the local government to be removed from receivership. If the local government has a strong mayor, the resolution requires strong mayor approval before the local government is removed from receivership. A local government that is removed from receivership while a financial emergency continues to exist as determined by the governor shall proceed under the neutral evaluation process pursuant to section 25.

(8) The governor may delegate his or her duties under this section to the state treasurer.

(9) Notwithstanding section 3(1) of 1968 PA 317, MCL 15.323, an emergency manager is subject to all of the following:

(a) 1968 PA 317, MCL 15.321 to 15.330, as a public servant.

(b) 1973 PA 196, MCL 15.341 to 15.348, as a public officer.

(c) 1968 PA 318, MCL 15.301 to 15.310, as if he or she were a state officer.

(10) An emergency financial manager appointed under former 1988 PA 101 or former 1990 PA 72, and serving immediately prior to the effective date of this act, shall be considered an emergency manager under this act and shall continue under this act to fulfill his or her powers and duties. Notwithstanding any other provision of this act, the governor may appoint a person who was appointed as an emergency manager under former 2011 PA 4 or an emergency financial manager under former 1988 PA 101 or former 1990 PA 72 to serve as an emergency manager under this act.

(11) Notwithstanding section 7(4) and subject to the requirements of this section, if an emergency manager has served for less than 18 months after his or her appointment under this act, the governing body of the local government may pass a resolution petitioning the governor to remove the emergency manager as provided in this section and allow the local government to proceed under the neutral evaluation process as provided in section 25. If the local government has a strong mayor, the resolution requires strong mayor approval. If the governor accepts the resolution, notwithstanding section 7(4), the local government shall proceed under the neutral evaluation process as provided in section 25.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1550 Orders.

Sec. 10.

(1) An emergency manager shall issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary to accomplish the purposes of this act, including, but not limited to, orders for the timely and satisfactory implementation of a financial and operating plan, including an educational plan for a school district, or to take actions, or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan. An order issued under this section is binding on the local elected and appointed officials and employees, agents, and contractors of the local government to whom it is issued. Local elected and appointed officials and employees, agents, and contractors of the local government shall take and direct those actions that are necessary and advisable to maintain compliance with the financial and operating plan.

(2) If an order of the emergency manager under subsection (1) is not carried out and the failure to carry out an order is disrupting the emergency manager's ability to manage the local government, the emergency manager, in addition to other remedies provided in this act, may prohibit the local elected or appointed official or employee, agent, or contractor of the local government from access to the local government's office facilities, electronic mail, and internal information systems.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1551 Financial and operating plan for local government; development and amendment by emergency manager; objectives; submission; modification; form; conduct of public informational meeting; effect of plan adopted under former law.

Sec. 11.

(1) An emergency manager shall develop and may amend a written financial and operating plan for the local government. The plan shall have the objectives of assuring that the local government is able to provide or cause to be provided governmental services essential to the public health, safety, and welfare and assuring the fiscal accountability of the local government. The financial and operating plan shall provide for all of the following:

(a) Conducting all aspects of the operations of the local government within the resources available according to the emergency manager's revenue estimate.

(b) The payment in full of the scheduled debt service requirements on all bonds, notes, and municipal securities of the local government, contract obligations in anticipation of which bonds, notes, and municipal securities are issued, and all other uncontested legal obligations.

(c) The modification, rejection, termination, and renegotiation of contracts pursuant to section 12.

(d) The timely deposit of required payments to the pension fund for the local government or in which the local government participates.

(e) For school districts, an educational plan.

(f) Any other actions considered necessary by the emergency manager in the emergency manager's discretion to achieve the objectives of the financial and operating plan, alleviate the financial emergency, and remove the local government from receivership.

(2) Within 45 days after the emergency manager's appointment, the emergency manager shall submit the financial and operating plan, and an educational plan if the local government is a school district, to the state treasurer, with a copy to the superintendent of public instruction if the local government is a school district, and to the chief administrative officer and governing body of the local government. The plan shall be regularly reexamined by the emergency manager and the state treasurer and may be modified from time to time by the emergency manager with notice to the state treasurer. If the emergency manager reduces his or her revenue estimates, the emergency manager shall modify the plan to conform to the revised revenue estimates.

(3) The financial and operating plan shall be in a form as provided by the state treasurer and shall contain that information for each year during which year the plan is in effect that the emergency manager, in consultation with the state financial authority, specifies. The financial and operating plan may serve as a deficit elimination plan otherwise required by law if so approved by the state financial authority.

(4) The emergency manager, within 30 days of submitting the financial and operating plan to the state financial authority, shall conduct a public informational meeting on the plan and any modifications to the plan. This subsection does not mean that the emergency manager must receive public approval before he or she implements the plan or any modification of the plan.

(5) For a local government in receivership immediately prior to the effective date of this act, a financial and operating plan for that local government adopted under former 2011 PA 4 or a financial plan for that local government adopted under former 1990 PA 72 shall be effective and enforceable as a financial and operating plan for the local government under this act until modified or rescinded under this act.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature

that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1552 Additional actions by emergency manager; suspension of power of administrative officer and governing body; contracts subject to competitive bidding; sale or transfer of public utility; limitation.

Sec. 12.

(1) An emergency manager may take 1 or more of the following additional actions with respect to a local government that is in receivership, notwithstanding any charter provision to the contrary:

(a) Analyze factors and circumstances contributing to the financial emergency of the local government and initiate steps to correct the condition.

(b) Amend, revise, approve, or disapprove the budget of the local government, and limit the total amount appropriated or expended.

(c) Receive and disburse on behalf of the local government all federal, state, and local funds earmarked for the local government. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.

(d) Require and approve or disapprove, or amend or revise, a plan for paying all outstanding obligations of the local government.

(e) Require and prescribe the form of special reports to be made by the finance officer of the local government to its governing body, the creditors of the local government, the emergency manager, or the public.

(f) Examine all records and books of account, and require under the procedures of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.421 to 141.440a, or 1919 PA 71, MCL 21.41 to 21.55, or both, the attendance of witnesses and the production of books, papers, contracts, and other documents relevant to an analysis of the financial condition of the local government.

(g) Make, approve, or disapprove any appropriation, contract, expenditure, or loan, the creation of any new position, or the filling of any vacancy in a position by any appointing authority.

(h) Review payrolls or other claims against the local government before payment.

(i) Notwithstanding any minimum staffing level requirement established by charter or contract, establish and implement staffing levels for the local government.

(j) Reject, modify, or terminate 1 or more terms and conditions of an existing contract.

(k) Subject to section 19, after meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and state treasurer determine that all of the following conditions are satisfied:

(i) The financial emergency in the local government has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.

(ii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.

(iii) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

(iv) Any plan involving the rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

(l) Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement.

(m) If a municipal government's pension fund is not actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government or its pension fund was due, the emergency manager may remove 1 or more of the serving trustees of the local pension board or, if the state treasurer appoints the emergency manager as the sole trustee of the local pension board, replace all the serving trustees of the local pension board. For the purpose of determining the pension fund level under this subdivision, the valuation shall exclude the net value of pension bonds or evidence of indebtedness. The annual actuarial valuation for the municipal government's pension fund shall use the actuarial accrued liabilities and the actuarial value of assets. If a pension fund uses the aggregate actuarial cost method or a method involving a frozen accrued liability, the retirement system actuary shall use the entry age normal actuarial cost method. If the emergency manager serves as sole trustee of the local pension board, all of the following apply:

(i) The emergency manager shall assume and exercise the authority and fiduciary responsibilities of the local pension board including, to the extent applicable, setting and approval of all actuarial assumptions for pension obligations of a municipal government to the local pension fund.

(ii) The emergency manager shall fully comply with the public employee retirement system investment act, 1965 PA 314, MCL 38.1132 to 38.1140m, and section 24 of article IX of the state constitution of 1963, and any actions taken shall be consistent with the pension fund's qualified plan status under the federal internal revenue code.

(iii) The emergency manager shall not make changes to a local pension fund without identifying the changes and the costs and benefits associated with the changes and receiving the state treasurer's approval for the changes. If a change includes the transfer of funds from 1 pension fund to another pension fund, the valuation of the pension fund receiving the transfer must be actuarially funded at a level of 80% or more, according to the most recent governmental accounting standards board's applicable standards, at the time the most recent comprehensive annual financial report for the municipal government was due.

(iv) The emergency manager's assumption and exercise of the authority and fiduciary responsibilities of the local pension board shall end not later than the termination of the receivership of the municipal government as provided in this act.

(n) Consolidate or eliminate departments of the local government or transfer functions from 1 department to another and appoint, supervise, and, at his or her discretion, remove administrators, including heads of departments other than elected officials.

(o) Employ or contract for, at the expense of the local government and with the approval of the state financial authority, auditors and other technical personnel considered necessary to implement this act.

(p) Retain 1 or more persons or firms, which may be an individual or firm selected from a list approved by the state treasurer, to perform the duties of a local inspector or a local auditor as described in this subdivision. The duties of a local inspector are to assure integrity, economy, efficiency, and effectiveness in the operations of the local government by conducting meaningful and accurate investigations and forensic audits, and to detect and deter waste, fraud, and abuse. At least annually, a report of the local inspector shall be submitted to the emergency manager, the state treasurer, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The annual report of the local inspector shall be posted on the local government's website within 7 days after the report is submitted. The duties of a local auditor are to assure that internal controls over local government operations are designed and operating effectively to mitigate risks that hamper the achievement of the emergency manager's financial plan, assure that local government operations are effective and efficient, assure that financial information is accurate, reliable, and timely, comply with policies, regulations, and applicable laws, and assure assets are properly managed. At least annually, a report of the local auditor shall be submitted to the emergency manager, the state treasurer, the superintendent of public instruction if the local government is a school district, and each state senator and state representative who represents that local government. The annual

report of the local auditor shall be posted on the local government's website within 7 days after the report is submitted.

(q) An emergency manager may initiate court proceedings in the Michigan court of claims or in the circuit court of the county in which the local government is located in the name of the local government to enforce compliance with any of his or her orders or any constitutional or legislative mandates, or to restrain violations of any constitutional or legislative power or his or her orders.

(r) Subject to section 19, if provided in the financial and operating plan, or otherwise with the prior written approval of the governor or his or her designee, sell, lease, convey, assign, or otherwise use or transfer the assets, liabilities, functions, or responsibilities of the local government, provided the use or transfer of assets, liabilities, functions, or responsibilities for this purpose does not endanger the health, safety, or welfare of residents of the local government or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.

(s) Apply for a loan from the state on behalf of the local government, subject to the conditions of the emergency municipal loan act, 1980 PA 243, MCL 141.931 to 141.942.

(t) Order, as necessary, 1 or more millage elections for the local government consistent with the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, sections 6 and 25 through 34 of article IX of the state constitution of 1963, and any other applicable state law.

(u) Subject to section 19, authorize the borrowing of money by the local government as provided by law.

(v) Approve or disapprove of the issuance of obligations of the local government on behalf of the local government under this subdivision. An election to approve or disapprove of the issuance of obligations of the local government pursuant to this subdivision shall only be held at the general November election.

(w) Enter into agreements with creditors or other persons or entities for the payment of existing debts, including the settlement of claims by the creditors.

(x) Enter into agreements with creditors or other persons or entities to restructure debt on terms, at rates of interest, and with security as shall be agreed among the parties, subject to approval by the state treasurer.

(y) Enter into agreements with other local governments, public bodies, or entities for the provision of services, the joint exercise of powers, or the transfer of functions and responsibilities.

(z) For municipal governments, enter into agreements with other units of municipal government to transfer property of the municipal government under 1984 PA 425, MCL 124.21 to 124.30, or as otherwise provided by law, subject to approval by the state treasurer.

(aa) Enter into agreements with 1 or more other local governments or public bodies for the consolidation of services.

(bb) For a city, village, or township, the emergency manager may recommend to the state boundary commission that the municipal government consolidate with 1 or more other municipal governments, if the emergency manager determines that consolidation would materially alleviate the financial emergency of the municipal government and would not materially and adversely affect the financial situation of the government or governments with which the municipal government in receivership is consolidated. Consolidation under this subdivision shall proceed as provided by law.

(cc) For municipal governments, with approval of the governor, disincorporate or dissolve the municipal government and assign its assets, debts, and liabilities as provided by law. The disincorporation or dissolution of the local government is subject to a vote of the electors of that local government if required by law.

(dd) Exercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government as provided in the following acts:

(i) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(ii) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20.

(iii) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(iv) 1851 PA 156, MCL 46.1 to 46.32.

(v) 1966 PA 293, MCL 45.501 to 45.521.

(vi) The general law village act, 1895 PA 3, MCL 61.1 to 74.25.

(vii) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28.

(viii) The revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

(ix) The state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

(ee) Take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities.

(ff) Remove, replace, appoint, or confirm the appointments to any office, board, commission, authority, or other entity which is within or is a component unit of the local government.

(2) Except as otherwise provided in this act, during the pendency of the receivership, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the

local government under law, charter, and ordinance shall be suspended and vested in the emergency manager.

(3) Except as otherwise provided in this subsection, any contract involving a cumulative value of $50,000.00 or more is subject to competitive bidding by an emergency manager. However, if a potential contract involves a cumulative value of $50,000.00 or more, the emergency manager may submit the potential contract to the state treasurer for review and the state treasurer may authorize that the potential contract is not subject to competitive bidding.

(4) An emergency manager appointed for a city or village shall not sell or transfer a public utility furnishing light, heat, or power without the approval of a majority of the electors of the city or village voting thereon, or a greater number if the city or village charter provides, as required by section 25 of article VII of the state constitution of 1963. In addition, an emergency manager appointed for a city or village shall not utilize the assets of a public utility furnishing heat, light, or power, the finances of which are separately maintained and accounted for by the city or village, to satisfy the general obligations of the city or village.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1553 Pendency of receivership; compensation of chief administrative officer and members of local governing body.

Sec. 13.

Upon appointment of an emergency manager and during the pendency of the receivership, the salary, wages, or other compensation, including the accrual of postemployment benefits, and other benefits of the chief administrative officer and members of the governing body of the local government shall be eliminated. This section does not authorize the impairment of vested pension benefits. If an emergency manager has reduced, suspended, or eliminated the salary, wages, or other compensation of the chief administrative officer and members of the governing body of a local government before the effective date of this act, the reduction, suspension, or elimination is valid to the same extent had it occurred after the effective date of this act. The emergency manager may restore, in whole or in part, any of the salary, wages, other compensation, or benefits of the chief administrative officer and members of the governing body during the pendency of the receivership, for such time and on such terms as the emergency manager considers appropriate, to

the extent that the emergency manager finds that the restoration of salary, wages, compensation, or benefits is consistent with the financial and operating plan.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1554 School district in receivership; additional actions.

Sec. 14.

In addition to the actions otherwise authorized in this act, an emergency manager for a school district may take 1 or more of the following additional actions with respect to a school district that is in receivership:

(a) Negotiate, renegotiate, approve, and enter into contracts on behalf of the school district.

(b) Receive and disburse on behalf of the school district all federal, state, and local funds earmarked for the school district. These funds may include, but are not limited to, funds for specific programs and the retirement of debt.

(c) Seek approval from the superintendent of public instruction for a reduced class schedule in accordance with administrative rules governing the distribution of state school aid.

(d) Subject to section 19, sell, assign, transfer, or otherwise use the assets of the school district to meet past or current obligations or assure the fiscal accountability of the school district, provided the use, assignment, or transfer of assets for this purpose does not impair the education of the pupils of the school district. The power under this subdivision includes the closing of schools or other school buildings in the school district.

(e) Approve or disapprove of the issuance of obligations of the school district.

(f) Exercise solely, for and on behalf of the school district, all other authority and responsibilities affecting the school district that are prescribed by law to the school board and superintendent of the school district.

(g) With the approval of the state treasurer, employ or contract for, at the expense of the school district, school administrators considered necessary to implement this act.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1555 Sale of asset worth more than $50,000.00; payment of benefit upon death of police officer or firefighter.

Sec. 15.

(1) Unless the potential sale and value of an asset is included in the emergency manager's financial and operating plan, the emergency manager shall not sell an asset of the local government valued at more than $50,000.00 without the state treasurer's approval.

(2) A provision of an existing collective bargaining agreement that authorizes the payment of a benefit upon the death of a police officer or firefighter that occurs in the line of duty shall not be impaired and is not subject to any provision of this act authorizing an emergency manager to reject, modify, or terminate 1 or more terms of an existing collective bargaining agreement.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1556 Criminal conduct contributing to receivership status.

Sec. 16.

An emergency manager shall, on his or her own or upon the advice of the local inspector if a local inspector has been retained, make a determination as to whether possible criminal conduct contributed to the financial situation resulting in the local government's receivership status. If the emergency manager determines that there is reason to believe that criminal conduct has occurred, the manager shall refer the matter to the attorney general and the local prosecuting attorney for investigation.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1557 Report.

Sec. 17.

Beginning 6 months after an emergency manager's appointment, and every 3 months thereafter, an emergency manager shall submit to the governor, the state treasurer, the senate majority leader, the speaker of the house of representatives, each state senator and state representative who represents the local government that is in receivership, and the clerk of the local government that is in receivership, and shall post on the internet on the website of the local government, a report that contains all of the following:

(a) A description of each expenditure made, approved, or disapproved during the reporting period that has a cumulative value of $5,000.00 or more and the source of the funds.

(b) A list of each contract that the emergency manager awarded or approved with a cumulative value of $5,000.00 or more, including the purpose of the contract and the identity of the contractor.

(c) A description of each loan sought, approved, or disapproved during the reporting period that has a cumulative value of $5,000.00 or more and the proposed use of the funds.

(d) A description of any new position created or any vacancy in a position filled by the appointing authority.

(e) A description of any position that has been eliminated or from which an employee has been laid off.

(f) A copy of the contract with the emergency manager as provided in section 9(3)(e).

(g) The salary and benefits of the emergency manager.

(h) The financial and operating plan.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1558 Recommendation to proceed under chapter 9.

Sec. 18.

(1) If, in the judgment of the emergency manager, no reasonable alternative to rectifying the financial emergency of the local government which is in receivership exists, then the emergency manager may recommend to the governor and the state treasurer that the local government be authorized to proceed under chapter 9. If the governor approves of the recommendation, the governor shall inform the state treasurer and the emergency manager in writing of the decision, with a copy to the superintendent of public instruction if the local government is a school district. The governor may place contingencies on a local government in order to proceed under chapter 9. Upon receipt of the written approval, the emergency manager is authorized to proceed under chapter 9. This section empowers the local government for which an emergency manager has been appointed to become a debtor under title 11 of the United States Code, 11 USC 101 to 1532, as required by section 109 of title 11 of the United States Code, 11 USC 109, and empowers the emergency manager to act exclusively on the local government's behalf in any such case under chapter 9.

(2) The recommendation to the governor and the state treasurer under subsection (1) shall include 1 of the following:

(a) A determination by the emergency manager that no feasible financial plan can be adopted that can satisfactorily rectify the financial emergency of the local government in a timely manner.

(b) A determination by the emergency manager that a plan, in effect for at least 180 days, cannot be implemented as written or as it might be amended in a manner that can satisfactorily rectify the financial emergency in a timely manner.

(3) The emergency manager shall provide a copy of the recommendation as provided under subsection (1) to the superintendent of public instruction if the local government is a school district.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1559 Proposed action; submission to local governing body; approval or disapproval; alternative proposal.

Sec. 19.

(1) Except as otherwise provided in this subsection, before an emergency manager executes an action under section 12(1)(k), (r), or (u) or section 14(d), he or she shall submit his or her proposed action to the governing body of the local government. The governing body of the local government shall have 10 days from the date of submission to approve or disapprove the action proposed by the emergency manager. If the governing body of the local government does not act within 10 days, the proposed action is considered approved by the governing body of the local government and the emergency manager may then execute the proposed action. For an action under section 12(1)(r) or section 14(d), this subsection only applies if the asset, liability, function, or responsibility involves an amount of $50,000.00 or more.

(2) If the governing body of the local government disapproves the proposed action within 10 days, the governing body of the local government shall, within 7 days of its disapproval of the action proposed by the emergency manager, submit to the local emergency financial assistance loan board an alternative proposal that would yield substantially the same financial result as the action proposed by the emergency manager. The local emergency financial assistance loan board shall have 30 days to review both the alternative proposal submitted by the governing body of the local government and the action proposed by the emergency manager and to approve either the alternative proposal submitted by the governing body of the local government or the action proposed by the emergency manager. The local emergency financial assistance loan board shall

approve the proposal that best serves the interest of the public in that local government. The emergency manager shall implement the alternative proposal submitted by the governing body of the local government or the action proposed by the emergency manager, whichever is approved by the local emergency financial assistance loan board.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1560 Emergency manager; immunity from liability; responsibilities of attorney general; costs; insurance; litigation expenses after conclusion of date of service; failure of municipal government or school district to honor and remit legal expenses.

Sec. 20.

(1) An emergency manager is immune from liability as provided in section 7(5) of 1964 PA 170, MCL 691.1407. A person employed by an emergency manager is immune from liability as provided in section 7(2) of 1964 PA 170, MCL 691.1407.

(2) The attorney general shall defend any civil claim, demand, or lawsuit which challenges any of the following:

(a) The validity of this act.

(b) The authority of a state official or officer acting under this act.

(c) The authority of an emergency manager if the emergency manager is or was acting within the scope of authority for an emergency manager under this act.

(3) With respect to any aspect of a receivership under this act, the costs incurred by the attorney general in carrying out the responsibilities of subsection (2) for attorneys, experts, court filing fees, and other reasonable and necessary expenses shall be at the expense of the local government that is subject to that receivership and shall be reimbursed to the attorney general by the local government. The failure of a municipal government that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the municipal government from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state

revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district that is or was in receivership to remit to the attorney general the costs incurred by the attorney general within 30 days after written notice to the school district from the attorney general of the costs is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

(4) An emergency manager may procure and maintain, at the expense of the local government for which the emergency manager is appointed, worker's compensation, general liability, professional liability, and motor vehicle insurance for the emergency manager and any employee, agent, appointee, or contractor of the emergency manager as may be provided to elected officials, appointed officials, or employees of the local government. The insurance procured and maintained by an emergency manager may extend to any claim, demand, or lawsuit asserted or costs recovered against the emergency manager and any employee, agent, appointee, or contractor of the emergency manager from the date of appointment of the emergency manager to the expiration of the applicable statute of limitation if the claim, demand, or lawsuit asserted or costs recovered against the emergency manager or any employee, agent, appointee, or contractor of the emergency manager resulted from conduct of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager taken in accordance with this act during the emergency manager's term of service.

(5) If, after the date that the service of an emergency manager is concluded, the emergency manager or any employee, agent, appointee, or contractor of the emergency manager is subject to a claim, demand, or lawsuit arising from an action taken during the service of that emergency manager, and not covered by a procured worker's compensation, general liability, professional liability, or motor vehicle insurance, litigation expenses of the emergency manager or any employee, agent, appointee, or contractor of the emergency manager, including attorney fees for civil and criminal proceedings and preparation for reasonably anticipated proceedings, and payments made in settlement of civil proceedings both filed and anticipated, shall be paid out of the funds of the local government that is or was subject to the receivership administered by that emergency manager, provided that the litigation expenses are approved by the state treasurer and that the state treasurer determines that the conduct resulting in actual or threatened legal proceedings that is the basis for the payment is based upon both of the following:

(a) The scope of authority of the person or entity seeking the payment.

(b) The conduct occurred on behalf of a local government while it was in receivership under this act.

(6) The failure of a municipal government to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in section 17a(5) of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.917a. The failure of a school district to honor and remit the legal expenses of a former emergency manager or any employee, agent, appointee, or contractor of the emergency manager as required by this section is a debt owed to this state and shall be recovered by the state treasurer as provided in the state school aid act of 1979, 1979 PA 94, MCL 388.1601 to 388.1896.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1561 Adoption and implementation of 2-year budget.

Sec. 21.

(1) Before the termination of receivership and the completion of the emergency manager's term, or if a transition advisory board is appointed under section 23, then before the transition advisory board is appointed, the emergency manager shall adopt and implement a 2-year budget, including all contractual and employment agreements, for the local government commencing with the termination of receivership.

(2) After the completion of the emergency manager's term and the termination of receivership, the governing body of the local government shall not amend the 2-year budget adopted under subsection (1) without the approval of the state treasurer, and shall not revise any order or ordinance implemented by the emergency manager during his or her term prior to 1 year after the termination of receivership.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1562 Determination that financial emergency rectified; actions by governor.

Sec. 22.

(1) If an emergency manager determines that the financial emergency that he or she was appointed to manage has been rectified, the emergency manager shall inform the governor and the state treasurer.

(2) If the governor disagrees with the emergency manager's determination that the financial emergency has been rectified, the governor shall inform the emergency manager and the term of the emergency manager shall continue or the governor shall appoint a new emergency manager.

(3) Subject to subsection (4), if the governor agrees that the financial emergency has been rectified, the emergency manager has adopted a 2-year budget as required under section 21, and the financial conditions of the local government have been corrected in a sustainable fashion as required under section 9(7), the governor may do either of the following:

(a) Remove the local government from receivership.

(b) Appoint a receivership transition advisory board as provided in section 23.

(4) Before removing a local government from receivership, the governor may impose 1 or more of the following conditions on the local government:

(a) The implementation of financial best practices within the local government.

(b) The adoption of a model charter or model charter provisions.

(c) Pursue financial or managerial training to ensure that official responsibilities are properly discharged.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1563 Receivership transition advisory board.

Sec. 23.

(1) Before removing a local government from receivership, the governor may appoint a receivership transition advisory board to monitor the affairs of the local government until the receivership is terminated.

(2) A receivership transition advisory board shall consist of the state treasurer or his or her designee, the director of the department of technology, management, and budget or his or her designee, and, if the local government is a school district, the superintendent of public instruction or his or her designee. The governor also may appoint to a receivership transition advisory board 1 or more other individuals with relevant professional experience, including 1 or more residents of the local government.

(3) A receivership transition advisory board serves at the pleasure of the governor.

(4) At its first meeting, a receivership transition advisory board shall adopt rules of procedure to govern its conduct, meetings, and periodic reporting to the governor. Procedural rules required by this section are not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(5) A receivership transition advisory board may do all of the following:

(a) Require the local government to annually convene a consensus revenue estimating conference for the purpose of arriving at a consensus estimate of revenues to be available for the ensuing fiscal year of the local government.

(b) Require the local government to provide monthly cash flow projections and a comparison of budgeted revenues and expenditures to actual revenues and expenditures.

(c) Review proposed and amended budgets of the local government. A proposed budget or budget amendment shall not take effect unless approved by the receivership transition advisory board.

(d) Review requests by the local government to issue debt under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, or any other law governing the issuance of bonds or notes.

(e) Review proposed collective bargaining agreements negotiated under section 15(1) of 1947 PA 336, MCL 423.215. A proposed collective bargaining agreement shall not take effect unless approved by the receivership transition advisory board.

(f) Review compliance by the local government with a deficit elimination plan submitted under section 21 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.921.

(g) Review proposed judgment levies before submission to a court under section 6093 or 6094 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6093 and 600.6094.

(h) Perform any other duties assigned by the governor at the time the receivership transition advisory board is appointed.

(6) A receivership transition advisory board is a public body as that term is defined in section 2 of the open meetings act, 1976 PA 267, MCL 15.262, and meetings of a receivership transition advisory board are subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. A receivership transition advisory board is also a public body as that term is defined in section 2 of the freedom of information act, 1976 PA 442, MCL 15.232, and a public record in the possession of a receivership transition advisory board is subject to the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1564 Determination that financial conditions not corrected; appointment of new emergency manager.

Sec. 24.

The governor may, upon his or her own initiative or after receiving a recommendation from a receivership transition advisory board, determine that the financial conditions of a local government have not been corrected in a sustainable fashion as required under section 9(7) and appoint a new emergency manager.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1565 Neutral evaluation process.

Sec. 25.

(1) A neutral evaluation process may be utilized as provided for in this act. The state treasurer may, in his or her own discretion, determine that the state monitor the neutral evaluation process initiated by a local government under this section and may identify 1 or more individuals who may attend and observe the neutral evaluation process. A local government shall initiate the neutral evaluation process by providing notice by certified mail of a request for neutral evaluation process to all interested parties. If the local government does not provide notice under this subsection to all interested parties within 7 days after selecting the neutral evaluation process option, the treasurer may require the local government to go into receivership and proceed under section 9.

(2) An interested party shall respond within 10 business days of receipt of notice of the local government's request for neutral evaluation process.

(3) The local government and the interested parties agreeing to participate in the neutral evaluation process shall, through a mutually agreed-upon process, select a neutral evaluator to oversee the neutral evaluation process and facilitate all discussions in an effort to resolve their disputes.

(4) If the local government and interested parties fail to agree on a neutral evaluator within 7 days after the interested parties have responded to the notification sent by the local government, the local government shall, within 7 days, select 5 qualified neutral evaluators and provide their names, references, and backgrounds to the participating interested parties. Within 3 business days, a majority of participating interested parties may disqualify up to 4 names from the list. If a majority of participating interested parties disqualify 4 names from the list, the remaining candidate shall be the neutral evaluator. If the majority of participating parties disqualify fewer than 4 names, the local government shall choose which of the remaining candidates shall be the neutral evaluator.

(5) If an interested party objects to the qualifications of the neutral evaluator after the process for selection in subsection (4) is complete, the interested party may appeal to the state treasurer to determine if the neutral evaluator meets the qualifications under subsection (6). If the state treasurer determines that the qualifications have been met, the neutral evaluation process shall continue. If the state treasurer determines that the qualifications have not been met, the state treasurer shall select the neutral evaluator.

(6) A neutral evaluator shall have experience and training in conflict resolution and alternative dispute resolution and have at least 1 of the following qualifications:

(a) At least 10 years of high-level business or legal experience involving bankruptcy or service as a United States bankruptcy judge.

(b) At least 10 years of combined professional experience or training in municipal finance in 1 or more of the following areas:

(i) Municipal organization.

(ii) Municipal debt restructuring.

(iii) Municipal finance dispute resolution.

(iv) Chapter 9 bankruptcy.

(v) Public finance.

(vi) Taxation.

(vii) Michigan constitutional law.

(viii) Michigan labor law.

(ix) Federal labor law.

(7) The neutral evaluator's performance shall be impartial, objective, independent, and free from prejudice. The neutral evaluator shall not act with partiality or prejudice based on any participant's personal characteristics, background, values, or beliefs, or performance during the neutral evaluation process.

(8) The neutral evaluator shall avoid a conflict of interest and the appearance of a conflict of interest during the neutral evaluation process. The neutral evaluator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest. Notwithstanding subsection (16), if the neutral evaluator is informed of the existence of any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest, the neutral evaluator shall disclose these facts in writing to the local government and all interested parties involved in the neutral evaluation process. If any participating interested party to the neutral evaluation process objects to the neutral evaluator, that interested party shall notify the local government and all other participating interested parties to the neutral evaluation process, including the neutral evaluator, within 15 days of receipt of the notice from the neutral evaluator. The neutral evaluator shall withdraw, and a new neutral evaluator shall be selected as provided in subsections (3) and (4).

(9) Before commencing a neutral evaluation process, the neutral evaluator shall not establish another fiscal or fiduciary relationship with any of the interested parties or the local government in a manner that would raise questions about the integrity of the neutral evaluation process, except that the neutral evaluator may conduct further neutral evaluation processes regarding other potential local public entities that may involve some of the same or similar constituents to a prior mediation.

(10) The neutral evaluator shall conduct the neutral evaluation process in a manner that promotes voluntary, uncoerced decision making in which each participant makes free and informed choices regarding the neutral evaluation process and outcome.

(11) The neutral evaluator shall not impose a settlement on the participants. The neutral evaluator shall use his or her best efforts to assist the participants to reach a satisfactory resolution of their disputes. Subject to the discretion of the neutral evaluator, the neutral evaluator may make oral or

written recommendations for a settlement or plan of readjustment to a participant privately or to all participants jointly.

(12) The neutral evaluator shall inform the local government and all participants of the provisions of chapter 9 relative to other chapters of title 11 of the United States Code, 11 USC 101 to 1532. This instruction shall highlight the limited authority of United States bankruptcy judges in chapter 9, including, but not limited to, the restriction on federal bankruptcy judges' authority to interfere with or force liquidation of a local government's property and the lack of flexibility available to federal bankruptcy judges to reduce or cram down debt repayments and similar efforts not available to reorganize the operations of the local government that may be available to a corporate entity.

(13) The neutral evaluator may request from the participants documentation and other information that the neutral evaluator believes may be helpful in assisting the participants to address the obligations between them. This documentation may include the status of funds of the local government that clearly distinguishes between general funds and special funds and the proposed plan of readjustment prepared by the local government. The participants shall respond to a request from the neutral evaluator in a timely manner.

(14) The neutral evaluator shall provide counsel and guidance to all participants, shall not be a legal representative of any participant, and shall not have a fiduciary duty to any participant.

(15) If a settlement with all interested parties and the local government occurs, the neutral evaluator may assist the participants in negotiating a pre-petitioned, pre-agreed-upon plan of readjustment in connection with a potential chapter 9 filing.

(16) If at any time during the neutral evaluation process the local government and a majority of the representatives of the interested parties participating in the neutral evaluation process wish to remove the neutral evaluator, the local government or any interested party may make a request to the other interested parties to remove the neutral evaluator. If the local government and a majority of the interested parties agree that the neutral evaluator should be removed and agree on who should replace the neutral evaluator, the local government and the interested parties shall select a new neutral evaluator.

(17) The local government and all interested parties participating in the neutral evaluation process shall negotiate in good faith.

(18) The local government and each interested party shall provide a representative to attend all sessions of a neutral evaluation process. Each representative shall have the authority to settle and resolve disputes or shall be in a position to present any proposed settlement or plan of readjustment to the participants in the neutral evaluation process.

(19) The local government and the participating interested parties shall maintain the confidentiality of the neutral evaluation process and shall not at the conclusion of the neutral evaluation process or during any bankruptcy proceeding disclose statements made, information disclosed, or documents prepared or produced unless a judge in a chapter 9 bankruptcy proceeding orders that

the information be disclosed to determine the eligibility of a local government to proceed with a bankruptcy proceeding under chapter 9, or as otherwise required by law.

(20) A neutral evaluation process authorized by this act shall not last for more than 60 days following the date the neutral evaluator is initially selected, unless the local government or a majority of participating interested parties elect to extend the neutral evaluation process for up to 30 additional days. The neutral evaluation process shall not last for more than 90 days following the date the neutral evaluator is initially selected.

(21) The local government shall pay 50% of the costs of a neutral evaluation process, including, but not limited to, the fees of the neutral evaluator, and the interested parties shall pay the balance of the costs of the neutral evaluation process, unless otherwise agreed to by the local government and a majority of the interested parties.

(22) The neutral evaluation process shall end if any of the following occur:

(a) The local government and the participating interested parties execute a settlement agreement. However, if the state treasurer determines that the settlement agreement does not provide sufficient savings to the local government, the state treasurer shall provide notice to the local government that the settlement agreement does not provide sufficient savings to the local government and the local government shall proceed under 1 of the other local government options as provided in section 7.

(b) The local government and the participating interested parties reach an agreement or proposed plan of readjustment that requires the approval of a bankruptcy judge.

(c) The neutral evaluation process has exceeded 60 days following the date the neutral evaluator was selected, the local government and the participating interested parties have not reached an agreement, and neither the local government nor a majority of the interested parties elect to extend the neutral evaluation process past the initial 60-day time period.

(d) The local government initiated the neutral evaluation process under subsection (1) and did not receive a response from any interested party within the time specified in subsection (2).

(e) The fiscal condition of the local government deteriorates to the point that necessitates the need to proceed under the chapter 9 bankruptcy option pursuant to section 26.

(23) If the 60-day time period for a neutral evaluation process expires, including any extension of the neutral evaluation process past the initial 60-day time period under subsection (20), and the neutral evaluation process is complete with differences resolved, the neutral evaluation process shall be concluded. If the neutral evaluation process does not resolve all pending disputes with the local government and the interested parties, or if subsection (22)(b), (c), or (d) applies, the governing body of the local government shall adopt a resolution recommending that the local government proceed under chapter 9 and submit the resolution to the governor and the state treasurer. Except as otherwise provided in this subsection, if the local government has a strong mayor, the resolution requires strong mayor approval before the local government proceeds under

chapter 9. The resolution shall include a statement determining that the financial condition of the local government jeopardizes the health, safety, and welfare of the residents who reside within the local government or service area of the local government absent the protections of chapter 9. If the governor approves the resolution for the local government to proceed under chapter 9, the governor shall inform the local government in writing of the decision. The governor may place contingencies on a local government in order to proceed under chapter 9 including, but not limited to, appointing a person to act exclusively on behalf of the local government in the chapter 9 bankruptcy proceedings. If the governing body of the local government fails to adopt a resolution within 7 days after the neutral evaluation process is concluded as provided in this subsection, the governor may appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. If the governor does not appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings, the chief administrative officer of the local government shall act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. Upon receiving written approval from the governor under section 26, the local government may file a petition under chapter 9 and exercise powers under federal bankruptcy law.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1566 Chapter 9 proceeding.

Sec. 26.

(1) With the written approval of the governor, a local government may file a petition under chapter 9 and exercise powers pursuant to federal bankruptcy law if the local government adopts a resolution, by a majority vote of the governing body of the local government, that declares a financial emergency in the local government. Except as otherwise provided in this subsection, if the local government has a strong mayor, the resolution requires strong mayor approval. The resolution shall include a statement determining that the financial condition of the local government jeopardizes the health, safety, and welfare of the residents who reside within the local government or service area of the local government absent the protections of chapter 9 and that the local government is or will be unable to pay its obligations within 60 days following the adoption of the resolution.

(2) If the governor approves a local government to proceed under chapter 9, the governor shall inform the local government in writing of the decision. The governor may place contingencies on a local government in order to proceed under chapter 9 including, but not limited to, appointing a

person to act exclusively on behalf of the local government in the chapter 9 bankruptcy proceedings. If the governor does not appoint a person to act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings, the chief administrative officer of the local government shall act exclusively on behalf of the local government in chapter 9 bankruptcy proceedings. Upon receipt of the written approval and subject to this subsection, the local government may proceed under chapter 9 and exercise powers under federal bankruptcy law.

(3) If the governor does not approve a local government to proceed under chapter 9, the local government shall within 7 days select 1 of the other local options as provided in section 7.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1567 Duty of local officials and employees to provide assistance and information; failure to abide by act.

Sec. 27.

(1) The local elected and appointed officials and employees, agents, and contractors of a local government shall promptly and fully provide the assistance and information necessary and properly requested by the state financial authority, a review team, or the emergency manager in the effectuation of their duties and powers and of the purposes of this act. If the review team or emergency manager believes that a local elected or appointed official or employee, agent, or contractor of the local government is not answering questions accurately or completely or is not furnishing information requested, the review team or emergency manager may issue subpoenas and administer oaths to the local elected or appointed official or employee, agent, or contractor to furnish answers to questions or to furnish documents or records, or both. If the local elected or appointed official or employee, agent, or contractor refuses, the review team or emergency manager may bring an action in the circuit court in which the local government is located or the Michigan court of claims, as determined by the review team or emergency manager, to compel testimony and furnish records and documents. An action in mandamus may be used to enforce this section.

(2) Failure of a local government official to abide by this act shall be considered gross neglect of duty, which the review team or emergency manager may report to the state financial authority and the attorney general. Following review and a hearing with a local government elected official, the

state financial authority may recommend to the governor that the governor remove the elected official from office. If the governor removes the elected official from office, the resulting vacancy in office shall be filled as prescribed by law.

(3) A local government placed in receivership under this act is not subject to section 15(1) of 1947 PA 336, MCL 423.215, for a period of 5 years from the date the local government is placed in receivership or until the time the receivership is terminated, whichever occurs first.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1568 Imposition of taxes; prohibition.

Sec. 28.

This act does not give the emergency manager or the state financial authority the power to impose taxes, over and above those already authorized by law, without the approval at an election of a majority of the qualified electors voting on the question.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1569 Issuance of bulletins; rules.

Sec. 29.

The state financial authority shall issue bulletins or promulgate rules as necessary to carry out the purposes of this act. Rules shall be promulgated pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1570 Actions under former law.

Sec. 30.

(1) All of the following actions that occurred under former 2011 PA 4, former 1988 PA 101, or former 1990 PA 72, before the effective date of this act are effective under this act:

(a) A determination by the state treasurer or superintendent of public instruction pursuant to a preliminary review of the existence of probable financial stress or a serious financial problem in a local government.

(b) The appointment of a review team.

(c) The findings and conclusion contained in a review team report submitted to the governor.

(d) A determination by the governor of a financial emergency in a local government.

(e) A confirmation by the governor of a financial emergency in a local government.

(2) An action contained in subsection (1) need not be reenacted or reaffirmed in any manner to be effective under this act.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township

act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1571 Emergency manager serving prior to effective date of act.

Sec. 31.

An emergency manager or emergency financial manager appointed and serving under state law immediately prior to the effective date of this act shall continue under this act as an emergency manager for the local government.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1572 Liability or cause of action.

Sec. 32.

This act does not impose any liability or responsibility in law or equity upon this state, any department, agency, or other entity of this state, or any officer or employee of this state, or any member of a receivership transition advisory board, for any action taken by any local government under this act, for any violation of the provisions of this act by any local government, or for any failure to comply with the provisions of this act by any local government. A cause of action against this state or any department, agency, or entity of this state, or any officer or employee of this state acting in his or her official capacity, or any membership of a receivership transition advisory board acting in his or her official capacity, may not be maintained for any activity authorized by this act, or for the act of a local government filing under chapter 9, including any proceeding following a local government's filing.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall

function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1573 Severability.

Sec. 33.

If any portion of this act or the application of this act to any person or circumstances is found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of this act which can be given effect without the invalid portion or application. The provisions of this act are severable.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1574 Appropriation.

Sec. 34.

For the fiscal year ending September 30, 2013, $780,000.00 is appropriated from the general fund to the department of treasury to administer the provisions of this act and to pay the salaries of emergency managers. The appropriation made and the expenditures authorized to be made by the department of treasury are subject to the management and budget act, 1984 PA 431, MCL 18.1101 to 18.1594.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32.

(d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

141.1575 Appropriation.

Sec. 35.

(1) For the fiscal year ending September 30, 2013, $5,000,000.00 is appropriated from the general fund to the department of treasury to administer the provisions of this act, to secure the services of financial consultants, lawyers, work-out experts, and other professionals to assist in the implementation of this act, and to assist local governments in proceeding under chapter 9.

(2) The appropriation authorized in this section is a work project appropriation, and any unencumbered or unallotted funds are carried forward into the following fiscal year. The following is in compliance with section 451a(1) of the management and budget act, 1984 PA 431, MCL 18.1451a:

(a) The purpose of the project is to provide technical and administrative support for the department of treasury to implement this act. Costs related to this project include, but are not limited to, all of the following:

(i) Staffing-related costs.

(ii) Costs to promote public awareness.

(iii) Any other costs related to implementation and dissolution of the program, including the resolution of accounts.

(b) The work project will be accomplished through the use of interagency agreements, grants, state employees, and contracts.

(c) The total estimated completion cost of the project is $5,000,000.00.

(d) The expected completion date is September 30, 2016.

History: 2012, Act 436, Eff. Mar. 28, 2013
Compiler's Notes: Enacting section 2 of Act 436 of 2012 provides:"Enacting section 2. It is the intent of the legislature that this act function and be interpreted as a successor statute to former 1988 PA 101, former 1990 PA 72, and former 2011 PA 4, and that whenever possible a reference to former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state or to a function or responsibility of an emergency financial manager or emergency manager under former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, under other laws of this state shall function and be interpreted to reference to this act, with the other laws of this state referencing former 1988 PA 101, former 1990 PA 72, or former 2011 PA 4, including, but not limited to, all of the following: (a) The charter township act, 1947 PA 359, MCL 42.1 to 42.34. (b) 1966 PA 293, MCL 45.501 to 45.521. (c) 1851 PA 156, MCL 46.1 to 46.32. (d) The general law village act, 1895 PA 3, MCL 61.1 to 74.25. (e) The home rule village act, 1909 PA 278, MCL 78.1 to 78.28. (f) The fourth class city act, 1895 PA 215, MCL 81.1 to 113.20. (g) The home rule city act, 1909 PA

279, MCL 117.1 to 117.38. (h) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426. (i) 1947 PA 336, MCL 423.201 to 423.217."

EXHIBIT 2

Detroit Emergency Manager, Order No. 3

http://www.detroitmi.gov/Portals/0/docs/EM/Order%203.pdf

EXHIBIT 3

Detroit Emergency Manager Order No. 4

http://www.detroitmi.gov/Portals/0/docs/EM/Order%204.pdf

EXHIBIT 4

Detroit Emergency Manager Order No. 5

http://www.detroitmi.gov/Portals/0/docs/EM/Order%205.pdf

EXHIBIT 5

State Treasurer's Fiscal Scoring Chart

http://www.michigan.gov/documents/treasury/Oakland_342010_7.pdf

http://www.michigan.gov/documents/treasury/Wayne_342037_7.pdf

http://www.michigan.gov/documents/treasury/Genesee_341964_7.pdf.

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such.

/s/ Nabih H. Ayad

_____

NABIH H. AYAD (P-59518)
General Counsel
Arab-American Civil Rights League
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 13

From *NAACP v Snyder*, Case No. 13-12098 (E.D. Mich)

13.	5/30/13	12	Order Reassigning Comp. Case

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Detroit NAACP et. al,

Plaintiff(s),

v.

Governor Rick Snyder,

Defendant(s).
_____/

Case No. 13-12098

Honorable Paul D. Borman

Magistrate Judge Laurie J. Michelson

ORDER REGARDING REASSIGNMENT OF COMPANION CASE

This case appears to be a companion case to Case No. 13-11370. Pursuant to E.D. Mich LR 83.11, the Clerk is directed to reassign this case to the docket of the Honorable George Caram Steeh and Magistrate Judge R. Steven Whalen.

s/Paul D. Borman
Paul D. Borman
United States District Judge

s/George Caram Steeh
George Caram Steeh
United States District Judge

Pursuant to this order, case assignment credit will be given to the appropriate Judicial Officers.
Case type: CIVIL

If the District Judge assigned to the companion case is located at another place of holding court, the office code will be changed accordingly.

Date: May 30, 2013

s/ S Schoenherr
Deputy Clerk

cc: Parties and/or counsel of record
Honorable George Caram Steeh

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re	No. 13-53846
CITY OF DETROIT, MICHIGAN,	Chapter 9
Debtor.	HON. STEVEN W. RHODES

APPELLEES' DESIGNATION OF ITEMS

Item 14

From *NAACP v Snyder*, Case No. 13-12098 (E.D. Mich)

14.	5/22/13	11	Defs' Mtn to Reassign Civil Case

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

HON. PAUL D. BORMAN

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Michael F. Murphy (P29213)
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/

DEFENDANTS' MOTION TO REASSIGN CIVIL CASE

Defendants file this Motion to Reassign Civil Case and state as follows:

1. On May 13, 2013, this matter was filed by Plaintiffs seeking relief under both 42 U.S.C. § 1983 and 42 U.S.C. § 1973 b(a), the Voting Rights Act of 1965.

2. The action challenges the constitutionality of the Local Financial Stability and Choice Act, Mich. Comp. Laws § 141.1541, *et seq*., (known as 2012 Mich. Pub. Acts 436 or P.A. 436).

3. The challenges allege violations of the 14th Amendment of the U.S. Constitutional Due Process and Equal Protection clauses, (R. 1, ¶¶ 75-91, I.D. #26-31), and violation of the Voting Rights Act (R. 1, ¶¶ 92-95, I.D. #31).

4. The Plaintiffs seek both declaratory and injunctive relief. (R. 1, I.D. #32).

5. There are three actions presently pending in federal court challenging some or all aspects of P.A. 436 on grounds including violations of the 14th Amendment's Due Process and Equal Protection clauses. Two of those actions also challenge P.A. 436 as a violation of the Voting Rights Act of 1965.

6. The three pending actions involve two individuals and a group of related and unrelated plaintiffs and raise substantially the same challenges as Plaintiffs raise here. All matters are assigned to Honorable Judge George Steeh, Eastern District of Michigan, as companion cases.

- *Phillips, et al v. Snyder, et al*., Case no. 2:13-cv-11370
- *Telford v. Snyder, et al*., Case no. 2:13-cv-l1670
- *Davis v. Snyder, et al*., Case no. 2:13-cv-11760

7. Local Rule 83.11(b)(7) (A) (C) and (D) cover companion cases filed in the District Court. Subsection (C) provides that cases must be brought to the Court's attention that are or may be companion cases on the civil cover sheet. A review of the civil case docket sheet in the ECF system shows possible companion cases as **"None"**.

8. Local Rule 83.11 (b)(7) (D) provides that when the judge to whom a case is assigned learns of the companion case(s) that, upon consent of the earlier assigned judge, the presiding judge shall sign an order reassigning the pending matter to the earlier judge.

9. Judge Steeh accepted both the *Telford* and *Davis* cases as companion cases, as the assigned judge to the first case filed, *Phillips*.

10. The relief sought in this motion was discussed and concurrence was sought from Plaintiffs' counsel on May 17, 2013. Concurrence in the relief sought was denied.

Defendants request this Court to seek the consent of Judge Steeh to have this matter reassigned in accordance with L.R. 83.11. Importantly, judicial economy and efficiency would also be served by transferring this case to Judge Steeh.

Respectfully submitted,

Bill Schuette
Attorney General

s/ Michael F. Murphy
Michael F. Murphy (P29213)
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Dated: May 22, 2013

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DETROIT BRANCH NAACP, MICHIGAN STATE CONFERENCE NAACP, DONNELL R. WHITE, THOMAS STALLWORTH III, RASHIDA TLAIB, MAUREEN TAYLOR,

Plaintiffs,

v

RICK SNYDER, in his official capacity as Governor of the State of Michigan, ANDREW DILLON, in his official capacity as Treasurer of the State of Michigan, and RUTH JOHNSON, in her official capacity as Michigan Secretary of State,

Defendants.

No. 2:13-cv-12098

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/

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO REASSIGN CIVIL CASE

CONCISE STATEMENT OF ISSUES PRESENTED

1. The presiding District Judge should seek the consent of the District Judge first assigned to take this case as a companion case.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority: Eastern District of Michigan Local Rule 83.11

STATEMENT OF FACTS

The necessary facts are contained in the motion.

ARGUMENT

I. This matter should be reassigned to District Judge George Steeh, should he consent.

Defendants rely on L.R. 83.11 (b)(7) (C) and (D).

CONCLUSION AND RELIEF REQUESTED

Based upon the motion and brief, and judicial economy and efficiency, it is requested the Court seek Judge George Steeh's consent to take this matter as a companion case.

Respectfully submitted,

Bill Schuette
Attorney General

s/ Michael F. Murphy
Michael F. Murphy (P29213)
Denise C. Barton (P41535)
Heather S. Meingast (P55439)
Assistant Attorneys General
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Dated: May 22, 2013

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on May 22, 2013, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ *Michael F. Murphy*
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2013-0044216-A\ NAACP (Detroit) (EM) USDC-ED\Mot & Brief to Reassign Civil case