

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.

Civil Action No.  
Hon.

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.

\_\_\_\_\_ /

VERIFIED COMPLAINT

**I.**

**NATURE OF THE CASE**

1. This is an action brought under the Equal Protection and Substantive Due Process Clauses of the Fourteenth Amendment (42 U.S.C. Sec. 1983, U.S. Const. Amend. XIV), as well as the preclearance section of the Voting Rights Act of 1965 (42 U.S.C. Sec. 1973b(a)), 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 18<sup>th</sup> 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 (6<sup>th</sup> 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 prerequisite 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 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 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 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, 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](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 Ct. 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/](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](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](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](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%20meetin\\_g.pdf](http://www.wlcsd.org/files/filesystem/March%207%202013%20Board%20of%20Ed%20meetin_g.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](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. 3<sup>rd</sup> 843 (6<sup>th</sup> 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 (6<sup>th</sup> 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. 3<sup>rd</sup> 843 (6<sup>th</sup> 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 Protection 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.

## VIII.

### FOURTH CAUSE OF ACTION

#### **(42 U.S.C. Sec. 1973c, 42 U.S.C. 1973b(a); Voting Rights Act Preclearance Requirement)**

92. Plaintiffs re-allege and re-plead all the allegations of the preceding paragraphs of this Complaint and incorporate them herein by reference.

93. Section 5 of the Voting Rights Act provides that any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect on November 1, 1972, when Buena Vista Township and Clyde Township in Michigan became "Covered Jurisdictions" under the Voting Rights Act, may not be lawfully implemented unless Michigan, through the Office of the Michigan Secretary of State, first obtains the approval of the United States Attorney General, or a declaratory judgment from the United States District Court for the District of Columbia, to the effect that the changes does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. *NAACP v. New York*, 413 U.S. 345, 365 (1973);

[http://www.justice.gov/crt/about/vot/sec\\_5/covered.php](http://www.justice.gov/crt/about/vot/sec_5/covered.php).

94. The Buena Vista Township Schools District is experiencing extreme financial hardship. All but 3 of the District's employees have been laid off, District officials indicate that the District cannot meet its May 24 payroll, and classes have been cancelled since Friday, May 3. On May 9, 2013, the Buena Vista Township Board of Education voted to "request a preliminary

review [from the State] to determine the existence of financial stress."

([http://www.mlive.com/news/saginaw/index.ssf/2013/05/buena\\_vista\\_schools\\_requests\\_m.html](http://www.mlive.com/news/saginaw/index.ssf/2013/05/buena_vista_schools_requests_m.html)).

95. This Court should grant an injunction and/or issue a declaratory judgment that Public Act 436 violates the preclearance section of the 1965 Voting Rights Act in light of the fact that the State failed to obtain the approval of the United States Attorney General or in the alternative, a declaratory judgment from the U.S. District Court for the District of Columbia, before said Emergency Manager law went into effect.

#### **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 Substantive Due Process Clauses of the United States Constitution;
- B. An order declaring that Public Act 436 violates the 1965 Voting Rights Act;
- C. 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;
- D. 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;
- E. A preliminary and permanent order that actions exercised by Emergency Managers under Public Act 436 are unenforceable;
- 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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ATTORNEYS FOR PLAINTIFFS

DATED: May 13, 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

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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

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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

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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

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Maureen Taylor

Executed on May 10, 2013