

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

Russ Bellant, Detroit Library Commissioner;
Tawanna Simpson; Lamar Lemmons, Detroit
Public Schools Board Member; Elena Herrada;
Kermit Williams, Pontiac City Council Member;
Donald Watkins; Duane Seats, Juanita Henry,
and Mary Alice Adams, Benton Harbor
Commissioners; William “Scott” Kincaid, Flint
City Council Member; 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,
Executive Board, Council of Baptist Pastors of
Detroit and Vicinity;

Case No.:
Judge:

Plaintiffs,

v.

RICHARD D. SNYDER, as Governor of the
State of Michigan; ANDREW DILLON, as
former Treasurer of the State of Michigan,
R. KEVIN CLINTON as former Treasurer
of the State of Michigan, and NICK KHOURI,
as Treasurer of the State of Michigan, acting in
their individual and/or official capacities,

***Complaint for
Declaratory Relief***

Defendants.

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COMPLAINT FOR DECLARATORY 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 cause of action brought pursuant to 42 U.S.C. §1983 for violations of the Plaintiffs' rights under the Equal Protection Clause of the United States Constitution, Amend. XIV.

2. The *Local Financial Stability and Choice Act*, Act No. 436, Public Acts of 2012, MCL §§ 141.1541 *et. seq.* (Public Act 436) establishes a new form of government within the State of Michigan that discriminates against communities composed of a majority of African-descended residents. The new government allows Michigan cities and other forms of municipal corporations to be ruled by

one unelected official and by its terms and in practice is overwhelmingly invoked to disempower African-descended majority communities.

3. On its face and as applied, Public Act 436 violates Plaintiffs' right to equal protection of law.

II. JURISDICTION AND VENUE

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

5. Venue is proper pursuant to 28 USC §1391, since four of the 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

6. 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 a member of the Detroit Library Commission.

7. 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 a former Detroit Public Schools Board Member.

8. 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.

9. 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 former Detroit Public Schools Board Member.

10. 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 former member of the Pontiac City Council.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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 a member of the Flint City Council.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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 President of the Council of Baptist Pastors of Detroit and Vicinity.

23. 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.

24. Defendant Andrew Dillon is a former Treasurer of the State of Michigan. The Defendant 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.

25. Defendant R. Kevin Clinton is a former Treasurer of the State of Michigan. The Defendant maintains his principal residence in East Lansing in Ingham County, Michigan, and at all times relevant hereto was acting individually and in his official capacity as State Treasurer and as a policymaker.

26. Defendant Nick Khouri is the Treasurer of the State of Michigan. Treasurer Dillon maintains his principal residence in Plymouth 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

27. 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

28. 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 Great Depression. 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 commonly then appointed receivers to oversee the finances of municipal debtors.

29. 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 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.

30. Prior to 1988, unless proceeding through Chapter 9, Michigan 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.

31. 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. 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.

32. 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.

33. 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 could appoint an emergency financial manager (EFM) after the Governor declared a financial emergency within the local government. As an alternative to appointing an EFM, the local government could enter into a consent agreement with the emergency review board and provided a process for filing Chapter 9 bankruptcy on behalf of the local government.

34. Under PA 72 when an EFM was appointed, local elected officials were not removed from office and they were not divested of all powers of their office. The EFM's powers only extended to matters of municipal finances. Their powers did not extend to policy or purely administrative matters.

35. Michigan municipalities derive most of their revenue from two sources - property taxes and state revenue sharing. A few cities such as Detroit, Flint and Pontiac also generate revenue from income taxes.¹ Declines in any of these three revenue streams will readily challenge the fiscal stability of any municipality primarily composed of low income residents with high service needs.

¹ Detroit is one of the few cities that has a fourth major source of revenue – casino taxes.

36. Michigan school districts derive almost all of their revenue from federal and state payments and local property taxes. Again, declines in any of these three revenue streams will readily challenge the fiscal stability of any school district with significant numbers of low income households and students with high service needs.

37. In the late 1990s, State legislation severely reduced 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's local financial emergency review board appointed PA 72 EFMs in the cities of Hamtramck,² Highland Park,³ and Flint.⁴

39. With the onset of the historic Great Recession that began in 2007 and resulted in record foreclosures and steep increases in unemployment, cities and municipal corporations in Michigan saw severe reductions to income and property tax revenue. State revenue sharing laws were further amended to again reduce

² Appointed in 2000 and EFM remained until 2007.

³ Appointed in 2001 and EFM remained until 2010.

⁴ Appointed in 2002 and EFM remained until 2004.

revenue sharing with local governments and thereby balance State budgets. As a result, Michigan municipalities again faced widespread financial stress.

40. Again, the State's local financial emergency review board appointed PA 72 EFMs in various cities and one school district.

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

- a. Village of Three Oaks - EFM appointed in 2008;
- b. Detroit Public Schools - EFM appointed in 2009;
- c. Ecorse - EFM appointed in 2009;
- d. Pontiac - EFM appointed in 2010;
- e. Benton Harbor - EFM appointed in 2010;

42. The State also entered its first PA 72 consent agreement when the State entered a consent agreement with the City of River Rouge in December 2009.

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 not intended to and did not substantively reform financial oversight of local governments; did not provide additional tools to EFMs to address financial issues within local government; and did not provide additional financial resources for local governments.

44. Rather, the bill was 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.⁵ The court decision provoked elements of the State legislature who opposed the decisions of the city's elected school board and who sought greater control over Detroit's schools. The bill was thus *intended to* curtail the power of local voters and the officials they elected over matters unrelated to local financial issues.

45. House Bill 4214 was rushed through and within a month was passed by the State legislature. 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. The new law repealed PA 72 and was given immediate effect.

46. Public Act 4 automatically converted all EFMs to Public Act 4 Emergency Managers (EM) and greatly expanded the scope of their powers over nonfinancial matters. The Act also brought all existing consent agreements under the new law.

47. At the time that PA 4 became law, Benton Harbor, Detroit Public Schools, Ecorse, and Pontiac had emergency managers while River Rouge had a consent agreement. The largest racial group in each of these communities is African-descended residents. At the time PA 4 became law and divested these

⁵ The EFM acknowledged that these decisions were unrelated to the school system's financial issues.

communities of their elected officials, the Michigan legislature was composed of an overwhelming majority of White legislators.

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 declared a financial emergency, the Governor could then appoint an individual to be the municipality's or school district's EM. The Governor was granted broad discretion to declare a financial emergency.

50. Tellingly, the PA 4 changed the title of PA 72's "emergency financial managers" to "emergency managers" and expanded the scope of their powers to control all facets of the local government or school district.

51. The PA 4 EM's powers extended not only to financial practices and fiscal policy, but rather permitted EMs to fully act "for and in the place of" any elected governing body, boards, commissions, and appointed officials. 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 local laws, regulations and policies – including city charters, ordinances, administrative regulations, school district bylaws, etc.

54. The Act again granted a State financial review team the power to enter into a consent agreement with the local government, in lieu of appointing an EM.

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 EMs appointed.

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. Following enactment of PA 4, the Governor appointed an EM over the City of Flint and entered into a consent agreement with the City of Detroit.

58. The largest racial group in each of these communities are African-descended residents.

***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 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.

60. The petitions were challenged solely on the basis that the title of the petitions had not been printed in 14 point font, but rather were printed in slightly smaller font of approximately 13.75 or larger.

61. After appeals, the Michigan Supreme Court issued an opinion ordering the State's Board of Canvassers to certify the petitions and place the referendum on the ballot.

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

63. The State's Attorney General issued a formal opinion stating that once the petitions were certified suspending PA 4, PA 72 would spring back into effect and would remain in effect if voters rejected PA 4 at the November 2012 election.

64. After certification of the petitions, State officials then reappointed all existing PA 4 EMs as PA 72 EFMs and proclaimed that all existing consent agreements would continue in place as PA 72 consent agreements.

65. At the general election on November 6, 2012, Michigan voters overwhelmingly rejected PA 4. At that time, PA 72 remained in effect.

66. During PA 72's resurrection as State law, the Governor appointed an EM over the City of Allen Park and entered into a consent agreement with the City of Inkster.

***Michigan's Legislature Overrides the Citizen's Vote
and Enacts Public Act 436***

67. In response to the Michigan voters rejecting PA 4, incensed officials and segments within the legislature quickly moved to enact a new law with emergency manager provisions substantially identical to the rejected law.

68. During the lame-duck session, the State legislature introduced a new bill containing the emergency manager provisions of Public Act 4. The new bill passed the Michigan 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, (PA 436) on December 26, 2012.

69. Public Act 436 retained PA 4's title of "emergency managers". 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 or school district’s governing body, boards, commissions and appointed officials. The powers again include a general grant of legislative power to EMs and exempts EMs from following local laws and regulations.

70. Under PA 436, all EMs appointed under PA 4 and EFMs appointed under PA 72 were automatically converted to PA 436 EMs. Likewise, all previous consent agreements were converted to PA 436 consent agreements.

71. 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. The new law contains a provision that permits a local government or school district to remove an individual appointed as an EM but permits the Governor to replace that individual with another person to act as EM.

72. Once the Governor declares a financial emergency under Public Act 436, municipalities and school districts have an initial option to request neutral evaluation,⁶ a consent agreement, an emergency manager, or approval to file for Chapter 9 bankruptcy. The local body’s preferred option is subject to approval of State officials.

⁶ Neutral evaluation is simply a form of mediated negotiation with creditors under time deadlines. It is within the discretion of creditors whether they will participate.

73. 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 over the Detroit Public Schools, Highland Park Public Schools, and Muskegon Heights Public Schools. The State's consent agreements with Inkster and River Rouge were again converted – now to PA 436 agreements.

74. The Governor appointed EMs over the City of Detroit and Highland Park Public Schools before the new law took effect; however, the new EMs did not assume their offices until after PA 436 took effect. An EM was also subsequently appointed over the City of Lincoln Park and a consent agreement was subsequently entered with Wayne County.

Public Act 436 on its Face & In Application

75. There is no question that Michigan's emergency manager laws have disproportionately impacted communities composed of African-descended populations.

76. Given local governments' heavy reliance on State revenue sharing and property tax revenues and the sensitivity of these revenue streams to economic downturns, the terms of PA 436 and the suspension of elected local governance is overwhelmingly likely to be imposed on low-income communities composed of residents with high services needs. In Michigan, such communities are disproportionately composed of African-descended citizens.

77. At the time PA 436 was adopted, State officials were well aware of such facts and would not have adopted PA 436 had it been likely to apply equally to majority white communities.

78. Because historical and structural circumstances have created a form of economic racial apartheid in Michigan, a reference to a community in severe financial distress is functionally a racial reference.

79. Consequently, emergency manager legislation as it has been framed in Michigan is facially in violation of the equal protection clause because the legislation targets communities that, because of their economic condition are believed to be, and are in fact populated by African-descended residents.

80. State intervention under PA 436 curtails local residents “ability to meaningfully participate in decision-making that directly affects their well-being and exerts this influence on precisely the populations with the least power in society—that is, minorities and the urban poor.”⁷

81. A longstanding historical narrative of disenfranchisement of these communities from meaningful economic and political power within Michigan and the nation is well-established.

⁷ SJ Lee, A Krings, S Rose, K Dover, J Ayoub, F Salman - Children and Youth Serv. Rev., at 6 (2016).

82. The State's action in adopting and implementing P.A. 436 is an intentional and purposeful continuation of this extended narrative of structural and strategic racism.⁸

83. Statistics establish that for each 1% increase in the African-descended population of a local government, there is a 5% increase in the likelihood of State intervention under PA 436 and correspondingly, a 20% increase in a community's Black/African American population would result in a 100% increase in the likelihood of intervention.⁹

84. The African-descended population of each of the communities where a PA 436 EM or consent decree has been in place are as follows:

- a. Allen Park (EM): 587 persons comprising 2.1% of the city's population;
- b. Benton Harbor (EM): 8,952 persons comprising 89.2% of the city's population;
- c. Detroit (EM): 590,226 persons comprising 82.7% of the city's population,
- d. Ecorse (EM): 4,315 persons comprising 46.4% of the city's population;

⁸ See generally, Peter J. Hammer, *The Flint Water Crisis, KWA and Strategic-Structural Racism*, at 9-13 (July 18, 2016) (written testimony submitted to the Michigan Civil Rights Commission Hearings on the Flint Water Crisis). Available online at <http://www.michigan.gov/documents/mdcr/>.

⁹ See L. Owen Kirkpatrick, and Nate Breznau, *The (Non)Politics of Emergency Political Intervention: The Racial Geography of Urban Crisis Management in Michigan*, at 19 (March 24, 2016). Available online at SSRN: <https://ssrn.com/abstract=2754128>.

- e. Flint (EM): 57,939 persons comprising 56.6% of the city's population;
- f. Hamtramck (EM): 4,266 comprising 19.3% of the city's population.
- g. Highland Park (Neutral Evaluation & EM): 10,906 persons comprising 93.5% of the city's population;
- h. Inkster (Consent Agreement): 18,569 persons comprising 73.2% of the city's population;
- i. Lincoln Park (EM): 2,250 persons comprising 5.3% of the city's population;
- j. Muskegon Heights (EM): 8,501 persons comprising 78.3% of the city's population;
- k. Pontiac (EM): 30,988 persons comprising 52.1% of the city's population;
- l. River Rouge (Consent Agreement): 3,994 persons comprising 50.5% of the city's population;
- m. Royal Oak Township (EM): 4,191 persons comprising 95.3% of the township's population; and
- n. Wayne County (Consent Agreement): 737,336 persons comprising 40.5% of the county's population.

The African-descended population of these cities totals 847,907 persons.

85. As a result of the Defendants' actions, fifty-six (56%) of the State's African-descended population has seen the suspension of elected local governance and come under the governance of a PA 346 EM, consent agreement and/or a transition advisory board compared under 3% of the State's White population.

86. Cities and school districts with African-descended majority populations did not request State review of their finances under PA 72/PA 4/PA 436 before an EM or consent agreement was imposed by the State while comparable cities and school districts composed of a majority White population commonly only received such reviews upon the request of governing officials and then commonly only received an EM when city officials requested an EM's appointment.

87. The Defendants' intent to engage in racial discrimination by adopting and implementing the emergency manager law is evidenced by the above-stated facts and the following:

- a. In much the same way that enslaved Africans were essentially powerless political placeholders for purposes of the Constitution's Three-Fifths Compromise, the Michigan emergency manager law reduced residents of predominantly black municipalities to powerless political placeholders for those who maintained for their own benefit the fiction of local democracy in places where emergency managers are in charge. The residents of emergency manager cities must stand mute as appointed, unelected individuals carry out an agenda that is not created by the residents, and these emergency managers speak, act and govern in the residents' name – without their consent, and almost as though they own them. It is this political use and exploitation of human beings in a way that is reminiscent of chattel slavery that betrays the racial intent of the Defendants;
- b. In the immediate aftermath of the referendum that resulted in the repeal of PA 4, the Defendants knew or should have known that voting was highly racialized, and that substantial numbers of African-descended Michigan residents actively opposed the emergency manager law. Nevertheless, and in the face of disparate

racial sentiments about the law in white and black communities, the Defendants proceeded with the enactment of PA 436:

- c. In 2013, Kevyn Orr, the former emergency manager for the City of Detroit, commented: "For a long time the city was dumb, lazy, happy and rich. Detroit has been the center of more change in the 20th century than I dare say virtually any other city, but that wealth allowed us to have a covenant [that held] if you had an eighth grade education, you'll get 30 years of a good job and a pension and great health care, but you don't have to worry about what's going to come;" and
- d. Notwithstanding Orr's own African ancestry, the characterization of the city's predominantly black population in this way betrays an attitude rooted in the worst racial stereotypes. Notwithstanding a perspective that is racist at worst and racially insensitive at best, Orr enjoyed the full support and confidence of the Defendants

88. At the time of filing this complaint, the Highland Park School District remains under the governance of a PA 436 EM and the cities of Ecorse, Flint and Hamtramck remain under the control of PA 436 Transition Advisory Boards (TABs) following the completion of an EMs term in office.

89. Transition Advisory Boards have final authority over the finances of the city or school district; commonly control appointments; and have broad authority under powers delegated by the former EM and/or the Governor. These boards remain in place and continue to govern for an indeterminate length of time until dissolved by the Governor.

90. In each of the communities where an EM, consent agreement, or transition advisory board is in place, citizens will experience the loss of democratic

norms and experience severe restrictions imposed on their ability to govern and participate in local affairs on equal footing with other citizens of Michigan.

V. CAUSES OF ACTION

COUNT I – 42 U.S.C. §1983 -- Constitutional Violation **US Const, Amend. XIV, § 1 –Equal Protection based on Race**

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, have engaged in conduct and adopted laws and policies that violate Plaintiffs' rights under Amend. XIV, §1 of the U.S. Constitution

94. 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."

95. The Equal Protection Clause protects against laws and the application of laws that invidiously discriminate against a suspect class and between similarly situated individuals or between groups of persons.

96. On its face, as applied, and in practice, PA 436 violates the Equal Protection Clause of US Const., Amend. XIV, § 1 through provisions of the statute

that disparately impact and intentionally discriminate against municipalities and school districts composed of African-descended majority populations.

97. On its face, Public Act 436's provisions create a scheme that invidiously discriminates against communities composed of African-descended majority citizens. The scheme was adopted with knowing intent that PA 436's measures resulting in the total loss of local governing power would be disproportionately imposed on African-descended majority communities given the sensitivity of their revenue streams and human services to economic downturns, while majority White communities would escape PA 436's application.

98. In its application, the Defendants applied Public Act 436's provisions to invidiously discriminate against African-descended majority communities. The Defendants disproportionately and intentionally applied the provisions of PA 436 to African-descended majority communities resulting in residents' loss of governing power while not applying the law to similarly situated majority White municipalities and school districts suffering equal or greater financial distress.

99. 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 governing power based on the racial composition of that community. Such provisions include those that provide for EMs to:

- a. Provide for the preliminary financial review of municipalities and school districts solely at the discretion of the State Treasurer or State Superintendent of Public Instruction. See provisions including but not limited to MCL §141.1544;
- b. Provide for the determination of whether a financial emergency exists in a municipality or school district solely at the discretion of the Governor. See provisions including but not limited to MCL §141.1546;
- c. Provide for the selection and appointment of an EM solely at the discretion of the Governor. See provisions including but not limited to MCL §141.1549 and §141.1564;
- d. 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;
- e. Ratify appointments made and acts taken by EMs acting under Public Act 4. See provisions including but not limited to MCL §141.1570;
- c. Act for and in the place and stead of the governing body and elected officials of local government 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 local governments through powers that permit the EM to contravene and thereby implicitly repeal local laws, regulations, and rules of local government; See provisions including but not limited to MCL §141.1552;
- f. Explicitly repeal, amend, and enact local laws, regulations and rules. See provisions including but not limited to MCL §141.1549 and §141.1552;
- g. Provide for the determination of whether a local government may enter a consent agreement with the state solely at the discretion of

the State Treasurer. See provisions including but not limited to MCL §141.1548; and

- h. Provide for governance by a receivership transition advisory board with many of the same powers as the EM and that is granted any powers that the Governor in his sole discretion deems to convey and that serves at his pleasure. See provisions including but not limited to MCL §§141.1563.

100. 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 56% of the State's population of citizens who are African-descended.

101. 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.

102. Numerous other states have far less restrictive statutory schemes to oversee and aid local communities undergoing financial distress during economic downturns, which do not invidiously discriminate against African-descended majority communities.

103. 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, Amend. XIV;
- b. For attorneys' fees and costs; and
- c. For such further relief as is just and equitable.

December 1, 2017

Respectfully Submitted,

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