

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

UNITED RETIRED GOVERNMENT EMPLOYEES,
THE CITY OF PONTIAC RETIRED EMPLOYEES
ASSOCIATION, on behalf of themselves and all
association members, WALTER MOORE, SHERRI MURPHY,
BEVERLY STUBBS, and JANICE GAFNEY,

Plaintiffs,

v.

COMPLAINT

RICK SNYDER, in his individual and/or
official capacity as governor for the
State of Michigan, ANDY DILLON, in his
individual and/or official capacity as Treasurer
for the State of Michigan, STEVE ARWOOD,
in his official capacity as Director of Licensing and
Regulatory Affairs for the State of Michigan,
JOHN NIXON, in his official capacity as Director of
the Department of Management and Budget for the
State of Michigan, EDWARD KURTZ, in his official capacity
as Emergency Manager for the City of Flint,
LOUIS SCHIMMEL, individually and in his official capacity
as Emergency Manager for the City of Pontiac, MICHAEL
BROWN, individually and in his capacity as Emergency
Manager for the City of Flint, the CITY OF FLINT, the
CITY OF PONTIAC and the MICHIGAN MUNICIPAL
EMPLOYEES RETIREMENT SYSTEM,

Defendants

LAW OFFICE OF GREGORY T. GIBBS

By: ALEC SCOTT GIBBS (P-73593)
gibbsale@gmail.com

By: GREGORY T. GIBBS (P-26440)
greggibbs51@sbcglobal.net

Attorneys for Plaintiffs
717 S Grand Traverse St
Flint, MI 48502
(810) 239-9470

THERE IS ANOTHER PENDING CIVIL ACTION ARISING OUT OF THE SAME TRANSACTIONS OR OCCURRENCE AS ALLEGED IN THIS COMPLAINT, BEFORE THE HONORABLE JUDGE GEORGE C. STEEH, THAT CIVIL ACTION BEING CASE NO. 13-CV-11370.

COMPLAINT

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

JURISDICTION AND VENUE

1. This action is brought under the Supremacy Clause of the United States Constitution, the Contracts Clause of the United States Constitution, 11 U.S.C. § 903, 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202.
2. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because it arises under the Constitution and laws of the United States. In addition, jurisdiction is proper under 28 U.S.C. § 1343(a)(3), because Defendants, under color of state law, seek to deprive Plaintiffs of their federal constitutional rights. This Court is authorized to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.
3. Venue in federal-question cases lies in the district in which any defendant resides or in which a substantial part of the events or omissions giving rise to the claim occurred. 28 U.S.C. § 1391(b). Venue in this district is proper under 28 U.S.C. § 1391(b)(1) because the Cities of Flint and Pontiac are in this district, and the conduct and transactions at issue in this matter arose in this district.
4. Pursuant to 28 U.S.C. § 102(a)(1), this action should be assigned to the Southern division of this Court because the actions that give rise to this case occurred in municipalities

located in the Southern Division of the Eastern District of Michigan.

5. This case is related to the matters of *Phillips, et al. v. Snyder, et al.*, (E.D. Mich. Case No. 13-cv-11370) and the case of *Detroit Branch NAACP, et. al. v. Snyder, et. al.* (E.D. Mich. Case No. 13-cv-12098). This case also involves a facial challenge to Public Act 436 of 2012. The legal issues raised by this complaint also overlap with many of the legal issues raised by the cases of *Telford v. Snyder, et al.* (E.D. Mich. Case no. 2:13-cv-11670) and *Davis v. Snyder, et al.*, (E.D. Mich. Case no. 2:13-cv-11760). With the exception of *Detroit NAACP*, the remaining cases have all been assigned to the Hon. Judge George Steeh as companion cases, pursuant to L.R. 83.11. Counsel for Defendants Snyder and Dillon have moved to re-assign *Detroit NAACP* to Judge Steeh.
6. This case raises issues similar to but distinct from legal issues raised in the cases of *City of Pontiac Retired Employees Association, et al v Schimmel, et al*, (E.D. Mich. Case No. 12-cv-12830 and Sixth Circuit Court of Appeals Case No. 12-2087) and *Welch, et. al. v. Brown, et. al.*, (E.D. Mich. Case No. 12-cv-13808 and Sixth Circuit Court of Appeals Case No. 13-1476). Neither *City of Pontiac Ret. Empl. Assoc.* nor *Welch* involves facial challenges to the statutes authorizing actions of Defendants under the doctrine of federal preemption, and the nature and number of Defendants in this action is significantly different. Additionally, this Complaint addresses altogether different and subsequent transactions, and after a significant change in law.

PARTIES

7. Plaintiff United Retired Governmental Employees Local #1 (hereinafter URGE) is a nonprofit corporation registered with the Michigan Department of Licensing and

Regulatory Affairs. URGE was incorporated in 1975 as a fraternal organization to promote health and welfare betterment status for retired governmental employees.

URGE's membership consists of City of Flint municipal retirees and their spouses who are covered by Flint's pension and health care obligations. Under federal and state law, they have a recognized interest in protecting and advancing the rights of their retiree members, particularly in the context of municipal receivership. *See AFT Mich. v. State*, 297 Mich. App. 597; 825 N.W.2d 595 (2012); MCL § 141.1542(I). Mary Bland serves as the current president of URGE.

8. Plaintiff City of Pontiac Retired Employees Association (hereinafter CPREA) is a nonprofit corporation registered with the Michigan Department of Licensing and Regulatory Affairs. The CPREA was formed, in consultation and coordination with the Emergency Financial Manager for the City of Pontiac, "to represent the interests of retired employees of the City of Pontiac in regard to their retirement benefits from the city, including all types of health and medical benefits and insurance benefits, including advocacy, lobbying and/or litigation." CPREA's membership is limited to retirees with health insurance benefits offered through the City of Pontiac. Under federal and state law, they have a recognized interest in protecting and advancing the rights of their retiree members, particularly in the context of municipal receivership. *See AFT Mich. v. State*, 297 Mich. App. 597; 825 N.W.2d 595 (2012); MCL § 141.1542(I). Claudia Filler serves as the current president of CPREA.

9. The individual named Plaintiffs are as follows:

- A. Plaintiff Beverly Stubbs is a City of Pontiac municipal retiree and member of

CPREA.

- B. Plaintiff Sherri Murphy is a member of URGE and served on the Flint Retirement System Board of Trustees prior to its transfer to Defendant MERS.
 - C. Plaintiff Walter Moore is a member of CPREA, serves on the CPREA Board of Directors, resides in Pontiac and is also the former mayor for the City of Pontiac. Plaintiff Moore currently serves on the Pontiac General Employees Retirement System Board of Trustees.
 - D. Plaintiff Janice Gaffney is a member of CPREA, serves on the CPREA Board of Directors and is currently serving on the Pontiac General Employees Retirement System Board of Trustees.
10. Defendant Rick Snyder is the Governor of the State of Michigan. Public Act 436 gives Defendant Snyder broad power to declare financial emergencies, appoint emergency managers and control the approval and management of a municipal bankruptcy petition.
11. Defendant Andy Dillon is the Treasurer for the State of Michigan. Public Act 436 gives Defendant Dillon broad power to manage cities operating under consent agreements and emergency management. Public Act 436 gives Defendant Dillon broad power to approve the nullification of collective bargaining agreements, and the joint responsibility for deciding whether or not to abrogate collective bargaining agreements or approve liquidation of municipal assets when an alternative to an emergency manager plan is proposed by the governing body of a municipality under receivership. The state treasurer is appointed by the governor, with the advice and consent of the senate, and serves at the pleasure of the governor.

12. Defendant Steve Arwood is the Director of Licensing and Regulatory Affairs. Public Act 436 gives Defendant Arwood the joint responsibility for deciding whether or not to abrogate collective bargaining agreements or approve liquidation of municipal assets when an alternative to an emergency manager plan is proposed by the governing body of a municipality under receivership. The director of licensing and regulatory affairs serves at the pleasure of the governor.
13. Defendant John Nixon is the Director of Management and Budget. Public Act 436 gives Defendant Nixon the joint responsibility for deciding whether or not to abrogate collective bargaining agreements or approve liquidation of municipal assets when an alternative to an emergency manager plan is proposed by the governing body of a municipality under receivership. The director of management and budget serves at the pleasure of the governor.
14. Defendant Michael Brown was the Emergency Manager for the City of Flint under Public Act 4 of 2011. Defendant Brown was appointed as receiver in late 2011, and his term as emergency manager ended when Public Act 4 was certified for the ballot in August of 2012.
15. Defendant Edward Kurtz was the Emergency Financial Manager for the City of Flint from 2002 through 2003 and from 2012 through 2013. At those times he served as an Emergency Financial Manager under Public Act 72 of 1990. Since Public Act 436 became effective on March 28, 2013, he has served as Emergency Manager for Flint under that act.
16. Defendant Louis Schimmel was the Emergency Financial Manager for the City of Pontiac

from 2010 through 2011. He served as Emergency Manager under Public Act 4 from 2011 through 2012, and again as Emergency Financial Manager under Public Act 72 from 2012 through 2013. He currently serves as Emergency Manager under Public Act 436.

17. Defendant City of Flint is a municipal corporation organized under the laws of the State of Michigan. Flint is currently in receivership under Public Act 436.
18. Defendant City of Pontiac is a municipal corporation organized under the laws of the State of Michigan. Pontiac is currently in receivership under Public Act 436.
19. Defendant Michigan Municipal Employees Retirement System is a nonprofit corporation organized under the laws of the State of Michigan.

THE CASE AND CONTROVERSY

20. The power to pass uniform rules on the subject of Bankruptcy is conferred exclusively to Congress under the United States Constitution. *See* U.S. Const. Art. I, § 8, Cl. 4: “The Congress shall have Power...[t]o establish...uniform Laws on the subject of Bankruptcies throughout the United States.”
21. The power of states to impair contractual obligations is expressly prohibited by the very same article of the United States Constitution. *See* U.S. Const. Art. I, § 10, Cl. 1: “No State shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts...”
22. The proximity of these clauses is intentional:
 - A. Writing in the Federalist Papers No. 10, James Madison identified factions based on economic interests as the principal danger to the protection of individual

rights:

“[T]he most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

“No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold

the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail.”

- B. Writing in 1788 on the Contracts Clause, James Madison again cautioned the public about the damage that can be caused by state impairment of contracts for the benefit of private economic interests:

“The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society.”

23. The Contracts Clause and the Bankruptcy Clause are mutually reinforcing constitutional limitations on state government, and vital to the system of government established by the Founding Fathers.

24. The political subdivisions of states, but not states themselves, are eligible for relief under Chapter 9 of the Bankruptcy Code if they meet the prerequisites of voluntariness, good faith negotiation and insolvency. According to the plain language of Section 903 of that Code, States cannot use alternative municipal insolvency statutes to bind non-consenting creditors of a municipality, primarily because Congress desires a national, uniform approach to the subject that is accomplished with the municipal bankruptcy code. Finally, although states and their political subdivisions may use the police power to regulate private affairs for the purpose of addressing broad general social and economic matters, attempts to use that power to make modifications of contracts involving a state or its political subdivisions will be subject to a more searching judicial inquiry if the modifications affect public contracts or otherwise implicate the state's self-interest.
25. The history of Michigan's modern receivership statutes begins with the financial struggle of the City of Ecorse, a municipality located "downriver" from Detroit. On December 3, 1986, Judge Richard Dunn of the Wayne County Circuit Court named Defendant Louis Schimmel as receiver for the city. This order followed a September ruling that created the receivership under Michigan's general receivership statute, a first under Michigan law and without explicit statutory authority. *See* Robert Daddow, "Ecorse: The Fall and Rise of a Michigan City," (Mackinac Center for Public Policy, Dec. 1, 1992), <http://www.mackinac.org/5583> (accessed May 28, 2013).
26. In response to the Ecorse receivership, the Michigan legislature passed the first emergency manager legislation in 1988, which was followed by Public Act 72 of 1990, the immediate predecessor to Public Acts 4 of 2011 and 436 of 2012.

27. Unlike the laws challenged in this case, PA 72 did not confer sweeping powers onto an EFM. To begin with, the EFM would generally be subject to the same limitations placed on a city council or mayor. For example, he was still required to abide by the limitations on municipal government that were set out in the city charter. And PA 72 did not initially give an EFM the explicit power to enact ordinances, which was an innovation that would come decades after initial passage.
28. PA 72 did not touch on the principal concerns of the federal bankruptcy code: The avoidance of contractual obligations and the discharge of debtor's obligations.
29. This changed with the adoption of Public Act 4 of 2011. The legislation created a more expansive and far-reaching process for selecting an "Emergency Manager" discarding the qualifier "financial" in part to emphasize the unprecedented powers of the new statutory receivership.
30. Unlike the more limited EFMs operating under Public Act 72, an EM under PA 4 had the power to do all of the following:
 - A. Reject, modify or terminate an existing contractual obligation, including, facially, contractual obligations between private parties.
 - B. Reject, modify or terminate one or more terms of an existing collective bargaining agreement, including, at least facially, CBAs between private parties.
 - C. Liquidate and transfer municipal assets.
 - D. Enact ordinances and issue orders by decree.
31. In November of 2012, Michigan's voters decisively rejected Public Act 4.
32. Defendant Snyder lobbied for the passage of a virtually identical statute, Public Act 436

of 2012. *See* MCL 141.1541 *et. seq.* This time, the legislature attached an appropriation measure to the legislation in order to prevent a second referendum. *See id at* §§ 141.1574-1575 (appropriation provisions).

33. Public Act 436 restores the bankruptcy powers of Michigan's Emergency Managers, with some provisos designed to give the illusion of public control and oversight. For example:
- A. PA 436 requires that the transfer of any municipal assets valued over \$50,000 or the modification or abrogation of collective bargaining agreements first be submitted to a municipal governing body for approval, at which time the municipality may approve or reject the proposal. Although designed to give the appearance of local self-government, this choice is in fact illusory. The transfers and modifications are approved in consultation the State Treasurer, Defendant Andy Dillon, and the ultimate decision on the matter is reserved for Defendants Dillon, Nixon and Arwood, all three of whom constitute the local emergency financial assistance loan board. *See* MCL § 141.1559(2). The board itself is seated in the Department of Treasury, which is overseen by Defendant Dillon. In other words, PA 436 preserves the political control of its most controversial provisions.
 - B. Although PA 436 gives some municipalities facing state management and oversight the option of deciding whether to pursue a consent agreement, emergency manager receivership, a neutral evaluation process or a Chapter 9 petition, PA 436 also preserves the state's control over those processes, including the filing of any bankruptcy petition. This choice of alternatives to emergency

management is also not available to Detroit, Flint, Pontiac or other municipalities that entered receivership before March 28, 2013.

- C. The options available to municipalities under PA 436 are intertwined and interrelated. For example, a consent agreement may lead to emergency manager receivership, which may lead to a chapter 9 petition. Alternatively, the selection of a chapter 9 petition may be rejected by Defendant Snyder, and result in the forced selection of another option like emergency management. This insures that Defendants will control the process and guide the implementation of PA 436 for the benefit of their corporate allies in the private sector.
34. Facially and as implemented, both PA 4 of 2011 and PA 436 of 2012 are preempted by the Bankruptcy and Contracts Clauses of the United States Constitution, as well as Chapter 9 of the United States Bankruptcy Code. For example:
- A. On its face, and as applied to Plaintiffs, Public Act 4 of 2011 allowed Emergency Managers to use their legislative authority to reject, modify or terminate one or more terms of private and public contracts, as either municipal legislators or through the delegation of the state's sovereign power. *See* MCL 141.1519(1)(j)-(k). Michigan courts have construed the use of this provision as an exercise of legislative power that results in contractual modifications. *See* Opinion and Order Entering Permanent Injunction, *Yurk et. al. v. City of Flint*, Case No. 01-71149-NZ (Gen. Ct. Cir. Ct. Dec. 11, 2012) (“The EM issued Order No. 13 pursuant to MCL 141.1519(1)(j), which allows an EM to ‘reject, modify, or terminate 1 or more terms and conditions of an existing contract...’”).

- B. On its face, and as applied, Public Act 436 of 2012 contains language that is identical to that found in PA 4, allowing Emergency Managers to use their legislative authority to reject, modify or terminate one or more terms of private and public contracts, as either municipal legislators or through the delegation of the state's sovereign power. *See* MCL 141.1552(1)(j)-(k).
 - C. On its face, and as applied, Public Act 4 of 2011 impermissibly discriminated among creditors, in violation of the Bankruptcy Clause and Contracts Clause, as well as Chapter 9 of the United States Bankruptcy Code. *See* MCL 141.1518(1)(b)(requiring financial and operating plan to discriminate in favor of certain creditor classes).
 - D. On its face, and as applied, Public Act 436 of 2012 impermissibly discriminates among creditors, in violation of the Bankruptcy Clause and Contracts Clause, as well as Chapter 9 of the United States Bankruptcy Code. *See* MCL 141.1551(1)(b)(requiring financial and operating plan to discriminate in favor of certain creditor classes).
35. As implemented, the actions of Defendants have resulted in the unconstitutional violation of Plaintiffs' due process and impairment of contractual rights, in violation of the US Constitution. This includes the following:
- A. In the Summer of 2012, acting under color of law pursuant to Public Act 4 of 2011, Defendant Michael Brown directed trustees he placed on the Flint Employees Retirement System to transfer the pension funds to Defendant Michigan Municipal Employees Retirement System. This transfer was a violation

of the contractual obligations and due process rights of URGE members, and also in violation of state laws, although this case does not concern liability for the state law violations. The transfer was approved by Defendant Dillon, in contemplation of the execution of a conspiracy between Defendants MERS, Snyder, Brown and Dillon and unknown representatives of financial institutions to deprive Plaintiffs of their property and impair Plaintiffs contract rights under color of state law, in violation of 42 U.S.C. § 1983. The plan to carry out the transfer was developed in coordination with representatives from financial institutions, including Bank of America.

- B. On May 10, 2013, Defendant Louis Schimmel submitted a proposal to eliminate Pontiac's obligation to pay for retiree health care coverage, presumably with the concurrence of Defendant Dillon, in violation of 42 U.S.C. § 1983. This action was approved under color of law pursuant to Public Act 436 of 2012, in contemplation of the execution of a conspiracy among and between the named Defendants to deprive Plaintiff CPREA's membership of their rights under state and federal law, in violation of 42 U.S.C. § 1983.
 - C. Defendants have also planned for the transfer of the Pontiac General Employees Retirement System, which is funded at approximately 149%. Defendant Schimmel proposed that the Pontiac GERS be transferred to Defendant MERS, notwithstanding the inadequate funding levels of MERS.
36. The actions of Defendants are not isolated, but part of a much broader pattern and policy designed to serve some state interests as well as interests of private creditors of the State

of Michigan and affected municipalities at the expense of the contractual obligations of its political subdivisions to creditors not preferred by the Defendants. However, individual actions taken by the Defendants reflect that pattern:

- A. It has become evident that the retirement system transfer in Flint was not an isolated event, but part of a broader plan to move millions of dollars in pension fund assets away from local control, in part to divert assets of the systems for prohibited purposes. In Pontiac, Defendant Louis Schimmel is attempting to divert the assets of the retirement system to cover other municipal obligations and eliminate local control and oversight over investments, while in Flint Defendant Emergency Manager Brown managed to achieve that goal using his power under PA 4.
- B. In Detroit, Defendant Snyder appointed an attorney, Kevyn Orr, from a firm representing Detroit's creditors to manage Detroit's receivership. Less than a month after this appointment, and under the approval and direction of Orr as emergency manager, Detroit's city council has hired Orr's firm to handle the restructuring of its obligations to municipal bondholders, the city's primary creditors and the clients of Orr's former employer. Within one month of his appointment, Kevyn Orr had identified Detroit's pension obligations and the management of the Detroit retirement system, and indicated that he may use his EM powers to modify the pension system and its assets.
- C. Publicly available evidence strongly suggests that Defendants Snyder and Dillon have made assurances to financial institutions and provided details of their plans

to strip public assets for private gain, as well as increasing the state's credit rating. These measures are only feasible now that local control has been eliminated and the Emergency Managers have been given broad powers to discharge debts, eliminate contracts and other powers exclusively reserved for execution by bankruptcy courts and trustees operating under their supervision.

- D. Defendants Dillon, Nixon and Snyder have met privately with the three primary credit rating bureaus for municipalities. The clear purpose of these meetings was to enhance the state's credit rating, and to convey the ways in which Defendants and their political allies were hoping to accomplish that goal.
- E. These meetings began in May of 2011, when, among other things, the Defendants assured the bureaus that the recent pension tax increase would be upheld by the Michigan Supreme Court, although no decision had been issued at that time. *See* Amy Lane, "Snyder: Meetings with credit agencies went well, but better ratings will take time," *Crain's Detroit Business*, June 14, 2011.
- F. The last known meeting between Defendants and credit bureaus was in New York in March of this year, around the time that Kevyn Orr's appointment as emergency manager for Detroit was announced. At the March meeting, Defendants discussed the Detroit receivership and gave the bureaus their assurances that the interests of bondholders will be protected at the expense of public sector retirees and municipal residents.
- G. The effect of these assurances was reflected in part by Standard & Poor's upgrade of Detroit's credit rating following the appointment of Kevyn Orr, a curious

development that otherwise contradicts S&P's rating system for cities facing a default that could impair its obligations to bondholders.

- H. Similarly, the receivership announcement did not disturb the ratings by Moody's or Fitch, notwithstanding the possibility of Detroit's defaults on municipal bond debt and other obligations. The evidence of manipulation of credit ratings by the bureaus, particularly Stanard & Poor, is consistent with recent state and federal fraud claims that S&P manipulated credit ratings for financial products in order to procure investments on behalf of issuers of those products who paid for the favorable ratings. *See United States v. McGraw Hill Companies, Inc.*, Case No. 13-CV-00779 (Central Dist. CA 2013).
- I. This is consistent with the implementation of PA 436 in the municipality with the largest bond debt, the City of Detroit. Under the direction of Defendants Snyder and Dillon, Detroit receiver Kevyn Orr has revealed that he is contemplating the liquidation of Detroit's assets for the stated purpose of satisfying municipal bondholders. Most shockingly, this includes valuation of the assets held in trust by the Detroit Institute of Arts, a nonprofit corporation that manages the Detroit art museum for the benefit of Detroit's residents and residents who pay to support the museum in surrounding counties.
- J. Defendant Snyder's recent claim that the forced sale of municipal assets by a bankruptcy court is possible in a Chapter 9 petition is plainly false. Chad Livengood and Daniel Howes, "Snyder: DIA art vulnerable to liquidation," *Detroit News*, May 29, 2013. In a Chapter 9 petition, the bankruptcy court cannot

order the sale or transfer of municipal assets. *See* 11 U.S.C. § 904(2). However, Defendant Snyder's claim is consistent with the plain language, intent and implementation of PA 4 and PA 436, namely the use of bankruptcy powers outside of the bankruptcy context in order to satisfy creditor claims of institutional bondholders, whether or not they are prioritized.

37. Defendant Dillon has also met privately with municipal bondholders, underwriters and their representatives, assuring them that their contracts are not subject to modification under PA 4 or PA 436. This includes assurances made at a symposium was sponsored by sponsored by the Bond Buyer, an influential publication on the municipal bond industry, which was held on March 18 and 19. The event followed the announcement of Kevyn Orr's appointment, and Defendant Dillon was a featured speaker. Participants included the credit rating agencies as well as multiple representatives from Bank of America/Merryl Lynch, Fitch Ratings, Moody Investor Services and Standard & Poor.
38. In the Summer of 2012, acting under color of state law under Public Act 4 of 2011, Defendant Michael Brown forced a sham transfer of the Flint Employees Retirement System to Defendant Michigan Municipal Employees Retirement System using powers derived from PA 4 of 2011. This transfer was accomplished by impairing the contracts of retirees represented by Plaintiff URGE, which required the administration of the system by the a Flint Board of Trustees.
39. The 2012 transfer of the Flint Retirement System was part of a coordinated plan to transfer the assets of the Flint and Pontiac pension funds, and to divert the assets of these systems for prohibited purposes, in violation of the Public Employee Retirement System

Investment Act.

40. Prior to the transfer of the Flint Retirement System to the Defendant MERS, City of Flint retirees were permitted to deduct a portion of their pension in order to finance their URGE membership dues. As a result and intended consequence of Defendants' illegal transfer of the Flint retirement system, the deduction is no longer authorized under MERS' guidelines. URGE is being denied the ability to adequately represent its membership as a result of Defendants' actions under PA 4, even though PA 4 is no longer effective.
41. The transfer of the Flint Retirement System resulted in the loss of local control, which also means that Plaintiff Murphy has lost her influence over investments as a trustee and may ultimately lose her position as trustee. With the loss of her influence over the handling of trust funds and potential loss of position as a result of Defendants' unconstitutional actions under Public Act 4, Plaintiff Murphy has been deprived of her right to represent retirees as the elected representative of retirees on the FERS Board of Trustees.
42. The 2012 transfer in Flint was followed by a subsequent attempt to change the composition of the Pontiac General Employees Retirement System Board of Trustees in order to accomplish the same goal in Pontiac. The plan was temporarily halted by the entry of a preliminary injunction issued when PA 72 was in effect. Defendant Schimmel pressed for the court to lift the preliminary injunction in order to use his powers under PA 436 to accomplish the same goal, although he has abandoned that plan after his proposal to lift the injunction was denied on May 22, 2013.

43. The transfers have been proposed and implemented under the direction of Defendants Snyder and Dillon, and was part of a larger plan to transfer retirement systems in cities under receivership.
44. On May 10, 2013, Defendant Schimmel proposed the elimination of all retiree benefits, including the July 1, 2013 termination of retiree health care.
45. In order to justify the elimination of retiree benefits, Defendant Schimmel transferred the City of Pontiac surplus in order to pay off municipal bondholders years ahead of schedule. Defendant Schimmel then used the resulting structural deficit to argue that the city had no ability to pay for retiree health insurance, and instead proposed a constitutionally prohibited diversion of retiree pension fund assets to satisfy the municipal obligations.
46. Defendant Schimmel's proposal was rejected by Pontiac's elected representatives, and an alternative proposal was submitted to the local emergency financial assistance loan board, as required under Public Act 436. *See* M.C.L. § 141.1559(2).
47. The local emergency financial assistance loan board consists of Defendants Arwood, Dillon and Nixon, all of whom are executive branch political appointees selected by Defendant Snyder.
48. Under the alternative proposal submitted by Pontiac City Council, some pension funds may be transferred to cover retiree health care under a permissible IRS "420" transfer that may still be illegal under state law. The loan board must approve one of the two proposals, both of which will result in an impairment of Plaintiffs' contractual rights. Neither proposal will be capable of being implemented before health care coverage for

retirees is terminated on July 1.

49. In parallel developments in Flint, Michigan, Defendant Edward Kurtz has also proposed the complete elimination or “modification” of retiree health insurance benefits, a proposal that he claims is authorized by PA 436.
50. Plaintiff Stubbs, a City of Pontiac retiree, lives on a fixed income and is totally and permanently disabled. She suffers from Type II diabetes, coronary artery disease, a heart murmur, hypertension, glaucoma, cataracts and other debilitating conditions that jeopardize her health. She takes a number of life-sustaining prescription drugs.
51. Under the current proposal to eliminate her health care, Plaintiff Stubbs will be unable to afford medically necessary treatment. Even the proposed but unauthorized diversion of Pontiac pension assets to provide all retirees with an additional \$400 per month for one year would not prevent irreparable injury to Ms. Stubbs: At the time that Ms. Stubbs retired in 2008, the monthly cost of individual medical coverage under the plan provided by the City of Pontiac was nearly \$1,000. If the city eliminates her health insurance coverage, and assuming that she is not denied coverage because of pre-existing conditions or faces unduly burdensome premiums because of those conditions, Ms. Stubbs will be forced to choose between paying for monthly necessities and procuring life-sustaining medical care and coverage.
52. As a result of Defendant Schimmel’s proposal to Pontiac City Council and Defendants Dillon, Nixon and Arwood, members of CPREA and similarly situated Pontiac retirees stand to lose all of their health care coverage if PA 436, and orders issued under PA 436, remains in effect.

53. Plaintiff Murphy and retiree members of Plaintiff URGE have no adequate remedy at law against the impairments of their contractual right to select representatives of their choosing for the Flint Retirement System Board of Trustees, and to preserve local control and due process guarantees provided for in those contracts.
54. Plaintiff CPREA has no adequate remedy at law against the impairment of the contractual right to health insurance coverage threatened by Defendant Schimmel's proposal and certain approval by the loan assistance board. Plaintiff CPREA's members will suffer irreparable injury as a result of the total loss of health care coverage.

COUNT I

Declaratory and Equitable Relief; Preemption of Public Act 4 and Public Act 436 under the Bankruptcy Clause, Supremacy Clause, 42 U.S.C. § 1983 and 11 U.S.C. § 901 et seq.

55. Paragraphs 1-54 are incorporated herein.
56. Public Act 4 of 2011 was in effect from 2011 through 2012. Michigan courts continue to give effect to orders issued by emergency managers under PA 4.
57. PA 4, along with the actions complained of that were taken under color of PA 4, was preempted by the United States Constitution's Bankruptcy Clause, which vests Congress with the exclusive authority to pass uniform rules on the subject of bankruptcy, as well as Chapter 9 of the US Bankruptcy Code, 11 U.S.C. § 901 et seq.
58. Public Act 436 of 2012 became effective March 28, 2013.
59. Public Act 436, and all actions taken under PA 436, are preempted by the United States Constitution's Bankruptcy Clause, which vests Congress with the exclusive authority to pass uniform rules on the subject of bankruptcy, as well as Chapter 9 of the US

Bankruptcy Code, 11 U.S.C. § 901 et seq. The above powers conferred by PA 4 and PA 436 are not severable from other provisions.

COUNT II

Declaratory and Equitable Relief; Preemption of Public Act 4 and Public Act 436 under the Contracts Clause, Supremacy Clause and 42 U.S.C. § 1983

60. Paragraphs 1-54 are incorporated herein.
61. Public Act 4 of 2011 was in effect from 2011 through 2012. Michigan courts continue to give effect to orders issued by emergency managers under PA 4.
62. PA 4, and all actions taken under PA 4, was preempted by the United States Constitution's Contracts Clause, which prohibits states from using their police power to delegate the power to specifically identify individual contractual terms for termination or modification.
63. Public Act 436 of 2012 became effective March 28, 2013.
64. Public Act 436, and all actions taken under PA 436, are preempted by the United States Constitution's Contracts Clause, which prohibits states from using their police power to delegate the power to specifically identify individual contractual terms for termination or modification. The above powers conferred by PA 4 and PA 436 are not severable from other provisions.

Count III

Declaratory and Equitable Relief, Damages; Impairment of Contracts Under Contracts Clause, Supremacy Clause, Due Process Clause and 42 U.S.C. § 1983-Transfer of Flint Employee Retirement System

65. Paragraphs 1-54 are incorporated herein.
66. Public Act 4 of 2011 was in effect from 2011 through 2012. Michigan courts continue to give effect to orders issued by emergency managers under PA 4, including the order transferring the Flint Employee Retirement System to Defendant Michigan Municipal Employees Retirement System.
67. The transfer of the Flint Employees Retirement System to Defendant MERS impaired the contractual rights of URGE members and URGE itself.
68. Defendants, through their failure to provide notice and a pre-termination hearing before transferring the FERS pension and taking away the contractual and proprietary rights of Plaintiff URGE members and Flint retiree Plaintiffs to elect representatives to regulate the investments of their pension fund have impaired Plaintiffs' contractual rights and deprived Flint retiree Plaintiffs of a property interest without due process and just compensation, in violation of 42 U.S.C § 1983, Article I and the Fourteenth Amendment of the Constitution. Additionally, Defendant City of Flint acted pursuant to an official policy or custom.

Count IV

Declaratory and Equitable Relief, Damages; Impairment of Contracts Under Contracts Clause, Supremacy Clause and 42 U.S.C. § 1983-Elimination of Pontiac Retiree Health Care Coverage

69. Paragraphs 1-54 are incorporated herein.
70. Public Act 436 of 2012 became effective March 28, 2013.
71. Pursuant to PA 436, Defendant Louis Schimmel has proposed the impairment of all

contractual obligations to pay for retiree health care coverage, which is owed to all members of Plaintiff CPREA, including the named plaintiffs listed in this complaint.

72. Defendant Dillon has concurred in this determination, and Defendants Arwood and Nixon have or will authorize the elimination of Pontiac's contractual obligations to retirees.
73. Defendants' actions under PA 436 violate the Contracts Clause and Due Process Clause of the United States Constitution. Additionally, Defendant City of Pontiac acted pursuant to an official policy or custom.

Prayer for Relief

WHEREFORE, PLAINTIFFS PRAY THAT THIS COURT:

- A. Enter a judgment declaring that Michigan's Public Act 436 is preempted under the Bankruptcy Clause and Contracts Clause of the US Constitution, as well as Chapter 9 of Title 11 of the United States Code, and may no longer be enforced by Defendant's Snyder, Dillon, Arwood and Nixon, and that all actions taken adverse to Plaintiffs under Public Act 4 were invalid and unauthorized.
- B. Enter a judgment declaring that the now-repealed Public Act 4 of 2011 was also preempted under the Bankruptcy Clause and Contracts Clause of the US Constitution, as well as Chapter 9 of Title 11 of the United States Code, and that all actions taken adverse to Plaintiffs under Public Act 4 were invalid and unauthorized.

- C. Enter a permanent injunction preventing Defendant Michigan Municipal Employees Retirement System from administering the pension fund assets belonging to the cities of Pontiac and Flint, and directing Defendant MERS to transfer the system back to the Flint Employee Retirement System Board of Trustees.
- D. Award Plaintiffs their reasonable attorney fees pursuant to 42 U.S.C. § 1988.
- E. Award all such other equitable and legal recovery that this Court deems just.

LAW OFFICE OF GREGORY T. GIBBS

Dated: May 30, 2013

/s/ Alec Scott Gibbs
By: Alec Scott Gibbs (P73593)
Law Offices of Gregory T. Gibbs
Attorneys for Plaintiffs