

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

Catherine Phillips, et al.

Plaintiffs,

v.

Richard D. Snyder, et al.

Defendants.

Case no. 2:13-cv-11370

Hon. George Caram Steeh  
Mag. R. Steven Whalen

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION TO  
DISMISS**

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**PLAINTIFFS' RESPONSE TO DEFENDANTS'**  
**MOTION TO DISMISS**

NOW COME Plaintiffs, by and through their attorneys, the SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE, THE SANDERS LAW FIRM, PC, GOODMAN AND HURWITZ, P.C. on behalf of the Detroit and Michigan

National Lawyers Guild, MILLER COHEN, PLC, the CENTER FOR CONSTITUTIONAL RIGHTS, and CONSTITUTIONAL LITIGATION ASSOCIATES, P.C., for their *Response to Defendants' Motion to Dismiss* do hereby state as follows.

1. On or about February 12, 2014, Plaintiffs filed their First Amended Complaint seeking declaratory and injunctive relief against the Local Financial Stability and Choice Act, Act No. 436, Public Acts of 2012, Mich. Comp. Laws § 141.1541 *et. seq.* (PA 436).

2. The Complaint is brought pursuant to 42 USC §1983 for violations of the Plaintiffs' rights under the U.S. Const. art. IV, § 4; amend. I; amend. XIII; amend. XIV; and the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et. seq.*

3. Public Act 436 establishes a form of government that allows Michigan cities and other forms of municipal corporations to be ruled by one unelected official who is vested with broad governing powers, including a general grant of legislative power to emergency managers who have disproportionately been appointed over majority African American cities, towns and school districts.

4. Plaintiffs deny the allegations of Paragraph No. 1 of Defendants' motion. In an effort to avoid constitutional scrutiny of PA 436, Defendants' arguments would effectively lead to a conclusion that no one has standing to challenge the unconstitutional law.

5. Plaintiffs deny the allegations of Paragraph No. 2 of Defendants' motion. PA 436 violates both property and liberty interests protected by the Due Process Clause of U.S. Const. amend. XIV and violates the right to a democratically elected government as protected at U.S. Const. art. IV, § 4.

6. Plaintiffs deny the allegations of Paragraph No. 3 of Defendants' motion. Public Act 436 impermissibly discriminates among citizens in the exercise of their fundamental right to vote and wrongfully discriminates against citizens on the basis of their race and wealth in violation of the Equal Protection Clause of U.S. Const. amend. XIV.

7. Plaintiffs deny the allegations of Paragraph No. 4 of Defendants' motion. Public Act 436 impermissibly discriminates among citizens in the exercise of their fundamental right to vote and wrongfully discriminates against citizens on the basis of their race in violation of Section 2 of the Voting Rights Act of 1965.

8. Plaintiffs deny the allegations of Paragraph No. 5 of Defendants' motion. Public Act 436 violates both free speech rights and the right to petition one's government as protected by the U.S. Const. amend. I.

9. Plaintiffs deny the allegations of Paragraph No. 6 of Defendants' motion. Public Act 436 perpetuates the badges and incidents of slavery by denying the right to vote in local elections to a majority of Michigan's black population and

thereby violates the U.S. Const. amend. XIII.

10. Plaintiffs admit that Defendants sought concurrence in the motion and that concurrence was denied as stated in Paragraph No. 7 of Defendants' motion.

11. Plaintiffs deny the allegations of Paragraph No. 8 of Defendants' motion. The motion provides a boilerplate recitation of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); however **Defendants' make no substantive argument** based on the holdings of these cases – that Plaintiff has failed to plead sufficient facts to support a claim. "Federal Rule of Civil Procedure 8(a) (2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief."<sup>1</sup> While a plaintiff must plead "more than labels and conclusions,"<sup>2</sup> the "complaint need not contain 'detailed' factual allegations."<sup>3</sup> Plaintiffs must only show factual allegations sufficient "to raise a right to relief above the speculative level."<sup>4</sup> A plain reading of the facts of Plaintiffs' Complaint and First Amended Complaint reveals that both cases are inapplicable.<sup>5</sup>

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<sup>1</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Ass'n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 548 (6th Cir. 2007).

<sup>5</sup> While Defendants have failed to point to any deficiencies in Plaintiffs' First

12. Plaintiffs deny the allegations of Paragraph No. 10 of Defendants' motion. **Defendants' claim that the court lacks subject matter jurisdiction over Plaintiffs' claims is clearly frivolous.** Plaintiffs have pled claims arising under 42 U.S.C. §1983 for violations of the U.S. Constitution and for violations of the Voting Rights Act. Pursuant to 28 USC § 1331, federal district courts have subject matter jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States."

13. The pending motion fails to meet the requirements for dismissal under either Fed. R. Civ. P. 12 (b) (1) or (6). Rule 12 (b)(1) only permits dismissal based on the court not having subject matter jurisdiction over the case; while Rule 12 (b)(6) only permits dismissal based on "failure to state a claim upon which relief can be granted." This Honorable Court has clear subject matter jurisdiction over the claims of the First Amended Complaint and Plaintiffs have stated claims upon which relief can be granted.

14. On a Rule 12 (b) (6), the court "**must also accept all well-pleaded factual allegations as true and construe the complaint in the light most favorable to plaintiffs.**"<sup>6</sup> Defendants bear the burden of proving that a complaint

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Amended Complaint, Plaintiffs request leave to file a further amended Complaint to the extent that any deficiencies may be found by this Honorable Court.

<sup>6</sup> *Bennett v. MIS Corp.*, 607 F.3d 1076, 1091 (6th Cir. 2010) (emphasis added).

fails to state a claim as a matter of law.<sup>7</sup>

15. Defendants' motion borders on the frivolous and, in all respects, fails to meet its burden of showing that Plaintiffs have failed to state a cause of action upon which relief can be granted. Rather, Defendants' motion and brief seek relief under Fed. R. Civ. P. 12 (b) (1) and (6), yet Defendants argue the factual merits of the claims throughout. This is improper on Rule 12 (b) motions. The legal and factual issues are complex to simply treat the pending motion as one for summary judgment under Fed. R. Civ. P. 56. Plaintiffs' are entitled to fully develop the issues and the court is entitled to a full and proper briefing before rendering judgment as a matter of law on Plaintiffs properly stated claims for relief.

16. For these and the reasons as further stated in the accompanying *Brief in Support of Plaintiffs' Response to Defendants' Motion to Dismiss* filed under Fed. R. Civ. P. 12(b) (1) & (6), Defendants' motion should be denied on the merits.

WHEREFORE, Plaintiffs pray that this Honorable Court enter an order denying Defendants' *Motion To Dismiss*.

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<sup>7</sup> *Id.*

Respectfully Submitted,

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Dated: March 28, 2014

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**CERTIFICATE OF SERVICE**

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 28, 2014, I electronically filed the foregoing *Plaintiffs' Response to Defendants' Motion to Dismiss* with the Clerk of the Court using the ECF system, which will send notification of such filing to all ECF participants.

Respectfully submitted,

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