



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

August 12, 2011

Mr. Corbin R. Davis, Clerk  
Michigan Supreme Court  
Michigan Hall of Justice  
925 W. Ottawa  
Lansing, Michigan 48933

Dear Mr. Davis:

Enclosed please find an Executive Message from Governor Snyder addressed to the Chief Justice and Justices of the Michigan Supreme Court arising from an action in the 30th Circuit Court captioned as *Brown v Snyder*, case number 11-685-CZ. The Executive Message is submitted pursuant to MCR 7.305(A). By this message, the Governor respectfully requests that the Michigan Supreme Court authorize the 30<sup>th</sup> Circuit Court to certify the questions presented.

Courtesy copies have been provided to counsel of record and to the presiding circuit court judge. Please contact me if you have any questions concerning the enclosed.

Sincerely,

Michael Gadola  
Deputy Legal Counsel

Enclosure

cc: The Honorable Rosemarie Aquilina  
Mr. Michael Murphy, Office of the Attorney General  
Mr. Frank Monticello, Office of the Attorney General  
Mr. John Philo, Sugar Law Center  
Mr. Herbert Sanders, The Sanders Law Firm, P.C.  
Mr. Richard Mack, Jr., Miller Cohen, PLC  
Ms. Julie Hurwitz, Goodman & Hurwitz, P.C.  
Mr. Darius Charney, Center for Constitutional Rights



STATE OF MICHIGAN  
EXECUTIVE OFFICE  
LANSING

RICK SNYDER  
GOVERNOR

BRIAN CALLEY  
LT. GOVERNOR

**IN THE SUPREME COURT OF THE  
STATE OF MICHIGAN**

**Executive Message of Governor Rick Snyder**

**TO:** The Honorable Chief Justice and Justices of the Michigan Supreme Court

**FROM:** Rick Snyder  
Governor

**DATE:** August 12, 2011

**RE:** *Brown et al. v Richard D. Snyder, Governor, and Andrew Dillon, Treasurer*, Ingham County Circuit Court No. 11-685-CZ  
Gubernatorial request for early determination under MCR 7.305(A)

---

The above-captioned Ingham County Circuit Court case, pending before Circuit Judge Rosemarie Aquilina, seeks declaratory and injunctive relief while challenging the constitutionality of the Local Government and School District Fiscal Accountability Act, 2011 PA 4, MCL 141. 1501 *et seq.* (the “Emergency Manager law”). This lawsuit is a facial challenge to the Act requiring no factual development.<sup>1</sup>

Severe financial difficulties face Michigan’s local governments and school districts,<sup>2</sup> requiring swift resolution of the constitutional claims presented in this litigation. Emergency managers are already in place to address fiscal crises in several Michigan communities and the Detroit Public Schools, and the validity of those managers’ actions may well depend on the Act’s constitutionality. As Governor, I submit that this constitutional challenge involves controlling questions of public law of such public moment as to require early and final determination by the Michigan Supreme Court. Passage of the Emergency Manager law was intended to confront structural financial problems facing our communities and school districts, and the Act can serve as an essential tool to address the austere fiscal realities local units of government face after a decade of economic challenges. Without a bypass, this lawsuit may take years to reach finality, regardless of the substantive disposition of this case; the subject matter requires an expeditious resolution. Accordingly, as provided by MCR 7.305(A), I respectfully request that this Court certify the questions presented here and move to resolve this lawsuit as expeditiously as possible.

---

<sup>1</sup> See complaint attached. An answer and affirmative defenses was filed on July 20, 2011.

<sup>2</sup> In this message school districts and their officials are not referred to separately, but are included within references to local units and their officials.

### Background

The Emergency Manager law was passed and given immediate effect on March 16, 2011. The Act expanded the authority of emergency managers appointed under Public Act 72 of 1990, and it provides for the appointment of additional emergency managers for those local governments and school districts that meet the statutory criteria. The earlier emergency manager legislation, repealed by 2011 PA 4, was responsible for the appointment of emergency financial managers in seven Michigan communities, in addition to an emergency financial manager appointment for the Detroit Public School District in 2009.

Plaintiffs consist of 28 Michigan residents from around the state, including 11 from Detroit and vicinity, 4 from Pontiac, 2 from Benton Harbor, 2 from the Flint area, 1 from Jackson, 1 from Ann Arbor, 6 from Western Michigan, and 1 from the Upper Peninsula. The complaint alleges that the Act violates nine provisions of the 1963 Michigan Constitution, concentrating on those provisions of the Act that allow the emergency manager to suspend the authority of, and act in the place of, local officials.

### Complaint

Count I asserts that the Act violates Const. 1963, art 3, § 2 and art 4, § 1 by delegating legislative powers to executive branch agencies and officials as well as private contractors, thus violating the separation of powers doctrine and the nondelegation doctrine. Count I refers to sections 14a, 15, 17, and 19 of the Act.

Count II asserts that the Act violates art 4, § 29, the local acts clause, “through provisions providing for consent agreements, without a finding of local financial emergency, that permit the state treasurer to delegate sole discretionary power to adopt local acts to a local government’s chief administrative officer, the chief financial officer, or other executive officers of the local government.” (Compl at 75.) Count II refers to sections 14a, 17, and 19 of the Act.

Count III asserts that the Act violates art 7, § 22, the rights of local electors, through provisions “providing for consent agreements that, without a finding of local financial emergency, permit the state treasurer to delegate sole discretionary power to a local government’s chief administrative officer, the chief financial officer, or other executive officers of the local government . . . to effectively suspend and/or implicitly repeal, the provisions of city and village charters.” (Compl at 80.) Count III refers to sections 14a, 15, 17, and 19 of the Act.

Count IV asserts that the Act violates art 1, § 17 and §23, and art 7, § 21, § 22, and § 34, based on local citizens’ procedural due process “during repeal of local charter provisions and during the repeal, amendment, and adoption of local ordinances” (Compl at 84), and violates local citizens’ “substantive due process rights to a republican form of local government and to choose the officials of local government by democratic elections” (Compl at 85). Additionally, Count IV asserts a violation of the “due process

clause, the retained rights clause, and the inherent rights of the people” by delegating the powers of an emergency manager to a local government’s chief administrative or financial officer, or other executive officers. (Compl at 88.) Count IV refers to sections 15, 17, and 19 of the Act.

Count V asserts the Act violates art 9, § 29 of the Headlee amendment by “imposing new and increased activities upon local government without making an appropriation and disbursement to pay for necessary increased costs to local government.” (Compl at 92.) Count V refers to section 15(5)(e) and (6), section 19(1)(o) and (p), and section 25(3), (4) and (5) of PA 4.

### Controlling Questions at Issue

The following questions control the determination of this case:

1. Does 2011 PA 4 violate 1963 Const art 3, § 2 (separation of powers), or art 4, § 1 (legislative power), in its authorization of an emergency manager or a consent-agreement-designated local official to exercise powers of a local unit, including adopting, amending, and repealing local ordinances, to address the local unit’s debilitated financial condition, notwithstanding the provisions of local charters and ordinances?
2. Does 2011 PA 4 violate Const. 1963, art 4, § 29 (local or special acts), by permitting actions by an emergency manager or by a consent-agreement-designated local official to exercise powers of a local unit, including adopting, amending, and repealing local ordinances, to address the local unit’s debilitated financial condition, notwithstanding the provisions of local charters and ordinances?
3. Does 2011 PA 4 violate Const 1963, art 7, § 22 (charters, resolutions, ordinances; enumeration of powers) by allowing an emergency manager or a consent-agreement-designated local official to exercise powers of a local unit, including adopting, amending, and repealing local ordinances, to address the local unit’s debilitated financial condition, notwithstanding the provisions of local charters and ordinances?
4. Does 2011 PA 4 violate due process rights set forth in Const. 1963, art 1, § 17, or violate any right that is retained in Const 1963, art 1, § 23, by allowing an emergency manager or a consent-agreement-designated local official to assume the power and authority of a local governing body, including enacting or repealing local laws and ordinances, notwithstanding the provisions of local charters and ordinances?
5. Does 2011 PA 4 violate Const. 1963, art 7, §§ 21, 22, and 34 (provisions for local government) by allowing an emergency manager or a designated local official to assume the power and authority of a local governing body to act as a local governing body, including enacting or repealing local laws and ordinances, notwithstanding the

provisions of local charters and ordinances?

6. Does 2011 PA 4 impose new or increased activities or services on local governments in violation of the Headlee Amendment, Const 1963, art 9, § 29, by requiring the local government for which the emergency manager is appointed to pay for certain costs associated with the emergency manager?

Conclusion

This is a difficult period for state and local governments and school districts. I recognize the significance of seeking a bypass to this Court as provided by MCR 7.305, and only request this Court's involvement after careful consideration of the urgency and importance of the issues presented here. I do not anticipate additional review requests in the immediate future and sincerely appreciate the Court's granting of review in accord with my previous request regarding the issues related to the exemption for retirement income.

As Governor, I submit that this constitutional challenge involves controlling questions of public law of such public moment as to require early and final determination by the Michigan Supreme Court. I respectfully request this Court to order the lower court to certify the above questions. I further request, as provided for by MCR 7.305, that this Court stay all lower court proceedings pending resolution of the certified questions.

Respectfully submitted,



Rick Snyder  
Governor

Attachment

RECD JUN 24 REC'D *lym*

Approved, SCAO

Original - Court  
1st copy - Defendant

2nd copy - Plaintiff  
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 30th JUDICIAL CIRCUIT COUNTY PROBATE	<b>SUMMONS AND COMPLAINT</b>	CASE NO.  <i>11685CZ</i>
---	------------------------------	--------------------------------

Court address: Veterans Memorial Courthouse 313 W. Kalamazoo Street 2nd Floor Lansing, MI  
 Court telephone no.: ROSEMARIE E. AQUILINA (517) 483-6500

Plaintiff's name(s), address(es), and telephone no(s). BROWN, et. al.
Plaintiff's attorney, bar no., address, and telephone no. John C. Philo (P52721) Anthony D. Paris (P71525) Sugar Law Center For Economic & Social Justice 4605 Cass Avenue, Second Floor Detroit, MI 48201 (313) 993-4505

Defendant's name(s), address(es), and telephone no(s). RICHARD D. SNYDER, as Governor of the STATE OF MICHIGAN, and ANDREW DILLON, as the TREASURER OF THE STATE OF MICHIGAN.  Governor Richard D. Snyder George W. Romney Building 111 South Capitol Avenue Lansing, MI 48933 (517) 373-6800
---

**SUMMONS NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state). (MCR 2.111(C))
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued <b>JUN 22 2011</b>	This summons expires <b>SEP 21 2011</b>	Court clerk <b>MIKE BRYANTON</b>
---------------------------	---	----------------------------------

\*This summons is invalid unless served on or before its expiration date.  
 This document must be sealed by the seal of the court.

**COMPLAINT** Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

**Family Division Cases**

There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in \_\_\_\_\_ Court.

The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

**General Civil Cases**

There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in \_\_\_\_\_ Court.

The action  remains  is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

**VENUE**

Plaintiff(s) residence (Include city, township, or village)	Defendant(s) residence (Include city, township, or village)
Place where action arose or business conducted	

Date 6/22/11

Signature of attorney/plaintiff *[Signature]*

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

**STATE OF MICHIGAN**  
**IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM**

---

Elizabeth Brown, Tameka Ramsey,  
Emma Kinnard, Hon. Juanita Henry,  
Barbara Ford, Edith Lee-Payne,  
Evelyn Foreman, Jacqueline Steingold,  
Leslie Little, Michelle Martinez,  
Suzanne Sattler IHM, Barbara Davenport,  
Irene Wright, Patrick O'Connor, Paul Jordan,  
Michael Merriweather, Marcia Sikora,  
Ahmina Maxey, Maryion Lee,  
Lisa Oliver-King, Kimberly Spring,  
Brenda Reeber, George Reeber,  
David Frederick, John David Ivers,  
Lori Christenson, Betsy Coffia  
and James Clancey,

Plaintiffs,

vs.

Case No. 11-68502  
Hon. \_\_\_\_\_

ROSEMARIE E. AQUILINA

RICHARD D. SNYDER, as Governor of the  
STATE OF MICHIGAN, and ANDREW DILLON,  
as the TREASURER OF THE STATE OF  
MICHIGAN.

Defendants.

---

John C. Philo (P52721)  
Anthony D. Paris (P71525)  
SUGAR LAW CENTER  
FOR ECONOMIC & SOCIAL JUSTICE  
4605 Cass Avenue, Second Floor  
Detroit, Michigan 48201  
(313) 993-4505/Fax: (313) 887-8470  
Co-Counsel - Attorneys for Plaintiffs

Herbert A. Sanders (P43031)  
THE SANDERS LAW FIRM PC  
615 Griswold St Ste 913  
Detroit, MI 48226  
(313) 962-0099/Fax: (313) 962-0044  
Co-Counsel - Attorneys for Plaintiffs

Richard G. Mack, Jr. (P58657)  
Keith D. Flynn (P74192)  
Robert D. Fetter (P68816)  
MILLER COHEN PLC  
600 W Lafayette Blvd Fl 4  
Detroit, MI 48226

Julie H. Hurwitz (P34720)  
William H. Goodman (P14173)  
Brandon M. Stump (P74418)  
GOODMAN & HURWITZ PC on behalf of  
the DETROIT & MICHIGAN NATIONAL  
LAWYERS GUILD  
1394 E Jefferson Ave

(313) 964-4454/Fax: (313) 964-4490  
Co-Counsel - Attorneys for Plaintiffs

Detroit, MI 48207  
(313) 567-6170/Fax: (313) 567-4827  
Co-Counsel - Attorneys for Plaintiffs

Darius Charney  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway 7th floor  
New York, NY 10012  
Co-Counsel - Attorneys for Plaintiffs

---

**COMPLAINT**  
**FOR DECLARATORY & INJUNCTIVE RELIEF**

NOW COME Plaintiffs, Elizabeth Brown, Tameka Ramsey, Emma Kinnard, Hon. Juanita Henry, Barbara Ford, Edith Lee-Payne, Evelyn Foreman, Jacqueline Steingold, Leslie Little, Michelle Martinez, Suzanne Sattler IHM, Barbara Davenport, Irene Wright, Patrick O'Connor, Paul Jordan, Michael Merriweather, Marcia Sikora, Ahmina Maxey, Maryion Lee, Lisa Oliver-King, Kimberly Spring, Brenda Reeber, George Reeber, David Frederick, John David Ivers, Lori Christenson, Betsy Coffia, and James Clancey and by and through their attorneys and for their Complaint, do hereby allege as follows.

**NATURE OF PLAINTIFFS' CLAIMS**

1. This lawsuit arises from violations of Plaintiffs' constitutional rights under the Constitution of the State of Michigan of 1963.
2. The Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL §§ 141.1501 et. seq. (the Act) effectively establishes a new form of local government within the State of Michigan. The new form of government allows Michigan cities, villages, townships, and other forms of municipal corporations to be ruled by one



unelected official and that this official's orders, appointments, expenditures, and other decisions are not reviewable by local elected officials or local voters.

3. On its face and in practice, the Act violates the rights of local voters by delegating law-making power and the power to adopt local acts to unelected emergency managers, by suspending the rights of local electors to establish charters and to elect local officials, and by imposing substantial new costs and expenses upon local municipalities without providing new revenue.

4. The Act thereby violates Art. I, § 17, Art. I, § 23, Art. III, § 2, Art. IV, §§ 1 & 29, Art. VII, §§ 21, 22, & 34, and Art. IX, § 29 of the Michigan Constitution.

#### **JURISDICTION AND VENUE**

5. Jurisdiction is conferred by MCL § 600.601 and § 600.605 and by MCR, Rule 2.605.

6. Venue is proper pursuant to MCL §600.1615, since the offices of the Governor and State Treasurer exercise governmental authority within this county and judicial circuit.

#### **PARTIES**

7. Plaintiff Elizabeth Brown is a citizen of the United States and a resident of the City of Jackson, County of Jackson, and State of Michigan.

8. Plaintiff Tameka Ramsey is a citizen of the United States and a resident of the City of Pontiac, County of Oakland, and State of Michigan.

9. Plaintiff Emma Kinnard is a citizen of the United States and a resident of the City of Benton Harbor, County of Berrien, and State of Michigan.

10. Plaintiff Hon. Juanita Henry is a current City Commissioner of the City of Benton Harbor and is a citizen of the United States and a resident of the City of Benton Harbor, County

of Berrien, and State of Michigan.

11. Plaintiff Barbara Ford is a citizen of the United States and a resident of the City of Detroit, County of Wayne, and State of Michigan.
12. Plaintiff Edith Lee-Payne is a citizen of the United States and a resident of the City of Detroit, County of Wayne, and State of Michigan.
13. Plaintiff Evelyn Foreman is a citizen of the United States and a resident of the City of Detroit, County of Wayne, and State of Michigan.
14. Plaintiff Jacqueline Steingold is a citizen of the United States and a resident of the City of Detroit, County of Wayne, and State of Michigan.
15. Plaintiff Leslie Little is a citizen of the United States and a resident of the City of Detroit, County of Wayne, and State of Michigan.
16. Plaintiff Michelle Martinez is a citizen of the United States and a resident of the City of Detroit, County of Wayne, and State of Michigan.
17. Plaintiff Suzanne Sattler IHM is a citizen of the United States and a resident of the City of Detroit, County of Wayne, and State of Michigan.
18. Plaintiff Barbara Davenport is a citizen of the United States and a resident of the City of Pontiac, County of Oakland, and State of Michigan.
19. Plaintiff Irene Wright is a citizen of the United States and a resident of the City of Pontiac, County of Oakland, and State of Michigan.
20. Plaintiff Patrick O'Connor is a citizen of the United States and a resident of the City of Pontiac, County of Oakland, and State of Michigan.
21. 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.

22. Plaintiff Michael Merriweather is a citizen of the United States and a resident of the City of Ann Arbor, County of Washtenaw, and State of Michigan.
23. Plaintiff Marcia Sikora is a citizen of the United States and a resident of the City of Farmington Hills, County of Oakland, and State of Michigan.
24. Plaintiff Ahmina Maxey is a citizen of the United States and a resident of the City of Ferndale, County of Oakland, and State of Michigan.
25. Plaintiff Maryion Lee is a citizen of the United States and a resident of the City of Flushing, County of Genesee, and State of Michigan.
26. Plaintiff Lisa Oliver-King is a citizen of the United States and a resident of the City of Grand Rapids, County of Kent, and State of Michigan.
27. Plaintiff Kimberly Spring is a citizen of the United States and a resident of the City of Grand Rapids, County of Kent, and State of Michigan.
28. Plaintiff Brenda Reeber is a citizen of the United States and a resident of the City of Ludington, County of Mason, and State of Michigan.
29. Plaintiff George Reeber is a citizen of the United States and a resident of the City of Ludington, County of Mason, and State of Michigan.
30. Plaintiff David Frederick is a citizen of the United States and a resident of the City of Montague, County of Muskegon, and the State of Michigan.
31. Plaintiff John David Ivers is a citizen of the United States and a resident of the City of St. Clair Shores, County of Macomb, and State of Michigan.
32. Plaintiff Lori Christenson is a citizen of the United States and a resident of the City of Southfield, County of Oakland, and State of Michigan.

33. Plaintiff Betsy Coffia is a citizen of the United States and a resident of Traverse City, County of Grand Traverse, and State of Michigan.

34. Plaintiff James Clancey is a citizen of the United States and a resident of the City of Negaunee, County of Marquette, and State of Michigan.

35. Defendant Richard D. Snyder is the Governor of the State of Michigan. Governor Snyder maintains his principal office at the Office of the Governor, 111 S. Capitol Avenue, George W. Romney Building in the City of Lansing, County of Ingham, and State of Michigan.

36. Defendant Andrew Dillon is the Treasurer of the State of Michigan. Treasurer Dillon maintains his principal office at the Department of Treasury, 430 W. Allegan Street in the City of Lansing, County of Ingham, and State of Michigan.

#### **COMMON FACTS**

37. Through its provisions, the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL §§ 141.1501 *et. seq.* (the Act) 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.

38. On its face and in practice, the Act flagrantly violates the Constitution of the State of Michigan by:

- a) Delegating legislative powers without limiting standards to emergency managers;
- b) Granting unelected emergency managers the power to enact local law without the constitutional restraints placed on state and local governments;
- c) Usurping the vested rights of local electors to adopt and amend local charters which govern cities and villages within Michigan;

- d) Suspending the rights of local electors to a republican form of government and to elect the officials of local government through democratic elections; and
- e) Imposing substantial new costs upon local municipal corporations without providing offsets or additional revenue streams to affected communities.

39. Prior to 1988, local government was 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. *Fisk v Fisk*, 333 Mich 513 (1952).

40. In 1990, the legislature passed the Local Government Fiscal Responsibility Act, Act No. 72, Public Acts of 1990 (the former Act). This statute authorized state officials to intervene when local governments were facing a financial emergency. Pursuant to the former Act, when a financial emergency was found to exist and there existed no satisfactory plan to resolve the emergency, an emergency financial manager could be appointed by a state board.

41. In February of 2011, the bill for the Local Government and School District Fiscal Accountability Act (the Act) was enrolled and fast-tracked through the Michigan legislature.

42. The Local Government and School District Fiscal Accountability Act bill was presented to the Governor for signature approximately one month after its introduction before the legislature.

43. Governor Richard D. Snyder signed the Local Government and School District Fiscal Accountability Act into law on March 16, 2011.

44. The Local Government and School District Fiscal Accountability Act (the Act) replaced the Local Government Fiscal Responsibility Act (the former Act) and radically revised state law.

45. The Act grants the Governor broad discretionary powers to declare that a local government is in a financial emergency and to determine whether the local government has a satisfactory plan to resolve the emergency. MCL §141.1515 (1).

46. The Act grants a state financial review team power to enter into a consent agreement with local government to address local financial problems and purport to provide financial stability to the local government without a finding that a financial emergency exists.

47. The Act further states that the consent agreement may grant the state treasurer power to vest a local chief administrative officer, the chief financial officer, or other officers of the local government with the powers and authority of an emergency manager under the Act MCL §141.1514a (9).

48. The Act further provides that once the Governor has unilaterally declared a financial emergency and found that no satisfactory plan exists to resolve the emergency, the Governor shall appoint an emergency manager to act for, and in place of, the governing body of the local government. MCL §141.1515 (4).

49. The emergency manager is an appointed official of the executive branch of state government. Alternatively, the emergency manager is a private contractor working as an agent of the executive branch of state government.

50. The Act seeks to grossly expand the powers of emergency managers over all operations of local government. The emergency manager's powers extend not only to financial policy and decision-making, but also to all other areas of local government. The Act seeks to accomplish this expansion of powers without dissolving the corporate body of local government and without first removing or suspending the offices of local elected officials.

51. The provisions of the Local Government and School District Fiscal Accountability Act establish a form of local government that is repugnant to the constitutional liberties of Americans under settled law, as well as the rule of law itself. Under this new form of government, the people become subject to a form of governance where an unelected local official wields absolute power over all aspects of local government and whose decisions are without review by either local elected officials or local voters.

52. Without limiting standards, the Act delegates the state legislature's general legislative powers to emergency managers. The Act delegates such powers through provisions that vest emergency managers with sole discretionary power and authority to:

- a. Contravene, and thereby implicitly repeal, local laws such as city and village charters and ordinances; and
- b. Explicitly repeal, amend, and enact local laws such as city and village ordinances.

53. The Michigan Constitution of 1963, Art. III, § 2, prohibits executive branch officials from exercising general legislative power granted to the state legislature by Art. IV, § 1.

54. The Michigan Constitution of 1963, Art. IV, § 1, vests the state senate and house of representatives with general legislative power.

55. The Act grants emergency managers greater power than the state legislature possesses regarding the adoption and repeal of local acts. The Act grants such power through provisions that seek to vest emergency managers with sole discretionary power and authority to:

- a. Contravene, and thereby implicitly repeal, local laws such as city and village charters and ordinances; and

- b. Explicitly repeal, amend, and enact local laws such as city and village ordinances.

56. The Michigan Constitution of 1963, Art. IV, § 29, prohibits the state legislature from adopting local acts without the approval of two-thirds of the members serving in the state legislature and without the approval of a majority of the electors voting in the affected locality. Furthermore, Article IV, § 29 only permits the repeal of local acts by a majority vote of the state legislature.

57. The Act violates the exclusive constitutionally mandated rights of local electors to adopt and amend local charters. The Act violates such rights through provisions that seek to vest emergency managers with sole discretionary power to contravene local charter provisions.

58. The Michigan Constitution of 1963, Art. VII, § 22, vests the sole right to frame, amend, and adopt charter provisions in the electors of cities and villages. So long as the corporate body of local government remains in existence, the charter exists as local law to be followed by all persons within the local jurisdiction.

59. The Act usurps the constitutionally mandated rights of local electors to a republican form of government and to choose the officials of local government by democratic elections. The Act usurps such rights through provisions that seek to vest emergency managers with sole discretionary power and exclusive authority to act for, and in the place of, local government.

60. The Michigan Constitution of 1963, Art. I, § 17, grants due process rights to all persons in the state. Due process rights include a right to procedural due process during the repeal of local charter provisions and during the repeal, amendment, and adoption of local ordinances. Due process rights further include, a substantive right to a republican form of local



government and to choose the officials of local government by democratic elections throughout the time that corporate body of local government remains in existence.

61. Under the Michigan Constitution of 1963, Art. VII, §§ 21, 22, and 34, local electors possess an inherent right to a republican form of local government and to choose the officials of local government by democratic elections throughout the time that corporate body of local government remains in existence.

62. Under the Michigan Constitution of 1963, Art. I, § 23, local electors possess a retained right to a republican form of local government and to choose the officials of local government by democratic elections throughout the time that corporate body of local government remains in existence.

63. The Act requires local governments to increase activities and incur necessary expenses by requiring local governments to fund emergency managers, their staffs, auditors, financial review teams, technical advisors, consultants, firms, and other expenses incurred when complying with the mandated activities of the Act.

64. In 1978, the Michigan Constitution was amended to include Art. IX, § 29, which prohibits the state from mandating new activities or services upon units of local government without making a state appropriation of funds to be disbursed to local government to pay for any increased costs.

65. At the time of filing, emergency managers have been appointed over the cities of Benton Harbor, Ecorse, and Pontiac and over the Detroit Public Schools. As such, these emergency managers are currently exercising powers unconstitutionally granted by the Local Government and School District Fiscal Accountability Act.

**COUNT I – Constitutional Violation**  
**1963 Const. Art III, § 2 and Art. IV, § 1**  
**Nondelegation Doctrine**

66. Plaintiff incorporates by reference paragraphs 1 through 65 above as though fully stated herein.

67. Article III, § 2 of the Michigan Constitution of 1963 states: “No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.” Article IV, § 1 of the Michigan Constitution of 1963 vests the state senate and house of representatives with legislative power.

68. Pursuant to Article III, § 2 and Article IV, § 1, the Michigan legislature is prohibited from delegating legislative powers, not only to executive branch agencies and officials, but also to private contractors.

69. When delegating rule-making authority to executive branch agencies and officials, the state legislature must articulate reasonably precise limiting standards to avoid the constitutional prohibition against the delegation of legislative powers.

70. On its face, the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates the prohibitions of Article III, § 2. The Act violates the nondelegation doctrine through provisions providing for consent agreements that, without a finding of a financial emergency and without reasonably precise limiting standards, permit the state treasurer to delegate sole discretionary legislative power to a local government’s chief administrative officer, the chief financial officer, or other executive officers of the local government. See MCL §141.1514a (9).

71. On its face, the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates the prohibitions of Article III, § 2 and the nondelegation

doctrine through provisions of the statute that, without reasonably precise limiting standards, delegate to emergency managers sole discretionary legislative power and authority to:

- a. Act for and in the place and stead of the local governing body of cities and villages over matters unrelated to the financial emergency and unrelated to the fiscal policies, practices, and circumstances of the local government. See provisions including but not limited to MCL §141.1515(4); §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2);
- b. Contravene, and thereby implicitly repeal, local laws such as city and village charters and ordinances; See provisions including but not limited to MCL §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2); and
- c. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1519(1) (dd).

WHEREFORE, Plaintiffs request that this Court order declaratory relief and declare that the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL § 141.1501 *et seq.*, unconstitutionally delegates legislative power to the emergency manager, and that this Court provide injunctive relief restraining present and future emergency managers appointed under the Act from implementing or exercising authority and powers purportedly conveyed by §141.1514a (9), §141.1515(4), §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2).

**COUNT II – Constitutional Violation**  
**1963 Const. Art. IV, § 29**  
**Local Acts**

72. Plaintiff incorporates by reference paragraphs 1 through 71 above as though fully stated herein.

73. Article IV, §29, the Michigan Constitution of 1963 prohibits the state from enacting local acts “until approved by two-thirds of the members elected to and serving” in the state legislature and until approved “by a majority of the electors voting” in the affected district. The article further requires approval of a “majority of the members elected to and serving in each house” of the state legislature before a local act can be repealed.

74. City and village charters, adopted by local electors, and ordinances, adopted by local legislative bodies, are local laws – equivalent to local acts adopted by the state legislature.

75. On its face, the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates the prohibitions of Article IV, § 29. The Act violates the local acts clause through provisions providing for consent agreements, without a finding of a local financial emergency, that permit the state treasurer to delegate sole discretionary power to adopt local acts to a local government’s chief administrative officer, the chief financial officer, or other executive officers of the local government. See MCL §141.1514a (9).

76. On its face, the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates the prohibitions of Article IV, §29. The Act violates the local acts clause by delegating more power than the legislature possesses. The Act violates the clause by granting emergency managers sole discretionary power and authority to:

- a. Contravene, and thereby implicitly repeal, local laws such as city and village charters and ordinances; See provisions including but not limited to

MCL §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2);  
and

- b. Explicitly repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1519(1)(dd).

WHEREFORE, Plaintiffs request that this Court order declaratory relief and declare that the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL § 141.1501 *et seq.*, violates Article IV, §29 of the Michigan Constitution, and that this Court provide injunctive relief restraining present and future emergency managers appointed under the Act from implementing or exercising authority and powers purportedly conveyed by §141.1514a (9), §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2).

**COUNT III – Constitutional Violation**  
**1963 Const. Art. VII, § 22**  
**Electors’ Right to Form Charter**

77. Plaintiff incorporates by reference paragraphs 1 through 76 above as though fully stated herein.

78. The Michigan Constitution of 1963 at Article VII, §22 vests city and village electors with exclusive power to “frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village.”

79. Once a city or village is incorporated and so long as it continues to exist, its charter constitutes local law that is required to be followed by all public officials, the local governing body, and all persons within the local government’s jurisdiction.

80. On its face, the Local Government and School District Fiscal Accountability Act , Act No. 4, Public Acts of 2011 violates the prohibitions of Article VII, § 22. The Act violates the rights of local electors through provisions providing for consent agreements that, without a finding of a local financial emergency, permit the state treasurer to delegate sole discretionary power to a local government's chief administrative officer, the chief financial officer, or other executive officers of the local government to contravene, and thereby effectively suspend and/or implicitly repeal, the provisions of city and village charters. See MCL §141.1514a (9).

81. On its face, the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates local electors' rights as vested by Article VII, §22. The Act violates the local electors' charter clause by granting emergency managers sole discretionary power and authority to:

- a. Contravene, and thereby effectively suspend and/or implicitly repeal, the provisions of city and village charters. See provisions including but not limited to MCL §141.1515(4), §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2).

WHEREFORE, Plaintiffs request that this Court order declaratory relief and declare that the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL § 141.1501 *et seq.*, violates Article VII, §22 of the Michigan Constitution and that this Court provide injunctive relief restraining present and future emergency managers appointed under the Act from implementing or exercising authority and powers purportedly conveyed by §141.1514a (9), §141.1515(4), §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2).

**COUNT IV – Constitutional Violation**  
**1963 Const. Art. I, §§ 17 & 23 and Art. VII, §§ 21, 22 & 34**  
**Electors Rights to Republican Form of Local Government and**  
**to Elect Local Government Officials**

82. Plaintiff incorporates by reference paragraphs 1 through 81 above as though fully stated herein.

83. The Michigan Constitution of 1963 at Article I, § 17 provides that no person shall be deprived of liberty or property without due process of law. The Constitution's due process clause protects the rights of persons to both procedural and substantive due process.

84. Michigan's due process clause requires that local governments observe procedural due process during the repeal of local charter provisions and during the repeal, amendment, and adoption of local ordinances.

85. Michigan's due process clause protects local citizens' substantive due process rights to a republican form of local government and to choose the officials of local government by democratic elections throughout the time that corporate body of local government remains in existence.

86. The Michigan Constitution of 1963 at Article I, § 23 recognizes and protects rights retained by the people of the state of Michigan. The retained rights of the people include a right to a republican form of local government and to choose the officials of local government by democratic elections throughout the time that corporate body of local government remains in existence.

87. The Michigan Constitution of 1963 at Article VII, §§ 21, 22 & 34 establishes the rights of the people of the state of Michigan to local government. Michigan citizens' right to local government inherently vests citizens with a right to a republican form of local government

and a right to choose the officials of local government by democratic elections throughout the time that corporate body of local government remains in existence.

88. On its face, the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates Article I, §§ 17 & 23 and Article VII, §§ 21, 22 & 34 of the Michigan Constitution of 1963. The Act violates the due process clause, the retained rights clause, and the inherent rights of the people by granting:

- a. The State Treasurer power, without the finding of a financial emergency, to delegate the sole discretionary powers and authorities of an emergency manager to a local government's chief administrative officer, the chief financial officer, or other executive officers of the local government; MCL §141.1514a (9);
- b. Emergency managers sole discretionary power and authority to act for and in the place and stead of the local governing body of cities and villages over matters unrelated to the financial emergency and unrelated to the fiscal policies, practices, and circumstances of the local government. See MCL §141.1515(4), §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2);
- c. Emergency managers sole discretionary power and authority to rule by decree over cities and villages on matters unrelated to the financial emergency and unrelated to the fiscal policies, practices, and circumstances of the local government through powers that permit the emergency manager to contravene, and thereby implicitly repeal, local laws such as city and village charters and ordinances and to explicitly



repeal, amend, and enact local laws such as city and village ordinances. See provisions including but not limited to MCL §141.1515(4); §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2); and

- d. Emergency managers sole discretionary power and authority to overrule and supersede and assume all the powers and authority of the local governing body and of all local elected officials over matters unrelated to the financial emergency and unrelated to the fiscal policies, practices, and circumstances of the local government. See provisions including but not limited to MCL §141.1515(4); §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2).

WHEREFORE, Plaintiffs request that this Court order declaratory relief and declare that the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL § 141.1501 *et seq.*, violates Article I, § 17 of the Michigan Constitution, and that this Court provide injunctive relief restraining present and future emergency managers appointed under the Act from implementing or exercising authority and powers purportedly conveyed by MCL §141.1514a (9), §141.1515(4), §141.1517(1), §141.1519(1) (dd), (ee), and (ff) and §141.1519(2).

**COUNT V – Constitutional Violation**  
**1963 Const. Art. IX, § 29**  
**Headlee Amendment**

89. Plaintiff incorporates by reference paragraphs 1 through 88 above as though fully stated herein.

90. In 1978, the Headlee Amendment to the Michigan Constitution of 1963 at Article IX, § 29 was enacted to prohibit the state from:

- a. Requiring a new activity or service by local government, unless a state appropriation is made and disbursed to pay for any necessary increased costs; and
- b. Enacting an increase in the level of any activity or service by units of local government beyond that required by existing law, unless a state appropriation is made and disbursed to pay for any necessary increased costs.

91. At the time that the Amendment was adopted in 1978, the state did not intervene in local financial emergencies, emergency managers were not appointed by the state, and local governments were not required to pay costs and fees related the appointment of emergency managers.

92. The Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates Article IX, § 29 of the Michigan Constitution of 1963 by imposing new and increased activities upon local government without making an appropriation and disbursement to pay for necessary increased costs to local government.

93. New and increased activities imposed upon local government by the Act include, but are not limited to:

- a. Requiring the local government to pay the compensation, salary, benefits, and expenses of the Governor's appointed emergency manager. See MCL §141.1515(5)(e);
- b. Requiring the local government to pay the compensation, salary, benefits, and expenses of any employee, agent, appointee, or contractor of the emergency manager including inspectors, auditors, and technical

personnel hired at the discretion of the emergency manager; See MCL§141.1515(6) and §141.1519(1)(o) and (p);

- c. Requiring the local government to pay the costs and expenses of the attorney general to defend in civil lawsuits brought against the emergency manager; See MCL §141.1525(3);
- d. Requiring local government to pay general liability insurance, professional liability insurance, workers compensation insurance, automobile insurance, and other insurance for the benefit of the emergency manager and any employee, agent, appointee, or contractor of the emergency manager; See MCL §141.1525(4); and
- e. Requiring local government to pay for attorney fees and all costs of civil litigation brought against the emergency manager and any employee, agent, appointee, or contractor of the emergency manager if such expenses are not covered by applicable insurance policies; See MCL §141.1525(5);


WHEREFORE, Plaintiffs request that this Court order declaratory relief and declare that the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL § 141.1501 *et seq.*, violates IX, § 29 of the Michigan Constitution, and that this Court provide injunctive relief restraining present and future emergency managers appointed under the Act from implementing or exercising authority and powers purportedly conveyed by MCL §141.1515(5)(e) and (6), §141.1519(1)(o) and (p), and §141.1525(3), (4) and (5).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Elizabeth Brown, Tameka Ramsey, Emma Kinnard, Hon. Juanita Henry, Barbara Ford, Edith Lee-Payne, Evelyn Forman, Jacqueline Steingold, Leslie

Little, Michelle Martinez, Suzanne Sattler IHM, Barbara Davenport, Irene Wright, Patrick O'Connor, Paul Jordan, Michael Merriweather, Marcia Sikora, Ahmina Maxey, Maryion Lee, Lisa Oliver-King, Kimberly Spring, Brenda Reeber, George Reeber, David Frederick, John David Ivers, Lori Christenson, Betsy Coffia, and James Clancey pray this Honorable court enter Judgment against Defendants providing:

- a. For declaratory relief holding that the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011 violates the Michigan Constitution of 1963;
- b. For injunctive relief restraining present and future emergency managers appointed under the Act from implementing or exercising authority and powers purportedly conveyed by the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011;
- c. For attorneys' fees and costs; and
- d. For such further relief as is just and equitable.



---

John C. Philo (P52721)  
Anthony D. Paris (P71525)  
**SUGAR LAW CENTER**  
**FOR ECONOMIC & SOCIAL JUSTICE**  
4605 Cass Avenue, Second Floor  
Detroit, Michigan 48201  
(313) 993-4505/Fax: (313) 887-8470  
**Co-Counsel - Attorneys for Plaintiffs**

Herbert A. Sanders (P43031)  
**THE SANDERS LAW FIRM PC**  
615 Griswold St Ste 913  
Detroit, MI 48226  
(313) 962-0099/Fax: (313) 962-0044  
**Co-Counsel - Attorneys for Plaintiffs**

Richard G. Mack, Jr. (P58657)  
Keith D. Flynn (P74192)  
Robert D. Fetter (P68816)  
MILLER COHEN PLC  
600 W Lafayette Blvd Fl 4  
Detroit, MI 48226  
(313) 964-4454/Fax: (313) 964-4490  
**Co-Counsel - Attorneys for Plaintiffs**

Julie H. Hurwitz (P34720)  
William H. Goodman (P14173)  
Brandon M. Stump (P74418)  
GOODMAN & HURWITZ PC on behalf of the  
DETROIT & MICHIGAN NATIONAL  
LAWYERS GUILD  
1394 E Jefferson Ave  
Detroit, MI 48207  
(313) 567-6170/Fax: (313) 567-4827  
**Co-Counsel - Attorneys for Plaintiffs**

Darius Charney  
CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway 7th floor  
New York, NY 10012  
**Co-Counsel - Attorneys for Plaintiffs**

**Date: June 22, 2011**