

Questions and Answers About *Brown et al. vs. Snyder*, Citizens' Legal Challenge to Michigan Public Act 4

BASIC

1. What is Public Act 4?

A law passed by Republican majorities in the Michigan Legislature in March 2011 which gives Gov. Rick Snyder power to appoint an emergency manager for any city, town, village or school district in Michigan undergoing a “financial emergency.” Michigan already had a law in place, a law used by both Republican and Democratic governors, that allowed the appointment of officials to help bring communities and school districts in financial trouble back to solid ground. But now the power-hungry Governor and other politicians rammed through a new law through that gave politically appointed managers unprecedented powers to cancel collective bargaining, privatize services, and strip power from local elected officials.

2. Who decides when a “financial emergency” exists?

PA 4 lists broad, loosely worded criteria which could trigger the process for appointing an emergency manager, ranging from projected budget shortfalls to complaints from creditors, which could apply to nearly every single municipality and school district in Michigan. In addition, State Treasurer Andy Dillon and State Superintendent of Public Instruction Michael Flanagan have “sole discretion” based on “other facts and circumstances” to appoint an emergency manager. This is just a power grab by politicians in Lansing to take power away from local officials and put their people in place, people who support their agenda.

3. What can an “emergency manager” do?

Virtually anything he or she wants, including saddling local taxpayers with huge debt without their approval and selling off public assets. The law empowers emergency managers to end contracts, including collective bargaining agreements. The rights of public servants like cops, firefighters, nurses and teachers who negotiated contracts in good faith will be stripped away. The appointed manager can also overrule local elected officials, lay off municipal and school district workers, write new budgets and even dissolve municipal governments. This sweeping authority is exercised by a single person, without local consent, legislative authority or any mechanism for citizen oversight.

Prior to passage of Public Act 4, state law provided for appointment of “emergency *financial* managers” in more limited circumstances. The new law drops the word “financial” from the title, reports the *Detroit News*, “to more accurately describe the expansion of authority beyond financial matters.”

In Benton Harbor, for example, the emergency manager has prohibited the city’s elected Mayor from entering his own office, and banned the elected City Commission from taking any action without his written permission. Pontiac’s emergency manager has proposed that the city be merged with Oakland County, losing its very identity.

4. How extensively will PA4 be used?

Any Michigan community or school district that is experiencing financial troubles is subject to a potential takeover under this new law. The law’s criteria are extremely broad, and the last one allows the Governor to declare financial emergency whenever he sees fit. It’s hard to know how widely takeovers will occur, but the state is preparing lots of people to implement them—there are wait lists for the official emergency manager training classes.

Even where actual takeovers don’t occur, the reality of this power skews the local process of budgeting and decision-making. In Michigan cities, the threat of an emergency manager has been used to demand that unions and elected officials cooperate with policies harmful to working families.

5. Does PA-4 compel local governments to pay the costs of emergency managers?

The law requires local taxpayers to pay for EMs, their staff, auditors, financial review teams, technical advisors, consultants, firms and any other expenses EMs decide to incur. This violates the Michigan Constitution, which was amended in 1978 to prohibit the state from mandating new activities for local government without appropriating state funds to pay for any increased costs (Art. IX, § 29).

LAWSUIT

1. Is Public Act 4 unconstitutional?

Yes. Public Act 4 violates the Michigan Constitution, which protects home rule, provides for separation of powers, and prevents the legislature from enacting unfunded mandates. It also violates the equal protection clause of the U.S. Constitution.

The law exceeds the powers of the state Legislature as defined by the Michigan Constitution.

The Act grants emergency managers greater power than the state legislature regarding the adoption and repeal of local acts. The Act's provisions 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.

The law gives the executive branch of the state government powers that properly belong to the legislative branch.

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

The law violates the letter and the spirit of the Michigan Constitution's definition and guarantee of local control through democratic elections and the adoption, amendment and repeal of local ordinances.

Through its provisions, the Act establishes a new form of local government, unknown within the United States, where the people within the jurisdiction of local municipalities are governed by an unelected official who establishes local law by decree.

2. Is anyone challenging this law in court?

Yes. Dozens of citizens from all across the state have joined together to protect their right to self-government through their elected representatives. The **Sugar Law Center for Economic and Social Justice** is serving as lead counsel for this litigation, *Brown et al. vs. Snyder*.

3. Have other lawsuits been filed against Public Act 4? Why is this one important?

Public Act 4 violates the rights of public officials and public employees. Detroit pension fund trustees have already filed suit, and public worker unions are also considering litigation.

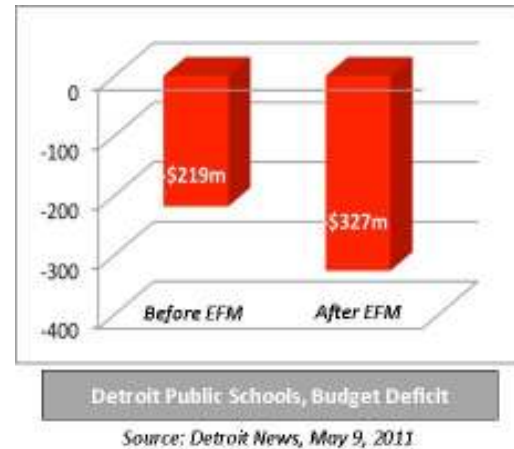
But Public Act 4 doesn't just violate the rights of specific groups of Michigan citizens; it violates the rights of *all* citizens, by taking away our basic right to self-government. With plaintiffs from communities all over the state, *Brown vs. Snyder* complements the efforts of other parties who are injured by the law. By focusing on this unconstitutional attempt to put governmental authority in the hands of select group of unelected "emergency managers," the suit brings before the court the core issues of democratic representation and public accountability.

Winning a lawsuit against the state is not easy; the Attorney General has vast resources and a dedicated team to defend the law. To ensure the greatest chance of success, it's important that *all* aspects of Public Act 4 that violate the state and federal constitutions be put before the courts.

ANALYSIS

1. Aren't tough measures necessary to keep local governments and school districts functioning in tough times?

It's wrong to use the threat of ending local representative government to get communities to comply with an agenda from Lansing. It's wrong to coerce communities into outsourcing jobs, cutting public safety, schools and other services. And there's no evidence that getting "tough" by trampling the rights of citizens does any good. Just the opposite: Following appointment of an "emergency manager," the budget deficit for Detroit Public Schools got *worse*, not better. Violating basic principles of democracy is never a good idea.



2. What's wrong with the idea that EMs can fix the economic problems of financially troubled local governments and school districts?

The fiscal problems of cities and school districts across Michigan were caused by politicians in Lansing and Wall Street CEOs, not by too much local democracy. It was the big banks and greedy CEOs who got us into this recession and it's Lansing politicians who put cities and schools in financial peril by cutting education and local government funding so CEOs could get tax breaks. We need more democracy, not less.

Emergency Managers increase the powerlessness of local communities and do nothing to address the problems of struggling working families. They function primarily to protect existing arrangements of wealth and power. For example, the jobs, wages, health insurance and pensions of city workers are fair game for Emergency Managers. But money owed to bondholders and other creditors is effectively off-limits for EM cuts. Furthermore, the costs of being "emergency managed" are borne by local taxpayers. Local governments taken over by emergency managers are likely to emerge from the process worse off financially than before.

3. Does PA 4 affect local governments, even if they are not taken over by an Emergency Manager?

Yes. The mere *threat* of a take-over is being used to intervene in contract negotiations and other decision making by local government. The threat is all the more powerful because virtually every local unit of government is under significant financial stress now due to the recession and funding cutbacks from Lansing. Every local government is affected by PA 4, whether or not they are currently a candidate for takeover.

4. There was already a law to address financial emergencies in local governments. Bankruptcy and other remedies can also be used. So what was the motive for passing PA4?

PA4 is a power grab by Lansing politicians who want to protect Wall Street bankers who hold bonds and big corporations who are creditors. Private companies are looking to cash in as consultants to emergency managers or take over public services, at the expense of local taxpayers. Perhaps most significantly, many Lansing politicians supported the bill as a way to attack public sector workers and public sector unions. The cartoon at right, originally published in the Detroit News on May 27, 2011, makes that point quite clear.



"Hello, Super-Emergency-Manager Man?!"

Michigan politicians who are eager to end collective bargaining realize that it will be difficult to do so statewide, so they are using this strategy to end it community by community—and thus weaken labor everywhere.

5. Under PA 4, could the State Treasurer take over a government for purely partisan reasons? For example, could a Republican state administration take over a city if its voters elected Democrats?

PA 4 contains no safeguards that would prevent this kind of abuse.

BACKGROUND

1. What is the Sugar Law Center for Economic and Social Justice?

Headquartered in Detroit, Sugar Law is a national public-interest law center with a record of winning justice for working people and communities of color. Sugar Law’s attorneys have won millions of dollars for workers who are victims of plant closings; represented workers and unions pushing for fair working conditions at companies like Wal-Mart and Pulte Homes; and successfully pursued claims for environmental justice in federal court on behalf of citizens in Flint and Southwest Detroit. Learn more about Sugar Law at www.sugarlaw.org.

Sugar Law Center’s Legal Director, John Philo, has extensive experience in public-interest law, community advocacy, municipal law, civil litigation, and labor and employment law. Sugar Law’s Executive Director Tova Perlmutter has many years experience in public advocacy and education, leading collaborations and coalitions among individuals and advocacy groups. Together, they are uniquely qualified to lead this statewide multiparty litigation, together with a “dream team” of top attorneys, and to bring these critical issues to national attention.

2. How can individuals and organizations support this effort to overturn Public Act 4?

The Sugar Law Center will require substantial financial support in order to present an effective case that has a real chance of winning in court.

Michigan Attorney General Bill Schuette will mount an aggressive defense of Public Act 4, with the full taxpayer-funded resources of his office. And the key concepts behind Public Act 4 – restricting the authority of local officials, rewriting union contracts, dissolving local units of government – have been promoted by local and national right-wing think tanks, including the Mackinac Center for Public Policy and the American Legislative Exchange Council (ALEC). The Mackinac Center has received financial support from the Charles G. Koch Foundation, the Dick and Betsy DeVos Foundation and the Walton Family Foundation. It is likely these same groups and their funders will become involved in efforts to uphold Public Act 4.

3. Is the Sugar Law Center a 501(c)(3) tax-exempt organization?

Yes. Contributions to fund our legal work—including this litigation to overturn Public Act 4—are fully deductible according to applicable law.