

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

ELIZABETH BROWN, TAMEKA RAMSEY,
EMMA KINNARD, HON. JUANITA HENRY,
BARBARA FORD, EDITH LEE-PAYNE,
EVELYN FOREMAN, JACQUELYN STEINGOLD,
LESLIE LITTLE, MICHELLE MARTINEZ,
SUZANNE SATTLER IHM,
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PATRICK O'CONNOR, PAUL JORDAN,
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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,

Supreme Court No. 143563

**Lower Case: Ingham County Circuit
Court Case No. 11-685-CZ
Honorable Rosemarie E. Aquilina**

Plaintiffs,

vs.

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

Defendants.

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/

**PLAINTIFFS' RESPONSE TO THE EXECUTIVE MESSAGE
FROM GOVERNOR SNYDER TO THE CHIEF JUSTICE
AND JUSTICES OF THE MICHIGAN SUPREME COURT**

NOW COME Plaintiffs, by and through their attorneys SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE, THE SANDERS LAW FIRM PC, GOODMAN & HURWITZ PC on behalf of the MICHIGAN NATIONAL LAWYERS GUILD, MILLER COHEN PLC and CENTER FOR CONSTITUTIONAL RIGHTS and for their Response to the Executive Message from Governor Snyder to the Chief Justice and Justices of the Michigan Supreme Court state as follows:

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I. INTRODUCTION

This lawsuit arises from violations of Plaintiffs' constitutional rights under the Constitution of the State of Michigan of 1963 occurring as the result of the enactment of the Local Government and School District Fiscal Accountability Act, Act No. 4, Public Acts of 2011, MCL §§ 141.1501 et. seq. (the Act).

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 or savings.

In this case, Plaintiffs filed their Complaint on June 22, 2011 and the Defendants filed an Answer on or about July 20. A scheduling order has been entered allowing discovery through April 9, 2012 and providing a deadline for dispositive motions of June 9, 2012.

Governor Richard Snyder filed the pending Executive Message on or about August 12, 2011 and served Plaintiffs' counsel with copies of the same on August 16. The Executive Message requests immediate review by the Michigan Supreme Court and cites MCR 7.305(A) as the basis for this extraordinary request. However in this case, there are no controlling questions of a public moment that will bring finality to the controversy surrounding Public Act 4 of 2011 and discovery at the Circuit Court is necessary before the issues in this case will be ripe for hearing. As a consequence, the request for immediate review is unsupported and should be properly denied.

Plaintiffs respectfully request oral argument on the issues raised by the Executive Message from Governor Snyder to the Chief Justice and Justices of the Michigan Supreme Court.

II. DISCUSSION

A. MCR 7.305 (A) DOES NOT SUPPORT CERTIFICATION IN THIS CASE

The Governor, in his Executive Message dated August 12, 2011, requests that the Michigan Supreme Court grant immediate review in this case pursuant to MCR 7.305(A). The cited court rule reads:

Whenever a court or tribunal from which an appeal may be taken to the Court of Appeals or to the Supreme Court has pending before it an action or proceeding involving *a controlling question of public law*, and the question is of such *public moment* as to *require early determination* according to executive message of the Governor addressed to the Supreme Court, the Supreme Court may authorize the court or tribunal to certify the question to the Supreme Court with a statement of the facts sufficient to make clear.

MCR 7.305(A) (1) (emphasis added). This rule is not simply a procedural device to move a case to a forum that the requestor perceives as more favorable. As a result, MCR 7.305(A) is rarely used and such requests rarely granted.

In the past twenty years, Michigan governors had only requested review pursuant to MCR 7.305(A) (1) on very few occasions. In only one instance is the Supreme Court known to have granted the request. These cases reveal the extraordinary nature of such review and make clear that certification is not proper in this case.

The case of *In re Executive Message from the Governor*, 650 N.W.2d 326 (Mich. 2002) (Attached as Exhibit A) provides an example of the Supreme Court's traditional recognition that the lower courts should be permitted to first develop the legal and factual issues in a case and that certification is appropriate only in very rare instances. The underlying case was subsequently dismissed by *Wayne County Bd of Comm'rs v Wayne County Airport Auth*, 253 Mich App 144 (2002) and the request was then denied by *In re Executive Message from the Governor*, 467 Mich. 1208 (2002).

In that case, the lower court – in an original action brought before the Court of Appeals pursuant to MCR Rule 7.206 - considered a constitutional challenge to Public Act 90 of 2002. The Act transferred operational jurisdiction of two airports from Wayne County to a statutorily created airport authority. The challenge was based on the Act’s alleged violation of the Headlee Amendment – Art. IX of the Michigan Constitution.

While the case was pending in the lower court, Governor Engler submitted an Executive Message to the Supreme Court requesting review pursuant to MCR 7.305(A)(1). The rationale for seeking Supreme Court review in that case shares a great deal with Governor Snyder’s rationale in the case currently before the Court. Governor Engler’s Executive Message stated:

[T]he mere pendency of this litigation is having a deleterious effect on the operation and management of the state’s busiest airport [and that] delay in resolving the litigation will, in all likelihood have a significant negative impact on Michigan’s economy.

Yet, even after the Governor made this argument, the Supreme Court denied the Governor’s request for certification. This Court should do the same.

In considering Governor Engler’s request, the Supreme Court acknowledged that the “litigation [wa]s of considerable importance to the public” and “involve[d] important legal issues.” *In re Executive Message from the Governor*, 650 NW2d at 326. And, unlike the present case, related federal lawsuits had been substantively resolved prior to the Governor’s request, so there was a potential for bringing finality to the then-pending issues. See *Wayne County Bd of Comm’rs*, 253 Mich App at 158-59.¹

However, the Court recognized the extraordinary nature of the request when it issued an order for the lower court to expedite proceedings and subsequently denied the Governor’s request. In her

¹ The federal lawsuit had been dismissed, however technically remained pending to resolve certain issues pertaining to a potential award of attorneys’ fees.

concurrence, Justice Kelly cited practical reasons for the Court's holding and reasoned that the complexity of the legal issues were most appropriately developed in the lower court.

Even where the very notion of a republican form of government is at stake the Supreme Court has declined a Governor's request for certification. *See In re Executive Message from the Governor*, 444 Mich 1214 (1994). In that case, the Governor requested expedited review of questions in a case brought before the Eaton County Circuit Court. The case involved issues including:

[W]hether a referendum is "properly ... invoked" when petitions are filed with the Secretary of State, or only when the State Board of Canvassers certifies that the submitted petitions are sufficient to permit a referendum. Undoubtedly, this is an issue of paramount importance to our citizenry that implicates the sovereignty of the people as well as the very structure of state government.

Id. (Riley, J., dissent). Despite the "paramount importance" of the case, the majority of the Supreme Court properly recognized the necessity of issues being fully developed in the lower courts prior to the case being adjudicated by the state's highest court.

In addition, it is important to note that MCR 7.305(A)(1) imposes certain requirements before review can be granted. Most notably, there must be a "controlling question ... of such public moment ... as to require early determination." In short, the rule requires that resolution of the case issues will bring finality (i.e. *controlling* question) to a matter of public controversy (i.e. public moment), which if not resolved with extreme swiftness will result in some great detriment to the public (i.e. *require* early determination). Here, there are no controlling questions of a public moment that will bring finality to the controversy surrounding Public Act 4 of 2011.

As the basis of his request, Governor Snyder cites "[s]evere financial difficulties [that] face Michigan's local governments and school districts" as the public moment "requiring swift resolution of the constitutional claims presented in this litigation." In practically the same breath, the Governor admits that "[e]mergency managers are already in place to address fiscal crises in several Michigan

communities and the Detroit Public Schools.” As noted by the Governor, emergency managers are in place in three cities and one school district.

A financial emergency had been declared in each of the current cities and the Detroit Public Schools during 2009 and 2010. Under Michigan law, only seven municipalities are known to have ever had an emergency manager.² Of the cities that have emerged from their financial emergency, the average term of the emergency manager has been more than four years.³ The current emergency managers have been in place for between one or two years. None of the current locales with an emergency manager have been reported to be in any way close to emerging from their financial emergencies and if past precedent serves as an example, these emergency managers will be in place for years to come.

The present lawsuit has had no apparent impact on either the activities of the current emergency managers or on the actions of the Governor and State Treasurer in considering new emergency managers. All of the current emergency managers remain in place. These emergency managers are issuing orders and directives, and are conducting the business of their offices. The lawsuit has not named any of these individuals as defendants and does not seek injunctions against their actions. Likewise, the Governor and Department of Treasury continue to review the financial conditions of localities and to consider the appointment of new emergency managers.⁴ In short, the Governor fails to provide any specific instance of how the pending litigation interferes with the offices

² See State of Michigan, Department of Treasury website at http://www.michigan.gov/treasury/0,1607,7-121-1751_51556-253021--,00.html (last visited on September 8, 2011)

³ The cities of Highland Park, Hamtramck, and Flint had emergency managers for approximately 9 years, 4 years, and 4 years respectively. The Village of Three Oaks had an emergency manager for approximately 1 year.

⁴ See Paul Egan, “Snyder to pick review team for Highland Park Schools,” Detroit News, August 31, 2011 (reporting the Governor’s appointment of a financial review team for Highland Park School District) and Kristin Longley, “State reviewing Flint’s finances under controversial emergency financial manager law,” Flint Journal, August 26, 2011 (reporting that the Department of Treasury will begin a preliminary financial review in Flint).

of the current emergency managers or the actions of state officials. The Governor's boilerplate assertions and unarticulated hypothetical contingencies should be found insufficient as a matter of law to support the extraordinary review requested.

Moreover, there is no public moment that expedited review of this case will resolve. There is no question that resolution of this case will not end the severe financial difficulties faced by Michigan's municipalities and school districts. These difficulties began years ago and became most pronounced with the onset of the economic downturn faced by our nation in 2008 as a result of the national mortgage crisis. Additionally, swift resolution of this case will not resolve the controversy surrounding Public Act 4 of 2011. Presently, there are three other federal lawsuits challenging Public Act 4 of 2011 and the actions of emergency managers under the law. Each of these lawsuits will remain in the courts – likely for years to come – regardless of whether expedited review is taken in this case. There is also a public petition drive to repeal the legislation. Both the federal lawsuits and the petition drive will continue to cloud the ongoing validity of the Act independent of any outcome in this case.

Finally, as discussed more fully in the following section, there is significant factual discovery that needs to occur in this case before the issues are properly presented to the court as a matter of law. The trial court is the forum best-suited to manage and oversee the discovery process.

B. NECESSARY DISCOVERY IS PROPERLY CONDUCTED IN THE TRIAL COURT

Plaintiff's Complaint challenges the constitutionality of the Public Act 4 of 2011 on its face and as it has been applied in practice.⁵ For example, Paragraph No. 3 of the Complaint alleges:

⁵ At the August 31, 2011 status conference with the trial court, defense counsel pointed to wording within specific counts that arguably suggest the case is solely a facial challenge. At the time, counsel for the parties have entered

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.

See Plaintiffs' *Complaint* attached to the Executive Message from Governor Snyder (Emphasis added). At Paragraph No. 38, the *Complaint* further alleges:

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.

Id. (Emphasis added).

Plaintiffs' *Complaint* at Counts I and II alleges that powers granted by Public Act 4 violate provisions of the State Constitution that prohibit the delegation of legislative powers and that prohibit the adoption of local acts by state government except by 2/3 vote of the state legislature and a vote of local electors. *Id.* Both Counts require a determination of the status of emergency managers within state government. Before a decision can be reached on either issue, a factual determination will have to be made as to whether the emergency manager is an official or agent of the state executive office or another department of state government. This

into a stipulation for the filing of a First Amended *Complaint* that clarifies any confusion in that regard and make clear that the Plaintiffs' claims contest the validity of Public Act 4 on its face and as applied.

determination cannot be made without factual inquiry into the actual relationships between the Defendants and the existing emergency managers to determine the extent of intertwinement between these offices, control, and other relevant factors.

For the as-applied challenge presented by Count I and II, a factual inquiry is also necessary to determine the extent to which current emergency managers have actually undertaken legislative acts. Under the legislation, emergency managers are not required to provide notice of their orders or directives and are not required to publish resolutions or ordinances. As a result, it is wholly unclear what orders, directives, resolutions, and ordinances have been adopted by existing emergency managers and the role of the Defendants in the adoption of these instruments. Discovery is therefore necessary to confirm the full scope of violations occurring based on the allegations of Counts I and II.

Plaintiffs' Complaint at Count III alleges that Public Act 4 empowers emergency managers to take actions contravening city charters and to effectively repeal charter provisions in violation of electors' rights under the Michigan Constitution. *Id.* Again, emergency managers are not required to publish their directives, orders, resolutions, and ordinances and other actions. Plaintiffs need the procedures afforded by the rules of discovery to confirm the facts of the emergency manager's actions which relate to the claims stated in Count III.

At Count V, Plaintiffs' Complaint further alleges that Public Act 4 of 2011 imposes an increase in the activity and services of local government without making an appropriation and distribution to pay for increased necessary costs. As a result, Count V alleges a violation of the Headlee Amendment found in the state Constitution. Pursuant to the Amendment's implementing legislation, *de minimis* costs and costs that are offset by corresponding savings do not constitute "necessary costs." MCL § 21.233. Discovery is thus needed to confirm that the

costs imposed by provisions of the Act exceed the *de minimus* exceptions and have not been offset by any meaningful savings.

In the present case, the lower court has entered a scheduling order, the dates of which were proposed by the Defendants and agreed to by counsel for all the parties. Pursuant to this scheduling order, discovery will be completed by April 9, 2012.

Under the Michigan court system, Circuit Courts are vested with the power, have meaningful experience, and are best situated to expeditiously oversee discovery. As a result, the Governor's request for expedited review should be denied.

C. REQUEST TO RECUSE

While no Canon of Michigan's Code of Judicial Conduct directly addresses the issue, the American Bar Association's Model Code of Judicial Conduct provides guidance. At Rule 2.11, the Model Code reads:

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

* * *

(2) The judge knows that the ...the judge's spouse... is:

* * *

- (b) acting as a lawyer in the proceeding;
- (c) a person who has more than a *de minimis* interest that could be substantially affected by the proceeding; ...

Hon. Justice Stephen Markman's spouse is not an attorney in the case pending before the Ingham County Circuit Court; however, she is intimately involved in related litigation challenging the constitutionality of Public Act 4 of 2011. Kathleen Markman is one of two

named counsel from the state Attorney General’s office appearing on behalf of the Defendants in *The General Retirement System of the City of Detroit et. al. v. Richard Snyder and Andrew Dillion*, Case No. 2:11-cv-11686-SFC-LJM (hereinafter “pension lawsuit”), which is pending before the United States District Court, Eastern District of Michigan. (See appearance attached as Exhibit B). Mrs. Markman’s co-counsel in that case is Assistant Attorney General Michael F. Murphy, who is lead counsel for the Defendants in this case.

The pension lawsuit contests the constitutionality of Public Act 4 of 2011 under both the Michigan and United States Constitutions. At Count III of the pension lawsuit’s complaint, plaintiffs allege a violation of the charter provisions of Michigan’s Constitution at Art. VII, §22. (See Pension Lawsuit Complaint – Count III attached as Exhibit C). Those allegations are substantially the same as the allegations of Plaintiffs at Count III of the present lawsuit. The remaining Counts in the pension case allege violations of the contracts clause, due process clause, and equal protection clauses of the federal and state constitutions.

Any decision by this Court on these issues will most certainly be cited by Defendants in the pension case and be highly influential, if not determinative, in the federal court’s deliberations – particularly regarding Count III of the pension lawsuit. As counsel for the Governor and the Treasurer in the pension lawsuit, Mrs. Markman thus has a substantial interest in the outcome of that case and in the outcome of any decision of this Court in this case.

In light of the intense public scrutiny and controversy surrounding Public Act 4 and given the need for public confidence in any decision of this Court, Plaintiffs respectfully request that Hon. Justice Stephen Markman recuse himself from consideration of the Governor’s Executive Message and the issues of this case.

III. CONCLUSION

Immediate review by the Michigan Supreme Court pursuant to MCR 7.305(A) is not proper in this case. In short, there are no controlling questions of law regarding a public moment that will bring finality to the controversy surrounding Public Act 4 of 2011. Three pending federal court claims and a petition drive ensure that the controversy will continue into the foreseeable future. Likewise, the severe economic conditions faced by Michigan municipalities and school districts cannot fairly be claimed to likely abate by expedited resolution of this case. Discovery at the Circuit Court is also necessary before this case will be ripe for hearing on the issues presented.

For these reasons and as otherwise stated in this response, Plaintiffs' respectfully request that expedited review by the Michigan Supreme Court be denied.

Plaintiffs respectfully request oral argument on the issues raised by the Executive Message from Governor Snyder to the Chief Justice and Justices of the Michigan Supreme Court.

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Date: September 14, 2011

EXHIBIT A



IN RE EXECUTIVE MESSAGE FROM THE GOVERNOR

SC: 122182

SUPREME COURT OF MICHIGAN

650 N.W.2d 326; 2002 Mich. LEXIS 1589

September 6, 2002, Decided

JUDGES: **[**1]** Kelly J. (concurring in part and dissenting in part). Cavanagh, J., not participating.

OPINION

[*326] The Executive Message of the Governor pursuant to *MCR 7.305(A)* was received on August 19, 2002, requesting that this Court direct the Court of Appeals to certify certain questions for immediate determination by this Court. The proposed questions involve important legal issues, and the subject matter of the litigation is of considerable importance to the public. As such, we agree that the case merits substantial yet expeditious review. Accordingly, in lieu of acting

on the Governor's request at this time, we DIRECT the Court of Appeals to accelerate its briefing and oral argument schedule in *Wayne County Board of Commissioners v Wayne County Airport Authority*, Docket No. 241521, in order to deliver its opinion no later than September 24, 2002. The Executive Message shall remain under consideration.

CONCUR BY: Kelly (In Part)

DISSENT BY: Kelly (In Part)

650 N.W.2d 326, *; 2002 Mich. LEXIS 1589, **

DISSENT

Kelly J. (*concurring in part and dissenting in part*).

I agree that this case merits expeditious review. By everyone's admission, the constitutional law issues raised thus far are exceedingly complex. The Court of Appeals is in the best [**2] position to give thorough but speedy consideration to them, and that Court's opinion would be invaluable to this Court in the event of a further appeal. Accordingly, I agree that the Governor's request to bypass the Court of Appeals should not be granted at this time.

However, I would not accelerate to September 24, 2002 the timetable for rendering the Court of Appeals opinion. That Court has already set a highly accelerated series of deadlines for the parties which, in its judgment, makes possible a speedy but adequately considered ruling. It has been acting diligently to complete its work.

As of the date of this order, the parties have not completed their formulation of [*327] the issues; the case has not been fully briefed; and oral argument has not been heard. Yet, this Court's order demands a full written opinion from the Court of Appeals within eighteen days. I do not object to our urging a speedy opinion from the Court of Appeals. But, I believe that requiring it on the day now set for oral argument is unreasonable both for the parties and the Court of Appeals and does not promote the public interest. It demeans the integrity of the proceedings before the Court of Appeals and increases [**3] the probability of delay should one of the parties seek leave to appeal to this Court. Therefore, I would have agreed to give the Court of Appeals until October 8, 2002, two weeks after oral argument is heard, to issue its decision.

Cavanagh, J., not participating.

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE GENERAL RETIREMENT SYSTEM OF THE
CITY OF DETROIT, THE POLICE AND FIRE
RETIREMENT SYSTEM OF THE CITY OF
DETROIT, and, SUSAN GLASER, ALVIN
BROOKS, JAMES E. MOORE, and LAURA ISOM,
individually,

Plaintiffs,

v

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

Defendants.

No. 2:11-cv-11686-SFC-LJM

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APPEARANCE OF COUNSEL

Please enter our APPEARANCE as attorneys on behalf of Defendant Richard D. Snyder, Governor, and Andrew Dillon, Treasurer, State of Michigan, in the above action.

Bill Schuette
Attorney General

s/ M. Kathleen Markman
M. Kathleen Markman (P44739)
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Dated: May 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2011, I electronically filed a copy of Defendants Richard D. Snyder and Andrew Dillon's APPEARANCE with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Aaron O. Matthews (P64744) amathews@clarkhill.com

s/ M. Kathleen Markman
M. Kathleen Markman (P44739)
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EXHIBIT C

U.S. DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, THE
POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT, and
SUSAN GLASER, ALVIN BROOKS, JAMES
E. MOORE, and LAURA ISOM, individually,

Case No. _____

Hon. _____

Plaintiffs,

vs.

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

THERE IS NO OTHER PENDING OR
RESOLVED CIVIL ACTION ARISING
OUT OF THE TRANSACTIONS OR
OCCURRENCES ALLEGED IN THIS
COMPLAINT.

Defendants.

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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

employee is entitled are determined in accordance with the terms and conditions of the respective collective bargaining agreements between the City and the employee's bargaining unit, in connection with the City Charter and Municipal Code.

106. By allowing for the transfer of the assets, administration, and control of the GRS and PFRS to an emergency manager or, potentially, to some other retirement system, the Act has (a) significantly impaired the contractual rights of Plaintiffs and other members of the Detroit Retirement Systems as negotiated in their respective collective bargaining agreements by limiting or eliminating their representation in the administration of their pension benefits and unilaterally altering their benefits structure; (b) done so without a legitimate public purpose; and (c) resulted in an unreasonable effect on the law of contracts.

107. This impairment of the collective bargaining agreements and the contractual rights of Plaintiffs and other members of the Detroit Retirement Systems violates the Michigan Constitution.

108. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 1, §10.

COUNT III

VIOLATION OF THE HOME RULE PROVISION OF THE STATE OF MICHIGAN CONSTITUTION

109. Plaintiffs incorporate paragraphs 1-108 of this Complaint with the same force and effect as if fully set forth herein.

110. The Michigan Constitution provides that the electors of each city "shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city." Const 1963, art 7, §22.

111. These powers and authorities are further expanded by the Home Rule Act.

112. As authorized by the Michigan Constitution and the Home Rule Act, the Detroit City Charter provides that the City has the authority to create and maintain retirement systems for its employees, and provides for the creation of the GRS and the PFRS and their respective Boards.

113. The Act effectively amends the Detroit City Charter without the consent or a vote of the citizens of Detroit by usurping and voiding the City's sole authority and power to create and administer local pension systems for the benefit of the employees of the City of Detroit.

114. The Act therefore violates the Michigan Constitution.

115. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 7, §22.

COUNT IV

VIOLATION OF THE TAKINGS CLAUSE OF THE UNITED STATES CONSTITUTION

116. Plaintiffs incorporate paragraphs 1-115 of this Complaint with the same force and effect as if fully set forth herein.

117. The United States Constitution prohibits the taking of private property without just compensation. US Const, Am V.

118. The Fifth Amendment to the United States Constitution is applicable to the states through the Fourteenth Amendment to the United States Constitution. US Const, Am XIV

119. Plaintiffs and other members of the Detroit Retirement Systems have vested property rights in the benefits to which they are entitled and vested rights in representation in the administration of their pension benefits and assets.

120. By allowing for the transfer of the assets, administration, and control of the GRS and PFRS to an emergency manager or, potentially, to some other retirement system, the Act