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GOVERNOR

STATE OF MICHIGAN
EXECUTIVE OFFICE
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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.¹

Severe financial difficulties face Michigan's local governments and school districts,² 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.

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

² 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,

A handwritten signature in black ink, appearing to read "Rick Snyder", written in a cursive style.

Rick Snyder
Governor

Attachment