IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CATHERINE PHILLIPS, et al.,

Plaintiffs,

vs.

RICHARD D. SNYDER, et al.,

Defendants.

Case No. 2:13-cv-11370-GCS-RSW

Hon. George Caram Steeh

_____/

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF FOR THE AMERICAN CIVIL LIBERTIES UNION FUND OF MICHIGAN

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The American Civil Liberties Union Fund of Michigan (ACLU Fund of Michigan), by and through its attorneys, hereby moves the Court for leave to file an *amicus curiae* brief in opposition to Defendants' motion to dismiss Plaintiffs' Complaint. In support of this Motion, the ACLU Fund of Michigan relies upon its appended proposed Brief.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*

The American Civil Liberties Union Fund of Michigan is the Michigan affiliate of a nationwide nonpartisan organization of nearly 500,000 members dedicated to protecting the liberties and civil rights guaranteed by the United States Constitution. The ACLU is widely recognized as one of the foremost defenders of social, civil and political rights. More generally, the organization has an unswerving commitment to the preservation of a democratic society. We believe that this case presents an important challenge to a law that threatens the fundamental tenets of democracy. We further believe that our *amicus curiae* brief will bring additional authorities and perspectives to the attention of the Court.

SUMMARY OF THE ARGUMENT

This action challenges the constitutionality of Public Act 436 ("the emergency manager law"), a Michigan statute that purports to address "emergencies" in ways that suspend the political rights of more than 50 percent of people of African descent in Michigan.

The U.S. Constitution is silent as to when it is permissible to suspend constitutionally-guaranteed political rights. In the absence of constitutional guidance, U.S. courts have frequently considered international and comparative law. As *amicus curiae*, the ACLU of Michigan presents herein an international law analysis to demonstrate that the State of Michigan has established a threshold for the suspension of the political rights of its citizens that is substantially lower than the standards demanded and expected of countries throughout the world.

Under international law, a nation must refrain from suspending political rights unless the emergency "threatens the life of the nation." However, the "emergencies" set forth in Michigan's emergency manager law pale in comparison to the type of severe conditions that justify the displacement of elected officials under international law and therefore the emergency manager

law violates international norms. Further, even in cases where derogation from rights is permitted under international law, the government cannot suspend rights in a way that discriminates on the basis of race. Discrimination occurs under international law when conduct has either the "purpose or effect" of causing inequality. The disproportionate targeting of cities with substantial black populations for emergency management violates international law because its effect is to deprive the residents of those cities of political rights enjoyed by others.

The case at bar provides an opportunity for Michigan law to be conformed to standards that are applied to countries around the world, and the pending motion to dismiss this action should be denied.

ARGUMENT

I. INTERNATIONAL LAW STANDARDS FOR THE DECLARATION OF PUBLIC EMERGENCIES PROVIDE USEFUL GUIDANCE IN EVALUATING WHETHER THE CONDITIONS THAT LED TO THE PASSAGE OF THE EMERGENCY MANAGER LAW JUSTIFY THE SUSPENSION OF CONSTITUTIONALLY-GUARANTEED POLITICAL RIGHTS AND WHETHER THE APPLICATION OF THE LAW CONSTITUTES UNLAWFUL RACIAL DISCRIMINATION.

Plaintiffs in this matter challenge the constitutionality of Michigan's Public Act 436, widely known as "the emergency manager law." The law effectively authorizes the suspension of certain political rights of the people who live in jurisdictions governed by emergency managers. Those rights include voting for local representatives, acting through elected representatives, and having access to local officials who are accountable to residents. Plaintiffs also claim that the law is being applied in a racially discriminatory manner.

It is useful to consider international law principles in this case on the question of whether conditions permitting the appointment of an emergency manager are sufficiently severe to justify

the suspension of political rights for several reasons. First, the U.S. Constitution, which is usually the source of authority in cases where constitutionally-guaranteed political rights are at issue, does not contain a comprehensive framework for the suspension of rights it confers. In some areas the standards are clear. For example, Article I, section 9 provides that the privilege of writ of habeas corpus can be suspended if there is "…rebellion or invasion [and] the public safety may require it." Similarly, the Fifth Amendment suspends the right to a grand jury for soldiers on active duty during periods of war and public danger. Nonetheless, there is silence with respect to the constitutional rights at issue in this case: the right to due process, equal protection, and the right to petition government.

In the absence of constitutional or other statutory guidance on particular questions of law, courts have found it useful to look to relevant international law standards for guidance. *See, e.g., Roper v. Simmons*, 543 U.S. 551, 575-79 (2005) (indicating that the court views "international authorities as instructive"); *Sun Oil v. Wortman*, 486 U.S. 717, 724 (1988) (international law consulted to inform interpretation of the Full Faith and Credit Clause.); *Murray v. The Charming Betsey*, 6 U.S. 64 (1804) (holding that a domestic statute must be construed so as not to conflict with international law).

Second, the Constitution's framers intended for government officials to honor the protections contained in treaties signed by the United States. As Article VI specifically states,

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and **all Treaties made**, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land**; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI (emphasis added).

Third, customary international law has been recognized as persuasive authority: "[W]here there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations." *The Paquette Habana*, 175 U.S. 677, 700 (1900). The practice of drawing from international and comparative jurisprudence to inform the development of domestic law is well-established in U.S. courts. This has been true even in cases where international law has not been binding or precedential. The courts have found empirical and persuasive value in the experiences of other nations and international bodies as they have addressed constitutional issues of shared concern. *See, e.g., Graham v. Florida*, 560 U.S. 48 (2010) (acknowledging that while not binding, international law provides important confirmation and persuasive support for the court's conclusions); *Estelle v. Gamble*, 429 U.S. 97, 104 fn 8 (1976) (The court included U.N. minimum standards for prisoner medical care in a list of model codes to demonstrate universal consistency of prison health care requirements.); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) (In a case where parents faced deportation and separation from their children, the court looked to international human rights law to affirm the importance of family integrity both domestically and internationally.); *Rodriguez-Fernandez v. Wilkinson*, 654 F.2d 1382, 1388 (10th Cir. 1981) (The court judged it "proper then to consider international law principles for notions of fairness as to propriety of holding aliens in detention.").

In *Tayyar v. New Mexico*, 495 F. Supp. 1365 (D.N.M. 1980), the court acknowledged a responsibility to ensure that its rulings are consistent with international law standards for the broader purpose of encouraging protection of human rights abroad.

> This policy [of non-discrimination] is reflected in the United States' strong support for developing international human rights standards, as expressed, for example, in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, both of which provide for

> equal access for all to higher education, on the basis of capacity, without discrimination on the basis of national origin or other status. The introduction of such discrimination by law within a jurisdiction of the United States would be damaging to United States efforts to promote the widest realization internationally of human rights goals and standards.

Id. at 1378.

Thus, it is appropriate to look to international law for guidance. In this case, as explained below, international law does not permit the suspension of rights simply because government officials declare a "state of emergency"; rather, conditions must be present that threaten the nation. Further, when conditions truly reach the level of an emergency justifying the suspension of civil and political rights, international law addresses whether governments may suspend rights in a way that disproportionately impacts racial minorities.

II. THE EMERGENCY MANAGER LAW VIOLATES INTERNATIONAL LAW BECAUSE: 1) THE CONDITIONS THAT LEAD TO THE APPOINTMENT OF AN EMERGENCY MANAGER UNDER MICHIGAN'S EMERGENCY MANAGER LAW ARE NOT SUFFICIENTLY SEVERE TO JUSTIFY THE SUSPENSION OF CIVIL AND POLITICAL RIGHTS, AND 2) IMPLEMENTATION OF THE EMERGENCY MANAGER LAW HAS A DISCRIMINATORY EFFECT ON PEOPLE OF COLOR

A. The Civil and Political Rights Affected by the Emergency Manager Law

Article 25 of the International Covenant on Civil and Political Rights ("the Covenant") provides:

> Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: a) to take part in the conduct of public affairs, directly or through freely chosen representatives; b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; c) to have access, on general terms of equality, to public service in his country.

The emergency manager law limits or suspends these rights. M.C.L. § 141.1549 provides in relevant part:

> Upon appointment, **an emergency manager shall act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.** The emergency manager shall have **broad powers** in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare. Following appointment of an emergency manager and during the pendency of receivership, **the governing body and the chief administrative officer of the local government shall not exercise any of the powers of those offices except as may be specifically authorized in writing by the emergency manager** or as otherwise provided by this act and are subject to any conditions required by the emergency manager.

(Emphasis added).

This provision essentially usurps the power of local government and any power that may have been possessed by the governed. The substitution of an emergency manager for duly-elected mayors and city councils effectively nullifies the votes of the electors resulting in a loss of the right to vote. Government by a sole, appointed manager effectively deprives the governed of the right to a republican form of government. When elected officials are stripped of their authority to act except on occasions when the emergency manager gives written authorization, the governed lose their right to petition government because the emergency manager may act unilaterally and without consulting either elected officials or the electors. These and other rights lost by the governed exist under both international and domestic law.

The suspension of rights is contemplated under the Covenant, but only under limited circumstances. Article 4 provides in relevant part:

> In time of public emergency **which threatens the life of the nation** and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.

(Emphasis added).

The Covenant has been ratified by the U.S., and while it is a non-self-executing treaty that is not enforceable under domestic law, a non-self-executing treaty can nevertheless create binding international obligations on the federal and state governments. *Medellin v. Texas*, 552 U.S. 491, 504 (2008). Other international conventions likewise provide for derogation from rights in times of emergency. Article 27(1) of the American Convention on Human Rights provides:

> In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, **provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.**

(Emphasis added.)

Similarly, Article 15(1) of the European Convention on Human Rights provides:

> In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Likewise, Article 30 of the 1961 European Social Charter provides:

> In time of war or other public emergency threatening the life of the nation any Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

Because the emergency manager law deprives select residents of the state of the right to participate in a representative democracy, the first inquiry must concern whether an "emergency" contemplated by the emergency manager law rises to a level that, under

international law standards, allows for derogation from the civil and political rights of the citizens of Michigan.

B. The "Emergencies" Contemplated by the Emergency Manager Law Do Not Meet International Law Standards

The United Nations Human Rights Committee (or "Committee") considers questions and disputes related to the Covenant on Civil and Political Rights and renders opinions on these issues. The Committee's interest in limiting derogation to the most extreme emergencies has prompted its review of domestic legislation that defines the term "emergency" too broadly. Tanzania, the Dominican Republic, Uruguay, Bolivia and Colombia among others became the subjects of criticism by the Committee for laws that provided excessive leeway in the characterization of local problems.[1]

Characterization of an emergency as one that "threatens the life of the nation" suggests extreme circumstances. Dr. Angelika Siehr explained:

> In practice, States have mostly referred to internal difficulties like insurrectional situations (Algeria, Ecuador), vandalism and the use of firearms (Argentina), serious political and social disturbances (Bolivia, former Yugoslavia), terrorist activities (Chile, Colombia, Israel, Nepal, Peru, United Kingdom of Great Britain and Northern Ireland), subversive activities (Ecuador, Bolivia), serious internal unrest caused by an economic crisis (Ecuador; similar Bolivia; general strike, hyperinflationary crisis), natural disasters (Guatemala: Hurricane Mitch; Ecuador: severe storm), outbreaks of violence, clashes between demonstrators and units of defense forces (Panama), acts of sabotage (Peru, Sri Lanka), violence caused by drug traffickers (Colombia, Peru), the need to ensure the rational use of natural resources (Peru), the need to avert a civil war, economic anarchy as well as destabilization of state and social structures (Poland), violent nationalistic clashes (Russian Federation), civil war, a very chaotic socio-economic and political situation, lawlessness and armed robbery (Sudan), the threat from international terrorism (United Kingdom of

[1] *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Chapter 16, United Nations (2003).

> Great Britain and Northern Ireland), the attempt to assassinate the President of the Republic (Venezuela).[2]

The circumstances prompting these countries to declare emergencies are not always guaranteed to be regarded by the Committee as justification for a prolonged state of emergency. Dr. Siehr cited Colombia, Chile and Israel as examples of states that attempted to improperly claim extended states of emergency for national difficulties that did not warrant such a response.[3]

Likewise, the green light for derogation from human rights is not freely given.

> The ultimate purpose of derogations under international law is to enable the States parties concerned to return to normalcy, i.e., to restore a constitutional order in which human rights can again be fully guaranteed…The crisis situation justifying the derogation must be so serious as to actually constitute a threat to the life of the nation (universal and European levels) or its independence or security (the Americas). This excludes, for instance, minor riots, disturbances and mass demonstrations.[4]

More particularly, Principle No. 41 of "The Siracusa Principles"[5] states: "Economic difficulties per se cannot justify derogation measures."[6]

When measured against these standards, it is readily apparent that the Michigan emergency manager law is a misnomer. M.C.L. §141.1545 defines a financial emergency as follows:

> A financial emergency exists within a local government if any of the following occur:
>
> (i) The report under subsection (3) concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next

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[2] Ratification and Implementation of the ICCPR and Right to Health, by Dr. Angelika Siehr (The Hague) 8-9 November 2004.
[3] Id.
[4] *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Office of the High Commissioner for Human Rights (2003).
[5] A set of principles governing the derogation provisions of the ICCPR developed by international law experts convening in Siracusa, Sicily in 1984.
[6] United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985).

succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare.

(ii) The local government has failed to provide timely and accurate information enabling the review team to complete its report under subsection (3).

(iii) The local government has failed to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(iv) The chief administrative officer of the local government concludes that 1 or more of the factors in subsection (3) exist or are likely to occur within the current or next succeeding fiscal year and threaten the local government's current and future capability to provide necessary governmental services essential to the public health, safety, and welfare, and the chief administrative officer recommends that a financial emergency be declared and the state treasurer concurs with the recommendation.[7]

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[7] The factors listed in "subsection 3" include: (a) A default in the payment of principal or interest upon bonded obligations, notes, or other municipal securities for which no funds or insufficient funds are on hand and, if required, segregated in a special trust fund. (b) Failure for a period of 30 days or more beyond the due date to transfer 1 or more of the following to the appropriate agency: (i) Taxes withheld on the income of employees.

(ii) For a municipal government, taxes collected by the municipal government as agent for another governmental unit, school district, or other entity or taxing authority.

(iii) Any contribution required by a pension, retirement, or benefit plan.

(c) Failure for a period of 7 days or more after the scheduled date of payment to pay wages and salaries or other compensation owed to employees or benefits owed to retirees.

(d) The total amount of accounts payable for the current fiscal year, as determined by the state financial authority's uniform chart of accounts, is in excess of 10% of the total expenditures of the local government in that fiscal year.

(e) Failure to eliminate an existing deficit in any fund of the local government within the 2-year period preceding the end of the local government's fiscal year during which the review team report is received.

(f) Projection of a deficit in the general fund of the local government for the current fiscal year in excess of 5% of the budgeted revenues for the general fund.

(g) Failure to comply in all material respects with the terms of an approved deficit elimination plan or an agreement entered into pursuant to a deficit elimination plan.

(h) Existence of material loans to the general fund from other local government funds that are not regularly settled between the funds or that are increasing in scope.

The conditions described by Michigan's emergency manager law pale in comparison to emergencies that have satisfied the international law standards for public emergencies. In those cases there have been wars, natural disasters, civil unrest and other comparably disastrous events. More particularly, when economic conditions have been cited as the basis for a state of emergency, circumstances have been so catastrophic that the "life of the nation" has indeed been threatened.

For example, between 1998 and 2000, Ecuador was essentially bankrupted by the collapse of oil prices and the destruction of its agricultural exports by El Nino-induced storms. The country was forced to abandon its own currency and adopt the U.S. dollar, thereby losing its economic sovereignty and giving the U.S. control of its money supply. In another case, Bolivia (which during the late 1980s is said to have been the poorest country in South America) confronted a general strike when the government found itself unable to increase wages to ameliorate the impact of hyper-inflation.

In fact, the UN Human Rights Committee has explained that "not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation." (*See* UN doc. GAOR, A/56/40 (vol. 1) p. 202). If the basis for derogation from

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(i) Existence after the close of the fiscal year of material recurring unbudgeted subsidies from the general fund to other major funds as defined under government accounting standards board principles.

(j) Existence of a structural operating deficit.

(k) Use of restricted revenues for purposes not authorized by law.

(l) The likelihood that the local government is or will be unable to pay its obligations within 60 days after the date of the review team's reporting its findings to the governor.

(m) Any other facts and circumstances indicative of local government financial emergency.

the civil and political rights of Michigan's residents rests in findings based on criteria established by the emergency manager law, then it is insufficient to satisfy international law standards for the existence of an emergency, and all rights should be preserved.

C. The Emergency Manager Law's Discriminatory Effects Against People of African Descent Preclude Its Use as a Basis for the Suspension of Rights

Even if the emergency manager law standards were consistent with international law standards for emergencies, the discriminatory effect of the law's implementation would preclude derogation from political rights. The International Covenant on Civil and Political Rights ("the Covenant") states that derogation is allowed only if "such measures are not inconsistent with [a state's] obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin."[8]

An authoritative interpretation by the United Nations Human Rights Committee of the term "discrimination" as used in the Covenant indicates that the discrimination referenced in the above-quoted provision need not be intentional. Rather, a neutral policy that has a negative disproportionate impact on people of color also violates the Covenant. In this case the impact is on Michigan's black population. A United Nations Human Rights Committee comment states:

> [T]he Committee believes that the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the **purpose or effect**

[8] International Covenant on Civil and Political Rights, 999 UNTS 171 and 1057 UNTS 407/[1980] ATS 23/6 ILM 368 (1967), art. 4.

> of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.[9]

(Emphasis added).

The reference to "purpose or effect" highlights the fact that prohibited discrimination need not be intentional. It is also worth noting that the prohibition of discrimination elsewhere in the Covenant contemplates discrimination that results from disparate impact. In *Althammer v. Austria* (Communication No. 998/2001. Views of 8 August 2003), the Committee discussed Article 26[10] of the Covenant:

> [A] violation of Article 26 can also result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate. However, such indirect discrimination can only be said to be based on the grounds enumerated in Article 26 of the Covenant if the detrimental effects of a rule or decision exclusively **or disproportionately affect persons having a particular race**, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, rules or decisions with such an impact do not amount to discrimination if they are based on objective and reasonable grounds.[11]

(Emphasis added)

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[9] Human Rights Committee, General Comment 18, Non-Discrimination (37th session 1989). It is also worth noting that Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination provides: "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: … (c) Political rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service."

[10] Article 26 provides: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

[11] As quoted in: "Experience of the application of Article 26 of the International Covenant on Civil and Political Rights," by: Professor Martin Scheinin, Abo Akademi University (Finland) [Paper submitted at Non-Discrimination: A Human Right – Seminar to mark the entry into force of Protocol No. 12, Strasbourg, October 11, 2005.]

The plaintiffs in this matter allege, among other things, that Michigan's Public Act 436 (the "emergency manager law") is racially discriminatory. Paragraph 88 of the Complaint states:

> As a result of the Defendants' actions under Public Act 436, fifty two (52%) of the state's Black/African-American population will come under the governance of an emergency manager or consent agreement. In each of these communities, citizens will have either lost or experienced severe restrictions on their right to vote and to participate in public affairs.

The discriminatory impact along racial lines is clear. Plaintiffs' Complaint references the appointment of emergency managers for: Pontiac (52.1% black); Ecorse (46.4 % black); Flint (56.6% black); Benton Harbor (89.2 % black); Inkster (73.2% black); River Rouge (50.5% black); Highland Park (93.5% black); Muskegon Heights (78.3% black); and the City of Detroit (82.7% black). Allen Park is the only city with an emergency manager that has a relatively small black population (2.1%).[12]

Because cities with sizeable black populations have been selected for emergency management when there is a statewide economic crisis and other cities without substantial black populations are also in distress, the emergency manager law threatens to institutionalize a system of government that maintains two systems of governance in this state: one for wealthy, predominantly white communities that retain their ability to elect their representatives and be governed by them; and another for low-income, predominantly urban communities of color, that must surrender self-government to the control of one or more emergency managers who operate under the authority of the state executive.

The economic circumstances of cities with substantial populations of African descent must be considered in a historical context in order to fully appreciate how discrimination manifests itself in emergency management. Like many northern regions, Michigan became a destination for descendants of those who had been enslaved and who

[12] On the date of filing of this brief comes news of the appointment of an emergency manager for Hamtramck.

themselves had experienced discrimination in the southeastern United States.[13] Michigan's attractiveness was enhanced by a booming automobile industry that contributed to the birth and growth of a black middle class.[14] As was the case in many urban areas, the arrival of new black populations triggered "white flight" to suburban regions.[15] The fortunes of black urban communities were heavily tied to the fate of the auto industry itself, and with its decline came an era of widespread poverty.[16]

While some might debate the question of where fault lies for the predicament of Michigan's black urban communities, there can be no suggestion that the emergency manager law appeared on a blank slate.[17] Michigan's racial and economic circumstances were already in place at the time that the law was conceived, and the fact that it would affect Benton Harbor, Flint, Detroit and other cities with substantial impoverished populations of color was more than obvious. Identifying these cities as focal points for assistance is not discriminatory. However, when measured against previously cited international law standards, decisions to interfere with or eliminate fundamental political freedoms of the residents of these cities as part of the emergency management process constitutes a practice that is strictly proscribed because of its discriminatory effect.

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[13] The Origins of the Urban Crisis: Race and Inequality in Post-War Detroit, by Thomas Sugrue, Princeton University Press (2005) p. 7.
[14] *Id.* at p. 95.
[15] *Id.* at p. 8 and p. 266.
[16] *Id.* at p. 126.
[17] *Id* at pp. 270-71. Sugrue argues that the economic plight of Detroit is the consequence of industrial and racial problems decades in the making after World War II. He further suggests that not only is it an error to conclude that the city's decline is the result of governmental mismanagement that began after urban rebellions of the 1960s, but also that the conditions inherited by Mayor Coleman Young and his successors presented challenges that would likely have confounded anyone attempting to govern the city.

CONCLUSION

The emergency manager law does not address the types of serious "emergencies" contemplated by international law standards. Consequently, no basis exists for derogation from the human rights of residents of affected cities. Even if actual emergencies existed, implementing the emergency manager law in a manner that strips the black community of its rights to participate in a genuinely representative democracy violates the international law prohibition of acts that have a disparate impact on racial groups. Given the historical context and contemporary circumstances, implementation of the emergency manager law has a racially discriminatory effect and it therefore cannot be the basis for derogation from the political rights of people of color in Michigan. The Plaintiffs' Complaint provides an opportunity for this honorable Court to consider in full the merits of the emergency manager law, and Defendants' pending motion to dismiss should be denied.

Respectfully submitted,

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Date: June 27, 2013

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2013 I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

/s/Brenda Bove