

**TESTIMONY OF PROFESSOR JOCELYN BENSON
FEBRUARY 21, 2012**

Thank you for providing me with an opportunity to testify before your committee today. My comments will address Section 2 of the Voting Rights Act and whether Michigan's "Emergency Financial Manager Law," Public Act 4, is a potential violation of Section 2.

Almost fifty years ago, civil rights activists across the country rejoiced in the passing of the Voting Rights Act. It was a crowning achievement of the civil rights movement and the culmination of a bloody series of events seeking to add statutory protections to ensure that no citizen was denied the right to vote or elect their candidate of choice on account of race or color.

Under Section 2 of the Voting Right Act, a private party or the Justice Department can bring a suit to challenge any existing voting practice or apportionment scheme that "results in a denial or abridgment" of the right to vote on the basis of race, color, or language-minority status. Section 2 claims require a court to evaluate the "totality of the circumstances" under which the law is being enforced in order to determine whether a violation has occurred. In other words, the court must examine the overall context of the election systems to determine whether the challenged election law causes minority voters to have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."¹

There is little known evidence that PA4 was enacted to intentionally target communities of color. Its trigger is neutral and based upon financial solvency of the municipality or school district.

However, there is significant evidence amended Emergency Financial Manager law has a disproportionate impact on the state's Black and Latino population. Of Detroit's 713,777 residents, 89 percent are African-American. About 89 percent of Benton Harbor's residents are black. That number is 46 percent in Ecorse, 52 percent in Pontiac and nearly 57 percent in Flint. The city of Inkster (population 25,369), which recently got an EM, has a black population of 73 percent. Having EMs in these cities would mean that unelected officials would govern the majority of the state's black population. This would suggest that, under the totality of the circumstances, this law's application and enforcement would result in African Americans having less opportunity for self-governance than other members of Michigan's electorate.

In addition, the way in which the law is being enforced does send an implicit message of disempowerment and suppression. Imagine going to the polls on Election Day to vote in your city elec-

¹ In the context of redistricting schemes challenged under Section 2, the courts have developed three prima facie factors that must be satisfied before a court can determine whether, under a totality of the circumstances, a Section 2 violation has occurred. These preconditions are: (1) the minority group is "sufficiently large and geographically compact to constitute a majority" in a single-member district; (2) the minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it usually to defeat the minority-preferred candidate. If these conditions are met, the Court has sometimes ordered the creation of majority-minority districts to "ensure equal political and electoral opportunity" to minority voters.

tion, only to hear on the radio that your vote for mayor will likely be overruled by a state authority appointing an emergency manager to take over the city?

That is exactly what happened in Flint – a majority Black city - last November, when state officials announced on Election Day that they would likely appoint an emergency manager to oversee Flint's finances after declaring a financial emergency in the city.

I believe strongly in reforms that have the potential to improve government service, and improve the political arena. Reforms that promote and require accountability and transparency from our public officials can change government for the better. Solutions that improve the efficient and cost effective delivery of government services make society better. Changes that give citizens a greater voice in their government, such as campaign finance or redistricting reforms, are long overdue and can create a better political arena.

These types of reforms can bring us closer to the ideals imbedded in the Voting Rights Act, and our US and Michigan Constitutions – documents that established branches of governments that were to be of, for, and accountable to the people.

But Michigan's Emergency Financial Manager law takes us further away from those ideals.

Now, to be clear, the state's fiscal health is dependent upon the solvency of its cities and towns, and Michigan has an interest in protecting its local governments. But it is inconsistent with democracy for these “managers” to take a shortcut around the democratic process in order to gain local authority.

They should have to run in a local election to gain the job of running the place. Because if they are going to be empowered to essentially run the local government, they should have to convince more people than the Governor that they are right for the job. They should be able to win over people who live in the locality, and convince them that they have what it takes to fix their town.

At the very least, in times of financial emergency, managers should be appointed with the consent of the citizens over which they will have authority. And those citizens should not only have a say in who is appointed as manager, they should also be able to have the ability to remove a manager who has abused their power or exceeded their authority without the current high hurdles in the law.

There are multiple ways in which one can enable this type of consent, ranging from a special election to the creation of a local committee to review and approve the appointment of the manager. But without some sort of “check,” this reform eliminates local residents' ability to influence and oversee their own local governing body. As a result, those citizens' votes, their legal authority in a democracy, lose their meaning.

Another solution is for the state to agree to restore the terrible cuts made to revenue sharing that have hurt our cities – Detroit in particular, as well as Flint and Benton Harbor. The state should also commit to train local elected officials and equip local leaders with the same resources they are giving to the Emergency Managers. And appointed Emergency Managers should, as they are now, serve in their capacity as consultants, not dictators. They should still be empowered to review a city

or district's finances and overall infrastructure, but should not be granted unilateral, unaccountable authority in making permanent changes.

The managers should instead be permitted to only implement temporary changes, and make a recommendation for any long term or permanent changes that can best address the crisis. Citizens should then be given the opportunity at the next possible election date to review and vote on enacting aspects of those recommended changes - thereby empowering voters to direct their state and city on the solutions they would like to see implemented.

This solution, of course, would take a lot more time than simply appointing someone to take over the management of a locality. But it would promote the development of new and creative approaches to problem solving, override potential political log jams that may be preventing progress, while also preserving important aspects of citizen authority.

Thank you for the opportunity to testify before you today.