

U.S. House of Representatives
Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Twelfth Congress

December 1, 2011

The Honorable Eric Holder
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Attorney General:

I write to request that you immediately review and monitor and, if necessary, challenge the application of Michigan's Emergency Manager (EM) law,¹ which could lead to the appointment of an unelected financial manager overseeing the governance of the City of Detroit.

As enacted, this law allows the Governor, after following a specified review process, to take over a local government or school district by appointing a manager to assume the authority and responsibility of locally elected officials. It includes the power to terminate collective bargaining agreements and contracts and even to dissolve outright a unit of government. The media is reporting that Governor Rick Snyder is planning to initiate this process as early as tomorrow by calling for a financial review of the City of Detroit.²

As the Ranking Member of the House Judiciary Committee, and a representative of large parts of the City of Detroit as well as Allen Park, Hamtramck and Highland Park, I have grave and myriad concerns about the Emergency Manager law. Among other things, allowing the unilateral termination of collective bargaining agreements and contracts outside of a bankruptcy proceeding would appear to violate the Contract Clause of the U.S. Constitution, which provides that "No State shall . . . pass any . . . Law impairing the Obligation of Contracts."³ The Supreme Court has interpreted the Contract Clause to prohibit "the States [from retroactively] modify[ing]

¹2011 Mich. Pub. Acts 4.

²See, e.g., Suzette Hackney, *Snyder to Begin Process for Detroit Emergency Manager*, DETROIT FREE PRESS, December 1, 2011, available at <http://www.freep.com/article/20111201/NEWS01/111201029/Snyder-begin-process-Detroit-emergency-manager?odyssey=tab|topnews|text|FRONTPAGE>.

³U.S. CONST. art. I, § 10, cl. 1.

their own contracts as well as . . . regulat[ing] those between private parties.”⁴

The EM also would appear to violate the Voting Rights Act, which prohibits practices or procedures that discriminate on the basis of race or color.⁵ In this case, while the law itself may be facially neutral, it would seem that it is being applied in a discriminatory fashion, as the impacted jurisdictions have very high proportions of African Americans and other minorities. For example, the EM law has so far been applied to the cities of Benton Harbor, Ecorse, Flint, Hamtramck, Highland Park and Pontiac, the Village of Three Oaks, and the public schools systems in cities of Detroit and Inkster. By initiating the process that would add the City of Detroit to the list of EM jurisdictions, another largely African American jurisdiction, the State would be perpetuating the discrimination on an even more egregious scale.

Finally, application of the EM law would also appear to be inconsistent with Article 4, Section 4 of the U.S. Constitution, which provides for a republican form of government in the states. The Supreme Court has previously held that this clause guarantees the people the right to a democratically elected form of government.⁶ It goes without saying that appointing an unelected manager in place of an elected Mayor, City Council and other public officials would be totally antithetical to the concept of democracy.

It is particularly galling that the State of Michigan would consider such a radical and draconian step at a time when it is in apparent violation of a revenue sharing agreement with the City of Detroit. Under an agreement struck with the State in 1998, the City agreed to reduce its income tax rates in exchange for a freeze in state revenue sharing funds set at \$333.9 million per year.⁷ The State of Michigan reneged on the bargain when it amended the law and reduced the City’s proportion of revenue sharing by a total—thus far—of \$220 million.⁸ That loss of revenue accounts for a significant portion of the City of Detroit’s current structural deficit. In addition, the City has lost approximately \$400 million in revenue because the state has denied its ability to return to the voter approved 1981 income tax rate.

While I fully appreciate the magnitude of the fiscal crisis impacting the City of Detroit, there are less disruptive and lawful means of resolving the crisis, other than eliminating the very

⁴*U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 17 (1977).

⁵*See* 42 U.S.C. § 1973(a) (2006).

⁶*Kiernan v. Portland*, 32 S. Ct. 231, 234 (1912).

⁷1998 Mich. Pub. Acts 532.

⁸Steve Pardo, *Michigan Reneged, Cut Detroit Aid, Bing Charges*, THE DETROIT NEWS, November 17, 2011, available at <http://detnews.com/article/20111117/METRO01/111170419/Michigan-reneged--cut-Detroit-aid--Bing-charges>.

rights and protections our nation was founded on – democracy, the right to vote, and the right to contract.

For the reasons outlined above, I believe the Justice Department has ample authority to review and if necessary challenge this unilateral exercise of power by the State towards the City of Detroit and other jurisdictions. I would ask the Department to do so expeditiously, given the very high stakes and very limited time frame involved in the present matter.

Sincerely,


John Conyers, Jr.
Ranking Member

cc: Hon. Lamar Smith, Chairman House Judiciary Committee