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HON. JOHN CONYERS
UNITED STATES HOUSE OF REPRESENTATIVES
FORUM ON MICHIGAN'S PUBLIC ACT 4

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Economic emergencies provide opportunities to undertake necessary restructuring, but such emergencies can also provide a pretext for eliminating the rights of individuals. The ongoing global economic crisis creates opportunities for needed reforms and regulation to create a fairer, more stable, and sustainable economy. However under the guise of addressing crisis, the existing economic environment also creates openings for legislation that threaten citizens' constitutional rights. Whether adopted in excessive haste or for less virtuous motivations, Michigan's Local Government and School District Fiscal Accountability Act, 2011 PA 4 (Public Act 4) represents an undue infringement upon the democratic rights of their Michigan's poorest citizens.

For the first time in the known history of the United States, local economic crises are being used to justify the broad suspension of democratic governance in municipalities. Public Act 4 arose, in part, from legitimate concerns regarding fiscal distress existing within local governments. These concerns are shared by many states that are also looking for legislative models to bring financial stability to troubled municipalities. Michigan's law however is a model that dangerously rests upon a belief that democratic governance is incompatible with financial recovery.

Public Act 4 effectively establishes a new form of local government, previously unknown in the State of Michigan or anywhere else within the United States. Under this new form of government, the people within local municipalities may be governed by an unelected official who is authorized to establish local law by decree. On its face, as

applied, and in practice, the Act flagrantly violates the United States Constitution and the Constitution of the State of Michigan. Citizens' rights are violated by parts of the Public Act 4 that:

- 1) Condition the right to vote in local elections upon the wealth of the local community;
- 2) Disproportionately impact communities of color and take away the right to vote in local elections within these communities;
- 3) Give law-making power and the power to adopt local laws to an unelected emergency managers;
- 4) Suspend the rights of local residents to establish charters and to elect local officials;
- 5) Impose substantial new costs and expenses upon local cities, villages, and school districts without providing new revenue or mandatory savings.

Michigan's Public Act 4 blames the victims of the global recession by depriving the state's poorest communities of their right to vote for local government. All communities in Michigan have been granted the right to elect local officials through our state Constitution and the state's Home Rule Cities Act. This right to vote is in fact a mandatory provision of city charters throughout the state. However, Public Act 4 now conditions this right on the wealth of the community. When a community's wealth declines, that community is at risk of

becoming subject to an appointed emergency manager who is wholly unaccountability to local residents.

The decline in economic circumstances of local communities cannot be divorced from the massive loss in wealth suffered by our nation's poorest households during the current economic crisis. In the early years of the crisis, household wealth declined by a \$17 trillion dollars. Little of that wealth has been recovered. The loss of household wealth was caused by the foreclosure crisis, corresponding sharp declines in property values, and historic levels of unemployment.

Municipalities are dependent on property and income taxes to finance government services. With historic declines in property values and household income, local governments frequently become economically unstable. The foreclosure crisis, declining property values, and unemployment have most impacted households with the lowest levels of income. Public Act 4 turns a blind eye to the decline in wealth in these communities and the conditions that caused revenue losses to local government. Rather, Public Act 4 targets our poorest citizens by eliminating their right to vote in local elections. The Act effectively assumes that the local economic crisis was caused by local elected officials' corruption or fiscal incompetence and that local voters have sanctioned such acts by continuing to place such persons in office. The Act however dispenses with the formality of finding any corruption, incompetence, or voter irresponsibility. By doing so, Public Act 4 violates the United States Constitution's Equal Protection Clause.¹

¹ Arguments that the law applies equally to wealthy and poor communities are unpersuasive. In only the rarest of instances will a community composed of financially wealthy households become subject to Public Act 4.

Public Act 4's impact on communities of color also cannot be ignored. The relationship between economic wealth in the United States and race has long been recognized. For a host of reasons, economic opportunities have been closed or otherwise unavailable to racial and ethnic minorities, where poverty too often remains entrenched. Statistics also show the current economic crisis has hit black and Latino households the hardest. Foreclosure rates, declining property value, and unemployment rates are disproportionately higher within black and Latino households.

Given the relationship between household economic wealth and race, Public Act 4 emergency managers unsurprisingly have only been appointed or remain in place within communities with majority or near majority populations of racial and ethnic minorities. As a result, the right to vote in local elections has been suspended in whole, or part, for over fifty percent of Michigan's population of black citizens. The disproportionate impact upon communities of color should also be found to violate the federal Constitution's Equal Protection clause.

Michigan's law further raises constitutional concerns regarding the power of emergency managers to enact local law. While setting forth his concepts of government based on a separation of powers between the executive, legislative, and judicial branches, Charles de Montesquieu cautioned that "[w]hen the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty."² In support of ratification of the U.S. Constitution, James Madison agreed:

The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many,

² Montesquieu, *THE SPIRIT OF LAWS*, VOLUME 1, at XI, Ch. 6, p. 151 (New York: Cosimo Inc. 2007).

and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.³

Michigan's law violates separation of powers doctrine by merging local legislative powers in one person - emergency managers. Upon appointment, emergency managers are vested with the powers of the city's mayor and city council. With this power, emergency managers are granted sole authority to enact local ordinances. As such, the emergency manager is empowered to establish local laws by decree. Local ordinances are local laws. Michigan's Constitution severely restricts the power of state officials to adopt local laws, requiring a two-thirds vote of the state legislature and a majority vote of local residents. This grant of power violates the separation of powers clause of the Michigan state Constitution and runs contrary to our nation's founding constitutional principles and further implicates the voting right of local electors.

Michigan's Constitution reveals an overall scheme to grant electors the right to vote for local officials and for the local legislative body. Subject to the general laws of the state, the Michigan's Constitution vests sole authority to frame and adopt charters in the electors of Michigan's cities and villages. The charter is the formative document that establishes the officials and structure of local government. In every city of this state, electors have chosen a form of government where local officials are elected by residents. Reading the state Constitution as a whole, the document exhibits a clear intent for local electors to choose the structure of the local government through their unique power to adopt a charter and thereby determine the particular local officials and legislative body that will compose the city or village's governing body. By removing voting rights from low income communities, Public

³ Hamilton, ed, THE FEDERALIST, No. 47, pp. 373-374 (Philadelphia: JB Lippincott, 1864).

Act 4 violates the state' scheme of elected local government under the state Constitution and may implicate fundamental substantive due process rights under the federal Constitution.

The Headlee Amendment to Michigan's Constitution further bars the state from enacting laws that increase the costs and expenses of local government without providing new revenue streams or savings. Once the state appoints an emergency manager, the municipality is required to pay the emergency manager's salary and benefits and expenses, along with the salary and benefits and expenses of his or her staff and consultants. Furthermore, the locality is required to pay for the emergency manager's legal expenses and contract costs. The law provides no new revenue streams or cost savings to local governments, and as a result, violates the Headlee Amendment to the state Constitution.

In short, Public Act 4 is an unconstitutional response to a global, national, and statewide economic crisis created by government's failure to regulate banks and Wall Street and by national policies that hit the industrial Midwest below the belt. In response to the economic crisis, Michigan state government has chosen, not to come together to find a statewide solution to a statewide problem. Rather, state government has chosen to suspend democracy in our poorest communities and communities of color and to grab local political power through hand-picked emergency managers. These acts and this law are repugnant to the constitutional liberties granted to all persons within the United States.