

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216

One Hundred Fourteenth Congress

February 12, 2016

Chairman Bob Goodlatte  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington D.C. 20515

Dear Chairman Goodlatte:

We are writing to request that the House Judiciary Committee conduct hearings on the operation of the Michigan Emergency Manager Law<sup>1</sup> and its role in the tragedies concerning the poisoning of Flint's water and the dangerous deterioration of the Detroit Public Schools. Although other committees are reviewing these matters in certain respects, we believe our Committee has a critical responsibility to engage in oversight and review as well.

In April 2014, under the direction of Darnell Earley, the emergency financial manager appointed by Michigan Governor Rick Snyder, Flint switched its water supply from Detroit Water and Sewage Department (DWSD) to the Flint River after Mr. Earley rejected an offer from DWSD to continue to sell water to the city while it awaited the completion of the Karegnondi Water Authority pipeline.<sup>2</sup> Prior to the switch, the Michigan Department of Environmental Quality failed to require the city, while under the management of Mr. Earley, to investigate the proper treatment of the river to ensure it was a safe source of drinking water. Subsequently, the city failed to treat the water with a widely available anti-corrosive agent and the corrosive river water leached toxic lead from pipes serving the city's residents.

In January 2015, Governor Snyder reassigned Mr. Earley as an emergency financial manager to oversee the Detroit Public School (DPS) system. Despite complaints from residents regarding the water's color and taste, the city's subsequent emergency financial manager Jerry Ambrose overruled a Flint city council vote to restore Flint's connection to the DWSD system. The city continued to draw drinking water from the Flint River until October 2015.

Since Mr. Earley took over the management of DPS, the school system's accumulated debt has ballooned from \$216 million to an expected \$335 million by the end of 2016. Furthermore, Mr. Earley ignored complaints from staff regarding the deteriorating conditions of the school system's buildings. The conditions included rodent infestations, black mold growth, exposed electrical wiring, and freezing temperatures. Mr. Earley resigned as emergency financial manager of DPS effective February 29, 2016.

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<sup>1</sup>Michigan Public Act 436 of 2012, the Local Financial Stability and Choice Act. Act 436 of 2012 is the successor law to Act 4 of 2011, which was repealed by a referendum held during the 2012 general election.

<sup>2</sup> Paul Egan, *Is emergency manager law to blame for Flint water crisis?*, DETROIT FREE PRESS, Oct. 25, 2015, available at <http://www.freep.com/story/news/politics/2015/10/24/emergency-manager-law-blame-flint-water-crisis/74048854/>.

Given the broad powers they are afforded and the lack of oversight, it is no surprise that the emergency financial managers appointed by Governor Snyder have so egregiously failed the citizens of Flint and Detroit. Under Act 436 of 2012, an emergency financial manager appointed by the governor is empowered to “act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.”<sup>3</sup> Furthermore under the Act, local elected officials are prevented from exercising “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.”<sup>4</sup> But unlike the local elected officials they replace, an emergency financial manager is unaccountable to the citizens they ostensibly serve. Thus, emergency financial managers under Act 436 of 2012 have broad powers to make public policy yet the citizens can be denied a voice in decisions that can potentially result in dire consequences for their communities. In fact, Michigan’s own Department of Treasury concluded in a report analyzing the current law’s substantially similar predecessor Public Act 4 that “[t]his bill allows emergency managers too much power and control over local units of government. Emergency managers can’t be trusted to act in the interests of the local unit and will use the enhanced powers granted under this bill for their own gain. Stripping local officials of their powers is anti-democratic.”<sup>5</sup>

We are asking for these hearings because there are a number of federal constitutional and legal issues raised by the Michigan Emergency Manager Law and its implementation that fall within the House Judiciary Committee’s purview. In addition to the numerous matters of criminal law which are under investigation, these include the following:

1. The implementation of the Michigan Emergency Manager Law has had a significant impact on voting in local elections, as well as a disproportionate impact on minority voters. Since 2009, more than 50% of African American citizens in Michigan have been subjected to the rule of an emergency financial manager, as compared to only 1.8% of white citizens. Thus a grossly disproportionate number of minority voters were prevented from participating in meaningful representative democratic elections.
2. The Michigan Emergency Manager Law also may violate the Constitution’s Contract Clause<sup>6</sup> by allowing – after limited consultation with the relevant local governing body<sup>7</sup> - the rejection or alteration of collective bargaining agreements and other contracts outside of a bankruptcy legal process. Professor Kenneth Klee, one of the nation’s preeminent bankruptcy authorities, wrote that Public Act 4, the current law’s predecessor “is violative of [the Constitution’s] Contracts Clause.... No prior legislature has had the audacity to legislate the unilateral termination, rejection, or modification of a collective

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<sup>3</sup>MCL § 141.1549 (9)(2) (2012), available at <http://www.legislature.mi.gov/%28S%28tknv2ywi5fbchtahejo4saa%29%29/mileg.aspx?page=getObject&objectName=mcl-141-1549>.

<sup>4</sup> Id.

<sup>5</sup> Curt Guyette, *Examining the body of evidence in Detroit’s bankruptcy trial*, DETROIT METRO TIMES, April 1, 2014, available at <http://www.metrotimes.com/detroit/examining-the-body-of-evidence-in-detroits-bankruptcy-trial/Content?oid=2144001>.

<sup>6</sup> U.S. Const., Art. I, Sec. 10, Cl. 1.

<sup>7</sup> MCL § 141.1559 (2012), available at <http://www.legislature.mi.gov/%28S%28cthhpouek30pag0xn10lqgj%29%29/mileg.aspx?page=getObject&objectName=mcl-141-1559>

bargaining agreement.”<sup>8</sup> Under the current law, Act 436 of 2012, an emergency manager can determine whether to reject, modify, or terminate one or more terms in an existing collective bargaining agreement<sup>9</sup> or an existing contract.<sup>10</sup>

3. Without appropriate oversight over the emergency managers, numerous examples of mismanagement and conflicts of interest have been identified. One example of mismanagement occurred in Pontiac, Michigan where an emergency manager incurred a potential loss of \$1.4 million in HUD funding due to mismanagement of federal grants.<sup>11</sup> A subsequent GAO report requested by Rep. Conyers and then Rep. Gary Peters found that, “the losses of human capital, financial, and organizational capacity that can accompany such serious financial distress present municipalities with significant challenges to their ability to effectively obtain and manage federal grants.”<sup>12</sup>
4. The crisis in Flint raises significant legal and moral issues in terms of environmental justice. Executive Order 12898,<sup>13</sup> directs federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities. The water crisis in Flint and health crisis in the Detroit Public Schools represent the most recent examples of how minority communities are more susceptible to environmental damage due to malfeasance and indifference of government decision-makers. As the Chairman of the Committee on Oversight and Government Reform, Rep. Conyers held hearings on the topic of environmental justice, and subsequently conducted a number of forums on the topic in his capacity as Ranking Member of the Judiciary Committee.

The Committee on the Judiciary has a long history of holding hearings on matters of grave legal and constitutional significance. Given the tragic consequences of Michigan’s Emergency Manager Law for the citizens of Flint and Detroit, and the legal and constitutional questions such laws raise, we believe it is not only appropriate, but necessary for the Committee to review these issues. To that end, we request that the Committee hold hearings and we would respectfully request that, among others, Governor Snyder, Mr. Earley, State Treasurer Andy Dillon and Mr. Ambrose be asked to participate.

Thank you for your time and attention on this important matter.

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<sup>8</sup>Statement of Professor Kenneth Klee, Emergency Manager Town Hall, Feb. 21, 2012, *available at* <http://democrats.judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/Klee120221.pdf>

<sup>9</sup>MCL § 141.1552 (12)(1)(k) (2012), *available at* <http://www.legislature.mi.gov/%28S%28tknv2ywi5fhhbcthahejo4saa%29%29/mileg.aspx?page=getObject&objectName=mcl-141-1552>.

<sup>10</sup>MCL § 141.1552(12)(1)(j) (2012), *available at* <http://www.legislature.mi.gov/%28S%28tknv2ywi5fhhbcthahejo4saa%29%29/mileg.aspx?page=getObject&objectName=mcl-141-1552>.

<sup>11</sup> See Press Release, Office of U.S. Representative Gary Peters, HUD Figures Released Late Yesterday Show That Pontiac Will Receive Almost \$700,000 More Per Year Than If Emergency Manager’s Original Contract Was Put Into Place (Jan. 18, 2012), *available at* <http://peters.house.gov/news-releases/newly-released-figures-confirm-that-pontiac-will-receive-over-14-million-in-federal-funding-after-us-rep-peters-intervened-to-save-funds-emergency-manager-would-have-forfeited/>

<sup>12</sup> United States Government Accountability Office. *Municipalities in Fiscal Crisis: Federal Agencies Monitored Grants and Assisted Grantees, but More Could Be Done to Share Lessons Learned*. By J. Christopher Mihm, and Robert J. Cramer. GAO-15-222. Washington D.C. 2015.

<sup>13</sup> Exec. Order No. 12898, 3 C.F.R. 1 (1994).

Sincerely,

John Conroy

Phil Johnson

Suzanne Dixon

Judy Ann

Genold Natter

Jim

David H. Cichline

Steve Chen

Dir V. Galt

Alan

Mark Johnson

Karen

Barbara

John

Zed Dauter

Zoe