

**U.S. DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN**

THE GENERAL RETIREMENT SYSTEM
OF THE CITY OF DETROIT, THE
POLICE AND FIRE RETIREMENT
SYSTEM OF THE CITY OF DETROIT, and
SUSAN GLASER, ALVIN BROOKS, JAMES
E. MOORE, and LAURA ISOM, individually,

Case No. _____

Hon. _____

Plaintiffs,

vs.

RICHARD D. SNYDER, in his official capacity
as Governor of the STATE OF MICHIGAN,
and ANDREW DILLON, in his official capacity
as the TREASURER OF THE STATE OF
MICHIGAN,

THERE IS NO OTHER PENDING OR
RESOLVED CIVIL ACTION ARISING
OUT OF THE TRANSACTIONS OR
OCCURRENCES ALLEGED IN THIS
COMPLAINT.

Defendants.

Ronald A. King (P45088)
Joseph E. Turner (P44135)
Aaron O. Matthews (P64744)
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226-3435
(313) 965-8300
Attorneys for Plaintiffs

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. By this Complaint for declaratory and injunctive relief, Plaintiffs request that this court declare unconstitutional and enjoin the implementation of a portion of recently enacted legislation that would impermissibly modify the Detroit City Charter and various collective bargaining agreements between the City of Detroit and its uniformed and non-uniformed workers, disenfranchise the citizens of the City of Detroit and members of the General Retirement System of the City of Detroit (the “GRS”) and the Police and Fire Retirement System of the City of Detroit (the “PFRS”) (collectively, the “Detroit Retirement Systems”) by removing and/or replacing duly elected trustees of the Detroit Retirement Systems without any legitimate justification, and potentially dissolve the Detroit Retirement Systems and transfer the control, assets and administration of the Detroit Retirement Systems to some other retirement system.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff the GRS is a municipal employee retirement system and pension plan and trust created by the Charter of the City of Detroit to provide retirement, disability, and survivor benefits to eligible non-uniformed City of Detroit employees and their beneficiaries, as authorized by the Michigan Constitution and the Home Rule City Act of 1909, MCL § 117.1 *et seq.* (the “Home Rule Act”).

3. Plaintiff the PFRS is a municipal employee retirement system and pension plan and trust created by the Charter of the City of Detroit to provide retirement, disability, and survivor benefits to eligible employees of the City of Detroit Police Department and Fire Department and their beneficiaries, as authorized by the Michigan Constitution and the Home Rule Act.

4. Plaintiff Susan Glaser is the Chairperson of the Board of Trustees of the GRS, an

active employee of the City of Detroit, an active member and participant in the GRS, and a resident of the City of Detroit.

5. Plaintiff Alvin Brooks is a member of the Board of Trustees of the GRS, a retired employee of the City of Detroit, a retired member and participant in the GRS, and a resident of the City of Detroit.

6. Plaintiff James E. Moore is the Chairperson of the Board of Trustees of the PFRS, an active employee of the Police Department of the City of Detroit, and an active member and participant in the PFRS.

7. Plaintiff Laura Isom is a former member of the Board of Trustees of the PFRS, a retired employee of the Police Department of the City of Detroit, a retired member and participant in the PFRS, and a resident of the City of Detroit.

8. Defendant Richard D. Snyder is the Governor and the chief executive officer of the State of Michigan.

9. Defendant Andrew Dillon is the Treasurer of the State of Michigan.

10. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because this civil action arises under the Constitution of the United States of America. Further, this Court also has jurisdiction to render declaratory judgments as requested herein pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* With respect to claims set forth herein based on violations of the Michigan Constitution, this Court has jurisdiction under 28 U.S.C. § 1367.

11. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Defendants reside and exercise their authority in this district, Plaintiffs reside and/or exercise their authority in this district, the property at issue is located or managed from within this district, and the constitutional violations sought to be enjoined or prevented by this Complaint have or

will occur in this district.

BACKGROUND OF THE GRS and PFRS

A. General Retirement System of the City of Detroit

12. As authorized by the Michigan Constitution and the Home Rule Act, the GRS was established through an amendment to the Detroit City Charter of 1918, effective July 1, 1938.

13. The GRS was established, in part, to hold the retirement assets of the employees of the City of Detroit in trust and separate and apart from the general funds and assets of the City of Detroit such that the City of Detroit could never use the employees' retirement assets for anything other than their intended purpose.

14. The GRS is governed by a Board of Trustees (the "GRS Board"), which consists of ten trustees: the Mayor or the Mayor's designee (who must be a city employee), *ex officio*; one City Council Member, *ex officio*, who is selected by the City Council; the City Treasurer, *ex officio*; five elected members of the GRS; one resident of the City of Detroit who is not a member of the GRS, a City employee, or eligible to receive benefits; and one retiree-member who is receiving benefits from the GRS, as elected by retired employees of the City.

15. The GRS consists of one defined benefit plan and two defined contribution plans (the 1973 defined contribution plan and the 1998 defined contribution plan), each of which constitute a qualified plan and trust pursuant under the Internal Revenue Code.

16. The GRS also provides duty and non-duty disability benefits to eligible employees and retirees, and certain survivor benefits to beneficiaries of deceased former employees of the City of Detroit.

17. Members of the GRS, consisting of active and retired non-uniformed City of Detroit (or "City") employees and their beneficiaries, participate in the defined benefit plan and may participate in one of the defined contribution plans.

18. The provisions of the defined benefit plan and the defined contribution plans are codified ordinances of the City of Detroit.

19. The pension benefits provided by the GRS are constitutionally guaranteed. Const 1963, art 9, §24.

20. Under the defined benefit plan, members earn service credit during employment that entitles them to receive benefits in the future in the form of a monthly payment.

21. The defined benefit plan is funded by employer contributions from the City of Detroit and gains, interest, and other income from the investment of the GRS's assets.

22. The City of Detroit's employer contributions to the GRS and the benefits to which eligible employees are entitled are part of the compensation owed by the City of Detroit to its employees.

23. The benefits to which each eligible employee is entitled are determined in accordance with the terms and conditions of the collective bargaining agreement between the City of Detroit and the employee's collective bargaining unit, or by City Charter or ordinance.

24. The City is required to make employer contributions in order to ensure payment of the defined benefit. Const 1963, art 9, §24; Detroit Ordinance, § 47-2-18.

25. Under the defined contribution plans, members can elect to participate by contributing a percentage of their salary to the plan. Participating members can then elect to receive a lump sum payment or an annuity benefit upon eligibility for retirement, which is funded by that employee's contributions during employment and investment income earned by the GRS's investment of the defined contribution plan's assets.

26. Investment of the GRS's assets is governed by the Public Employee Retirement System Investment Act, MCL § 38.1121, *et seq.* ("PERSIA").

27. Among other things, PERSIA authorizes the investment of the assets of the GRS, defines and limits the investments which may be made by the GRS, and defines certain powers and responsibilities of investment fiduciaries.

28. Pursuant to the Detroit City Charter and their collective bargaining agreements, members of the GRS are entitled to vote for the elected trustees so as to provide the members with representation on the GRS Board.

29. The GRS Board is vested with the general administration, management, and responsibility for the proper operation of the GRS. Detroit Ordinance § 47-1-3.

30. One of the GRS Board's responsibilities is to ensure that the GRS is properly funded through employer contributions and investment income.

31. The GRS Board retains an actuary who calculates plan assets and liabilities to determine the plans' funding levels and needs.

32. After consultation with the actuary, the GRS Board determines the amount of the City's annual pension contribution, which includes the current service cost plus any additional payment needed to maintain appropriate and required funding levels for accrued liabilities. MCL § 38.1140m.

33. On an annual basis, the GRS's actuary produces an actuarial valuation of the Retirement System's assets and liabilities and reports on its financial condition.

34. The GRS compares favorably to public employee retirement funds of similar size and has performed in the top 20% of municipal pension funds nationwide in recent years.

35. Notwithstanding the recent global economic meltdown, the GRS's performance is exemplary and reflects the fact that the GRS is well managed and such performance is beneficial to the employees of citizens of the City of Detroit.

B. Police and Fire Retirement System of the City of Detroit

36. As authorized by the Michigan Constitution and the Home Rule Act, the PFRS was established through an amendment to the Detroit City Charter of 1918, effective July 1, 1941.

37. The PFRS was established, in part, to hold the retirement assets of the uniformed employees of the City of Detroit in trust and separate and apart from the general funds and assets of the City of Detroit such that the City of Detroit could never use the employees' retirement assets for anything other than their intended purpose.

38. The PFRS is governed by a Board of Trustees ("the PFRS Board"), which consists of eleven trustees: three active Police Department employees (two elected by and from members holding the rank of Lieutenant and lower and one elected by and from members holding ranks above Lieutenant); three active Fire Department employees (two elected by and from members holding the rank of Lieutenant and lower and one elected by and from members holding ranks above Lieutenant); the Mayor or the Mayor's designee, *ex officio*; the President of the City Council or a member thereof elected by City Council, *ex officio*; the City Treasurer or the Deputy City Treasurer, *ex officio*; the Chief of Police or the Chief's designee, *ex officio*; and the Fire Commissioner or the Commissioner's designee, *ex officio*.

39. The PFRS consists of a defined benefit plan and a defined contribution plan, both of which are qualified plans and trusts pursuant to applicable sections of the Internal Revenue Code.

40. The PFRS also provides duty and non-duty disability benefits to eligible employees and retirees, and certain survivor benefits to beneficiaries of deceased former employees of the Police and Fire Departments of the City of Detroit.

41. Members of the PFRS consist of active and retired employees of the City of Detroit Police and Fire Departments, and their beneficiaries.

42. The provisions of the defined benefit plan and defined contribution plan are set forth in the Charter and ordinances of the City of Detroit.

43. The pension benefits provided by the PFRS are constitutionally guaranteed. Const 1963, art 9, §24.

44. Under the defined benefit plan, members earn service credit during employment that entitles them to receive benefits in the future in the form of a monthly payment.

45. The defined benefit plan is funded by employer contributions from the City of Detroit and gains, interest, and other income from the investment of the PFRS's assets.

46. The City of Detroit's employer contributions to the PFRS and the benefits to which eligible employees are entitled are part of the compensation owed by the City of Detroit to its uniformed employees.

47. The benefits to which each eligible employee is entitled are determined in accordance with the terms and conditions of the collective bargaining agreement between the City of Detroit and the employee's collective bargaining unit, or by City Charter or ordinance.

48. The City is required to make employer contributions in order to ensure payment of the defined benefit. Const 1963, art 9, §24; Detroit Charter, art VII, § 3.

49. Under the defined contribution plan, members can elect to receive a lump sum payment or an annuity benefit upon eligibility for retirement, which is funded by that employee's contributions during employment and investment income earned by the PFRS's investment of the defined contribution plan's assets.

50. The administration and investment of the PFRS's assets is governed by PERSIA.

MCL § 38.1121, *et seq.*

51. Among other things, PERSIA authorizes the investment of the assets of the PFRS, defines and limits the investments which may be made the PFRS, and defines certain powers and responsibilities of investment fiduciaries.

52. Pursuant to the City Charter and their collective bargaining agreements, members of the PFRS are entitled to vote for elected trustees so as to provide the members with representation on the PFRS Board.

53. The PFRS Board is vested with general administration, management, and responsibility for the proper operation of the PFRS.

54. One of the PFRS Board's responsibilities is to ensure that the PFRS is properly funded through employer contributions and investment income. The PFRS Board retains an actuary who calculates plan assets and liabilities to determine the plans' funding levels and needs.

55. After consultation with the actuary, the PFRS Board determines the amount the City's annual pension contribution, which includes the current service cost plus any additional payment needed to maintain the required funding levels for accrued liabilities. MCL § 38.1140m.

56. On an annual basis, the PFRS's actuary produces an actuarial valuation of the PFRS's assets and liabilities and reports on its financial condition.

57. The PFRS compares favorably to public employee retirement funds of similar size and has performed in the top 20% of municipal pension funds nationwide in recent years.

58. Notwithstanding the recent global economic meltdown, the PFRS's performance is exemplary and reflects the fact that the PFRS is well managed and such performance is

beneficial to the members of the PFRS and the citizens of the City of Detroit.

EMPLOYER CONTRIBUTION REQUIREMENTS AND BACKGROUND

59. Each year, the actuaries for the GRS and the PFRS calculate the unfunded accrued liabilities for the following three-year period for which the City of Detroit is required to make contributions to the GRS and the PFRS. MCL § 38.1140m.

60. The City of Detroit's obligations to make employer contributions are contractual in nature and are required by the Michigan Constitution and the Detroit City Charter and Municipal Code.

61. Although the City of Detroit has been chronically tardy in making its annual contributions, the Detroit Retirement Systems have consistently outperformed their peers, have at all times remained financially sound, and have fully honored and performed all of their obligations to their members.

THE NEWLY ENACTED LEGISLATION

62. On March 16, 2011, Governor Snyder signed into law the Local Government and School District Fiscal Accountability Act (the "Act"), Public Act 4 of 2011, MCL § 141.1501, *et seq.*, after the legislation was rushed through both houses of the Michigan Legislature.

63. The Act (including tie-barred amendments to other existing statutes) is intended to provide the Governor and the unelected State Treasurer with broad and nearly unchecked powers in the event of a so-called "financial emergency" at the local government level.

64. Like the Local Government Fiscal Responsibility Act (Public Act 72 of 1990), which it repeals, the Act enables a state review and intervention into local government finances, but increases substantially the power and authority of the appointed emergency manager, specifically authorizing the modification and termination of constitutionally protected contract

rights and the seizure of control of retirement systems.

65. The Act governs both the selection and the power of emergency managers, who are appointed to act for and in the place of the governing body and the chief administrative officers of municipal governments and public school districts deemed to be in financial distress.

66. Although some of the triggering thresholds may be reflective of actual and significant financial distress at the local government level, particularly when present in combination, the Act ultimately provides the Governor and State Treasurer with the unbridled power to declare a local “financial emergency” whenever and wherever they see fit, in their sole and absolute discretion.

67. For instance, the State Treasurer may order a “preliminary review” of a local government if there exists any “facts or circumstances that in the state treasurer’s sole discretion [] are indicative of municipal financial stress,” and then he or she can make an initial finding of “probable financial stress” without resort to any standard or threshold. MCL § 141.1512.

68. Once the State Treasurer sets this ball in motion, a review team (comprised mostly of hand-picked representatives of the Governor and State Treasurer) is given “full power” to review all of the local government’s books and records in order to determine whether the local government is or is not in “severe financial stress” or a “financial emergency.” MCL § 141.1513.

69. Under the Act, the Governor or State Treasurer can ultimately determine that a local government is in “severe financial stress” or a “financial emergency,” pursuant to MCL § 141.1515, based on thresholds that are so low as to capture nearly every municipality in the state at one time or another, and/or based on any other criteria that they alone have the power to determine, *i.e.* “[a]ny [] facts and circumstances indicative of local government financial stress

or financial emergency.” MCL § 141.1513.

70. Once the Governor and State Treasurer exercise this purported authority, their hand-picked “emergency manager” is vested with czar-like powers under the Act – powers much broader in fact than those normally possessed by the local government’s duly-elected leaders.

71. More specifically, but without limitation, under the Act, an emergency manager would be able to suspend and usurp the power and authority of city managers and local elected officials and remove or arguably replace the trustees of a pension system for any reason or no reason at all. MCL § 141.1519.

72. Specifically with respect to pension funds and retirement systems, Section 19(1)(m) of the Act – the gravamen of this action – provides that an emergency manager may, under certain circumstances: (a) remove any serving trustee of a local pension board for any reason or no reason at all; (b) arguably replace the serving trustees and assume and exercise the authority and fiduciary responsibilities of a local pension board as sole trustee of the pension fund for any reason or no reason at all; and (c) arguably require the municipal government to participate in, and transfer the assets of the local retirement system to, some other retirement system for any reason or no reason at all. MCL § 141.1519(1)(m).

73. As an initial matter, Section 19(1)(m) has no legitimate place within the Act and the powers purportedly granted to an emergency manager with respect to pension funds and retirement systems bear no rational relationship to the asserted purpose of the Act – to address financial emergencies within local governments and school districts.

74. Although Plaintiffs contend that the Act does not actually bestow upon the emergency manager the power to be appointed as sole trustee of a local retirement system or the power to transfer control or the assets of a local retirement system to some other retirement

system, upon information and belief the Governor and State Treasurer contend otherwise, necessitating guidance from this Court.

75. The only triggering threshold provided in the Act for granting an emergency manager control over retirement systems is that a retirement system be actuarially funded at a level of less than 80%, which is entirely arbitrary and capricious and unconstitutionally vague. MCL § 141.1519(1)(m).

76. Standing alone, the actuarial funding level of a retirement system is not necessarily indicative of the financial health of a retirement system or whether the retirement system is well managed.

77. The Act fails to provide adequate guidance regarding the calculation of the funding level of retirement systems and fails to take into account the many actuarial assumptions and other variables that affect such calculations.

78. The Act further provides that the “net value of pension bonds or evidence of indebtedness” shall not be included in determining the actuarial funding level of a retirement system. MCL § 141.1519(1)(m).

79. Upon information and belief, the reference to “pension bonds” or “evidence of indebtedness” directly targets the City of Detroit’s issuance of pension obligation certificates (“POCs”), a form of municipal bond, in 2005 as a means of raising funds to meet the City of Detroit’s employer contribution requirements to the Detroit Retirement Systems.

80. The City of Detroit issued \$1.44 Billion in POCs in 2005 and used the proceeds to satisfy the City of Detroit’s employer contribution requirements to the Detroit Retirement Systems. Those funds are now part of the Detroit Retirement Systems’ total assets, as are all other employer contributions made by the City of Detroit, and are invested in accordance with

PERSIA.

81. The City of Detroit issued additional POCs in 2006, but the proceeds therefrom were used to redeem a portion of the 2005 POCs, effectively refinancing some of the 2005 debt incurred by the City of Detroit. None of the funds from the 2006 POCs were used to meet the City of Detroit's employer contribution requirements to the Detroit Retirement Systems.

82. The repayment or redemption of the POCs is solely the obligation of the City of Detroit.

83. Although the initial proceeds from the issuance of the POCs were used to satisfy the City of Detroit's financial obligations to the Detroit Retirement Systems, the Detroit Retirement Systems (a) played no role in the decision to issue the POCs; (b) are not parties to the POCs; (c) have no debt service or other payment obligations in connection with the POCs; and (d) have no obligations whatsoever with respect to the repayment or redemption of the POCs.

84. While a municipality's use of POCs or other bonds to finance its pension obligations may, in some circumstances, be indicative of a financial distress on the part of the municipality, the fact that a municipality/employer may have utilized the proceeds from "pension bonds" or other "indebtedness," including POCs, to pay its statutorily required employer contributions bears no rational relationship to whether a retirement system is financially healthy or well managed, and certainly does not justify the removal of trustees or the seizure of control of a retirement system. To the contrary, the timely and complete payment by a municipality/employer of its pension obligations from whatever source helps ensure the financial health of the retirement system.

85. The 80% actuarial funding level (which triggers the powers of an emergency manager with respect to pension funds and retirement systems) and the exclusion of the "net

value of pension bonds or evidence of indebtedness” from the funding level calculation are wholly arbitrary and not related in any rational manner to the management of a retirement system or the performance of the duly elected trustees of a retirement system, and cannot justify the removal of trustees or the seizure of control of a retirement system, particularly in the context of a statute that is purportedly designed to respond to financial emergencies suffered by municipalities and school districts.

86. Under the Act, the Governor and State Treasurer, through the emergency manager, have the virtually unchecked power to seize administration and control of the Detroit Retirement Systems and potentially attempt to transfer their assets to any other retirement system that the Governor or State Treasurer choose, disenfranchising the members of the Detroit Retirement Systems through the elimination of their vested property rights in representation, and to unilaterally modify, if not outright eliminate, the contractual rights of the members of the Detroit Retirement Systems.

87. Even if an emergency manager is not formally appointed under the Act, the Act provides that a local government may enter into a consent agreement with the State Treasurer granting the chief administrative officer, the chief financial officer, the governing body, or any other officer of the local government the powers of an emergency manager under Section 19(1)(m). MCL § 141.1514a(9).

88. The seizure of administration and control of the Detroit Retirement Systems by an emergency manager or a city officer threatens the “qualified” status of the pension plans under the Internal Revenue Code, subjecting the Detroit Retirement Systems and their participants to significant tax liabilities.

89. On April 12, 2011, The Mayor of the City of Detroit delivered an address to the

Detroit City Council concerning the City of Detroit's Fiscal Year 2011-12 budget in which the Mayor used the Act and the potential appointment of an emergency manager for the City of Detroit as justification to demand significant concessions from Plaintiffs, and indicated that Governor Snyder and his administration knew of and supported the Mayor's proposals and plan.

90. In the address, the Mayor specifically pointed to the GRS Board and the PFRS Board and asserted that the changes he was demanding – which include the unconstitutional suspension of required employer contributions to the Detroit Retirement Systems and changes to the constitutionally guaranteed pension benefits of the employees of the City of Detroit – were necessary “to prevent a state takeover.”

91. On April 18, 2011, Detroit City Council President Pro Tem Gary Brown appeared on WJR radio and indicated his support for a consent agreement between the City of Detroit and the State Treasurer, intimating that discussions or negotiations of such an agreement by the City of Detroit and the Governor and/or State Treasurer already have occurred.

92. While the Act does provide limited rights to appeal the Governor's determination that a local government is in “severe financial stress” or a “financial emergency” (which would allow the Governor to then place the local government in receivership and appoint an emergency manager), the appellate rights do not extend to the pension funds or retirement systems over which the emergency manager can exercise control, or to the employees and retirees of the local government whose pension funds can potentially be placed in the hands of the emergency manager. Moreover, there are no appellate rights afforded under the Act if a consent agreement is entered into with the State Treasurer.

93. The Detroit Retirement Systems bring this action on their own behalf and on behalf of the more than 32,000 active and retired participants in the systems whose interests they

have a duty to protect, and Plaintiffs Susan Glaser, Alvin Brooks, James E. Moore, and Laura Isom bring this action on their own behalf and on behalf of their fellow employees, retirees, and residents of the City of Detroit, seeking to have Section 19(1)(m) of the Act declared unconstitutional and enjoining the exercise of any powers purportedly granted thereunder.

94. A declaration of the invalidity Section 19(1)(m) of the Act will not affect the remainder of the Act as the Legislature specifically anticipated such a scenario and provided that if any portion of the Act is found to be invalid by a court, the invalidity shall not affect the remaining portions of the Act as the provisions of the Act are severable. MCL § 141.1531.

95. The potential for injury to the Detroit Retirement System and their participants, including the individually named Plaintiffs, is sufficiently immediate and real to allow this Court to issue a declaratory judgment, particularly given the explicit assertion by the Mayor of the City of Detroit – with the support of the Governor and his administration – that Plaintiffs must “voluntarily” relinquish or agree to a diminishment of their rights and property interests in order to avoid the appointment of an emergency manager under the Act, who will attempt eliminate or diminish those rights without their consent pursuant to Section 19(1)(m) of the Act.

COUNT I

VIOLATION OF THE CONTRACTS CLAUSE OF THE UNITED STATES CONSTITUTION

96. Plaintiffs incorporate paragraphs 1-95 of this Complaint with the same force and effect as if fully set forth herein.

97. The United States Constitution provides that “No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.” US Const, art I, §10.

98. Under both the GRS and the PFRS plans, the benefits to which an eligible

employee is entitled are determined in accordance with the terms and conditions of the respective collective bargaining agreements between the City and the employee's bargaining unit, in connection with the City Charter and Municipal Code.

99. By allowing for the transfer of the assets, administration, and control of the GRS and PFRS to an emergency manager or, potentially, to some other retirement system, the Act has (a) significantly impaired the contractual rights of Plaintiffs and other members of the Detroit Retirement Systems as negotiated in their respective collective bargaining agreements by limiting or eliminating their representation in the administration of their pension benefits and unilaterally altering their benefits structure; (b) done so without a legitimate public purpose; and (c) resulted in an unreasonable effect on the law of contracts.

100. This impairment of the collective bargaining agreements and the contractual rights of Plaintiffs and other members of the Detroit Retirement Systems violates the United States Constitution.

101. This violation of United States Constitution is actionable under 42 USC § 1983.

102. There is an actual controversy between the parties as to the constitutionality of the Act under US Const, art I, §10.

COUNT II

VIOLATION OF THE CONTRACTS CLAUSE OF THE STATE OF MICHIGAN CONSTITUTION

103. Plaintiffs incorporate paragraphs 1-102 of this Complaint with the same force and effect as if fully set forth herein.

104. The Michigan Constitution provides that "No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted." Const 1963, art 1, §10.

105. Under both the GRS and the PFRS plans, the benefits to which an eligible

employee is entitled are determined in accordance with the terms and conditions of the respective collective bargaining agreements between the City and the employee's bargaining unit, in connection with the City Charter and Municipal Code.

106. By allowing for the transfer of the assets, administration, and control of the GRS and PFRS to an emergency manager or, potentially, to some other retirement system, the Act has (a) significantly impaired the contractual rights of Plaintiffs and other members of the Detroit Retirement Systems as negotiated in their respective collective bargaining agreements by limiting or eliminating their representation in the administration of their pension benefits and unilaterally altering their benefits structure; (b) done so without a legitimate public purpose; and (c) resulted in an unreasonable effect on the law of contracts.

107. This impairment of the collective bargaining agreements and the contractual rights of Plaintiffs and other members of the Detroit Retirement Systems violates the Michigan Constitution.

108. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 1, §10.

COUNT III

VIOLATION OF THE HOME RULE PROVISION OF THE STATE OF MICHIGAN CONSTITUTION

109. Plaintiffs incorporate paragraphs 1-108 of this Complaint with the same force and effect as if fully set forth herein.

110. The Michigan Constitution provides that the electors of each city "shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city." Const 1963, art 7, §22.

111. These powers and authorities are further expanded by the Home Rule Act.

112. As authorized by the Michigan Constitution and the Home Rule Act, the Detroit City Charter provides that the City has the authority to create and maintain retirement systems for its employees, and provides for the creation of the GRS and the PFRS and their respective Boards.

113. The Act effectively amends the Detroit City Charter without the consent or a vote of the citizens of Detroit by usurping and voiding the City's sole authority and power to create and administer local pension systems for the benefit of the employees of the City of Detroit.

114. The Act therefore violates the Michigan Constitution.

115. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 7, §22.

COUNT IV

VIOLATION OF THE TAKINGS CLAUSE OF THE UNITED STATES CONSTITUTION

116. Plaintiffs incorporate paragraphs 1-115 of this Complaint with the same force and effect as if fully set forth herein.

117. The United States Constitution prohibits the taking of private property without just compensation. US Const, Am V.

118. The Fifth Amendment to the United States Constitution is applicable to the states through the Fourteenth Amendment to the United States Constitution. US Const, Am XIV

119. Plaintiffs and other members of the Detroit Retirement Systems have vested property rights in the benefits to which they are entitled and vested rights in representation in the administration of their pension benefits and assets.

120. By allowing for the transfer of the assets, administration, and control of the GRS and PFRS to an emergency manager or, potentially, to some other retirement system, the Act

constitutes a taking as, among other things, it: (a) has an adverse economic impact on the GRS and PFRS and their members, retirees and beneficiaries; (b) significantly interferes with distinct investment-backed expectations; and (c) permanently misappropriates funds for other uses.

121. This taking is without just compensation, and thus violates the United States Constitution.

122. This violation of the United States Constitution is actionable under 42 USC § 1983.

123. There is an actual controversy between the parties as to the constitutionality of the Act under US Const, Am V.

COUNT V

VIOLATION OF TAKINGS CLAUSE OF THE STATE OF MICHIGAN CONSTITUTION

124. Plaintiffs incorporate paragraphs 1-123 of this Complaint with the same force and effect as if fully set forth herein.

125. The Michigan Constitution prohibits the taking of private property without just compensation. Const 1963, art 10, §2.

126. Plaintiffs and other members of the Detroit Retirement Systems have vested property rights in the benefits to which they are entitled and vested rights in representation in the administration of their pension benefits and assets.

127. By allowing for the transfer of the assets, administration, and control of the GRS and PFRS to an emergency manager or, potentially, to some other retirement system, the Act constitutes a taking as, among other things, it: (a) has an adverse economic impact on the GRS and PFRS and their members, retirees and beneficiaries; (b) significantly interferes with distinct investment-backed expectations; and (c) permanently misappropriates funds for other uses.

128. This taking is without just compensation, and thus violates the Michigan Constitution.

129. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 10, §2.

COUNT VI

VIOLATION OF THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

130. Plaintiffs incorporate paragraphs 1-129 of this Complaint with the same force and effect as if fully set forth herein.

131. The United States Constitution provides that no state shall “deprive any person of life, liberty, or property without due process of law.” US Const, Am XIV.

132. The State of Michigan purportedly enacted the Act pursuant to its police power, which allows it to act for the benefit of the health, safety, and general welfare of Michigan’s citizens.

133. Plaintiffs and other members of the Detroit Retirement Systems have vested property rights in the benefits to which they are entitled and vested rights in representation in the administration of their pension benefits and assets.

134. The provisions of the Act granting powers to the emergency manager with respect to retirement systems bear no rational relationship to the stated purpose of the Act, which is purportedly to:

to safeguard and assure the fiscal accountability of units of local government, including school districts; to preserve the capacity of units of local government to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of units of local government and the provision of services by units of local government, including

school districts; to provide criteria to be used in determining the financial condition of units of local government, including school districts; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and duties of the governor, other state departments, boards, agencies, officials, and employees, and officials and employees of units of local government, including school districts; to provide for placing units of local government, including school districts, into receivership; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager; to require the development of financial and operational plans to regulate expenditures, investments, and the provision of services by units of local government, including school districts, in a state of financial stress or financial emergency; to provide for the modification or termination of contracts under certain circumstances; [and] to set forth the conditions for termination of a local government financial emergency. MCL prec § 141.1501

135. The provisions of the Act granting powers to the emergency manager with respect to retirement systems bear no rational or reasonable relationship to a permissible legislative objective.

136. The policy judgment of the Legislature in enacting the Act is palpably arbitrary and irrational, and is supported by no state of facts that were known or could reasonably be assumed by the Legislature.

137. The Act improperly infringes the liberty and property interests of Plaintiffs and other members of the Detroit Retirement Systems without due process of law, in violation of the United States Constitution.

138. The Act is impermissibly vague in that it creates and delegates broad powers to the Governor, State Treasurer, and emergency manager without providing discernable standards for the triggering or exercise of such powers, in violation of the United States Constitution.

139. This violation of the United States Constitution is actionable under 42 USC § 1983.

140. There is an actual controversy between the parties as to the constitutionality of the Act under US Const, Am XIV.

COUNT VII

VIOLATION OF THE DUE PROCESS CLAUSE OF THE STATE OF MICHIGAN CONSTITUTION

141. Plaintiffs incorporate paragraphs 1-140 of this Complaint with the same force and effect as if fully set forth herein.

142. The Michigan Constitution provides that “[n]o person shall . . . be deprived of life, liberty or property, without due process of law.” Const 1963, art 1, §17.

143. The State of Michigan purportedly enacted the Act pursuant to its police power, which allows it to act for the benefit of the health, safety, and general welfare of Michigan’s citizens.

144. Plaintiffs and other members of the Detroit Retirement Systems have vested property rights in the benefits to which they are entitled and vested rights in representation in the administration of their pension benefits and assets.

145. The provisions of the Act granting powers to the emergency manager with respect to retirement systems bear no rational relationship to the stated purpose of the Act, which is purportedly to:

to safeguard and assure the fiscal accountability of units of local government, including school districts; to preserve the capacity of units of local government to provide or cause to be provided necessary services essential to the public health, safety, and welfare; to provide for review, management, planning, and control of the financial operation of units of local government and the provision of services by units of local government, including school districts; to provide criteria to be used in determining the financial condition of units of local government, including school districts; to permit a declaration of the existence of a local government financial emergency and to prescribe the powers and

duties of the governor, other state departments, boards, agencies, officials, and employees, and officials and employees of units of local government, including school districts; to provide for placing units of local government, including school districts, into receivership; to provide for a review and appeal process; to provide for the appointment and to prescribe the powers and duties of an emergency manager; to require the development of financial and operational plans to regulate expenditures, investments, and the provision of services by units of local government, including school districts, in a state of financial stress or financial emergency; to provide for the modification or termination of contracts under certain circumstances; [and] to set forth the conditions for termination of a local government financial emergency. MCL prec § 141.1501.

146. The provisions of the Act granting powers to the emergency manager with respect to retirement systems bear no rational or reasonable relationship to a permissible legislative objective.

147. The policy judgment of the Legislature in enacting the Act is palpably arbitrary and irrational, and is supported by no state of facts that were known or could reasonably be assumed by the Legislature.

148. The Act improperly infringes the liberty and property interests of Plaintiffs and other members of the Detroit Retirement Systems without due process of law, in violation of the Michigan Constitution.

149. The Act is impermissibly vague in that it creates and delegates broad powers to the Governor, State Treasurer, and emergency manager without providing discernable standards for the triggering or exercise of such powers, in violation of the Michigan Constitution.

150. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 1, §17.

COUNT VIII

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION

151. Plaintiffs incorporate paragraphs 1-150 of this Complaint with the same force and effect as if fully set forth herein.

152. The United States Constitution provides that no state shall “deny . . . any person within its jurisdiction the equal protection of the laws.” US Const, Am XIV.

153. The Act creates a classification between retirement systems which are subject to potential takeover by an emergency manager and those which are not, and a resulting classification between members of a retirement system which is subject to potential takeover by an emergency manager and members of a retirement system which is not.

154. The classifications between retirement systems and members thereof created by the Act are not rationally related to a legitimate government interest.

155. The policy judgment of the Legislature in enacting the Act is palpably arbitrary and irrational, and is supported by no state of facts that were known or could reasonably be assumed by the Legislature.

156. By way of example, and without limitation, the actuarial funding threshold of 80% created by the Act, as well as the exclusion of “the net value of pension bonds or evidence of indebtedness” from the funding calculation, is arbitrary and bears no rational relationship to the financial health of the retirement system or the municipality.

157. The classifications between retirement systems and members thereof created by the Act violate equal protection of the laws afforded to the Plaintiffs and other members of the

Detroit Retirement Systems by the United States Constitution.

158. There is an actual controversy between the parties as to the constitutionality of the Act under US Const. Am. XIV.

COUNT IX

VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE STATE OF MICHIGAN CONSTITUTION

159. Plaintiffs incorporate paragraphs 1-157 of this Complaint with the same force and effect as if fully set forth herein.

160. The Michigan Constitution provides that “[n]o person shall be denied the equal protection of the laws.” Const 1963, art 1, §2.

161. The Act creates a classification between retirement systems which are subject to potential takeover by an emergency manager and those which are not, and a resulting classification between members of a retirement system which is subject to potential takeover by an emergency manager and members of a retirement system which is not.

162. The classification between retirement systems and members thereof created by the Act are not rationally related to a legitimate government interest.

163. The policy judgment of the Legislature in enacting the Act is palpably arbitrary and irrational, and is supported by no state of facts that were known or could reasonably be assumed by the Legislature.

164. By way of example, and without limitation, the actuarial funding threshold of 80% created by the Act, as well as the exclusion of “the net value of pension bonds or evidence of indebtedness” from the funding calculation, is arbitrary and bears no rational relationship to the financial health of the retirement systems or the municipality.

165. The classifications between retirement systems and members thereof created by

the Act violate equal protection of the laws afforded to the Plaintiffs and other members of the Detroit Retirement Systems by the Michigan Constitution.

166. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 1, §2.

COUNT X

VIOLATION OF THE ACCRUED FINANCIAL BENEFITS PROVISION OF THE STATE OF MICHIGAN CONSTITUTION

167. Plaintiffs incorporate paragraphs 1-166 of this Complaint with the same force and effect as if fully set forth herein.

168. The Michigan Constitution provides that: “The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby. Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.” Const 1963, art 9, §24.

169. These provisions unambiguously prohibit the state and its political subdivisions from diminishing or impairing “accrued financial benefits.”

170. The Act improperly diminishes and/or impairs the accrued financial benefits of Plaintiffs and other members of the Detroit Retirement Systems by authorizing the transfer of administration of the retirement systems to an emergency manager or, potentially, to some other retirement system, which will result in the modification and/or elimination of some or all of the financial benefits of the members, retirees, and beneficiaries of the Detroit Retirement Systems.

171. The Act therefore violates the Michigan Constitution and/or represents an imminent threat to the constitutional rights of Plaintiffs and other members of the Detroit

Retirement Systems.

172. There is an actual controversy between the parties as to the constitutionality of the Act under Const 1963, art 4, §29.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court issue an Order:

(1) Declaring that Section 19(1)(m) of the Act (a) violates the State of Michigan's Home Rule Provision as it amends the City Charter without a vote of the citizens of Detroit; (b) impairs the contractual rights of Plaintiffs in violation of the Contract Clause of the United States Constitution and State of Michigan Constitution; (c) constitutes a taking of private property of the Plaintiffs without just compensation in violation of the Takings Clause of the United States Constitution and State of Michigan Constitution; (d) deprives the Plaintiffs of their rights to due process and equal protection under the United States Constitution and State of Michigan Constitution; and (e) violates the Michigan Constitution by improperly diminishing and/or impairing the accrued financial benefits of the members, retirees and beneficiaries of the Detroit Retirement Systems.

(2) Restoring the status quo by declaring Section 19(1)(m) of the Act unconstitutional and all actions taken by Defendants to implement or enforce the Act void *ab initio*;

(3) Enjoining Defendants, and all persons and entities acting in concert with them, from taking any further actions to implement or enforce Section 19(1)(m) of the Act; and

(4) Awarding Plaintiffs the attorney's fees, costs, and other expenses incurred in prosecuting this lawsuit, as well as such other and further relief as this Court may deem just and proper.

Respectfully submitted,

CLARK HILL PLC

By: /s/ Ronald A. King
Ronald A. King (P45088)
Joseph E. Turner (P44135)
Aaron O. Matthews (P64744)
500 Woodward Avenue, Suite 32500
Detroit, MI 48226
(313) 965-8300
Attorneys for Plaintiffs

Date: April 18, 2011