

VOICE OF DETROIT <http://voiceofdetroit.net>
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RACIST DETROIT BANKRUPTCY PLAN: \$11.5 BILLION FOR BANKS, \$0 FOR RETIREES; VOTE NO OR LOSE APPEAL RIGHTS!



Mayday march against Detroit bankruptcy plan occupied streets, banks downtown May 1, 2014, calling for a NO vote on POA4.

Under Chapter 9, Plan of Adjustment #4 cannot be “crammed down” if it “discriminates unfairly” against Black and poor retirees and residents

Bank debt to be paid first out of city general fund before other needs

State/DIA “grand bargain” package: \$716 M over 20 years to cover \$3.2B claims; not binding, not to be signed until Dec. 31, 2014

For “grand bargain,” retirees must vote Yes, revoke appeal rights re: Ch. 9 eligibility, state pension protection, EM law PA 436 constitutionality

Pension fund “investment” oversight board for 20 years, bank-run health care VEBA trust: billions more for wealthy

By Diane Bukowski

May 20, 2014

Analysis

DETROIT—As the Detroit Chapter 9 bankruptcy debacle unravels, the corporate media and voluntary “retiree associations” are focusing only on what retirees and city workers will do about Detroit’s alleged debt crisis.

In one-sided stories regarding the Fourth Plan of Adjustment (POA4), and YES vote recommendations, they are ratcheting up the pressure on these tens of thousands of seniors, who are least able to afford cutbacks.

This includes threatening a “cramdown” if retirees vote NO, despite the fact that Chapter 9 provides in part, *“Under ‘cram down,’ if all other requirements are met except the § 1129(a)(8) requirement that all classes either be unimpaired or have accepted the plan, then the plan is confirmable **if it does not discriminate unfairly and is fair and equitable.**”*

An analysis by VOD of POA4 shows that POA4 does in fact discriminate grossly against Black and poor retirees, workers, and residents of Detroit, based on income, race, and gender.

The charts below, compiled by VOD from information in POA4, show that Detroit Emergency Manager Kevyn Orr proposes to pay **bank/bondholder creditors a total of \$11.5 BILLION out of the city’s general fund.**

This includes payment of at least **\$945 million** on the 2005-06 Certificates of Participation (COPS) debt and swaps deals to UBS and Bank of America, if they consent to take 40 percent of the original deal. Orr declared these “void *ab initio*, illegal and unenforceable” in a Jan. 17, 2014 lawsuit in bankruptcy court.

Under terms of POA4, the banks get their debt payments **FIRST**, prior to the provision of city services for the residents of Detroit. What about street lights, garbage pick-up, reconstruction of Detroit neighborhoods devastated by illegal and predatory bank lending and foreclosures, and jobs for the youth in the public sector, which “Mayor” Mike Duggan is rapidly privatizing?



Thousands of marchers descended on Michigan Gov. Rick Snyder’s home outside Ann Arbor on MLK Day, 2011 to demand an end to racist EM laws.



Woman in Highland Park outside home after DTE removed all street lights because city could not pay DTE bill. Public Lighting Authority proposes to remove 40 percent of Detroit's street lights. AP Photo/Carlos Osorio

Meanwhile, Orr and his vulture partners from Jones Day and other law firms purporting to represent Detroit are slating **\$0 from the city's general fund for pensions.**

The State of Michigan and the Detroit Institute of Arts have allegedly promised to provide a measly \$716 million over 20 years to fund pension claims which amount to over \$3.124 BILLION.

The city will contribute NOTHING from its general fund towards any pension obligations until at least 2023. Nothing is said in the plan about the \$723 million in state revenue-sharing that Detroit lost over the last ten years, according to a recent Michigan Municipal League report.

How can Detroit be bankrupt while it owns billions of dollars worth of art at the DIA?

The State and DIA deals will not be signed, if at all, until Dec. 31, 2014, the effective date of the plan, but Orr wants retirees to vote by July 11, 2014.

The deals state in plain language that they are “non-binding,” and there are numerous loopholes for the DIA and state to renege. In exchange for the puny offering, the City of Detroit will hand over all the art it owns at the DIA, likely worth billions of dollars, to a vaguely defined “trust,” the *coup de grace* for the city's privatization of DIA operations in the 1990's.

Leaders of Michigan AFSCME Council 25 meanwhile have told their members including retirees to hold off voting on the plan until the State and DIA deals are signed, which creates a problem for Orr since he has set a voting deadline of July 11.



4TH AMENDED PLAN OF ADJUSTMENT: CLAIMS PROPOSED TO BE PAID

PAYMENTS TO BANKS AND BONDHOLDERS OUT OF CITY FUNDS: TOTAL \$11,475,490,066 (\$11.5 BILLION)

PAYMENTS TO RETIREES OUT OF CITY GENERAL FUND: \$0 UNTIL AT LEAST 2023

(To retirees from State/DIA: 5716 M over 20 years IF they vote for plan and withdraw any legal/other action citing State Constitution, Art. 9 Sec. 24 protection of pensions, constitutionality of EM Act PA 436)

TO SUPPORT PAYMENT OF DEBTS TO BANKS AND OTHER NON-RETIREE CREDITORS, KEVYN ORR HAS SIGNED AN EXECUTIVE ORDER FOR A \$650 MILLION BOND ISSUE.

SECURED CLAIMS (BACKED BY WATER, OTHER REVENUES FROM RATEPAYERS, TAXES)

1A	All Classes of DWSD Bond Claims	Unimpaired/ Nonvoting; Impaired/ Voting	4,568,346,628	NEARLY ALL UNIMPAIRED (NOT DECREASED FROM ORIGINAL CLAIM)
1B	All Classes of DWSD Revolving Sewer Bonds	Unimpaired/ Nonvoting	482,872,027	
1C	All Classes of DWSD Revolving Water Bonds	Unimpaired/ Nonvoting	21,453,761	
2A	Secured GO Series 2010	Unimpaired/ Nonvoting	252,475,366	
2B	Secured GO Series 2010(A)	Unimpaired/ Nonvoting	101,707,848	
2C	Secured GO Series 2012(A)(2)	Unimpaired/ Nonvoting	39,354,171	
2D	Secured GO Series 2012(A2-B)	Unimpaired/ Nonvoting	54,055,927	
2E	Secured GO Series 2012(B)	Unimpaired/ Nonvoting	6,469,135	
2F	Secured GO Series 2012(B2)	Unimpaired/ Nonvoting	31,037,724	
3	Other Secured Claims	Unimpaired/ Nonvoting	Unspecified	
4	HUD Installment Notes Claims	Unimpaired/ Nonvoting	90,075,004	HUD, thru Fannie Mae/ Freddie Mac, does 50 % of evictions in Detroit due to massive foreclosures from predatory, illegal mortgages, disparate treatment of poor, Black, Latino neighborhoods. The FM's pay banks 100% of mortgages. Banks pay no taxes on foreclosed homes, do not maintain them. City loses homeowner taxes. WHAT HAPPENED TO \$500 M HARDEST HIT FUND?
5	COP Swap Claims	Impaired/ Voting	85,000,000 plus 300,000,000 already paid plus interest after effective date	Full faith and credit of city, from general fund before anything else. Net to be paid in full in cash within 30 days of effective date Dec. 31, 2014; interest charged up to 180 days if it takes longer, at Barclay's loan rate plus 1.0 %. On effective date each party receives a deferral fee in cash equal to 1 percent of total. If these terms not met, will be a "liquidity event" (default—city pays total even if goes broke).
6	Parking Bond Claims	Unimpaired/ Nonvoting	8,099,287	Drivers in city help pay this with drastically increased parking ticket rates effective June 1, 2014.

UNSECURED CLAIMS (CHALLENGED IN BANKRUPTCY, SUBJECT TO CREDITORS' VOTES)

7	Limited Tax General Obligation Bond Claims	Impaired/Voting	163,543,188	
8	Unlimited Tax General Obligation Bond Claims	Impaired/Voting	388,000,000	Bondholders have already agreed; this is 74% of their claims, rest to come from insurance companies.
9	COP Claims	Impaired/Voting	At least 580,000,000	COP Claims offer: for settling parties, 40 % of aggregate unpaid principal amount: \$580 million. City will make "every effort to consult with OCR, DG VEBA and PF VEBA." For those who don't settle, City will establish Disputed COPS claims reserve. Remainder divided up between those the court deems allowed, the two VEBA's and the city.
10	PFRS Pension Claims (actually secured by years of labor, ASF contributions, union contracts)	Impaired/Voting	1,245,000,000**	City to pay nothing until at least 2023—money to come solely from DIA and State Contribution agreements totaling \$716M which won't be signed (if at all) until Dec. 31. Retirees to pay MONTHLY individual Annuity Savings Fund Recoupment, lose % of COLA. EACH AGREEMENT NON-BINDING, MEANS DIA/STATE DON'T HAVE TO PAY. WHAT HAPPENED TO \$723 MILLION IN STATE REVENUE SHARING OWED TO DETROIT OVER LAST 10 YEARS?
11	GRS Pension Claims (actually secured by years of labor, ASF contributions, union contracts;	Impaired/Voting	1,879,000,000**	City to pay \$428.5 million coming from DWSD revenues, e.g. restructuring savings (if DWSD even still exists), part of State Contribution Fund plus DIA (amount) which won't be signed (if at all) until Dec. 31. Retirees to pay MONTHLY individual Annuity Savings Fund Recoupment, 4.5 % cut in pension if WHOLE agreement passes; 27 % cut if not, (including if DIA/State don't pay), loss of COLA. Additional money from Disputed COPS claim fund if not settled. EACH AGREEMENT NON-BINDING, MEANS DIA/STATE DON'T HAVE TO PAY. WHAT HAPPENED TO \$723 MILLION IN STATE REVENUE SHARING OWED TO DETROIT OVER LAST 10 YEARS?
12	OPEB Claims	Impaired/Voting	4,303,000,000	Per agreement between Retirement Committee and City: on effective date, DGRS VEBA gets 218,000,000. PFRS VEBA gets 232,000,000. VEBA is trust run by city-selected bank, with bank getting assorted fees, expenses, investment decisions, not retirees or city. Additional money may come from unsettled Disputed COPS claim fund. NO GUARANTEE THAT VEBA AMOUNT WILL COVER NECESSARY BENEFITS. TWENTY-YEAR OVERSIGHT BOARD ASSIGNED.
13	DDA Claims	Impaired/Voting	33,600,000	DDA is front for Detroit Economic Growth Corp., run by wealthy private corporations.
14	Other Unsecured Claims	Impaired/Voting	Prorated	
15	Convenience Claims	Impaired/Voting	25% of total	
16	Subordinated Claims	Impaired/Nonvoting	0	

CONDITIONS FOR STATE AND DIA FUNDING OF PENSIONS, TOTALING \$716 MILLION OVER 20 YEARS @ 6.75%

Both PFRS and DGRS retirees vote for the plan; they, retirement systems, all other retiree associations, unions, any others must withdraw 6th Circuit Court of Appeals cases, any District Court Appeals of constitutionality of Public Act 436, and any other legal action/assertion that the State Constitution Art. 9, Sec. 24, protects public pensions. If STATE/DIA fund, no appeal; if not, all retirees will be deemed to have voted NO.

ART. 9 SEC. 24 OF THE MICHIGAN CONSTITUTION: "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, annual funding. 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."

Once the plan takes effect, all is not over by a long shot.

It says, “**Post-Effective Date Governance 20 years:** Prior to or on the Effective Date, a financial oversight board shall be established pursuant to and in accordance with State law now in effect or hereafter enacted to ensure that, post-Effective Date, the City adheres to the Plan and continues to implement financial and operational reforms that should result in more efficient and effective delivery of services to City residents. The financial oversight board shall be composed of individuals with recognized financial competence and experience and shall have the authority to, among other things, impose limits on City borrowing and expenditures and require the use of financial best practices.”



Indefinite bankruptcy court oversight

Additionally, POA4 says that the Bankruptcy Court shall retain oversight of its provisions indefinitely, and anything at all within them may be changed at the discretion of the court. It also retains jurisdiction over union contracts.

“Pursuant to sections 105(c), 945 and 1142(b) of the Bankruptcy Code and notwithstanding entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court will retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 9 Case and the Plan . . . to the fullest extent permitted by law, including, among other things, jurisdiction to . . . Enforce the term

Judge Steven Rhodes (maturity) of the collective bargaining agreements identified on Exhibit II.D.5 of the Plan, ***notwithstanding any state law to the contrary.*** . . . Approve any modification of the Plan or approve any modification of the Confirmation Order or any contract, instrument, release or other agreement or document created in connection with the Plan or the Confirmation Order. . . .”

It is unclear, actually, how Judge Rhodes is still wielding power, since according to Judgepedia, he retired Dec. 31, 2013 and is to be replaced by newly-appointed Bankruptcy Judge Mark Randon (***at right***) the court’s first Black judge.



Bios of Rhodes state different dates for his original appointment as a bankruptcy judge, ranging from 1986 to 2009. The 1986 date indicates he was appointed under the Ronald Reagan regime.

It is unclear from the bios whether he was serving as a bankruptcy judge July 17, 2013 when the bankruptcy case was filed. He was appointed by U.S. Sixth Circuit Court Chief Judge Alice Batchelder, another Reagan appointee, to handle it, with glowing recommendations from U.S District Court Chief Judge Gerald Rosen, a member of the ultra right-wing Federalist Society who Rhodes appointed as mediator in this case. Perhaps he was already planning to retire but was resurrected by Batchelder et al to do the bidding of the banks and corporations on the Detroit bankruptcy.

Retiree health insurance actually protected by Chapter 9

Orr has already imposed drastic health care out-of-pocket costs additionally that will put thousands in poverty. Such benefits are actually protected under Chapter 9, which declares any cuts must be “fair and equitable.” (Click on [Ch9 US Code Payment of Insurance Benefits to Retired Employees.](#))



Orr: between devil and deep blue sea

Orr did NOT take the steps required by Chapter 9 listed in the US Code before cutting retiree health care benefits, another reason to challenge the legality of POA4. He has bragged that Federal law “trumps” state law but evidently ignored these provisions.

Click on [CH 9 US CODE CONFIRMATION OF PLAN](#) to read about required conditions of fairness and equity. That section also states that impaired creditors like city retirees should receive at least the amount of the value of their holdings as if they had been liquidated (i.e. \$6 billion from the pension plans.)

“To me, the choice is the devil and the deep blue sea with a large stone around our neck, and Orr dropping buckets of blood in the water to draw sharks,” Water Department retiree Keith Davis said. “If I vote no, at least we have a chance with the legal [appeal]. If [we] vote yes, you’ll all say, you took it yourselves, don’t whine to us. I would be voting NO!”

A YES vote requires that the retirement systems, unions and others with cases pending before the Sixth Circuit Court of Appeals challenging the city’s eligibility for bankruptcy, which are backed

by strong amicus briefs from retirement systems nationally, including California's CalPERS, the largest in the nation, have to withdraw their appeals. Other cases pending before the U.S. District Court and state courts which challenge the constitutionality of Public Act 436, which put Orr in place would also have to be withdrawn.

Under terms of POA4, a YES vote from retirees would cancel out their rights to legal challenges to the pension and health care cutbacks, in particular any challenge citing the Michigan State Constitution's protection of public employee pensions:

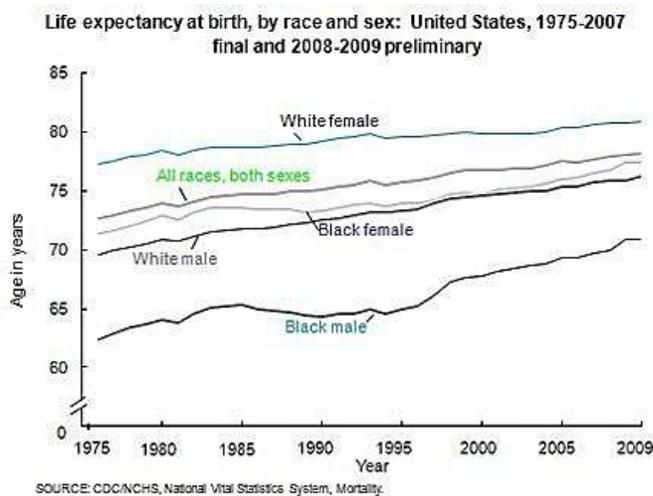
Article IX, Sec. 27 : "The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby."

POA4 even says that voters must agree that the clause does NOT apply in this case, despite the fact it was included in the Constitution during the 1963 Michigan Constitutional Convention and cannot be negated without the will of the people.



Retirees at N'namdi's meeting. The Detroit Concerned Citizens, Active Employees and Retirees meets there, at 12150 Woodward in Highland Park, every Monday at 11 a.m.

At a recent meeting of the Detroit Concerned Citizens, Active Employees and Retirees, (DCCAER) one retiree pointed out that actuarial figures used to compute the amount of pension and annuity cuts for each individual retiree, including the retiree's expected life span, are race-based and therefore also discriminatory.



(Ironically, POA4 says the figures are based on THREE different actuarial reports, from Milliman, Inc., Gabriel, Roeder and Smith, the city's official actuary, and a third company hired by the Retirees Committee.

According to testimony at the bankruptcy trial from Kevyn Orr and Charles Moore of Conway McKenzie, the Milliman report, which claimed the retirement funds were \$1.5 billion underfunded, was never completed.

The Gabriel, Roeder and Smith report estimated an approximate total of \$800,000 underfunding. So the estimates used in individual ballots of cuts to retiree pensions and annuities are highly questionable.)

According to the site, <http://www.worldlifeexpectancy.com/usa/life-expectancy-african-american>, Black males in Michigan have a life expectancy of 68.1 years while white males can expect to live to 76.29. Life expectancy for Michigan's Black females is 76.8 while white females live to an average age of 81.12.

This is not to mention the fact that Public Act 436, under which Detroit's EM Kevyn Orr was appointed and eventually declared bankruptcy, has been applied almost exclusively to majority-Black cities, in this case to the nation's largest Black-majority city.

New investment committee, VEBA represent additional windfall for banks



The DGRS held a membership meeting Sept. 25, 2012 at Fellowship Chapel but did not rally its retirees. Many of trustees shown are no longer on the board.

The retirement systems' silence on POA4 can be explained by the fact that their trustees' positions are retained in the document, unlike POA3 which replaced them with appointees who were not allowed to be city employees or retirees, union members or leaders, or anyone else related to the pension systems.

POA4, however, sets up an "Investment Management Committee" composed of members similar to the POA3 description, along with an "Investment Manager," who will have oversight over the retirement boards. They will not only make investment decisions, they will have the power to control distribution of assets to retirees.

What power the elected trustees will retain remains unclear, but likely they will still get a chance to take their little trips to retirement system conferences around the world, in exchange for selling out their memberships.

The two Voluntary Employee Benefit Associations (VEBA's) for the DGRS and the DPFERS which are proposed to handle the city's health care obligations to its employees likewise represent huge profits for the banks.



Mass national rally for single payer health care
the Trust Fund will be sufficient to pay any benefit to any person or make any other payment. The obligation of the Plan to pay any benefit provided under the Plan is expressly conditioned on the availability of cash in the Trust to pay the benefit, and no plan fiduciary or any other person shall be required to liquidate the OPEB Claims Notes or any other Plan asset in order to generate cash to pay benefits."

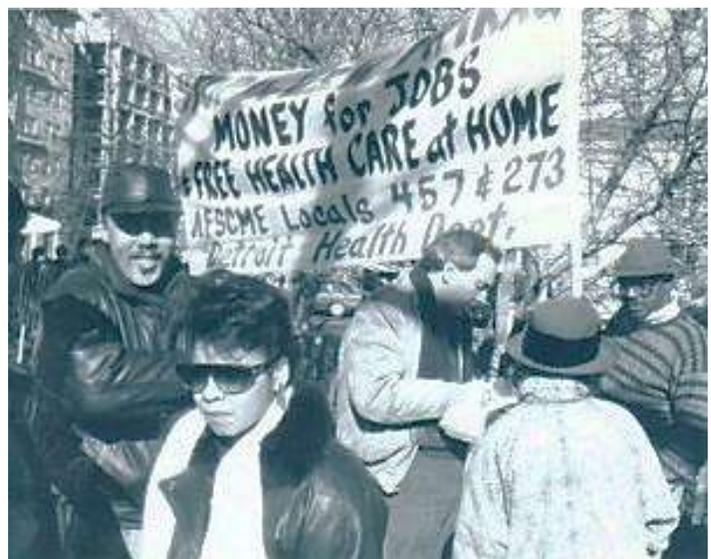
The city will choose ONE bank to run the systems as a trust. It will have broad decision-making powers over the administration of retiree health care as well as investments of the funds the city contributes, namely

The VEBA language in the proposal says in Sec. 2.4: **"No Guarantee. Nothing contained in the Trust or the Plan shall constitute a guarantee that the assets of**

Sec. 2.5 adds: **"No Interest.** Detroit shall not have any legal or equitable interest in the assets of the Trust Fund at any time, including following the termination of the Trust."

Sec. 5.9 addresses **Bank Compensation:** "The Bank will apply the assets of the Trust Fund to pay its own fees in the amounts and on the dates [set forth in Exhibit A]. The Bank's compensation shall constitute a lien on the Trust Fund."

The VEBA agreement says, "The Mayor of Detroit shall appoint three (3) voting members, both (*sic*) of whom shall be residents of the State of Michigan and neither of whom may be an employee, contractor, agent or affiliate of the City or any labor union representing employees of the City, a member of any



AFSCME Locals 457 and 273 from the now defunct Detroit Health Dept. marched in Washington against the first U.S. war on Iraq in 1991. Local 457 Pres. Al Phillips is at right being interviewed, member Denise Cranford (in hat) listens.



such labor union, or a Participant.”

Other members are to be selected by The Detroit Retired City Employees Association (DRCEA) and the Official Committee of Retirees in the case of the DGRS VEBA, and the Detroit Retired Police and Firefighters Association (DRPFPA) and the Official Committee of Retirees in the case of the DPFRS VEBA. Both associations are voluntary and completely non-representative of the total membership of the DGRS and the DPFRS.

No wonder Dentons, PLLC on behalf of the Official Retirees Committee, the DRCEA and the and the DRPFPA sent out letters recommending a YES vote on this horrendous, racist *Atty. Carol Nevile, Denton's* theft of the little that Detroit's retirees and active employees have to keep from being homeless and starving. SHAME!

Dentons, US LLP, which identifies itself as counsel for the Official Committee of Retirees appointed by the court AND THE CITY, announced with little notice that it is holding town hall meetings at Cobo Hall Wed. May 21, 2014 and Fri. May 23, 2014, with morning sessions from 10 am to 12 noon and afternoon sessions from 1 to 3 p.m. This is the first time Denton's, which argued strenuously AGAINST bankruptcy eligibility, has said it represents the City (i.e. Kevyn Orr as recognized by Judge Rhodes).



Kid Rock, Wendell Anthony embrace

The city's retirement systems are holding meetings at Rev. Wendell Anthony's Fellowship Chapel (notice at right).

The notice stresses that the meetings are "informational" only, meaning it is likely that remarks from retirees themselves will be extremely limited. Anthony sits on the DGRS board, which voted to approve POA4, saying it was "the best" they could get.

 RSCD Retirement System City of Detroit		Join Us: <i>Two Meeting Locations and Dates</i>	
Thursday, June 5, 2014 Fellowship Chapel 7707 West Outer Drive Detroit, MI 48235 10:00 am – Noon and 2:00 pm – 4:00 pm		Thursday, June 12, 2014 Renaissance Unity Church 11200 E. Eleven Mile Road Warren, MI 48089 1:00 pm – 3:00 pm and 6:00 pm – 8:00 pm	
LIVE STREAMING IS AVAILABLE: June 5, 2014 – 2:00 pm – 4:00 pm www.fellowshipchapel.org/livestream June 12, 2014 – 6:00 pm-8:00 pm www.renaissanceunity.org/livestreaming/livestreaming For more information about the General Retirement System of The City of Detroit contact: www.rscd.org .			
THIS IS AN INFORMATIONAL MEETING ONLY			
Program Presenters Moderator.....Mildred Gaddis The Ballot Issues.....Michael VanOverbeke		Health Care Benefits.....Benefits Specialist Questions & Answers.....Presenters	

The Detroit Concerned Citizens, Active Employees and Retirees is sending the following message by postcard to the DGRS and plans to be at all the meetings to campaign vigorously for a NO VOTE!

Dear GRS, Board of Trustees Members

Thank you for creating an opportunity for the City of Detroit retirees, past employees and active employees, to hear and speak on what may undoubtedly change our life styles and standards of living as we know it.

Respectfully, this note is directed to you all to request that there be an open microphone opportunity and not written cards at the Informational Meetings that are scheduled in June 2014. As we try to clearly understand these turbulent situations, we fully need to be able to express ourselves in our own words and for our own understanding. We are fortunate that the Board is providing an informative opportunity that we may never get to experience again; however, we truly want to avoid the changes of our questions being misinterpreted, filtered, screened, or not clearly understood.

Again, Thank You for this venue and for any consideration provided to this request!

Sincerely,

To read the entire POA4 and its Disclosure Statement, click on

4th amended Plan of Adjustment

<http://www.mieb.uscourts.gov/sites/default/files/detroit/docket4392.pdf>

4th amended Disclosure Statement

<http://www.mieb.uscourts.gov/sites/default/files/detroit/docket4391.pdf>

MEETINGS OF THE DETROIT CONCERNED CITIZENS, ACTIVE EMPLOYEES, AND RETIREES EVERY MON. 11 A.M. AT N'NAMDI'S CAFE, 12150 Woodward, Highland Park

MEETINGS OF THE STOP THE THEFT OF OUR PENSIONS COMMITTEE EVERY MON. 7 P.M. AT 5920 Second Avenue, Detroit, Phone 313-680-5508

RELATED ARTICLES:

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