Case No. 15-2353

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

IN RE: CITY OF DETROIT, MICHIGAN

DENNIS TAUBITZ AND IRMA INDUSTRIOUS

Appellants

v.

CITY OF DETROIT, ET. AL.

Appellees.

On Appeal from the United States District Court
for the Eastern District of Michigan
No. 14-CV-14917
The Honorable Bernard Friedman

Joint Brief of Appellants Dennis Taubitz and Irma Industrious

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit Case Number: 15-2353 Case Name: Dennis Taubitz, et. al. v. City of Detroit et

Name of counsel: Dennis Taubitz

Pursuant to 6th Cir. R. 26.1, Dennis Taubitz and Irma Industrious
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on December 18, 2015 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

6th Cir. R. 26.1
DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

(a) **Parties Required to Make Disclosure**. With the exception of the United States government or agencies thereof or a state government or agencies or political subdivisions thereof, all parties and amici curiae to a civil or bankruptcy case, agency review proceeding, or original proceedings, and all corporate defendants in a criminal case shall file a corporate affiliate/financial interest disclosure statement. A negative report is required except in the case of individual criminal defendants.

(b) **Financial Interest to Be Disclosed**.

(1) Whenever a corporation that is a party to an appeal, or which appears as amicus curiae, is a subsidiary or affiliate of any publicly owned corporation not named in the appeal, counsel for the corporation that is a party or amicus shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the parent corporation or affiliate and the relationship between it and the corporation that is a party or amicus to the appeal. A corporation shall be considered an affiliate of a publicly owned corporation for purposes of this rule if it controls, is controlled by, or is under common control with a publicly owned corporation.

(2) Whenever, by reason of insurance, a franchise agreement, or indemnity agreement, a publicly owned corporation or its affiliate, not a party to the appeal, nor an amicus, has a substantial financial interest in the outcome of litigation, counsel for the party or amicus whose interest is aligned with that of the publicly owned corporation or its affiliate shall advise the clerk in the manner provided by subdivision (c) of this rule of the identity of the publicly owned corporation and the nature of its or its affiliate's substantial financial interest in the outcome of the litigation.

(c) **Form and Time of Disclosure**. The disclosure statement shall be made on a form provided by the clerk and filed with the brief of a party or amicus or upon filing a motion, response, petition, or answer in this Court, whichever first occurs.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Oral Argument is requested. Appellants Dennis Taubitz and Irma Industrious submit that the Court's decision process would be aided by oral argument. *See Fed. R. App. P 34(a) (2) (c)*.

STATEMENT OF APPELLATE JURISDICTION

This is a Joint Appeal by Appellants Dennis Taubitz and Irma Industrious from the final order of the United States District Court for the Eastern District of Michigan (the District Court) exercising appellate jurisdiction over the United States Bankruptcy Court for the Eastern District of Michigan (the Bankruptcy Court) dismissing Appellants appeal on the grounds of equitable mootness.

The District Court order was entered on September 29, 2015. Appellants filed a timely notice of appeal.

The District Court's jurisdiction was based on 28 USC § 158 (a) (appeal from final judgment of a bankruptcy court). This Court has jurisdiction pursant to 28 USC § 158 (d) (appeal from a final order of a district court exercising appellate jurisdiction).

STATEMENT OF THE ISSUES

1) Whether the District Court erred by extending the equitable mootness doctrine to apply to this case which arises under Chapter 9 of the United States Bankruptcy Code.

2) Whether, assuming Arguendo, that the equitable mootness doctrine applies in the case at bar, the District Court erred in determining that the claims of error in Appellants' appeal from the Bankruptcy Court's Confirmation of the Plan of Adjustment meet the criteria for refusing to exercise jurisdiction on the grounds of equitable mootness.

   (a) Whether the Plan of Adjustment was substantially consummated in any way relevant to the claims of error raised in Appellants' appeal to the District Court.

   (b) Whether the relief Appellants seek or any other possible relief adversely affects the rights of third parties not before the District Court.

   (c) Whether the relief Appellants seek or any other possible relief doom the Plan of Adjustment and leave it in chaos.

STATEMENT OF THE CASE

Appellee the City of Detroit filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of Michigan, Southern Division under Chapter 9 of the United States Bankruptcy Code in case number 13-53846 in July of 2013. The Bankruptcy Court ruled that the City of Detroit met the statutory requirements of 11 U.S.C. § 109 (c) and could enter Chapter 9 bankruptcy, and that the City could impair pensions without violating the State of Michigan Constitution. *See In re City of Detroit, 504 B.R. 97, 110 (2013).*

From the beginning of the proceedings, the Bankruptcy Court denied the constitutional due process rights of the Appellants Dennis Taubitz and Irma Industrious by refusing to allow them to participate in a meaningful way in the proceedings. The Bankruptcy Court also, in error, allowed creditors to vote on the Fourth Amended Plan of Adjustment of the Debts of the City of Detroit. This occurred despite the fact that material facts were concealed from the creditors, and that creditors with differing and competing interests were improperly placed in Class 11.

Additionally, the Bankruptcy Court in the Plan of Adjustment reduced pensions and allowed the clawback of alleged excess interest in the Annuity Savings Fund (ASF). Both the pension and the ASF were administered and paid by the General Retirement System of the City of Detroit (GRS). The GRS is a separate entity and was listed as a creditor in the bankruptcy case by the City of Detroit. The GRS never declared bankruptcy and was not listed as the debtor. Despite that fact, the Bankruptcy Court adjusted the debts of GRS in the case at bar.

Based on the consent of creditors, the Bankruptcy Court approved the City of Detroit's Eight Amended Plan of Adjustment of the Debts of the City of Detroit. Appellants Dennis Taubitz and Irma Industrious appealed the Bankruptcy Court's decision to the United States

District Court for the Eastern District of Michigan. The Appellants requested that that District Court strike the Annuity Savings Fund (ASF) clawback, also known as recoupment from the City's Eighth Amended Plan of Adjustment of the debts of the City of Detroit, as it pertains to Appellants Dennis Taubitz and Irma Industrious only; or in the alternative, Appellants Taubitz and Industrious requested that they be credited with the amount of ASF clawback that the City of Detroit asserts against them. Additionally, Appellants Taubitz and Industrious concurred with the relief requested by John P. Quinn to set aside the injunctions entered for non-debtors.

In response, the City of Detroit filed a Motion to Dismiss the Appellants Dennis Taubitz and Irma Industrious' appeal based on the doctrine of equitable mootness. The City of Detroit asserted that the appeal should be dismissed since to do otherwise would disrupt the entire bankruptcy Plan of Adjustment. The District Court granted the City of Detroit's Motion to Dismiss the appeal.

Appellants Dennis Taubitz and Irma Industrious now appeals the District Court's decision.

SUMMARY OF THE ARGUMENT

Equitable mootness is a judge created doctrine. The United States Supreme Court has not yet ruled on the doctrine's appropriateness. The doctrine arose in Chapter 11 bankruptcy cases, particularly reorganizations. The doctrine has also been utilized in Chapter 11 liquidations. The doctrine has been questioned, even in Chapter 11 situations, due to the fact that the Cunited States Congress has granted Article III jurisdiction to hear appeals from judgments and final orders of the United States Bankruptcy Court. The United States Congress has allowed a few rare exceptions to this general rule. However, no such exception exists for equitable mootness.

The doctrine of equitable mootness is made up of Chapter 11 concepts, primarily substantially consummation. The most deciding factor in an equitable mootness analysis is whether third parties, not before the court, would be adversely impacted if the relief was granted, and whether the relief sought in the appeal would leave the Plan in tatters, creating chaos and preventing the Plan from succeeding.

Appellants submit that the doctrine should not be expanded into a Chapter 9 setting as it is, at best, a Chapter 11 concept that does not fit into a Chapter 9 analysis.

Moreover, Appellants submit that even if the doctrine of equitable mootness is deemed applicable in Chapter 9 cases, the District Court misapplied the doctrine in the case at bar and therefore committed reversible error. Appellants therefore seek that the case be remanded to the District Court for a hearing on the merits.

STANDARD OF REVIEW

This Court reviews an equitable mootness determination de novo. *See Curreys of Nebraska, Inc. v. United Producers, Inc. (In re United Producers),* 526 F. 3rd 942, 946 (6th Cir. 2008) (" because the Court of Appeals is in just as good a position to make the determination as was the District Court").

In reviewing a bankruptcy decision appealed to the District Court, this Court accords no deference to the District Court's decision. *See Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Home Patient, Inc.),* 420 F. 3rd 559, 564-65 (6th Cir. 2005).

ARGUMENT

I. EQUITABLE MOOTNESS IS NOT APPROPRIATE IN A CHAPTER 9 BANKRUPTCY CASE

Equitable mootness is a judge created doctrine that began in Chapter 11 reorganization under the Bankrupt Code. The City of Detroit and the District Court seek to expand this discredited doctrine to a Chapter 9 bankruptcy. However there are many distinctions between a Chapter 11 reorganization and a Chapter 9 case and these distinctions impact the viability of the equitable mootness doctrine.

In Chapter 11, the debtor when it files for bankruptcy, incurs a loss of control of the business. A trustee is appointed and he or she is in charge of the day to day operation of the business. Certainly, business decisions out of the day to day operation requires court approval, which requires a court hearing which involves all interested parties having an opportunity to be heard in open court. *See* 11 USC § 363(b) Although the City of Detroit is a municipal corporation, its bankruptcy was under a totally different set of rules. The City of Detroit retained complete control of its day to day operations. Further, there was no scrutiny by the court of any of the City of Detroit's expenditures. The question of what expenditures are proper and necessary for the municipal administration is not judicial, it is conferred by law to the discretion of the municipal authorities. See *East St Louis v. Zehley, 110 US 321 (1884).*

In essence, the City of Detroit was free to spend any amount of money on anything it chose and did so. This was able to occur despite the fact that it had an adverse effect on the creditors. In Chapter 11, a corporation that cannot nor will not pay its creditors can be liquidated and its assets sold to satisfy the creditors. In Chapter 9, the municipality cannot be forced to

liquidate its assets. Indeed, the City of Detroit owns multiple assets worth billions of dollars, and it has failed to sell a single asset.

Further, there is no priority provision in a Chapter 9 bankruptcy unlike a Chapter 11. Simply stated the City of Detroit in its bankruptcy was treated far different than other debtors. Moreover, no statutory authority exists to base the extension of equitable mootness doctrine to a Chapter 9 bankruptcy. Neither 28 USC § 158 nor the Bankruptcy Code allows courts any discretion over which appeals to consider in such a certain narrow class of bankruptcy cases. Congress has expressly limited the relief that can be obtained on appeal. *See* 11 USC§ 363(m) limiting the relief available on appeal of an order approving an unstayed sale of a debtor's property to a good faith purchaser and 11 USC § 364 (e) (limiting the relief available on appeal of an order approving post petition financing provided in good faith). There is, however, no provision in Chapter 9 of the Bankruptcy Code that allows an Article III court to decline to review cases due to equitable mootness. Because Congress limited appeals in certain situations, they could have done so in a Chapter 9 situation but they did not. *See Leatherman v. Tarrant County Narcotics Intelligence and Coodination Uni,t 507 US 163,168 (1993)* (Congress express inclusion of certain exceptions indicates an intent to preclude the recognition of others) *Russello v. United States, 464 U.S. 16 23 (1983)* (where Congress includes particular language in one section of a statue but omits in another section of the same act it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion and exclusion) *Field v. Mans, 516 US 59, 75 (1995)* (The more apparently deliberate the contrast, the stronger the inference as applied for example to contrasting statutory sections originally expected simultaneously in relevant respect “)

Simply stated there is no valid reason to extend the discredited judge created doctrine of equitable mootness to a Chapter 9 Bankruptcy as debtors are treated entirely different under the two different Chapters. Equitable mootness, if it retains any viability, should be restricted to Chapter 11 cases.

II. THE DISTRICT COURT'S ANALYSIS OF EQUITABLE MOOTNESS IS ERRONEOUS

The District Court waited until September 29. 2015 to issue the document entitled Opinion and Order Granting Appelle's Motion to Dismiss Appeal as Equitable and Constitutionally Moot pursuant to Fed. R. Civ. P. 12(b)(1).

Simply stated, the District Court was wrong to apply an equitable mootness analysis to an appeal of a Chapter 9 bankruptcy case. Appelants Dennis Taubitz and Irma Industrious submit that applicaton of the judge created equitable mootness doctrine is constitutionally and morally suspect and should not be applied in any case.

The argument instead focuses on an analysis of the District Court's rationale that premised its opinion to dismiss Appellants' appeal of a Chapter 9 Bankruptcy case without affording arguments on the merits of the appeal.

The District Court opinion of the Annuity Saving Fund (ASF) clawback is enlighting as it is at the heart of this appeal. The lower court neglects to mention that the Debtor, now Appellee the City of Detroit, placed these individuals that were being clawed back with those who only received a 4.5% reduction in their pension into the same Class 11. Unsurprisingly, those who were subject to a 4.5% reduction were agreeable to allowing other pension claimants in the same Class 11 to have their pension reduced by up to 20%. Clearly, there was a conflict within the Class which should have been divided into at least two separate classes -- those who were clawed back and those who were not.

Finally, the District Court set forth its rational for appealing equitable mootness in a Chapter 9 bankruptcy case opining that because the underlying equitable considerations of promoting finality and good faith reliance on a judgment applies with equal force to a Chapter 9 bankruptcy appeal, the Court sees no reason why the doctrine should not be applied to avoid disturbing a Chapter 9 Plan of Adjustment. Although the District Court saw no reason, Appellants Dennis Taubitz and Irma Industrious certainly do.

First, the doctrine of equitable mootness is simply a weapon that the proponents of bankruptcy plans use to avoid having to defend the merits of an appeal. The argument of promoting finality is unfair. Instead of litigating an appeal on the merits of a challenge, the parties now litigate equitable mootness and its application. There is a risk of even less finality after litigating equitable mootness to the Court of Appeals as there is a risk that the parties may have to litigate the merits of the case, thus prolonging the litigation process and giving rise to even less finality than if the parties had litigated the merits from the beginning.

Secondly, the District Court sets forth the position of good faith reliance on a judgement. The District Court, however, fails to set forth why a Bankruptcy Court, a non Article III judge, is accorded a higher degree of reliance than other civil or criminal judges. A criminal conviction by an Article III judge is appealable to the Court of Appeals. A civil judgment in the District Court is appealable to the Court of Appeals. It is therefore questionable why a bankruptcy judgment should not also be appealable, particularly in light of the fact that bankruptcy judge is not an Article III judge.

There is no comparison between this case and a Chapter 11 litigation. The District Court in its faulty analysis, opines that “rather what matters is whether hearing the bankruptcy appeal could unravel the debtor’s plan and disturb the reliance interests created by it”. District Court

opinion p.10 . The City of Detroit's bankruptcy plan account for $18 billion in debt. Appellants Dennis Taubitz and Irma Industrious fail to determine how returning appellants $70,000 would unravel an $18 billion plan. Nor would the return of the $70,000 disturb any reliance on the plan by third parties. First, there are no third parties. All of the parties that could be adversely affected by the return of Appellants' money are before the court. There is also no third parties' reliance interest in the case at bar, again pointing out the distinction between a Chapter 11 bankruptcy and Chapter 9.

Additionally, the lower court notes that the City of Detroit in calculating the ASF clawback calculated "the difference between the amounts earned on ASF accounts and the amount that would have been earned had the accounts been credited with actual returns, but capped at 7.9% and with a floor against investment loss (0%)". District Court opinion p.5. Nowhere does the District Court attempt to explain why funds invested in the account should be capped at 7.9%. Certainly, in many of the years in question 2003 to 2013 market returns were much greater than 7.9%. An investment device that seeks to obtain additional capital for the pension fund should not limit the highest poosible return on the investment to 7.9%? The District Court certainly provides no explanation. Indeed, the only rational explanation is the City of Detroit seeks to profit from the investment of others in its pension by seeking to inappropriately reduce its funding obligation to the pension fund.

Finally, the District Court erroneously misstates the relief sought by Dennis Taubitz and Irma Industrious. In footnote 3, the District Court claims "Appellants request here (striking the ASF Recuopment in it entireity from the Plan) District Court Opinion p. 7. This is false. Appellants do not represent every clawed back claimant. Appelants only represent themselves. The District Court in failing to read the entire relief requested, misquoted Taubitz

and Industrious' request for relief which states that " request that this Honorable Court strike the Annuity Saving Fund (ASF) clawback also known as recoupment from Appellee's Eight Amended Plan of Adjustment of the debts of the City of Detroit **as it pertains to Appelants Dennis Taubitz and Irma Industrious**" (Emphasis added) Joint Reply Brief of Dennis Taubitz and Irma Industrious filed with District Court on April 13, 2015 p 18.

The District Court's allegation that Appellants sought to strike the ASF recoupment in its entirety is **totally false**.

Dennis Taubitz and Irma Industrious simply want their monies that was clawed back returned to them. Dennis Taubitz and Irma Industrious are not seeking to strike the ASF clawback from the bankruptcy plan as it is applied to anyone else. Indeed, only Dennis Taubitz and Irma Industrious could possibly be affected by a positive outcome obtained by the Appellants. To be perfectly clear, Appelants Dennis Taubitz and Irma Industrious are only requesting the return of *their* clawback money which totals approxiamately $70,000 ($52,020 for Appellant Dennis Taubitz and $18,000 for Appellant Irma Industrious). Clearly, this is not seeking to strike the ASF clawback program in its entirety from the bankruptcy plan. Indeed it is nowhere close. Removing the $70,000 the Appellants are seeking from a total ASF clawback of $190 million is more in the nature of rounding error and is certainly deminus as Appellants have previously stated, and as the District Court chose to ignore.

If the City of Detroit's argument is taken to its illogical conclusion, there would never be an appeal of a bankruptcy court judgement. No matter how wrongful the Bankruptcy Court's rulings, or how many constitutional rights are violated, there would be no redress. This a

violation of due process rights and is completely contrary to the American jurisprudence and any sense of fairness.

III. ASSUMING THAT THE EQUITABLE MOOTNESS DOCTRINE APPLIES TO THIS CASE, THE DISTRICT COURT ERRED IN RULING THAT APPELLANTS' CLAIMS OF ERROR IN THEIR APPEAL FROM THE BANKRUPTCY COURT CONFIRMATION OF THE PLAN OF ADJUSTMENT SATISFIED THE CRITERIA FOR DECLINING TO EXERCISE JURISDICTIONON THE GROUNDS OF EQUITABLE MOOTNESS

Even if it is assumed that equitable mootness is applicable in this case, the District Court applied it incorrectly, and therefore committed reversible error. The District Court emphasized that Appellants Dennis Taubitz and Irma Industrious failed to obtain a stay from the Bankruptcy Court. Appelants, however, submit that they attempted to obtain a stay from the Bankruptcy Court when they concurred with John Quinn's Motion for a Partial Stay. Indeed, this partial stay would not have left the Bankruptcy Plan of Adjustment in chaos or tatters. Nonetheless, the Bankruptcy Court denied the Motion for a Partial Stay. Certainly, Appellants tried to obtain a partial stay, and the fact that Appellants were denied a partial stay should bear little weight in the analysis.

Dennis Taubitz and Irma Industrious' request for a partial stay was wrongfully denied by the Bankruptcy Court in the same manner that their constitutional right to due process were consistently denied by the Bankruptcy Court. Specifically, Appellant Dennis Taubitz's Motion to Participate in the hearing to determine the eligibility of the City of Detroit's to enter into Chapter 9 bankruptcy proceeding was denied by the Court. Similarly, Appellant Dennis Taubitz's Motion to Participate in Negotiations and or the mediation process was denied by the Court. Moreover, the Bankruptcy Court scheduled a confirmation hearing on the City of Detroit's Plan of Adjustment, but denied Appellant Dennis Taubitz's request to participate in the

confirmation hearing, and wrongfully limited Appellant Irma Industrious to one witness and five minutes, which disallowed Appellant Industrious from participating in the hearing in a meaningful way. It should be noted that the Court placed no such restriction on the City of Detroit at the confirmation hearing. Based on this pattern of abuse of Appellants' constitutional due process rights, it is not surprising that the Bankruptcy Court, denied the Motion for Partial Stay. Indeed, the easiest way to ensure that one's unconstitutional decisions are not reviewed by an Article III Judge is to deny the request for a stay.

A. THE PLAN OF ADJUSTMENT WAS NOT SUBSTANTIALLY CONSUMMATED IN ANY WAY RLEVANT TO THE CLAIMS OF ERROR RAISED IN APPELLANTS' APPEAL

The District Court cites a definition in the Bankrupt Code for substantial consummation See 11 USC § 1101 (2). This is of course a Chapter 11 concept see Bennett v. Jefferson Count Ala 58 R 613 LND D (a 2014 and *In re Seidler 44 F. 2d 845, n3(11th Cir 1995)* and it is dubious at best to apply it in a Chapter 9 as is the case at bar. The District Court's reliance on 11 USC § 1101(2) is inapplicable due to 11 USC 102(f).

In the case at bar, Appellants Dennis Taubitz and Irma Industrious submit that substantial consummation has not occurred. For example, there has not been a "commencement of distribution under the plan" 11 USC §1101(2)(6) as unsecured claims of the City of Detroit have not received a distribution. Therefore, not all the requirement for substantial consummation have been met.

Further, in light of the fact that Appellants Dennis Taubitz and Irma Industrious only challenge the viability of pension cuts and the ASF clawback, and not the entire plan, the City of Detroit and the District Court's reference to transactions, many of which would not be impacted

by the relief sought by Appellants Taubitz and Industrious, are therefore inappropriate, particularly, due to the fact that the City of Detroit ASF clawback will be in effect for the next twenty to thirty years. Appellants Taubitz and Industrious submit that a process that takes twenty to thirty years to complete has **not** shown substantial consummation. Further, the fact that the Emergency Financial Manager, Kevyn Orr, was relieved as the Emergency Manager does not show substantial consummation. Moreover, an appointment of the Michigan Financial Review Commission does not demonstrate substantial consummation, but rather demonstrates a lack of faith in the ability of the City of Detroit to govern itself.

Appellants Dennis Taubitz and Irma Industrious assert arguendo that even if the District Court was correct to apply the equitable mootness doctrine, there has not been substantial consummation of the portion relevant to Appellants' claim for review.

B. THERE ARE NO THIRD PARTIES THAT ARE NOT BEFORE THE COURT THAT WOULD BE ADVERSELY AFFECTED BY GRANTING APPELLANTS' RELIEF

The District Court correctly noted that "even when a plan has been substantially consummated it is not necessarily impossible or inequitable for an appellate court to grant effective relief" *In re United Producers Inc.* 526 F3d 942, 949 (6th Cir. 2008). The District Court also notes the "most important factor (a) court must consider is whether the relief requested would affect the rights of parties not before the court or the success of the plan. *Id* This therefore requires a case by case anaylis of the feasibility of a effective relief should the parties appealing prevail. *Id*. The *In re United Producer* court goes on to state that the appellate court must "consider the nature of relief requested and whether it amounts to a piecemeal revision of the plan or a wholesale rewriting of it" 526 F3d at 949. Indeed, *In re United Producers supra* the

court goes further and asserts that the appellate must determine if Appellants set forth a "plausible argument that the implementation of their suggested changes to the confirmation plan would not require any of the actions undertaken pursant to the plan to be reversed". 526 F2d 950

The District Court calling Dennis Taubitz and Irma Industrious' relief a perverse outcome is based on the District Court's failure to grasp the relief that the Appellants requested. First, Taubitz and Industrious were seeking not to have approximately $70, 000 of the ASF clawback be applicable to them. Second, Taubitz and Industrious also joined Appellant John Quinn and requested relief that the Federal District court bench is able to create an effective remedy. To be perfectly clear, Taubitz and Industrious do **not** seek to strike $190 million from the City of Detroit's plan. Taubitz and Industrious do not seek to eliminate the entire ASF clawback, and therefore the District Court's contention that it "would require nothing less than a wholesale annilation of the Plan" is false. *See In re Menges* 29 F3d at 1043 Taubitz and Industrious submit that neither allowing them to recover their $70,000, or allowing the federal bench to arrive at an equitable solution to the clawback, or removing injunctions for parties other the debtor Appellee City of Detroit would result in a wholesale anniliation of the Plan. Indeed, Taubitz and Industrious are only seeking a more equitable resolution of a very inequitable plan that was proposed by the City of Detroit with no opportunity for involvement in the process (Appellant Taubitz attempt to participate in the negotiation process and was denied by the Bankruptcy Court) and approved by the Bankruptcy Court with no meaningful opportunity for Appellants to be involved in the hearing.

Taubitz and Industrious submit that they were denied due process and therefore denied equity, which the District Court has also refused to grant in allowing a hearing on the merits of their appeal, instead dismissing their appeal, on the grounds of equitable mootness.

Further, Taubitz and Industrious submit that the District Court had the cart before the horse. The District Court should have decided the merits of the appeal and then the court could determine if a remedy could be fashioned that would not result in "wholesale annihilation of the Plan". *See In re Manges* F3d at 1043.

Moreover, the District Court claims that "reversing the Plan (of Appelle) would negatively affect countless third parties who justifiably relied on the plan". Dist Ct. opinion pp. 17-18. The District Court fails to assert who the alleged third parties are. Under the equitable mootness doctrine, a judge made doctrine, which is applied in a Chapter 11 context, it speaks of third parties because such parties exist in a Chapter 11 plan. They could, for example, be stockholders. Because the City of Detroit is a municipality, it has no shareholders because there is no stock in the entity called the City of Detroit. The only parties who could possibly be affected by the appeal of Taubitz and Industrious are appearing before this Court and they appeared in the District Court as well as the Bankruptcy court. The City of Detroit, the General Retirement System of the City of Detroit, the State of Michigan and the Retiree Committee have all appeared, although some of the entities have chosen not a file a brief in response to Appellants Taubitz and Industrious' appeal.

Therefore, the District Court was in error on both counts. First, Appellants Taubitz and Industrious requested relief would not negatively affect the success of the Plan and nor would innocent third parties that are before the Court be harmed.

C. THE RELIEF THAT APPELLANTS SEEK DOES NOT ADVERSELY AFFECT THE SUCCESS OF THE PLAN OF ADJUSTMENT

The relief that Appellants Dennis Taubitz and Irma Industrious seek does not adversely affect the success of the Plan of Adjustment. Allowing the District Court jurisdiction to hear

Appellants' appeal on the merits would not adversely impact the rights of matters before the court. All the parites that could be affected or impacted by Appellants' appeal are already before the court. The debtor the City of Detroit is before the Court. The State of Michigan is an appelle and is also before the court. The General Retirement System of the City of Detroit is an also appelle and is therefore before the court. Lastly, the Retiree Committee of the City of Detroit is an appelle and before the court as well. Simply stated, there are no other parties, not before the court, that would be adversely impacted by Appellants appeal.

It is possible to grant Dennis Taubitz and Irma Industrious relief without adversely affecting the success of the Plan of Adjustment as a whole. The Plan of Adjustment provides that Appelle City of Detroit is to make payments to the General Employee Retirement System in order to fund the pensions. The relief that Appellants Dennis Taubitz and Irma Industrious seek would not alter the timing or amount that the City of Detroit is required pursuant to the Plan of Adjustment to pay.

The relief Taubitz and Industrious seek also does not reduce the monies the City of Detroit would have available to satisfy claims of other creditors, or to provide services to the residents and to carry out any revitalization projects. The City of Detroit would still have the same amount of funds pursant to the Plan of Adjustment.

Further the relief Taubitz and Industrious seek does not affect the City of Detroit's liability. The relief Taubitz and Industrious are seeking would only affect the General Retirement System which is a separate legal entity from Appelle the City of Detroit. Moreover, the General Retirement System never filed for bankruptcy protection regarding its pension and the ASF obligations, and certainly was not the debtor in the City of Detroit's bankruptcy as it was instead listed as a creditor.

In short, the City's Plan of Adjustment is not doomed to failure and chaos will not erupt if Taubitz and Industrious are granted their requested relief. The City of Detroit will still have the same amount of monies in order to fulfill its obligations.

IV. THE DISTRICT COURT ERRED BY EXTENDING THE EQUITABLE MOOTNESS DOCTRINE TO APPLY IN THIS CASE WHICH ARISES UNDER CHAPTER 9 OF THE UNITED STATES BANKRUPTCY CODE

A. THE DISTRICT COURT'S HOLDING THAT EQUITABLE MOOTNESS APPLIES IN CASES ARISING UNDER CHAPTER 9 LACKS PRECEDENTIAL SUPPORT IN THE UNITED STATES SUPREME COURT AND THIS COURT

The United States Supreme Court has not yet ruled on the doctrine of equitable-mootness. This court has discussed it in three published cases and two unpublished cases, all involving reorganizations under Chapter 11 of the United States Bankruptcy Code. *City of Covington v. Covington Landing L.P.*,71 F.3d 1221 (6th Cir. 1995);[7] *Unofficial Committee of Co-Defendants v. Eagle-Picher Indus., Inc. (In re Eagle Picher Indus., Inc.)*, 172 F.3d 48, 1998 WL 939869 (6th Cir., 1998) (unpublished); *Matter of Arbors of Houston Associates Ltd. Partnership*,172 F.3d 47, 1999 WL 17649 (6th Cir. 1999)(unpublished); *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Home Patient, Inc.)*, 420 F.3d 559 (6th Cir. 2005); *Curreys of Neb., Inc. v. United Producers, Inc. (In re United Producers, Inc.)*, 526 F.3d 942 (6th Cir. 2008). In *City of Covington*, *Arbors of Houston*, and *American Home Patient United Producers* the Court held that equitable mootness did not prevent consideration of the merits. In *Eagle*

[7] The *Covington* panel used the term "equitable estoppel," not "equitable mootness." However, it is clear the doctrine it applied was at least an embryonic form of what we have come to call "equitable mootness." This Court has cited *Covington* as an equitable-mootness case. *American Home Patient*, 420 F.3d at 563; *United Home Producers*, 526 F.3d at 947.

Picher and *United Producers* equitable mootness was held to apply. In *Merriweather v. Official Comm. of Unsecured Creditors (In re Made in Detroit, Inc.)*, 414 F.3d 576, 583 (6th Cir. 2005), also a Chapter 11 reorganization, the debtor raised issues of statutory and equitable mootness. The Court determined that the appeal was statutorily moot and therefore declined to consider the issue of equitable mootness. This Court has not suggested, even in dicta that equitable mootness might apply in cases arising under Chapter 9 of the Bankruptcy Code.

The overwhelming majority of cases in which equitable mootness has been considered in other circuits also have been Chapter 11 reorganizations. See *Desert Fire Prot. v. Fontainebleau Las Vegas Holdings, LLC (In re Fontainebleau Las Vegas Holdings, LLC)*, 434 B.R. 716, 742-43 (S.D. Fla. 2010) ("[E]quitable mootness is most commonly applied to avoid disturbing [chapter 11] plans of reorganization,") This is not surprising, since courts have developed the doctrine "in response to the particular problems presented by the consummation of plans of reorganization under Chapter 11." *TNB Fin., Inc. v. James F. Parker Interests (In re Grimland, Inc.)*, 243 F.3d 228, 231 (5th Cir.2001).

Recently, the Second Circuit applied equitable mootness to a Chapter 11 liquidation. *Beeman v. BGI Creditors' Liquidating Trust (In re BGI, Inc.)*, 772 F.3d 102, 109-11 (2d Cir. 2014). In unpublished opinions, panels of the Eighth and Tenth Circuits seem to assume, without analysis that equitable mootness applies in Chapter 11 liquidations, as well as reorganizations. *Zegeer v. President Casinos, Inc. (In re President Casinos, Inc.)*, 409 F. App'x 31, 31-32 (8th Cir. 2010)(unpublished); *Sutton v. Weinman (In re Centrix Fin. LLC)*, 355 F. App'x 199, 201-02 (10th Cir. 2009)(unpublished). The First Circuit has considered the possibility that equitable-mootness could prevent consideration of the merits in a Chapter 7 liquidation, but declined to apply the doctrine to prevent review of the merits in the case before it. *Hicks, Muse & Co. v.*

Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 48-49 (1st Cir. 1998). The Fifth Circuit has twice declined to apply equitable mootness in Chapter 7 liquidations and questioned whether it can ever be applied in such a case. *In re San Patricio Cnty. Cmty. Action Agency*, 575 F.3d 553, 558 (5th Cir. 2009); *In re Bodenheimer, Jones, Szwak, & Winchell L.L.P.*, 592 F.3d 664, 668-69 (5th Cir.2009). Similarly, see *In Re: Christian Anthanassious, Debtor. Carol Palmer, Appellant*, 418 Fed. Appx. 91, nt. 3 (3d Cir. 2011) (unpublished). Recently, in an unpublished opinion, the Eleventh Circuit applied equitable-mootness analysis to affirm dismissal of an appeal in a Chapter 7 liquidation where there had been no effort to obtain a stay and the estate had been entirely liquidated more than two years before the dismissal. *In re Strickland and Davis International, Inc.*, 11th Cir. No. 14-13104, May 11, 2015.

In *Russo v. Seidler (In re Seidler)*, 44 F.3d. 945 (11th Cir. 1995) the district court had held that an appeal from the bankruptcy court's final order in an adversary proceeding was moot under 11 U.S.C. § 1327, a provision found in Chapter 13 of the Bankruptcy code. However, the Eleventh Circuit reversed that holding. 44 F.3d 948, 949. In its opinion the court of appeals made no explicit reference to equitable mootness, but in its consideration of statutory mootness it discussed factors that are commonly associated with equitable mootness: whether a stay was obtained, whether the plan has been substantially consummated and the interests of third parties not before the court. 44 F.3d 947, nt. 3. It went on the reject application of one of those factors, substantial consummation, to the Chapter 13 case before it because "'[s]ubstantial consummation' is a Chapter 11 concept, *See* 11 U.S.C. 1101(2), which is inapplicable to this case, *See* 11 U.S.C. § 103(f)."*Lionel v. City of Vallejo*, 551 F. App'x 339 (9th Cir.

2013)(unpublished)[8] is a memorandum opinion containing two paragraphs of analysis. In those two paragraphs the panel assumed, without discussion,[9] that equitable mootness is available as a ground for dismissal of an appeal in a Chapter 9 case and affirmed such a dismissal. A district court in the Fourth Circuit reached the same conclusion, without analysis, in *Alexander v. Barnwell Cnty. Hosp.*, 498 B.R. 550 (D.S.C. 2013).

B. THE ONE COURT, ASIDE FROM THE DISTRICT COURT IN THIS CASE, THAT HAS CAREFULLY CONSIDERED WHETHER EQUITABLE MOOTNESS APPLIES IN CASES ARISING UNDER CHAPTER 9 OF THE BANKRUPTCY CODE CONCLUDED THAT IT DOES NOT

Bennett v. Jefferson County, 518 B.R. 613 (N.D.Ala. 2014), was a Chapter 9 bankruptcy. Jefferson County, Alabama, had incurred unsustainable debt to maintain and operate its sewer system and had sought the protection offered by Chapter 9. The bankruptcy court approved a plan of adjustment that foreseeably would result in large rate increases for users of the sewer system and limit the power of the county commissioners to set rates. A group of ratepayers appealed from confirmation of the plan of adjustment, and the county moved to dismiss the appeal on several grounds, including equitable mootness.

[8] "Unpublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion." Ninth Circuit Rule 36-3(a).

[9] No party in *City of Vallejo* raised the question whether equitable mootness applies in Chapter 9 cases. See *Lionell v. City of Vallejo*, 9th Case No. 12-60042: Appellant's Informal Brief, DktEntry 6, 9/24/12; Appellees' Brief, DktEntry 3, 10/22/12; Appellant's Informal Reply Brief, DktEntry 17, 11/30/12.

The district court held that the equitable mootness doctrine does not apply in cases arising under Chapter 9 of the Bankruptcy Code and that the case did not, in any event, meet the criteria for equitable mootness in the Eleventh Circuit. The court based its holding that equitable mootness cannot stand in the way of consideration of the merits of an appeal in a Chapter 9 case on two broad considerations that it went on to develop in detail: "(1) its application is 'in some tension with [the Supreme Court's] recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging,' and (2) it is based on Chapter 11 concepts that may be inapplicable to or inappropriate for this Chapter 9 case" 518 B.R. at 613 (citations and notes omitted).

C. A COURT CANNOT APPLY EQUITABLE MOOTNESS WITHOUT DETERMINING WHETHER THE PLAN UNDER REVIEW HAS BEEN SUBSTANTIALLY CONSUMMATED, BUT THE CONCEPT OF SUBSTANTIALLY CONSUMMATION IS NOT APPLICABLE IN CASES ARISING UNDER CHAPTER 9

The Bankruptcy Code contains provisions that have the effect of mooting certain issues in appeals from some rulings by the bankruptcy court. However, equitable mootness finds no warrant in the Code – it is entirely judge made. Moreover, a careful reading of relevant Code provisions makes it clear that the equitable-mootness doctrine cannot be relied upon to prevent appellate consideration of the merits in a Chapter 9 bankruptcy case.

To apply the doctrine of equitable mootness, a court must determine whether "substantial consummation" of the plan has occurred. As the courts in *Seidler* and *Jefferson County* noted, "substantial consummation" is defined in Chapter 11 of the Code, specifically in 11 U.S.C. § 1101(2). By its terms, the definition applies only in Chapter 11and is not one of the provisions made applicable in Chapter 9 by 11 U.S.C. § 901(a). Nor is its application in a Chapter 9 case

permitted by 11 U.S.C. § 103(f) or (g). Thus, attempting to implement equitable mootness in a Chapter 9 case would require the Court to consider a factor that, according to the Bankruptcy Code, should not apply in a Chapter 9 case. *Jefferson County*, 518 B.R. 635 - 36, citing *Seidler*, 44 F.3d. 947 n. 3.

This Court has explicitly held that § 1101(2)'s definition of substantial consummation does apply in equitable-mootness analysis: "'Substantial consummation' is a statutory term used to determine whether a bankruptcy court may modify or amend a reorganization plan. 11 U.S.C § 1127. The Bankruptcy Code defines substantial consummation under 11 U.S.C. § 1101(2) as:

(2) "substantial consummation" means—
(A) transfer of all or substantially all of the property proposed by the plan to be transferred;
(B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and
(C) commencement of distribution under the plan.

This standard has been adopted in the equitable mootness analysis to determine the extent to which the plan has progressed." *United Producers*, 526 F.3d 948 (6th Cir. 2008). This is consistent with the Court's unwavering practice of applying equitable mootness only in cases arising under Chapter 11.

D. APPLICATION OF EQUITABLE MOOTNESS IN A CASE ARISING UNDER CHAPTER 9 OF THE BANKRUPTCY CODE IS INCONSISTENT WITH CONST. ART. III § 1 AND THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

This Court last addressed the equitable-mootness doctrine in *United Producers*, 526 F.3d 942 (6th Cir. 2008). So far as its opinions disclose, this Court has never considered whether equitable mootness raises constitutional concerns. The *Jefferson County* court has remarked on

the tension between equitable mootness and recent holdings of the Supreme Court, 518 B.R. at 613., citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.,* 134 S. Ct. 1377, 1386 (2014).

In *Lexmark* the district court had dismissed Static Control's Lanham Act counterclaim for lack of standing. This court reversed, *Static Controls Components, Inc. v. Lexmark Intern., Inc.*, 697 F.3d 387, 411 (6th Cir. 2012), and the Supreme Court affirmed this Court. In the Supreme Court, *Lexmart* relied on "prudential standing," a doctrine that, like equitable mootness, seeks to prevent a court from exercising its jurisdiction on prudential grounds. In rejecting the argument "that we should decline to adjudicate Static Control's claim on grounds that are 'prudential,' rather than constitutional" the Court averted to its "recent reaffirmation of the principle that 'a federal court's "obligation" to hear and decide' cases within its jurisdiction 'is "virtually unflagging." ' " 134 S. Ct. 1377, 1386, 188 L.Ed.2d 392, citing *Sprint Communications, Inc. v. Jacobs*, 134 S.Ct. 584, 591, 187 L.Ed.2d 505, 513 (2013) and *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S. Ct. 1236, 47 L.Ed.2d 483 (1976)). The failures to exercise jurisdiction that the Court rejected in *Sprint Communications* and *Colorado River Water Conservation Dist.* were based on Younger abstention.

Shortly after the *Lexmark* decision, the Supreme Court again expressed its suspicion of any failure to exercise federal jurisdiction " 'on grounds that are "prudential," rather than constitutional' " and reminded us of federal courts' virtually unflagging obligation to hear and decide cases within their jurisdiction. *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2347, 189 L.Ed.2d 246 (2014). In that case the Court declined to consider the continuing vitality of "prudential ripeness," having concluded that the claim before it was justiciable under Article III and determining that consideration of the prudential-ripeness factors would not change the outcome. *Id.*

Neither *Lexmark*, *Sprint Communications*, *Colorado River Water Conservation Dist.* nor *Susan B. Anthony List* is a bankruptcy case, but there are implications for equitable mootness which other circuits have observed. *See In re Continental Airlines*, 91 F.3d 553, 568 (3rd Cir. 1996) (Alito, J., dissenting); *In re Zenith Electronics Corp.*, 329 F.3d 338, 347 (3rd Cir. 2003); *In re Pacific Lumber Co.*, 584 F.3d 229, 240 (5th Cir. 2009); *In re: One2One Communications, LLC*, No. 13-3410, 2015 WL 4430302, 2015 U.S. App. LEXIS 12544, [*25] (3d Cir. July 21, 2015) (Krause, J., concurring). The point that a congressional assignment of jurisdiction to an Article III court (as opposed to a grant of jurisdiction to be exercised by leave only) is not a mere suggestion or invitation to hear certain types of matters – that it is, rather, a mandate – applies with equal force to the assignment to district courts of "jurisdiction to hear appeals . . . from final judgments, orders and decrees" of the bankruptcy courts. 28 U.S.C. § 158(a)(1). Equitable mootness is clearly the sort of prudential rationale for refusing to hear the merits of an appeal that is so clearly disfavored by the Supreme Court.

Stern v. Marshall, 131 S. Ct. 2594 (2011) is a bankruptcy case. The Court's chief preoccupation in *Stern* was the power of bankruptcy judges to enter final judgments. *See* 28 U.S.C. § 157(b)(1). This is a matter of concern because bankruptcy judges are not Article III judges and, therefore, are not among the judges vested with the "judicial power of the United States," granted tenure during good behavior, and protected from diminution of their compensation. Const. Art. III, § 1, 131 S.Ct. at 2601 - 2602. This implicates two closely related constitutional objectives: maintenance of the separation of powers, and protection of the right of a litigant to be heard by a judge whose impartiality is not threatened by fear of dismissal or diminished compensation:

> In establishing the system of divided power in the Constitution, the Framers considered it essential that 'the judiciary remain truly distinct from both the legislature and the executive.' The Federalist No. 78, p. 466 (C. Rossiter ed. 1961) (A. Hamilton). As Hamilton put it, quoting Montesquieu, ' "there is no liberty if the power of judging be not separated from the legislative and executive powers." *Ibid.* (quoting 1 Montesquieu, Spirit of Laws 181).
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> . . .
>
> Article III imposes some basic limitations that the other branches may not transgress. Those limitations serve two related purposes. 'Separation-of-powers principles are intended, in part, to protect each branch of government from incursion by the others. Yet the dynamic between and among the branches is not the only object of the Constitution's concern. The structural principles secured by the separation of powers protect the individual as well.' *Bond v. United States*, 564 U.S.131 S.Ct. 2355, 2011 WL 2369334, *8 (2011).
>
> Article III protects liberty not only through its role in implementing the separation of powers, but also by specifying the defining characteristics of Article III judges. The colonists had been subjected to judicial abuses at the hand of the Crown, and the Framers knew the main reasons why: because the King of Great Britain 'made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.' The Declaration of Independence ¶ 11. The Framers undertook in Article III to protect citizens subject to the judicial power of the new Federal Government from a repeat of those abuses. By appointing judges to serve without term limits, and restricting the ability of the other branches to remove judges or diminish their salaries, the Framers sought to ensure that each judicial decision would be rendered, not with an eye toward currying favor with Congress or the Executive, but rather with the '[c]lear heads . . . and honest hearts' deemed 'essential to good judges.' 1 Works of James Wilson 363 (J. Andrews ed. 1896).
>
> *Stern*, 131 S.Ct. 2608 - 2609

This does not imply that bankruptcy judges have no authority to enter final judgments. The *Stern* Court did not question the bankruptcy court's general authority to enter final judgments in core proceedings subject to parties' right to appeal those judgments to the district court "which reviews them under traditional appellate standards." 131 S.Ct. 2603 - 2604, citing 28 U.S.C. § 158(a) and Fed. Rule Bkrtcy. Proc. 8013. Its narrow holding was that Congress may

not vest in a bankruptcy court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract or tort action arising under state law, without consent of the litigants, even when the bankruptcy court's ruling is subject to appellate review by an Article III court. 131 S.Ct. at 2615.

Nonetheless, when *Stern* is read alongside *Susan B. Anthony List*, *Lexmark*, *Sprint Communications*, and *Colorado River Water Conservation Dist.* Appellants Taubitz and Industrious submit that an appeal of a Bankruptcy Court final order is reviewable by an Article II judge." *See Morrissey v. Brewer*, 408 U.S. 471, 484, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), a party aggrieved by a final judgment of a bankruptcy court includes a right to appeal the judgment to an Article III court and to have that court review the judgment under traditional appellate standards. That right " 'may be forfeited . . . by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it,' " *Stern*, 131 S.Ct. At 2608, quoting *United States v. Olano*, 507 U.S. 725, 731, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993), quoting *Yakus v. United States*, 321 U.S. 414, 444, 64 S.Ct. 660, 88 L.Ed. 834 (1944). However, when the right to Article III review of a bankruptcy court's final decision is properly asserted, a court is almost always bound to honor it. If the court withholds the review that is the aggrieved party's due "on grounds that are 'prudential,' rather than constitutional," (*e.g.*, on the ground of equitable mootness) it violates its virtually unflagging obligation to hear and decide cases within its jurisdiction. *Lexmark*, 134 S.Ct. at 1386.

Obviously, it may be time to reconsider the viability of equitable mootness even in Chapter 11 reorganizations, and in *One2One*, U.S. App. LEXIS 12544, [*21] - [*56] (3d Cir. July 21, 2015) (Krause, J., concurring). Has done just that. But the case at bar does not present

that question. The question here is whether the discredited equitable-mootness doctrine should be expanded to apply in Chapter 9 municipal bankruptcies.

V. APPELLATE REVIEW IS NEEDED FOR THE ISSUE RAISED IN THIS CASE

Appellants Dennis Taubitz and Irma Industrious have raised multiple issues on appeal. The most primary issue is the relationship between a municipality and its pension system when the pension system is a separate entity that must itself file for bankruptcy in order to impair its pension obligations and seek a clawback to the ASF. This issue can only arise in a Chapter 9 bankruptcy case which are relatively rare until now, at least. The issues and sub issues are raised by a municipality invoking a Chapter 9 bankruptcy case, and its pension system are unique and will not arise in other bankruptcy cases and therefore cannot be definitely resolved unless an Article III court rules upon the merits of Appellants claims. In order for Chapter 9 case law to evolve, issues such as the one that Appellants raise in the case at bar needs to be decided on the merits in order to provide a legal framework and guidance for future cases to follow. Development of the law through the appellate process is an important aspect of American jurisprudence.

Appellants Dennis Taubitz and Irma Industrious note that they adopt the appellate briefs and arguments and relief sought of other appellants in similar cases before this Court and specifically those of Appellant John Quinn, who is also appealing the dismissal of his appeal on grounds of equitable mootness in Case Number 15-2337.

CONCLUSION

For the aforementioned reasons, the Order being appealed from dismissing Appellants Dennis Taubitz and Irma Industrious' appeal should be reversed and the matter should be remanded to the District Court with instructions that Appellants' claims be permitted to be heard before a court of law on the merits.

Dated: December 18, 2015

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsels of record of Dennis Taubitz, et. al., certifies that pursuant to Fed. R. App. P. 32(a) (7) (C) that this Brief complies with the type-volume limitation of Fed, R, App. P. 32 (a) (7) (B) because this Brief contains 9299 words and 898 lines including footnotes excluding the parts of the Brief exempted by Fed. R. App. P. 32(a) (7) (B) (iii).

In addition, this Brief complies with the typeface requirements of F.R. APP.P. 32 (a) (6) because this Brief is prepared in a proportionally spaced typeface using Microsoft Word 2013.

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CERTIFICATE OF SERVICE

We certify that on December 18, 2015, we electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of the filing to the following Bruce Bennett, Heather Lennox, Jonathon Green, Matthew Schneider, Robert Gordon and Ryan Plecha.

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