Detroit bankruptcy ruling paves way for nationwide attack on pensions

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Federal bankruptcy court judge Steven Rhodes on Tuesday gave the go ahead for the city of Detroit to proceed with the largest municipal bankruptcy in US history.

In his ruling supporting Detroit Emergency Manager Kevyn Orr, Rhodes explicitly sanctioned the gutting of the pensions of the city's 23,500 retired municipal workers, overriding prohibitions against such cuts in the Michigan Constitution. Reading out a 90 minute summary of his ruling from the bench, Rhodes provided a pseudo-legal framework for a nationwide attack on the pensions of millions of firefighters, teachers, transit workers, and other public employees.

Rhodes crafted his ruling to serve as a precedent for city and state governments across the country to carry out a similar conspiracy against the working class as has been carried out in Detroit, using the federal bankruptcy courts to override state and local laws, and strip workers of retirement benefits earned in the course of years of public service.

It is no accident that only hours after Rhodes issued his ruling, both chambers of the Illinois legislature voted to impose a pension "reform" that will rob Illinois state workers of thousands of dollars in retirement income.

Rhodes' ruling marks a turning point in class relations in the US comparable to President Ronald Reagan's firing of the striking PATCO air traffic controllers in 1981. That action signaled a government-backed attack on the unions in which the strike-breaking methods of the first decades of the 20th century were revived in order to impose mass layoffs and brutal cuts in wages and benefits. With the collaboration of the union leadership, struggles of workers against concessions were isolated and defeated, ushering in an assault on working class living standards that has continued ever since and has been intensified since the Wall Street crash of 2008.

Rhodes' ruling signals a new stage in the ruling class offensive, in which pensions, medical benefits, safety and health regulations—in short, every limitation on the exploitation of the working class—will be eliminated. This nationwide assault has the explicit backing of the Obama administration, which filed a brief supporting the bankruptcy process.

In the 1980s and 1990s, the bankruptcy courts were used to destroy the pensions of workers in steel, the airlines and other industries. They are now being used to shred the rights of public sector workers, 78 percent of whom still have pensions.

The bankruptcy process will aid Orr—an unelected front-man for the banks—in selling off city assets, privatizing services, and reorganizing the city in the interests of the corporate and financial elite. The entire operation is aimed at maximizing the amount the banks, bond insurers and other financial institutions will extract from the looting of the city and its working class inhabitants.

After the ruling, Orr told reporters that "some very hard decisions regarding pensions" would be included in the adjustment plan he will release in early January. He added that Christie's auction house would finish its appraisal of the "500 or so highest value pieces of art" at the Detroit Institute of Arts over the next two weeks. He reiterated his intention to "monetize" (i.e., sell off) the publicly owned art collection "in some fashion."

The Big Lie of Rhodes—echoed by Orr, Democratic and Republican politicians and the local and national news media—is that the bankruptcy process is being carried out to benefit the people of Detroit. It is supposedly being done as a "last resort" to provide the population with basic public services.

In reality, those responsible for the decline of Detroit and other industrial cities and towns across the country—the auto giants, the banks and their political servants in both major parties—are using the crisis caused by plant closures, mass layoffs, and budget cuts as a pretext to steal billions of dollars from workers who are in no way responsible for what has occurred.

In his ruling, the judge did not attempt to explain how gutting pensions and throwing tens of thousands of city residents into destitution, or privatizing city services and selling off its cultural treasures, will improve the health and safety of Detroiters.

Rhodes acknowledged that Detroit was entangled in "complex and confusing" financial arrangements pushed by the banks in previous years. While noting that, as a result of these arrangements and the economic crisis, debt servicing could rise from 28 percent to 65 percent of the city's annual budget, Rhodes never suggested that the Wall Street institutions be made to pay for the disaster they created. Instead, he insisted that the chief source of the city's financial woes was "legacy costs," i.e., the pensions and health benefits of retired workers.

This claim was challenged during the nine-day trial on the Chapter 9 bankruptcy filing over which he presided last month. Evidence was submitted that Orr's entire presentation of the financial crisis of the city was exaggerated and distorted in order to justify throwing the city into bankruptcy and cutting pensions.

A recent report by the think-tank Demos showed that the chief cause of the crisis was not "unsustainable" benefits, but the banks' predatory financial schemes, along with years of corporate tax cuts and reductions in state revenue sharing.

Rhodes ignored all such evidence, accepting uncritically and completely Orr's politically motivated presentation of the city's financial position.

His ruling was not an exercise in objective jurisprudence. It was a political and class decision made on behalf of the corporate-financial elite. The judge strung together a series of sophistic arguments to distort the facts, circumvent the law, and arrive at a previously determined conclusion.

In common with the US Supreme Court ruling that countermanded the Florida Supreme Court and halted the counting of votes in order to hand the 2000 presidential election to Bush, Rhodes's decision asserted federal supremacy to ride roughshod over the Michigan State Constitution and its guarantee of public pensions.

In finding the city eligible for bankruptcy, the judge brushed aside the legal arguments of retirees and others who filed lawsuits challenging Orr's bankruptcy filing and Michigan's anti-democratic emergency manager law. Dismissing the plain language of the Michigan Constitution's ban on "impairing or diminishing" public employee pensions, Rhodes argued that there was no such ban and that the federal courts could sanction an attack on workers' benefits.

The judge also ruled that the state's emergency manager law, Public Act 436, was constitutional, even though it was essentially the same law that was repealed by Michigan voters in December 2012.

The judge went through contortions to claim that the bankruptcy filing was carried out in "good faith" even though he acknowledged that Orr had not conducted "good faith" negotiations with retiree groups, unions, and other creditors—one of the requirements under the bankruptcy law. Rhodes ruled that further negotiations were "impracticable" because there were more than 100,000 creditors and the city was running out of time and could not pay its bills.

In his concluding remarks, Rhodes gave an extraordinary account of what he called the "composite narrative" of the objectors' argument that the filing had been in bad faith.

Rhodes said: "The city's filing was the consequence of a long-term strategic plan whose goal was the impairment of pension rights through a bankruptcy filing by the city. Its genesis, the narrative says, was hatched by a law review article that two Jones Day attorneys wrote. This is significant because Jones Day did not just become the city's attorneys, but the law firm from which the emergency manager was hired."

The "narrative," he said, included the city engaging the creditors only in the minimum so it could later assert in bankruptcy court that it attempted to negotiate in good faith.

Rhodes acknowledged that not only the objectors, but "many people in Detroit hold to this narrative or at least substantial parts of it." He added that the "Court does find, in some particulars, the record does support the objectors' view of the reality that led up to this bankruptcy filing."

Despite these damning acknowledgments—pointing to a political conspiracy against the people of Detroit—Rhodes insisted that there was "not nearly enough particulars for this Court to find that the filing was in bad faith."

In essence, Rhodes ruled that no matter how fraudulent the proceedings leading up to the bankruptcy, it could still go forward. He thereby opened, no doubt intentionally, a very wide door for other cities to declare bankruptcy and proceed with their own attacks on the jobs and benefits of the working class.

This ruling underscores the fact that the entire political system—from the White House, to the Democratic and Republican parties, to Congress, to the courts—is an instrument of the financial aristocracy and is carrying out a social counterrevolution against the working class.

The corporate and financial elite is able to proceed with such brazen contempt for social and democratic rights because of the cowardice and complicity of the trade unions. As was made clear in a filing last week, the unions accept the entire framework of the bankruptcy, demanding that the city proceed even more aggressively in selling off art from the DIA. (See,"The unions and the Detroit bankruptcy").

The mobilization of the working class against this attack requires the exposure of the entire criminal operation and the financial interests that stand to benefit from the looting of pensions and public assets. For this purpose, the Socialist Equality Party is organizing the February 15 Workers Inquiry into the Attack on the DIA and the Bankruptcy of Detroit.

For more information on the Workers Inquiry, visit detroitinquiry.org.