

US federal court rejects challenge to Michigan emergency manager law

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In a 3-0 ruling, a panel of US appellate court judges on Monday struck down a complaint challenging the legality of Michigan's emergency manager law. The suit was originally filed in March, 2013, but the Detroit bankruptcy proceeding put a freeze on civil actions against Michigan state officials. After two years of legal wrangling, the petitioners submitted a new brief last March, claiming that the law violated the US Constitution and the Voting Rights Act of 1965.

The plaintiffs claimed that Michigan's emergency manager law infringed on the right to collective bargaining, the right to an elected government, freedom of speech, the right to petition local government and the right to equal protection under the law.

The current version of the emergency manager law, Public Act 436, was signed into law by Republican Governor Rick Snyder on December 26, 2012, just seven weeks after more than 2.3 million people voted to overturn the previous emergency manager law, PA 4 of 2011, in a popular referendum. PA 436, drafted with the involvement of Democratic State Treasurer Andy Dillon, was virtually identical to the previous law, with the notable exception that it was made "referendum-proof."

A legal loophole in the Michigan Constitution states that "the power of referendum does not extend to acts making appropriations for state institutions." PA 436 was included in an appropriations provision, supposedly giving it iron-clad legal protection against being overturned.

This legally shady conspiracy had the backing of high-placed officials of both Republican and Democratic parties. In fact, the Obama administration's justice department submitted a friend-of-the-court brief specifically endorsing its use in the Detroit bankruptcy proceedings.

In the Cincinnati-based appeals court's Monday, Judge John M. Rogers wrote, "Improving the financial situation of a distressed locality undoubtedly is a legitimate legislative purpose, and PA 436, while perhaps not the perfect remedy, is one that is rationally related to that purpose. The emergency manager's powers may be vast, but so are the problems in financially distressed localities, and the elected officials of those localities are most often the ones who—through the exercise of their powers—led the localities into their difficult situations."

The legal opinion continues, "Plaintiffs are still provided a vote. PA 436 does not remove local elected officials; it simply vests the powers of the local government in an emergency manager."

As a legal precedent, the appeals court cited a 1982 US Supreme Court ruling in the case *Rodriguez v. Popular Democratic Party*, in which "the Court rejected a challenge to a procedure whereby vacancies in the Puerto Rico legislature could be filled on an interim basis by political parties. The Court reasoned that '[t]he right to vote, per se, is not a constitutionally protected right,' and that the Constitution does not 'compel[] a fixed method of choosing state or local officers or representatives.'"

In denying the claims made by the plaintiffs, the court dredged up the most anti-democratic legal pretext. According to the court, the population of the country has no inherent right to choose its representatives, and thus a financial dictator imposed on the basis of a law previously rejected by the population is entirely in order.

The anti-democratic law enabled the governor to appoint emergency managers with dictatorial powers over municipal governments and school districts and allowed for the abrogation of union contracts, in order

to ensure “financial accountability.” Since its enactment, the law was used to force the city of Detroit into bankruptcy, allowing for the looting of city workers’ pensions and the “monetization” the city’s assets, including the Detroit Institute of Arts and the Detroit Water and Sewerage Department (DWSD). Several emergency managers were appointed to Flint, where they were responsible for the decision to cut the city off from its source of treated water from Lake Huron supplied by the DWSD and switch it to the toxic Flint River.

State-appointed emergency managers over the school districts of Detroit, Muskegon Heights and Highland Park are responsible for continuing assaults on teachers and public education, including by advancing the reactionary agenda of privatizing schools altogether.

The original complaint against the emergency manager law was filed by a group of union officials, municipal officials and pastors, led by Catherine Phillips of AFSCME Council 25. The suit served as a fig leaf to cover up for the despicable role that the unions played throughout the bankruptcy of Detroit. Without their acquiescence to the “plan of adjustment” imposed by Emergency Manager Kevyn Orr and bankruptcy Judge Steven Rhodes, the operation could not have been pulled off.

It is not surprising that the courts struck down this legal challenge to a measure that has repeatedly proven valuable to the corporate and financial elite.



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