

Federal judge hears motion for injunction against end of water shutoff moratorium in Detroit

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On Monday, federal Judge Denise Page Hood heard arguments at the Theodore Levin courthouse in Detroit to extend a temporary moratorium on water shutoffs in the city. The moratorium was enacted by the city in March of 2020 in response to the outbreak of the COVID-19 pandemic, which triggered wildcat actions by autoworkers who refused to work in unsafe plants.

In December 2020, the temporary moratorium was extended through December 2022. Detroit Mayor Mike Duggan noted in his 2021 State of the City address that a solution would need to be in place by 2023.

“As long as COVID-19 remains a health concern, no Detroit residents should have concerns about whether their water service will be interrupted,” Duggan, a Democrat, declared in 2020. With the supposed (and non-existent) “end” of COVID-19, the moratorium was allowed to expire on December 31, 2022.

The plaintiffs are seeking a temporary injunction against the lifting of the moratorium. On Monday, the judge said she would announce her decision on whether the Detroit Water and Sewerage Department (DWSD) can resume cutting off water to city residents by Friday, January 27.

Attorneys from the Edwards & Jennings law firm are representing six named plaintiffs as part of a class action lawsuit, *Taylor v. City of Detroit*, against the city, the DWSD and its director, Gary Brown.

Opening arguments to extend the moratorium were made by one of the plaintiffs’ attorneys, who began by asserting that “COVID-19 has not vanished” and that “The concern regarding shutoffs pre-dates COVID-19.”

The suit notes:

3. Families without water service in their homes are susceptible to infection. Through the years,

Detroit’s water shutoff policy has resulted in outbreaks of various forms of infectious diseases, including shigellosis (an acute dysentery); giardiasis (a protozoan infection); and campylobacter (an acute intestinal disease). Detroit’s policy has also resulted in threats to the health of affected families resulting from such things as the inability of people with diabetes to prepare medically necessary meals, the inability of parents to prepare infant formula, dehydration, and various other health consequences.

4. In many cases, individuals who live without water service in their homes have become carriers of disease, infecting others within their physical proximity. Communities with a significant number of households without water service are particularly susceptible to COVID-19 infection, creating a public health emergency that prompted repeated, consistent demands for remedial action by affected communities and their advocates.

It also states:

The pending litigation was filed for the specific purpose of permanently ending water shutoffs and to bring that into effect in a specific way—namely by making water rates affordable for all residential water customers.

In 2013, the state-appointed well connected lawyer

Kevin Orr as “emergency financial manager” of Detroit to oversee the restructuring of the impoverished city’s finances. Orr was given near dictatorial powers, over and above the elected city government. In July of 2013, he took the city into bankruptcy, filing in federal court for Chapter 9 bankruptcy protection.

The following year, the city began cutting residents off from water due to lack of payment. Between 2014 and 2019, over 141,000 households were disconnected. A six-month moratorium was sought and denied in September 2014, with plaintiffs’ attorneys arguing that time was needed to come to an agreement to make water affordable for the city’s residents. Nearly a decade later, no such agreement has been reached.

US bankruptcy Judge Steven Rhodes threw that motion out and ruled that water is not a fundamental right. That ruling set a precedent that was cited by the defendants’ attorney on Monday.

“What the plaintiffs are really asking is that there is a fundamental right to water service,” the lawyer said. “The Sixth Circuit has already ruled that there is no such fundamental right.”

The plaintiffs’ attorneys argued that many residents are not aware of the “Lifeline” program of structured payments that has been implemented by DWSD, or cannot apply due to barriers involving technology, internet access or required identification papers. Of the 100,000 households that are apparently eligible for the Lifeline program and behind on their water bills, just 14,000 have applied, leaving approximately 86,000 susceptible to service interruption.

The remaining delinquent households qualify for the 10/30/50 plan, which charges residents 10 percent of the overdue balance to get service restored instead of the regular 30 percent charge, and then 50 percent of any outstanding balance—in addition to arrears on any current bills.

The defendants’ attorney called the Lifeline program “a major achievement,” disregarding its low number of applicants. He argued that residents who have had their water shut off are aware of the Lifeline program due to outreach efforts by the DWSD, and that residents who are in danger of service interruption receive notices ahead of time. Any resident who has not applied cannot be forced to, and DWSD is not responsible, he declared. “Government assistance programs are not self-executing,” he added.

He stated that the Lifeline program’s \$18 per month for 4,500 gallons of water per month “may not be ideal,” but

that “residents can reduce [water] usage by spending less time in the shower.” DWSD estimates that about 28 percent of homes use more than the allotted 4,500 gallons in a month.

The defendants’ attorney noted further that the city has a “compelling reason to keep the water department solvent” and that there is no case in the US that says that “water departments cannot use service interruption as a last resort tool” to extract payment from customers. “The city represents public interests, and the public has an overwhelming interest in maintaining a properly functioning water department,” he added.

Perhaps the most reactionary argument made by the defense is that residents need to have the threat of service interruption as an “incentive” to encourage them to pay their bills. Defense counsel argued that before the 2020 moratorium, 92 percent of DWSD’s client base was up to date on their water bills. That rate dropped to 77 percent and then 72 percent during the moratorium, which, he argued, was due to a lack of “incentive”—and not the pandemic, which prevented residents from going to work while jobless aid was either inadequate or unobtainable.

“Why should they [pay] if there’s no possibility of shutoffs?” he asked the judge.

Cynically, the attorney cited the city’s “critically needed improvements to its 100-year-old pipelines,” without which “the enormity of the threat of catastrophe cannot be overstated.

“DWSD will have no choice but to impose significant rate hikes on its dwindling paying customer base, and hardworking families will have to make up for that,” he threatened.

“If an injunction is not put in place,” the plaintiffs’ attorney responded, “there will be catastrophes with disease.”

Making clear their readiness to compromise, the plaintiffs’ lawyer added that the “parties can come together—they want an affordability plan that works,” but the Lifeline program “in its current form is not ready.”



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